

BUSINESS COMPANIES IN KOSOVO

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Abstract: *The positive law in Kosovo regulates the business law with a series of laws. One of the most important laws used by this discipline is the Law on Obligation Relations, which determines the basic and specific conditions on establishing agreements and contracts in the business law. The business law uses the Law on Business Organizations which regulates business companies within Kosovo territories.*

Paper covers an analysis of business companies which act in Kosovo. The ways of establishing, the ways of registering, their work and the ways of their bankruptcy. Some companies even pass to the other or are transferred from one to the other. All this depends on their budget, but not only. Analysis of legal norms will be done by using the method of analysis. Comparison method will serve in order to compare legal norms and custom norms with some norms from some countries from the region. The methods of historical and systemic analysis will be used during the study. These methods will explain legislation regulative of business companies during the entire history in the territories of Kosovo and in some countries of region. Through methods of analysis and other methods the way of establishing of these companies will be explained. Registration, way of registration and basic conditions of existing of companies will be explained. During the analysis efforts will be made in order to get answers in some questions. Which are basic conditions for registering of business companies? Should all business companies fulfill similar conditions? Which are main ways of quenching of these companies? Are all companies with the same number of employees? From this it also could be analyzed if a business company in Kosovo could be established according to the law-then it will be established as the individual business company ore collective business company. The last part of the paper explains the way of company quenching according to the Law on Business Companies.

Key words: *law, business company, norms, registration, establishment*

1. Introduction

Judicial subjects are generally divided into physic and the judicial persons. Physic persons appear by birth and their physic capacity they gain by birth whereas the ability to act according to the Kosovo law they gain in the age of 18.

Judicial subject their ability to act gain by registering in the register whereas their registration is done according to the law an business organizations. Business organizations are judicial persons but there are cases when a physic person could appear as a judicial person and that only one physic person-this only in the cases when person is registered as individual entrepreneur. With this paper through the method of analysis there the judicial norms are analysed which regulate business organizations in Kosovo. By making analysis with the countries from the region paper uses the method of comparison. Through this method there are analyzed norms and the various authors. Systemic method is used in order to interpret norms of the law from an

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article to the other one. The main goal of the paper is the analysis of judicial norms on the law on business organizations in Kosovo. Paper will explain types of business organizations from the process of establishing, registration, functioning up to extinction of these organizations. Norms and the theories on individual associations, collective, with the limited responsibility, share business companies, commanded societies and quite at the end public and the social companies. Within the paper corporations as types of business organizations which are regulated with the law on business organizations.

2. Common rules of the business organizations

Business organizations in Kosovo could be established after adoption of their statute or their establishing act. Establishing act or statutes are regulated after the contract between physic persons (one or some) or by signing contract by two or more judicial persons.

Business companies in Kosovo are judicial persons which are established from physic persons of judicial persons but that have duties and rights. For the rights and the obligations of business organizations the association is responsible as single judicial person, but not with the wealth of founders and its members.

Relevant attributes which should be fulfilled by judicial persons are: name or business designation, residence of the judicial person, activates of the judicial person, capital and nationality.³⁸⁰

Business organization is a judicial person of law which has its name under which it develops its activities. Despite name business organizations have their residence as well. Name has some characteristics and on it in addition to the letters there could be put other signs. Judicial person has its total name and written. The name of every association or other organization that develops economic activity is its/their firm which should express especially the goal of this activity.³⁸¹

Residence of the business organization is the main place where important decisions are taken about the business organization, place from where the association is managed and led, but also the place where all decisions regarding the budget of the business organization.

Residence of the business organization is determined by the establishing act and it is registered at the Agency for Business Registrations.³⁸² Based on the main residence (headquarter) the nationality of the business organizations is determined. According to the positive legislation in Albania residence is called center and this legislation regulates with its disposals: judicial person has its residence where there is the leading organ, except when with the statute or with the establishing act it is regulated differently.³⁸³

Activities of the business organization are works and the acts which society exercises in order of realization of the profit.³⁸⁴ According to this works which are done by the society are: production, circulation of goods, services, etc. Activities are defined by the founder with the statute and the founding act and this doesn't mean that this cannot be expanded, completed with the other activities or changed.

