

# CONSIDERATIONS ON THE ROMANIAN REGULATIONS OF „CENSORS”, AN INSTITUTION BETWEEN TRADITION AND ACTUALITY

Lecturer Mirela Georgiana SABĂU<sup>1</sup>

## **Abstract:**

*This essay analyzes the institution of “censors”, as company body of internal control, aiming to determine whether this institution corresponds or not to a real need of some companies or it is just maintained in the virtue of the tradition of Romanian law system regulations regarding the internal control. Analyzing the evolution of company control and the institution of censors and especially the large attributions, rights and obligations the censors have, that are more extended than those of the auditors I came to the conclusion that the censors by their permanent and general activity corresponds to real needs of some companies. Therefore I consider that there are real grounds for which the institution of censors, part of the traditional system of internal control provided in the course of time by the Romanian law system, continues to exist. In the final part after analyzing the existing legal provision I suggested some amendments of the law such as : to request expertise of the persons nominated as censors in order to avoid a formal and inefficient control, to extend the secret vote for censors election as provided for companies by shares to all companies, to eliminate the obligation of the limited company by shares having more than 15 shareholders to nominate censors if such company enter into contract with auditors, as well as some suggestions regarding the correlation of the terminology.*

**Key words:** *company law, control of company management, censors, auditors, internal control of companies*

**JEL Classification:** *K20*

By the fulfillment of the formalities for company establishment and by observing the formal and substantial conditions imposed by the law, the company is transformed from a contract into a legal person having its own capacity and decision that is obtained as a result of the law and the will of company founders.

Its quality of subject of law and the double nature of contract and legal person, essentially defines the company, with all the consequences that derives from it and affects company own patrimony and the mechanism of adopting and implementing the company decisions, of the obligations and liability of the persons empowered to transpose company will in the relationship with third parties.

Company will is formed within the general meeting of shareholders and is accomplished by the administrators (managers) liable for the performance of company day to day activity under the supervision of the company bodies or persons who exercised company control.

The control of company management is aiming to prevent situations that might conduct to the infringement of company articles of incorporation and memorandum of association, abuses in directors and managers activity or of other company bodies, company bankruptcy, the decrease of company patrimony and other similar.

The activity of the control body and the control function assure the protection of the shareholders interest, as well as the interest of the company itself.

In the course of time, worldwide there were two main company control systems: internal control system and external control system.

The internal control system considers the control as a function within the company and therefore it states against the interference of persons outside the company with issues related to the company control. The internal control system pleads for the control exercised by a company body (censors or censors committee) formed by one or more persons who might be shareholders

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<sup>1</sup> Mirela Georgiana Sabău, Faculty of Law, Spiru Haret Bucharest University, Lawyer in Bucharest Bar, mirela.sabau@mfplawyers.ro

or not and who are acting on the basis of a mandate agreement.<sup>2</sup> The mandate of the censors as internal control body is granted by the general meeting of shareholders who delegates to this company body the exercise of the control function.

The internal control system that was adopted by the legislation of the neo-Latin law system was criticized for the following reasons:

- a) The fact that the censors are not independent, as far as they are nominated among the persons agreed by the directors and managers who actually preside and lead the general meeting of the shareholders<sup>3</sup>;
- b) The lack of expertise and specialization of the censors who are shareholders.

To avoid these deficiencies the main European countries who applied the system of internal control adopted regulations specific to the external control system that gained more and more space also within the law systems of the Latin countries<sup>4</sup>.

The external control system adopted initially by the Anglo-Saxon law and further on extended in the German and Scandinavian law systems provides a control of company management and operations exercised by specialists with expertise who are persons from outside the company.

