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Reccomendations for improvement of the bussines climate in Albania

BOOK

2013



FOREIGN INVESTORS ASSOCIATION OF ALBANIA



FOREIGN INVESTORS ASSOCIATION OF ALBANIA

WHITE BOOK

Albania 2013

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TABLE OF ACRONYMS

AKBN	National Agency for Natural Resources
AKEP	Electronic and Postal Communications Authority
BoA	Bank of Albania
DSO	Distribution System Operator
EBRD	European Bank for Reconstruction and Development
ERE	Albanian Energy Regulator
EU	European Union
FIAA	Foreign Investors Association of Albania
GDT	General Tax Directorate
HPP	Hydro Power Plants
IFC	International Finance Corporation
IFRS	International Financial Reporting Standards
KESH	Albanian Power Corporation
LLC	Limited Liability Company
LNG	Liquefied Natural Gas
METE	Ministry of Economy, Trade and Energy
NRC	National Registration Center
OECD	The Organization for Economic Co-operation and Development
OSCE	Organization for Security and Co-operation in Europe
PPA	Power Purchase Agreement
PSA	Production Sharing Agreement
SCU	Saving Credit Unions
SPV	Special Purpose Vehicle
VAT	Value Added Tax
WB	World Bank
WPS	Web Processing Service

FOREWORD

The White Book is a document which, starting from this year will be prepared annually by the Foreign Investors Association of Albania. Its publication will highlight and address the main issues that Foreign Businesses are facing in Albania. The content of this first edition is treating a significant part of the existing legal framework in the country and addressing the most common issues faced and communicated by our members.

We are aware that despite a lot of efforts made during the past 20 years or so, the country needs to further improve its business climate, complete reforms in key areas and strengthen its institutions in general and the judicial system in particular. FIAA has constantly offered opinions and recommendations to improve Albania's legislation in a number of vital areas especially through participation in the Albanian Advisory Council of Business, while communicating quite extensively with all major institutions like the Council of Ministers, Ministry of Economy, Trade and Energy and Ministry of Finance. However, we believe we make a serious contribution in this process through the publication of this document to address in specific our concerns and propose respective recommendations for each area of interest.

We remain hopeful that the recommendations provided in this first edition of the FIAA White Book 2013, will have a wide acceptance and positively affect efforts to improve the business environment. We believe that working towards a better business environment encourages the investors to reinvest their earnings in the country and secure conditions that will attract new investors willing to invest in Albania as well as leading to better employment of Albanian citizens and to improve the economic growth of the country.

We are confident that the Government and other political parties will find a proper communication which will give more support for a better business climate in Albania.

Finally, we would like to express our gratitude to all those members and other experts who contributed to the preparation of the first FIAA White Book 2013.

Patrick Pascal
President of FIAA

It's time to promote and protect your business
Join ~~FIA~~ now!



~~FIA~~ Your Partner for Sustainable Development

**Defining Changes
Building Opportunities**



FIAA SHORT HISTORY

FIAA was founded in April 2000 by several prominent foreign investors operating in Albania with the idea to set up an organization that will bring together values and benefits to the members, but also to the business climate at large. The launching of FIAA was highly appreciated and welcomed by the business community, foreign embassies in Albania and many other international institutions such as EU, WB, IFC, EBRD and OSCE.

Through its members, FIAA represents most of the FDI in Albania, originating from Austria, Bulgaria, Canada, France, Greece, Germany, Italy, Turkey, UK, USA, a range of economic sectors such as Banking, Insurance, Mining, Energy, Oil and Gas, Construction, Real Estate, Legal and Financial Consulting, Telecommunications, Trading, Cement, Pharmaceuticals, Human Resources, Food Industry, Tourism, Textile Industry, etc.

From day one FIAA clearly declared its status of an independent, non-profit organization. It is mainly funded by the membership fees and sponsorships in various activities. To date our organization counts more than 100 active members.

The Founders of FIAA were *Mr. Kent Ford* a professional economist from USA, *Mr. Pierre*

Semaan, General Manager of Seament Albania, a cement company owned by Lebanese investors, *Mr. Tom Lodge* from New Zealand and *Mr. Bennet Manning*, General Manager of the construction company Melrose, USA.

FIAA's first President was Mr. Kent Ford (2000-2001) who was succeeded further by Mr. Pierre Semaan (2001-2006). In 2007, FIAA changed its structure and formed a Board of 7 Directors and a Chairman. The first Chairman of the Board was Mr. Thomas Papaspyrou, CEO of Vodafone Albania (2007-2009), to be succeeded by Mr. Patrick Pascal, who is a chairperson from 2009 to date.

The members of the current Board of Directors are:

PRESIDENT	
• Patrick PASCAL	General Manager of Selenice Bitumi sh.a
VICE PRESIDENT	
• Perparim KALO	Managing Partner of Kalo & Associates
BOARD MEMBERS	
• Alexander RESCH	CEO of Intesa SanPaolo Bank Albania
• Alexandros KARAKITIS	Country Managing Partner of Ernst & Young Albania
• Hubert DE SAINT JEAN	CEO of Societe Generale Albania
• Avni PONARI	CEO of SIGAL, UNIQA Group AUSTRIA
• Ibrahim AKTOZ	Managing Partner of Alpet Albania & Fullpet
• Periklis DROUGKAS	CEO of Alpha Bank Albania
• Stefano BORGHESI	Administrator and Board Member of La Petrolifera Italo-Albanese

FIAA serves as a networking for foreign investors, as it regularly brings them together to discuss issues and possible solutions. Moreover, FIAA is a good source to the Albanian Government in respect of the development of commercial legislation. Furthermore, FIAA does lobbying activities with the Albanian Government, in cooperation with other business

organizations and other institutions. Such activities are roundtables and workshops with various stakeholders; networking events; publications; seminars, exhibitions, fairs, conferences and trainings.

ALBANIA BUSINESS CLIMATE

Macroeconomic stability

Albania was the only country in south-eastern Europe that continued to grow during the 2009 global financial crisis and beyond, with growth rates of over 3% in 2010 and 2011, driven by domestic demand, however economic activity practically stagnated in the first quarter of 2012. Foreign demand was the main driver of GDP growth, spurred by gross fixed capital formation, which rose by 3.6%. Private consumption growth slowed down to 2.6%, suppressed by weak lending to households and a further decline in remittances from

Albanians working overseas. Output from agriculture and other services increased. Consumption expenditure and investment remain weak partly reflecting the uncertain global economic situation.

Monetary policy remains sound, inflation kept within the target range and exchange rate stability has been broadly preserved. The annual inflation rate averaged 3% in 2012 remaining around the Bank of Albania's (BoA) target. The labor market situation improved slightly although lower unemployment remains consistently high.

Table 1. Main macroeconomic indicators (%)

	2009	2010	2011 projected	2012
GDP growth	3.3	3.5	3.1	0.6
Inflation (end-year)	3.7	3.4	1.7	3.1
Government balance/GDP	-7.4	-4.2	-3.5	-3.5
Current account balance/GDP	-14.0	-11.4	-12.3	-11.8
Net FDI (in million US\$)	936	1098	989	850
External debt/GDP	32.9	33.6	33.7	na
Gross reserves/GDP	19.0	22.9	18.3	na
Credit to private sector/GDP	36.7	37.7	38.9	

Source: EBRD Transition Report 2012

Available figures on the economic activity over the second half of 2012 are incomplete. However, indirect data analysis confirms earlier estimates for positive growth during this period, at levels similar to the second quarter of the year. Economic growth was mainly driven by foreign demand, while domestic demand was weak (Source: BoA). Private investment remain at low levels, as a consequence of underutilization of production capacities, uncertainties about foreign and domestic demand, and tightened lending terms by the financial sector.

During 2011 Albania attracted about 914 million USD of FDI-s and had an economic growth of 3.1%, which continues to exceed those of some regional peers. Important investments have been made in particular in the petroleum industry, and there are still further privatizations to be completed (in petroleum and insurance) and many concession agreements have been offered (in energy and mining sectors) by the Government (EBRD Assessment).

As for the actual Economic environment, the policy-making and legislative drafting processes in key ministries are still subject to shortfalls in research and analytical work and there is not enough transparency or consultation with relevant stakeholders. Frequent

staff turnover and weaknesses in analytical capacity and ability have had an impact on the quality of legislation drafted. There is need to pay more attention to the implementation and enforcement of legislation.

The privatization process has practically stalled and the institutional infrastructure to protect property rights and enforce the rule of law continues to be weak.

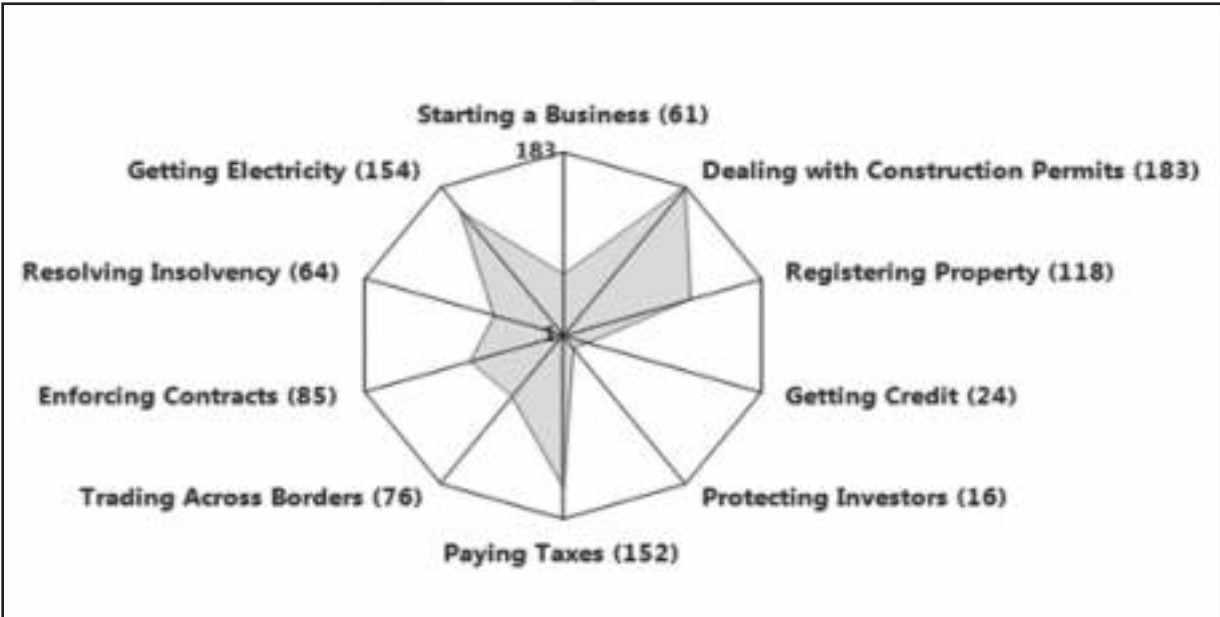
During 2011, net FDI inflows declined by 10%, reflecting the volatile global economic conditions, difficulties in neighboring economies and the repatriation of capital which coincided with the fragile political climate in the country in the beginning of the year. As a result, FDI inflows covered some 65% of the current account imbalance, down from 78% in the previous year. Net FDI increased by some 30% in the first half of 2012, partly reflecting a favorable base effect caused by depressed inward investment figures in the corresponding period of the previous year. Higher FDI was reported in the oil extraction and banking sectors, the latter linked to bank recapitalizations. The high current account deficit remains a source of exposure, especially in view of the potential adverse impact of the volatile global and regional economic situation on FDI-s.

In the 2012 global ranking of countries by the ease of doing business that the World Bank prepared, Albania is in the 82nd position, with a performance slightly below that of the previous year.

