

## **Limited Liability Company** **(Legal Norms that Obstruct the Entrepreneurship)**

### **Introduction**

The Limited Liability Company as one of the forms of organization of the business action of the entrepreneurs subsists in almost all the legislations in the world<sup>1</sup>. In its characteristics, it is undoubtedly the most appealing form of a trade company which makes it most commonly employed by the traders.

The concept of this hybrid legal form contains both elements of the personal types of companies (partnerships) and elements of the corporations. Different legal systems define the Limited Liability Company differently. However, the main distinctive features of this company are virtually the same in all legislations.

Its main characteristic feature, as depicted in the name itself, is the limited liability of the members of the company. That means that the company itself is liable for its obligations with all the property it owns. The responsibility of the members of the company is limited only to the amount of the assets they have deposited in the company (thus assigning them to the company, which has become their owner). Any liability for the obligations of the company from the personal possessions the members own is excluded. That is the main impetus that makes this type of company most widely practiced in the trade.

It is assumed that today's type of the Limited Liability Company initially came into existence in Germany around the end of the 19th century. Therefore, today's German law of Limited liability companies presents a comprehensive definition which states that one or more persons may establish a Limited Liability Company in accordance with the regulations of that Law provided that its intended activity is legal (the intended activity is not to be against the Law). A French Trade Book of regulations state that a Limited Liability Company is established by one or more persons that bear the losses of the company only with the amount of their deposits.

The legislation of the Island (Great Britain), with its characteristic legal system (common law) regulates this subject in a specific way. Thus, the Companies Act 1985 defines what Stock Company is, (public limited company) and appends that a Limited liability company (private limited company) is the company which is not stock company. What is actually asserted is whether the very Company Contract is explicitly stating that it represents a public limited company, as otherwise it represents Limited liability company; therefore the Contract is to state the word limited (Ltd.).

On the Balkans the legal regulation of the Limited Liability Company, as well as of the other subjects of the company law area is considerably analogous. That is due to the actuality of the longstanding

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<sup>1</sup> *English*: private company limited by shares or by guarantee; *French*: Societee responsabilite limitee; *German*: Gesellschaft mit beschränkter Haftung; *Portuguese*: Sociedade por quotas; *Croatian*: Društvo s ograničenom odgovornošću; *Macedonian*: Društvo so ograničena odgovornost; *Italian*: società a responsabilità limitata

synchronization of the Former Yugoslav Republics' legal system with the continental legal system, especially with the German legal circle.

According to the Macedonian Law of Companies, the Limited liability company is a company in which two or more persons participate with one deposit (contribution) in previously determined basic capital of the Company (share capital). Croatia: Legal entity the members of which are not liable with their personal property for the Company liabilities and which has previously determined share capital (by the means of a Contract). Slovenia: A Company in which the share capital consists of basic deposits.

Here we are going to analyze the fundamentals at the founding and the establishment of this company as a legal entity. We are going to compare the various regulations of the legislations throughout Europe, which will be followed by congruous conclusion as for the extent to which the legislator by the means of legal regulations enables the availability of this type of company, whether instigating the entrepreneurship, or being rather restrictive at the legal regulation of the Limited Liability Company.

What is vitally important at the establishment of the Limited Liability Company is whether the legal norms determine a minimal amount (financial or non-financial) that the company's founders are to deposit, as a prerequisite of the legal establishment of the company. Up to a decade ago various different approaches to this issue could be encountered, especially regarding different legal systems. Hence we had utterly liberal concepts concerning the necessity of the founders' deposits at the very initiation (at the founding of the company), in the common law systems, by certain moderate decisions in some countries, down to countries where an absolute prerequisite for establishment of the company was the deposit of the appointed amount on the part of its founders. The purpose that was assigned as justification of the restrictive concepts was the protection of the prospective creditors of the company, namely, that capital was to represent an assurance to the prospective creditors to the company's possession of at least minimal assets by which to pay up the claims.

### **1.1. United Kingdom**

In England, the foundation, functioning and cessation of the companies have been regulated by a specific law for companies (Companies Act). What is of particular interest to us is the regulation manner of the determination of the basic capital, or the starting capital with the company on the island that corresponds to the Limited Liability Company.

In regards to that particular issue, there has been an agreement that with the so called private companies no minimal amount that these companies are to possess at their foundation and during their functioning has been determined.

