

Characteristics, Legal Nature and Taxation of Management Contracts According to the Macedonian Law


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Abstract: Managerial contracts are essentially synthesis of the power of management and the power of the leadership of the company. The conclusion of management contracts is not a simple and routine task which the contracting parties will easily access or, on the other hand, they will assign that task to other (third) persons. With the adoption of corporate decisions by the company, at the moment of appointment to the management body, and thus becoming a member of the body, rights and obligations determined by law arise. In the process of transferring the status powers to the management body or the manager, the owners of the companies or their representatives inevitably have to share a part of the power with the elected managers. The managerial contract is an act of free entrepreneurial will of the two parties that conclude the contract. Thus, this contract regulates the salary, allowances, participation in profit, reimbursement for expenses, reimbursement for life insurance, insurable income, and other employment rights and obligations. On the other hand, managers as individuals facing professional risk are to create a professionally based coalition of interests of all those involved in realizing the company's corporate goals and business policy and thereby enable economic growth and development.

1. Introduction

The problem related to management contracts¹ has become particularly significant and relevant in the last few years. Its actuality comes to the fore especially after the adoption of the new Company Law Act in 2004, which sets the normative foundations for the existence of management contracts in the Republic of Macedonia. Two decades later, the impression is that the research and professional practice related to the issue in question in our country is at a relatively low level.

It is more than clear that the dilemmas in practice were and still are tremendous, starting from the legal nature of management contracts, the content aspect, the determination of the status position of managers, their employment-legal status, taxation of income, insurable incomes, terminological ambiguities and inconsistencies in the laws, the “interference” of laws in the determination of the status position of the managers, the insufficient demarcation of the different echelons of management in the company, etc.

The determination of the type and volume of total income and other rights and obligations arising from the employment relationship of the manager is appropriate to the type and volume of tasks entrusted to and the responsibility of the manager, as well as the manager’s personal contribution to the success of the company’s operations. Accordingly, the application of compulsory and voluntary social contributions and the taxation of personal income differs in some respects from the “normal” employment contract.

For the purposes of this paper, an analysis has been conducted of the legal framework and domestic laws that set the rules and provisions for management contracts. Additionally, a comparative approach will be used to explore the contractual provisions in the manager contract *vs* the regular employment contract. The historical method will facilitate the chronological analysis of the laws and provisions no longer in force or repealed, with laws in force and enforceable provisions.

¹ In this paper, both terms “manager contract” and “managerial contract” are used without referring to the specifics of these terms used worldwide.

Hence, one of the main goals of this paper is to answer the aforementioned dilemmas and ambiguities, emphasizing the previous judicial practice related to the issue in question and the challenges of adopting the new Law on Personal Income Tax.

2. The Individual Existence of the Contract for Regulating the Relations of Business Persons with the Company

The contract regulating the relations of business persons with the company, has certain specificities. That contract must have a certain form and include specific answers to all the questions asked about the status, business and legal powers, compensation and the evaluation of the results of the operation, the resolution of disputed issues and the determination of the responsibility of the business persons in the company. For those reasons, such a contract should be seen as a type of business statute, which delegates specific rights, obligations and responsibilities to business persons, interrelated with the established business venture or the management of the company.²

When defining the concept of a management contract, it is necessary to consider the legal definitions established in the Company Law. These legal definitions refer to two different legal institutions, namely:

- “agreement for the regulation of relations between the company and an executive member of the board of directors, a member of the management board, that is, a manager” which is an agreement that regulates the mutual rights and obligations between the company and an executive member of the board of directors, a member of the management board, that is, the manager; and
- “agreement for regulating relations with a manager” which is an agreement that regulates the mutual rights and obligations between the company, represented by the management body and the manager.

These agreements represent the joint relationship of those facing entrepreneurial risk (investors, owners) and managers as those facing professional risk. Managerial contracts are essentially a synthesis of the power of management and the power of leadership, a type of document that establishes a partnership between those who have a business vision and willingness to invest funds and managers who, as co-owners, accept

² Zoran Mihajloski, *Pravniot status na delovnite lica* (Skopje: Selektor, 2010), 31.

the professional challenge of that business vision to bring it to life. Success and the realization of corporate goals as a motivational set largely coincide for both parties and are an incentive in the process of negotiation and the conclusion of the management contract.

