



The fifth annual complimentary guide
to understanding M&A practices around
the world with an Asia-Pacific focus

INCLUDING A SPECIAL FOCUS ON
ONE BELT ONE ROAD CHINA INVESTMENT

LexisNexis® Mergers & Acquisitions Law Guide 2018

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Acquisitions Law Guide 2018**

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Introduction

Albania is situated in southeast Europe in the west of the Balkan Peninsula and covers an area of 28,748 sq. km. Albania borders Montenegro and Kosovo to the north and northeast, Macedonia in the east, and Greece to the south. Albania occupies an important strategic location in the Balkans with access to the Adriatic and Ionian Seas in the west. The terrain is mostly mountainous. The average altitude of 708 meters is about twice the European average. The country offers numerous beautiful landscapes, archaeological sites, historic castles and other tourist attractions. The climate is Mediterranean with hot dry summers and cool rainy winters. Albania is in the Central European time zone and is therefore one hour ahead of GMT.

The Albanian Institute of Statistics reports that the population of Albania on 1 January 2017 was 2,874,800 inhabitants.

Situated at a natural crossroad of Europe's major transit corridors, Albania boasts a strong strategic, economic and geographic position. Described as a reforming country with a focus on the ease of doing business, free markets, low taxation and powerful incentives, as well as a motivated, educated and cost-competitive work force, Albania is considered a vital and interesting country to invest in by international businesses. For some years, the Albanian economy has been moving quickly towards a more open and liberal model with inward investment playing a key role in the overall economic transformation.

Recent economic developments

According to the overview of the World Bank in Albania, Country Snapshot October 2017, the country's economy expanded 3.4% in 2016 supported by domestic demand. Private investment in two large FDI-financed energy projects and a recovery in private consumption drove growth, contributing 1.8% and 2.1% points respectively. Improvements in employment and credit growth also encouraged private consumption in 2017. The primary surplus of 0.7% of GDP helped lower the debt to GDP ratio for the first time since the global crisis, reaching 72.4% of GDP in 2016. Average annual inflation fell from 1.9% in 2015 to 1.3% in 2016, below the Bank of Albania's target +-1%.

Remittances are stable despite weak growth in source EU countries. Net FDI's increased to 8.9% of GDP from 8% in 2015, helped by inflows associated with energy projects. Also stronger growth stimulated job creation in 2016 where the employment grew by 2.5% points reaching 48.7%, driven by industry and services.

Albania's economic outlook is expected to improve over the medium term. Growth is projected at 3.5% during 2017-2019 driven by private investments and private consumption.

Foreign investment

Albania is a country that offers many investment opportunities to foreigners. The country has considerable natural resources, mainly oil, gas, coal, iron, copper, chrome, water and hydroelectric potential.

The privatization process in itself offers a wide range of options. Potentially high profit sectors

include mining and oil extraction, both of which are export-oriented industries. Albania is the only country in Europe with substantial reserves of chrome, which before 1990 made it the world's third largest producer of chrome ore. Nevertheless, significant capital investments and capacity upgrades are needed in order to modernize the old and outdated production methods. Other areas of interest include thermal and hydropower production, alternative sources of energy production, infrastructure, agriculture, light industry sectors such as textiles, leather and footwear, confectionary, and meat processing.

The privatization strategy explicitly seeks qualified foreign firms as strategic investors for these key sectors.

Tourism in Albania is a growing sector with more tourists visiting the country every year. Tourism also offers great investment prospects. Albania has spectacular mountain scenery, a beautiful and pristine coastline, and ancient history and culture. Tourism could be one of the main attractions for foreign investors.

It is expected that Albania will highly benefit from the Trans-Adriatic pipeline, which will generate one of that country's largest FDI projects, with important benefits for a number of industries, including manufacturing, utilities and transport. The pipeline will enhance Europe's energy security and diversity by providing a new source of gas. Albanian law, especially the Law on Foreign Investments, guarantees full legal protection for foreigners' investments. Private investments are not subject to nationalization or expropriation, unless specifically required by law for the public interest. Parties to a dispute may agree to submit claims to arbitration. Foreign investors also have the right to submit disputes to an Albanian court.

