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# « THE COMPARATIVE LAW OF REGULATIONS APPLICABLE TO MULTINATIONAL COMPANIES »

-Summary of doctoral thesis -

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## 2. Introduction

This paper critically and comparatively examines the fundamental concepts regarding companies and the relevant particularities for multinational companies in different systems of continental law (Romanian law, French law) and common-law (British law, American law), with incursions in Asian law (Chinese, Japanese), in order to identify differences in the legal approach and conceptualization regarding companies and in order to identify relevant crosspoints between the legal elements and the historical, geographical, economic and philosophical factors that contribute to the establishment and structuring of companies.

We felt drawn to pursue such research because we were unable to identify in any of the studied legal or economic literature any satisfying references that might be able to provide a framework that elaborates on the correlations between the legal and decision-making processes and the economic elements involved in the establishment and structuring of multinational companies, as none of the studied papers describe and create the necessary tools to what would be required by people with legitimate business-framing concerns. A potential investor, lawyer, economist or business consultant would need to understand, when proposing to conduct an economic activity through a company, what the legal nature of a company is as opposed to alternative forms of legal organization, what would constitute an appropriate place of incorporation for the company or the concrete ways in which the company could expand its activity in other states, and, most of all, what are the relevant legislative and economic factors that must be taken into account when deciding on such an expansion, what are the ways in which one can invest in a company, structure its share capital or company holdings and what are the consequences of the potential juxtaposition between several legal systems applicable to the same multinational company. Most papers present either elements of company law through the limited perspective of national regulations, or analyze the dynamics of multinational companies from a purely economic perspective and in a manner focused on specific areas of interest, and such approaches leave it to the researcher or investor to determine the concrete effects of the applicable legal rules and how they can best be used to produce various concrete economic results.

Such an endeavour as the one we have tasked ourselves with is oftentimes difficult even in the case in which a single national law is applicable, as sometimes there are regulations that create

unexpected effects when they are taken into consideration in conjunction with other norms, but it becomes all the more difficult and absconse to determine the applicable legislation or combination of applicable norms in the case of multinational companies, as the legal entities that make up the multinational company are subject to different regulations, which can, however, produce chained effects throughout the entire company system. The lack of a guide or benchmark to penetrate the significance of legal institutions and the rules of different legal systems can turn any attempt to structure a multinational company or to conduct economic activity through such a vehicle into a titanic job, labyrinthine and more complex and confusing than it should be, which makes it both costly and inefficient for the one who takes on the task.

As such, through the doctoral thesis entitled "THE COMPARATIVE LAW OF REGULATIONS APPLICABLE TO MULTINATIONAL COMPANIES" we sought to approach and inspect from a comparative perspective the basic legal concepts regarding companies (legal personality, nationality, structuring and social capital, transformation) and to specifically determine how these potential differences of perspective, conceptualization and regulation are relevant to the business environment matter and make all the difference in making financial and opportunity decisions within companies.

In order to carry out the research work, we set out to broadly follow the subsequent guidelines and find answers to the following questions:

1. What is the legal perspective in different legal systems regarding multinational companies, how they operate and the extent to which they can operate? If there are different conceptions and solutions in these respects, what is the possible reason or explanation for the difference in approach or perspective, given the historical, axiological, cultural, social and ideological past of the respective regulatory space?

2. What is the current economic, administrative, legal and operational reality of multinational companies in the states concerned? How have multinational companies complied with, adapted to or evaded the various applicable regulations? Are there situations in which the social reality constructed by existing companies has generated the emergence of the legal framework necessary to confirm these new structures?

3. What are the factors of a public, practical and circumstantial nature that influence the alternation between the social and legal developments in the activity of multinational companies?

**3. The structure of the doctoral thesis. Approach**

The paper is structured in chapters with progressive themes, which build on the foundations accumulated in the previous chapters. We considered it necessary for a good substantiation of the research to first explore the historical and cultural-social evolution of the structures through which economic activity was undertaken up until the legal consecration of the company form, in order to have a deep understanding on the differences of conceptualization of companies as distinct legal entities. We then explored in detail the ideas that gave rise to the concept of company, as well as the legal, economic and social implications of its distinct legal personality in the context of the relationship between partners and society, including the assumption that partners are themselves legal entities within a multinational structure.

