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Dear reader,

In this issue, we have reported recent developments to Albanian legal framework on Energy Licensing and Mining Law and to the Kosovo legal framework on personal data protection. You will also find information on new Tax Conventions ratified by the Albanian Parliament.

Under the editorial "Article" we have presented to you an overview on the E-commerce Law.

RECENT DEVELOPMENTS

Albania

- *New Mining Law*
- *Activities in the Energy Sector: New Licensing Rules*
- *Ratification of new Conventions on Avoidance of Double Taxation of Income and Capital*

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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

- ***New Mining Law***

Starting from August 27, 2010 mining activities are subject to a new law. Approved by the Albanian Parliament on July 15, 2010, law no. 10304 On Mining Sector in Albania (the "Mining Law") has abrogated law no. 7796, dated 17.02.1994 "Mining Law of Albania" (the "Abrogated Law").

The Mining Law reflects the provisions of EU Directive 2006/21, dated 16 March 2006 "On Management of Waste from Extractive Industries". It reinstates some of the provisions of the Abrogated Law but also provide for new rules affecting different aspects of mining activities in Albania. Below you will find a brief overview of the main new provisions ruling the mining activities as per the new Mining Law.

Classification of Mining Activities
Under the Mining Law, mining activities and mining permits are classified according to the type of activity and type of mineral.

Specifically, mining activities may be performed in the form of (i) research-exploration; (ii) exploitation; and (iii) research-exploration-exploitation (i.e. combination of point (i) and (ii)).

Additionally, the Mining Law introduces a new classification system of the mineral reserves consisting of:

a) metallic, non-metallic, cobbles and bitumen minerals;

b) construction minerals;

c) precious and semi precious minerals;

d) radioactive minerals.

Under the Mining Law the number of groups of minerals is reduced from six to four groups, as a result of the fact that the minerals mentioned in point (a) above are considered and constitute one sole group and not three different types of groups as under the Abrogated Law.

Acquisition of Mining Rights
Under the Mining Law, Albanian or foreign legal entities may acquire the right to research-explore and/or exploit in respect of the minerals of group referred to under point (a) (b) and (d). Mining rights over the group of precious and semi precious minerals (point (c) above) are granted in the form of research-exploration-exploitation.

Additionally, trade of precious and semi precious stones is subject to obtaining of an authorization; the procedures, terms and conditions of such authorization shall be defined upon a forthcoming decision of the Council of Ministers.

The Mining Law introduces the concept of "bid procedure for obtaining mining rights", aiming to provide for more transparency in the licensing process when the mining area is qualified as "bid area" as per the Annual Mineral Plan approved by the Ministry of Economy, Trade and Energy. Accordingly, mining rights are granted to the winner of the bid procedure, Albanian or foreign legal entity either in pursuance with the Public Procurement Law (law no. 9643, dated 20.11.2006) or under the legal requirements of the Concession Law (law no. 9663, dated 18.12.2006). For the mining areas which are classified as "*opened areas*", the permit is granted based on the principle "*first come, first served*".

Royalty tax
Under the Mining Law, the mining rent (royalty tax) is levied (i) on the minerals sold when such minerals are extracted based on the exploitation permit for the minerals mentioned under (a) (b) and (d) above and (ii) on the research-exploration-exploitation permit for precious and semi precious minerals.

The royalty tax is determined in the National Taxes Law (9975/28.7.2008). It is a fixed percentage over the sale price of minerals. The tax rates depend on the type of minerals, but in any case it does not exceed 10 %.

Supervision/monitoring of mining activities
The Mining Law introduces the establishment of two new public entities i.e. Mining Cadastre and Mining Register which will constitute the primary sources of technical information for mining reserves and activities.

Transitory provisions
All those requests/applications filed for obtaining mineral permits, in process of examination at the moment of entry into force of the Mining Law shall be subject to the procedures of examination and issuance of the permits as set forth by the Abrogated Law, except when the applicant decides to withdraw the request and re-file it under the Mining Law provisions.

Mineral rights acquired under the Abrogated Law, the approved surface and term for exercising mining rights are not affected by the entry into force of the Mining Law. Nevertheless, any application for extension of the approved term shall take place as per the rules of the Mining Law.

