ISSN 2345-1424 http://jrtmed.uccm.md E-ISSN 2345-1483

Journal of Research on Trade, Management and Economic Development
Category B
VOLUME 8, ISSUE 1(15)/2021

THE PARTICULARITIES OF THE SOCIAL CAPITAL CHANGES OF JOINT STOCK COMPANIES ACCORDING TO NATIONAL LEGISLATION

Liliana DANDARA, Assoc. Prof., PhD
Trade Co-operative University of Moldova
E-mail: lilianadandara@gmail.com

Universal Decimal Classification: 658.114.4:347.72.034
JEL Classification: F15, K00, K33

Abstract

The joint stock company is the most complex and, at the same time, the most evolved form of the company. In this form of organization of the company the contributions of the associates matter the most. The associates are coming with contributions to the formation of the social capital, without carrying out an activity in the society. Contributions to the social capital represent interest for both the company and third parties, as the partners are liable for the obligations assumed within the limit of the size of the contributions in the social capital of the joint stock company. The joint stock company is intended for large businesses, which require significant capital. The joint stock company is thus designed to aspire to modest financial contributions for the formation of large capitals, necessary for the development of large-scale projects.

Due to the important role that the joint stock company has in the economic life of the Republic of Moldova, the Civil Code and Law no. 1134/1997 on joint stock companies ensures a regulation corresponding to this form of business organization. The joint stock company is the company whose obligations are guaranteed with the company's patrimony, the shareholders being obliged to subscribe and pay contributions in the social capital within the term provided by law. During the economic activity, the joint stock company, depending on the share of the registered turnover, as well as on the company's capacity to participate in the commercial and civil circuit, can change the social capital by reducing or increasing it.

***Keywords**: joint stock company, social capital, change, capital increase, capital reduction*

1. Introduction

The joint stock company represents the most complex form of legal organization of the economic entity, and, at the same time, the most evolved and prosperous of the commercial companies. In this form of company, such as the joint stock company, the contributions of the partners matter more than their personal qualities. However, joint stock companies are also called public limited companies. Therefore, it is of great interest that the partners contribute with their contributions to the formation of the share capital, without carrying out any activity in the company. These contributions are of interest, including to third parties, as the liability of the partners (shareholders) for their obligations is limited to the amount of the contributions paid into the share capital of the joint stock company.

Due to the importance of the contributions to the formation of the share capital and the blurring of the personal qualities of the associates (shareholders), the joint stock company is also known as a joint-stock company.

The evolution of companies shows that this form of company is intended for large businesses, which require significant capital. The joint stock company is thus designed to raise monetary contributions for the establishment of share capital, the amount of which is capped by law, in order to generate large capital, necessary for large investments. In order to achieve this purpose, the joint stock company is authorized to use the public subscription of securities.

The shares represent fractions of the share capital and, at the same time, securities representing the contributions of the associates to the formation of the social capital. In this article we aimed to approach the institution of share capital from the perspective of changes in the Civil Code of the Republic of Moldova, as well as the full republishing of the Law of the Republic of Moldova no. 1134/1997 on joint stock companies. Also, the motivations of this topic are the new regulations contained in the above-mentioned legislative act.

The proposed theme is characterized by an element of novelty, given the latest legislative changes in the field of joint stock companies. Papers that analyze this aspect, after the substantial modification of the applicable regulations, are practically non-existent, which amplifies the increased significance of the chosen subject.

The actuality and importance of the issue are determined by the importance of the subject investigated in both national and international legislation, or from the content of the study we deduce the commitments of the Republic of Moldova to adjust the national regulatory framework to the European acquis in the field of companies, ratification by the Republic of Moldova in 2014 of the Association Agreement with the European Union.

Starting from the definition of the social capital of the joint stock company, we note that it has a double legal and accounting meaning. As a result, the social capital of the company represents the value expression of all contributions in cash or in kind, with which the participants in the formation of the company contribute to the formation of its patrimony, to ensure the material means necessary to carry out the activity and achieve statutory goals.

According to art. 158 Civil Code of the Republic of Moldova the social capital of the joint stock company is formed by placing the shares between the shareholders and represents the value of the cash and in kind contributions paid in proportion to the number and value of the subscribed shares. The share capital will be equal to the sum of the nominal value of the placed shares, if it was established in the articles of incorporation of the company, according to the provisions of art. 40, Law no. 1134/1997 on joint stock companies. If the company has placed shares whose nominal value has not been established, the social capital will be equal to the summary value of all contributions deposited in the share payments. It should be noted that the value of the shares authorized for placement of the company, but not placed, is not included in the share capital of the joint stock company. If the amount of the contributions made on account of the payment of the shares exceeds the nominal value of the shares placed, this excess represents the additional capital of the company and can only be used to supplement, including the increase, the share capital of the joint stock company.

In view of the above, it is clear that the social capital includes the value of all cash and goods contributions made to the incorporation of the company or through subsequent subscriptions. The contribution may have as object any goods with economic value, which represents economic value and which is of interest for the company's activity. The law on joint stock

companies does not require that the contributions of shareholders be equal in value or that they have the same content and object, or be a unitary object.

As a reference rule, the Law on joint stock companies stipulates that contributions to social capital may be money, securities, other assets, including property rights or other rights that can be valued in cash, as well as the company's obligations/debts payable to creditors with assets. Non-monetary contributions to share capital may be transferred to the company with the right of ownership or right of use.

At the same time art. 41 of the Law on joint stock companies establishes restrictions regarding the limit of contributions, namely there can be no contributions to share capital: a) monetary assessment of the activity of the founders for setting up the company, as well as the work of shareholders working in the company; b) the obligations (debts) of the founders, shareholders of the company and of other persons; c) unregistered securities and real estate, including the products of intellectual activity, subject to registration in accordance with the legislation; d) the goods belonging to the purchaser of shares with the right of economic administration or operative management, without the consent of the owner of these goods; e) goods intended for the current consumption of the civilian population, goods whose circulation is prohibited or limited by legislative acts.