Albania ranks in the middle of the group of the Western Balkan countries and ahead of its neighbors, Italy and Greece. In terms of the ten main areas comprising the doing business indicator there is a large difference.

The country is reported to have higher ranking in Protecting Investors (16), Getting Credits (24), and Starting a Business (61) (figure .1). It has a worse position in Registering Property (154), Getting Electricity (152), Paying Taxes (152) and is the lowest in the global ranking in Dealing with Construction Permits (183/183).

Figure 1. How far has Albania come in the areas measured by *Doing Business*?



Source: WB “Doing Business” database

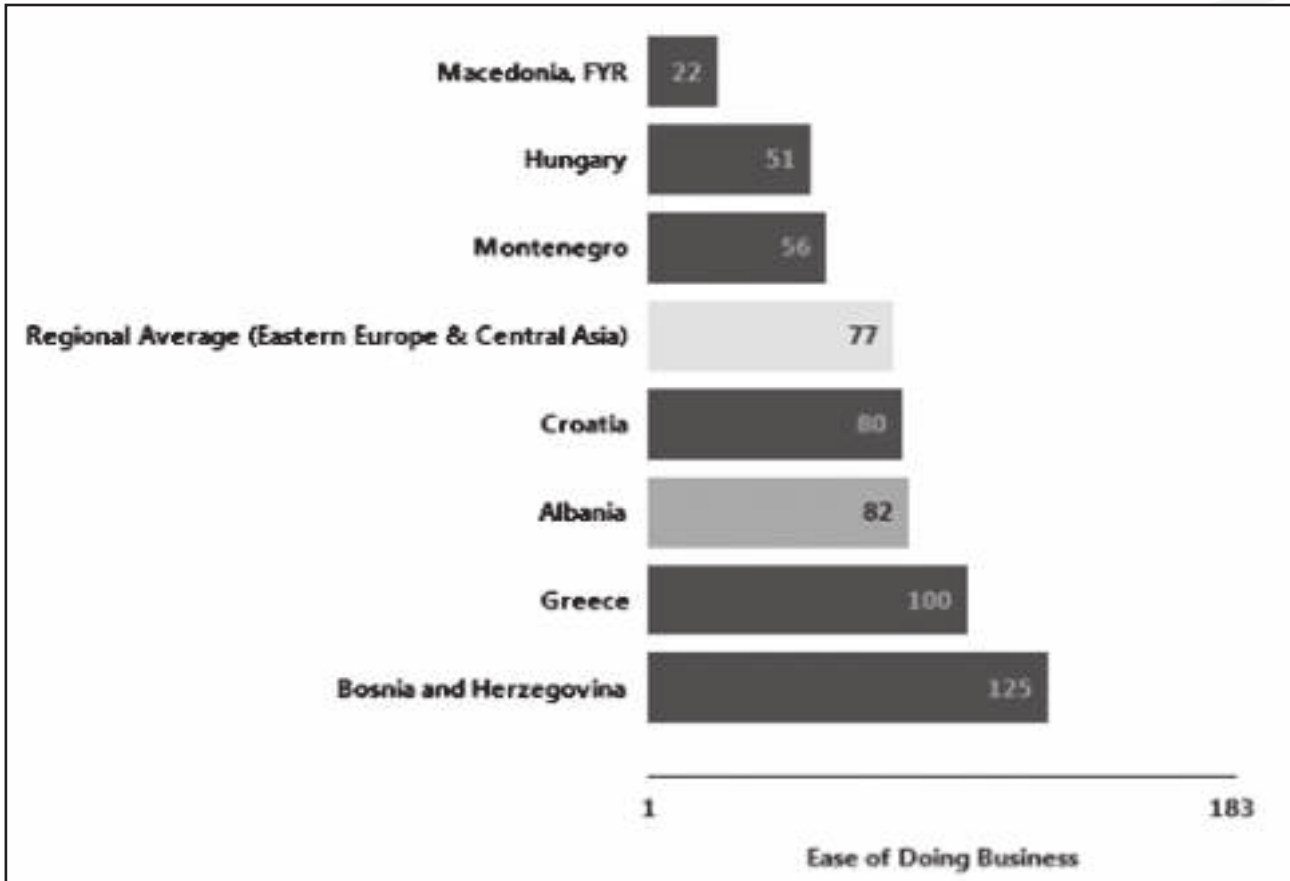


Figure 2. Ease of doing business in Albania

Source: WB “Doing Business” database
 The above figures show that:

- Albania stands at 16 in the ranking of 183 economies on the strength of investor protection index.
- Albania stands at 118 in the ranking of 183 economies on the ease of registering property.
- Albania stands at 183 in the ranking of 183 economies on the ease of dealing with construction permits (Source: WB).

Although Albania has been taken positive steps, making it easier to start business by streamlining procedures and setting up a one-stop shop, making procedures simpler or faster by introducing technology and reducing or eliminating minimum capital requirements, there are still things to be improved in the Business Registration Process.

In general, there have been some fundamental reforms, but they lack proper implementation and further reforms still need to be made in order to provide a good business environment in Albania

FIAA'S PERSPECTIVE

The mission of the Foreign Investors Association in Albania is to contribute to a better investment climate through an open dialogue with the Government and other Institutions in order to attract more investors coming to Albania.

As in all emerging economies, Albania is passing through a transition period and is working hard to meet the EU criteria so as to become part of the European Union. Despite many good laws having been adopted and implemented, there are still many other laws pending, which require a qualified majority in the Parliament for approval. The policy-making and legislative drafting processes in key ministries are still subject to shortfalls in research and analytical work and there is not enough transparency or consultation with relevant stakeholders.

According to the Doing Business Report 2012 (WB), some improvements have been noticed in the areas of investor protection, getting credit and starting a business, but there aren't any improvements in the areas of dealing with construction permits, paying taxes, contracts enforcements and property registration.

FIAA is working hard to provide a continuous flow of information to Government

Representatives and other related Institutions.

There is also a constant flow of information between FIAA and the business community in order to obtain and understand their feedback on specific concerns they have while doing business in Albania. Targeted surveys have been conducted in order to gain a better understanding of their problems, followed by specific meetings for generating recommendations and providing solutions.

Moreover, two committees have been created under the leadership of FIAA, respectively supporting the Mining, Oil & Gas and Energy industries in order to better identify the main concerns faced by these industries and bringing together all relevant stakeholders to try and find the pathway to meaningful solutions.

In support of the above initiatives various letters have been prepared raising these concerns and addressed to the highest authorities.

A recent example was the meeting with the Prime Minister of Albania which expressed FIAA members concerns and opinions of the prevailing investment climate and emphasizing the importance of the promotion of Foreign Direct Investment in Albania.

Through this communication we have focused attention on the requirement for several important laws to be approved and enforced, tax and VAT reform, and the significance of the privatization process, all of which are key factors that can influence the inward investment flow.

Various events have been organized under the leadership of FIAA aimed at promoting its members and discussing the foreign investors community issues with different Governmental representatives, international organizations in the country, as well as with others participants who contribute to the nation's business climate.

Given the fact that Albania is in a pre-election campaign process for parliamentary elections and the main political parties of the country are preparing their economic programs, we believe it will be of great value for FIAA through this White Book, to address some of the problems that have hindered the activity of the foreign businesses in Albania.

After having produced the first Edition of the FIAA White Book 2013 and distributed it to the relevant organizations, we will further strengthen our communication with the Albanian Government officials and continue our cooperation with the most important stakeholders with the sole objective of having an improved business environment.

LEGAL ISSUES TO CONSIDER WHEN INVESTING IN ALBANIA

FIAA's White Book (First Edition) addresses legal issues contained in the most relevant laws which impact the current business climate and also gives recommendations on how the laws should be improved so as to better support of future inflows of investments. The issues in this document are presented by some of our members and reflect the experience of investors and entrepreneurs doing business in Albania.

Before going into details it is appropriate here to point out that some of the problems that have hindered the activity of foreign Companies and have sometimes been caused by the following problems: the decentralized manner in which the law can be administered causing ambiguity and therefore possible misinterpretation; the refusal to recognize some laws by some of the State authorities; the incorrect application of certain laws and guidance notes which sometime exceeded the original intent of the law; attempts to administer new provisions which have not yet been passed into law. More specifically, the laws this first edition of the White Book covers are:

- Banking Regularity Framework;
- Bankruptcy Law;
- Business Registration Law;
- Concessions Law;
- Corporate Law;
- Dispute Resolution and Litigation;

- Employment Law;
- Energy Law;
- Insurance Law;
- Mining and Hydrocarbons Law;
- Residence and Work Permit Law;
- Tax Law;
- Telecommunications Law.

Each section will provide: (i) Introduction of the Selected Laws; (ii) summary of the key issues; (iii) summary of the major proposals and recommendations.



I

BANKING REGULATORY FRAMEWORK

The banking regulatory and supervisory framework has been strengthened in recent years, both with the aim to provide a safe and sound financial environment and for purposes of a rapid approach with the best standards and

Directives of the European Union (EU), in view of the country’s planned accession into the EU.

Over the last two years, some of the amendments and revisions to laws and legal acts are as follows:

LAWS	REGULATIONS OF BANK OF ALBANIA
<ul style="list-style-type: none"> • <i>Law on Banks</i> 	<ul style="list-style-type: none"> • <i>On Management of Operational Risk</i>
<ul style="list-style-type: none"> • <i>Law on Deposit Insurance</i> 	<ul style="list-style-type: none"> • <i>On Credit Risk Management</i>
<ul style="list-style-type: none"> • <i>Law on Income Tax</i> 	<ul style="list-style-type: none"> • <i>On the Minimum Required Reserve Held by Banks with Bank of Albania</i>
<ul style="list-style-type: none"> • <i>Law on Registration of Immovable Properties</i> 	<ul style="list-style-type: none"> • <i>On the capital adequacy ratio</i>
<ul style="list-style-type: none"> • <i>Law on Anti-Money Laundering</i> 	<ul style="list-style-type: none"> • <i>On liquidity risk management</i>
	<ul style="list-style-type: none"> • <i>On the core management principles of banks and branches of foreign banks and the criteria on the approval of their administrators</i>

While banks understand the international and national financial context that necessitates these regulatory actions, the resulting impact on the bank can be a barrage of requests coming from many different directions. In addition, there is evermore need for constructive consultation, as well as communication of decision making authorities with banks, for the regulatory changes of such importance to be more efficient.

Further issues to be tackled from a regulatory, as well as administrative point of view, are summarised in the following table.

SPECIFIC ISSUE	RECOMMENDATIONS
<p>Execution of collateral</p> <p>(1) Different court decisions from different courts on issues regarding execution of titles such as:</p> <ul style="list-style-type: none"> - on the method and the timetable of the calculation of accrued interests and penalties stipulated in the loan agreements; on the suspension of the execution by issuing a preliminary injunction. <p>(2) Optimize the collateral execution process.</p> <p>(3) Public and Private Bailiff Service and their payment method.</p> <p>(4) Auctions procedures for the execution of collateral.</p> <ul style="list-style-type: none"> - Setting of price in the second auction. - Number of auctions. 	<p>(1) The unification of the court practices for these issues, by:</p> <ul style="list-style-type: none"> - establishing the accrual of interest and penalties for the whole period until the total settlement of the liability; - achieving a unified interpretation of the legal mechanisms in full compliance with the spirit of the Civil Procedural Code. <p>(2) Amend Article 517 of the Civil Code the article where the debtor has the right to claim against each of the bailiff's steps and property evaluation, which will allow a smoother and less costly recovery process.</p> <p>(3) Issuing by-laws in the form of an Instruction on Bailiff Procedures to explain the actions provisioned in principle in the Civil Procedural Code in more detail, in order to make these rules clear and applicable to all the bailiffs in a unifying way, thus avoiding any individual inaccurate interpretation occurring thus far.</p> <ul style="list-style-type: none"> • Amending the respective by-Laws, in order to liberalize the bailiff fee and its payments to be done not in advance to the whole process, but according a success fee scheme, as in most countries in the region and elsewhere in Europe. <p>(4) Necessary changes to the Civil Procedures Code (Article 557 and 577), in well defining the initial price of property (movable and immovable) for the second auction, which should come down to 50% or less of the original price.</p> <ul style="list-style-type: none"> • Necessary additions to the Civil Procedural Code were to define the procedures of a third auction, where the price should start from zero.