Once we have established a firm grasp on the extent and implications of the distinct legal personality of a company and of the legal boundaries between the different structures within a multinational company, we considered it necessary to discover how an economic activity acquires its international dimensions, identifying the relevant factors that determine a company to become multinational and the strategies that such companies opt for in order to expand their business to other states. Noting that legal considerations and the strictness or laxity of tax, trade and protectionist regulations are some of the relevant criteria in determining the way companies expand overseas, we decided to also approach this issue from the opposite perspective, respectively from the perspective of how setting up a company in a particular state gives rise to a number of consequences in terms of nationality, legal capacity and national and international liability of companies.

All these discussions were made without distinction regarding the type of company concerned, but we noticed that the fact that different regulations provide for a variety of company structures can generate relevant effects on the structure and operation of multinational

companies, which is why in the following parts of the paper, we addressed the types of companies regulated by the national laws concerned and the relevant legal criteria that generate this variability, in order to be able to substantiate the discussion on the participatory and constitutive structure of companies.

We analyzed the notion of share capital and the different legal understandings of this concept in each studied legal system, with detailed explanations as to the limits of the concept: the possible absence of a share capital as a designated company feature, authorized capital, need to subscribe or pay shares, shares without nominal value, classes of shares and their variability, tradable shares, including by automated means, with final discussions on the implications that these particular aspects of the corporate structure pose in the case of multinational companies.

The last part of the paper deals with particular issues regarding ownership relationships between companies within a multinational structure, as well as issues related to the transformation and modification of the company structure in the context of mergers and acquisitions and the appropriateness of national regulations dealing with third parties' rights of opposing or blocking such operations.

## 4. Presentation of the chapters of the doctoral thesis

**(Chapter 2 The evolution of concepts and regulations pertaining to companies from a hystorical, legal and cultural point of view)**

The study starts from a historical and cultural analysis of the evolution of concepts and regulations regarding companies, with the purpose of identifying those legal structures that have been used as tools for carrying out business activity, starting from the first contractual forms (partnership, commenda), identifying possible precursor legal institutions that might account for the appearance and regulation of companies (*societas* in Roman law, *koinonia* in Greek law, *sreni* in Indian law, *waqf* in Arabic law) and pursuing the gradual recognition of companies of the unincorporated joint-stock type as true legal entities in current regulations.

We conducted these extensive surveys of the first legal forms for investment in economic activity mainly because it was necessary to identify the roots of current legal thinking about companies and to have a basis for analysis and understanding of how the concept of the company as an entity with legal personality arose in the European, American and Asian legal culture.

We note that even during this historical period, some of the principles that currently govern the regulation of companies were already visible: on the one hand, the contribution of partners represents a pooling of resources, an investment based on which participants hope to make a profit, in proportion to the share or nature of their contribution; the designated agents (similarly to the directors) are empowered to engage in activity in which investors (associates) cannot interfere, any of the investors may withdraw from the legal framework created at any time, and investors / members shall be liable for any damage to other members or to the group itself. However, there are also considerable differences: all these of these activities are carried out at this stage on a purely contractual basis, and the binding force of the contract can be very rigid; the whole operation is considered exclusively from a contractual perspective and the remedies available to the contractors stem solely from a breach of contractual obligations. These aspects are important because at this stage, the obligations arise only between the partners and the contractual framework in which the commercial activities are carried out will be maintained throughout the development of the regulations regarding the companies.

Even in this period of Antiquity and the Middle Ages, however, there were legal or social structures that benefited from *persona* and *corpore*, probably because of a growing need for the pooled capital to last longer and economic activity to be perpetuated, irrespective of whether some members of the group might change or disappear. Some such forms of collaboration were expressly regulated and could be considered precursors of the legal forms of company: certain forms of the *societas* contracts under Roman law, the *sreni* company under Indian law, a legal construction formed on a collaborative basis and operating similar to a craft guild, but which had a membership and reward structure based on the invested capital and obtained profit, and the *waqf*-type structures under Arab law, similar to the British *trust*.

