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1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

The legal framework on employment matters in Albania is mainly composed by (i) the Albanian Constitution, (ii) Conventions governing employment matters as ratified by the Republic of Albania, (iii) Law no. 7961, dated 12.07.1995 "The Labour Code of the Republic of Albania" as amended ("ALC"), (iv) Law no. 8549, dated 11.11.1999 "On the Status of Civil Officers" ("Law on Status of Civil Officers"), (v) Law no. 10237, dated 18.02.2010 "On Security and Health at Work", (vi) Law no. 9634, dated 30.10.2006 "On Labour Inspection and State Labour Inspectorate", (vii) Law no. 7703, dated 11.05.1993 "On Social Insurance in the Republic of Albania" as amended, (viii) Law no. 7870, dated 13.10.1994 "On Health Insurance in the Republic of Albania" as amended (on 25.03.2013 it is expected the entry into force of Law no. 10383, dated 24.02.2011 "On Obligatory Health Care Insurance in the Republic of Albania" which will repeal the existing law), (ix) Law no. 10221, dated 04.02.2010, "On Protection from Discrimination", (x) Law no. 9970, dated 24.07.2008, "On Gender Equality", (xi) Law no. 9959, dated 17.07.2008 "On Foreigners", etc.

Additionally, the case law (i.e. Uniform Decisions of the Joint Sessions of the High Court) also constitutes an important source of the Albanian employment legal framework.

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

There are employees working in the public sector (i.e. civil officers) and employees working in the private sector. The work in the public sector is mainly regulated by the Law on the Status of Civil Officers; work in the private sector is, however, regulated by the provisions of the ALC. Subject to Article 1.3 of the Law on the Status of Civil Officers, for issues not expressly regulated by the said Law, the ALC provisions shall apply.

Furthermore the ALC recognises different employment contract regimes, namely:

(i) full-time and part-time employment contracts;
(ii) limited- and unlimited-duration employment contracts;
(iii) individual and collective employment contracts;
(iv) home-based employment contracts;
(v) commercial agent contracts; and
(vi) apprenticeship contracts.

1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

Subject to Article 21.1 of the ALC the employment contract may be concluded either verbally or in writing. If verbally concluded, the employer must, within a period of 30 days from the date of its entry into force, sign an agreement with the employee. In case of non-compliance, the employer may be subject of fines up to 30 times the value of the minimum monthly salary.

1.4 Are any terms implied into contracts of employment?

Imperative provisions set out by the ALC, shall apply although not expressly stated in the employment contract. These provisions mainly relate to rights arising in virtue of the employment relationship, such as the right to compensation in case of prohibition of competition after termination of employment, annual vacation, non discrimination, prohibition of forced employment, prohibition of any form of control over the employee's personal effects, safety in the working premises, etc.

In addition, there are obligations to which the employee is bound although not stated in the employment contract, such as the obligations to obedience, due diligence and care and loyalty, liability for damages caused to the employer, etc.

1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

The employer shall observe, *inter alia*; the minimum age of the employee (i.e., 18 years; the employment of persons between 16 and 18 years of age is permitted provided that they are not engaged in hard work and the daily working schedule does not exceed six hours per day), the non-discrimination obligation, the obligation to health protection and safety in the workplace (i.e., medical examination), the minimum salary as set out by the relevant decision of the Council of Ministers, the payment of social contributions, etc.

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

Subject to the ALC the collective bargaining agreement contains, *inter alia*, provisions on employment conditions, on content and termination of the individual employment contracts and on relationships between the contracting parties. It shall not contain

less favourable provisions for the employee than the applicable legislation.

The collective bargaining occurs usually at company level.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

Freedom of association is guaranteed by the Albanian Constitution (Art. 50).

The ALC sets out the relevant provisions regarding the establishment and rights of the independent trade unions and professional organisations (whether of employees or employers), focused on protection of the economic, professional and social rights and interests of their members.

The trade union acquires legal personality 60 days after the filing of bylaws with the First Instance Court of Tirana (i.e. Art. 178). The employers' professional organisations should have at least five founding members, while those of employees must have at least 20 founding members (Art. 177.1).

