

SPI Albania Project on Revising regulatory act on Execution of Procedures on Bank accounts

Project Objective

To review and improve the regulatory framework on execution on bank accounts related to executive titles concerning budgetary institutions consolidated accounts, and other executive titles issued by public institutions. In particular, to review the BoA's Guideline "On the modalities of execution of obligations on amounts in bank accounts".

Project Management Team

Project Owner (PO): Seyhan Pencapligil, General Director, National Commercial Bank

Project Manager (PM): Veronika Prifti, Head of Legal Department, National Commercial Bank

Co- Project Manger (CPM): Elvis Zaimi, Head of Section, Legal Department, Bank of Albania

Co- Project Manger (CPM): Isida Koka, Budget Department, Ministry of Finance

Minutes

Second meeting

December 16, 2009—AAB premises

Attendees: Veronika Prifti, BKT (PM)
Elvis Zaimi, BoA, (CPM)
Kujtim Mare, RB (member)
Anuela Ristani, SPI Albania, Director of Operations
Holta Kotherja, SPI Albania, Consultant

AGENDA

- I. Project Progress Brief
- II. Summary Findings on the Banks' Questionnaire (Discussion)

III. Conclusions and Distribution of Tasks

IV. Closing Remarks

I. Project Progress Brief

SPI Secretariat has collected the feedback from all the participating PWG member banks as well as other non PWG member banks on the questionnaire for the execution of amounts on bank accounts. The findings have been summarized in the document that is the actual objective of discussion for the second PWG meeting.

II. Summary Findings on the Bank's Questionnaire

SPI Secretariat lead the PWG members on through the responses on each of the questions relating to regulatory changes (potential proposals) for the relevant regulatory acts referring to the challenges faced by the banks in relation to the execution of accounts.

Detailed findings and responses can be found under Appendix I.

IV. Conclusions and Distribution of Tasks

For the next PWG meeting:

- SPI Secretariat will send the meeting minutes and the revised drafts of the documents for final approval to the PWG;
- SPI Secretariat will draft a the consultation paper based on the opinions issued by the legal experts of the banks and other participatory institutions involved in the project and consult with them individually for the possibilities/ feasibility of the proposed regulatory recommendations that the PWG will finally issue.

VII. Closing Remarks

The third PWG meeting is preliminarily scheduled to take place in February 2010, however PWG members are to be contacted individually or through group e-mails on the different stages of the consultation paper drafting.

APPENDIX I

1 SUMMARY OF FINDINGS FROM QUESTIONNAIRES ON EXECUTION OF AMOUNT IN BANK ACCOUNTS

I. Execution of Bailiff's Orders against Budgetary State Institutions.

Based on your historical data, please provide information and arguments on:

- a. The percentage of the requests for execution of amounts in bank accounts related to executive titles concerning budgetary institutions' treasury accounts.

The bank's practice evidences that 5-15% of the total requests for execution of amounts in bank accounts are execution's requests related to executive titles concerning budgetary institutions' treasury accounts.

- b. The percentage of cases when requests for execution of amounts in bank accounts of budgetary state institutions have been executed.

1. In some cases the banks admit that they have executed requests for execution of amounts in bank accounts of budgetary state institutions, but they do not have statistic data. However in practice, requests for execution of amounts in currents accounts of budgetary state institutions have been executed, opened up in their name such as Regional Directory of Social Security, DRSKSH, Housing Authority, Tax Department, etc.
2. In some cases the banks admit that they haven't executed any of the above-mentioned orders, without previous notification of the competent authority, which never have done a complaint or address the case to the court. The response to the competent authority has been based on legal grounds and respective argumentation.
3. The banks admit that the execution have taken place after receiving the confirmation by the Institution whose accounts will be touched by the execution; in cases when the Bailiff Office have presented the document proving the notification of the Institution's highest authority's such as the director, than again the banks have executed the order.

2

- c. Did the bank followed the terms and conditions foreseen by the Decision No. 43, dated 11.06.2003 of the Supervisory Council of Bank of Albania on executing executive titles concerning budgetary institutions consolidated accounts?

o If yes, please describe?

1. In cases of positive responses to the above-questions, it is stressed that in executing execution orders against budgetary touching their treasury accounts, the banks have always applied the terms and the conditions foreseen by the Guideline No. 43, Date 11.06.2003 of Supervisory Council of the Bank of Albania, rejecting the requests of execution making known the remarks and observations concerning the form and content when something was lacking.

