NEW LAW ON FOREIGNERS

The Albanian Parliament passed a new law on foreigners which supersedes the 2008 law “On Foreigners”. The new law regulates the entry, employment, residence and other requirements foreigners have to follow in Albania. The law should be examined and considered for compliance not just by foreigners living in Albania but also by employers who employ foreign citizens.

Some of the changes this new law brings are:

1) Albanian migration authority may issue visas at the border under the conditions determined by the law, granting approval for foreigners residence for more than 90 days within 180 days based on the principle of reciprocity, but only if the legal requirements are met.

2) European Union and Schengen Zone citizens shall no longer need a work permit. However, the law has determined that for such exemption there will be restrictions in compliance with migration policy and the labour market situation in order to protect Albanian jobseekers. Employers with foreign staff and foreigners wishing to work in Albania should follow the changes carefully to ensure all criteria are met for not needing a work permit.

3) The new law also provides some favourable provisions for US citizens who shall be treated as Albanian citizens as regards employment and have the right to remain in Albania for a period of time without needing a residence permit.

4) The new law also offers favourable provisions for skilled employees who may obtain a special permit if they meet the legal requirements.

By Emel Haxhillari (MA), Associate, Employment & Immigration

METE PROPOSES CHANGES TO CONCESSION LEGISLATION

In the same week a proposed amendment to the current Concession Law and a proposed entirely new law on Concessions & PPP was put forward by METE. This, to say the least, created some confusion in the legal market, as there appeared to be little warning of any intention to enact an entirely new law to replace the current Law on Concessions.

The Concession Law Amendment introducing the step-in right, in brief, essentially enables the lender to substitute the concessionaire with another suitably qualified company where the concessionaire is in default of its obligations. This shall ensure the continuity of the project and essentially give lender comfort to offer financing in the first place.

Without much notice, or any explanatory note, an entirely new law was proposed. There did not appear to be any obvious reason to enact this new law, especially as amendments could simply be made to the existing Concession Law in keeping with the spirit of the drafting style of that law which was clear concise and to allow for flexibility.

In a quick assessment of the proposed new law there are some good additions suggested such as: (i) introduction of specific requirements for the production of a feasibility study (ii) removal of the need for approval of the concessions agreements by higher authorities such as the Council of Ministers (seems now that only the Contracting Authority is required for the signing and approval).

However, this new draft law requires a lot more work, aside from general drafting problems, there is confusion created in the text between Concession and PPPs and application of rules to either structures. Other specific areas that need reviewing are those provisions on amendments to the concession or PPP contracts, renewal of terms and financing. The draft text for financing refers to the ability to place an encumbrance on the rights under the concession & PPP contracts, the enforcement of which stated would be complex and difficult. The draft Concession Law Amendments on the Step-In Rights are far better suited to the market and should be used instead.

With the recent political shuffles involving METE, the market waits eagerly to see what happens. It is hoped however that there will be further consultation with interest stakeholders, lenders and the legal market on the new proposed law. It would be unfortunate to make such significant changes to the Concession legislation without proper and detailed consideration, especially to its envisaged implementation.

By Sophia Darling, Partner

CHAMBERS GLOBAL RANKINGS

KALO & ASSOCIATES – ALBANIA is ranked once again as Top Tier by Chambers Global, a leading professional legal guide to business and corporate legal services You can visit Chambers & Partners (Europe) website for the full review.

“Abstract”, by Igli Jorgo
ADVERTISING UNDER THE NEW AUDIOVISUAL MEDIA LAW

After long anticipation, the Albanian parliament last month finally approved the new law on Audiovisual Media in the Republic of Albania no. 97/2013. This law repealed the old law “On Public and Private Radio and Television in the Republic in Albania” and Law no. 9742, dated 28.05.2005 “On Digital Broadcasting in the Republic of Albania” and is said to be fully aligned with the EU Directives especially with Audiovisual Media Services Directive (Directive 2010/13/EU).

Although not such an issue in Albania to date, which is arguably due to lack of proper regulation and consumer awareness, regulation of audiovisual advertising and promotion is a significant issue for member states of EU and elsewhere hence subject to regulation by the Audiovisual Media Services Directive noted above. The old Public and Private Radio Television law had dedicated two chapters to advertising and sponsorship, but in the new Audiovisual Media law this subject matter has been assigned much wider scope and given more attention as now industry concepts are better defined, new notions (but not phenomena) such as ‘product placement’ are introduced and the ‘DOs’ and DON’Ts of advertising in audiovisual media streamlined.

The purpose of an improved advertising regulation is important as it is geared towards effective consumer protection and giving direction to broadcasters and advertisers towards a culture of responsible advertising. Below I summarize in brief some of the new features of the law with respect to advertising, some simply being re-organization of the guidelines and principles of the old law:

New Notion of Audiovisual Commercial Communications: The law introduces the general concept of audiovisual commercial communications i.e. defined as images designed to promote, directly or indirectly, the goods, services or brand of a commercial entity, against payment or similar compensation or for self-promotional purposes.