<p>(5) Territorial jurisdiction and deadline for trials the scope of which is invalidity of executive titles or objection of bailiff actions that execute this title.</p> <p>(6) Update the Credit Risk Administration Regulation regarding provisioning.</p> <p>(7) Write off of lost loans.</p>	<p>(5) Considering that the procedural law contains provisions that stipulate specific deadlines and fast procedures for these kinds of trials, it allows for the stipulation of the organizational obligation of courts to enforce the law and finalize these cases in all the 3 court instances for a period of not more than 60 days, through issuing of by-laws or orders under the authority of the Ministry of Justice.</p> <ul style="list-style-type: none"> • Instructing the courts to transfer to Tirana all the court cases that have the banks-borrowers as litigating parties and the scope of which is invalidity of executive title and/or objection of bailiff actions. <p>(6) BoA to take into consideration real estate collaterals for loan provisioning and classification purposes, which will allow the banks to address the overcapitalization level.</p> <p>(7) Amendments to be made to the legislative framework for the recognition by the tax authorities of the write-off as tax deductible.</p>
<p>TAX ISSUES</p>	
<p>(1) Income Tax Law on Tax Deductibility of Provisioning Expenses.</p>	<p>(1) It stipulates that the provisions will be tax deductible up to IFRS calculated amounts “... but in any case, not exceeding the amounts defined by rules of Bank of Albania for this purpose.”, causing inconsistency in the tax treatment of provisioning. In certain periods as per BoA regulations the provisions may be revised downwards, and the difference be taxed as income, while it has not been recognized as a deductible expense in previous periods.</p> <ul style="list-style-type: none"> • Amendments to the Law are so that banks receive a lawful and unbiased fiscal treatment.

<p>(2) Blocking requests on customer accounts from Tax Offices and Bailiff Agencies.</p>	<p>(2) There is a need to determine a clearer Tax Procedure in harmony with the legal framework specifying the cases in which all the authorized Authorities may send blocking orders and require information from banks on such regards.</p> <p>Electronic communication between authorities and banks shall ease the situation.</p> <p>Also amendments should be made in terms of current breaches for the cases of joint accounts, when the blocking order comes for one of the account holders, etc.</p>
<p>OTHER ISSUES</p>	
<p>(1) Reactivation of the Stock Exchange Market.</p> <p>(2) Changes to the Deposit Insurance Premium.</p>	<p>(1) Reactivating the Stock Exchange Market, allowing the banks to benefit from higher efficiency in Risk, Finance, Treasury and Commercial domains, and allowing the government to benefit from a lower level of informality.</p> <p>(2) Detailed proposals have been presented to the Deposit Insurance Agency regarding:</p> <ul style="list-style-type: none"> - The decrease of the deposits insurance premium rate. - Changing the scheme towards a Risk Based Premium (thus the riskier banks shall pay higher premiums), as the experience shows in most of the countries.

Celebrating

15 years
IN ALBANIA



ALPHA BANK

Alpha Bank Albania

Alpha Bank Albania started to operate in Albania in January 1998 as a branch of Alpha Bank A.E., one of the largest banks in Greece, which was established in 1879. In addition to Greece the bank is conducting business in the South-Eastern European Countries, UK, and Cyprus. The trade name under which the Bank is operating in the Albanian market is ALPHA BANK.

In May 17th 2012, Alpha Bank Albania was transformed in a subsidiary of Alpha Bank A.E. with a share capital of more than EUR 78 million. The bank continues to be under the supervision of the Albanian Regulatory Authorities fulfilling all the rules and regulations around banking activities in Albania as well as rules and regulations regarding the regulatory capital and liquidity position.

Alpha Bank Albania has established advanced corporate governance with the Board of Directors having the overall responsibility for the bank, approving and overseeing the implementation of the bank's strategic objectives, corporate governance and corporate values. A number of committees established by the Board are supporting its activities. This helps the Board of Directors to be ultimately responsible to all stakeholders for the business, risk strategy, financial soundness, organization and governance. For instance, Alpha Bank Albania is one of the first banks in the market which have established a Risk Committee at a board level. The organizational structure of the bank ensures a smooth, sound and effective management. The Management Board of the bank is responsible for ensuring that the bank's activities are consistent with the business strategy, risk tolerance/appetite and policies approved by the Board.

Alpha Bank is one of the largest banks in the country with considerable market share in wholesale and retail business. It has been a real partner by financing many companies which are main players in the Albanian Economy. Many of the biggest infrastructure projects in Albania such as Rruga e Arbrit, the Tirana International Airport, the Telecommunication Industry etc., have been financed by Alpha Bank. Also, Alpha Bank was the first local bank arranging the biggest syndicated loan to the Albania Government.

Today, Alpha Bank delivers quality service to more than 210 thousand customers through 42 branches around the country and other alternative channels: ATMs, WEB banking, 1,100 POS terminals.

The bank is a leader in the cards business, offering credit cards under the trademarks of American Express and VISA. The bank is exclusive issuer and acquirer of American Express cards, providing a list of privileges and benefits to the cardholders that use this payment instrument all over the globe. Alpha Bank was the first bank in the local market to issue a co-branded credit card (Vodafone American Express card by Alpha Bank), providing material discounted benefits to mutual customers of Alpha Bank and Vodafone. The debit card VISA electron provides access to the customer accounts with absolutely no costs for the transactions performed in the ATM network of Alpha Bank.

A wide range of deposit and investment products are offered to the individual clients, providing tailor-made solutions for all their needs, and combining profitability through competitive interest rates and flexibility through access to funds as per preferences. Today the Bank lists around 15 different deposit products, categorized in term and non-term deposits, which cover in full the needs of the customer and reward them in accordance with the investment scheme selected.

In terms of retail lending, the Bank maintains a high ranking position for retail lending, with particular attention to housing loans. Competitive terms and conditions, such as favorable tenor and low monthly payments have made our retail lending products quite attractive in the local market, whereas the existing customers have the flexibility of combining fixed and variable interest rate periods, revision of loan terms in cases of payment difficulties and also the auxiliary service of SMS notification for the loan installment. Small business lending is the focus of the bank's business development efforts, as it provides this very important segment with the liquidity it needs for sustaining and growing, and constitutes a strong bond for other additional banking services and products.

Social Responsibility is very important for Alpha Bank and is part of its corporate culture; through a diversified sponsorship program the Bank has supported and will continue to support projects that aim the improvement of the social, economical and environmental conditions.

II

BANKRUPTCY LAW

Bankruptcy in Albania is governed and regulated by law no. 8901, dated 23.05.2002 “On bankruptcy” which entered into force in May 2002 and has been subject to two amendments respectively in 2008 and 2009. The law has been largely influenced by the German Bankruptcy Law in force at the time.

The Law is further supplemented by sub-legal acts regulating issues such as the organization and functioning of the Bankruptcy Supervising Agency, the licensing and remuneration of the Bankruptcy Administrators, etc.

It should be noted that Bankruptcy is not an isolated area of law. Indeed, Bankrupt-

cy law is interconnected with, and relies upon, other pieces of legislation such as the Civil Code, the Tax Procedures Law, and the Company Law, (and at times they conflict with each other). It should be made clear also that there is very little practice in the implementation of the Bankruptcy Law and because of this the interpretation and application of the Bankruptcy Law provisions have proven to be difficult.

The Ethic Code of the Bankruptcy Administrators and the National Standards on the Administration of the Bankruptcy Estate are currently in process of being drafted, which when enacted shall further complete the Albanian Bankruptcy legal framework.

SPECIFIC ISSUE	RECOMMENDATIONS
(1) Conflict between the provisions of Tax Procedure Law and those of Bankruptcy Law with regard to the insolvency conditions for purposes of initiation of bankruptcy proceedings.	(1) Need for amendment to the Tax Procedures Law to be aligned with the Bankruptcy Law.
(2) Conflict between the provisions of Tax Procedures Law and the provisions of Bankruptcy Law with regard to the ranking of claims.	(2) Tax Procedures Law to be amended in accordance to be aligned with the Bankruptcy Law.
(3) Bankruptcy Law contains incorrect references and cross-references of article numbers (e.g. articles making reference to other sections of the law that has no bearing or meaning with the former).	(3) Bankruptcy Law should be amended in order to address such mistakes.

PRACTICAL ASPECTS	PRACTICAL ASPECTS
<p>(1) Number of court bankruptcy cases is very limited.</p> <p>(2) There is only the first generation of bankruptcy administrators already licensed.</p>	<p>(1) Increase business awareness on bankruptcy proceedings.</p> <p>(2) Organization of continuous training and workshops for the licensed bankruptcy administrators.</p>

III

BUSINESS REGISTRATION LAW

Starting with the inauguration of the National Registration Centre on September 10, 2007, the business community, had reasons to characterize that business registration procedures are: Simpler, Cheaper, and Easier. By applying in this institution, physical persons or legal entities can register their new businesses and receive a taxpayer ID number, and simultaneously register for social and health insurance services. The establishment of this public institution as a One Stop Shop aims to encourage investitures that once this application has been approved by NRC, the new legal entity will be registered automatically at the municipality, Tax Directorate, Social Security, Health Insurance and Labour Inspectorate departments. However, in practice this does not happen as all entities are required by Law to follow up the registration at the Municipality and to submit the documents for the registration from in the beginning.

According to the Investing Across Borders Indicators, foreign and domestic investors have equal rights in a company ownership in Albania, other than in the air transportation and television broadcasting sectors. Starting a foreign LLC in Albania takes 5 procedures and 5 days, which is faster than both the regional

ECA (average of 6 procedures and 16 days) and the global average of 7.4 procedures and 31 days.

Formal registration of companies has many immediate benefits for the companies and for business owners as well as employees. Legal entities can outlive their founders. Resources are pooled as several shareholders join forces to start a company. Formally registered companies have access to services and institutions from courts to banks as well as to new markets. And their employees can benefit from protections provided by the law. An additional benefit comes with limited liability companies.

These laws limit the financial liability of company owners to their investments, so personal assets of the owners are not put at risk.

Where governments make registration easy, more entrepreneurs start businesses in the formal sector, creating more great jobs and generating more revenue for the government. The establishment and registration of legal entities is determined by Law no. 9901 dated 14.04.2008 "On traders and Commercial Companies" as amended and Law no. 9723 dated 03.05.2007 "On National Registration Centre" (NRC) as amended. Based on our legislation the following entities:

- Physical persons exercising a commercial economic activity;
 - Simple partnerships defined by the Civil Code;
 - Commercial Companies such as Limited Liability Companies and Joint Stock Companies;
 - Branches and representation offices of foreign companies;
 - Savings and Credit Companies and Unions;
 - Cooperation Companies;
 - VAT Representatives;
- are obliged by law to register and to submit their application at National Registration Centre.

