

Legal News

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The Council of Ministers issued recently a series of decisions for the implementation of the provisions of the law no. 55/2015, dated 28.05.2015 "On Strategic Investments in the Republic of Albania" ("**Law on Strategic Investments**"). All these decisions, published with the Official Gazette no. 221, dated 24.12.2015, entered into force on 25.12.2014.

The below will address the focal points of each of these decisions in order to provide insight on such new legal acts.

- A. Decision no. 1023, dated 16.12.2015 "On the strategic subsectors and development priority areas"**
- B. Decision no. 1024, dated 16.12.2015 "On the approval of projects having the status of "Strategic Potential Project"**
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A. Decision no. 1023, dated 16.12.2015 "On the strategic subsectors and development priority areas"

The decision of the Council of Ministers in line with the Law on Strategic Investments, elaborates in detail the list of the subsectors of the economy that fall under the definition of the strategic investment.

The strategic sectors and their relevant subsectors are classified as follows:

1. The strategic sector of energy and mining, consisting of the following subsectors:

- i. The energy subsector, including strategic investments in the area of production, transmission, distribution and supply of electricity;
- ii. The hydrocarbons subsector, including strategic investments in the areas of exploration, development, extraction, production, separation, processing, collection, transportation and distribution of crude oil and petroleum by-products, activities in the areas of transmission, distribution, trade, storage, supply, as well as the activities for construction and operation of the natural gas infrastructure;



iii. The mining subsector, including strategic investments in the areas of exploration, discovery and exploitation of the mining environment.

2. The strategic sector of transport, electronic communications infrastructure and urban waste, consisting of the following subsectors:

- i. The subsector of maritime transport, including strategic investments related to the construction, maintenance, administration of maritime ports, port areas and marinas, as well as the provision of maritime transport services for goods and passengers;
- ii. The air transport subsector, including strategic investments related to the construction, maintenance, administration of airports, as well as the provision of air transport services for goods and passengers;
- iii. The rail transport subsector, including strategic investments related to the construction, maintenance, administration of rail infrastructure, as well as the provision of rail transport services for goods and passengers;
- iv. The road transport subsector, including strategic investments related to the construction, maintenance, and administration of regional and national roads, as well as the provision of road transport services for goods and passengers;
- v. The transport networks subsector, including strategic investments related to the construction, maintenance, administration of the alternative networks of transport, such as tram, metro or similar alternative transports, as well as the provision of transport services for passengers;
- vi. The electronic communications subsector, including strategic investments related to the construction, maintenance, administration of electronic communications infrastructure, as well as the provision of access services to this networks for users;
- vii. The urban waste subsector, including strategic investments in activities related to the integrated waste management, including the collection, transport, recovery, disposal of waste, construction, requalification, administration and care for the closure of landfills;
- viii. The subsector of water supply and sewer, and treatment of sewage, including strategic investments related to the construction, rehabilitation and/or maintenance of the water supply system, sewer system, as well as sewage treatment plants.

3. The strategic sector of tourism, consisting of:

The subsector of touristic structures, including strategic investments related to the construction, maintenance and administration of accommodating touristic structures considered as touristic enterprises in accordance with the legislation on tourism.

4. The strategic sector of agriculture and fishing, consisting of the following subsectors:

- i. The agricultural production subsector, including strategic investments having as model the large agricultural farms;
- ii. The livestock-farming infrastructure subsector, including strategic investments that create and administer the necessary infrastructure for livestock-farming and provide services regarding the distribution of livestock-farming products;
- iii. The fishing infrastructure subsector, including strategic investments having as scope the construction and management of fishing and aquaculture infrastructures, as well as the provision distribution services for fishing products.

5. The strategic sector of the area of technology and economic development, consisting of:

The subsector of industrial/technological parks, including strategic investments related to the construction, maintenance and administration of industrial/technological and innovation parks, as well as the equipment with the necessary infrastructure for the production, industrial development, trading and provision of services related to the activities exercised within them.

Additionally, this decision defines the areas with development priorities, which are those regional and/or local areas that are considered as areas of particular importance that need special support, having as scope the economic development, the fostering of the employment, the improvement of the living conditions and the efficient exploitation of the public infrastructures' sources. To this effect, this decision of the Council of Ministers indicates the main focuses of such areas, as well as the auxiliary criteria for their identification. The promulgation of the areas with development priority is done by the Council of Ministers, upon proposal of the responsible ministries, Albanian Investment Development Agency and the Strategic Investments Committee.

