

Dear reader,

In this issue, we have reported recent developments to Albanian legal framework on Labor Code, State Aid, National Registration Center requirements, Excise Stamps, Personal Data Protection and Real Estate. Kosovo developments include Consumers Protection and Electronic Communications.

Under the editorial “Article” we have presented to you an overview on the discussed amendments to Albanian commercial companies’ law.

RECENT DEVELOPMENTS

Albania

- *Labor Code to be amended*
- *Regional State Aid Map approved by the State Aid Commission*
- *Changes to notarization requirements for filings with the Commercial Register*
- *Modalities of application of excise stamps revised by the Minister of Finance*
- *New instructions of Commissioner for Personal Data Protection*
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- *Protection of consumers subject to a new law*
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ARTICLES

- *Amendments to the Commercial Law*

We hope you enjoy reading this issue, and will be glad to welcome any of your queries should they arise in relation to the topics herein contained.

RECENT DEVELOPMENTS

ALBANIA

- *Labor Code to be amended*

The Ministry of Labor, Social Affairs and Equal Opportunities has prepared a new draft law proposing changes to the Labor Code. The draft law is yet to be approved by the Council of Ministers.

Below is a brief summary of the proposed amendments:

- *Temporary employment of foreign citizen*

Albanian law provisions shall govern the employment relationship of foreigners working in Albania for a period no longer than 12 months; however, the legislation of the country of residence of the employee may be applicable if it is more advantageous.

- *Telecommuting*

A new form of employment is introduced i.e. telecommuting, where the employer agrees with the employee that the work will be performed from an arranged place of work through telecommuting.

- *Temporary employment agency*

Another novelty is the introduction of the “temporary employment agency” which is an attempt to reflect into the domestic law the provisions of Directive 2008/104/EC on temporary agency work.

- *Written form of the employment contract*

Under the draft law the employment contract must be in written form. It should be stipulated as of the day the parties agree on the terms and conditions of their collaboration. In addition, the draft law requires that the employment contract includes provisions on the probationary period. The parties may stipulate the employment contracts within a period of 7 days from the hiring, but such delay should be justifiable. Lack of compliance with the requirement to enter into a written contract is subject to penalty imposed on the employer.

- *International transfer*

When the employee is asked to work abroad for a period longer than one month, the employer must obtain his/her consent to do so and provide him/her with a document stating the conditions of the work.

- *Information and consultation with the employees’ representatives*

Employees’ representatives may request information and participate in consultations with the employer on issues regarding the employees and their employment relationship. The employer may refuse to (i) give any requested information when it is considered as classified, or (ii) participate in any consultation if the nature of matters to be discussed may seriously damage the enterprise’s activity.

- *Risk Evaluation*

A document on the evaluation of risk of each job including relevant precautionary measures must be prepared by the employer and made available to the labor inspectors when required.

- *Working conditions*

If the employee works more than 6 hours per day without interruption, a minimum of 20 minutes unpaid break should be provided. If the employee works more than 9 hours per day, an additional minimum break of 20 minutes should apply.

- *Working hours*

The time used from the employee for his/her professional development as requested by the employer is included in the working hours.

- *Work during weekends or official holidays and overtime*

The official holidays are paid holidays only when they fall on a work day. It is no longer possible to postpone the day-off when the official holidays fall on the weekend.

Work performed during the weekend will be compensated with an additional remuneration of at least 25%, or with paid time-off equal to the time of the performed work plus an additional time-off of at least 25% of the performed work.

Work performed during official holidays when the latter falls on a work day, will be compensated with an additional remuneration of at least 125%, or with paid time-off equal to the time of the performed work plus an additional time-off of at least 125%.

Maximum weekly work is reduced under the draft law to 48 hours instead of the existing 50 hours. In any case, the overtime should not exceed 200 hours of work per year. Overtime work for pregnant women or women with a child of up to 1 year old is forbidden.

- *Annual Leave and Other Leaves*

If the annual leave falls on an official holiday, the annual leave is postponed. Annual leave cannot be substituted with monetary compensation, save where the employment has terminated and the employee must obtain the compensation corresponding to untaken leave.

Cohabitant is also listed among those persons that in case of their death, the employee is entitled to a 5 days paid leave.

In case of child birth, the spouse/cohabitant is entitled to a 3 days paid leave.

- *Special protection for women*

Pregnant women in agreement with the employer are entitled to paid leave for medical visits if these visits must occur during the working time. In addition, the prohibition to work after giving birth is extended from 42 to 63 days.

- *Term of employment agreement, probationary period and termination process*

The draft law reiterates the principle that an employment contract should be indefinite. It provides for some of the reasons that justify the conclusion of a definite term contract such as temporary replacement of an employee, seasonal activities, and temporary overload work.

