

LAW
No. 65/2016
FOR SOCIAL ENTERPRISES IN THE REPUBLIC OF ALBANIA
Pursuant to articles 78 and 83, point 1 of the Constitution, upon the proposal of the Council of
Ministers,
ASSEMBLY
OF THE REPUBLIC OF ALBANIA
DECIDED:
CHAPTER I
GENERAL PROVISIONS

Article 1

Object

This law regulates the organization and functioning of social enterprises and defines the conditions and criteria that an entity must meet to benefit the status of social enterprise.

Article 2

Purpose

The purpose of this law is to regulate the activity of social enterprises, with a view to protecting and social inclusion of vulnerable groups through:

- a) employment, in recognition of the fundamental right of the individual to have sufficient living resources in accordance with human dignity;
- b) provision of employment opportunities for persons whose age, health and family status does not allow active availability in the labour market;
- c) Providing goods and services in diverse and good quality, providing appropriate and accessible opportunities for individuals with special needs, and marking an essential step towards gender equality as these services facilitate the participation of women in the labour market;
- d) the economic and social integration of groups in need, promoting the spirit of social responsibility, solidarity and cohesion in the community.

Article 3

Field of Law Enforcement

This law applies to legal entities that operate as social enterprises, creating suitable conditions for employment of disadvantaged individuals in the labour market.

Article 4

Principles

The organization and functioning of social enterprises is based on the accepted principles in the exercise of community-based activity and, in particular, on the principle of:

- a) transparency: social enterprises and their decision-making bodies act in a transparent and predictable way, promoting participation and accountability;
- b) Sustainability: The founders of social intercourse take the risk of financial sustainability and plan with discretion the realization of income, in cooperation with members and employees;
- c) autonomy and accountability: social enterprises exercise their activity based on the decisions of the governing bodies, which make decisions for the organization, functioning and administration of the entity autonomously and without being influenced by the state bodies, even though they receive public subsidies. Public bodies have the right to oversee the use of funds that social enterprises benefit from public subsidies;
- d) collective dimension: social enterprises preserve and promote the collective dimension, including in membership and decision-making other actors such as employees, volunteers, service users and buyers of goods, local government bodies and any other interested party contributing to the realization of a local development project;
- e) effectiveness: socially owned enterprises plan and use financial resources effectively, ensuring the maximum possible social benefit

Article 5

Promotion of social enterprises by the state

1. Social enterprises are promoted through the implementation of support measures, which include financial and other measures, and through the development of the information and education system for social intercourse.
2. The social entrepreneurship information and education system includes:
 - a) Providing services in support of the establishment and operation of social enterprises, including counselling for the preparation of documents for the establishment of a social enterprise;
 - b) introduction of new ideas resulting from market analysis;
 - c) Identifying opportunities to provide public services.
3. The ministry responsible for social issues is charged with drafting policies for the promotion and development of social enterprises.

Article 6

The role of local self-government units

1. Local self-government units support and implement social enterprise development policies in the territories within their jurisdiction.
2. Local self-government units stimulate the participation of social enterprises in public procurement procedures, under the conditions set out in the legislation in force

CHAPTER II

CRITERIA

Article 7

Criteria

A subject to maintain the status of a social enterprise must meet a minimum of economic and social criteria.

Article 8

Economic Criteria

To maintain the status of social enterprise, these economic criteria must be met:

1. A social enterprise shall conduct a continuous activity in the field of goods production and / or provision of services.
2. At least 20 percent of the revenue after the second year of activity and at least 30 percent of the revenue after the third and subsequent year of activity must be carried out by the activities provided for in Article 10 of this law.
3. In its activity, the social enterprise, in addition to the contribution of volunteers, must necessarily include, at least, 3 paid employees.
4. The income generated by the economic activity of social enterprises serves the continuous expansion of their activity.

Article 9

Social Criteria

To maintain the status of social enterprise, the following social criteria must be met:

1. Social enterprise aims to promote social objectives in a well-defined field of activity.
2. At least 30 percent of the employees employed in the social enterprise should belong to the category of socially and economically disadvantaged groups provided for in Article 11 of this law.

Article 10

Field of activity

1. Social enterprises operate in these areas:
 - a) social services;
 - b) employment mediation;
 - c) youth employment;

- d) protection and promotion of health;
 - e) education services;
 - f) environmental protection;
 - g) promotion of tourism, culture and cultural heritage;
 - h) sports activities, with the purpose of recreation and socialization;
 - i) promotion of the development of local communities.
2. The Council of Ministers approves the list of concrete activities exercised by social enterprises according to point 1 of this article.

Article 11

Disadvantaged groups

1. Social enterprises contribute to social protection and the support of disadvantaged groups through their employment and provision of services to them.
2. Disadvantaged groups include groups with extreme poverty problems, social exclusion due to discrimination, long-term unemployment, difficulties due to being prosecuted or addicted to drugs and alcohol, and displaced persons.
3. The concrete categories of disadvantaged groups are determined by the decision of the Council of Ministers.