B. Decision no. 1024, dated 16.12.2015 “On the approval of projects having the status of Project with Strategic Potential”

This decision sets out the rules on approval of the projects having the status of the “*Project with Strategic Potential*” (“PSP”). As PSP is considered a possible investment project with strategic impact on the development of the country and that is of public interest. A project shall be classified as PSP from the moment of the initiative on drafting it, from the promotor thereof, until the moment it obtains the status of “strategic investment/investor”. These projects are sustained through implementation of special, favourable, facilitating or accelerating, administrative procedures and through provision of assistance and services to the relevant investors. The Strategic Investments Committee (“SIC”) shall approve the PSP status, following the performance of the preliminary procedures and assessments on the part of the Albanian Investment Development Agency (the “Agency”).

Proposals for the PSP status shall be proposed either by the relevant ministers responsible for the project, or by the investor that has prepared the project.

The investor and the competent bodies may stipulate in the phase of expression of preliminary interest and preparatory actions, developing the PSP, a memorandum of understanding in accordance with the Law on Strategic Investments. Such memorandum of understanding should contain the undertakings of the parties on realization of the project, including the services that such bodies shall provide to the benefit of the strategic project on one hand, as well as the undertakings of the potential investor on implementation of the strategic investment project on the other hand.

C. Decision no. 1025, dated 16.12. 2015 “On promotional and representation services of strategic investments”

The decision details the competencies awarded to the Agency by virtue of the provisions of the Law on Strategic Investments, namely those related to the promotion and representation of strategic investments

Pursuant to this decision, the Agency is entitled to develop and purchase (i.e. on its own or by contracting specialized foreign or domestic entities, in accordance with the applicable legislation on public procurement) services on promotion, incitement and attraction of strategic investments, as well as procure, in the name

and on behalf of the Albanian government, representation services for strategic investments, through international investments’ agents.

D. Decision no. 1026, dated 16.12.2015 “On the assessment of the strategic investment documentation”

By means of this decision, the Council of Ministers sets out the rules about the necessary documentation required for the inclusion of an investor in the administrative procedures of strategic investments. To this effect, any interested investor, private or legal person, domestic or foreign one, is entitled, in accordance with the Law on Strategic Investments, to request the inclusion of an investment project in the administrative procedures of the strategic investment, in order to obtain the status of “*strategic investment/investor assisted procedure*” or “*strategic investment/investor, special procedure*”.

In this view, the interested investors submit a written request to the Agency, along with the relevant documentation specified in this decision. The Agency, initially, assesses if the submitted project pertains to any strategic sectors or subsectors, as well as the minimal value of investment, the duplications with other existing projects, etc.

The documentation submitted by the interested investors must include, *inter alia*, the business plan; the financial plan and financial sources; the working program and forecasted time terms; the assessment of social, economic and strategic impact; the feasibility study, evidence on payment of the applicable fees, etc.

The Agency verifies the abovementioned documentation within 30 (thirty) working days from the date of its submission. In case of incomplete documentation, the Agency may request from the relevant investor, only once, within 10 (ten) days after having received the file, the completion thereof. The latter should complete such documentation within 10 (ten) working days from the receiving date of Agency’s request.

When concluding that the relevant project has strategic potential, the Agency, after having obtained the relevant approval of the minister responsible for the economy, may propose to the SIC to authorize the Agency itself or the responsible minister to proceed with the negotiation and conclusion of a memorandum of understanding with the relevant investor.

Despite of positive or negative evaluation of the relevant applications on the part of the Agency, the latter submits for examination to the SIC any application on obtaining the PSP status, within 10 (ten) days to from the expiry of the foregoing 30 (thirty) working days term.

The SIC resolves, subsequently, on the approval or refusal of the application on PSP status within 30 (thirty) days from the day the relevant proposal is submitted by the Agency. The SIC may require through the Agency extra information from the investor that prepared the project, only once, within 10 (ten) working days after having received the file. The latter should provide the additional information/documentation within 10 (ten) working days from the receiving date of this request. In such cases the 30 (thirty) days term of decision making is extended until the completion of documentation and final examination on the part of SIC.

The decision of SIC on approval, rejection or revocation of the status of "*strategic investment/investor, assisted procedure*" or "*strategic investment/investor special procedure*" shall be notified, in writing, to each investor by the Agency acting in the quality of SIC's secretariat.

E. Decision no. 1027, dated 16.12.2015 "On the fees of services for the strategic investments"

This decision provides for the respective fees for services offered by the Agency to the strategic projects and investors. There are two applicable fees in this regard, namely:

- a) the fee of administrative costs and services, which covers the costs and expenses for all services performed by the Agency from the moment the application is submitted, until the moment of SIC's decision on the approval or rejection of the status of "*strategic investment/investor assisted procedure*" or "*strategic investment/investor special procedure*". This fee has a fixed value of ALL 70,000 (seventy thousand) and should be paid at the moment of the application, at the Agency, by the interested investor; and
- b) the fee of management of the strategic investments procedures, which covers all supporting services performed by the Agency after the status of "*strategic investment/investor assisted procedure*" or "*strategic investment/investor special procedure*" has been obtained.