The external control system was criticized for the fact that the activity and work of the directors, who are trustful persons agreed by the shareholders, is subject of the control and attack of persons/bodies outside the company.<sup>5</sup>

The existing Romanian legislation, harmonized with European Union Law by the implementation of the EU directives on companies, provides a control system that combines elements of external and internal control. The control is exercised differently function of the form in which the company is organized, state participation in the respective company, the system of accounting evidence that is adopted by the company, as well as by shareholders choice. Consequently the control may be exercised by: the shareholders who are not directors of the company, censors (shareholders and experts), supervision board controlling the directorate of the companies with two tier management and experts such as the financial auditors, statutory auditors, preventive financial controllers and other persons who have specific control attributions for companies with specific fields of activity such as credit and financial institutions, insurance companies, the companies that are under the control and supervision of the National Securities Commission and others.

In all forms of companies the shareholders maintain to a certain extent control attributions and the right of control. The shareholders' control over the company management is achieved by exercising the rights granted by law<sup>6</sup> to them such as the right to information, the right to hold the directors liable etc.

For the companies by shares and for limited partnership, as well as for the limited liability companies with a large number of associates, there are important reasons which determined the adoption of legal regulations regarding the appointment of censors who exercise a control additional to that exercised by the associates or shareholders.

The shareholders' absenteeism in supervising the company's activity and many times their lack of specialized training and competence<sup>7</sup> determines the simple control exercised by the

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<sup>2</sup> M. Șcheaua, *Company law no 31/1990, with comments and annotation*, Publishing House All Beck, Bucharest, 2002, p. 154;

<sup>3</sup> P. Demetrescu, I.L. Georgescu, *Commercial Code Carol al II-lea, Comentary*, Publishing House Cartea Românească, Bucharest, 1936, p. 184, 185 quoted by St. Cârpenaru, C. Predoiu, S. David, Gh. Piperea, *Companies. Legal provisions, doctrine, jurisprudence*, Publishing House All Beck, Bucharest, 2001, p. 370.

<sup>4</sup> M. Șcheaua, cited work, p. 154

<sup>5</sup> P. Demetrescu, cited work, p. 351

<sup>6</sup> Stanciu. D. Cârpenaru, *Treaty of Romanian commercial right*, Publishing House Universul Juridic, Bucharest, 2012, p. 231.

<sup>7</sup> Ph. Merle, *Droit commercial. Sociétés commerciales*, Edition III, Précis Dalloz, Paris, 1992, p. 404;

shareholders, who meet quite rarely and who do not have the possibility to deeply study the company management<sup>8</sup>, to be insufficient. Unlike the partnerships, where the associates know each other, they respond without limits and jointly and are acquainted with company's activity, in most cases the shareholders did not adjoin based on mutual trust, they limitedly respond to the subscribed share capital and may be prevented from exercising an efficient control because they come from a wide geographic area.

Although the control by censors is expressly provided by law only for the companies by shares and limited liability companies with more than 15 associates, by the articles of incorporation an internal control body may also be appointed within the partnerships<sup>9</sup> and limited liability companies with less associates, and in this sense Law no. 31/1990 provides no restrictions.

Nevertheless, in the doctrine there are also critics to the control by censors, according to which censorship has proved itself to be an absolutely inefficient institution. The censors are appointed and revoked by the same persons present or represented also in the board of directors, thus determining their subjugation by the majority shareholders and implicitly their transformation into puppets, actually subordinated to the directors whom they must supervise<sup>10</sup>. Sometimes, the censors' lack of interest and their silence are bought by offering them considerable remuneration, and other times the legislator created the directors' subordination to the censors, which may lead to an atmosphere of tension and mutual suspicion capable to affect the good functioning of the company's activity.<sup>11</sup>

Another reason of critics of the existing legal provisions regarding the censors is based on the fact that the positions of accountant control and fund control imply specialized knowledge, and the law does no longer pretend that the censors have such knowledge. Thus it is allowed and also possible for the censors to be persons with no accountancy or judicial knowledge, thus being unprepared for developing the surveillance activity which is the core of their position.

For this reason, the companies fulfilling certain criteria of certain economic – financial extent are subject to the legal obligation of auditing, and the censorship is gradually replaced by the auditors, authorized to practice accountant control and verification activities based on exclusively professional criteria, expressing professional opinions, based on international standards, with regard to the company's financial situation and patrimony, as well as its accountancy.

