

Issue 02/13

To keep you up-to-date with the latest economic and financial developments, this bulletin provides information that may affect the operation of your business in Albania.

Amendments to Law no. 8537, dated 18.10.1999 “On Securing Charges”

The Albanian parliament approved Law no. 132/2013 (“Law 132/2013”) which amends Law no. 8537, dated 18.10.1999 “On Securing Charges”.

According to the amendment, references to “intangible properties”, “securities”, “instruments” and “accounts” in the Law “On Securing Charges” are abrogated.

Law 132/2013 has been published in the Official Gazette no. 79, dated 14.05.2013 and enters into force on May 29th, 2013.

Starting from the said date, intangible properties, securities, instruments and accounts as they were defined in the Law “On Securing Charges” shall no longer be granted as collateral under such law. Due to this amendment, securing charges can be taken only over tangible movable assets.

New Law on System of Payments and Financial Collateral

The Albanian parliament passed Law no. 133/2013 “On the System of Payments” (Law 133/2013) which also enters into force on May 29th, 2013.

Scope of application

Law 133/2013 introduces the financial collateral as a new form of collateral arrangement (besides pledge and securing charges). For purposes of this law, financial collateral is constituted by “cash” and “financial instruments”.

Definitions

The new law defines “cash” as “money credited to an account in any currency, or similar claims for the repayment of money, such as monetary deposits”.

“Financial instruments” are defined as “shares of joint stock companies, either foreign or local, and other securities equivalent to shares in joint stock companies, bonds and other forms of debt instruments if these are negotiable on the capital market, and any other securities which are normally dealt in and which give the right to acquire any such shares, bonds or other securities by subscription, purchase or exchange or which give rise to a cash settlement (excluding instruments of payment), including units in collective investment undertakings, money market instruments, precious metals credited in an account and claims relating to or rights in or in respect of any of the foregoing”.

Creation of financial collateral

Article 25 of Law 133/2013 indicates that the financial collateral is created in pursuance with a written agreement (paper-made or electronic) and no other formalities are required.

The financial instruments provided as financial collateral may be (i) transferred in the possession of the collateral taker or (ii) credited in a special account, held in a register in the name of the collateral giver, collateral taker or in the name of a third party acting as a depositor.

The same applies to *cash*, as financial collateral, which possession is transferred to the collateral taker, or to a special account, or held, transferred, or subject of any measure so as to be in the possession or under the control of the collateral taker or of a person acting on the collateral taker's behalf. The collateral taker notifies the debtor for the performed transfer by acknowledging the claim on the cash or the obligation of the debtor to explicitly recognize the existence of the financial collateral agreement.

Enforcement

The collateral taker has the right to enforce the financial collateral without prior notice and without intervention of the court or any another public authority, in pursuance with the agreed terms and conditions.

In case of *financial instruments* the enforcement takes place by sale or appropriation and by setting off their value against the relevant financial obligations; and for *cash* by setting off the amount against the relevant financial obligations.

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Boga & Associates

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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.

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