

**UDC 334.7(497.7)  
Professional paper**

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**SIMILARITIES AND DIFFERENCES OF ASSOCIATION AS  
PARTNERSHIPS, COOPERATIVES, PUBLIC TRADE  
COMPANIES AND COMPANIES WITH LIMITED LIABILITY**

**Abstract**

In this study the author elaborates similarities and differences of association as partnerships, cooperatives, public trade companies and companies with limited liability considering the needs and target the partners within any of those types of associating would like to achieve. Thereby those similarities and differences are analyzed from the aspect of: way of establishing and persons establishing the company, property of the company, bodies making decisions at the company, management and the representation of the company as well as the liabilities of the partners for Company's obligations toward third entities. In this process of recognition of those differences it is considered that the partnership as association is not a legal entity and is regulated by the Law on Obligations, while the cooperative as legal entity is regulated by the Law for Cooperatives, while the Public Trade Company and the Company with Limited Liability as legal entities are regulated by the Law for Trade Companies, so the analysis is focused on regulations of each of those laws for the purposes of elaboration of aspects designated in this study.

At the end of elaboration is concluded that the complexity of relations created in relation with and because of each of those associations inquires partners thoroughly to survey all implications that may appear from association form they will decide for, considering the specific circumstances and environment wherein the business activities in Republic of Macedonia are taking part.

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**Key words:** Company with limited liability, Cooperative, Public Trade Company, Partnership, Law for Trade Companies

**JEL classification:** K22

## 1. Introduction

In economy or more precisely in business activities, the complexity of social relations especially the circumstances wherein such business activities are taking part, and of course considering the scope and way of performing such activities, it's necessary several persons mutually to act and in such cases we are talking about meeting the individual interests of each. Such mutual business activities beside the purpose to meet individual interests of each person, contributes for fulfillment of mutual interest of individuals who joined. Thereby the association is realized as different types of companies as legal form for mutual associated activities. Therefore the nature of relations in the companies, especially the need to protect persons acting within as well as all third individuals contacted by, impose inquiry for legal regulation of many questions considering the scope of regulation and special characteristics of each of those associations.

On the level of the modern stadium of existence of free competition regarding realization of trade activities, the selection of the type of company through which the associates would accomplish their mutual interests, is free and unlimited by regulations, although the legal form of the company wherein such association could be realized is normatively regulated. While the classification of the companies according to special characteristics of each, facilitates associates decision which legal form to be chosen. In legal system exist regulations by which the types of companies wherein the association can be realized are strictly determined, therefore this is no left to will of associates, to establish a company for which no provisions in existing legislation exist i.e. exist *numerus clausus* of companies. Regulations determine characteristics of certain companies, but still having certain dimension for autonomic regulation of its relations. Such legal intervention is required in order to protect the creditors' interests, associates' interests as well as public interests.

Dispositive regulations, anyhow enable private autonomy of associates concerning regulation of relations in company, but as such, they also fill the legal gap in contracts for establishing companies, if associates left any items unregulated.

The associates as most interested subjects in regard with the characteristics and the legal regime of the company established by them, in the process of selecting the type of the concrete company, start from the position if such company will satisfy their business interests. After deciding for using certain type of company, they autonomously regulate internal structure and mutual relations as those most appropriate for them, while have to obey the provisions of compulsory nature. So, in the process of association it's essentially the associates to decide, in such case, within which type of company they will associate because the provisions application depends on that, as well as the way of fulfilling the legal gap not regulated thereby.

In selecting the type of company by associates, main stream is the target that should be achieved by such association. In all that not less significant is the status the associates have at that company, considering the expectations of any of them would like to accomplish by such association especially if in such company the associates should invest any capital, or if they should have any material liability toward third parties in relation with external business relations of the company etc.

Special importance also has the wish of certain associate if wants to be engaged within the business activities of the company in any of its forms, i.e. if will take part only in making decisions or will also take part in managing the company's activities.