The censors have the role to verify the observance of the company legality and interest within the current management operations of the company, as well as the company's financial aspects. The censors are not a decision body, but a control deliberative body which draws up reports to be presented to the general meeting of associates / shareholders.

Similar to the director, the censor may be treated either as the company's attorney, or as the company's body, depending on the legal nature regulated in the relationship between the censor and the company.

Company Law no. 31/1990 maintained the traditional concept<sup>12</sup>, according to which the censors are considered the company's proxies, empowered to supervise and control the way the company is managed. Art. 166 align. 1 of Law no. 31/1990 expressly provides that "the extent and effects of censors' liability are determined by the rules of the power-of-attorney."

<sup>8</sup> D.D. Gerota, *Commercial companies Courses*, Publishing House Fundația Culturală Regele Mihai I, Bucharest, 1928, p 158

<sup>9</sup> O. Căpățînă, *Commercial companies*, 2<sup>nd</sup> edition, Publishing House Lumina Lex, Bucharest, 1996, p. 299

<sup>10</sup> P. Demestrescu, I.L. Georgescu, cited work, p. 184-185

<sup>11</sup> Stanciu. D. Cârpenaru, Cătălin Predoiu, Sorin David, Gheorghe Piperea, *The law of commercial companies. Commented by articles*, Edition 4, Publishing House C.H. Beck, Bucharest, 2009, p. 662

<sup>12</sup> Fiñtescu N., *Commercial law lecture*, Publishing House Al. Doicescu, Bucharest, 1929, vol. I, p. 264 și D.D. Gerota, cited work, p. 139

It was sustained that<sup>13</sup> the affirmation according to which the censors are the company's proxies is not precise, in reality being the representatives of the shareholders collectivity grouped in the general meeting, who exercises on its account the company activity and management control. **In our opinion, the censors are a control body who detain a power-of-attorney from the company in order to exercise the verifications provided by law, as well as any other verifications established by the articles of incorporation.** It is obvious that the general meeting (« *the collectivity grouped in the general meeting* ») decides with regard to granting the power-of-attorney to the censors, because granting the power-of-attorney by the company implies the expression of the company will in this sense, or the company's will is formed within the general meeting.

In the French law, it was appreciated<sup>14</sup> that it is not admissible to qualify the censors position as being of the power-of-attorney, because the censors do not have the attribution to fulfill legal documents in the company's name, but only certain verification and control operations.

With regard to this assertion, in the Romanian doctrine<sup>15</sup> it was affirmed that the object of the power-of-attorney granted by the company to the censors is constituted precisely by the verification of the company management operations, a verification performed by the censor in the name of the company. Nevertheless the quality of an attorney does not exclude that of the company body.

In the specialized literature it was also sustained that the relationships between the censor and the company are not based on a mandate agreement, but on the provisions of the law. These relationships have the character of a labour relation of institutional nature, proper to a functional body, strictly necessary to the company<sup>16</sup>. The censors are the result of the company will, being appointed by the associates 'vote gathered in the general meeting and they exercise a member position, which grants them the quality of company's body.<sup>17</sup>

Under Law no. 31/1990, the censors clearly appear as company's proxies (power-of-attorney granted by the company by the general meeting of shareholders), and in this sense there are both the provisions of art. 166 align. 1 of Law no. 31/1990, directly making reference to the mandates' rules, as well as others, such as art. 162 align.1<sup>18</sup> of the same Law, making reference to the censor's renunciation to the mandate.