Agreement (contract) for regulating the relations between the company and an executive member of the board of directors, or a member of the management board, i.e. a manager, which is an agreement that regulates the mutual rights and obligations between the company and an executive member of the board of directors, or a member of the management board, i.e. the manager and the contract for regulating relations with a managing person, which is an agreement that regulates the mutual rights and obligations between the company, represented by the management body and the managing person, are *sui generis* contracts determined by the Macedonian Company Law. In principle, these agreements are partnership agreements between those who own the business idea and those who believe that they are capable of turning that idea into a business result.³

The management contract by definition is an act of free entrepreneurial will of the two parties agrees to conclude the contract, a document that realizes the professional synthesis of the power of money, the power of knowledge and the power of partnership. The key role of managers as those facing professional risk is to create a professionally based coalition of interests of all those involved in the realization of the company's corporate goals and business policy and thereby enable economic growth and development.

An agreement to regulate the relations between the company and an executive member of the board of directors, a member of the management board, belongs to the category of agreements of autonomous law. However, when defining this contract, there are still certain dilemmas whether it is a regulated, named contract within positive law or it is unnamed, i.e. an unregulated contract, which, more or less, depends on the will of the contracting parties. Therefore, the management contract is presented as a purely binding contract between equal contracting parties (the company and the manager). The subject matter of the contract is the application of

³ Tito Belicanec, *Komentar i vodici niz Zakonot za rabotnite odnosi* (Skopje: Zdruzenie na pravnici od stopanstvoto na Republika Makedonija, 2006).

managerial intellectual know-how in running an enterprise, with elements of an “normal” employment contract.

3. Regulation of Relations between the Company and Business Persons

With an agreement to regulate the relations between the company and an executive member of the board of directors, a member of the management board, i.e. manager, the will is expressed between the parties for the realization of management decisions on related principles or rules that direct decision-making in business functions and preparation of the plan of the individual business functions.⁴ The relations between the company and the members of the management body are, as a rule, arranged on a status basis. Based on law, a person is appointed to the position of a member of the management body, and the authorized body issues an act on behalf of the company by which that position is awarded. The act by which one is appointed to the position of a member of a management body is by its nature a corporate act. The members of the board of directors, that is, the members of the supervisory board, are appointed to their position based on the decision of the assembly, while the members of the management board are appointed to their position based on the decision of the company’s supervisory board. All these decisions are simple because they are based on the powers contained in the law. At the moment of the election, that is, the appointment to the management body, a set of rights and obligations determined by law arise.

The rights and obligations acquired by the member of the supervisory or management board, the member of the board of directors, as well as the executive member of the board of directors, are determined and defined by the Company Law. The decision to elect the board of directors or supervisory board, and its members, enters into force from the day of adoption. However, some of the rights and obligations determined by law, as an exception, may be regulated differently, if so provided by law. Such is the case when individual members of the management board of the company are deprived of their right to represent the company, a right which is

⁴ Bobek Suklev, *Uspesen modern manager, Lawyer* (Skopje: Macedonian Lawyers Association Journal, 2000).

vested in them by the law, but with a decision of the management board, in accordance with the supervisory board, the right of representation can be granted to some members of the management board. Also, by an act which is in its nature a corporate act, the board of directors appoints the executive members – managers of the board of directors.

