

Dear Reader,

In this issue, we have reported recent developments to Albanian legal framework concerning personal data protection as well as proposed amendments affecting non-profit organizations, Albanian Code of Civil Procedures and inspection procedures.

Under the editorial “Article” you may go through a short overview on *Corporate Governance Code*.

Enjoy the reading!

#### RECENT DEVELOPMENTS

##### *Albania*

- *Draft law on amendments to Law “On Non-profit Organizations”*
- *Updates on protection of personal data legal framework*
- *Draft law on amendments to Albanian Code of Civil Procedures*
- *Proposed amendments to the legislation on inspection in the Republic of Albania*

#### ARTICLE

- *Unlisted joint stock companies to implement Corporate Governance Code*

## Albania

- *Draft law on amendments to Law “On Non-profit Organizations”*

A draft law is in place that would bring some amendments to law no. 8788, dated 07.05.2001 “On Non-profit Organizations”. The proposed changes not only grant more supervising responsibilities to the highest decision-making body and to the executive body of the organization, but also to other governmental agencies for further collaboration between them. In addition, they build a transparent system for all financial actions the organization undertakes for its activities. All proposed changes are made to prevent nowadays worldwide concerns on terrorism and money laundering through non-profit entities.

This stated, the highest decision making body is envisaged to have broader powers to review:

- the financial statements and detailed information about the revenue sources and their destination;
- the administration and implementations of the activity’s costs;
- the activity of the organizations to prevent the use for terrorism financing and money laundering.

On the other hand, under the proposed law amendments, the executive body of the organization shall be legitimate to ensure financial reliability and prosperity according to its declared purpose of activity. The executive board shall collaborate with other governmental agencies such as the General Directory of Money Laundering Prevention in order to tackle criminal issues arising out of the activity of the organization.

Concerning the legitimacy of the activity that local and foreign non-profit organizations exercise, further regulations have been made regarding their liability, activity surveillance, financial transactions, grants and donations’ destination:

- The organization as a legal entity has civil and criminal liability;

- The funds of the organization are kept in bank accounts and every financial transfer or transaction regarding these funds shall be made through the bank system, according to the provisions of the applicable law;
- The applications for donations must reflect in detail the purpose of the donations. The organization must confirm that the said funds are being used for the declared purpose;
- The monitory entity of the organization that prevents money laundering and terrorism financing, shall be the tax authorities. The latter and the General Directory of Money Laundering Prevention, examine anytime it is necessary, organizations’ financial and accounting reports about the fund’s destination which are generated from the donors.

Regarding the tax status, similar to the existing provisions in the tax legislation, the draft law makes a distinction between the means through which the non-profit organization generates income. When commercial activities generate income, which are used for purposes other than those primary stated, such income is subject to taxation.

The income a non-profit organization generates for its activity is not subject to taxes. However, if the organization carries out commercial activities the income of which is not destined for the purpose stated in the establishment acts, the activity shall be estimated as profitable and will undergo charges of taxes.

In order to facilitate and make transparent their activity, the draft law requires from organizations to retain the tax documents in accordance with the provisions of the tax procedures legislation. In addition, the financial statements of the organizations should be subject to publication as required by the respective legislation on accounting and financial statements.

- *Updates on protection of personal data legal framework*

As of 27.12.2012 the Commissioner for Personal Data Protection issued the following acts providing for rules applicable to processing of data protection:

- (i) Decision no. 4 “On Determination of Exemptions from the Obligation for Notification of Personal Data Processing” (Decision 4/2012), and
- (ii) Instruction no. 24 “On Obligations of Controllers before Processing Personal Data” (Instruction 24/2012).

Both acts were published in the Official Gazette no.175/2012 and entered in force upon their publication (ie. 04.01.2013).

### *Rules under Decision 4/2012*

Controllers/processors of personal data are not obliged to notify the Commissioner when:

- a) the processing of personal data (except for sensitive data) is made in respect of management of human resources in the public or private sector as provided by law or regulations and is limited to hiring, applications, competitions, appointments, dismissals, promotions, work performance evaluation, disciplinary actions, personnel registrar, qualifications, data on the employment contract, calculation of salary;
- b) the processing of personal data is done pursuant to law no. 9154, dated 06.11.2003 “On Archives”, provided that it is limited to the necessary purpose set forth in law no. 9887, dated 10.03.2008 “On Personal Data Protection” as amended (Law 9887/2008).

### *Rules under Instruction 24/2012*

Instruction 24/2012 abrogates Instruction no. 2, dated 25.02.2010 “On Controllers’ and Processors’ Obligations prior to Processing of Personal Data”.

