

ALBANIA LEGAL NEWSLETTER

COMMENTS FROM MR HENRI MAUS DE-ROLLEY General Manager of Banka Popullore

Société Générale (SocGen), an internationally well known and established French bank had not so long ago purchased a supermajority stake in the local, successful Albanian bank 'Banka Popullore'. We have taken the opportunity to ask the new General Manager, Mr Henri Maus de-Rolley a few questions:

Is SocGen planning to offer more diverse financial products such as leasing, factoring, insurance etc. in the Albanian market?

SOCGEN is very active in various fields of banking activity. Its position is strong in Europe in retail banking which include activities that we denominate "specialised financial services" namely leasing, consumer finance, insurance, long term car renting etc. Being a universal bank we want to be in a position to offer to our customers - individual as well as corporate- a full range of products and services.

Concerning Albania, SocGen has just acquired Banka Popullore (BP) and we have to adapt to the market size and needs. Banka Popullore's priorities are presently focusing on developing pure, traditional retail banking products and services and to widen our base of clientele. That means we are strengthening commercial teams, creating new branches in and outside Tirana, developing our commercial individual offer in term of cards, e-banking etc.

However, it is clear that other products are under study; among new products, leasing will be a priority. We are very confident that this is a product adapted to corporate sectors (construc-

tion, printers etc.), and SMEs in particular but also to other sectors like medical and para-medical activities, etc. There is also a demand for car leasing, public transport vehicles etc...BP has in this area a great potential to develop and all the technicity and experience derived from SocGen. Concerning insurance we are studying the market and the regulatory framework. SocGen is strong in the field of life insurance but it is premature to see if the market size will be sufficient to justify the incorporation of a subsidiary acting in this field.

Capital markets is an underdeveloped area here in Albania, and as an internationally recognised bank has SocGen considered whether this is an area that it would be in support of in terms of it's the development?

Capital market activities are not excluded from BP's future plans of development. We can see that our sister companies in the Balkan region have developed such activities successfully. However any development will depend on the evolution of the market needs and regulatory rules. It relies also on the evaluation by international bodies and banks of the Albanian country risk. We are confident that perspectives are positive and that we SocGen and Banka Popullore shall very soon play a proactive active role in the development of such activities.

SocGen operates in many parts of the world; is Albania considered to be as significant as other jurisdictions and what is the general perception of SocGen on the legal and



Painting by Mikael Drita

regulatory framework?

Banka Popullore although in its size is very modest compared to our other entities, it is recognised as a full subsidiary of SocGen, having its full place and role to play in our international network. Banka Popullore is subject to the same constraint of the Group (financial consolidation, monthly reporting, similar procedures and code of ethics, etc) and enjoys the same rights. The Albanian staff is part of the Group having access to the same training, induction programmes and international career perspectives. SocGen's values are professionalism, team spirit and innovation. These values are fully appropriated by Banka Popullore.

With regards to the regulatory framework, SocGen would never have invested in Albania if legal and regulatory framework was not satisfactory. Of course there is room for improvement in this field, general administrative procedures are sometimes slows but the environment is workable, improvements are visible. In the banking sector activity the Bank of Albania as regulator is strong, independent, and professional. We welcome by the way, the creation of a Credit Information Bureau which will be of great help to the banking system in terms of risk control. This is an illustration on progress made and we understand that others are on their way.

MUNICIPAL BONDS

As reported in our last September edition of the newsletter a new Law "On Corporate and Municipal Bonds" is soon to be proposed for approval by the Albanian Parliament. Below I highlight some aspects of the draft Municipal Bonds law.

At present there exists no corporate

and/or municipal bonds market, indeed even the stock exchange although existing is non-functioning. The financial sector in Albania is very much bank driven.

Municipal bonds constitute one of several ways by which cities and counties may issue debt, in order to raise

funds. In many emerging economies, e.g. Romania, the issuance of municipal bonds represents an innovative tool for increasing investment revenues of the local public administration. Local governments may issue short-term debt that is payable within the fiscal year in which it is issued to temporarily finance

cash flow deficits. They may also issue long-term debt for capital investment that is to be utilized for public purposes, such as for infrastructure projects etc.