2.2 What rights do trade unions have?

The trade unions are entitled to represent their members in negotiations with the employers on concluding collective bargaining agreements, as well as in negotiations regarding the change of terms and conditions of the existing collective employment contracts.

The trade unions are further entitled to protect the interests of their members before the courts, in order to oblige the employer to observe the provisions of the employment law, collective employment contract or individual employment contracts.

They may be organised in organisations of a larger level such as federations (composed of at least two trade unions) and confederations (composed of at least two federations), and may become members of international professional organisations.

Furthermore, subject to Article 197/1 of the ALC, the strikes may be organised only by trade unions.

2.3 Are there any rules governing a trade union's right to take industrial action?

The trade union's right to strike is also guaranteed by virtue of the constitutional law and specifically regulated by the ALC.

Subject to Articles 197 – 197/1 of the ALC only trade unions have the right to strike. In practice, such industrial action is used as *ultima ratio* by trade unions to enforce the solving of their economic and social requirements.

According to Article 197/3 of the ALC the strike is lawful if it is organised by a legally founded trade union and it aims either the conclusion of a collective employment contract or (if it already exists) the fulfilment of those requirements deriving from the employment relationship, not set forth in the collective contract.

Additionally, the ALC confers protection to striking employees during the strike period (including, without limitation, the prohibition not to dismiss or replace the participants in the strike with new employees, etc.) – Art. 197/2.

Civil officers are not entitled to strike (Art. 19 (f) of the Law on the Status of Civil Officers).

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

The ALC is silent in relation to the requirements of work councils' establishment, as other jurisdictions do (i.e., German *Betriebsrat*).

However, subject to Article 21 of law no. 9901, dated 14.04.2008 "On Entrepreneurs and Commercial Companies", as amended, the Employees' Council may appoint employees' representatives at board level of the joint stock company, if agreed between it and the company's legal representative. Nevertheless, there are no further provisions dealing with such an issue.

On the other hand, law no. 10237, dated 18.02.2010 "On Safety and Health at Work" provides for the existence of the Council of Safety and Health at Work, which represents the employees solely in relation to health and security issues at the workplace.

2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

This is not applicable.

2.6 How do the rights of trade unions and works councils interact?

This is not applicable.

2.7 Are employees entitled to representation at board level?

Please see our answer to question 2.4 above.

3 Discrimination

3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

Albanian legislation prohibits any form of discrimination against employees.

To this effect, protection against discrimination is guaranteed by the Albanian Constitution (Art. 18), ratified international conventions, the ALC, Law no. 10221, dated 04.02.2010, "On Protection from Discrimination", Law no. 9970, dated 24.07.2008, "On Gender Equality", the acts of the Commissioner for Protection from Discrimination, etc.

3.2 What types of discrimination are unlawful and in what circumstances?

Subject to the ALC any form of discrimination, irrespective of the circumstances (i.e., pre-hire and post-hire), based on, *inter alia*, race, colour, gender, age, civil status, religion, political beliefs, nationality, social origin, mental or physical disabilities, pregnancy, etc., is unlawful and therefore prohibited.

3.3 Are there any defences to a discrimination claim?

If the employee claims before a court to be the subject of his/her employer's discriminatory action (i.e., dismissal), the latter shall

provide evidence showing that such action does not have a discriminatory basis.

3.4 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

The employees may file a lawsuit before the competent court. The claims may be settled before and after being initiated.

3.5 What remedies are available to employees in successful discrimination claims?

The termination of the employment contract based on discrimination features, as indicated in question 3.2 above, is considered as termination without reasonable grounds (Art. 146.3 of the ALC). In such case the employee is entitled to an indemnification up to one year's salary plus the salary that he/she should have received during the notice period.

Accordingly, civil servants must be returned to the same work position, if stated in a final court decision.

3.6 Do "atypical" workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

Albanian legislation provides the same protection from discrimination for any type of employee.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

Subject to Albanian legislation female employees are entitled to:

- 365 days of maternity leave – in case of one child (including 35 days before and 42 days after childbirth); and
- 390 days of maternity leave – in case of more than one child (including 60 days before and 42 days after childbirth).

