

International **Comparative** Legal Guides



Digital Business **2020**

A practical cross-border insight into digital business law

First Edition

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ISBN 978-1-83918-051-4
ISSN 2732-5237

Published by

glg global legal group

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Printed by
Ashford Colour Press Ltd.

Cover image
www.istockphoto.com

Strategic Partners



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Contributing Editors:

Davey Brennan & Alex Brodie
Gowling WLG

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This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

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Davey Brennan & Alex Brodie, Gowling WLG

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From the Publisher

Dear Reader,

Welcome to the first edition of the *ICLG – Digital Business*, published by Global Legal Group.

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

The question and answer chapters, which in this edition cover 21 jurisdictions, provide detailed answers to common questions raised by professionals dealing with digital business laws and regulations.

The publication's opening expert analysis chapter provides further insight into navigating business digitalisation.

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

Global Legal Group would also like to extend special thanks to contributing editors Davey Brennan and Alex Brodie of Gowling WLG for their leadership, support and expertise in bringing this project to fruition.

Rory Smith
Group Publisher
Global Legal Group

Albania

Boga & Associates



Renata Leka

1 E-Commerce Regulations

1.1 What are the key e-commerce legal requirements that apply to B2B e-commerce in your jurisdiction (and which do not apply to non-e-commerce business)? Please include any requirements to register, as well as a summary of legal obligations specific to B2B e-commerce.

The Law “On E-commerce” provides general principles with regard to conducting e-commerce activities applicable to both B2B e-commerce and B2C e-commerce.

E-commerce can be conducted by any subject whether legal or natural without the need for prior authorisation. Nevertheless, subject to the Law “On Electronic Communications”, service providers as well as financial and insurance service providers have the obligation to obtain the relevant authorisations.

E-commerce is conducted based on principles such as contractual freedom, free will and equal treatment of the parties, free development of entrepreneurial activities and free movement of goods and services within the Albanian territory.

The parties to an electronic transaction cannot impose limitations on purchases or on the fulfilment of rights and obligations of natural or legal persons, other than those provided for by law.

In addition, the law stipulates that in conducting their activity, the entities shall respect human rights, guarantee the protection of consumers and investors, ensure the protection of minors, take measures to guarantee the protection of the offered services in order not to be used for illegal purposes, and provide the services to any subject without discrimination. Moreover, the service provider shall not infringe national security, public safety and public health, as well as, in conducting its activities, the consent of the service beneficiary shall be obtained.

1.2 What are the key e-commerce legal requirements that apply to B2C e-commerce in your jurisdiction (and which do not apply to non-e-commerce business)? Please include any requirements to register, as well as a summary of legal obligations specific to B2C e-commerce.

See the answer to question 1.1.

2 Data Protection

2.1 How has the domestic law been developed in your jurisdiction in the last year?

The domestic legislation is still under continuous development and harmonisation with EU legislation.

2.2 What privacy challenges are organisations facing when it comes to fintech, AI and digital health?

Fintech, AI and digital health are still in the early stages in Albania.

2.3 What support are the Government and privacy regulators providing to organisations to facilitate the testing and development of fintech, AI and digital health?

With regard to fintech, the Albanian Parliament has initiated the procedures of adopting the Law “On Payments Services”. This draft law aims to establish a legal basis for payment services and to partially align the Albanian legislation with the EU Directive 2015/2366 “On Payment Services in the Internal Market”. The draft law aims to create a modern and inclusive low-value payment market in Albania, based on secure and efficient payment infrastructures, as well as a wide range of payment instruments and services that meet the needs of users. Consequently, fintech companies will be an important reality in payment services.

On the other hand, no concrete initiatives have been implemented thus far regarding AI and digital health.

3 Cybersecurity Framework

3.1 Please provide details of any cybersecurity frameworks applicable to e-commerce businesses.

The Law “On Cybersecurity”, which was recently enacted, governs cybersecurity for all entities, whether private or public and regardless of the method in which the activities are conducted.

3.2 Please provide details of other cybersecurity legislation in your jurisdiction, and, if there is any, how is that enforced?

The domestic legislation on cybersecurity mainly comprises the following acts:

1. The Convention “On cybercrime”, ratified in Albania on 25.04.2002 by Law No. 8888.
2. Law No. 2/2017 “On cybersecurity”.