The proposed draft Law is generally in line with the legislation on municipal bonds as in most emerging economies (e.g. Romania). Under this draft Law, all local government debt must be secured as a general obligation of the local government, payable in principal from all of the local government's lawfully available funds, which have not otherwise been pledged to other lenders. There is principally no third party protection in the form of a sovereign central government guarantee of local government debt. The Ministry of Finance does, however, have the option of providing an express guarantee of the debt. It is important, that legal measures are obtained, for the purpose of securing demands by bond creditors against Municipalities. Either the mandatory issuance of municipal bonds

should be supported by the central government's guarantee, or alternatively, legal provisions for ring fencing a part of the municipal assets should be considered. In any event ring fencing should be at least the required minimum.

According to the draft Law neither the local government nor the lender needs to notify the Ministry of Finance in the event of a default. Consideration should perhaps be given to setting the requirement that notification of default be made to a public register kept with the Ministry of Finance, and of course open to the public. In support of this suggestion a special department should be created under the supervision of the Ministry of Finance whose responsibility would be to create and further update a database on local government borrowing.

Private guarantees or insurance over municipal debt should be further considered. In Romania, private insurance companies insure almost half of all municipal bonds that have been issued

so far, i.e. for the timely payment of the debt service. A premium is paid for guarantee coverage. Such insurance companies are very experienced and well trained in underwriting risk and assessing risk to the finances to the municipalities, or the stability of project financing. However, this would not be a substitute for the creditworthiness of a local government, as the guarantors will only guarantee the debt of the community considered to be creditworthy.

Finally, as an incentive to investors in municipal bonds should be exempted from any direct or indirect tax, in order to provide an incentive for investing into them.



By **JONA BICA**
Associate, Acting Head of Banking/Finance

CONSTRAINTS OF WORK PERMIT RULES ON FREEDOM OF ECONOMIC ACTIVITY...

The recent changes in the business and legal climate in Albania has been progressively stimulating foreign investment. Albania is being looked upon as one of the better countries to invest in, and is seeing much interest from investors around the world. One of the most important factors for foreigners seeking to work in Albania need to consider is the requirement of a work permit. The framework of the business facilities in Albania has long been based on the principle of *equality of rights for both local and foreign employers*. This rests upon the principles set out in the Law on Foreign Investments (1993), i.e. foreign investment are permitted and treated based on conditions not less favourable than those afforded to domestic investments in similar circumstances.

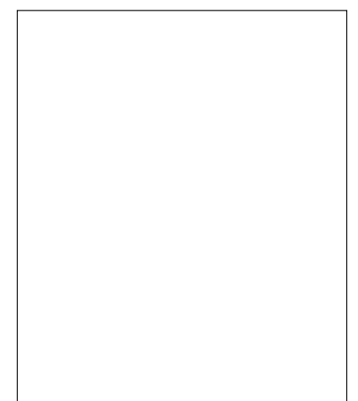
Thus it is somewhat contradictory in that when a foreign investor (or indeed an Albanian employer) wishes to employ a foreigner he/she must supply a declaration confirming that he will employ two Albanians for each foreigner he employs (*Council of Ministers Decision 262, dated 25.05.2000, 'For issue of work permit for foreigners'*). This requirement raises many concerns and is not just a matter of unequal

treatment of foreigners to Albanians; in fact it is unfair treatment to all employers particularly in the free market that the Government is stimulating. Some may even say unconstitutional, in that it could be perceived as an unjustified infringement of the freedom of economic activity. What if the employer does not have the funds to employ two other people and requires the skills and expertise of the foreign employee. There are many reasons to demonstrate the unfairness of this requirement.

