THEORETICAL CONSIDERATIONS FOR SECURITIES ISSUED BY JOINT STOCK COMPANY

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Abstract :
In this moment in Romania and in the European economy securities issued by joint stock company occupies a very important role. Stocks and bonds are debt securities which it individualises by certain characteristics .Without them, joint-stock companies could not exist . The stock is a fraction of the authorised capital that has always to be of an equal value. In the anonymous stock companies, the social shares can have an inequal value. If the constitutive document does not say different, the stocks give to the owners equal rights. The stock represents the credit title that observes the rights and obligations that are part of the quality of shareholder. In other words, the document in which it is incorporated the shareholder's right. The bonds are fractions of an unique loan contracted by the company. They represent the company's obligation to return the borrowed money. The titles of the bonds are equal and indivisible. The bonds from the same emission have an unitary regime. Through the incorporation of the obligation of reimbursement in the title, the bonds are transmissible. Through this article we will see their role and solutions for a better aplication for Romania in the context of actual European economy.

Key words: securities, stocks, bonds, shareholders, solutions.

JEL Classification: K22

1. INTRODUCTION

In Romania with the actual European economy the securities issued by the joint stock company have an important role. The stocks and the bonds are credit titles that have certain characteristics.

The stock is a fraction of the authorised capital that has always to be of an equal value. In the anonymous stock companies, the social shares can have an inequal value. If the constitutive document does not say different, the stocks give to the owners equal rights.

The stocks are representative titles of the social parties and they are fractions of the authorised capital and they give to their owners the quality of share holders. After the legal institution of the joint stock company, the stocks can be transmitted and negociated.

The bonds are fractions of an unique loan contracted by the company. They represent the company's obligation to return the borrowed money. The titles of the bonds are equal and indivisible. The bonds from the same emission have an unitary regime. Through the incorporation of the obligation of reimbursement in the title, the bonds are transmissible.

Without them, the joint stock companies would not exist or function. The solutions for a good applicability of the securities issued by the joint stock company from Romania would be several but the most important would be that the managers get involve more in the company's activity.

2.SECURITIES THAT ARE EMITTED BY THE JOINT STOCK COMPANY, THEIR ROLE IN SUCH A COMPANY AND IN THE SAME TIME IN ROMANIA'S ECONOMY

In Romania the securities that are emitted by the joint stock companies are incarnated by bonds, and the most important securities are the bonds and stocks.

First of all the stocks are representative titles of the social parties and they are fractions of the authorised capital and they give to their owners the quality of share holders. After the legal institution of the joint stock company, the stocks can be transmitted and negociated.

In the juridical doctrine one can identify several means for the notion of stock.

The stock is a fraction of the authorised capital that has always to be of an equal value. In the anonymous stock companies, the social shares can have an inequal value. The stock represents the credit title that observes the rights and obligations that are part of the quality of shareholder. In other words, the document in which it is incorporated the shareholder's right.

Also the stock deisgnates the corporative or associate proportion, that is the juridical bond that exists between shareholder and the company. The shareholders' rights and obligations are determined by the stocks' possession and not by the company contract or by the quality of shareholder (1).

These actions' titles ave to comprise the following elements: the name and the duration of the company, data regarding the constituent document and the company's matriculation, the corporate funds, the number of stocks and the payments they did, the advantages given to the founders. The stocks have to be signed by two managers, when they are multiple managers, or of the only manager.

It is really important the aspect regarding the fact that the nominal value of the stock can be established through the constituent document or through the law. In the case in which the stock's quantum is established through the constituent document the associates have complete freedom. In the national legislations, the legal stipulations establish a minimum limit regarding the nominal value of the stock (2).

The stocks cannot be emitted for a smaller sum than their nominal value.

The basis of this stipulation means the protection of the social creditors. In the measure in which the nominal capital corresponds to the real capital, the social creditors cannot be mislead. But the company can emit stocks for a superiour value to their nominal value. The contrary modality of issuance is allowed, because the company's patrimony grows with the difference that results.

