

**„LUCIAN BLAGA” UNIVERSITY OF SIBIU  
„SIMION BĂRNUȚIU” FACULTY OF LAW**

**DOCTORAL FIELD  
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**PhD THESIS  
CIVIL LAW PARTNERSHIP  
CONTRACT**

Coordinator:  
***Professor Alexandru BACACI, PhD***

Doctoral Student:  
***Amelia – Veronica  
GHEOCULESCU (SINGH)***

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### **The Evaluation Board of the PhD Thesis:**

**PRESIDENT:** Professor Călina JUGASTRU, PhD, Dean of « Simion Bărnuțiu » Law Faculty within „Lucian Blaga” University from Sibiu

#### **SCIENTIFIC REFEREES**

**Coordinator** Professor Alexandru BACACI, PhD, « Simion Bărnuțiu » Law faculty within „Lucian Blaga” University from Sibiu

Professor Ovidiu UNGUREANU, PhD, « Simion Bărnuțiu » Law faculty within „Lucian Blaga” University from Sibiu

Professor Eugen CHELARU, PhD, Faculty of Law and Administrative Sciences, University of Pitești

Professor Ionel DIDEA, PhD, Faculty of Law and Administrative Sciences, University of Pitești

### *Colophon of the PhD Thesis*

The work comprises 236 pages, the editing is done in Times New Roman, font size: 13, spacing: 1.25, A4 standard print format.

The structure of the thesis is presented at the beginning of the work, its content is organized in four chapters divided into sections and sub-sections, while the end of the thesis, dedicated to conclusions, is displayed in a distinct section.

The judicial practice and the comparisons to other law systems represent an integral part of the paper.

Footnotes have been incorporated in the body text, with the quoted text and its sources of corresponding explanations being found on the same page.

References are included at the end of the paper are structured into five sections: one dedicated to textbooks, specialized papers, monographies published in Romania, followed by another section dedicated to papers published abroad; a third section deals with articles and studies, followed by a section dedicated to judicial practice and another dedicated to legislation.

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### ***I. Introductory Considerations***

I have chosen the topic of the „civil law partnership contract” at a crucial moment for legal regulations, in the context of the adoption of the new Romanian Civil Code against the background of existing proposals to regulate the European laws regarding contracts, in order to harmonize the civil legislation of member states.

I have made the choice of this topic following an analysis which has been focused on several issues leading me to think I have been facing a challenge, but, at the same time, I have been presented with opportunities to express a documented and well-grounded point of view, based on unprecedented legal transformations.

The theme in discussion is of high interest and novelty, since the recent modification of the Romanian Civil Code in force has had a low number of published papers on the matter as a direct consequence, both when choosing and implementing the theme and in the present. General and particular legal changes especially have already stirred controversies in the specialized legal literature, some of the critics claiming these changes are merely formal and do nothing but transfer commercial provisions from one legal code to another, while others have considered the present Civil Code has put the basis of the „commercial civil law”.

Beyond all these, the present Civil Code seems to be beneficial for the dynamics of the social life and business, resonating with what is being now built in the European law; the notion of society contract acquires new meanings, both in theory and in practice, thus allowing me to declare that it must not be regarded as a simple institution, since it has an impact upon social cohesion and stability of the civil society – an effect that lies in the special character of the relationships between people involved in the contract. The simpler formalization – from design to operation – gives the civil law partnership contract a greater mobility, capacity to adapt to changes and to the new economic and social realities.

The legislative particularities I have mentioned, which have manifested ever since the moment I have chosen the topic of the present PhD thesis and all along its elaboration process, are reflected by the constant comparisons between the legal regulations in force and the former Civil Code, by the highlights of provisions which have been brought in the new Civil Code from the commercial legislation, as well as by the presentation of the aforementioned regulations in the light of the German and French Civil Codes.

I suggest that we follow all these considerations in the present summary.

