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#### **Law no. 60/2016 “On whistleblowing and protection of the whistleblowers”**

In June 2016, the Albanian parliament approved the law no. 60/2016 "On whistleblowing and protection of the whistleblowers" (Law 60/2016). The law aims prevention of the corruption in the public and private sector, protection of the persons that report on suspicions practices at their working places and encouragement of the reporting of such practices.

The practice of whistleblowing and its importance it recognized worldwide since the 1960. In the UK whistleblowing is regulated under the Public Disclosure Act of 1998, and sections were inserted into the Employment Rights Act 1996, whilst in USA the referring piece of legislation is the Whistleblower Protection Act of 1989.

Whistleblowing is the term used when a worker passes on information on wrongdoings typically witnessed at the workplace. A whistleblower is a person who exposes any kind of information or activity that is deemed illegal, unethical, or not correct within an organization, either private or public body.

Law 60/2016 approved by the Albanian parliament on 02 June 2016, has entered into force and become applicable since 1 October 2016, becoming effective for public entities right away; whilst for private entities the legislator has provided for a transitory period for the implementation of the law provisions. In the latter case, by July 01, 2017 private entities

are obliged to establish internal structures for the protection of the whistleblowers. As for the mandatory obligation to have in place internal structures, the law stipulates that public entities having more than 80 employees and the private entity having more than 100 employees should be establishing a responsible unit for recording and conducting the administrative investigation of the reports obtained by whistleblowers.

Under the law provisions, “whistleblowing” is defined as the reporting of the information by the whistleblower to the competent structure within the organization (internal whistleblowing) or to the High Inspectorate of Declaration and Audit of Assets and Conflict of Interest (external whistleblowing).

Further details on the provisions of the law that will help to better understand whistleblowing and the various obligations for entities are given hereunder:

#### **Whistleblower**

Any person within the entity may become a whistleblower. The whistleblowing is based on the principle of voluntary reporting of a suspicious action or practice. The law places serious emphasis on the rights of the whistleblower, its protection and the confidentiality issues. Specifically Law 60/2016 provides that the rights of the whistleblower supersede any confidentiality clause defined in its work-in contract or regulatory acts.

## Responsible unit within public/private entities

The responsible unit has the duty to protect the whistleblower and is bound to engage in administrative investigation of the reported situation. The unit, often, is incorrectly perceived as the mandatory whistleblower. Based on the law provisions the unit is the structure where the whistleblower reports and seeks protection in case the working position or interests of the whistleblower are threatened due to the reporting activity. The unit reports annually to High Inspectorate of Declaration and Audit of Assets and Conflict of Interest (the Inspectorate). Based on the structure of the entity, the responsible unit may be composed by one or more persons specifically trained for the protection of the whistleblowers. The Inspectorate is the authority responsible for issuing the instructions for the selection and training of the persons that will be assigned in the responsible unit in private entities. The criteria applicable to the public entities concerning the selection and training of the persons to be assigned in the responsible units shall be defined upon a decision of the Council of Ministers.

The Law 60/2016 defines also the rights and duties of the Inspectorate. Amid other competencies the Inspectorate has also the right to investigate directly the whistleblowing, in specific cases when:

- there is not a responsible unit;
- the responsible unit does not start or complete the administrative investigation in accordance with the provisions of the Law 60/2016;
- exists a suspicion that the whistleblowing has a directly or indirectly interest;
- exist a possibility that the evidence in relation to the suspected corruption action, can be cancelled or destroyed from the entity.

Other duties of the Inspectorate include monitoring and laying down the guidelines for the internal whistleblowing mechanisms and the responsible units of entities; controlling the proper functioning of internal whistleblowing mechanism and the responsible units of the entities; ascertain the administrative offenses and imposing the relevant fines; receiving and investigating the requests for the protection against the retaliatory measures against

whistleblowers and guaranteeing their protection; drawing up assessments and making recommendations based on the annual reports of the responsible units; providing advice and support in relation to the implementation of the law, as well as raising awareness for the public about this law, and increasing the cultural acceptance of the whistleblowing.