After the issuance of the stock its value can be inferiour or superiour to the nominal one. The stock has an effective value, reported to the real situation of the company's patrimony. The stock can also have a stock exchange value.

The stock titles can be unique or multiple. The unique or simple titles correspond to only one stock, and multiple ones to several stocks.

In the speciality literature the process of emitting multiple stocks has been challanged. The objections referred to the fact that the shareholder that has a stock or a number of stocks, that is inferior to the multiple for which the stocks have been emitted, wouldn't have the right to vote. But the shareholder's right to vote is stipulated by the law. No matter the number of his stocks, the shareholder cannot be stopped to vote.

Regarding the juridical nature the stocks are considered to be credit titles. But they do not have all the characteristics of the credit titles.

The stocks are characterised only through the existence of a title that incorporates the right, without being autonomous and literal. As such, we ave to deal with the following consequences: the extension of the possesor's right is incompletely stipulated in the document that observes, it is determined through the company contract and through statute; the content of the posessor;s right can change according to the modifications of the company contract and of the statute; the sub-obtainer has a derivat right and not an intrinsical one, and the exceptions that the debtor can invoque against the first obtainer are opposable to the following ones.

As a consequnce the stocks are not perfect credit titles. They attest a complex right, being corporative or participation titles.

Next we shall see aspects regarding the stocks' types and transmission.

After their individualisation model, the stocks are of two types: nominative stocks and bearer shares.

The nominative stocks have in their title the name, the forename and the address of the possessor's, or the name and his headquarter. Their ownership is established through the listing in the shareholders' register.

The nominative stocks can be emitted in the material form, on paper, or in the dematerialized form, by listing in the shareholders' register. For the stocks that have material form there can be emitted cumulative titles, that comprise a multiple, that means several stocks. If it did not emit actions in material form the company will release, at the request or from office, a certificate for shareholder.

Regarding the transmission of the nominative stocks it is made through a declaration made in the shareholders' register, that is signed by the assignor and by the assignee or their trustees and through the mention that is made on the title. Through the constituent document one can say other ways of transmitting the property rights on the stocks.

The formality of listing is necessary for the cession's opposability regarding the third parties. The rights that correspond to the quality of shareholder can be exerted only by the associated that is listed in the shareholders' register, that means the titular holder.

The listing of the operation in the company's register is also mandatory in the case of institution of real securities on the stocks.

Bearer bonds have in the title only a number, without the mentioning of the possesor's name. The bearer bonds' property belongs to the possessor. The bearer bonds are transmitted through the simple material tradition of the title.

It is also interesting the fact that the associates have the right to chose between nominative stocks and the bearer bonds.

Although the bearer bonds are prefered, many times the constituent act or the law stipulates the nominative form. Through the nominalisation of the stocks it is intended to know exact the shareholders and implicitly the componence of the social capital. If in the constitutive document it does not say otherwise the stocks will be bearer bonds. But the stocks that are not paid in full are always nominative.

The stocks are indivisible. In the situation in which a nominative action becomes the property of several people, the company id not bound to list the transaction, if a soul representative is not designated by the co-owners that will exert the rights that are a result of the stock.

The nominative stocks that are paid in full can be converted into bearer bonds. The bearer bonds can be changed into nominative stocks. In the lack of a legal ban, the conversion of the stocks from one form into another is decided through the decision of the extraordinary general shareholders meeting.

According to the rights that are given to the title holder, the stocks can be divided into two categories: regular stocks and privileged ones (3).

The regular or ordinary stocks are of equal value. Due to the parity of the contributions, the regulat stocks give their possessors equal rights.

The priviledged or preferential stocks give to the title holders additional advantages. The creation of priviledged stocks can be established through the constituent document or later on, through a decision of the extraordinary general shareholders meeting.

