

## **CONTRIBUTION IN THE COMPANY (According to the Macedonian Company Law)**

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The contribution in the company is the second constitutive element of the company, apart from the plurality of the members and their participation in the final results of the company's, which by the Macedonian company law is defined as "the capital which in the foundation (or in the process of increasing the share capital) is left for the company.

The contributions of the company are in the forms of money, assets and real estate as well as rights (labour and services, only if allowed by the law) which the member, i.e. the stockholder, transfers it to the company in the process of the establishment or in the process of increasing the share capital.<sup>323</sup>

Since the contributions are the first and main source in establishing the capital of the company, it is clearly that the prime duty of the member is to make a contribution into the company.

As we have mentioned before, the duty to make a contribution (money, movables, real estate and the rights, labor and services only if allowed by the law) in the company, establishing the initial capital, which is not the only condition for foundation, but it is also a condition for further existence of the company, exists in all kinds of companies.

We have already mentioned one of the most important characteristic that includes the term prime capital, and that is the fact that contributing in the company is an essential requirement for the foundation of the company. If there are no contributions made, a company cannot be established by legal terms. Since, without a capital (which is established through contributions), the company cannot execute its primary function for which is entitled to, and therefore a legal person cannot exist without a capital.

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<sup>323</sup> Clen 34, stav 1 od Zakon za trgovski drustva, "Sluzben vesnik na RM", br. 28/2004, 84/2005, 25/2007, 87/2008 I odluka na Ustaven Sud na RM, U.br.177/2005 od 24 maj 2006.Vo natamosniot tekst: Zakon za trgovski drustva.

The company that is founded with no contributions or with fictional contributions (contributions with no value or contributions that are laden with bonds bigger than their actual value), can be invalid.

Future members are obligated to submit their initial contributions. In addition to this obligation, they have to make an actual payment for their contributions. So, the payment phase is when the members made an actual payment of their previously subscribed obligations. They are not only entitled to subscribe their contributions, which represents the period of subscribing the contributions, but to actually pay the contributions, which represents the period of making a payment of the contributions, thus creating the capital essential for the company to function.

It is worth mentioning, that contribution is an operation which entitles the members to obtain certain rights in the company, regarding their contribution. This is the characteristic that distinguishes the contributing from terms, as selling goods or approving a loan. This is about contributing in the company, according to which, the members get certain rights towards the company. These rights correspond proportionally to their contributions, and each represents certain amount of shares in the company. So, what the members get as reciprocation for their contribution in the company, is not a price nor interest, but totality of rights, which are proportional to their contribution.

A really important fact regarding the contribution in the company, is that the members are not owners of a part of company's capital. Through the procedure of contribution, the member makes his contribution to the company - a legal person with special legal subjectivity, and becomes its owner. For his contribution, the member gets share in the company as a totality of rights and obligations towards it.<sup>324</sup>

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<sup>324</sup> Milan d-r Nedkov, Tito d-r Belicanec i Elena d-r Gradiski-Lazarevska, Pravo na drustvata, p. 195, SIGMA PRES, Skopje, 2003.

### **1.1 Subject of contribution**

There are two types of contributions:

- Monetary contribution (Money as contribution)
- Nonmonetary contribution (Movables, real estates and rights as contribution).

The contribution in the form of labour and services is considered as non-monetary contribution, but due to certain specifications it treated quite differently. This type of contribution cannot be part of the company's share capital and therefore cannot be an object of enforcement in legal procedures.

The obligation of a monetary contribution and its payment must be executed in the official currency of the Republic of Macedonia, which is denar.<sup>325</sup> As it was mentioned before, subscribing the contributions and their payment are two different procedures. Payment of a monetary contribution is carried out when the registered monetary sum will be paid-in on the temporary account of the company (if it is paid-in during the phase of establishing the company) or on a company's account, if it is increasing the capital in an already existing company by additional contributions.

Non-monetary contributions can be defined as contributions that are consisted of goods (movables and real estate) and rights that have value. Any kind of contribution which is not in the form of money or labor and services, can be defined as non-monetary contribution.

Otherwise, a contribution made in goods should satisfy certain claims, if we want to be considered as a non-monetary contribution. For example, a subject of contribution that is a non-monetary contribution, should be determined a monetary value, which means that there must be a value that can be estimated by appraiser, without major difficulties.<sup>326</sup> The legislator does not appoint the condition, regarding the object of the contribution to be used for the activity of the company.

Another demand of the non-monetary contribution is its value to be expressed in the foundation act of the company (memorandum, articles of association etc.).

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<sup>325</sup> Clen 34, stav 2 od ZTD.

<sup>326</sup> Clen 35, stav 5 od ZTD.

