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THE INVALIDITY OF COMMERCIAL COMPANIES UNDER EU LEGISLATION

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ABSTRACT: *Directive 68/151 / EEC of 9 March 1968 on the coordination of safeguard measures against members and others to be accorded to member countries of undertakings in the meaning of the second paragraph of Article 58 of the Treaty , in order to make these measures equivalent to the whole community ", with all the care that is shown in the protection of the rights of third parties, has not forgotten to leave a path to address the invalidity of the establishment of commercial companies in cases of special. In this paper I will give my contribution in analyzing the invalidity of commercial entities under EU legislation. In a latter faze, I will elaborate the influences and harmonization of EU legal framework on Albanian legislation of commercial companies.*

KEYWORDS: Commercial Companies, EU, Legislation

The invalidity of commercial companies under EU legislation.

In the third section of the Directive, respectively in the three provisions, Articles 10-11-12 deals with the invalidity of commercial companies. All Member States, whose laws do not provide for administrative or judicial preventive control, at the time of the formation of a company, the law or statutes of the company, as well as any changes to such documents, shall be drafted and certified in the appropriate legal form. member states can not foresee cases of invalidity of commercial companies contrary to the following provisions:

a) No instrument of incorporation has been drafted or the rules relating to prior scrutiny or legal formalities required have not been met;

b) The object of the company is unlawful or contrary to public order;

c) The instrument of incorporation of a company or statute does not cite the name of the company, the value of the individual capital subscriptions, the total amount of the subscribed capital or the object of the company;

d) Inability to comply with the provisions of national law regarding the minimum capital value to be paid;

e) Absence of all founding members;

f) When in violation of national law governing commercial companies, the number of founding members is less than two.

Beyond the foregoing causes of invalidity, corporation can not become subject to any cause of absolute or relative invalidity or declaration of invalidity. Also, the question whether an invalidity decision rendered by a court may be countered to third parties will be governed by Article 3 of the Directive. Where national law recognizes a third party's right to challenge the decision, it can do so only six months from the public notice of the award. Invalidity has as a consequence the liquidation of a commercial society, just like its breakup. Invalidity should

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not affect the validity of commitments undertaken by or with the company, despite the fact that the company has liquidated.

The laws of member states may provide for provisions concerning invalidity between the bodies of the company. Holders of shares, remain obliged to pay their subscribed capital, but still outstanding to the extent that they require commitments made to creditors.

The co-ordination measures described in this Directive shall apply to provisions laid down by law, regulation or administrative action in the Member States with regard to joint stock companies. The name of each joint stock company will be accompanied by a more detailed description than other companies. Member States may decide not to apply this Directive to investment firms with variable capital and incorporated corporations as one of the types of companies listed in the Directive. If the laws of the Member States use this option, they should also stipulate the obligation of these companies to include in their designation the name "variable-capital company" or "corporate" in order to be identified by other companies.

A publicly owned share capital company under this Directive shall be considered to be a company that:

a. They have the primary purpose of making investments in stocks, stocks, land, or other assets with the sole purpose of spreading investment risks and giving their shareholders the benefit of the results of their asset management

b. Offer their shares for public registration, and

c. Their statutes provide that within the limits of the minimum and maximum capital, they can at any time issue, repay or resell their shares.

In any case, the Directive requires that these companies, statutes or founding acts contain at least the following information:

a. Kind and name of society;

b. The object of the company;

c. When the company has no authorized capital, the amount of capital subscribed;

d. When the company has an authorized capital, its amount and also the amount of capital registered at the time the company is incorporated or authorized to start the business and at the time of any change in the authorized capital as per point (e) of Article 2 of Directive 2009/101 EEC;

e. The duration of the company, except when it is indefinite.

f. Registration Office;

g. The nominal value of the shares subscribed and, at least once a year, their number;

h. Number of shares signed without declaring nominal value, where such shares may be issued under national law;

i. Special conditions, if any, limiting the transfer of shares;

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j. Are registered shares or bearers when national law provides for both types and any provision relating to the conversion of such shares unless the procedure is provided by law;

k. The amount of subscribed capital paid at the time the company is incorporated or is authorized to start the business;

l. The nominal value of the shares or, when there is no nominal value, the number of shares issued for an amount other than cash, together with the nature of the remuneration and the name of the person giving such consideration;

m. The total amount or at least an estimate of all the costs to be paid by the company or to be paid for, due to its formation and, as the case may be, before the company is authorized to start the business; and

n. Any special advantage given to, at the time of formation of the company or until the time it receives the business start-up authorization, to anyone who has participated in the formation of the company or in the transactions leading to the grant of such authorization.

Where the laws of a Member State require a company to be formed by more than one member, the fact that all shares are held by a person or that the number of members has fallen into the statutory minima after the incorporation of the company shall not lead to the automatic decommissioning of the company. Member States' laws will require that, in order for a company to incorporate or obtain a business start-up authorization, a minimum capital of at least EUR 25 000 should be signed. The signed office can only be formed by assets capable of economic evaluation. However, an enterprise to perform work or supply services can not be part of those assets.

Member States may allow those who undertake to make shares in the exercise of the profession to pay less than the total price of the shares for which they sign during that transaction. Bonuses issued for a payment must be paid when the company is incorporated or is authorized to start the business with not less than 25% of their nominal value or, in the absence of a nominal value, their responsible money. However, when the shares are issued for an amount other than those in money at the time the company is incorporated or is authorized to start the business, consideration should be fully transferred within five years of that time.

CONCLUSIONS

As a consequence of the Stabilization and Association Agreement, Albania is bound to align the legislation in the field of business with that of the EU. Approximation of the legislation on commercial entities, particularly on the invalidity of companies, is an important part of this obligation, as it offers commercial entities and parties to treat the security that the law will be implemented and interpreted according to European standards.

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