The logic behind such a requirement is of course understood, the Government primarily has to consider the market of the Albanian labour force. One can make a comparison with the requirements of a work permit in the UK, employers wishing to employ somebody from outside the UK, should not only demonstrate that they had advertised within their country but also within the EU, and that nobody within that region qualified or applied for the position. The employer must evidence the reasons why the person from outside of the EU qualified more so than any other EU applicants. This requirement ensures that the people of UK and indeed the EU are given

primary opportunity, but still allows the employer to seek employees from elsewhere satisfying the demand of its business.

The labour market in Albania is very often seen as one of its greatest assets, but still there are many areas and sectors for which more skill and expertise and experience is required and foreign workers required to be called upon. The requirement of CMD 262 is an obstacle and a cause for concern for many employers. The CMD does not adequately describe in any detail how, when or at what position to two Albanians must be employed against the employment of one foreigner. It remains unreasoned, and hopefully shall be amended and approaches that are more in line with international practice are taken in protecting the local workforce in the issue of work permits to foreigners.



By **EMEL HAXHILLARI**
Associate, Tax/Employment

PROJECT UPDATES

Energy: The much debated privatisation of the KESH *Distribution* is still underway, with the IFC preparing the Strategic Options Report for the Government. Following the USAID Workshop on Privatisation held in Tirana on 14.11.07, it was clear that issues pertinent to such privatisation are tariff prices (potential increases against potential improvement of service), certainty of title to immovable property and timing of its completion. The

IFC had announced that the tender was expected to be opened sometime in March 2008. *Concessions for Hydro Power Plants* (e.g. Devoll, Ashta) and Concession for Thermo Power Plant (Fieri) are still very much of interest to foreign strategic investors and the processes are ongoing.

Insurance: The process of privatization of INSIG, through the sale of 61 per cent or 100 per cent of the shares

(yet to be determined) is ongoing and is currently at the due diligence stage, with the government being advised by BNP Paribas, assisted by the local law firm.

Oil: Process of privatization of Albanian Refinery and Marketing of Oil is ongoing and the privatization advisor is now making the appraisal and preparing the tender documents for the sale of its shares.

NEW DRAFT LAW “ON INDUSTRIAL PROPERTY”

As a consequence of the increase of e-commerce as a primary transaction medium in the business world, more than ever small businesses in every industry are engaging in national and international transactions. In order to succeed in a global economy, all businesses depend upon their intellectual property (IP) assets.

IP is one of the spheres of business that has been recently developing with rapid rhythms including within Albania. *Law no. 7819 ‘On Industrial Property Rights’ in 1994*, currently providing a legal framework for IP protection, in general complies with international standards as regards to mutual recognition of intellectual property rights. To further consolidate the IP legal framework a new law has been drafted “On Industrial Property”. Below are some main new important aspects covered by the new draft law:

- In relation to patents for inventions there has been the addition of the recognition of *‘biotechnological inventions’* which are now permitted to be registered.
- The new draft law provides for more collaboration of the courts, in relation of IP infringement, with the customs authorities. More remedies are also provided for the infringed party. Under the current law the only enforcement sanctions and indeed remedies open to the infringed party is upon issuing a law suit and seeking cessation of the infringement and damages. The draft further provides for a procedure that protects the infringed party at the actual border (*see next point*).

- There has been an expansion of the provisions regarding *court and administrative proceedings* for the enforcement of infringements of IP rights. An introduction of new sanctions on the import and sale of counterfeit goods. The customs authority has the power to confiscate goods in the quest to prevent free movement of the counterfeited goods in the internal market. If an aggrieved party, i.e. owner of a trademark (or design) has knowledge that some other party is importing goods with the same or very similar trademark (without the requisite registration), that party may then contact the customs authority giving details of the infringement. The customs authority shall stop the party infringing upon the registered trademark and confiscate the goods, but the aggrieved party must within 10 days file a law suit for the enforcement of its IP rights.

- The issue of the Board of Appeal, the existence of which is provided for in the current legislation but fails to exist in practice, is being addressed. One of the questions that still fall under great discussion is how this board of appeal should be composed. It has been proposed that it should be composed of members of the General Directorate of Patents and Trademarks or composed of also representatives from the court. Essentially this Board of Appeal is to hear complaints of applicants who have been refused registration or those who wish to oppose the registration of others.

