

NATURE OF THE MANAGEMENT CONTRACT - THE CASE OF THE REPUBLIC OF MACEDONIA

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Abstract

The management contracts are a kind of business statute that delegate specific rights, obligations and responsibilities to the managers. In their essence, they are synthesis of management and governing power. The success and realization of the corporative goals as a motivational part, match on the both sides greatly. At the same time, they encourage the negotiation process and the conclusion of the management contract. The key role of the managers as carriers of the occupational risk, is to create professionally based coalition of interests among those who are involved in the realization of corporative goals and the business policy of the company, providing growth and development.

The main aim of this paper is to determine the legal nature of the management contract, as a crucial chain for creating of the managers status position. Special attention will be paid on the characteristics of these contracts, having in mind certain comparative observations in this sense. It is very important to emphasize that the management contracts are not substitution of the employment contracts. The form and legal frame of the manager’s individual engagement may differ, but a well-defined contract must provide several basic preferences, that would be analyze in this paper.

However, the main emphasis will be given to the actual normative (as well as practical) structure of the subject matter in the Republic of Macedonia, expressing our hope that through this paper, we’ll be able to clarify certain dilemmas in the scientific and professional public, regarding this issue.

Keywords: *company, managers, management contract*

competitive clauses and so on. By contrast, the structure of the content of most of the management contracts in the Republic of Macedonia is predominantly made of paraphrasing quotes of the legal provisions or styling of general rights, powers and responsibilities of the parties to the contract.

4. Contracting parties in the management contract

Upon determining of the status of the managers in the company, the introduction in the management contract should clearly state the act on the basis of which decisions are based on selection and appointment of managers or members of the managing body, details and authorization of the person that represents the company, determining the status position of the manager in the company, the contracting authorities and limitations in the legal representation of the company, as well as the general and special acts that determine the rights, obligations and responsibilities of managers who are not covered by the management contract.

The rights and obligations of the executive members of the board of directors, managing board members, or the manager, in addition to the rights and obligations stipulated by law, can be determined by a contract on regulation of the relations between the company and an executive member of the board of directors, managing board member or manager⁵. The Company Law determines the parties entered into the management contract. The contract with an executive member of the board of directors may be concluded by the non-executive members of the board of directors, and it shall be signed by the president of the board of directors on behalf of the company⁶. In a company with a two-tier board management, the contract shall be concluded between the members of the managing board or managers and the members of the managing board on behalf of the company and it should be signed by the president of the supervisory board. The board of directors, in accordance with its powers, shall submit an application for registration of executive members that are authorized to represent the company, in the commercial register of the executive members authorized to represent the company. The representative of the company is a natural person that, by law, is determined to represent the company. The regulations for settlement of relations between companies and business people is highly harmonized with the EU regulations for this area, and the principles of corporate governance adopted in the wider international arena are incorporated in them.

In various legislations, the issues related to the legal framework for regulating the relations between the management and the company is mainly regulated by the laws that govern the rights of companies.

For example, in the Serbian legislation, managerial contracts are covered by The Company Law, The Labor Law, The Law on mandatory social insurance contributions and The Law on pension and disability insurance fund and other laws.

⁵ Company Law, article 350.

⁶ Ibid .

Similarly to the Serbian legislation, the Croatian legislation regulates this issue in the Law on trade companies and other regulations governing the framework of the powers and responsibilities of managers in legal action.

The Polish legislation, however, governs the relations of the company management in a very detailed manner, by two main regulations: Code of trade companies and the Labor Code. Also, in part of this matter, and the remuneration of managers in particular, significant place is taken by the Polish Civil Code.

It should be taken into consideration that other European countries regulate these relations in a similar manner, by using relevant European directives as their basis; this particular topic will also be discussed in this paper.

In the United States, the judicial thinking regarding management contracts is concentrated on the question of the autonomy of deciding of companies on their own. Whether their management contract is considered valid, depends on the extent of the delegation of managerial functions. The Board may give authority to act, but it can not delegate its managing function⁷. Thus, the management does not have a legal authority to take the place of the managing board of the company. In this context, the courts consider the criteria such as: the duration of the contract and who has the authority to decide in a final degree, in relation to the business policy of the company⁸. The principle of non-delegation⁹ is applied even if the shareholders of the company have already approved the management contract¹⁰.

In France and UK, the management contracts are also eligible but only to a limited extent¹¹. Because of the fact that they are rarely mentioned in the relevant literature, such agreements seem to have no practical significance¹².