SPECIFIC ISSUE	RECOMMENDATIONS
<p>(1) There is a lack of information regarding the list of documents and procedures required for the registration and de-registration of the General Partnership. Based on the law that regulate the activities of NRC these contracts must be submitted and registered at the NRC, however the law does not determine the procedures for the registration of this entity, while subjects are required to register the data as for the LLC. NRC applies the LLC criteria for registration of the General Partnership.</p>	<p>(1) The Law for the NRC needs to be amended by including specific criteria for the registration of General Partnerships based in the Civil Code and the conditions of the agreement between the parties.</p>
<p>(2) Joint venture Company's agreement is not provided by the legislation of the Republic of Albania</p>	<p>(2) Considering the worldwide use of this kind of agreement that have a good impact in the attraction of foreign investor will be of great advantage for the Republic of Albania to create the legal basis for its implementation.</p>

<p>(3) The liquidation process for legal entities is determined by law “On traders and Commercial Companies” and all the documents must be submitted and published at the NRC webpage. The information for legal entities in liquidation process and the invitation of the creditor are not updated in the online database of NRC, generating problems, in case of delay(s).</p>	<p>(3) The National Registration Centre must update constantly its online database of companies in liquidation process. This will allow the creditor to raise their claims in time.</p>
<p>(4) Foreigner investors have no information on recognition of the Apostille seal of the Republic of Albania by other states.</p>	<p>(4) NRC must publish a complete list of states that recognize Albanian Apostille seal. This list must contain the state signatory of the “Hague Convention Abolishing the Requirement for Legalization for Foreign Public Documents” (Albania joined in 2004) with the possible exclusion and the states with which Albania have bi/multi-lateral agreements on recognition of official documents.</p>
<p>(5) According to Albanian Legislation a legal entity is considered registered after the confirmation issued by the NRC, but to be operative, it needs to “resubmit” in other institutions, the registration documents/information. The NRC have to function in the One Stop Shop for sharing the documents/information with the municipality, tax directorate, Social Security, Health Insurance and labour Inspectorate departments, etc; but (however) this doesn’t happen by generating delay and administrative consequences for the companies.</p>	<p>(5) In order to make the One Stop Shop facility functional, NRC has to share the submitted documents/information with the other institutions, in the same moment they issue the confirmation of registration of the company.</p>



IV

CONCESSIONS LAW

The Concessions Law (9663/2006), as amended, establishes the legal framework for the participation of the private investors into the public sector activities through privately financed concession projects. The Concessions Law develops the general principles in the award of contracts by public authorities through the establishment of specific procedures for the award of concession projects. The activities eligible for the granting under con-

cessions include the activities in the sectors of transport, electricity, gas, water, waste management and recycling, education, health care, tourism and culture and prison sectors as well as any other sector approved by the government. Though the Concessions Law is amended several times with the aim to better clarify the procedures and increase the transparency in awarding concessions several issues need to be regulated further.

SPECIFIC ISSUE	RECOMMENDATIONS
<p>(1) <i>Step in rights.</i></p> <p>The Concessions Law currently includes only a few not elaborated provisions for the step-in rights of the financing institutions/lenders, namely (i) article 22 paragraph 1/c, providing that that in case of implementation of a step-in right by a financing institution, the bidding procedure would not be applicable for the selection of the concessionaire to be replaced and that the contracting authority may use the negotiation procedure that is subject to Council of Ministers' approval; and (ii) article 27 paragraph p) providing that a step-in rights clause may be included in the concession contract.</p> <p>The Concessions Law does not expressly regulate the right of the contracting authority to conclude a direct agreement with the</p>	<p>(1) We would recommend introducing in the Concessions Law a new article addressing the issue of the step-in rights and including without being limited to:</p> <ul style="list-style-type: none"> (i) the conditions when the financing institutions/lenders would be entitled to step in, either by substituting the defaulting concessionaire or transferring part or all of its shares; (ii) an general underline of the procedures for exercising the step in rights; (iii) the criteria of approval /rejection by the relevant contracting authorities of the new concessionaire and the relevant time limits for issuing the relevant decision.

financing institutions/lenders to enable the later to step-in to the project in case of default of the concessionaire and substitute the defaulting concessionaire with the new one, without carrying out another bidding procedure.

(2) *Relationship between the Concessionaire and the SPV.*

The Concessions Law, defines the Concessionaire as the legal entity, Albanian or foreign, with or without local or foreign participation that enters into a concession contract with the contracting authority (article 2/4 of the Concessions Law).

Article 27 of the Concessions Law provides that the concession agreement may contain inter alia the requirements relating to the establishment and minimum capital of a legal entity (SPV) to be established by the successful bidder in accordance with the effective laws, and prohibition of transfer of shares or part of the capital of this company without prior consent of the contracting authority (point 27/ç) and any restrictions or conditions related to the transfer of a controlling interest at the concessionaire (point 27/h).

Though the requirements included in article 27 are indicative and not mandatory, the standard concession contracts provide for the obligation of the concessionaire to establish within a certain period of time the SPV that will be in charge for the implementation of the concession contract and also

The description of the procedures for the exercise of the step in rights should be general in order to permit the financing institutions/ lenders to apply their respective procedures in accordance with the characteristics of each financed concession project.

Also, we would recommend introducing in the Concessions Law the definition of the direct agreement and the relevant article providing an outline of the terms and conditions that such agreement may include.

(2) We would recommend introducing additional wording in article 27, in order to provide a clearer view of the relationship between the concessionaire and the SPV and also provide for additional wording in order to better define the position of the concessionaire regarding its liabilities towards the contracting authority following the establishment of the SPV and the transfer to the SPV of the rights and obligations deriving from the concession contract

provide for the joint liability of the concessionaire and the SPV towards the contracting authority with regard to the obligations deriving from the concession agreement. Taking in consideration that upon establishment the SPV substitutes the concessionaire in all rights and obligations deriving from the concession contract, the existence of the above provisions in their current form leaves room for ambiguity and misinterpretation.

(3) Calculation of the Concession Term

Under the Concessions Law, the term of concession agreements may not be longer than 35 years (unless approved by the Parliament).

The Concession Law does not clarify if the 35 years term is calculated as off the date the agreement enters into force, or as off start of the operation phase (significant periods may run before the operations start – i.e. the pre - construction and construction phase).

In practice the authorities apply the concession term as off the effective date of the agreement, and the duration of the pre - construction and construction phase is included in the total concession term.

(3) We propose to amend article 27 of the Concession Law by inserting a clarification provision related to the start of calculation of the concession term so as to optimize the duration of the operation phase (i.e. clarify that the 35 year terms is calculated as off the start of the operation phase).



IV

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OTHER LAWS AFFECTING CONCESSIONS

In addition to the provisions of the Concessions Law (9663/2006), as amended, concessionaires need to comply with other legal provisions, which are not always coordinated with the provisions of the Concession Law and/or of the Concession Agreement, which therefore may complicate the implementation of concessions. In addition, some other legal

provisions, especially related to public immovable properties and expropriation of private properties for public interest, are in practice difficult to be applied by concessionaires. Here below is a list of certain legal provisions which we believe need immediate attention from the Government to facilitate the implementation of concessions, especially in the energy sector.

SPECIFIC ISSUE	RECOMMENDATIONS
<p>(1) <i>Scope of Concession Rights – natural resources.</i></p> <p>Under Law 8093 dated 21.03.1996 On Water Reserves (to be repealed as at the 6th of December 2013 by Law Nr. 111/2012 on integrated management of water resources), the water concession permits are granted by the respective water basin council (which is an ad hoc body responsible for the management of water resources).</p> <p>Under Law 8093 - the duration of water concession is not longer than 30 years. The duration of water permits is even shorter</p>	<p>(1) We propose to amend Law Nr. 111/2012 and the Concession Law, so as to also the Contracting Authority of the Concession (i.e. for energy sector – METE) to grant also rights to exploit the national resource (i.e. the water reserve), the duration of which must be equal to the duration of the concession agreement.</p> <p>It makes no sense for the concessionaire to obtain a separate and additional concession/permit related to water usage (with shorter validity term) by the water basin councils.</p>
<p>(2) <i>Scope of Concession Rights – public assets.</i></p> <p>Under article 4 of the Concession Law, the scope of this law is the granting of concessions for the conduct of the economical activities in certain sectors.</p> <p>In special cases, for the promotion of investments referred to in paragraph 1 of this article or for other priority sectors in economic development, in accordance with strategic objectives, the Council of Ministers may offer to domestic or foreign investors,</p>	<p>(2) We propose to coordinate amendments to the Concession Law, Law no. 8743 dated 22.02.2001 “On state public properties” and Law no. 8744 dated 22.02.2001 “On the transfer of state public properties to local government authorities”, and Law 33/2012 On registration of immovable properties” so as to allow:</p>

<p>concessions for the symbolic price of 1 euro. Council of Ministers, upon proposal of the Minister responsible for economy, approves the list of assets that will be given in concession, for the purposes of this section. Based on the above, the scope of the concession usually refers to the business, but it does not necessarily include the right to use public assets.</p> <p>In practical terms (i.e. for energy related projects) the concession does not automatically grant usage rights on public assets, which are usually envisaged to be granted under separate civil law agreements (i.e. usufruct agreements).</p> <p>Moreover, under the Civil Code the maximal term of the usufruct agreement may not be longer than 30 years, if the beneficiary is a legal entity (i.e. SPV). Moreover, under Law no. 8743 dated 22.02.2001 “On state public properties” the destination and usage of non disposable state assets (i.e. energy related assets and relevant natural resources such as river banks, etc.) requires separate approvals from the Council of Ministers.</p> <p>Finally, a specific public asset necessary for the concession (i.e. land where a construction works must be carried on) may have been transferred to local authorities under Law no. 8744 dated 22.02.2001 “On the transfer of state public properties to local government authorities”.</p> <p>Given the above legal provisions, concessionaires face substantial problems and delays in securing legal rights under the Civil Code for the usage of public assets needed for the concession.</p>	<ul style="list-style-type: none"> (i) The Contracting Authority be the exclusive public body legally entitled to grant rights related to the usage of all public assets and public land necessary for the concession; (ii) All public assets and public land necessary for the concession to be specifically identified and included in the Concession Agreement, and granted under concession rights for the same term of the concession; (iii) The Concession Agreement to be the <u>only</u> agreement that the Concessionaire needs to sign for legally securing rights related to the usage of all public assets and public land necessary for the concession; (iv) The filing of a copy of the Concession Agreement with the immovable property registry (ZRPP) be the only registration obligation under Law 33/2012 On registration of immovable properties” with respect to all public assets and public land identified in the Concession Agreement.
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<p>(3) <i>Expropriation procedures.</i></p> <p>Under the Expropriation Law Nr.7848, dated 25.07.1994, (art. 5) the documents of an expropriation file shall include:</p> <p>(omissis)</p> <p><i>c) a nominative list of private owners whose properties expropriated, the manner and extent of compensation;</i></p> <p>(omissis)</p> <p>The expropriation law procedures under the current legal framework are not consistent with the new the land registration system of Albania.</p> <p>In practice the land registry is not technically able to implement and register an expropriator decision under the current legal framework, as from the day the nominative list of private owners is prepared, until the expropriation is approved, property transfers may have happened, and therefore there is no objective certainty on who to expropriate.</p> <p>Moreover, in practice it is a usual problem that private owners having legal titles, are not always registered in IPRO as required by law, but none the less have the right to be compensated.</p> <p>As such, it is very difficult for a private investor (i.e. concessionaire) to identify who is the private owner that must be expropriated, and the amount for his/her compensation under the law.</p>	<p>(3) We propose to amend the Expropriation Law Nr.7848, dated 25.07.1994 as follows:</p> <p>(i) The expropriation is approved by the government based on cadastral maps of the project area, and not on nominative list of private owners;</p> <p>(ii) The private owners claiming title rights for expropriated land submit to the IPRO their titles and documents, within a certain timing, and IPRO finally confirms all valid and legal private titles with respect to the cadastral map of the project area;</p> <p>(iii) only the owners that have confirmed their title rights with IPRO, within the specified timing, will be entitled to receive compensation;</p> <p>(iv) An objectively clear and limitative list of documentation is detailed for private owners claiming title rights with IPRO with respect to the project area;</p> <p>(v) If the expropriation is made in the framework of a concession agreement, IPRO, together with the registration of the public ownership on expropriated properties shall automatically register also concession rights on the project area, granted under concession for the benefit of the Concessionaire.</p>
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V

CORPORATE LAW

The current Commercial Law governing business organizations in Albania (i.e. Law no. 9901 “On Entrepreneurs and Commercial Companies”) entered into force on 21.05.2008. It is modeled on commercial legislation found in Germany, Italy and Great Britain. It constitutes the main body of legislation for business organizations aiming to approximate the Albanian legislation with the legislation of other European countries and the *acquis communautaire*.

