

### Issue 05/14

To keep you up-to-date with the latest economic and financial developments, this bulletin provides information that may affect the operation of your business in Albania.

#### The amendments of the Law on Entrepreneurs and Commercial Companies

On October 2014, the Albanian Parliament approved law no. 129/2014 "On Some Additions and Amendments to the law no. 9901, dated 14.04.2008 "On Entrepreneurs and Commercial Companies", as amended (the "Law"). The Law entered into force on the 7<sup>th</sup> of November 2014.

The Law is partially aligned with the directives 2009/109/EC and 2009/101/EC of the Council and European Parliament.

The main novelties of the Law are as follows:

- (i) the amount of the registered share capital and value of the paid-in capital must be stated in all correspondence addressed from the company to third parties.
- (ii) new rules governing the invalidity of the company and its corporate acts, as well as statutes of limitation for such invalidity claims are introduced. According to the new provisions of the Law, the establishment of the company might be declared invalid by the court if:
  - the documents for the initial registration based on the law no. 9723, dated 03.05.2007 "On National Registration Center" as amended, are not in written form;
  - the founding partners/shareholders of the company do not have the legal capacity to act;
  - the scope of the company's activity is contrary to the Albanian legislation;
  - the required information is not indicated in the Articles of Association. Such information includes the name of the company, the subscribed contribution by each of the founding shareholders, the total value of the subscribed capital by the founding shareholders and the scope of the company;
  - the share capital of the company, subscribed by the founding partners/shareholders, is lower than the minimum/legal share capital; and
  - the subscribed share capital of a joint stock company is not paid before registration with the National Registration Center, as required by the law.

The invalidity of the establishment of the company does not affect the rights of the third parties acquired after the registration of the company with the National Registration Center ("NRC").

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- (iii) the law provision on 'piercing the corporate veil' is also amended, so that an individual shareholder or administrator (a member of the management body), or a representative of the shareholder (where the shareholder is a legal entity), shall be held personally liable for the company's debts if they willingly commit one of the actions set forth in article 16 of law 9901/2008, for an unfair benefit of either themselves or a third party. The personal liability is limited up to the value of the unpaid obligations of the company.
- (iv) the share capital of a limited liability company is divided into a number of shares equal to the number of shareholders, and each shareholder owns a single share representing a part of the capital in proportion with the value of that shareholder's contribution.
- (v) resignation of administrators and members of the management body are now subject to specific and detailed rules. According to the new provisions, the administrator or a member of Management Board or Supervisory Board may resign at any time from his position upon the written notification addressed to either the Management Board/Supervisory Board (for administrators) or the General Assembly (for members of the Management Board). In case a new administrator, or member of the Management Board/Supervisory Board, is not appointed by the competent decision-making body of the company before the effective date of resignation, the resigned administrator/member of the Board notifies the said resignation directly to the NRC. The latter must undertake the registration of this fact accordingly.
- (vi) new grounds for dissolving a limited liability and joint stock company and details on the dissolution process are now introduced.
- (vii) specific rules on mergers (such as agreements for, and report of, mergers, increases of share capital, a right for shareholders to request documents related to the merger, etc.) are amended.
- (viii) a shorter term in the liquidation procedure is specified.
- (ix) the share transfer contract governing the transfer of shares does not have to be a notary deed.

The Law abrogates the transitory provisions set forth in articles 230 and 231 of Law 9901/2008, under which companies were dissolved due to failure to fulfill the requirements set out by article 230 of Law 9901/2008 (i.e. adopt the corporate documents in line with the provisions of the new company law within three years from the entry into force of said law, such deadline expiring on 20.05.2011). However, an additional period of 3 months from entry into force of the Law is granted to companies registered before 20.05.2008 to:

- (i) approve the required amendments to their Articles of Association harmonizing them with Law 9901/2008, as amended; and
- (ii) file either (a) the said amendments with the NRC or (b) a statement from the representative of the company declaring that the company's Articles of Association meet the requirements of Law 9901/2008.

Failure to perform the actions under (i) and (ii) above will result in a penalty of 30,000 Leke. In addition, the NRC will not file any corporate act nor perform any other service for a company which has not complied with the above requirement by the said deadline.

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## Boga & Associates

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The firm maintains its commitment to quality through the skills and determination of a team of attorneys and other professionals with a wide range of skills and experience. The extensive foreign language capabilities of the team help to ensure that its international clientele have easy access to the expanding Albanian and Kosovo business environment.

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