The notice term for termination during probationary period is extended from 5 to 7 days.

It is proposed that the reasons for termination be disclosed to the employee and should pertain to employee's skills, behavior, operational requirements of the company, or execution of a final court decision to return an employee at the same job.

A novelty of the draft is the right of the employee to claim return at work, in case of termination of employment without reasonable cause.

- *Other proposed amendments*

Other proposed amendments consist of provisions regulating the work at night, shift work, rights of an employee under the definite term contract, creation of regional three parties' council, etc.

- ***Regional State Aid Map approved by the State Aid Commission***

The Albanian State Aid Commission (SAC) has recently approved the regional state aid map (passed upon decision no. 43 and effective as of 11.09.2012).

The scope of the decision is to determine the areas that may benefit regional state aid of a high intensity in order to stimulate economic development in areas of low living standards or high level of unemployment.

The Statistics Institute (INSTAT) in cooperation with EUROSTAT divided the Republic of Albania in three regions: i) Durres and the North; ii) Tirana and Elbasan; iii) the South.

Pursuant to the decision of SAC, Albania will be considered equal to the areas described in article 107 (3) (a) of the Treaty on the Functioning of the European Union (TFEU).

Such article provides that a state aid may be considered as compatible with the common market (i.e. state aid can be justified and exempted from the prohibition set forth in article 107 (1) of the TFEU) if it promotes the economic development of areas where the standard of living is abnormally low or where there is serious underemployment.

As for the intensity of the regional aid applied on the entire Albanian territory, SAC decision no. 43/2012 establishes that it must not exceed 50% of the equivalent gross amount of the aid. An additional 20% or 10% increase is justified when the beneficiary of the state aid is a small or medium enterprise, respectively.

According to SAC, the maximal intensity applicable in each of the above regions is in compliance with the requirements specified in the EU directives concerning national regional aid.

- ***Changes to notarization requirements for filings with the Commercial Register***

On 27.09.2012, the Parliament approved law 92/2012 “On an Amendment to Law no. 9723, dated 03.08.2007 “On the National Registration Center” (effective from 1 November 2012).

Pursuant to such amendment, documents can be filed with the Commercial Register in original or copies. Applicants shall be held responsible for the authenticity of the filed documents.

- ***Modalities of application of excise stamps revised by the Minister of Finance***

Minister of Finance has passed two instructions on the modalities of application of excise stamps (Instruction no. 17, dated 04.09.2012 and Instruction no. 23, dated 18.10.2012 amending Instruction no. 19, dated 01.09.2011 “On modalities of application of excise stamps and tax stamps in tobacco, beer and alcohol products”).

Upon Instruction no. 17/2012, the Minister of Finance has postponed the deadline for prohibition of circulation of products bearing the excise stamp produced from the Securities Print House, up to 09.01.2013.

Additionally, the producers and importers of products subject to excise stamps (except from those of spirituous beverages) have been required to report their stock as of 10.09.2012 to the tax authorities. If producers and importers estimate that it will not be possible to sell all the declared stock within the deadline provided under Instruction no. 17/2012 they should request within December 2012 to the relevant authority and producer of excise stamps, new stamps (which will be placed over the products bearing the excise stamp produced from the Securities Print House).

Under Instruction no. 23/2012 in case the excise stamps are destroyed or become unusable before or during the sticking process performed by a machine, the producer must return the excise stamps to the importer.

- ***New instructions of Commissioner for Personal Data Protection***

On 24.09.2012 the Commissioner of Personal Data Protection issued Instruction no. 21 on rules for safeguarding the personal data processed from large controllers and Instruction no. 22 on rules applicable to small controllers. These Instructions will enter into force within 6 months after publication in the Official Gazette (ie. on 18 April 2013).

- *Instruction no. 21 – large controllers*

Under Instruction no. 21, the Commissioner of Personal Data may request at any time a personal data controller to provide evidence of the level and content of technical measures of data processing.

Data controllers must create and maintain the system of security management of information for protection of data (SMSI). This system will be used to identify, analyze and improve the security of personal data.

For the determination of SMSI the following standards of information security should be taken into consideration: confidentiality, integrity, availability, reliability.

Instruction no. 21 provides also for details on the policy of information's security (PSI) to be compiled and applied from the data controller in compliance with the national and international laws as well as rules on manual process of personal data.

The latter will be entitled to request the reimbursement of the excise tax paid, in compliance with article 40 of the decision of the Council of Ministers no. 612, dated 05.09.2012 "On implementing provisions of Law "On Excise". The customs authority assesses the request for reimbursement in compliance with article 41 of the abovementioned decision and within 10 (ten) days, approves or rejects the reimbursement.

