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I. Amendments to Law no. 9901/2008 “On Entrepreneurs and Commercial Companies”

Amendments to the existing Law no. 9901, dated 14.04.2008 “On Entrepreneurs and Commercial Companies” have been approved by the Albanian Parliament through Law no. 129/2014 and have entered into force on 7/11/2014. The amendments have adopted the EU Directives 2009/109 and 2009/101.

The most relevant amendments are listed below.

Cancelation of the establishment of a company and its registration with the National Registration Center (“NRC”)

The establishment of a company can be ascertained invalid by the court within three years after its registration date if any of the following circumstances is verified:

- Documents submitted to the NRC on registering the company were not in a written form;
- The founding partners of the company did not have legal capacity to act as such;
- The company’s object of activity was in violation/against the Law;
- The name of the company, the contributions signed by each of the founder partners, the value of subscribed capital or the object of activity were not specified in the company’s statute;
- The value of subscribed capital was lower than the minimum required by Law;
- The subscribed capital of the company was not paid in the manner and amount required by Law before its registration with NRC.

The company shall start liquidation procedures upon the court’s decision. If the cause for invalidity is correctable and has been corrected by the company before the court



decision, the court may decide to not announce invalidity and therefore to not initiate liquidation procedures. The invalidity of establishment of a company under this new provision does not affect third parties relations with the company nor the founder partners' obligations toward creditors.



Abuse of power and with the company's form

While the existing Law did not determine any limitations on the personal responsibility of individuals, the amendments now provide that individuals who are partners, shareholders, representatives of a shareholder or partner, administrators or members of the Board of Administrators, who with their actions or omissions have gained for themselves or third parties an unjust economical profit or have caused the reduction of wealth to third parties, are personally responsible for the repayment of debts.

The amended Law provides the following cases of abuse and related personal responsibility:

- For abuse with the form of the company and/or the limited liabilities offered by the company, the personal responsibility is extended up to the total value of unpaid debts of the company;
- For treating the property of the company as their personal, the personal responsibility is extended up to the market value of the property they treated as their own;
- For failure, pursuant to the related competences, in taking the necessary steps to ensure non-continuance of the company's activity in circumstances of non-sufficient capital and inability to pay its debts, the personal responsibility is extended up to the total value of unpaid debts of the company rising after taking knowledge of the company's economic situation.

However, the persons who commit any of the violations mentioned above shall be held responsible only if there is a final court decision asserting such responsibility.

Number of quotas

For Limited Liabilities Companies, the number of quotas is determined according to the number of partners. One partner can only own one quota, the value and voting right of which is determined in proportion with the partner's contribution. In case one quota is owned by two or more partners, they jointly own it and act a sole owner.

Certificate of Payment Capability

The administrator will be now required to issue a Certificate of Payment Capability also in the case when a company makes a payment in favor of one of the shareholders based on an agreement between the company and the shareholder, where conditions for the company are less favorable compared to market conditions.

Mandatory data in the company's correspondence

As an addition to the mandatory data, together with the registration numbers, legal seat and legal form, the company's correspondence with third parties must contain also the amount of its registered capital and the extent to which it is paid.

Creditor's rights

The current Law provides for the right of all creditors, regardless of the amount of their claim toward the company, to ask to the General Assembly the filing of a lawsuit for the invalidation of the administrators' decisions, when such decisions are in violation of the Law and statute. Based on these amendments, the creditors cannot exercise such right in case their claims towards the company are not more than 5% of the capital of the company.

Appointment and resignation of the administrator

The administrator/member of the Board of Administrators can resign from his position any time through a written notice addressed to the General Assembly. The administrator who resigns must convene the General Assembly for the election of a new administrator before the date his resigning becomes effective. In case the General Assembly does not decide on the election of a new administrator, the current one notifies his resignation in written to the NRC, along with a copy of the notice to convene the General Assembly. NRC registers such resignation and it becomes effective as of such date. Resignation of the administrator does not affect the company's right to file lawsuits for breach of fidelity obligations of the administrator toward the company during his duty.

Dissolution of the company

One of the conditions for a company to be dissolved under the existing Law was also the start of its bankruptcy procedures. The amendments change such disposition, providing that dissolution of a company starts upon termination of bankruptcy procedures.

Liquidation procedures

Pursuant to the amendments, the liquidator is now entitled to distribute the company's assets only after a 30-day period from the second notification addressed to creditors, instead of 3 months as it used to be before the amendment.

Adaption of statute

Companies registered before 20.05.2008 which had the obligation to **adapt their corporate acts with Law no. 9901/2008** within 3 years from its entry in force, i.e. within 20.05.2011, but have not done so, are now required to adapt them in accordance with Law no. 9901/2008, as amended, **and register them with the NRC within 7.02.2015** (i.e. 3 months from the date of entry in force of the amendments). **A penalty of 30 000 ALL shall be applied to the companies failing such obligation.** The NRC shall suspend its services towards such companies until the alignment of their corporate acts has been completed and the penalty fully paid.

II. Amendments to the Regulation of Bank of Albania "On licensing and exercise of the activity of foreign banks and branches in the Republic of Albania"

The Decision of the Supervisory Council of the Bank of Albania no. 55, dated 01.10.2014 introduced the following main changes:

- There is a prior approval needed from the Bank of Albania and some criteria and documentation to complete by a second level bank when investing over 15% of its regulatory capital in other companies that do not exercise banking activity.
- Bank of Albania has the right to deny to a second level bank to carry out certain banking and financial services outside of the Albanian territory, provided that the bank has not put in place appropriate systems for continuously mitigating risk factors, or it has not complied with the information and publication requests, or the provision of such services deteriorates the financial indicators of the bank.

III. Amendments to the Decision of the Council of Ministers "On the criteria and procedures of lease, or other contracts of state property"

The main amendments to the Decision of the Council of Ministers no. 54, dated 05.02.2014, brought by the recent Decision no. 735, dated 05.11.2014, extend the range of benefits from the facilities offered in the use of state property for investment with broad economic and social impact.

Chapter V, "The contract with the symbolic fee 1 Euro / contract", initially provided facilities for these categories of investments with a lease contract at the level of 1 Euro / contract:

- Industrial production activity in investment levels over 10 million Euro;
- Manufacturing activities of the active inward processing (fason regime).

With the recent amendments, the following categories of investments benefit from such facilities instead:

- Manufacturing activity, with investment levels over 300 million ALL;
- Inward processing of goods (fason regime), for activities which will provide not less than 50 job opportunities;
- Agribusiness activities, such as collecting, processing and sale of agricultural products or livestock, with investment levels over 100 million ALL.

The level of guarantee for each contract now amounts to 2% of the overall investment presented in the competition procedures for the contract, instead of 10% as before the amendment.

IV. Instruction no. 22, dated 19.11.2014 "On the supervision of NGOs from the tax authorities in order to prevent money laundering and the financing of terrorism"

According to this Instruction, NGOs are now subject to the procedures of surveillance and internal reporting by the tax authorities for anti-money laundering and terrorist financing purposes.

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