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THE COMMON COMPANY IN THE ALBANIAN LEGISLATION

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SUMMARY: 1) The meaning of the common company; - 2) Content of the common company; - 3) Termination of the common company.

1) THE MEANING OF THE COMMON COMPANY

Article 1074 of the Civil Code defines the meaning of a common company contract. This article provides that:

"Company is a contract by which two or more persons agree to exercise an economic activity, in order to share profits derived from it.

The person member of company should make available to this activity money, goods or services. '

To use a comparative perspective, we encounter the concept of the common company contract only in the Italian Civil Code of the year 1942, where it is worth mentioning that this contract has not previously existed in that legal order, nor is expressly incorporated in any legal provision of any other legal order. In terms of having or not legal personality the common company, we can say that this company is simply a contract and as a result does not have legal personality.

On the other hand in the second paragraph of Article 1075 of the Civil Code is defined that the company is common, when it does not present the distinctive qualities of trade company regulated in the Commercial Code. "

Following Section 10751 of this Code stipulates that in common company, the contract is not subject to any particular form, except when required by the nature of united items. This means that if, for example: person member of the company makes available to him an immovable item, the company contract should be notarized, becoming the corresponding note in public records. So, in principle, the common contract is not subject to any particular form, which means that this company could also be created simply by reaching a verbal agreement or through concludent actions (*rebus ipsis et factis*).

Whereas Article 1077 of the Civil Code stipulates that company contracts may be amended only with the consent of all partners, if the agreement is not agreed otherwise.

For items given in ownership, the guarantee required by the member and the transfer of risks regulated by the provisions on sale. "

Regarding the above, it is worth mentioning that Article 22 of the law no. 9723, date: 03.05.2007 "On National Registration Center " is defined circle of entities that carry the obligation of registration at the NRC. Specifically, this article provides:

"1. Entities obliged to be registered in the trade register are:

- a) natural persons who exercise commercial economic activity;
- b) common companies under the provisions of the Civil Code; "
- c) commercial companies;
- d) branches and representative offices of foreign companies;
- d) companies and saving credit unions;

f) companies of mutual cooperation

e) any other entity, for which the obligation for registration is provided under the national legislation.

2. Entities, except as otherwise provided by special laws shall apply for registration within a 15-day period, which is calculated:

a) for natural persons, common company and branches or representative offices of foreign companies from the date of start of the activity.

b) for legal entities from the date of incorporation.

3. For other mandatory records, the application is made within 30 days from the date of the event of the fact and / or the formation of the act mandatory for registration. The common company should be registered at NRC in the above terms, because otherwise the omission constitutes an administrative offense pursuant to Article 74 § 3 of the law "On National Registration Center" and punished with a fine up to 15,000 ALL. It is worth mentioning the regulation provided for in Article 262 of Law no. 9723, dated 03.05.2007 "On National Registration Center " which provides that:

"The application for the initial registration of common companies is made by all members or any person authorized by them. Application for other recordings is made by the person authorized to represent the company in relation to third parties or by any person authorized by them. "

2) CONTENT OF THE COMMON COMPANY CONTRACT

- Relations between members of the company.

Substantial parts of the contents of the common company contract are the forms that regulate the relations between the members of this company. Thus, Article 1076 of the Civil Code provides that the member is obligated to pay certain contributions to the company contract. It is presumed that members are required to contribute, in equal parts between them, as is necessary to achieve the purpose of the company, unless the agreement provides otherwise.

The member, who has contributed to the loan, is responsible to the insolvency of the debtor, within the limits stated in article 506 of this Code to the case of obtaining the guarantee by agreement.

In terms of administration of the common company, Article 1080 of the Civil Code stipulates that, except when otherwise specified in the agreement, the administration of the company belongs to each member separately from the others.

If the administration belongs separately to several members, each of whom has the right to challenge actions that wants to perform another, before this to be accomplished.

Most of the members, determined under Part of each member in profit, settle the dispute.