All those above mentioned targets and wishes of the associates, as well as many others which can not be mentioned herein due to limited space we have, enable the interested subjects to select type of company wherein will be associated and which is the most appropriate for their wishes and interests.

Herein, as well, due to limited available space we have, will be briefly elaborated the legal characteristics of the associations as partnership, cooperative, public trade company and company with limited liability considering their mutual characteristics especially those approaching to personal types of companies i.e. companies of persons wherein the personal characteristics of the associates play a crucial role in determining the type of company wherein they will associate. So,

**THE PARTNERSHIP** which according to Article 667 of the Law on Obligations (hereinafter referred as LOO)<sup>1</sup> is characterized by the fact that by the Contract for partnership of two<sup>2</sup> or more persons partners, they are mutually obligated to associate their property and labor or part of their property and labor, for the purpose of joint realization proceeds and profit allocation, is a typical personal association wherein the personal characteristics of each associate play crucial role for others to associate with ;

**THE COOPERATIVE**, on other side is characterized by association of physical or legal entities for the purpose of promotion or protection of certain number strictly defined economical interests, within all main operating activities except in banking and insurance as well as activities being prohibited by the Law to establish cooperative – Article 2 of the Law for cooperatives<sup>3</sup> (hereinafter referred as LC) ;

**PUBLIC TRADE COMPANY** which is typically personal company, according to Article 110 of the Law for trade companies (hereinafter referred as LTC )<sup>4</sup> is a trade company wherein, according to the Contract, are associated two or more physical and legal entities<sup>5</sup> who are liable in front of the creditors for Company's obligations without any limitations and jointly with their entire property ;

**THE COMPANY WITH LIMITED LIABILITY(Ltd.)** as Company of capital, which in some significant characteristics is quite different from above mentioned, also is very closed to personal companies, if the main orientation for the associates is to perform the association by taking into consideration their personal characteristics. Namely, according to Article 166 of the LTC, Company with limited liability is company wherein, according to Company's Contract, one or more physical and legal entities participate with up to one investment within the agreed in advance main capital of the company while the Shareholders are not liable for the Company's obligations.

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<sup>1</sup> Služben vesnik na RM (Official Gazette of RM) No. 18/01, 4/02 , 5/03, 84/08 161/09 .

<sup>2</sup> Example exception is English law - Companies Act of 1985 sets up partnerships lower limit of 20 partners - Barbi J. (2002): page 6-7

<sup>3</sup> Služben vesnik na RM (Official Gazette of RM) No. 54/02, 84/05

<sup>4</sup> Služben vesnik na RM (Official Gazette of RM) No. 28/2004, 84/2005, 25/2007, 87/2008, 42/2010, 48/2010

<sup>5</sup> In Switzerland, membership is limited only to physical entites - Guhl,T. (1994): p.691

## **2. Characteristics related to way of establishing and entities who are establishing the Company**

The establishment of all those companies except for the cooperative is made by Contract. Namely,

- **The Contract for the partnership** is made in written form and any amendments of the same requires consent given by all partners. That means that any verification of signatures at Notary Public is not required. Since the partnership is not a legal entity and should not be registered in any public registers, minimal mandatory content of the Contract is not instructed, so the partners are free for any content implemented within. The main characteristic of partnership as form of association is relations between the partners themselves and their mutual trust, as well as the impossibility the partner to assign the partnership investment to third entity in case such third entity has became partner instead of him/her. Undoubtedly the partnership is personal company established considering the partners personality<sup>6</sup>.

- **The Cooperative**, as opposed to partnership, to Public Trade Company and the Company with limited liability is established on the founding assembly which enacts the Statute and cooperative members acquire right to sign that Statute. The founding assembly approves all written reports prepared and delivered by the shareholders and appoints the cooperative's bodies.<sup>7</sup> Since the cooperative is founded for the purpose to promote or to protect certain number of strictly defined economical interests and since it's concerning membership in the cooperative, when the receipt of every member should be approved by its assembly or any other body determined by the Statute of the cooperative, and since it's not possible to make transfer of the membership to third entity without having decision for the receipt of the new member in the cooperative, it can be argued that the cooperative is also close to personal companies i.e. same is founded on the basis of certain characteristics of each it's member.