3. Law No. 7895, dated 27.01.1995, “Criminal Code of the Republic of Albania”, as amended.
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”.

The competent authority for the implementation of these laws is the National Authority on Electronic Certification and Cyber Security.

4 Cultural Norms

4.1 What are consumers’ attitudes towards e-commerce in your jurisdiction? Do consumers embrace e-commerce and new technologies or does a more cash-friendly consumer attitude still prevail?

Over the last few years, Albania has witnessed a digital revolution and there has been a shift in consumer behaviour toward e-commerce. However, the Albanian consumer continues to be cash-friendly.

4.2 Do any particular payment methods offer any cultural challenges within your jurisdiction? For example, is there a debit card culture, a direct debit culture, a cash on delivery type culture?

As mentioned above, the cash-friendly consumer and the cash on delivery type culture still prevail in Albania. Nevertheless, in recent years there has been a rapid increase in the use of bank cards. According to the statistics published by the Bank of Albania, the most used instrument is the debit card.

4.3 Do home state retailer websites/e-commerce platforms perform better in other jurisdictions? If so, why?

There is no official database that would provide for such information.

4.4 Do e-commerce firms in your jurisdiction overcome language barriers to successfully sell products/services in other jurisdictions? If so, how and which markets do they typically target and what languages do e-commerce platforms support?

There is no official database that would provide for such information.

4.5 Are there any particular web-interface design concepts that impact on consumers’ interactivity? For example, presentation style, imagery, logos, currencies supported, icons, graphical components, colours, language, flags, sounds, metaphors, etc.

There are no particular web-interface design concepts that impact consumers’ interactivity.

5 Brand Enforcement Online

5.1 What is the process for online brand enforcement in your jurisdiction?

Any subject who aims to protect their brand online shall submit an application to the Authority of Electronic and Postal Communications (The Authority). Registration is carried out pursuant to the conditions and rules provided in Regulation No. 02 dated 21.02.2008 “On the Registration and Administration of Domain Names under .AL and sub-domains .gov.al, .mil.al, .edu.al, .com.al, .org.al and .net.al”.

The registration process is based on the self-declaration principle, according to which the applicant declares in writing the legal responsibility for the veracity, accuracy and authenticity of the data submitted. In particular, the applicant declares the non-infringement of the rights of the other parties as provided in the laws regarding competition, copyrights and intellectual or cultural property. The deadline for registration of a domain is up to three working days from the moment of submitting the application.

The Authority may reject or close the domain name if a right has been infringed or in cases of unauthorised use. Also, any interested party who claims the infringement of the right to register or the right of possession, is entitled to file an administrative complaint with the Authority.

5.2 Are there any restrictions that have an impact on online brand enforcement in your jurisdiction?

Subject to respective regulation, the individuals can register up to five domains of .al, while legal entities, including Registrars, can register up to 15 domains. The domain shall be put into use within one year from the moment of registration, and if not used the domain shall be automatically released.

6 Data Centres and Cloud Location

6.1 What are the legal considerations and risks in your jurisdiction when contracting with third party-owned data centres or cloud providers?

There is no specific regulation regarding Data Centres and Cloud Location. However, when dealing with personal data, the Law “On Protection of Personal Data” is applicable regarding international transfer and the criteria that shall be met.

Furthermore, international transfers of personal data in countries with an adequate level of protection are not restricted provided that the Commissioner has been duly notified. Decision No. 8, dated 31.10.2016 of the Commissioner provides that countries with an adequate level of protection for international transfers of personal data are, namely, EU Member States and countries that are part of the European Economic Area, members of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and the related Protocol, as well as countries designated by a decision of the EU Commission.

International transfer of personal data to third countries with no adequate level of protection are subject to prior authorisation of the Commissioner. In cases where the Commissioner, after assessing the situation, permits the international transfer of personal data to a third country with no adequate level of protection, a set of proper safety measures shall apply. The

Commissioner might exempt data controllers from requiring authorisation for special categories of personal data. The categories of data falling under the said exemption shall be determined by the Commissioner.