³⁸⁰ Mazllum Baraliu, Business Law, University of Prishtina, Prishtina, 2010, pg.117.

³⁸¹ Albanian Civil Code, updated 2014, Article 27.

³⁸² Armand Krasniqi, Business Law, Dukagjini, Pejë, 2014, pg.185.

³⁸³ Albanian Civil Code, updated 2014, Article 28.

³⁸⁴ Armand Krasniqi, Business Law, Dukagjini, Pejë, pg. 191.

3. Types of the business organizations

Business organizations are classified according to some criteria. According to the criteria of form there are: associations of partnership or copartnership, comandite associations, associations with the limited responsibility and joint stock companies.

According to the complexity of the organization the organizations are classified on simple and composite.

Depending on that if they develop their activities on the determined period of time they are divided in permanent and temporary organizations.

Based on the form they are divided into: copartnership and comandite associations, joint stock companies and associations with the limited responsibilities. Associations based on the sphere where they act they may be industrial, agricultural, hostel, etc.

A trading society in Kosovo could be established in Kosovo as the individual business, general copartnership, limited copartnership, society with the limited responsibility and the joint stock companies.³⁸⁵

Business society could be created for whatever goal and it could develop whatever activity which cannot be forbidden with the law in Kosovo.³⁸⁶

Business societies could be established by persons which have gained the ability to act, persons that have reached age of 18.

4. Registration of trading societies (business)

Positive legislation emphasizes that trading societies could be founded by physical and judicial persons. Some could be founded by two or more physical or judicial persons. For some societies their founding needs a determined number of physical or judicial persons.

Agency for Registration of Businesses in Kosovo (ARBK) is the responsible organ for registration of business organizations in Kosovo. Judicial person has the ability to gain rights and to be obliged with the duties from the moment of registration, when the law foresees that they should be registered from the moment of registrations.³⁸⁷ The residence of ARBK is in Prishtina.³⁸⁸

This institution acts in the entire territory of Kosovo and it possesses branches in all Kosovo municipalities.

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³⁸⁵ Kosovo Law on Business Organizations, Law nr.06/L-016, Official Gazette, Approved 24.05.2018, article 5.

³⁸⁶ Kosovo Law on Business Organizations, Law nr.06/L-016, article 6, paragraph 2.

³⁸⁷ Albanian Civil Code, updated 2014, article 29.

³⁸⁸ Kosovo Law on Business Organizations, Law nr.06/L-016, Approved 24.05.2018, article 7, paragraph 2.

ARBK register trading societies and trading names as well as it is authorized to exercise other functions determined by this law or another functions which are determined for ARBK with the other laws. ARBK prepares and publishes forms, authorizations and procedures in order to facilitate registration of trading societies.³⁸⁹ Trading societies are registered in register and this register according to the law it is kept in a physic and electronic formation. Application for registration is done by business organization by filling in the form and adding to it the needed documents.

5. Authorized representative

In addition to the statute or founding act, name or the residence, business organization should have also the authorized representative. With the representation a person (representative) exercises within the authorisations given by the law, from or from the court in the name and in the favour of a physic or judicial person (represented).³⁹⁰ Each trading society should at least have on authorized representative.³⁹¹ Authorised representative can represent the bussines organization in all activities and transactions undertaken for the business organization. Authorize representative doesn't represent the joint stock company only if with the statute of the founding act is foreseen no representation from the authorized person.

Authorized representative of trading companies are: owner of the business---individual businesses, for copartnership---general copartners, corporations-managing directors, for public and social enetrprisses the authorized representative is appointed in accordance with the applicable law.

Authorized representative in most cases is also the representative in the process of bankruptcy and liquidation of the associations.³⁹²

6. Individual Business

Business organizations could be created by one or more physic persons but also by judicial persons. Individual business is one of the sole businesses which is created by a sole physic person whereas it has characteristics of the judicial sujet. Accodring to the law individual business is not a judicial person. Apart from this, he may sign contracts, he may own property, he may raise the suit in court and he may be sued, in the name of his business or in the name of his owner.³⁹³ Physic person is responsible for all rights and the duties of the society. Authorised representative of society is physic which has created the business and who runs the society. It is extinguished with the death of the entrepreneur, with the fulfillment of the goal for what it was created, by passing the time, with the liquidations and bankruptcy.