While Article 1081 of this Code provides that if administration belongs jointly to several members, it is necessary consent of all administrators partners to perform the operations of the Company.

If it is determined that for the administration or for certain actions be necessary to adopt the majority, this is determined by the last paragraph of Article 1080 of this Code.

In the cases provided for in this Article, special administrators can not perform any action, except in urgent cases when to avoid a damage that threatens the company.

Further, the Article 1082 of the Civil Code stipulates that the removal of the administrator appointed in the contract can be made for a fair cause.

Administrator appointed by a special act can be removed under the provisions of the entrepreneurship contract. In such case, his waiver may be requested judicially from each member.

The rights and obligations regulated by the provisions administrators on order. Administrators are jointly responsible to company to fulfill the obligations charged by law or by contract of the company, except when they prove they have no fault.

On the other hand, the members that do not participate in the administration have the right to receive notice by the administrators for the performance of the works of the company to consult the documents relating to the administration and to receive a report at the time the works are completed for which the company was created.

If the performance of the company works takes more than a year, members have the right to take the administration report at the end of each year, unless the contract provides for a different period.

Article 1085 of the Civil Code provides explicitly that except the contrary agreement, each member is entitled to receive its part of profits after approval of the report.

Parts belonging to members in profits or losses are presumed in proportion to the contributed shares. If the value of the contribution is not determined by the contract, is assigned by the court. If the contract provides only part of each member in the profits, in the same measure is presumed to be determined also the participation in losses.

Any agreement that excludes one or more members from participation in the profits or losses is invalid.

In Article 1106 of the Civil Code is defined the rule that each member can waive the company, when it is formed for an indefinite period or for the entire life of one of the members.

In addition it may be waived in the cases provided for in the contract of the company or when there is a just cause.

In cases provided for in the first paragraph, the waiver should be communicated to other members at least three months before.

Whereas Article 1107 of this Code provides that unless the contract provides otherwise, in case of death of one of the members, the others should liquidate the share in favor of the heirs, unless they prefer to distribute the company or to continue with the heirs, and they give consent.

Further, Article 1108 of the Civil Code states that the exclusion of a member can occur because of significant failure of liability resulting from law or contract of the company, and for his detention, inability or for his sentence to a measure that includes even a temporary ban from official duties.

Member who has given a contribution to a company his work or enjoyment of an item, can also be excluded because of the immediate unsuitability to perform work given or the loss of the item, that occurred for reasons that can not be charged to administrators.

It can also be excluded member who has contributed through the transfer of ownership of an item, if he lossesa before the item is acquired by the company.

On the other hand, Article 1109 of the Civil Code provides that the exemption is decided by the majority of members, not including in their number the member to be excluded and is effective after 30 days from the date the notice is done to excluded member.

Within this period, excluded partner can submit an objection before the court which may suspend implementation of the decision.

If the company is composed of two members, the exclusion of one is made by a court at the request of another.

Also in Section 1110 of the Civil Code is set rule that are also excluded from company:

- a) the member who has been declared bankrupt
- b) the member against whom a certain creditor thereof has managed to have the right to quota liquidation under Article 1092 of this Code.

The exclusion provided in the first paragraph of this Article shall not apply in cases where member bankruptcy is the result of bankruptcy of the company.

But when is removed from company only a member, he and his heirs have the right only to an amount representing the value of the share.

Liquidation of the share becomes on the basis of the property situation of the society, the day that the removal of the member occurs.

If there is ongoing activity, member and his heirs have participations in the profits and losses have to do with these activities. Notwithstanding section 1092, share payment pertaining to the partner should be done within 6 months from the date of his removal.

Where from the company only one member is removed, this or his heirs are liable to third parties for the obligations of the company until the day he was removed.

Removal should be known to third parties by appropriate means, otherwise, it can not be relied on against third parties, that not at their fault, they have not been aware of.

- Relations with third parties.

In Article 1088 of the Civil Code is expressly stated that company acquires the rights and assumes the obligations by the members who have the right to represent him.

