NEW LAW ON FOREIGNERS

The new law “On foreigners” approved on April 20, 2013, brought numerous changes regarding the entry, residence and employment of the foreigners in Albania. According to this law, the Council of Ministers shall within 6 (six) months issue secondary legislation in order to clarify the procedures of obtaining the visa, residence permits, work permits and the exemption from the obligations to have a work permit. Following the above, the Council of Ministers Decision “On determining the criteria and procedures for the entry, stay and treatment of foreigners in the Republic of Albania” was published in the Official Gazette (dated July 12, 2013).

This decision provides new procedures for the visa and residence permit applications by the foreigners willing to enter into and reside in the Republic of Albania. Furthermore, it introduces for the first time in the Republic of Albania, the possibility to file on-line the application for the residence permit.

Also, important changes are made to the application form(s) and template(s) related to temporary and final residence permit(s). This decision only regulates the issues related to the entry and residence of the foreigners in Albania and there are no provisions related to employment criteria such important for purposes of work permit.

The new law on foreigners brought many changes related to the employment issues for the foreigners in Albania, and the other decisions which are expected to be approved (as provided in the relevant law) shall allow for an easier access in the Albanian labour market for the EU and US citizens. In the meantime, the Ministry of Labour and Social Affairs (MoLSA) approved some practical rules which assisted to avoid the legal “gap” caused due to non-existence of the relevant secondary legislation.

Now, it is a matter of fact that the above Decision and the practical rules of MoLSA have assisted in the simplification of the procedures related to the exemption of the EU and US citizens from the obligation to have a work permit in Albania.

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

CIVIL PROCEDURES CODE AMENDMENTS

Albanian Ministry of Justice has recently introduced several amendments as part of reforms in the legal system. Amendment to Civil Procedures Code is one. These amendments were largely discussed with stakeholders and the Ministry of Justice was assisted also from the EURALIUS Mission in Albania. KALO & ASSOCIATES also contributed by providing several suggestions to the Ministry of Justice.

On 18.4.2013, Albanian Parliament approved the amending law which shall enter into force on September 1, 2013.

Amendments aim at improving the quality of the enforcement procedures which is largely perceived as too lengthy and sometimes not efficient.

The changes and additions are focused in the following civil procedural areas: reformation of the appeals procedures before the Supreme Court; reduction of the necessary time for the issuance of the executive orders and the simplification of such procedures; the introduction of the audio recording technology; the due service of the process and the notification of the court acts electronically.

The reformation of the appeals procedure before the Supreme Court consists in reducing the number of the Justices who constitutes the panels. In the past the Supreme Court tried the appeals in panels constituted by five Justices. According to the newly introduced amendments the cases which were tried in the first instance court by a sole Judge, shall be tried before the Supreme Court by a panel constituted by three Justices.

A NEW LAW “ON CONCESSIONS AND PRIVATE PUBLIC PARTNERSHIPS”

The Albanian Parliament enacted in April of this year the Law “On Concessions and the Private Public Partnership” (Law on Concessions & PPPs), repealing the 2006’ Concessions Law. This law was necessary due to the fast growth of the concession sector in the country and the need to organize and facilitate the treatment of concessions, as well as the problematic of a rapid solution of legal impasse, the high bureaucracy also regarding deadlines, without excluding the issue of bank financing, which however is a separate discussion.

Before the Law “On Concessions & PPP” was enacted, the opinion of stakeholders and relevant institutions continue page 2
Currently the civil college of the Supreme Court is operating with three panels of Justices and through these amendments the Supreme Court’s civil college shall have 6 panels of Justices. Of course, these changes shall reduce considerably the time frame within which the Supreme Court examines the appeals.

Furthermore, according to these amendments the executive orders for the final and binding court rulings shall be issued based on the One Stop Shop procedure. The Court chancellor confirms the executive order within 5 days after the court decision becomes final and binding. This newly introduced procedure shall avoid the older procedure in which the interested party should appear before the Judge in order to issue the executive order. The One Stop Shop procedure also shall reduce the work load of the Judges, the direct involvement of whose is not necessary anymore.