During the activity of the joint stock company, the share capital is fixed and represents the limit of the general pledge of the company's creditors. Therefore, the value of the company's net assets must not be less than the size of its share capital. In this sense, art. 158 of the Civil Code of the Republic of Moldova stipulates that, if the assets of the joint stock company have been reduced below the minimum established by law, and the shareholders' meeting has not decided to cover losses or reorganize the company, it is dissolved. Also, art. 39 the Law on joint stock companies stipulates that if, at the expiration of 3 consecutive financial years, except for the first financial year, the value of the company's net assets, according to the company's annual balance sheet, will be less than the social capital, any shareholder of the company is entitled to request the annual general meeting of shareholders to adopt one of the following decisions: a) regarding the reduction of the social capital; b) regarding the increase of the value of the net assets by making additional contributions by the company's shareholders in the manner provided by the company's statute; c) regarding the dissolution of the company; d) regarding the transformation of the company into another legal form of organization.

If, according to the latest balance sheet, the value of the company's net assets is less than the size of the social capital, unless the value of the net assets is negative, the company is entitled to issue additional shares only by closed issue. The company whose net assets, according to the latest balance sheet, have a negative value is obliged to publish a notice in this regard in the Official Gazette of the Republic of Moldova and has no right to issue securities. Non-execution of the provisions provided in art. 39 paragraphs (6) and (7) of the Law on joint stock companies constitute the basis for the dissolution of the joint stock company based on the decision of the court. Any shareholder has the right to appeal to the court with a request for the dissolution of the company.

Another cause of discrepancy between the value of net assets may be non-payment of subscribed shares or an overestimation of in-kind contributions. In these situations, actions are

to be taken to enforce the subscribers who did not make the contributions in the company's capital or, in the case of an overestimation of the contributions in kind, to supplement them and implicitly the capital, or reduce the capital to the real value of the contributions.

2. The degree of investigation of the problem and purpose of research

As mentioned above, the joint stock company is considered one of the most advanced and complex forms of organization of companies, operating in areas as diverse as possible, having the ability to develop large and profitable businesses. In such situations, it is necessary to carry out research on the regulations related to the size of the social capital, which gives the company mobility in activity, safety and financial stability, on the one hand, and in another sense is the guarantee of the company's creditors. We reiterate that the issue of changing the social capital of joint stock companies is appropriate, given the latest legislative changes in the field of joint stock companies. Papers that analyze this aspect, after the substantial modification of the applicable regulations, are practically non-existent, which amplifies the increased significance of the chosen subject.

3. Applied methods and materials

Quantitative and qualitative research methods were used to carry out this study, as well as the induction and deduction method, the logical and comparative method. The article is made as a result of national and international bibliographic research, consultation of official sites, as well as virtual libraries, with the ultimate goal of determining the main theoretical and practical objectives of the research topic. The means considered are various bibliographic sources mentioned at the end of the paper, following the best possible documentation, including the literature related to the field accessible on the Internet and using/interpreting the ideas of the most important authors in the field of civil and commercial law in the Republic of Moldova. Romania, which through their practical and theoretical works have created useful concepts and models for those interested, in order to document, improve and inform.

4. Results and analytics

The premise of setting up and operating a joint stock company is its share capital. In this respect, the social capital is the foundation of that company.

The social capital of a company, in particular of the joint stock company, represents the legal basis of its activity, on the one hand, and on the other hand, ensures the patrimonial interests of creditors and shareholders. And in turn, shareholders bear the risk of losses within the value of the shares to which they belong.

The social capital is an element of the social patrimony that is expressed, in currency, the total value of the contributions in cash and in kind subscribed by the associates at the incorporation of the company. The original patrimony, the one with which the society starts on the road, is formed through the contributions of the associates. Through such contributions, the social capital is increased during the social life.

The share capital is included in the articles of incorporation of the company. However, it is not enough to enter only the global figure of the social capital, other elements must be specified in order to configure it as accurately as possible. Thus, the constitutive act of a joint stock company will be reflected: the subscribed and paid-in social capital, mentioning the contribution of each partner, in cash and in kind, the value of the contribution in kind and the valuation method, as well as the date on which it will be paid in full subscribed social capital.

The social capital of a joint stock company is not to be confused with the company's assets. The patrimony includes the totality of the rights and obligations of the collective entity, so active and passive, the liabilities being formed by the share capital and the other own capitals, i.e. the debt towards the associates, on the one hand, and the debts to third parties, on the other hand. In other words, the share capital and the other own capitals form, together with the social debts, the patrimonial liability, and the latter, together with the asset, make up the reflected patrimony in the form of the balance sheet. Following the subscription of shares, the company retains the value of the contributions in the share capital, as an element of liabilities, i.e. debts to the associates, while the assets and rights are recorded in the balance sheet assets (active side of assets), along with other assets and rights in society in other ways (purchase, exchange, own development). Therefore, the social capital doesn't include goods, sums of money or receivables, but values representing debts of the company to the associates, corresponding to the goods, sums of money and receivables contributed by each of them, which entered into subscription in the company's patrimony, in this case social asset. The company's patrimony is dynamic, continuously modifiable as a result of the company's operations, while the share capital, being a value entered in the articles of incorporation, is fixed, unchangeable, only by amending the articles of association. In conclusion, the social capital is not the sum of the assets, amounts and receivables contributed, but the sum of their values from the date of contribution, value which, after subscription, is no longer in any correlation with the respective amounts, assets or receivables which, being social assets, are available to the company and are, in addition, the subject to market fluctuations [1].

When the joint stock company is set up, equity and social capital are relatively close. Later, however, the proximity disappears with the appearance of profits or losses. The result of the profit and loss account, once entered in the balance sheet, increases (when the result is positive), respectively erodes (when it is negative) the company's capital.

Law on joint stock companies no. 1134/1997, art. 50 paragraph (3) letter b), enshrines the exclusive right of the general meeting of shareholders to decide on the change of social capital. A change of social capital may have as its object both the size of the social capital and its reduction.

In practice, the capital increase will most often be preceded by a capital reduction, an operation designated by the formula "accordion". The practical interest of this operation is obvious especially if the capital increase is achieved through contributions made by new partners, they will not agree to participate in the capital increase if the losses are not borne by the old partners [2].