In the absence of other provisions in the contract, representation belongs to each member administrator and applies to all acts within the scope of the company. Amendments and termination of the powers of representation are regulated by the provisions for representation.

On the other hand, Article 1089 of the Code provides that the creditors of the company may ask their rights on the property of the company. For the obligations of the company, are also responsible personally or jointly members, who acted on behalf of the company and, if there is other agreement, the other members too.

The agreement must be disclosed to third parties by appropriate means, in the absence of receiving knowledge, limitation of liability or exemption from liability solidarity can not be relied on against those who have not been aware of.

Member, which is required the payment of company liabilities may ask, even when the company is in liquidation, prior execution against the assets of the company, indicating the items on which the creditor may be rewarded in the best way.

Whoever becomes a member in a company created ago is responsible together with the other members for the obligations of the company before it has acquired the quality of the member.

In Article 1092 of the Civil Code stipulates that particular creditor of the member, until the company lasts, can seek his rights on the profits belonging to the debtor, as well as taking preserving (conservative) measures on the share that belongs to this last in liquidation.

If other items of the debtor are insufficient for of rewarding its loans, special creditor of a member may, in addition, at any time the debtor's liquidation of its share. The share should be liquidated within three months of the request, unless the dissolution of the company is decided.

On the other hand, it is not accepted compensation between the obligation that a third party has towards company and loan that this has towards a member.

3) TERMINATION OF THE COMMON COMPANY

Under Article 1094 of the Civil Code the company is dissolved:

1. by the expiry;
2. by the realization of the object of the company or for the impossibility of its realization;
3. at willingness of all members;
4. for other reasons provided for in the contract of the company.

The company contract is tacitly extended for an indefinite time period when, although deadline stipulated in the contract has expired, members continue to carry out acts of company.

Article 1096 of the Civil Code provides that after the dissolution of the company, administering members preserve power only for administration issues until the necessary actions are taken to liquidate.

If the contract does not provide for the manner of liquidation of assets and members are not in tune to determine it, liquidation is done by one or more liquidators, appointed with the consent of all members or, in case of disagreement, by the court.

Liquidators may be revoked by the will of all partners and in any case by the court, at reasoned request of one or several members.

Article 1098 of the Civil Code defines that obligations and responsibilities of the liquidator are regulated according to the rules set by administrators, unless otherwise provided by the following provisions or the contract of the company.

On the other hand, Article 1099 of the Civil Code stipulates that administrators should submit liquidators the objects and documents of the company and to represent them the administration account for the period after the last reporting.

Liquidators should take over, objects and documents of the company and to draw up, together with administrators the inventory, from which to result the active and passive situation of the company assets. Inventory should be signed by the administrators and liquidators.

Further, Article 1100 of the Civil Code defines the rule that liquidators may perform acts necessary for liquidation and, if members have not provided otherwise, can sell in block the property of the company and make agreements and compromises. They also represent the company in judgment.

Liquidators can not take new actions. Otherwise, they are personally and jointly liable for the works started.

Liquidators can not share between the members, even partially, the assets of the company until the creditors of the company not be paid, or not to be put aside the amounts necessary to pay them.

If the available funds are insufficient for the payment of company obligations, the liquidator may ask members the payments for which they still owe the respective quotas and, if necessary, appropriate amounts in the respective limits of liability and proportionate the share of each in the loss. In the same proportion is divided between members of a member with insolvency.

Members, who have contributed to the asset for use, have the right to take it back to the state in which it is. If items are lost or damaged for reasons that can be charged to administrators, members have the right to compensation for damage on charge of company property, unless lawsuit can be filed against administrators.

After settling the company liabilities, the remaining asset is allocated to the payment of contributions shares. Possible surplus is divided among the members in proportion to the share of each in profit.

The quota value of the contributions having no subject the sum of money, which is determined according to the assessment made in the contract or, in its absence, according to the value that they have had at the time when they were granted.

Article 1105 of the Civil Code stipulates that if in the agreement is provided that the division of items to do in kind, the provisions on sharing common items are applied.

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