

# Specific Commercial Power of Attorney – Definition in Legislation of the Republic of North Macedonia

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## Abstract

The aim of this paper is to give a substantive definition of the procurator as the broadest commercial power of attorney in accordance with the legislation of the Republic of Northern Macedonia and as a special type of power of attorney which can be given only by the person who has the role of a merchant, to indicate the legal nature of the procurator, its meaning, authorization and restriction in the trade, in the relations that occur between the represented and the procurator, the procurator and the third party, the responsibility, its strengths and weaknesses and similar.

**Keywords:** representing, represented person, procurator, merchant, Trade Company

## 1. Introduction

The procuration represents the special form of power of attorney. It is a special commercial power of attorney with content and scope prescribed by the law. The procuration is commercial power of attorney *sui generis* which can be established only in the business relations but not in other legal relations (such as civil law, family, martial etc.).

As a legal commercial institute the procuration originated in German law and was introduced by the General German Commercial Code of 1861 (Note 1). The provisions stipulated with this Code represent the solutions that refer to the procuration in the commercial Code of the Federal Republic of Germany which are now in legal force now (Note 2).

The German model of the procuration with minor modifications is taken from Austria, Czech Republic, Denmark, Norway, Finland, Slovakia and other countries.

The Law on Trade Companies of Croatia (Note 3), Republic of Serbia (Note 4), Republic of Montenegro (Note 5), Bosnia and Herzegovina (Note 6), Republic of Slovenia (Note 7) and Republic of North Macedonia (Note 8) (at the time of the enactment of the Law on Trade Companies in 2004, Republic of Macedonia), states that were federal members and that emerged after the break-up of the former Socialist Federal Republic of Yugoslavia, contained almost identical legal solutions for the procuration trade law institute according to the German model. The basic company law of the former Socialist Federation of the Republic of Yugoslavia also regulated the prokura institute according to the German model (Note 9). The Anglo-Saxon and Romanian legal systems do not recognize the procuration.

The word procuration itself has Latin origins and derives from the Latin word *procurare*, which specifically means executing the work on behalf of a third party.

The procuration is related to execution of trade activity and refers to the representation of the merchant in the trade relations. This is a main reason why the content of the procuration as a legal commercial institute is regulated by the company laws.

The legal institute procuration is inextricably linked to the legal institute of representation, which in basic material and legal sense is regulated with the laws in the field of obligations. In other laws, such as in Law on Litigation procedure (Note 10), Law on General Administrative Procedure (Note 11), Law on Misdemeanours (Note 12) the institute of representation is regulated in a procedural legal meaning.

## 2. Procuration

### 2.1 *Procuration as a Special Type of Power of Attorney*

The procuration is an institute in the field of representation typical for the commercial law. It is a power of attorney which occurs in a very special manner: with the content and the scope determined by the law, and by the concluded agreement between the merchant and the proxy.

The procuration is established in the legal matter between the company and the procurator.

The procuration is registered into the Trade Register.

## *2.2 The Concept of Procuration in Accordance with the Law on Trade Companies*

The Law on Trade Companies defines the procuration from the legal aspect in the following way: The procuration is a commercial power of attorney whose content and scope are determined by this law. The procuration shall be issued only by a person who according to the law is considered as a merchant. The procuration can be issued in a manner determined by the declaration for establishment of the trade company by one person, by the articles of association, i.e., Statute (Note 13). In the concept of the procuration the following essential elements are preserve from a legal aspect: a) the procuration represents a commercial power of attorney; b) the content and the scope of authorizations are regulated with law; c) procuration shall be given solely by the person who in accordance with the law is considered as a merchant; and d) The procuration shall be given in a manner determined by the statement of establishment of a trade company by one person, the articles of association, that is, the statute of the company (Note 14).

### *2.2.1 The Procuration as a Commercial Power of Attorney*

A power of attorney shall be a representation authorisation conferred by a principal to the representative by means of a legal procedure (Note 15). Procuration is a commercial power of attorney given in written form.

The entire legal effect of the procuration is not achieved only by issuing the power of attorney, also there is the need to conclude an agreement for regulation of the relations between the merchant and the procurator. It is a legal provision which stipulates that the relations between the trade company and the procurator, as well as the remuneration, shall be regulated by a contract (Note 16).