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

During maternity leave female employees benefit from payments from the Albanian Social Security Institute, consisting of:

- 80 per cent of the average of the estimable daily salary of the last calendar year, for the period before birth and the period of 150 calendar days after birth; and
- 50 per cent of the average of the estimable daily salary of the last calendar year, for the remaining period.

It is to be noted that the employee must have contributed to the social contribution scheme for at least 12 months in order to receive the maternity payments as above.

Moreover, the termination of the employment contract during the period the woman benefits from childbirth or adoption allowances from the social securities, is invalid. If the contract termination has been notified before commencement of the protection period (i.e., 35 days prior to and 42 days after childbirth), the notice term (if not expired) will be suspended during such period (Art. 107 of the ALC).

4.3 What rights does a woman have upon her return to work from maternity leave?

A woman returning from maternity leave must be assigned to the same work position. She cannot be obliged: (i) to carry out hard or dangerous work which may jeopardise her health and/or child's health; (ii) to start work before 05:00 a.m. in the summer (06:00 a.m. in the winter) and to continue to work after 20:00; and (iii) to work during the night. She is also entitled to paid work breaks during the day, not less than 20 minutes for every three hours of ongoing work.

Female employees are entitled to paid and/or unpaid leave (as better described in question 4.5 below) in relation to indispensable parental care.

If the employer terminates the employment after maternity leave, it is obliged to provide evidence that such termination did not occur due to childbirth.

4.4 Do fathers have the right to take paternity leave?

The ALC is silent in this regard. Currently, only employees working in the public sector are entitled to three days of paid paternity leave.

However, with the draft-amendment to the ALC expected to be adopted by the Albanian parliament, fathers have the right to three days of paid parental leave.

4.5 Are there any other parental leave rights that employers have to observe?

Subject to Article 132.1 of the ALC the employee shall benefit: (i) up to 12 days of paid leave per year, due to mandatory care for children in custody; (ii) up to 15 days of paid leave, in case of illness of children up to three years of age, provided that the illness is supported by a medical certificate; and (iii) up to 30 days of unpaid leave if parental care is needed.

4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependants?

As already mentioned in question 4.3 above, the ALC entitles female employees returning from maternity leave to work flexibly (i.e., they should not carry out hard work or work during night hours, are entitled to several work breaks during working hours, etc.).

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

According to Article 138.1 of the ALC, in case of business transfer (i.e., sale) all rights and obligations deriving from valid employment contracts with the employees, in effect until the moment of transfer, shall be transferred to the transferee (i.e., buyer).

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

As mentioned in question 5.1 above, the business sale does not affect the validity of the employment contracts in place at the moment the transfer occurs. Therefore, all rights and obligations

arising in virtue of the employment contracts currently in place shall pass to the transferee.

The ALC does not explicitly regulate the impact of the business sale on collective employment agreements. Nevertheless, as far as the individual employment contracts are grounded on valid collective employment agreements, the latter will be also transferred to the transferee.

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

The transferor (i.e., previous employer) and the transferee (i.e., buyer) are obliged to inform the employees (in the absence of trade unions) on the business transfer, at least 30 days before its occurrence. Simultaneously, they must carry out consultations with the employees regarding the measures affecting them due to such transfer.

The employer, who terminates an employment contract to the detriment of the employee without observing the foregoing procedures, is obliged to indemnify the latter with up to six monthly salaries plus the salary he/she should have received during the notice period.

5.4 Can employees be dismissed in connection with a business sale?

The dismissal of the employee due to business transfer – except when occurring for economic, technologic or structural reasons – is invalid.

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

Both the transferor and transferee are obliged to observe the obligations deriving from the employment contract until the end of the contractual notice period or the term set out in the employment contract.

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

The employer willing to terminate an employment contract (whether for limited or unlimited duration) during the probationary period, must serve a notice period of five days to the employee.

Additionally, the ALC provides for the following notice periods in relation to employment contracts with unlimited duration:

- two weeks, during the first six months of the employment;
- one month, during the first year of employment;
- two months, for two up to five years of employment; and
- three months for more than five years of employment.

