STUDIES AND COMMENTS

Commercial law in Macedonia after 1990

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Abstract

With the Declaration of Independence of 17.11.1991 and the entry into force of the Constitution on 20.11.1991, Macedonia was free to draft its own legislation. But the difficult internal and external situation, the unofficial imposition of the Greek embargo since the end of 1991, and the UN embargo on Yugoslavia, which brought losses of US $ 80 million a month to the new state, had a negative impact on the legislative process[3]. The 1990 (!) amended Yugoslav company law of 1988,[4] which replaced the Organization of Associated Labour as a basic economic subject with the "commercial companies" as a new legal concept,[5] organized the economic life in public companies and limited liability companies. All Art.s that regulated the economic organizations in Yugoslavia were abolished. This amendment was in force until 30.5.1996. In this sense, main objective of this manuscript is the analysis of the commercial law reforms in Macedonia after the fall of communism towards a free market economy and EU membership.

Keywords: *commercial law, Macedonia, reform, free market economy.*

JEL Classification: K22

1. Introduction

Although the legislative changes in Yugoslavia in the late 1980s could no longer trigger decisive modernization impulses, this phase of legislation was necessary for the subsequent legal developments toward free market economy for Macedonia. In 1996, the Macedonian Commercial Code (HGB), the "Law on Commercial Companies"[6] came into force. This law consisted of 728 Art.s and contained quite extensive regulations.[7] It regulated:

- the merchant concept,
- transfer of trade names,
- private and commercial companies,

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[3] Schrameyer, K., *Die Verfassung der Republik Makedonien vom 17 November 1991*, JOR 2008, 413.
[4] Art 6–14 of the law on amendments to the law on economic enterprises of 1990.
[5] Borić, T., *Eigentum und Privatisierung in Kroatien und Ungarn – Wandel des Eigentums-rechtssystems und Entwicklung der Privatisierungsgesetzgebung*, Wien, 1996, 99.
[6] Zakon za trgovski društva (Gesetz über die Handelsgesellschaften) Sl V RM 1996/28.
[7] Jashari, A., *Subjektet e së drejtës afariste*, Tetovo, 2009, 36.

- basic principles on commercial companies, seat, establishment, liability, commercial register, business books of commercial companies, foreign companies and their affiliates.

2. The commercial law of 2004

Since the Macedonian commercial law of 1996 was very complicated in its construction, [8] the Macedonian government decided to fundamentally reform the commercial law. On April 30, 2004, the new company law came into force.[9] It was drafted in accordance with EU rules. [10]

The 2004 Companies Law defines "the merchant as a" natural person exercising as a profession one or more of the commercial activities specified in this law "(Art. 12 (1).

"The merchant is personally liable without limitation with all his assets and acquires his legal personality with the registration in the central register of Macedonia" (Art 12 (2) and 4).

According to Art 4 of the Companies Law of 2004, a commercial company is referred as such, if it pursues the following commercial activities independently:

- the purchase of movable property in order to sell it in its original or processed form;
- the sale of moving things in processed form;
- Securities trading and fund management;
- banking, exchange and other businesses;
- insurance services;
- transport of persons and goods;
- commission-based activities, freight forwarding services, warehousing and leasing;
- agents;
- hospitality, directory inquiry, marketing and other intellectual services;
- producing films, video cassettes, audio-visual recordings and software and other similar activities;
- publishing and printing activities and other commercial activities related to trade in books and artistic works as well
- purchase, construction and decoration of real estate for the purpose of sale and rental.

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[8] Koevski, G. Pepeljugoski, V., *Corporate finance principles under new Macedonian securities Legislation, in IFLR 1000*, Skopje, 2005, p. 575, http://www.iflr1000.com/pdfs/Directories/5/Macedonia%20(575-578)%20i.pdf (consulted on 1.05.2019).

[9] Zakon za trgovski društva, Sl V RM 2004/28 idF Sl V RM 2005/84 idF Sl V RM 2007/25 idF Sl V RM 2008/87 idF Sl V RM 2010/42 idF Sl V RM 2010/48 idF Sl V RM 2011/24 idF Sl V RM 2012/166.

[10] Nedkov, L. *Zasto nov zakon za trgovskite društva*, „Bilten na Ministerstvo za Ekonomija", 2003, 20 (23).

This definition is essentially the same as in the Commercial law of 1996; only the requirement of continued exercise was added. Commercial companies are defined in Art. 19 (1) of the Companies Law of 2004 as legal persons in which one or more persons collect money, funds or rights and share the profits and losses arising from the cooperation. On the other hand, the company is to conduct the business independently and continuously with the aim of generating profit (Art. 19 (2). This shows that not all legal persons are commercial companies, but only those who raise funds and money and pursue a certain commercial activity independently and continuously, are aimed at making profit; same as merchant. In the legal sense, the commercial company is not a company; rather, it consists of companies referred to as the means of carrying out commercial activities of the commercial company.[11]

Art. 20 of the Companies Law 2004 regulates four forms of commercial companies and the limited partnership of shares. The General partnership retains its traditional elements and is defined as a company founded by two or more natural or legal persons, who are jointly and severally liable to the creditors with their entire assets (Art. 110). Also with the private limited partnership the legislator does not envisage any changes in comparison with the company law of 1996.

