MAIN EQUITY OF THE TRADE COMPANIES -LEGISLATION AND PRACTICE-

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Abstract

Depending on the form of the company, the main capital may be defined differently, although all the definitions are reduced to the fact that it consists of the stakes of the members of the company. In the limited liability company it is represented through the sum of the partners' stakes. The partner with the investment of his property in the company loses the connection with his assets invested in the company. On the basis of the entered deposit (monetary or non-monetary), the acquirer rights and claims against the company in the amount and percentage, as much as its stake in relation to the company's main capital. Having in mind the importance of the main capital for the operation of the company, the legislator foresaw that if the same according to the annual account falls below the legally prescribed minimum it should be complemented to the required level. All persons who have a legal interest in this have the right to claim such a complement.

Just like the limited liability company and the joint stock company, the main capital may consist of cash and non-monetary assets. It is divided into shares through which shareholders prove their participation in the total amount of the principal. In the scientific and professional literature, the company's principal can be found under several terms, such as: core capital, start-up capital, fixed capital, Although the terms are different, the meaning and functions remain the same.

These are the legal provisions. But the issue regarding the main capital gets important in the practical application of the legislation. Namely, the legislator is very explicit when it determines the minimum amount of the main capital and the obligation to maintain it at that level. How to do it is also legally regulated. These provisions considered many participants in the business world as an obligation for one another in their account, or in the property continuously in the name of the main equity amount determined for that form of the company. But is that so? Certainly not.

After all, the most logical situation arises when opening a bankruptcy procedure to a company. Namely, the legislator established obligatory existence of a minimum main capital, and the court in bankruptcy procedure concluded that there are no property that would justify the conduct of the procedure (although there is a main capital on the annual account).

Key words: Main equity, money, objects, reduction, bankruptcy.

1. Introduction

The minimum of the principal is solely dependent on the form of the company being established. This minimum is, in principle, determined in the founding act of the company (agreement, statement or statute), but under that legally prescribed minimum the appropriate form of a company can not be established. Thus, our Law on Trade Companies for Limited Liability Company (which is in fact the most common form of a company in our country) has determined the lowest amount of main equity of Euro 5,000 in denar counter value according to the middle exchange rate of that currency, which was announced by the National Bank of the Republic of Macedonia on the payment day, en if the founders have agreed that to be the day of signing the contract for the company or the statement on the company. At the joint stock company, the minimum equity is 25,000 euros when it is established simultaneously, and when the establishment is successively the principal is 50,000 euros. In individual companies, the minimum core capital may be set higher by a special law. This is for example when establishing banks and insurance companies. The reason for the high amount of the minimum core capital of these companies is that they are large economic entities and accumulate a large amount of capital. Characteristic of the main capital is that in the same immorality there are non-monetary deposits, but only to enter the minimum required by law.

On the other hand, for example, the legislator has not provided for a minimum main equity for the public company, since the founders - the partners in the company for the obligations of the company respond indefinitely and in solidarity with all their property, so introducing a main investment is completely unnecessary.

The principal is divided according to the form of the company of shares or stocks. The Law on Trade Companies determines the lowest nominal value of one share of one Euro, while for a share it is not determined for reasons that the minimum main capital can be paid by one, two or more persons, which means that it can have one, two or more shares . During the operation of the company, the principal may increase or decrease. In both cases, a decision by the shareholders / shareholders is required depending on the company's form.

We announce in advance that the subject of interest in this paper is especially elaborated from the aspect of the core capital in the limited liability company and the joint-stock company as the most common forms of companies in our country.

2. Legal regulation of the main capital in certain forms of trade companies

2.1. Main shareholder of a limited liability company

The main capital of the limited liability company consists of the sum of the partners' stakes and it can not be less than 5,000 euros. The amount of the main capital must be expressed in an integer that is divisible by the number 100. Although the principal is comprised of the sum of the partners' stakes, the partner is not the owner of the stakes, which means that it can not own the stakes, nor has the right to use it or dispose of it contrary to the provisions of the Law on Trade Companies (to sell it on its own will). The solicitor, on the basis of paid money, the invested items, acquires rights and claims against the company in the amount and percentage, as much as his investment in relation to the main capital (for example, 1,000 euros or 20% of the main capital).