The Law on Foreign Investments provides "special state protection" for investments/projects exceeding EUR 10 million. Such protection is granted where a dispute arises between the foreign investor and a private party claiming title

over the land where the project is or will be built and/or developed. This protection involves the state replacing the foreign investor in a court dispute and undertaking to compensate the claimant if the court rules in its favor.

Other legal incentives include:

- (a) Equal treatment of foreign and domestic investors;
- (b) Full profit and dividend repatriation, after taxation;
- (c) Repatriation of funds from liquidated companies.

Statistics on foreign investment

By December 2016, Chinese investments in Albania amounted to \$ 760 million, according to the Albanian Telegraphic Agency. Two big investments were recently made by Chinese companies in Albania - namely the acquisition of the oil company Bankers Albania and Tirana International Airport. In March 2016, the Canadian Banker's Petroleum Company announced the sale of oil exploration and production rights to the Chinese company Petroleum Geo-Jade. In April, the Chinese consortium "Keen Dynamics Limited", an association of companies, namely China Everbright Limited and Friedmann Pacific Asset Management Limited (Friedmann Pacific) announced the acquisition of the entire share capital of Tirana International Airport. This group will cover the airport management up to 2025, with an additional two-year possibility, until 2027 after the approval of the government. In the mining field, the company "Sichuan Jiannanchun", together with the Turkish company "Kurum", have received the concession of the Kalimash and Vlajini mines, the chrome enrichment factories in Kalimash and the copper enrichment plant in Golaj. Also, the Chinese company "Jiangxi Copper" has acquired 50% of the shares of "Beralb" company that exploits copper mines in Albania.



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Genc Boga

Managing Partner, Boga & Associates

Genc Boga is the founder and Managing Partner of Boga & Associates which operates in both jurisdictions of Albania and Kosovo. Mr. Boga's fields of expertise include business

and company law, concession law, energy law, corporate law, banking and finance, taxation, litigation, competition law, real estate, environment protection law etc.

Mr. Boga has solid expertise as advisor to banks, financial institutions and international investors operating in major projects in energy, infrastructure and real estate. Thanks to his experience, Boga & Associates is retained as legal advisor on regular basis by the most important financial institutions and foreign investors.

He regularly advises EBRD, IFC and World Bank in various investment projects in Albania and Kosovo.

Mr. Boga is continuously ranked as leading lawyer in Albania by Chambers and Partners and IFLR 1000.

He is fluent in English, French and Italian.

The legal system

The Law on Foreign Investments attempts to create a hospitable investment climate. The law provides guarantees to all foreigners (either physical or judicial persons) willing to invest in Albania. Below we present a brief information on the foreign investment protection or particularities of Albanian legal framework:

- (a) No prior government authorization is needed and no sector is closed to foreign investment;
- (b) There is no limitation on the percentage share of foreign participation in companies – 100% foreign ownership is possible;
- (c) Foreign investors have the right to expatriate all funds and contributions in kind of their investment;
- (d) Albania's tax system does not distinguish between foreign and domestic investors;
- (e) There are no restrictions on the purchase of private residential property;
- (f) Foreign investments may not be expropriated or nationalized directly or indirectly and will not be subject to any measure or similar action, except for public purposes determined by law;
- (g) Foreign investments will be treated in a non-discriminatory manner and paid immediately, in a fair and effective manner, in accordance with the law;
- (h) In all cases and at all times investments will have an equal and unbiased treatment, and will have complete protection;

- (i) There are limited exceptions to this liberal investment regime, most of which apply to the purchase of real estate:
 - (i) Agricultural land cannot be purchased by foreigners and foreign entities, but may be rented for up to 99 years; and
 - (ii) Constructible land may be purchased, but only if the proposed investment is worth three times the price of the land.
- (j) Investors in Albania are entitled to judicial protection of legal rights related to their investments. The Albanian Civil Procedure Code outlines provisions regarding international arbitration;
- (k) Albanian law recognizes a variety of legal forms for businesses entities – as explained below.

