

## Tax & Legal News

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#### I. Foreigners' Residence Permit Procedures

As part of the revision of the legal framework governing the legal residence and work conditions of foreigners in Albania, the Minister of Internal Affairs and the Director of the State Informative Service approved the instruction no. 265, dated 25.05.2015 "On the collaboration between the structures of the Ministry of Interior Affairs and the State Informative Service regarding the procedures of treating foreign citizens with legal residence in the Albanian territory" (the "Instruction").

The Instruction was published in the Official Gazette no.100, dated 07.06.2015 and is effective as of the date of its publication.

This Instruction provides that the application for a residence permit or renewal of the same is submitted near the migration office of the territory where the foreigner resides at the moment of the application. The migration office accepts the foreigner's application for a residence permit no later than 30 days after his entrance in Albanian territory or within 60 days before the expiration of the existing residence permit, in cases of application for renewal.

If the foreigner applies for a residence permit beyond the above indicated deadlines, however within the first 90 days of residence, when the residence is still considered regular, the local migration authorities after reviewing the reasons for exceeding of such term may accept the application subject to the application of a fine. According to the law no. 108/2013 "On foreigners", the said fine may vary from ALL 20,000 to 30,000.

In case the foreigner applies for the residence permit after the deadlines defined above have elapsed, meaning that at the moment of application his residence has become irregular, the migration authorities accept the application only in cases of force majeure or



humanitarian cases. When no justified reasons exist for non-compliance with the legal deadlines, the migration authorities refuse the application and initiate the expulsion procedures.

The Border and Migration Department near the General Police Directorate is the competent authority for the approval or refusal the residence permit, on the basis of assessments made by all the structures (regional migration authorities and structures of State Informative Service) participating in the assessment of application.

## II. New Law on Electricity Sector

On 30.04.2015 the Albanian Parliament passed the law no. 43/2015 "On electricity sector" (the "Law 43/2015").

Law 43/2015, repealing the law no. 9072, dated 22.05.2003 "On electricity sector" as amended, is fully approximated with the Directive 2009/72/EC of the European Parliament and of the Council, dated 13.07.2009 "Concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC", and has entered into force on 12.06.2015.

By means of Law 43/2015 the legislator aims to reform the legal framework of this vital sector of the Albanian economy; having, henceforth, as objective the establishment of a fully functional and competitive internal market and its integration in the regional market, which should provide sustainable electricity and guaranty security of supply to end customer.

With regard to end customers, Law 43/2015 impedes the discriminatory behavior on the part of the licensee/operator and sets out as imperative the transparency of the relevant terms and conditions of the contract to be entered into with the end customer.

To this effect, Law 43/2015 reserves them the right to preliminary information regarding any amendments to the contractual terms and conditions, as well as full information about the prices, tariffs and standard contractual terms and conditions regarding the access to and the use of electricity supply services.

In addition, Law 43/2015 sets out the status of the 'vulnerable customer' and defines also the key criteria for benefiting such status.

Apart from the above, Law 43/2015 contains a separate section regarding the payment of the obligations on the part of end customers. One of the measures for the mandatory execution of the outstanding payments, under such section, is the placement of the mortgage over the

property (i.e. immovable assets), to the business customers, in case the value of the outstanding payments exceed ALL 1.500.000.

The provisions of Law 43/2015 regarding the transmission system introduce the concept of the certification of the transmission system operator by ERE (Energy Regulatory Entity) as well as enabling the engagement of other operators in the distribution system. The law provisions also offer the possibility to transmission and distribution operators to contract independent operators, which upon ERE's approval will carry out metering of electricity consumption, as well as for installation of smart meters.

In order to guarantee the security of electricity service, based on the provisions of Law 43/2015, the licensee might require using of one or more of the following rights over the property:

- (i) Right for lines;
- (ii) Right of use;
- (iii) Right of easement; and
- (iv) Expropriation.

Law 43/2015 pays attention to the promotion of the generation of electricity from renewable energy sources, while setting out inter alia that the producers of electricity from such sources have priority regarding the access in the electricity network.

In conclusion, Law 43/2015 provides for important novelties some of them indicated above, but the most important one remains the right of supplier to apply and enforce the mortgage over immovable assets of business customers.