### *2.2.2 The Content and Scope of the Authorizations of the Procuration Regulated by the Law*

The content and scope of the authorizations are regulated by the Law on Trade Companies (Note 17). The merchant in the power of attorney for issuing the procuration can adjust the scope of authorization which are given to the procurator and define limitation in his representation of the merchant with third parties. However, according to the Law, the procurator cannot alienate and pledge the immovable's of the trade companies and cannot give statements, nor conclude legal activities, that is undertake legal activities leading to initiation of a bankruptcy or some other procedure that can result in termination of the company (Note 18).

### *2.2.3 Issuance of the Procuration*

Procuration can be given only by a person who in accordance with this Law is considered as a commercial entity (Note 19). According to the Law on Trade Companies, for commercial entity shall be considered the trade company and sole proprietor and only this type of subjects can give procuration.

The law on trade companies does not contain a provision that specifically states which body gives the power of attorney on behalf of the merchant. In this part, the law contains the provision which refers only to the sole proprietor and with which is prescribed that sole

proprietor shall personally give the procuration, and the authorization for giving procuration cannot be transferred to another natural person (Note 20). As for the trade companies, in giving the procuration there shall be applied the rule by which in the name of trade company, procuration can be given by the persons and the bodies which are authorized to represent the trade company. In personal companies, where the management bodies are not formed, appointment of the procurator is done by the partners who are authorized to manage the company. In capital companies, those are managing bodies such as: Board of directors, Management board, or the manager/ managers (Note 21).

The procuration can be issued in a manner determined by the statement of establishment of the trade company by one person, by the Articles of association, ie. Statute of the Company (Note 22). The partners, ie the shareholders with the acts for establishing the trade company shall determine which person/body in the name and on behalf of the trade company can give a procuration, as well the possible existence (determination) of an obligation to obtain consent from the partners, from the bodies that perform supervision in the company and so on.

#### 2.2.4 The Person to Which Procuration Is Issued

The procuration can be issued to any natural person capable to contract, regardless of the duties and activities he/she is performing, unless otherwise determined by the statement of establishment of the company by one person, with the Articles of association, i.e., the Statute

The procuration cannot be given to a legal entity (Note 23). The provider of the procuration, with the Articles of association has the right and freedom to regulate all the issues which are related to the conditions for acquiring the status of procurator, the limitations of the procuration and similar.

### 3. Registration of the Procuration in the Trade Register

Giving the individual or joint procuration, its limitations and its revocation are registered into the Trade Register of the Republic of North Macedonia which is conducted in accordance with Law on the one-stop-shop system and keeping a Trade Register and Register of other legal entities (Note 24). The name and surname of the procurator and his/her unique personal identification number of the citizen shall be entered in the trade register. The decision for granting the procuration, that is, the decision for limitation, that is, revocation of the procuration and the certified signature by a notary (containing the full name and surname of the procurator) shall be enclosed together with the registration application (Note 25).

Registration of the procuration in the trade register represents a legal fact and a circumstance for the safety of the third party that enters into business relationship with the trade company which is represented by the procurator. The entry of the procuration in the trade register expresses its public-legal aspect which is expressed in the way that the procurator shall sign the trade company by signing his/her name and surname below the business name including words indicating his/her position as a procurator or by adding the following abbreviation: “p.p” (Note 26).

#### **4. Legal Effect of the Procuration**

The procuration is considered valid when the decision to award the procuration is submitted to the procurator. The legal actions undertaken based on the procuration shall be valid and shall oblige the merchant who gave the procuration, even when the procurator is not registered in the trade register yet. Registering the procuration into the trade register has declarative meaning (Note 27). This is for practical reasons because in real life the situation is different and the procurator according to the business needs starts his representation before the entry of his authorizations in the trade register.

The issuance of the procuration occurs with the legal acts which give authorization to the procurator, by its acceptance and by concluding an agreement for arranging the mutual relations between the company and the procurator.

These legal acts are concluded and are in legal force even before the entry of the procurator in the trade register and the procurator has the right immediately to take over the given authorizations for running the affairs of the company. These are the material legal requirements that must be fulfilled before the entry of the procuration in the trade register. On the other side, the entry of the procuration in the trade register is performed additionally and a certain period of time may pass until the registration is made.