These given priviledges can be of patrimonial nature or they can refer to the right to vote and they give certain facilities to the sharing of the dividends or to the division of the social actives, in case of the company's dissolution or to multiple rights to vote (4).

In the concretization of the prefernces that are given to a category of stocks we must keep in mind the equality of treatment, respecting the other's shareholders rights.

The advantages that are given are not always accompanied by the right to vote in the general meetings. In a different conception, in the Dutch and Finish law, there cannot be emitted stocks without the right to vote.

In some legislations there can be emitted stocks that give special rights to the founders or the promoters, as well as facilities to the employees for providing certain services. They have dividends, but their right to vote has a series of restrictions.

In the Italian law the company's whose stocks are listed at the market can emit compensatory stocks. Their possessors have the right to a prior dividend, that represents 5% from the nominal value of each stock owned.

Next we shall see notions about **the attainment by the company of its own stocks.**

The anonymous joint stock company cannot attain its own stocks, either directly, or through people that act in their own name, but in the behalf of the company.

In an exceptional manner the attainment by the company of its own stocks can be decided by the extraordinary shareholders general meeting. Its qon stocks that are attained cannot exceed a certain value of the subscribed social capital (5).

Its own stocks that are attained by the company do not have the right to dividends. During the duration of their attaining by the company the right to vote that they give is suspended.

The company can attain its own stocks without restrictions. In certain situations the law allows the free attaining of a determined number of its own stocks, that are integrally free (6).

Another important aspect regarding this problem is the one referring to **the rights and obligations of the shareholders.**

Thus, the owner of the stock is called a shareholder and the possession of the stock gives him the quality of associate. The rights and obligations of the associate are determined by the number of stocks that he owns, as well as the stipulations of the constituent document of the company.

The main obligation of the shareholder lies in the payment of the payments they owed and the anexis to the actual financial situation has to comprise data regarding the stocks. It will be specified if the stocks have been paid in full, as well as the number of stocks for which the payment was requested .

The payment of the rest of payments on the stocks it is made at the data that are established before hand, through the constituent document of the company. In the lack of such stipulations the moment of payoff of the rest of the debt is appreciated by the general assembly or by the managers (7).

According to the principle of the equality of treatment the request of payment is addressed to all the shareholders. The payment invitation is made through a collective somation, published twice, in the Official Monitor and in the media.

In the situation in which after the somation the residual payments are not made, the board of directors can decide the pursuit of the shareholders or the anullemnt of the stocks that are not paid in full. In the place of the anulled stocks now stocks will be issued, having the same number that will be sold. The money obtained from the sell will be used for the covering of the residual payment and the afferent expenses.

If the price obtained it is not enough or the selling does not happen because of a lack of buyers, the company can go agains its sub-subscribers and assignees.

They are sollitary responsible for the full payment of the stocks and the company can pursue either of them. But when the sums that are owed to the company are not recovered, the social capital will be reduced in a procent that is proportional with the existent difference(8).

According to his quality, the shareholder has the following rights: to cash dividends, to participate in the general meetings of the company, to vote in the general meetings, to be informed on the company's activity, to receive his share after the company's liquidation (9).

The making of benefits is one of the essential elements of the contract of company.

They are observed through the annual financial situation and they are established by the general meeting, the benefits are divided between the shareholders. They are called dividends and they represent a part of the net annual benefits, that are paid for each stock.

The dividends can be expressed in two ways: under a procentual form, as weight in the nominal value of the stock, and in absolute terms, as sum for each stock. The dividends are divided periodically. According to the moment of payment, during or at the end of the year, the dividends are temporary or permanent.

The dividends are paied in a certain order. First the fixed dividends are paid, that correspond to the priviledged stocks. From the sum that remains, the variable dividends are paid, and they correspond to the regular dividends.

From the moment when the quantum of the dividends is specified, the shareholder benefits from a right of claim against the company.

The shareholder will use this right according to his own will. In the case in which the company is declareed bankrupt, the shareholder will enroll with the other creditors to the mass bankruptcy.