- **The Contract for the public trade company and for the company with limited liability** have strictly instructed minimal content, by denoting names of shareholders, name of company and its registered office, scope of operation, its management and representation, as well as

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<sup>6</sup> avdar K. (2011): p.877-879

<sup>7</sup> Nedkov, M. Beli anec, (2008):p.637-639

other items arising out from the character of the Public Trade Company i.e. the Company with limited liability. Here the possibility to transfer the capital investment of the Public Trade Company to third entity only by having consent of all shareholders undoubtedly leads to conclusion that the Public Trade Company is established on basis of the character of each shareholder, therefore it's personal company par excellence. Also, possibility at the Company with limited liability, by its Contract, to limit or to be conditioned by certain assumptions concerning the capital investment transfer to third entity even if it is by way of inheritance, indicates the familiarity of Ltd. with personal companies.

So common feature of the Public Trade Company, the Company with limited liability and the Cooperative, is that, by their registration into the trade register, they acquire status of legal entity. As previously noted, partnership can not acquire status of legal entity neither can be registered in any public register.

### **3. Characteristics related to the property of companies**

Since the fact that property means collection of subjective property rights and obligations to one certain legal entity, for those companies wherein partnership is also included, even though it's not legal entity, it should be determined who is holder of such rights and obligations, while it's previously necessary to elaborate how the property of those companies is created. Namely,

- the property of the **partnership** is constituted by partners' capital investments ( main capital ) as well as the property acquired during the partnership activity and the partners are owners of the partnership property. One of main obligations of each partners is to invest in partnership which investment can be money, goods, rights and labor. If not otherwise agreed in partnership agreement, it is assumed that the partner's investments are equal. Investments determined by the partnership agreement can be additionally increased only by having consent by all partners while as investment increasing can be considered the profit realized during such partnership. The partner can not possess part of property under ownership<sup>8</sup> of other partners neither can possess certain investments being parts of that property;

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<sup>8</sup> Gorenc, V.(1998): p.834

- the property of the **Cooperative** is created by investing capital investments by cooperate society members who are creating the main capital of the cooperative, which investments can be monetary and non-monetary while in the Cooperative's Statute are included provisions concerning its property, way of investing, legal regime for the acquired real estate property or movable property, as well as all data regarding people that invested any goods or rights. Holder of the property of the cooperative is the cooperative itself that acquires legal entity status by its registration into Trade Register<sup>9</sup> ;

- the property of the **Public Trade Company** is consist of capital investments of shareholders while the Company's Agreement includes provisions regarding the type and the amount of the investments of each shareholder, which investment can be money, goods, rights, labor and services. The type and the amount of the investment of each shareholder are registered in Trade Register. The shareholder of the public company is not obligated to increase its investment above the amount determined by the Company's Agreement, neither in case of loss to compensate the same if it's decreased not by his fault. Withdrawal of capital investment may be required by the shareholder only in case of termination of the shareholder's relation in that public company. Holder of the property of the Public Trade Company is the Company itself which the legal entity status acquires at the moment of its registration into the Trade Register;

- the property of the **Company with limited liability** is consist of capital investment of the shareholders which can be with different amounts and can be monetary and non-monetary and registered completely. Capital investments in form of labor and services including labor or services that are already preformed, are not allowed. Holder of the property of the Company which represents the overall of rights, property and other proprietary rights acquired by the Company over goods, money and rights invested by the shareholders or acquired by the Company during its functioning, is the Company with limited liability that acquires its legal entity status by its registration into the Trade Registry. Each shareholder of the Company with limited liability is holder of one capital investment determined by the size of the same taken over by that shareholder, if not otherwise determined by the Company's Agreement ;

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<sup>9</sup> Barbi J. (2002): p.657

#### **4. Characteristics related to bodies who are making decisions in the Company**

Making decisions in all those associations is made by body where participate all associates. So:

- At **partnership**, the right to manage the partnership activities belongs to all partners, while if not otherwise agreed within the Partnership Agreement, it is assumed that the partners' capital investment are equal. Since the partners are co-owners of the partnership property, in management of the partnership are applied, as logical, provisions as per Articles from 35 to 49 of the Law for property and other proprietary rights related to co-owner management with goods = analogue to partnership property<sup>10</sup>. In taking activities for regular management, consent given by the co-owners whose investments are more than a half of the goods value, is required. If it's not agreed, and the activities for the regular management of the work are necessities, competent will be the court. For taking over activities that exceed the framework of regular management, consent given by all co-owners is required, while if agreement will not be reached, the co-owners can ask for competence by the court ;

- At **Cooperative**, the highest authority i.e. body is the general assembly of cooperative society members. In this general assembly each cooperative member has one vote, if not otherwise determined by the Statute. Except when by law or by cooperative's statute is not assumed something else, decisions of the assembly are made by majority of votes of cooperative's members. This majority is valid as well for cases of voting by cooperative's members writing;

- At **Public Trade Company** each shareholder is authorized to manage the Company, while the Company's Agreement can specify that decisions which will be made by all shareholders should be made by decision making in written form, if shareholders didn't required to convene a meeting of founders i.e. meeting of shareholders. Decisions that exceed the authorizations related to regular activities of the Company, are made by the founders i.e. the shareholders unanimously if not otherwise determined by the Company's Agreement<sup>11</sup>. If by the Company's Agreement is determined decisions to be made by majority

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<sup>10</sup> avdar K. (2012): p.109-114

<sup>11</sup> Barbi J. (2002): p.312-313

of votes, then each founder i.e. shareholder has only one vote, if not otherwise determined within the Company's Agreement ;

- At **Company with limited liability** founders i.e. shareholders are making decisions for the Company at shareholders' meeting or in written form, while the shareholders meeting is consist of all founders i.e. shareholders. Each amount of the of share of each shareholder corresponding to amount of 100 EUR, gives one vote, while the parts under 100 EUR are not considered in voting right. In Company's Agreement can be determined the shareholders to have other right to vote than the one determined by the share amount while each shareholder has to have right to at least one vote. Quorum for the meeting is presence of shareholders that have majority of votes according to shares, if by the Company's Agreement is not determined higher majority.

## **5. Characteristics related to management and representation of the Company**

Management of each of those companies is regulated on different way where it's mostly determined by the liability of the Company for its obligations toward third entities elaborated below. So,-

- At **partnership** each partner can, without previous consent of other partners, perform all activities that do not exceed the framework of regular management of the partnership, but if any of partners will oppose it, decision made by all partners is required. When any of partners would violate the limits of regular management or limits of authorizations entrusted by other partners, then would be valid rules of management without a warrant. Each partner can perform the work immediately without previous consent given by other partners, otherwise the partnership threatens harm that otherwise could not be removed<sup>12</sup>. In case when the partners didn't achieve agreement, each partner is authorized to represent the partnership within the scope is authorized for its activities.

By the partnership agreement its management<sup>13</sup> can be entrusted to be realized by one or several partners (representatives) or by persons not being partnership members. If the manager is person who is not partner, relations between this person and the partnership is regulated by

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<sup>12</sup> avdar K. (2011): p.880-882

<sup>13</sup> Management of business partnership is any action that is being taken to achieve the common goal of partnership except that delves into the foundation of partnership - Ditfurth, H.(1995): p.121

special agreement. When there are several managers, they decide by majority of votes. When as manager is assigned one of partners, same can not resign without having justified reasons, otherwise would be liable for the damage.

- At **the Cooperative** management body is the Board of Managers elected by the Cooperative Assembly. The Board of Managers of the Cooperative must have at least three members while the majority of the members of that Board should be Cooperative members i.e. citizens of Republic of Macedonia with permanent residence on territory of RM. At least one member of the Managing Board should have authorization to represent the Cooperative which authorization is registered into the Court Register. The members of the Board of Managers are elected for the time period not less than four years and are eligible for re-election except if not otherwise regulated by the Cooperative's Statute<sup>14</sup>.

