

RECENT DEVELOPMENTS

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RECENT DEVELOPMENTS IN ALBANIA

• Pharmaceutical Advertising

On 17.01.2019 the Minister of Health and Social Protection based on Law no. 105, dated 31.07.2014 “*On Medicinal Products and Pharmaceutical Service*” approved Instruction no. 25, dated 17.01.2019 “*On approval of the Regulation on Pharmaceutical Advertising*” (the “**Regulation**”), which was published in the Official Gazette on 12.02.2019.

The Regulation aims to define rules for the advertising of medicinal products addressed to the general public. The Authority responsible for implementing the Regulation is the National Agency for Medicinal Products and Medicinal Devices.

One of the main principles of advertising of the medicinal products, consists in providing true information, which is scientifically proven and complies with ethical criteria to ensure an adequate and rational treatment of the patient.

Advertising to general public

Advertising to general public is only allowed for medicinal products that are part of the OTC list (over the counter) medicines. Advertising to the general public of medicinal products which are only available on medical prescription is prohibited except for awareness raising campaigns or activities of public health institutions which are conducted in line with the programs adopted by the Ministry of Health.

The advertising of medicinal products to the general public shall contain the following information:

- Name of medical product followed by the common name where the product contains only one active substance;
- Instructions on the proper use of the medicinal products;
- Instructions regarding careful reading of the labeling and package leaflet.

Internet advertising

The Regulation also permits internet pharmaceutical advertising; however, the respective website shall have separate sections dedicated to the general public and to the health care professionals (in which case the access shall be granted via login in credentials).

The website should provide for the identity of the owners/clients of the said website and sources of the information which is available in the website.



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- **The Cadaster**

Law no. 111/2018 “On Cadaster”, dated 07.02.2019 regulates the public service of the registration of immovable property, the organization of the competent authorities and the administration of the cadaster, as a public register of immovable properties.

In terms of registration procedures, no major changes are introduced in comparison with the former law (i.e. Law no. 33/2012 “On the registration of immovable properties”, as amended).

Based on law no. 111/2018 “*On Cadaster*”, the State Agency of Cadaster is the public authority organized in central level (General Directorate) and local level (Local Directorates), for purposes of administering the state cadaster and public services thereto.

Art. 30 of the Law provides that the initial registration of a property is done in a cadastral zone identified by the local directorate. Moreover, the local directorate registers property titles created by the transactions between subjects of private law, by court orders or other public authorities.

The register of cadaster contains all information related to the immovable property: identity of its owner, the value, the identification number, the surface and the boundaries of the property, the date of registration and the relative deed of the ownership acquisition, and maps that show the location of property. In addition, any mortgage, easement, court dispute, restriction order, right to use or any other right connected to or deriving from the immovable property that is transferred to any third party, should be recorded to the register.

Any contract or other legal instrument effecting transactions involving an immovable property must be filed with the competent Local Office within 30 days from its execution. The Local Office shall reject any subsequent transactional act which has no chronological continuity, and which would create an overlapping of the titles.

The Local Office will issue the relevant certificate (ownership, usufruct, easement, rent) upon request of the owner or holder of the relevant right.

An immovable property that is registered for the first time is subject to temporary registration. The competent office issues a temporary registration valid for 45 consecutive days. During this period any interested person can file with the office any claim or request for the correction of the mistakes. No claims submitted after the expiry of the temporary period shall be considered. If no claims are made within the temporary period or if any claim submitted has been settled in agreement between the parties, the said property will be classified as permanently registered. Where there is a claim and the parties fail to agree upon a solution, the case shall be resolved by the competent court.



- **Promotion of Employment**

On 13.03.2019 the Albanian Parliament approved the law no. 15/2019 “*On Promotion of Employment*”, abolishing law no. 7995/1995.

