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- **New minimum and maximum salary for purposes of calculating social and health contributions**

On 9 July 2014, the Council of Ministers decided to amend the decision no. 1114, dated 30.07.2008 “On some matters implementing the legislation related to the social and health contributions in the Republic of Albania”, as amended. The new decision no. 457 (the “Decision”) is published in the Official Gazette no. 112 dated 22 July 2014 and extends its effects from the 1st of August 2014.

The Decision increases the minimum and maximum monthly salaries, which serve as the basis of calculation of social contributions for employed individuals. It affects as well the social and health contributions paid by self-employed individuals and persons paying voluntary contributions.

Starting from 1st of August 2014, the monthly minimum salary will be Leke 19,406 while the maximum salary will be Leke 97,030.

Social contributions rates remain the same: they are paid by the employer at the rate of 15% and by the employee at the rate of 9.5%.

The basis of calculation of such contributions is the gross salary of the employee up to the maximum salary of Leke 97,030.

The basis for the calculation of the mandatory health insurance contributions remains the same as well:

- For employees, the basis is the gross salary of the insured person (the rates remain the same i.e. 1.7% for the employees and 1.7% for the employer);
- For self-employees and persons paying voluntary contributions, the basis is the double of the minimum salary of Leke 19,406 (at the rate of 3.4%).

Monthly declaration and payment of social and health contributions should be made not later than the 20th day of the successive month.

- **Changes to Law on Industrial Property**

On 10 July 2014, entered into force the changes to Law no. 9947, dated 07.07.2008 “On Industrial Property”. Changes covered almost all aspects such as provisions on patents, industrial designs and trademarks. With regard to the trademarks, the changes pertain to collective and certification trademarks, substantial examination rules applicable to absolute grounds of refusal, etc.

We will address below the changes regarding the certification and collective trademarks as these changes has brought significant novelties to the Albanian applicable law.

By the changes stipulated under Law 55/2014 the Albanian legislator has introduced for the first time the so-called certification trademarks. As of 10th of July 2014, the applicants will be able to apply and register certification trademarks.

Pursuant to the law provisions the certification trademark serves to indicate the goods and services that are certified by the owner with regard to their origin, quality, material used, method of preparation of the goods or method for offering the services, etc.

For registration purposes along with documents needed for registration of ‘regular’ trademarks the applicant should file with the General Directorate of Patents and Trademarks (GDPM - the authority *inter alia* responsible for registration of trademarks in the Republic of Albania), also the regulation that sets out the rules for the use of the certification trademark. Such regulation should contain the characteristics of goods/services that are certified, testing procedures, control measures and sanctions applicable by the owner.

The other novelty brought by the Albanian legislator is that from now and on, law addresses more detailed procedures for registration of collective trademarks. Prior to these changes, the Law on Industrial Property provided for just the definition of collective trademarks without determining procedures for registration of the same.

Based on such provisions the collective trademark is the trademark which serves to distinguish the goods and services of members of an association, or of another entity and the rights attached to such trademark are not transferable.

For registration purposes the applicant should file with the GDPT, also the regulation determining the terms of use of the collective trademark.

The regulation should provide for the authorized persons allowed to use the trademark, terms and conditions of the membership in the association/entity and if possible (optional) the terms of use of the collective trademark and relevant sanctions. The regulation determining the use of the trademark is considered important by the legislator given that in its absence the application for registration will be rejected by the GDPT. Same treatment will apply in case the regulation contains provisions violating public order and moral principles.

The owner of the collective trademark is obliged to file with the GDPT all amendments, supplements to the regulation, amendments/supplements that will enter into force with the publication of the same in the register of trademarks.

- **Law on Health Insurance in Kosovo**

Kosovo Parliament has passed Law No.04/L – 249, dated 10 April 2014 “On Health Insurance” which has introduced the public health insurance system in the Republic of Kosovo. This law is published in the Official Gazette no. 29, dated 30 April 2014 and has entered into force on 16 May 2014. Law 04/L – 249 provides for the mandatory or voluntary health insurance contributions. Mandatory contributions are payable from all citizens and residents of Kosovo (covered by the Health Insurance Fund (the “Fund”) which is a public institution responsible for the implementation of this law). Voluntary contributions can be paid from citizens and residents of Kosovo as well as the foreign employees in Kosovo and other individuals asking for supplementary health insurance (covered by private healthcare insurance companies duly registered in Kosovo).

The new law provides also for the guaranteed healthcare services which are benefited regardless of the status of the health insurance. These are:

- emergency health care;
- healthcare services to children younger than 18 years old;
- essential healthcare services to pregnant women and women after childbirth;
- other essential healthcare services determined by the Fund.

