

CONCEPT OF A JOINT STOCK COMPANY

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Abstract: Companies are classified in two separate groups. One is the so-called personal type of companies, the other is the capital type.

Companies of capital are those whose essence is joining of capital.

Unlike companies of capital, where for the work of the company it is important to raise capital from various sources, regardless of the fact who the persons giving it are, the personal type of companies *are based on persons who* make up that company.

Out of the companies provided by the laws on companies only two are pure types of companies of capital, i.e. companies of persons without any qualities that are attributed to the other type of companies. A **joint stock company has**, solely, the characteristics of a company of capital. The prototype of a personal company type is the **public trade company**.

A company is, in fact, a union of those persons. *In the company of persons* each partner agrees to participate in the company, valuing the personality of the other stakeholders (*intuitively person*).

Key words: *persons, capital, stock, equity, principal, dividend*

Before going into explaining the concept of a joint-stock company, we must become familiar with the notions of shareholder, shares, stake in the company, capital assets and dividend.

1. **A shareholder** owns one or more shares and is not responsible for the obligations of the joint-stock company and of the limited partnership joint stock company. A shareholder is a person who invests in a joint-stock company, and the rights and

obligations acquired by the shareholder on the basis of the stake in the capital assets are his share in the company for which he gets shares;

2. **A share** is a security (which may be issued by a joint stock company or a limited partnership joint stock company) in which a part of the capital assets is presented and which embodies the rights of the shareholder who, as the owner of the share, is neither a creditor of the company nor the owner of a part of the company's property. A share is an ownership security which is a proof of ownership of an ideal part of the company's capital.
3. **Investment in a company** is money, property, rights which the partner or shareholder assigns and transfers to the company in the process of establishment or in the process of increasing the company's capital or labor and services where this law is allowed;
4. **Capital assets** is the total amount of all contributions of members or shareholders, where the amount of the capital assets is equal to the sum of the nominal value of all investments, i.e. to the nominal value of all shares of the joint stock company;
5. **Dividend** is the part of the company's profit which is distributed to the members or shareholders of the company in accordance with the rights set out in shares, or in every type and class of shares.

Joint stock companies were created in time of colonialism and the industrial revolution, first in practice and consequently they were governed by regulations. Modern joint-stock companies were created in the 19th century in the field of mining, railway and industry. Investing in these areas could not be imagined without such a manner of raising capital and limiting risk. Respective companies in the Netherlands and France that needed a lot of money for their overseas trade had a major role in the development of companies.

The advantage of this form of association is very clear for its members. The person who does not have enough money to establish a company (firm) or the one who finds it difficult to engage his whole property, would more easily decide to take a lower risk of loss in investing in a joint stock company. That form of association is good for those who have a considerable sum of money, because they are given the opportunity to buy a larger number of shares and have the main say in the company. According to a western author (Samuelson) *"corporation is the perfect way to get a large amount of capital that does not need to be returned, which does not threaten the entire property of the owner, which allows managing work and can result in higher income than that received from interest and which ultimately gives the opportunity to every individual, to regain his investment in nominal or increased value at any time. Only in the case when a shareholder invests in bad company he may suffer a loss, but this is solely a consequence of his poor judgment"*.

Determining the notion of a joint stock company, i.e. its definition is very difficult because this creation is quite complicated. It is difficult to formulate a definition that on one hand would contain nothing redundant, and on the other hand would be completely exhaustive, since it is not possible to cover all the characteristics of a

company with one definition. Such an attempt was made in the Company Law in the SFRY in 1988., in article 85, but rather unsuccessfully, according to which: *"A Joint Stock Company is a company is a company that gets funds for establishment and operation by issuing shares."*

Almost all laws on trade companies are more or less similar in determining the notion of a joint-stock company, or, more specifically, they are very close to the definition of such a company in the laws of Western countries. These, as a rule, start from the fact that it is a company which has capital assets divided into shares and the persons participating in it with one or more shares are not liable for the liabilities of the company, but the company is liable for its obligations with its property. Some definitions (as in the French Trade Companies Law) mention the risk in case of loss of the company, which risk is limited to losing only one what is invested in the company (up to the amount of their investments).

The basic defining elements of the concept joint stock company are as follows:

1. A Joint Stock Company, as a legal entity has certain capital assets which is expressed in money.
2. The capital assets are divided into equal parts (shares).
3. Any person - shareholder participates with one or more shares, so with the payment for these shares the basic capital is being created.
4. The obligations of the joint stock company are secured with all the assets of the company. The duty of the participants in the creation of the company boils down to paying for the taken share. Shareholders are not responsible for liabilities of the company to third parties.

Only the company is liable to these, with all its assets.¹

A joint stock company, as an association of owners (shareholders), is a separate legal entity. Given that the joint stock company is a legal entity separate from shareholders, it has its own property, creates profit, can borrow, can sue and be sued, etc.²

A characteristic of the management in a joint stock company is that it has the structure of authorities aimed at achieving ownership position in the company, because its management is based on the funds invested in the company.

The basic division of authorities in a joint stock company (hereinafter: company) is made based on ownership and functional basis. Ownership is the basis for inclusion in the company's management

¹A corporation, which under US law equals with a joint stock company and which is a creation of the law and of a founding act, consists of shareholders as creditors (owners) of the corporation operations and its board of directors who are appointed by the shareholders for running the company. Board of Directors, in turn, employs agents (clerks and other employees at lower positions) to oversee the execution of daily operations of work - the activity of the company.

