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In Focus
LEGAL · TAX · ACCOUNTING
2015

Issue 01/2015

RECENT DEVELOPMENTS

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- New Law “On Insurance and Reinsurance”

- **Amendments to Law no. 9723, dated 03.05.2007 "On the National Registration Centre"**

On 19.02.2015 the Parliament passed the Law no. 8/2015 "On Some Amendments and Additions to Law 'On the National Registration Center'", as amended (hereinafter the "Law").

According to the Law, unless it is expressively required to obtain a permission, license or authorization for the commencement of the business, the entities holding a certificate of registration issued by the National Registration Center (hereinafter the "NRC") have the right to immediately start their activity.

Other amendments affect:

- the obligation for registration and terms for such registration;
- registrations of court decisions and deregistration through a court decision;
- filings of financial statements;
- internal organization of NRC
- electronic portal of NRC data and extracts.

The Law formalizes a number of subjects which are now designated as specifically being subject to registration with the NRC, such as representative offices of Albanian companies and physical persons who are not entrepreneurs but exercise economic activity or freelance profession.

It provides for a new term within which the legal entities should be registered with the NRC i.e. within 30 calendar days (instead of the previous 15 days term) from the date of constitution but in any case before the effective commencement of the activity. Filing of change of registered seats and opening of secondary addresses should occur within 30 calendar days from the date of the relevant decision, but in any case, before the effective commencement of the activity at that place of activity.

For other mandatory filings, save where the Law provides otherwise, the application for filing should take place within 30 calendar days from the date of the occurrence of the circumstance/event and/or drafting of the act/document that is subject to filing.

The Law also formalizes the procedure which allows NRC to suspend any application if any of the financial statements pertaining to preceding years (i.e. from the creation of the NRC in 2007) has not been filed with NRC and impose a penalty of 15,000 Leke (this is a procedure implemented so far in practice by NRC).

It is no longer provided for the obligatory passage in 'inactive status' in case of failure to file the financial statements and it has been formally included the registration of court decisions, deregistration through court decisions and the relevant procedure (until now, in practice, court decisions have been registered with NRC and deregistration through court decisions has been performed in view of the provisions of the Law no. 9901, dated 14.04.2008 "On Entrepreneurs and Commercial Companies").

The Law provides for a chapter on the electronic portal for accessing NRC. Any individual, after being identified electronically, has the right, in the quality of the applicant or authorized person, to apply or perform through the electronic portal any registration or other action, including administrative appeal procedures. Said process will be further implemented upon a decision of the Minister of Economic Development, Trade and Undertakings.

- **New Law "On the Right of Information" and amendments to Law "On the Protection of Personal Data"**

On 17th October 2014 two new laws were published in the Official Gazette. Respectively, the Law no. 119/2014, dated 18.9.2014 "On the right of information", and Law no. 120/2014, dated 18.9.2014 "On some amendments to the Law, no.9887, dated 10.3.2008, 'On the protection of personal data'", as amended.

Both laws were simultaneously adopted with the purpose of improving the exercise of the right of information. Protection of personal data and the right of information are strongly linked. Having left room from time to time for restriction of the first to protect the latter, or vice-versa, a reformation of the previous legislation has been needed in order to make such rights equally exercisable without overlapping one the other.

The newly introduced Law on the right of information is a breakthrough in the attempt to guarantee the mechanisms of providing full and fair implementation in practice of such right by the public.

In view of the above, the following amendments and novelties have been established:

