



FOREIGN INVESTORS ASSOCIATION OF ALBANIA

WHITE BOOK

Albania 2017-2021

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TABLE OF ACRONYMS

AAB	Albanian Association of Banks
AMM	Albanian Power Market Model
APEX	Albanian Power Exchange
B2B	Business to Business
BoA	Bank of Albania
DER	Distributed Energy Resources
DSO	Distribution System Operator
EBRD	European Bank for Reconstruction and Development
EnC Treaty	Energy Community Treaty
ERE	Albanian Energy Regulator Authority
EU	European Union
EURES	European Employment Services
FDI	Foreign Direct Investments
FIAA	Foreign Investors Association of Albania
FIT	Feed in Tariff
GA	General Assembly
GDP	Gross Domestic Product
GTL	General Tax Law
IFC	International Finance Corporation
IFRS	International Financial Reporting Standards
IPRO	Immovable Property Registry Office
ISTAT	Institute of Statistics of Albania
JOA	Joint Operating Agreement
LLC	Limited Liability Company
MM	Market Model
MTPL	Motor Third Party Liability Insurance
NBC	National Business Center
NPL	Non Performing Loans
NRC	National Registration Centre
OECD	Organization for Economic Co-operation and Development
OSCE	Organization for Security and Co-Operation in Europe
OSHEE	Electric Energy Distributor Operator
PFL	Petroleum Fiscal Law
PPA	Power Purchase Agreement
PPP	Public Private Partnership
PSA	Production Sharing Agreement
PSC	Production Sharing Contracts
SCU	Saving Credit Unions
SPV	Special Purpose Vehicle
VAT	Value Added Tax
WB	World Bank

PURPOSE OF THE WHITE BOOK

The White Book is a document which is prepared by the Foreign Investors Association of Albania at the start of each Governing mandate of the Government of Albania. Its publication highlights and addresses the main issues that Foreign Investors are facing while conducting their business in Albania.

The content of this second edition treats a significant part of the existing legal framework in the country and addresses the most common issues faced and communicated by our members.

We are aware that despite a lot of efforts made during the past 25 years or so, the country needs to further improve its business environment, implement reforms in key areas and strengthen its institutions in general and the judiciary system in particular. During the last 4 years, FIAA has constantly offered opinions and recommendations to improve Albania's legislation in a number of vital areas by actively working with the Albanian Investment Council of Business, while communicating

quite extensively with all major institutions like the Council of Ministers, Ministries of Economy, Energy, Finance, Agriculture and Justice and so on.

However, after the restructuring of the Albanian Government and in particular with the creation of the *Institution of Minister of State for Entrepreneurship*, we have started a new path of communication in support of Business Environment in the country.

Together, we believe we will enhance the cooperation and dialogue between Business and relevant institutions by applying our best expertise to further elaborate the addressed issues through ad hoc working groups.

Finally, we would like to express our gratitude to all those members and experts who contributed to the preparation of the FIAA White Book 2017-2021.

Marinela JAZOJ
Executive Director

A WORD ON COOPERATION

The White Book Document comes just at the right moment for the Institution of Minister of State for the Protection of Entrepreneurship. Our mission consists in the reduction of the existing gap between entrepreneurship and the public administration, by influencing in the creation of an adequate business environment.

The Albanian government considers business as partners and their indisputable role in the economic development of the country requires a proactive approach and co-governance together. Therefore, my role as a government ombudsman, will focus on finding solutions for all the addressed concerns coming by business community in the Country.

The White Book will be our Work Guide by using a new format of dialogue between Albanian Authorities and the Foreign Business Community and not only. The goal here, is the creation of Ad-Hoc Working Groups with Experts from both Public Administration and Business Representatives in order to define concrete measures and implement recommendations coming from the White Book. This initiative came out during the discussions on the purpose of the White Book with the Representatives of FIAA.

We strongly believe that The White Book is a solid step toward a sustainable and long-term cooperation.

Sonila QATO

Minister of State for the Protection of Entrepreneurship

ABOUT FIAA

FIAA was founded in April 2000 by several prominent foreign investors operating in Albania with the idea to set up an organization that would bring together values and benefits to the members and to the business environment at large.

The launching of FIAA was highly appreciated and welcomed by the business community, Diplomatic Bodies in Albania and many other international institutions such as EU, WB, IFC, EBRD and OSCE.

The Foreign Investors Association is the only foreign business association in the country, acting mainly as a supporter and facilitator of foreign investors in Albania. FIAA represents the largest and most prominent businesses operating in various sectors of Albanian economy with the main aim to dialogue and cooperate with the government and other relevant institutions for a better investment

climate and favorable atmosphere in order to attract more foreign investors in Albania.

Through its membership, FIAA represents most of the FDI in Albania, originating from Italy, Greece, Austria, Netherlands, Norway, China, France, Germany, Turkey, UK, USA, Switzerland and a range of economic sectors such as Banking and Finance, Insurance, Mining, Energy, Oil and Gas, Construction, Real Estate, Consulting, Telecommunications, Trading, Agriculture, Tourism, Manufacturing, etc.

From day one, FIAA clearly declared its status of an independent and non-profit organization and is managed by a Board of 7 Directors who are representatives of distinguished companies in Albania. To date, FIAA counts about 100 active members and enjoys a great reputation inside and outside Albania.

FIAA'S SUMMARY ON THE BUSINESS CLIMATE IN ALBANIA

PROGRESS TO DATE

During the last 4 years, Albania has undergone considerable development. The country has experienced a high public debt, unpaid obligations to business, high NPLs and many administrative obstacles, a part of which are now going on positive direction thus, contributing to a better business environment and higher economic growth. The Ministry of Finance projects the economic growth in 2018 at about 3,8%. The two largest investments in the country, TAP Pipeline and the Devoll Hydropower Plant, which have a significant flow of foreign investment in the country, have contributed to this economic growth. It is worth mentioning the importance of the FDI inflows in Albania, which represent about 33% of Gross Fixed Capital Formation. Sustaining the momentum of the implementation of the reforms and institutional restructuring that the government has undertaken is very important to improve the investment climate in the country.

These steps are particularly related to the implementation process of the Justice Reform, as one of the main conditions for clarifying many obstacles to law enforcement and the business climate, as well as the ongoing fight against informality in the country. Foreign

investors need to trust the institutions, they need a predictable and stable environment where compliance with the rule of law and the elimination of corrupt practices are a given. Furthermore, efficiency and credibility of the public administration need to be established.

As in all emerging economies, Albania is going through a transition period and seems to be working hard to meet the EU criteria and become part of the European Union. Albania continues its work towards a regional and European integration. Despite many good laws having been adopted and implemented, there are still many other laws pending, which require a consistent and professional work of the institutions in charge. 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 timely consultation with relevant key stakeholders.

We are aware that despite a lot of efforts made during the past 4 years, the country needs to further improve its business environment by completing reforms in key areas, strengthening its institutions in general, the judicial system in particular and continue the fight against corruption.

FIAA'S SUPPORT TO THE GOVERNMENT

The mission of the Foreign Investors Association in Albania focuses on contributing to a better investment climate through an open dialogue with the Government and other Institutions, in order to attract more investors coming to Albania. This edition of the White Book is intended to be presented at the beginning of the work the new Government and after the period of institutional restructuring.

This, will give the foreign investment community the opportunity to present Albania's challenges in attracting Foreign Direct Investors and give recommendations to the decision makers at this proper moment.

FIAA has been working hard to provide a continuous flow of feedback and recommendations 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 issues, followed by specific meetings for generating recommendations and providing solutions.

Moreover, there are four sectorial committees working under the leadership of FIAA, respectively supporting the Mining, Oil & Gas, Energy, Taxes and European Integration

areas 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 official communication have been made raising these concerns and addressing to the highest authorities.

In 2014, FIAA prepared a Wish List to the Government of Albania consisting of the Top 10 Requests that Business was expecting from the Government to fulfill:

1. *Europeanize the VAT system and speed up the VAT reimbursement*
2. *Liberalize and open the energy market*
3. *Phase out reference prices system in customs and taxation*
4. *Hold a midterm review on the new fiscal package mid 2014*
5. *Terminate unfair subsidies and ensure payment discipline of public services*
6. *Focus on fiscal stability and keep the macroeconomic balance*
7. *Apply good governance practices and European standards in administration*
8. *Establish a new level of transparency with online publication of concessions progress*
9. *Ensure high focus on competitiveness and Promote investments*
10. *Establish a New investment and competitiveness council for investors*

This was tracked by a Mid-term Evaluation Review and presented for progress to the Prime Minister of Albania at beginning of 2016.

INFORMALITY

Informality, was identified by Foreign Investors as one of the biggest obstacles in the business environment of the country. The campaign against informality undertaken by the Government has yielded some encouraging results, but extra efforts are needed to tackle it at all levels of business. FIAA believes that an effective fight against informality is one of the best ways to prevent a further increase of taxes that would hamper the economic growth.

CORRUPTION

Corruption, continues to be addressed by foreign investors as a hindrance to investors in the country. FIAA has recommended 8 measures as important actions which would help the country on minimizing the Corruption phenomenon in Albania. It was titled as: ***A new approach towards openness – online transparency and good governance***

RECOMMENDED MEASURES TO IMPROVE FIGHTING CORRUPTION

*A new approach towards online transparency and good governance
July 2016*

- 1 **Interoperability** of Tax Agency, Cadaster, Company Register, Central Bank of Albania and Assets Disclosure Register of politicians and high state officials to reduce tax evasion, money laundering and corruption in order to significantly improve Albania's ranking in: www.transparency.org/country/#ALB
- 2 **Online business and cadastral registries**, full online regularly/timely updated property Cadaster, including ownership, current legal status of the immovable properties, their location (by official map), their current market value (if applicable) and online construction permitting registry. Access to information is a backbone for anti-corruption measures and elimination of corruption resulting from the unmet demand for information services.
- 3 **Creation of an online database tracking projects supported by state subsidies, grants and pre-accession EU funds.** Excellent access to information is one of the ways to secure integrity of subvention schemes. Timely and good quality information on "who got benefitted from subvention schemes and why" is crucial for controlling of the processes both from the government's point of view as well as citizen vigilance.
- 4 **Online Business Gazette** combined with Business Registry. This has a great potential for identifying companies with little credibility and thus prevent/deter fraudulent activities in business to business as well as business to government activities.
- 5 **Creation of an online legal information portal with upcoming legislation open to public for commenting.** This will create not only ways to improve access to legal information, but will also give a higher predictability of legal situation, potential for greater inclusivity in the drafting period for businesses.
- 6 **Online court management**, debt execution, bankruptcy and other digital justice tools to endorse and actively engage with the EU e-Justice targets.
- 7 **Digital judiciary** complementary to the going Justice reform, fully backed by the international investor community of Albania and progress in: <http://data.worldjusticeproject.org/#/groups/ALB>
- 8 **Build a National Coalition for Anti Corruption in Albania** involving all stakeholders from donors, civil society and Government of Albania. A role model could be developed based on the Georgia success model: <http://www.transparency.ge/en/node/911>. Similar success stories in the global framework could be: <https://www.acauthorities.org/success-story> based on OECD countries with reference: <https://www.oecd.org/corruption/acn/>

Keeping up on Fighting Corruption Concern



Foreign Investors Association of Albania

The voice of Foreign Investors Association of Albania

www.fiaalbania.al

A good example has been the publication of the Business Ethics Booklet which brings together the best models of business ethics responsibility applied by foreign businesses in Albania and aimed at serving as an example for all those companies who still don't have a Code of Ethics, in particular the local businesses.

