



ICLG

The International Comparative Legal Guide to:

Project Finance 2013

2nd Edition

A practical cross-border insight into project finance

Published by Global Legal Group, with contributions from:

Advokatfirmaet Thommessen AS

Ali Budiardjo, Nugroho, Reksodiputro

Amarchand & Mangaldas & Suresh A. Shroff & Co.

Boga & Associates

Bonelli Erede Pappalardo

Brigard & Urrutia Abogados S.A.

Clayton Utz

Colibri Law Firm

Cuatrecasas, Gonçalves Pereira

Debarliev, Dameski & Kelesoska Attorneys at Law

Dr. Adam & Associates

EPLegal Limited

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Gonzalez Calvillo, S.C.

Gorrissen Federspiel

Gowling Lafleur Henderson LLP

Hajji & Associés

Heuking Kühn Lüer Wojtek

Ikeyi & Arifayan

Koep & Partners

Lee and Li, Attorneys-at-Law

Loyens & Loeff

Mattos Filho, Veiga Filho, Marrey Jr. e Quiroga Advogados

Milbank, Tweed, Hadley & McCloy LLP

Odvetniki Šelih & partnerji, o.p., d.o.o.

Pachiu & Associates

Philippi, Yrarrazaval, Pulido & Brunner

Project Lawyers

Schweizer Legal, s. r. o.

SJ Berwin LLP

Torres Plaz & Araujo

Vinson & Elkins RLLP

Walder Wyss Ltd.

White & Case LLP

Yigal Arnon & Co.

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Contributing Editor

John Dewar, Milbank,
Tweed, Hadley & McCloy
LLP

Account Managers

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Suzie Kidd

Senior Editor

Penny Smale

Group Consulting Editor

Alan Falach

Group Publisher

Richard Firth

Published by

Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design

F&F Studio Design

GLG Cover Image Source

iStockphoto

Printed by

Ashford Colour Press Ltd.
April 2013

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ISBN 978-1-908070-56-2

ISSN 2048-688X

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EDITORIAL

Welcome to the second edition of *The International Comparative Legal Guide to: Project Finance*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of project finance.

It is divided into two main sections:

Five general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting project finance, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in project finance laws and regulations in 38 jurisdictions.

All chapters are written by leading project finance lawyers and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor John Dewar of Milbank, Tweed, Hadley & McCloy LLP, for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

Alan Falach LL.M
Group Consulting Editor
Global Legal Group
Alan.Falach@glgroup.co.uk

Albania



Renata Leka



Besa Velaj (Tauzi)

Boga & Associates

1 Overview

1.1 What are the main trends/significant developments in the project finance market in Albania?

The activity of project finance in Albania is considered as an important additional means by which to support and develop private sector entrepreneurship. By ensuring project finance to the eligible prospective investors, the delivering institutions assist in evaluating, structuring and implementing their projects in Albania and in providing loans and equity investments, including financing from other sources. Over the years, Albanian project finance implementation has not been an area delivered only to private companies, but there are engagements from different lending institutions (banking and non-banking, or in joint collaboration) concerning policy dialogue with the Albanian government, with the potential to invest in key public sector projects, along with the implementation of numerous donor-funded projects in the country.

1.2 What are the most significant project financings that have taken place in Albania in recent years?

In Albania, project finance activity has seen continuous developments in terms of the amount invested and in the variety of sectors covered in the financing process. Key sectors on which project finance support has been applied are:

- Government institution projects.
- Financial institutions.
- Energy sector, mining, oil and gas.
- Infrastructure.
- Corporate, small-medium production enterprises.
- Natural resources.
- Commercial construction (i.e. infrastructure construction).
- Residential construction (real estate).
- Sectors which have comparative advantages such as light manufacturing, fishing and tourism.