## ***II. Paper Structure***

I have organized the presentation of the topic of the PhD thesis having as title „Civil Law Partnership Contract” starting from the idea of a comprehensive approach of the matter. Thus, the paper contains a table of contents, an introduction, four chapters divided into sections and subsections, a final part dedicated to conclusions, as well as a complete reference list of sources used in its elaboration process.

In ***Chapter I*** „About the Civil Law Partnership Contract”, after the introduction part, I have approached the concept from a historical perspective, while making a brief overview of its development in ***Section I „History”***. I have made a detailed comparative analysis of the notion and features of the civil law partnership contract in ***Section II „Definition and Features of Civil Law Partnership Contract. Presentation of Evolution According to Both Former and New Civil Codes”***. I have considered it important to analyze not only the similarities and differences between commercial societies and civil law ones in the present legal context, but also to present them in comparison with the former regulations, all these aspects being integrated in ***Section III „Commercial Partnerships and Civil Partnerships”***. To emphasize the new dimension granted to the civil law partnership contract under the provisions of the present Civil Code, I have made a comparative presentation of the two concepts in ***Section IV „Civil Law Partnership and Contractual Joint Venture”***. While describing the civil law partnership contract, I have paid special attention to the differences from other types of partnership, in ***Section V – Differences from Non-Profit Associations and Foundations*** – and in ***Section VI „Distinctions Between Civil Law Partnership Contract and Co-Proprietorship or Undivided Co-Ownership”***.



To highlight the importance of the range of application of the civil law partnership contract, I have dedicated a whole distinct chapter to it (*Chapter II*), divided into three sections. In *Section I* I have provided details on *the range of application of the civil law partnership contract* as well as on the novelties brought about present regulations in the civil and commercial field. Throughout two special sections, *Section II and III*, I have presented the subject in the light of German and French Civil Code provisions, since their tradition in law is known to have represented a source of inspiration for our legal regulations over time.

I have dedicated *Chapter III* in its entirety to the validity conditions of the civil law partnership contract. If *general provisions* are described in *Section I*, I have assigned two distinct sections, *Section II* and *III* respectively to the *general validity conditions* and *special validity conditions*.

I have considered the functioning of the civil law partnership extremely important, therefore I have decided to approach this topic in a distinct chapter – *Chapter IV* – which I have organized in five sections. I have dedicated the first section to the duration of the civil law partnership, while the rights and obligations of partners are approached in *Section II*; the management of the civil law partnership, losing the statute of partner, cessation of the civil law partnership and its effects are presented in *Sections III, IV* and *V* respectively.

In the *conclusion* part I have tried to render a complete picture of the status and importance the civil law partnership contract has in comparison to both economic and social realities and the dynamic evolution process of European and international law regulations.

At the end of the paper comes the *references* organized in five parts: one part containing specialized works, textbooks and monographies published in Romania, followed by a part dedicated to papers published abroad; a third part is assigned to articles and studies, followed by a part approaching judicial practice and another dedicated to legislation.

### ***III. Considerations on Issues Addressed in the First Chapter of the Thesis***

As expected, I have dedicated the introduction to my paper to a general presentation of both the complexity of the civil law partnership contract under the present legislation, and the legal context in which this PhD thesis has been

drafted, that is the context of adopting a new Romanian Civil Code following proposals from the European Union to codify the European law.

In **Section I „History”**, I have made a brief overview of the evolution of the notion of civil law partnership contract from the first regulation in the Hamurabi Code, pointing to the rules of the Roman law, the Calimach Code, the Caradja Code and the Romanian Civil Code from 1864, up to the provisions of the present Civil Code.

I have presented the definition and features of the civil law partnership contract in **Section II „Definition and Features of Civil Law Partnership Contract. Presentation of Evolution According to Both Former and New Civil Codes”**. The detailed description of the notion and features of the civil law partnership contract is made as a comparison between the 1864 Civil Code and the present Civil Code, as it stands out from the very title of the section.

I have insisted on emphasizing the importance the institution of civil society contract acquires following legal transformations concerning both civil law provisions and commercial regulations in **Section III „Commercial Partnerships and Civil Partnerships”**; I have presented in the same section the similarities and differences between commercial partnerships and civil law partnerships both under the former legal framework and under the present regulations.

