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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.

On 14.04.2008 the Albanian Parliament approved the Law no. 9901 "On Entrepreneurs and Commercial Companies" ("Commercial Law"). This law will replace the previous laws governing business organizations in Albania, namely Law no. 7632 dated 04.11.1992 and Law no. 7638 dated 19.11.1992.

The new Commercial Law results from the combination of commercial legislation models of Germany, Italy and UK. It will constitute the main body of the legislation on business organizations aiming to approximate the Albanian legislation with the European countries legislation and the *acquis communautaire*.

This new Commercial Law is submitted to the President of the Republic and once approved shall enter into force 15 days after its publication in the Official Gazette.

The sole entrepreneur and commercial companies are the subjects of the new Commercial Law. The sole entrepreneur is defined as the physical person who conducts an independent economic activity requiring an ordinary commercial organization. The commercial companies are the general partnership (shoqeri kolektive), limited partnership (shoqeri komandite), limited liability companies (shoqeri me

perjegjesi te kufizuar) and joint stock companies (shoqeri aksionere).

Differently from the previous company law, the new Commercial Law introduces definition of branches and representative offices of foreign companies and provisions on the group of companies.

For commercial companies existing under the former companies' legislation in the moment of entry into force of the new Commercial Law, it will apply a transitory period of three years within which the companies are under the obligation to adjust their organizational structure in accordance with the provisions of new Commercial Law.

At this stage the following requirements introduced by the new Commercial Law are identified as pertaining to the organizational structure or needed to be considered within the transitory period:

- Non-competition requirement providing for prohibition of shareholders and administrators of a limited liability company, administrators and members of the managing board of a joint stock company, to be vested with managing functions or have employment relationships with other companies engaged in the same line of commercial activity. Exception from this rule

- is possible, subject to introduction of relevant provisions in the bylaws of the company.
- Establishment of the Council of Employees in companies having more than 20 employees.
- Prohibition of the administrator of the parent company to exercise administration duties of the controlled company.
- Dissolution of the company in cases when no activity is conducted for a period of two consecutive years provided that no suspension of activity is filed with the National Registration Centre.
- Obligation of joint stock companies to keep the shares registers indicating therein all information regarding the shares.
- Adoption by joint stock companies of a flexible administration system. This type of companies may choose to adopt either the “*monistic*” system (with a board of directors/administrators conducting both management and supervising functions) or the “*dualistic*” system (with board of directors/administrators and supervisory board conducting supervising functions).
- Limitation of the number of mandates of administration board members (if the monistic system is chosen).

Upon entry into force of the new Company Law, the provisions ruling the matters and aspects of the commercial companies’ organization (establishment, changes or dissolution) must be considered.

In particular, the new Company Law provides for the possibility of division of ownership rights over the shares; new rules on transfer of shares; new requirements on distribution of dividends; new powers and rights of shareholders’ meeting affecting the powers of the administrators; new quorum of shareholders’ meeting; introduction of new modalities of convocation and participation to shareholders meeting; representation in shareholders meetings, restrictions on shareholders voting right by mean of exclusion; new rules on remuneration and duties of administrators;

new rules on withdrawal and exclusion of shareholders from the company; new limits of share capital for limited liability companies; detailed categories of shares in a joint stock company; new rules on consequences of failure to payment of shares in a joint stock company; new rules on loans of shareholders to the joint stock company; new rules on increase and/or decrease of share capital and introduction of the “authorized increase of capital”; possibility of issuance of convertible obligations and obligations with participation to the profit of the joint stock company.

An innovation of the new Commercial Law is also the exposure of the shareholders, administrators or members of the Board of Directors of the commercial companies to personal and syndicated liability for the obligations accrued by the company toward third parties in the following cases:

- Use of the legal form of the commercial company for unlawful purposes;
- Treatment of the assets of the company as their personal property;
- Failure to undertake appropriate measures (*i.e. ensuring that the company has sufficient capitals to fulfill its obligations toward third parties*) in case of awareness of the insolvency of the company.

Failure to comply with the transitory period would lead to the automatic dissolution and deregistration of the company from the Commercial Register kept neat the National Registration Center.

The Ministry of Economy, Trade and Energy, in the quality of the initiator of the Commercial Law in collaboration with external consultants, has also drafted the models of bylaws for the four forms of commercial companies.

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