Accordingly, countries like England, as well as the other countries of Great Britain, adopt non-assessment of the minimal share capital with the form of company that corresponds to the Limited Liability Company. The assessment of the minimum basic capital is only present with the stock-companies. As yet, the concept of non-assessment of the minimal basic capital with the Limited Liability Company has worked impeccably in practice, thus enabling high availability of this form that insures limited liability to its members for the prospective entrepreneurs.

Undoubtedly, in Great Britain it is exceptionally easy for the future entrepreneur to register and establish a Limited Liability Company, exclusively by meeting certain criteria and payment of minimal (compared to their standard) administrative taxes.

## 1.2. Germany

The new Law of Limited Liability Company in Germany brought about significant changes with the Limited liability companies and came into legal effect on November 1st 2008. Certainly the alterations in the new law were inspired by the European business trends, and they regulate the establishment and management of the Limited Liability Company in an entirely new manner.

Namely, lately the European corporative structures accessed the German market. That means that the endeavour for free market establishment on the territory of European Union has facilitated the advance of trade company forms regulated in a more "liberal" manner on the German market. The trade companies founded according to the laws of other countries – members of the European Union, are becoming increasingly popular. Owing to the great advantages in the legal regulations, many of the German companies chose to organize in the same manner as the English Limited liability companies (although they have permanent management in Germany). The reasons are absolutely apparent; the purpose of the prospective entrepreneurs is to avoid the relatively difficult requirements for establishment of a Limited liability company according to the previous German law. It entailed requirements of a higher level of initial deposit (share capital) at the foundation of the Limited Liability Company, as well as longer period of time prior to it.

As a result of the competition of the business forms, the German government decided to modernize the law governing the Limited liability companies. Following an in-depth discussion, the so called "The German Act to Modernize the Law Governing Limited Liability Companies and to Combat Abuses" ("Gesetz zur Modernisierung des GmbH-Rechts und zur Bekämpfung von Missbräuchen" - abbr. "MoMiG") was passed.

Due to the fact that the company regulated according to the German law of Limited liability companies was not competitive with the analogous forms of this company in the other countries, the alterations in this area were essential, mainly regarding the basic capital, that is, the legal minimum required for the company establishment.

The new law is aimed at improvement of the Limited Liability Company in three aspects. The first aspect of the changes regards the foundation of the company. The actual process of Limited liability company establishment is accelerated. In the same manner, the new law expedites the input of the basic deposits, as well as easier distribution, merging and transfer of the stocks / shares. In addition, there are measures for more expeditious company registration, that is, its listing in the particular trade register, since the process of registration in the trade books has been consolidated. Secondly, the prognosis is that the Limited Liability Company is to become more appealing form of new business establishment. Even though in Germany the number of entrepreneurs that organize their business in the form of a Limited liability company is extremely high, new mitigations were still vital, by which this type of company will become even more accessible.

An interesting novelty is that the new law permits a company, registered in accordance with the German law, to locate its offices outside Germany. That Decision was not intrinsic to the old German law. Furthermore, by the new law a higher degree of transparency concerning the shareholding is effectuated. This is in regards to the simplification of the stocks/shares acquisition procedure. The law enacts long-term legal basis for financing groups, which will eventually enable the Limited liability companies to participate in the cash pooling systems that are common in the other countries.

Finally, the new law provides several measures for prevention from deceitful and embezzling business practices, including the procedures for consolidation and legal requests services, defending against

simulated financial inefficiency procrastination and enhancing the qualification standards of the general managers.

For this paper, as well as for the company associates themselves, the most useful and significant are the alterations concerning the main capital of the Limited Liability Company. There were several alternatives for the reduction of the basic capital with the Limited Liability Company. The initial efforts were aimed at abolishment of the decision for minimum base capital of 25.000 Euros with this type of company. However, the main approach of the German Government to the decrease of the Limited Liability Company minimum share capital from 25 000 Euros to 10 000 Euros was rejected as a form of diminishing the power of the highly respected capital structures of the Limited Liability Company. Nevertheless, it was more than clear that a solution that would capacitate the desired changes with the share capital with this type of company had to be found. Therefore, instead of abolishing the legal minimum base capital of the existing form of Limited Liability Company, the legislation by the means of the new law has decided to implement an entirely new legal type of Limited Liability Company in Germany. That is represented in the so called "UG" (*Unternehmergeellschaft*, the approximate translation of which would be "Business Company")

Thus, unlike the Limited Liability Company that operated in the German Company Law and to which the same set of regulations still applied, the new business company is regularized by different regulations which singled out this type of company.