CHAPTER III STATUS

Article 12

Legal form

1. Social enterprises are non-profit organizations, as defined by the legislation in force for non-profit organizations.
2. After obtaining the status of social enterprise, it is mandatory to use the name "Social Enterprise" next to the name of the organization.
3. The use of the name "Social Intermediation" is prohibited by any entity that does not hold the status, in accordance with the provisions of this law.
4. Social enterprises may decide to form social enterprise organizations.

Article 13

Knowing or Rejecting Status

1. Recognition of the status of a social enterprise for a subject is done by order of the minister responsible for social affairs after the verification of the documents.
2. The application for obtaining the status is made after the registration of the subject to the competent authority and the obtaining of the license, if the social enterprises exercise the activity for which a license is needed.
3. Procedures and documentation necessary for obtaining the status of a social enterprise are defined by the instruction of the minister responsible for social affairs.
4. The status of a social enterprise is refused in cases when the entity:
 - a) does not meet the conditions or did not submit the documentation, according to the requirements set forth in the instruction specified in point 3 of this article;
 - b) has filed false information or documentation.
5. In any case, the Minister's order for recognition or refusal of status shall be issued within 30 days of the date of application.

Article 14

Loss of status

1. The status of social enterprise is lost if:
 - a) the social enterprise, at its own initiative, is addressed to a motivated request to the ministry responsible for social affairs;
 - b) significant and / or repeated irregularities are observed in the activity of the social enterprise;

- c) the status is acquired through fraud, threats, bribery, conflict of interest, counterfeiting or any other act which constitutes a criminal offense;
 - d) the social enterprise has ceased its activity for a period longer than six months or has been disbursed.
2. The procedures and documentation necessary for the ban on the activities of a social enterprise and the abolition of the status of the social enterprise are determined by an instruction of the minister responsible for social affairs.
 3. Loss of status is announced by the order of the minister responsible for social affairs.
 4. Within three days, the Minister's order for the deprivation of status shall be deposited in the national register of socially-owned enterprises by delisting it from that register.
 5. In cases of loss of social inter-status, after the liquidation of creditors, the property created during the maintenance of the status must be used for the public interest or should be passed on to other socially-owned enterprises.

Article 15

Register of Socially Owned Enterprises

1. Social enterprises are registered as such in the register kept by the ministry responsible for social affairs.
2. The establishment of the register of social enterprises, the ministry responsible for social affairs, and the detailed rules for the format of its contents are defined by the instruction of the minister responsible for social affairs.
3. The register of social enterprises shall be made public according to the legislation in force.

CHAPTER IV ORGANIZATION AND FUNCTIONING OF SOCIAL ENTERPRISES

Article 16

Functioning

1. The activity of social enterprises is governed by decision-making bodies and executive bodies, including in decision-making other actors such as employees, volunteers, service users and buyers of goods, local government bodies and any other interested party.
2. The Minister in charge of social affairs adopts the regulation of the type of functioning of social intercourse.

Article 17

Non-Distribution of Profit

1. If socially-owned enterprises realize profit through the exercise of economic activity, they must be taxed for the profit realized under the applicable income tax legislation.
2. The social enterprise uses profits for the development and expansion of its activity.
3. The distribution of any kind of profit, whether in the indirect form, in favour of the members, employees or associates of the social enterprise is prohibited.
4. Consider indirect earnings:
 - a) the remuneration of members, directors and associates, in amounts greater than those provided for in undertakings operating in the same sectors and conditions, when such remuneration exceeds 20 percent of the bonuses received as a reference;
 - b) the salaries of employees, in any position, exceed by more than 20 percent the wages provided for by contracts or contracts for specific works, in similar sectors, except where the benefit relates to a specific professional occupation carried out for a certain period of time.

Article 18

Employee rights

1. Every employee has the right to adequate social protection, whatever his status and regardless of the size of the social enterprise in which he is employed.

2. Socially-owned workers may not be assigned economic and legal treatment less favorable than that provided for by employment contracts or collective agreements applicable under the provisions of the Labor Code.
3. Social enterprise employees, irrespective of their position, have the right to be informed, to give their opinion and to participate in decisions on strategic directions.
4. The limits and means of realization of these rights are defined in the internal regulations of social enterprises or in agreements concluded between the administration bodies of the social enterprise and employees or employees' representatives.

Article 19

Collective participation in decision-making

1. Any natural or legal person, domestic or foreign, has the right to be a member of a social enterprise, as well as to participate in the governing bodies or its administrative staff.
2. The rules of operation of a social enterprise must provide for, inter alia, forms of participation of employees or other interested stakeholders in the strategic planning decisions of the enterprise.
3. Participation is also accomplished through the provision of the necessary information, which enables the employees and beneficiaries of the activities to give their opinion and contribution in making decisions related to the general direction, especially on issues related to working conditions , as well as the quality assurance of goods and services provided by the enterprise.