The new law aims to establish equal employment opportunities among citizens through setting up public services and programs about employment, self-employment and professional qualification. The main objective is to increase the employability of labor forces, which includes the combination of skills, knowledge and competencies in order to increase employment opportunities of people, to remain employed and to advance in their careers.

An Institution for employment replacing the Regional Labor Offices will be established within six months from entry into force of the Law. This institution will be responsible for the administration and implementation of employment promotion programs and professional training programs.

Furthermore, the Law provides for the establishment of the Social Employment Fund as a public financial fund. The aim of such fund is the employment, integration and social involvement of persons with disabilities.

- **Regulation on Geographical Indicators and on Designation of the Origin**

The Council of Ministers has recently approved the “*Regulation on Geographical Indicators and on Designation of the Origin*” (Reg. No. 251, 24.04.2019), abolishing decision no. 1705 dated 29.12.2008 “*Regulation on the Registration of geographical Indications*”. The General Directorate of Industrial Property (GDIP) is entitled with the implementation of this decision. The Regulation entered into force upon its publication in the Official Gazette.

This regulation aims to define the rules and procedures regarding the applications for registration of the geographical indicators (GI) and designation of the origins (DO), filing and

reviewing the oppositions to the registration of the published GI and DO, filing the requests for appeal of the decisions including the requests for the abrogation of the protected geographical indicators (PGI) and protected designations of the origin (PDO). The competent authority for the examination of applications is GDIP. Depending on the type of applications, they may be reviewed by the Opposition Chamber or the Invalidation / Revocation Chamber and may also be appealed to the Board of Appeals. After the exhaustion of administrative remedies, they may also be appealed to the Court.

- **Procedures for Participation in the Training Center in the field of Industrial Property and Determination of Relevant Tariffs**

The Council of Ministers based on article 193/d of Law no. 9947, dated 07.07.2008 “*On Industrial Property*”, as amended, approved the Decision no. 457, dated 03.07.2019 “*On Approval of Procedures for Participation in the Training Center in the field of Industrial Property and Determination of Relevant Tariffs*” (the “Decision”), which was published in the Official Journal on 05.07.2019.

The Decision aims to approve the procedures for participation in the Training Center in the field of industrial property and applies to:

- Physical and legal persons who want to obtain a certificate of professional qualification in the field of industrial property;

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- Authorized representatives;
- Experts in the field of industrial property;
- Employees of the institutions involved in the industrial property system;
- academic staff of different universities;
- General Directorate of Industrial Property employees.

The Training Center in the field of Industrial Property (the "Center") is part of the organizational structure of the General Directorate of Industrial Property ("GDIP") and develops training activities

- **Amendments to Law no. 9920, dated 19.05.2008 "On Tax Procedures in the Republic of Albania"**

Obligation of taxpayers to open and declare the bank account details

The Albanian Parliament adopted Law no. 31/2019, dated 17.06.2019 "On some additions to *Law no. 9920, dated 19.05.2008 "On Tax Procedures in the Republic of Albania"*, as amended ("New Law"). The New Law was published in the Official Gazette no. 99/2019, dated 10.07.2019 and is effective from 25.07.2019.

It introduces the obligation for certain categories of taxpayers, to have a local bank account for the registered business and declare it with the tax administration.

Existing taxpayers

Existing taxpayers such as sole entrepreneurs that are registered for VAT, all legal entities (regardless of their annual turnover) and non-profit organizations (or other similar entities) registered with the tax administration are obliged to open a bank account (if they do not have one) no later than 90 days from the entry into force of the New Law, and declare it within the same period with the tax administration.

Newly registered taxpayers

The newly registered taxpayers (registered after the entry into force of the New Law), are required to

in the field of industrial property, including also online training.

In addition, the Center, in cooperation with the other GDPI internal structures, develops the program of continuous training of GDPI employees.

The environment and logistics for both types of trainings will be provided by the GDPI.