There is no legal obstacle for the provider of the procuration to decide the legal effect of the procuration to take effect from the day of entry in the trade register, in which case there will be no difference between the actual situation and the situation according to the entry in the trade register.

#### **5. Scope of the Procuration**

##### *5.1 Scope of Authorizations Arising from the Procuration in Accordance with the Law of Trade Companies*

The procuration as commercial power of attorney has a wide scope of authorizations. The procurator can conclude contracts and perform all legal actions and activities in the name and on behalf of the company within the scope of operation of the company, manage the enterprise of the procurator provider and represent the company in procedures before the administrative and other state bodies, organizations and institutions with public authorizations and the courts (Note 28).

##### *5.2 Scope of Limitations of the Procuration in Accordance with the Law of Trade Companies*

The procurator cannot alienate and pledge the immovable's of the trade companies and cannot give statements, nor conclude legal activities, that is undertake legal activities leading to initiation of a bankruptcy or some other procedure that can result in termination of the company. In accordance with the Law on trade companies there is an explicit prohibition that the procurator cannot issue a letter of attorney for the purpose of concluding contracts and other legal activities to another person (Note 29).

1) The prohibition for alienation and encumbrance of the immovable's of the trade company.

The prohibition for alienation and pledge applies only to the immovables of the trade company. This is a situation in which due to the irresponsibility of the procurator the size and value of the company's property may be endangered.

2) Other limitations of procuration.

The procurator cannot issue a letter of attorney for the purpose of concluding contracts and other legal activities to another person (Note 30).

The procurator cannot conclude contract with oneself. The act that the procurator concludes in the name of the trade company as one party and in his/her personal capacity as the other party, whether in his/her name and on his/her behalf, in his name/her and on another party's behalf, or in the name and on behalf of another party, shall be considered null and void, provided that the procurator has not been explicitly authorized thereto.

Limitation of the procuration, not anticipated by this Law shall have no legal effect against third parties regardless whether the third party was aware or taking into consideration the circumstances should have been aware thereof (Note 31).

## **6. Types of procuration**

The procuration can be individual or joint.

### *6.1 Individual Procuration*

The procuration can be given to one natural person (individual procuration)—individual prokura (Note 32). This is the case when the merchant gives the procuration to one natural person. But the merchant can decide to give procuration to more natural persons. When the procuration is given to two or more natural persons, each of these persons shall be a procurator who independently represents the trade company within the frames of the authorizations determined by the Law (Note 33). For the purpose of substantial differentiation from the individual procurator, it is necessary for the merchant to strictly state this in the procuration that each of the procurators will independently perform the given authorizations.

### *6.2 Joint Procuration*

When the procuration is given to two or more persons we are talking about joint procuration. The procuration given to two or more persons shall be considered as joint procuration, provided that it is strictly stated in the procuration (Note 34). If this is not stated it shall be considered as an individual procuration.

In joint procuration two or more persons appear as authorization holders. In case of joint procuration, the statements of will, the legal actions and activities shall be valid if they are jointly performed by all procurators, that is if all procurators gave their consent. The legal actions and activities performed by one of the procurators shall be considered valid, if an explicit consent has been obtained from all procurators or if consent is obtained additionally from the other procurators (Note 35).

The joint procuration is considered as a good protection against the abuse of the merchant's trust, but also as a manner of performing the procuration in way that enables a safe degree of competences (Note 36).

Each statement of will or a legal actions and action done by one of the procurators shall be considered to have been done to all procurators (Note 37).

In a case of joint procuration, the awareness of legally relevant facts or the guilt of one of the procurators shall cause legal effects on the provider of the procuration, regardless of the fact whether the other procurators knew or were aware thereof (Note 38). It is about fulfilling subjective assumptions that are relevant to the legal action of the procuration.

## **7. Termination of the Procuration**

### *7.1 Termination of the Procuration with Revocation Given by the Trade Company*

The procuration can be revoked at any time, regardless of the legal grounds for issuance of the same (Note 39). In accordance with the Law on obligations, the principal may, by his own choosing, cancel or limit a power of attorney, even if he/she has renounced that right in the contract. Cancelling or limiting a procuration may be done by means of a statement without any special form (Note 40) The law on trade companies in the part of the provision for revoking the procuration prescribes that the The provision of the contract by which the trade company denies the right to revoke the procuration, as well as the provision which imposes time limits or other terms on the right to revoke the procuration, shall be considered null and void (Note 41).