Under the law, for mandatory contributions, the necessary information of all categories of insured persons should be submitted to the Fund, not later than 90 days from the day the payment of the premium becomes obligatory.

Mandatory premiums will be calculated as follows:

- for entities active in the public sector, public-private sector and private sector and having a turnover exceeding Euro 50,000, the premiums shall be at the level of 7% of the gross income equally paid by for the employer and the employee (i.e. each 3.5%). This percentage is applicable for the first 36 months. After this period, the rate of the premium shall be determined by the Government. Mandatory premium for employees and employers is paid on monthly basis through the payroll.
- for all other citizens, the premium shall be at the level of Euro 2 per person for the first 12 months. After this period the rate of the premium shall be determined by the Government.

The starting date for the collection of premiums will be specified through a sub-legal act issued by the Ministry of Health.

ARTICLES

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- **Temporary Agency Work in virtue of the Albanian Labor Legislation**

The EU Directive 2008/104/EC, dated 19.11.2008 "*On Temporary Agency Work*" (hereinafter, "*EU Directive*"), representing one of the main pillars of the EU labor legislation on protection of atypical working, applies to workers being in an employment relationship with a so called 'Temporary Work Agency' who are assigned to user undertakings to work temporarily under their supervision and direction.

Although being in an ongoing alignment process with the EU legislation, Albania has not attained so far to introduce into the domestic labor legislation any specific regulations dealing explicitly with the Temporary Agency Work, as per the EU Directive.

It is to be noted that one of the important novelties contained in the new draft amendments to the Albanian Labor Code (hereinafter "ALC") is the explicit incorporation of the Temporary Agency Work, but it seems that such document has been trapped for the moment in the bureaucratic hurdles on its way to the Parliament.

Albanian legislation provides indeed for the existence of Private Employment Agencies (i.e. recruitment firms), granting them an intermediary role in the labor market (as per the government's decision no. 708, dated on 16.10.2003 "*On the licensing and functioning of Private Employment Agencies*"), but their scope consists of seeking the placement of the employee to a potential employer, whether for definite or indefinite duration. Therefore they differ from the Temporary Work Agencies which employ and manage the contingent workforce in order to assign it (temporarily) to any user undertaking/employer.

Notwithstanding the above, ALC provides for the *secondment* of the employee to another employer. It provides that an employer (i.e. "seconding employer") may put an employee (i.e. secondee) at the disposal of another employer (i.e. "host employer"), in virtue of a *secondment* agreement, after having obtained the consent of the employee on such purpose.

The seconding employer must ensure that the host employer provides to the secondee same working conditions as those applicable to host employer's employees performing same category of work.

Then again, the host employer itself has towards the secondee same obligations regarding health protection, safety and hygiene, as for its own employees. In this view the latter must take care that the seconded employees would have similar working conditions/treatment as those who are already working for host employer and performing same work.

In case the seconding employer does not fulfill its obligations towards the secondee made available to the host employer, both employers shall be held jointly liable towards the secondee.

Although the *secondment* provision of the ALC and the EU Directive seems to provide for the procurement of the same service, there are basic differences between them.

To this effect, we may emphasize, *inter alia*, that the employee in virtue of the ALC has not been employed with the view to being assigned temporarily to a user undertaking/employer to work under its supervision and direction (Art. 3.1 (c) of the EU Directive), but to perform a specific job for the seconding employer (under an employment contract whether for limited or unlimited duration).

On the other hand the parties to the *secondment* agreement as per ALC do have the same quality; they are both employers (i.e. undertakings) and subsequently none of them represents a Temporary Work Agency, as per Article 3/1/b of the EU Directive.

- **Introduction of New Rules on Late Payment in Commercial Transactions**

The Albanian parliament has passed on 24.04.2014 the law no. 48/2014 "On Late Payments for Contractual and Commercial Obligations", which is partially aligned with the Directive 2011/7/EU of the European Parliament "On Combating Late Payment in Commercial Transactions" and shall enter into force after being promulgated by the President of the Republic and thereafter, 15 days upon publication in the Official Gazette.

Until now, late payments have been regulated by few provisions of the Civil Code, which are based on the principle of contractual freedom.

The new law defines the rules on calculation of legal interest for late payments in commercial transactions which lead to the supply of goods and services between commercial undertakings and/or to public authorities, in order to ensure a proper functioning of the internal market, by encouraging competitiveness of commercial undertakings and particularly of small-medium enterprises.