Despite the fact that it introduces a more flexible and regulated structure of entities engaged in business activities, its implementation up to date still urges the need to further improvements and developments. Here below are mirrored some aspect which *inter alia* would be recommended for further changes and improvements to bring the company law closer to European standards.

SPECIFIC ISSUE	RECOMMENDATIONS
<p>(1) Article 68, paragraph 2. Following such provision “...each of the shareholders enjoys its share proportionally to the contribution in the share capital. The share capital is divided into shares between the shareholders according to such proportion...” The mentioned article is construed on the basis that each of the shareholders to a limited liability company owns a single share proportionally to its contribution. Article 88 first paragraph raises some confusion on such regard, as it states that “...unless otherwise provided in the bylaws each of the shares give right to one vote...” This leads to a misinterpretation of provisions of law, meaning that each shareholder can own more than one share in the limited liability company.</p>	<p>(1) We suggest amending article 88 by bringing into line with the provision of article 68.</p>
<p>(2) Article 95 paragraph 2; Article 156, paragraph 2; Article 158, paragraph 2; Article 167, paragraph 3. In such provisions are set out restrictions to the appointment of administrators,</p>	<p>(2) We suggest to explicitly stating in the law if such restrictions apply to companies regardless of their place of registration.</p>

members of the council of administration and members of the supervisory council. The restriction contained in letter (a) of article 156 paragraph 2 expressly refers to companies registered in the Republic of Albania, whilst restrictions under letter (b) and (c) of the mentioned article as well as those indicated under article 95 paragraph 2, paragraph 2 of article 158 and paragraph 3 of article 167 do not provide for such reference. This might lead to the conclusion that such restrictions apply to companies or group of companies worldwide (regardless the place of registration).

(3) Article 118, paragraph 2 and article 119, paragraph 5. According to article 118, paragraph 2 “in case private or public offering, the issuing of stocks should follow the procedures set out in the law on securities”. According to article 119, paragraph 5 provisions of the Corporate Law on the share ledger kept by the joint stock companies do not exclude obligation of the latter to register the stocks in accordance with the provisions of the law on securities. In our opinion application of the procedure for the issuance and registration of securities as per the provisions of law no. 9879, dated 21.02.2008 “On Securities” also in case of private offering turns to be an administrative/economic cost for the companies and results in a prolonged procedure of issuance and registration of stocks, regardless of their number or purpose (private or public offering). To be noted that Law on Securities regulates transactions of dematerialized securities, whilst the stocks issued as per provisions of the Corporate Law are classified as materialized (this is confirmed also by article 150 of the Law on Securities).

(3) We suggest application of provisions of Law on Securities to joint stock companies with public offering and non applicability of such provisions to the ones with private offering.

VI

DISPUTE RESOLUTION AND LITIGATION

The Albanian legal system is based on codified principles specified in the law no.8116, dated 29.03.1996 on “Civil Procedures Code of the Republic of Albania” which determines

obligatory, identical and equal rules for the trial of civil disputes and other disputes provided in this Code and in specific laws

SPECIFIC ISSUE	RECOMMENDATIONS
<p>(1) Lack of legal provisions regarding suspension of the court proceedings when the jurisdiction of the Albanian court is appealed with the Supreme Court, by one of the litigant parties alleging jurisdiction of a foreign court or arbitration.</p>	<p>(1) The Law needs to define that the appeal with the Supreme Court against the jurisdiction of the Albanian court, by one of the litigant parties, suspends the examination of the case until the Supreme Court decides on the jurisdiction issue.</p> <p>Such provision would avoid any situations in which the Albanian court proceeds with adjudication of the merits of the case, whereas simultaneously the Supreme Court may not rule in favor of the Albanian court jurisdiction.</p> <p>An analogous adjustment is defined under article 60 of the Civil Procedure Code providing that “When a public institution alleges administrative jurisdiction of the case, upon request of the later such conflict is addressed for resolution to the Supreme Court whereas the initiated judgment is suspended until the decision regarding the jurisdiction by the Supreme Court is made”.</p>
<p>(2) Settlement Agreements entered into between the Albanian Government and a Foreign Company, when approved by Council of Ministers’ decision and eventually approved by and fully incorporated in an Arbitration Decision, which was subsequently recognized by the Court of Appeal in Albania, , become binding on the Albanian institutions</p>	<p>(2) The penalties that are approved by Arbitration Decision do not need an additional Arbitration Decision, because the Albanian Government, by approving the Settlement Agreement has directly approved the penalties to be enforced immediately if the conditions provided in the Settlement Agreement are met.</p>

and other entities, and immediately enforceable through decision of the District Court. In one of the above cases, FIAA Member applied to the Bailiff's Office which delivered a notification to the Albanian Government for voluntary execution of the Penalty as provided for in the relevant Settlement Agreement. The Albanian Government did not comply with this notification before expiration of the term of 10 days, nor did it oppose it within 5 days, but brought a lawsuit in the Tirana District Court against the mandatory enforcement of the penalty as well as seeking the suspension of execution of the Penalty. Finally the Tirana Court issued a decision whereby it upheld the lawsuit and suspended the enforcement of the Penalty.

VII

EMPLOYMENT LAW

Employment in Albania is primarily governed and regulated by the 1995 Labor Code (having been amended twice under Law No. 8085 of 13 March 1996 and Law No. 9125 of 29 July 2003), which is based on the Albanian Constitution, drafted in accordance with all international conventions ratified by Albania and is generally in line with current EU standards.

Employment matters by the following hierarchy of legal acts:

1. Constitution of the Republic of Albania;
2. International conventions ratified by the Republic of Albania;
3. Labor Code and its sub-legal acts;
4. Collective contract of employment;
5. Individual contract of employment;
6. Internal regulations of the employer;
7. Local and occupational customs.

The Labor Code provides for the contractual regulation of the employment relationships between the employer and the employee by means of an individual or a collective

labor agreement. The Labor Code has proven secure and satisfactory piece of legislation over the years and forms a good foundation for the regulation of employment relations, especially as the market has developed.

However, the Labor Code can be difficult to interpret definitively on certain matters in particular calculation and forms on compensation for unfair dismissal, and as such the courts have developed considerable discretion in this respect.

Recently an initiative has been undertaken to amend some 90 articles of the existing Labor Code, but this is still in draft form and not yet approved by the Albanian Parliament.

SPECIFIC ISSUE	RECOMMENDATIONS
<p>(1) Whilst the Albanian Labor Code does provide for a list of reasons that are defined to be ‘without cause’ for purposes of dismissal of an employee which are beneficial for employers, these reasons are broadly and often unclearly interpreted. Such broad interpretation has been taken by the courts in the use of their discretion which has tended to favor the employee in many cases.</p>	<p>(1) Albanian Labor Code to clarify those stated ‘without cause’ reasons, and/or courts to offer a much more objective and reasoned interpretation of the stated reasons with regard to causes for termination of employment to avoid unjust compensation of employees.</p>
<p>(2) Law no. 10237 dated 18.2.2010 “On Health and Safety in Work Premises” have vague provisions for some obligations (e.g. the requirements of a company doctor) for the employers which need to be clarified in corresponding secondary legislation.</p>	<p>(2) Secondary legislation to be approved in order for the companies to have clear understanding of their obligations and ensure legal certainty for investors.</p>
<p>(3) Existing penalties for failure to declare employee(s) are considered to be disproportionately high.</p>	<p>(3) Penalties to be adjusted to be more proportionate to non-compliance.</p>
<p><i>Practical aspects</i></p>	<p><i>Practical aspects</i></p>
<p>(4) Starting from January 2013 the declaration of employees must be done online. Some specific entities that do not have the obligation to hire any employee (such as SCU) cannot reflect this on the online declaration, and under the changes these entities could be subject to the corresponding penalties.</p>	<p>(4) The online system available for the declaration of employees must be adjusted accordingly.</p>

VIII

ENERGY LAW

Albania has been a potential candidate for accession to the European Union since January 2003 and it formally applied for EU membership on April 28, 2009 and is in the process of harmonising its legal framework with that of the EU.

The institutional and regulatory framework for energy and in general the energy market in Albania reflects policy progress achieved over the last decade. In the context of the energy market, Albania is party to, *inter alia*, the Athens Memorandum, Kyoto Protocol, and the European Community Treaty and strives to comply with the targets set therein to create a unified and sophisticated market foreign investors can rely upon.

The market has undergone liberalisation and indeed the recent re-structuring of the State-owned electricity enterprise has enhanced its technical, economic and corporate performance and allowed a partial opening of the market.

The energy sector in Albania is currently regulated by the Power Sector Law (law no. 9072, dated 22.5.2003, as amended from time

to time) which is largely in line with the Energy Community Treaty though does still present a number of obstacles for full market liberalisation. A new national energy strategy is being prepared and accordingly a new package of laws is to be enacted, namely three new laws:

1. An Energy Sector Law, which will abrogate the existing law and will fully adopt the EU legislation on energy; and
2. An Energy Efficiency Law, which will abrogate the existing energy efficiency law and will fully adopt the EU legislation on energy efficiency; and
3. A Renewable Energy Sources Law, which will fully adopt the EU legislation on renewable sources.