The modification of the social capital is made in compliance with the necessary conditions for any modification of the constitutive act of the joint stock company. Decision on the amount by which the share capital of the company will be increased or reduced, the method of

increasing or the procedure for reducing the social capital, the amounts paid by each shareholder or the method of payment, the deadline for exercising the pre-emption right of shareholders, notification of creditors, the number and nominal value of the new shares assigned to each subscriber will be taken by the ordinary or extraordinary general meeting of shareholders, the executive body of the joint stock company being the one that concretely executes the decision taken at the general meeting.

4.1. Increase of the social capital of the Joint Stock Company

The increase of the capital of a company can be determined by various causes, as well as the development and consolidation of the economic strength of the company, the removal of financial difficulties, the accumulation of important reserves or the need to revalue the company's assets, between the carrying amount of the assets and their present actual value, offering for subscription the shares of the company's employees to become its shareholders, etc. [3]. In such cases, the share capital is increased by incorporating the benefits (profit) that exceed the reserve capital, or as the case may be, the differences from the revaluation, thus achieving a balance of the balance sheet.

The capital increase may also become necessary to achieve the expansion and diversification of a company's shareholders by giving other persons outside the company to subscribe for new shares.

Also, the increase of the social capital may constitute a legal obligation, when the raising of the minimum limit of the share capital of the joint stock company occurs with the operation of changes in the legislation.

In the literature, among the ways to increase the social capital is listed the merger. However, it must be borne in mind that, although the merger produces, among other effects, the capital increase of the acquiring company, it is nevertheless a complex operation, with multiple consequences, with a well-defined eventuality and which, both legislatively and statutory, finds its own regulation, distinct from that of capital increase [4].

According to the provisions of art. 43 paragraph (3) of the Law on joint stock companies no. 1134/1997, sources of the size of the social capital may be both the company's own capital, within the limit of the part exceeding its social capital and the reserve capital, and/or the contributions received from the purchasers of new shares.

In terms of the economic source, the capital increase through new contributions, regardless of the holder of the subscription: shareholders, employees of the company, or people outside the company, is a source of external financing. New funds or new assets enter the company's patrimony, increasing the assets and invigorating the economic capacity of the joint stock company. The latter is a true source and an important way to increase social capital. The other ways, not involving external contributions, are considered a self-financing of the company, by incorporating in its capital some available resources.

According to the provisions of the Law on joint stock companies no. 1134/1997, the social capital of the company can be increased by: a) increasing the nominal value (fixed) of the placed shares and/or b) placing shares of the additional issue.

The increase of the social capital by increasing the nominal value of the shares is done by mobilizing the available resources or mobilizing the favorable differences from the revaluation of the patrimony.

The capital increase by incorporating the available resources, which appear in the liabilities of the balance sheet, having the character of own capitals, represents a way of self-financing of the company. This procedure represents an increase of the share capital without contributions, but also without an increase of the social asset. In the doctrine this is called nominal or free increase.

The resources available for the capital increase come from the company's profit, which is usually segmented into different funds. Thus, in addition to the fund that constitutes the reserve capital and which is mandatory for the company according to the provisions of the Law on joint stock companies, the companies aim to, by statute or decision of the supreme body, to constitute other funds. All these funds are constituted as a result of the payment of cash as a result of the registration of the profit by the company, and are used in accordance with the law and the statute.

The existence of significant reserves strengthens the material condition of a company and the ability to pay / market solvency. They represent an additional guarantee for third parties that enter into business relations with the company, in the sense that the reserves join the share capital or are likely to replace its small size or the “decapitalization” of the company in periods of monetary depreciation.

It’s an expression of the spirit of foresight, the reserves open to society increased opportunities to cope with unfavorable economic conditions and possible losses. It's a kind of "white money for dark days." At the same time, reserves can be a source of self-financing in case of urgent needs, such as when the company's progress requires new investments [5].

As in the case of social capital, reserves must be reflected in the company's assets. Therefore, the reserves do not remain blocked, they do not represent a sum of money in a bank account, but are invested in securities and real estate.

The Law on joint stock companies does not regulate the reserve fund and only the reserve capital, which is formed from annual breakdowns of net profit until reaching the amount provided by the company's statute. The volume of the breakdowns is established by the general meeting of shareholders and constitutes not less than 5% of the net profit of the company. The reserve capital can be used only to cover the company's losses and / or to increase the company's social capital. However, the reserve fund may be constituted by the decision of the general meeting of shareholders on account of the net profit recorded by the company. The decision of the general meeting of shareholders to set up such reserves, and respectively to reduce dividends, is usually in favor of the majority shareholders, who seek to reinvest profits, to compete and to achieve higher profits in the future.

In conclusion, we increase that the social capital increase by increasing the nominal value of the placed shares is carried out in equal proportion for all shares of the company, unless the company's statute provides that the increase in nominal value extends to shares of a certain class of shares. At the same time, the share capital cannot be increased and the shares cannot be issued until the issuer's treasury shares have been alienated, in accordance with art. 13

paragraph (9) of the Law on joint stock companies, and/or will not be completed all the stages related to the increase of the social capital, previously approved.

In this context, we mention that, for the application of this procedure to increase the company's social capital, there is nothing to prevent shareholders from contributing additional contributions to the increase in the nominal value of the shares.

As mentioned above, the capital increase can also be made by a supplementary issue of shares, under the terms of the Law on joint stock companies, the Capital Market Law, the company's statute and the decision of the general meeting of shareholders and the decision of the board on the additional issue of shares.

The additional issue of shares may be carried out by means of a public offer of shares - public issue or closed offer - closed issue. Public offer of securities is the communication addressed to persons, made in any form and by any means, which presents sufficient information about the terms of the offer and about the securities offered, so as to allow the investor to make a decision on the purchase or subscription of these securities [6]. Closed bid (closed issue) is the placement of securities in the additional issue between the issuer's shareholders and/or in a limited circle of persons, approved by the general meeting of shareholders [7].

The additional issuance of shares is carried out after the state registration of the shares placed at the establishment of the company. The conditions for issuing additional shares, including the cost of placing them, will be the same for all purchasers of shares. The cost of placing shares of the same class will be not less than their nominal value or fixed value. Under the terms of the Law on joint stock companies, the joint stock company has the right to issue shares by closed or public issue. The shares of the additional issue paid in full with the net assets (equity) of the company are distributed among the shareholders of the company without payment, in accordance with the classes and in proportion to the number of shares belonging to them. The entries in connection with the additional issue of shares are made in the register of shareholders based on the Certificate of state registration of securities and the list of subscribers of shares in the respective issue.

