

## CONTRACT MANAGEMENT - NEWS OR DISUSE?

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### ABSTRACT

In a world in constant change, the inertia generated by the function of leadership is sometimes more expensive than the change itself, whatever national origin would be. Currently, Romania has reached a point where the market economy depends to a large extent on how the activities are organized into an entity, organizational management and attitude change. Ferment market economy is the innovative ideas and managers think and act in new directions.

Of course, Romanian managers have the creativity needed to transition, but for its manifestation, it takes a release of intellectual impulses of the former type of a centralized leadership. Performance is a result of the operation of an organization, a consequence of the driving task. It reflects the degree to which the manager went to meet the objectives and performance criteria which were firmly committed by signing a contract to this effect. Performance can be measured both quantitatively by comparing quantifiable as those imposed by contract and in terms of quality, which involves a dose of subjectivity on the part of welcomes.

**Keywords:** *management, contract, manager, organization*

### 1. INTRODUCTION

Gradually Romania, after 1990, the market economy and the subsequent accession of Romania to the constituent treaties of the European Union enshrined in the Basic Law and (art. 35 par. 1 and art. 148 of the Romanian Constitution, 31 October 2003), was, undeniably, a serious challenge, guaranteeing great efforts to political leadership. The contract is central to the right material as shall be established by law and certain relationships "it plays a key role" in the establishment of economic relations. The contract is the agreement of wills between two or more persons with the intent to establish, modify or extinguish a legal relationship. The parties are free to enter into any contracts and determine their content, within the limits of law, public order and morals. Life has shown, however, that hopes were vain, therefore legislate on was staggered. Indeed, a number of laws, as applicable, or were repealed shortly after their adoption or amendments enacted looked more name than the legal content of the contracts to which we referred above, or, finally, it came to the establishment of legal institutions hybrid mongrels compared to the true classics in the field, which has generated and generates - as we show below - serious difficulties in precise legal characterization and their effects.

### 2. PLAIN TEXT

Managers are a group of persons appointed, specially prepared, which directs, coordinates and directs the work of all members of an organization to the fulfillment of the objectives.

Specifically, managers are people who hold in organizations, leadership positions involving tasks of coordination, organization, provision, control and management.

Managers should possess certain qualities that enable them to carry out management actions influence other people and get results through their activities. At

the same time, managers must have a thorough management training, scientific, real capacity to lead and organizational talent.

They are key to any decision-making, influencing directly through their actions and behavior of others. The Law no. 66/1993 Contract Management management companies with fully or majority state, as well as autonomous administration was entrusted to managers, who had undertaken such an activity under the management contract, the contract indisputable commercial and not individual work.

The lower interval, as was the Law no. 49/1999 (April 22, 1999 - April 25, 2000) directing operators having owned/majority state is achieved by administrators (under a management contract) contract which was still legal, commercial, since this contract could conclude, where appropriate, with a natural or legal person (Article 1 of the Ordinance) and its provisions are supplemented by the provisions relating to directors under Law no. 31/1990, republished, (Article 3. 1 of the Ordinance).

Taking into account the theme of the present study, we note that, from 1993 to the present, they thought sometimes - regardless of the political color of the Parliament and Government - that the persons performing the activity for the management of economic operators (CEOs, and the comparable executives) having owned or majority state (national companies, national companies, other companies, autonomous) or of public institutions (the education or health) as managers (by signing management contracts) or administrators (by entering into management contracts) rather than as employees (under individual employment contracts) or, finally, the name of public officials of certain public authorities/institutions as "public managers" would be a panacea, capable of radically improve the efficiency of operators and budget units mentioned. Of course, the current legal precedence companies where the state holds shares for a share of at least 50% of the capital, including those resulting from the reorganization of autonomous administrations, but nothing can prevent the

application of these provisions and the private sector, of course with agreement of the parties (which is not expressly forbidden, is permitted under law principles).

In this situational context, hiring managers and motivate accountability properly in financial terms by signing management contracts could be an effective solution in achieving superior results in an organization.

Utility management for contract management has been and is still supported by the practice of many industrialized countries who use this valuable tool. Managing such a contract includes performance monitoring and documentation.

In fact, managing a management contract is similar to managing a project. Each contract is a mini-project.