The foregoing terms may be amended by the parties by mutual agreement in the individual or collective employment agreement. In any case, the notice period shall not be less than two weeks, for up to six months of employment and less than one month, for more than six months of employment.

6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

Subject to the ALC the employment relationship terminates at the expiry of the notice period (Art. 141). Upon instruction of the employer, the employer may either exercise his/her work until the end of the notice period or leave the premises starting the day as mentioned in the notice period.

6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

The employer is obliged to comply with the termination procedure (see question 6.6 below) and the notice period (see question 6.1 above) as provided under the ALC. The employee cannot be dismissed for unreasonable grounds, as per Article 146 of the ALC (i.e., discrimination motives, motives related to membership or not in trade union activities, etc.).

The employee shall be deemed as dismissed when the employer terminates the employment contract (whether with immediate effect or at the end of the notice period).

No third party consent is required in case of dismissal. Exemption is made in case of termination of the employment relationship with employee(s) being representative(s) of an employee's trade union. In such case the consent of the relevant trade union is required. Otherwise the termination shall be held invalid (Art. 181.4 of the ALC) unless it occurs due to violation by the employee of the law, the individual employment contract, the collective employment contract or the employer proves that the termination is necessary for business activity purposes.

6.4 Are there any categories of employees who enjoy special protection against dismissal?

The ALC prohibits the termination of the employment for employees:

- carrying out the military service;
- benefiting allowances for temporary disability from the employer or Albanian Social Security Institute, for a period of time of up to one year; and
- being on a vacation granted by the employer.

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so how is compensation calculated?

The employer may terminate the employment contract in compliance with the relevant provisions of such contract. Additionally, Article 153 of the ALC entitles either party to terminate the employment contract with immediate effect for reasonable causes, which consist of those serious circumstances that according to the good faith principle do not allow the continuation of the employment relationship (i.e., breaches of the obligations to duty care at work (Art. 24) and loyalty (Art. 26)). Nevertheless, the court will decide, if a termination cause is grounded or not.

Dismissal for economic, technologic and structural reasons is also allowed (Art. 138.3 of the ALC).

In case of termination of the employment relationship the employee is entitled to (i) the salary for the duration of the notice period, (ii) the compensation for the accrued annual leave and (iii) the seniority bonus, if the employment relationship lasted at least three years.

Subject to article 145.2 of the ALC the seniority bonus consists of at least 15 days' salary over each year of employment and is calculated over the salary existing at the moment of termination of the employment relationship. In case of variable salary, the seniority bonus will be calculated over the average salary of the previous year and will be indexed.

6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

The employer must serve a prior written notification to the employee, informing the latter about its intention to terminate the employment relationship and also invite it in a meeting to discuss about the termination reasons. The notification must be delivered at least 72 hours before the meeting takes place. Should the employer decide to continue with the termination procedure, the decision for termination of the employment must be notified to the employee, in writing, not earlier than 48 hours after the meeting and not later than one week from it.

6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

If dismissed, the employee may pursue legal actions before the competent court, challenging the dismissal for procedural breaches and/or material breaches.

Failure to comply with the termination procedure the employee must be indemnified with, *inter alia*, two monthly salaries.

In case of termination of the employment without reasonable cause, the employee must be indemnified with up to one year salary, the salary that the employee should have received during the notice period plus, the accrued annual leave, and the relevant seniority bonus (if applicable).

In case of immediate termination of the employment without justifiable cause, the employee is entitled to the salary he/she should have received during the notice period or until the end of the employment contract (in case of contracts with limited duration), an indemnification not exceeding one year salary plus the relevant seniority bonus (if applicable). The same rule shall apply for breaches of the notice period.

6.8 Can employers settle claims before or after they are initiated?

Claims may be settled both before and after being initiated.

6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

According to Article 148.1 of the ALC, the following is considered collective dismissal: the termination of the employment on the employer's initiative for reasons not related to the employees, provided that the number of dismissed employees (within 90 days) is at least: 10 for companies having up to 100 employees; 15 for companies with more than 100 and up to 200 employees; 20 for companies with more than 200 and up to 300 employees; and 30 for companies having more than 300 employees.