Holders of mineral permits are required to comply with the requirements concerning the financial guarantees as provided for in article 31 of the Mining Law within 1 (one) year from entry into force of the Mining Law.

- ***Activities in the Energy Sector: New Licensing Rules***

The Council of Ministers approved upon decision no. 385, dated 19.05.2010 (the "New Decision") some amendments to decision no. 538, dated 26.05.2009 "On Licenses and Permits issued by or through the National Licensing Centre (the "NLC") and some Relevant Amendments" (the "Licensing Decision"). The New Decision enters into force immediately.

The New Decision abolishes decision of the Council of Ministers no. 913, dated 26.08.2009 "On Establishment of the National Energy Centre", upon which it was decided to establish a licensing centre serving as "*one stop shop*" for implementation of projects in the energy sector.

Further, the New Decision has introduced a new Annex (the "Annex 4) to the Licensing Decision. Such Annex provides for the rules applicable to the issuance of licenses/permits/authorizations and certificates in the energy sector, where the following procedures shall apply:

- applications (for obtaining of a license/permit/certificate) falling under Annex I of the Licensing Decision shall be subject to examination of NLC.
- applications falling under Annex II of the Licensing Decision or when the application relates to obtaining of an authorization/certification/administrative decision issued by a central governmental entity, shall be processed in accordance with Group III of Licenses (Licensing Decision);
- applications under the competencies of independent entities shall be filed directly with the said entities.

When the activities subject to licensing are conditioned from stipulation of a concession agreement, the above provisions of Annex 4 shall apply after such agreement has been concluded between the parties.

All entities which have filed applications for obtaining licenses, permits, authorizations, certificates prior to **09.06.2010** may decide, either to proceed with the initiated procedure or restart the procedure by filing one or several applications.

- ***Ratification of new Conventions on avoidance of double taxation of income and capital***

Recently the Albanian Parliament has ratified three new Conventions on avoidance of double taxation of income and prevention of fiscal evasion entered into between Albania and respectively **Estonia, Germany and Kuwait**.

Kosovo

- ***New Kosovo Law on Personal Data Protection***

On April 29, 2010 the Parliament of the Republic of Kosovo passed the Law No. 03/L-172 "On Personal Data Protection" (the "Law") which entered into force on June 15, 2010.

The purpose of the Law is to determine the rights, responsibilities, principles and measures with respect to the protection of the personal data. Impartiality and legitimacy of data processing which in no event should harm the dignity of the data subject are considered the binding principles of the Law.

To this end for a legitimate processing of personal data, the Law requires fulfillment of certain conditions such as consensus of the data subject, existence of a legal obligation of the controller/processor or the processing itself is necessary for the vital interest of the data subject etc. (i.e. their coexistence is not required) .

The above requirements became more stringent in case of processing/storage of sensitive data. According to the provisions of the Law sensitive data are data revealing racial or ethnic origin, political or philosophical opinions, religious beliefs, membership in labor unions or any information on health status, sex life etc.

Data controllers and processors in exercising their activity should provide for appropriate measures in order to guarantee and secure the respective activities. In addition, the Law provides for a mandatory notification to the competent authority (i.e. at least 20 days) for any intended new filing system or any new categories of personal data to be processed. Failing to take appropriate measures or inform the competent authority as per above lead to the applicability of fines of up to EUR 10.000.

To the subject whose personal data are being or about to be processed, the Law recognizes several rights likewise, accessing of its own processed/stored data, possibility to add, correct, block, destroy, erase, delete and object data proved to being incomplete, inaccurate or not up to date, or if the data are stored or processed contrary to the provisions of the Law.

Restrictions to the said rights are made for national and public reasons, important economic or financial interest of the Republic of Kosovo, or for cases of prevention, investigation and prosecution of criminal offences etc.

The competent state authority established to guarantee the legitimacy of processing of personal data is the State Agency on Protection of Personal Data (the "Agency"). The Agency operates as an independent authority directly accountably to the Kosovo Parliament. The Agency high executives (Chief State Supervisor and four members) are directly appointed and discharged by the parliament.

Inspections, controls of subjects exercising processing/storage of personal data, advice to public and private entities on matters concerning personal data, information to the public on developments and promotion of rights related to personal data protection are some of the prerogatives of the Agency. The obligations of both legislative and executive branch of the Republic of Kosovo to consult the Agency in case of possible initiatives in legislative/administrative field of its competence and the right to address the Constitutional Court for the constitutional validity of laws are other competencies recognized by the Law to the Agency.