- The definition of public authority is extended in the context of reaching a higher standard of transparency on public information and broader accessibility of it, by including every local and central administrative, legislative, judicial organ, prosecution and companies where the state owns the majority of shares, as the responsible authorities for informing, upon request, every person with Albanian or foreign citizenship or without citizenship;
- The Data Protection Commissioner is granted with additional and extended competences as the responsible authority for the surveillance of an effective and efficient implementation of the protection of personal data, as well as the right of information;
- The Coordinator as a new public administration figure and the provisions governing its competences regarding facilitation of the application of the right of information. In case the public authority does not posses the information required, the Coordinator addresses the information request to another public authority and notifies the requester;
- A broad set of provisions to specify the cases where the right of information might be restricted;
- Transparency Programs which are institutional programs created by the public authority to specify the categories of information that are made public without prior request and the methods applied for making such information public. Such programs serve as a tool to reduce the need for individual information requests. On the other hand, a special register is foreseen where it shall be noted all the information requests along with the information given as a reply;
- The use of electronic communications between the public authority and requestor, and shorter terms for the public to receive information.
- Provisions of sanctions for the administrative violations concerning the right of information;
- No fees apply to the service of giving information except of reproduction of the information costs and/or delivery costs as the case might be.

- **Competition Authority to issue guidelines on application of rules "On Abuse with Dominant Position"**

Law no. 9121, dated 23.07.2003 "On Protection of Competition" (hereinafter referred to as the "Law") prohibits any abuse with the dominant position of one or more undertakings (market operators) in the market (articles 8 and 9).

In implementation of the above articles 8 and 9, the Competition Authority issued an instruction, which provides for the general principles of assessment of the Authority of (i) dominant position and (ii) abuse with the dominant position.

Dominant position

According to the Law, a dominant position is the position of economical power of certain undertaking(s) in the market, which hinders the effective competition and gives to it the power to act independently from the competitors, clients and end consumers.

Pursuant to the new instruction, the dominant position is assessed based on the following factors:

a. market position of the dominant undertaking and its competitors. *Market shares provide a useful first indication for the Authority of the market structure and of the relative importance of the various undertakings active on the market. Dominance is not likely if the undertaking's market share is below 40 % in the relevant market. However, there may be specific cases below that threshold where competitors are not in a position to constrain effectively the conduct of a dominant undertaking, for example where they face serious capacity limitations.*

b. constraints imposed by the credible threat of future expansion by actual competitors, or entry by potential competitors (expansion and entry). *An undertaking can be deterred from increasing prices if expansion or entry is likely, timely and sufficient*.

c. constraints imposed by the bargaining power of the undertaking's customers (countervailing buyer power). *Countervailing buying power may result from the customers' size or their commercial significance for the dominant undertaking, and their ability to switch quickly to competing suppliers, to promote new entry or to vertically integrate, and to credibly threaten to do so.*

The Competition Authority will intervene under Article 9 of the Law where, on the basis of convincing evidence, the allegedly abusive conduct is likely to lead to **anti-competitive foreclosure**. *The term "anti-competitive foreclosure" is used to describe a situation where effective access of actual or potential competitors to supplies or markets is hampered or eliminated as a result of the conduct of the dominant undertaking, whereby the dominant undertaking is likely to be in a position to profitably increase prices to the detriment of consumers.*

The Commission considers the following factors to be generally relevant to such an assessment:

- the position of the dominant undertaking;
- the conditions on the relevant market;
- the position of the dominant undertaking's competitors;
- the position of the customers or input suppliers;
- possible evidence of actual foreclosure;
- direct evidence of any exclusionary strategy.

Furthermore, ACA analyses **the exclusionary conduct based on the price**, and intervenes only when the conduct may cause competition infringement. *In order to determine whether even a hypothetical competitor as efficient as the dominant undertaking would be likely to be foreclosed by the conduct in question, the Authority will examine economic data relating to cost and sales prices, and in particular whether the dominant undertaking is engaging in below-cost pricing. This will require that sufficiently reliable data be available. Where available, the Authority will use information on the costs of the dominant undertaking itself. If reliable information on those costs is not available, the Authority may decide to use the cost data of competitors or other comparable reliable data*.

Objective necessity and efficiencies

In the enforcement of Article 9 of the Law, the Authority will also examine claims put forward by a dominant undertaking that its conduct is justified. *A dominant undertaking may do so either by demonstrating that its conduct is objectively necessary or by demonstrating that its conduct produces substantial efficiencies which outweigh any anticompetitive effects on consumers. In this context, the Authority will assess whether the conduct in question is indispensable and proportionate to the goal allegedly pursued by the dominant undertaking*.