The fee for participation in trainings organized by the Center in the field of Industrial Property at GDIP is 700 ALL / hour.

open a bank account in the name of the business and declare it with the tax administration no later than 20 calendar days after the registration with the Commercial Register / tax administration.

Penalties

Failure to meet the obligation stipulated in the New Law is subject to the following penalties:

- for taxpayers that are sole entrepreneurs registered for value added tax, with an annual turnover up to Leke 8 million, a fine of Leke 25,000;
- for taxpayers that are legal entities (regardless of their turnover) as well as sole entrepreneurs having an annual turnover exceeding Leke 8 million, a fine of Leke 50,000;
- for non-profit organizations, a fine of Leke 37,000.

In case of continued non - compliance with the New Law, the taxpayers are exposed to a fine twice the amount of the first fine.

Increased penalties for late filing of changes in the shareholders' structure

The Albanian Parliament adopted Law no. 30/2019, dated 17.06.2019 "On some additions to Law no.

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9723, dated 03.05.2007 "On Business Registration", as amended.

The new law was published in the Official Gazette no. 99/2019, dated 10.07.2019 and provides for the obligation of a legal entity to file any changes into its shareholding structure, with the Albanian Commercial Register no later than 30 calendar days from the occurrence of the change.

Joint-stock companies shall continue to notify the list of the shareholders and their identification data once a year, together with their annual financial statements.

• Developments in the Banking Regulatory Landscape

AML/Terrorism financing

On 03.07.2019, the Supervisory Council of the Bank of Albania adopted a number of amendments to the existing banking regulatory framework, with the aim of reflecting the recommendations of the MONEYVAL (Council of Europe anti money laundering body). Specifically, amendments were adopted in the following regulations:

- "On licensing and exercising of activity of the banks and branches of foreign banks, in the Republic of Albania", as amended;
- "On licensing and exercising of activity of non-banking financial institutions", as amended;
- "On licensing and exercising of activity of savings and loan associations and their Unions";
- "On licensing, organization, activity and supervision of foreign exchange bureaus", as amended.
- "On risk management in the activity of non-bank financial institutions", as amended.

Through such amendments, the Bank of Albania intends to apply stricter rules on financial institutions applying for license to exercise a

The law entered into force on 25.07.2019.

Failure to meet the obligation stipulated in the law is subject to the following penalties:

- Legal entities (with the exception of joint-stock companies) are subject to a fine of Leke 50,000;
- Joint-stock companies are subject to a fine of Leke 100,000.

regulated activity. This includes also the shareholders, as well as transactions resulting in changes to the influencing shareholding structure. In addition, the amendments also aim at reinforcing the functions of internal audit in non-banking financial institutions.

Non-performing loans

In addition to the above, a new regulation "On addressing out-of-court settlement for non-performing borrowers that are exposed to more than one bank", was approved.

Such new regulation was approved as a result of the commitments of the Bank of Albania in reducing non-performing loans. It will be a temporary measure effective until 31.12.2020.

The novelty introduced by the new regulation consists in the establishment of a common platform among banks, with the aim of facilitating an adequate solution for the borrower. Moreover, another amendment was introduced in the regulation concerning "Credit risk management by the banks and branches of foreign banks", under which stricter rules will be applied in potential loan restructuring, effective as of 01.01.2021. In addition, the Bank's term for the write off of lost loans is reduced to 2 years.

RECENT DEVELOPMENTS IN KOSOVO

Kosovo Assembly has adopted several laws aimed at regulating different sectors of the legislation, in order to align it with the norms and rules of the European Union.

• **Protection of Personal Data**

Law No. 06/L-082 “*On Protection of Personal Data*” which entered in force on 09.03.2019 determines the rights, responsibilities, principles and punitive measures with respect to the protection of personal data and privacy of individuals. Further, said Law provides for responsibilities of the institution responsible for monitoring the legitimacy of data processing and access to public documents. The new Law is in compliance with the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27.04.2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

The Data Protection Law applies to both public and private entities established in Kosovo as well as to those data controllers who are not established in Kosovo but that for the purposes of processing personal data use automatic or other equipment in the Republic of Kosovo. In case of data controllers not established in Kosovo, the controller must designate a representative established in Kosovo.