2. From the other side, obstacles have been encountered regarding the respect of deadline determined by the above-mentioned Guideline, because the confirmation process in case of budgetary institutions requires that more than one institution approval, resulting in a more lengthy process.

d. If not, why? (Please describe)

1. In general, the banks' practice evidences as causes of the non-execution of the executive titles: 1) the impossibility to respect the deadline determined by Guideline No. 43, dated 11.06.2003 of the Supervisory Council of Bank of Albania and 2) the lack of active balances in the respective accounts. Another reason related to non-respect of deadline is due to the Minister of Finance Order, which foresees that the execution of these executive titles can't take place without the approval of the Treasury Department.

2. The approach of the banks was to not execute in cases, when a Bailiff Order was in relation to an execution against a budgetary account. In those cases the banks have asked the Bailiff Office to apply the respective procedures and the privileges according to the Art. 605 of the Civil Code.

e. Did your bank suffer any legal consequence in cases when the bank didn't execute the execution order against a state budgetary institution?

o If yes, please describe?

1. In general, no legal consequence has been evidenced against the banks.

2. In the only case, when it is affirmed that the bank has had a legal consequence, it was a fine penalty against the Director of the Legal Department, which has been challenged to the court.

3

3. It is important to stress the fact that there have been some cases, in which the creditors from the other side have reported cases to the Bailiff Office.

f. What would you recommend to remedy the situation in regard to execution of amounts in a bank account against a budgetary state institution? (Please provide information in a concise manner)

o Indicate when/if possible the kind of legal act that needs to be amended and/or newly drafted to remedy the situation?

1. The banks' practice evidence that, although the Civil Procedure Code foresees the execution procedure of the amounts in the bank accounts for the budgetary institutions, however it does not foresee explicitly the instruments and the manner for their execution. Also, Art.589 of the C.Pr.C (newly amended) refers to the Guideline of the Council of Ministers for the execution of the monetary obligations that shall be approved upon this article. Apart from that it is suggested to complement the current Guideline Nr. 43, Date 11.06.2003 of Supervisory Council of the Bank of Albania. Concrete recommendations in this regard are: the amendment of Art. 2 where it is defined

the concept of “account”, reflecting in a more detailed manner the kind and the classifications and subsequently amending the other articles with the purpose of defining different kind of executions procedures for different kind of “accounts”. The amendment of these articles has to be sustained with the possible Guidelines of the Council of Ministers.

2. Suggestions in order to remedy the situation are provided in relationship with the deadlines for the budgetary institutions, that because of the special nature of their accounts; In this case the deadlines shall be longer than the execution’s terms for the accounts of the other private debtors.

3. General recommendation has been made emphasizing the need for collaboration between the Bank of Albania and the Ministry of Finance, to define the modalities for the execution of the amounts in bank account against state budgetary institution; the composition and the approval of the legal acts for the application of the Art 589 – 590 of the Pr.C.C and the approval of the Joint Guideline of the Ministry of Finance and the Ministry of Justice.

II. Execution of executive titles/orders issued by other institutions that are entitled to do so such as (General Tax Directorate, General Customs Directorate)

4

Based on your historical data, please provide information and arguments on:

a. The percentage of the requests received by your bank for execution of amounts in bank accounts related to executive titles/order issued by other state institutions (that per law have a right to execute executive titles or similar orders such as General Tax Directorate, General Customs Directorate).

1. The answers regarding this question are different, however the percentage of the requests for executions issued by other state institutions such as General Tax Directorate, General Customs Directorate are considerable and vary from 35%, 50% or 99%.

2. The order’s number is not constant and changes depending on the time period in which such institutions make their respective inspections, so the major number of requests refers to the first 3 months and the last 3 months of the year.

3. From the practice of other banks, it is evidenced that 100 % of these requests are executive titles/orders issued by other institutions such as General Tax Directorate, General Customs Directorate.

b. The percentage of cases, when requests for execution of amounts in bank accounts related to executive titles issued by other state institutions that per law have a right to issue executive titles/order, have been executed.

1. The percentage of requests for execution of amounts in bank accounts related to executive titles issued by other state institutions that per law have a right to issue executive titles/orders is very low. Execution has been made only for account of General Tax Directorate, General Customs Directorate, Bailiff Office and the Local Government Tax Authorities. Approximately, 50 % of the case in which the execution has taken place were on executive titles/orders from the General Tax Directorate and/or General Customs

Directorate, 30 % Bailiff's Office executive titles/orders and 20 % Municipality executive titles/orders.

2. The execution has been made from the institutions which have the right to apply the sequestration measure upon the Civil Procedure Code.

c. If yes, (in case the executive titles/order have been executed) please indicate the procedure and the respective legal basis used by the bank when doing so?

5

1. The execution procedure upon the Bailiff's orders have been executed based on C.Pr.C and the Guideline No. 43, Date 11/06/2003 of the Supervisory Council of Bank of Albania on executing executive titles concerning budgetary institutions accounts.