This fee has a fixed value equal to ALL 15,000 (fifteen thousand), which should be paid by the interested investors, and submitted along with the required

documentation for the approval of the status "*strategic investment/investor assisted procedure*" or "*strategic investment/investor special procedure*".

The abovementioned fees do not include other fees and expenses, applicable by letter of law for obtaining permits, licenses or authorizations, or for other actions related to the project or the strategic investment. Additionally, these fees do not cover the services performed by the Agency for the preliminary support of a strategic project, if the proposer is a governmental body.

F. Decision no. 1028, dated 16.12.2015 "On determining of the margins, rules and documentation of the financial guarantees of strategic investments"

Domestic or foreign entities in their quality of investors interested in the development and realization of a strategic investment, must submit to the Agency the documentation that evidences their financial capacities for the realization of the investment project. Such measure intends to guarantee the implementation and development of the project. In this regard, the legislator sets out a benchmark of not less than 10% of the total project's value, being the minimum financial guarantee requested for an investment, and should be submitted at the application moment and/or at the moment of the execution of the contract, when, as per the applicable law, such instrument should be stipulated.

Save the above, the SIC, depending on special characteristics, size and complexity of the project, experience and capacity of the investor, and depending on public interest, may set out higher levels of percentage of the required financial capacities, which, however, should not go beyond 20% of the total investment value.

The financial capacities may be evidenced through:

- a) investor's own financial sources resulting from the financial statements (i.e. of the last 3 years, if possible, or if the investment entity has been established after this term, those of the last year/s) audited and submitted to the tax administration;
- b) adequate financing and lending, on the part of, domestic or foreign, banks or financial institutions, enjoying well-known reputation and high reliability;
- c) financial guarantees issued by domestic or foreign, banking or financial institutions, enjoying well-known reputation and high reliability.

SIC is entitled to request to the investor further documents, guarantees or financial support for the purposes of the project, if the information and documents submitted are not sufficiently convincing.

The guarantees and financial information, for strategic investments purposes, are not required in case of public projects, considered as strategic investments, initiated and founded by the state, through budget funds, grants or different financing. However, the foregoing does not exclude submission of other guarantees as required by Albanian legislation in force.



G. Decision no. 1029, dated 16.12.2015 “On the inter-institutional cooperation in the strategic investments procedures”

By virtue of this decision, the Council of Ministers sets out the procedures and terms for exchange of information between institutions, approval of permits, licenses and authorizations, as well as the functioning and organization of the operational groups in the ambit of strategic investments.

In this view, in terms of communication channel, governmental authorities (central and local) are obliged to revert to the Agency about the request for cooperation, along with the requested information, within 7 (seven) working days. If the Agency requests data or information that require special knowledge or examinations, such term shall be no longer than 20 (twenty) working days.

As for purpose of realization of strategic investments projects having obtained the status of “*strategic investment/investor assisted procedure*” or “*strategic investment/investor special procedure*”, which need to be provided with the relevant permits, licenses, authorizations, or similar approvals, in accordance with the legislation in force, the Agency assists the strategic investor during these procedures, as an intermediary with the competent governmental bodies. To this end,

following transmission of relevant file by the Agency (transmission of the file within 5 (five) working days), the competent state authority must issue (as the case might be) the permit, license, authorization or other document within 15 (fifteen) working days. For reasonable causes, such term shall be extended for other 15 (fifteen) working days; however, no further extensions are allowed.

The Agency assists and supports the strategic investments and projects through *ad hoc* operational groups, established under the Agency itself. Such operational groups are composed of experts, technicians and professionals of the responsible ministries, in which fields shall be realized the relevant strategic investment, and are headed by the executive director of the Agency.

H. Decision no. 1030, dated 16.12.2015 “On the organization and form of state’s participation in strategic investments and rules for the creation, functioning and administration of the Fund of Immovable Properties for Supporting Strategic Investments”

This decision regulates the procedures, documents and steps to be followed by the strategic investors and competent governmental authorities, regarding the possibility of the inclusion of the state, as co-participant in the investment, together with private investor.

The state can participate in the strategic investments in quality of:

- a) Co-developer of the strategic investment. In such case the state participates as a shareholder/stockholder in the company that will realize the strategic investment;
- b) Co-developer of a certain territorial area, in which are being realized strategic investments. In such case, the state might support the strategic investment through taking measures on the development of this area, such as (i) improvement and development of existing objects and infrastructures, (ii) building new infrastructure, or (iii) other supporting measures.
- c) Co-participator in the investment in other forms, such as by making available immovable or moveable properties, assets, machineries, rights or various facilities, etc.

