

The Development of Joint Stock Companies according to Kosovo's Legislation and their Comparison with the Region

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Abstract

Joint Stock companies or Corporations are the highest forms of business organization and are regulated by law. As the most organized business forms, they have special importance on economic development of a country and that their development and their regulation determine the economic and political stability of a country. To describe corporations and their regulation from the legal aspect, namely to use the descriptive technique, are used secondary data. In this paper has been implemented also the comparative method in order to compare the development of joint stock companies in Kosovo with those in the region. More specifically, the comparison is made with Albania, Macedonia, Montenegro, Croatia and some other countries of the Western Balkans. The legal framework of all these countries is analyzed in detail and comparisons are based on those findings.

From this comparison it is noted that while the joint stock companies in other countries have started to act very early, Kosovo as a country which has recently come out of war has managed to issue a law that does not differentiate greatly from any other legislation of neighbouring countries.

From the conducted research, it is noted that Kosovo has made progress in terms of legislation in the field of commercial law, which has resulted in improving the investment climate and organization of joint stock companies.

Key Words: Joint Stock Companies, Kosovo, Law, Business, Economic Development.

1. Introduction

The main object of elaboration in this work are the joint stock companies in Kosovo and their comparison with the joint stock companies in the region, including those in Albania, Macedonia, Montenegro and some other countries of the Western Balkans.

Given the significance that the business organizations have in the economic development of a country and that their development and regulation determine the economic and political stability of a country, then this paper will provide essential information for joint stock companies in Kosovo, more specifically: their regulation from legal aspect, i.e. starting from their registration until the stage when they stop to operate. This method will be present in this paper to have a clearer picture of the development of joint stock companies in Kosovo and with the intention that through comparison to obtained the best practices of their development in the region.

2. Overview of the development of Joint Stock Companies

A joint stock company or a corporation is the highest form of business organization and is regulated by law. Derives from the Latin word "*Corpus*" which means the body, thus representing a group of people. The origins of the organization of joint stock companies date from the 18th century in Great Britain and they have initially dealt with foreign trade activity¹. According to the same author, is stated that at the beginning of their formation, the corporation, as a form of organization, was viewed with great suspicion considering as they used an ineffective way of management: characterized by corruption and do not take into account the social and environmental issues.

Adam Smith in his work "*The Wealth of Nations*" criticizes corporations (in their form as joint-stock) due to the separation of ownership from control: "The directors of these companies are managers and not people

¹ Hay D, "The Public Joint-Stock Company: Blessing or Curse?", Jesus College, *University of Oxford*, Oxford, 1990.

who have invested their money, therefore cannot be expected to supervise with the same anxious and vigilance with which the partners of a partnership often supervise their own business ... therefore the negligence and generosity will prevail in the affairs of the company"².

Joint stock companies have managed to facilitate economic development in the past 150 years by allowing businesses to increase their level of development. This has happened because businesses that are organized as a joint stock have greater capital to operate in comparison with other forms of business and greater legal protection offered to investors, allowing them to invest their money in shareholding and become owners but are released from unlimited responsibility and managerial responsibilities.

Modern corporations are successor to the corporate of the time of Hammurabi, ancient Greece, and Rome. In England, have begun with the establishment of joint stock companies like: Virginia Company, the Massachusetts Bay Company and others which are considered then as the precursor of modern corporations. To these corporations was given the monopoly in trade and was guaranteed the power to act from the British government³.

3. The development of joint stock companies in Kosovo

The system controlled completely by the Serbian regime had resulted in the paralysis of political and socio-economic development of Kosovo. Only after 1999, when the war ended and was installed the interim administration of UNMIK, began to be taken some steps to relieve the situation that existed in the organization of enterprises in Kosovo after the war. Before the war, the laws that were applied in Kosovo were those of the former Yugoslavia, which would be used until the approval of the new system for the organization of companies that practiced business in Kosovo. Kosovo's economy before 1999 was characterized as a socialist and centralist Yugoslav economy, where the property and social enterprises were the country's economy. With the Federal Constitution of 1974, all the means of production, products and income earned through the collective labour, natural resources and other means to meet the needs of public

² Smith, A., "The Wealth of Nations", Tirana, 2006.

³ Mallor J, Barnes, J, Bowers T, Phillips M, and Langvardt A., "Business Law and the Regulatory Environment", *MacGraw Hill Companies, Inc*; Tenth edition, , USA, 1998, pp. 818.

became state property, thus making the social property a category different from private or state property. This system was in effect until March 22, 1989, a day before the suspension of the autonomy of Kosovo from Serbia⁴.