We would also like to add that the Macedonian experience moves in these framework, when we are discussing the establishment of the legal framework for governing of management contracts; mainly, more or less, it regulates this issue in a similar manner.

5. Employment-legal status of managers

An executive member of the board of directors, managing board member or manager elected for a specific period of time, may perform its function by establishing an employment relation or without it¹³. When the function is performed by established employment relation, the labor rights are exercised under the conditions laid down in the contract for arranging the relations between the executive member of the board of directors, managing board member or manager of the company, in accordance with the Company Law.

⁷ Kennerson v. Burbank Amusement Co, 120 Cal.App.2d 157, 260 P.2d. 823, 832-833 (1953); Manson v. Curtis 171 A.D. 954 (1915), aff. 223 N.Y. 313 (1918); McQuade v. Stoneham 263 N.Y. 323, 189 N.E. 234 (1934); Clark v. Dodge 269 N.Y. 410, 199 N.E. 641 (1936); Long Park Inc. v. Trenton-New Brunswick Theatres Co et al 297 N.Y. 174 77 N.E 2d 633 (1948); see also infra p. 28.

⁸ Sherman & Ellis Inc. v. Indiana Mutual Casualty Co 41 F 2d 588 (7 Cir. 1930).

⁹ Cf. Henn 425.

¹⁰ Grossfeld supra ch 4 s. 111, critics Lattin, Jennings and Buxbaum 309

¹¹ See Grossfeld supra ch 4 s. 109

¹² Houin 16

¹³ Company Law, article 366 paragraph 2.

5.1 Rights and responsibilities of managers arising out of the employment relations

The rights and obligations of the employment relations that are established by a contract and are obtained by an executive member of the board of directors, managing board member or manager, who, before the election, was employed in the company, will now be put at rest (standstill). The standstill starts from the date of election of that person¹⁴. A person may be an executive member of the board of directors or a managing board member only in one shareholding company.

According to the Company Law, the executive members – in order to carry out its powers stipulated by law - may appoint managers who perform day-to-day running of the company in accordance with the decisions, directions and orders of the executive members of the board of directors¹⁵.

In order to execute the powers established by law, the managing board may also appoint managers who perform day-to-day running of the company in accordance with the decisions, directions and orders of the managing board¹⁶.

These persons shall exercise the rights and obligations arising out of the employment relation, under the terms stipulated in the contract for settlement of the relations between the managing body and the managing officer - contract for settlement of relations with the managing officer. This contract regulates the salary, compensations (benefits), the participation in the profit, compensation costs, compensation for life insurance and other kinds of insurance and other employment rights. The manner of determining of the type and scope of total income and other rights and obligations that arise out of the employment relation of the managing officer is appropriate to the type and scope of assigned duties and responsibilities to the managing officer, as well as to his personal contribution to the success of the company. The contract with the managing officer is signed by the president of the managing body, on behalf of the managing body.¹⁷

According to Article 366, paragraph 4 of the Company Law, the provisions of collective agreements, and the provisions of the Labour Law related to the process of establishing and termination of employment, disciplinary responsibility, salary, fees and safety at work are not applied for managers. These persons realize the rights that arise out of these provisions of the Labour Law in a manner and under the conditions laid down in the contract for arranging the relations with the managing officer.

The rights and obligations of the nominated persons that were acquired before the election, especially those who were employed in the company and were determined by a contract, will be put on standstill upon their nomination to be persons with special responsibilities (managers) by a decision of the managing body. The standstill starts from the date of election of that person.

¹⁴ Ibid, article 366 paragraph 1.

¹⁵ Ibid, article 371 paragraph 5.

¹⁶ Ibid, article 375 paragraph 3.

¹⁷ Ibid, article 366 paragraph 4.

Concluding observations

The managers are the most important capital and resource of each company, but at the same time it has to be kept in mind that to create a good management structure one requires major investments, a lot of time and synchronized mutual relations. Upon discovering of the management potential and upon its development, their professional and business characteristics should be recognized, such as: initiative, communicability, creativity, knowledge in methods of management, etc.

The creation and termination of contracts that regulate the relations of an executive member of the board of directors or managing board member are tied with the moment of acquisition of the position of a member of the board of directors or managing board member. This contract is not a contract based on who receives the capacity as an executive member of the board of directors or managing board member – it governs those rights and obligations which are not regulated by law. We believe that with this paper we succeeded in highlighting the key aspects related to the legal nature of managerial contracts, placing special emphasis on legislation and practices in the Republic Macedonia.

Finally, we hope that this paper will provide an additional impetus for considering of this matter by the experts and by the scientific community.

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