The deposit exists as long as the company exists, which means during the bankruptcy and liquidation proceedings, that is, until the company is terminated by a court decision. The ending of the company ceases to exist. Each member of the company can only take one deposit at the time of the establishment of the company, ie, one deposit can be taken over by several persons. The individual deposit can not be less than 100 Euros and it must be expressed in an integer that is divisible by the number 100. Prior to submitting the application for registration of the establishment of the company in the trade register, the partner has no obligation to pay the cash deposit nor for entering a non-monetary deposit. In

case of payment of the cash deposit prior to submitting the application for registration of the company in the trading register, the payment is made to a temporary account of the company with a payment operations carrier in the Republic of Macedonia.
Having in mind the importance of the main equity when establishing and starting the company, the legislator foresaw the responsibility for the partners and the managers of the company that, during the foundation of the company, gave false data due to which the main capital did not reach the agreed amount. In such a case, they are obliged to pay the amounts that are not paid and to reimburse the payments made during the establishment of the company, and are not accepted as the costs of establishing the company. Starting from the intention for real presentation of the founding stake in accordance with the legislation, for the partners and the manager, there is a plan for the company (and as solidarity debtors) for the possible damage caused due to non-imposition or incorrect input of the non-monetary deposits [1], as well as due to the too high estimation of their value.

Having in mind the determination of the compulsory and precise amount of the main capital as one of the conditions for establishing and commencing the operation of the companies, the authorized appraiser in the performance of the assessment of the non-monetary deposits in addition to the personal and unlimited liability with all his property for the accuracy of the the data in the assessment report is under threat and from criminal responsibility. Namely, during the performance of the assessment, the authorized appraiser is obliged to refrain from actions and procedures that would unrealistically determine the value of the non-monetary investment. In doing so, it is especially obliged to ensure that non-monetary deposits are items to which value can be determined by money, which will be expressed in money. This is because, according to the law, the principal is determined in monetary value (5,000 Euros). Considering the significance of the assessment of non-monetary deposits for a partner, an obligation to pay attention to the company's contract is required not to enter the value of the non-monetary deposit in excess of the amount stated in the assessment report [2] prepared by the certified appraiser.
Sometimes, in practice, situations are possible, despite the intention of the members to establish a company and realize economic benefits from it, the establishment of the company will not be successful, that is, the company should not be founded. In such a case, when a company can not be founded within 6 months, counting from the day of entering the first deposit, in the manner defined by the contract for the company, each founder who has entered the deposit may, with a proposal, request the court to determine the right to return his non-monetary contribution and to oblige the other founders to return it, and for the return of the money deposit, the bank in which the monetary deposit has been paid[3].
From the interpretation of the provisions of the Law on Trade Companies, it can be concluded that the contribution can only be returned by a court decision by which the court will determine that the establishment of the company is unsuccessful ie that it is not founded. According to the Law on Trade Companies, in no case is there a repayment of the paid deposit. This is because the main component of the term LLC is the main capital as a reliable basis to fulfill the obligations towards the creditors of the company. Although this is the main intention of the legislator, however, in today's conditions of business, taking into account the scope of the activities of the companies from the aspect of their monetary value, it is hardly possible that the main capital, with the minimum stipulated in the law, will provide a reliable basis for settling liabilities to creditors. There is justification for determining such a low threshold of main equity if it starts from the intention to give everyone the opportunity to start their own business. But, anyway, there will always be unfavorable effects on one side or the other, which we will talk about further.
During the operation of the company, a partner may come out of the company or be disconnected from the company. Starting from the title of the labor, the mere act of excommunication or exclusion of the fellow is not a matter of interest, but we believe that the action of these acts in relation to the company's main capital deserves special attention. Namely, with the withdrawal or exclusion, the acquirer acquires the right to reimbursement of his share. If the stake was non-monetary, the founder has the right to return it, regardless of

whether this right has been determined in the contract for the company or otherwise agreed with the other members.

Since we know that the company's share capital is divided into shares, and the share is evidence of ownership of a part of the company's core capital, then it is indisputable, especially in the case of a non-monetary investment that the equity of the company with the return of the deposit will be reduced legally the established minimum. The law in this section does not offer any solution to this issue. The question arises, what with the intention of the legislator for the existence of minimum main capital as a guarantee that the company will fulfill the obligations towards the creditors. The situation can be complicated even more when the adjudicated or excluded court has a significant amount of the main capital. How in this situation the company will continue its work when there is no main catch for establishing and fastening-minimum main capital. The Law stipulates a provision on how to proceed if a decrease in the main capital in case of a withdrawal of a share occurs[4]. Here the legislator foresaw the possibility of the withdrawal to be done by reducing the main capital, which on the other hand requires that it be taken care not to fall below the statutory minimum. This solution would be inadequate to apply in the example we elaborated.