Instruction no. 23/2012 changes also the procedure on the returning of defected stamps. Under this Instruction, the producer of goods bearing the excise stamps will no longer apply the deadline of 10 days from receipt of the stamps for notifying the supplier that the stamps are defected.

Information's security control, from the data controller, must be made at least once a year. For data controllers that perform only electronic processing of personal data, the control may be part of the general financial control.

Data controllers should train the personnel at least once a year, and appoint at least one person for being in charge with supervising, advising and implementing the technical measures.

- *Instruction no. 22 – small controllers*

Under Instruction no. 22, small data controllers are considered all entities that engage less than 6 persons in the data processing, and that are not involved in the processing of sensitive data.

Controllers are responsible for the security of personal data processing, by safeguarding those from accidental or illegal damage, destruction, loss, unauthorized access or any other kind of unauthorized elaboration. For this purpose, they must take the necessary technical and organizational measures, appropriate for the processing of personal data.

- *New criteria and procedures for registration of rights over buildings*

The Council of Ministers on 03.10.2012 approved Instruction no. 3, “On determination of the criteria and procedures for the registration of the construction permit and notary deeds related to the development, in the capacity of the investor, landowners, or purchasers/assignors of individual units of the building in the skeleton phase or the completed building” (the “Instruction”).

The approval of the Instruction follows the entry into force of two recent laws, Law on Territory Planning (regulating construction and territory planning) and Law on Registration of the Immovable Properties [regulating the operation of immovable properties registration offices (“IPRO”) and the criteria and procedures of registration of immovable properties and relevant rights)].

The Instruction sets out the criteria and procedures for the registration of (i) the construction/development permit; (ii) buildings under construction (i.e. in skeleton phase) and (iii) registration of the completed buildings and of all relevant rights of individuals or entities related to each of these registrations. The forms of the separate registers to be used for the permits and for the registration of the skeletons are attached to the Instruction.

The Territory Planning Authority is the authority in charge for registration of construction and/or development permits, requests for registering buildings under construction (i.e. in skeleton phase) and individual units, with the local IPRO.

KOSOVO

- *Protection of consumers subject to a new law*

Kosovo Parliament has passed a new Law on Consumer Protection, which was published on November 20, 2012 in the Official Gazette no. 32 and entered in force on December 04, 2012 (“the Law”).

The Law abrogates Law no. 2004/17 “On Consumer Protection” and Law no. 03/L-131 “On amending and supplementing the Law no. 2004/17”.

The Law incorporates the rights of a consumer and the obligations of the seller, manufacturer and supplier in a broader spectrum comparing to the previous Law No. 2004/17 “On Consumer Protection”.

New provisions on the consumer rights have been added to the Law, such as: the consumer right to complain, to receive compensation for indemnity, to use public services and to receive services in local language in compliance with the Law on the use of Official Languages.

Here below is a brief introduction to this Law:

Sale of products and provision of services. The consumer may approach the responsible structures for consumer protection at the Ministry of Trade and Industry (the “MTI”) for every complaint that he/she might have towards the seller, manufacturer and/or supplier. The respective structure is obliged to notify the consumer in respect to his/her complaint within fifteen (15) days from the receipt of such complaint.

Notification for the goods. Every product placed in the market must have the declaration of the goods where the consumer can be able to know who is the manufacturer, type and model of the goods, production and expiry date, etc. All above mentioned information shall be placed in the package where it is visible, readable and understandable.

Sale by action, discount, sale at outdoor markets and sale of defective goods. When the goods are being sold with a discounted price, the place where the selling will be performed shall be clearly marked with a visible placed sign in order that the consumer can be informed properly regarding the sale. Goods that are being sold on a seasonal discount should be separated from goods that are on sale as a result of deficiencies, errors and defects.

Public services provided to the consumer. The seller shall inform the consumer in advance about all conditions of public services. These conditions shall be published in electronic and written media. In cases where there is a complaint towards the public service provider, in the committee for the review of consumer complaints within the economic operators who provide public services, the representatives from the office for consumer protection, consumer associations and community must be also involved. The public service provider is obliged to compensate the consumer in case of any eventual damages.

Consumer credit contract is any agreement, where a creditor gives or promises to give to a consumer a credit in the form of a deferred payment or deposit, lending or other similar financial agreement. The consumer credit contract shall include the purpose of the credit, full details on the identity and addresses of the contracting parties, total amount of the credit and terms for its use, credit maturity term, nominal annual interest rate, any expense that is not included on the calculation of the effective interest rate, the installment amount, the cost of maintaining an account, guarantees, the right to withdrawal, penalties, legal form of the establishment of the collateral, etc.