All these legal structures show that the impulse to treat a community as a single entity has existed since ancient times, but these structures were largely designed for the administration of public interests and communities, seen as groups with common activities. Some of these structures also had economic implications and activities, but ancient legal thinking could not go beyond the limits of a primary right, in which only individuals can be treated as subjects of law. As such, any form of pseudo-corporate organization was seen rather as a set of rules for pooling resources, managing large-scale projects, and regulating relations between members.

In the Medieval period, trade gradually developed from the level of annual international fairs in which only isolated producers participated, to the level of associations of producers organized in guilds with a well-defined organizational and hierarchical structure. With the development of guilds and the increase of their incomes, traders became the main financiers of cities, also carrying out financial-banking activities, and international trade was based on the organization of consortia, share-based financing, *commenda* and *societas maris* contracts, *compagnia* and *rogadia* contracts, and some of the most prosperous businesses were developed by so-called Florentine "societies", organized in the form of multiple quasi-permanent partnerships, in the sense that the company did not dissolve in the event of the death or withdrawal of one of the partners, or, even in the event of dissolution, the partnership was immediately renewed. The reason why the partners requested the termination of the partnerships was usually the desire to carry out a restructuring of participations / holdings, which may or may not have beeen followed by a distribution of profits. These ways of reorganization did not interrupt the existence of the partnership, but rather functioned as methods for the reorganizations of these companies.

As such, it can be noted that corporate-type organizations were used in practice since the Medieval period, even if their legal structure was generated by the use of old commercial forms which were adapted to current needs. We could therefore consider that companies, as a vehicle for economic activity, precedes any form of regulation and official recognition. At this stage, the associative and investment structure was what was necessary, and there wasn’t yet any need for the recognition of a distinct legal personality, which will appear as

soon as the businessmen will have a greater interest to ensure their profit in a context in which they become "anonymous" investors, lost in a sea of other investors.

Distinct legal personality was given to companies for the first time during the era of the great geographical discoveries, among the first companies thus recognized being The East India Company, established by charter in 1600 and the Dutch East India Company established in 1602, the latter being in fact, the first entity to which a corporate form was assigned by issuing bonds and shares that could be subscribed by the general public to finance the commercial activity of this company.

With the first chartered companies, the idea of a share-based company became a concrete solution for regulating business activity, especially if the necessary funds were not available to investors or partners. In France, with the French Revolution, the right to register private companies was unreservedly proclaimed, and the law on the registration of companies was strengthened under the Commercial Code adopted in 1807 under Napoleon.

This chapter also explores the perspective of whether or not such contractual business frameworks might have been sufficient for conducting wide-scale business activity, without any need for a company form, yet such a possibility seems unfeasible. These perspectives are useful for understanding the difficulties that states have encountered in recognizing and regulating societies and substantiate / anticipate differences of conception between different legal systems.

**(Chapter 4 Legal explanations of the distinct legal personality of companies and of the links between companies within a multinational)**

Once we have established the social, cultural and historical context that generated the need to regulate companies as a particular form of conducting business, we considered it necessary to analyze in the next chapter how this transformation was achieved from a legal point of view, respectively to identify either the way in which legal institutions already known in the studied legal systems were used as a foundation to justify the concept of „company" or a legal person, or the way in which the notion of „company" might have appeared as a new instrument in these systems of law ( we have not found any references that might explore

in a systematic manner the way in which the legal personhood and company form came to be).

I found that in both the French and common-law systems , it was possible for companies to be created and recognized as subjects of law with legal personality because they were established by a manifestation of public power (*octroi* in French law, *charter* in British law), and thus their legal personality was perceived as an extension of the public authority through which they arise and from which they borrow. However, the legal changes in each system went through different stages, with British law going through a slower and more gradual process of recognition of the legal personality of companies and French law exhibiting more excessive swings from total freedom of company formation through administrative procedure to time periods of total ban.