A series of Surveys with the foreign businesses in Albania have been conducted by FIAA during the last years and referring to the most recent ones, businesses address as main concerns those related with the judicial system, corruption, the administrative

Courts efficiency and frequent changes in the legislative and fiscal framework. For foreign investors, the importance of the investment climate quality in the investment world and the necessity of continuation of all the taken reforms in order to achieve the needed results is crucial on solving the identified obstacles. The Authorities have taken some important steps, but still the problem remains in their implementation. The FIAA expectation level is high, even higher than in previous years because the competition is getting tougher.

PROMISING RESULTS

FIAA positively recognizes all the efforts that Albanian Government has made for restoring the macroeconomic stability, the reforms taken in different important areas by strongly supporting their complete implementation so far in the energy sector, the fight against informality, the simplification of tax procedures, the new customs code, the e-permits and the inspections procedures. Very importantly, there has been also the preparation and approval of important laws on Tourism, Renewable Energy, Transfer Pricing, Public Private Partnerships, and Strategic Investments Rules, all expected to deliver their positive effect to the business climate.

FIAA notes that the recent Economic Reform Program 2017-2019 that Albanian Government has submitted to the European Commission, includes concrete measures that go into the right direction in strengthening business environment, improving labor market conditions and developing sectors such as Agriculture, Tourism, Energy and Transport. Working together towards a healthy business environment and economy will be our joint task.

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

CHALLENGES FORWARD

There is a long road forward for Albania for further improving the business environment and for maintaining the current economic growth in the long run and fulfilling the criteria towards the path to EU Accession. In this White Book edition, Foreign Investors have addressed main issues along with the respective recommendations. Among others, foreign business appeals the Government for higher attention into speeding up the reform process in these crucial areas:

Macroeconomic Stability

Maintain macroeconomic and political stability, predictable business environment, transparent public decision-making process, supported by an accelerated progress of reforms and strong law enforcement, full and proper implementation of laws.

Administration Efficiency

Minimize bureaucracy and increase public administration's efficiency.

Corruption

Fight against corruption and informality.

Legislative and Fiscal Framework

Improve and stabilize the fiscal and legal framework including the application of tax regulations, procedures and stop sudden or drastic law changes.

Consultation

Structure the dialogue with business by involving them during the early stages of legislation drafting process.

FIAA and its members are ready to cooperate with the relevant entities to develop solutions to these challenges.

FIAA'S ROLE FORWARD

In this edition, the FIAA's White Book addresses issues faced 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 our members and reflect the experience of investors and entrepreneurs doing business in Albania.

Before going into details, it is appropriate to point out that some of the problems that have hindered the activity of foreign companies 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 issues we have been working on this edition of the White Book are subject of the following laws:

- Tax Law;
- Business Registration Law;
- Banking Regularity Framework;
- Corporate Law;
- Concessions Law;
- Energy Law;
- Mining Law;
- Hydrocarbons Law;
- Insurance System in Albania;
- Employment Law;
- Residence and Work Permit Law;
- Bankruptcy 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.

We remain hopeful that the recommendations provided in this edition of the FIAA White Book, will have a wide acceptance and positively affect efforts to improve the business environment in the country. In this ambit, we express our readiness for dialogue and cooperation with the relevant

institutions by offering our best expertise to further elaborate the addressed issues through *ad hoc* working groups. We believe that working all together 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 improve the economic growth of the country.

We are confident that the Government and other stakeholders will find a fruitful communication which will give more support to a better business climate in Albania.

I

TAX LAW

Over the past years, Albania has marked significant progress in improving its tax legislation and business climate.

Positive developments included the harmonization of the VAT legislation with the EU VAT Directive, the simplification of tax procedures and modernization of the IT tax system, which contributed in significantly decreasing the administrative burden. In particular, the introduction in 2014 of the bank guarantee option, along the obligation to settle tax liabilities assessed by a tax audit, as a precondition for executing the right of appeal, has significantly improved the position of taxpayers, which business used to be jeopardized by large arbitrary tax assessments, which they could not afford to pay and also has disincentivized arbitrary interpretation of the law with the sole purpose of unduly collecting large amount of taxes. Also, the new e-tax system, apart from the technical difficulties created at the beginning, has made easier declaring and paying taxes.

Moreover, the Ministry of Finance has enhanced the dialogue with taxpayers through empowering the Tax Council and more active interaction with business associations. In 2016, the Ministry of Finance adopted most of taxpayers' longstanding propositions for changes in the tax procedures legislation.

➤ Out of nine recommendations presented in the White book 2013, six

marked significant progress, while the remaining three are still to be addressed.

➤ The move of the administrative appeal instance from the tax administration to the Ministry of Finance and its further reformation should improve the quality of the proceedings, (as this provision was made applicable as of May 2017, the exact effects are yet to be determined).

However, the introduction of the progressive and higher tax rates and frequent changes in the tax legislation and administration have resulted in less competitive tax rates compared to the region, lack of predictability and legal stability, thus, adversely affecting Albanian's attractiveness for FDIs.

➤ Tax audits continue to be aggressive, indicating that more structural changes are required in order to change the tax authorities' mentality from a penalizing institution to a state revenue collection agency.

➤ Moreover, the VAT refund process poses still many challenges. Despite the enormous progress made in 2014 with the refund of long due VAT amounts, taxpayers still face considerable delays.

➤ Also, the process remains still very burdensome due to unnecessary VAT audits performed regularly for each refund claim, instead of risk-based ones.

The tax legislation requires further modernization and improvement, in particular the secondary one, which seems to follow outdated and in many cases wrong approaches to taxation.

➤ The approximation of our tax legislation to EU Law requires that not only tax laws, but also administrative instructions and guidelines follow the same taxation principles and do not distort them to the detriment of the taxpayer, by introducing burdensome procedural requirements or vague and ambiguous interpretations.

➤ There are still many problems

with the application of tax regulations due to the lack of professionalism and training of the tax administration and continuous budget pressure.

➤ Further reforms are required in order to transform the role of the tax administration into an institution that guarantees the implementation of the tax legislation, but also guides, understands and protects the rights of the taxpayers.

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

Value Added Tax - Procedures for refund and credit

SPECIFIC ISSUE	RECOMMENDATIONS
<p>(1) The tax authorities have failed to refund in due time the creditable VAT to taxpayers. Many entities especially those that are under the investment phases or those that perform export of goods have significant creditable VAT that is due for reimbursement, but the tax authorities have not been able to perform these refunds on a timely manner or at all.</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 provided with the possibility to set off the VAT credit towards the tax authorities with the payable VAT on import of goods. Currently, such compensation scheme is granted only for those entities that have a VAT credit position towards the tax authorities and have the 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 VAT reimbursement should take place within 60 days after submission of the request for reimbursement, and 30 days for exporters. This means that both the tax audit for the verification of the reimbursable VAT and the refund should take place within 30 days. This deadline is rarely 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 requested amount, 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 regarding the 30 days term for reimbursement, and therefore if no refund has taken place within the legally established deadline, the taxpayer may omit to pay other taxes that are due, the Instruction of the Minister of Finance states 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 tax audit regarding the VAT reimbursement and therefore prohibit the taxpayer to use its right of tax offsetting. 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 applicable only *de jure*.

(2) The Instruction of the Minister of Finance on Tax Procedures to be amended by stating explicitly that if within 60 days for taxpayers/30 days for exporters 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 60/30 days period and issue a tax assessment, this would be subject to appeal procedures and only the approved VAT credit shall be reimbursed.

(3) Pursuant to the VAT Law (article 24), in the case of B2B (business to business transactions) the place of supply of services to a taxable person acting as such shall be the place where that person has established his business. However, if those services are provided to a fixed establishment of the taxable person located in a place other than the place where he has established his business, the place of supply shall be the place where that fixed establishment is located. In absence of such place of establishment or fixed establishment, the place of supply of services shall be the place where the taxable person who receives such services has his permanent address or usually resides. However the Instruction of the Minister of Finance adds the procedural aspect to an extent that makes it very difficult in practice for the taxpayer to benefit from the provisions above. The Instruction requires among a list of 5 documents also a certificate issued from the tax authorities of the foreign country where the taxpayer receiving the services is registered, in order to issue an invoice not subject to Albanian VAT. This procedure makes it very burdensome the application of the general rule of the place of supply and also creates a high risk for the Albanian taxpayer which, although following the law and the EU Directive principle, can be penalized at the full amount of VAT for lack of supporting evidence.

(3) The Instruction of the Minister of Finance to be amended in order to not introduce further requirements, including procedural ones, beyond what is provided by the VAT Law. Only in case it is proved that the taxpayer has not acted in bona fide and has intentionally abused from the application of the general rule. The Instruction of the Minister of Finance should ease the burden of taxpayers for compliance, not increase their bureaucratic burden.