Resolving the problem in the case of expulsion or exclusion of a partner appears to be found in the application of Article 173 of the Law on Trade Companies. Namely, according to paragraph 1 of this article if the main capital is reduced for any reason under the legally prescribed minimum, the amount must be increased to the legally prescribed amount within a period of 6 months from the day of the adoption of the annual account, unless the company in that period, has not been transformed into another form of company [5]. Although this is a legal obligation, in practice it is very rare for companies to comply with this provision. In order to fulfill the function of the main capital and protection of the creditors of the company, the legislator went with some kind of strengthening of the obligation to comply with this provision by providing an opportunity in the situations when it will not be acted upon in accordance with the Law on increasing the main capital to the foreseen amount. This enhancement of the obligation consists in the fact that, any person having a legal interest may, with a proposal to the court, request that the company be terminated after having previously warned its representative by law that the situation is in accordance with the law.

If the law is read, there is nothing unclear, but on the contrary, we have a clear norm that explicitly points to the opportunities available to the co-owners and interested parties in the event of a reduction in the main capital below the set minimum.

The existence of different situations regarding the amount of the value of the main capital between what is contained in the company's bookkeeping and the real value of the same at the opening of a bankruptcy procedure can most clearly be seen if taking into account the data on initiated bankruptcy proceedings before the Main Court in Prilep for the period 2014-2016 [6], from which it can be concluded that in a significant number of initiated procedures bookkeeping there is a main capital in the amount of 5,000 euros (Chart 1).

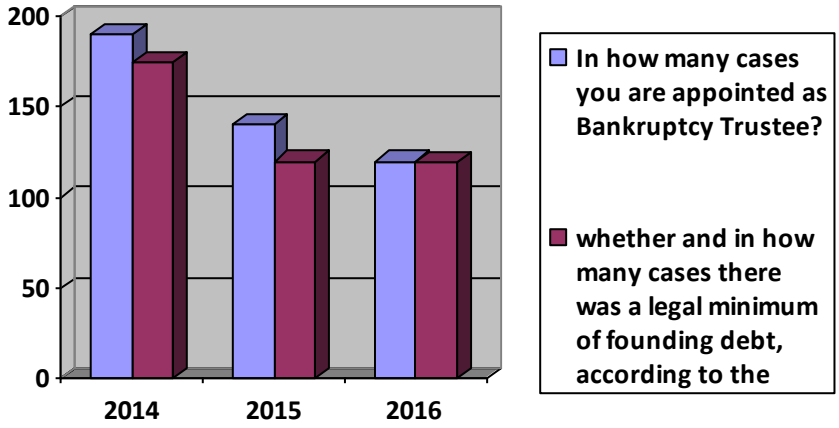

Figure 1. Bankruptcy proceedings for the period 2014-2016

However, whether this amount exists and real. On the contrary, the data is disappointing, because that amount in all initiated bankruptcy proceedings or does not exist at all or exists only partially.
The data is even more generous if it is known that the main capital consists of items, which means the equipment invested in the establishment and according to the assessment report made by the authorized appraiser, the value of 5,000 euros is now fully depreciated and has no bookkeeping nor real value.

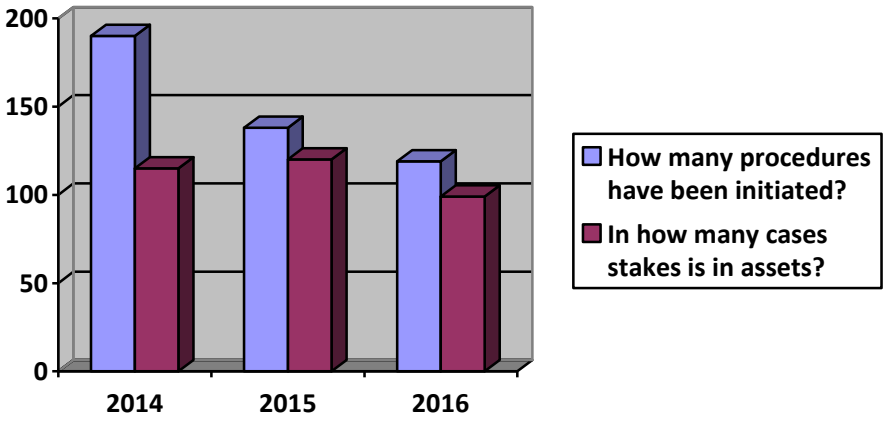

Figure 2. Relation between the initiated bankruptcy procedures and the equity in the assets

What in such a situation? Where is the main objective of the legislator, the company's main capital is to guarantee that it will fulfill the obligations towards the creditors.
This is where the answer lies, why is most of the bankruptcy procedures locked in the open-close system[7], ie the procedure is opened but not implemented, but it is immediately concluded because of lack of property that would be sufficient to cover the minimum costs of the procedure or property which would guarantee economic justification for conducting the procedure.

