Exit plan of financial investors in growing businesses from legal and accounting aspects in Hungary

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ABSTRACT: Starting from the doctrinal distinction between the company contract and the syndicate contract, the paper presents, through practical examples, the possibilities of enforcing complex ownership interests derived from the complementary institutional systems of company and contract law. In the case of joint stock companies, company law itself defines a multifaceted set of instruments for the practical regulation of the long-term owner-shareholder cooperation of founders (types of shares, classes of shares), which makes the joint stock company form the most suitable form of company for capital investment in the SME sector (especially for start-up companies). However, beyond the institutional framework of company law, practice has also developed a number of forms of contractual law to effectively model syndicated management (call and put options, drag-along and tag-along rights, etc.), with a focus on the detailed rules of the investment exit event regime. In addition to the legal guarantees to be provided to financial investors, the assets, financial and income situation of the investee company must be measured on an ongoing basis, based on a set of indicators that can be agreed in advance by the parties, in order to determine the optimal exit date. Accounting reports provide the primary information base for this metric system and therefore reliable and fair accounting reports are a key element in this decision and evaluation situation.

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Introduction

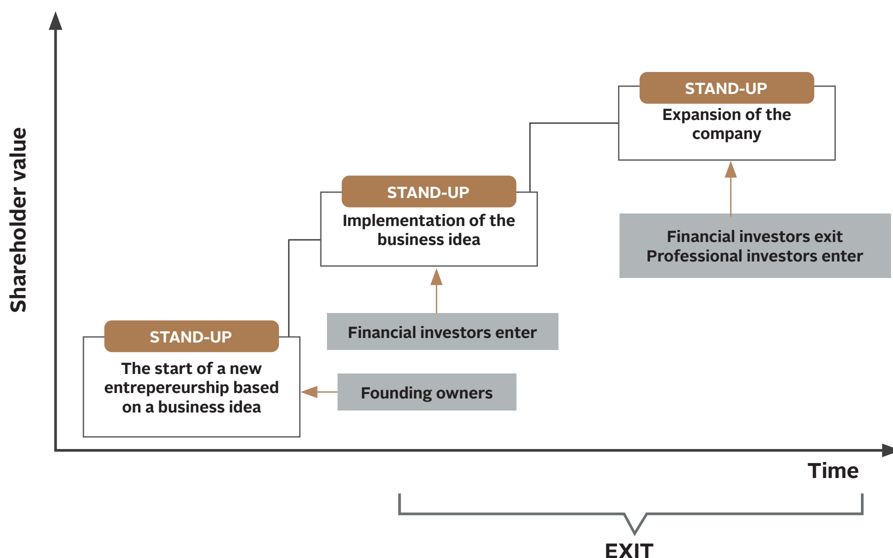
The ownership control of companies is fundamentally determined by company law. The legal framework for the operation of the company is laid down by the members/shareholders in the company's articles of association (memorandum of association, articles of association, statutes) within the framework of the legal institutions defined by company law. There are, however, cases where the legal framework provided by company law (the articles of association) is not suitable to fully regulate the complex business/legal relations of the owners. This is where the syndicate contract comes into play, which regulates on a contractual basis (complementing the articles of association) the operation of the company and the relations between the members (typically the original founders and the financial investors), in particular the "exit guarantees" for the investor. (DeTienne 2010)

This need for regulation is widespread in practice, especially in the case of external financial investment in start-ups, where *the company law* instrument is partly suitable for reconciling conflicting economic interests, but the *syndicate contract* is nevertheless suitable for introducing complementary rules that cover the legal relations between the members (founders and investors) in a more complex way than the depth of regulation provided by the company law instrument. The adequate protection of investors is a key issue for economic growth. Several authors have addressed this issue in their studies. (Bennedsen, Nielsen, and Nielsen 2012) (Beck, Levine, and Loayza 2000) (Bennedsen and Nielsen 2010)

Previous studies show that investor protection at the country level is determined by the institutional structure and legal system of the country. (Benkraiem et al. 2023) (Fu et al. 2022) (Huang, Li, and Wei 2021)

In our study, we will explore the possibilities of legal guarantees that can be provided to financial investors and we will also consider the economic aspects of determining the exit point based on the theory of equity value analysis, as shown in Figure 1.

