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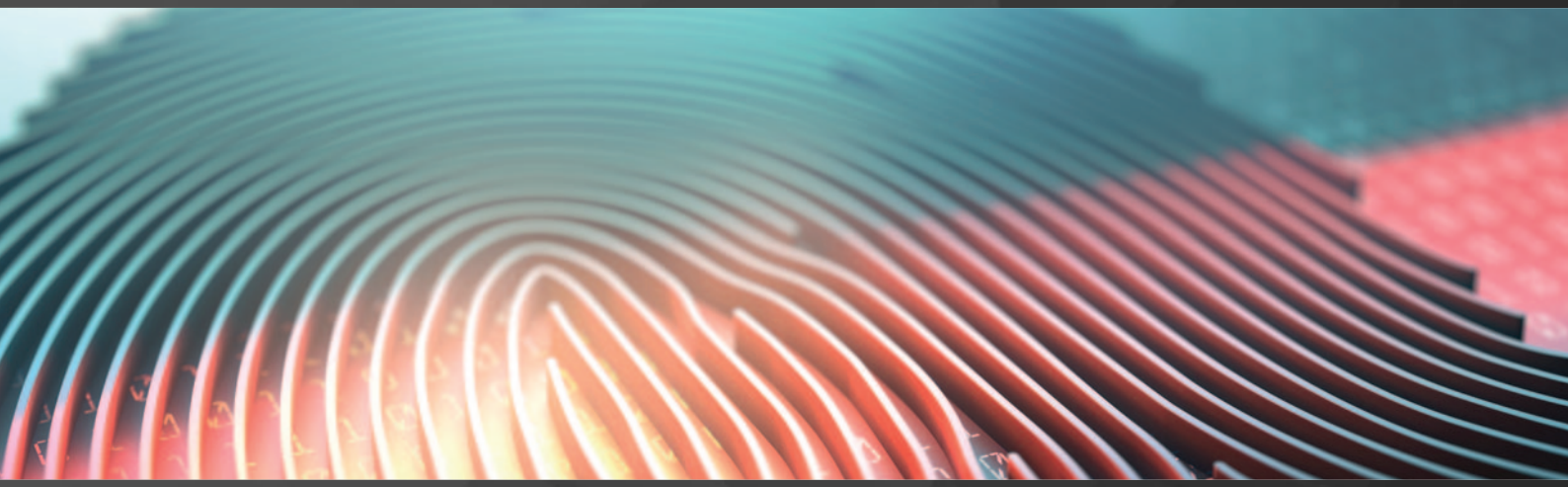

Cybersecurity 2020

A practical cross-border insight into cybersecurity law

Third Edition

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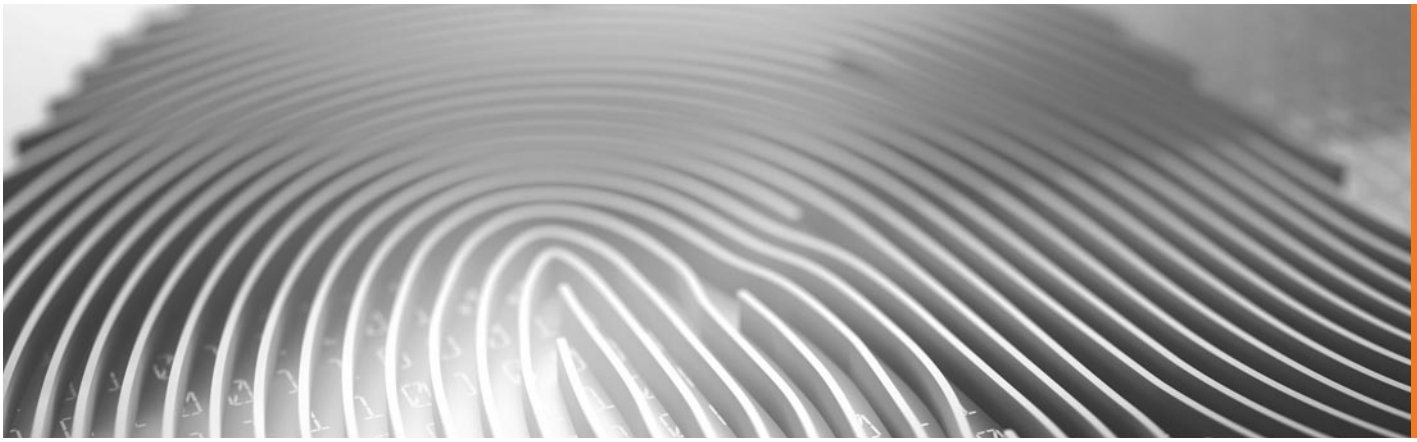