The relations between the company and business persons can be regulated on a contractual basis. The Company Law does not exclude the possibility that these relationships, despite being established on a status basis, may also be established on a contractual basis. Relations based on a contractual basis are not established with all members of the management body of the company, only some of the members of these bodies have the privilege to establish contractual relations to regulate the issues related to the position of a member of a company's body. When regulating the rights and obligations of the members of a company's bodies, the Company Law stipulates that only executive members of the board of directors and the members of the company's management board can conclude an agreement to regulate the relations between the company and a member of the company's body.⁵

The possibility of the company concluding such an agreement with non-executive members of the board of directors and the members of the supervisory board of the company is excluded. Determining the status of managers in the company is not only a matter of a logical introductory form of the management contract. In the matter of determining the status of the managers, the act based on which the decisions for the selection and appointment of the managers are made, i.e. concerning the members of the management body, and the authorization of the person representing the company, the status position should be clearly stated. With regard to the manager in the company, the contractual powers and limitations in the legal transaction and representation of the company, as well as the general and special acts that determine the rights, obligations and responsibilities of the managers that are not covered by the management contract should also be defined.

⁵ Milan Nedkov, *Upravljanje so akcionerski društva, Svet na korporativno upravljanje* (2005), 98.

4. Legal Nature of the Management Contract

The status, that is, the position of an executive member of the board of directors, or the member of the management board, is acquired only on a status basis, by a corporate act passed by an authorized body of the company. The financial and material position of the executive member of the board of directors or the member of the management board, is significant for relations that are established on a contractual basis. However, management contracts are not only a legal instrument or a formality with which wages, benefits, rights and obligations are regulated between the contracting parties in relation to the operation of the company and other particulars of mutual relations, but it is a key document in which success depends significantly on the specific job. For those reasons, the Company Law expressly prohibits executive members of the board of directors or members of the management board from entering into an employment contract. With the agreement that regulates the relations between the company and the executive member of the board of directors, or a member of the management board, i.e. the manager, salary, monthly allowance, the right to life insurance and other types of insurance, the right to compensation for travel and other expenses, the right to participate in the annual profit (payment in money, shares, dividends etc.) and other rights can be arranged and determined. With the conclusion of the management agreement, certain obligations established by law arise in the exercise of the authority of the executive member of the board of directors, member of the management board, i.e. of the manager in the interest of the company (managerial obligations), attention to orderly and conscientious trade, keeping of business secrecy during and after the termination of the mandate, prohibition of competition and obligation to disclose conflicts of interests and transactions with interested parties.

While investors and company owners can make decisions based on personal judgments in investing in a business venture, often guided by bare intuition, since they are putting their own funds into the project, and thus taking on their own risk, it is expected of managers that they will assess the sustainability of a given business plan professionally and responsibly, and, based on that assessment, accept or not accept personal involvement in its implementation. That is, in contrast to other

knowledge, skills and abilities that can be relatively easily obtained from the labor market with adequate remuneration, managers have a specific value because they cannot be easily replaced. They do not offer their time at rates according to the company's collective agreements, but what they offer is their entire career, work energy and their ability to concentrate on the prospects of the business venture, while taking personal, professional and legal risks.

Managerial contracts by their legal nature are contracts of autonomous law. It is a special *sui generis* legal institution predicted in the Company Law. In terms of their form and content, management contracts reflect the imperative mandate, i.e. of the business-legal relations of the company and its management, rather than of clearly qualified and measurable proposals for cooperation, on which the established corporate goals, mutual rights, powers and responsibilities are based, including and the remuneration of managers. When preparing and concluding the contract for the regulation of relations between a member of the management body and the company, it is necessary to refer exactly to the legal norm that governs these contracts, in order to know what level of management it refers to. This is of particular importance if it is known that to exercise their powers established by the Company Law, executive members, i.e. the members of the management board, can appoint managers who manage the day-to-day governance of the company in accordance with the decisions, guidelines and instructions of the executive members of the board of directors.

An executive member of the board of directors, or a member of the management board, that is, a manager for the time for which they were elected, can perform the function with or without an employment relationship. When they perform the function based on an employment relationship, they exercise the rights resulting from such a relationship according to the conditions established in the agreement regulating the relations between an executive member of the board of directors, or a member of the management board, i.e. manager and the company, in accordance with the Company Law on Commercial Companies. The provisions of the Law that refer to the executive member of the board of directors and the member of the management board also apply to the manager of other forms⁶ of

⁶ I.e. Limited Liability Company.

commercial companies. The contract for the company determines the manner and conditions under which they are applied unless the function is not performed under an employment relationship. On the other hand, according to the Company Law, the provisions of collective agreements, as well as the provisions of the Law on Labour Relations refer to the establishment and termination of employment, disciplinary liability, salary, benefits and protection of workers' rights. These persons (managers) exercise their rights in the manner established in the contract and according to contractual conditions.