Specific forms of abuse

The instruction provides for the specific forms of abuse:

- Exclusive dealing. *A dominant undertaking may try to foreclose its competitors by hindering them from selling to customers through use of exclusive purchasing obligations or rebates, together referred to as exclusive dealing*.
- Tying/conditioned sale and bundling. *'Tying' usually refers to situations where customers that purchase one product (the tying product) are required also to purchase another product from the dominant undertaking (the tied product). Tying can take place on a technical or contractual basis. 'Bundling' usually refers to the way products are offered and priced by the dominant undertaking. In the case of pure bundling the products are only sold jointly in fixed proportions. In the case of mixed bundling, often referred to as a multi-product rebate, the products are also made available separately, but the sum of the prices when sold separately is higher than the bundled price.*
- Predation. *In line with its enforcement priorities, the Authority will generally intervene where there is evidence showing that a dominant undertaking engages in predatory conduct by deliberately incurring losses or foregoing profits in the short term, so as to foreclose or be likely to foreclose one or more of its actual or potential competitors with a view to strengthening or maintaining its market power, thereby causing consumer harm*.
- Refusal to supply and margin squeeze. *The existence of the imposition of an obligation to supply on the dominant undertaking, even for a fair remuneration, may undermine undertakings' incentives to invest and innovate and, thereby, possibly harm consumers.*

- **New Decision of Council of Ministers "On Loss, Waste and Damage Recognized for Tax Purposes"**

The Law no. 8438, dated 28.12.1998 "On Income Tax", as amended upon Law no. 156/2014, dated 27.11.2014, authorized the Council of Ministers to issue a decision determining the rates of loss, damage, and waste related to production, transportation and storage of goods for tax purposes.

To this end, the Council of Minister issued the Decision no. 434, dated 20.05.2015 "On Determination of Rates for Losses, Waste, and Damages during Production, Storage and Transport for Tax Purposes" (the "Decision").

According to the Decision, no losses during *storage* or *transport* are recognized for tax purposes, except for storage or transport of certain excise products (for which sublegal acts determine the level of allowed loss during transport and storage).

Furthermore, the Decision establishes that when no legal or sublegal acts indicate a recognized level of loss and waste in the production process, their quantity and value will be allowed based on technological charts/scheme of production process of each specific taxpayer. According to the Decision, within 45 days after the Decision comes to force (i.e. no later than 11 July 2015), any interested taxpayer should submit the documentation relevant to determination of losses to the relevant Regional Tax Directorate (RTD), which will approve the loss level. The Decision is silent as regards applications filed after the above deadline.

Among other documentation, the taxpayers are required to submit to the RTD the technological chart/scheme certified from recognized institutions, which have the technical ability to do so (depending on the nature of the production activity it could be the National Agency of Natural Resources, National Food Authority, Institute of Construction Materials, National Agency of Medicine and Medical Equipments etc).

However, as per the Decision, the technological charts/schemes remain still subject to examination and verification during tax audits by the tax inspectors.

The Decision lists the existing legislation providing for the loss levels, set forth in specific fields of activity, as follows:

- to determine the allowable losses and wastes for excise products, taxpayers should apply the rates already provided on the Decision of Council of Ministers no. 612, dated 05.09.2012 "On Implementing Provisions of Excise Law";
- losses and waste in the process of producing tobacco are determined in reference to the decision no. 687, dated 18.06.2009 of Council of Ministers "On Determination of Levels of Losses and Waste during the Processing of Tobacco";
- losses in electricity distribution are determined according to the decision of the Council of Ministers no. 171, dated 25.02.2015 "On the Approval of the Financial Recovery Plan of Energy Sector".

The Decision states that losses will be recognized as deductible expense with effective date from the date of approval of the losses level by the RTD.

- **New Law "On Strategic Investments"**

The Albanian Parliament has recently enacted the Law no. 55/2015 "On Strategic Investments in the Republic of Albania" (the "Law") as part of the initiative for facilitating and improving foreign and domestic strategic investments.