Figure 1 The life cycle of entrepeneurship with a focus on exits of the financial investors



Source: Own elaboration, adapted from (Pisoni and Onetti 2018)

The doctrinal distinction between a company contract and a syndicate contract

Description of the taxonomy of company law

The legal characteristics of a company contract (articles of association, statutes, depending on the type of company) are different from those of classical civil law contracts: it does not regulate the obligations and rights of the contracting parties vis-à-vis each other, but is aimed at establishing a new legal entity (the company), separate from the person of the contracting parties, and defining the legal conditions for its operation. Company law provides for an appropriate system of legal sanctions in the event of breach of the obligations laid down in the company law (e.g. legal consequences of failure to provide subscribed capital/equity capital). (Janku 2014)

The subsidiary role of contractual obligations in company law

The legal framework provided by the company statute does not, however, preclude the founders/members of the company from regulating their legal and business relations with each other beyond this framework. A syndicate contract, unlike a company contract, is a classical civil law obligation whereby the members (typically the original founders and the subsequent financial investors) who set up and then

run the company regulate the business framework of the investment and provide guarantees to the venture investor for the realisation of profits and the subsequent exit. As the syndicate contract regulates legal relations between the parties for which company law does not provide adequate sanctions, the syndicate contract would not be enforceable on company law grounds per se. It is therefore necessary to provide for legal sanctions of a contractual nature (typically: liquidated damages) in order to make the contractual performance of the parties more enforceable (ultimately before a court).

The *company statute* (the articles of association of a private limited company) is therefore intended to regulate the rules for the establishment (and operation) of the company itself, which is a legal entity distinct from its members, while the *syndicate agreement* is intended to anticipate potential disputes by focusing on the eventual conclusion of the cooperation (in particular: the possible exit of the investor). The latter, by its legal nature, is a legal instrument exclusively suitable for settling the relations between the members of the company (typically: original founders and financial investors – shareholders) (although we are talking about a type of contract not specified by law, the so-called atypical contract).

Thus, while the instruments of company law (through the company contract) basically lay down the legal framework for the establishment and operation of the company, the syndicate contract typically focuses on the period after the realisation of the investment, prepares the future conclusion of their cooperation and lays down the legal framework for the investor's exit – within the discretionary and innovative scope provided by the law of obligations and freedom of contract.

Company law regulation of the ownership of public limited liability companies

As it has been already mentioned in the introduction, company law already establishes a basic legal framework from which (menu-style) minimum legal guarantees can be incorporated into the company contract, which can ensure that the legal interests of financial investors are enforced during the operation of the company and the investor exit after the realisation of profits.

In a given case, the framework provided by company law may therefore be sufficient in itself to cover the need for investment regulation. A typical real-life example is when an external investor makes a capital investment in a start-up company *by raising a* substantial amount of capital, where it is necessary to coordinate

- the legal interests of founders providing innovative know-how
- the legal interests of return-oriented financial investors

resolving the legal conflict of interest between the two, which is inherent in the nature of the construction.

By increasing the capital through a share premium, the capital requirement under the Civil Code can be ensured on a continuous basis – asset losses can be avoided – and a favourable equity structure can be maintained by accounting the

share premium as a capital reserve. The capital reserve can be mobilised to cover losses in cases where the available dividend resources and capital cover would not meet the dividend requirements of members and financial investors.

As a consequence of the investment by way of a capital/share capital increase, the nominal value of the shares (the share of the registered capital between the members) may be at parity in size or even the equity investor may remain in a nominal minority (thus ensuring professional control for the innovative founders), but the instruments of company law may already provide a certain level of guarantees to protect/enforce the legal interests of the financial investor.

The most appropriate form of company for realising external financial investments in the start-ups mentioned in the practical example is the private limited company under the domestic company law. This type of company already has the structural advantages of the share type, but does not yet have to comply with all the regulated market criteria that already apply to a listed public limited company.

Let us therefore consider all the legal options available to protect the interests of the financial investor in the case of a limited liability company until the financial exit.