The co-participation of the state can be attained following proposal by the latter itself or the investor. Any investor that requires the state’s participation in a strategic investment, besides the documentation for inclusion in

the administrative procedures of strategic investments and that on financial guarantees, should present among others, also:

- a) an explanatory report stating the reasons of the request for state's involvement, the method of participation or direct support of the state, and a detailed explanation of state's participation assessment as necessary for the success of the project;
- b) The detailed description of the form and level of the requested state's participation, along with concrete information about the aspects of this participation;
- c) The identification of public movable or immovable asset and the responsible administering body, if the availability of a public asset under state's ownership is required;
- d) Special rights offered to the state by the investor, in the ambit of state's participation in the investment.

It is up to the Agency to verify the proposal of the relevant investor for state's participation in the strategic investment and the former can reach out also for the expertise of independent experts, whose costs will be carried out by the investor. At the conclusion of the assessment process, following the approval of the minister responsible for economy, the Agency forwards to SIC the submitted proposal, the relevant documentation, the opinions of other governmental authorities involved, as well as its evaluation.

SIC must, within 30 (thirty) days from the date when the Agency has forwarded the request, resolve on the approval, approval upon certain conditions, or refusal the proposal. In any case, the SIC's decision shall be notified to the investor within 5 (five) days following its issuance date. The refusal of state's participation does not affect the status of "*strategic investment, special/assisted procedure*", if the investor declares its intention to proceed with the investment, despite state's non-participation.

If the SIC resolves on approval of the proposal, the latter forwards it for approval to the Council of Ministers, accompanied with a detailed relation and the relevant documentation. Based on such proposal of the SIC, the Council of Ministers determines through its decision, case by case, the form, level and ways of participation in the strategic investment.

In the light of the above, in order to support the strategic investments, the ministry responsible for the economy creates, keeps the inventory records of, and administers,

the Fund of Immovable Properties for Supporting Strategic Investments (the "**Fund**"), which shall be created from the state immovable properties, objects, land plots, agricultural land, forest, meadows and pastures, owned by the central institutions or the local governmental units.

The transfer, or inclusion of such properties in the Fund, shall take place through decision of the Council of Ministers, issued upon proposal of the ministry responsible for the economy (or other central/local responsible bodies), as well as upon proposal of the strategic investors through the Agency.

I. Decision no. 1031, dated 16.12.2015 "On determining of the rules on the functioning, creation, administration and the format, content and procedures for the security of the Strategic Investments Register"

Subject to this decision, the Strategic Investments Register (the "**Register**") is the public inventory, which contains the information and the data base regarding the strategic investments to be performed in the Republic of Albania. The Agency is responsible for the creation, administration and updating of the Register.

The Agency maintains the Register in electronic and written format, both in the Albanian and English language, and publishes it on its official website or on another special website. The Register contains principal data (i.e. specific data and information collected by the Agency with regard to the strategic investments) and secondary data (i.e. data and information collected from other databases, where they are considered primary data).

The Register is public and accessible for the central and local governmental bodies, strategic investors and the public, as per the levels of access and security classes determined by the Agency. The access to the contained information in the Register might be restricted for some information, in order to guarantee the non-disclosure of, *inter alia*, the confidential information, personal data, commercial secrets or data that might endanger the fair competition of the commercial entities.

The Register shall be created by the Agency within 3 (three) months from the entry into force of this decision.

J. Decision no. 1032, dated 16.12.2015 "On evidencing of the agreements between the strategic investors and the owners of private immovable properties"

This decision sets out the procedures of engagement to be followed by the strategic investors with the private owners in relation to the immovable properties, before proceeding with the expropriation.

In this view, the strategic investors having the status of “*strategic investors/investment, special procedure*”, before requesting the expropriation of private immovable properties’ owners, must engage in negotiations with the private owners and propose entering into special agreements. By virtue of the special agreement, strategic investors should offer adequate, alternative and/or compensating, instruments such as the temporary use of private properties, the possibility of use by the owner without transferring the ownership title, but through determining the leasing or easement rights, emphyteusis, usufruct, or other similar arrangements.

If the strategic project cannot be realized without affecting the private immovable property, the investor must offer to the relevant owners the conclusion of the sales contract, having a compensation of not less than the financial value of compensation that would result from the expropriation. The strategic investor may offer to the owners also alternative agreements offering benefits of different nature, which are acceptable by the owners.

With regard to the necessary procedures for the conclusion of such agreements, the strategic investor is obliged to follow certain obligatory steps, such as performing of meetings and consultations with the owners. In its efforts to reach an agreement with the owners, the strategic investor is entitled to request the support of Agency as well.

The strategic investor keeps record of the procedure as indicated above and only in case following the expiry of a 90 (ninety) days term from the date of the first meeting, no agreement has been reached, the strategic investor might request the expropriation of the owner, in accordance with the procedures set out by the legislation in force.



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