## III. Strategic Investments in Albania

On 28.05.2015 the Albanian Parliament passed the law no. 55/2015, dated 28.05.2015 "On strategic investments in the Republic of Albania" (the "Law 55/2015"). Law 55/2015 shall enter into force 3 months after 01.07.2015 that was the date of publication in the Official Gazette.

This legal instrument aims the encouragement and attraction of domestic and foreign strategic investments in the economic sectors, through the establishment of specific favorable administrative procedures that facilitate and accelerate the services and the support to the investors.

Law 55/2015 applies to all strategic investments to be selected as such in virtue of the criteria and according to the procedures defined therein. Subject to the provisions of Law 55/2015 are expressly identified as strategic investment sectors, sectors as energy, mining, transport, telecommunication, waste management, tourism, agriculture and fishing, etc.

The criteria for determining public interest, to be taken into account when selecting a strategic investment, are among others the investment value, the realization time, the productivity and added value of the investment, the opening of new work places, the economic sectorial priority, the regional economic development, the development or improvement of conditions and standards for the production of goods and provision of services, the provision of new technologies for enhancing competitiveness and efficiency of the investment; etc.

Law 55/2015 defines the investment value required to qualify the investment as strategic one. The values vary from EUR 1 million to 50 million according to the investment sectors.

Additionally, Law 55/2015 provides for the following procedures:

- (v) “*assisted procedure*” meaning the administrative procedure through which the public administration follows, coordinates, supervises and (as might be the case) represents the strategic investment during the phases of its implementation; and
- (vi) “*special procedure*” meaning the administrative procedure through which shall be granted a support with particular rules for strategic investments having impact on the economy, employment, industry, technology and/or regional development, intending herewith the facilitation and acceleration of the investments.

The status of “*strategic investment/investor, assisted procedure*” or “*strategic investment/investor special procedure*” shall be granted by the Strategic Investments Committee (SIC), organized as a collegial body functioning near the Council of Ministers, which duties are set out by Law 55/2015. Detailed rules on application and evaluation for granting such statuses shall be approved upon a decision of the Council of Ministers.

After obtaining the status of “*strategic investment/investor, assisted procedure*”, the investor may benefit services such as (i) preparation of documents and administrative application in accelerated procedure; (ii) priority treatment of preparation of

documents, issuance of opinions and following of procedures which are in the scope of activity of state administrative bodies (iii) land consolidation; (iv) support programs; (v) support through auxiliary infrastructure; (vi) making available of state owned immovable properties in pursuance to the legislation in force.

After obtaining the status of “*strategic investment/investor special procedure*”, the investor can benefit, in accordance with the provisions of this law (i) the expropriation of real estate, private property, to enable the development and implementation of strategic investment projects; (ii) approval by the Parliament of the relevant contracts of strategic investment in order to increase the security of the relationship between the investor and the government.

The Albanian Investment Development Agency (AIDA) will act as SIC secretariat and will be in charge of the Strategic Investments Registry that serves as the data base of each and all strategic investments in the Republic of Albania.

The investors that aim to include their investment in the administrative procedures of strategic investment should apply near AIDA and submit several documents, among which we may list the business and financial plan, the expected social and economic impact of the project; the list of the required support and incentives required by the Albanian state for the realization of the project and a document that evidences the financial capacity of the investor for completing the project.

Further Law 55/2015 provides for the right of the Albanian state to participate together with the private investor in the realization of the strategic investment, whereas the modalities of the participation shall be defined upon a Decision of the Council of Ministers. For the realization of the strategic investments the State will make available to the investors land plots, forests, agricultural lands and other state owned immovable properties. On such regard will also be created the Fund of Immovable Properties for the Support of the Strategic Investments where will be included the immovable properties in the ownership of the central or local government. The rules for the operation of the said Fund and granting right over state owned properties shall be defined upon a Decision of the Council of Ministers.

The provisions of Law 55/2015 are applicable to all future investments projects, to investment projects for which the contract is in process of negotiation and also to investments for which a contract is executed between the state and the private investor, but is reclassified as strategic investments under the law provisions.

In a final note to all investors interested in obtaining the status of “*strategic investment/investor, assisted procedure/special procedure*”, the deadline for application with the aforementioned bodies is the end of December 2018.

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