

Issue 01/14

To keep you up-to-date with the latest economic and financial developments, this bulletin provides information that may affect the operation of your business in Albania.

Introduction of New Rules on Late Payment in Commercial Transactions

The Albanian parliament has passed on 24.04.2014 the law no. 48/2014 "On Late Payments for Contractual and Commercial Obligations", which is partially aligned with the Directive 2011/7/EU of the European Parliament "On Combating Late Payment in Commercial Transactions" and shall enter into force after being promulgated by the President of the Republic and thereafter, 15 days upon publication in the Official Gazette.

Until now, late payments have been regulated by few provisions of the Civil Code, which are based on the principle of contractual freedom.

The new law defines the rules on calculation of legal interest for late payments in commercial transactions which lead to the supply of goods and services between commercial undertakings and/or to public authorities, in order to ensure a proper functioning of the internal market, by encouraging competitiveness of commercial undertakings and particularly of small-medium enterprises.

Article 2 of the law provides that this law shall not apply to obligations, or payments that:

- are subject to bankruptcy procedures initiated against the debtor (including the procedure of debt restructuring);
- derive from transactions with the consumers;
- consist of interest or other payments made for securities; and
- constitute damage relief for torts, including indemnities payable from life and non-life insurance companies.

In commercial transactions where the debtor is an undertaking or a public authority, the creditor is entitled to payment of interest from the next day of the due date, without giving notice of delay to the debtor if:

- the creditor has fulfilled all its obligations under the law and contract;
- the creditor has not been paid, except when the delay did not occur because of the debtor's fault.

Payment terms

When the payment term has not been determined in the contract, the creditor shall be entitled to interest starting from the expiry of the following terms:

- 30 calendar days following the date of receipt by the debtor of the invoice;
- 30 calendar days after receiving the goods or services, when it is not clear the receipt date of the invoice;
- where the debtor receives the invoice earlier than the receipt of goods or services, 30 calendar days after the date of the receipt of the goods or services;
- where a procedure of acceptance or verification, by which the conformity of the goods or services with the contract is to be ascertained, is provided for by law or in the contract and if the debtor receives the invoice earlier or on the date on which such acceptance or verification takes place, 30 calendar days after that date.

While the Directive 2011/7/EU provides that the payment period determined in the contract may not exceed 60 calendar days, under the law no. 48/2014 the parties may agree on a longer payment period, provided it is not to the detriment of the creditor.

The payment periods mentioned above are also applicable to commercial transactions between undertakings and public authorities. However, the creditor shall be entitled to claim late interests after a total of 60 days, including 30 days of delay from the treasury department in addition to 30 days of payment delay from the public authority.

Interest and compensation for recovery costs

Article 5 of the law provides for the following applicable interest:

The rate for late payments in Leke will be fixed in reference to the REPO (Repurchase Agreement) and reverse REPO (Reverse Repurchase Agreement) interest rates as approved by the Bank of Albania by adding eight percentage points; while, for Euro currency by referring to the interest rate of main refinancing operations approved by the

Central European Bank by adding eight percentage points. For the first semester of the year concerned shall be the rate in force on 1 January of that year, while for the second semester of the year concerned shall be the rate in force on 1 July of that year.

In addition, the new law provides for payment of expenses in case of delayed payments by the debtor. Thus, the creditor is not only entitled to claim payment of interest, but also the expenses incurred because of such delay, including but not limited to, legal fees the creditor paid for the enforcement of debtor's obligations. Moreover, the debtor must pay to the creditor the amount of 5,000 Leke as a compensation for the creditor's own recovery cost.

Unfair contractual terms

The law prohibits abuse of contractual freedom to the detriment of the creditor. Hence, where a contractual term or practice relating to the payment period or the interest rate for late payment or the compensation for recovery costs is not justified by the terms granted to the debtor or mainly serves to procure an additional advantage for the debtor to the creditor's cost, it may be regarded as abusive and unenforceable, and the creditor is entitled to claim remedies for the damage incurred.

Enforcement of monetary obligations

Under law no. 48/2014, financial/monetary obligations are considered as an 'executive title' in the sense of the Civil Procedures Code and are enforced by the bailiff office, provided that the creditor has delivered the goods or performed the services in accordance with the contract and the law and the debt is not disputed.

Conclusion

Businesses entering into commercial contracts after law no. 48/2014 enters into force, should pay particular attention to the payment periods and rates of interest provided by it. Although commercial parties may still negotiate payment periods which are longer than 60 days, it is possible that in event of a dispute, this may not be considered a fair remedy for late payment, and will be unenforceable.

BOGA & ASSOCIATES

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

info@bogalaw.com

Tirana Office

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

Pristina Office

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

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

© 2014 Boga & Associates. All rights reserved.

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

Boga & Associates

Boga & Associates, established in 1994, has emerged as one of the premier law firms in Albania, earning a reputation for providing the highest quality of legal, tax and accounting services to its clients. Boga & Associates also operates in Kosovo (Pristina) offering full range of services. Until 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.