*The so called "business company" with limited liability can be founded with share capital of only 1 euro.* By this the German legislation implements the most significant change with the limited liability companies (receding from its long standing concept), which is in accordance with the modern European streams. As stated above, the only reason for this legislative decision is the removal of the barriers that the legal minimum of share capital represents, thus allowing easier access to this type of company. By that, Germany met the challenge imposed by the laws of other countries, primarily France, which as several years ago decided to implement a symbolic share capital of one euro in its law. This kind of response is logical, having in mind the fact that in a climate of competitive contemporary streams, each government, by modernization of the laws, tends to provide national prosperity in all the areas. Without any doubt, the area of the company law is such that by regulating the forms of the trade companies, it has direct effect on the national economic streams.

However, as a kind of balance to the symbolic share capital in the amount of one euro, the legislation implements certain regulations which impose certain limitations and which the "mini-company with limited liability" is to obey. Thus the new law imposes that the abbreviation "UG" or the word "Unternehmergeellschaft" is to be included in the name of the company, until the minimum base capital reaches 25 000 Euros. The only reason for implementing this regulation is the creditors. Its purpose is for the creditors to be immediately aware what kind of company is in question, so that they can easily discern this company with symbolic base capital, and therefore an appropriate abbreviation alongside its name is required. It is supposed that thus the creditors are given the opportunity to be careful when entering debtor-creditor relationship with this company. It is nevertheless a fact that third parties perform analysis and their own evaluation of the real property of the company, yet the mandatory labeling of this company allows improved and easier information of the stakeholders.

Another interesting regulation regarding the business company with limited liability exclusively is the existing legal obligation for the company to place 25% of its annual profit as a new capital reserve. Namely, a part of the company's profit, that is  $\frac{1}{4}$  of the profit, is to be maintained as a reserve capital, which means that this part of the profit is subjected to a regime, and it can only be spent in ways determined by the law. The law furthermore determines that the part of the profit that the company

is to maintain as a reserve can only be used for increase of the basic capital, or, alternatively, for covering the company losses. With these legal regulations concerning this business company, there is still tendency for acquisition of a certain property that the company will own and in some way ensure the security of the third parties. This further confirms the “dosage” of moderation on the part of the legislation, in regards to the alterations implemented with the constituency of the new business company with limited liability.

### **1.3. France**

France was the first of the western European countries to implement changes in its legislation aiming at the abolishment of the regulations concerning legal minimum capital that the *Limited Liability Company* is to possess as a share capital. With the legal changes of the Limited Liability Company in 2003 in the French legislation following the English model, establishment of Limited Liability Company with symbolic basic capital of one euro was allowed. The reasons for these changes were rooted in the purpose of France to attract foreign investors in its economy. Likewise, in the direction of foreign investments invitation were the changes of the amount of the basic capital of the Limited Liability Company. Logically, in order to attract foreign investments, it is necessary to provide favorable circumstances that will appeal to the prospective foreign investors as to invest.

With the decrease of the amount of the basic capital, that is, with the abolishment of the determined amount as a requirement for the Limited liability company establishment, the foundation procedure for this company was facilitated, and that was one of the reasons favorable business climate in France was created and numerous foreign investors were attracted.

So then the law determines that the minimum of the basic capital for a Limited Liability Company foundation is 1 Euro. The banks definitely require more than this amount in order to set up an account of the company. Namely for a company foundation a contribution of 4000 Euros is to be placed in the bank, however, it should be taken into consideration that this amount is a “working capital”, which can be withdrawn from the company account at any time and therefore it does not represent a typical basic capital the amount of which is to be permanently maintained by the company and which would serve as an assurance to the creditors.

### **1.4. Macedonia, Croatia and Slovenia**

As mentioned above, the bulk of the legal concept in the former Yugoslav Republics was created according to the German model, which is why the presence of the German legal decisions is evident. The rights of the companies as a specific legal area did not resist the German legal influence; hence here the same influences are considerably into effect, certainly with variations in each of the Republics, as to adjust the legal decisions with the characteristic social connections they refer to.

