

Albanian Commercial law towards EU

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Abstract

The new Albanian commercial code of 2008,¹ which replaced the State Companies as a basic economic subject with the “commercial companies” as a new legal concept (Borić, 1996, 99), organized the economic life in public companies and limited liability companies. All Articles that regulated the economic organizations in Albania were abolished.

Albania is a candidate country for EU membership and one of its duties consists in the implementation of EU acquis. The Albanian commercial procedures are fast, not bureaucratic and based on EU and international commercial principles. Albania has applied the basic principles of market economy and along with it the Lisbon Treaty, Regulations and EU Directives in the frame of commercial law. Main purpose of this manuscript is to give an overview of Albanian Commercial law in accordance with the One Stop Shop Principle and the EU Commercial Directives and Regulations.

Keywords: Albania, Commercial law, EU.

Introduction

Albanian commercial code of 2008 defines the merchant as a natural person,² who exercises an independent economic activity and disposes of a common commercial organization (Article 2 point 1). According to article 2 point 2 of the Commercial Code, “merchant” means natural persons, who exercise an independent activity (as a notary, doctor, architect, lawyer, etc) or a special law gives them this status. Traders acquire their legal capacity according to Article 28 point 1 and 30 of the Law on the National Registration Center of 2007 with registration in the NRC (Çuri, 2009, 71).

Only a natural person can be a merchant. He can employ other persons according to the labor code.³ Commercial activity does not depend on the achievement of annual turnover, this means that the trader can keep his status even if the annual turnover exceeds certain limits. But, in practice, the turnover amount leads to change of legal form and in establishing a commercial company (Malltezi, 2011, 3). The merchant is responsible for obligations, arising from economic activity, with his full wealth, with movable and immovable property, intellectual and industrial, loans to third parties and any other rights or assets, the value of which can be expressed in money (Malltezi, 2011, 4).

¹ Law No. 9901 on „Merchant and Commercial Companies“.

² Only an individual or a natural person, who carries out commercial activities according to the CC, can be registered as a trader in the NRC. According to Article 1 CC, every natural person enjoys full and equal capacity to have civil rights and obligations, within the limits set by law; Skrame, Commentary 12.

³ Law No. 7691 Labor Code, dated 12.7.1995, FI Z 1995, No. 5, 305; FI Z 1996, No. 6, 253; FL Z 2003, No. 72, 3225; FI Z 2008, No. 205, 11075.

Albanian commercial law distinguishes between commercial companies and simple companies (Malltezi, 2011, 13). The latter were founded for the first time in 1992-1993, because the necessary capital for the establishment of commercial companies was missing (Çuri, 2009, 103). Simple companies are established by a contract between two or more partners, which regulates all legal relations between partners and all business activities. For the simple company, it is worth mentioning article 1074 of the Albanian Civil Code 1994, which provides :

„ A partnership is a contract by which two or more persons agree to exercise an economic activity, in order to share the profits derived from it. The person who is a member of the company must make money, items or services available for this activity. “

According to Article 1075 of the Civil Code, a simple society is a society, which does not meet the characteristics of a commercial company. The simple company is not a typical form of commercial company forms for exercising commercial activities, but it is registered in the NRC (Malltezi, 2011, 13). As an example for simple companies, concessions and companies can be taken, which participate in tender procedures. They are established as simple companies before signing the contract and are transformed after signing the contract into commercial companies (Malltezi, 2011, 14).

Commercial companies are established according to the commercial code of 2008 by two or more natural and legal persons, who appear as investors. In the establishment phase, investors discuss the terms of the contract, rules of business relations, of profit and losses as well as the legal conditions of establishment (Malltezi, 2011, 10). The act of incorporation is the contract, which the founders sign at the time of incorporation. The statute is the document that regulates the activity of the commercial company. After signing the charter and paying the company's capital, legal representatives can register the commercial company in the NRC. (Çuri, 2009, 135). Sh.p.k. and sh.a. can be established only by a natural or legal person. (Çuri, 2009, 89). The collective society retains its traditional elements. Partners represent it vis-à-vis third parties, as long as it is not provided otherwise in the statute (article 38); the law of 2008 does not foresee any changes in the limited partnership, compared to the 1992 commercial code.

The most used form of commercial companies in Albania is LLC, which in 1992 had a minimum capital of 100,000 ALL according to Article 38 of the Commercial Code of 1992. With Article 70 of the Commercial Code of 2008, this amount was reduced to 100 ALL, to make it more attractive for foreign investors to enter the market. In this context, the government struggled with a massive liberal policy (for example “Albania one Euro”), to attract investors. According to Article 68 point 5, of the 2008 Commercial Code, the share capital is divided into quotas, which can be in cash or in kind. By paying the quota, the founder buys a part of the company's business. According to Article 72 point 2 of the Commercial Code, the founders answer personally, or jointly for damages caused by the subsequent fulfillment of obligations. Article 73 of the Commercial Code of 2008 regulates the possibilities of purchasing and transferring shares of the company, through: 1. Payment of the quota; 2. Purchase; 3. Heritage; 4. Donation; 5. In any other legally permitted form.