The new law on Protection of Personal Data introduces the role of Commissioner, who is elected by the Assembly of the Republic of Kosovo, to lead, organize and coordinate the work of the National Agency for Personal Data Protection.

Further, the new law stipulated the obligation of the data controller and the data processor to designate on the basis of professional qualities a staff member of the controller or processor, as data protection officer, in any case where:

- the processing is carried out by a public authority or body (except for courts acting in their judicial capacity);
- the main activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects on a large scale; or
- the main activities of the controller or the processor consist of processing on a large scale of special categories of data (such as processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purposes of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation) and personal data relating to criminal convictions and offences.

The data protection officer shall have at least the following tasks:

- to inform and advise the controller or the processor and the employees who carry out processing regarding their obligations pursuant to the law provisions and sub-legal acts on data protection;
- to provide advice, where requested, as regards the data protection impact assessment and monitor its performance

- to cooperate with the National Agency for Personal Data Protection;
- to act as the contact point for the National Agency for Personal Data Protection on issues relating to processing, and to consult, where appropriate, with regard to any other matter.

• Allocation For Use and Exchange of Municipal Immovable Property

Law No. 06/L-092 “*On Allocation for Use and Exchange of Municipal Immovable Property*” which entered in force on 18.04.2019 aims at ensuring the effective use of immovable property of the municipality for sustainable economic development, increase in value of the immovable property of the municipality and fulfilment of the general interest. This Law also provides opportunity for exchanging the immovable property of the municipalities and acquisition of the ownership right by municipalities over the properties administered by state institutions, in view of fulfilling the general public interest.

Further, this Law regulates and defines the forms and procedures for use and exchange of immovable property of the municipality and procedures of transferring the ownership of the immovable property managed by the Central Institutions, Kosovo Forestry Agency owned by municipality. In the previous law the manner of allocation of municipal immovable property for use, exchange of

The controller and processor shall ensure that the data protection officer does not receive any instructions regarding the exercise of the above tasks. Data subjects may contact the data protection officer with regard to all issues related to processing of their personal data and to the exercise of their rights. The data protection officers report directly to the highest management level of the controller or the processor.

municipal property between the municipality and natural and legal persons, was regulated with the central institutions and the Privatization Agency of Kosovo (PAK).

The new Law introduces the Evaluation Commission, which shall be established and composed of five (5) members to carry out procedures for allocating the use the immovable property of the municipality. The Mayor shall nominate two (2) members from the municipal executive, the Municipal Assembly shall nominate two (2) members from the Municipal Assembly among different political entities and one (1) member among the non-governmental sector, who is proposed by the local nongovernmental sector. Also, by the new law the party unsatisfied with the evaluation process of bids by the Commission shall be entitled to submit an appeal, within seven (7) calendar days from the day of receiving the announcement, to the Appeal Commission.

• Special Chamber of The Supreme Court of Kosovo On Privatization Agency Related Matters

The purpose of the Law No. 06/L –086 “*On The Special Chamber Of The Supreme Court of Kosovo On Privatization Agency Related Matters*” which entered in force on 12.07.2019, is to define the jurisdiction, competences, organization and functioning of the Special Chamber of the Supreme Court on Privatization Agency Related Matters, the rules governing its operation as well as appointment

of judges of this court. of judges to serve thereon, shall be as established by and provided for in the present law.

