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I. PPPs' Administrative Review Fee

As part of the revision of the legal framework governing the public procurement, concessions and public private partnership procedures, the Council of Ministers upon decision no. 401, dated May 13, 2015, approved the fees and relevant payment rules for the appeal procedures near the Public Procurement Commission.

The decision titled "On determining the fee and payment rules in an appeal procedure against concession / public private partnership procedures, with the Public Procurement Commission" was published in the Official Gazette no.80, dated May 21, 2015 and is effective as of the date of its publishing.

The decision issued based on article 63 of the Public Procurement Law (9643/2006) provides that any appeal filed with the Public Procurement Commission (PPC) from parties having a legitimate interest in a concession / public private partnership procedure, must be accompanied with the bank statement attesting the payment of the administrative review fee.

The fee payable for the administrative review is set to 10% of the bid security value, when the bidding documents require the provision of the bid security by the economic operators, or 0.2% of the estimated value of the concession contract that is being challenged. Each contracting authority should clearly define the fee amount in the bidding documents.

Failure of the appellant party to pay the fee will result in direct rejection of the appeal by the PPC. The fee is returned to the appellant in case the appeal is accepted by the PPC and is transferred to the state budget in cases when the appeal is rejected.



II. New Territory Development Regulation

On May 13, 2015 upon decision no. 408, the Council of Ministers approved the regulation on the territory development (Regulation), which constitutes one of the core sub-legal acts implementing the Law on Territory Planning 107/2014 that entered into force on October 01, 2014.

The Regulation details the process for obtaining the development and construction permit as well as competences and timing of issuance of such permits by the respective authorities being the major of municipality and National Territory Council (NTC).

Additionally, the Regulation indicates the basic criteria (to be detailed in the various development documents) applicable to the construction works such as distances, density and height of buildings/facilities.

As for the process of the examination and issuance of the development and construction permit, the relevant application and accompanying documents can be filed either by uploading the dossier into the online portal or by personally submitting hard copy documentation with the dedicated single-window office at the municipality or the Secretariat of the National Territory Council, as the case may be.

With regard to examination of documents and issuance timing, the Regulation indicates a fixed term of 10 days for the development permit.

The general term for the issuance of the construction permit is already set out by the law 107/2014. The Regulation provides specific terms for each of the steps to be completed till the issuance of the permit. Should the above term of 60 days elapse, the application for construction permit is deemed approved based on the tacit approval principle, provided that the technical assessment report on the project is positive.

A novelty is the issuance of the construction permit following the so-called accelerated procedure. In this case the construction permit is issued within 10 days from the application date. This procedure is applicable in case of:

- (i) works of minor volume such as construction of scales, light structures which can be disassembled;
- (ii) construction of two story homes;
- (iii) ancillary facilities for agricultural and livestock activities, etc.

Additionally, the accelerated procedure is applicable also in case the developer pays an application fee 10 times higher than the standard fee.

The Regulation likewise determines the type of construction works (complex ones according to the law 107/2014) that falls under the competence of the National Territory Council (NTC) for examination and issuance of the construction permit.

Based on the Regulation, NTC examines and issues the construction permit, inter alia for the following (complex) works:

- (i) power plants;
- (ii) gas and oil pipelines, production and processing gas and oil plants;
- (iii) airports, ports and terminals of any kind;
- (iv) hospitals and health care centers;
- (v) touristic resorts and the like facilities;
- (vi) military infrastructures;
- (vii) museums and national theaters and operas.

The legislator has resolved that until approval of the local development plans, by each local government unit or their review vis-à-vis the National General Plan (to be approved by the Council of Ministers within 20 months from the entry into force of the law 107/2014, that was October 01, 2014), the Regulation is applicable only to construction works determined with resolution of the National Territory Council.

Based on the provisions of the law 107/2014, the local development plans should be approved by the local government units within 2 years from entry into force of the law.

The Regulation is to be welcomed and hopefully will provide some fresh air to the construction sector in Albania, which for some time now has been languishing under the weight of the global financial turmoil and lack of specific sector regulation by the central/local government.

III. Decision of the Council of Ministers no. 469, dated 03.06.2015 “On determination of minimum value of the reference rental prices for tax purposes”

With the Decision 469/2015 of the Council of Ministers, entered into force on June 15, 2015 the government aims to determine for tax purposes the minimum applicable level of the rental fees across the country. From the reading of the Decision, one is legitimated to raise a couple of concerns related to the legislative technique used in this case.

Firstly, it appears that the Decision obviates basic principles and provisions of the Albanian Civil Code that in the hierarchy of laws ranks above the decisions of the Council of Ministers. The hierarchy of the normative acts is clearly defined under article 116 of the Constitution of the Republic of Albania.

The Decision determines that the rental fees of buildings have to be stipulated in the lease contracts executed before a Notary Public and obliges the latter to submit the

lease contracts to the regional tax directorates on regular basis. It is to be noted that the Civil Code does not require lease contracts to be notarized (it does not require even a written contract for leases less than 1 year period). Hence, such oversight on the part of the government is quite questionable.

The other arguable point with regard to the Decision is that the government seems to undermine a basic principle set out in the Civil Code, which is the ‘contractual freedom’. To this effect, the Decision provides that in no case the rental fee should be lower than the minimum amount indicated in the Decision, meaning that parties to a lease contract are bound by the Decision provisions with no possibility to exercise their rights for setting a mutually agreed rental fee.

Although it is understandable that the minimum rental fee requirement should be used for the determination of tax obligations, also in this case, the legislative technique is quite questionable. Hence, from the reading of the Decision one (i.e. especially tax authorities) can infer that no lower amounts of rental fee can be stipulated for lease contracts.

Having said that, as for the method of calculation of the minimum rental fee, the government has divided the facilities in two main categories:

- (i) houses/dwelling apartments; and
- (ii) other buildings (i.e. basements, warehouses, garages, etc.).

The latter category is also divided into two main sub-categories, which are buildings within the city of Tirana and buildings outside Tirana. According to the Decision the minimum monthly rental fee for square meter for houses is equal to 0.3% of the selling price of such surface, as determined in the latest Instruction of the Council of Minister “On approval of the average cost for the houses from the National Housing Authority” (hereinafter MRF).

Below for illustration purposes examples of calculation of the rental fee for different facilities:

Minimum amount of the rental fee per 1 sq. meter of surface	Goods/Services Store	Covered Garage	Office and warehouse	Open Garage	Basement	Buildings privatized with Law 7652/1992 “On privatization of state houses”
Tirana	2 x MRF	0.7 x MRF	MRF	0.3 x MRF	0.7 x MRF	0.7 x MRF
Other Cities	1.5 x MRF	0.7 x MRF	MRF	0.3 x MRF	0.7 x MRF	0.7 x MRF

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