5. Characteristics of the Management Contract

A basic characteristic of management contracts is their autonomy expressed by certain specificities that give them the character of *sui generis* contracts. These contracts are not substitutes for the employment contract that establishes an employment relationship.⁷ The management contract specifies the role of the manager and mutual rights, powers, obligations and responsibilities on a contractual basis. Although at first glance the form of the entrusted mandate seems to be a less significant question, the management contract itself represents a mandatory legal framework of the will of the company and the manager. The managerial contract set up in this way requires that, even in the negotiation phase, the attitudes regarding the work-legal and material conditions must be harmonized with the assumption of the mandate.

The form and legal framework of the individual hiring of managers vary from case to case, but every well-established management contract must provide for several basic parameters in its content, namely: the manager's obligations, powers and responsibilities, the manager's work-legal status, the way of communication and monitoring the execution of business policy goals, motivation and reward for achieved results, business ethical rules, insurance against business risks and the issue of compensation from the damage caused, compensation for the manager and the way of interpreting the changes and the termination of the management contract. Given that most answers to the above questions are covered and determined by legislation, experience shows that it is much better, and in any

⁷ Zoran Mihajloski, *Menadzerski dogovor* (Skopje: Selektor, 2014), 150.

case, it is advisable, to incorporate all the specifics and the agreed positions for cooperation into the content of each specific management contract.

The individual character of the management contract dictates that the presented recommendation finds its application, all the more so that in North Macedonia, unlike in European Union countries, as a rule, no standards of corporate management or ethical codes have been developed, so there is room for arbitrary interpretation of external regulations and the very content of internal agreements.

Considering the overall situation and experiences regarding the conclusion of management contracts in the Republic of Macedonia, the way of setting the elements in the contract is of particular importance. Namely, it is necessary to make the essential provisions of the management contract as detailed and understandable as possible, while using unambiguous concepts and categories. At the same time, the specificities of certain rights, obligations and responsibilities that cannot be expressed in numbers or formulas should be covered descriptively and raised to the level of definitions, using keywords. The Company Law does not provide a solution in what form the contract should be concluded, however, starting from the essence and character of such a contract, it must be concluded in writing. For the methodological way of drafting a management contract, the experiences from the Anglo-Saxon practice are of particular benefit. In Anglo-Saxon law managerial contracts are identical in form to letters of intent, that is, they are fairly specific as a result of the substantial meaning of the manager's mandate. In their content, they avoid redundant provisions in terms of professional obligations and powers. This is because they are essentially understood, as either they are covered in legal regulations or elaborated in detail by the corporate acts of the company. That is why issues are precisely defined in terms of corporate goals, powers, obligations, deadlines, basic salary, conditions for the realization of awards, various compensations related to the work, anti-competitive clauses and more. Compared to the Macedonian law, the content of the structure of most management contracts in the bulk of the text contains paraphrased quotations of legal provisions or stylization of general rights, powers and responsibilities of the parties to the contract.

6. Parties to the Management Contract

When determining the status of managers in the company, the introduction to the management contract should clearly state the act based on which the decisions for the selection and appointment of the managers are made, i.e. the members of the management body, and the authorization of the person representing the company, the status position of the manager in the company, the contractual powers and limitations in the legal turnover and representation of the company, as well as the general and special acts that determine the rights, obligations and responsibilities of the managers that are not covered by the management contract.