Next we shall clear up aspects referring to the bonds, notion and juridical nature.

The making of the joint stock company's operations imply a social capital. When the capital becomes insufficient, the company can use certain procedures. The necessary money will be obtained by the increase of the social capital or through short term loans.

In order to avoid the difficulties created by the increase of the number of shareholders or by the market's fluctuations, the company can use a specific mean. In exchange for the sums that are lent on a long term, the company can issue bonds. Included in the category of securities, the bonds are credit titles, that are individualised by certain characteristics.

The bonds are fractions of an unique loan contracted by the company. They represent the company's obligation to return the borrowed money.

The titles of the bonds are equal and indivisible. The bonds from the same emission have an unitary regime. Through the incorporation of the obligation of reimbursement in the title, the bonds are transmissible.

The possession of the bonds gives the quality of creditor for the company, and not associated. Being only a creditor the owner of the title has the right to the reimbursement of the borrowed money and of the established rates no matter the situation of the company.

If the company is declared bankrupt the creditor will participate to the division of the active bankruptcy (10).

According to the circulation manner, the bonds can be nominal or bearer bonds. They can be issued in material shape, on paper, or in dematerialiyed shape, through listing into an account.

Nominative stocks have in their title the identification data of the creditor. The right belongs only to the title holder, and it can be transmitted through transfer.

Bearer bonds do not contain data to identify the title holder. The right belongs to the owner of the title, and it is transmitted through simple material tradition.

After the nature of the right given to the owner, the bonds are of three types: regular, with the gratification and with the lot.

The regular bonds give the right to reimburse the nominal value and the afferent rate.

The gratification bonds are bought by a sub-scriber at a price under the nominal value. They give the right to the difference between the nominal value and the sum that is effectively paid to the company.

The bonds with lots can be reimbursed, at the date of payment or before that, through the cast of lots. They give the right to a value superior to their nominal value (11).

The conditions of issuing the bonds. The issuing of bonds can be decided by the extraordinary general meeting of the company. The nominal value of a bond cannot be lower than the limit established by the legal stipulations.

The issuance of bonds can be made through a bank or through appeal to public subscription.

In the first case, the banks take over all the stocks issued by the company. After that, they give the stocks to their clients.

In the second case, the company has to publish an issuance prospect. This prospect has the value of a public offer.

The issuance prospect will comprise the following aspects: identification data of the company; the social capital and the reserves; mentions regarding the listing and the constituent document of the company; the situation of the social patrimony, after the last approved balance sheet; the types of stocks issued by the company; the total amount of the bonds that were issued and that will be issued, the reimbursement manner, the nominal value of the bonds, their interest, the indication if their are nominal or if they are bearer bonds, as well as the fact if they are convertible; the tasks that burden the securities of the company; the date to which was published the decision of the general meeting that approved the issuance of the bonds (12).

The bonds will be subscribed on the copies of the issuance prospect, and the value of the subscribed bonds has to be paid in full.

Another important aspect is the one refering to the general assembly of the bonds.

The unique juridical regime of the bonds creates between the creditors a community of interests. With the purpose of protecting their common rights, some national legislations have stipulated the organisation of the aggreggation of the creditors. Through analogy, the group of creditors is the object to the laws regarding the ordinary assembly of shareholders.

The general meeting is convened at the request of a number of shareholders that represent the forth part of the issued titles and that are not reimbursed or of the representants of the title holders. The compnay that issues them cannot participate to the deliberations of the general meeting of the creditors. The title holders can be represented through trustees, except the managers, censors and the company's clerks.

The assembly of the bonds holders can take the following decisions: to name a representant of the bonds holders and one or more surrogates, with the right to represent them to the company and in a court of law; to fulfill all the supervision acts ad to defend their common interests; to make a fund, that will be taken from the interests that belong to the bonds holders, to cover the necessary expenses in order to defend their rights; to oppose any modification of the constituent document or the conditions of the loan that could harm the rights of the bonds holders; to have a say on the issuance of new bonds. The decisions of the meeting are brought to the attention of the company (13).