The EBRD invested a total EUR 65.7 million in Albania in 2011, mainly in projects in the public sector such as transport, power and energy. EBRD granted a EUR 53 million loan for the reconstruction of Fier (22 km) and Vlore (27.6 km) bypasses. The two bypasses are key sections of the national road network in Albania connecting important roads, previously co-financed by EBRD and EIB (European Investment Bank). The Italian government and European Commission have provided grant funding for the preparation of the detailed design works.

The EBRD also granted a EUR 12.7 million sovereign loan to the Republic of Albania to be on-lent to Korporata Elektroenergjitiqe Shqiptare (KESH) for investments in the Komani hydropower dam. The EBRD will parallel finance the project with the World Bank (WB), Swiss State Secretariat for Economic Affairs (SECO) and Kreditanstalt fur Wiederaufbau (KfW). This project aims to strengthen dam safety at the Drin and Mat River Cascades hydropower plants, which generate 95% of the entire Albanian electricity production.

Source:

<http://www.ebrd.com/saf/search.html?type=project&country=Albania>.

2 Security

2.1 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

Securing charges over movable property are governed by Law no. 8537 dated 18.10.1999 "On Securing Charges", as amended. The security agreement must contain a description of the collateral in accordance with the definitions provided by the law, which may not necessarily be an itemised description of the asset. In any case, it is advisable that the security agreement ensures an adequate description of the collateral in order to avoid any disputes in the event of enforcement.

Securities granted over immovable property are subject to a mortgage agreement, which should contain a description of the collateral.

2.2 Can security to be taken over real property (land), plant, machinery and equipment (e.g. pipeline, whether underground or overground)? Briefly, what is the procedure?

Security can be taken either over immovable property (i.e. land, building, fixtures) or over movable property (i.e. machineries and equipments).

According to Civil Code provisions, the mortgage (security taken over immovable assets, usufruct or emphyteusis rights) can be taken/given over present or future immovable assets and present and/or future fixtures related thereto, as well as easement rights over immovable property. It is established upon an agreement (mortgage agreement) made in writing in the form of a notary deed, and is perfected upon registration of the mortgage agreement with

the immovable properties registry kept by the local Real Estate Registration Office. The Civil Code provisions imply the necessity to describe the security in the security deed (i.e. mortgage agreement), even when taking/granting mortgages over future assets.

Securing charges are a non-possessory security and are given/taken only over movable, tangible and/or intangible assets (i.e. machineries and equipment), for securing either a present or a future debt. The securing charge is created by written agreement and perfected through registration with the securing charges registry.

2.3 Can security be taken over receivables where the chargor is free to collect in the receivables in the absence of a default and the debtors are not notified of the security? Briefly, what is the procedure?

Security over the receivables is allowed under Albanian law and permits the chargor to hold the security and make use of it for exercising its activity and to continue collect the receivables, until the chargor is in default and the chargee notifies the debtor in relation thereto.

2.4 Can security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

Bank accounts may be subject to securing charges by means of a security agreement. The securing charge is perfected upon its registration with the securing charges registry.

2.5 Can security be taken over shares in companies incorporated in Albania? Are the shares in certificated form? Briefly, what is the procedure?

Shares can also be taken as security and will be subject to a securing charges agreement. The agreement must contain a description of the collateral and is perfected upon its registration with the securing charges registry.

The securities law requires that the shares of joint stock companies are dematerialised. No shares certificates can be traded. Instead, the company can issue a certificate confirming the shareholding, but this is not a saleable instrument. Transfer of shares should be registered in the share ledger that, in practice, is commonly not kept by the companies.

2.6 What are the notarisations, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets (in particular, shares, real estate, receivables and chattels)?

The law does not mandatorily require notarisations of the securing charge agreement. However, in practice the security documents are drawn up by the Notary Public. The notarisations fee varies from ALL 1,500 (approx. EUR 11) to ALL 4,000 (approx. EUR 29), depending on the amount of repayment which is guaranteed by means of the security agreement. The stamp duty is ALL 200 (approx. EUR 1). The fee for the registration with the securing charges registry is ALL 1,400 (approx. EUR 10).