The rights and obligations of the executive members of the board of directors/the members of the management board, i.e. the manager, in addition to the rights and obligations determined by law, can also be determined by an agreement (contract) to regulate the relations between the company and an executive member of the board of directors, or member of the management board, that is, the manager. The Macedonian Company Law determines the parties that conclude the management contract. On behalf of the company, the contract with an executive member of the board of directors is concluded by the non-executive members of the board of directors and signed by the president of the board of directors. In the two-tier system of managing the company, the contract with the members of the management board or the manager is concluded by the supervisory board and signed on behalf of the company by the president of the supervisory board. The board of directors, in accordance with its powers, applies for registration of the executive members authorized to represent the company in the commercial register. The representative of the company is a natural person who, according to the law, is authorized to represent the company. The application is signed by all members of the board of directors unless the members have given written authorization to an executive member of the board of directors to sign it. When registering with the commercial register, the executive members submit signatures certified in accordance with the provisions of the Law. The Law provides continuity in the process of creating management contracts, with their negotiation at the initial stage, followed by the conclusion and signing, and finally application for their registration with the commercial register. The Company Law stipulates that a company management body can

decide to appoint persons with special powers and responsibilities called managers. Managers exercise their rights and obligations in the company according to the conditions established in the agreement regulating the relations between the management body and the managing person.

The contract for managing the relations with managers, which by its nature has all the elements of a management contract, regulates the salary, allowances, participation in profit, reimbursement of expenses, reimbursement for life insurance and other types of insurance, as well as other employment rights. In the content of the contract, the type and amount of total income and other rights of the manager should be determined in great detail, to correspond to the type and volume of entrusted tasks and the responsibility of the manager, as well as the manager's personal contribution to the success of the operation of the company. The success and realization of business policy goals as a motivational set in a company must largely be in accordance with the mutual connection and professional relationship of the two contracting parties and be encouraged in the process of negotiation and conclusion of the management contract. The contracting parties of the management contract create a professionally based coalition of interests of all those involved in the realization of the business policy goals of the company and thereby enable economic growth and development. On behalf of the management body of the company, the contract with the managing person is signed by the president of the management body. The regulation of relations between companies and business persons is largely harmonized with the regulation of this issue applicable in the European Union, and it includes the principles of corporate governance accepted in wider international frameworks.

The problems related to the legal framework regulating relations between the management and the company are covered by different legislations mainly in laws concerning company law. For example, in Serbian legislation, management contracts are governed by the Company Law, the Law on Labour, the Law on Contributions and Mandatory Social Insurance, the Law on Pension and Disability Insurance and other related laws. Similarly, to Serbian legislation, Croatian legislation regulates this issue in the Law on Commercial Companies and other regulations governing the framework of powers and responsibilities of managers in legal action.

Polish legislation regulates the relationship between management and the company in a much more detailed manner in two main regulations: The Code of Commercial Companies and the Labour Code. Also, with regard to this matter, and especially to the remuneration of managers, the Civil Code of Poland has a significant place. It should be considered that the rest of the European countries regulate these relations in a similar way, based on the relevant European directives, which will be discussed separately in the paper.

In the USA, the judicial reasoning concerning management contracts has focused on the question of the decision-making autonomy of the companies themselves. Whether a management contract is considered valid depends on the degree of delegation of the management function.⁸ The board of directors can give authority to act, but it cannot delegate its function of management. Thus, the management is not legally authorized to replace the board of directors of a company. In that context, the courts consider criteria such as the duration of the contract and who has the authority to make the final decision regarding the company's business policy.⁹ The principle of non-delegation¹⁰ applies even if the company's shareholders have approved the management contract.¹¹

Legal regulations for management contracts are found in the Investment Company Act of 1940. This law covers contracts between investment companies and investment advisers. The permissibility of these agreements is presumed. The law provides that they should prevent the adviser from exercising too much influence and ensure the reasonableness of their remuneration. The agreement is subject to specific conditions regarding the approval of outside directors. In the case of long-term contracts, re-consent is required. The Public Utility Holding Company Act of 1935 places the management contracts of public utilities and companies that provide public goods and services under the supervision of the Securities and Exchange

⁸ 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), p. 28.

⁹ Sherman & Ellis Inc. v. Indiana Mutual Casualty Co 41 F 2d 588 (7 Cir. 1930).

¹⁰ Cf. Henn 425.