Implementing Codes of Conduct: Media service providers are, according to the new law, obliged to draft and enforce codes of conduct to cover audiovisual commercial communications of food and beverages containing nutrients and substances with a nutritional or physiological effect, excessive intakes of which in the overall diet of children are not recommended, in the advertising included in or accompanying children’s programs.

Sponsorships: Rules on sponsorship are also improved in the new law. Sponsors must not influence the content or scheduling of a programme and cannot encourage the purchase of a specific product or service. Whilst tobacco companies may not act as sponsors, pharmaceutical companies are allowed to sponsor a program though without advertising a specific product. News and informative programs related to politics may not be sponsored. Also, the display of a sponsorship logo during children’s programmes, documentaries and religious programmes is prohibited.

Television Advertising and Teleshopping: Traditional television advertising and teleshopping are subject to stricter rules than other types of communications. Hence they should not be isolated (apart from broadcast sports events), may promote alcoholic drinks subject to certain restrictions, may not take up more than 12 minutes of any given hour of broadcasting time and may be inserted during children’s programs, films and news programs only once in each scheduled period of at least 30 minutes. A media service provider may not advertise spots with political content other than during the election period and subject to the rules of the election code. Inclusion of commercials during religious programs is also prohibited.

Product Placement: As opposed to sponsorship, product placement shall be part of a program’s narrative whereas sponsor’s references may be shown during the program but are not part of it. Product placement is only permitted for films and TV series, sport and entertainment programs.

By Anisa Rumbullaku (LLM), Partner Corporate & Licensing

CHANGES TO NOT-FOR-PROFIT ORGANISATIONS LAW

The Albanian Parliament has recently approved amendments to Law no. 8788, date 7.5.2001 “On non-for-profit organizations” (“NiPO Law”). The amendments are not substantial but are implemented mainly with a view to (i) accentuate the civil and criminal responsibility of NiPOs as legal entities (ii) further define the responsibilities of the organs of NiPOs, (iii) further exemplify the tax and financial obligations of NiPOs and (iv) increase the level of supervision of NiPOs.

The changes are implemented in the context of creating a more transparent supervision system for NiPOs in order to prevent involvement in money laundering or terrorist activities. The amended NiPO Law now grants the highest decision making organ of an NiPO the power and obligation to supervise the activity of the NiPO, in collaboration with other relevant public authorities, such as tax authorities or the General Directorate of Prevention of Money Laundering, with a view to preventing the use of the resources of the NiPO for terrorist purposes, in accordance with Law no. 9917, date 19.05.2008 “On prevention of money laundering and financing of terrorism”.

Under the scope of the increased level of supervision the amended NiPO Law provides that foreign NiPOs shall be supervised by both local and foreign competent authorities that have the obligation to exchange information whenever necessary.

The funds of NiPOs shall now be maintained in bank accounts and any transfer or financial transaction regarding such funds shall be made through the banking system, in accordance with the applicable law. Further, requests for donation made to NiPOs shall reflect in details the purpose for which they will be used and have the obligation to attest that such donations are being used for the declared purpose.

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MANAGING PARTNER, PERPARIM KALO - FIAA VICE-PRESIDENT: The Managing Partner of the Firm, Mr Perparim KALO, was re-elected as a board member and given the number of votes obtained is now the Vice-President of the Foreign Investors’ Association in Albania.

FIRM NEWS

TAX PARTNER, ARDJANA SHEHI SELECTED AS AMCHAM HEAD OF TAX AND LEGAL COMMITTEE: The Board of AmCham selected the KALO & ASSOCIATES Tax & Banking Partner, Av. Ardjana Shehi to head the Tax & Legal Committee. Ardjana has significant experience and knowledge of commercial law and Albanian institutional framework to contribute in AmCham’s lobbying and promotion of the legal and tax concerns of businesses to the government.

LEGAL TAX ALERT

DCM “On the determination of the list of machinery and equipment that are directly related to the investment and on the procedures of exemptions and the relevant criteria”

The Council of Ministers has already issued a Decision related to the recent change to the VAT law no. 125/2012. Following this, a new Decision of Council of Ministers now provides for the criteria and procedures that need to be followed by taxpayers to enable them to benefit from the VAT on import exemption and also provides the list of machineries and equipment that are subject to this exemption. This Decision of Council of Ministers has just been published in the Official Gazette no.44/2013 on 2.4.13.