The purchase must be made through a signed contract. Not only the one who sells quotas, but also the buyer is jointly and severally liable, until the time of registration in the commercial register for the purchase of obligations (article 74 commercial code

2008). The establishment of the l.l.c is done with the charter of the company of the founders, while the need for the participation of a notary and the establishment of the company in stages has been abolished (Malltezi, 2011, 46). According to Article 6 of the 2008 Commercial Code and Article 32 and 35 of the Law on the National Registration Center, the statute must contain the following elements:

name of the firm, the identification data of the founders, administration office, business activity, contract extension, identification data of business managers and legal representatives of the company in relation to third parties, the amount of the basic capital, the number of shares of the company, participation in the share capital and the value of the quotas of each partner.

LLC consists of 2 bodies: General Assembly and Administrator. In the main tasks of the General Assembly, as the highest decision-making body, the company's commercial policy is included, the decision on changes to the statute, appointment and dismissal of administrators, control of the commercial policy of the administrators, capital increase and decrease, representation of society, reorganization of society as well as other tasks, which may be carried out according to the law or the statute of the General Assembly (Article 81 of the Commercial Code 2008). The General Assembly is convened by the administrators or partners, who hold at least 5% of the votes in the General Assembly (Malltezi, 2011, 77). Decision-making is done by the majority of votes of the partners present, as long as the law or statute provides otherwise (Article 87 point 2 of the Commercial Code 2008). The General Assembly may appoint one or several administrators, who must be registered in the commercial register. According to article 95 point 3 of the 2008 Commercial Code, the principal duties of an administrator include direction, representation, administration of all the company's activity, storage and processing of documentation and business balance, reporting on company policy to the General Assembly as well as other statutory or statutory duties. According to Article 98 point 2 of the 2008 Commercial Code, administrators are liable for damages to the company for any action or omission, that is reasonably related to the purposes of the trading company (article 98 point 2 of the 2008 commercial code).

The joint stock company is a commercial company, whose registered capital is divided into shares (article 105 point 1 of the Commercial Code 2008).⁴ In joint stock companies, a distinction must be made between public and private joint stock companies. The joint stock company with public offering was founded in accordance with the law no. 8080, dated 1.3.1996, "On securities".⁵ The difference between these two types of joint stock companies is based on the fact that the publicly offered company can trade its shares through publicly offered securities, i.e. through the offer offered to an unlimited number of investors, through sale on the stock exchange or in other legally defined forms.

JSC with public offer is defined in Article 105, as follows:

„ Within 30 days from the issuance of shares by public offer, joint stock companies offer these

⁴ According to Albanian law, the registered capital of the company is immutable.. However, capital increases are provided for in the legal systems of other countries; Malltezi, 83.

⁵ Law No. 8080 on Securities, dated 1.3.1996, FI Z 1996, No. 4, 135, FI Z 1996, No. 27, 939, FI Z 2001, No. 6, 157, FI Z 2006, No. 78, 2252, FI Z 2008, No. 36, 1629.

shares on the stock exchange. From this moment on, the LLC is defined as a publicly offered LLC or as a public company “.

With public offer⁶ means the offer to sell the shares of the joint stock company to at least 100 people (Article 27 of the Securities Law). Unlike the private offer joint stock company, which has a limited capital, joint stock companies with public offering can increase their capital through public offering as well as to borrow more easily from banks.⁷

Another characteristic of the joint-stock company is the public offer, that it is established in two phases; unlike the joint stock company with a private offer, which is established in one phase. The fundamental difference between these two forms of limited liability companies stay in the relationship it has with the public. Joint-stock companies with public offering must communicate with potential investors and present them with the financial data of the company; for this reason, the prospectus of the company is also created (Malltezi, 2011, 88). Its content is regulated in Articles 28-34 of the Securities Law. According to Article 28 of the Securities Law, the latter must contain the data, under which the securities will be issued. The prospectus contains the invitation to purchase securities, an accurate information, objective and broad on the assets and liabilities of the company, on profit and loss, the financial situation, risk factors and rights, containing these securities. Based on this information, investors are able, to make an objective assessment of the situation, within the framework of the risks associated with them (Malltezi, 2011, 89).

