

RECENT DEVELOPMENTS

Albania

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- Organic Products subject to a new regulatory framework
- Additional security measures to public order affecting companies
- New Oilman Status
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- **New Amendments to the Civil Code and Civil Procedure Code in the Republic of Albania**

In the last months the Albanian Parliament introduced several changes to the Law no. 8116, dated 29.03.1996, "On the Code of Civil Procedure of the Republic of Albania" as amended and Law no. 7850, dated 29.07.1994 "On the Civil Code of the Republic of Albania" as amended. The Civil Code is changed upon law no. 113/2016, dated 03.11.2016, and the Code of Civil Procedure is changed upon law no. 114/2016, dated 03.11.2016 and Law no. 38/2017, dated 30.03.2017.

Amendments to the Civil Code

Law no. 113/2016 is published in the Official Gazette no. 219-2016, dated 15.11.2016. It aims to reflect the new Insolvency Law (effective starting from 22 May 2017) by providing for the following novelties:

- [changes to the ranking of payment of the creditor's claims in insolvency procedure](#)

In an insolvency procedure the ranking of payment of the creditors' claims is the one set forth in the New Law On Insolvency. The ranking provided by article 605 of Civil Code shall not be applicable to new insolvency proceedings.

- [challenge of transactions performed from the debtor](#)

Law no. 113/2016 establishes that article 607 of Civil Code (re: the creditors' right to challenge the debtor's transactions) is not applied in insolvency proceedings. The creditor has the right to challenge the debtor's transactions only in accordance with the respective provisions of the New Law On Insolvency.

Amendments to the Civil Procedure Code

Law no. 114/2016

Law no. 114/2016 is published in Official Gazette no. 219-2016, dated 15.11.2016 and entered into force on 30.11.2016.

This law introduces the following changes to the enforcement process:

- [addition of a third auction](#)

A third auction is added to the procedure of selling seized assets by auction. In this auction, the price of the assets is reduced up to 10% compared to the second auction price. In case the assets are not sold through the third auction, the bailiff proposes first to the creditor to take the assets against the loan, at the price of the third auction. The creditor has to reply to the bailiff's proposal within 30 days, otherwise the bailiff releases the seizure.

The debtor may within 30 days from the notice on commencement of compulsory enforcement, file a lawsuit with the competent court claiming invalidity of executive title or challenge the obligation.

In case the executive title is a bank loan agreement or an act through which non-banking financial institutions issued a loan, the court cannot suspend enforcement when the debtor claims that the debt amount is lower.

- [changes to the procedure for issuance of enforcement order](#)

Law no. 114/2016 changed the procedure for issuance of the enforcement order. The request for issuance of the enforcement order will be examined by the court without the presence of the parties.

The Court shall issue the enforcement order subject to the submitted documents.

Thus, the process for issuance of the enforcement order will become faster.

- [bailiff's success fee, notifications and announcements](#)

Law no. 114/2016 introduces for the first time the concept of 'success fee' as compensation to the bailiff's services. It is fixed upon agreement between the creditor and the bailiff, according to the legislation which regulates bailiff fees. Such legislation is expected to be amended as it currently does not provide for the success fee.

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- changes to some aspects related to the procedure of compulsory enforcement

Law no. 114/2016 introduced amendments to the method of evaluation of the seized assets. This evaluation will be carried out by an expert in accordance with the specific methodology to be approved by the Council of Ministers within 3 months after the law no.114/2016 becomes effective.

Law no. 114/2016 provides for a 30 days term for the Appeal Court to examine the appeal against the decision of First Instance Court that rules on the request for suspension of enforcement.

It also states that the Appeal Court must examine the appeal filed against the First Instance Court decision that rules on the claim of the debtor who seeks invalidity of executive title within 60 days.

The bailiff's actions or inactions are subject to appeal by the parties. The appeal filed against the decision of First Instance Court must be examined by the Appeal Court within 30 days. Such appeal is examined without the presence of the parties, but in explicit cases the Appeal Court may summon the parties.

The new procedures and deadlines provided by Law no. 114/2016 aim to speed up the examination process of such cases by Appeal Court.