<p>(4) According the VAT Law (article 99) the invoice may be issued periodically the same month the services are rendered. Nonetheless the Instruction of the Minister of Finance requires monthly issuance of invoices for periodical services performed continuously.</p>	<p>(4) With respect to periodical services, taxpayers should be allowed to issue invoices at intervals corresponding to the contractual arrangements between parties, following milestones, business cycles, etc, for example for tax services invoices could be issued every three months, and their issuance should not be limited to a monthly basis.</p>
<p>(5) The VAT Law as well as the Instruction do not limit the right of crediting VAT for businesses that are in the process of liquidation, or in investment stage and do not have sales. Pursuant to the dispositions of the Law the right of crediting of input VAT is not conditional on having output VAT, but on conducting a taxable business activity, in line with the principle of VAT neutrality, i.e. VAT should not become a cost for the taxpayer. However in practice tax inspectors deny the right of crediting VAT in case when taxpayers do not have sales for a certain period.</p>	<p>(5) The Ministry of Finance should stipulate in the VAT Instruction the right of taxpayer to credit input VAT to the extent their business activity is taxable, providing detailed and specific guidance in line with VAT Directives Commentaries and ECJ cases on this matter.</p>

(6) The VAT Law and the respective Instruction do not provide for a reference selling price which can be used by a company for determining the VAT basis, and neither liaise such price with the production/buying costs or the requirement for profit to be generated. On the contrary, the VAT law is explicit on the cases where reference should be made on the market value or cost of the product, for purposes of determining the VAT due i.e. such as the case of transactions between related parties. However, in practice tax inspectors impose VAT and related penalties on sales performed under cost following abusive practices which were established based on the wrong interpretation of the old VAT Law, Article 18.

(7) The composite supply in the VAT Law and the respective instruction outline that the main part of the supply, i.e. if it is a composite supply of goods or of services is not defined according to which item has the greatest value, but in principle which is the main activity. However this leaves way to interpretation and possible misinterpretation of the logic of the Law.

(6) The Ministry of Finance should clarify through the VAT Instruction that there is no requirement on taxpayers to be selling at a profit, or that their sale price must cover the costs of production/acquisition, in order to avoid an incorrect application of the VAT Law in practice as well as to numerous court cases by taxpayers contradicting VAT liabilities and fines assessed not based on legislation.

(7) The Instruction should clarify the specific treatments for most common scenarios.

NATIONAL TAXES-CARBON TAX/EXCISE TAX

SPECIFIC ISSUE	RECOMMENDATIONS
<p>Due to the latest Amendments during 2012 to the Law “On Excise” and “National Taxes”, Albania currently imposes indirect taxes on solid fuels in the amount of 5 lek/kg (i.e. 2 lek/kg for excise and 3 lek/kg for carbon tax). These taxes, increase the import price of fuel by 45% - 50%.</p> <p>Such an increase to the cement industry is translated into a significant burden in its cost structure having an effect of ~2.5 - 3 euro additional cost per ton of final product depending on the type of the cement produced.</p> <p>In the international trade markets this cost handicap is significant and unless abolished, is expected to significantly undermine the Albanian Cement export capacity very soon.</p> <p>Neither the EU nor the neighboring countries (with the exception of a small tax in Kosovo) have indirect taxes imposed on solid fuels used by the industry. Energy products and electricity, in EU countries is taxed only when they are used as motor or heating fuel and not when they are used as raw materials/ combustibles in the production process or for the purposes of chemical reduction or in electrolytic and metallurgical processes. <i>(EU directive 2003/96/ EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity).</i></p>	<p>Removing Excise and Carbon TAX, thus following the standard applied in EU, is expected to re-establishing level playing conditions in the cement market of Albania and as such improve the competitiveness of the local industry which has been disproportionately affected by the economic crisis. It should be noted that the local cement industry adds significant local value to the final product, contributes to trade revenues of Albania with ~ 48 million EUR per annum and provides employment to over 800 direct employees.</p> <p>An alternative solution, considering the significant impact these taxes have to the state budget, is (i) their replacement with an equivalent increase in the VAT or the imposition of another TAX instead, to be applied to the final product (cement) OR (ii) the removal of carbon and excise tax to the extent applicable for exports performed and the imposition of equivalent custom duties to imported Cement related products OR (iii) at least the application of a reimbursement scheme for Carbon Tax in the form applied also for Excise Tax.</p>

Having said the above, the Excise Tax as well as the Carbon tax being indirect taxes are *commonly imposed to the final product* and as such are born by the final consumer. The way such indirect taxes are currently imposed in Albania, they burden the intermediary product, thus affecting the manufacturer.

In addition to the above and in relation to the Excise TAX, even the reimbursement mechanism provided by the Excise LAW does not provide the necessary release offered by the EU legal framework since the European legislation apply **excise exemption and NOT `reimbursement** for energy products when they are used as raw materials/ combustibles in the production process or for the purposes of chemical reduction or in electrolytic and metallurgical processes.

CORPORATE INCOME TAX- EXTENSION OF UTILIZATION PERIOD FOR TAX LOSSES

SPECIFIC ISSUE	RECOMMENDATIONS
<p>One of the major goals of the Albanian Government is to attract FDI willing to perform Greenfield investments. Given the nature and the size of such Greenfield investments, it usually takes 3-5 years before these investments start to generate profits. In some cases, due to market conditions, this period might be even longer. Under such circumstances, these companies do accumulate losses which are to be utilized against future profits.</p> <p>The Albanian legislation as per the Income Tax Law No. 8438 dated 28.12.1998 as amended, provides that the tax losses can be carried forward and utilized for a period of not more than 3 years.</p>	<p>Considering that EU countries like Italy, grant to Companies an indefinite period for utilizing the tax losses generated during their first 3 years of investment to this end and aiming at creating an attractive environment for FDI performing Greenfield investments, it is strongly recommended that the 3 years period stipulated in the Income Tax law <i>is extended to a minimum of 10 years.</i></p>

With reference to the abovementioned argument on the time when such Companies start to generate profits and taking into account the current stagnant economic conditions, it is obvious that the relevant provision of the Albanian Legislation does not serve the purpose of creating an attractive environment for such Greenfield investments. To the contrary neighboring countries like Greece, Bulgaria, Serbia, Turkey, grant to Companies a period of minimum 5 years, for utilizing tax losses.

LOCAL TAXES- TEMPORARY TAXES

SPECIFIC ISSUE	RECOMMENDATIONS
<p>The Law on Local Taxes (Article 33) provides that the Municipality Council, when deemed necessary, can impose temporary taxes in the general interest of the community within the territory of its jurisdiction.</p> <p>However, no any further specification is given in the law with regards to the limits of such authority, the necessary reasoning that should support the decision of imposing such taxes as well as the definition of what for the purposes of imposing such taxes would be as necessary for the community. This leaves the Municipality Council with an authority that overpasses the law itself and creates uncertainty for the future.</p>	<p>In order to ensure compliance with the constitutional principles on imposition of Taxes, but also to avoid unpredictability and unjustified financial exposure of the business operators, the Law should define clearly and have the Municipality Councils to clearly define and provide in their decisions, while imposing such temporary taxes, sufficient reasoning on :</p> <ul style="list-style-type: none"> a) the respective needs of the communities to the benefit of which such taxes are being imposed; b) the terms and criteria for the calculation and implementation of such taxes; <p>Additionally such taxes should not :</p> <ul style="list-style-type: none"> (i) apply for more than 2 years in row and not repeated within the 5 years period starting from the last year of implementation of such taxes; (ii) exceed on annual basis 50% of the total yearly local taxes.

II

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.

The establishment of this public institution as a One Stop Shop aims to encourage investors that once this application has been approved by NRC, the new legal entity will be registered automatically at the municipality, Tax Directorate, Social Security Institution, Health Insurance and Labour Inspectorate.

Nevertheless, despite the fact that the Business registration process has become fairly

short and simple with the establishment of the National Business Centre (NBC), deregistration remains a burdensome process, time consuming and rather unpredictable. The main problems stem from the interaction between the NBC and the tax authorities.

Although the tax procedure legislation provides for strict timelines for the tax authorities to complete the process, they systematically delay it through unnecessary and lengthy tax audits, conducted without any risk analysis and even for historically dormant entities.

SPECIFIC ISSUE	RECOMMENDATIONS
<p>(1) The Law “On traders and Commercial Companies” allows creditors of a commercial company under liquidation to file their claims in the NCB with certain legal deadlines. Instead, the official website of NCB does not reflect a list of companies under liquidation process.</p>	<p>(1) The National Registration Centre must publish and update constantly in its online database the list of companies in liquidation process. This will allow the creditors to raise their claims within legal deadlines.</p>
<p>(2) Foreigner investors need to have a complete information on legalisation/apostille requirements, among other information made available by NCB.</p>	<p>(2) It would be useful that NRC publishes a complete list of states that can avail of Apostille seal for public deeds submitted in Albania, as well as the updated list of states that have bi/multi-lateral agreements with the Republic of Albania for direct recognition of public documents.</p>
<p>(3) The option of on-line application, provided by the Law, is not fully operational.</p>	<p>(3) It would be feasible that NCB makes available the on-line application for all filings provided by the Law no. 9723 dated 03.05.2007 “On Business Registration”, as amended.</p>
<p>(4) The Entity deregistration remains a burdensome process, time consuming and rather unpredictable. The main problems stem from the interaction between the NBC and the tax authorities. Although the tax procedure legislation provides for strict timelines for the tax authorities to complete the process, they systematically delay it through unnecessary and lengthy tax audits, conducted without any risk analysis and even for historically dormant entities.</p>	<p>(4) It is very important that NCB and Tax Authorities give solution to this burdensome process which more and more is becoming a serious issue to business.</p>

III

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.

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.

ISSUES EXECUTION OF COLLATERAL	RECOMMENDATIONS AND EXPLANATIONS
<p>(1) Drafting and approving Decision of Council of Ministers On defining the methodology of collateral assessing, during the execution procedures.</p> <p>- Completing the legal obligation imposed by the amended article 564 of Civil Procedure Code.</p>	<p>(1) The goal is to define an accurate and unique methodology of item valuation, which will be done with the guidance of the Council of Ministers, which will avoid the abuses that have been made so far.</p>
<p>(2) The joint guideline of the Ministry of Justice and Ministry of Finance for Private Bailiff Tariffs.</p>	<p>(2) Considering the objection of the new two guidelines approved on 26 June 2017, on the level of fixed and success fees for private judicial bailiff's service, especially on the level of the tariffs set on them and on the prepayment of the fix tariff, the guidelines has to be change accordingly.</p>
<p>(3) Special Law on "Procedures and Tariffs of Execution of Executive Titles".</p>	<p>(3) Drafting a specific law considering best European and regional practices would be a complete and final solution on enforcement procedures/collateral execution.</p>

<p>(4) The amendment of the Article 320 of the Penal Code “Obstruction of court decision execution”.</p>	<p>(4) Not releasing of immovable property by the former debtor / holders within the deadline set by the bailiff, should constitute a criminal offense. In conditions of the physical presence of the debtor or owners without a title, at the moment of action for the release and delivery of the new owner’s property (creditor), must be considered a criminal offense and in case of resistance shall be accompanied by actions from the present police to the enforcement proceedings.</p>
<p>(5) Drafting of bylaws of the new Law On Bankruptcy.</p>	<p>(5) Completion of the framework of the new Law On Bankruptcy.</p>
<p>Administrative issues</p> <p>(1) Drafting and approving a Decision of Council of Ministers, for not carrying the unpaid taxes from the former owner of an immovable property, to the new owner (bank).</p>	<p>(1) It is needed to be determined that the Bank, as the owner of a property obtained from an enforcement proceeding is not responsible for unpaid obligations of electricity, water, taxes, fees and fines. These obligations belong to the previous owner of the property.</p> <ul style="list-style-type: none"> - The OSHEE and the Water Supply and Sewerage must have the liability that according to Bank’s demand associated with the ownership document, to close the existing contract with the former/previous owner and to set up the new supply contracts with the new owner (bank). Setting clear rules that the unpaid obligation cannot be carried over to the new property owner, but the collection of these obligations will be followed under the provisions of CPC with former/previous owner.