Under Instruction 24/2012, all controllers, whether public or private, before processing any personal data, must:

- a) collect personal data in compliance with the purpose of processing;

- b) inform the data subject in compliance with article 18 of Law 9887/2008 (i.e. provide information on the data collected and their purpose of processing etc);
- c) file the notification with the Commissioner on the processing of personal data;
- d) correct/rectify or complete the submitted notification form within the indicated deadline if required from the Commissioner;
- e) take technical and organizational measures to safeguard personal data in compliance with legal requirements;
- f) request authorization from the Commissioner (save where Law 9887/2008 provides otherwise) in case of:
  - (i) processing sensitive data for an important public interest by providing proper protecting measures;
  - (ii) cross border transfer of personal data in a country with an inadequate level of protection of personal data;
  - (iii) use of personal data for purposes not specified in their collection.
- g) process sensitive personal data with written consent from the data subject;
- h) appoint a person in charge for conducting the internal supervision of compliance for the protection of personal data from the controller;
- i) preserve confidentiality and loyalty after termination of the work/task.

Controllers that fail to comply with the above requirements might be subject to a fine, as set forth in article 39 of Law 9887/2008 (it varies from Leke 10,000 to Leke 1,000,000 for individuals; the fine imposed to legal entities is two times higher).

- *Draft law on amendments to the Code of Civil Procedures*

A new draft law is proposed (the Draft Law) to amend Law no.8116, dated 29.03.1996 on “The Code of Civil Procedures”, as amended (the Code).

Below is a summary of the Draft Law:

- Pursuant to the article 128 of the Code, the court summon is served to the other party by the court officer. The Draft Law provides for additional means for serving the court summon, for instance electronic mail (e-mail), phone calls and text messages. Private legal entities will be served with court summons only by means of e-mail. Under the Draft Law, inclusion of the parties` e-mail addresses and mobile phone numbers in the lawsuit is a prerequisite. Each of these notification means are to be performed in conformity with the legislation applicable to electronic communications.
- As a consequence of proposed amendments to articles 206 and 611 of the Code, the courts will no longer be entitled to issue any preliminary measure for securing the claims against the bailiffs` actions neither to suspend the enforcement procedures.
- Pursuant to the Draft Law, a final court decision will be accompanied by the enforcement order, which together with the final decision, has to be notified to each of the parties. Thus the parties do not have to pursue separately the procedures for issuance of the enforcement order as provided currently under the Code.
- The “procedural violations which have affected the issuance of the court decision” will no longer constitute a ground for appeal to the Supreme Court against the said court decision.
- The Draft Law introduces a novelty regarding the revision of the court decision, whereby it proposes to entitle the appeal courts with the right of such revision instead of the Supreme Court as it is actually provided under the Code.
- The Draft Law proposes a reduction of the auction immovable property`s price by 50% of its real value if during the first auction no bidder appeared (which will result in a lower price than the price provided currently by the Code for the second auction).

- *Proposed amendments to the legislation on inspection in the Republic of Albania*

New amendments are expected to intervene also in inspection process from different governmental entities.

The proposed draft law introduces some changes and amendments to several existing laws governing specific fields of industry with regard to inspection procedures in order to bring them in line with the provisions of the law no. 10433, dated 16.06.2011 “On Inspection”.

Such amendments propose a reform in the field of inspection which aims to simultaneously achieve two goals:

- enhance the effectiveness of inspection bodies in the prevention of risks;
- reduce the administrative burden and the costs on business activity.

The new model of inspection which is proposed by the draft-law contains principles, organizational rules and procedures, aiming to achieve the two above mentioned goals.

The draft law regulates fields such as:

- Mineral Resources
- Industrial Property
- Transportation
- Construction
- Environment
- Agriculture
- Public Health
- Food

- Tourism
- Culture Heritage
- Education
- Justice
- Intellectual Property etc.

Although there is a wide range of fields which are to be inspected, the draft law brings the novelty of a reduced number of inspectorates without reducing their function. At first sight it looks contradictory but this is thought to reduce costs, administrative difficulties and also to reach an efficient and better performance of the inspectorates.

A new general inspectorate will be established with limited competencies which will have full power to supervise the inspector's performance of each inspectorate.

## ARTICLE

### *Unlisted joint stock companies to implement Corporate Governance Code*

Contributed by Mr. Ilir Limaj as first published in ILO

With the assistance of international experts from the International Finance Corporation, the government has drafted the Corporate Governance Code for unlisted joint stock companies. The code incorporates the Organisation for Economic Cooperation and Development (OECD) definitions and principles on corporate governance, setting down the structure under which a company's objectives are set and the means of attaining those objectives and monitoring performance are determined. The code is not legally binding; rather, it is considered to be guidance for unlisted companies in Albania, aiming to provide a best-practice framework above the minimum legal requirements and to assist Albanian companies in developing a sound governance framework.