One Belt One Road Investment

Government support and initiatives

The Albanian Government welcomes any kind of initiative for strategic investments in Albania.

The Albanian government acknowledged that the initiative creates the necessary conditions for improving the infrastructure of the region, thus serving the idea of creating a “New Silk Road” linking Asia with Europe, and that Albania wants to see the actualization of the incoming projects. Albania is open in strengthening cooperation for the development of infrastructure, road, rail, port and airport under the principle of mutual benefit.

The Albanian government aims at boosting economic, trade and investment cooperation and creating better conditions for a sustainable growth of the economy and trade.

On many occasions, the Albanian government statements underlined the willing to increase the exports of Albanian products towards the Chinese market. The signature of an agreement to reduce the quarantine terms by the Chinese customs authorities for Albanian foodstuffs would facilitate their export or continuous

communication between the relevant authorities realizing the growth of import-exports.

Albanian specialists of the economy have positively assessed the Chinese initiative and the impact it will have in Albania. “One Road Belt” together with the other Chinese initiative to establish the 16 + 1 Co-operation Mechanism between China and Central and Eastern Europe were considered by the government as two platforms that serve to strengthen Albania’s relations with China, especially in the economic field.

The Albanian government has submitted to the Secretariat of the Council of Strategic Investments in 2012 -2013 the following projects that may be developed and invested in namely:

- (a) A Project for a Container Terminal in Vlore (Soda River);
- (b) A private sector project for the construction of a sugar factory in Maliq;
- (c) The project of Tirana Tram.

The Albanian part has proposed funding from Chinese funds (or 16 + 1 Initiative), of some projects from the transport and infrastructure sector, energy, agriculture, economic zones, etc.

- (a) Blue Corridor project
- (b) Port of Shengjin project
- (c) Development of the industrial park in Spitalle, Durrës project

The Blue Corridor or the Adriatic–Ionian motorway is a project that will stretch along the entire eastern shore of Adriatic and Ionian seas, from Trieste in Italy to Greece via Croatia, Montenegro and Albania. The project is seen as a matter of national importance for both Albania and Montenegro. The MoU opens the possibility for the construction of the road segments Thumane (near Durrës) - Peze - Mullet (near Tirana) and Peze (near Tirana) – Dushk (near Fier) in Albania. According to the Albanian Investment Development Agency in November 2015, Albania and Montenegro signed a MoU (with Chinese company Pacific Construction



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Renata Leka **Partner, Boga & Associates**

Renata is a Partner at Boga & Associates, which she joined in 1998. 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. She manages anti-piracy and anti-counterfeit programmes

regarding violation of copyright in Albania and assists international clients in all aspects of the IPR. She is also head of the IPR Committee of the American Chamber of Commerce in Albania and is active in all its activities vis-à-vis public authorities in matters of IPR in Albania.

For years, Renata has been recognised as a “Leading Individual” in “Intellectual Property” in *Chambers and Partners* and *Chambers Europe* – “Europe’s Leading Lawyers for Business” (2010, 2011, 2012, 2013, 2016, 2017). According to *Chambers Europe*, Renata continues to be highly active, and assists a number of international corporations with trademark protection. She is also contributing to *World Trademark Review* magazine for Albania.

Renata graduated in Law at the University of Tirana in 1996 and also holds a Practice Diploma in International Intellectual Property Law (2006) and a Practice Diploma in Anti-Trust Law (2009) from the College of Law of England and Wales, UK.

Renata is fluent in English and Italian.

Group) that opens the way for the construction of the Blue Corridor motorway project. The joint application for financing the Feasibility Study of this highway was made on December 16, 2015, during the 14th round of the WBIF (Western Balkan Investment Framework) Instrument by the Albanian Government in cooperation with the Government of Montenegro. The total amount of grant awarded: Euro 2.5 million for Albania, 1.5 Million Euros for Montenegro – Financial Institution: EBRD / EIB.