Types of shares that may be issued by a public limited liability company (under Act V of 2013 on the Civil Code):

- the ordinary/common share;
- preference shares (in this article we will focus on these types of shares)
- employee shares (not covered here because they are not closely related to financial investor protection)
- interest-bearing share;
- redeemable shares.

Ordinary/common share means a share which does not belong to the preference, employee, interest-bearing, redeemable or other classes of shares specified in the Articles of Association. A common share is typically held by the original founders of the company, with voting and dividend rights equal to its nominal value, without any other special rights.

Investor guarantees are provided by certain special types of shares of the preference share class, as well as by interest-bearing and redeemable share classes, and we will focus on these in the following.

3.1. The preference share

Within a preference share class, shares may be issued in different classes according to the shareholder rights involved, and shares with different content and extent of membership rights may be issued within a share class.

The articles of association of a public limited company may provide for the issue of shares which confer a specific advantage to the shareholder (typically: the financial investor) over other types of shares, by setting out the conditions for the issue.

The Articles of Association within the preference share class

- dividend priority;
- in the event of the dissolution of the public limited liability company without successor, the priority of the share of the assets to be distributed (priority to the liquidation share);
- priority of voting rights (voting priority);
- priority for the appointment of an executive officer or a member of the supervisory board;
- right of first refusal

may define classes of shares.

It may define classes of shares that provide more than one of the preferential rights described above, in accordance with the legal safeguards tailored to the needs of the financial investor.

The financial investor making a substantial capital investment can therefore "choose" from the following menu, according to his needs in terms of company management and the legal guarantees he requires to ensure a return on his investment.

Preference share

A preference share entitles the holder to a dividend from the after-tax profit distributable to shareholders at a more favourable rate than shares of other share types and share classes.

If the voting rights attached to a preference share are restricted or excluded by the Articles of Association and the company does not pay dividends to preference shareholders in a financial year or the dividends paid are less than the dividends payable on the preference share, the voting rights attached to the preference share may be exercised without restriction until the adoption of the annual accounts for the following financial year.

In a case-by-case investment scheme, an (external) financial investor who raises capital in the company by way of a share premium may be granted a right to receive dividends from the company's taxable profits only until the amount of the share premium he has contributed has been recovered, while dividends may be paid on the common shares of the founders holding common shares only once the value of the share premium contributed by the investor has been recovered.

Liquidity preference share

If the company has issued preference shares attached to a liquidation preference, the rights conferred by the preference share shall be taken into account in the distribution of the assets remaining after the settlement of debts. A liquidation preference share provides an adequate legal guarantee for the investor in the event that the company is wound up before the realisation of the capital investment and the investor wishes

to receive at least the value of the consideration it has contributed in the liquidation of the company.

Preference voting share

A preference share entitles the shareholder to exercise multiple voting rights to the extent provided in the Articles of Association. In the case of a public limited-liability company, the voting rights attached to a share may not exceed ten times the voting rights corresponding to the nominal value of the share; any other provision in the articles of association shall be null and void.

A resolution of the General Meeting of Shareholders may be adopted on the basis of a preference share carrying a veto right by the affirmative vote of a simple majority of the shareholders present and holding such a share, or, if one share of the preference share has been issued, by the affirmative vote of the shareholder holding such a share. These are typically neuralgic issues related to the operation of the company which the financial investor may wish to control or ultimately block from a minority (to give a real-life example: control or complete blocking by the financial investor of an additional capital investment or acquisition in the company by an outside investor until his or her substantial capital investment is recouped).

Preference shares for the appointment of an executive officer, member of the supervisory board

On the basis of the preference shares for the appointment of the chief executive officer, the shareholders are entitled, in the manner and according to the procedure laid down in the articles of association, to appoint one or more members of the board of directors, who, upon acceptance of the appointment, become members of the board of directors.

If the preference shareholders do not appoint the chief executive officer within the procedure and time limit laid down in the articles of association, the right to elect the chief executive officer shall be vested in the corporate body otherwise entitled to do so, in accordance with the general rules.