Subsequently with the revocation of the procuration, shall neither exclude nor reduce the procurator's rights defined in the contract on the basis of which he/she was appointed as a procrarator (Note 42). If the procurator considers that his/her rights have been violated by revoking the procuration, he/she can request protection before the competent court.

### *7.2 Other Types of Termination of Procuration*

In addition to the revocation, the procuration can be terminated in the following cases

- 1) With resignation by the procurator;
- 2) A prokura shall expire with the death of the representative;
- 3) By losing the business capability of the procurator;

The procuration terminates with resignation by the procurator. The resignation is unilateral statement of the procurator. When damage is caused by this resignation, there is an obligation on the part of the procurator to compensate the damage done to the merchant.

The procuration may terminate with the termination of the existence i.e., death of one of the entities in the contractual relationship. The procuration of the trade company expires when the trade company no longer exists as a legal entity (Note 43) or in case when the bankruptcy procedure is opened against the trade company. Also the death of the procurator who is a natural person leads to termination of the procuration (Note 44).

The procuration can be issued to any business capable natural person. The loss of the legal capacity of the procurator represents a ground for termination of the procuration.

### *7.3 Termination of the Procuration Issued by the Sole Proprietor*

The procuration given by the sole proprietor shall not terminate in the event of death of the procuration provider, nor if the capacity to contract of the procurator's provider has been revoked or limited (Note 45). This provision represents an exception from the general rule by which the termination of existence of the one of the subjects leads to termination of the legal relationship. Pursuant to Law on obligations the power of attorney shall be terminated with the termination of existence of the legal entity, ie the death of the person which has issued the power of attorney, unless the indicated work cannot be terminated without causing the damage to the legal successors or the power of attorney is valid in case of a death of the issuer upon its will or giving the nature of the work (Note 46). This exception is justified by the fact that the trade company which is represented and managed by the procurator does not cease with the death of its owner.

The company in such case by the force of law or by will passes to the inheritors of the owner. In case the company ceases to exist, then the procuration shall be terminated, because the subject of the procuration ceased to exist. With the termination of the company the procuration ends (Note 47).

## **8. Deletion of the Procuration from the Trade Registers**

In addition to the issuance and termination of the prokura, its revocation is also registered in the trade register (Note 48).

The legal effect of the revocation and deletion of the procuration is different from the legal effect of the entry of the procuration in the trade register. The legal effect of the registration of the procuration is of a declarative nature.

The revocation of the procuration as well as its narrowing shall have no legal effect on a third party that has entered into a contract with the representative or has performed any other legal transaction without being aware or having to be aware that the power of attorney has been cancelled or limited (Note 49).

However, the issuer of procuration can claim liability from the procurator only if he has previously informed him that the procuration has been revoked or narrowed or if the procurator knew this fact and still continued to take legal action with third parties and thus caused damage to the company.

Until the procuration is deleted from the trade register, the procurator retains his/her powers of representation.

Each third party which enters into a legal relationship has the right to rely on and to refer to the content of the procuration registered in the Trade Register.

The entry of the procuration is important for reasons and needs of legal certainty, because the public has the right to believe in the content and correctness of the data entered in the Trade



Register.

This is so-called positive legal effect of the procuration which is in accordance with the principles of truthfulness and consciousness (Note 50), principles according to which the registers are kept and the entries in the trade register are performed. The third parties that participate in the legal transactions or exercise any of their rights trust the data from the register and do not bear the harmful legal consequences that may arise from a false entry of a data or failure to enter data in the register.

## **9. Tax Liabilities on the Basis of Procuration**

The tax legislation of the Republic of North Macedonia does not prescribe tax reduction based on income from procuration nor in accordance with the Personal income tax law, or with the law on Personal tax from income (Note 51).