SPECIFIC ISSUE	RECOMMENDATIONS
<p data-bbox="256 577 472 607"><i>Energy Sector Law</i></p> <p data-bbox="209 651 788 871">(1) Lack of progress with the full market liberalisation, there is currently a lack of compliance with the Energy Treaty - in particular the generation and wholesale supply operations of the state-owned company KESH have not yet been unbundled.</p> <p data-bbox="209 902 788 1308">(2) The National Energy Strategy provides limited support for sustainable energy in the form of promotion of minimal environmental impact energy sources but there is no direct regulatory framework, nor policy, for renewable energy. There is currently an obligation on producers and importers to use renewable resources or inject energy produced by renewable into the national power system in a quantity of around 2% of the total production.</p> <p data-bbox="161 1319 788 1538">Without the renewable energy legal framework offering appropriate investment incentives there remains a lack of diversification of the use of alternative energy sources aside from just hydro power (wind, biomass, solar etc) and the country shall fail to draw in foreign investment for such projects.</p> <p data-bbox="209 1713 788 1971">(3) Inadequate court enforcement, investors left unable to reasonably rely on courts to offer a solution to breach of contracts; specifically in this sector power producers are unable to secure payments from the state off-taker under the very Power Purchase Agreement the state offers as an incentive.</p>	<p data-bbox="901 577 1117 607"><i>Energy Sector Law</i></p> <p data-bbox="853 651 1433 797">(1) Progress should be made with the enactment of the newly amended Power Sector Law that shall underpin and regulate the new strategies.</p> <p data-bbox="853 902 1433 1688">(2) Enactment of the draft Law on Renewable Energy Law currently before Parliament and originally drafted with the assistance of international advisors, should be a matter of priority. The final draft for enactment should be subject to further comment and review by the relevant stakeholders, including the private investors in this sector. There should be a concerted and realistic effort to anticipating the implementation of this law and hence all required secondary legislation to be enacted also within the requisite times set out in the law. This is particularly important in the context of the quotas for priority access and mandatory power off-take agreements for projects creating energy from the various energy sources. Further the draft should maintain the distinction for access to the grid between Priority Producers (i.e. those given PPAs with feed-in tariffs) and Producers without Priority.</p> <p data-bbox="853 1713 1433 2007">(3) This should be addressed within the general reform of the court system. In reference to the PPAs offered by KESH based on the template approved by ERE, this template should be better improved to offer more favourable more secure contractual remedies for power producers. IFC and its advisors have prepared an improved and more detailed PPA</p>

<p>(4) There is an inadequate “take or pay” clause in Power Purchase Agreement currently in force as approved by ERE.</p> <p>(5) There is a lack of a standard connection agreement between Distribution System Operator and/or Transmission System Operator and the producers of energy in a format approved by ERE.</p> <p>(6) There is a lack of a minimum timeframe obliging KESH (as the current wholesale public provider) to conclude the Power Purchase Agreement with the producers of energy which may cause substantial delays and increase the cost of energy concession projects (there is a lack legal and contractual certainty that lenders would wish to see).</p>	<p>template (covering both the off-takers and the producers rights and obligations) for ERE’s consideration and approval, to which further consideration should be given.</p> <p>(4) Improvement of the current approved PPA to also include a more detailed and favourable “take or pay” clause, or other mechanism, which would improve the bankability of HPPs projects and secures the investment of Renewable Energy producers. The current provision for compensation should be extended to cover cases where for e.g. when WPS is willing to purchase and accept but the DSO grid fails to distribute perhaps due to closure for maintenance.</p> <p>(5) ERE should consider the approval of the draft template Grid Connection Agreement that was prepared by the IFC and its consultants (which was also reviewed through a thorough public consultation process with interested stakeholders) on behalf of METE. This provides greater legal certainty for both the producers wishing to be connected and the grid operators and lays out the proper allocation of risks and liabilities between the parties. The existence of this legal certainty would also be favourable to lenders.</p> <p>(6) This should be addressed in the new Renewable Energy Law.</p>
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(7) The recent changes approved by ERE through its no. 93 decision, dated 16.07.2012 “On some amendments to the Rules of the Albanian Electricity Market”, have caused imbalance-related costs to quadruple.

Under these conditions, the above decision regarding the determination of imbalances constitutes a disproportionate measure, especially in a system which is based by 99% on Hydropower and which provides more flexibility in managing imbalances.

(8) In addition, the current mechanism for measuring imbalances, which was set in order to prevent further abuses, allegedly made by operators through the market mechanism implemented during the first 6 months of 2012, comes at a time when there is still no practice which would provide the identification of (i) true abusers, (ii) the real imbalances caused by each consumer, (iii) the total cost to KESH regarding imbalances and (iv) the real contribution of each customer towards the total cost of the KESH imbalances, thus penalizing customers in an unjustified and unfair manner.

(7) The imbalance calculation formula at the end of the 6-month period of its implementation, should be revised by taking seriously into account the possibility of restoring the formula applied during the first 6 months of 2012 at least until a practice which would provide the identification of (i) true abusers, (ii) the real imbalances caused by each consumer, (iii) the total cost to KESH regarding imbalances and (iv) the real contribution of each customer towards the total cost of the KESH imbalances, is well established and properly implemented.

IX

INSURANCE LAW

SPECIFIC ISSUE	RECOMMENDATIONS
<p>(1) The initiative for several changes in the Law no. 10076, dt. 12/02/2009 “For the compulsory insurance in transportation field”.</p> <p>(2) Changes and improvements in the law for compulsory MTPL insurance Lack of support for bankability of mining project financing, specifically no legal framework for the placing of registered liens over the permit itself in favour of third parties. Lack of legal certainty on change of control requirements in the legislation. Clear rules on transfer of licence exist but nothing on change of control of the licence holder’s shares.</p>	<p>(1) This refers to changes in the law on compulsory insurances in the transportation sector mainly regarding the procedures and methodology used in evaluating material and non-material damages resulting from compulsory insurance in the transport sector.</p> <p>(2) With the aim to adapt and further develop the market and eliminate negative phenomenon present in the legislation, the Insurers Association of Albania initiated changes of the law for compulsory insurance for holders of motor vehicles regarding their liability toward third parties. The project, drafted from experts of the Insurers Association of Albania, was delivered to both FSA and Ministry of Finance and aimed approaching the insurance legislation to EU regulations and it included a proposal that would generate the biggest revolution in these 15 years of obligatory insurance market and in the same time would eliminate a majority of problems (direct indemnification). The bill entitled ‘On the compulsory insurance of motor vehicles for third-party liability’ was proposed with the aim to improve and adapt the insurance market to ongoing developments. Besides, drafting a new law framework is a necessity for a better internal coordination with other laws such as Road Code and specific additional laws in the insurance segment. Obviously this project needed to be reviewed by FSA who didn’t analyze at all the bill.</p>
<p>(3) Initiative for several changes of the Civil Code of the Republic of Albania</p>	<p>(3) The insurance contract is subject to provisions stated in the Civil Code of the Republic of Albania: article nr.115 of the Civil Code- Pinpointing of the cause based on article</p>

<p>(4) Reform of the private pension scheme</p>	<p>nr. 115/ç of Civil Code, article 1113 of Civil Code and following-the insurance contract. We think that at the end of article nr. 1113 an additional paragraph should be involved regarding co-insurance and every insurer's liability. Article nr. 608 of Civil Code- claim indemnification-regarding the compensation of the claim due to the liability insurance, especially the liability of the driver.</p> <p>(4) The liberalization of social insurances that means removing the state monopoly on social insurances (including health insurances as well) would lead to the further development of life insurance and private pensions. This would be in favor of individuals and state and is one of the most important state reforms. Is important to determine the pension system in the Republic of Albania by gradually establishing the private pension's compulsory scheme (as a second column) so that the state scheme shall be combined with the private one.</p>
<p>(5) VAT reduction for insurances:</p> <ul style="list-style-type: none"> • Removing VAT for private health insurance • To juridical subjects in Albania that have accident, life and health insurance, expenses for these insurances should be considered and accountable expenses 	<p>(5) Banks in Albania are excluded from the VAT, in Macedonia insurances are also excluded from VAT.</p> <p>Insurances are financial services and as such should be excluded from VAT and this facilitation should be stated in the tax legislation.</p> <ul style="list-style-type: none"> • Removing VAT that is added to the premium is a necessity especially for private health insurance because that would make possible a lower premium and the insured would benefit medical service within and outside the country. • The VAT reduction on the health insurance would also increase this insurance portfolio and would facilitate the state regarding compulsory health insurances that hasn't been functioning properly and would also make possible offering a better health care for Albanian citizens.

<p>(6) Compulsory insurance from natural disasters and earthquakes.</p> <p>Implementation of article 45/3/c of law nr.10076 dt. 12.02.2009 on the receipts of penalties of uninsured drivers in favor of Albanian Insurance Bureau</p>	<p>Including private health insurance, accident insurance, and life insurance as write-off expenses from tax institutions for juridical subjects that get these insurances for their employees; would impact the further development of these products leading to an increase of interest from subjects and also an additional facilitation for the state regarding the obligatory state scheme.</p> <p>(6) This refers to a bill related to Compulsory Insurances in case of Natural Disasters in Albania that is focused especially on insuring houses, private and public buildings from earthquakes.</p> <p>The main objective of the law is to effectively and timely finance the majority of losses (damages of insured assets) caused from earthquakes etc that would further lead to (a) alleviation of the financial impact to house owners and (b) reduction of the government fiscal exposure toward earthquake risks (evaluated to occupy 74% of the annual budget in case of a big earthquake in one of the most populated area).</p>
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X

MINING AND HYDROCARBONS LAW

Mining Law: The licensing process for the mining rights in Albania initiated in 1994, upon approval of the Albanian Mining Law (no. 7796 dated 17.2.1994). This law has been subject to several amendments up until 2010, when it was abrogated by the Mining Sector Law no. 10304. Pursuant to the implementation and harmonisation of the Albanian legislation with the acquis, the Mining Sector Law reflected the provisions of EU Directive (2006/21 dated 16 March 2006 ‘On Management of Waste from Extractive Industries). Mining planning, financial guarantees to realize the investments and the rehabilitation of the mining zones, the management of waste and the digitalization of mining data were listed as some of the new features of the mining law.

Hydrocarbon Law: The Law on Hydrocarbon of 1994 (amended as of 2008) governs and regulates the hydrocarbon extraction industry. This law together with the Council of Ministers Decision “On the fiscal system in the petroleum sector” as amended, forms the legal framework for the exploration, development and exploitation of petroleum in Albania. Any investor wishing to conduct petroleum operations should firstly obtain either a Prospecting Permit or enter into a Production Sharing

Agreement (PSA) with terms and conditions that will be negotiated with the Agency of Natural Resources of the Republic of Albania (representing the Ministry of Economy, Trade and Energy). In the latter case there is no separate licence per se, since all is regulated and encompassed in the PSA.

In 2008, a new gas law was adopted that created conditions for investment in the gas sector and anticipates a liberalised gas sector. Specifically, the law requires that any undertaking licensed in the natural gas sector carrying out more than one of the activities related to production, transmission, distribution, supply, and operation of liquefied natural gas (LNG) facilities and storage facilities shall keep separate accounts for each activity and prepare consolidated balance sheets in accordance with required accounting practices. All relevant codes and most secondary legislation in the gas sector have yet to be adopted.

SPECIFIC ISSUE	RECOMMENDATIONS
<p><i>Mining Law</i></p> <ul style="list-style-type: none"> (1) Frequent changes on royalty rates and methodology and often without proper in-depth consultation with the mining industry representatives. This creates economic uncertainty for long term investments. (2) Overlapping of mining permits has proven to be a problem. (3) Lack of support for bankability of mining project financing, specifically no legal framework for the placing of registered liens over the permit itself in favour of third parties. (4) Lack of legal certainty on change of control requirements in the legislation. Clear rules on transfer of licence exist but nothing on change of control of the licence holder's shares. (5) Decision of Council of Ministers (DCM) defines a minimum expenditure commitment of 300,000 Euro/km² by the permit holder on the third and fourth years of exploration. (6) The DCM on prospecting-exploration bank guarantee defines a sum of 75 % of the total yearly investment. (7)) The report on company's exploration-exploitation activity to AKBN should be filed every three months. 	<p><i>Mining Law</i></p> <ul style="list-style-type: none"> (1) Better consultation with the mining industry representatives prior to future changes; and consider current requests for changes (including increasing prospecting-exploration period back to original term of 6 years). (2) Mining geological and land data should be better regulated to avoid and resolve such issues, Overlapping of mining permits should not occur and when occurring should be resolved fairly and quickly. (3) Consideration should be given to the introduction of the registration of third party liens over mining permits to enable lender to secure real rights over the permits. (4) Introduction of regulations or amendment of existing regulation to specify when change of control can occur and what consent requirements are, if any, by the relevant state authorities. (5) We propose this sum to be more realistic, to 20,000 Euro/km², or double of the one required in the first two years of prospecting-exploration. (6) We propose for this purpose a sum of 20 % of the total yearly investment. (7) We propose this report to be filed every six months.

XI

RESIDENCE AND WORK PERMIT LAW

Albania is relatively easy to enter and to get informed about all the documents and procedures for obtaining residence permit. Some countries whose citizens are holders of ordinary passports can enter in Albania without a visa. They have to present their valid passports at a border checkpoint and are granted a stay permit of 90 days. Foreign citizens must have the necessary currency to sustain themselves during their stay in the Republic of Albania. Based on bilateral agreements, Albanian citizens who hold diplomatic or service passports can travel to some countries without an entry visa with a stay permit up to 90 days and they do not have to pay a fee at the border.