4.2. Reduction of the social capital of the Joint Stock Company

The deficient activity of the company caused by a bad administration or, simply, by an unfavorable conjuncture leads, in most cases, to patrimonial losses, in which case the value of the net assets of the social patrimony is lower than the value of the nominal capital of the company. Therefore, in such cases, it is necessary either to replenish the patrimonial asset, up to the limit of the share capital, or to reduce the social capital to the level of the existing asset.

The reduction of the social capital is that legal-accounting operation through which the associates diminish the registered level of the social capital on the background of some losses or to make refunds to the associates. The reduction of the social capital falls within the competence of the general meeting of shareholders, in this case the extraordinary meeting, and cannot be the subject of delegation to the board of directors, the executive body of the company. When it is motivated by losses, recognized by the balance sheet, the method is a consolidation one by which the social capital is equaled with the own capitals (net assets), in order to establish the value of the new corporate pledge (lower). As it is not the share capital

but the net assets that are eroded as a result of accounting losses, the intervention of the shareholders meeting in a general meeting is necessary to decide the reduction of the social capital and its alignment to the new value of net assets [8].

Another cause of reduction of the social capital is the overvaluation of some contributions in kind, a situation that requires either the completion of the contribution and, implicitly, of the capital, or the reduction of the capital to the real value of the contributions.

Therefore, the reduction of the social capital can occur even in the situation when the joint stock company is prosperous, but its capital exceeds the necessary resources to achieve the objective of establishing the company. In order to unblock this excess capital and restore the balance between assets and liabilities, the social capital is reduced.

According to art. 45 of the Law on joint stock companies, the social capital of the company may be reduced by: a) reducing the nominal (fixed) value of the shares placed and/or b) canceling the treasury shares.

The reduction of the nominal value of the placed shares consists in the decrease of the nominal value of the shares while maintaining their number. The reduction of the social capital below the limit provided in art. 40 paragraph (2) of the Law on joint stock companies, i.e. 20,000 lei, is not allowed. Thus, if a joint stock company has a social capital of 50,000 lei, divided by 10,000 shares, the value of a share will be 5 lei, correlatively the social capital will be reduced from 50,000 lei to 40,000 lei, the number of shares will remain unchanged - 10,000, the value of the shares will be reduced to 4 lei. As a consequence, the operation of reducing the social capital registers the value of 40,000 lei, which falls within the limit of the regulated capital of 20,000 lei.

The second procedure for reducing the social capital is performed by canceling the existing treasury shares or by acquiring its own shares by the company by acquiring by the company the placed shares, according to the procedure provided in art. 78 of Law no. 1134/1997, the redemption to the company of the placed shares, under the conditions provided by art. 79 of the Law on joint stock companies, or in another way, followed by the cancellation of the treasury shares.

As mentioned above, the reduction of the social capital of the joint stock company is decided by the decision of the general meeting of shareholders, with the quorum and the majority provided in art. 58, in conjunction with art. 50 of the Law on joint stock companies. The decision of the general meeting must be a reasoned one, the procedure used to reduce the social capital, as well as data on the number of canceled shares or the nominal value of the shares. Following the described procedure, the transparency of the operation of reduction of the share capital towards the creditors is ensured, which must be informed as complex as possible, considering that the reduction of the social capital affects the guarantee it represents for the execution of their claims.

In the context of the provisions of the Law on joint stock companies, the decision on the reduction of social capital is to be published by the company within 15 days from its adoption by the general meeting, usually in the Official Gazette of the Republic of Moldova, to be opposable to third parties.

From the date of publication of the decision on the reduction of the social capital, the company's creditors have the right within one month to request from the company (i) the granting of guarantees or the guarantee of the obligations assumed by it or (ii) the premature execution or premature termination of obligations of the company and repairing the damages caused by it. In case of lack of requirements towards the company from the creditors, the decision to reduce the share capital will enter into force after 30 days from the date of publication, and in case of existence of requirements from the creditors mentioned above, the decision to reduce the share capital will enter in force after their satisfaction.

Some authors consider that, art. 45 of the Law on joint stock companies is to be amended, in the sense that, if the reduction of the social capital is caused by financial losses registered by the partners, the creditors lose their right to request the company to provide guarantees or early execution of their acrids [10].

The reduction of the social capital will be reflected in the state of the company and will be subject to registration at the National Commission of the Financial Market, in accordance with the legal provisions in force. The change in the social capital will also be reflected in the company's balance sheet, in the shareholders' register and on the company's header sheet.

If the purpose of the reduction of the social capital is to return to the shareholders a part of the contributions, representing the company's net assets, this payment will be made only after the registration of the changes in the company's statute.

By derogating from the provisions of paragraph (6) art. 45 of the Law on joint stock companies, in case of free transfer of public property, according to the regulations contained in art. 14 of Law no. 121/2007 on the administration and denationalization of public property, if the reduction of the share capital has as finality the restitution to the shareholders of a part of the contributions, the payment will be made after the adoption of the respective decision by the general meeting of shareholders.

4.3. Procedure for recording changes in the company's social capital

As mentioned above, the increase of the social capital of the joint stock company is done through two procedures: (1) public offering of securities and (2) issue or closed offer of securities.

The increase of the social capital of the joint stock company through public offering has as object the securities that are offered by the issuer for the first time to be subscribed by the public to which such offer is addressed.

The public offer is made only through investment companies licensed in category "B" (only in the placement of securities without firm commitment), category "C" and accepted persons, which according to the Regulation on licensing and authorization on the capital market, approved by the Decision of the National Commission no. 56/11 of November 14, 2014, are entitled to provide financial investment services and activities on the territory of the Republic of Moldova.

