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DECISION

No. 1028, dated 16.12.2015

ON THE STIPULATION OF THE MARGINS, THE RULES AND THE DOCUMENTATION OF THE FINANCIAL GUARANTEES OF STRATEGIC INVESTMENTS

Pursuant to article 100 of the Constitution and paragraph 5 of article 8 of law 8 no. 55/2015 “On strategic investments in the Republic of Albania”, upon the proposal of the Minister of Economic Development, Tourism, Trade and Entrepreneurship, the Council of Ministers

DECIDED:

1. The private legal persons, both the natives and the foreigners, who, in the capacity of the investing subjects interested in the development and the realization of a strategic investment claim the inclusion of the investing project in the administrative procedures of the strategic investments to receive the status: “Strategic investment/investor, an assisted procedure”, or “Strategic investment/investor, a special procedure”, apart from the required documentation with regard to the project, shall submit at the Albanian Agency of Investment Development, the documentation which proves the financial capacities for the realization of investing project, as a guarantee for the implementation and the development of the project.
2. The documentation which proves the financial capacities for the realization of the investing project shall contain financial data which testify the capacities of the investor for the realization of the investment in the measure not less than 10% of its total value.
3. The financial guarantees to receive the status “Strategic investment/investor, an assisted procedure” or “Strategic investment/investor, a special procedure” shall be presented at the moment of the application and/or when the contract is signed, in the cases when, according to the applicable law, such a contract is signed with the state.

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4. The minimal boundary of the financial guarantees shall be in the measure not less than 10% of the total value of the investment. The Committee of the Strategic Investments, depending on the characteristics, measures and complexity of the project, the investor's experience and capacities as well as depending on the public interest may claim higher percentages of the required financial capacities but not more than 20% of the total value of the investment.

5. The value of the financial capacities required for the realization of the investment may be proven through:

- a) Financial capacities of the investor proved and based on the financial statements audited and deposited at the tax administration of the three last years, when such a thing is possible, or if it has been established after this time limit, of the last years;
- b) The appropriate funding and crediting by the domestic or foreign bank or financial institutions, with a prominent reputation and high credibility;
- c) Offering the financial guarantees by the domestic or foreign bank or financial institutions, with a prominent reputation and high credibility.

6. In the cases when the realization of the investment shall be carried out through a specifically-established company, set up by the investor, the documentation in relation to the financial capacities shall be presented by the investor/company/possessing companies of the Subject for Specific Purposes (SSP).

7. In the cases when the investor proves the capacity to realize the investment through his capacities, the Strategic Investment Committee may ask the investor to undertake the preservation and the non-diminishment of the capital and of its financial capacities beyond the minimal level of guarantee throughout the duration of the realization of the strategic investment as well as the obligation to claim the preliminary approval; for any case of the transfer of the quotas/shares of the company. Also, the Committee of the Strategic Investments is entitled to require to the investor the documents for the guarantee or further financial support by trustworthy financial partners or institutions, which support the project, in case the submitted information and documents do not try in a convincing and clear way the financial capacity to cover with its assets the required part of 10% of the investment value.

8. In the cases when the investor proves the capacity to realize the investment through the funding, crediting or provision of the guarantees by the bank or financial institutions, the Committee of Strategic Investments authorizes the Albanian Agency of Investment Development for the evaluation of the appropriate form of documents and the periodical verification of the validity of the funding instruments and guarantee. The Committee of Strategic Investments shall be informed by the investor for every change of these documents, which should be adopted by the Committee of Strategic Investments for the preservation of the status "Strategic Investment/investor, an assisted procedure", or "Strategic investment/investor, a special procedure".

9. In all the cases, the Committee of the Strategic Investments is entitled to require to the investor information regarding the financial capacity and their capability to generate sufficient funds for the funding of the entire investment. These pieces of information include, but without being limited, documents on the financial situation, the administration structure, the ownership of the properties and assets, the positioning in the market, the previous experiences, the financial support of the external partners or investors as well as any other necessary information to prove their investing capacities and the potential to be a strategic investor for the projects of the strategic investments.

10. The form of the documentation, the value and the essential conditions of the financial guarantees of any project shall be specified, case after case, by the Committee of the Strategic Investments, in compliance with the levels of the margins and with the stipulations of this decision. For the evaluation of the elements of the required financial guarantees, the Committee of the Strategic Investments takes into consideration the balancing of the public interests with the ones of the investors and evaluates the specific characteristics of every project.

11. The rights and the obligations of the parties shall be stipulated through signing a special agreement on the conditions, the mode of the realization of the investment and of the provision of the financial guarantees. Particularly, the special agreements shall contain the financial obligations for the preservation of the investor's financial condition, in compliance with paragraphs 6 and 7 of this decision and shall provide for appropriate sanctions against those who make false statements for the financial condition, who change the documents of funding, crediting or guarantees, without the approval of the Committee of Strategic Investments, who do not realize the investment at the stipulated values and do not comply with the conditions of the investment project or carry out actions in contradiction to the permits, licenses or necessary authorizations, according to the legislation into force. The special agreements may be signed by the Committee of Strategic Investments, by another body authorized by it or by the responsible body, stipulated according to the specific legislation of the respective activity.

12. In the case of the investments which require to receive the status of strategic investments for which a contract has been signed before the entry into force of this law, and for which the investor has realized over 10% of the investment value, the Committee of Strategic Investments may consider as reasonable the non-submission of the financial guarantee, providing that a certification of the realized investment is submitted, drafted by licensed evaluators, according to the legislation into force and the confirmation by the contractual authority.

13. The guarantees and the financial information for the purposes of the strategic investments shall not be required in the cases of the public projects considered as strategic investments, initiated and funded by the state, through the budgetary funds, grants or different funding.

This stipulation does not exclude the submission of the other guarantees required by the Albanian legislation into force.

14. The Ministry of Economic Development, Tourism, Trade and Entrepreneurship and the Albanian Agency of Investment Development shall be responsible for the implementation of this decision.

This decision enters into force after the publication in the Official Journal.

PRIME MINISTER
Edi Rama