Residence and work permits are regulated according to the law "On Foreigners" No. 9959, dated 17 July 2008 and the respective sub legal acts. This law regulated the regime of entering into and exit of foreigners from the Republic of Albania as well as their residence, work and treatment in the country. The law determines the functions and competencies of the state authorities and other subjects, public and private, Albanian and foreigners, related to foreigners.

Foreign citizens who enter Albania without a visa are permitted to remain in Al-

bania only for 30 days for one entry, and are obliged to pay an entry tax of EUR 10. They can stay in Albania up to 90 days in a period of 180 days. Persons working in or travelling frequently to Albania are advised to obtain a residence permit in order to avoid the entry fee. Persons who are not Albanian citizens and wish to work in Albania for more than three months need a work permit issued by the Ministry of Labour, Social Affairs and Equal Opportunities.

The request for the work permit should be completed before starting any work and all required applications, which can be obtained from the Migration Office, Albanian embassies in one's country of origin or at regional labour offices, must be filled out. Generally, the granting or refusal of a work permit takes no longer than 30 days after submitting the appropriate documentation.

A work permit can be granted with or without time restrictions. The validity period of the work permit is based on the type of work permit. The work permit will expire if the deadline is exceeded, if the foreigner leaves Albania for a period longer than six months or does not start the activity for a period of three months from the date the work permit is issued.

There has been no progress in access to the labour market for Albania. Amendments to the Law on Foreigners, aiming to grant EU citizens access to the Albanian labour market without any obligation to hold a work permit, are awaiting adoption.

Some progress was made in the preparations for participation in the EURES (European Employment Services) network. The National Employment Service has launched a programme to computerize all employment of-

fices, including the creation of job-seekers and employers databases, with the aim of making the system compatible with the EURES network standards.

There has been little progress as regards coordination of social security systems. A bilateral agreement on social security with Belgium has been signed. Negotiations with Hungary and the Former Yugoslav Republic of Macedonia have continued and negotiations with the Czech Republic and Romania have started.

SPECIFIC ISSUE	RECOMMENDATIONS
<p>(1) In order to apply for “transfer within the company” work permit as part of the documentation requires is the tax certificate issued from the Tax office providing that the Albanian company does not hold any tax obligations.</p>	<p>(1) Given the existence of an integrated system between the Labour office and the tax administration, the requirement to submit a certificate showing that the Albanian company has no unpaid tax liabilities, will create only administrative procedures that will prolong the issuance of the work permit.</p>
<p>(2) Physical presence of the seeker/s is required in the moment of the submission of the documents when applying for a residence permit. The state authority does not recognize the specific Power of Attorney.</p>	<p>(2) The state authorities should accept the submission of the permit documentation from another person other than the seeker, in case the application is supported by a specific Power of Attorney.</p>
<p>(3) According to the “Law on Foreigners” of the Republic of Albania a foreigner can not apply for work permit without submitting a signed labour contract with its employer.</p>	<p>(3) The application of the foreigner should not require the submission of the foreign labour contract; instead it might require the submission of the secondment agreement between the employer and the foreigner or an authorisation issued from the foreign employer proving the work relationship between them.</p>

XII

TAX LAW

Albania is in a rapid state of development and this entails changes after changes of its legislation, especially fiscal legislation. On one hand, such changes are more than welcome when they respond to the needs of both taxpayers and the state as well as to the reality of growing businesses. But on the other hand, such changes affect the juridical and legal stability of a system, which is needless to say, risky.

Tax administration understanding of its role is different from the one the Administrative Procedures Code or special laws have designed for it. During the recent years, it seems

that its role is to penalize taxpayers by making arbitrary interpretations, having discriminatory positions and change their approaches or issue directives beyond their legal competencies, entailing insecurity among businesses. While, tax administration as any administration is not built only to penalize (which is the righteous thing to do if the law is breached) but to guide, understand and protect the rights of the taxpayers.

Below are some of the main issues having a material impact to the businesses and recommendations for finding a solution.

SPECIFIC ISSUE	RECOMMENDATIONS
<p>(1) The tax authorities have failed to refund in time the VAT amount to the taxpayers. Many entities that are under the investment phases or those that perform export of goods have accumulated significant amounts of VAT that is due for reimbursement but the tax authorities have not been able to perform such refund.</p> <p>The risk related to the reimbursement of VAT is considered a major challenge for any project.</p> <p>Delay or partial VAT refund from Albanian tax authorities, represents a significant cash flow implication for the investors.</p>	<p>(1) The situation regarding the VAT credit amount might be improved if the taxpayers are recognized with the possibility to set off the VAT credit towards the tax authorities with the VAT payable on import of goods. Actually such compensation scheme is granted only for those entities that have a VAT credit position towards the tax authorities and have obligation to pay VAT to the customs authorities in application of the VAT deferral scheme for import of machineries and equipment for investment purposes. We would recommend allowing the companies to use the VAT credit towards tax authorities to set off the VAT payable to customs authorities on import of any kind of goods.</p>

(2) Under the Tax Procedures Law (articles 75 and 76), the reimbursement should take place within 30 days after submission of the request for reimbursement. This means that both the tax audit for verification of the VAT to be reimbursed and the refund of the amount should take place within 30 days. This deadline is never met by the tax authorities.

Furthermore, under the Tax Procedures Law, if the taxpayer has no outstanding tax obligations and the tax authorities have not reimbursed in cash the amount requested, when the conditions for reimbursement have been met, the taxpayer is entitled not to pay the other tax obligations due, up to the amount of the VAT credit (object of the request for reimbursement).

Although the law provisions are clear as regards the 30 days term for reimbursement, and therefore if no refund has taken place within the said period, the taxpayer may omit to pay other taxes that are due, the Instruction of the Minister of Finance made a different interpretation by stating that only when there is an approval from tax authorities on the VAT to be reimbursed, the taxpayer may stop payment of other taxes. By using this interpretation, the tax authorities delay the conduct of a tax audit on VAT reimbursement and therefore prohibit the taxpayer to use its right for not payment other taxes due. As a consequence, the right of the taxpayer not to pay other taxes when a reimbursement of VAT is due does not benefit to the taxpayer and remains only in paper.

(3) The customs authorities have recently changed their practice by claiming payment of the carbon and circulation taxes to petroleum entities while importing oil byproducts that are used for their own needs.

(2) The Instruction of the Minister of Finance on Tax Procedures to be amended by stating explicitly that if within 30 days upon submission of request for reimbursement, the tax authorities have not performed the reimbursement the taxpayer may stop paying other taxes. Otherwise, the taxpayer will be eligible to payment of interest from the tax authorities.

It is obvious that if tax authorities would conduct an audit within the 30 days period and issue a tax assessment, this would be subject to appeal procedures and only the approved VAT credit shall be reimbursed.

(3) The law on national taxes (law no. 9975/2008) should contain a specific provision clearly indicating that carbon tax is applicable whenever the oil byproducts are combusted/burned.

Carbon and circulation taxes are environment - pollution taxes, levied on the carbon content of fuel released as carbon dioxide when it is burnt. Oil byproducts that are not burned do not pollute the environment – therefore, there is no *raison d'être* of the carbon tax in case the oil byproducts imported by petroleum entities are used for technological purposes (ie. without any burning process of such byproducts).

The foreign experiences in other countries show that the companies get the exemption certificate or rebates for the carbon tax paid when fuel or diesel is not combusted (burnt). As such, it results from the nature of the carbon tax that it should not be paid for oil not combusted.

The same remains true for the circulation tax, which is applied to oil burnt from vehicles.

- (4) Under Income Tax Law, shall be considered as non deductible expenses for profit tax purposes, “expenses for technical, management and consultancy services rend from third parties, which are not paid within the same year” (article 21/ll of the Income Tax Law). On the other hand, and opposite to other legislations (such as Kosovo Income Tax Law), the said law does not state whether the said expense shall be deductible later on in the year the expense is paid.

Instruction of Minister of Finance on Income Tax makes a rational interpretation of the above law provision since it states that the expense shall be deductible if (i) either the invoice or (ii) the withholding tax due on the above services rendered from non residents, is paid within the year.

Nevertheless, tax administration has recently refused to apply the above said pro -

In addition, use of oil from entities in their technological process (not burnt from vehicles) should not subject to the circulation tax, but this should be clearly stated in the law 9975 to avoid misuse by tax authorities of the legal provisions.

- (4) Income Tax Law should be amended, by either indicating that the expense shall become tax deductible in the year it will be paid or that the payment of withholding tax within the calendar year is sufficient to recognize the expense.

vision of the Instruction of Minister of Finance on the grounds that the Minister has overcome its competencies and the said provision is in breach of the law. By doing so, tax administration penalizes the taxpayers, who have fully complied with the instruction of the Minister of Finance.

- (5) Under a recent amendment upon law no. 20/2012 of the Income Tax law (art. 13.6), the foreign tax credit for personal income tax is recognized only in cases when a tax treaty exists. Such new provision is contradictory with another article of the same law (art. 37) that recognizes the foreign tax credit for both personal income tax or profit tax either unilaterally or under a tax treaty.

It also provides for a discriminatory position between income generated from individuals towards legal entities. The recognition of the foreign tax credit is one of the most important principles of OECD.

- (6) Instruction of Minister of Finance no. 26, dated 16.04.2009 "On collection of social and health contribution" requires all the entities registered with the tax authorities to have at least one employee even if they conduct no business activity.

In practice, tax authorities require that social charges are paid for all legal representatives of the entities registered in Albania.

In many cases the legal representatives do not work in Albania and it can happen that he/she do not perceive any remuneration related to the appointment as legal representative (when acting as legal representative of a sole shareholder or parent company for branches); therefore, in these cases, they should not be subject of payment of salary-related obligations. Furthermore, they are

- (5) Article 13.6 of the Income Tax Law should be abrogated.

- (6) Instruction of Minister of Finance to be amended for including cases when the social charges are not applicable.

usually insured in their country of origin and do not benefit from payment of social charges in Albania.

(7) *Appointment of tax representative for VAT purposes.*

According to article 15 of the VAT Law and the Instruction no. 25, dated 08.11.2011 “On VAT”, for services related to immovable property in Albania, irrespective of the annual turnover (i.e. whether the VAT threshold is met or not), the foreign entity is liable for VAT in Albania and must be registered through appointment of a tax representative or establishment of a branch depending whether the services give rise to a permanent establishment (PE) of the foreign supplier.

The Instruction of Minister of Finance “On VAT” (Instruction no. 17, dated 13.05.2009), provides for examples of services related to immovable property as follows:

- designing, construction, reconstruction and maintenance of immovable property,
- supervision,
- expertise,
- renting,
- services from real estate agencies,
- etc.

The tax authorities have taken a very restrictive approach in regard to determination of services related to immovable property. According to them, any service rendered to an entity which scope of activity relates to an immovable property is considered as “related to immovable property” and therefore the service provider becomes subject to VAT in Albania.

(7) We would suggest that in the VAT instruction is clearly determined an exhaustive/closed list of services which fall under the category of services related with immovable property.

In addition, the VAT Instruction should be amended in order that the obligation for appointment of a VAT representative applies only if the value of the services exceeds the VAT registration threshold.

In addition, according to the Instruction no. 25, dated 08.11.2011 issued by the Ministry of Finance which amended Instruction no. 17, dated 13.05.2008, "On Value Added Tax", it is requested that the obligation for appointment of a tax representative remains even if the value of the supply does not exceed the minimum limit for VAT registration.