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Third Edition

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Expert Chapters

Country Q&A Chapters

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From the Publisher

Dear Reader,

Welcome to the third edition of *The International Comparative Legal Guide to Cybersecurity*, published by Global Legal Group.

This publication, which is also available at www.iclg.com, provides corporate counsel and international practitioners with comprehensive jurisdiction-by-jurisdiction guidance to cybersecurity laws and regulations around the world.

This year, there are three general chapters which provide an overview of key issues affecting cybersecurity, particularly from the perspective of a multi-jurisdictional transaction.

The question and answer chapters, which cover 32 jurisdictions in this edition, provide detailed answers to common questions raised by professionals dealing with cybersecurity laws and regulations.

As always, this publication has been written by leading cybersecurity lawyers and industry specialists, to whom the editors and publishers are extremely grateful for their invaluable contributions.

Global Legal Group would also like to extend special thanks to contributing editors Nigel Parker and Alexandra Rendell of Allen & Overy LLP for their leadership, support and expertise in bringing this project to fruition.

Rory Smith
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Albania


Genc Boga


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1 Criminal Activity

1.1 Would any of the following activities constitute a criminal offence in your jurisdiction? If so, please provide details of the offence, the maximum penalties available, and any examples of prosecutions in your jurisdiction:

Hacking (i.e. unauthorised access)
Hacking constitutes a criminal offence in the Albanian jurisdiction. Article 192/b/1 of the "Criminal Code of the Republic of Albania" provides that unauthorised access or excess of authorisation to a computer system, or part of it, through violation of security measures is punishable by a fine or imprisonment for up to three years. According to the Final Report of the General Prosecutor on the state of criminality for the year 2018, 11 cases have been recorded by the Prosecution body, two of which have ended with the sentencing of the accused, but no further details have been given.

Denial-of-service attacks
Article 293/c/1 of the "Criminal Code of the Republic of Albania" provides that the creation of serious and unauthorised obstacles to harm the function of a computer system, through insertion, damage, deformation, change or deletion of data is punishable with imprisonment of between three to seven years. According to the Final Report of the General Prosecutor on the state of criminality for the year 2018, two cases have been recorded by the Prosecution body, but no details have been given on the cases.

Phishing
Article 143/b of the "Criminal Code of the Republic of Albania" states that adding, modifying or deleting computer data, or interfering in the functioning of a computer system, with the intention of ensuring for oneself or for third parties, through fraud, unfair economic benefits or causing a third party reduction of wealth is punishable by imprisonment for six months to six years and a fine from 60,000 Leke to 600,000 Leke. According to the Final Report of the General Prosecutor on the state of criminality for the year 2018, 52 cases have been recorded by the Prosecution body, but no details have been given on the cases.

Infection of IT systems with malware (including ransomware, spyware, worms, trojans and viruses)
Article 293/b of the "Criminal Code of the Republic of Albania" provides that damage, deformation, change or unauthorised deletion of computer data is punishable by imprisonment of between six months to three years. According to the Final Report of the General Prosecutor on the state of criminality for the year 2018, 31 cases have been recorded by the Prosecution body, but no details have been given on the cases.

Possession or use of hardware, software or other tools used to commit cybercrime (e.g. hacking tools)
Article 293/ç of the "Criminal Code of the Republic of Albania" provides that manufacturing, keeping, selling, giving for use, distributing or any other action to place at disposal any equipment, including a computer program, computer password, access code or any other similar data created or adapted for breaching a computer system, or a part of it, with the aim of committing a criminal act, as provided in articles 192/b, 293/a and 293/c of the "Criminal Code of the Republic of Albania", is punishable by imprisonment for six months to five years. According to the Final Report of the General Prosecutor on the state of criminality for the year 2018, there are no cases recorded by the Prosecution body.