However, the Law provides for exceptions to the obtaining of prior authorisation in cases of international transfer to a third country having an inadequate level of protection, which are:

- made based on international treaties ratified by the Republic of Albania, which are directly applicable;
- consented to by the data subject;
- necessary for the implementation of the contract between the data subject and controller or for the implementation of the pre-contractual measures, in response to the request of the data subject, or the transfer is necessary for the fulfilment or implementation of the contract between the controller and a third party, in the interest of the data subject;
- necessary for the vital interest of the data subject;
- done through a register open to consultation, which provides information to the public in general; or
- necessary or legally required by an important public interest or for the exercise/defence of a legal right.

Even though the law is clear regarding the authorisation, the Commissioner's standpoint is that any international transfer to third countries having an inadequate level of protection must be authorised.

6.2 Are there any requirements in your jurisdiction for servers/data centres to be located in that jurisdiction?

Please see the answer to question 6.1.

7 Trade and Customs

7.1 What, if any, are the technologies being adopted by private enterprises and government border agencies to digitalise international (cross-border) trade in your territory?

Modernisation of operations and procedures in international trade through the implementation of new technology systems is a mission of customs authorities, as prescribed in the Law No. 102/2014 of "Customs Code in the Republic of Albania". Article 286 of the Law, on the other hand, provides that up to 31 December 2021, the new technology shall not be functional.

New fiscalisation system and e-invoice, regulated by Law No. 87/2019 "On e-invoice and turnover system monitoring", is expected to start its first wave of implementation by September 2020 and have its final act by July 2021. Tax invoices will be issued, confirmed and reported in real time to tax authorities. The fiscalisation process will be performed through a central platform of invoices, being software-based and supported by modern internet activity. As regards to cross-border trade, import and export of goods is also part of the regulation. For the import, the process will use the online data communicated directly from customs to tax authorities. Such procedure should be followed also for a purchase invoice from a foreign taxpayer non-resident in Albania. Should the invoice from a foreign supplier comply with the EU Directive on e-invoices, it will be recognised and included in the same system.

7.2 What do you consider are the significant barriers to successful adoption of digital technologies for trade facilitation and how might these be addressed going forwards?

According to the Law No. 87/2019 "On e-invoice", taxpayers are required to declare the invoice electronically to a central system of tax authorities (so-called "fiscalisation"). Such system is obligatory for a foreign supplier (B2C) and the software solution can be provided only from an entity registered in Albania.

In case of the import of goods, the fiscalisation process is performed only based on the customs declaration form after placing the goods under the free circulation casting regime, but no later than three days from the releasing into free circulation.

Furthermore, until the day of *paperless customs* comes, according to the Customs Code of Albania in force, the customs officers have the competence of approving, signing and stamping a customs declaration. Apart from inapplicability of electronic signature, the power left to officials raises the risk of biased decisions and corruption.

8 Tax Treatment for Digital Businesses

8.1 Can you give a brief description of any tax incentives of particular relevance to digital businesses in your jurisdiction? These could include investment reliefs, research and development credits and/or beneficial tax rules relating to intellectual property.

As from 1 January 2018, for entities operating as software producers/developers, the profit tax rate has been reduced from 15% to 5%.

For purposes of this amendment, the activities part of this sector are defined by the terminology of International Standards ISO/IEC 12207:2017 and IEEE Std 12207-2017 "Engineering of Software Systems – Processes of Software's Life Cycle".

8.2 What areas or points of tax law do you think are most likely to lead to disputes between digital businesses and the tax authorities, either domestically or cross-border?

Albanian tax legislation in force is indeed a regulatory of the conventional forms of businesses. No action nor initiative has been taken to tax digital presence in the country.

To operate as a digital business in Albania, an entity needs to be established or have their place of effective management in Albania to be considered a resident. However, the internet economy has not stopped typical digital businesses in streaming video, TV content and online bets generating incomes from local consumers without being a registered entity, exploiting the gaps of the current legislation.

VAT legislation in regard to the supply of electronic services is similar to the EU Directive, although lack of sublegal acts make it difficult to determine the place of supply for non-taxable persons.

The definition of royalties is very wide and includes almost every payment for digital products. Such definition implies that every amount paid to non-residents is subject to withholding tax at a rate of 15%, unless a double tax treaty provides for a lower rate. Therefore, exploitation of artistic and literary work, trademarks and patents, and digital products are directly affected.