<p>(2) Drafting and approving a Decision of Council of Ministers associated with specific procedures and time limits for the Local Offices of Registration of Real-estate for the processing of orders and bailiff decisions.</p>	<p>(2) Determining with bylaw, obligatorily applicable to all network of local offices of registration of real estate and contractors or subcontractors of their service, the procedures and deadlines for the specified processing / registration of enforcement acts and definition of strict deadlines for their response / or putting in dispose the documents, as well as accompanied by administrative measures by the employer (Central Office of Registration of Immovable Properties) in case of their violation.</p>
<p>(3) Increasing the number of judges in the Administrative Appeal Court.</p>	<p>(3) The number of judges of the Administrative Appeal Court is insufficient to cope with the influx of court files that goes in this court. In these conditions parties are damaged by the failure of a decision given within the legal deadlines, which basically are considered as a violation of human rights by the Constitutional Court and that of Strasbourg. According to the law the practice must be reviewed by the appeal within 30 days, while they are taken into consideration only after 2 years (over 600 days of delay).</p>
<p>TAX ISSUES</p>	
<p>Changes in tax legislation (1) Implementation of IFRS-9 standards</p>	<p>(1) Bank of Albania and the Ministry of Finance should start respectively discuss on the issues regarding the implementation of IFRS 9 standards, as regard to necessary changes to BoA's regulatory framework as well as on the fiscal regulatory on the issues related with these standards.</p>

(2) Law no.8438, dated 28/12/1998, “On Income Tax in the Republic of Albania”, as amended and the respective Instruction no. 5, dated 30/01/2006, “On Income Tax”, as amended.

(2) There is a need to review and make necessary changes to determine a clearer Tax Procedure mainly, but not only on:

- **Article 24 Bad Debts/Write offs and the respective paragraphs of the Instruction**–

aiming to: (i) clarify that the moment of execution of movable or immovable property and entitles banks, when the credit is secured by movable or immovable property, to recognize the write off of non-performing loan (bad debt) as deductible expense at the time of execution of the property. Thus, even when there have been less than 365 days from the filing of the request to initiate the compulsory execution to the bailiff, the bank has the right to recognize the write off of non-performing loan as deductible expense at the time of execution of the property; (ii) allows banks, that upon the fulfilment of certain conditions set by the Instruction, the losses incurred by the sale (i.e., therefore, by the write off of the loan at the time of transfer for consideration) to be recognized as deductible expenses.

- **Article 25, Special reserves for banks and insurance companies** –

additions are needed for clarification and to avoid abusive cases, specific paragraph to clarifies that in case of transfer of a non-performing loan as proposed by Article 24, and under the proposal conditions in respective point of Instruction, the provisions previously recognized as deductible expenses for loans, will remain as such.

In case of transfer of the non-performing loan, the loss (or income) that will result as a consequence of writing off (transferring) the loan in accordance with the proposal in Article 24, of the Law will reflect the previously recognized banking provisions.

- **Article 20, Deductible expenses-**

(i) as there is no specific legal basis in respect of losses incurred from the sale of movable assets or real estate obtained by banks through legal procedures, we consider important to have it. The proposal should be in line with the needed addition to the article 24 (as per above proposal), as the collateral is a substitute of the non-performing loan previously recognized as bad debt/write off (deductible expense) and devaluations/ impairments, revaluations and losses represent the real impact of a previously written off loan. The same addition should be done even in the respective Instruction.

(ii) as there is no specific legal basis in respect of losses incurred in the money market, there is need to have it. Albanian Law on Income Tax is very limited with respect to transactions occurring in the money market. Currently, the aforementioned Law contains no provision in respect of losses incurred in the money market as a result of the unfavorable macro-economic conditions. The same addition should be done even in the respective Instruction.

- **Article 21, Nondeductible expenses paragraph 1 ë)-** it is needed legal amendment, aiming at avoiding the revaluation of interest rate applied in inter-bank loans, based on the applicable rates of non-comparable loans.

(3) Law no.92/2014 “On Value Added Tax in the Republic of Albania”, as amended and the relevant Instruction.

(3) In Article 34 and 36, “Taxable value” and in the relevant Instruction - are needed legal additions aiming to clearly define the meaning of market value in the event of the sale of a movable property that served as collateral.

In accordance with the main objective of the bank, the sale of collateral (in case of bad debts) is not the object of the banking activity but rather a way to ensure the return/collection of the loan. This means that the banks themselves are not intended for the trading of movable or immovable properties, but rather, when applicable, intend use the cash for the primary purpose of the economic activity. The current Law on Value Added Tax as a general rule provides that the taxable value will be the “market value” of the supply of goods or services. On the other hand, the Law No. 81/2016 “On revaluation of immovable property” provides that “the revaluation at the market value is done by independent experts, licensed for property evaluation by the relevant institutions”, aiming indirectly at the certification of the “market value”.

To clarify and specify the meaning of “market value” and to relate to the Law no. 81/2016, we have suggested adding a paragraph which provides that “market value” in case of the collateral will be the value determined and certified by an independent evaluation expert. This specification is necessary to avoid any claims by the tax authorities in considering the “residual accounting value” as “market value”.

	<p>On the other hand, practice has shown that the market value determined by an independent evaluation expert, is not always the value by which the collateral is sold in the market (i.e. it is being sold at a lower value). To avoid potential abusive behavior by the taxpayer, it is suggested a list of supporting documents which will prove the fact that the bank has exhausted all its possibilities to carry out the transaction by the initial market value certified by an independent expert.</p>
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IV

CORPORATE LAW

The current Corporate 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 aspects which *inter alia* would be recommended for further amendments and improvements to bring the Corporate Law closer to European standards.

SPECIFIC ISSUE	RECOMMENDATIONS
<p>(1) Article 14, paragraph 2. Article 14 states general principles of the Corporate Law. Paragraph 2 of this article sets out the principle of equal treatment of shareholders of the company. Taking in consideration the case of joint-stock companies where the shares may be either preferred shares or ordinary shares, shareholders may belong to different categories. Therefore, shareholders of different categories shall be treated differently, and shareholders of the same category shall be treated equally in compliance with the EU definition on equal treatment.</p> <p>(2) Article 92, paragraph 2, article 124, article 195 etc. These and other provisions of the Corporate Law set time limits expressed in days. However, they do not specify whether the days should be counted as calendar days or business days, leading to confusions and</p>	<p>(1) We suggest amending this provision, by better elaborating the principle of equal treatment with regard to different categories of shareholders.</p> <p>(2) We suggest filling the loopholes by defining if the time limits are expressed in calendar or business days, in order to avoid any potential inconvenience.</p>

/or delays in meeting important deadlines that may cause the loss of rights, such as: notification of the minority shareholders on the decision of the General Assembly (GA) about initiation of a claim to the court against the decision(s) of the administrator(s), otherwise minority shareholders shall proceed to raise the claim themselves; payment of contributions to the share capital of the company, otherwise shareholders lose the right to participate in the GA; making present the claims of creditors of the company to the liquidator of a company in liquidation process within the time limit, otherwise creditors lose their rights.

(3) 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, members of the board of directors and members of the supervisory board. 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) We suggest to explicitly state in the law if such restrictions apply to companies regardless of their place of registration.

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| <p>(4) Article 118, paragraph 2 and article 119, paragraph 5. According to article 118, paragraph 2 “in case private or public offering, the issuing of shares 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 shares 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 and/or economic burden for the companies and results in a prolonged procedure of issuance and registration of shares, regardless of their number or purpose (private or public offering). To be noted that Law on Securities regulates transactions of dematerialized securities, whilst the shares issued as per provisions of the Corporate Law are classified as materialized (this is confirmed also by article 150 of the Law on Securities).</p> | <p>(4) 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.</p> |
| <p>(5) Article 194. Article 194 requires registration with the National Business Center (NBC) of the information about the liquidator of the company. In practice this registration is carried out as an application which as required by the Law on NRC is confirmed by a written confirmation. On the other hand, article 195 of the Corporate Law provides that the liquidator shall, inter alia, publish to the website of the NBC two consequent notifications</p> | <p>(5) We suggest the amendment of the NCB Law in order to grant uniformity, practicality and certainty to the subjects that shall carry out a registration and/or publication by providing a written confirmation not only for applications but for any document that is required to be deposited and/or published.</p> |

for the creditors on the fact that the company is undergoing the liquidation process. What seems impractical is the publication process. The current procedure requires the liquidator to physically submit to the counter of the NBC the notification documents, without taking any written confirmation of performing the filing. Instead the liquidator must check online on the NBC's website if the publication has been made. Even though the data of the liquidator are registered, and the notification is published, both these processes consist in submitting documents to the NBC and in both cases, should be given a written confirmation in order to guarantee the liquidator that the filing has been properly performed and to ensure consistency among the legal provisions.

V

CONCESSIONS LAW

Concessions and Public Private Partnerships (PPPs) are governed by Law no. 125/2013, dated 25 April 2013 “On Concessions and Public Private Partnership”, as amended, which entered into force on 25 May 2013 (“Concession & PPP Law”) and Decision of the Council of Ministers no. 575, dated 10.07.2013 “On Approval of Rules and Evaluation of the Granting of Concessions/Public-Private Partnerships”, as amended (“Decision 575”).