The General Assembly or the Managing Board, if so regulated by the Statute, can entrust the management of the Cooperative to one or several persons, managers not being members of the Cooperative. Persons entitled i.e. authorized to represent the Cooperative take over all legal activities and acts within the regular business of the Cooperative. Among other things, the Managing Board of the Cooperative performs control of persons authorized for managing the daily works of the Cooperative as well as of persons authorized to represent the Cooperative.

- At **Public Trade Company** each shareholder is authorized to manage the public company, while if the shareholders have agreed the management of the public company to entrust to one or several shareholders then other shareholders are excluded from its management. Management authorizations are related to activities that belong to regular Company's operating activities. Its managers are authorized to act independently in managing the Company. If according to the Company's Agreement, the managers act mutually then decisions are made by consent given by all managers. Each manager can fulfill all urgent actions independently if it prevents the occurrence of damage for the Company<sup>15</sup>. For all taken over activities the manager should without any delay to notify all other managers of the public company;

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<sup>14</sup> Nedkov, M. Beli anec, (2008): p.640-642

<sup>15</sup> Barbi J. (2002) p.316

- **Company with limited liability** is managed by its manager i.e. managers while the composition, the organization, the activities and the competencies of the management body are determined by the Company's Agreement. As a manager it can be elected any physical person who is being business capable. The manager can take over all legal activities and acts related to and usual for the business of the Company and in its interests. In relations with third entities the manager is authorized to act in all circumstances on behalf of the Company except for the authorizations which according to Law for trade companies and Company's Agreement, assigned to the shareholders.

The manager is obligated to obey the limitations of authorization for representation determined within the Company's Agreement, within the Decision made by the Shareholders' Assembly, but those limitations do not have any legal effect toward third entities even if the limitations were published. Manager who knew that has taken over activities on behalf of the Company without having authorizations for that will be personally liable in front of the Company for all caused damage.

#### **6. Characteristics related to liabilities of associates concerning obligations of the Company for third entities**

All those above mentioned four associations: the Partnership, the Public Trade Company, the Company with limited liability and the Cooperative differ among themselves in regard with the fact how the liability concerning obligations that each of those companies in their daily works takes over toward third entities is regulated by the Law. So,

- At **Partnership**, regarding its obligations, the partners are jointly liable, while for partnership debts and receivables, if not otherwise agreed, are applicable the provisions of the Law on Obligations for obligations with several debtors and trustees. The partner, can not, by right to work, to oblige the partnership without having consent given by other partners. Such consent can be given prior to Contract conclusion as license or after signing the Agreement as approval if not otherwise regulated by Law. Provisions of the Partnership Agreement by which the partners' liability is limited to the amount of their capital investments or on any other way, has legal effect for its trustees, only if they were notified for such limitations before signing the Agreement. Personal trustees of the partners can not ask to settle i.e. to cover their debts from

the partnership property, but the trustees of each partner can put veto on part of the profit that belongs to their debtor and to ask abstraction of the investment of their debtor from the partnership property. The partnership debtor can not compensate its receivables from any of partners neither the partnership can not compensate its receivables from its debtor with debt having to any of partners<sup>16</sup>.

- At **Cooperative** concerning the liability for Cooperative's obligations toward third entities, the Cooperative can be established:

- a) as Cooperative with unlimited liability of its members, or
- b) as Cooperative with limited liability of its members ;<sup>17</sup>

At Cooperative with unlimited liability, the Cooperative is liable for its obligations with all its property and at Cooperative with limited liability the Cooperative is liable for its obligations with all its property. By the Statute of the Cooperative with limited liability can be regulated that in case of liquidation or bankruptcy of the Cooperative the members will be subsidiary and jointly liable to pay certain additional amount which usually will be expressed as multiple amount of value of their capital investments at the Cooperative.