Chinese companies have been invited by the government to assess investing in the construction of the industrial park, Spitalle, Durres,

on the basis of the Public-Private Partnership. During the 4th China-CESEE summit, in East China’s Suzhou city from November 24 to November 25, 2015, it was announced that Albania has obtained Chinese support for the development of an industrial park in the coastal city of Durres, including development of the port infrastructure.

It is expected that the Albanian government will launch tender procedures for the development of economic zones in Koplík (Shkoder) and Vlora.

Given the interest expressed by the Chinese government for the region as a whole for rail transport projects, another opportunity is the

concession of Albanian rail network. Following the completion of the economic assessment of the entire Albanian railway network (in February 2016, the EBRD-funded study was completed), the economically advantageous segments were assessed in this network.

Government bodies and bilateral trade treaties

Government bodies responsible for encouraging Chinese investments are the Line Ministries (ex. Ministry of Energy and Infrastructure, Ministry of Finance, Ministry of Tourism), agencies (ex. AIDA, Albanian Investment Development Agency, that perform the role of the assisting agent, and will follow all administrative procedures on their behalf from the moment an application is submitted until the strategic investment is completed), and the China-Albania Chamber of Commerce.

Albania and China have signed a bilateral Investment Treaty on February 13, 1993. The Tax Treaty was signed between the two countries on 01.01.2006.

Do these Bilateral Trade Treaties offer Investment Protection Mechanisms?

Yes. Under the Bilateral Investment Treaty Private, there is:

- (a) equal treatment of foreign and domestic investors;
- (b) full profit and dividend repatriation, after taxation;
- (c) repatriation of funds from liquidated companies; and
- (d) protection against nationalization or expropriation, unless specifically required by law in the public interest.

Key sectors for One Belt One Road Investment

Strategic investments might be in the following sectors:

- (a) Energy and mining;

- (b) Transport, telecommunications, infrastructure and urban waste;
- (c) Tourism;
- (d) Agriculture and fisheries;
- (e) Economic zones; and
- (f) Priority Development Areas.

Business set up, registration and approvals

The current Commercial Law governing business organizations in Albania (Law no. 9901 “On Entrepreneurs and Commercial Companies”) entered into force on 21 May 2008. It is modeled on commercial legislation found in Germany, Italy and Great Britain. The Commercial Law constitutes the main body of legislation for business organizations and aims to harmonize Albanian law with the laws of other European countries and the *acquis communautaire*.

Types of business entities

The foreign investor has numerous options available to organize its business operations in Albania. This may be achieved either by establishing a locally incorporated company, a branch or a representative office. The registration of new entities in Albania, since 1 September 2007, is carried out by the National Registration Center (“NRC”) established under law no. 9723, dated 3 May 2007 “On the National Registration Center”, which aimed to implement a “one stop shop” system. As of 26 November 2015, a new law no. 131/2015 has been enacted “On National Business Centre”. The said law aims to further facilitate doing business in Albania by offering the registration and licensing procedures through only one institution, which is the National Business Centre (“NBC”). Therefore, the National Business Centre will replace both the National Registration Centre and the National Licensing Centre.

According to the Albanian legal framework, the following business entities need to be registered with the NBC:



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Jonida is a Partner at Boga & Associates, which she joined in 2004.

She is a specialised business lawyer and assists clients on any business law aspects, including corporate, employment, taxation of corporations, competition law implications,

mergers and acquisitions and intellectual property.

Jonida also assists banks and financial institutions in their day-to-day activity in Albania including regulatory compliance requirements.

In addition to her client related work, Jonida has published extensively on tax and anti-trust issues.

She is a member of ICC Commission on Arbitration and ADR and ICC Commission on Competition.

Jonida is a member of the Board of Directors of CSR Network Albania.

She graduated in Business Law (“Maîtrise en Droit des Affaires”) at the University of Paris X Nanterre, Paris, France in 2002 and obtained a Master Degree in Business Law (“Diplôme d’Etudes Approfondies en Droit des Affaires”), in 2003 at the University of Paris X Nanterre, Paris, France.