The notarisations fee for the mortgage agreements vary from ALL 2,000 (approx. EUR 12) to ALL 15,000 (approx. EUR 107). The stamp duty is ALL 200 (approx. EUR 1). VAT (currently at 20% rate) applies to notarisations fees.

The fees applicable for registration with the Real Estate Registration Office of mortgage agreements entered into for securing repayment of loans granted by banks or other financial institutions vary from ALL 7,500 (approx. EUR 55) to ALL 25,000 (approx. EUR 180), depending on the amount of the loan.

2.7 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

Registration with the securing charges registry is completed within 48 hours of the application date.

Registration with the Real Estate Registration Office is completed within 7 (seven) days. However, in practice such registration lasts up to 14 (fourteen) days.

2.8 Are any regulatory or similar consents required with respect to the creation of security over real property (land), plant, machinery and equipment (e.g. pipeline, whether underground or overground) etc.?

In general, no regulatory consents are required for the creation of securities. However, in the case of implementation of concession agreements, the approval of the Contracting Authority is required for the purpose of creating security over the assets of the project company party to the concession agreement.

3 Security Trustee

3.1 Regardless of whether Albania recognises the concept of a "trust", will it recognise the role of a security trustee or agent and allow the security trustee or agent (rather than each lender acting separately) to enforce the security and to apply the proceeds from the security to the claims of all the lenders?

Albanian legislation is silent on the concept of the "security trustee", as described above. The enforcement of security interests is performed by the bailiff office.

In terms of securing charges, the court issues the order for seizure of the collateral object to the securing charge, considering that the security agreement by law constitutes an executive title. Following this, the bailiff, in compliance with the order issued by the court, proceeds with the seizure of the collateral and consigns it to the chargee or to the person authorised by the chargee.

In terms of the mortgage, a public auction is required to enforce it.

3.2 If a security trust is not recognised in Albania, is an alternative mechanism available (such as a parallel debt or joint and several creditor status) to achieve the effect referred to above which would allow one party (either the security trustee or the facility agent) to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

Please see question 3.1 above.

4 Enforcement of Security

4.1 Are there any significant restrictions which may impact the timing and value of enforcement, such as (a) a requirement for a public auction or the availability of court blocking procedures to other creditors/the company (or its trustee in bankruptcy/liquidator), or (b) (in respect of regulated assets) regulatory consents?

In terms of security over movable property, the security agreement by law constitutes an executive title and is enforced by the bailiff upon a court decision. The lender, upon taking possession of the collateral, may proceed either with a private or public sale, auction or restricted bid procedures, provided that arm's length principle is observed.

The lender/chargee may proceed with the enforcement, provided that the chargor and any other successive lender/chargee in terms of ranking are notified in writing at least 10 days before the sale takes place.

Notification by the chargee is not required if the chargee deems that (i) occurrence of the notification would significantly diminish the value of the collateral, (ii) expenses related to its storage are excessive in proportion to its value, (iii) in the event of default by the charger, any other person to be notified of the enforcement expressly waives such rights, or (iv) the court considers that the notification is not necessary.

When the enforcement involves securities consisting of immovable properties, notification of the debtor (10 days) is mandatory in order to permit the debtor to voluntarily execute the obligation. In case of failure of the debtor to voluntarily execute the obligation, the bailiff officer proceeds with the enforcement, which should be organised in the form of a public auction.

4.2 Do restrictions apply to foreign investors or creditors in the event of foreclosure on the project and related companies?

No specific restrictions apply to foreign investors.

5 Bankruptcy Proceedings

5.1 How does a bankruptcy proceeding in respect of the project company affect the ability of a project lender to enforce its rights as a secured party over the security?

Subject to the Insolvency Law, the secured lenders are entitled to enforce their rights in accordance with the applicable legislation on secured transactions, out of insolvency proceedings.