7. General copartnership

General copartnership is trading company which is established as soon as it is registered in the ARBK. It is established from two or more physic persons in order to develop determined activities with the common name. Obligations of the society are solidar with the entire wealth

³⁸⁹ Kosovo Law on Business Organizations, Law nr.06/L-016, Official Gazette, Approved dt. 24.05.2018, article 9, paragraphs 1 and 2.

³⁹⁰ Albanian Civil Code, 1994, updated 2014, article 64.

³⁹¹ Kosovo Law on Business Organizations, Law nr.06/L-016, article 24, paragraph 1.

³⁹² Kosovo Law on Business Organizations, Law nr.06/L-016, Approved dt. 24.05.2018, article 24.

³⁹³ Kosovo Law on Business Organizations, Law nr.06/L-016, Approved dt. 24.05.2018, article 48, paragraph 4.

if they did not differently contract with the creditor. Memorandum or contract is the founding act. Agreements are regulated with the contract, memo or with good mutual understanding.

Copartners may have also contracts. Copartnership is not a judicial person even though it has all attributes of judicial persons. It may sign contracts, may raise suit and may be sued like judicial or physic persons. Civil Code of Albania regulates societies of persons with the evident condition -copartners should be physic persons.³⁹⁴

Copartners regulate their relationships with the memorandum of founding of the society and with the contract of copartners.

Types of contributions are monetary and with the other wealth, work or services which are either conducted or ensured for the general copartnership.³⁹⁵

It is important to be said that with the agreement of copartnership is determined that all copartners have the right in a equal separation of all profit, loses and alocations.

Each member of the society of copartnership has the right and obligation to lead with the works of the society. It is important to be said that none of members can give up from the managing rights. Decisions in the copartnership society are taken by the majority votes of the partners in the copartnership society. Authorised representative is elected by majority of votes and the consent is needed on decision making. Authorization may be revoked with the competent court decision based on the suit of the copartner of the copartnership society. Partner of the collective society has the right on created expenses done during the work of the society. Profit and loses of the collective society are disbursed in equal parts between its members.³⁹⁶

Copartnership society according to the law is extinguished: after the term of expiry, with the decision of all copartners, by the death of one of the general copartners, by the willingness of all copartners to extinguish the society, by withdraw or expelling of any of copartners, with the court decision and in the other cases regulated by the founding act.

8. Societies with the limited responsibility

Society with the limited responsibility is judicial person which is judicially separated from joint-stock. This society is holder of right and the obligations.³⁹⁷ Shares of the society are personal property of the shareholder, can be transferred partially depending on the statute disposal.³⁹⁸ Statute of this society foresees that each share holder should prove through certificates issued by the society with the limited responsibility. But this is not obligatory for the society with the limited responsibility. This society requires a minimal capital quite smaller than for the shareholder society, respectively 10.000 EUR.³⁹⁹

This society is founded after registered in ARBK. It as share association may take the responsibility for the rights and obligations. Society with the limited responsibility has the rights and the duties to: raise suit or to be sued, to sign contracts, to borrow money, to take debts, to

³⁹⁴ Francesco Galgano, Trade Law, Sipërmarrësi- Shoqëritë, Luarasi, Tiranë 2009.

³⁹⁵ Kosovo Law on Business Organizations, Law nr.06/L-016, article 54.

³⁹⁶ Armand Krasniqi, Business Law, Dukagjini, Pejë, pg. 202.

³⁹⁷ Kosovo Law on Business Organizations, Law nr.06/L-016, article 75, paragraph 1.

³⁹⁸ Kosovo Law on Business Organizations, Law nr.06/L-016, article, 75, paragraph 3.

³⁹⁹ Francesco Galgano, Trade Law, Sipërmarrësi- Shoqëritë, Luarasi, Tiranë 2009. pg. 952.

win, to possess, to put into the rent, to enter into the mortgage relations, to elect and to change managers, workers and the agents of the society and to do their compensation. The duration of existence of society with the limited responsibility is not determined.