Article 2 of the law provides that this law shall not apply to obligations or payments that:

- are subject to bankruptcy procedures initiated against the debtor (including the procedure of debt restructuring);
- derive from transactions with the consumers;
- consist of interest or other payments made for securities; and
- constitute damage relief for torts, including indemnities payable from life and non-life insurance companies.

In commercial transactions where the debtor is an undertaking or a public authority, the creditor is entitled to payment of interest from the next day of the due date, without giving notice of delay to the debtor if:

- the creditor has fulfilled all its obligations under the law and contract;
- the creditor has not been paid, except when the delay did not occur because of the debtor's fault.

For the first semester of the year concerned shall be the rate in force on 1 January of that year, while for the second semester of the year concerned shall be the rate in force on 1 July of that year.

Payment terms

When the payment term has not been determined in the contract, the creditor shall be entitled to interest starting from the expiry of the following terms:

- 30 calendar days following the date of receipt by the debtor of the invoice;
- 30 calendar days after receiving the goods or services, when it is not clear the receipt date of the invoice;
- where the debtor receives the invoice earlier than the receipt of goods or services, 30 calendar days after the date of the receipt of the goods or services;
- where a procedure of acceptance or verification, by which the conformity of the goods or services with the contract is to be ascertained, is provided for by law or in the contract and if the debtor receives the invoice earlier or on the date on which such acceptance or verification takes place, 30 calendar days after that date.

While the Directive 2011/7/EU provides that the payment period determined in the contract may not exceed 60 calendar days, under the law no. 48/2014 the parties may agree on a longer payment period, provided it is not to the detriment of the creditor.

The payment periods mentioned above are also applicable to commercial transactions between undertakings and public authorities. However, the creditor shall be entitled to claim late interests after a total of 60 days, including 30 days of delay from the treasury department in addition to 30 days of payment delay from the public authority.

Interest and compensation for recovery costs

Article 5 of the law provides for the following applicable interest:

The rate for late payments in Leke will be fixed in reference to the REPO (Repurchase Agreement) and reverse REPO (Reverse Repurchase Agreement) interest rates as approved by the Bank of Albania by adding eight percentage points; while, for Euro currency by referring to the interest rate of main refinancing operations approved by the Central European Bank by adding eight percentage points.

In addition, the new law provides for payment of expenses in case of delayed payments by the debtor. Thus, the creditor is not only entitled to claim payment of interest, but also the expenses incurred because of such delay, including but not limited to, legal fees the creditor paid for the enforcement of debtor's obligations. Moreover, the debtor must pay to the creditor the amount of 5,000 Leke as a compensation for the creditor's own recovery cost.

Unfair contractual terms

The law prohibits abuse of contractual freedom to the detriment of the creditor. Hence, where a contractual term or practice relating to the payment period or the interest rate for late payment or the compensation for recovery costs is not justified by the terms granted to the debtor or mainly serves to procure an additional advantage for the debtor to the creditor's cost, it may be regarded as abusive and unenforceable, and the creditor is entitled to claim remedies for the damage incurred.

Enforcement of monetary obligations

Under law no. 48/2014, financial/monetary obligations are considered as an 'executive title' in the sense of the Civil Procedures Code and are enforced by the bailiff office, provided that the creditor has delivered the goods or performed the services in accordance with the contract and the law and the debt is not disputed.

Conclusion

Businesses entering into commercial contracts after law no. 48/2014 enters into force, should pay particular attention to the payment periods and rates of interest provided by it. Although commercial parties may still negotiate payment periods which are longer than 60 days, it is possible that in event of a dispute, this may not be considered a fair remedy for late payment, and will be unenforceable.

- **Customs measures on protection of intellectual property rights**

Kosovo Parliament, in the attempt to protect intellectual property rights in the country, has approved Law no.03/L-170, dated 29 December 2009 "On Customs Measures for Protection of Intellectual Property Rights" and its Administrative Instruction which determine the procedure and measures to be undertaken by Customs authorities for goods that are suspicious of or are found infringing intellectual property rights.

This legislation provides the rights and obligations of the Right Holder in cases when goods are found infringing intellectual property rights. Concretely, the Right Holder may apply in written near the Customs authorities asking for the beginning of the required procedure for protection of intellectual property right. The application for action shall be submitted together with the declaration of liability and the proof that the applicant/the Right Holder holds the right for goods.

The Right Holder in terms of 5 (five) working days shall notify the Customs authorities for the expiration of the validity of his right. If the Right Holder does not notify the Customs, he will be subject to offence provisions.

Customs authorities shall process the application and notify the applicant in written for the decision within 30 (thirty) working days from the receipt of the application for action. However, the Customs authorities may reject the application for action when it does not contain the mandatory information and documentation. Law provides the possibility of the applicant to appeal the Customs' decision within thirty (30) days.