Corporations are characteristic of a modern economy, which cannot be said for the economy of Kosovo. At the time of Serbian occupation, as the Serbian authorities did not allow the penetration of foreign capital and the privatization of the state sector, thus came to the collapse of the economy and the termination of the transition process as a chance for recovery and development of businesses in Kosovo⁵

UNMIK issued the Regulation 2001/6 which is also qualified as halved version of Western laws, through which to the trade companies were offered the basic conditions for the exercise of business activities in Kosovo. But considering that this regulation was deficient, above all it lacked harmonization with the EU directives and many other deficiencies ranging from investor obligations and restrictions, removal of the director, board of directors, shareholders, issue of securities, etc., made that in 2003 to start to draft a new law on commercial companies. Only in 2008 it was finalized⁶.

Law No. 02/L-123 on business organization, adopted by the Assembly in May 2007⁷, can be said that is in accordance with the requirements of European Union legislation as during its drafting was taken as the base the Austria - German model. This law has as an aim to allow Kosovo to be quickly integrated into the European Union. The law in question provides procedures for the registration of all types of companies, the registration office, data that should be provided to third parties, then continuing the review of individual enterprises, general partnerships, limited partnerships, limited societies, and lastly the joint stock companies⁸.

In June 2011 was adopted the Law on Amending the Law No. 02 / L-123 on business organization in which were made some textual changes and substitutions of phrase, were changed some notions such as⁹:

⁴ Instituti Kosovar për kërkime dhe zhvillime të politikave, "Misioni i Kombeve të Bashkuara në Kosovë dhe Privatizimi i Pronës Shoqërore" Prishtina, 2005, pp 5.

⁵ Badivuku-Pantina M, "Korporatat Multinacionale dhe Roli i tyre në Krijimin e Rendit të Ri Botëror", Prishtinë, 2001, pp, 5.

⁶ Sejdiu K, "Shoqëritë Tregtare", Moduli 2, Prishtina, 2008, pp. fq 2.

⁷ Assembly of Kosovo, "Law No. 02/L-123 on Business Organizations in Kosovo", Prishtina, 2007.

⁸ Sejdiu K, "Shoqëritë Tregtare", Moduli 2, , Prishtinë,2008. fq 2

⁹ Assembly of Kosovo, "Law No. 04/ L- 006, for the amendment and supplement of the Law No. 02/ L- 123 on Business Organizations in Kosovo", Prishtina, 2011.

- Individual Enterprise was replaced with Individual Businesses,
- A collective partnership was replaced with the notion General Partnership,
- The word Companies word replaced with the word Corporation,
- The Registry Office was replaced with Agency of Business Registration of Kosovo (ABRK).

4. Definition of Joint Stock companies according to Kosovo's legislation and legislation of Albania and Montenegro

Law No. 02 / L-123 on business organization, adopted by the Assembly of Kosovo on 27 September 2007 and promulgated by UNMIK's Regulation no. 2008/26 of date 27 May 2008¹⁰, is dedicated mostly to joint stock companies, as a special type of companies which operate in Kosovo, as its operation is more complicated. More precisely, from Article 126 until the Article 234 deal with the regulation of joint stock companies in Kosovo. In this part of the law on business organization are set the general provisions on joint stock companies, the statute and regulations, shares and securities, equity, distributions, the board of directors and officers, shareholders and shareholders' meetings, the change of statute, mergers, divisions and other major transactions, control of the shares, dissolution and liquidation, etc¹¹.

Joint Stock Company as the highest form of business organization under the Law on business organization no. 02 / L-123 (Article 126.1, 2007) is defined in this way: "*A joint stock company is a legal person that is owned by its shareholders but is legally separate and distinct from its shareholders. A shareholder of a joint stock company is not a co-owner of, and has no transferable interest in, any property or assets of such company. A joint stock company may have a single shareholder*"¹². This definition is more focused on the responsibility of shareholders to split the ownership of the business organization from personal ownership of shareholders and also highlights the possibility of a minimum of shareholders (one shareholder).

¹⁰ Assembly of Kosovo, "Law No. 02/L-123 on Business Organizations in Kosovo", Prishtina, 2007.

¹¹ Assembly of Kosovo, "Law No. 02/L-123 on Business Organizations in Kosovo", Prishtina, 2007.