Identity theft or identity fraud (e.g. in connection with access devices)
Even though the "Criminal Code of the Republic of Albania" does not explicitly mention or provide an article dedicated to identify theft, article 186/a states that modifying, deleting or omitting computer data, without the right to do so, in order to create false data with the intention of presenting and using them as authentic, even though the created data is directly readable or understandable, are all punishable by imprisonment of between six months to six years. According to the Final Report of the General Prosecutor on the state of criminality for the year 2018, 19 cases have been recorded by the Prosecution body, eight of which has ended with the sentencing of the accused, but no details have been given.

Electronic theft (e.g. breach of confidence by a current or former employee, or criminal copyright infringement)
Article 186/a/2 of the "Criminal Code of the Republic of Albania" provides that when the aforementioned criminal act, as described in the provision of identity theft above, is done by the person responsible for safekeeping and administering the computer data in cooperation more than once, or has brought forth grave consequences for the public interest, is punishable by imprisonment for three to 10 years.

Any other activity that adversely affects or threatens the security, confidentiality, integrity or availability of any IT system, infrastructure, communications network, device or data
Article 293/b/2 of the "Criminal Code of the Republic of Albania" provides that damage, deformation, change or unauthorised deletion of computer data, when done with regard to military computer data, national security, public order, civil protection and healthcare, or in any other computer data with public importance, is punishable by imprisonment of between three to 10 years.

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Failure by an organisation to implement cybersecurity measures
In virtue of Law No. 2/2017 "On cybersecurity", failure by an organisation to implement cybersecurity measures does not constitute a criminal offence. Article 21 of the Law "On cybersecurity" provides that failure to implement cybersecurity measures is considered an administrative violation and is punishable by a fine.

1.2 Do any of the above-mentioned offences have extraterritorial application?

The Convention "On cybercrime", ratified in Albania on 25.04.2002 through Law No. 8888, provides, in article 22, that Member States of the Convention must determine the jurisdiction in the cases where a cybercrime is committed in their territory or by a citizen of that state. Article 6/2 of the "Criminal Code of the Republic of Albania" provides that Albanian law is also applicable to Albanian citizens who commit a crime in the territory of another state, when the crime is at the same time punishable and as long as there is not any final decision by any foreign court for that crime. Also, article 7/a of the "Criminal Code of the Republic of Albania" states that the criminal law of the Republic of Albania is also applicable to foreign citizens who have committed a criminal act outside the territory of the Republic of Albania for which special laws or international agreements, of which the Republic of Albania is part of, determine the application of the Albanian criminal legislation.

1.3 Are there any actions (e.g. notification) that might mitigate any penalty or otherwise constitute an exception to any of the above-mentioned offences?

Article 48 of the "Criminal Code of the Republic of Albania" provides mitigating circumstances for any penalty. These circumstances include, but are not limited to: a) when the criminal act is committed under the influence of psychic shock caused by provocation or unfair actions of the victim or any other person; b) when the criminal act is committed under the influence or unfair instruction of a superior; c) when the person responsible for the criminal act shows deep repentance; d) when the person has replaced the damage caused by the criminal act or has actively helped to erase or minimise the consequences of the criminal act; e) when the person presents him/herself before the competent bodies after committing the criminal act; and f) when the relations between the person who has committed the criminal act and the person who has suffered the consequences of the criminal act have returned to normal.

1.4 Are there any other criminal offences (not specific to cybersecurity) in your jurisdiction that may arise in relation to cybersecurity or the occurrence of an Incident (e.g. terrorism offences)? Please cite any specific examples of prosecutions of these offences in a cybersecurity context.

