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ORGANIZATIONAL AND FUNCTIONAL PROCEDURES FOR FORMAL REGISTRATION OF A COMMERCIAL COMPANIES ACCORDING TO MACEDONIAN LAW

Summary

This paper intended to present the process of formal registration of a company according to Macedonian law. At the same time, this paper is analyzing the position of the Central Register as authorized body for registration of a company. Since the registration of a company is very important phase for the entering into the business, a lot of international institutions are conducting researches in that filed. One of them, Doing Business report of the World Bank, is setting Macedonia among the countries with easiest procedures for formal registration of a company. Also in this paper are analyzed the facts and numbers from those reports. Those numbers, thorough the years are showing positive tendencies and reforms of the administrative process of formal registration of a company. This made Republic of Macedonia business friendly country in respect of the procedures for registration of a company. Nevertheless, there are a lot of tasks to be done to improve the wider environment for conducting a business (on time payment, bankruptcy procedures, enforcement of contracts etc.).

Key words: Central Register, registering a company, requirements, one-stop shop

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1. Introduction

Choosing of type of company for operating a business venture is always delicate matter. It involves wide range of legislation which need to be consulted. Formal process of obtaining registration of commercial company is very important, because it is considered as a first step for the entrepreneur and his entering into the business world. Each country business competitiveness is measured, among other, with the barriers or conditions needed for starting and registration a business entity. If those barriers and conditions are less and less, the country is more open for business and more friendly for entrepreneurs. The process of registration of a company should be free of discretion powers of the authority which is in charge for conducting of the registration. This means that the formal conditions for registration of company should be prescribed strictly by the law, not by by-law or internal acts and decisions of the registration authority. On the macro level the process of registration of company should be free of discrimination on the basis on "nationality" of the persons who intend to register a company. This means that foreign legal and natural persons can be allowed under same conditions as for domestic legal and natural person to register a company.

The procedures for setting up a corporation and the liability incurred by persons purporting to represent it before the incorporation process is complete are substantially similar in the UK, Germany and the US, but do still display interesting differences.¹ In UK special person

¹ Differences arise from the types of documents that must be filed and the contents of such documents. Where, as in the UK, the composition of the board and the mode of appointing directors are determined solely by the constitutional documents, the drafting of these documents takes on more importance than in Germany, where such important matters are determined without exception by the Aktiengesetz. Differences also arise where one jurisdiction has mandatory prerequisites not found in the law of the other. Where, as in the EU, strict procedures are prescribed for the constitution of a mandatory amount of minimum capital, the process of incorporation can become much more formal and time-consuming. These aspects can in turn affect the court's determination of fairness when incorporators enter into contracts before the body corporate has come into existence. Incorporation procedures thus exemplify the workings of corporate law models ranging from the most formalistic to the most informal, as well as

called *promoter* has role in the incorporation of the company that distinguish him from the other persons in that process. The promotion of a company consists in taking the necessary steps to incorporate it by registration under the Companies Act, to see that it has share and loan capital, and to acquire the business or property which the company is formed to control.²

As a part of establishing of a company, in that phase can be arised very different but essential remarks and discussions based on very interesting and modern topics such as the *real seat principle*³ and *branches of company*⁴ (we just mentioned them here, because the purpose of this paper is to analyze the procedures for formal registration of a company).

If we need to analyze the existing aspects for the process of formal registration of company, first of all, the basics are set in the Law on trade companies (LTC)⁵. So this means that we need to start from the Law on trade companies, and define the term *commercial entity*. Namely, commercial entity, shall be any person that independently and permanently as an occupation performs commercial activity in order to gain profit by production, trade and providing services on the market by means of: 1) purchase of movable things, with the aim of selling them in original, refined or processed form; 2) sale of movable things in a refined or processed form from his/her own production; 3) trading with securities and funds management; 4) banking, exchange and other financial activities; 5) insurance activities; 6) transport of persons and goods; 7) commission-based activities, freight-forwarding services, storage services and leasing; 8) trade representation and mediation; 9) hospitality-tourism activity, information

how courts may react differently to problems thrown out by different statutory configurations. Cahn Andreas, Donald David, „Comparative Company Law”, Cambridge University Press, 2010, pp.132.

² There is no general definition of a promoter in the Companies Act 1985. However, Treasury regulations under the Financial Services and Markets Act 2000 exempt from liability for false statements in listing particulars, or a prospectus, those who merely give advice in a professional capacity but do not give specific reports for inclusion as experts. Thus, a solicitor or accountant who merely advises the promoters on legal and financial matters respectively will not be considered as a promoter in respect of misrepresentations which appear in any prospectus issued to raise capital. Nevertheless, accountants, in particular, may be liable as experts if any of their financial statements are included with their consent in a prospectus and turn out to be false. In addition, the courts have not given the expression ‘promoter’ a precise definition although Cockburn CJ, in *Twycross v Grant* (1877) 2 CPD 469, called a promoter ‘one who undertakes to form a company with reference to a given project, and to set it going, and who takes the necessary steps to accomplish that purpose’. See: Wild Charles, Weinstein Stuart, „Smith and Keenan’s Company Law”, Pearson Education Limited, 2009, pp.92.