The Concession & PPP Law, which abolished law no. 9663, dated 18.12.2006 “On Concessions”, was amended in 2014 and 2015 and is partially harmonized with the EU Directive 2004/18/EC. In 2016, a new draft-law was introduced to the Albanian parliament seeking further amendments affecting certain procedural aspects. However, such draft-law is still subject to discussions and consultation in the parliamentary commissions.

SPECIFIC ISSUE	RECOMMENDATIONS
<p>(1) Change of ownership of SPV</p> <p>Article 32, point 2 of the Concessions Law provides that changes in the ownership or the management of the Special Purpose Vehicle (SPV) is subject to the approval of the contracting authority and the Ministry of Finance, unless such changes are due to trading of shares in a regulated capital market.</p> <p>Such provision is vague and fails to specifically address the procedure that shall be followed in this case as well as the criteria that will be applied by the contracting authorities in granting the approval for the change of ownership/management of the SPV.</p> <p>It may be interpreted that article 32, point 2, provides for a mere approval from the contracting authority and the latter will not make any detailed evaluation of the capacities of the new (private) shareholders of the SPV, taking into consideration that the concession</p>	<p>(1) It is recommended the amendment of Article 32, point 2 as to specifically provide for the procedure that will be followed by the contracting authorities (and the Ministry of Finance) to grant their approval in relation to the changes of ownership/management of the SPV.</p>

contract was awarded after evaluating the technical and economic criteria of the initial shareholders.

The above-mentioned issue is not addressed by Decision of the Council of Ministers no. 575, dated 10.07.2013 “On the approval of the rules for the evaluation and granting of concessions/public private partnerships”, as amended.

In practice, the transfer of shares of SPV(s) has resulted in the involvement of new shareholders the capacities of which may not always be sufficient to implement the concession contract, albeit the duty and obligations primarily rely on the SPV itself.

(2) Symbolic price (EUR 1) concessions

Under article 4 of the Concession Law, the scope of this law is the granting of concessions for the conduct of the economic activities in certain sectors.

(3) Usage of public assets

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.

(2) Symbolic price (EUR 1) concessions

We would propose the amendment of item 3 of article 4 to better clarify the cases in which the Council of Ministers may offer concessions of EUR 1.

The former Concessions Law, provided that the cases where symbolic price concessions were awarded aimed at promoting investments in priority sectors that were in accordance with strategic objectives of the Albanian government.

(3) Usage of public assets

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:

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”.

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.

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;

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;

The Concession Agreement to be the only 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;

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.

OTHER LAWS AFFECTING CONCESSIONS

In addition to the provisions of the Concessions Law, 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) Expropriation procedures.</p> <p>Under the Expropriation Law no. 8561, dated 22.12.1999, (art. 10) the documents of an expropriation file shall include:</p> <p>(omissis)</p> <p><i>e) a nominative list of private owners whose properties expropriated, list of the private owners of whose properties are depreciated due to the expropriation, as well as the third parties that shall be compensated for their rights over the property subject to the expropriation together with the necessary explanation and necessary data for each of them, the respective provisions for the evaluation of these properties and rights as well as addresses and location most recently known of the owners and third parties.</i></p>	<p>We propose to amend the Expropriation Law no. 8561, dated 22.12.1999, as follows:</p> <ul style="list-style-type: none"> (i) The expropriation is approved by the government based on cadastral maps of the project area, and not on nominative list of private owners; (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; (iii) only the owners that have confirmed their title rights with IPRO, within the specified timing, will be entitled to receive compensation;

<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. 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>	<ul style="list-style-type: none"> (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; (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.
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VI

ELECTRICITY AND RENEWABLES LAWS

The Albanian energy market has entered recently in a deep transformation that only few years ago were difficult to think it would happen.

The new law “On Electrical Energy Sector” (no. 43/2015, dated 30.04.2015) (“Energy Law”) has been partially harmonized with the EU Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009.

The institutional and regulatory framework for energy and in general the energy market in Albania is reflective of the policy progress achieved over the last decades. In the context of the energy market, among others, Albania is part of the Athens Memorandum and the Energy Community Treaty (“EnC Treaty”) and strives to comply with the targets to join Pan-European Energy Market set there in to establish a liquid spot power market, enhancing the utilization of public and private resources based on best international practices, where the foreign investors can rely upon. The market has undergone some liberalization and indeed the recent re-structuring of the State-owned electricity enterprises has enhanced its technical, economic and corporate performance and allowed a partial opening of the market.

Pursuant to Albania’s obligations undertaken in the context of the EnC Treaty, on 30 April 2015, the Albanian Parliament adopted the new Power Sector Law no. 43/2015. The new Power Sector Law transposed the Third Energy Package of the EU acquis (including full transposition of Directive 2009/72/EC, 13 July 2009 concerning common rules for the internal market in electricity and Regulation (EC) 714/2009).

The actual package of recent laws in the energy sector, includes also the Law on Renewables and three laws on efficiency field, such as Law on Energy Efficiency, Energy Performance of Buildings, and Energy Labelling of Products.

The secondary legislation in force, is yet to be fully enacted and adjusted, to open the way of the reforms needed in fully implementation of the Third Energy Package.

SPECIFIC ISSUES	RECOMMENDATIONS
<p><i>The implementation of the Power Sector Law and adoption of the secondary legislation is behind schedule.</i></p> <ul style="list-style-type: none"> In view of the new rules to establish a liberalized and competitive electricity market, the Council of Ministers approved the new Albanian Power Market Model (“AMM”) on 13 July 2016, which introduced concrete steps to be implemented by the relevant state authorities towards the creation and functioning of the Albanian Power Exchange (“APEX”). Such steps however have not yet been fully implemented, despite the timelines set out by the AMM. The balancing market and responsibility are also provided in the MM, which was enacted in 2016. Notwithstanding, the project financed by IFC, so far no practical action has been put in place for the creation of a balancing market in Albania and the provisional electricity market rules that are applied, are not in line with the Power Sector Law. New rules for switching, balancing and congestion management were adopted by ERE to partially bridge the regulatory gap, however, compliant market rules, balancing rules and network codes are not yet in place. 	<p><i>Progress should be made with the enactment of the applicable sublegal acts.</i></p> <ul style="list-style-type: none"> The timely implementation of the steps required for the actual establishment and operation of the APEX is the first priority. This would allow not only the correct implementation of the commitments under the new Power Sector Law, but also open the door to the liberalization and promotion of a fully competitive power market in line with Albania’s obligations under the Third Energy Package. This is also expected to improve the reputation of Albania as a trading country, which will serve as a good model to other markets’ reforms in Albania. Rapid progress should be made with the establishment of a balancing market in order to guarantee the quality and sustainability of power services and long-term financial stability of the new Day-Ahead Power Market in Albania. Balance responsibility needs to be established in a compliant manner along with the mechanism of a competitive balancing market. To this point, rapid progress should be made with the establishment of a market-based balancing mechanism and the implementation of new balancing rules.

- The unbundling of OSHEE, deregulation of prices for supply (and on top for the generation) are also in delay.

- The unbundling of OSHEE, the revision of the non-compliant public service obligations, development of a complete and compliant set of rules for the access and operation of the networks, competitive forms of supply, abandoning generation price regulation and protection of customer rights are a priority.

RENEWABLES LAW

SPECIFIC ISSUES	RECOMMENDATIONS
<p>(1) The New Law on Renewables has introduced a substantial change of the support schemes, by substituting the feed-in-tariff scheme (fixed-price FIT payments), with the so-called ‘contracts for difference’ scheme. This means that renewable energy producers will compete for the investment to be made and the support of the energy sold in the market, receiving a variable premium as the difference between the auction price and the electricity market price. The secondary legislation in relation to contracts for difference support scheme has been however not yet adopted.</p> <p>(2) The New Law on Renewables has not overlooked the “existing preferential energy producers”, that have concluded concession contracts with the Ministry of Energy before the entry into force of the New Law and have completed or are planning to complete their plants within 31 December 2020. However, they will be subjected to new government rules which appear to be not yet clear and attractive for this category such as:</p> <ul style="list-style-type: none"> • A new methodology for setting the price for the electricity produced is in place. • The present methodology is very vague and unclear and does not offer security to the producers in the long run. • Producers will be subject to new prices to be calculated by ERE on the basis of the new methodology. 	<p>(1) More progress should be made with the timely enactment of secondary legislation in relation to the new support scheme introduced by the new Law on Renewables. This will provide investors with a chance to fully assess the implications of such support schemes and hence decide whether to invest or not in the industry. Due to the strategic kind and size of the investments, the government shall consult the new rules and methodologies with the interested targeted stakeholders.</p> <p>(2) It is recommended that such new rules should be enacted within the limits set out by the New Law on Renewables. This means they should not disregard the right of existing preferential producers to sell their energy to OSHEE as a public service obligation of this latter and the criteria of the new methodology for calculating the annual price, as well as the minimum price (FIT) set out by ERE in 2016.</p> <p>It is important to ensure that the methodology criteria should not result in fundamental changes compared to the older ones, on which investors relied when making their investment by entering into PPAs.</p> <p>The methodology for the calculation of the support scheme applicable to existing producers shall be agreed to regain investor interest in the domestic renewable energy market.</p>

(3) The adoption of the Net-Metering scheme was the main step towards ensuring compliance with the Renewable Energy Directive and formulating the policy needed to deployment of distribute renewable resources. Specifically, to meet the requirements repeatedly expressed by the World Bank reports, in particular the “Doing Business 2014”, the recent interventions of the Ministry and of the Energy Regulatory Authority have already opened the way for the network to receive energy input produced by businesses and households by generating distributed resources based on net energy measurement scheme up to 500kW.

(3) The implementation of the net-metering scheme has to be particularly regarded as favorable, if considering the problems of network in Albania and the concentration of production in north, due to the fact that the DER are produced directly in the place where their consumption is needed. In particular, one third of the total number of consumers is located in the capital and the rest in the largest urban and rural areas of the western lowland or in other areas with high solar radiation such as Elbasan, Korça, etc.

Moreover, the self-consumption of electricity produced on-site boost the citizen participation in the energy transition and enable a technological and social development.

Instead, direct investments for building of long lines in remote areas make the network operators to adapt their grid development plans to accommodate more renewable energy on urban ones.

As per the above, the rapid addressing of remaining commercial and technical issues is essential, having a framework in which first of all the energy authority (ERE) should play a key role in securing market competition. In addition, it is of core importance that the distribution operator applies non-discriminatory and transparent rules and tariffs for all forms of distribution network usage.