Below is a summary of the most important aspects of the new Law, based on the draft law approved by the Council of Ministers and submitted to the Parliament. The content of the Law, as approved by the Parliament, is not yet available at the Parliament webpage.

The Law is in line with the strategic objectives and priorities as defined in the Economic Criteria Chapter of the National Plan for European Integration, 2014-2020, which as a mid-term objective has to increase the investments by EUR 1 – 1.2 billion.

The Law aims to incentivize and attract strategic foreign and domestic investments, in sectors identified by the Law as strategic ones, by establishing special benefits, facilitating or accelerating administrative procedures to support and serve investors. It determines procedures and rules to be applied by state bodies for the review, approval and support of strategic investments, foreign or domestic ones, as well as services rendered to investors via the "unique window".

Furthermore, it identifies as strategic sectors: (i) energy and mining; (ii) tourism (tourism structures) sector; (iii) transport, electronic communication infrastructure, and urban waste sectors; (iv) agriculture (large agricultural farms) and fishing sector; (v) "economic areas" sector; and (vi) priority development areas.

The criteria for determining strategic investments will be based on the value of the investment, which are specified in this Law for different sectors. Other criteria include the timeline of investment implementation; investment productivity and added value; creation of new jobs; sectoral economic priorities; regional and local economic development; development or improvements of conditions or standards for the production of goods or provision of services; offering new technologies to effectively increase competition and investments; increase of the general level of security and citizens' quality of life; and protection of the environment and consumers.

The Law defines two types of application procedures: "assisted procedure", in which the public administration follows, coordinates, assists, supervises, and depending on the circumstances, represents the strategic investment during all phases of implementation"; and "special procedure", in which is given support and special regulations for strategic investments with impact in the economy, employment, industry, technology and/or regional development, with the goal of facilitating and accelerating investments.

Moreover, it provides for the creation of a Strategic Investment Committee (the "Committee"), a collegial administrative organ, established near the Council of Ministers, and chaired by the Prime Minister, which members are the Deputy Prime Minister and the relevant ministers covering the strategic sectors. The Committee bears the following responsibilities:

- monitors the functioning of the "unique window" system and services rendered towards strategic investors;
- monitors the performance and impact of strategic investments, and approves concrete support for strategic investments;
- approves the action-plan for measures, procedures and timelines related to services and facilitates procedures for the design and implementation of a strategic investment project, which defines commitments, duties and concrete timelines for central institutions and local government units, during all phases of a project, from conception to its implementation;
- approves projects with status "Project with strategic potential", invites all the chairmen of the local government units in meeting without the right of vote, but only to give their opinion on the strategic investments as contemplated in their areas of administrative jurisdiction.

The Committee is supported by the Albanian Agency of Investment Development ("AIDA"). AIDA is the competent administrative unit for delivering services to investors via a "unique window", towards investors/projects which apply and obtain the status of "Strategic Investment Assisted/Special Procedure".

In addition, AIDA keeps the "Register of Strategic Investment", which contains all the data for each strategic investment that will be performed in the Republic of Albania after entry into force of this Law.

According to the Law, the administrative procedures related to strategic investments within the scope of this Law, regarding preparation, implementation, development and realization of a strategic investment project, as well as issuing licenses/permits/authorizations pursuant to this Law, have priority and all institutions/entities/public authorities involved shall apply an accelerated procedure.

The status of strategic investment

The interested investor which seeks to obtain the status of "Strategic Investment", either in the form of assisted procedure or special procedure, has to file a request to AIDA by attaching these documents:

a) Business plan, financial investment plan and the working program for the realization of the project/strategic investment;

b) Social impact evaluation;

c) Documentation that proves the financial capacities for realizing this investment project;

d) The subject declaration over the accuracy of the data;

e) Written authorization by the investor, authorizing AIDA to perform all necessary verifications to the data submitted with the file along with the consent to publish details related with the investment, except for the data considered by the investor as confidential;

f) Proof of payment for the applicable fee.