The issue of securities carried out through public offering includes the following stages:

1) the adoption by the issuer of the decision regarding the issue of securities;

2) the completion by the issuer and the investment company of the contract for the provision of financial services;
3) preparation and approval by the issuer of the public offer prospectus;
4) the opening by the issuer of the provisional account for the accumulation of the funds obtained in the process of placing the securities;
5) approving the prospectus of the public offer of securities at the National Commission of the Financial Market, with the assignment of the securities of the state registration number, as the case may be, the multiplication of the prospectus of the public offer;
6) disclosing the information contained in the prospectus of the public offer, in the manner established by the prospectus;
7) placement of securities;
8) the preparation and approval by the issuer of the report on the results of the issue and the qualification of the issue as performed or not performed;
9) the registration at the National Commission of the Financial Market of the report on the results of the issue;
10) the operation of the modifications and completions determined by the results of the issue in the issuer's statute (in case of the issue of shares);
11) closing the provisional account and transferring the funds from this account to the current account of the issuer - in case the National Financial Market Commission has registered the report on the results of the public issue of securities;
12) withdrawal of the Certificate of state registration of securities from the National Commission of the Financial Market, of the issuer's decision regarding the issue of securities (2 copies) and of the list of subscribers to the given issue (2 copies);
13) entering in the register of holders of securities the data about holders of securities, issuing to the subscribers the extracts from the register/from the account.

The public offer of securities may be initiated by any issuer only after the publication of an offer prospectus, approved by the National Financial Market Commission, under the conditions established by the Capital Market Law no. 171/2012, the Instruction on stages, deadlines, the manner and procedures for the registration of securities, approved by the NFMC decision no. 13/10 of 13.03.2018 and other normative acts of the National Commission.

The initiation and conduct of the public offer without publication of the offer prospectus, approved by the National Financial Market Commission under the conditions established by Law no. 171/2012 and the Instruction, mentioned above, is prohibited and void and, in turn, attracts the responsibility of the guilty persons and application of the sanctions provided by the legislation in force. The issuer, which carries out such an offer, is liable for any damages caused to investors, it being obliged to investors to refund payments arising from the nullity of transactions concluded on the basis of such a public offer.

The obligation to publish a prospectus does not apply in the cases provided in art. 13 paragraph (2) of Law no. 171/2012, namely: a) the offer is addressed exclusively to qualified investors; and/or b) the offer is addressed to a number of less than 100 natural or legal persons, other than qualified investors; and/or c) the offer is addressed to investors who purchase these securities in the amount of the RON equivalent of at least 50,000 euros

calculated at the official exchange rate of the National Bank of Moldova per investor; and/or d) the offer in which the nominal value of a security is equal to or higher than the RON equivalent of 50,000 euros calculated at the official exchange rate of the National Bank of Moldova; and/or e) the offer whose total value, during 12 months, is less than the RON equivalent of 100,000 euros calculated at the official exchange rate of the National Bank of Moldova, also, the prospectus is not drawn up in cases where they are met the conditions set out in Article 16 paragraph (5) of the same Law, as follows: the public tender prospectus is not drawn up if the tenderer makes public a document containing information equivalent to the information in the public tender prospectus, if: a) are offered shares issued to replace previously issued shares, as a result of conversion, fractionation or consolidation, provided that this does not imply an increase in the share capital; b) securities are offered that appear as a result of a merger; c) the shares are or are to be transferred free of charge to the existing shareholders or the dividends are paid in the form of shares of the same class as the shares granting the right to these dividends, provided that the published document will contain information on the number and nature of these actions, as well as about the reasons and conditions for offering them; d) the securities are transferred or are to be transferred to the members of the board, the sole executive body or to the members of the executive body, existing or former, or to employees by their employer, provided that these securities are admitted to trading on a regulated market and the issuer will disclose information about the number and nature of these securities, as well as about the reasons and conditions for offering them.

According to the provisions of art. 14 of the Law on the capital market, the public offering prospectus may be drawn up in the form of a single document or a set of 3 separate documents, and shall contain: a) information on the issuer and securities offered publicly or to be admitted to trading on a regulated market; b) all information enabling investors to make an informed assessment of assets and liabilities, financial position, profit or loss, prospects of the issuer or guarantor of the issue, if any, and related rights these securities; c) a summary of the prospectus.

The public offer must be initiated on the date indicated in the prospectus, but not later than 60 working days from the date of approval of the prospectus by the National Financial Market Commission. The date of initiation of the offer isconsidered the first working day on which the intermediary can accept subscriptions for the securities that are the object of the public offer. The issuer is liable in accordance with the legislation in force for not initiating the offer within the term established according to the prospectus approved by the National Commission.

The decision to approve the prospectus by the National Financial Market Commission becomes null and void if the public offer is not initiated within a maximum of 60 working days from the date of approval by the National Commission of the offer prospectus (drawn up in a single document) or the last of the above documents.

The final number of securities, which are the subject of a public offer (if indicated in the prospectus), after the date of approval of the prospectus by the National Commission cannot be changed.

The criteria for allocating the securities subscribed in the public offer must be explicitly specified in the offer prospectus, which may be one of the following:

1. pro-rata allocation - the number of shares allocated to an investor will be determined as the product of the number of shares indicated in the investor's subscription application and the ratio between the total number of securities offered and the total number of securities subscribed in the framework of the offer;
2. allocation "first come, first served" - the shares will be allocated in the order of registration of subscription requests;
3. discretionary allocation (arbitrary) - the shares will be allocated according to the decision of the management bodies of the issuer.

One or more criteria for the successful closing of the public tender may be established in the tender prospectus. If the criteria for successful closing of the public offer are not met, the funds will be returned in full to the subscribers and the securities, object of the offer, are considered not to have been placed.

Any significant new fact, any error or substantial inaccuracy in the prospectus, which may influence the decision of investors or potential investors to subscribe for the securities subject to the public offer, occurred within the approval of the prospectus until the conclusion of the public offer, shall be communicated by the tenderer by means of a supplement to the prospectus. In this sense, any request to modify the prospectus, already approved, is submitted to the National Commission in the form of a supplement, according to the provisions of art. 18 of Law no. 171/2012.

The supplement to the prospectus shall be approved by the National Commission within a maximum of 7 working days from the date of submission of the issuer's application and shall be published by the issuer within a maximum of 3 working days from the date of approval of the supplement to the National Commission, the prospectus has been published.

If the National Commission approves a supplement to the prospectus, the person who has accepted the purchase or subscription of the securities until the publication of the supplement, is entitled to refuse their purchase or subscription within at least 2 working days from the publication of the supplement, on the conditions set out in the prospectus. Withdrawal of the subscription by an investor is made by submitting the request to revoke the subscription within a maximum of 2 working days from the publication of the supplement.