The limited liability company is defined in Art. 166 of the Companies law of 2004 as a trading company into which one or more natural or legal persons contribute money or contributions in kind to the share capital. The minimum share capital was reduced from 10,000,000 denar (161,716 euros) according to Art. 112 Commercial law of 1996 to 5,000 euros according to Art. 172 of the Companies law 2004.

The limied liability company is established by a partnership agreement of all founding shareholders (Art. 170 para 1). In the case of a one-person limited liability company, the company contract is replaced by a basic act (statute) of the limited liability company (Art. 170 (2). The statute of the company shall contain the name of the Company, the form, the registered office of the Company, business object, the term of the contract, the information about the Directors and persons authorized to represent third parties. In addition, the statute includes the participation in the share capital, the value and nature of the capital contributions of each shareholder and indicates whether or not the subscribed share capital has been paid in (Art. 171). In accordance with Art. 174 (1), the share capital is divided into capital contributions which may be made in cash or in kind. The provision of the share capital in the form of work and services is not permitted pursuant to Art. 174 (2). The minimum value of the paid capital contributions shall not be less than 100 euros (Art. 174 (4) and each shareholder acquires shares in the company with the Payment of the deposit (Art. 174 (5). The shareholders are to pay at least one third of their deposits, with a minimum value of € 2500, prior to the registration of the company in the central register (Art. 175 (1). In the case of a payment in kind, the statute of the company shall include:

[11] See Jashari, A., *op. cit*, p. 70.

- the name of the shareholder who contributed in kind;
- the transfer of contributions in kind;
- the value of the contributions in kind as well as
- the advantages of the shareholder who contributed in kind, if these benefits are also accepted by the other shareholders (Art. 176 (1).

The shares of the shareholders are determined by the value of the deposits, unless otherwise stipulated in the statute of the company (Art. 193 (1). Only shareholders whose shares are registered in the Register of Shares are shareholders in the company (Art. 196 (1). The transfer of a share takes place only if the shareholder has fully paid his contribution (Art. 198). The Macedonian Companies Law of 2004, does not enumerate the possibilities of acquiring, transferring and splitting business shares, but regulates them in detail. Acquisition, transfer and division should be effected by a written contract. The transfer of a share in the case of inheritance is not restricted (Art. 199). Not only the one who transfers his business shares, but also the acquirer is jointly and severally liable for all rights and obligations of the departing partner (Art. 200). Upon the death of the partner, all rights and obligations resulting from membership pass to the heirs (Art. 199 (2).

A splitting up of shares takes place in the case of transfer, legal succession to a partner whose shareholder position has ended, or in the case of inheritance. The splitting up of a business share requires the consent of all shareholders, unless otherwise stipulated by contract (Art. 201). The possibilities of acquiring the shares are not only listed, but regulated in various Art.s in detail.[12]

Unlike the Commercial law of 1996, the limited liability companies are free to decide on the establishing of a Supervisory Board. It should consist of at least three members with a mandate of four years (Art. 244 in conjunction with Art. 247). The limited liability company consists of two bodies: the General Assembly (Art 214) and the Managing Directors (Art 231).

The tasks of the General Assembly include the annual financial statements, the annual report and the distribution of profits and the loss compensation. The election and dismissal of the managing directors, the decision on necessary auditing and control measures and changes to the contract are also regulated by the general assembly.

The managing directors are elected by the General Assembly for four years (Art. 232). Art 235 regulates the rights and obligations of the managing directors. The managing director is responsible for the management and administration of the

[12] In Art. 203 the acquisition of the shares is regulated by the shareholder, who foresees the payment of the full amount of the share; in Art. 333, the purchase of the shares is regulated by repurchase, ie the repurchase of treasury shares, either by itself or by a third party acting in his/her name but for the account of the company. The repurchase of treasury shares is permissible under the following conditions: 1) Approval by resolution of the general meeting of shareholders regarding the purchase of treasury shares by repurchase. It implies approval for the maximum number of shares to be acquired and the period during which the repurchase will be carried out; 2) the nominal value of the shares acquired, including the shares of companies already acquired or owned by the company, shall not exceed one tenth of the share capital; 3) only fully paid up shares can be acquired through the buyback.

business, the representation of the company, the preservation of internal documentation and balance sheets of the company, the preparation of the annual consolidated balance sheet and the management report of the company. The managing directors are liable for damages caused by disregard and violation of professional standards (Art. 241).