Last, based on efforts to ensuring the implementation and enforcement of legal obligations covered by the Energy Community Treaty, we would suggest to call for a new involvement of the parliament, based on the constitutional control function toward the executive action. On this regard, it is suggested the creation and development of semi-official or official

consulting network (a forum or regulation school) including relevant stakeholders, such as business, academia, civil society and professionals, within and outside the 'thematic groups', to set out the key energy challenges that should provide a new impetus of national implementation energy plans, taking into account the multilateral dimensions that the energy sector provide.

VII

MINING LAW

The licensing process for the mining rights in Albania initiated in 1994, upon the 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, dated 15.7.2010, as amended. In view of the implementation and harmonisation of the Albanian legislation with the EU acquis, the Mining Sector Law partly reflected the provisions of EU Directive (2006/21 dated 16 March 2006 ‘On Management of Waste from Extractive Industries). Some of the new features

of the mining law include 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. Despite the various amendments made in the mining law, the foreign investors who operate in this field keep addressing as critical concerns, issues which affect negatively their doing business life and would influence their decisions on expanding their activity in Albania. Thus, we have summarised below the main issues along with the respective opinions and recommendations.

SPECIFIC ISSUES	RECOMMENDATIONS
<p>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.</p> <p>Overlapping of mining permits has proven to be a problem.</p> <p>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>Lack of coordination between different institutions in charge for permits obtaining process. This results with a longer process on Investor’s side, lost of time and often lost of Investor trust on administration efficiency.</p>	<p>Better consultation with the mining industry representatives prior to future changes; and consider current requests for changes Mining geological and land data should be better regulated to avoid and resolve such issues.</p> <p>Overlapping of mining permits should not occur and when occurring should be resolved fairly and quickly.</p> <p>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.</p> <p>Creation of a one Stop Shop to support all those Investors who have been granted concessionary Licences by facilitating all the necessary permits in one single Window.</p>

(1) Concern related to the Prospecting – exploration period in Mining Industry

The New Mining Law of 2010 shortened the prospecting-exploration period from 6 years to 4 years. This period is absolutely inadequate for prospecting and exploration of solid minerals in any country. For comparison, the Industry Members of FIAA have examples from other countries.

(2) Concern related to the minimum mandatory investment value

Regarding the minimum mandatory investment value to be carried out by a mining company per square kilometer, after the second year of prospecting-exploration, it is the highest in the world, with a value of 300,000 Euro/km². Is Albania brought to an attractive light for foreign investors if such irrational mandatory expenses are applied? In our opinion this will definitely deter any potential investment for the sector. This irrational amount needs to be reduced.

(3) Concern related to the financial guarantee for prospecting-exploration permit

The financial guarantee for prospecting-exploration permit is 75% of the annual investment, which is a huge burden for this

(1) The Industry Members of FIAA have concluded that the prospecting-exploration period in the mining industry is impacted by different factors from weather conditions during the winter to the frequent problems with local landowners (servitude), which makes the real effective work in prospecting-exploration in Albania more than 4 years, including extensions. The sector recommends the necessity to amend the period of this permit to a minimum of six years. To support this, the industry members are ready to help providing examples from other countries.

(2) The Industry Members of FIAA have concluded that the actual mandatory value is very irrelevant for both existing and prospective investor. For the health of the industry in Albania the mandatory minimum investment values need to be reduced to a reasonable value.

(3) The Industry Members of FIAA have concluded that the actual financial guarantee for prospecting-exploration permit of 75% of the annual investment is a huge burden for this purpose. The industry members are

purpose. We believe that such a high financial guarantee is meaningless and has markedly reduced foreign investments in this industry since 2010.

(4) Concern related to Reporting frequency on the performed activities

The reporting on the activity performed by the permit holder for exploration and exploitation permits as specified in articles 13 and 18 of the mining law, each three months and heavily loaded with details, to our understanding are very frequent. For example, such reports are made once a year in Kosovo and in all the provinces of Canada.

(5) Concerns related to SERVITUDE

The problem of servitude is one of the oldest problems on implementation of the mining law in Albania. Once a mining permit is issued, the Government should take over the responsibility in resolving the legal problems between the permit holder and landowner.

ready to help providing examples from other countries. Our recommendation is to apply a bank guarantee of 10%, as in the case of the exploitation permit.

(4) The Industry Members of FIAA have concluded that the reporting frequency on the activity performed by the permit holder for exploration and exploitation permits, should be adjusted in order to help minimize corruptive practices and increase investments in the ground. We recommend these reports be of a frequency up to two times per year and be removed from the authoritative and categorical positions of the respective agencies. On this point, there is also room for reviewing the items that are considered as investment in prospecting, exploration or exploitation, because at present, a considerable number of them are unjustly disqualified as such.

(5) The Industry Members of FIAA, would propose that for every disputed land area, the permit holder pre-deposits in the bank the expropriation value according to the land reference price as specified by the government. Thereafter, the investor should be eligible to start the mining activities in the area, whilst the case is settled in court.

VIII

HYDROCARBONS LAW**CHALLENGES IN THE
HYDROCARBON EXPLORATION AND
PRODUCTION SECTOR IN ALBANIA**

The Law on Hydrocarbons of 1994 (as amended) governs and regulates the hydrocarbons exploration and extraction industry. This law together with the Council of Ministers Decision “On the fiscal system in the petroleum sector” as amended, forms the main 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 Albanian Agency of Natural Resources (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 February 2017, the Hydrocarbons Law was amended by introducing certain changes and additions.

One of them was aimed at the protection of the Albanian natural resources by means of guaranteeing the country’ national security, thereby complying with the principles of Directive 94/22/EC of the European Parliament

and of the Council “On the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons”.

This means that the relevant authorities may reject the execution of new PSAs or any share transfers in existing PSAs over grounds of Albanian national security possible infringement.

The new amendment has also introduced the possibility for the contractor to benefit from stability clauses, up to 12 years from the production of hydrocarbons, thereby maintaining the same level of tax liabilities for the whole 12 years period.

SPECIFIC ISSUE	RECOMMENDATIONS
<p>(1) It is difficult to highlight specific problems and issues with the Hydrocarbon Law itself as it is quite bare, and most is left to be regulated by the negotiated PSAs.</p> <p>(2) There is a lack of transparency in the application procedures for licenses/acquiring PSAs in the oil sector. There is a lack of clear qualification criteria, details and timings on the application procedures resulting in a certain lack of legal certainty especially where there is more than one applicant for the same block.</p>	<p>(1) In most cases, these PSAs are well designed contracts governed by Albanian and foreign law (where foreign investors are involved). There are some areas that could benefit from more detailed provisions such as timing and responsibilities of parties in development plan approval procedures, take over procedures from the state counterparty in case of early termination, etc. Parties to the PSA may agree on reflecting any such amendment, as maybe legally required, into the PSA.</p> <p>(2) Licensing regulations should be re-drafted to offer much more detailed and transparent qualifications criteria. Even if not introducing competitive tender procedures, applicants should know what their position is where there is more than one applicant for the same block.</p>

TAX LAW FOR THE UPSTREAM PETROLEUM SECTOR

Exploring and developing production from an oil or gas field requires significant upfront investments that could reach billions of Dollars. The investors therefore seek certainty to recover the investment and profit that corresponds to the high-risk operations they undertake. Recovering the investment would require several years. Because of this industry

specific risks and rewards governments apply specific tax legislations for hydrocarbon exploration and production sector (the Sector) so that the investments become feasible.

The hydrocarbon sector has significant potential to contribute to the Albanian economy. Unless the anomalies in the fiscal laws are resolved, the uncertainty would deter capable investors to enter in the Sector in Albania.

SPECIFIC ISSUES	RECOMMENDATIONS
<p><i>The Petroleum Fiscal Law (“PFL”) in relation to the international tax practices followed by the petroleum industry and in relation to the General Income Tax Law (“GTL”).</i></p> <p>(1) The overriding effect of the specific tax regime is not sufficiently addressed in the PFL and the General Tax Laws (GTL). i.e. the GTL does not indicate that the PFL applies to the Sector, and this creates high fiscal uncertainty. This uncertainty may potentially create double taxation to investors that would negatively influence their investment decisions.</p> <p>(2) The Petroleum Profit Tax scheme is not sufficiently addressed by the PFL and not clearly mirrored/enforced by the general income tax law and other laws, most notably the following aspects, as examples:</p>	<p>(1) The Petroleum tax regime could be improved by amending the relevant laws to provide clarity and endorse the tax terms agreed in the existing PSCs and to leverage from international practices.</p>

a) The GTL includes elements to calculate taxes which do not agree with the way tax is calculated for the Sector such as recoverable costs, non-recoverable costs and limitations to recoverability. These concepts are usually clear in fiscal legislations in other countries.

b) Capital expenses are fully recovered against revenues through cost oil as incurred in line international practices instead of applying annual depreciation percentages. There is a general industry practice on the application of Production Sharing Contracts (PSCs) and recoverability of costs and capital expenditures. These are currently lacking in the Albanian legislations.

c) There is no specific Petroleum Profit Tax declaration form and payment terms.

(3) Joint Operating Agreements (“JOA”s) based on all international best practices and Albanian accounting framework are not recognized by the fiscal framework. JOAs enable multiple investors to join the investment and share the costs, the risk and the profit. JOAs are not recognized in the law.

(4) Given the special tax regime that investors have in the Sector, exemptions from other Albanian taxes exist accordingly, these exemptions are not reflected in general tax laws (e.g. exemption from withholding tax on payments made to affiliate companies; from employment income tax for employees/expatriates; from local taxes and national

taxes [except for royalty tax]; from customs duties).

VAT regime for the Petroleum regime

(5) Joint VAT Instruction of the Ministries is not supportive of the exemptions granted in the Law and the PSCs.

a) 30 days of approval of exemption and lack of legal means to provide clarifications and appeal decisions. The time limit in the VAT directive is against the VAT law by making the exemption right for the Sector to expire by the simple pass of time. The lack of legal means leaves the investors in legal uncertainty to protect their right.

b) Definition of 'exploration' is not consistent with definition in the current PSCs. This creates unnecessary conflicts between the interpretation of the VAT instructions and terms of the PSCs.

(5) The Joint Instruction could be reviewed to include provisions that addressed the existing issues and provide legal certainty.