- (8) General Tax Directorate has issued several times (since January 2006) tax rulings stating that if the advertisement time is not supplied by media entities but by third parties (who buy such time from media and resell it), the supply shall be subject to VAT. The local tax offices have recently taken a different approach and claim that in any case and irrespective of who is supplying the advertisement, the said supply is VAT exempted; hence, they treated the input VAT for these supplies to the buyer as a non deductible VAT. Such interpretation is also supported by the Tax Appeal Directorate.

The tax inspectors refuse to apply GTD tax rulings on such issue, claiming that a tax ruling is individual and not applicable by a taxpayer to whom it is not explicitly addressed. There are no legal grounds to such claims if the tax ruling covers the same situation/transaction.

- (9) Tax inspectors consider that 'bonuses' paid to distributors for target performances are not tax deductible expenses based on several arbitrary arguments such as the said bonuses are (i) gifts, or (ii) not explicitly mentioned in the fiscal legislation; or (iii) reduce the VAT effectively paid from the supplier; or (iv) are not directly related to the primary business activity of a taxpayer.

- (8) General Tax Directorate to issue a general ruling in the form as set forth in article 10 of Tax Procedures Law (9920/2008) indicating the correct interpretation of the advertisement services from VAT perspective.

- (9) Instruction of Minister of Finance on Income Tax be amended in order to contain a clear statement on target performance compensation (that should be tax deductible expenses, whenever the conditions set forth in article 20 of Income Tax Law are met). Alternatively, General Tax Directorate may issue a general tax ruling indicating the above.

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XIII

TELECOMMUNICATIONS LAW

Albania has implemented the EU *acquis communautaire* gradually in the last years; initially between 2008 and 2010 (2003 EU telecoms package) and most recently in December 2012. The electronic communications law in force (Law 9918 dated 19.05.2008, as amended) is based on the EU 2009 regulatory framework. Amendments for introducing the EU 2009 regulatory framework were prepared initially in late 2009, but were ratified and entered into force only in December 2012.

AKEP (Postal and Electronic Communications Authority) is the regulatory authority in the postal and electronic communications field which monitors the regulatory framework defined from the law on electronic communications and the Law on Postal services. AKEP must apply the principle of technology neutrality, ensure fair competition and guarantee non-discrimination and issue individual authoriza-

tions on spectrum allocation and numbering ranges.

Any undertaking is allowed to offer networks and services within the territory once authorized from AKEP. Authorization from AKEP is done through formal notification process in case of offering of networks and services as long as it does not require usage of natural limited resources (in case of spectrum and numbering individual authorizations are granted from AKEP). General authorisation scheme for all electronic communications networks and services was introduced in 2008 and reinforced through the newly approved regulation on General authorizations in early February 2012.

Below there is a complete table of regulatory obligation in the Albania market and respective implementation date:

Carrier (Pre) Selection	Fixed Number Portability	Mobile Number Portability	Reference Interconnection Offer (RIO) fixed	Reference Interconnection Offer (RIO) mobile	Reference unbundling Offer (RUO)	Wireless Broadband Access (WBA)	MVNO	nat. roaming	LRIC fixed	LRIC mobile
2012	2012	2011	2009	2009	2012	-	-	-	-	2009
✓	✓	✓	✓	✓	✓	✗	✗	✗	✗	✓

Mobile operators are subject of regulation in the wholesale markets of voice and SMS termination. In the fix telephony market only the incumbent has been regulated so far, currently in access market, retail market for local,

national and international calls, international calls from a fixed location, interconnection (such as in voice termination and origination and national transit), and further on in lease line and access to broadband.

SPECIFIC ISSUE	RECOMMENDATIONS
<p>(1) <i>Competitive safeguards.</i></p> <p>Implementation of competitive safeguards is slow. Mobile number portability has been made effective in May 2011 and fixed number portability is foreseen to complete within January 2013. Carrier (pre) selection C(P)S implementation has been constantly delayed; AKEP approved the first Reference Unbundling Offer (RUO) only in May 2012. Similarly, lease line regulation has been delayed with RUO publication on May 2012.</p>	<p>(1) AKEP needs to complete the competitive safeguards through a fast, transparent, non-discriminatory and proportionately. That to include:</p> <p>Quick completion of fix portability process. Incentives to stimulate C(P)S and LLU. Implement cost modelling for fix telephony. Implement other missing competitive safeguards.</p>
<p>(2) <i>Rights of way legislation.</i></p> <p>There is no clear legal basis on rights of way, while the draft law is pending in Parliament since 2010.</p>	<p>(2) Draft law on rights of way is being discussed in Parliament since 2010. Emphasis must be put to the overall process finalization, as it heavily influences the rollout strategy of broadband and fibre optic.</p>
<p>(3) <i>Broadband and Fibre legislation.</i></p> <p>Fibre regulation missing and unclear, the Broadband Strategy and providing our input to their external consultants from ITU and USAID.</p>	<p>(3) The government has to put the right legal and regulatory framework in place in order for investors to have legal certainty and decide whether to invest in fibre and how to do it. This is also crucial to the Broadband Strategy. Government has to push a lot on initiatives that stimulate demand for electronic services in order to generate demand for broadband services.</p>
<p>(4) <i>Re-farming.</i></p> <p>The amendments to law only in December 2012 have enabled undertakings to claim re-farming based on neutrality.</p>	<p>(4) (5) Future LTE investment is cost effective mainly in 800 MHz and Government should take actions to free this band from television operators. According to current Government Strategy and Decision this is</p>

<p>planned to happen in 2015 and as such it 'neutralizes' neutrality principle itself for the time being.</p> <p>(5) <i>Digital dividend.</i></p> <p>According to the current Government Strategy and Decision the Digital dividend is planned to happen in 2015.</p> <p>(6) <i>Double taxation.</i></p> <p>The current legislation provides for double taxation on spectrum usage.</p>	<p>(6) The law needs to be amended according to the EU directives, whereas fees for spectrum usage should accommodate only costs of the regulator. Double taxation is illegal, impedes business growth and investing.</p>
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- Hoxha, Memi & Hoxha
- Sigal Uniqua Group Albania
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The Albanian Association of Banks (AAB) is a non-for-profit organization, established in April 1999, which represents commercial banks that have established their activities in Albania. In an environment characterized by a diversity of opinions and interests, AAB serves as a forum where member banks formu-

late common concerns and argue their cases against third parties. Through effective collaboration, AAB aims to be the common voice of the banking sector and influence to bring about positive changes in the financial and banking system in Albania.

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Firm overview

Boga & Associates, established in 1994, has emerged as one of the premier law firms in Albania, earning a reputation for providing the highest quality of legal, tax and accounting services to its clients. Boga & Associates also operates in Kosovo (Pristina) offering full range of services. Until 1st of May 2007, the firm was a member firm of KPMG International and the Senior Partner/Managing Partner, Mr. Genc Boga was also Senior Partner/Managing Partner of KPMG Albania.

The firm's particularity is linked to the multidisciplinary services it provides to its clients. Apart of the wide consolidated legal practice, it offers also a significant expertise in tax and accounting services with a keen sensitivity to the rapid changes in the Albanian and Kosovar business environment.

With its diverse capabilities and experience, the firm services leading clients in most major industries, banks and financial institutions, companies engaged in insurance, construction, energy and utilities, entertainment and media, mining, oil and gas, professional services, real estate, technology, telecommunications, tourism, transport, infrastructure and consumer goods. The firm has also an outstanding litigation practice, representing clients on all levels of Albanian courts. This same know-how and experience has been drawn upon by the Legislature in the drafting of new laws and regulations.

Boga & Associates is recognized as a top tier firm by the most prestigious ranking companies in Corporate/Commercial, Dispute Resolution, Intellectual Property, Real Estate by Chambers and Partner (2012) and in Financial and Corporate Law by IFLR (2013). The firm is praised by clients and peers as a "law firm with high-calibre expertise" and is distinguished "among the elite in Albania" and as "accessible, responsive and wise".

Areas of practice

LEGAL: Commercial, Corporate, Mergers and Acquisitions, Banking and Finance, Competition, Employment, Construction, Telecommunication, Oil and Energy, Procurement, Environment, Real Estate, IP, Litigation, etc.

TAX: Tax Advice, Compliance, Audit, Litigation.

ACCOUNTING: Accounting, Bookkeeping and Payroll.

Languages spoken: *Albanian, English, French, Italian, Greek, German.*

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PROFILE

PricewaterhouseCoopers established its presence in Albania in 2004. The team in Tirana currently has a total of 41 staff. We are part of the [worldwide Pricewaterhouse Coopers](#) organization- the world's leading professional services organization, drawing on the knowledge and skills of more than 169,000 people in 158 countries. Our combination of international and Albanian expertise is fundamental to the high quality of advice and assistance we offer.

The clients of PricewaterhouseCoopers in Albania are key players in the Albanian market, leading Albanian and international companies. We consider it our mission to help our clients find solutions to complex problems arising in the course of today and offer them [services](#) of the highest quality. To serve our clients best, we aspire to understand their business and specifics of [industry](#) they operate in.

SERVICES

In Albania, PricewaterhouseCoopers provides full range of assurance, business advisory, tax and accounting services to local clients and foreign investors. We offer solutions that provide competitive advantages to our clients and meet their needs, using our local and international expertise as well as our broad industrial and service experience. At PricewaterhouseCoopers in Albania, our services are organised into Lines of Service. Each of these lines is staffed with highly qualified, experienced professionals whose goal is to help our clients build value, manage risk and improve their performance.

OUR LINES OF SERVICES:

Assurance Services

- Financial statements audit
Regulatory compliance & reporting
- IFRS reporting
- Sarbanes-Oxley compliance
- Independent controls & systems process assurance
- Internal audit

Tax Services

- Financial statements audit
- Regulatory compliance & reporting
- IFRS reporting Sarbanes Oxley compliance
- Independent controls & systems process assurance
- Internal audit

Advisory Services

- In Advisory Services we support and advise our clients in developing a new project including:
- feasibility studies,
- valuation,
- business plan preparation market survey

KALO & ASSOCIATES

KALO & ASSOCIATES was established in 1994 becoming a large full service commercial corporate law practice operating both in **Albania** and **Kosovo**. The Firm represents prominent foreign and multinational companies and agencies from across the globe operating in a variety of sectors and industries, priding itself on its solution-driven approach to client problems, offering tailored legal advice to suit specific needs.

The Firm's diverse work force, with international experience and specialization, serves to combine comparative approaches and local legal knowledge in finding the most appropriate resolution to problems.

The Firm enjoys recognition in South East Europe arising from its membership of the South East legal Group, the strongest legal alliance in the Balkans – a successful collaboration now ten years in existence - composed of leading law firms from 12 jurisdictions providing seamless legal services including cross-border commercial transactions (www.seelegal.org).

QUALITY AND CLIENT FOCUS...

The Firm was shortlisted three years in a row for the award of “*The Best Law Firm of Eastern Europe and the Balkans*”, by the Lawyer European Awards (www.thelawyereuropeanawards.com);

It is listed as Top Tier Firm by IFLR1000, Chambers Europe, Chambers Global and other prestigious legal publishers quoting clients referring to the Firm as:

“One of the largest and most well-established law firms in Albania”, providing clients with a sophistication that is rare in Albania”

“An excellent team and real market leader...” “A practice that is consistent with what you would expect from a top Washington law firm”.

“Really stands out in the market, due to its superb technical ability in both local and international corporate matters”...“feel comfortable and secure dealing with KALO & ASSOCIATES; The firm offers high standards and fair billing,”

“We asked several of our international firms and everyone recommended them” ...



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www.lespot.al



Amadeus Group

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CNR(Companie Nationale Du Rhone /Wenerg sh.a)

www.cnr.tm.fr



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