But there are also provisions offering the censor the quality as a company body exercising a control position. Thus, art. 8 letter i of Law no. 31/1990 provides that the articles of incorporation of a company on shares must contain "provisions regarding the company management, administration, functioning and control by the *statutory bodies*", and art. 49 of Law no. 31/1990 makes an express reference to the *company control bodies*.<sup>19</sup>

Art. 161 align. 2 of Law no. 31/1990 provides that they cannot be censors and, if they were chosen, they lapse from their mandate those persons who receive under any form, for

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<sup>13</sup> Stanciu. D Cărpenu, Cătălin Predoiu, Sorin David, Gheorghe Piperea, *The law of commercial companies. Commented by articles*, Edition 4, Publishing House C.H. Beck, Bucharest, 2009, p. 660

<sup>14</sup> Ph. Merle, cited work, p. 406

<sup>15</sup> M. Scheaua, cited work, p. 226

<sup>16</sup> Bărsan C., Dobrinou V., Țiclea Al., Toma M., *Commercial companies. Organization, functioning, liability*, 2 vol., Publishing House Publishing House Șansa SRL, Bucharest, 1995, p. 137

<sup>17</sup> Yves Guyon, *Droit des affaires*, Ed. Economica, Paris, 1986, p. 363

<sup>18</sup> Art. 162 align.(1) of Law no. 31/1990 provides „In case of decease, physical or legal embarassement, termination or renunciation to the mandate by a censor, he will be replaced by a surrogate”.

<sup>19</sup> Art. 49 of Law no. 31/1990 provides «The founders, company's representatives as well as the first members of the management, administration and control bodies of the company are liable with no limits and solidarily for the damage caused by the irregularities to art. 46-48 refers».

positions other than that of censor, a salary or remuneration from the directors or from the company or whose employers are in contracting relationships or in competition with it. Consequently, at least apparently, from the legal text it results that the censor may receive a salary for the activity as a censor developed within the company. In our opinion this interpretation would be wanted to be cancelled *de lege ferenda* stipulating more clearly that the censors cannot receive a salary for the activity developed under the mandate as a censor, as the censors exercise their mandate independently and there is an obvious incompatibility between the quality of censor and an employee within the company. The relationship between the censor and the company is based on a mandate agreement, which is a private right agreement, in which the parties are equal, the attorney independently performing his activity. The relationships born under such agreement are fundamentally different and incompatible with the relationships based on subordination born from a labor agreement.

The employees are subordinated to the directors, developing their activity as per their instructions, while the censors' activity is independent and has the main scope to control the modality in which the directors perform the company's management.

Unlike the employees, the censors are appointed by the general meeting having a mandate which is by its essence temporary and revocable, while the labor agreement is generally concluded for an unlimited period of time.

The censors' mandate may be revoked *ad nutum* by the general meeting, with no prior notice or another formality, while the labor agreement may be terminated only in the cases strictly and limited provided by the law, with the observance of certain procedures and formalities, such as the warning, the prior investigation procedure in the case of disciplinary dismissal etc. The employee who is abusively dismissed without the observance of the legal procedures may demand reinstatement, while the censor's mandate has a preminent *intuituu personae* character, based on the trust of the general meeting to grant that person the exertion of the control position. When trust disappears, no matter the reason, the censor's mandate may be revoked with immediate effect, without him having the possibility to contest the decision and demand reinstatement, having the possibility only to demand damage in the extent in which revocation was abusive, sudden and without a just cause.

As shown above, the censors' mandate is granted by the general meeting of associates / shareholders. In the companies on shares the censors are appointed and revoked by secret vote by the ordinary general meeting of shareholders (art. 111 align.2 letter b corroborated with art. 130 2<sup>nd</sup> paragraph of the Company Law no. 31/1990). We point out that art. 166 align.2 of Law no. 31/1990 provides that the censors' revocation may be performed only by the ordinary meeting while the majority will be imposed for adopting the decisions by the extraordinary general meeting.

The jurisprudence<sup>20</sup> highlighted that the legislator reserved to the competence of the extraordinary general meeting the issues which are considered more important. This does not mean that the extraordinary meeting cannot decide on less important issues that are under the competence of the ordinary general meeting. Therefore, in case the censors' election was included on the agenda and all the legal provisions were observed and the resolution of extraordinary general meeting implies a quorum and a majority higher than the ordinary meeting, the extraordinary general meeting is no doubt competent to pronounce also on censors' appointment.