³ See: Menjucq Mihael, „Towards the end of the real seat theory in Europe”, in Michel Tison, Hans de Wulf, Christoph van Derelst, Reinhard Steennot, „Perspectives in Company Law and Financial Regulation”, Cambridge University Press, 2009, pp. 124-132.

⁴ See: Marco Becht, Luca Enriques, Veronika Korom, „Centros and the cost of branching”, in Michel Tison, Hans de Wulf, Christoph van Derelst, Reinhard Steennot, „Perspectives in Company Law and Financial Regulation”, Cambridge University Press, 2009, pp. 91-124.

⁵ “Official Gazette of the Republic of Macedonia” no. 28/2004, 84/2005, 25/2007, 87/2008, 42/10, 48/10, 24/11, 166/12, 70/13, 119/13, 120/13, 187/13, 38/14, 41/14, 138/14, and 88/15.

activity, marketing and other intellectual activities; 10) production of movies, videocassettes, audio-visual entry, software, as well as other similar activities; 11) publishing and printing activity and other activities connected with trading of books and artistic creations, and 12) purchase, construction and decoration of an immovable thing with the aim of sale and rent.⁶

The trade company shall be a legal entity wherein one or more persons have invested cash, things or rights in assets used for joint operation and who jointly share the profit or loss arising from the operation.⁷ The trade company shall independently and permanently perform an activity, in order to gain profit.⁸

A trade company, in accordance with the type, regardless of whether it performs a trade or some other activity, shall be: 1) the general partnership; 2) the limited partnership; 3) the limited liability company; 4) the joint-stock company, and 5) the limited partnership with stocks.⁹ If we analyze the forms of companies thorough European union, we can conclude that forms of companies prescribed by Macedonian company legislation are in the line and with respect of the most relevant European traditions. Namely, in: a) Austira there are: Sole Proprietorship (Einzelunternehmen), General Business Partnership (Offene Gesellschaft), Limited Commercial Partnership (Kommanditgesellschaft), Silent Partnership (Stille Partnerschaft), Company Constituted Under Civil Law (GesbR), Limited Partnership with a Limited Liability Company as General Partner (GmbH & Co. KG); b) France there are: Entreprise Individuelle (EI), Société Anonyme (SA), Société par Actions Simplifiée (SAS), Société à Responsabilité Limitée (SARL) and Société en Nom Collectif (SNC); c) Germany there are: Sole Proprietorship (Einzelunternehmen), Private (Non Commercial) Partnership (BGB-Gesellschaft), Commercial Partnership and Private Partnership Company (OHG und Partnerschaftsgesellschaft), Limited Partnership (Kommanditgesellschaft), Silent Partnership (Stille Gesellschaft) , Limited Commercial Partnership (GmbH & Co. KG), Limited Liability Corporation (GmbH) and Corporation (Aktiengesellschaft); d) Italy there are: Informal Partnership (Società semplice (S.s.)), General Partnerships (Società in nome collettivo (S.n.c.)) , Limited Partnership (Società in accomandita semplice (S.a.s.)), Limited Liability Company (Società a responsabilità limitata (S.r.l.)) , Joint-Stock Company (Società per Azioni (S.p.A.)),

⁶ Article 14 of LTC.

⁷ Article 19 of LTC.

⁸ Article 19 of LTC.

⁹ Article 20 of LTC.

Partnership Limited by Shares (Società in Accomandita Per Azioni (S.a.p.a.)) etc.¹⁰ This means that they are not restrictive, contrary, they are suitable for doing business activities and they are on European level.

A trade company can be incorporated only in a form and manner determined by this LTC.¹¹ The founder shall freely choose the type of trade company, unless otherwise determined by law.¹²

The asset created by making contributions in the trade company shall be expressed in cash and shall represent the basic capital of the company.¹³ The basic capital of the trade company shall be expressed in Denars or a foreign currency and shall be mandatoryil stated in the memorandum.¹⁴

Table 1.

minimum nominal amount basic capital of a company according to Macedonian law	general partnership	limited partnership	limited liability company	joint-stock company incorporated simultaneously	incorporated successively with a public notice for subscription of stocks
	No minimum nominal amount of basic capital	No minimum nominal amount of basic capital	Euro 5000	Euro 25000	Euro 50000

¹⁰ See more: Muncert Michael, Stephan Stubner, Wulf Torsten, „Founding a company: Handbook of legal forms in Europe”, Springer, 2010, pp. 19, 49,71 and 107-108.

¹¹ Article 20 of LTC.

¹² Article 20 of LTC.

¹³ Article 22 of LTC.

¹⁴ Article 22 of LTC.