It has a unique purpose, consumes resources, has a beginning and an end and requires coordination and planning of relevant activities in order to achieve objectives.

Contract management is the contract by which the operations are performed by a third party who fulfills all the necessary managerial functions in return for a specified management fee. Unlike franchise where a product or know-how is given as a license to be used, the management contract involves the actual performance of operational activities.

Operational activities may cover a wide range of services such as facility management of production, supply and maintenance of human resources, marketing a product or plan.

The purpose of contract management is to ensure that all parties to the contract fully meet their obligations as efficiently and effectively as possible, providing business and operational outputs required by contract and providing value for money.

It also protects the rights of the parties and provides the necessary performance when circumstances change.

In our country, by Law no. 66/1993, management companies with fully or majority state, as the autonomous bodies entrusted to managers, who had undertaken such an activity under the management contract, the contract indisputably commercial, not individual work.

According to Article 1 of the aforementioned enactment, management contract is an agreement between a person engaged in an economic activity, as the owner and a manager who is entrusted with the organization, management and leadership owner on the basis of objective and measurable performance criteria, in return for payment.

From this definition it follows that contract characteristics, namely:

- organize, manage and lead a business
- payment
- manager
- owner
- objectives and performance criteria

The law states that in order to be selected, the candidate (individual or entity) must meet certain minimum conditions for participation in the selection.

There can not participate in the selection, Romanian individuals who:

- a) they are managers or administrators to another company or autonomous and do not present a written statement that, if designated renounces to it;
- b) underwent definitive convictions that make them incompatible with being a manager;
- c) listed as managers and administrators who received the mandate revoked;
- d) they have been convicted of tax statutory provisions;
- e) holding shares or shares he's relatives, his wife and their affinity to the second degree in another company whose activity is similar to the utility for which the selection is made.

At the contest selection, individuals are written statement to the effect that they are not incompatible, submitting, where appropriate and supporting documents. There can participate in the selection of Romanian legal entities which:

- a) were included in the insolvency proceedings;
- b) have been convicted of tax statutory provisions.

Candidates submit bids in an endosed envelope sealed with the conditions and legal criteria, within 30 days of the last publication of the tender.

### **3. CONCLUSION OF CONTRACT MANAGEMENT**

For the valid conclusion of the contract there must be met certain legal requirements. Indeed, this activity is an operation whose validity should be met by any person who is to perform these activity requirements.

Such conditions may be divided into several categories, as follows:

- a) common conditions of all contracts: capacity, consent, object, cause and conditions of this contract (favorable professional references from past employers or managers, or managers of companies with identical or similar to the profile of the company for ending contract management, etc.).
- b) formal requirements.

In any case, there can not be established conditions of employment based on race, nationality, religion, etc.. The rights, duties and obligations are stipulated in the content of the contract management. The terms are negotiable, and the contract may stipulate other causes agreed between the parties, according to the objectives. The management contract is concluded in writing. Manager has full power in leadership, organization and management of the institution/business unit. Manager, by signing management, becomes general director and chairman of the board. According to art. 4 Commercial Code management contract concluded pursuant to Law no. 66/1993 is the subjective act of commerce as one of the parties is a trader, being a self/company registered with the Trade Register.

### **4. PARTIES TO THE CONTRACT MANAGEMENT**

They are part of the contract:

- a) company - through its Board of Directors;

b) Manager - teams of up to seven persons, Romanian or foreign, or a natural or legal person, Romanian or foreigner.

Manager shall exercise the powers set out in the management contract. Manager part, without the right to vote and compensation, of the board of directors of the company who is a party to the management contract.

In terms of meeting the manager to exercise its obligations under the contract, the date stipulated, the parties may agree a contract extension. Indicators that define the company's business objectives should include elements of economic and financial situation of the company.

For their determination these will be take into account economic and previous financial year. In terms of objectives and performance criteria they are, in quantitative and value, the main results of the company that the manager undertakes to obtain the leadership, organization and management activity.