IX

INSURANCE SYSTEM IN ALBANIA

The insurance system in Albania has been liberated since 1996. Actually 11 insurance companies operate in the market offering non-life insurance, life insurance and private pensions. Strategic investors are in the market since 2003 and nowadays more than 70% of shares belong to Austrian companies (mainly UNIQA Group AUSTRIA and Vienna Insurance Group).

Despite the reforms and legislation improvement in these years, the Albanian insurance market continues to be small with a contribution of only 35 euro/capita.

The market is mainly focused on compulsory motor insurances that occupy more than 70% of the total premium volume. Last year, the Financial Supervisory Authority decided to liberate the MTPL insurance that further lead to often premium changes by so causing confusion in the market.

Considering that in neighborhood countries (Macedonia, Montenegro etc) the premium per capita is, at least, 100 Euro/capita, the Albanian insurance market has a very high development potential.

The insurance market in Albania bases its activity on two main laws:

- Law No. 52/2014, date 22/05/2014 “On Activity of Insurance, Reinsurance and Brokerage in Insurance and Reinsurance”.
- Law No. 10076, date 12/02/2012 “On Compulsory Insurance in Transport Sector”; Civil Code of Republic of Albania, Chapter XXIII INSURANCE.

This segment is also regulated through Bylaw acts and Regulations approved by Financial Supervision Authority.

In order to move forward a further development of the insurance market in Albania, several changes, including legislation and procedures are needed.

SPECIFIC ISSUE	RECOMMENDATIONS
<p><i>Compulsory insurances needed</i></p> <p>In Albania, the state/government is the only responsible institution that deals with health and material claims resulting from natural catastrophes, accidents and liabilities.</p> <p>(1) By establishing natural disasters insurance and accident insurance as obligatory by law would make possible: a financial assistance and protection such as in massive claims due to natural hazards and an economic growth pursuing the growth of insurance market.</p> <p>(2) Several events occurred in hotels and restaurants (explosions mainly to gas equipment's; food poisoning etc.) lead to a more urgent need to have obligatory hotel and restaurant insurances.</p> <p>(3) State institutions' investments in infrastructure and construction should be properly insured regarding the quality of works and liability of the constructor.</p>	<p>(1) Drafting and approval of a bill on compulsory insurance from natural disasters and earthquake. This refers to a bill that is focused especially on insuring houses, private and public buildings from earthquakes and additional natural disasters. 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> <p>(2) Liability insurance for hotels and restaurants to be reflected on the art. 31, Law Nr.9902, date 17.4.2008 "On Consumer's Protection".</p> <p>(3) Obligatory Contractors All Risks insurance for constructions that are financed from state institutions. This insurance covers the constructor's liability regarding: damages of the insured and damages caused to third parties.</p>

<p>(4) Differently from employed people, pupils and students aren't involved in the health insurance scheme in case of illness or accident.</p> <p>(5) In the recent years the agriculture sector has experienced a two-digit growth thus composing app.23% of GDP. As The agriculture insurance composes only 0.001% of the GDP while Albania risks to be hit by natural disasters more than any other country in Europe. The damages caused by flood amount to 200 million Euro.</p>	<p>(4) As in many countries, Pupils and Students insurance from Accidents should become compulsory and as such it should be reflected on the law on Pre-university and University Education. This would lead to a general improvement of the life quality and health of youngsters as well as it would minimize the state costs.</p> <p>(5) The agriculture insurance for more than 305K farms (acc. To INSTAT) is a must as it would facilitate the indemnification of the agriculture damages due to natural hazards. The subsidization of the agriculture premium from the state would be an asset both to the farmers and the state itself as the private companies would be in charge of claims handling.</p>
<p><i>Gaps in social insurance scheme</i></p> <p>Social insurance are showing big financial problems.</p> <p>The Parliament has approved the law No. 10197, dt. 10.12.2009 "On voluntary pension funds".</p> <p>The implementation of the reform acquires cooperation between all political parties in parliament.</p>	<p><i>Approval of the new law 'On social insurances and voluntary pension in the Republic of Albania'</i></p> <p>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>

X

EMPLOYMENT LAW

Employment in Albania is primarily governed and regulated by the 1995 Labor Code (having been amended several times under Law No. 8085 of 13 March 1996, Law No. 9125 of 29 July 2003, Law No. 10 053 of 29 December 2008 and Law No. 136/2015), 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.

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>(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>(3) Existing penalties for failure to declare employee(s) are considered to be disproportionately high.</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) 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) Penalties to be adjusted to be more proportionate to non-compliance.</p>
<p>Practical aspects</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>Practical aspects</p> <p>(4) The online system available for the declaration of employees must be adjusted accordingly.</p>

XI

RESIDENCE AND WORK PERMIT LAW

Albania is relatively an easy country to enter in and to get information on all the documents and procedures for obtaining a 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 within a 180 days period. Foreign citizens must have the necessary currency to sustain themselves during their stay in the Republic of Albania. Based on bilateral agreements, Albanian citizens 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 (i.e. including but not limited to European Union countries).

Residence and work permits are regulated according to Law no. 108/2013, dated 28 March 2013 "On Foreigners", as amended 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 Albania for up to 90 days within a 180 day period, with no entry fee. All foreign citizens who intend to work and live in Albania need to be provided either with Work Permit, or Work Registration Certificate, or Certificate of exemption from the obligation to obtain a work permit, depending on their citizenship, the type of work and the duration of stay in Albania.

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.

EU citizens, Schengen countries citizens and USA citizens are exempted from the obligation to be provided with work permit or work certificate. However, they must be provided with a certificate from the relevant authority stating that they are exempted from the obligation to obtain a work permit (i.e. Certificate of Exemption). The Certificate of Exemption is issued by the relevant Albanian authority within 5 (five) working days from filing of the application.

In addition, EU citizens are entitled to the same rights and obligations with Albanian citizens with regard to the labour legislation.

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 offices, 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 some progress as regards coordination of social security systems. Bilateral agreements on social security with Greece, Belgium, Turkey, Germany, Romania, Hungary, Macedonia, Luxemburg and Czech Republic have been signed. Negotiations with Italy and other major countries have continued.

SPECIFIC ISSUE	RECOMMENDATIONS
<p>(1) In order to apply for “transfer within the company” work permit as part of the documentation, requires the tax certificate issued from the Tax office providing that the Albanian company does not hold any tax obligations.</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>(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) 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>(4) Labour Office and Migration office require apostilled labour contract and assignment letter to obtain respectively the work permit and residence permit.</p> <p>(5) Law on Foreigners does not provide a transfer within company” option for foreigners that will be transferred to work in Albania up to three months. For foreigners working less than 60 (sixty) days, there are some limited possibilities depending on the work they will perform and citizenship.</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 second agreement between the employer and the foreigner or an authorisation issued from the foreign employer proving the work relationship between them.</p> <p>(4) Obtainment of apostilled private documents is costly and time consuming; thus, apostilled documents must be requested only in case of foreign official documents and not agreements between private persons.</p> <p>(5) New amendments to the Law on Foreigners may address this issue. Also, Law on Foreigners should be aligned with recent provisions of the Labour Code on posting on foreign workers to Albania.</p>
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XII

BANKRUPTCY LAW

The new Bankruptcy Law no.110/2016 has brought some novel concepts, but, above all, it has enabled the inclusion into a single law of several new provisions and also of some interpretations, the latter based on and created by the to date court practice related to the previous bankruptcy law.

Among the most important new concepts of the new Bankruptcy Law, to be mentioned are the provisions related to extra-judicial agreements for the restructuring of debt for commercial entities, new dedicated provisions for administrative violations, making reorganization of some public entities or local government units possible subject to the bankruptcy law, the involvement of the prosecutor in the insolvency process.

Among some of the interpretations and practices created by the court practice related to the previous bankruptcy law, it is worthy to mention the followings: the use of court experts before the opening of the insolvency proceeding, provisions relating to the National Insolvency Agency, clarification of the possibility for the bankruptcy of a natural person (individual) and of some other subjects, clarification for secured creditors regarding the enforcement of security out of insolvency proceedings, insolvency proceedings over hereditary property and joint marriage property.

Regarding the legal provisions that still have the potential to create problems in the daily

practice, there are to be mentioned the issues related to availability of funds to support the cases where the debtor does not have sufficient assets to cover the costs of the insolvency proceeding and indefinite suspension of the process until the funds are made available, the protection over the insolvency estate until the opening of the insolvency proceedings if these are not opened within the legal timeframes, securing of the shareholders' personal property until it is confirmed that there were no misconduct, abuse, etc., which led to the state of insolvency, the priority ranking of bankruptcy claims provided in the new Bankruptcy Law in comparison to the ranking provided in the Civil Code and according to some conventions to which Albania is a party to, the lack of expressed alternative for the sale of the debtor, the unclear role of the National Insolvency Agency in court insolvency proceedings, some unconstrained decision-making rights of the administrator which can apply without having the confirmation of the creditors meeting, the simultaneous repayment of the creditors belonging to the same ranking of preference, etc.

Since the new Bankruptcy Law is now effective (May 2017), some of the above novelties and problems can and will be tested by the relevant court practice which should aim to create good and sustainable court precedents to bring effective benefits to the interested subjects and to the entire Albanian economy.