The preference shareholders are entitled to recall the member of the Board of Directors appointed by them. In the event of the conditions laid down in the Articles of Association, the preference shareholders are obliged to recall the member of the Board of Directors appointed by them. If they fail to comply with this obligation within the time limit laid down in the statutes, the right of recall shall be vested in the corporate body otherwise entitled to recall the directors. In such a case, the preference shareholders may also nominate a new chief executive officer to replace the recalled chief executive officer. (Preference shares for the nomination of a chief executive officer may not be issued, mutatis mutandis, if the board of directors of the public limited liability company is chaired by a chief executive officer.)

On the basis of a preference share for the appointment of a member of the supervisory board, the rules described above shall apply mutatis mutandis to the

appointment or removal of a member of the supervisory board, whereas a public limited liability company may not issue preference shares for the appointment of a manager or a member of the supervisory board.

In the case of the example, an investor who acquires a minority stake in the company by means of a substantial capital increase – in terms of nominal share value – can be expected to delegate at least one member to the three-member board of directors (or supervisory board), thus giving him/her an overview of the operational and strategic management of the company.

Shares granting the right to pre-emptive subscription

The articles of association of a private limited company may provide for the issue of a class of shares under which a shareholder has a pre-emptive right to acquire shares issued by the company which are to be transferred by sale.

If the shareholder fails to make a declaration within fifteen days of the notification of the intention to transfer and the conditions of the purchase offer received, it shall be deemed not to have intended to exercise its pre-emptive right.

The right of first refusal is essentially a contractual legal institution, but the issue of a share with a right of first refusal can also institutionalise, within the framework of company law, the financial investor's legitimate claim to choose the persons of his partners, possibly ensuring him full control of the company, if the founders would prefer to exit earlier than the financial investor himself.

Interest-bearing share

The statutes may provide for the issue of shares carrying a predetermined rate of interest.

In addition to the other rights attached to the share, the holder of an interest-bearing share is entitled to interest on the nominal value of the share calculated in the manner provided for in the Articles of Association from the free retained earnings supplemented by the previous financial year's profit after tax. No interest shall be payable to the shareholder if, as a result, the share capital of the company would be less than the share capital of the company.

An interest-bearing share is an appropriate legal guarantee that the financial investor's return is continuous and predictable.

Redeemable shares

The statutes may contain a provision on the issuance of shares based on which

- the public limited liability company has the right to purchase the share;
- the shareholder has the right to sell the share;
- or the public limited liability company has the right to buy and the shareholder has the right to sell the share.

The public limited liability company may exercise its right to buy or discharge its obligations arising from the shareholder's right to sell shares in respect of which the shareholder has paid the full nominal value or issue value and has made the non-cash contribution to the public limited liability company. The public limited liability company may not exercise its rights under the right to buy and discharge its obligations under the right to sell if the public limited liability company could not decide to pay dividends. The company cancels the redeemed shares in accordance with the rules for the compulsory reduction of share capital.

The redeemable share is therefore an institution provided by company law which can itself be used to regulate the exit options of a financial investor in advance, with the difference that the company has the right to buy or sell shares from the investor, with the application of the legal provisions on the acquisition of own shares. By contrast, a syndicate contract, which is of a contractual nature, creates a call or put option in the relationship between shareholders.

Other types of shares (the "infiltration" of disposability into company law)

A public limited liability company may decide to issue a type or class of shares other than those provided for in this Act, provided that it specifies in its articles of association the content and extent of the membership rights represented by the shares to be issued.

At this point, the principle of civil law dispositivity seeps into the institutional arrangements of company law, i.e. the innovation potential offered by the law of syndicate contracts, which was previously exclusively the law of syndicate contracts, can now be institutionalised within the framework of company law (quasi subsidiarily complementing the model requirement of company law as a general rule).

Preference shares in a public limited company

As it has been already mentioned in the introduction, the private limited company is the form of company that offers the widest scope for regulating the relationship between the original founders and the financial investors. The legal environment of the public limited company allows for a narrower scope for this type of regulation, and therefore only companies with a mature business model, which have moved beyond the initial start-up stage of capital investment, and which have already made financial investments on regulated capital markets, are recommended to go public.