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<sup>20</sup> Ilfov Court, Ist Commercial Section, 3rd March, 1942, quoted in I.L. Georgescu, Romanian Civil Right, Vol II, Commercial companies, Publishing House Socec, Bucharest, 1948, p. 459.

The legal provisions requesting the censors to be appointed by secret vote refers only to the nomination of the censors of the companies by share and it is not retrieved in the legal provisions regarding the nomination of the censors of other forms of companies. For this reason we conclude that for the companies that are not companies be shares the censors are appointed by open, public vote, as far as the secret vote is an exception and the enumeration of the cases in which it is applied is limitative and of strict interpretation.

The aim of the secret vote is to eliminate the influence of the board of directors' members on shareholders<sup>21</sup>.

The requirement of secret vote is applied only in case the vote is exercised during the deliberations of the general meeting of shareholders. If the vote is made by correspondence, the reasons that determined the legislator to request the secret vote are no longer retrieved. The shareholder votes directly, without participating to deliberation and consequently there being no risks of influencing during the debates, the secret vote is not necessary.

In the absence of similar provisions art. 153<sup>12</sup> align. 3 of Law no. 31/1990<sup>22</sup> the acceptance of the censor's mandate can also be tacit in all forms of companies, including the companies by shares.

In the limited partnerships, according to art. 190 of Law no. 31/1990, the active partners, who are not directors, cannot take part to deliberation of the general meeting for the censors' election or, as the case may be, of the financial auditor, even if they are shareholders.

In the limited liability companies, art. 194, 1<sup>st</sup> paragraph, letter b of Law no. 31/1990 provides that the general meeting of associates has the obligation to appoint the censors, to revoke/dismiss them and to grant them management discharged, as well as to decide the contracting of financial audit when it does not have a mandatory character, as per the law. Because of the similarity of reason we consider that *de lege ferenda* it would be useful that also in the limited liability companies the censors appointment to be mandatory, this appointment to be performed by secret vote.

The article 159, second paragraph of the law no. 31/1990 establishes a duration of censors mandate of 3 years, stating that the censors may be re-elected. Different than the duration of the director mandate that is established by the general meeting of shareholders, the duration of censors mandate is established imperatively by the law as being 3 years, without being possible to establish another duration. The 3 years duration of the mandate is in consensus with the provisions of the New Civil Code which specifies in art. 2015 a 3 years duration of the mandate if parties expressly do not agree otherwise.

The activity developed by censors within the company is a permanent and general activity. Censors attributions within the company may be classified in two main categories: (i) the control or supervision of company's activity and management and (ii) the accounting control.<sup>23</sup>

The control of company activity and management refers to all operations and activities developed by the company and it is exercised by reference to the economical efficiency of an operation on one hand and to the observance of the law and corporate documents (by-laws) on the other hand. The accounting control implies a minimum expertise and represents at its turn a form of control of company management. The accounting control is aiming to verify if company activities and operations are correctly evidenced in the accounting books of the company, as well as if the legal provisions are observed during the evaluation of company assets and patrimony. The fact that the censors may be by persons who does not have a specific (we refer mostly to

<sup>21</sup> I.L. Georgescu, Drept comercial român, p. 414

<sup>22</sup> Art 153<sup>12</sup> para. 3 of Law no. 31/1990 provides that for the appointment of an administrator or a member of the board or the supervisory board, to be legally valid, the person designated administrator must explicitly accept the appointment.

<sup>23</sup> M. Șcheaua, cited work, p. 223, I. L. Georgescu, cited work, p. 581

censors who are only shareholders without being accounting experts) was vehemently criticized by the authors<sup>24</sup> and we agree with these critics.