Article 74/a of the "Criminal Code of the Republic of Albania" states that distributing or offering to the public through computer systems materials that deny, minimise or significantly approve or justify acts which constitute genocide or crimes against humanity is punishable by imprisonment of between three to six years. Also, article 84/a of the "Criminal Code of the Republic of Albania" provides that serious threats to kill or seriously injure a person through computer systems because of ethnicity, nationality, race or religion are punishable with a fine or imprisonment for up to three years. Article 119/a of the "Criminal Code of the Republic of Albania" states that offering or distributing to the public through computer systems materials with racist or xenophobic content constitutes an administrative violation and is punishable by a fine or imprisonment for up to two years. Article 119/b of the "Criminal Code of the Republic of Albania" provides that a public insult involving ethnicity, nationality, race or religion through a computer system constitutes an administrative violation and is punishable by a fine or imprisonment for up to two years.

2 Applicable Laws

2.1 Please cite any Applicable Laws in your jurisdiction applicable to cybersecurity, including laws applicable to the monitoring, detection, prevention, mitigation and management of Incidents. This may include, for example, laws of data protection, intellectual property, breach of confidence, privacy of electronic communications, information security, and import/export controls, among others.

1. The Convention "On cybercrime", ratified in Albania on 25.04.2002 by Law No. 8888.
2. Law No. 7895, dated 27.01.1995, "Criminal Code of the Republic of Albania", as amended.
3. Law No. 2/2017 "On cybersecurity".
4. Law No. 9918, dated 19.05.2008, "On electronic communications in the Republic of Albania", as amended.
5. Law No. 9887, dated 10.03.2008, "On protection of personal data", as amended.
6. Law No. 8457, dated 11.02.1999, "On classified information 'Secrets of State'", as amended.
7. Law No. 9880, dated 25.02.2008, "On electronic signatures", as amended.
8. The Decision of Council of Ministers No. 141, dated 22.02.2017, "On organising a functioning of the national authority for electronic certification and cybersecurity".

2.2 Are there any cybersecurity requirements under Applicable Laws applicable to critical infrastructure in your jurisdiction? For EU countries only, please include details of implementing legislation for the Network and Information Systems Directive and any instances where the implementing legislation in your jurisdiction exceeds the requirements of the Directive.

Article 8 of the Law "On cybersecurity" specifies that operators of critical infrastructure of information are obliged to implement the requirements of safety measures and to also document their implementation. Article 9/3 of the Law "On cybersecurity" provides that the Responsible Authority for Electronic Certification and Cybersecurity (herein the "Authority") determines, through a regulation, the content and method of documenting the safety measures. To the best of our knowledge, no such regulation exists.

2.3 Are organisations required under Applicable Laws, or otherwise expected by a regulatory or other authority, to take measures to monitor, detect, prevent or mitigate Incidents? If so, please describe what measures are required to be taken.

Article 9 of the Law "On cybersecurity" provides a list of safety measures and divides them into two groups: organisational measures; and technical measures. As specified above, the Authority determines, through a regulation, the content and method of documenting the safety measures. To date, no such regulation exists.

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2.4 In relation to any requirements identified in question 2.3 above, might any conflict of laws issues arise? For example, conflicts with laws relating to the unauthorised interception of electronic communications or import/export controls of encryption software and hardware.

To the best of our knowledge, no such regulation exists.

2.5 Are organisations required under Applicable Laws, or otherwise expected by a regulatory or other authority, to report information related to Incidents or potential Incidents (including cyber threat information, such as malware signatures, network vulnerabilities and other technical characteristics identifying a cyber attack or attack methodology) to a regulatory or other authority in your jurisdiction? If so, please provide details of: (a) the circumstance in which this reporting obligation is triggered; (b) the regulatory or other authority to which the information is required to be reported; (c) the nature and scope of information that is required to be reported; and (d) whether any defences or exemptions exist by which the organisation might prevent publication of that information.

Article 11 of the Law "On cybersecurity" determines that operators of critical infrastructure of information and operators of important infrastructure of information are required to report immediately after they detect cybersecurity Incidents to the National Authority on Electronic Signature and Cybersecurity. The Authority determines by regulation the types and categories of cybersecurity Incidents, as well as the format and elements of the cybersecurity Incident report. In the case of cybersecurity Incidents and attacks on constitutional, security and defence institutions, the Authority reports immediately to the leaders of these institutions on the issues and measures to be taken.