Also, another change introduced by this law is the introduction of the audio recording of the court hearings. The litigant parties shall have the possibility to obtain from the court the audio registration of the hearings, which shall be part of the trial dossier.

Moreover, pursuant to these amendments the litigant parties shall have the obligation to declare their e-mail address and/or their mobile number and the court shall notify electronically or via SMS the court summons and other documents, which until now were notified via registered mail. It is expected that the introduction of the technology shall reduce considerably the postponement of the trial hearings which are deferred several times due to the failure of the court to duly serve the process in the litigant parties’ addresses.

These changes and additions are welcomed and hopefully shall expedite the court proceedings and shall re-establish the trust toward the Albanian justice system.

By Oltjon Dano (LLM), Senior Associate, Litigation

---

**LEGAL TAX ALERT**

Extension of deadline for declaration “On capital legalization and partial pardon of a tax and customs debt”


**Amendment to Income Tax instruction**

On 24.5.2013, Minister of Finance (MoF) amended the existing Instruction on Income Tax which is already published in the Official Gazette and has entered into on June 4.6.2013. The amendment introduces new rules applicable to credit institution(s), such rules related to the write-off of the bad debts. These new rules are applicable to both secured and unsecured bad loans and, according to the recent amendment, the credit institutions may write-off the bad debts after a certain time period.

From the filing with the court of the corresponding execution request or after the court has issued the execution order. The amendment provides that the right of credit institution(s) to write-off the bad debts after the filing of the execution request or issue of the writ of execution depends on whether the corresponding loan is secured or unsecured.

**Amendment to the existing Instruction of Minister of Finance “On tax procedures”, as amended**

On the 3rd June 2013, the Minister of Finance (MoF) amended the existing Instruction “On tax procedures”, as amended, and such recent amendment is already published in the Official Gazette and is effective as of June 14th, 2013.

This amendment provides some further procedural details and the conditions that need to be met for the registration of the tax representative. Starting from January 26, 2013, the tax representative ought to be registered only with the corresponding regional tax directorate. In addition, this amendment provides for the procedure to be followed in the case of deregistration of the tax representative.

Other important changes include the procedures to be followed by the National Registration Centre and the tax authorities in the case of a request for deregistration of a taxpayer (either as a result of liquidation or a merger/division of the taxpayer). Further, the amendment has clarified the provisions related to the submission of the tax declarations during the deregistration procedure.

MoF has also amended the provisions related to the procedures to be followed by the tax authorities in the case that persons (legal entities or individuals) have been found to exercise economic activity without being duly registered.

By Tax & Banking
A NEW LAW “ON CONCESSIONS AND PRIVATE PUBLIC PARTNERSHIPS”

from page 1

were taken into consideration and reflected in it. The law aims at creating a safer and stable environment, as well as stronger rules in terms of monitoring and supervision, etc. From a quick analysis of the law there have been added some good new practices such as:

(i) introduction for the first time of provisions regarding the capacity of the Ministry of Finance and its role in approving the contracts and the financings; article 10 para. 3 provides that in case of unpaid financial charges in accordance with the provisions of this Law, the contracting authority shall notify the Ministry of Finance, who can issue order for payment as executive title for commercial banks; Ministry of Finance shall create and hold a register to record all the information about the procedures regarding concessions and PPP-s;

(ii) introduction of specific requirements for the production of a feasibility study and how should institutions act in case of investments up to 300 million ALL as well as the calculation of the concession value;

(iii) definition for the first time in Albanian legislation of PPP-s, and establishment of the rights and obligations of the parties to a PPP, duration, payments, financial impact, etc;

(iv) provision for the guarantees or bond to the benefit of contracting authorities; rules and threshold of subcontracting part of works to be completed by concessionaire to third parties; regulations regarding the relationship of ownership, transfer of ownership; security interests and legal stability clauses; restrictions regarding bonus in case of unsolicited proposals etc.