2.2. The main equity of the Joint Stock Company

The main characteristic of the joint stock company is that the main equity is divided into shares, and from the economic point of view, the most important form of the company is the most acceptable and simple form of concentration of large capital with an unlimited number

of persons (legal and physical). The joint stock company has its own special property (main equity) with which it performs its activities and is responsible for the undertaken obligations in the legal transactions with third parties. The property of the joint-stock company as a whole is separated from the assets of the shareholders of the company. Shareholders are not liable for the obligations of the company, unless they have paid the agreed amount or part of the unpaid equity participating in the company's equity.
In accordance with the legal provisions, which are in principle of an imperative nature, the joint stock company must have a main capital-core capital. This capital is formed when the company is founded and its amount is not the same for all joint stock companies. The amount of the core capital - principal depends on the manner of establishment chosen by the founders of the company. If the founders decided to implement the establishment without referring a public call for subscription of shares, the principal amount is 25,000 Euros calculated in denar counter value. This is the so-called simultaneous establishment of the joint-stock company. There is another way of establishing the company, and this is a succession establishment, in which case the founders write down a part of the shares, and for the rest, call for registration is sent, in which case the principal amount is 50,000 euros. In the second case, a further procedure for founding the company is followed, but this is not an interest in this paper.
During the existence of the joint stock company, the main capital must be permanently secured at least in the legally prescribed minimum amount, as previously mentioned. In the joint-stock company, the main glutin can consist of money and goods or rights (non-monetary deposit). Characteristic of the non-monetary investment is that it should be paid in such a way that its full entry must be made so that the company can freely dispose of it from the date of the registration of the company's establishment in the trade register.

3 Reduction of equity

The Law on Trade Companies and the Limited Liability Company and the joint stock company foresee the possibility of reducing the core capital. Although the manner and procedures for its realization differ in certain nuances depending on the form of the company, the decisions regarding the protection of the creditors of the companies are quite similar in the intention for providing this protection, and given the subject of labor interest a more detailed elaboration of this issue will be given.

3.1. Reduction of the core capital of a limited liability company

For determining the reduction of the core capital of the limited liability company, the company's holders are authorized to decide on the issue at a gathering of shareholders. What is the reduction in the company's equity capital? Any decrease in the amount of the main capital, determined in the contract for the company, shall be considered to reduce the main capital. However, this reduction can not be unlimited. Namely, the company's main capital must not be reduced below the legally defined minimum of 5,000 euros. Yes, the law provides an opportunity in certain cases for this reduction to be below this minimum, but at the same time it is required to make a decision by which the principal will increase to 5,000 euros. This solution is entirely in the spirit of the legal provisions for the existence of a minimum company's capital that can guarantee the fulfillment of obligations to creditors.
The decision for the intention to reduce the core capital shall be entered in the trade register. This solution is also aimed at protecting the interests of creditors, furthering the strengthening of the protection, and the manager of the company is obligated to immediately announce the announcement of the intention for reduction of the main capital in the trade register. the intention to reduce the core capital in the Official Gazette of the Republic of Macedonia. In this announcement, the company announces that it is in compliance with the creditors, on the basis of their request, to pay off their claims or to provide security. It is undisputed that by reducing the core capital, the fulfillment of the obligations towards the creditors is questioned. Of course, it is questioned the question of settling their claims.

However, although the legislator kept an eye on the protection of the interests of the creditors, he left room to decide for himself whether to seek a settlement or to secure the claims or would consider that the company, even with such reduced main capital, would be able to fulfill its obligations. Namely, if after the expiration of 90 days from the day of announcing the announcement, no request for payment of a claim is submitted, it is considered that all creditors agree with the intention to reduce the main capital. After the expiry of this deadline, an application for registration of the decision for reduction of the main capital shall be submitted. Here special attention is paid to the provision by which the company was instructed to inform the known creditors in writing about the intention to reduce the core capital. We think that in such a way the possibility of damaging the creditors is avoided (everyone does not take or does not read an official newspaper), because if the bookkeeping of the company is kept properly (and so it should be) all the distributors should be known. Otherwise, other legal remedies are available to the creditors.