If the private limited company intends to convert into a public limited company, its preference shares for the appointment of an executive officer or a member of the supervisory board, or its preference shares giving the right of pre-emption, as well as its preference shares giving the right to preferential dividends, or liquidation preference, shall be converted into preference shares or ordinary shares which may be issued by public limited-liability companies prior to listing.

Due to the above legal constraint, the syndicated ownership structure models provided by preference shares can be most fully exploited in the case of private

limited companies outside the stricter legal constraints of regulated markets, where founders have the widest scope to regulate the ownership of the company in a sufficiently complex manner, despite the capital-intensive nature of their company, by using the tools provided by company law.

The law of obligations in the operation of joint stock companies

The second level of ownership management (complementing the regulation at the level of company law and the company contract based on it) is the use of the legal framework provided by the syndicate contract.

As already indicated in the introduction, a syndicate contract (unlike a company contract) is not aimed at creating a new legal entity (in the case of the example: a limited liability company) other than the shareholders, but basically at regulating the relationship between the shareholders. The two main areas of this regulatory need are the limitation of third party shareholdings and exit clauses.

The third-party limitation gives the financial investor a legal guarantee that it will "lock in" the original founders and investors involved in the investment, giving the investor the exclusivity of having the founders he or she knows carry the investment through, on the one hand, and not having to compete with other investors, on the other.

Exit clauses are intended to regulate the stage of the investment when, as a result of the capital investment, the company moves from the start-up phase to the stage of an operational business model and is able to generate a level of profit that ensures a return for the investor that is in line with the objective (in practice, a period of 2-5 years). After the exit of the financial investor, the following economic perspectives for the development of the company can be considered:

- the involvement of a professional or institutional investor with the departure of the financial investor
- to float the company on the stock exchange in order to raise additional capital.

This development phase of the company ends with the exit of the financial investor in the start-up company without any litigation.

Limitation of third parties' holdings (Right of first refusal and delimitation of the right of first refusal and the right of first offer)

The essence of the right of first refusal is that, if a member wishes to transfer its holding to a third party, the member must communicate the offer from the third party to the other members, who may accept the offer or, without exercising their right of first refusal, allow the member to transfer its holding to a third party.

The right of first refusal in a partnership can be based on three legal bases: the Civil Code (in the case of a limited liability company), the partnership agreement or a civil law contract (in our case, the syndicate contract). In the case of joint stock companies, the Civil Code does not provide for a statutory pre-emptive right, so

that only the preference share with a pre-emptive right provided for in the company statutes or the pre-emptive right provided for in the syndicate contract can be considered.

Right of first refusal: the selling member must communicate its own offer to the collateral taker. If the securityholder does not accept the offer, he may forward his offer to a third party.

Right of first offer: the holder may make the first offer to the member who intends to sell his/her holding. The right of first offer is weaker than the right of first refusal, as the person to whom the offer is addressed is not obliged to accept the offer. (Szabó 2012)

Exit clauses

Right to buy and obligation to sell

In addition to the company structure provided by the redeemable share legislation, the shareholders of a company are also entitled to acquire (either mutually or asymmetrically) call options or put options on each other's shares. "The exercise of these rights does not require a unanimous and reciprocal declaration by the seller and the buyer: the transaction is perfected by a unilateral declaration by the option holder: the other party is then only obliged to sell or buy. This is the most common legal instrument for regulating the exit of an investment.

Duty to cooperate (Drag Along)

The essence of a drag-along is that if a member of a company wishes to sell his shares to a third party, the holder may unilaterally oblige all or a certain number of members of the company to sell their shares to the third party on the same terms.

The advantage of a drag-along is that, in the case of a buyer who wants to buy the whole company, the collateral holder can negotiate more advantageous terms with the buyer, as the beneficiary can sell all or a larger part of the company by unilateral declaration. This may result in a more favourable purchase price if the buyer wishes to buy all or a larger part of the company but some members would refuse to transfer their shareholding. A side effect of a drag-along could be that the debtor would only be obliged to sell the qualifying shareholding if a certain purchase price is reached by the third party offer. (Szabó 2012)

Tag Along

Tag Along follows a similar design to Drag Along. The difference is that if a member wishes to sell his share to a third party, the holder of the Tag Along may request the selling member to sell his/her share to the third party together with the holder's share and negotiate on such terms.