Society with the limited responsibility could be founded from one or more persons but the number of these physic or judicial persons is not determined. Contribution of one joint-stock is monetary, property, work or executed services.⁴⁰⁰

A physic or judicial person ends on being part of the society with the limited responsibility in case of death or in case of extinguishing of judicial or physic person, in case of vullnetary withdrawal of physic/judicial person as it is determined by the law on bankruptcy, if physic/judicial person does not hold shares in the society with the limited responsibility and in the other cases determined by the statute.⁴⁰¹

Share holder in whatever time may withdraw from the position in the society with the limited responsibility by informing in written all share holders of the society. If it happens that withdrawal damages society then the share holder should compensate members of the society with the limited responsibility. Society with the limited responsibility is extinguished by reaching the term of expire determined by founding act, by the decision od the council of the members, by statutory changes that lead towards the extinguishing; by bankruptcy, by the court decision with what it is concluded that the registration of the society was unlawful and it is ordered its delete form the register, appearance of other events foreseen with the founding act and with the contract of members of the society.⁴⁰²

9. Joint stock company

Joint stock company is business organization that acts in Kosovo. This society is founded from one or more physic/judicial persons with the capacities of shareholders. Capital of shareholder society is determined and divided into shares. Shareholder society is judicial person which possesses all attributes of judicial person. Shares in the shareholder society are the property of shareholder.⁴⁰³ Initial founding capital of the society should be in the sum of 10.000 EUR or of a bigger sum if that is required as regulated with the article 145 of LSHT.⁴⁰⁴ Share is a specific form of commercial paper by which the deposit is proved and to the depository is given the right to take part in the governance of the society where he has his deposits.⁴⁰⁵

Shareholder society is responsible for all obligations with its property. Shareholders society describes all of its responsibilities and the responsibilities of shareholders by the founding act and by the founding contract. This business organization is founded with the founding contract. There are cases when it is founded from a person and in such cases it is founded with the founding act. Acts should be drafted in written and all signatures of shareholders should be verified. Shareholder society has no expiration date, its term timely is not limited with the exception if it is determined with the statute.

⁴⁰⁰ Kosovo Law on Business Organizations, Law nr.06/L-016, article 85.

⁴⁰¹ Kosovo Law on Business Organizations, Law nr.06/L-016, article 99.

⁴⁰² Armand Krasniqi, Business Law, Dukagjini, Pejë, 2014, pg. 214.

⁴⁰³ Kosovo Law on Buisness Organizations, Law nr.06/L-016 article 118, paragraph 3.

⁴⁰⁴ Kosovo Law on Buisness Organizations, Law nr.06/L-016, article 119.

⁴⁰⁵ Riza Smaka, Buisness Law, Universiteti Mbretëror Iliria, Prishtinë, 2008, pg. 96.

Shareholder society may emit usual and privilege shares, founding shares, shares with the restrictive rights of votes, shares with no voting rights, stocks shares and shares of founding capital.⁴⁰⁶ There could not be emitted shares according bearer. Minimal quota of the basic capital of the shareholder society is 25.000 EUR.

Organs of the shareholder company according to the law are: Council of the shareholders, Board of Directors (Executive Board, Director) and other officials who exercise duties which have to do with the internal auditing or auditing commission.

Shareholder society is extinguished by passing the time for what it was created, by the decision of the council which is taken with the qualified majority of votes, by court decision, by the decision of the council of bankruptcy, liquidations, etc.

10. Commandite society

Is a society which is created from two or more physic/judicial persons in the capacities of copartners in order to exercise the determined activities under the common name of business where at least one person is responsible for the obligations of the society in unlimited way-complementary whereas at least one of them up to the level of quota contracted by comanditor.⁴⁰⁷

This society is established with the registration in ARBK and with the founding memorandum and with the agreement of comandites and the complementaries the contract is signed. Contract may be changed by agreement of all complementors and the comandites of the society. With the contract of copartners the activities of the organization are specified as well as the leadership. This contract is drafted and signed from all copartners of the business organization. In case of the conflict between the founding memorandum and the contract, the memorandum will be applied. Complementaries lead the society and its work. Complementaries may represent comandite society but it can be represented by one only of them. Comandites cannot represent society and they can do so only if they got authorized.

