
BOOK REVIEW

Keti Kokrashvili, *Company Law*, Tbilisi (Technical University), 2005, ISBN 99940-35-63-0

The development of a legal framework, which would be compatible with the economic reforms ongoing in Georgia, became the focal point of the agenda of reform with Georgia's proclamation of independence in 1991. The Law of Georgia on Entrepreneurs, which was adopted in 1995, attracted the attention of the lawmaker more than once and, consequently, it underwent a series of material changes with the development of adequate to modern economic relationships within company law having become the priority task of the State. Quite often, the reform of company law was undertaken with a view to the harmonisation of Georgian legislation with that of the EU standards and to the introduction of liberal rules of play for the participants of the economic relationship. However, these goals were not always attained successfully and there were shortcomings, unregulated areas and new deficiencies appearing repeatedly which prompted further the lawmakers to prepare the new changes to the law.

The year 2005 did not turn out to be an exception with the draft changes, having been prepared by two independent working groups, submitted to Georgian governmental authorities for consideration. One of the drafts was developed by a working group which was created within the Ministry of Justice of Georgia and consisting of representatives of GEPLAC, the International Financial Corporation and German Association for Technical Assistance (GTZ) whilst the initiator of the other draft was the Office of the State Minister of Georgia for the Co-ordination of Reforms. The changes to the Law of Georgia on Entrepreneurs were introduced on 24 June 2005.

Keti Kokrashvili, the author of the new textbook in the field of company law, co-operated closely with both of these drafts and served as a type of bridge between their activities. The intensive involvement of the author in the process of carrying out the reforms provides the readers, naturally, with first-hand information about the process without missing any important details of the ongoing reform and further allows them to be able to familiarise themselves with the background of the development of each of the provisions. Rather often, as another of its positive points, the textbook offers a very interesting comparative law analysis with respect to certain institutions.

The structure of the textbook, as chosen by the author, is similar to that of its European analogues which are based on the development of the institutions within the framework of common concepts. Particularly appreciable are the tests and practical tasks which are offered by the author to the students in the book's annex. Unlike other European textbooks, however, no author's analysis thereof is provided.

The book consists of eight chapters of which the last gives a general overview of the various organisational-legal forms of companies whilst each of their common features are analysed in the chapter covering the respective topic. Consequently, the reader is able to study various issues on a systematic basis and to analyse them in the light of comparative law.

The first chapter deals with the concept of Company Law. In this light, together with respective definitions, the reader has the possibility to acquaint himself with the history of development of company law, its principles and sources. Furthermore, the author discusses the important elements which are relevant to a specific economic activity. In particular, she pays attention to profit-orientation, independence, organised nature, lawfulness and continuity of economic activities. It is noteworthy, too, that according to the Law of Georgia on Entrepreneurs, these features are relevant to any organisational-legal form of a company which is registered as an entrepreneur. According to the German Commercial Code, which allows for the existence of an entrepreneur without registration in a company registry, these elements are decisive for the establishment of whether or not a company – not yet registered in a company registry – is an entrepreneur (*Istkaufmann*). In such cases, along with the aforementioned elements, accounts must be taken of the number of persons employed in the company concerned, the existence of branches and the scope of accounting data. Consequently, a company either meets the requirements or will be regarded as a so-called small enterprise (*Kleingewerbe*). The latter, on its own, may be an entrepreneur, but only in the case that it is registered as such in a company registry and, subsequently, chooses its organisational-legal form.

For a better understanding of the aforementioned elements, the author provides an example in the form of diagram No. 2, which depicts the features of entrepreneurial activities and the importance thereof in a simple and explicit manner. The description of the element of independence, however, which is particular for the economic activities, is not uniform. At one point, on page 20 of the text, it is defined in the light of international experience as only a “legal” independence whilst in the diagram itself, the independence is subdivided into “proprietary” and “organisational” parts.

Amongst the sources of company law, the author particularly highlights the usages of trade, mentioned in Article 339 of the Civil Code of Georgia, and she is quite right in doing so. Together with the international experience, it would have been useful for the readers to be given a short overview of whether or not this source has acquired practical importance within the Georgian reality. In particular, this refers to the acknowledgement of the legally binding nature of certain usages of trade as established between the entrepreneurs and if it is practicable by Georgian courts.

The author pays attention to the existence of the trade law as an independent field of law and is correct in upholding *Hopt's* opinion on the acknowledgement of trade law as an objectively existing and independent field of law irrespective of whether or not it is regulated by a separate code. The existence of trade law within the legal framework of Georgia is beyond doubt despite the absence of an independent statute on trade law;

that is, a commercial code which is proved by the abundance of trade law provisions in the Civil Code of Georgia and the Law of Georgia on Entrepreneurs.