In private limited liability companies, securities are offered only to a limited number of investors, who are known by the shareholders. This offer cannot be addressed to more than 100 foreign investors.⁸ For this reason, the prospectus addressed to these investors is simply formulated (article 27 point 4 of the law on securities).⁹

In Article 107 of the Commercial Code, the minimum basic capital of the joint stock company with private offer is 2,000,000 Lek (about 14,285,714 Euros), while that of the joint stock company with public offer is 10,000,000 Lek (about 71,428.57 Euro). As in the joint stock company, the basic capital is divided into cash and kind. According to Article 115 point 1 of the Commercial Code, both forms of companies are established through the statute. It must contain the same data as a limited liability company. Shares are divided into preference shares (Article 149 of the Commercial Code) and basic shares, which have a primary right, in profit sharing, while preferred shares cannot constitute more than 49% of the share capital (article 122 point 2 of the commercial

⁶ Article 27 of Law No. 9879 dated 21.2.2008 on securities “ distinguishes between private and public offers: „A public offering of securities is an invitation to subscribe for securities, which, using the mass media of communication, addressed to an unspecified number of people.“. „The private offering of securities is the issue, in which the offer to underwrite the securities is directed only to institutional investors, shareholders or employees, but not more than 100 external investors, who are directly addressed to the issuer.

⁷ Financial Supervision Authority, Public Offering (2009) 5.

⁸ Article 27 point 3 of the Law on securities.

⁹ According to Article 27 point 4 of the Law on Securities, Institutional investors are investment funds, pension funds, insurance companies, as well as legal entities, who invest in securities solely on account of their investment portfolios. The status of the institutional investor is certified by the decision of the Authority. The authority approves regulations for the procedure and documentation necessary for the certification of institutional investors.

code). The bodies of the JSC are: The general Assembly, the Board of Administration and the Supervisory Board in the case of two-level joint stock companies. In the case of one-level joint stock companies, JSC consists of two bodies: General Assembly and Board of Administration (Çuri, 2009, 172). The General Assembly is the highest body of the company. Its most important competencies include: determining business policy, licensing of the annual balance sheet or intermediate reports on the state of the enterprise, capital increase and decrease, changes in the restructuring and termination of the company, as well as the appointment and release of administrators and members of the Council of Administration (article 135 of the commercial code). The General Assembly meets with a quorum of shareholders, who own between 30-50% of the shares. It decides by simple majority or by $\frac{3}{4}$ of the shareholders present (Article 144 of the Commercial Code).

In Article 114 of the Commercial Code, the one-person joint stock company is mentioned. It has the same organs as a "normal" company. The sole shareholder may appoint other persons as members of the General Assembly or act as a General Assembly itself (Malltezi, 2011, 168).

The Administrative Council of the JSC consists of 3-21 members, who have a 3-year mandate (Article 155 of the Commercial Code). Article 154 of the Commercial Code defines the powers of the Administrative Council. They include the granting of powers for the business policy of the directors of the company, control and monitoring of the company's policy, appointment and dismissal of the director, determination of powers and compensation as well as the economic audit through independent accounting experts (Çuri, 2009, 172). This rule is not directed only at all members of the Administrative Council, but also in the General Assembly (Malltezi, 2011, 213). The members of the Administration Council can exercise their functions, according to article 156 point 2 of the Commercial Code, only in two registered companies that carry out business activity in Albania. According to Article 157 point 1 of the Commercial Code, the members of the Supervisory Council can be released at the request of the Administrative Council and by simple majority of the General Assembly. The members of the Administrative Council in the one-level JSC are elected for a 3-year term (Article 158 point 1 of the Commercial Code).

The Supervisory Council has the same number and the same powers as the Administration Council; but the members of the Administration Council cannot also be members of the Supervisory Council (Article 167 point 3 of the Commercial Code). Other forms of commercial companies are the company for mutual cooperation, which is regulated in the law with the same name of 1996, savings societies or their subsidiaries regulated in the law with the same name of 2001 like the simple society mentioned above.

Conclusions

As mentioned in this introduction of the Albanian Commercial law reform, this process was executed in compliance with the EU Regulations and Directives. This was further increased by the fact that in the period between 1990 and 1992, so to speak, there was a vacuum because, on the one hand, the laws dating back to the communist era were

abolished, but a new commercial code could only enter into force in 1992. Albania followed the path of state enterprises and socialist property during communism. The private property was abolished and only state property existed. In this regard, Albania had a very difficult path to follow with the change of people's mentality by including in its legislation the commercial companies and private property. The new commercial code of 2008 implied new legislation and the execution of the One Stop Shop Principle and the National Registration Center. The Albanian Commercial code of 2008 presented in the manuscript shows full compliance with ECJ Jurisprudence and the EU *acquis* towards EU membership.

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