3.2 Reduction of the equity of a joint stock company

The assembly of the majority voting company shall decide on the reduction of the main capital of the joint-stock company, which can not be less than two-thirds of the voting shares presented to the assembly, unless the statute provides for a larger majority. In this case, the main capital can not be reduced more than the smallest nominal amount determined in the company law. If the company cuts its parent capital under the specified legal minimum, the decision to reduce the principal is null and void. Nevertheless, there is the possibility of surviving such a decision, provided that together with a decision on reduction of the main capital, a decision is made for increasing the main capital to the minimum amount determined by the law for the appropriate type of company in view of the manner of establishment company. This decision, as well as with the limited liability company, is subject to a pre-registration in the trade register.

After the registration of the pre-emption of the decision on reduction of the main capital in the trade register, the chairman of the board of directors or the chairman of the board of directors announces the intention to reduce the principal in the "Official Gazette of the Republic of Macedonia" and at least one daily newspaper. In this case, one kind of enhancement of the possibility of informing the creditors of the company of the intentionally reducing the main capital by announcing it and in one daily newspaper, which in any case is exempt from the Official Gazette, can be noticed. The intention for this may be that the joint stock company is always with bigger capital and scope of work, which of course entails a larger number and with a higher amount of claims and creditors of the company. The announcement states that the company is in compliance with any creditor who will submit a request to pay the received claim or provide security for the claim. So these opportunities are available to creditors only for outstanding claims. If, after the expiration of 90 days from the announcement of the announcement, no request for payment of a claim is submitted, it is considered that the creditors have given their consent to the decision to reduce the principal. In this case, as well as with the limited liability company, there is the obligation for written notice to the known creditors, individually, at the place of residence or the creditor's head office registered in the trade register, whereas here there is a threshold for fulfillment of such an obligation from the side of the company, the claims of creditors to amount to over 10,000 euros. Why such a threshold, most likely the reasons listed above regarding the publication in a daily newspaper.

Although the legislator had previously established that only the creditors with arrears had the right to demand payment and security, the possibility for creditors to obtain collateral for claims incurred before the entry of the decision on reducing the company's main capital in the trade register was left. Namely, the creditor may request the provision of a claim that was previously reported and occurred prior to the adoption of the decision for reduction of the main capital, whether it was received within the 90-day period, provided that by reporting the claim that the creditor did not arrive its collateral and there are sufficient reasons to consider

that the reduction of the equity stake will reduce the ability of the company to settle the creditor's claim. These three conditions need to be met cumulatively.

4 Conclusion

Starting from the assumption that in order to start a particular business, it is necessary to start an initial level of capital with which the business ventures would be initiated, the Law on Trade Companies devoted a significant part of its provisions to the main capital of the companies. From this aspect, it can be concluded that this area is regulated accordingly. However, the problems arise during the operation of the business entities when the maintenance of the required minimum of the main capital is imposed as a problem, especially if the founding deposit is in the property. Namely, the entered money when establishing the name of the founding deposit is spent and the non-monetary deposit ie the items over time are depreciated ie at one point their value is reduced to zero.

The legal solution for replenishing the amount of the equity capital if the same according to the annual account shows a reduced amount seems appropriate from the aspect of the reliability of the creditors for collection of their claims. However, the question arises as to how to implement it in practice. One of the ways would be to do this through the borrowing of the Central Registry to monitor this situation, and if in the legally determined deadline, the Law did not act to close the company through an appropriate legal procedure in which way would it be possible to prevent further creation of obligations by the company, which it can not fulfill.

The possibility of supplementing the amount of principal capital at the request of an interested person seems ineffective because it is difficult to believe that someone will engage in such work in view of the actual situation in the judicial system and the economic benefit that would result from it.

Since the main capital is the main prerequisite for starting a trade company, in addition, according to the law it is the main instrument that guarantees the exercise of the rights of the creditors of the company, a legal decision, by which in case of bankruptcy in case of factual lack of the legal the amount of the main capital, the liability of the founders of the company for its obligations to the amount of the main capital with its personal property would be the right decision. This not only from the aspect of protecting creditors, but in this way the financial discipline, which ultimately leads to a favorable economic environment and a healthy economy, will significantly increase.

References:

[1] The non-cash deposit in the limited liability company, the joint-stock company, the joint-stock company and the commodity company with shares is assessed by an authorized appraiser (one or more), appointed by the founders, shareholders, shareholders or the bodies of the company from the list of certified appraisers (Art. Article 35, paragraph 2 of the Law on Trade Companies)

[2] For the assessment report, see more in Article 35, paragraph 6 of the Law on Trade Companies

[3] The cash deposit is paid to a temporary account of the company at the payment operations broker of the Republic of Macedonia

[4] Also Article 205 para. 3

[5] Also, Article 20

[6] Author's own research

[7] Art. 40 of the Law Amending the Law on Bankruptcy, Gazette of the Republic of Macedonia 79/2013