The second phase includes the procedures needed to be taken in account for the process of registration of the choosed type of company. For Macedonian legal environment this means the phase of registration conducted by the Central Register of the Republic of Macedonia as a independent institution. Getting in mind the fact that recently this new institution took over the authority for registration of companies from the courts and considering the experience so far we can conclude that the Central Register of the Republic of Macedonia is functioning very proper. In the second part of this paper, the registration of a company in the Macedonian contexts will be analyzed by facts and numbers from the Doing Business reports for 2011, 2012 and 2013.

2. Procedural aspects of registration of a commercial company – facts and numbers – Macedonian case

One of the most relevant international reports for measuring of the efficiency of the procedure for registering of a company is Doing Business report. Those reports are following Macedonian procedures for registration of a company for a long period. In those reports we can track the evolution and upgrading of the procedure for registration of company in the Republic of Macedonia.

If we analyze the development and building of the procedures for registration of a company according to Doing Business reports and if we compare them from 2010 to 2015 we can notice very big progress. Namely, these reports in the respected period are noticing the follow: integrating procedures at a one-stop shop (2010), improving one-stop shop system (2011), simplifying the process for obtaining a company seal (2013) and making online registration free of charge (2015).¹⁵ Table 2 shows the progress of Macedonia for procedural aspects of registration of a company.

Table 2¹⁶.

Doing business report	2011	2012	2013

¹⁵ Doing Business 2015, The International Bank for Reconstruction and Development, 2014, pp. 19.

¹⁶ Doing business 2013, The International Bank for Reconstruction and Development, 2012, pp. 15.

Procedures (number)	3	3	2
Time (days)	3	3	2
Cost (% of income per capita)	2.5	2.4	1.5
Paid-in Min. Capital (% of income per capita)	0.0	0.0	0.0

3. Organizational structure of the Central Register of the Republic of Macedonia

The establishment, organization and scope of operations of the Central Register of the Republic of Macedonia, the relations between this register and the other basic registers and their users; the relations with other legal entities; as well as the issues related to inputting, processing, keeping and distributing relevant data from the Central Register to the users of such data is regulated by the Law on the Central Register¹⁷. The Central Register is a central information base of legal and other relevant data, which in accordance with this or another law or agreement are entered therein.¹⁸ The Central Register shall have the capacity of a legal entity, having rights, obligations and liabilities stipulated by this Law.¹⁹

The data determined by the Law on Central Register or other law shall be entered in the Central Register where they are electronically processed, integrated, selected, kept and made available to the interested users.²⁰ The processing, integration and classification of the entered data shall be carried out by the Central Register according to its procedures and forms.²¹ The Central Register shall adhere to the principle of professionalism, independence, objectivity, economy and efficiency, when entering and managing the data.²²

¹⁷ Article 1 of the Law on Central Register ("LCR") ("Official Gazette of the Republic of Macedonia" no. 50/2001; 49/2003; 109/2005, 88/2008, 35/2011, 43/2014, 199/2014 and 97/2015).

¹⁸ Article 2, of LCR.

¹⁹ Article 2(2) of LCR.

²⁰ Article 8 of LCR.

²¹ Article 8 of LCR.

²² Article 8 of LCR.

The basic registers and the other entities and the Central Register, shall enter the data in the Central Register on the basis of single procedures and Forms in electronic or other shape (form), in order to achieve rationality in the operations and their easier and faster accessibility to the interested users.²³

The processed, integrated and classified data entered in the Central Register shall be stored and kept at the head offices of the registers.²⁴

The data entered in the Central Register may be modified, supplemented, updated and deleted only by the basic registers and the other legal entities and natural persons that have entered them.²⁵ The data from the Central Register may be used by the state administration bodies, all natural persons and legal entities, both domestic and foreign, unless otherwise stipulated by a law or an agreement for some of them.²⁶

The Central Register may make available the data entered therein, in a form of information as unprocessed, processed or in any other form stipulated by this or another law.²⁷

With regard to the services rendered within the scope of its work, determined by this or another law, and referring to entering inputting, processing, integrating, classifying, selecting, storing, keeping and using the data in the Central Register, as well as for distributing the data to the interested users, the Central Register shall charge a proper amount determined by a Tariff of the Central Register, adopted by the Governing Board of the Central Register, upon consent of the Government of the Republic of Macedonia.²⁸

In the performance of its activity, the Central Register shall cooperate with other state bodies, legal entities and natural persons and shall exchange information with other registers from abroad, unless otherwise stipulated by law for specific types of exchange of information.²⁹

²³ Article 10 of LCR.

²⁴ Article 12 of LCR.

²⁵ Article 13 of LCR.

²⁶ Article 14 of LCR.

²⁷ Article 17 of LCR.

²⁸ Article 18a of LCR.

²⁹ Article 19 of LCR.

The Central Register and the basic registers, as well as other legal entities and natural persons shall be obliged to mutual cooperation and to present each other the data they have at their disposal, as well as to give explanations and assistance in regard to the performance of the activities within their competence.³⁰

³⁰ Article 20 of LCR.