¹¹ Grossfeld supra ch 4 p. 111, kritika Lattin, Jennings and Buxbaum 309.

Commission. The fundamental issue in these contracts is the reasonableness of the relationship between performance and consideration. The two features that are given particular attention are the limitation of compensation to actual costs and the allocation of costs between individual subsidiaries. In France and England, management contracts are also allowed but only to a limited extent. Since they are rarely mentioned in the relevant literature, such contracts do not seem to have any practical significance.

7. Benchmark for Rewarding Managers and Taxing Them

The determination of the type and amount of total income and other rights and obligations from the employment relationship of the manager is adequate to the type and volume of entrusted tasks and the responsibility of the manager, as well as their personal contribution to the success of the company's operations.

The Company Law stipulates that the executive members of the board of directors and the members of the management board of the company have the right to a salary, that is, a monthly allowance, the right to life insurance and other types of insurance, reimbursement of travel and other expenses and other rights. Additionally, the executive members of the board of directors or the management board have the right to participate in the company's profit. Consequently, the most important components for assessing the manager's salary in a specific company are the status of that company in the market in which it operates, the content of the established business policy goals, the complexity of the manager's role in the specific company, the professional reputation of the candidate for manager, the structure of the total ambiguities and vagueness and the attractiveness of the assigned mandate and salaries compared to those offered by the competition.

The data and arguments about the status of the company indicate that company's recent and present position in the market in which it operates. These factors can be divided into several groups, namely:

- size of the company depending on the number of employees and volume of work;
- state of the ownership structure in the company expressed through the indicators of the capital structure;
- the financial power of the company expressed through the available own sources of financing, income, costs and profitability;

- the organizational complexity of the company's business venture, which can be either a small, medium or large organizational unit;
- the complexity of the production program expressed in the number and types of products, their quality and technical equipment, and
- the position of the company in the market and its competitive position.

The second component for determining the manager's salary represents a set of parameters by which the justification of the company's business policy goals can be expressed. As a set of desired changes, they can be expressed descriptively or with concrete projects in temporal and financial dimensions. Their viability depends on the behavior of the company and its competitive position, the complexity of the market, the quality of the available resources and the content of the production program. The complexity of the manager's role in the company is a significant component in determining the basic salary of managers provided for in the management contract. The attractiveness of the basic salary will also depend on the professional references of the candidate, as well as on the framework and intensity of the responsibilities of the assigned mandate. These factors will equally affect other components for evaluating and determining the salary of managers. However, certain essential rules systematized in several categories are of great importance for determining the salary in the negotiation between the contracting parties before the conclusion of a management contract. These rules say that:

- if the amount of the manager's salary stipulated in the management contract and other permanent compensations is higher, it entails a proportionate reduction of the share of remuneration on account of participation in the profit and shares of the company;
- the manager's salary is not a gift and it should be earned to the extent that the company's business policy goals are met, i.e. by delegating the powers and trust to manage the company's operations, managers invest a lot in the development of their own career and as such have numerous alternatives in the labor market (demand and supply of managers);
- the salary must be sufficiently motivating for the managers to be part of the company's mid-term and long-term development business goals;
- the salary should be a measure of the professional reputation and prestige of managers, which tends to make their salaries proportionate to

- the position and reputation of the owners of the company in the market;
- the salary should be projected in such a way that it compensates in advance the possible inflation and the rise of living costs during the mandate;
 - if the owner of the company offers a relatively low salary to the manager and high expectations for rewards and other benefits, it implies that they are interested in a manager-entrepreneur willing to take business risks, or they believe that the company's business policy goals are easily achievable;
 - if the owner of the company offers the manager a relatively high salary and a modest package of benefits, it means that they are interested in a manager-professional not willing to engage in high-risk games who considers that the company's business policy goals are not easily achievable, and
 - if the manager accepts a relatively high salary, it leaves them more room in the negotiations for the conclusion of a management contract to better position themselves with regard to the rewards and other benefits arising from the assigned mandate, and above all in the fair participation in the business profits, through different forms of rewards.