¹² Assembly of Kosovo, "Law No. 02/L-123 on Business Organizations in Kosovo", Prishtina, 2007, Article 126

Law on Entrepreneurs and Business Organization in Albania makes a different definition of joint stock by saying that “*Joint Stock Company is a business organization whose capital is divided into shares signed by the founders. The founders are individuals or legal persons who are not personally liable for the obligations of the organization and that the losses are covered only with the outstanding value of signed shares. In Albania, the definition of joint stock companies is focused on dividing the responsibility of organization from its owners, thus the owners have their assets secured as that is secured in Kosovo.*

According to the Law on Business Organization in Montenegro, No. 17/07, the joint stock companies are defined as following: “*Joint Stock Company is an economic entity that is an organization belonging to an individual or legal person, which is established for the purpose of conducting business activity and its ownership is represented by shares*¹³. A joint stock company is a legal person and its existence along with its assets and liability are totally separated from shareholders. The definition made in Montenegro is almost the same to that in Kosovo but that in this case is specified the main purpose of joint stock companies that is the conduction of business. While the shareholders’ responsibility is the same as in Kosovo and Albania, i.e. shareholders have their wealth separated from their personal wealth.

In Croatia the law on Business Organization no. 111/93 exists since 1993 and on this basis it can be said that the regulation of business organization in Croatia has a long tradition¹⁴. Despite the fact that this law is old enough, it does not differ much from the definitions that exist in Kosovo, Albania, Montenegro etc. So, even under the Law of Business Organization in Croatia, “*A joint stock company is a business organization in which shareholders invest with basic capital divided into shares. A joint stock company may have a single shareholder or many shareholders and are not liable for organization’s debts*”.

The definitions of joint stock companies in all countries of the region do not differ much among them. So, in all countries of the region, the joint stock companies are regulated by the laws on business organizations, where the shareholders can be individual or legal persons who invest through shares and are not liable for losses of the company with their

¹³ Assembly of Montenegro, “Law No. 17/07 on Business Organizations”, Podgorica, 2007, Article 17.

¹⁴ Assembly of Croatia, “Law No. 111/93 on Business Organizations”, Zagreb, 1993, Article 159.

personal wealth and that they cover the losses only with the outstanding value of signed shares.

5. The establishment of joint stock companies, focusing on Kosovo, Albania, and Montenegro

The general economic development and the development of business organization in particular, are proceeding too fast. Globalization and the technological development have complicated the procedures for the establishment and registration of business organization, while on the other hand, the need to simplify these procedures was estimated to be a necessary condition not only for the state administrative system to not lag behind in terms of economic developments but was also one factor that accelerated and helped the business development and helped in the attraction of foreign investment¹⁵.

To simplify this process, in the Ministry of Trade and Industry of the Republic of Kosovo functions the institution for the registration of businesses in Kosovo called the Business Registration Agency in Kosovo¹⁶. At this centre is made the registration of all business organizations and other foreign business organizations according to the Law No. 02/L-123 (2007) on Business Organization and also according to the Law No. 04/L-006 (2011) to amend and complement the basic law on Business Organizations. This centre offers various services such as services for business registration, issuing of licenses and services for industrial property. Start-up businesses along with taking the business registration certificate can be provided with fiscal number, certificate of VAT¹⁷, and the export-import certificate¹⁸.

For the registration of J.S.C., are required different documents ranging from the completion of the form and continuing with other procedures. This form is to be completed by the applicant, is divided into 13 parts and this information is required; Business name, trade name, business address,

¹⁵ Mallor J, Barnes, J, Bowers T, Phillips M, and Langvardt A., "Business Law and the Regulatory Environment", *MacGraw Hill Companies, Inc*; Tenth edition, USA, 1998, pp. 818

¹⁶ Agjencioni i Regjistrimit të Bizneseve në Kosovë, Available from <http://www.mti-ks.org/sq/Agjencia-e-Regjistrimit-te-Bizneseve-Kosovare> (03 March, 2013)

¹⁷ VAT- acronym for Value Added Tax

¹⁸ Agjencioni për Regjistrimin e Bizneseve në Kosovë, Prishtina. Available from: <http://www.arbk.org> (23 February, 2013)

business type, date of establishment, number of employees, basic capital, business activities, name of business owners and their addresses, Director and Board of Directors, unit for additional information, and finally the information for the applicant.

After the completing of the form, the founders must present the *Statute of the Organization* which should be drafted on the basis of Article 35.1 of Law on Business Organization no. 02 / L-123. Also there should be submitted the *Partnership Agreement* drawn under Article 138 of Law no. 02 / L 123. Attached to these documents should be also mentioned the *Agent Consent* ¹⁹ registered under article 35.3 of the Law No. 02 / L-123, as well as the owners identification documents (copies) and of other persons involved in the business ²⁰.