The subscriptions within a public offer will be validated only on the condition of observing the provisions registered in the offer prospectus approved by the National Commission of the Financial Market.

The investment company, through which the subscriptions are made within an offer, has the obligation to inform the clients about the conditions of the offer and is responsible for non-compliance with the provisions of the prospectus.

The public offer is considered closed on the date of expiration of the development period, provided in the notice and prospectus, or on the date of early closure according to the provisions of the prospectus.

The public offer may be closed in advance if all the securities that are the subject of the offer have been subscribed until the expiration of the term mentioned in the prospectus, and the

chosen allocation method is "first come, first served", provided that the possibility of early closing of the public offer be expressly mentioned in the prospectus. The Issuer notifies the National Financial Market Commission regarding the results of the public offer within 10 working days from its closing date.

At the expiration of the term for placing the securities or at the date of early closing, according to the provisions of the prospectus, the issuer approves the report on the results of the issue of securities placed through the public offer.

The request regarding the registration of the securities according to the report on the results of the securities issue through the public offer is submitted to the National Commission of the Financial Market within maximum 15 working days from the date of concluding the placement of the securities.

For the purpose of registering with the National Commission the report on the results of the issue of securities through the public offer, the issuer will present the following documents:

1) the application, according to the requirements provided in the Instruction, approved by the NCFM decision no. 13/10 from 13.03.2018;
2) the minutes of the body that approved the report on the results of the issue of securities through the public offer, drawn up and presented in accordance with art. 64 paragraph (3) or, as the case may be, art. 68 paragraph (9) and paragraph (10) of Law no. 1134/1997;
3) the confirmation issued by the banking institution regarding the deposit / transfer by the subscribers of the funds on account of the payment of the securities until the approval of the issuance results (the original bank certificate);
4) reporting on the results of the additional issue of securities (in original);
5) the list of subscribers to the securities, approved by the authorized management body of the issuer, in 3 copies (in original);
6) proof of disclosure of information on events and actions affecting the economic and financial activity of the issuer according to the provisions of Law no. 171/2012 and the Regulation on the disclosure of information by issuers of securities;
7) the draft amendments to the company's statute related to the size of the share capital and the securities issued;
8) the decision of authorization of the Competition Council in the cases provided by the legislation in the field of competition or the Declaration on its own responsibility as if the operation does not constitute an economic concentration within the meaning of the legislation in the field of competition;
9) the payment order (s) regarding the payment of taxes and fees for the registration of securities, collected in accordance with the Law on the National Commission of the Financial Market no. 192/1998.

Within 15 working days from the date of presentation of the last document in support of the application, the National Financial Market Commission examines the documents related to the registration of the report on the results of the additional issue of securities through public offer and issues an appropriate decision, made in the State Register of the securities of the respective entries in case of satisfaction of the submitted request.

If the securities placed by the issuer have not been subscribed in the minimum volume indicated in the prospectus and the issuer has qualified the issue as not carried out, within 10 working days from the date of approval of that decision, the issuer submits an opinion to the National Financial Market Commission, annexing the minutes of the authorized body of the issuer that qualified the issue as not performed.

If the issue of the securities is classified as unrealized, the means obtained by the issuer following the placement of the securities shall be returned to the investors. At the same time, the issuer reimburses to the investors the benefit obtained as a result of using the means attracted in the process of placing the securities or the lost gain, in case the conditions of the issue contain such a clause.

Within 5 working days, after the expiration of the term of 10 days from the date of approval of the decision to qualify the issue as not made, the issuer will present to the National Commission the confirmatory documents regarding the refund of the funds deposited by the subscribers.

In the same context, we will set out below the steps for issuing additional closed bid shares which are as follows:

1. the adoption by the issuer of the decision regarding the issue of shares;
2. the placement of securities in a determined period of time that ensures the exercise of preemption rights, in accordance with art. 27 of Law no. 1134/1997. According to paragraph (2) art. 27 of the Law on joint stock companies, the right of preemption is exercised within a period which may not be less than 14 working days from the date of publication of the offer or from the date of sending to shareholders the letters for placement of securities by public offer or from the date of adoption of the decision for their closed additional issue, except for the cases provided in paragraph (7) art. 27, which provides that the term of realization of the preemption right according to paragraph (2) does not apply if 100% of the voting shares of the company participate in the general meeting of shareholders and/or all shareholders subscribe to the securities of the respective class in proportion to the share held in the share capital, and/or the closed issue of the securities it takes place following the reorganization of the company by merger.
3. the approval by the competent body of the issuer of the report on the results of the additional issue of shares and the qualification of the issue as performed or not performed;
4. registration with the National Commission of the report on the results of the additional issue of shares, issued through a closed offer;
5. the operation of the modifications and completions, determined by the results of the issue, in the issuer's statute;
6. entering in the register of securities holders the data about the subscribers to shares and issuing the extracts from the register/account.

When the issuer adopts the decision on the issue of securities, it will ensure compliance with the requirements of Law no. 1134/1997, art. 39 paragraph (71), which provides that, if, according to the latest balance sheet, the value of net assets of the company is smaller than the size of the share capital, unless the value of the net assets is negative, the company is entitled to additionally issue only shares by closed issue and art. 43 paragraph (5), according

to which, the share capital cannot be increased and the shares cannot be issued until the treasury shares of the issuer have been alienated, according to art. 13 paragraph (9), and/or all the stages related to the previously approved share capital increase will not be completed.

Subsequently, the issuer, after the approval of the report on the results of the additional issue of shares, within 15 working days from the date of concluding the placement of the securities, will present to the National Commission the request for the registration of the respective report.

We mention that, when the social capital is increased by additional issue of shares, the types of contributions to be deposited are established in the decision regarding the additional issue of shares in compliance with the provisions of art. 41 of Law no. 1134/1997.

The contributions to the increase of the social capital will be paid within the term established by the general assembly, but not later than 2 months from the adoption of the decision to increase the social capital. The value of the non-monetary contribution to the company's social capital is approved by the general meeting, or by the decision of the company's board.

The state registration of the amendments and completions to the incorporation documents of the issuers, related to the registration of the results of the additional issue of shares or the restructured issue as a result of the increase of the nominal value of the shares, are introduced in the incorporation documents of the company, on the results of the issue of the additional share.