The employer intending to apply mass dismissals is obliged to provide written notice to the recognised employees' representative organisation. In its absence, the employer must notify the employees by placing visible notifications at the workplace (Art. 148.2).

Such notification should contain, *inter alia*, the reasons for such action, the number of employees to be dismissed, and the time-frame during which the dismissals shall occur. It is also obliged to notify in writing the Ministry of Labour and Social Affairs ("MLSA").

Afterwards, the employer must attend consultations with employees' representatives within 20 days from the notice date, attempting to achieve an agreement on mass dismissals. Subsequently, it must inform the MLSA on their result. If no agreement has been achieved during such consultations, the MSLA will assist the parties to conclude an agreement, within the foregoing period (Art. 148.3 – 148.4).

Finally, at the end of the forgoing period the employer must deliver notice to the employees planned to be dismissed, in compliance with the notice terms indicated in question 6.1 above.

6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

The employees may challenge the dismissals before the courts.

The employees dismissed in violation of the forgoing procedures must be indemnified with up to six monthly salaries, plus the salary they should have received during the relevant notice period, or the amount of indemnification due in case of breach thereof.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

Pursuant to the ALC the employee is not allowed to be engaged during the employment period in any work paid by any third parties and/or to disclose employer's manufacturing and business secrets (Art. 26).

The ALC provides also for the conclusion of an anti-competition agreement covering the post-employment period (Art. 28). Accordingly, the employee undertakes, upon termination of the employment contract, not to compete with the employer and especially not to establish a competitive enterprise, work for, or be interested in it.

7.2 When are restrictive covenants enforceable and for what period?

The employee is not allowed to work for third parties, if such work may harm or compete with the employer. Such covenants are valid during the entire employment period.

The anti-competition agreement concerning the post-employment period must be in writing and is enforceable only if: (i) the employee is at least 18 years old; (ii) the employment enables him/her to have knowledge of the employer's manufacturing or business secrets and if their use may seriously harm the latter; and (iii) the employee will receive a remuneration of not less than 75 per cent of the salary he/she would have received if continuing to work for the employer. The agreement is valid only for one year.

7.3 Do employees have to be provided with financial compensation in return for covenants?

Please see our answer to question 7.2 above.

7.4 How are restrictive covenants enforced?

The covenants are enforceable before the courts. In case of breaches, the employee must indemnify the employer for the damage caused.

8 Court Practice and Procedure

8.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

Subject to Article 7.1 of the ALC, disputes arising in virtue of employment relationships shall be settled by the First Instance Court of the defendant's location.

Employment-related disputes may also be settled by the First Instance Court of (i) the location where the employee usually performs its work, or (ii) the location where the employer's seat is situated (when the employee performs its work in different locations) (Art. 7.2).

Generally the trial for work-related disputes is held before a single judge. Exception is made for disputes involving a value which exceeds ALL 20 million (approximately EUR 142,857) which, upon request of one of the parties during the preliminary hearing, will be examined by a college composed of three judges.

8.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed?

The employment-related complaints are ruled by the Albanian Civil Procedure Code ("ACPC"). The ACPC does not provide for any special procedure with regard to employment-related complaints, which may differ from those applicable for normal civil complaints.

Subject to Article 25 of the ACPC courts should previously try to reconcile the parties.

8.3 How long do employment-related complaints typically take to be decided?

Usually, it may take approximately six months.

8.4 Is it possible to appeal against a first instance decision and if so how long do such appeals usually take?

First instance court decisions may be challenged before the competent court of appeal (composed by three judges). Such decision may take approximately one year.

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Renata also represents clients in all aspects of their business including acquisitions, mergers and joint ventures as well as compliance with regulatory and general corporate governance matters.
Renata graduated in Law at Tirana University, Albania (1996), and also holds Practice Diplomas in International Intellectual Property Law (2006) and in Anti-Trust Law (2009), from the College of Law of England and Wales, UK.
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