**Abuse of the rights in the establishment of the obligations, exceeding the limitations by the procurator and non-existence of obligation for fulfilling the concluded contract from the represented company due to the existence of third-party liability toward the represented company.**

The limitations of the procuration are explicitly stated in the Law on Trade Companies. However, there may be limitations on the power of attorney in case of abuse of rights in the establishment of obligations.

All parties in the obligations shall be equal (Note 52). When establishing obligations and when exercising the rights and obligations arising from those obligations, the parties shall be bound to abide by the principles of consciousness and honesty (Note 53). The exercise of a right arising from the obligations which is contrary to the purpose for which it was established or acknowledged by law, shall be prohibited (Note 54). This principle in obligation relations refers to all types of representation, including the procuration as a special type of commercial power of attorney.

Although the represented person bears the risk in case of abuse of the representation authority which is given, when the necessary preconditions are fulfilled, the submission of that falls away and the represented party is not bound by the matter which is concluded with the representation.

Given the fact that the internal limitations do not apply to third parties even when the represented person knew or had to know, for such removal of the risk from the represented, is required by the procurator and the third party with abuse of the right to act upon the damage of the represented person in order to conclude a legal matter which is contrary to the limitation which the representative has placed over the procurator.

It is conspiracy. In this case, the principle according to which the legal determination of the power of attorney serves for security in legal transactions is violated. It is therefore essential to set boundaries on this principle (Note 55).

For such limitation of the procuration it is important that the subjective assumptions of both the procurator and the third party to be fulfilled.

The procurator may act against the internal limitation and act with abuse, with intent, negligence, ordinary negligence, unconsciousness and the same may occur by the third party in connection with the knowledge that this is done by the procurator.

For the procurator, it is sufficient the work to be objectively concluded contrary to the obligations he has with the representative and no fulfilment of any special subjective assumption is required.

This is logical considering the undertaken obligation to act in accordance with what has been undertaken in the internal relationship with the represented, ie to act in accordance with the set internal limitations. The consequence of such illegal action is a violation of an undertaken obligation (Note 56).

Limitation of the procuration shall have no legal effect against third parties regardless whether the third party was aware or taking into consideration the circumstances it should have been aware regarding the limitation of the prokura (Note 57).

However, if the objective and subjective assumptions in the legal relationship are fulfilled the concluded legal act between the procurator and the third party does not bind the represented person.

This is because this legal act is concluded outside the framework of the limitations given the procuration (objective assumption on the part of the procurator) as well as it was done with a conscious abuse of the right by the third party (subjective assumption on the part of the third party). The right of the represented is in accordance with the general principles of representation in the obligatory relations, whether he/she/it will approve the exceeding of the authorizations by the procurator, ie whether he/she/it will want to remain in obligation toward the third party (Note 58).

The third party who deliberately abuses the rights in the legal relationship and where there is guilt cannot seek compensation from the represented company, as well as from the procurator. But the third party, depending on the circumstances of the case may be liable to the represented company for the causes of the damage. *Culpa in contrahendo* (Note 59). This damage can exist not only during the conduct of negotiations when there is no contract, but also when a valid or invalid contract is concluded. Under this legal basis there is an obligation to compensate damage when the legal act is concluded through threat, delusion, and fraud or in case of concluding null or void contracts. The party which conducted the negotiations without intending to conclude an agreement is liable for the damage caused with the conduct of the negotiations (Note 60). The party which negotiated with the intention to conclude an agreement, and abandons that intention without a valid reason and thus causes damage to the other party is liable (Note 61). The caused damage can be the damage of negative interest, that is, the damage that a certain person suffers because he justifiably believed that a certain contract would be concluded with a certain person or he justifiably believed that the concluded contract was valid.

## **10. Liability of the Procurator for Caused Damage to the Trade Company and to Third Party**

With the issuance of the procurator and with the realization of its powers, three groups of relations are practically established: a) relations between the represented and the procurator; b) relations between the procurator and the third party, and c) relations between represented trade company and the third party. Within the relations between the represented person and the procurator and the procurator and the third party the question of the procurator's liability shall be located. The procurator is not a body of the company, he is a commercial proxy and the rules for liability for caused damage that apply to the bodies of the company do not apply to him.