Through the validation of the deliberations the decision will be made with a majority representing at least a third of the issued and non reimbursed titles. In the case of the modification of the constituent document or the conditions of the loan or the issuance of the of new bonds, it will be required at the meeting the presence of the owners that have at least two thirds of the non reimbursed titles and the favourable vote of at least four fifths of the titles that are represented at the meeting.

The decisions of the meeting are compulsory and for the bonds holders that were missing or that they voted against. They have the possibility to attack these decisions in a court of law.

The reimbursement and the conversion of the bonds.

The bonds are reimbursed by the company that issued them at the date of payment.

The operation can take place even before the date of payment for the bonds from the same emission and with the same value. The bonds will be reimbursed through cats of lots, to a sum that

is superior to their nominal value, that is established by the company and that is publically announced.

The bonds can be converted into stocks of the issuing company. This operation is made in the conditions stipulated in the prospect of public offer (14).

In the last years the Romanian legislation and the European ones suffered modifications that we shall see next.

In this sense the joint stock companies are big companies that have a large number of shareholders when they are made. Today, the law says that a joint stock company can be made with only two shareholders.

The compulsory social capital at the constituent moment, established by law, is minimum 90000 lei. The social capital can be made only in cash or in cash and in nature (15).

In the case of the joint stock companies that are made through simultaneous subscription, the law says that at the constituent moment minimum 30% from the share of each shareholder has to be paid, if their part is cash, the difference will be paid in 12 months from the date of the company's listing. If there are parts that will be paid in nature, the difference will be paid in 2 years from the date of the company'e listing.

According to art 10 paragraph 1 from the Law 31/1990, republished and modified, the Government will be able to modify, at least once every 2 years, the minimal value of the social capital, taking into account the exchange rate, so that this quantum represents the equivalent in lei of the sum of 25000 euros.

The social capital is divided into stocks, represented by negociable and transmissible titles on organized financial markets (as the stock market) as well as on non-organized markets, especially when the stocks are not listed on the stock market.

The stocks are transmitted through *inter vivos* acts (selling, donation), as well as juridical *mortis causa* acts (wills).

The management of the company is made on the majority of shareholders votes principle and not that of unanimity. The management organ is the general shareholders meeting, that can be ordinary or extraordinary.

The administration of the company can be made, either according to the unitary system, by the management council and by the directors, or according to the dualist system by the supervision council and by the dierctorate.

According to art 137 paragraph 1 from Law nr 31/1990, republished and modified, the management of the company can be made by asole administrator, with the exceptions stipulated by the law (16).

The control of the company's activity is made, compulsory, by a comission of censors made from at least 3 censors and as many surrogates (17), if by the constituent document is not stipulated a higher number. In all the cases the number of censors has to be an odd one (according to art 159 from Law nr 31/1990, republised and modified).

3. A FINAL VERY IMPORTANT ASPECT IS THE ONE REFERRING TO THE DEFINITION OF THE SECURITIES IN THE COMMUNITARY EUROPEAN LAW

The definition of the securities in the communitary European law has its origin in the principle of harmonization of the national legislations of the field, principle that has at its basis the Rome Treaty, having as a starting point the harmonization of the essential notions of the capital market. Between them the concept of security is fundamental. That is why the Directive nr 79/279 regarding the conditions of admission at the official share of a stockmarket and the Europen Code of conduct in the transactions with securities imposed to the states that are members of the UE and

to the actors of the communitary capital market give a definition of the security. In the sense of this sources of communitary law, the notion of security covers "any negociable or that is susceptible of being negociated title on an organized market". Directive 93/22/CEE of the Union Council from 10.05.1993 regarding the investition services in the field of securities (DIS) considers that by security one understands "the categories of titles that are negociated usually on the capital markets, for example, state titles, stocks, the negotiable values allowing the buying of stocks on subscription or through trade, stocks certificates, stocks that are issued in a series, warants with indices and the titles allowing the acquisition of such bonds on subscription".