Jonida is fluent in French, English and Italian.

- (a) Sole Entrepreneur – Tregtari
- (b) Unlimited Partnership – Shoqeri Kolektive
- (c) Limited Partnership – Shoqeri Komandite
- (d) Limited Liability Company – Shoqeri me Pergjegjesi te Kufizuar
- (e) Joint Stock Company – Shoqeri Aksionare
- (f) Joint Ventures – Shoqeria e Thjeshte

Common business vehicles

The most commonly adopted business vehicles are the limited liability company and joint stock companies.

Limited Liability Company (SHPK)

This is the most common used legal form for conducting business in Albania. It can be established

by one or more individuals or legal entities. Under normal circumstances, shareholders are held responsible for losses only to the extent of their contribution to the capital.

The minimum required capital for the limited liability company is ALL 100.

Contributions to the capital can be in cash or in kind by any asset, tangible or intangible.

Directors are nominated by the General Assembly of the shareholders for a period of no more than five years, though this term can be renewed. Ordinary decisions may be validly taken by the General Assembly of shareholders provided that a quorum representing more than 30% of the company’s shares is present in the meeting.

Extraordinary decisions, such as changes to the bylaws, increase or decrease in share capital, mergers and acquisitions or distribution of profits, may be validly taken by the General Assembly of the shareholders upon a majority vote of 75% of the shareholders present in the meeting, provided that shareholders holding more than half of the total number of votes are present at the meeting.

Decisions of the General Assembly of shareholders are recorded in the minutes of the meeting, which are kept by the directors of the company.

Joint Stock Company (SHA)

The capital of a joint stock company is divided into shares, and, under normal circumstances, its shareholders are held responsible for losses only to the extent of their contribution to the capital. The minimum initial capital required is ALL 3.5 million for privately held companies with no public offering, and ALL 10 million for companies which are publicly listed.

The capital is fully subscribed when the shareholders have promised to transfer assets to the company in cash or in kind to an amount equaling the capital. At the point of subscription, for shares being paid for in cash, at least one quarter of the nominal value of the shares must be paid in cash. Payment of the remaining value can be made in installments with the agreement of the management bodies of the company. In kind contributions must be fully paid in at the time of subscription. The Commercial Law does not permit contributions by way of services.

Rights attached to shares may not be transferred before registration of the company with the NBC. All shares bear the same nominal value.

The joint stock company may have “ordinary shares” or “privileged shares”. The latter may also have no voting rights and in any case, may not represent more than 49% of the registered share capital.

The Commercial Law provides for the adoption by joint stock companies of a flexible administration system. Joint stock companies may choose to adopt either a “one-tier” system (with

a board of directors conducting both management and supervisory functions) or a “two-tier” system (with a board of directors and a separate supervisory board carrying out supervisory functions).

Once the incorporation documents and other accompanying documents are filed with the National Business Center, the latter completes the registration typically within two business days.

Key requirements for the establishment and operation of these vehicles

Before undertaking any decision to adopt a specific form for conducting business in Albania, the foreign investor might need to require local law advice. A specific investment might be subject to licensing (eg. banks or other financial institutions non-banks, audiovisual media companies, electronic communications operators) and the applicable law might require that a specific form of the legal entity or other requirements be complied with.

In general, the registration with the National Business Center requires submission of the following documents:

- (a) Application form (standard form) filled in and filed by the legal representatives of the company or by a person authorized by a power of attorney;
- (b) Articles of Incorporation and/or Bylaws of the new company;
- (c) If the shareholder is a legal entity, also the following should be submitted:
 - (i) Articles of Incorporation and Bylaws of parent company and any amendments;
 - (ii) Recent extract from the Chamber of Commerce of the country where the shareholder is located, issued no more than 90 days before the date of the application, and confirming the registration of the shareholder in the Commercial Register of the country of origin; the company is not subject



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Gerhard Velaj Partner, Boga & Associates

Gerhard is a Partner at Boga & Associates, which he joined in 2000.

His core practice area is litigation and alternative dispute resolution overarching a wide range of business issues in Albania.