SPECIFIC ISSUE	RECOMMENDATIONS
<p>(1) Regarding the legal provisions that have the potential to create problems in the daily practice, may include the issues related to the need for availability of funds to support the cases where the debtor does not have sufficient assets to cover the costs of the insolvency proceeding and indefinite suspension of the process until the funds are made available, the protection over the insolvency estate until the opening of the insolvency proceedings, if these are not opened within the legal timeframes, securing of the shareholders' personal property until it is confirmed that there were no misconduct, abuse, etc., which led to the state of insolvency, the priority ranking of bankruptcy claims provided in the new Bankruptcy Law if compared to the relevant ranking provided in Civil Code and according to some conventions to which Albania is a party to, the lack of expressed alternative for the sale of the debtor, the unclear role of the National Insolvency Agency in court insolvency proceedings, some unconstrained decision-making rights of the administrator which can apply without having the confirmation of the creditors meeting, the simultaneous repayment of the creditors belonging to the same ranking of preference, etc.</p>	<p>(1) Some of these problems can and will be tested by the relevant court practice which should aim to create good and sustainable court precedents to bring effective benefits to the interested subjects. Alternatively, Bankruptcy Law could be amended in order to address such issues.</p>

Practical Aspects	Practical Aspects
<p>(1) Number of bankruptcy court cases is very limited.</p> <p>(2) There is only a limited number of bankruptcy administrators who are licensed to act as such.</p>	<p>(1) Increase business awareness on benefits from the bankruptcy proceedings, and increase awareness of creditors on their relevant rights.</p> <p>(2) Increase number of bankruptcy administrators, strengthening of their professional capacities through the organization of continuous training and workshops for the licensed bankruptcy administrators.</p>

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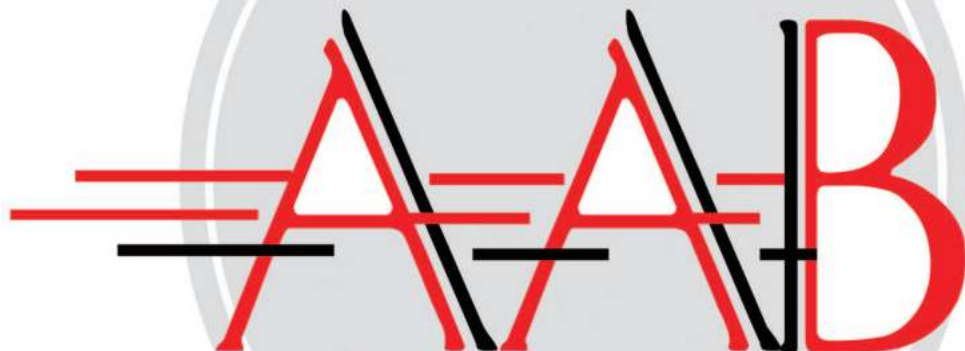
Committee, FIAA Tax & Financial Committee, FIAA European Integration Committee, Albanian Association of Banks, Ernst & Young Albania, Boga and Associates, Kalo and Associates, PriceWaterhouseCoopers Audit shpk, SIGAL UNIQA Group AUSTRIA and Dr. Lorenc Gordani, Energy Advisor.

WHITE BOOK WORKING TEAM

ALBANIAN ASSOCIATION OF BANKS

Spiro Brumbulli
Secretary General

Brunilda Kostare
Legal Advisor



ALBANIAN ASSOCIATION OF BANKS
SHOQATA SHQIPTARE E BANKAVE

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 formulate 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.

BOGA & ASSOCIATES

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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. The firm also operates in Kosovo (Pristina) offering a full range of services. Until May 2007, the firm was a member firm of KPMG International and the Senior Partner/Managing Partner, Mr. Genc Boga, was also the Senior Partner/Managing Partner of KPMG Albania.

The firm's particularity is linked to the multidisciplinary services it provides to its clients, through an uncompromising commitment to excellence. Apart from the widely consolidated legal practice, the firm also offers the highest standards of expertise in tax and accounting services, with keen sensitivity to the rapid changes in the Albanian and Kosovo business environment.

The firm delivers services to leading clients in major industries, banks and financial institutions, as well as to 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 is continuously ranked as a "top tier firm" by The Legal 500, by Chambers and Partners for Corporate/Commercial, Dispute Resolution, Projects, Intellectual Property, Real Estate, as well as by IFLR in Financial and Corporate Law. The firm is praised by clients and peers as a "law firm with high-calibre expertise", "the market-leading practice", "a unique legal know-how", distinguished "among the elite in Albania" and described as "accessible, responsive and wise".

Areas of practice

LEGAL: Commercial/Corporate, Banking and Finance, Competition, Employment, Construction, Telecommunication, Oil&Energy/Projects, Procurement, Environment, Intellectual Property, Consumer Goods & Product Safety, Real Estate, Litigation, etc.

TAX: Tax Advice, Tax Audit Services, Tax Compliance

ACCOUNTING: Bookkeeping Services, Accounting Advice, Forensic Services

Languages spoken: Albanian, English, French, Italian.

Tirana Office

40/3 Ibrahim Rugova Str.

1019 Tirana

Albania

Tel +355 4 225 1050

Fax +355 4 225 1055

Email: boga@bogalaw.com

www.bogalaw.com

Pristina Office

27/5 Nene Tereza Str.

10000 Pristina

Kosovo

Tel +381 38 223 152

Fax +381 38 223 153

Email: boga@bogalaw.com

www.bogalaw.com



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EY in Albania and Kosovo is part of the global organization and one of the 22 countries that comprise the Central and Southeast Europe (CSE) region of EY. This enables and facilitates our experienced professionals to use and implement our globally proven methodologies and extensive resources so as to offer seamless, consistent, high quality services to our domestic as well as cross border clients and inbound investors. In Albania we have assembled a growing number of highly skilled professionals with the drive to provide clients with unique service experience by being connected, responsive and insightful to them.

Our services

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- Financial Statement Audit
- Financial Accounting Advisory Services
- Fraud Investigation and Dispute Services
- Climate Change and Sustainability Services

Advisory Services

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- Information Technology (IT)
- Financial Services Risk
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As a member of EY EMEA organization, the firm operates as a single entity in 150 countries. It is within this structure that we can deliver the right resources bring the best skills and wealth of expertise to cater for the clients' needs irrespective of their geography. We are proud and confident that our business reflects the market in which we operate. With diverse and inclusive culture, we aim to set a model to others by living our core values, integrity, respect and commitment to our people, teamwork and pursuit of excellence.

Our values

Our values define who we are. They influence the way we work with each other, our clients and regulators, and our communities.

Our strengths

Our strength lies in our ability to serve our clients using a powerful combination of deep local knowledge and global experience.

Tax Services

- Business Tax Services
- Global Compliance and Reporting
- Transaction Tax
- People Advisory Services
- Indirect Tax
- International Tax Services
- Law

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Tirana Office, Albania

Sky Tower
Ibrahim Rugova Street
1001, Tirana, Albania
Tel: +355 4 24 19 575

Prishtina Office, Kosovo

16-7 Pashko Vasa Str.
1000, Republic of Kosova
Tel: +381 38 220 155



Established in 1994 KALO & ASSOCIATES represents today a leading commercial corporate law practice in Albania and Kosovo. The Firm represents prominent foreign and multinational companies and agencies, including many Fortune 500 and some Fortune 100, operating in a various sectors and industries across the globe.

K&A lawyers have a considerable international experience and specialization, earned through studies in foreign schools, which enhances the services provided to our clients in sophisticated practice areas and complex cases.

K&A is recognized for its expertise in the energy sector and in particular it has ample experience in relation to regulatory and legislation framework review attained from (i) working in EBRD projects; (ii) working in energy related projects, nearly always involving renewable energy sources; (iii) working on projects for drafting and improving the renewable energy framework. Notably the firm has assisted and contributed in drafting projects funded by various international donors such as: (i) Energy Efficiency of Buildings Law; (ii) Renewable Energy Law; (iii) Concession Law; (iv) Privatization Law for the Electricity Distribution Division (OSHE), together with all relevant secondary legislation; and the (v) Mining Law.

K&A also enjoys regional recognition in South East Europe culminating with the establishment in 2003 of the South-East Europe Legal Group – (SEE LEGAL), the largest legal alliance in the Balkans consisting of premier national law firms from 12 jurisdictions providing seamless legal services including cross-border commercial transactions (www.seelegal.org).

K&A is nominated for many years in a row for “The Best Law Firm of Eastern Europe and the Balkans” by the Lawyer European Awards (www.thelawyereuropeanawards.com) and is regularly Listed as Top Tier Firm by IFLR1000, Chambers Europe, Chambers Global and other prestigious legal publishers quoting clients:

“a sophistication that is rare in Albania”; “A practice that is consistent with what you would expect from a top Washington law firm”; “Feel comfortable and secure dealing with KALO & ASSOCIATES”; “The firm offers high standards and fair billing.”; “We asked several international firms and everyone recommended them”

K&A law practice is structured in 6 departments as follows:

Corporate | Competition
Tax | Customs
Employment | Immigration

Intellectual Property | Data Protection
Banking | Finance
Litigation | Arbitration



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Rruga Ibrahim Rugova

Sky Tower

9/1floor

Tirana,Albania

Tel:[355] (4) 2 242 254/2280 423

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PwC established its presence in Albania in 2005. As elsewhere in the world, PwC in Albania uses the benefit of its hands-on experience to provide a strong level of local understanding and support, in accordance with the international professional standards of the PwC worldwide organisation.

The clients of PwC in Albania are key players in the Albanian market, as well as leading Albanian and international companies. We consider it our mission to help our clients find solutions to complex problems arising during their everyday operations and offer them services of the highest quality. To best serve our clients, we aspire to understand their business and specifics of the industry they operate in.

In Albania, PwC provides a 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 PwC in Albania, our services are organised into Lines of Service. Each of these lines is covered from 50 professionals who are holders of Association of Chartered Certified Accountants (ACCA) certificates and members of the Institute of Certified Public Accountants in Albania and whose goal is to help our clients build value, manage risk and improve their performance.

Our Lines of Services:

Assurance Services

PwC has the knowledge and experience necessary to help companies and organisations both large and small. Our audit and assurance approach, is tailored to suit the size and nature of your organisation. With our deep understanding of local and international regulation and legislation we can also help with complex reporting issues involving Sarbanes-Oxley and International Financial Reporting Standards (IFRS).

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PwC in Albania provides comprehensive tax advisory services on all aspects of Albanian taxation, as well as on international taxation. We provide tax advice, answers to your questions and/or offer opinions on tax matters including research, discussions, memoranda and attendance at meetings related to these matters. We give clients the benefits of international expertise and in depth understanding of the local authorities. Our tax staff has substantial practice experience as well as academic experience.

Legal Services

Our legal team has the local and international knowledge and experience in assisting clients in all legal aspects of their business in Albania and cross border transactions. With a commercial awareness approach and solution oriented mindset, we are dedicated to providing advice, strategy and alternative resolutions.

Advisory services

Our Advisory Services practice focuses on the strategic development of businesses, including the purchase or sale of businesses and assets, and assisting in the development of new projects. By combining the global knowledge pool of Advisory Services with our local skills we are able to provide an exceptional service to clients by effectively linking regional commercial reality with international resources and finding a position of mutual acceptability and consensus.

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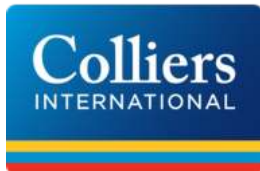
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Aida KUKA

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Foreign Investors Association of Albania

Themistokli Gërmenji Str. Building No.8, 2nd Floor, Ap. No.9

Tirana, Albania

Tel: ++355 (4) 222 555 3

contact@fiaalbania.al

www.fiaalbania.al