Objectives and performance criteria will include mandatory: turnover, profit or other financial indicator summary, balance of import-export volume of investment, labor productivity. Manager will submit monthly to the board of the company, for approval and inform the general shareholders/associates, financial and economic situation, the stage of the investment or any other requested documentation, endorsed and certified by auditors. To achieve the performance criteria specified in the contract, the manager is vested in the Board of Directors with full powers in the organization, management and leadership of the company, within the limits set by the management contract.

The main powers of the Manager are:

- a) apply strategies and policies for development company, designed together with its board of directors;
- b) selects, hires and fires personnel;
- c) the manager negotiates collective bargaining agreement with respect of revenue and expenses approved by law;
- d) negotiate individual employment contracts;
- e) represents the company in its relations with third parties;
- f) legal agreements and on behalf of the company, within the powers granted by the Board of Directors or management agreement;
- g) other approvals established by contract, agreement.

Retribution Manager, under the contract of management, shall be as follows:

- a) a monthly payment that supports the payroll of the company;
- b) participation in the profits of the company, established in proportion to the degree of achievement of agreed objectives in the management contract.

Rights accruing to manager performance during annual leave, contributions to social security or health insurance due to the manager or management team members, and any other rights shall be determined by negotiation under the management contract. Note that failure to meet targets and performance criteria established by agreement entails liability management contract manager in accordance with the terms agreed to its conclusion or any addenda. Thus, given that there was an agreement between the parties, liability in connection

with its failure can not be employed locally tort only in terms of contractual liability. This is because the common law torts is the tort and contractual liability is a liability to the special character derogatory injured Contracting Party may get compensation only on the basis and within the limits set by the contract, which is the law of parties. The contract is the act by which the parties have chosen to obey rules set by them, the acquisition of rights and fulfillment of obligations. As such, any party is bound and constrained, under the contract, to submit to the same legal and contractual disputes arising from failure or improper performance of the contract, so the responsibility to act with special character (the contract) and not the responsibility of common law (the tort). Management contract has indeed legal nature of an agency, but even in this case, only exceptionally gives rise to the warrant subordination relationships ie only where the warrant sets a fully subordinate to the principal trustee expressly. However, according to art. 14 of Law no. 66/1993, the manager in the performance management contract, has full power in leadership, organization and management of the company. In this regard, he has the powers to conceive and apply independently developing policies and strategies of the company and enjoy autonomy in the exercise of initiative and obligations under the management agreement. Administrator, the legal entity manager, is responsible with Offences in relation to individual activities for the legal entity whenever exceed - the acts and deeds - the set by law, statute and decisions of bodies, as appropriate deliberative bodies of legal entity. In other words, by this criterion, he answers contravention whenever exercising abuse liability legislation through the tasks that make up their duties entrusted status of legal entity. In addition, the natural person responsible contravention in managerial duties, whenever enforce or allow to enforce the decisions of the deliberative bodies that manifest through their effects illicit Offences covered. The first is a direct liability resulting directly from its own wrongful act. The second is a vicarious liability because it ordered the manager, rather, he did not conduct legal entity regulated such that under the rules of offenses, but deliberative body. Looked through the entities involved in the illicit contravention is the deliberative body that has adopted a decision manifestly contrary to legal norms in a particular field of activity, or that, if executed, will lead to the commission of an offense. Administrator - although in principle is defended by the fact that enforcement of a judgment of a deliberative body, so as this is within the legal limits of his professional status - will respond by ricochet in this respect, since he, like any issue of law, is responsible to respect the law first. As such, the general abstention shall in all cases where such decisions that would put him in enforcing the illicit contravention sphere.

As noted, the liability is mediated only by reference to the judgment of a deliberative body, being one who "guides" to the illicit conduct Offences Manager. In light of the general duty of abstention from any violations of social norms established by laws, however, it is the direct responsibility, in other words is all personal.

Answer then, no doubt, and if the manager exercises incorrectly, inappropriate managerial duties.

This rule is customized by accounting law, which states expressly that the leadership of the head of the responsible accounting law. This example, in conjunction with other, more established criteria for determining the liability offenses manager of the legal person. The first will be held liable, any illegal act Offences Act and arising from current activity of the legal person, the right held common legal norms regulating the activity of all legal entities, ie the governing of their operation as such a legal person, exceeding its principle of specialty.

To be more specific, any person to act as such, must organize and manage the daily accounting, to organize in terms of fire safety rules and the rules regarding safety.