The fines applicable for breach of the provisions of Law 60/2016 vary from ALL 100.000 to ALL 500.000 and are imposed by the Inspectorate.



## **Law no. 6/2017 “On some amendments and additions on the law no. 7746, dated 28.07.1993 “On Hydrocarbons”, as amended**

On 02.02.2017 the Albanian parliament approved the law no. 6/2017 (“Amending Law”) amending the law no. 7746, dated 28.7.1993 “On Hydrocarbons” (“Law 7746”). The law was published with the Official Gazette no 26, dated 20.02.2017 and will enter into force after 15 days from its publication.

These amendments aim to improve the provisions of the Law 7746 by reflecting the concepts laid down by the Directive 94/22 /EC of the European Parliament and the European Council, dated 30.05.1994 "On the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons".

Pursuant to the Amending Law, the ministry in charge shall conclude the petroleum agreement or alternatively authorize Albpetrol through a license for the conclusion of a petroleum agreement, after evaluating the credentials of the applicant such as sufficient resources and technical competence to fulfill the obligations deriving from the petroleum agreement.

Below are described the main novelties brought by the Amending Law:

### **Petroleum agreement opening procedure**

The petroleum agreement procedures are opened:

- a) initiative of the ministry, via notification to the interested parties; or
- b) notification of the ministry inviting for applications other entities, this following the filing of an application by a specific entity for a particular block/oilfield.

### **Exploration phase**

Paragraph 3 point a/1 of article 5 of the law provisions provides for a term of 5 years for conducting exploration activities within the contract area. In exceptional cases where the contractor presents to the ministry, convincing arguments on

the existence of specific conditions that require a longer period, the term may be extended, but in any

case, the term cannot exceed the 7 years, in total. The exploration period may be extended also for the term necessary for the finalization of drilling or testing of a well.

Additionally, the extension of the exploration period for an additional period of 3 years may be requested in cases a discovery has been made by the contractor.

### **Renewal of the term of the petroleum agreement**

The new law provisions, limit the right to renew the term of the petroleum agreement in up to 5 years.



### **Stability clause**

The petroleum agreements may contain clauses regarding stability of the fiscal regime, under the following conditions:

- a) Stability clauses, if any, cannot exceed a term of 12 years from the date of commencement of production;
- b) Stability clauses shall not include laws and regulations related to national safety, employment relations, environment/nature protection, protection of human health, international treaties to which the Republic of Albania is a member;

- c) Stability clauses of the fiscal regime, shall not affect the calculation and payment by contractors of applicable taxes under the applicable tax legislation.

### **Scientific Institute of Hydrocarbons and the National Agency Responsible for Hydrocarbons**

The Council of Ministers shall create the Scientific Institute of Hydrocarbons. This institute will be an advisory body, for all the scientific matters in the field of hydrocarbons under the competent minister responsible for hydrocarbons activity.

On the other hand, the National Agency Responsible for Hydrocarbons, a body under the umbrella of the competent ministry for hydrocarbons activity, will have the following competences:

- a) implement the policy of the government in the field of the hydrocarbons;
- b) participation in the negotiation of the petroleum agreements;
- c) preparation of the necessary documentation and procedures for the issuing of permits,

licenses, authorizations, which will enable the conclusion of petroleum agreements and the conducting of the petroleum operations, according to the executed agreements;

- d) supervision of the hydrocarbons activity and monitors the implementation of the signed petroleum agreements.

The Council of Ministers will approve the organization structure and functioning of the National Agency Responsible for Hydrocarbons.

According to the provisions of the Amending Law, the amendments shall not be applicable to the petroleum agreements already signed and will not affect those agreements for which the negotiation process have commenced prior to the entry into force of such law.

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