I have emphasized the dimension acquired by the civil society contract under the provisions of the present Civil Code – including the transformation of the contractual joint venture into a subtype of civil society contract – in **Section IV „Civil Law Partnership and Contractual Joint Venture”**, by making a comparative presentation of the two notions.

I have considered that the distinction of the civil law partnership from non-profit associations and foundations needed to be addressed in a distinctive section – **Section V – „Distinctions from Other Types of Association”** – because, although the three notions have the same core, they are fundamentally different.

The last section of the first chapter, Section VI, is dedicated to the distinction between the civil law partnership contract and co-proprietorship or undivided co-ownership – where I have pointed out briefly the way they are created, their starting point being a key-element which makes the difference between the three contract types. To the same extent I have also dealt to certain

situations which might raise legal issues as to the continuation of the civil law partnership contract, co-proprietorship and undivided co-ownership.

#### ***IV. Considerations on Issues Addressed in the Second Chapter***

By addressing the range of application of the civil law partnership contract, I have decided it would be more appropriate to present it in a distinct chapter, ***Chapter II***. To highlight the importance of the range of application of the civil law partnership contract, I have divided the chapter into three sections.

In ***Section I*** I have provided details on the range of application of the ***civil law partnership contract***, as well as on novelties brought about by the adoption of current civil and commercial regulations.

The next sections, ***Section II*** and ***Section III***, are dedicated to the presentation of the topic in discussion in the light of traditional law regulation systems, respectively in the light of the French and German Civil Codes.

#### ***V. Considerations on Issues Addressed in the Third Chapter***

I have approached the ***validity conditions of the civil law partnership contract*** in ***Chapter III*** of the present paper, divided into three sections. If in ***Section I*** I presented ***general provisions***, the ***general validity conditions*** have been described in ***Section II***, while the ***special validity conditions*** are exposed in the last section, ***Section III***.

I have kept the comparative manner of presentation, dealing with the 1864 Civil Code and the new Romanian Civil Code, but I have also mentioned the German and French Civil Codes.

Ever since the beginning of the „General Provisions”, I have highlighted the fact that the new regulation has given up tackling with the society as a mere organization and management technique applied to a volume of goods, since its lack of practical applicability generated by the former regulations has been already proven. In this section, I have emphasized the fact that the legislator manages to provide a legal framework adapted to the present economic and social conditions, by means of the new forms of regulations concerning the civil law partnership contract – including commercial regulations.

Within *Section II „General Validity Conditions”*, I have described in detail the substantive and formal conditions for the civil law partnership contract, pointing out the novelties brought about by the present regulation in particular, while the *special validity conditions* are addressed in *Section III*.

#### *VI. Considerations on Issues Addressed in Chapter IV*

While analyzing the civil society contract, one of the most important aspects addressed both theoretically and especially practically is the *Functioning of the Civil Law Partnership*, to which I have considered appropriate to dedicate a whole chapter – *Chapter IV*. Structured into five large sections, it comprises the *duration of the partnership* in *Section I*, the *rights and obligations of partners* in *Section II*, the *management of the civil law partnership, losing the statute of partner, cessation of the civil law partnership and its effects* being subsequently presented in *Sections III, IV and V* respectively.

Before developing the analysis of *the partners’ obligations* – obligation to contribute and to guarantee the object of contribution, the obligation of contribution to losses, the obligation of loyalty and the obligation of non-concurrential behavior of partners – I have tried to clarify and elaborate on all basic aspects concerning the notion of contribution, contribution realization, contribution object, types of contribution and social patrimony.

Regarding the contribution object, I have estimated necessary to make some detailed mentions on *„Contribution of a common asset in joint spouse ownership”* and I wanted to highlight the elimination of all situation subject to interpretation, by means of clarifying and unifying the issue under the provisions of article 1882 from the present Civil Code. The aforementioned interpretations were based on assumptions generated by regulations from the family Code.