In Albania as well in Kosovo, functions the *National Registration Center* regulated by Law No. 9723 dated 03.05.2007, which has abolished the previous laws ²¹. At the centre are registered all types of business organization which are provided by the already mentioned law on business organization. The National Registration Centre is a state owned public institution with legal personality depending on executive power. Even in Albania, for the registration of a joint stock company must be firstly completed an application form, identification documents, should be submitted the statute and the act of incorporation, acts of appointing the bodies of the company. The application must contain the following information: name, type, date of establishment, identification data of the founders, headquarters, object, duration, identification of the persons responsible for the management, the value of the initial capital, the number and nominal value of shares and other relevant information²².

A joint stock company which is established must be registered in order to gain legal personality. This registration must be done depending on where the economic activity will be developed and according to the law which is in force.

¹⁹ The registered agent is the company or individual who receives the lawsuit against the company, notices or other applications when the company in question is a party to a judicial process.

²⁰ Agjensioni për Regjistrimin e Bizneseve në Kosovë, Prishtina, 2013.

²¹ Curi P, "E drejta tregtare", Vol.1.,Tirana, 2000, pp 29

²² Assembly of Albania, "Law No. 9901 on Business Organizations", Tirana, 2008, Article 28 and 32.

Even the law on business organizations of Montenegro provides almost the same requirements for the registration of a corporation. The required documents for the registration of a joint stock company in Montenegro are: the agreement of incorporation, statute, the list of directors and their personal data, type of business, etc. All these documents must be presented at the registration centre in the Commercial Court of Montenegro²³.

The registration of joint stock companies, depending on the country and their legal arrangement, is made with the basic laws on business organization or by referring to the specific laws that are specifically approved for registration. With the registration in the register of business organizations, the organization acquires legal personality and from this moment its founders, whether individual or legal, under Article 133 of the Law on Business organization in Kosovo (02 / L-123, 2007) do not have authority to manage or govern with it, but their powers come from the position they hold after its registration. From here it also derives the importance of registration of JSC in the business register and the responsibilities carried by the founders in the joint stock companies.

Besides the documents that are required for the establishment of a corporation, the special importance is given to the initial capital that includes the equity that should be held by the joint stock company before starting to exercise its economic activity or otherwise can be said that the establishing capital represents the minimum amount that is available to satisfy the claims of creditors²⁴. This initial capital once has been at the amount of 25,000 Euros, while with the amendment of the law on business organization, that value has changed and now and joint stock company can be established with only 10,000 Euros²⁵.

On the other hand, according to the legislation in Albania is distinguish between joint stock companies with private offer which may not have capital of less than 2,000,000 Lekë, while those with public offer may not have capital of less than 10,000,000 Lekë²⁶.

²³ Assembly of Montenegro, "Law No. 17/07 on Business Organizations", Podgorica, 2007, Article 21.

²⁴ Assembly of Kosovo, "Law No. 02/L-123 on Business Organizations in Kosovo", Prishtina, 2007, Article 153

²⁵ Assembly of Kosovo, "Law No. 04/ L- 006, for the amendment and supplement of the Law No. 02/ L- 123 on Business Organizations in Kosovo", Prishtina, 2011, Article 25.

²⁶ Assembly of Albania, "Law No. 9901 on Business Organizations", Tirana, 2008, Article 28 and 105.

While in Kosovo, the amount of 25,000 Euros for establishing capital was reduced to 10,000 Euros in order to encourage the foreign investment, in Montenegro has remained the amount of 25,000 Euros required for the establishment of joint stock companies as obliged initial capital²⁷.

6. The organizational structure of Joint Stock companies in Kosovo compared to those in Montenegro and Macedonia

According to the Law on Business Organization in Kosovo, JSC are established by shareholders who called also the owners of JSC. However, the shareholders are exempt from the management of JSC, because this role is generally left to the board of directors and officers, who are elected on the basis of certain qualifications and conduct the business management of JSC and for their work, give accountability to shareholders. Although the law on business organizations of Kosovo does not foresee the body of a JSC, it is still implied that the bodies of a JSC which operate in Kosovo are: the board of directors, officers, shareholders meeting²⁸.

According to the Law on Traders and Business Organizations of the Republic of Albania, the JSC is a business organization whose capital is divided into signed shares from the founders. The founders are individual or legal persons who are not personally liable for the obligations of the organization and they cover losses only to the indelible value of signed shares. Under this law, the JSC can be with private or public offer²⁹. Bodies of the JSC are: General Assembly; The board of the administration as a single administrative body which carries both the administration and oversight functions of the company's activities; supervisory council³⁰.

A slightly different arrangement of the organizational structure of JSC makes the law on business organization of Montenegro. Under this law, the shareholders of JSC are owners of JSC, while shareholder meeting is the final authority of a company and qualify as mandatory body of the JSC.