Law no. 38/2017

Law no. 38/2017 is published in the Official Gazette no. 98, dated 05.05.2017 and will enter into force 6 months after such publication i.e. 05.11.2017. The changes introduced upon Law no. 38/2017 aim to enhance, among others, the importance of a fair and impartial trial and provide more strict rules regarding the behavior of the parties in a trial.

Mainly the amendments are focused on the following:

- sanctioning postponement of the court hearings without a due cause. In these cases, the court is entitled to impose sanctions to the party seeking to achieve unreasonable postponement of the examination process. The determination of the 'due causes' is at the discretion of the court;
- establishing time limits for the legal process at each court level;
- establishing timeframe for issuance of the written decision (reasoning of a decision) by the court;
- extension of the timeframe for issuance of the reasoned decision from ten to twenty days;
- introduction of a new electronic system kept by the Ministry of Justice regarding the experts that will be involved in court proceedings. Such register will be available to the public for consultation;
- introduction of a new document called "declaration of defense" which is required to be issued from the defendant. This declaration will provide the facts and arguments based on which the defendant will sustain its defense. It should not be issued later than 30 days from the notification of the lawsuit to the defendant. Afterwards, this declaration is notified to the plaintiff, in order to allow the plaintiff to submit any new arguments and facts related to the requests of the defendant as per the declaration of defense;
- scheduling of preliminary hearings during the judgment.

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- **Cosmetic Products will now be regulated by a specific law**

Cosmetic products are now subject to a specific legislation i.e. Law no. 26/2017 “On Cosmetic Products” published in the Official Gazette no. 75 on 12.04.2017.

In a previously vacant legal environment concerning the cosmetic products, the Law marks the first attempt to regulate the field of cosmetic products and services in Albania. The Law aims to establish tight safety requirements for the manufacturer, importer and distributor of cosmetic products before they are put in the market and made available to the public as well as during their trade.

Below you will find the main features of the Law:

- “Cosmetic Product” means any substance or mixture destined to be placed in contact with the external parts of the human body (epidermis, hair system, nails, lips and external genital organs) or with the teeth and mucous membranes of the oral cavity with a view exclusively or mainly to cleaning them, perfuming them, changing their appearance, protecting them, keeping them in good condition or correcting body odors.
- The cosmetic product will now be placed on market only after a Responsible Person is appointed to be in charge with the compliance check of the cosmetic product with the Cosmetic Products law (once approved and entered in force), evaluation of public health risk and cooperation with the national authorities.

The Responsible Person is the individual or legal entity registered with the National Business Center and may be the local manufacturer, the importer or the distributor of the cosmetic product.

- A set of obligations to be complied with have been provided for the distributor as well.
- In order to enhance an effective market control, the Law provides for a close cooperation between persons responsible for manufacturing and/or distribution and the relevant administrative authorities. This applies especially to the notification to be sent by the Responsible Person to the Ministry of Health regarding the detailed data and information of each product before making it available for the Albanian consumer.

In this view, before placing the product on the market, the Responsible Person initiates a safety assessment conducted by the relevant qualified professional and prepares a report based on its results as per the special requirements set forth by the Ministry of Health.

- Every cosmetic product available in the Albanian market, when applied reasonably and in normal conditions, must be safe for the consumer's health considering especially elements like labeling, external display, usage instruction and other indicators and information provided by the **Responsible Person**.
- Information determined in the Law is kept in the product's information file for a period of 10 years starting from the day when the last quantity of the cosmetic product was put in the market. The product's information file is made available to the Ministry of Health in English or Albanian language.
- The responsible administrative structure for the surveillance and execution control of this Law is the

Inspectorate in charge with healthcare matters. The new Law provides a large set of competences and responsibilities of the Inspectorate and its performance of control sessions.

- Failure to comply with provisions of the Law, if not criminal offense, will constitute administrative offense fined at a value ranging from 100,000 Leke to 1,000,000 Leke.

- **Organic Products subject to a new regulatory framework**

On 27.10.2016 the Albanian Parliament approved Law no. 106/2016, "On Organic Production, Labeling of Organic Products and their Control", which is partially approximated with Council Regulation (EC) No 834/2007 of 28 June 2007 on Organic Production and Labeling of Organic Products and Repealing Regulation (EEC) No 2092/91.