Company law no 31/1990 details in art. 163 the following obligations of the censors:

- a) The obligation to permanently supervise the company management;
- b) The obligation to verify the financial situations, their legality and if they are in accordance with accounting books and company accounting evidence;
- c) The obligation to verify if company books are kept updated and in accordance with the law;
- d) The obligation to verify if the evaluation of the patrimony was made in accordance with the rules established for drafting and submitting the financial situations;
- e) The obligation to submit to the general meetings of shareholders detailed reports on the company management and their findings during the exercise of their control, as well as about the proposals regarding the financial situations and profit distribution they consider useful. As far as the censors may work together or separately their reports may be joint reports or separate reports;
- f) The obligation to request monthly information from the managers;
- g) The obligation to inform the members of the Board of Directors about the deficiencies in company management they found, as well as about the non observance of the legal and statutory provisions they have acknowledged. The most important and severe cases have to be reported to the general meeting of shareholders.

In addition to the above obligations the censors also have other specific rights and obligations provided by other articles of the Company Law no 31/1990 such as:

- a) The obligation to participate without voting right to any meeting of the Board of Directors at which they are called (art. 141<sup>1</sup> of the Company law no. 31/1990) ;
- b) The obligation to participate at the general meeting that was provided previous legal provisions was eliminated in the present;
- c) Provisory nomination of the single Director (manager) in case the single director nominated by the general meeting of shareholders dies or has a physical impediment in exercising his management activity. The final nomination of company single director is to be made by the general meeting of shareholders that is to be urgently called by the censors (art. art. 137<sup>2</sup> alin.5);
- d) The obligation to register their deliberations and their findings in a special register of the company (art. 165 alin.3 of the law no. 31/1990)
- e) The obligation call immediately the general meeting of shareholders and to inform the meeting about their findings and observations in the cases expressly provided by the law (for example the case provided by art. 164<sup>1</sup> alin.2 of the Company law no 31/1990.
- f) The obligation to address to the first general meeting the claims of the shareholders under the conditions provided by the law.

The attributions and obligations of the censors provided by the Company law no 31/1990 represent a mandatory minimum. These attributions and obligations may be extended by the provisions of the constitutive act but may not be reduced or excluded, as they are provided by legal provisions of public order.<sup>25</sup>

Censors attributions and obligations provided by Company Law no. 31/1990 are completed with those provided by the new Civil code regarding the mandate contract, if these

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<sup>23</sup> Sorin David in Stanciu. D Cărpănaru, Cătălin Predoiu, Sorin David, Gheorghe Piperea, *Company Law. Coments by artices*, Edition 4, Publishing House C.H. Beck, Bucharest, 2009, p. 664

<sup>25</sup> I. L. Georgescu, cited work, p. 584.

provisions are compatible with the provisions of Company Law no 31/1990, as far as the relationship between the censor and the company is based on a mandate agreement.

The main attribution of the person who receives the mandate is to accomplish the mandate within the limits and observing the powers he/she was entrusted with (art. 2.017 1<sup>st</sup> paragraph of the New Civil Code). Therefore the censor has the obligation to accomplish all the verification and supervision activities requested by the law. The mandate of the censors does not imply the execution of legal deeds, but only verifications and the exercise of the control function within the company to assure that the laws, company by-laws and the decisions of the general meeting of shareholders are observed.

Taking into consideration that generally the censors is paid for the mandate exercised, censors failure and default in exercising the mandate is appreciated *in abstracto*, considering the criteria of a prudent and diligent person. Art. 2.018, 1<sup>st</sup> paragraph of the new Civil Code provides that if the mandate is with consideration, the mandate is to be fulfilled with *the diligence of a good owner*. If the fulfillment of the mandate is not paid than the required diligence is the diligence that the censor has for his own business and his guilt is appreciated *in concreto*.

The censor has the obligation to accomplish his mandate with good faith in accordance with the company interest, acting with good care and diligence and avoiding the conflicts between him or persons closed or related to him, on one hand, and the company, on the other hand. This obligation is imposed by art. 2.018, 1st paragraph 1 of the New Civil Cod, which request the person entrusted with powers to announce the person who granted the powers about the events occurred after the date when the powers were granted and that might conduct to the revocation or modifications of the powers granted.