Gerhard represents international clients in courts of all levels, in cases related mainly to banking and finance, real estate, taxation, competition, intellectual property and all sorts of other commercial/corporate disputes.

Additionally, he performed in a number of legal due diligences regarding real estate development issues, property disputes, banking issues, intellectual property, etc.

Gerhard is fluent in English and Italian.

to dissolution or bankruptcy; the composition of the managing bodies of the company.

- (iii) Resolution of the board of directors or of any other body of the company (shareholder of the new company) authorized under its bylaws, to establish a new legal entity;
- (d) Depending on the legal form of the business entity, additional and specific information may be required to be stated in the Articles of Incorporation/Bylaws or filed with the NBC.

To register a branch or representative office with the NBC the following documents are required:

Application form (standard form) filled in and filed by the representative of the branch/representative office or of the parent company or by a person authorized by a power of attorney issued by either of the above-mentioned persons;

- (a) Articles of Incorporation and Bylaws of parent company and any amendments;

- (b) Recent extract from the Chamber of Commerce of the country where the parent company is located, issued no more than 90 days before the date of the application, and confirming:

- (i) the registration of the parent company in the Commercial Register of the country of origin;
- (ii) that the company is not subject to dissolution or bankruptcy;
- (iii) the composition of the managing bodies of the company.

- (c) Resolution of the parent company's board of directors or of any other body of the company authorized under its bylaws, to establish the branch or representative office in Albania and appoint a legal representative (Manager) of the branch or representative office in Albania;

- (d) Financial statements for the last financial year of the parent company and the auditor's report.

Registration requirements

Compulsory data for the registration of commercial companies are as follows:

Name

Form

Date of establishment

Founder Identification Data

Headquarters

The object, if it is defined

Duration, if determined;

Identification data of persons responsible for the administration and representation of the company in relation with third parties, powers of representation, as well as deadlines for their appointment.

Signature specimens of persons representing the company.

Share capital value, the number of shares, the nominal value of shares, the value and type of contributions of each shareholder, and whether the initial share capital is paid or not.

Government approvals

An investment in Albania is subject to prior approval of a state agency or authority (depending on the nature of activity) if required by the applicable law. For example, the following activities require obtaining of a prior approval from the above public authorities:

- (a) Banking activities;
- (b) Financial non-banking activities (including insurance and re-insurance);
- (c) Audiovisual media activities;
- (d) Electronic communications;
- (e) Construction activities;
- (f) Oil activities;
- (g) Renewable energy;
- (h) Mining activities;
- (i) Transportation activities;
- (j) Pharmaceuticals;
- (k) Other activities

Competition clearance procedures

The Albanian Competition Authority (“ACA”) is responsible for applying the merger control legislation in Albania.

A concentration shall be deemed to arise where a change of control on a lasting basis results from:

- (a) the merger of two or more independent undertakings or parts of undertakings;
- (b) the acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of shares or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings; or
- (c) direct or indirect control over one or more undertakings or part of the latter.

Control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, particularly by:

- (a) ownership or the right to use all or part of the assets of an undertaking; and
- (b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

The merger control applies to mergers when all of the following turnover thresholds are met:

- (a) the combined worldwide turnover of all participating undertakings is more than Leke 7 billion (approximately EUR 50 million) and the domestic turnover of at least one participating undertaking is more than Leke 200 million (approximately EUR 1.42 million); or
- (b) the combined domestic turnover of all participating undertakings is more than Leke 400 million (approximately EUR 2.8 million) and the domestic turnover of at least one participating undertaking is more than Leke 200 million (approximately EUR 1.42 million).

In general, the aggregate turnover includes the income of the participating undertakings realised in the preceding financial year from the sale of products falling within the undertakings' ordinary activities, after deduction of taxes or fees directly related to the undertakings' turnover. In cases of mergers of credit or financial institutions, the turnover is the income resulting in annual or consolidated accounts deriving from interests, shares, bonds, equity interests, commissions, net profit from financial operations and other income, after deduction of taxes. For insurance undertakings, the turnover is the gross income of subscribed premiums which include all received and collected amounts as per insurance contracts, as well as reinsurance premiums, after the deduction of taxes.