The Law dedicates quite a few provisions to the transfer of personal data in other countries and/or international organizations. According to the provisions of the Law, the said subjects should mandatory offer an adequate level of protection of personal data. The adequacy of protection of personal data is subject to a decision of the Agency based on the criteria set out by the Law. For such purpose the Agency publishes a list of the subjects fulfilling criteria set out by the Law, list that includes also other countries and international organizations deemed to fulfill such criteria by the EU competent organism.

In conclusion the Law provides for a wide range of pecuniary fines applicable to infringers. The fines are based on the gravity of the violation and vary from a minimum of EUR 200 up to EUR 10,000.

ARTICLE

"The E-commerce Law: a briefing"

Contributed by Sabina Lalaj

On May 11, 2009 the Albanian Parliament approved the E-commerce Law (10128/2009), which establishes the rules governing:

- e-commerce activity and information society services;
- the protection of parties to such transactions; data privacy of consumers and of parties to such transactions;
- the free movement of information services; and
- the responsibilities of service providers.

The definition of "information society services" set out in the law includes services provided at a distance by electronic means, on the request of the recipient, against compensation. The law further defines "commercial communications" as any means of communication designed to promote, directly or indirectly, the image of an entrepreneur or a commercial company, non-profit organization or other person engaged in commercial or industrial activity. The law categorizes as "e-commerce" activities conducted by the subjects of the law upon receipt of electronic documents for the trade of goods and/or services.

The law applies to all services offered electronically to natural or legal persons, excluding:

- the services of a notary public or similar relating to the execution of public authority;
- the representation of third parties before the courts or other authorities;
- activities subject to payment for participation in bets, lotteries, electronic games, games of chance and casinos; and
- legal relationships arising from fiscal activity, the protection of personal data or agreements governed by the Competition Law.

The conduct of e-commerce is based on principles such as:

- contractual freedom;
- free will and equal treatment of the parties; and
- free movement of goods and services in the territory of Albania.

Within this context, the parties to an electronic transaction cannot impose limitations on purchases or on the fulfillment of rights and obligations of natural or legal persons, other than those provided for by law.

The E-commerce Law provides that information society services may be provided by all natural or legal persons registered with the National Registration Centre, without any need for a special authorization or license. The service provider should provide the authorities and service recipients with certain minimum information, including:

- its commercial name;
- the address of its legal seat;
- its website and email address; and
- company registration data.

This information, and details of the goods or services offered, should be provided in a clear and precise manner that may be easily understood by the wider public.

The service provider should ensure that commercial communications include, at a minimum:

- a clear indication of the commercial nature of the communication;
- sufficient information to identify the subject on whose behalf the communication is being sent;
- clear instructions on the terms and conditions of any benefits offered in the communications; and
- clear instructions for participation in competitions or promotional games, where these are permitted by law.

When delivering unsolicited commercial communications, the service provider must also respect the will of recipients that do not wish to receive such communications. A service provider that sends such communications to third parties which have indicated that they do not wish to receive them will be held responsible for any damage caused.

Contracts entered into electronically shall be considered as validly executed under the E-commerce Law if they comply with the requirements of the Civil Code and of the Law on the Protection of Consumers (9002/2008).

This law does not apply to:

- contracts that create or erase rights to immovable property;
- contracts that require by law the participation of the court, public authorities or public service professionals;
- contracts governed by the Family Code;
- actions governed by the chapter of the Civil Code regulating issues of testamentary inheritance; and
- financial or insurance services contracts.

The Authority of Electronic and Postal Communication is responsible for supervising compliance with the E-commerce Law; while the protection of consumers is safeguarded by the Commission for the Protection of Consumers and other bodies as designated in the Law on the Protection of Consumers.

The E-commerce Law sets out the penalties applicable in case of breach of its provisions. The fines that may be imposed by the supervising authorities vary up to Lek200,000.

Should any disputes arise in relation to the conduct of e-commerce activities, the law gives priority to arbitration.

Where an arbitration clause was not included in the agreement entered into between the parties, the district courts will have jurisdiction to hear the dispute.

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