The public company is defined as a commercial company whose subscribed capital is divided into shares. It may be founded by one or more natural or legal persons (Art. 270). As a basic requirement for the establishment of a public company, will be the drafting of the statute by the shareholders (Art. 286). The statute should have the same content as the limited liability company. According to Art. 273, the public company is divided into public company with public and private call, in accordance with the "Law on Securities" of 7.11.2005. A public call is understood as a public solicitation to subscribe and to buy securities published by public media (Art. 2 of the Law on Securities).

The public company making a public call must have more than 100 shareholders and a share capital of more than 1 million EUR. They are referred to as reporting companies and are to be registered in the Securities Commission of the Republic of Macedonia and on the stock exchange (Art. 2 of the Law on Securities).[13] The issue, offering and sale of securities are subject to the approval of the Securities Commission.[14] As in Albania, the public company is set up with a public call in two phases; unlike the public company with private call, which is established in one phase. The public company with public call must communicate with potential investors and present them with the company's key financial data. This is the purpose of the prospectus, which describes in Art. 2 (26) of the Securities Act a written document that publishes marketable securities in Macedonian language describing the financial situation, business prospects, investment risks and associated rights of the securities offered.

In the case of a public company with private call, the securities are only issued to a certain group of investors who know the shareholders. Private Call is understood as an offer to subscribe and to purchase securities to: a. not more than 20 persons mentioned in the issue act, and b. to institutional investors.[15]

The minimum capital value has been raised towards the commercial law of 1996 from (20,000 Denar = 323,558 euros) to 25,000 euros. Even for the public company with private call the value of the minimum capital was raised from 50,000 Denar (808,763 euro) in the 1996 to 50,000 euro (Art. 273). The internal organization of the public company was retained. Members of the Board of Directors and Supervisory Board are elected for six years and may be represented

[13] See Koevski, G. Pepeljugoski, V., *op. cit.*, p. 576.

[14] According to Art. 13 of the Securities Act, the application for admission should contain the following files: (a) basic data on the issuer of the securities, (b) basic data on the persons of the supervisory board and the management or the board of the issuer, (c) basic data on the securities and (d) information about the business activities of the issuer and the use of proceeds from the issuance of the securities.

[15] According to Article 2 (15) of the Law on Securities, as Institutional Investors are recognized: banks, insurance, investment funds or pension funds.

in five other registered companies. In the one-level system of the public company, the Board consists of 3-15 members and in the two-level system it consists of 3-11 members. In the case of a minimum capital share of less than € 150,000, the general meeting may elect a director instead of a council of directors (Art. 374 para. 2).

For all types of public companies, the general meeting is the highest body of the company. According to Art. 383, the most important tasks of the general meeting are to approve the statute, the annual financial statements, the interim report on the course of business and the situation of the company, taking into account future developments, approving increases and reductions in subscribed capital, and approval of changes that occur during the restructuring and dissolution of the company.

The Board of Directors manages the business and supervisory powers of the one-level public company and only the business competences of the two-level public company. It consists of at least 3 and max 11 members. They are elected by the Supervisory Board (Art. 374). The Supervisory Board is governed by Art. 378 and consists of as many members as the Board of Directors. It is established at the two-level public company, and his most important task is the supervision of the management (Art. 380).

In contrast to the commercial law of 1996, the one-person public company can also be established by a natural person, but only if it is run as a "normal" public company. This person may delegate other persons to the general meeting or form the general meeting himself or elect the members of the board of directors and supervisory board themselves.

3. Conclusion

Overall, the Macedonian Company law of 2004 contains very detailed regulations on the entire spectrum of company law. This is already shown by the fact that it consists of 617 Articles.

How unstable and uncertain, the economic situation in Macedonia is, it is shown that between 2004-2012, the company law was amended 7 times. The latest amendments of 24.12.2012[16] are intended to strengthen competition and improve the overview of the size of the active companies, but most importantly to open the road towards EU membership. The intention is therefore to delete companies in the central register which have not carried out any business activities in the past three years. According to the media, about 50,000 companies in Macedonia were dissolved and deleted from the central register.[17]

Also in the Securities Act, the Ministry of Finance believes that new rules and conditions should be created through the compulsory listing of listed

[16] Zakonot za izmenuvanje i dopolnuvanje na Zakonot za trgovskite društva, Sl V RM 2012/166.
[17] http://www.karanovic-nikolic.com/wp-content/uploads/2013/03/ Corporate_Newsletter_ Macedonia_March_2013_eng.pdf (consulted on 1.05.2019).

companies. This should also strengthen competition and increase transparency in the capital market. [18]

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[18] http://www.mondaq.com/x/238910/Corporate+Commercial+Law/Corporate+Energy+And+ Infrastructure (consulted on 1.05. 2019).