Art 1 from this Directive considers that that are securities: stocks and other values that assimilated to the stocks, bonds and other claim titles, negotiable on the capital markets, as well as any other values that regularly are negociated allowing the buying of such securities on subscription or through trade, or that have the right to a payment in money, with the exculsion of the payment means (18).

The European courts of law decided that the proposed definition has effects only in regard to this directive and it does not affect in any way the different definitions of financial instruments that are held in the national legislations with other purposes and especially with fiscal purposes. As such the definition has only value of indication.

The European dogma considers that by securities one understands: stocks or other securities that are assimilated to the stocks, the representative certificates on stocks, the bonds issued by public or private entities, other negotiable titles on the capital markets and "any other values that are usually negotiated that would allow the attainment of such titles through public subscription or exchange or through payment in cash".

In sysnthesis, one must remember that the securities are, in the communitary law, titles that incorporate claims or personal-nonpatrimonial rights (sometimes they are called "political" rights, because some securities give the right to vote in the general shareholders meeting or of the issuer's obligations, as well as, in some conditions, the control over the issuer). In order to be negotiable on the regulated markets, the securities have to have been made the object of an initial public offer and to have been listed at the share market or on the regultaed market (19).

Traditionally, the Roman law did not dedicate a certain settlement to securities.

Roman civil code, in art 474 (that takes the stipulations of art 529 from the French civil code) defines as securities through the determination of the law the actions or the interests in finance, commerce or industry companies, even when their capital is in real estates.

The securities, as juridical institution, were introduced in the Romanian law recently.

The consecration of the notion of "security" was made through Law nr 52/1994, regarding the securities and the stock markets. This law defined securities as "negotiable instruments that are issued in material form or that are marked out through listings into account, that give their owners patrimonial rights on the issuent, according to the law and in the specific conditions of their issuence". The law mentioned that there are considered as securities: the stocks, the bonds as well as the derived financial instruments, or any other credit titles, that are situated in this category by the National Board of Securities (20).

In Romanian legislation of securities the definition of the security starts from the premise that the securities are a specy of financial instruments (art 2, point 11, letter a) from Law nr 297/2004 regarding the capital market). The financial instruments are the kind that is a part of the securities.

They are considered securities according to art 2, pct 33 from Law nr 297/2004:

- The stocks issued bt commercial companies and other securities that are equivalent, negotiated on the capital market;
- Bonds or other claim titles, including state titles that have a payment day bigger than 12 months, negotiated on the capital market;

- Any other titles that are normally negotiated, that give the right to purchase the respective securities through subscription or trade, giving place to a settlement in money, excepting the payment instruments.

Through confusing definitions, art 2 pct 33-34 from Law nr 297/2004 divides the securities into state titles and titles, other than the capital titles. The capital titles are the stocks or other assimilated securities, as well as any other type of securities, giving the right to attain them as a result of a conversion or of the exertion of this right, in the measure in which the values of the second category are issued by the same issuer or by an entity that belongs to the group that the respective issuer is a part of. The securities that do not fit in the first category, of the capital titles, are part of the second category. With all the lack of precision of the text, we can appreciate that the capital titles are securities of type of stocks, while securities from the second category are the type of bonds that cannot be converted into stocks (21).

The common trait of these titles is, as we can notice, negotiability. Capital titles or titles, other than capital titles, are securities either because they are negotiated or because they are negotiable on the capital market. Securities are transactioned on the regulated markets, stock markets or extra-stock makets, only after they had been listed, as such, by the CNVM, at the Office for the Evidence of the Securities (OEVM).