2.6 If not a requirement, are organisations permitted by Applicable Laws to voluntarily share information related to Incidents or potential Incidents (including cyber threat information, such as malware signatures, network vulnerabilities and other technical characteristics identifying a cyber attack or attack methodology) with: (a) a regulatory or other authority in your jurisdiction; (b) a regulatory or other authority outside your jurisdiction; or (c) other private sector organisations or trade associations in or outside your jurisdiction?

As we mentioned above, it is required by the law to immediately report after organisations detect cybersecurity Incidents.

2.7 Are organisations required under Applicable Laws, or otherwise expected by a regulatory or other authority, to report information related to Incidents or potential Incidents to any affected individuals? If so, please provide details of: (a) the circumstance in which this reporting obligation is triggered; and (b) the nature and scope of information that is required to be reported.

To the best of our knowledge and after reviewing the legislation, there are no provisions with regard to this situation.

2.8 Do the responses to questions 2.5 to 2.7 change if the information includes: (a) price-sensitive information; (b) IP addresses; (c) email addresses (e.g. an email address from which a phishing email originates); (d) personally identifiable information of cyber threat actors; and (e) personally identifiable information of individuals who have been inadvertently involved in an Incident?

The responses to questions 2.5 to 2.7 do not change regardless of the information included.

2.9 Please provide details of the regulator(s) responsible for enforcing the requirements identified under questions 2.3 to 2.7.

Article 8 of the Law "On cybersecurity" provides that operators of critical infrastructure of information and operators of important infrastructure of information are obliged to implement the safety measures and also document their implementation. Furthermore, the aforementioned operators are obliged to implement the requirements of the safety measures during the establishment of the infrastructure.

2.10 What are the penalties for not complying with the requirements identified under questions 2.3 to 2.8?

Article 22 of the Law "On cybersecurity" states that in case of non-compliance with the requirements specified in the law, the Authority issues fines from 20,000 Leke to 800,000 Leke.

2.11 Please cite any specific examples of enforcement action taken in cases of non-compliance with the above-mentioned requirements.

To the best of our knowledge, there are no examples of enforcement action taken in cases of non-compliance with the abovementioned requirements.

2.12 Are organisations permitted to use any of the following measures to detect and deflect Incidents in their own networks in your jurisdiction?

Beacons (i.e. imperceptible, remotely hosted graphics inserted into content to trigger a contact with a remote server that will reveal the IP address of a computer that is viewing such content)
To the best of our knowledge, there are no provisions in this regard.

Honeypots (i.e. digital traps designed to trick cyber threat actors into taking action against a synthetic network, thereby allowing an organisation to detect and counteract attempts to attack its network without causing any damage to the organisation's real network or data)
To the best of our knowledge, there are no provisions in this regard.

Sinkholes (i.e. measures to re-direct malicious traffic away from an organisation's own IP addresses and servers, commonly used to prevent DDoS attacks)
To the best of our knowledge, there are no provisions in this regard.

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3 Specific Sectors

3.1 Does market practice with respect to information security (e.g. measures to prevent, detect, mitigate and respond to Incidents) vary across different business sectors in your jurisdiction? Please include details of any common deviations from the strict legal requirements under Applicable Laws.

There is no difference as regards the variety of measures taken across different business sectors, because the Law "On cybersecurity" is applied the same regardless of the business sector.

3.2 Are there any specific legal requirements in relation to cybersecurity applicable to organisations in: (a) the financial services sector; and (b) the telecommunications sector?

The Law "On cybersecurity" is the only one governing cybersecurity for all organisations, private or public, in the Republic of Albania.

4 Corporate Governance

4.1 In what circumstances, if any, might a failure by a company (whether listed or private) to prevent, mitigate, manage or respond to an Incident amount to a breach of directors' duties in your jurisdiction?

The Law "On cybersecurity" does not elaborate on this point but, nevertheless, this is a matter of regulation inside the company.

4.2 Are companies (whether listed or private) required under Applicable Laws to: (a) designate a CISO; (b) establish a written Incident response plan or policy; (c) conduct periodic cyber risk assessments, including for third party vendors; and (d) perform penetration tests or vulnerability assessments?