When the merger consists of the acquisition of parts of one or more undertakings, for calculation of the seller/s' turnover, only the turnover corresponding to the parts which are the subject of the transaction shall be taken into account.

Specifically, when the participating undertaking is part of a group, its aggregate turnover is calculated by adding together the respective turnover of the members of the group (i.e. (i) the participating undertaking, (ii) its subsidiaries where the participating undertaking holds directly or indirectly more than half of the share capital or voting rights, or has the power to appoint more than half of the members of the supervisory board, the administrative board or other legal bodies representing the subsidiary, or has the right to manage the subsidiaries' affairs, (iii) its parent undertakings having the above-mentioned rights or powers, and (iv) the subsidiaries of its parent undertakings – those undertakings in which two or more undertakings as referred to under (i) to (iv) herein have jointly the rights or powers listed in (ii) herein). In cases where the participating undertaking is part of a group, the Competition Law excludes from the calculation of the turnover, the sale of products performed between undertakings that are part of the group.

The Competition Law provides that the merger should be notified within 30 days from the signature of the merger agreement, of the control acquisition or from the announcement of the public offer.

The Competition Law defines the procedure for assessment of mergers from the ACA into: (i) preliminary proceedings; and (ii) in-depth proceedings.

During the preliminary proceedings, the ACA shall examine the notification in order to find whether the transaction “reveals any sign that it would restrict the competition”, especially through the creating or strengthening of a dominant position. When pursuing the in-depth proceedings, the ACA must assess whether the transaction significantly restricts the said competition.

During the preliminary phase, the ACA shall decide whether: (i) to initiate an in-depth procedure; or (ii) to give clearance of the merger, within two months after the confirmation of notification receipt (i.e. the period of two months shall begin on the working day following the confirmation of the ACA on the notification receipt or, if the information to be supplied with the notification is incomplete, on the day following the receipt of the complete information).

This period is extended by two weeks (“Extension Period”) in cases where the said signs are revealed, but the ACA grants a conditional clearance if the concerned undertakings, no later than one month after notification, commit themselves to take measures to eliminate the restriction of competition.

In cases where an in-depth proceeding is initiated, the ACA shall have three months, starting from the commencement of the proceeding, to declare by means of a decision, if the merger (transaction) is prohibited, fully cleared or cleared with conditions and obligations.

In the event of a “clearance with conditions and obligations”, the period of three months shall be extended by up to two months if the

participating undertakings, no later than two months from the date of commencement of the in-depth procedure, commit themselves to take measures to eliminate the restriction of competition.

If the ACA does not decide within the set deadlines (either for the preliminary phase or the in-depth phase), the Competition Law provides for the “silence-is-consent” rule, unless the ACA extends or suspends the above-mentioned time limits.

Free trade zones

The free trade zone of Albania’s city of Koplik (Shkoder) is open to foreign investors. The zone, open for manufacturing, industrial and agro-processing activities as well as trading and storing goods, will be divided into three smaller districts in order to provide more investing options to foreign investors.

So far, enterprises from Macedonia and Turkey have shown interest in the strategic position of Koplik’s economic and technological development zone because it provides links to the Balkan.

The free trade area, located in northern Albania, consists of 15 cadastral units and about 61 hectares of agricultural fields and pastures.

It will operate for a period of nine years for a symbolical price of 1 euro (1.11 U.S. dollars)

Tax obligations and incentives

Tax Treaty

China and Albania have entered into a tax treaty on avoidance of double taxation of income and capital.

The said tax treaty provides that the dividends, royalties and interest from loans paid from an Albanian entity are subject to taxation in Albania with a withholding tax rate of 10%. This tax rate shall be applicable for this type of income irrespective of the Albanian tax rate.