There is also the issue of Parallel Imports that is a topic unaddressed

by the Albanian legislation, which this new law touches upon, at least in relation to trademark/design infringement. The question remains as to (i) whether Albania is to follow the practice of the other EU countries stimulating the free movement of goods and fair competition (hopefully as a future probable EU member), or (ii) whether it is promote the restriction of the parallel import,. (*Please note that Parallel Imports shall be further reviewed in the next edition of this newsletter.*)

The draft law is still under the examination of the Ministry of Economy, Trade and Energy and shall be passed to the other administrative bodies and Ministries, for further comments and proposals. Legal representatives and IP agents has already been invited to provide comments and this draft is considered to be adequate and a good step forward.

The world economy is ever changing new technologies continue to arise requiring more innovative regulation. The challenge for Albania is to continue to improve its legislative framework, in particular its IP legislation and to respond constructively in light of disputes arising today as a result of the aforementioned developments..



By **ALKETA XHELILI**
Associate, Intellectual Property & ICT

NEW DRAFT LAW ON TAX PROCEDURE

Many of the recent changes in the tax system, some of which we have previously reported on, were in relation to the government's intention to bring out a new law on tax procedures. The goal of the government is for this new law to be in force as of 1st January 2008. At present it is draft form and a working process, circulated to interested parties for comments. In light of it being still in draft format I have tried to list the main new aspects affecting taxpayers.

The manner in which this draft law is construed and given that it seeks to abolish a number of other laws, suggests that this draft law is a serious attempt to introduce an Albanian Fiscal Procedure Code. The draft law also brings together the regulation of the procedures of tax, bookkeeping and documentation for tax purposes.

The draft law introduces electronic payment of tax declarations. It does not specifically provide for the types of tax declarations that can be submitted electronically but, it is implied that all types of tax declarations required under the Albanian tax legislation can be submitted electronically.

In order to make compliance with tax legislation more achievable and understandable the draft expressly provides taxpayers with the right to free assistance and information. This right and the right for reasonable tax controls may be considered as a new positive aspect of the draft law.

The right to appeal is one of the most important rights of taxpayers, as it allows for the right to an effective remedy, and access to courts. As a principle in the administrative appeal procedure, the taxpayers have to be assured for a fair, independent and impartial decision. These rights are also secured in the manner in which the supreme tax appeal body is composed.

The draft law on tax procedures states that the composition and the procedures of the Supreme tax appeal body shall be approved by the General Director of Tax Office. It is questionable whether this new provision secures a fair, impartial and independent decision. Surely the independence of the administrative bodies is ensured if the composition, criteria for appointment and procedure thereof are set in law.

The so-called Tax Operation Investigation (TOI) Department is to be divided into three divisions that operate as specialized units. The Tax Operation Investigation Department shall consist of Intelligence, Investigation of Tax Crime, and Tax Verification Division, which are functionally organized under the General Tax Directorate and directly managed by one of the Deputy General Tax Directors. It is again questionable whether the four articles dedicated to the organization and powers vested upon this TOI authority sufficiently regulates what is essentially tax intelligence and investigation power that shall have a broad impact on rights that are constitutionally protected. Such intelligence and investigative powers should not really be under the regulation of the Tax Directorate, and should be more strictly regulated by law.

There are more positive changes being brought about by this draft, particularly in making the procedure of tax declarations more efficient and effective. The law covers the procedures also for the social and health contributions. It provides also for the registration of the individual as a taxpayer, and embodies the concept of the tax representative for the non-resident taxpayers.

Although the draft law has introduced some positive improvements, some parts fail to be in complian-



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ce with the relevant provisions of OECD and represent a step back and not forward. The negative points are mainly connected with the broad discretion of the Tax Office to make the reassessment of transactions for tax purposes.

It should be noted, however, that this law is still a draft and changes are continuing to be made with the suggestions of international organisations and interest groups. We only hope that the negative aspects mentioned shall be reconsidered.



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