To the best of our knowledge, there is no obligation to fulfil these requirements. The Authority shall draft, approve and publish the necessary regulations to complete the legislative frame for cybersecurity within 12 months of the date of the law's approval.

4.3 Are companies (whether listed or private) subject to any specific disclosure requirements in relation to cybersecurity risks or Incidents (e.g. to listing authorities, the market or otherwise in their annual reports)?

The Law "On cybersecurity", even though it does not clearly mention companies, provides the obligation to report to the competent authorities. However, the "Code of Criminal Procedure of the Republic of Albania" demands disclosure when legally asked by the Prosecution, be it through an order or a court decision.

4.4 Are companies (whether public or listed) subject to any other specific requirements under Applicable Laws in relation to cybersecurity?

To the best of our knowledge, companies are not subject to any other specific requirements under Applicable Laws in relation to cybersecurity.

5 Litigation

5.1 Please provide details of any civil actions that may be brought in relation to any Incident and the elements of that action that would need to be met.

For a civil action to be brought in relation to any Incident, it is necessary to provide the element of damage caused by a person committing an illegal action and provide evidence as to the causality of this action. It is also necessary to identify the source or the person responsible for the Incident.

5.2 Please cite any specific examples of cases that have been brought in your jurisdiction in relation to Incidents.

To the best of our knowledge, there are no specific examples of cases brought in relation to Incidents.

5.3 Is there any potential liability in tort or equivalent legal theory in relation to an Incident?

The Law "On cybersecurity" does not provide any specifics in this regard, but there is potential liability in tort in relation to an Incident in virtue of the "Civil Code of the Republic of Albania", as specified above.

6 Insurance

6.1 Are organisations permitted to take out insurance against Incidents in your jurisdiction?

To the best of our knowledge, organisations are not prohibited from taking out insurance against Incidents.

6.2 Are there any regulatory limitations to insurance coverage against specific types of loss, such as business interruption, system failures, cyber extortion or digital asset restoration? If so, are there any legal limits placed on what the insurance policy can cover?

There are no regulatory limitations to insurance coverage against specific types of loss, such as business interruption.

7 Employees

7.1 Are there any specific requirements under Applicable Law regarding: (a) the monitoring of employees for the purposes of preventing, detection, mitigating and responding to Incidents; and (b) the reporting of cyber risks, security flaws, Incidents or potential Incidents by employees to their employer?

Article 9 of the Law "On cybersecurity" states that responsible bodies should take the necessary measures to manage and monitor the safety of human resources and people's access.

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7.2 Are there any Applicable Laws (e.g. whistle-blowing laws) that may prohibit or limit the reporting of cyber risks, security flaws, Incidents or potential Incidents by an employee?

To the best of our knowledge and after carefully reviewing the current Albanian legislation on the matter, there are no prohibitions in this regard.

8 Investigatory and Police Powers

8.1 Please provide details of any investigatory powers of law enforcement or other authorities under Applicable Laws in your jurisdiction (e.g. antiterrorism laws) that may be relied upon to investigate an Incident.

Structures for cybercrime at the County Directory Police and General County Directory Police are responsible for investigating any crimes related to cybersecurity. In addition, the State Police has made available to the public a website (http://www.policia.al/denonco/) where every person can report in real-time any criminal act related to cybercrimes. The Authority is also responsible for investigating any reported crimes related to cybersecurity.

8.2 Are there any requirements under Applicable Laws for organisations to implement backdoors in their IT systems for law enforcement authorities or to provide law enforcement authorities with encryption keys?

To the best of our knowledge, there are no requirements under the Applicable Laws for organisations to implement backdoors in their IT systems.

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Genc Boga is the founder and Managing Partner of Boga & Associates operating in Albania and Kosovo.
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In addition to his client-related work, Armando is continuously publishing for various law journals and magazines within his areas of expertise and also assists different business associations with *pro bono* advice.
Armando holds a Bachelor of Laws (2014) and a Master of Science in Public Law (2016) from the University of Tirana.
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