Tag Along is a quasi right of sale to third parties. The function of this security is that the Tag Along allows the holder to make it more difficult for other members to

leave the company (Lacave and Gutierrez 2010), as the buyer may be disadvantaged if he has to buy shares of other members in addition to the shares he wishes to buy. The holder can also ensure that it does not remain in the company with a new owner with whom it is unwilling or unable to cooperate. (Szabó 2012)

Specialised exits (Russian Roulette, Texas Shoot-out, Dutch Auction)

Russian Roulette
There is a dispute between two members over the governance of the company. The initiating member makes an offer to the other party to buy his share in the company. The party receiving the offer may decide to buy the offeror's share at the same price or to sell its own share to the offeror.

Texas Shoot-out (Texas Duel)
The members in dispute each make a separate offer to buy the other party's shares in a sealed envelope. The envelopes will be opened simultaneously and the party offering the higher price will be entitled to buy the other member out of the company.

Dutch Auction
The Dutch Auction is similar to the Texas Shoot-out. The difference is that in this case, members bid the minimum price in a sealed envelope. After the envelopes are opened, the party that has set a higher minimum price will be entitled to buy out the other member, but unlike in the Texas Shoot-out, not at the price proposed by the winning party, but at the minimum price set by the losing party. (Szabó 2012)

Financial and accounting aspects of the calculation of shareholder value

Framework for the calculation of property values

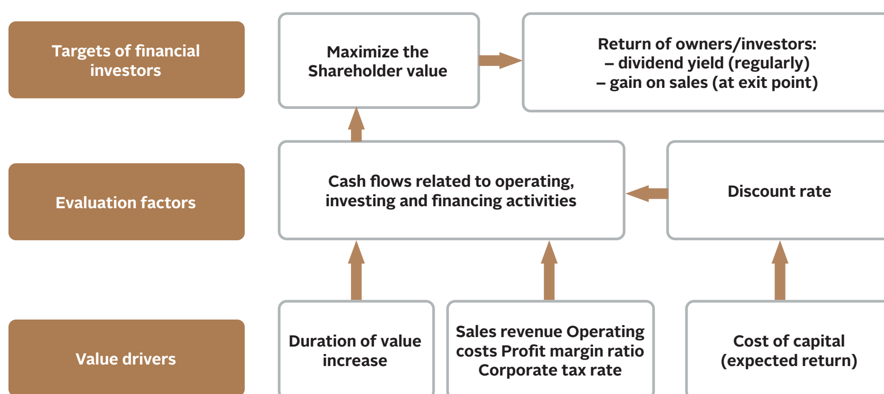
The basic aim of profit-oriented businesses is to maximise profits while achieving the highest possible level of consumer value (expectation). In our study we look at corporate objectives from the financial investor's perspective.

From an investor perspective, the fundamental objectives of a company are that companies seek to realise shareholder value (SHV) in excess of the explicit and implicit (combined cost of ownership) cost of investment, satisfying the expectations of financial investors. This investor objective can also be considered to be true at the exit point. Financial investors time the sale of their shares to the exit point, which is rational and optimal from a business point of view if the exit point is the point at which shareholder value is maximised. (Pisoni and Onetti 2018)

In other words, the investor objective function can be defined as the maximum realisable equity value at the exit point. The shareholder (ownership) value is the future free cash flow realised by the firm that is at the free disposal of its owners.

The elements of free cash flow are earnings before interest and taxes (EBIT), sources of financing for ongoing operations (short and long-term debt, with and without expected return), the value of tied assets and future cash flows, the expected rate of return and the time factor. The calculation of the value of ownership involves calculating the present value of future cash flows at different times and in different amounts by discounting a risk-adjusted cost of capital (discount rate). Based on Rappaport's (1997) net asset value framework, a schematic illustration of the overall system of investor value measurement is shown in Figure 2.