It can be seen at this point that in the legal history of both British and French law there comes a time when the state allowed for the free formation of companies, by moving from a system in which the company was created or approved on the basis of a state act to a system in which the state allows the establishment of these companies at the initiative of the founders, with prior verification of compliance with the minimum legal requirements. We consider that this is also an important leap, generated this time by social pressure and the fact that companies were already an indispensable element in the local economic landscape, as it transforms the company from a manifestation of public power into a private phenomenon, in which the manifestation the will of the parties takes precedence and is sufficient to produce legal effects.

The analysis of the cultural and socio-historical constraints serves as a basis in this chapter to explain why the perspective on companies differs in the British legal system (where basic regulations are looser) than in France (where regulations on registration, structuring, share capital were originally stricter, due to the need to combat the excesses and abuse of the company form in the first decades of use of these forms of business).

As for the distinct legal personality of the company, we identified the legal texts or jurisprudential sources from which this principle is derived, followed by an analysis of the situations in which the distinct legal personality of the company can be ignored in relation to shareholders which are legal persons (parent and subsidiary companies): in cases where

the company is an artificial and empty shell intended to protect the shareholders (in British, American, and Japanese law), when for the correct application of a legal text the distinct legal personality of a company must be disregarded (British and American law), where several companies act as a single economic entity (British law) or when the parent company is liable for the acts of the subsidiary company acting as its representative or when the parent company exercises excessive control or is responsible for the guidance of the subsidiary in the course of operations (in British and American law, in Chinese and Japanese law, in the form of the principal's tortious liability under French law).

In this chapter, we also discuss the implications of distinct legal personality and its limits in the particular situation of multinational companies, noting that the limits of legal personality are more flexible than the formal limits of each company, because, depending on how it operates, the activity of several companies can be considered a result of the manifestation of a single will, regardless of the formal barriers that arise from the law.

Recently, however, there have been more and more legislative measures (United States, France) or soft law approaches (standards in the field and certificates to combat abusive practices) taken in order to hold multinational companies accountable or liable for damages caused by subcontractors or subordinate companies.

**(Chapter 5 Economic Explanation for the Development of Multinational Corporations)**

As some of these legal perspectives lead to some flexible boundaries regarding the qualification of an entity as a company or of several entities as separate legal entities, or, conversely, as a single legal entity, we considered it necessary in the next chapter to explicitly address the notion of the multinational company, to identify the criteria and factors of organizational and economic nature that confer this status to a company and to set out relevant theories on the motivations and behavior of investors in creating or expanding the activity of a company beyond the borders of a single state, in order to understand the propensity of companies towards multinational activity. This perspective is useful as it gives the reader the opportunity to understand what are the internal factors that incentivize a company to expand in other states, and in the following chapters, the two perspectives, the legal and the economic-internal, are combined to highlight the points where inconsistencies, limitations or difficulties arise.

The concept of a multinational company is an economic one, rather than a legal one, and from the multitude of proposed definitions we notice a series of important factors in characterizing a company as a multinational: carrying out an economic activity (regarding goods and services or organizational activities such as research, development, business management and marketing) in several states, based on financial investments and in an organizational form that involves control or coordination between the various substructures of the entity. Existing legal regulations dealing with control and ownership relations between companies, such as those of Directive 2011/96/EU and Regulation (EU) 2015/848, only deal, from our point of view, with a certain type of multinational company, namely the one in which the different entities are linked to each other through a control structure generated by the structure of shareholders and holdings. However, we think that there are other structures through which several legal entities operate together internationally, whose composition is not based on a shareholding structure: dual listed companies, joint ventures, associative corporate structures or alliance-type formations, which must be considered, at least from an economically realistic perspective, as multinational companies.