The law gives to the contracting authorities the possibility to initiate the concession procedures in the field of their activity and competence. In addition, the new law does not require the approval of concession agreements by Council of Ministers thus giving more discretion to contracting authorities. Council of Ministers issued two implementing decisions last July.

One decision provides the rules of assessment and of granting of a concession or PPP. These rules define the preparatory activities for the award of a concession contract/PPP, eligibility criteria, content and treatment of unsolicited proposals, etc. Public Procurement Agency, within three months from the entry into force of these rules, adopt standard documents for the implementation of this decision. PPA designs explanatory instructions and procedures manual for the concession / PPP, which are mandatory for use by any contracting authority in the performance of activities of concession / PPP. The other decision provides the rules of identification, assessment and granting of concessions over Hydro Power Plants.

By Nives Shylila,
Associate, Infrastructure

PROJECT UPDATES

TAP PROJECT
National Territory Council of Albania approved the National Plan for the Trans Adriatic Pipeline Project - the winning project for gas corridor through Adriatic Sea. TAP is of a strategic importance as Albania becomes a central transit country for energy to the European Union.

CEZ SHPERNDARJE
CEZ Shperndarje is respondent in Vienna International Arbitration Centre (VIAC). Debt International Advisory (DIA) claims EUR 108,483,739.

CERRIK REFINERY PRIVATISATION
KURUM International is declared winner in the tender for the privatisation of this refinery. Cerrrik refinery is expected to be rehabilitated in 18 months and number of operating refineries to 3 in Albania.

CHANGES TO THE COMPANY LAW TO BE INTRODUCED

The existing Council of Ministers had finally proposed to the Albanian Parliament, in May 2013, just before the June parliament elections, the draft law on amendments to the Law no. 9901, dated 14 April 2008 “On Entrepreneurs and Companies” (“Company Law”), which was preceded by a series of round tables, dialogues and discussions among several stakeholders quite a few months ago. Accordingly, the draft law has introduced numerous significant changes to the current Company Law, generally regarding: (i) the invalidity of establishment of a company and related consequences (article 11), (ii) the competences of company organs and legal representation of the company (article 12), (iii) the abuse with the position and legal form of the company (article 16), (iv) grounds for dissolution of a company (article 99 and 187), (v) the responsibilities of sole shareholders in case of non-registration of the sole shareholding status of the company with the commercial registry (article 71,114), (vi) the form of the contract for sale of shares for both limited liability companies and joint stock companies (article 73,117), (vii) the issuance of solvency certificates by the administrators (article 77), (viii) the representation in shareholders’ assembly (article 85, 140), (ix) invalidity of irregular resolutions (article 92, 151), (x) the effect of appointment of administrators towards third parties and resignation of administrators or members of management or supervisory board (article 95, 157, 158), (xi) contributions and payment of contributions in joint stock companies (articles 112,113), (xii) increase of capital of joint stock companies (article 175, 176), liquidation procedures (article 190, 197, 199,205), (xiii) merger by acquisition (article 216, 218, 225) etc.

It will be up to the new parliament elected in June to discuss, amend or confirm the proposed draft amendments that we believe substantially changes some patterns of the current corporate governance framework of Albanian companies.