2. The execution procedure upon the General Tax Directorate's and other authorities' orders has been conducted based on Art. 90 of the Law No. 9920, Date 19.05.2008 "On the tax procedure in the Republic of Albania" and Art. 4 and 17 of the Law No. 9632, Date 30.10.2009 "On the local taxes' system".

d. if not, why?

o Please indicate the gap in legal framework and respective procedure, if this is the case?

1. The main reasons of the non execution are as below mentioned:

The incompleteness of the documentation sent by the competent authority (the lack of complete data in the Sequestration Orders issued by the tax administration) or because the order for the sequestration procedure have been issued without respecting the previous phase of the conservative sequestration;

The bank's client have voluntarily paid their obligation, so there was no need for the forced execution procedure;

The subject hasn't had any active balance in his/her account and/or the client was a credit taker (bank debtor). In these cases the Bank informed the respective tax authorities in a written form.

e. Did your bank suffer any legal consequence in cases when the bank didn't execute the orders issued by these other institutions (General Tax Directorate, General Customs Directorate)?

o If yes, please describe?

1. There haven't been any legal consequences.

f. What would you recommend to remedy the situation in regard to execution of executive titles/orders of state institutions such as (General Tax Directorate, General Customs Directorate)? (Please provide information in a concise manner)

o Indicate when/if possible the kind of legal act that needs to be amended and/or newly drafted to remedy the situation?

6

1. To have clear and determined execution procedure of executive titles, that can be achieved with the amendment of the Guideline No. 43 of the Supervisory Council of

Bank of Albania and through drafting of new Regulations Acts determining the position of these institutions in relation with the Bailiff Office, and their relation with the Banks of second level.

2. In regard to the executive/sequestration orders of the General Tax Directorate, it is necessary to amend the Guideline No.24, Date 02/09/2008, approved based on Art. 90/1 of the Law “On the tax procedure in the Republic of Albania”, defining concrete steps and standard procedures (including the standard form of the orders sent to the Banks), as well as the specification of the deadlines on undertaking and concluding this procedure.

3. According to the Law on Tax Procedure, the tax administration has the right to collect data for all subjects who have a bank account (An information requested every 3-months by the Banks to the taxpayers who open and close a bank account during that 3 months-period). This kind of information can be used not only by the administration, but also by the local government units with the purpose to limit the unnecessary procedures, so that only sequestration orders for those subjects who are bank’s clients would be sent to the banks.

4. It is necessary to draft and approve a Guideline of the Ministry of Finance and a Regulation of the Bank of Albania, which can regulate and foresee all the situations and the modalities regarding to the request and availability of information from the local units addressed to the banks, in order to prevent the unnecessary work load and to protect the client’s rights.

5. In more concrete terms, it is recommended the review of the Guideline, specifically the part which regulates the sequestration orders of the taxpayers’ bank accounts, in these main points:

- The Guideline must include a template of the Sequestration Order, and the clear warning disposition that the Bank does not proceed with the execution in case that the Sequestration Order is not completed according to this template.

- To define a maximum of Orders amount/number addressed to the Bank within a workday and a longer term (deadline) for the execution of the sequestration order and the transfer of the amount. This is due to the fact that in many cases the orders contain a list with a hundred names of subjects and their execution is practically impossible.

- The orders have to be addressed to the banks as an order for each individual debtor or taxpayer and not as a list of debtors.

7

III. Request for information in regard to debtors and/or potential debtors

Based on your historical data, please provide information and arguments on:

a. the percentage of the requests for information issued by other state institutions that per law have a right to check the financial situation of citizens/private entities in case they are tax debtors (such as General Tax Directorate, General Customs Directorate, Local Government Tax Authorities).

o Please indicate the legal basis used by these institutions and the format they are using when requesting the information?

1. Based on the banks’ practice it is evidenced that the percentage of the requests for the sequestration/execution of the amounts in the bank accounts from the above

mentioned authorities and the requests for information related to the banks clients is considerable and increasing progressively. The legal basis for the banks in providing this kind of information to these institutions are: Law No.9920, Date 19.05.2008 “On the tax procedure in R.A”, the Guideline No.24, Date 02.09.2008 of the Minister of Finance, Art. 511 and following of the Pr.C.C and Art. 245 of the C.C for the requests of the General Custom Directorate.

2. Legal basis for the bank in providing the requested information from the Local Government Authorities, are: the Law No. 9632, Date 30.10.2006 “On the local tax system” and Law No. 9920, Date 19.05.2008 “On the tax procedure in R.A”.

3. There isn't any consolidated practice/form applied by these institutions when sending the requests/orders to the bank, even within the same authority, different department use different forms (i.e the tax authority).