Principles

The Law aims to create the basis for the sustainable development of organic production, to ensure the effective functioning of the market and ensure fair competition, consumers' confidence and protection of consumers' interests.

Further, the general objectives and principles are defined, such as:

Labeling and advertising

For purposes of the Law, a product shall be regarded as bearing terms referring to the organic production methods, if on the labeling, advertising materials or commercial documents, the ingredients or feed material of the product are described in terms that inform the consumer that the product and its ingredients have been obtained in accordance with the rules of the Law.

Particularly, the terms 'biologic' or 'organic' or their diminutives such as 'bio' or 'eco', are used alone or combined for the labeling and the advertising of the products that meet the requirements of the Law. The labeling and

- The Law provides that it shall enter into force 1 (one) year after its publication in the Official Gazette. In the meantime it is expected to be completed with relevant sub legal acts regarding the establishment of instructions of the cosmetic products' manufacturing good practice, forbidden substances, nanomaterials etc.

advertising of live and unprocessed agricultural products terms referring to the organic ingredients of that product have also been produced in accordance with the Law. The terms indicated above, shall not be used in the labeling or advertising of a product that it has to be indicated in the labeling or advertising that it contains GMOs, consists of GMOs or is produced from GMOs.

Control

To ensure the compliance with the Law, the control bodies undertake the inspection and the certifying of the operators that produce organic products

- a) or all the production, preparing and distribution phases of the organic products and their control;
- b) the use of indications referring to organic production in labeling and advertising.

The Law applies to the products that originate from agriculture, including aquaculture, where such products are placed on the market or are intended to be placed on the market: live or unprocessed agricultural products; processed agricultural products for use as food; animals' food; vegetative propagating material and seeds for cultivation. The products of hunting and fishing of wild animals shall not be considered as organic production.

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The aforementioned control bodies are authorized by the 'Organic Production Commission' ("OPC"), provided that they fulfill certain requirements such as meeting standard ISO/IEC 17065 etc. The OPC is also in charge of monitoring the activity of the control bodies. Details on the controlling and inspecting processes will be adopted by the Council of Ministers

Imported products

Organic products that have been produced in another country are placed in the Albanian market provided that the importer ensures that the products are produced in

accordance with equivalent rules. The products that have been certified by control bodies operating in the EU or recognized as equivalent by the EU Commission are considered equivalent, according to the Law.

The Law is expected to improve the current situation in Albania and to further protect the interests of the consumers having in mind the present confusion in the market which is caused by the wrong labeling of the products with terms such as 'bio' or 'organic'. Additionally, the Law will ensure fair competition among the economic operators.

- **Additional security measures to public order affecting companies**

As implementation of articles 8 and 10 of Law no. 19/2016, "On Additional Security Measures to Public Order" the Ministry of Internal Affairs issued the Instruction no. 134, dated 10.03.2017 "On determination of the level of additional security measures and the type of measures that should take subjects depending on the activity or evaluation risk, and also their procedures of notification".

The Instruction defines the categories of public and private entities that should undertake these additional security measures, depending on their activity and the risk assessment performed from the State police.

The local authority responsible for the enforcement of this instruction is the Directorate of State Police.

- **New Oilman Status**

Law no. 8/2017 "On Oilman Status" is passed by the Albanian Parliament on 02.02.2017, and published in the Official Gazette no. 31, dated 23.02.2017. It is effective from 10.03.2017.

The Law determines the status of employees in oil and gas industry ("Oilman Status").

Under the Law, an ex-Oilman is any individual who has worked in the oil and gas industry in the categories defined by the decision of the Council of Ministers no. 526, dated 20.12.1958, "On the division of works in categories for retirement purpose" as ex-employees of mechanical oil plants and technical-engineer personnel who have worked in the ex-oil enterprises such as in exploration-drilling, drilling-exploitation, production, seismic, site geophysics,

mechanic, geological and technological institutions, processing, transport with oil and gas pipelines.

All persons currently working in the oil and gas industry, in the categories as defined above, fall under the definition of Oilman and benefit from the Oilman Status.

In addition, persons injured at work, irrespective of the time working in this industry, benefit from the Oilman Status.