We also considered it necessary in these preliminary studies to explore the economic and philosophical theories that explain the phenomenon of international trade, the reasons and methods underlying the decision of companies to expand their activity in other states, in order to later correlate these behaviors and perspectives with legal regulations and an analysis of the business decisions of multinational companies, taken in an economic, legal and managerial theory context. The proposed theories regarding international trade can be separated into two well-defined periods: in the initial period of development of these economic theories, the analysis and theorizing of these dynamics was operated from the perspective of the nation state that performs trade and gains from these activities (the classical theories on international trade – the mercantilist theory, the classical economic theory, the comparative advantage theory, the production factors theory), and during a later time, with the emergence of new technologies and the growth of the economic and political activity of certain national and multinational societies, the newer economic theories focused rather on the activity of a company as an actor of international trade (the modern theories of international commernce: theories on foreign direct investment, cost of capital, differentiated rate of return, portfolio investments, the internalization theory and the

eclectic theory / OLI model). This analysis showed that the decision to invest in other states is based on a conceptual structure of transaction cost analysis, and the multinational character is explained as the optimal reaction of the company to the following factors: geographical characteristics and local resources, opportunity and costs, specificity of local production and competition, labour and human resources available, transport and distribution networks, legislative and fiscal factors, public policy, the existence and potential advantage of alternative investment mechanisms.

We also analyzed in this chapter the methods and stages by which companies become multinationals, discovering that there are companies that are gradually expanding to an international model and can address different degrees of integration in the local economic culture (ranging from approaches open to integration and blending with the local economic medium up to inflexible models that simply copy and apply the original economic model in every state in which the company expands), but also companies that are conceived from the very beginning as international companies, considered to have been born global.

**(Chapter 6 The nationality and transferability of international companies as facets of their multinational character)**

Since the activity of a company in a certain territory may determine the incidence of some or other national or local regulations, the following chapter deals with the nationality of the legal person and the way in which different national regulations may determine and influence the legal capacity of a company, with a subsequent separate exploration of the possibilities of the companies to determine or change their nationality. Also, given that the nationality of companies does not exclude the possibility that a company may be considered a subject of law in other states, the paper also addresses the hypothesis of the "presence" of a company in another state, which is in some legal systems a criterion for determining the jurisdictions in which these companies may become parties to litigation under international law.

Given this legal context, we have studied the main reasons companies choose to establish themselves in a certain state, especially in the case of companies in the field of information technology and other companies born globally or serving global markets by electronic means, since in such cases the choice of the state of establishment of the company does not

depend on local elements, but rather seem to be dependent on more complex circumstances of a financial nature and of opportunity. The typical rules by which the nationality of companies is established (the theory of incorporation or the theory of the real seat of the company) are relevant for multinational companies because they determine the law applicable to these companies. We also analyzed the possibility of "transplanting" such companies from one state to another in the light of the regulations of British, American and French national law, which formally state the possibility for a company to change its nationality, as well from the perspective of the possible practical and administrative difficulties involved such operations, from the perspective of the jurisprudence of the European Union, which includes a rich and interesting variety of situations.

The last section of this chapter is dedicated to a topic of real interest to multinational companies, namely the liability of companies before the courts of a state other than the state of origin, a segment in which we discussed the criteria applicable in Europe and the United States to determine whether a certain court has jurisdiction over foreign companies: criteria regarding the place where the obligation of the forum state had to be fulfilled and, respectively, criteria regarding the presence of the foreign company on the territory of the forum state.

**(Chapter 7 Forms of companies)**

The following chapter sets out how the laws of the states concerned allow the organization and incorporation of companies and presents the types of companies recognized by law, in order to identify relevant criteria that characterize and differentiate some companies from others (type of liability, the private or public nature of the company, the type of membership), and to be able to detect the specific legal composition allowed in each legal system.

We will note that in most of the regulations studied, the criteria for differentiating between types of companies concern either the person of the holder (public or private companies) or the type of liability of partners (limited or unlimited liability or various forms of liability), composition or purpose for which the company is created (for example, in China, there are types of companies specifically designed to be set up by foreigners, either independently or in association with a Chinese natural or legal person, or, in the UK, there

are corporate forms specifically designed for companies with charitable or community-oriented scope), the number of partners (in some legislations, a company may be formed by a single member).