4. This problem is more evidenced when it comes to practices followed by the local government units, among which the most consisted one is the practice followed by Tirana Municipality. There are also cases, when the requests/orders sent by local governments lack even the correct legal basis.

b. the percentage of cases taken into consideration by your bank (that your bank has responded) versus the percentage of the cases when your bank do not undertake any action.

o Please indicate the legal basis used in both cases, (in cases that you responded and cases you didn't.

8

1. Based on the collected information it is evidenced that the banks have taken into consideration all the requests and conditions of the Law “On the tax procedure in R.A”, and the Guideline, issued upon the above-mention Law.

2. In the cases, in which no information was given, the bank has required the completeness of the data that should be contained in the request. (The completeness of the client bank's data).

c. Did your bank suffer any legal consequence in cases when the bank didn't respond to the requests of these institutions?

o If yes, please describe, including the legal basis used in these cases?

3. There are no evidenced cases of legal consequences for the banks.

4. Raiffeisen Bank Sh.A Lezhe is in practice the only case, in which the Bank had the penalty of 40,000 leke, based on the Art. 126 of the Law “On the tax procedure in R.A”, with the cause of not providing the requested information.

d. Do you think that the bank might be exposed to consequences (legal and business one) in relation to its customer's when/if the bank provides information in any situation especially under unclear legal procedures.

o If yes, please describe?

o Please describe also how the customers are protected under the contracts with your bank in regard to their data and transactions taking place without their will?

1. The banks haven't provided any information in cases of unclear legal procedure and when the requesting authority didn't make the necessary referrals.

2. There are different opinions evidenced in regard to the banks exposure to legal and financial consequences: In some cases it is denied that banks do face consequences because there exists a certain protection of the relations banks – clients – authorities under some laws.

3. Nevertheless, in more concrete terms, the lack of a regulation of the Bank of Albania setting the standards of the requests for providing information on the client's transaction, especially when it is without the will of the client, has serious consequences and can damage the

9

relation between the bank and its clients. It is necessary that the Bank of Albania issues regulations to determine the cases when the second level banks, are obliged to provide information or to apply the sequestration measure on the clients' accounts and the procedure that must be followed in such cases.

4. The relations between Banks and their clients are based on the mutual trust that is compromised in cases when banks touch the client's bank account based on the acts/procedures, which do not comply with the required legal form and are sustained by preliminary procedures. In such cases the major penalty suffered by the banks is the lose of clients, especially of the big clients, which takes away also their business collaborators. When they withdraw their bank account, the event is perceived in the public and results in a negative client attitude.

e. What would you recommend to remedy the situation in regard to provision of information on debtor/potential debtors to state institutions such as (General Tax Directorate, General Customs Directorate and Local Government Tax Authorities)? (Please provide information in a concise manner)

o Indicate when/if possible the kind of legal act that needs to be amended and/or newly drafted to remedy the situation?

1. Taking into consideration the fact that special laws give the right to different authorities to issue executive orders and to require information regarding client's bank accounts, and also trying to establish the appropriate balance between the bank-state institutions and bank-clients, it is suggested that the current Guideline No. 43, Date 11.06.2003 of Supervisory Council of the Bank of Albania, shall include also specification on how and on what kind of information can be provided to such institutions, and also the limits in distributing these data.

2. In the confidentiality framework, it is suggested that in the above mentioned amendments, the requests of these institutions sent to banks, must have a clear motivation on the reasons why this information is requested, avoiding the abusive requests, including the requests for a certain number of clients (not individual clients).

3. Taking into consideration that another concern is that the requests do not have enough data in identifying the subject for whom the information is requested that is contrary the provisions of Art. 3.2 of the Guideline No. 43, Date 11.06.2003 of Supervisory Council of the

Bank of Albania, it is suggested the amendment of this article, which gives to the bank the right to refuse to provide the requested information, in case that the data are not requested in a clear form or in cases that the request for information is abusive and unjustified.

4. Taking into consideration the fact that the banks send periodically the list of the new clients to the tax authorities, based on that information the tax authorities must do a preliminary selection of the Bank's clients consider as tax debtors and require based now on selected clients only the information and/or sequestration and/or execution of the bank accounts. So, it is necessary to make additional specific provisions to the Guideline No. 24 date 02/09/2008 "On the tax procedure in the R.Sh", in order to remedy the above-mentioned situation.

5. More specifically, since that the major requests for information are requested by tax authorities, it is necessary to amend the Guideline of the Minister of Finance, specifying:

- a) The cases in which the tax authorities have the right to request information regarding the taxable person;
- b) The template of the request with the data contained in the request which is sent to the bank;
- c) The cases in which the Bank does not give the requested information, because the request form is incomplet according to the above mentioned template.