The Law on Trade Companies does not contain special provisions which refer to the application of provisions for compensation of cause damage by the procurator toward the trade company and the third party. But this legal fact does not mean that the procurator can be released from liability in case of causing the damage to the Trade Company or third party. The general provisions for compensation of caused damage prescribed by the Law on obligations shall apply to the procurator and his liability for caused damage to the company and the third party. The procurator is a participant in the obligation relations. When performing an obligation, the party of the obligations shall be bound to act carefully, as required in the legal transactions of the kind of obligations involved (carefully as a good businessman i.e., good host) (Note 62). The issue of liability of the company's bodies for the damage caused by them to the company, in accordance with the Law on Trade Companies, is regulated in accordance with the legal standard of "attention to a meticulous and conscientious commercial entity."

According to this legal standard is determined the liability of the persons responsible for management and supervision of the companies, by which the prudence of the persons performing the entrusted tasks in the companies is determined, that is that they should act with a prudence of a skillful and (in the company's operation) competent person (professional), wherefore they are responsible for the ordinary negligence during the performance of the entrusted activities, unless another law specifies that they are liable only for gross negligence (*culpa lata*) (Note 63).

In order to determine what the attention of the members of the management should consist of, it should be taken into account that the members of the management are obliged to: a) to adhere to the rules governing the internal life of the company, b) to act according to the rules of issuance of the trade company toward third party, c) on achieving correct mutual cooperation, d) to show loyalty towards trade company and the shareholders and e) to adhere to the limits set in the freedom of entrepreneurial decision-making of the persons who manage the affairs of the trade company (Note 64). The Law on Trade Companies in several places (Article 241 paragraph 2, Article 362, paragraph 1, Article 502 paragraphs 1 and 2, Article 503 paragraph 1) regulates the issue of liability of the trade company bodies for caused damage to the company in accordance with the legal standard of a meticulous and conscientious commercial entity (Note 65).

The members of the company's bodies are required to manage the trade company in accordance with the legal standard of a meticulous and conscientious commercial entity and in the interest of the trade company and in the same time not to cause damage to the trade company.

The violation of the obligations of the members of the management body leads to their

responsibility as joint debtors for damage caused to the trade company if they did not perform their obligations with care of a meticulous and conscientious commercial entity. The provisions for responsibility of the bodies of the trade company are in order to protect the capital and the interest of the trade company. The provisions of the Law on Trade Companies the responsibility of the members of the bodies of the trade company are of a forced nature and there is no legal possibility with the acts of the company to intensify them, nor to mitigate them.

According to the Law of Trade Companies the procurator is a commercial proxy. But from the content of the powers that the procurator acquires according to the procuration, there is reason to think that, despite the fact that the procurator is not *de jure* listed as a body of the trade company *de facto*, the procurator can be considered a body of the representative trade company *sui generis*. This approach is confirmed by the fact that according to the Law on Trade Companies, the procuration is given in a manner determined by the statement of establishing the trade company by one person, with the contract for the trade company, ie the statute of the trade company (Note 66). The legal possibility with the acts of the trade company to provide the issuance of a procuration, in fact institutionalizes the procurator as part of the structure of the bodies of the company *sui generis*. That the procurator can be considered as a body *sui generis* is also seen from the content of the transferred authorizations, and that is his right to be able to conclude all contracts and to perform all other legal acts and actions on behalf and at the expense of the trade company within the subject of the operation of the trade company, to manage the enterprise of the provider of the procuration, and to represent the trade company in the proceedings before the administrative and other state bodies, organizations and institutions with public authorizations and courts (Note 67). These are a huge number of authorizations which by the force of law are in the competence of the bodies which are representing the companies, and which are transferred to the procurator by giving a procuration.

Almost the entire subject of operation is transferred to the procurator with the exception of legal restrictions that the procurator cannot alienate and encumber the real estate of the company, to give statements, to conclude legal matters, ie to undertake legal actions that initiate bankruptcy or other proceedings, which may lead to termination of the trade company, as well as to transfer the authorization from the procuration to another person (Note 68). The above matters represent a sufficient basis according to which it can be considered that the procurator is a kind of derived factual body, a body of the company *sui generis*.