The unfair consumer contracts conditions. Unfair conditions in the contract will be evaluated taking into account the nature of the goods and services for which the contract has been concluded and the time and actual circumstances when the contract has been concluded. Misleading commercial contracts and aggressive commercial contracts are considered as unfair commercial contracts.

Misleading commercial contracts. A commercial practice is considered as misleading if it contains incorrect information about the circumstances (e.g. the existence or nature of the goods, the country of origin of the goods, the address and identity of the trader, etc).

Aggressive commercial contracts. An aggressive commercial practice shall be regarded as aggressive when the circumstances consist in the use of harassment, the use of physical force, threats, etc.

Comparative and misleading advertising. Any advertisement is considered as misleading when directly or indirectly promotes a commodity or service which directly or indirectly works in favor of another competitor in the market. This kind of advertisement is permitted only under specific conditions described under provisions of the Law.

Persons who have reasonable interests may request from the MTI inspectorate or other relevant bodies, to stop broadcasting of misleading and comparative advertising.

Purchase and sale through internet. The obligations of the seller before concluding a purchase and sale contract through internet should provide the following information: name, address, phone number of the supplier, a detailed price list, the monetary currency, the general amount of the contract, etc. Furthermore, it is also stipulated that the supplier should send a copy of the sale contract to the consumers e-mail address, fax number and/or mailing address.

Bearers of consumer protection. The Consumer Protection Program shall establish the policies for consumer protection for five (5) years and sets out the work within the consumer protection. This program will be developed by the Consumer Protection Council of Kosovo and it will set out the policy principles and goals of costumer protection, the tasks that have priority when developing consumer protection policies and the use of financial resources to accomplish the tasks of costumer protection program.

Consumer information and education. The Ministry of Education, Science and Technology in the cooperation with MTI will prepare educational programs, curriculums and trainings on consumer protection.

Penalty provisions. The law determines a range of penalties for the violation of the law provisions from EUR 300 up to EUR 10,000.

Administrative instructions. The following administrative instructions remain in force until they are replaced with the new ones:

- (i) Administrative Instruction No. 2007/05 for labeling and declaration of goods;
- (ii) Administrative Instruction No. 2009/21 on amending and supplementing the Administrative Instruction No. 2007/05 for the labeling and declaration of goods.

- ***Law on Electronic Communications approved by Kosovo Parliament***

On 04.10.2012, the law on Electronic Communications was approved by the Kosovo Parliament and published in the Official Gazette no. 30, dated 09.11.2012 (see In Focus, Issue 01/12).

ARTICLE

Amendments to the Commercial Law

Contributed by Ened Topi

The first quarter of 2012 saw an intensive debate on the need to review and amend the Commercial Law (9901), dated April 14 2008. The debate, organised by the Ministry of Economy, Trade and Energy, gathered together different stakeholders and experts, both local and foreign.

This update examines two of the 33 proposed amendments contained in the final draft of amendments to the Commercial Law.

Share capital

The first amendment concerns the share capital of a limited liability company – the most commonly used legal form of company in Albania. According to the proposed amendment, the share capital of a limited liability company must be divided between the shareholders in a number of shares equal to the number of shareholders, and each shareholder shall own only one share of the company, representing part of the share capital in proportion to the value of its contribution.

This amendment is welcome as it aims to prevent any misinterpretation of the provisions of the law.

In actuality, it makes little difference, given that the definition of 'share capital' is in fact broader than the existing formulation. According to the background documents circulated among participants, the aim of the amendment is to clarify the term 'share capital'. Pursuant to Article 68(2) of the Commercial Law, each shareholder owns its share in the company in proportion to its contribution to the share capital. The article further provides that the share capital of the company is divided proportionally into shares between the shareholders.

Confusion will most likely arise due to the structure of other articles of the Commercial Law - especially Article 88, which determines voting rights (also to be reformulated according to the proposed draft). Article 88(1) establishes that “unless otherwise provided in the bylaws, each share entitles to one vote”.

The formulation of the paragraph gives rise to misinterpretation, by which a single shareholder of a company might own more than one share depending on its contribution to the share capital.

Company dissolution

The second amendment relates to Article 99, on the dissolution of a limited liability company. Article 99(1)(c) is intended to read:

“The limited liability company shall dissolve: c) if its object becomes unachievable due to continued failure of functioning of company bodies, or for other grounds that make the continuation of the activity absolutely impossible”.

The dissolution of a company in this case is effected by decision of the shareholders' assembly; if the assembly fails to take appropriate measures, an interested party may address the court.

No specific provision is contained in the Commercial Law regulating this issue. To date, in order to overcome the issue, one must seek application of Article 99(d), which provides that a company shall be dissolved by way of court decision.

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