The Law establishes the procedures to be followed for the approval of "strategic investment" status, and the assistance to be granted by AIDA to the investor for obtaining the relevant permits and authorizations to start the project implementation.

Applications for obtaining the strategic investment status may be filed until the end of year 2018.

It is foreseen that the Law shall enter into force three months after its publication in the Official Gazette.

ARTICLES

- **New Law "On Insurance and Reinsurance"**

  Contributed by Mr. Ilir Limaj as first published in International Law Office

Albania's Insurance and Reinsurance Law (52/2014) entered into force in July 2014.

Scope of law

The law aims to strengthen and develop the insurance sector, while focusing on the effective protection of consumer interests, and to ensure that the insurance market functions in a safe, stable and transparent manner. To this end, it sets out principles and determines the procedures for the establishment, organisation, administration, functioning and supervision of insurance and reinsurance. It also protects the rights and interests of consumer insured.

Harmonisation

The new law also aims to align Albania's insurance legal framework with EU directives related to insurance and reinsurance.
The law includes new provisions for EU and European Economic Area insurers conducting insurance activity in Albania directly or through the establishment of a branch. However, all provisions relating to such insurers shall enter into force only after Albania has become an EU member state.

Corporate governance

The new law provides that insurers with single-level administration (i.e., where the administrative council is the only governing body) must have no less than five members and meet the requirements for sound corporate governance according to the principles of the Organisation for Economic Cooperation and Development. In addition, the law sets out the criteria that key decision makers (ie, board members, managers and the main auditor) must meet in order to perform their duties. The Financial Supervisory Authority will assess whether these decision makers meet the listed criteria and can therefore hold the relevant positions in the insurer.

Consumer protection

The law dedicates a chapter to consumer protection by guaranteeing effective protection of consumer insured.

Unlike its predecessor, the new law includes a special chapter in which thorough and comprehensive provisions are laid down in connection with insurers' obligations to provide complete and clear information before entering into an insurance contract and during the contract's validity. The law also governs advertising and the obligations of an insurer in promoting its products.

Audit and risk management

Another novelty of the new law is the provisions governing the establishment and organisation of the audit committee and risk management system. The law requires that insurers establish an internal audit system for monitoring and implementing internal policies and procedures, in order to assess the efficiency of their activities and monitor compliance with the legal framework. The internal control system aims to identify and evaluate the risks to which the insurer may be exposed.

Supervision

The main novelty that the law introduces is the risk-oriented supervision by the authority. For this purpose, the authority will draft and adopt the Supervisory Manual with Risk Focus. The basic concept behind this new method of supervision is to identify higher-risk areas of activity and implement measures to reduce such risk to acceptable levels. This new approach aims to prevent financial problems before they happen. Depending on the risk profile, the authority sets supervision priorities and intervention levels in order to ensure that risks are acceptable. Supervision should be carried out through financial analysis and inspection at the place of activity. Regarding the latter, new provisions regulate the inspection process.

Compliance

Insurers have two years to take all necessary measures to comply with the law. With regard to agency and brokerage companies, as well as agents and brokers, the compliance timeframe is six months.

If you wish to know more on issues highlighted in this edition, you may approach your usual contact at our firm or the following:

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Boga & Associates

Boga & Associates, established in 1994, has emerged as one of the premier law firms in Albania, earning a reputation for providing the highest quality of legal, tax and accounting services to its clients. Boga & Associates also operates in Kosovo (Pristina) offering full range of services. Until May 2007, the firm was a member firm of KPMG International and the Senior Partner/Managing Partner, Mr. Genc Boga was also Managing Partner of KPMG Albania.

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.

With its diverse capabilities and experience, the firm acts for leading businesses in most major industries, including banks and financial institutions, as well as companies working in insurance, construction, energy and utilities, entertainment and media, mining, oil and gas, professional services, real estate, technology, telecommunications, tourism, transport, infrastructure and consumer goods sectors.