The same is true in the rules governing staff. It is obvious that the spectrum of relationships related to business management and for infringement aspect contravention of legal norms governing them, it is normal to intervene Manager responsibility. As normal as it seems that where offenses are set by the legislature pertaining to violation of the principle of speciality, answer contravention legal entity with a right of recourse against the real manager. This is because the violation of the provisions of the legal principle of its specialty intimately in order to keep the legal person. In other words, committing the contravention, failure to comply with the specialty and hence the purpose for which it was created as a fictional subject is so intimately tied to its being, that it can attract only liable. Examples of support criteria set above gives us even legislature. Thus, legal entities established in order to pursue activities of production or marketing of alcohol, in terms of breaking the rules of statutory contravention answer them, not the manager. Similarly, for businesses that have transport as activity, they answer as carriers and not their managers. In light of prementioned facts, it is natural to outline the principle that the individual engaged in a legal activity with the current activity management tasks, you must answer Offences only minor offenses that arise from such activity.

Otherwise, for other minor offenses that exceed the scope outlined above will be held liable contravention of the legal person.

## 5. TERMINATION OF MANAGEMENT

Management contract ended terminated by:

- a) the expiration of the period for which it was completed and the parties have not renegotiated to extend;
- b) the revocation manager in the event of failure of the contract;
- c) forfeiture of quality manager in the law;
- d) giving manager mandate when failure to conditions specified in the contract or in other situations;
- e) the parties' agreement;
- f) intervention of incompatibility;
- g) the death or placing under judicial interdiction;
- h) reducing state shareholding below 50% of the share capital of the company;
- i) insolvency.

In cases where management contract terminated under subparagraph. b) and d), the notice shall be given at least 30 days. When the mandate ends, management team members may be employed on request in the company, for a period of at least 6 months in accordance with their professional training and availability of posts in the company. If one or more members of the management team become unavailable, the Board of Directors of the company:

- a) may approve completion of the management team with the agreement and taking into account its proposals through an addendum to the existing management contract, while browsing the entire selection procedure;
- b) may require the selection committee to organize a new contest for vacancy.

Where disputes arise stemming from the interpretation of clauses, the conclusion, amendment, execution or termination of the management contract, the parties may agree to make disputes through arbitration. The law provides certain safeguards manager in the sense that it can not be lifted until the reasons and under the conditions laid down by the management contract. The manager has the right to request mediation, advice or other protective measures of the general meeting of shareholders, confederation, federation or organization of which the employer company in resolving conflicts with unions and other organizations.

## 6. CONCLUSIONS

These are just some of the conclusions in practice today discussed above. To date, although we chose a palette managers more or less rich and relevant when leading some did what they wanted, considering only their own interests.

The manager has the right to request mediation, advice or other protective measures of the general meeting of shareholders, confederation, federation or employers' organization of which the company, in resolving conflicts with unions and other organizations. The law provides certain protection measures Manger in that it can not be revoked only for the reasons and under the conditions laid down by the management contract.

Not the interests of shareholders and the company.

It is possible that at some point the desire to be professionals, shareholders, members of an organization as those that lead to objectively analyze and obtain performance or achievement to be known early in takeover credentials manager, ab initio. We believe that we can develop a new concept, namely the need for management contract.

Where disputes arise stemming from the interpretation of clauses, conclusion, amendment, execution or termination of management may agree to resolve disputes by arbitration to be made.

## 7. REFERENCES

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under Art. 152 of the Constitution, by updating the names and texts shall be renumbered (Article 152 became, as republished, art. 156). Revision of the Constitution Act no. 429/2003 was approved by national referendum of 18 to 19 October 2003 and entered into force on 29 October 2003, following its publication in the Official Gazette of Romania, Part I, no. 758 of 29 October 2003 the Constitutional Court Decision no. 3 of 22 October 2003 for the national referendum of 18 to 19 October 2003 on the Law amending the Constitution of Romania. Constitution, in its original form, was adopted at the meeting of the Constituent Assembly on 21 November 1991, was published in the Official Gazette of Romania, Part I, no. 233 of 21 November 1991 and entered into force after its approval by national referendum on 8 December 1991.

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