Figure 2 General measuring system of the Shareholder values (SHV)



Source: Own elaboration, adapted from (Rappaport,1997)

Figure 2 shows that the value added depends on the efficiency of the operation, its ability to generate profits, the current and fixed asset commitments required for the operation, the risk, the expected return, i.e. the cost of capital. (Rappaport 1997) These factors can be considered equivalent in terms of value formation. One of the most critical factors in the valuation system is the time factor. In the present situation, the time period expected by financial investors – the return on investment or the optimal exit date – can be considered as a value driver, rather than the time dimension of the company's operation. The time factor is also relevant for discounting cash flows at different points in time. The cost of capital used in discounting can be compared with the return on alternative investments of similar risk. In our case, maximising the value of ownership means maximising the cash return over the projected exit period, which is achieved by simultaneously managing the one-off and ongoing costs of operating the business at different times, and the explicit and implicit costs of capital committed to operations. Value maximisation is in fact the creation of surplus value.

The role of accounting statements in the calculation of ownership value

The calculation of the financial investor value requires mainly economic information, which is sourced from the company's accounting information system. At the top of the accounting system is the information available from the interim and annual accounts. (Babkin et al. 2022) Of the documents that appear in the annual accounts, the information in the balance sheet and the income statement are relevant to our topic. Therefore, in this subsection we will discuss the possibilities and limitations of using these two statements.

Limitations of the income statement

The information from the income statement provides information on the profit or loss for the period and on the development over time of the factors (income and expenses) affecting profit or loss. The amount of profit or loss may be influenced or distorted by various valuation choices (e.g. valuation of inventories, method of inventory recording, depreciation methods, exchange rate chosen, etc.).), significant value thresholds, indirect (principles for allocating overheads, method of costing, logic for calculating costing items, etc.), and indirect (principles for allocating overheads, method of costing, logic for calculating costing items, etc.). A further difficulty is – in general – the past orientation of accounting information, since the profit and loss account also shows the business performance of the past period, while at the same time it is essential to produce forecast information on the future on the basis of estimates when determining operating cash flows. Estimates can be used to project the amount of operating, investing and financing income and costs and expenses that will affect the change in ownership value. A fundamental problem can be the conversion of the cost of fixed tangible assets (machinery, equipment) into current costs. There is a risk of an increasing trend in the cost of these assets and an inappropriate depreciation policy. Depreciation as a fixed – hidden – cost, recognised continuously over the useful life of the asset, can significantly adjust the operating result, either towards an unrealistic profit or towards an unrealistic loss. It would be important to recognise and report the true cost of depreciation in the income statement, as this is the only way to measure more accurately the future cash flow of the investment. Similar problems can arise around the dilemmas of allocating overheads. An increasing ratio of corporate overheads to direct costs related to the direct product (service) has been observed in recent decades. At the same time, the higher the unallocated indirect costs not assigned to a product or service in the cost structure, the lower the company's profit, assuming that there are still some uninvoiced – unsold – stocks or services at the end of the financial year (calculation period). The principles, system and methodology of indirect cost allocation also affect the level of direct and indirect costs and, through this, the value of the company's profit and, ultimately, the free cash flow. With a logically designed costing system and a more modern indirect cost allocation method based on causality (see the advantages

of the activity-based cost allocation model over the surplus costing method), the distorting effects of the costing system and the indirect cost allocation used can be eliminated or at least reduced. The profit and loss account measures and shows the impact and magnitude of the economic events realised and accounted for on the operating result, but does not take into account the cost of capital as a factor affecting the value of ownership (see normal profit category). The cost of capital is shown here as a cost of equity. The traditional return on equity (ROA) indicator shows the after-tax profit per equity, which can paint a very different picture between two companies with the same performance simply because the ROA indicator uses equity as the basis of projection instead of total capital (equity and debt). Equity performance may be affected by the capital structure of the company, more specifically the ratio of equity to debt, and therefore it is appropriate to calculate the maximum ROA using the cost of total capital (equity and debt). Among debt, long-term loans and borrowings with interest payments are relevant. When using the profit and loss account, it should also be borne in mind that there are always ad hoc, non-recurring items in the current profit and loss account (such as realised or unrealised large exchange losses or gains, liquidation of a customer, supply problems caused by a natural disaster, pandemic, drop in income caused by a war situation, etc.). While the calculation of the value of ownership is essentially based on the recurring economic events that occur on a regular basis, the model calculates the standard profit-generating capacity. Therefore, it may be necessary to adjust or supplement accounting information to determine the future earnings generating capacity.