- At **Public Trade Company**, each shareholder is directly liable toward the trustees for Company's obligations, with all its property and jointly with all other shareholders. Trustee of Public Company can ask from the shareholders fulfillment of obligation of the Public Company only if the Public Company would not fulfill the obligation within the time period determined in the written call by the Trustee. Any new shareholder of Company which already exists, for obligations created before its acceding as shareholder at such Public Company, will be liable as all other shareholders.

- At **Company with limited liability** shareholders are not liable for Company's obligations. For its obligations toward third entities the Company with limited liability is liable with all its property.

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<sup>16</sup> avdar K. (2011): p.886-887

<sup>17</sup> Barbi J. (2002): p.698-702

Liability of shareholders of the Company with limited liability for the Company's obligations can appear only if presumptions as per **Article 28 of the Law for Trade Companies**<sup>18</sup>

### **Conclusion**

From global observations of this study above mentioned as well as according to many others characteristics of those associations which because of lack of space can not be elaborated here, can be concluded that at those associations we are talking about legal community of persons and property created with legal act and for the purpose of accomplishing certain aim wherein the associates are mutually related with proprietary rights and obligations determined by Law as well as by the Act by which the association is made. Therefore, characteristics of those associations thereby creating company for trade activities, would be the followings:

- a) it's about association of persons and properties;
- b) The Agreement is the fundament of association, except for the Cooperative where the Statute, signed by the cooperative members, is the fundament for association;
- c) The association is made for the purpose to achieve certain common target in trade activities;
- d) There is certain obligation for the shareholders, partners or cooperative members to contribute for achieving the target;
- e) That by the association is created legal entity at the Public Trade Company, Company with limited liability and at the Cooperative, while the Partnership is not created as legal entity;

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<sup>18</sup> By Article 28 of the Law for Trade Companies is regulated the following :

“ (1) Founder i.e. shareholders of the trade company have unlimited and joint liability for Company's obligations in cases if :

- 1) have abused the Company as legal entity in order to achieve targets which are forbidden for them as single persons ;
- 2) have abused the Company as legal entity in order to cause damage for their trustees;
- 3) against the Law, possessed the Company's property as own property , or
- 4) in own behalf or in any others behalf reduced the Company's property, and knew or had to know that the Company is not capable to perform its obligations toward third entities ;

- f) That the internal organization for making decisions and representation at Partnership and at the Public Trade Company is not regulated by law but is regulated by Association Agreement, while at the Company with limited liability and at the Cooperative its internal constitution and representation way of the Company i.e. of the Cooperative is regulated by Law.

In deciding which type of association to apply in order certain legal subject to be associated starting base is also the situation if the associates should be liable for the Company's obligations toward third entities directly and with all its property or only with investments paid for such association. Of course, third entities would have greater confidence in certain association if the liability for association obligations reaches the associates property. In that direction the Partnership and the Public Trade Company are characterized with same characteristics, with the difference that at Partnership the partners are liable directly and jointly for the partnership obligations, while at the Public Trade Company the shareholders are liable subsidiary i.e. when the receivables can not be settled by the Public Trade Company, but anyhow jointly and unlimited. Very similar is the liability at Cooperative which is established as Cooperative with unlimited liability. At the Company with limited liability the shareholders are liable toward the trustees only with their registered capital investments, if presumptions as per Article 28 of the Law for trade companies are not fulfilled. Similar is the liability of cooperative members established as Cooperative with limited liability.

According to exposure in this study, so it's surely that law regulations enable, in everyday life to have many associations in form being legally regulated by certain provisions, but the election of association form depends on concrete requirements of the associates and targets they would like to achieve by such association. The complexity of relations appearing in relation with and because of each association inquires from associates thoroughly to study all implications that may cause the association form they will decide for, while especially helpful will be the scientific and the professional analysis of each form of those associations, but also the placement of such associations in real practical life considering the certain circumstances and the surrounding wherein such business activities are taking part.

Certainly, this study is modest contribution in that direction.

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