The corporation is in fact a capitalistic company that belongs to a larger number of owners (joint stock company).

The place and meaning of shareholding in the world is confirmed by the fact that only the ATT corporation (American Telephone and Telegraph Corporation) has over 3 million shareholders. The prevalence of shareholding relations can lead to the separation of ownership from management. Studies show that in one giant corporation people of all positions that manage it own only about 3% of the total shares. Is it not a new way of socialization of society and relationships in it, a socialization which was mentioned in the official socialist doctrine, in a different way. Is this not about some kind of a more social capital about which young theoreticians of Marxism speak?

²Of all types of trade companies, only a joint stock company, under the Company Law, must have a statute. The joint stock company has its own firm. The firm contains the line of business of the company, after which the words "joint stock company" or the abbreviation "AD" should stand.

and the function of the economic entity (a legal entity that was created by merging capital of several entities) is the criterion for establishing company authorities and delimitation of their competences.

The very nature of the company's capital means that the highest hierarchical authority is the one involving the owners of investment. But it cannot be said that they are the most important authority in terms of company's operation. The internal organization of a company rests on the body where the owners operate (assembly of the company) and all other bodies, whether directly or indirectly, are the product of the authority they are appointed by or they are appointed by a body appointed by the owners. A body in which the owners of the assets with which the company is created participate, often called company assembly, delegates the performance of all the vital functions of the company to appropriate authorities, in order to operate appropriately.

Bodies in a company are: **assembly, management and supervisory board**. Stereotypically, the division of functions between the three authorities is determined in this manner: the assembly is a body in which the will of the company is created and it involves the owners of the invested funds - shareholders or persons authorized by them; management is an executive body and represents the top management which manages the company; and supervision is entrusted to the supervisory authority.

Joint stock company assembly is the hierarchically highest organ of a company because it represents the will of all members. However, the relation of the assembly to the other organs of the company is not reduced to a general formula of superiority and subordination.

The management pyramid in a Joint Stock Company is in a manner similar to the division of powers in a political system of a country into three known segments:

legislative, executive and judicial powers, where each segment is independent and autonomous in decision-making within its scope authorizations. But that independence is only seeming because each segment is controlled by the other two segments, so that it is forced to take account of that fact in the performance of its powers. In terms of management (managing structure), managers, shareholders, and employees in the company, the pyramid of powers is observed as a pyramid of delegated powers. Implementation of these powers among the segments of the pyramid is frequently interwoven. Managing (corporate) powers mean statutory powers to manage the operations of the company. These powers can be generally divided into: explicit and implicit powers. Explicit powers are powers determined in the legal regulation and by the company's statute, as well as with other documents of the company. Implicit authorizations are those which are implied and are necessary for carrying out the explicit powers and objectives.

The system of managing a company (management) under the Company Law can be: 1. **One-leveled** (board of directors) or 2. **Two-leveled system** (management board and supervisory board), depending on which model is chosen by the owners of the capital - shareholders. The company itself, i.e. the shareholders in the company, chooses the system of management. During its operation a joint stock company can, if it finds it necessary, change the system of management of the company, i.e. if a one-level system was used it can replace it with a two-level system and vice versa. The changing of the system of managing can become effective with changes in the statute of the company.

CONCLUSION

The division of companies into personal companies – companies of persons and companies of capital is not always possible in an ideal and pure form, even when we talk about a joint stock company as a pure type of company of capital or a public company as a prototype of a company of persons.

The only indisputable and undeniable element that provides a solid basis for the division of trade companies into the elaborated types is the difference in the company's liability to third parties (creditors).

When we talk about a joint stock company, the starting point is the fact that it is a company having capital assets divided into shares and that persons participating in it with one or more shares, are not liable for the company's obligations, but the company is liable for the obligations with its own property.

It was emphasized that the system of managing a company can be a: 1. **One-leveled** (board of directors) or 2. **Two-leveled system** (managing board and supervisory board), depending on which model is chosen by the capital owners - shareholders. In Scandinavian countries there is a three-leveled management system, which means a combination of both systems.

The change of the management system can be effected by changes to company statute.

The main function of the managing board members and executive members of the board of directors, i.e. top management is the **managing function** and **representation** of the company.

Or, they have a managerial function (in the broadest sense), which means;

1. Running company's affairs, which includes regulation of relations within the company (management).
2. Execution of the decisions made in the company concerning third parties, or the establishment of relationships with third parties (representation).

Managing refers to internal relations in the company, while representation refers to relationships of the company with third parties.

Managing or management actually represents a diverse, versatile and multifaceted activity, requiring expertise at the points of connection, expression and *integration* of interests in the decision-making.

The wider meaning of the phrase *company management* incorporates advocacy. Representation means an activity with which the authorized person of the company in the name and on behalf of the company establishes relationships with third parties. A company as a legal entity may acquire rights, but it cannot personally exercise such rights; in the name of the company such rights may be exercised by the organs of the company, which, understandably, can only be natural persons.

Such meaning of the phrase management of a company is characteristic for all the legislations of the so called Roman legal circle.

Although there is a distinction between managing and representation of the company, they are not considered separate functions with separate carriers, but two layers in the notion management of company.

The narrower meaning of the phrase management of a company covers only managing, i.e. only the regulation of internal relations and the conduct of affairs of the company. This meaning is inherent in the legislation of the so called German legal circle. According to this understanding, managing and representation are treated as respective and separate and features.

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