Some problems with the balance sheet

The balance sheet shows the enterprise's assets, liabilities and shareholder equity at a point in time, in terms of the form in which they are presented (assets) and their source (own and borrowed funds). Therefore, the balance sheet is a past-oriented, static statement of assets.

Another problem area in the calculation of ownership value is the valuation of the capital needed for operations. Fixed capital is recorded in the balance sheet. As with the profit and loss account, problems with the balance sheet include the valuation of assets on a historical cost basis, valuation at unrealistic book value due to depreciation problems, limited scope for market revaluation, and ignoring the effects of inflation. In addition to the asset side valuation problems of the balance sheet (e.g. distorted asset efficiency, asset profitability ratios), another difficulty is the determination of the amount of capital invested in the company. Determining the value of capital is essential for measuring the cost of capital. In determining the amount of capital, a distinction must be made between sources of funds according to whether or not there is an expectation of return on the funds. Current (short-term) liabilities (e.g. suppliers, other payables) do not normally have a return expectation, as they are built into the price. Among the liabilities, long-term debt (loans, borrowings and liabilities arising from bond issues) and equity are those with expected returns. (Boursicot,

Gauthier, and Pourkalbassi 2019) When we talk about capital invested in the firm, we refer to equity with expected return and long-term debt with interest payable. The value of capital is shown in the balance sheet at book value, its revaluation in the market is not allowed by law, and only foreign currency revaluation is allowed for liabilities denominated in foreign currencies. The expected investor return on equity is based on the return available on the market from alternative investments of comparable risk, which differs from the carrying amount of equity as shown in the balance sheet. In our opinion, the calculation of the cost of capital should take into account the difference between the market value of equity and the book value of equity, and therefore the value of equity as published in the balance sheet should be adjusted. The cost of capital may be different depending on whether the market or book value of equity is taken into account. Any company that generates a cost of capital has met the minimum requirement, i.e. the owners' (investors') capital invested has been returned. However, this is not a sufficient condition for determining the exit point, where the objective is not to meet the minimum expectation but to determine the maximum possible estimated value of the ownership. The maximum value will be equal to the maximum return (positive net present value) above the cost of capital of the company. The source of the surplus value is also assets that are not on the balance sheet, i.e. not eligible for the balance sheet, such as the professional experience, knowledge, motivation of employees, corporate culture, reputation, customer loyalty, geographical location, sustainable approach, social responsibility, etc., but these 'invisible' assets must also be taken into account when determining the value of the ownership. It can therefore be seen that additions and adjustments to the balance sheet may also be necessary, both on the asset and on the liability side.

Conclusions

Subsidiary legislation has continued to exist in case law. In this context, the existing founders, in addition to the legal institutional regime provided by the company statute, provide mutual guarantees with the financial investor, in a contractual relationship, by means of a syndicate contract, for the joint operation of the company until the return on investment is realised and, ultimately, for the financial investor's planned exit.

From a financial and accounting point of view, the exit date should be linked to the maximum value of ownership, based on a calculation of future earning capacity.

The accounting information system and the accounting statements are partly independent and, for external reasons, have limited ability to act as a coordinate system for calculating the maximum value of ownership. Value maximisation decisions require corrections and additions to accounting information, and the preparation of future estimates. In addition, management must also calculate with information that does not exist in the accounting system, most notably the treatment of the total cost of capital required for operations.

Value-based management, bearing in mind the expectations of the investors (whether financial or professional), always takes into account future expectations,

uncertainties and unpredictability of the future, which enhances the value of making forecasts based on estimates, and the calculation of future free cash flow. Free cash flow provides information to help financial investors determine their exit point as accurately as possible, as well as to support forward-looking and agile management in strategic decision-making.

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