In the second chapter, the author discusses the subject of economic activities. Following a short description of company law and the concept of an enterprise, she gives an overview of the various forms of enterprises. Of particular importance is the division of economic agents into two groups; that is, personal (partnership) and capital types of companies. The introduction of such a classification into Georgian company law must be welcomed as it helps the reader to better comprehend the essence and importance of each of the types of organisational-legal organisations after the association, thereof, with the respective group.

The author refers to a personally organised economic agent as “a partnership type company” which, *prima facie*, might be ambiguous for the reader. If we presume, however, that a partnership is a civil law association of persons, which under German doctrine is regarded to be the initial form of a personally organised economic unit, the reason for calling the personally organised economic units a “partnership in the sense of company law” becomes clear. The author attributes the special partnerships and joint responsibility companies to this group. Within capital type companies, the author discusses a joint-stock company, a limited liability company and a co-operative. It is worth mentioning, too, that the latter is a corporate economic unit, under German doctrine, but not a capital-type company.

The relationship, based on a special trust between the partners and, consequently, the personal liability, the personal type economic units which are based on, in a capital type company are substituted by the priority of partners’ dues and their limited liabilities.

It is still unclear whether or not the author, in unison with the well established position in Georgian literature, regards all of the organisational-legal forms – as envisaged by the Law of Georgia on Entrepreneurs – as corporate economic agents. For a comparison, according to the German doctrine, corporate-type (*koerperschaftlich*) economic units are: a joint-stock company, a limited liability company and a co-operative, the initial form of which is a non-entrepreneurial legal person; that is to say, a union.

In the same chapter, the author discusses the issues related to the registration of an enterprise and speaks about the constitutional feature (*konstitutiv*); that is, a right-originating and declarative (*deklaratorisch*) or a right-certifying feature. The importance of this delimitation is illustrated within the text with various interesting examples.

The author’s viewpoint with respect to the status of a pre-registered company is also rather interesting. The author states, for example, that the status of a company which is in the phase of incorporation, but not yet registered, is already envisaged by the Georgian legislation. She explains further that the responsibility for the obligations, undertaken by the company in the phase of incorporation before the registration, is borne by the partners

of the society in the capacity of joint debtors and not by the company itself. The position of the author with respect to this issue is again unknown. The issues related to the status and responsibilities of a pre-registered company are very problematic in practice and, given the importance of the topic, certainly requiring more detailed analysis.

Diagram No. 5 within the text is related to the incorporation of an enterprise and describes explicitly the stages of incorporation. Herein, the author speaks about the issues related to branches, the names of companies and their assets.

In the third chapter, *Keti Kokrashvili* discusses the managerial bodies of the enterprises and those bodies having representative powers including the procedure of their formation and selection. In this light, it is especially interesting to note the author's analysis of the German and Georgian experiences in the field of emancipation of minors.

With respect to capital companies, the author gives a detailed analysis of the legal relationship between the director and the enterprise which is not considered as an ordinary labour relationship but, rather, as a so-called 'official contract.' This term, however, which has been borrowed from other Georgian authors, requires a further specification. With due consideration of the German experience, under the term of an "official contract", *Keti Kokrashvili* presumably means a service contract which in the Civil Code of Georgia is integrated into a "Contract for Work." It is apparent, then, that it is necessary to develop special rules within the Georgian legislation that are applicable to higher officials.

Diagram No. 7 is easily understood and gives a very clear picture of the managerial bodies of an enterprise. In the chapter dedicated to representation, the author speaks about its direct and indirect forms. Under direct representation, however, she refers to the classic representation in civil law understanding whilst under indirect representation, she discusses the various types of mediation and gives a detailed description of each of the forms.

In the sixth sub-section of the conclusion of the third chapter, the author deliberates on the rights and obligations of the partners of an enterprise whilst the so-called internal and external responsibilities of an enterprise are discussed in the sixth chapter.

The fourth chapter analyses the process of incorporation, reorganisation and liquidation of an enterprise on a step-by-step basis with the possible versions of reorganisation presented as a schedule on page 168. Diagram No. 8 depicts the whole procedure of liquidation showing the process of the liquidation of an enterprise as being explicitly delimited from the full shutting down of an enterprise. In particular, liquidation is the process which leads to the registration of the liquidation in the registry and, consequently, to the point where the enterprises ceases to exist.

No less interesting is the fifth chapter of *Keti Kokrashvili's* work which is dedicated to the legal regulation of free trade and competition. Particularly important are the deliberations of the author on the manifestations of unfair competitions and legal levers against them. Unfortunately, these deliberations must be presumed as the overview of international

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experience as there is no competition legislation in Georgia which would at least in part resemble those of international standards.

As a final note, *Keti Kokrashvili* has produced a very interesting textbook, written in the Georgian language, which has definitely enriched the existing body of literature on the topic and, as well, the students' library.

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