A special commission shall be established within the ministry responsible for the oil and gas industry to verify the Status applications and issue a certificate to any person that is entitled to the Oilman Status. The right to benefit from the said status commences at the moment the person is hired in the oil and

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gas industry in one of the professions mentioned herein above.

Documents that shall be used to verify the status include work book supported by a certificate issued from the institution or company where the oilman have been employed or is currently employed, indicating the nature of work and its duration. The certificate should be confirmed by the ministry responsible for oil and gas industry. For retired persons, it is required a certificate from the Institute of Social Insurance, confirmed by the ministry responsible for oil and gas.

Salary and additional payments

The salary of Oilmen is defined in accordance with the collective employment contract and reflects all the obligations in accordance with the Labor Code and the special difficulties of the work in this industry and its impact on health.

The ministry responsible on health makes available or imposes to the companies operating in the oil and gas industry to invest in medical centers equipped with devices and professional doctors to treat health problems caused from the work in this industry:

- in case of diseases which are proved that, directly or indirectly, are caused from the work in the oil and gas industry, the beneficiaries of the Oilman Status have the right of free medical treatment in public or private institutions that have entered into an agreement with the Fund of Compulsory Insurance of Health Care (FSDKSH). If the treatment is not provided by these institutions, the beneficiaries of the Status are treated in private institutions within the country and their treatment is financed from the State Budget for former oilmen and from the companies/employers for employed persons;
- in case of diseases which are proved that directly or indirectly, are caused

from the work in the oil and gas industry that cannot be treated within the country, the beneficiaries of the status must be treated outside the country at no charge.

The salary of oilmen may not be less than 150 percent of the minimal wage applied in Albania (for your information, the minimal wage in Albania is currently 24,000 Leke).

Retirement age

Are entitled to pension, the employees that fulfill the following conditions:

- Men reaching 60 years of age that have contributed to social insurance scheme for a period of 30 years, out of which not less than 20 years as Oilman;
- Women reaching 55 years of age that have contributed to social insurance scheme for a period of 25 years, of which not less than 15 years of work as Oilman.

However, the above requirements do not apply to persons who have worked as operator (floor man), and assistant-operator roughneck / roustabout), driller on well service crew, driller, derrick man, drilling rig floor man, employee of the refinery petroleum coke shop, and confined space cleaning operators/workers. The retirement age for these persons is 55 years for men and 50 years for women with overall insurance period of 30 years for men and 25 years for women and seniority in these professions is half of overall seniority (for other professions).

Oilmen benefit from an additional pension payment of 1% for each year of work in oil and gas industry, but not more than 40% of their pension (payable by the Social Insurance Institute).

Financing of contributions of social insurance

An additional contribution in the amount of 5 percent of the gross salary shall be paid for the persons who work in the oil and gas

industry, in the professions defined by the Law. The additional contribution will be paid 3 percent from the employer and 2 percent from the employee. The additional contribution shall be paid together with the other social and health contributions.

Medical and social treatment

- The beneficiaries of the Oilman Status should perform free medical check-ups two times per year in state or private institutions within the country.
- The treatment outside the country for former oilmen is covered from the State Budget and for employed persons from their employer.
- The beneficiaries of the Oilman Status, which are in employment relationships, benefit an additional paid annual leave, equal to 25

• **Introduction of a new VAT rate for tourism**

The Albanian Parliament passed on 27.04.2017 Law no. 71/2017 "On an Addendum to the Law no. 92/2014 "On Value Added Tax", as amended, (the "Law"). The Law is published in the Official Gazette no. 113, dated 22.05.2017, and will enter into force on 06.06.2017.

The Law introduces a reduced rate in the tourism sector.

• **Regulation on the procedures for revocation of license in power and gas sector**

The board of Regulatory Entity for Energy (ERE), in the meeting dated 18.04.2017 adopted the "Regulation on procedures of license removal in power and gas sector". The aim of this Regulation is to ensure an equal and transparent approach for all the licensed subjects in the sector of electrical energy and natural gas, for which is decided to remove a license, through the implementation of equal procedures for the licensed in the electrical energy sector and that of natural gas, in case of a license removal.

percent of working days defined in the relevant legislation into force.

Other benefits

The Oilmen benefit from privatization of the oil and gas industry in proportion with the period of work, level of qualification and category of work.