I have also wanted to point out other new elements which certify the increased importance the present Civil Code attaches to the civil law partnership contract, by identifying and making a thorough analysis of novelties such as *„Contribution in Cash”, „Contribution in Goods” and „Contribution in Industry”*, while for arguing upon the social patrimony, I have drawn a parallel with similar regulations from the German Civil Code.

If the obligation to contribute and to guarantee for the object of the contribution, as well as the obligation to participate in losses and the obligation to a non-concurrential behavior of partners are thoroughly analyzed and presented in the light of specific new regulations, the obligation of loyalty is addressed in a different manner. Since it is not of patrimonial nature, I have decided to analyze this obligation from the perspective of the general legal principle of good faith governed by the Civil Code and the Romanian Constitution, with references to stipulations from the German law. I hereby have emphasized that good faith, „although being specially acknowledge in the present Civil Code in article 1170”, is still not defined as a concept, thus the task is to be assumed in the future by the jurisprudence and specialized literature.

I have used the comparative approach when analyzing and presenting „**Obligations of Partners**”. Some regulations from the German Civil Code are worth mentioning here, such as the *right and obligation of management, the right of information, the right of surveillance, as well as the right to vote* with its specific clauses concerning the majority.

I have also highlighted the novelty of the Civil Code provisions regarding the regulation of the civil law partnership contract, by using the study of *party transfer* in comparison with the *transfer of partners' rights* from the German Civil Code. In the paper, I have emphasized the fact that we have „an equivalent of provisions” from the German law in this respect (article 1901 Civil Code).

If I have chosen to approach in detail the *civil law partnership management* in Section III, throughout the next section I have addressed the subject of losing the status of partner, while analyzing the „*Party Transfer and Withdrawal of Partners from the Association*” from both perspectives – over an undefined period of time and over a finite time span, but also „*Forced Execution of Parties of Interest and Exclusion of a Partner from the Association*”.

Section V is fully dedicated to the *cessation of the civil law partnership and its effects*. Within the natural causes of cessation of a civil law partnership, I have subsequently developed „*Completion of Partnership Duration*” and „*Exclusion of a Partner from a Two-Partner Association*”, and I have gone on with the analysis of the cessation of a civil law partnership, by presenting the causes of voluntary liquidation of the aforementioned partnership.

Before fully presenting the *causes of legal liquidation*, I have mentioned right from the start that the present Civil Code has borrowed a series of commercial provisions, when it has regulated the type of partnership nullity.

After reviewing other causes of cessation stipulated in the civil law partnership contract, I have considered it important to address distinctively the *cases of civil law partnership in the light of article 1938 from the Civil Code*, respectively „*Death, Placement under Interdiction of One of the Associated Individuals, Legal Proclamation of Death of an Associate or Liquidation of an Associated Legal Person*” and „*Bankruptcy of an Associate*”.

The final part of Section V is dedicated to *the effects of the cessation of the civil law partnership*, which have been fully presented after a thorough analysis, but not before mentioning that „the liquidation of a civil law partnership must not be confused with the legal liquidation, regulated by special provisions stipulated by Law no. 85/2006 on the procedure of insolvency, which is applicable to commercial debtors in commercial legal rapports”.

### ***VII. Considerations on Issues Addressed in the Last Part of the Thesis, Dedicated to Conclusions***

In the section dedicated to conclusions, I have tried to render a complete picture of the status and importance the civil law partnership contract has in comparison to both economic and social realities and the dynamic evolution process of European and international law regulations, hoping that my personal contribution offers personality and uniqueness to the present thesis, thus making the efforts worth while.

As a general conclusion, in my scientific approach to develop the present paper, I have sought to gather all the new information on the civil law partnership contract and to make a comprehensive analysis of the topic, by passing it through the present legal framework and the regulations from the former civil code, while also taking into account specific provisions from European countries with tradition in law and judicial practice. I have tended, in expressing my viewpoint, to emphasize both the practical importance of the provided information and analysis, and the importance acquired by the civil law partnership contract along with the expansion of its range of application in several fields.