However, in the insolvency proceedings, chargees or lessors may not raise claims for rent or financial lease payments pertaining to a period of 12 months prior to the opening of the insolvency proceedings, or any other claims on damages relief, which are due because of the termination of the said lease by the bankruptcy trustee.

5.2 Are there any preference periods, clawback rights or other preferential creditors' rights (e.g., tax debts, employees' claims) with respect to the security?

Subject to the Albanian Civil Code, claims have preference according to the following order: (a) credits deriving from secured financial transactions by securing charges for the purchase price of a particular asset; (b) credits deriving from salaries related to labour or service relationships and nurture obligations, but not for more than 12 months; (c) credits of social insurance deriving from the

non-payment of contributions, together with penalties for delayed payment, as well as credits of employees for damages deriving from the non-payment by employers of the above contributions; (d) credits for funeral and medical expenses; (e) credits of authors and their heirs for compensations deriving from the total or partial transfer of their rights in intellectual property, due for the past two years; (f) credits of the State deriving from obligations against the budget and credits of the Social Insurance Institute for compulsory insurance established by law; (g) credits, deriving from financial transactions, secured by a securing charge according to criteria provided by law; (h) credits deriving from salaries related to labour or service relationships and nurture obligations, over the limit set out in (b) above; (i) the commission of the intermediation deriving from the contract of the agency, due in the last year of the service; (j) credits secured with a pledge or mortgage that do not create securing charges, according to law, equal to the value of things given in pledge or mortgage; (k) claims for expenses related to judicial proceedings incurred to secure the property and expenses for executions, in the common interest of creditors, from the sale of things; (l) claims deriving from bank loans (which are not included in (g) above and claims arising from voluntary insurance; and (m) claims for supplies of seeds, fertilisers and pesticides, or of irrigation waters, as well as claims for cultivation and harvest work on the crops to whose production claims have been used.

5.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?

Pursuant to the Insolvency Law, the property of (i) the State and its bodies, (ii) the strategic sectors, and (iii) the local government and its bodies, is excluded from the insolvency proceedings.

Instead, insolvency proceedings applicable to banks and other financing institutions are governed by specific law.

5.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of the project company in an enforcement?

There are no out-of-court proceedings available for the creditor to seize the asset in an enforcement.

6 Foreign Investment and Ownership Restrictions

6.1 Are there any restrictions, controls, fees and/or taxes on foreign ownership of a project company?

There are no restrictions on foreign ownership of a project company.

6.2 Are there any bilateral investment treaties (or other international treaties) that would provide protection from such restrictions?

Albania is party to several bilateral investment treaties, and no restrictions apply to foreign investors.

6.3 What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of investment specially protected?

The Constitution of the Republic of Albania provides that expropriation of private property or restrictions on exercising the

ownership right is permitted only when considered as necessary or appropriate in the public interest, and are subject to adequate and fair compensation of the expropriated owner.

The Law on Foreign Investments governs *inter alia* the nationalisation and expropriation of companies owned by foreign investors. The law determines that foreign investments will not be subject to expropriation or nationalisation either directly or indirectly and will not be subject to any similar measure, except for legitimate public interest purposes when required by law. Expropriation or nationalisation will not be discriminatory and will be compensated immediately, in an appropriate and effective manner, and in compliance with the procedures indicated by the law.

The existing Law on Foreign Investments was amended by law no. 10316 dated 16.09.2010, which introduces the concept of 'special State protection'. Such protection is granted to foreign investors on a case-by-case basis, upon the arising of a dispute between the foreign investor and private party claiming title over the immovable property where the project is or will be constructed/developed. Such instrument is available until the end of 2014.

7 Government Approvals/Restrictions

7.1 What are the relevant government agencies or departments with authority over projects in the typical project sectors?

The government, through the ministries competent for the project sectors involved, supervise and administer the award of projects.