Amendment to Law on Local Taxes

The Albanian Parliament has recently approved a new amendment to the Law no. 9632, dated 30.10.2006 “On Local Tax System”, as amended. This amendment clarifies the application of annual local taxes and local fees to mobile phone antennas and to any other type of transmission antennas. According to this amendment, properties owned by the state and those transferred by the Council of Ministers under the administration of state public companies are exempted from the tax on buildings.

Amendment to Income Tax Law

The Law no. 8438, dated 28.12.1998 “On Income Tax”, as amended, has been recently amended. The amendment is already published in the Official Gazette and shall enter into effect on 30.4.13. According to this new amendment any income in the form of salary lower than 30,000 ALL is exempted from personal income tax. In addition, the recent amendment has changed the conditions for purpose of the tax deductibility of the expenses related to technical, management and consultancy services.

DCM “On the determination of the procedures, criteria, type and quantity of VAT exemptions, related to import and domestic purchases of iron and cement products for the construction of hydropower plants”

The Council of Ministers has issued another Decision related to the recent change of VAT law no. 125/2012. This Decision of the Council of Ministers provides for the procedures and criteria that need to be followed and met by taxpayers to enable them to benefit from the relevant VAT exemptions related to import and domestic purchases of iron and cement.

PROJECT UPDATES

ALBTELECOM PRIVATIZATION

METE has declared the postponement of the public auction for the sale of the remaining stake of the state in the telecommunication company Albtelecom (that offers fixed phone and internet service throughout Albania). It shall now be on 28.2.2013 at 12:00.

“Appreciating the need for a fair balance between work and play, KALO & ASSOCIATES brought lawyers and support staff on a brief retreat in Mavrovo where they talked about CSR issues and enjoyed the ski slopes near Bistra Mountain in Macedonia before Mediterranean summer sets in.”

By Loriana Robo, Associate, Corporate & IP
KOSOVO Office

NEW LAW ON PLEDGES

The Kosovo Assembly has approved the Law no. 04/L-136 “On the Registration of a Pledge in the Registry of the Movable Property” setting out procedures and requirements for registration of pledges in the registry of movable property, amendments and searches for information and administration of the Pledge Registry. This shall provide much better regulation and framework for the placing of security over movable property and for rights of priority where there is more than one pledge over the same property: much needed additional tool for financing and making business projects more bankable.

Under this law the Pledge Registry shall be administered by the Kosovo Business Registry Agency, which was previously an independent office under the umbrella of the Ministry of Trade. This registry shall facilitate an efficient implementation of: (i) registration of pledges; (ii) search facilities; (iii) issue of pledge registry certificates; and (iv) all other functions designated under the law.

One of the main novelties of this Law is the introduction of the registration of pledge through an internet based system (e-registration). The fees for registration of pledge will be determined by a sub-legal act, which to date has not been approved.

It should be noted that the Pledge Registry Sector will not verify the authenticity of information provided for registration of pledge.

All old pledges registered prior to this law shall be re-registered on a free of charge basis.

Disclaimer: The contents of this newsletter is for information-purposes only and are not intended in any way as legal or other professional advice. It is advised that professional advice should be sought prior to any action being undertaken based on any of the contents of this newsletter.

PROJECT UPDATES

CONCESSION OVER BREZOVIĆA SKI RESORT:

At 23.4.13, the deadline for the submission of expression of interest, seven companies expressed their interest to participate in the tender for this project. On Monday five companies, namely “ATC Consultants”, “MK Group”, “Rilla Ski Resort”, “Civitel Hotels & Resorts”, “PGI Management & MDP Consulting” in cooperation with local companies have submitted their investment offers for the development project of the Touristic Centre of Brezovica.

PTK PRIVATIZATION:

On 16.4.13 the Government of Kosovo unanimously approved the recommendations of the Privatization Committee of Kosovo Telecom to announce the offer of Axos GmbH & Najafi Consortium as having the highest ranking and so thus award the contract to them.

M1 International, a UK based company has offered the amount of EUR 150 MIL whereas Axos GmbH (German based company) in consortium with Najafi Companies (US based Investment Fund) offered the amount of EUR 277MIL.

According to the privatization document, the winning consortium and the Kosovo Government shall within two month execute the sale agreement.

This privatization process was supported by the Transaction Advisors comprised of Lazard and Raiffeisen International (and

KALO & ASSOCIATES assisting the international legal advisors) in order to ensure a transparent and competitive process in accordance with best international practices.

Aside from international financial institutions such as IFC and EBRD, the Embassies of Germany, US and UK also welcomed the completion of this transaction stating that this deal will have a direct impact on the potential for increased direct further investments in Kosovo.

TPP KOSOVA E RE:

Following the removal of Kosova B from this project, the Steering Committee has examined the new developments in connection with the preparation of the Call for Proposals and the transaction structure.

The publication for the Call for Proposals together with the draft Project Agreements were expected by the end of March 2013.

EBRD has indicated it may be interested in financing this project.