According to the *Macedonian Law* of trade companies, it has been determined that the share capital of the Limited Liability Company is represented as a total of the contributions of the associates. Further, the legislation defines the basic capital of this form of trade company, by assessing that *the share capital cannot be less than 5000 Euros in denar counter value, according to the medium exchange rate published by the National Bank of the Republic of Macedonia on the day of its payment, unless the founders have agreed that it is on the day of signing the company contract, that is the statement of the company foundation.*

Since there is no further obligation of the associate for payment of a financial deposit at the beginning (at the foundation of the company as a legal entity and its enlistment in the appropriate registers), but the legislation determines that the above mentioned amount must be deposited within a year of the registration of the company into the trade register.

*The Croatian Law* of trade companies in the rules and the manner of regulating the relations in the area of the trade companies is very similar to the Macedonian decisions. The Croatian law determines that the basic capital of the Limited Liability Company is to be represented in kuna and its minimum amount is 20 000 Croatian kuna (about 2500 Euros) pointing to the fact that the permission for founding a company without the obligation of depositing and maintaining appropriate amount is rather dangerous occurrence that might cause insecurity in the flow and harm the creditors [13, 1015]. Therefore, the law determines the minimal capital, that is, it determines the minimal amount the company is to possess (to have it registered) at its establishment as well as to maintain in the course of its existence.

*The Slovenian Law* of companies is rather different from the Macedonian and the Croatian. Despite that, the regulations regarding the basic capital and the basic deposits are similar, with certain differences in the amount, the payment and maintenance of which is mandatory according to this law, in the case of the Limited Liability Company [15, 495].

Therefore, the legal normative of the share capital, as a topic of great significance for this paper, with the Limited liability company is determined by the legislation, by which it varies from the modern tendencies of the contemporary European legislation for non-determination of the minimum basic capital in this type of companies. The legally required minimum is to be at least 7 500 Euros whereas every basic deposit at least 50 Euros. The basic deposit may be in finances as well as equipment and rights.

## **2. Contemporary tendencies**

As it can be observed in the above comparative analysis, the contemporary tendencies concerning this topic are that the laws are not to determine the minimum amount of the basic capital, which the associates are to invest at the foundation of the company and to further maintain it, since the insurance for the creditors lies in the tangible available property of the company (according to which the traders have indicator of the power of the company itself) and not in some static amount (relatively low) which will only represent an encumbrance to the members of the company.

It is a fact that the newly established concept has been functioning successfully for some time in the leading European economies.

## **Conclusion**

The deregulation of the minimum amount which is to be deposited on the part of the founders at the establishment of the Limited Liability Company as well as the obligation of its constant maintenance for the course of the company existence is absolutely in the direction of stimulating the entrepreneurship. With this measure the legislation gives space to the prospective entrepreneur to personally estimate the amount necessary for setting a business initiative and to invest that amount in the company.

Considering the fact that the Limited Liability Company is the most desired form of company for organization of the small and medium companies, every legal measure that facilitates the approach of the prospective entrepreneur to the Limited Liability Company is of enormous economic importance.

Therefore, it is inevitable to make alterations in this area in the direction of following the contemporary tendencies of abolishing the mandatory amount of share capital with this type of company, particularly in the developing countries, the basic policies of which are aimed exactly at attraction of foreign investments, development of the entrepreneurship, etc.

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**შეზღუდული პასუხისმგებლობის კომპანია  
(სამართლებრივი ნორმები, რომელიც აბრკოლებს მეწარმეობას)**

## რეზიუმე

შეზრუდული პასუხისმგებლობის კომპანია, გარდა იმისა რომ არის მსოფლიოში საყოველთაოდ აღიარებული, წარმოადგენს აგრეთვე ისეთი ტიპის კომპანიას, რომელიც ხშირად აერთიანებს მცირე და საშუალო კომპანიებს. იმის გათვალისწინებით, თუ რამდენად მნიშვნელოვანია მცირე და საშუალო კომპანიები ერთი ქვეყნის მეწარმეობისა და ეკონომიკის განვითარებისათვის, ამ სამართლებრივი ტიპის კომპანიის სრულყოფილი რეგულირების აუცილებლობა უდავოა. მათი უპირველესი მიზანია უარი სთქვან შემცირებებზე და სიჭარბეზე რათა არ შეფერხდეს თავისუფალი მეწარმეობის განვითარება.