When the application for action is completed, Customs authorities have to state the period during which the action will be taken. This period shall not exceed 1 (one) year from the date of acceptance of the application. At least 15 (fifteen) days before expiry of the period, and being subject to the prior discharge of any debt owed by the Right Holder, the latter may request for extension of the period. Customs authorities shall immediately send the decision for granting an application and the decision for extension of the period to all customs offices.

The Customs authorities can detain or suspend the release of goods, when:

i) They have enough reasons to suspect that the goods infringe the intellectual property rights, even before the filled application. In such case they should notify the Right Holder, who can submit an application for action within 3 (three) working days. If no application is filed, the release of goods shall be allowed or the period for detention shall be stopped, considering that all customs procedures are completed;

ii) After receiving the decision granting the application for action filed by the Right Holder.

Law gives the right to the Customs authorities to authorize the simplified procedure for the destruction of goods suspected of infringing an intellectual property right after the written agreement of the declarant, the holder or the owner of the goods. The destruction is carried out at the expense and under the responsibility of the Right Holder. In such case it is not required to determine whether an intellectual property right has been infringed.

Law provides the obligation of the Right Holder to notify Customs authorities, within 10 (ten) working days, for initiation of any court procedure on determining the infringement of intellectual property rights.

With the initiation of such procedure, the period of suspension of the release of goods or detention is extended until the court has taken the decision concerning the goods.

Goods found infringing an intellectual property right at the completion of the procedure shall not be:

i) allowed to enter into the customs territory of Republic of Kosovo;

ii) released for free circulation;

iii) removed from the customs territory of Republic of Kosovo;

iv) exported;

v) re-exported;

vi) placed under a suspension procedure, or

vii) placed in a free zone or free warehouse.

If the Right Holder infringes, he will be subject to penalties determined by the legislation.

In practice, there are few cases when the taxpayers have used the advantages of law to protect their property rights. The infringement of intellectual property rights is still a problem in Kosovo.

- **Economic zones in Kosovo**

The Kosovo Parliament has passed the Law No.04/L-159 dated 14 February 2013 “On Economic Zones” which abolished Law No.03/L-129 “On Economic Zones” as amended. Law No. 04/L-159 was published in Official Gazette No.6, dated 12 March 2013 and has entered into force on 27 March 2013.

This legislation aims to provide for the establishment of the economic zones, free economic zones, creation of the basis for drafting the national plan for economic zones, site of economic zones, way of use of economic zones, promotion of economic zones, drafting of national plan for economic zones and establishment of National Council for Economic Zones.

The economic/free zones established with a decision by the Government of Kosovo, was based on a proposal of the Ministry of Trade and Industry, after the consultation with the respective authorities such as municipalities and Kosovo Customs. The economic free zones were created because they stimulate and encourage investments, attract private investments, help the economic development in Kosovo, open job opportunities and create income, increase completion between businesses.

The Ministry of Trade and Industry will prepare the national plan for development of economic zones in Kosovo only after consultations with municipalities, Kosovo Customs and groups of interest.

The national plan shall include the municipal and central economic zone, which are planned to be build within five (5) years from the day of the approval. The Government shall approve this plan within one (1) year from the entry in force of this legislation. The sites of the economic zones shall be done in accordance with the national plan for the development of economic zones approved by the Government, municipal and the central spatial plants.

The economic zone shall be administrated by the establisher who is obliged to ensure the financial means regarding the establishment and administration of economic zone. The establisher shall be entitled to contract business subjects for carrying out works related to the construction, build and administration of the economic zone. The zone may be given for use for investing (such as land) and carrying out business activities after the creation of conditions as determined by the law and no longer than ninety nine (99) years.

The placement of business activity inside the area of the economic zone will be allowed by the establisher based on the completion, in accordance with terms and conditions of this law.

In the economic zone can be exercised any business activity which does not violate the public order, protection of the public health, environment, flora and fauna and the national resources of Kosovo.

Facilities and conditions applied to businesses that exercise their activity in the economic zone are expected to be determined by sub legal acts.

The activities in the economic zone end when: the establisher decides to decompose the economic zone; the supervising authority does not see as possible the continuation of the operation if the economic zone after the expiry of the contact; they have no economic effectiveness and the establishers contact for operation in economic zone expires.

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Boga & Associates

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The firm maintains its commitment to quality through the skills and determination of a team of attorneys and other professionals with a wide range of skills and experience. The extensive foreign language capabilities of the team help to ensure that its international clientele have easy access to the expanding Albanian and Kosovo business environment.

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