We note that there are, at least at first glance, no notable differences in perspective or criteria as to the types of companies that may be established, with most laws targeting the same general criteria, which stem from the general concerns of the partners regarding liability towards third parties, but also from the position of the state regarding the type of activity it allows or encourages.

**(Chapter 8 Internal structures of ownership of the company)**

Once we have clarified the admitted variations involved in the composition of a company, the paper addresses the institution of share capital, starting from an attempt to theoretically and practically substantiate the notion.

The possibility of organizing the company without a share capital is also considered (taking into account at least the British regulation of the limited by guarantee company), and subsequently the particular rules for establishing, allocating and paying the share capital in the various regulations studied are addressed.

Because some states allow the issuance of shares with no par-value, the specific issues of such corporate structures and the legal arguments for which such compositions are permitted by law are studied.

Additionally, given that all of the relevant legal systems allow for the establishment of classes of shares with special rights, we set out and compare these regulations (in common-law legal systems the classes and related rights may vary without any restrictions, while in the systems of continental law, the possibilities are limited by some legal provisions), to substantiate discussions on how multinational companies could use or create complex shareholding structures by combining the rules of the various legal systems.

The last part of this chapter deals with the interactions between entities that belong to the same multinational company, with discussions on how parent companies and subsidiaries can

interact in terms of possible mutual holdings, on the merger and division of companies, hostile takeovers and how these transformations of companies may affect the rights of creditors.

## 5. Conclusions

The conclusions emphasize that the investor interested in building a legal structure for multinational companies must have a thorough understanding of the legal concepts, notional interpretation and regulations of the legal systems applicable in the states in which one wishes the company to operate and should also be able to identify how these regulations interact with one other in order to produce certain effects and to enable the creation of fluid legal structures.

Our interest in studying the regulations applicable to multinational companies has been animated by the possibility that, behind seemingly obscure configurations, there are linear, elegant structures capable of interacting with each other in a functional whole. After all, the very viability of large corporations proves that such structures can be created and used to give life to centrally-coordinated activities. However, the endeavour seems difficult, because, at first glance, multinational companies seem to be chaotic creatures, golems that work only because each part of the whole bears some sort of meaning and rationale that can be assessed by the observational mind, but which one would be unsure how to piece together.

In order to overcome these colorful perspectives of immediate impression, we considered it necessary to study the legal foundations of companies and current national regulations in the most important legal systems, in order to identify how these elements should be interpreted and used and how they interact with each other. We are aware that any critical "scan" of the functioning of multinational companies must start, on the one hand, from the understanding of the notion of multinational company, and on the other hand, from the understanding of the primary notions regarding companies in each legal system.

Upon an attempt to characterize multinational companies, we found that there is no express regulation defining multinational companies, even if there are regulations regarding certain

types of intra-group or intra-company relations (such as regulations regarding parent-company relations, regulations regarding the holding by a company of its own shares, regulations regarding the insolvency of companies belonging to the same group, etc.), reason for which we opted for an alternative perspective starting from the exploration of social realities: most companies considered multinational are companies operating in the territory of several states.

Precisely because there are such differences between investment vehicles and ample discussions about what constitutes a company or a group of companies, we considered it necessary to throroughly research both the concept of company and the historical evolution of this legal institution in each legal system, and we have found that, although the regulations are similar, the slight differences in the conceptualization of companies give rise to stringent differences in the internal organization and structuring of companies from different states.

Thus, the corporate concept developed slowly, gradually, from previously widely-used legal forms, such as partnership and agency, and were recognized and regulated when the community had already been widely using joint stock or limited partnership forms for conducting business. It was surprising to discover that it was not the organization and internal relations of a company that were difficult to generate (since they existed since the construction of the *sreni* and q*irad*, since *societas* and *koinonia*), but the very notion of a distinct legal personality, of a legal entity. The British created this concept on the foundations of *trust* and the concept of administrative "seat" (*corporation sole*). Both French and British law initially justified the granting of a legal personality to public companies / joint stock companies on the basis that such personality emanated from acts of state power (*octroi*, *charter*), followed by a stage of registration of companies under strong administrative control, to eventually give precedence to the free establishment of companies, bearing strong contractual inflections, the administrative verification being kept only to ensure the legality and transparency of the incorporation of companies.