The financial instruments, generally can be: (i) securities; (ii) participation titles for the organisms of collective investments; (iii) instruments of the money market, including state titles with a payment date that is less than a year and certificates of deposit; (iv) financial future contracts, including contracts that are similar to the final settlement in funds; (v) forward contracts on the rate of interest; (vi) swaps on the rate of interest, on the exchange rate and on stocks; (vii) options on any financial instrument, including contracts that are similar to final settlement in funds, options in process and on the interest rate; (viii) derived financial instruments on goods; (ix) any other instrument that is allowed at a transaction on a regulated market from a state member of the European Union or for that a request has been made to allow the transactioning on such a market (22).

From the definition of the financial instruments we can notice their common trait, negotiabilty.

In the contemporary French law securities are defined as titles issued by legal persons of public or private right, that are transmitted through listing in account or through simple tradition, giving to the title holders identical rights and access, directly or indirectly, to a part of the capital of the issuent person or to a claim right with general character over its patrimony. The dogma characterises them as “negotiable titles representing the rights, identical through category, attained by those that gave to a legal person, public or private, the cash or the goods necessary for its financing”. The securities represent, either a part of the capital of the issuent legal person, either a claim against it. Securities are considered movables, representing a claim against the issuer. In the case of the securities issued in dematerialized form, the title holder of such a value has a right of claim against the issuer and on the intermediary as well as a real right on the value represented by the respective listing into account (23).

Generally, in the French law there are considered as securities the following value titles: the stocks and bonds of the commercial companies, in all the variants allowed by the law or by the company’s bylaws; credit titles issued by the state and by the authorities of public central and local administration (municipal bonds); derived financial instruments, as futures and options contracts; negotiable instruments with a fix or variable income; participation titles issued by the investment funds; certificates or titles issued by different financial institutions authorized by the law.

The juridic regime of the securities is regulated in the United States of America through *Securities Act* from 1993. through the term of “securities” there are designated the stocks, the cash vouchers, bonds, interest certificates, deposit certificates, warranty certificates, and, in general, any

interest or instrument, together designated as securities or any interest or participation certificate, giving the right to subscribe or buy, regardin any of them (Securities Act, 1993, title I, Definitions, section 2 (1). American dogma fundaments the juridic regime of the securities as their main function as financial/ investemnt instrument. The securities are considered instruments that give to their owners property rights in a company, as stocks, or that show the relationship between the creditor and a state entity, or a commercial company issuer, as in the case of bonds, or that offer the right of special property, as in the case of the options and warrants (24).

In Great Britain the general juridical regime that applies to the securities is regulated in *Companies Act* from 1985, modified in 2000, in *Public Offers of Securities Regulation* (POSR) from 1995 and in *Financial Services Act* from 1986. Securities issued by the companies listed are regulated in *Financial Services Act* from 1986, completed by *Financial Services and Markets Act* 2000. According to the stipulations of the Companies Act commercial companies can be private (the equivalent of the close type company from the Roman law) or public (the equivalent of the company that issues securities from the Roman Law).

4. CONCLUSIONS

Without any doubt in this moment in Romania with the actual European economy the securities issued by the joint stock company have a very important role. The stocks and the bonds are credit titles that have certain characteristics.

The stocks are representative titles of the social parties and they are fractions of the authorised capital and they give to their owners the quality of share holders. After the legal institution of the joint stock company, the stocks can be transmitted and negociated.

In the juridical doctrine one can identify several means for the notion of stock.

The stock is a fraction of the authorised capital that has always to be of an equal value. In the anonymous stock companies, the social shares can have an inequal value. If the constitutive document does not say different, the stocks give to the owners equal rights.

The stock represents the credit title that observes the rights and obligations that are part of the quality of shareholder. In other words, the document in which it is incorporated the shareholder's right.

Also the stock deisgnates the corporative or associate proportion, that is the juridical bond that exists between shareholder and the company. The shareholders' rights and obligations are determined by the stocks' possession and not by the company contract or by the quality of shareholder.