As a *de facto* body of the company and for the procurator in its relations with the trade company, in the realization of the transferred authorizations and for his responsibility, the legal standard “attention to a meticulous and conscientious commercial entity” should be applied, which is applied to the bodies of the company. For these reasons, there is a need, in the Law on Trade Companies, in the part of the provisions for the procuration to be amended with a provision in the law which will explicitly state that both the procurator in his work and his responsibility will be subject to the legal standard. to the “attention of an meticulous and conscientious commercial entity.”

### *10.1 Liability of the Procurator Towards the Company in Accordance with the Law on Obligations*

The provisions of the Law on Obligations shall apply to the liability of the procurator for causing damage to the trade company.

One of the basic principles in the obligations relationship is a prohibition to exercise a right from these relations against the purpose for which that right is established or recognized by law (Note 69).

Procurator is participant in the obligations. Each participant in the obligations is obliged in performing its obligation to act carefully, as required in the legal transactions of the kind of obligations involved (carefully as a good businessman i.e., good host). When performing an obligation relating to their professional activity, a party of the obligations shall be bound to act with increased attentiveness, according to the professional rules and customs (attentiveness of a good expert). When implementing their rights, a party of the obligations shall be bound to restrain from acts, which could hinder the performance of the other party's obligation (Note 70).

As a participant in obligations the procurator shall be bound to restrain from any kind of abuse with which a damage to the trade company can be caused, also to remain within the framework of the content and scope of its authorizations. If the procurator abuses his / her authority and causes damage, the issue of its compensation will be raised. For the existence of an obligation to compensate the caused damage, it is necessary that the subjective assumptions are fulfilled, such as abuse of rights by the procurator, the causal relationship between cause and effect and specifically caused damage. For damage liability the fault of the procurator should exist, i.e., the procurator has caused damage with intent or negligence (extreme, usually or other degree of negligence provided by law) (Note 71). The liability of the procurator for the caused damage to the trade company (the represented party) lasts from the issuance of procuration until its termination, ie its revocation. It is not important for the liability for the caused damage whether an agreement has been concluded for regulating the relations between the represented company and the procurator. For liability It does not matter whether the procurator is registered in the trade register because the registration is of a declarative nature.

The procurator may be released from liability for the caused damage if he acted in accordance with a decision of the competent body of the trade company, ie if his actions are additionally approved by the competent body of the trade company.

### *10.2 Liability of the Procurator Towards the Third Party in Accordance with the Law on Obligations*

The question of liability of the procurator and the damage caused to a third party is also valid to be raised, as well as the procedure for compensation of damage. The provisions of the Law on Obligations shall apply to the liability of the procurator for the damage caused to a third party. For the procurator, as a participant in trade relations, all principles of the Law on Obligations are applied, which refer to his/her responsibility towards the represented party as well. Basically, the procurator is not responsible for the damage caused to a third party from a specific legal relationship, but the represented company. This is the basic principle that arises

from entry in the legal relations of the trade company represented by a procurator. However, in exercising his / her powers, the procurator may knowingly abuse the rights and obligations in the legal relationship and cause damage to the third party. Such case would be when the procurator knows that the represented trade company will not be able to fulfill its obligations from the concluded legal act, and still conducts negotiations and concludes legal acts with the third party and thus causes damage to the represented company. The procurator shall be liable for what his actions in the legal relationship. Despite the fact that the third party through the procurator enters into a legal relationship with the represented party, in such cases the third party may file a claim for damages against the represented company, but also against the procurator as a solidary debtor.

### **11. Advantages and Disadvantages of Procuration**

The procuration has its advantages and disadvantages and they are a consequence of both the internal relations in the company and the relations of the company into the business relations with third parties.

The following can be listed as main advantages of the procuration:

- a) There is no complicated procedure in the decision-making process by the procurator, on the contrary it is very short, practical and relatively fast and is in proportion to the real needs in the realization of business relations on the market;
- b) The procurator, unlike the members of the management bodies, is not liable in case of mistakes made in his / her work. Mistakes in the operation can be from a civil aspect, as well as from a criminal aspect, and for them the procurator will not be responsible for, but the issuer of the procuration, i.e., the represented;
- c) Many procurers are experts in a certain area of the market where they have already established business relations with other partners and which provides increased security and stability in taking of activities;
- d) The procuration allows senior members of the management, after the termination of their mandates, to continue to be active in the business life of the commercial entity in a way that they can be hired as procurators;
- e) Young managers have the opportunity to more easily master the skills and needs in the work processes;
- f) The procuration is suitable when the company wants to check the managerial skills of a certain person who can be previously appointed as a procurator, and if this person justifies the trust, later he/she can be appointed as a member of the company's management;
- g) In addition to the benefits it provides for domestic companies, the procuration is also suitable for foreign-owned trade companies in which the members of the management are foreign individuals, and the hiring of a domestic manager who knows the internal market as a procurator is imposed as an objective and real need;