In the cases of concessions in the oil and gas industry, in the concession agreement must be provided the obligation of the concessionaire to create a professional retirement fund, in accordance with the laws regulating these funds, not less than 10 percent of the gross salary of the employees.

The Law requires the Council of Ministers to issue within 3 months from the entry into force of the law, the sublegal acts on its implementation.

VAT at the rate of 6 percent will be applied for accommodation services in the accommodation facilities, as they are defined in the legislation covering such sector. A decision of the Council of Ministers will determine the conditions, requirements and procedures for the implementation of this provision.

This Regulation determines the procedures applied for the removal of a given license in virtue of Law No.43/2015, "On Electrical Energy Sector" and Law No.102/2015, "On Natural Gas Sector", in accordance with the "Regulation on organization and functioning of ERE" and the "Regulation on the procedures and terms on giving, modifying, transfer, renovating or removing the licenses in electrical energy sector", and "Regulation on procedures on licensing, modifying, partly or fully transferring, removing and renovating the licenses in natural gas sector".

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The act comes as a necessary step in regulating the electrical energy and

gas sector related to the functioning of these markets in Albania.

- **Removal of visa for nationals of certain states**

On May 30th 2017 the Council of Ministers passed a new decision on some amendments to the Decision of Council of Ministers "On the determination of criteria, procedures and the documentation for entrance, stay and treatment of foreigners in the Republic of Albania".

This decision aims to facilitate the entrance of foreigners from certain states in the Republic of Albania. In virtue of the new amendments, effective from May 30th,

citizens of Russia, Saudi Arabia, Belarus, Georgia, Qatar, and Oman can now enter into the Republic of Albania without a visa for the period May 31st until November 31st 2017.

As well citizens of Moldova can enter, from now on, into the Republic of Albania without a visa.

The Ministry of Internal Affairs and Ministry of Foreign Affairs are responsible for the implementation of this Decision.

SPOT ON

- **Tax audits in Kosovo and respective concerns**

One of the today's greatest concerns for the taxpayers is the length of tax audit in Kosovo.

In general, the tax audits in Kosovo are:

- (i) audits with prior notice by Tax Administration of Kosovo (TAK),
- (ii) routine visits without prior notice by TAK,
- (iii) audits following a VAT reimbursement request, and
- (iv) audits during the liquidation procedure.

Entities subject to a tax audit are selected based on a method that minimizes the potential risk for abuse. After the selection, a notice on the audit is given to the taxpayer. The latter has the right to privacy and confidentiality, professional and courteous service, to be informed, to be heard by the audit inspector, to receive clear communications from TAK including an audit report that clearly explains the results of the audit and the legal basis for the conclusion reached and the right to an appeal. On the

other hand, the taxpayer is obligated to provide to TAK's representative full access to all books and records, accurate information and on time documents, to cooperate fully with the TAK's officials during the course of tax audit and to facilitate the finalization of the audit and accept the findings (if any).

Except for the above rights and obligations, Kosovo legislation does not contain specific provisions for the obligation of TAK to indicate in the official notice of audit the duration of the audit. Under tax legislation, TAK's representatives have to follow all the required procedures as defined by the law, return to taxpayer the documents as soon as possible and complete the audit in the shortest of time possible.

The time within which the audit should be completed is specified only for the audit for VAT reimbursement and for liquidation purposes. Law defines that these types of audit should be completed within 60 days. For tax audits with prior notice or routine visits without prior notice by TAK, being in fact the most cases of audits, there is no

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time limit in which the audit has to be completed.

Lack of a specific audit timeline does not restrict the tax inspectors to carry out the audit for an indefinite time.

The related concern would be the violation of the right to have an audit for a reasonable time. Despite the duty stated by the legislation to perform an audit in the shortest period of time, the taxpayers have faced in practice audits extended in time without a

justified reason. It is obvious that a tax audit which lasts unreasonably may cause additional costs to the taxpayer. As a result, complying with the law becomes more expensive for taxpayers, creates barriers for doing business in Kosovo as well as incentives for evading taxes.

It is a necessity to improve the tax legislation in Kosovo, specifically by including the obligation for TAK to specify in the tax audit notification the duration of the audit.

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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.