By Loriana Robo (LLM),
Associate, Corporate and IP
KOSOVO Office

DRAFT LAW ON FOREIGNERS

Aiming to improve the business environment for foreign investors in Kosovo, recently with initiative of Government of Kosovo in addition to other laws, the Parliament of Kosovo has also decided to amend the conditions for being provided with Work and Residence Permit for foreigners in Kosovo. Up to date, in order to be provided with work and residence permit, there were required some bureaucratic procedures, considering the fact that the Labour directorate within the Ministry of Labour and Social Welfare was the competent authority for the work permits and in order to be provided with Residence Permit the foreigners should have applied with the Ministry of Internal Affairs. Taking into account the fact that this was a long lasting procedure and caused problems to the foreigners, the draft Law on Foreigners is planned to be approved very soon. Through the present draft law it is intended to properly regulate the conditions for entry, movement, residence and employment of foreigners in territory of Kosovo. It is worth to mention that provisions of present draft law do not affect foreigners whose status is regulated under other legal provisions or international agreement endorsed by Republic of Kosovo. Besides facilitating the procedures, the novelty of present draft law is also the regulation of Posted Employees status. By meaning of present draft law the posted employee is an employee sent to Kosovo by a foreign employer for a temporary or occasional period. The posted employee who resides in territory of Kosovo for more than 3 months is obliged to be provided with residence permit for purposes of employment.

CONTACT
info@kalo-attorneys.com

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.

LAW OF SAFETY AND HEALTH AT WORK

On May 17, 2013 Kosovo Parliament has adopted a new Law no. 04/L-161 “On Safety and Health Work” which governs implementation of measures for improving the level of safety of employees at work. Moreover, this Law contains general principles for prevention of occupational hazards, elimination of hazardous and accidents factors, information, consultation, balanced participation in improving the level of safety and health at work, treatment of employees, their representatives and general guidelines for implementing such principles. The provisions of this law are applicable to public (including state administration in central and local level) and private sectors. According to article 3 of the Law on Safety and Health at Work, the main body for implementation and supervision of the provisions of this Law is the Labour Inspectorate, which is an independent body under the umbrella of the Ministry of Labour and Social Welfare. Furthermore, the Government of Kosovo, upon proposal of Minister of Labour and Social Welfare shall establish the National Council of Safety and Health at Work, which is mandated to develop and propose policies on improvement of safety and health at work level. Pursuant to article 5 of the Law on Safety and Health at Work, the employer is responsible to: (i) provide safety and healthy working conditions at all aspects of work; (ii) cover all medical treatment expenses for employee(s) who have suffered injury at work or professional illnesses; (iii) carry out detailed risk assessment for working places; (iv) provide equal treatment without discrimination of employees on implementation of safety and health measures. One of the main novelties of this Law, is that the employer employing up to 50 (fifty) employees is entitled to take personal responsibility for the implementation of safety measures. Hence, the employer employing more than 50 employees but less than 250 is obliged to appoint an expert for carrying out tasks related to safety and health at work. In addition, an employer employing more than 250 employees is obliged to appoint 1 or more experts for the implementation of these measures. This Law has also foreseen the licensing of private entities to provide expertise in the field of safety and health for employers.

By Ahmet Hasolli, Partner

EBRD ANNUAL MEETING

Our Managing Partner, Perparim KALO, attended this event organized by EBRD in Istanbul on 10-11 May 2013 with the overall theme “Innovating for Growth”.

The newest member of EBRD was Kosovo, where the Prime Minister Hashim Thaci and other members of Kosovo delegation stated the importance of Kosovo-Serbia agreement has to the improvement of business climate in the whole region.

PROJECT UPDATES

MOTORWAY PRISHTINA – HANI I ELEZIT:
Steering Committee for Route 6, Motorway Prishtina – Hani i Elezit announced the tender documents for the tender of its construction. Prequalified economic operators will have to submit their bids within the deadline at the Ministry of Infrastructure. The cost of this project is expected to be 800 MLN Euro.

TIRANA - Kavaja Avenue, G-KAM Business Centre, 4th Floor, P.O. Box 235, Tirana-Albania, Tel.: +355 4 2233532, Fax: +355 4 2224727, info@kalo-attorneys.com

PRISTINA - Pejton, Str. Mujo Ulqinaku 5/1, 10.000 Pristina-Kosovo, Tel.: +381 38225674, Fax: +381 38225798, pristina@kalo-attorneys.com

www.kalo-attorneys.com

SEE Legal • Tirana • Pristina • Athens • Belgrade • Bucharest • Istanbul • Ljubljana • Podgorica • Sarajevo • Skopje • Sofia • Zagreb

www.seelegal.org