As the main weakness of the procuration is the possibility of its abuse in the relations with the

management of the company, in which the procurator invokes the authority of the owners of the company.

In any case the advantages of the procuration are far larger than its weaknesses.

## 12. Registered Procurators in Central Register

A total of 845 procurators are registered in the Central Register of the Republic of Northern Macedonia (Note 72) A total of 738 people are registered as procurators (this data is due to the fact that one person can be registered as a procurator of several business entities). According to the review below, out of the total number of 738 persons registered as procurers, 718 persons are procurers of the Limited Liability Companies. Of this number, 195 or 26.4225% are engaged in Limited Liability Companies and 523 or 70.8672% in Limited Liability Companies per person. The remaining 2.7101% belong to all other business entities.

## 13. Review

Of entities that have at least one procurator distributed by organizational forms according to the Central Register of the Republic of Northern Macedonia

Table 1.

Organization form	Number of subjects-prokurists	Percentage in the total number of procurators
Public Trade Company	1	0,1355 %
Limited Liability Company	195	26,4227 %
Joint Stock Company	7	0,9487 %
Sole proprietor	5	0,6775 %
Protected trade company	4	0,6420 %
A Subsidiary of foreign company	3	0,4065 %
Limited Liability Company to one person (LLC)	523	70,8672 %
Total	738	100 %

## 14. Conclusion

The procuration is a commercial power of attorney whose content and scope are determined by the Law on Trade Companies and as a commercial law institute is characteristic for the representation in the commercial law. As a power of attorney, the procuration occurs in a special way: its content and scope of authorizations are determined by law, and by an agreement concluded between the commercial entity and the proxy. The procurator in terms of representation acts on behalf and for the account of the company (trader) with unlimited or limited powers. The Law on Trade Companies of the Republic of Northern Macedonia, as a

modern law in the law of companies, has accepted and regulated the procuration in its material legal content according to the German model. From the content of the authorizations that the procurator acquires according to the procuration, there is a basis for thinking, according to which, despite the fact that the procurator is not de jure listed as a body of the company according to the Law on Trade Companies, de facto, he can be considered as a body of the represented trade company sui generis.

The procuration is given in a manner determined by the statement for establishment of the trade company by one person, with the articles of association of the trade company, ie the statute of the trade company.

The legal possibility envisage issuing the procuration with the acts of the trade company, in fact institutionalizes the procurator as a part of the structure of the company's bodies. The content of the transferred authorizations is determined by the Law on Trade Companies and it is a number of authorizations that by force of law have the bodies for representation of companies and which are transferred by procuration on the proxy. Almost the entire subject of the business operations of the company may be transferred to the procurator with the exception of the legal limitations for the procurator, among which is the impossibility to transfer the authorization powers from the procurator to another person. The fact that the procurator is a kind of derived factual body, a body of the company sui generis with authorizations in the trade prescribed by the Law on Trade Companies, is a basis according to which the legal standard should be applied to the obligations of the procurator in case of damage to the company. "Attention to a meticulous and conscientious trader." The content of procuration, its scope and limitations, in the material legal sense as a separate commercial law institute are prescribed by the Law on Trade Companies.

At this point, an explicit provision that would indicate the procurator's liability to the person represented is missing. For these reasons, there is a need to amend the Law on Trade Companies with a provision that will apply the legal standard of "attention to a meticulous and conscientious commercial entity" to the issue of liability of the procurator. Regarding the third parties, the responsibility of the procurator will continue to be performed in accordance with the general principles of the Law on Obligations.

Also in reality there is a need to raise awareness in the general public about the need to hire people—procurators who with their knowledge and experience will contribute to the successful realization of the business venture of the trader.

The procuration appears as a necessity in trade.

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