The stocks are characterised only through the existence of a title that incorporates the right, without being autonomous and literal. As such, we ave to deal with the following consequences: the extension of the possesor's right is incompletely stipulated in the document that observes, it is determined through the company contract and through statute; the content of the posessor;s right can change according to the modifications of the company contract and of the statute; the sub-obtainer has a derivat right and not an intrinsical one, and the exceptions that the debtor can invoque against the first obtainer are opposable to the following ones.

The bonds are fractions of an unique loan contracted by the company. They represent the company's obligation to return the borrowed money.

The titles of the bonds are equal and indivisible. The bonds from the same emission have an unitary regime. Through the incorporation of the obligation of reimbursement in the title, the bonds are transmissible.

The possession of the bonds gives the quality of creditor for the company, and not associated. Being only a creditor the owner of the title has the right to the reimbursement of the borrowed money and of the established rates no matter the situation of the company.

According to the circulation manner, the bonds can be nominal or bearer bonds. They can be issued in material shape, on paper, or in dematerialiyed shape, through listing into an account.

Without them, the joint stock companies would not exist or function. The solutions for a good applicability of the securities issued by the joint stock company from Romania would be several but the most important would be that the managers get involve more in the company's activity and of course the improvement of the national legislation through its harmonisation with the European legislation.

NOTES

(1) I Macovei, International Commerce Law, Vol I, ED. C.H. Beck, Bucharest, 2006, p. 133.
(2) I Macovei, International Commerce Law, Vol I, ED. C.H. Beck, Bucharest, 2006, p. 133.
(3) I Macovei, International Commerce Law, Vol I, ED. C.H. Beck, Bucharest, 2006, p. 135
(4) The owning of a stock can give the right to at most 10 votes, in the Danish and Swedish law, or 20 votes in the Finish law.
(5) For example 10% in the Italian, German or Dutch law
(6) See art 104 from Law nr 31/1990
(7) I Macovei, International Commerce Law, Vol I, ED. C.H. Beck, Bucharest, 2006, p. 137
(8) In this sense, art 100 from Law nr 31/1991
(9) S.D. Carpenaru, Roman commercial law, ed. V, Ed. All Beck, Bucharest, 2004, p. 311 and followings
(10) I Macovei, International Commerce Law, Vol I, ED. C.H. Beck, Bucharest, 2006, p. 138
(11) I Macovei, International Commerce Law, Vol I, ED. C.H. Beck, Bucharest, 2006, p. 138
(12) See art 168 from Law nr 31/1990
(13) See art 172 from Law nr 31/1990
(14) I Macovei, International Commerce Law, Vol I, ED. C.H. Beck, Bucharest, 2006, p. 160
(15) S. Angheni, M. Volonciu, C. Stoica, Commercial law, Edition 4, Ed. C.H. Beck, Bucharest, 2008, p.80
(16) S. Angheni, M. Volonciu, C. Stoica, Commercial law, Edition 4, Ed. C.H. Beck, Bucharest, 2008,p.81.
(17) S. Angheni, M. Volonciu, C. Stoica, Commercial law, Edition 4, Ed. C.H. Beck, Bucharest, 2008,p.81.
(18) Gh. Piperea, Commercial law, vol I, Ed. C.H. Beck, Bucharest, 2008, p. 328
(19) Gh. Piperea, Commercial law, vol I, Ed. C.H. Beck, Bucharest, 2008, p. 328
(20) Law nr 52/1994 regarding the securities and the stock markets
(21) Gh. Piperea, Commercial law, vol I, Ed. C.H. Beck, Bucharest, 2008, p. 329
(22) Gh. Piperea, Commercial law, vol I, Ed. C.H. Beck, Bucharest, 2008, p. 330
(23) Gh. Piperea, Commercial law, vol I, Ed. C.H. Beck, Bucharest, 2008, p. 330
(24) Gh. Piperea, Commercial law, vol I, Ed. C.H. Beck, Bucharest, 2008, p. 330

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9 Law nr.31/1990 regarding commercial companies
10 Law nr.52/1994 regarding securities and stock markets