

Dear reader,

In this issue, we have reported recent developments to Albanian legal framework on Competition, Foreign Investments and Tax.

Under the editorial “Article” we have presented to you an overview on Albanian commercial companies law regarding the expulsion of a shareholder from a limited liability company.

#### RECENT DEVELOPMENTS

- *Harmonization of Competition Protection Law with EU legislation*
- *An additional and special protection is now granted to certain foreign investments*
- *Supply of international transport services and international telecommunication services subject to VAT at zero rate*
- *Amendments to the transitory provisions of the Tax Procedures Instruction*

#### ARTICLES

- *“Withdrawal and expulsion of a shareholder from a limited liability company”*

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

- *Harmonization of Competition Protection Law with EU legislation*

Starting from October 22, 2010, some competition regulatory aspects (set forth in the Competition Protection Law no. 9121, dated 28.07.2003) are amended by the new law no. 10317, dated 16.09.2010. These amendments, which are mainly reported below, pertain to the concentrations, restrictive agreements, abuse of dominant position and undertakings subject to the Competition Protection Law.

### *New rules on concentrations*

Law no. 10317 provides for a new definition of the concentration of undertakings subject to the control of Albanian Competition Authority (“ACA”), new notification thresholds and term as well as new evaluation criteria of a concentration. In addition, the penalty applicable in case of failure to notify a concentration or for realization of a concentration which restricts the competition over the market is amended.

Definition of concentration. Law no. 10317 introduces a new concept and two new categories of control constituting a concentration under the Competition Protection Law i.e. the concept of “lasting change of control” as well as the following categories: (a) acquisition of direct or indirect control of an undertaking or part of it by one or more individuals who have the control of at least another undertaking and (b) direct or indirect control over one or more undertakings or part of them.

On the other hand, creation of a joint venture does no longer constitute a concentration provided that certain conditions are met.

Notification thresholds. Concentrations should be now notified to ACA within 30 days (previously one week) after signature of the relevant agreement or announcement of the public bid, if in the last business year preceding the concentration:

i) the combined worldwide turnover of all participating undertakings is more than Leke 7 billion (previously Leke 70 billion) and the domestic turnover of at least one participating undertaking is more than Leke 200 million (previously Leke 500 million);

ii) the combined domestic turnover of all participating undertakings is more than Leke 400 million (previously Leke 800 million) and the domestic turnover of at least one participating undertaking is more than Leke 200 million (previously Leke 500 million).

Penalties. Failure to notify a concentration shall be subject to a penalty not exceeding 1% of the total turnover of the preceding financial year (before the amendment, the penalty was from 2% up to 10%). While, realization of a concentration which restricts the competition over the market shall be subject to a penalty up to 10% of the total turnover of the preceding financial year (previously the penalty was from 2% up to 10%).

### *New rules on restrictive agreements*

Law no. 10317 introduces that restrictive agreements may be exempted from prohibition set forth under article 4 of the Competition Law if they fall under the categories of agreements considered as exempted (to be defined by a forthcoming regulation of ACA) or under the “*de minimis*” agreements.

### *New rules on abuse with the dominant position*

Some of the abusive actions (e.g. refusal to trade or to grant licenses) of an undertaking(s) having dominant position, listed in article 9 of the Competition Protection Law, are abrogated by Law no. 10317.

Article 9.3 of the Competition Law is also abrogated by Law no. 10317.

It provided that practices of one or more undertakings having dominant position are not considered as abusive if these undertakings prove that the practices are carried out for objective reasons, such as technical or legal commercial reasons.

## *Other amendments*

Upon introduction of the new Law, the following categories of undertakings become subject to the Law:

- ***An additional and special protection is now granted to certain foreign investments***

New provisions are introduced to Foreign Investments Law (law no. 7764, dated 02.11.1993) upon the law no. 10316, dated 16.09.2010 (“Amending Law”). These new provisions are effective from October 28, 2010.

The Amending Law introduces a special protection for foreign investments in Albania carried out in the tourist, public, energetic or agricultural infrastructure insofar they are:

- based on a concession agreement in light of the Albanian Concession Law; or
- related with an immovable property, made available to the foreign investor by the Albanian state; or
- related with an immovable property over which the foreign investor has rights based on a valid, legal, public document or act issued by a competent state-entity or public authority, where such investment exceeds or is foreseen to exceed the value of EUR 10 million.

The protection called “special state protection” is granted to the foreign investors pursuant to a decision of the Council of Ministers following the proposal of the concerned minister and request of the foreign investor. Granting of the special state protection is a discretionary right of the Council of Ministers.