In accordance with art. 2.019 1<sup>st</sup> paragraph the person receiving the mandate has the obligation to give explanations to the person who grants the mandate. In this context we consider that the censor has the obligation to accomplish the mandate transparently and to inform periodically the general meeting of shareholders about the activities performed.

In order to facilitate the fulfillment of the obligations the censors have based on the law and corporate documents, Company law no 31/1990 provides specific rights of the censors. The censors have the right to obtain monthly information from the directors about company operations (164 1st paragraph of the Company Law no 31/1990). The censors have also access right to all company documents in order to fulfill their mandate, this being a logic corollary of all censors obligations provided by the law.

In accordance with art. 159 alin.3 of the Company Law no 31/1990, the censors have to fulfill personally their mandate and the number of the mandates of censors one person can exercise at a time is restricted to 5 mandates. This restriction is based on the necessity that a censor pays specific attention and has sufficient time to personally fulfill each mandate the censor has, in order to avoid a formal control.

As a conclusion, after analyzing the numerous attributions, rights and obligations of the censors, that are more extended than those of the auditors, as well as the utility of the permanent and general activities developed by the censors, I am of the opinion that at this date the censors institution, as part of the Romanian traditional system of internal control, maintain its actuality and utility, responding to specific needs of certain types of companies.

The legal provisions regarding the censors evolved in the course of time, being successively improved by the numerous amendments of the Company Law no 31/1990. In my opinion there still are some parts of the legal provisions on censors that might be further on improved:

- (i) In accordance with art. 161 alin.1 of the Company Law no 31/1990: “The censors may be shareholders, except for the accounting expert censor who might be a third party exercising his profession individually or in association.” To avoid censors activity and control becoming inefficient and very formal it would be preferable the law to require a certain mandatory specific expertise of at least one censor. Also the clarity of the text is to be improved.
- (ii) The legal provisions requesting the censors to be appointed by secret vote refers only to the nomination of the censors of the companies by share and it is not retrieved in the legal provisions regarding the nomination of the censors of other forms of companies. For this reason we conclude that for the companies that are not companies be shares the censors are appointed by open, public vote, as far as the secret vote is an exception and the enumeration of the cases in which it is applied is limitative and of strict interpretation. *De lege ferenda* it might be useful to extend the secret vote for denomination of the censors of limited liability company having more than 15 shareholders and even to the other companies, as the reasons for which the secret vote was requested subsist also for other companies;
- (iii) Different than the legal provisions referring to company by shares, in case of a limited liability company (SRL) having more than 15 shareholders entering into a contract for internal and statutory audit does not exonerate the respective company of its obligation to nominate a censor, whereas art. 199 3<sup>rd</sup> paragraph of the Company Law no 31/1990 is imperative and provides no exception. We consider that *de lege ferenda* the law may be amended in the sense that a limited liability company (SRL) having more than 15 shareholders has the possibility to choose between censors and auditors in order to have a unified regime and to respond to the same reasons for which a company by shares is not obliged to have both auditor and censors.
- (iv) Art. 161 align. 2 of Law no. 31/1990 provides that they cannot be censors and, if they were chosen, they lapse from their mandate those persons who receive under any form, for positions other than that of censor, a salary or remuneration from the directors or from the company or whose employers are in contracting relationships or in competition with it. Consequently, at least apparently, from the legal text it results that the censor may receive a salary for the activity as a censor developed within the company. In our opinion this interpretation would be wanted to be cancelled *de lege ferenda* stipulating more clearly that the censors cannot receive a salary for the activity developed under the mandate as a censor, as the censors exercise their mandate independently and there is an obvious incompatibility between the quality of censor and an employee within the company.
- (v) As a result of the amendment of the accounting law no. 82/1991 by O.U.G. 37/2011 and the replacement of the words financial auditor with statutory auditor in the accounting law I propose that this replacement to be done also in all texts of the Companies Law no. 31/1990 in order to have a terminology correlation. Even if this proposal does not refer directly to the censors, I decided to specify it in this study due to the fact that the legal provisions regarding the censors continue to contain the old terminology of financial auditor instead of statutory auditor.

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