For the purpose of registering with the National Commission of the Financial Market the report on the results of the share issue, the issuer will present the following documents:

1) the application, in accordance with the provisions of the Instruction, approved by the decision of the National Commission of the Financial Market no. 13/10 of 13.03.2018;
2) the minutes of the general meeting of shareholders, at which the decision regarding the increase of the share capital was approved, with all the annexes provided in art. 64 paragraph (3) of Law no. 1134/1997. Issuers with more than 5,000 shareholders will present the list of shareholders who had the right to participate in the general meeting in electronic format, on a digital medium;
3) the decision on the issue of securities approved at the general meeting of shareholders, in 3 copies (in original);
4) the minutes of the authorized management body of the issuer that approved the report on the results of the additional issue of the securities and the list of subscribers to the securities, prepared and presented in accordance with art. 64 paragraph (3) or, as the case may be, art. 68 paragraph (9) and paragraph (10) of Law no. 1134/1997;
5) reporting on the results of the additional issue of securities (in original);
6) the list of subscribers to the securities approved by the authorized management body of the issuer, in 3 copies (in original);
7) the incorporation documents of the issuer and/or the modifications to them (copies legalized by the notary);
8) the statement on the issuer's own responsibility, (in original);

9) the confirmation issued by the banking institution regarding the deposit / transfer by the subscribers of the funds on account of the payment of the securities (the original bank certificate);
10) the act of receiving-handing over the non-monetary contributions on account of the payment of the subscribed securities (in original) and the evaluation report of the non-monetary contributions, drawn up by an evaluation enterprise - in case of paying the securities with non-monetary contributions;
11) the documents confirming the origin of the company's debts, including the statement from the account and/or the act of verification of the mutual settlements in case of their conversion into the shares of the additional issue;
12) the financial statements of the issuer, at the last reporting date (copy);
13) the agreement of the Public Property Agency or, as the case may be, the decision of the central/local public administration authorities in the case of the companies included in the list of goods subject to privatization according to the provisions of Law no. 121/2007;
14) the decision of authorization of the Competition Council in the cases provided by the legislation in the field of competition or the Declaration on its own responsibility as if the operation does not constitute an economic concentration within the meaning of the legislation in the field of competition;
15) proof of disclosure of information on events and actions affecting the economic and financial activity of the issuer according to the provisions of Law no. 171/2012 and the Regulation on disclosure of information by issuers of securities, approved by National Commission Decision no. 7/11 of February 12, 2016;
16) the payment order (s) regarding the payment of taxes and fees for the registration of securities, collected in accordance with the Law on the National Commission of the Financial Market no. 192/1998.

In case of issuance of shares of one class for the purpose of paying dividends for shares of another class, the decision taken by the holders of that class of shares to whom the dividends approved in accordance with the legislation will be presented will be presented. In case of restructuring the issue of previously placed shares by increasing the nominal value, the share of shares held by shareholders will remain unchanged.

For the situation in which the source of the social capital increase by increasing the nominal value of the shares serves the issuer's own capital, the increase of the nominal value is made for all classes of shares placed by the issuer, if the statute does not provide that this increase of value extends over the shares, class or several classes. If the source of the share capital increase by increasing the nominal value are the contributions made by the shareholders, they are deposited by each holder in proportion to the share held.

Within 15 working days from the date of presentation of the last document in support of the submitted application, the National Commission will examine the documents related to the registration of changes related to the share capital increase and issue an appropriate decision, with the execution in the State Register of the Securities of the respective registrations in case of satisfaction of the submitted application.

In order to obtain the Certificate of State Register of the Securities, the issuer will present to the National Commission a copy of the decision of the state registration body on the

registration of changes in the statute and the addendum on the introduction of changes in the articles of incorporation, authenticated by law.

The certificate of state registration of securities, the list of subscribers (2 copies) and the decision on the issue of securities (2 copies) will be collected by the issuer from the National Commission within 15 working days from the date of registration of changes to its statute and sent within 1 working day to the registry company/Central Depository for making entries in the register/accounts of the holders of securities.

For the registration in the State Register of securities of the changes related to the reduction of the social capital, the requirements established in art. 45 of the Law on joint stock companies no. 1134/1997.

For the registration in the State Register of securities of the changes related to the reduction of the social capital of the joint stock company, the issuer will present to the National Commission of the Financial Market the following documents:

a) the application for registration of the amendments, in accordance with the requirements provided by the Instruction, approved by the decision of the National Commission of the Financial Market no. 13/10 from 13.03.2018;
b) the minutes of the general meeting of shareholders, with all the annexes provided in art.64 paragraph (3) of the Law on joint stock companies no. 1134/1997;
c) the copy of the opinion on the reduction of the share capital, published in the Official Gazette of the Republic of Moldova;
d) confirmation of the lack, satisfaction or granting of guarantees to satisfy the creditors' requirements;
e) the statement from the issuer's account regarding the existence of treasury shares, issued by the registry company, in case of reduction of the share capital by canceling the treasury shares;
f) the original (s) of the Certificate of state registration of securities;
g) the authorization of the specialized central body that performs the management of the package of state shares in the share capital of the issuer, in accordance with the legislation in force;
h) copy of the issuer's financial statements, at the last reporting date;
i) copy of the payment orders regarding the payment of taxes and payments for the registration of securities, collected in accordance with the Law on the National Commission of the Financial Market no. 192/1998.

The documents listed above are presented to the National Financial Market Commission after one month from the date of publication of the opinion on the reduction of social capital in the Official Gazette of the Republic of Moldova, in case of lack of receivables from creditors or after their satisfaction in case of requirements.

The National Financial Market Commission, within 15 working days from the date of submission of the application, will examine the documents related to the registration of changes related to the reduction of the share capital of the joint stock company and will issue a corresponding decision, as appropriate with registration in the state register of securities of those entries. The certificate of state registration of securities will be collected by the issuer

from the National Commission of the Financial Market, within maximum 15 working days from the date of entry into force of the decision of the National Commission.

In order to obtain the Certificate of State Registration of Securities, the issuer will submit to the National Commission a copy of the decision of the State Registration Body (Public Services Agency) on registration of changes in the statute and the addendum on changes in the articles of incorporation of the joint stock company, authenticated in accordance with applicable law.