- undertakings owned by the state or undertakings which have obtained by the state exclusive or special rights;

- undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly in so far and to the extent the performance of their activity is not obstructed in law or in fact.

Under the special state protection, the foreign investor is substituted in the judiciary process by the Albanian state. Once the special state protection is granted, any injunction order issued by the court shall be executed over state properties.

The special state protection is not granted *a priori* but only after occurrence of the dispute. Expenses of representation by the Albanian state due to the said substitution shall be paid by the foreign investor, unless the court decides to attribute such expenses to the third parties and decide for the compensation of the foreign investor.

The special state protection may include also that the state undertakes to pay/fulfill the obligations binding on the foreign investor following the court decision, provided that certain conditions are met. In such a case, expenses of representation shall be charged to and paid by the state budget.

The special state protection shall be granted until December 31, 2014.

- *Supply of international transport services and international telecommunication services subject to VAT at zero rate*

Following the amendments to the VAT Law (no. 10215, dated 21.01.2010), effective from February 2010, as regards export of services, the Minister of Finance, Minister of Public Works and Transport and the Minister of Innovation and Information Technology and Communication have adopted a joint instruction.

The joint instruction (no. 31, dated 13.09.2010) aims to specify VAT zero rated supplies of services related to the international transport. For such purposes, the joint instruction provides for a list of all services related to the maritime international transport and aerial international transport considered as subject to VAT at zero rate.

In addition, the joint instruction provides that international telecommunication services are also subject to VAT at zero rate. Such services consist of (i) international interconnection services and (ii) international “roaming services” carried out by a local operator for foreign operators.

In any case, the taxpayer must prove through the relevant documentation that the service is carried out in connection to and in function of the international transport.

The joint instruction has been published in the Official Gazette on October 6, 2010.

- *Amendments to the transitory provisions of the Tax Procedures Instruction*

The amended Tax Procedures Instruction (no. 24, dated 02.09.2008) determines that breaches to the law made after entry into force of the Tax Procedures Law (law no. 9920, dated 19.05.2008) shall be subject to administrative sanctions which were in force at the moment they occurred, regardless the time when the breach is ascertained.

## ARTICLE

### *Withdrawal and expulsion of a shareholder from a limited liability company*

Contributed by Bers Hado

In addition to being able to withdraw from a limited liability company (LLC) through sale or cancellation of shares, a shareholder can be subject to withdrawal on reasonable grounds or expulsion, pursuant to Articles 101 and 102, respectively, of the Entrepreneurs and Commercial Companies Law (9901/2008). Both provisions are based on the principle that a partnership can be terminated on reasonable grounds.

In case of withdrawal based on reasonable grounds, the shareholder should notify the company of its decision and demonstrate the reasons for such withdrawal.

Under Article 101(1) of the law, a shareholder can leave an LLC if the other shareholders or the company:

- cause him damages by their actions;
- impede the exercise of its rights;
- impose on him unreasonable obligations; or
- for other reasons, render impossible the continuation of the shareholder’s partnership.

On receipt by the administrator of the company of the shareholder’s notification, the administrator shall immediately call a general meeting in order to resolve whether the outgoing shareholder will receive liquidation of its shares.

If the company fails to convene in a general meeting or finds the grounds for withdrawal and liquidation of the shares to be unreasonable, the outgoing shareholder can initiate court proceedings against the company to claim (i) liquidation of the shares, and (ii) compensation for any damages from the company or the shareholders.

However, if the court finds that there were no reasonable grounds for withdrawal, the withdrawing shareholder must compensate the company for any damages caused.

In cases where the company intends to expel a shareholder, under Article 102 of the law, a general meeting can issue an ordinary decision to ask a competent court to expel the shareholder and for compensation for any damages caused by the shareholder if the shareholder has:

- failed to pay its contributions as provided by the company bylaws;
- inflicted damages on the company or other shareholders deliberately or through gross negligence;
- violated the company's bylaws or legal obligations deliberately or with gross negligence;
- become involved in an undertaking that renders impossible the business undertaking between the shareholder and the LLC; or
- damaged or hindered the company's business to a significant extent through its actions.

If the court rules that the claim for expulsion is not reasonably grounded, the shareholder shall be entitled to compensation for any damages from the company. Alternatively, it will not be entitled to seek liquidation of its shareholding but may offset any amount that would otherwise be due as liquidation of its share against any claim for compensation submitted by the company.

All the rights deriving from the shareholder's membership in a LLC shall terminate on the date of withdrawal or the final court ruling regarding the withdrawal or expulsion.

*This article was originally edited by, and first published on [www.internationallawoffice.com](http://www.internationallawoffice.com).*

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