Corporate income tax

Companies with an annual turnover exceeding ALL 8 million are subject to a 15% tax rate of corporate income tax. If the annual turnover is between ALL 5 million and ALL 8 million, the entity is subject to the simplified corporate income tax rate of 5%. Entities with a total annual turnover below ALL 5 million are exempt from the simplified corporate income tax.

The determination of taxable base starts with the profit shown in the profit and loss account. The profit calculation should be made according to the current accounting legislation and relevant instructions issued by the Ministry of Finance.

Taxation of individuals

Under Albanian law, all individuals are liable to income tax. While residents pay tax on their worldwide income, non-residents pay tax only on income generated within the territory of Albania.

Residence

Individuals having their habitual residence in Albania or who reside in Albania for an aggregate period of more than 183 days in any tax year are considered Albanian tax residents.

Personal income tax rates

Wages, salaries and other compensation for employees are taxed as shown on the following page.

For other taxable income, a flat rate of 15% is applied.

Employment

Local employment regulations

Law 108/2013 dated March 28, 2013 “On Foreigners” and various decisions of the Council of Ministers regulate the employment regime in Albania. The law limits to 10% the number of foreigners hired by employers in Albania. In 2015, the Labor Code was amended to include

| Monthly taxable income | | Rate |
|------------------------|-----------|--|
| Over (ALL) | | Until (ALL) |
| 0 | 30,000 | Nil |
| 30,000 | 130,000 | 13 percent of the amount over ALL 30,000 |
| 130,000 | and above | ALL 13,000 + 23 percent of the amount over ALL 130,000 |

the temporary employment of foreigners in Albania.

Employment contracts

Employment contracts may be agreed or modified verbally or in writing between the employer and the employee. In the case of a verbal contract, the employer should draft a written document reflecting the agreement within 7 days.

As a general rule, under the Albanian Labor Code, employment contracts are valid for an unlimited term. However, an employment contract may be agreed for a limited term if the work to be carried out is temporary in nature and is to be performed over a predetermined period of time.

Under the Albanian Labor Code, an employment contract must include at least the following:

- (a) the identity of the parties;
- (b) the workplace;
- (c) the general description of the job;
- (d) the date of starting the job;
- (e) the duration, when the parties enter into a contract of defined time limits;
- (f) the duration of paid vacations;
- (g) the notice period in case of termination of the contract;
- (h) the constituent elements of the salary and the day on which it is given;
- (i) the normal working weekly time;

- (j) the collective contract in force;
- (k) the probation period; and
- (l) the types and procedures of disciplinary measures when no collective contract is in force.

Labor unions

The Confederation of Trade Unions of Albania (KSSH-CTUA) is the largest trade union organization in Albania.

Foreign employees

The authority empowered to issue work permits is the General Directorate of the National Labor Service or the Labor Office of the relevant territory, which is part of the Ministry of Youth and Social Welfare.

Foreigners working in the Republic of Albania, depending on the specific case, must obtain a work permit or a work registration certificate.

The following categories of foreign workers are exempted from either obligation:

- (a) Citizens of those countries which are part of the EU and Schengen zone have the same employment rights as Albanian citizens, except where the legislation in force requires Albanian citizenship for the job;
- (b) The working foreigner is only staying for one month in any one year in cases of:
 - (i) foreigners who are negotiating an agreement or supervising a trade event stall;
 - (ii) business visitors;

- (iii) crew members of ships or aircrafts;
- (iv) lecturers, researchers or foreign specialists who come into Albania pursuant to agreements between governments, governments and educational institutions or private sector parties and educational institutions;
- (v) educators who come into Albania pursuant to bilateral governmental agreements or agreements concerning educational institutions;
- (vi) employees of humanitarian organizations active in Albania pursuant to international programmes of cooperation.

The above documents might vary slightly depending on the type of work permit requested. The application file should be submitted to the General Directorate of the National Labor Service or the Labor Office of the relevant territory. The Directorate/Labor Office must notify its decision on issuance of the work permit within 30 working days from the date of submission of the documentation; in practice, the work permit is usually issued within one month. The official fee to be paid for the work permit is ALL 6,000 (approx. EUR 45).

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