However, in both systems of law, the company is considered a separate legal entity from that of its members. This identity sometimes has fluid boundaries; as we have seen especially in common-law, sometimes the company may be perceived only as an instrument in the

hands of associates and judges may without hesitation choose ignore the distinct legal personality.This part of the study is important because it shows, on the one hand, that the norms of the main legal systems recognize not only the legal impact of a single entity, but also the fact that relations between companies can generate legal effects that can be transferred from one company to another, on the basis of the nature of the links between them and, on the other hand, that there is, at least at the level of case-law, a recognition of groups of companies and multinational companies as subjects of law which can be regarded as a single entity.

For this reason, it is important that the reader interested in the operation and regulation of multinational corporations be aware that he cannot view each member company of such a multinational corporation as a separate entity, bound to the others only on the basis of contractual or holding relationships,with effects limited to those that were deliberately intended. For the activity of multinational companies, such a reasoning is neither sufficient nor satisfactory, because if we set up several companies, each in a different state, and link them together only on the basis of ownership structures so that we can call the structure a multinational company, such an perspective would not reflect legal reality, because the interactions between companies linked by control and ownership relationships cannot be ignored and are quite manifest in each of the operations that these companies undertake.

If such a multinational company makes profit in one of the states, it wants to know how and to whom the dividends are distributed and what are the consequences of such a distribution to the parent company; if a multinational company determines that the best strategy for business success is to carry out a certain operation, but this operation is either too expensive, restricted or prohibited in a state, it must have knowledge of these potential hindrances in order to be able to probe where it could better to carry out this operation, taking into account technological factors and economic realities; if a company is threatened by the progress of a competitor or even by the takeover bid launched by a competitor, it must know what tools it can use to prevent an undesirable result.

We believe that this is also the reason why the company is no longer necessarily linked to its location through fixed and immutable links: the company has the nationality of the state in which it was registered or has its headquarters, but this rule is only one to clarify the

situation of the company at any moment in time, especially in its relations with the state; however, its headquarters can be transferred to another state, the principle being recognized in both the European and American legal environment, bearing with it the consequence of changing the nationality of the legal person. Moreover, the mere presence of a company in the territory of a state entails legal consequences for it, in the sense of creating rights and obligations in its patrimony, in the sense of attracting its liability, and especially in the sense of conferring the competence of state authorities and courts to issue decisions and orders with regard to these companies (see only the extensive discussions on the *forum non conveniens* and the jurisdiction of the courts with regard to foreign parent companies, or the decision of the Mechelen Correctional Court, Belgium to sanction Skype for failure to fulfill an obligation of assistance with criminal investigations with the justification that the obligation had to be fulfilled in the territory of Belgium by a company which was considered to be present in that state, even if it did not have its registered office there).

The next part of the paper focuses on possible societal constructions from the perspective of primary regulations in each legal system. The first step in discovering the variability and fluidity of multinational companies and in making sense of these broad benchmarks was to identify the particularities of companies in each legal system and to explain these issues in relation to the historical evolution of the legal concepts pertaining to company law. A specialist who is required to provide a viable company construction must know all of these elements in order to find the solution that best meets the specific needs of the investor. We have noticed that companies are regulated relatively uniformly in all the studied legal systems, but each of these legal systems allows for the creation of only expressly regulated companies, so the person concerned must take into account these options of the legislator from the beginning.

