

## **INTELLECTUAL PRODUCTS AS AN IN-KIND (NON-MONETARY) CONTRIBUTION**

The term ‘in-kind’ or ‘non-monetary’ contribution is regulated by the Commercial Law, Part Three – Commercial Companies, Chapter One, General Provisions, Art. 72 (LEX, 2016). It envisages any right, any participation in a company’s capital, evaluated in terms of money. (Bonev, 2015). The term suggests that contributions to the company are made in the form of assets other than money. In other words, these are a kind of rights with the following options possible:

- property rights – for example right to property, right to construction, right to use on properties owned by the contributor;
- right both on a movable and on an immovable estate.

The following needs to be specified: the property owned by the company (where the contributor is no longer its owner), or for use (where the contributor preserves its property and after the company is closed, he/she restores fully the property right);

- rights on intangibles – patents, licenses, trade marks, industrial designs, know-how, etc.;
- obligation rights (receivables) – the contributor may have lent money and instead of the borrower paying the loan, he/she will be liable to the company (the company becomes a creditor on the receivable);
- securities – a specific type of movables (documents), materializing rights, which depending on the security can be: money receivables (promissory note), membership rights (in shares), etc.

In this broad range the Commercial Law does not allow future labour or services as a non-monetary contribution.

In-kind contributions through objects of intellectual property can be made both in setting up a commercial company and in increasing its capital. The Commercial Law requires that the company contract, respectively the Statute Book should state the name of the contributor, the description of the non-monetary contribution, the monetary value of the contribution and the grounds of the contributor’s rights. The legislation of some countries allows the in-kind contributions to be made in parts (for example, the USA) and the legislation of some other countries requires that the in-kind contributions be made in total. In our country there is no explicit regulation regarding this case but the experts in this sphere comment that it is rather the second option that is being applied, as the moment of recording the respective act is taken into account (regardless of whether this refers to setting up a company or increasing its capital).

The contribution to a private limited company, public limited company or a limited joint-stock company is evaluated by 3 independent experts, appointed by the registry officer at the Registry Agency. The conclusion of the experts must contain a full description of the non-monetary contribution, the method of valuation, the obtained value and its correspondence to the amount of the share of capital or the number, the nominal and issued value of the shares, registered by the contributor. The conclusion is presented in the Commercial Register together with the application for entry (LEX, 2016).

The regulations of the National Accounting Standard № 38 – Intangible assets are applied for the purposes of reporting intellectual capital. An asset is classified as intangible when: it meets the definition of an intangible asset; it can be duly evaluated when acquired; economic profits are expected from its use, proved with the presence or a plan for supplying enough resources, an opportunity to effectively fulfill its functional role and clearly defined specified technical feasibility.

The regulations of this standard classify intangible assets in the following way:

- a/ rights to industrial property – such rights are present when they are owned or can be used for a long time by the enterprise, regardless of whether they are purchased or created in it and they can be: trademarks, copyrights (incl. software), trade names, licences and franchises, patents;
- b/ long-term acquired rights on intellectual property – rights similar to the above mentioned, but acquired by the enterprise on the grounds of agreements with the creator;
- c/ concession rights – acquired according to the relevant legal order;
- d/ technological rights – such rights can be: execution of prescriptions, formulae, models, designs, prototypes, tools, matrixes, templates, etc.;
- e/ intangible assets in the process of development;
- f/ other intangible assets.

An internally generated intangible asset is recognized and reported according to the creation phase in which it is. An internally generated intangible asset created as a result of research is not recognized as an intangible asset; during the research phase of an internal project the enterprise cannot prove unambiguously that there is an intangible asset which will lead to future economic profits.

An internally generated intangible asset, created as a result of development activities, is recognized as intangible when the enterprise proves: the technical feasibility of completing the intangible asset so that it will be ready for use or sale; an intention to complete an intangible asset and to use it or sell it; an ability to use or sell an intangible asset; the ways in which the intangible asset will lead to generating future economic profits; the presence of adequate technical, financial and other resources necessary for finalizing the development, use or sale; an ability to evaluate the costs arising from the intangible asset in the course of its development.

Externally generated intangible assets created during their acquisition are evaluated according to the acquisition price, which includes the purchase price and all direct costs for the preparation of the asset to be used as intended.

Long-term intangible assets (respectively the objects of intellectual property) are traded, capitalized and depreciated like any other depreciable long-term tangible assets. However, unlike them an intangible asset can be transferred (licensed) to many other owners, whereas the initial owner of a specific tangible asset (e.g. a computer) can transfer it to only one new owner. And software (an intangible asset) can be licensed to an unlimited number of owners and the initial owner continues to use the intellectual product.

What is characteristic of intangible assets is that their use in business is a criterion of their worth and revaluation. Usually, in such valuations the price of the asset is calculated based on the businesses of all entities that legitimately use it, through their turnover, profits, new licensing and sub-licensing transfers, etc., therefore the initial purchase of the asset, without making any new investment in it, can get more expensive, regardless of the fact that there is no direct investment in it and at the same time its residual value decreases. Practically, it is possible that assets for hundreds of thousands of BGN are acquired for tens of thousands of BGN immediately, and for a ten-year period of paying off its valuation progresses and can reach millions of BGN after several revaluations.

Besides determining the fair market value of the objects of intellectual property with a view to including them in the accounting balance, business valuation is carried out in a number of specific cases, such as: increasing the capital of the company; change in the property; transformation of enterprises; creation of joint-ventures; satisfying the claims of shareholders, partners and creditors; withdrawing a loan as a collateral; trade operations such as franchising, licensing transactions, work done with materials supplied by the client; insurance operations, taxation, etc.

The newly created capital can also be used for acquiring shares in another enterprise, according to the Commercial Law. The opportunities which the objects of intellectual property offer are beginning to be increasingly used by business entities in our country for more efficient asset management and business development. At the same time, the consulting business in Bulgaria, incl. intellectual property consulting, is still lacking in experts in this sphere. The importance of these objects tends to grow and they will play an increasingly important role in the Common European market. For this reason the formation of their price is becoming a necessary business activity.

#### ***References:***

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