²⁷ Assembly of Montenegro, "Law No. 17/07 on Business Organizations", Podgorica, 2007, Article 17.

²⁸ Assembly of Kosovo, "Law No. 02/L-123 on Business Organizations in Kosovo", Prishtina, 2007, Article 166.

²⁹ In Albania minimum capital JSC with private offer cannot be less than 2,000,000 lek while those with public offer cannot be less than 10,000,000 ALL (Law 9901, Article 107, R. Albania, 2008).

³⁰ Assembly of Albania, "Law No. 9901 on Business Organizations", Tirana, 2008, Article 134.

Even under this law as well as that of Kosovo, the management body of JSC will be the Board of Directors, whose decisions will be enforced by officials, authorized people and chief executive. The chief executive officer and the authorized official are people who should have any JSC as it is mandatory the selection of the board of directors. As the necessary body to function the JSC is also necessary the certified auditor. As seen with the law on business organization of Montenegro, unlike that of the Republic of Kosovo no. 02 / L-123, is a long list of bodies which are obligatory to have a JSC³¹.

Despite these systems as discussed above, in Macedonia there is a slightly different arrangement of the organizational structure of the JSC. In this place, the management of the company can be a tier, thus the management of JSC is trusted only to the Board of Directors but may be also two tiers where the management of JSC is made by the board of directors and the supervisory board. JSC has the right of choice under which system will manage the business and shareholders are those who have the right to elect the members of these boards³².

Organizational structure of JSC in Kosovo, unlike other countries in the region, differ for the simplicity of organization and management because there are no bodies as supervisory board, the chief executive who in some cases can be presented as an obstacle or complexity in the activity of the JSC. But we must not forget that in some cases it is necessary that the organization of JSC to be divided into several levels due to higher efficiency as it exists in the Republic of Macedonia.

7. Shares of a Joint Stock Company

Shares are defined as part of the ownership of a company and can be held by one person or by another company³³. According to the Law on Business Organization of the Republic of Kosovo, shares in joint stock company are the units into which shared ownership interests in society. Shares in joint stock company is owned by the shareholder and depending

³¹ Assembly of Montenegro, "Law No. 17/07 on Business Organizations", Podgorica, 2007, Article 23.

³² Assembly of Macedonia, "Law No. 24/09 on Business Organizations", Skopje, 2009, Article 342.

³³ Black J., "Oxford dictionary of economics", New York, fq 425.

on how is determined in the statute of society it can be transferred to any other person or corporation³⁴.

When the company is firstly established, it issues shares for which they pay investors, thus become a shareholder of the company³⁵.

Joint Stock Company as part of the company, its base of construction has exactly on the shares. Shares represent the main source for capital growth of a company. The formation of a JSC aims mainly at selling shares in order to provide business financing. These shares may be sold to investors who in return receive share certificates as evidence of ownership, or as a right of ownership over a part of the corporation.

Investors or shareholders, as they are called, are individual or legal persons who have a certain number of shares of the corporation. A shareholder can be an individual or company, who legally owns one or more shares in a JSC capital, and therefore have jointly owned the company and as a result try to increase the value of the share. Corporate shareholders delegate to managers making the right decision for them to act in the interests of their good³⁶.

8. Conclusion

The treatment of joint stock companies in this paper has been more focused in their organization by Kosovo legislation and its comparison with the same law in the region. While joint stock companies in other countries have started to act much earlier, nevertheless Kosovo as a new state has managed to issue a law which does not very much from other laws of the region.

From the research conducted, is noted that Kosovo has made progress in terms of legislation in the field of commercial law, which has resulted in improving the investment climate and organization of joint stock companies in Kosovo. Also in this regard has also helped the reduce amount of money that is required for the establishment of a company which though the amended aw on business organization, this amount is reduced almost by half. So, administrative fees are not so high and are

³⁴ Ligji nr. 02/L-123, "për Shoqëritë Tregtare", Republika e Kosovës, neni 126.3, 126.4, 126.5, 2007.

³⁵ Shoqata e Kontabilistëve të Çertifikues dhe Auditorëve të Kosovës, "Kontabiliteti Financiar", fq. 408, Prishtinë 2007.

³⁶ Llaci Sh dhe Tabaku J, " Qeverisja e Korporatave", fq. 93, Tiranë, 2009.

economically acceptable for starting businesses. In conclusion, the law on business organization have established a good start on the organization of the business sphere in our country. However, in the future, this law should improve even more so that each situation to be foreseen in order to not leave anyone the opportunities for manipulation and normally a law should be as effective as it can to develop the commercial companies.

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