The rights of the executive members of the board of directors, and the members of the management board, i.e. the manager, are regulated by a management agreement, according to the type and scope of the entrusted tasks, the work-legal status and their personal contribution to the success of the company's operations. In addition to the right to salary, i.e. monthly compensation, for the work of the executive members of the board of directors, and the members of the management board, i.e. the manager, the assembly can also decide to approve profit sharing.

The approved participation in the annual profit of the company is calculated based on the part of the annual profit that remains after the reduction of the realized profit by the amount of the total losses carried over from previous years and the amounts set aside for reserves.

As mentioned above, the status of the managers is mostly based on dispositive legal rules, which gives the executive member of the board of directors, and the member of the management board, or a manager the right to agree to this position with or without employment status. As mentioned

above and prescribed in Article 365 paragraph 2 of the Company Act, “The executive members of the board of directors, the members of the management board, or the manager, shall be entitled to a salary, or a monthly remuneration, right to life insurance and other types of insurance, compensation of travel and other expenses and other rights” and in Article 366 paragraph 2 of the aforementioned Act:

Unless an executive member of the board of directors, a member of the management board, or a manager performs their functions without establishing an employee status, they shall, within the time period they were elected for, exercise the rights arising from such employment status according to the terms stipulated by the agreement regulating the relations between executive members of the board of directors, members of the management board, or manager, and the company.

In both cases, the parties are free to agree upon the duties and rights under the provisions of the Company Law.

If the manager does not have an employment-legal status in the company under a management contract, the tax basis will be the total remuneration, the personal income tax is 10% and usually charged to the company. Income tax is payable by a person on their income earned from various sources during the fiscal year based on their residential status. Macedonian tax residents are taxed on their worldwide income. Non-residents are taxed on their income derived in the territory of Macedonia. “All types of revenues earned in the country and abroad are included in the income”¹² and personal income tax needs to be paid. Personal income tax is paid annually on the sum of the net revenue from all sources, except for the revenues that are tax-exempt under the Law on Personal Income Tax. Those are revenues mentioned in Article 3 of the same Law: personal income from employment, income from self-employment, income from royalties and other related rights, income from sale of own agricultural products, income from intellectual property (IP) rights, income from lease and sub-lease of movable and immovable property, income from capital, capital

¹² Article 3, Law on Personal Income Tax.

gains,¹³ income from fixed-term deposits,¹⁴ income from insurance, and other incomes.

If the manager has an employment-legal status in the company according to the management contract, in addition to the salary determined by the contract, the social contributions are paid for the manager, and tax reductions are applied as well, thus, the tax basis for personal income tax is lower. The company is liable for the calculation and payment of the contributions on behalf of the manager. The company (Employer) is required to calculate and withhold compulsory social security contributions and personal income tax from the manager's (employee's) gross salary and pay them into the accounts of respective funds. These are public funds (pension, health). The current level of compulsory social security contributions is as follows:

- 18.8% for mandatory pension and disability insurance (that is composed of the pay-as-you-go system and the mandatory capital fully funded¹⁵);
- 7.3% for mandatory health insurance;¹⁶
- 0.5% rate of additional contribution for mandatory health insurance in case of injury at work and occupational disease, and
- 1.2% for mandatory unemployment insurance contribution.

Personal income tax is calculated according to the Law on Personal Income Tax, using the tax and benefit microsimulation (MK-MOD) model. This model uses the Law on Pension and Disability Insurance to simulate pensions in cases of the right to old-age pension and the right of the lowest pension amount.

Personal income tax is calculated as a flat rate of 10%. The new Law on Personal Income Tax¹⁷ adopted in 2018 with effect as of January 1, 2019

¹³ As of January 1, 2023, the applicable tax rate on capital gains from sale of securities and shares issued by an investment fund will be 0% if the taxpayer has owned them for a period longer than two years.

¹⁴ The taxation of income from fixed-term deposits is postponed until accession of North Macedonia to the European Union.

¹⁵ The pension system in the Republic of North Macedonia is regulated by the Law on Pension and Disability Insurance and the Law on Mandatory Capital Fully Funded Pension Insurance.