According to the new Law, the Special Chamber is composed of judges, nationals of the Republic of Kosovo, and it reflects the ethnical composition of the population in Kosovo, whereby at least two (2)

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judges shall be amongst the non-majority communities in Kosovo. Further the Kosovo Judicial Council, in consultation with the President of the Supreme Court, shall assign a Supervising

• The Access to Public Documents

By Law No. 06/L-081 “*On Access To Public Documents*” which entered in force on 19 July 2019, the Government shall guarantee the right of every person, without discrimination on any grounds, to access public documents produced, received, maintained or controlled by public institutions, as well as the right to re-use the public sector documents. This Law shall apply to all public documents produced, received, maintained, or controlled by public institutions, except in cases when it is limited otherwise by the legislation into force.

Public institutions are obliged to proactively publish any public document produced, received, maintained or controlled by the same, as soon as

• The Corporate Income Tax

The new Law no. 06/L-105 “*On Corporate Income Tax*”, replacing the existing Law no. 05/L-029 dated 18.08.2015, will enter in force as of 03.08.2019. The main changes set forth in the new Law are summarized below:

Time limit included in the definition of permanent establishment

The new Law provides for a time limit for a fixed place of business to be deemed as permanent establishment. Under the new Law, the “Permanent Establishment” is defined as a fixed place of business through which the business of an enterprise is wholly or partly carried on in Kosovo for a period longer than six (6) months within any twelve (12) months-period.

Carry forward of losses

According to the new Law, the losses may be carried forward for a period not longer than 4 (four)

Judge, taking into consideration his/her specialized trainings, managerial experience and performance evaluation.

such documents are made available for publication, but not later than fifteen (15) days from the moment they are rendered accessible. Further by the new law all public institutions shall appoint a unit or responsible person for access to public documents and all requests for access to public documents addressed to the public institution shall be submitted to the unit or official responsible for access to public documents.

The archives office in each public institution shall maintain the register of public documents contained therein that are freely accessible to the public. This register shall be updated every three (3) months.

years, instead of the period of 6 (six) years provided in the current legislation. Rules regarding the use of losses remain unchanged.

Application of profit tax instead of turnover tax

New Law has lowered the threshold for requirement to maintain books and records by aligning it with the VAT threshold. Taxpayers with annual gross income from business activities in excess of thirty thousand (€30,000.00) Euros, should now keep the books and records in accordance with the law

requirements. In addition, they will be taxed at 10% of their profit (instead of paying the turnover tax).

Insurance companies

The new Law removed the special treatment of insurance companies. In accordance with the new Law, insurance companies will be taxed based on their profits (currently they are taxed based on premium amounts).

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Provisions

The new Law has defined mathematical, technical and expected loss provisions. According to the new Law, the provisions are deductible for banks, financial institutions and insurance companies up to the level of 80% of the provisions allowed by the respective regulators.

Sponsorship deductions

The new Law states that the contributions made for sport, culture and youth activities are deductible according to the law no. 05/L-090 “*On Sponsorships*” (i.e. 30% of tax on profit).

Withholding tax for special categories

The new Law has reduced the rate of withholding tax for non-business persons. Farmers, collectors of recycled materials, mountain fruit, medicinal plants and similar, shall be subject to withholding tax at 1% of the gross payment (previously 3%).

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TOP TIER ACHIEVEMENTS 2019
IFLR1000 2019: Ranked in Tier 1 in Financial and
Corporate and Project Development

Chambers Global 2019: Ranked in Band 1 in
General Business Law

Chambers Europe 2019: Ranked in Band 1 in
Corporate/Commercial, Dispute Resolution, Projects
and Intellectual Property.

The Legal 500 2019: Ranked in Tier 1 in Legal
Market Overview

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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. The firm also operates in Kosovo (Pristina) offering a 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 the Senior Partner/Managing Partner of KPMG Albania.

The firm’s particularity is linked to the multidisciplinary services it provides to its clients, through an uncompromising commitment to excellence. Apart from the widely consolidated legal practice, the firm also offers the highest standards of expertise in tax and accounting services, with keen sensitivity to the rapid changes in the Albanian and Kosovo business environment. The firm delivers services to leading clients in major industries, banks and financial institutions, as well as to companies engaged 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.