The investor must also take into account the regulatory differences in the way the company is built: in American and British law, as well as in Japanese law, the company can be created with an authorized, unlimited capital, which does not necessarily have to be allocated at the time of the creation of the company, while in the French and Romanian legal systems, the share capital declared at incorporation must be equivalent to that subscribed - these differences are relevant in the case in which, for instance,the company wants to co-opt a

new partner, as in American and British law it is possible for the company to simply allocate additional shares to the new partner, without the need for approvals or complex procedures, while in the Romanian and French legislation it is necessary for the general meeting of shareholders to approve both the increase of the share capital and the acquisition of these shares by a new partner, with different rules in the case of public subscription in the case of joint stock companies. In the American legislation it is not necessary for the shares to have nominal value, while in French and Romanian law, such a nominal value is expressly required, and these differences in rules can oftentimes make it difficult for a multinational company to be valuated or to evaluate the shares themselves and the ways in which the transfer of the shares is carried out.

When deciding to attract new investors and expand the business, the founder must know what the possibilities are for structuring the share capital so as to maintain the control over the company, either by resorting to loans as a form of financing the company (debt) or by issuing classes of shares with different rights, or by varying the right to vote, the right to dividends, the possibility of conversion and redemption of shares, so that these structures may serve as a flexible tool either to attract investors or to protect the interests of the company against any attempts of a rival to take control or to ensure the financial balance of the company.

The investor must also know what the decisive relationships are between the companies in the group and to what extent a very close control of the operations of the subsidiaries can sometimes attract the liability of the parent company. Therefore, the investor who is to carry out a financially risky activity or one that is heavily regulated must organize the relations between the subsidiary structure and the holding company in such a way that the investment and legal risk is concentrated and limited to the personhood of the subsidiary.

We have analyzed all of these aspects in order to provide an accurate depiction of how to understand the essential elements of the establishment and structuring of a multinational company in each legal system, so that the possibilities and functional combinations allowed by each legislation to be more straightforward and obvious, within their implicit or explicit limits, while also taking into account the possible impact of the system of values applicable in the state concerned.

This paper is a picture of the possibilities available to those who want to understand and structure, in an informed and viable way, a multinational company, presenting the basic elements that must be considered in the internal organization of companies. which will make up the multinational company.

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**Cazuistică. Jurisprudență**

**Jurisprudență română**

1. DECIZIE nr. 58 din 1 februarie 2005 referitoare la excepţia de neconstituţionalitate a dispoziţiilor art. IX pct. 36 şi 39 din cartea II titlul II al Legii nr. 161/2003 privind unele măsuri pentru asigurarea transparenţei în exercitarea demnităţilor publice, a funcţiilor publice şi în mediul de afaceri, prevenirea şi sancţionarea corupţiei, a Curții Constituționale, publicată în Monitorul Oficial al României cu numărul 166 din 24 februarie 2005
2. Decizia nr. 684 din 05.05.2009 referitoare la respingerea excepției de neconstituționalitate a dispozițiilor art. 243 alin. (1) din Legea nr. 31/1990 privind societățile comerciale, emisă de Curtea Constituțională, publicată în Monitorul Oficial al României nr. 376/03.06.2009
3. Sentința nr.1/12.01.2010 a Tribunalului Botoșani, Decizia nr. 547/26.03.2010 a Curții de Apel Suceava
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6. Sentința civilă nr. 4776/12.04.2012 a Tribunalului București, Secția a VI-a Civilă
7. Sentința nr. 48/23.01.2015 pronunțată de Tribunalul Bacău
8. Sentința nr. 506/28.04.2016 pronunțată de Tribunalul Iași-Secția II Civilă-Contencios Administrativ și Fiscal
9. Decizia nr. 481 din 17 septembrie 2019 referitoare la excepția de neconstituționalitate a dispozițiilor art. 243 alin. (1) și (3) din Legea societăților nr. 31/1990, emisă de Curtea Constituțională, publicată în Monitorul Oficial al României nr. 275 din 2 aprilie 2020

10. Decizia nr. 196 din 6 martie 2020 referitoare la excepția de neconstituționalitate a dispozițiilor art. 243 alin. (1) sintagma ”nescadență la data publicării” din Legea nr. 31/1990 privind societățile comerciale, emisă de Curtea Constituțională, publicată în Monitorul Oficial al României nr. 350/23.05.2012

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