5. Conclusions

As a general conclusion, we can say that, starting from the definition of the joint stock company, as one of the legal persons, a collective subject of rights and obligations, we can affirm the usefulness of this company, by representing the main actor or link of trade, especially by providing people with a framework through which they can associate and carry out joint economic activities, supporting each other and maintaining at the same time the individuality of the contribution, remuneration and losses they will bear in case of failure of the company. However, the joint stock company differs from the general framework of commercial companies by distinct elements such as: the anonymity of the subsidiaries and the share capital. As shown, the joint stock company has the role of managing large businesses, of being the framework through which large-scale investments can be made, attracting and managing private investments. The joint stock company manages to bring together capital and investors to carry out its commercial industrial activity, without incurring unlimited risk.

REFERENCES

1. BODU S. Treaty of corporate law. Bucharest, Rosetti International Publishing House, Vol.1, 2014.
2. IVANOV E. Patrimony of companies. Bucharest, Hamangiu Publishing House, 2008.
3. MĂMĂLIGĂ S. Joint stock companies. Commentary on Law no. 1134/1997. Chisinau, Museum Publishing House, 2001.
4. BODU S. Reduction of social capital. Romanian Journal of Private Law. 2015, no. 5.
5. MIHALACHE I. Business Law. Chisinau, "Print Caro" Printing House, 2016.
6. Stanciu P. Cărpenaru, Cătălin Predoiu, Sorin David, Gheorghe Piperea. Commercial companies - Regulation, doctrine, jurisprudence. Bucharest, Ed. AllBeck, 2002.
7. Civil Code of the Republic of Moldova. Commentary Volume I. Chisinau, Central Printing House, 2006. 313 p.
8. Civil Code of the Republic of Moldova no. 1107 from 06.06.2002. https://www.legis.md/cautare/getResults?doc_id=125043&lang=ro
9. Law on joint stock companies no. 1134 from 02.04.1997. https://www.legis.md/cautare/getResults?doc_id=124769&lang=ro
10. Law on the capital market no. 171 from 11.07.2012. https://www.legis.md/cautare/getResults?doc_id=121985&lang=ro
11. Law on the National Financial Market Commission no. 192 from 12.11.1998. https://www.legis.md/cautare/getResults?doc_id=121984&lang=ro
12. Competition law no. 183 from 11.07.2012. https://www.legis.md/cautare/getResults?doc_id=121240&lang=ro
13. Law on the administration and denationalization of public property no. 121 from 04.05.2007. https://www.legis.md/cautare/getResults?doc_id=24966&lang=ro
14. The instruction regarding the stages, terms, manner and procedures for registration of securities, approved by the decision of NCFM no. 13/10 from 13.03.2018
15. Regulation on licensing and authorization on the capital market, approved by NCFM decision no. 56/11 of 14.11.2014.

16. The Regulation on the disclosure of information by issuers of securities, approved by CNPF decision no. 7/11 from 12.02.2016.

Rezumat

Societatea pe acțiuni este forma cea mai complexă și, totodată, cea mai evoluată a societății comerciale. În această formă de organizare a societății comerciale cel mai mult contează aporturile asociaților. Asociații contribuie cu aporturi la formarea capitalului social, fără să desfășoare o activitate în societate. Aporturile la capitalul social reprezintă interes atât pentru societate, cât și pentru terți, deoarece asociații răspund pentru obligațiile asumate în limita mărimii aporturilor în capitalul societății pe acțiuni. În același timp, asociații nu răspund pentru obligațiile sociale și juridice ale societății. Societatea pe acțiuni este destinată marilor afaceri, care necesită capitaluri însemnate. Societatea pe acținui este astfel concepută ca să aspire contribuții bănești modeste pentru formarea unor capitaluri mari, necesare dezvoltării proiectelor de anvergură.

Datorită rolului important pe care societatea pe acțiuni îl are în viața economică a Republicii Moldova, Codul Civil și Legea nr. 1134/1997 privind societățile pe acțiuni asigură o reglementare corespunzătoare acestei forme de organizare a societății comerciale. Societatea pe acțiuni este societatea ale cărei obligații sunt garantate cu patrimoniul societății, acționarii fiind obligați să subsrie și să verse aporturi în capitalul social în limita termenului prevăzut de lege. Pe parcursul activității economice societatea pe acțiuni, în dependență de ponderea cifrei de afaceri înregistrată, precum și de capacitatea societății de a participa la circuitul comercial și civil, poate modifica capitalul social prin reducerea sau majorarea acestuia.

Cuvinte-cheie*: societate pe acțiuni, capital social, modificare, majorarea capitalului, reducerea capitalului*

Аннотация

Акционерное общество это наиболее сложная и в то же время наиболее развитая форма коммерческих обществ. При такой форме организации наибольшее значение имеет вклад акционеров. Акционеры вносят вклад в формирование акционерного капитала, не осуществляя никакой деятельности в обществе. Вклады в уставной капитал представляют интерес и для акционерного общества, и для третьих лиц, поскольку вкладчики несут ответственность по взятым обязательствам в пределах размера вкладов в уставной капитал акционерного общества. При этом акционеры не несут ответственность по обязательствам акционерного общества. Акционерное общество предназначено для крупного бизнеса, требующего значительного капитала. Таким образом, акционерное общество призвано стремиться к скромным финансовым взносам для формирования крупных капиталов, необходимых для развития крупномасштабных проектов.

Имея в виду важную роль, которую акционерное общество играет в экономической жизни Республики Молдова, Гражданский кодекс РМ и Закон № 1134/1997 об акционерных обществах обеспечивают надлежащую регламентацию этой юридической формы коммерческого общества. Обязательства акционерных обществ гарантируются имуществом общества, а акционеры обязаны подписаться и внести взносы в уставный капитал в течение срока, установленного законом. В ходе хозяйственной деятельности акционерного общества, в зависимости от коммерческого оборота, а также от способности акционерного общества участвовать в коммерческом и гражданском обороте, уставной капитал может быть изменён, уменьшен или увеличен.

Ключевые слова: *акционерное общество, акционерный капитал, изменение, увеличение капитала, уменьшение капитала*

Received 01.06.2021
Accepted 28.06.2021
Published 30.06.2021