9 Employment Law Implications for an Agile Workforce

9.1 What legal and practical considerations should businesses take into account when deciding on the best way of resourcing work in your jurisdiction? In particular, please comment on the advantages and disadvantages of the available employment status models.

Subject to the Labour Code of the Republic of Albania, the following forms of contract of employment are available:

- full-time and part-time contracts;
- limited and unlimited duration contracts;
- employment agency contracts;
- individual and collective employment contracts;
- home-based employment contracts;
- commercial agent contracts; and
- apprenticeship/internship contracts.

Generally, the most common form of employment contract is the unlimited duration employment contract.

9.2 Are there any specific regulations in place in your jurisdiction relating to carrying out work away from an organisation's physical premises?

The Labour Code provides for teleworking or work from home. The employee performs his/her work at home or in another place under the terms agreed in the employment agreement, by using the information technology as designated in the employment agreement.

10 Top 'Flags' for Doing Business as a Digital Business in Different Jurisdictions

10.1 What are the key legal barriers faced by a digital business operating in your jurisdiction?

Albanian legislation regarding e-commerce is aligned with the Directive "On Electronic Commerce 200/31/EC", and is still under development. Digital business is still a new business reality in Albania that needs to be tested in the near future.

10.2 Are there any notable advantages for a digital business operating in your jurisdiction?

See answer to question 10.1 above.

11 Online Payments

11.1 What regulations, if any, apply to the online payment sector in your jurisdiction?

The following instruments mainly govern the online payment sector in Albania:

- Law No. 133/2013, dated 29.04.2013 "On Payment System".
- Regulation of BoA No. 148 "On the payment system and instruments".
- Regulation of BoA No. 28 "On supervision of electronic banking transactions".
- Regulation of BoA No. 11 "On electronic payment instruments".

11.2 What are the key legal issues for online payment providers in your jurisdiction to consider?

Entities may conduct online banking activities subject to verification by the Bank of Albania of the requirements set out by Regulation No. 28 "On supervision of electronic banking transactions". Online payment providers shall conduct their activities based on the principles of e-banking risk management as follows:

1. Establish an effective supervision of e-banking risk management on the e-banking operations, including the establishment of specific responsibilities, politics and controls on the management of these risks.
2. Review and adopt the main orientations of the security control process of the bank.
3. Implementation of the necessary measures to verify the identity and authorisation of clients with whom they conduct business through the internet.
4. Implementation of the methods on the verification of transactions, which lead to the real acknowledgment of facts and establish the responsibilities on e-banking transactions.
5. Ensure appropriate measures to protect the integrity of data on transactions, records and e-banking information are established.
6. Existence of safe controls for all e-banking transactions.
7. Implementation of the necessary measures to keep the confidentiality of basic e-banking information.
8. Provide the client with the adequate information before giving access to e-banking transactions.
9. Ensure the client's confidentiality.
10. Ensure the continuity of e-banking operations.



Renata Leka is a Partner at Boga & Associates, which she joined in 1998.

Her practice is mainly focused on commercial transactions, regulatory advice, project finance, advising numerous foreign investors in acquisitions and implementation of general business law matters, energy, project finance, procurement and concession. Her experience covers both international and domestic work across the full range of industry sectors, corporate, concessions, and infrastructure projects.

Renata also leads the intellectual property practice and is described as "*highly regarded*" and ranked as a "*leading individual*" by major international legal directories. She is an authorised trademark agent and has ample experience in trademark filing strategy, portfolio management and trademark prosecution, and handles a range of international matters involving IPR issues.

Renata also advises on matters of consumer protection, product liability and competition in both jurisdictions Albania and Kosovo.

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

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

The firm maintains its commitment to quality through the skills and determination of a team of attorneys and other professionals with a wide range of skills and experience. The extensive foreign language capabilities of the team help to ensure that its international clientele have easy access to the expanding Albanian and Kosovo business environment.

With its diverse capabilities and experience, the firm acts for leading businesses in most major industries, including banks and financial institutions, as well as companies working 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 sectors.

The firm offers its clients every legal, tax and accounting service they may need to do business in Albania and Kosovo. Over the years, the firm has advised on privatisation transactions, concessions, real estate transactions, setting up businesses, credit facilities and customs and tax issues, all with a keen sensitivity to developments in the Albanian business environment.

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