¹⁶ Law on Compulsory Health Insurance.

¹⁷ Law on Personal Income Tax, Official gazette of Republic of North Macedonia No. 241/2018; 84/2019; 275/2019; 290/2020; 85/2021; 274/2022.

introduces progressive taxation.¹⁸ Article 11 of the Law on Personal Income Tax stipulates that for any labor income earned, a progressive rate of 10% should be paid for the earned income up to 1,080,000 MKD per year, and 18% for any income earned above this threshold. The endorsement of this provision was postponed every year starting in the COVID-19 period, and, as of January 1, 2023, a 10% flat tax rate is applicable on income from employment. Progressive taxation has not become applicable so far.

In Macedonia, management contracts include confidentiality clauses, thus it is difficult to say what amounts of salaries, remuneration and profits are involved, but it can only be concluded that there are no limits when it comes to managerial salaries, remuneration awards or bonuses. The availability of this data differs in different legal systems and generally depends on the model of corporate governance. By comparison, in Europe, the disclosure of this data primarily for publicly owned joint stock companies is as follows: Great Britain and the Republic of Ireland have the most advanced systems for disclosure of data regarding the remuneration of directors and management. Data are published for each director separately on an annual basis. It is similar in France.¹⁹ Unlike these countries, Germany delayed the implementation of European data disclosure directives for a fairly long time because the right to anonymity in the amounts earned was considered a “natural right” according to the existing model of corporate governance.²⁰

8. Conclusion

Managers can successfully perform their duties and functionally and professionally perform their role as executive members of the board of directors only if the management body in the company has determined the general framework of business activities in the company. The manager's functions have to be performed professionally and responsibly and they involve the obligation to assess the viability of any business venture.

¹⁸ Progressive taxation on individuals was in force until 2006 when flat taxation was introduced with a 12% rate until 2008, and later 10%. Currently, the rate of 10% is still applicable.

¹⁹ Goran Koevski, *Komparativno korporativno upravljanje*, Faculty of Law, Skopje, 2005, 223–4.

²⁰ John C. Coffee, “The Future as History: The Prospects for Global Convergence in Corporate Governance and its Implications,” Columbia Law School Center for Law and Economic Studies Working Paper No. 144, 1999, 62.

Managerial contracts are essentially a synthesis of the power of management and the power of the leadership. The basic characteristic of these contracts is their autonomy expressed by certain specificities that give them the character of *sui generis* contracts. It is important to emphasize that during the preparation and conclusion of the management contract, it is necessary to refer precisely to the legal norm that governs these contracts, in order to know what level of manager it refers to.

It is extremely important to note that the provisions of the Law on Labour Relations and collective agreements that refer to the establishment and termination of employment relationships, disciplinary responsibility, salary, benefits and protection of rights under an employment relationship do not apply to the executive members of the board of directors, or the members of the management board or the manager and the officers. These persons exercise all the mentioned rights in the manner and according to the conditions determined by the management contract under the Macedonian Company Law. It cannot be said that the Republic of North Macedonia has some significant experiences regarding the existence of such contracts in legal reality. However, it seems that the previous judicial (and legal) practice showed certain shortcomings in the creation and application of management contracts in domestic frameworks. In this sense, it is of significance that the judicial practice has arguably taken consistent and legally sound positions concerning strategically important issues and the conceptual setting of management contracts. However, it seems that even more work will have to be done in terms of the training and specialization of all stakeholders, including the courts. In particular, further training and specialization in commercial law should be provided to judges who, from a logical perspective, should decide on cases related to management contracts.

The Macedonian Company Law stipulates that the executive members of the board of directors and the members of the management board of the company have the right to a salary, remuneration as members of the management bodies and reimbursement of costs from employment and all other allowances related to work provided for under the Labour Law, General Collective Agreement for the private sector, collective bargaining agreements and regulations for the state administration bodies, which is

to be determined by the company. Based on their intrinsic characteristics, it may be said that these contracts are *sui generis* contracts.

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