Otherwise, members/shareholders can simply accept the value of the items that entered as contributions by the member, although that is not the fair value of the contribution. Members themselves under take responsibility towards third parties, if the value written in the memorandum or article of the association is lower than the actual one. Such problem may be found in some types of companies (Limited liability company and public limited company). During the foundation of such companies, members intent as much as they can, to overestimate their contributions, which can cause a impairment to third parties, since the subscribed amount of the share capital does not match the real one.

In order to prevent this kind of situation, the legislator provides a range of different preventive measures, depending on the type of the company.

In the case of a limited liability company, the non-monetary value of the contributions, before they are taken over by the company, are assessed by certified appraiser, although in some cases the members may unanimously decide not to estimate the value of their non-monetary contributions.<sup>327</sup> In case the value of the contribution of goods is estimated, or if the value expressed in the memorandum is different from the value suggested by the appraiser, the legislator as prevention prescribes: *the members are liable towards third parties for a period of five years from the date of registration of foundation in the company register, for the value of the contribution, specified at the time of the foundation of the limited liability company*<sup>328</sup>.

In the case of the public limited company, the legislator provides that the valuation of the non-monetary contributions is a required matter of the statute of the company (articles of association). In the procedure of foundation of a public limited company, the founders enclose a report to the statute which is prepared by a certified appraiser, who is selected by them.

Another very important requirement when it comes to non-monetary contributions is that the contribution should always be available to the company as a whole, before registering the company in the company register and be eligible for use.

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<sup>327</sup> Clen 177 od ZTD.

<sup>328</sup> Milan d-r Nedkov, Tito d-r Belicanec i Elena d-r Gradiski-Lazarevska, Pravo na drustvata, p. 185, SIGMA PRES, Skopje, 2003.

By the *argumentum a contrario*, if the objects are unfinished or are yet to be made, or build, they cannot be the object of the non-monetary contribution.

The rights which can be an object of non-monetary contributions by their nature can be very different. Moreover it's referred to the rights of intangible goods. Considering the rights of intangible goods, they may include: copyrights, inventions, intellectual property rights etc. The rights entitled from securities and financial instruments can be listed in this group. An object of non-monetary contribution can be certain claims of the member who is a debt holder towards a creditor. So these claims can be a contribution of the members, and with the cession it will pass over this right to the company.

### **1.2 Minimum amount of a contribution**

During the foundation of the company every member has the right of a contribution, which means that every founder at the foundation can take only one contribution in the company. In contrast to this, one contribution may have more owners.

The main difference between the shares in the public limited company and shares in other types of companies is that the shares in other types of companies (partnership, limited liability company etc.) do not need to be equal, which means that their amounts can vary.

The minimum amount of the contributions can be different, because of the fact that the legislator in the companies such as partnerships (where the personal connections and trust between members are at a very high level) does not set any minimum amount of the contribution. Here, the founders/members are left free to determine the amounts of the contributions.

By contrast, when it comes to corporations such as public company and limited liability company, the law defines precisely the arrangement of the minimum amount of contribution. So, by the Company's legal act, it is clearly appointed the amount of every single contribution. In the limited liability companies this amount may be different, but the value of the contribution can not be less than *100 euro* in denar equivalent, while by

the law it is determined that even the smallest nominal amount of the share in a public limited company, should not be lower than 1 euro in denar equivalent.<sup>329</sup>

The intention of the legislator is, through this kind of assessment of smallest amount of the contribution in the limited liability company, to prevent participation with insignificant capital in this type of company, while the determining a legal minimum amount of the share in public limited company aims to attract a larger number of investors to invest in shares.

### ***1.3 Contribution in the form of labour and services.***

According to the Company law, contribution in the form of labour and services, is allowed in partnerships. With this kind of contribution in these companies, the members are actually obligated to make available to the company their expertise, their services, as well as their labour. So, the investors are obligated to perform the services that they had promised to it (according company memorandum), and to convey the benefits achieved by the activity which is the subject of their contribution.

The position of the members in the company that brings investment in the form of labour and services is quite different from the person who is employed in the company. So, between the member and the company there is no subordination and the member can not perform activities for himself, with which he would compete with the company.

As we have mentioned before, this kind of contribution (in the form of labour and services) can not represent a guarantee for the creditors of the company, and therefore is not included in the establishment of the share capital.

There are concise decrees in the Company Law, valid for a limited liability company and a public limited company, where the forms of labour and services as contributions, are explicitly prohibited. These types of contributions are only allowed in the general and limited partnership, since in these companies the members are accountable for the obligations/debts of the company with all their contributions as well as all their personal assets.<sup>330</sup>

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<sup>329</sup> Clen 174, stav 4 I clen 273, stav 2 od ZTD.

<sup>330</sup> Clen 174, stav 2 od ZTD.

The contribution in the form of labour and service in these types of companies, allows acquisition of a share, which carries the same rights for the member, as the share arises from the non-monetary contribution.

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