Good corporate governance is particularly important to the shareholders of unlisted companies. In most cases such shareholders have limited ability to sell their ownership stakes and are therefore committed to staying with the company for the medium to long term. This increases their dependence on good governance. The code comprises 14 relevant principles for all unlisted joint stock companies in Albania, construed primarily under the Law on Entrepreneurs and Companies.

The first four principles focus on the importance of establishing the corporate governance framework, board of directors' structure and organisation. Under these principles, for a well-established corporate governance framework the company's constitutional documents (eg, charter and bylaws) should clearly define the powers and role of the board of directors, which should be guided by the company's best interests. The board should:

- monitor and evaluate management performance;
- set strategic goals and take the necessary measures to meet them; and
- ensure that the company complies with its charter as well as the relevant legal, regulatory and governance requirements.

Moreover, the board should meet regularly enough to discharge its duties, and should be supplied in a timely manner with appropriate information. Thus, the basis for sound corporate governance is found in the company's constitutional documents, where the organisation and its method of functioning must be clearly stated.

The other main principles are those regarding remuneration and oversight. Under these principles, the levels of remuneration should be sufficient to attract, retain and motivate executive and non-managing directors of the quality required to run the company successfully. Remuneration, particularly for directors, should be approved by the shareholders. The directors are responsible for risk oversight and business success, and should maintain a sound system of internal controls (eg, by developing a basic risk register) to safeguard the company's interests and the shareholders' investment. Another principle regulates the governance of family-controlled companies. The establishment of family governance mechanisms is necessary to promote coordination and mutual understanding among family members, as well as to organise the relationship between family business governance and corporate governance. In addition to the proper establishment of the organisation and governance framework, it is essential that there is a clear distinction in governance status between family governance institutions and formal governance structures.

The last five principles are relevant only to large or more complex unlisted joint stock companies. One of these principles refers to the division of responsibilities at the head of the company, which should consist of a clear distinction between the running of the board and the running of the company business (ie, the roles of chairman and chief executive officer should be filled by different people).

Moreover, it is vital that no single person or small group of individuals dominates the board's decision-making process. Well-established enterprises should have a majority of non-managing and independent directors on their boards. Another principle states the importance of the establishment of board committees in order to allow a more effective discharge of its duties. The most commonly required committees in large enterprises are the nomination committee, the remuneration committee, the compliance committee and the audit committee. In order to establish a well-organised, successful company, there should be an independent and clear distinction of powers and a check-and-balance system between the company's governing bodies.

The OECD principles adapted into the code provide a best-practice reference for unlisted companies that aim to conduct themselves efficiently to achieve their business objectives. An effective governance framework defines roles, responsibilities and an agreed distribution of power across shareholders, the board, management and other stakeholders. Particularly in smaller companies, it is important to recognize that the company is not an extension of the owner's personal property. Many unlisted enterprises are owned and controlled by single individuals or families. In this context, good corporate governance is primarily concerned not with the relationship between boards and external shareholders (as in listed companies), or with compliance with formal rules and regulations. Rather, it is about establishing a framework of company processes and attitudes that add value to the business, and help to build its reputation and ensure its long-term success.

# BOGA & ASSOCIATES

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

[infocus@bogalaw.com](mailto:infocus@bogalaw.com)

## **Tirana Office**

Ibrahim Rugova str.  
P.O. Box 8264  
Tirana, Albania  
Tel +355 4 225 1050/225 1022  
Fax +355 4 225 1055

## **Pristina Office**

Nene Tereza str.  
Entry 30, No. 5  
Pristina, Kosovo  
Tel +381 38 223 152  
Fax +381 38 223 153

“In Focus” is an electronic publication edited and provided by Boga & Associates to its clients and business partners. The information contained in this publication is of a general nature and is not intended to address the circumstances of any particular individual or entity. “In Focus” is not intended to be and should not be construed as providing legal advice. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. You can also consult “In Focus” on the section “Library” of our website.

© 2013 Boga & Associates. All rights reserved.

This publication is copyrighted and is protected to the full extent of the law. Nevertheless, you are free to copy and redistribute it on the condition that full attribution is made to Boga & Associates. If you have not received this publication directly from us, you may obtain a copy of any past or future related publications from our marketing department ([marketing@bogalaw.com](mailto:marketing@bogalaw.com)) or consult them in our website ([www.bogalaw.com](http://www.bogalaw.com)). To unsubscribe from future publications of “In Focus”, please send “Unsubscribe” by replying to our email accompanying this edition.

## 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 1<sup>st</sup> of 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.