Comandite society is extinguished with the agreement, with achieving the goal for what it was created, by transfer to the other business organization e.g.share holder company, with the bankruptcy, with the liquidation, etc.

11. Social enterprise

Is an enterprise that works with the social capital. This capital is divided in shares or in parts with nominal values and it is registered in the register.

12. Public enterprises

Is an enterprise that conducts activities of the general interest. This society is created by the state. Its activities depend on the law determination. All these enterprises are of the general public interest.

⁴⁰⁶ Northy & Leigh's, Inroduction to Company Law. Second edition, L.H, Buterworths, London 1981, Nature of shares, pg.231.

⁴⁰⁷ Kosovo Law on Buisness Organizations, Law nr.06/L-016, article 66.

Conclusions

Business organizations in Kosovo are regulated with the Law on Business organizations. Business organizations according to the law are classified into several types: individual societies, copartner society, society with the limited responsibility, share holders society, comandite socies, public business organizations, social business societies and corporate companies which are not covered with this paper.

All these societies are obliged to fulfill attributes of judicial persons as are: name, statute (founding act), activities, residence and the capital.

All business organizations could be registered if they fulfill above mentioned conditions but after they apply in the electronic way and afterwards they submit physically document to the ARBK. This agency in detailed way analysis documents and after the analysis register business organization if it fulfils requested conditions.

Individual business society is society which is registered from a person and even though it is founded by a person it has the characteristics of the judicial person. All responsibilities of representation are taken by an individual as the owner of the society. It is extinguished like all other business organizations.

Society with the limited responsibility is founded by two or more judicial or physic persons. It is composed form the number which depends from the separation from shareholder business. This society is founded after the registration at ARBK and it is the judicial person.

Copartner organization is society which is registered at ARBK and this society like all societies is founded after the registration. It is important to be said that this society has attributes of the judicial person, but legally it is not a judicial person. Each copartner has parts of the capital but parts of the capital are not registered for every member in quotas. Each copartner has the right to represent society and has no right to give up representation.

Share holder company is founded from two or more persons (judicial/physic) and it is registered after the registration at ARBK. It has leading organs as Council of shareholders, Board of Directors, Director, etc. Each share holder has determined quota in percentage or in shares. Authorized representative of society is elected by the majority of votes form the total number of members. Value of the capital should be over 10.000 EUR according to the positive law otherwise it will be registered as comandite society or as the society with the limited responsibility.

Comandite society is society registered at ARBK. It is registered after fulfilling the registration conditions. Because it has two types of shareholders it is considered comandite. Shareholders in this society are divided into complementaries and comandites. The first are those which are responsible for the obligations of the society. Whereas the second, are responsible only if they are given responsibility from the council of complementariness.

Business organizations are extinguished based on the law on business organizations. They are extinguished by passing the term of expire, by fulfilling the goal for what they were founded, by the death of one of the founders, by the liquidation, and by bankruptcy. There are other ways of extinguishing which are specific depending on the type of business society.

Literature

- [1]. Baraliu, Mazllum. E Drejta Biznesore, Universiteti i Prishtinës, Prishtinë, 2010.
- [2]. Francesco Galgano, E Drejta Tregtare, Sipërmarrësi- Shoqëritë, Luarasi, Tiranë 2009.
- [3]. International Finance Corporation (IFC), World Bank Group, Qeverisja e Korporatave, Manual, Tiranë, 2009.
- [4]. Kodi Civil Shqiptar, i vitit 1994, i azhurnuar me 2014. Fletorja Zyrtare e Republikës së Shqipërisë.
- [5]. Krasniqi, Armand. E Drejta Biznesore, Dukagjini, Pejë, 2014.
- [6]. Ligji për shoqëritë tregtare. Ligji nr.06/L-016, Aprovuar me 24.05.2018.
- [7]. Northy & Leigh's, Inroduction to Company Law. Second edition, L.H, Buterworths, London 1981, Nature of shares, pg.231.
- [8]. Smaka, Riza. E Drejta Biznesore, Universiteti Mbretëror Iliria, Prishtinë, 2008.