Article 20

Volunteer members

1. The members of the social enterprise may also be persons contributing voluntarily to their work, in accordance with the legislation in force for volunteering.
2. The founding acts and statutes of social enterprises may provide for the granting of member status to employees or persons providing voluntary services.
3. Volunteer members are regularly registered in the Register of Socially Owned Enterprises and their number cannot exceed half of the total number of members.
4. Voluntary members do not apply collective bargaining agreements and legal provisions regulating labour relations, with the exception of provisions on protection against accidents at work and occupational diseases.
5. Volunteer members are not paid but can only receive reimbursement for the expenses incurred and documented, according to the rules established by the social enterprise for other members.

CHAPTER V INSPECTION OF SOCIAL ENTERPRISES

Article 21

Obligation to report

1. Social enterprises submit periodic reports to the ministry responsible for social affairs on the activities carried out in favour of the collective general interest and the categories of employed persons.
2. Forms, deadlines and reporting methods are defined by instructions of the minister responsible for social affairs.

Article 22

Supervision and inspection

1. The Ministry responsible for social affairs, through its structures, exercises controls in order to verify compliance with the provisions of this law by social enterprises.
2. The ministry responsible for social affairs, depending on the nature of the social enterprise and the activities exercised by it, exercises control of the activity of the social enterprise, coordinating the work with the inspectorates of other state institutions.
3. The procedure of conducting the control by the ministry responsible for social affairs, the coordination of the work with the inspectorates referred to in paragraph 2 of this article, as well as

the rights and obligations of the parties during the control shall be determined by decision of the Council of Ministers.

Article 23

Administrative offenses and sanctions

- a) For the purposes of this Law, the following violations constitute administrative offenses and are punishable as follows:
 - a) if during his activity the subject violates one of the economic criteria provided for in Article 8 of this law, he shall be fined from 20,000 (twenty thousand) ALL to 30,000 (thirty thousand) ALL;
 - b) if during his activity the subject violates one of the social criteria provided for in Article 9 of this law, he is punished by a fine ranging from 30 000 (thirty thousand) ALL to 40 000 (forty thousand) ALL;
 - c) the use of the name "Social Enterprise" contrary to the definition of article 12, point 3 of this law, is punishable by a fine of from ALL 30,000 to ALL 40,000 (forty thousand).
- b) The competent body for the punishment of an administrative violation is the body that has ascertained

CHAPTER VI

FINANCE SOURCES AND STATE SUPPORT

Article 24

Funding sources

Social enterprises exercise their activity with financial means that they can provide from these sources:

- a) income derived from the sale of goods and utility tariffs;
- b) public subsidies, linked to their social assistance and employment missions;
- c) private donations;
- d) other income, recognized by the legislation in force.

Article 25

Fiscal regime

Social enterprises are subject to the implementation of fiscal legislation, for the category of taxpayers to which they belong.

Article 26

Support forms

1. Social enterprises are supported by the state, through the subsidies of enterprises or employees in these entities.
2. The forms of support, through subsidies, shall be regulated by a decision of the Council of Ministers, after the assessment made by the State Aid Commission
3. Other forms of support and facilitation are regulated by the state aid, tax and non-profit organizations

Article 27

Participation in Public Procurement Procedures

1. Contracting authorities shall entitle social enterprises to participate in the procedures for awarding public contracts for health, social and cultural services.
2. In any case, the procedures for awarding such contracts shall be made in accordance with the legislation in force for public procurement and shall respect the general principles of public procurements.

CHAPTER VII FINAL PROVISIONS

Article 28

Appeal and execution of administrative measures

1. Complaints against the inspection bodies' decisions determined in this law shall be made in accordance with the law on inspection, whereas the procedures for ascertaining, reviewing, adjudicating, appealing and executing fines shall be made in accordance with the applicable law on administrative contravention.
2. The procedures for reviewing the issuance of administrative measures and the appeal of the administrative decision shall be made in accordance with the rules set forth in the Code of Administrative Procedures.
3. After the completion of the administrative appeal procedures, an appeal is made to the Administrative Court within the time limits and according to the procedures provided for in the provisions of Law no. 49/2012 "On the organization and functioning of administrative courts and the adjudication of administrative disputes".

Article 29

By-laws

1. The Council of Ministers is charged that within 6 months from the date of entry into force of this law to issue secondary legislation pursuant to articles 10, point 2; 11, item 3; 22, item 3; and 26 (2) of this law.
2. The Minister responsible for social affairs shall be charged, within 6 months from the date of entry into force of this Law, to issue orders and instructions pursuant to articles 13, point 3; 14, item 2; 15, item 2; 16, point 2; and 21 (2) of this Law.

Article 30

Additional adjustments

For matters not expressly regulated in this law, the provisions of the law on non-profit organizations shall apply.

Article 31

Entry into force

This law comes into force 15 days after its publication in the Official Gazette. Approved on 9.6.2016