7.2 Must any of the financing or project documents be registered or filed with any government authority or otherwise comply with legal formalities to be valid or enforceable?

There are no specific requirements related to the filing of project documents in order for them to be valid and enforceable.

Subject to provisions of concession law, the concession agreement where the investment value exceeds EUR 20 million must be approved by the Council of Ministers. Agreements of lower value do not require any approval and will enter into force after signature by the concessionaire and contracting authority.

Duration of the concession contract must correspond to the specific nature of the concession/project but in any case it should not exceed 35 years. Concessions longer than the said term must be approved by Parliament.

Regarding the financing documents which *inter alia* include security documents, they should be registered respectively with the Securing Charges Register and the Real Estate Register, depending on the type of security involved (i.e. movable or immovable property).

7.3 Does ownership of land, natural resources or a pipeline, or undertaking the business of ownership or operation of such assets, require a licence (and if so, can such a licence be held by a foreign entity)?

Under law no. 7980 dated 27.07.1995 "On Acquisition of Plots", foreigners can acquire a plot in Albania only if the value invested for construction on such plot exceeds three times the value of that plot.

Natural resources are the exclusive property of the Albanian State. They may only be granted for temporary use to private entities with consideration to the fact that the best interest of the Albanian community will always prevail.

Activities involving natural resources are subject to licences issued by the Ministry of Economy, Trade and Energy and Council of Ministers. The applicable legislation on the construction and operation of pipelines provides that the permit for construction and operation of pipelines is granted to companies that are established and registered with the Albanian Commercial Register, in the form of a joint stock company.

Law no. 10304 dated 15.07.2010 "On mining sector in Republic of Albania" provides that any legal entity, either domestic or foreign, may be granted a mining permit for prospecting, exploration or exploitation of minerals (not including crude oil and gas) in a certain area, provided that requirements set forth by the applicable legislation are met.

The activities related to the exploration and production of hydrocarbons in Albania are governed and regulated by Law no. 7746 dated 28.07.1993 "On hydrocarbons", as amended. According to the said law, the conducting of such activity is subject to the Hydrocarbons Agreement, to be entered into between the Ministry of Economy, Trade and Energy and the interested entity being either domestic or foreign.

7.4 Are there any royalties, restrictions, fees and/or taxes payable on the extraction or export of natural resources?

Any permit holder conducting extraction/exploitation activity of natural resources shall be subject to payment of royalties in favour of the Albanian State. Royalties are calculated in percentages based on the value of the return obtained from the relevant activity related with the natural resource. The value of the royalties applicable vary depending to the type of activity performed and of the natural resources involved. The royalties are determined by the legislation on national taxes.

No other taxes are applicable, such as for export of natural resources and others.

7.5 Are there any restrictions, controls, fees and/or taxes on foreign currency exchange?

The Albanian legislation does not contain any restrictions on foreign exchange operations.

The Law on Hydrocarbons provides that in case the hydrocarbons activity is performed by a foreign investor, the Hydrocarbons Agreement contains appropriate provisions related to the fiscal regime stability. It may provide *inter alia* for the right of the foreign investor to maintain foreign bank accounts and to exchange foreign currency into local currency, according to preferential exchange rates for purposes of fulfilment of its obligations arising out from the hydrocarbon activity.

7.6 Are there any restrictions, controls, fees and/or taxes on the remittance and repatriation of investment returns or loan payments to parties in other jurisdictions?

Investment returns or loan payments are freely transferable and no restrictions, taxes or fees apply.

7.7 Can project companies establish and maintain onshore foreign currency accounts and/or offshore accounts in other jurisdictions?

There are no restrictions imposed by Albanian legislation in this respect. The Law on Hydrocarbons explicitly allows foreign

investors the right to establish and maintain offshore accounts for the purpose of payments of goods, services and staff engaged in the conduct of hydrocarbons activity, as per the Hydrocarbons Agreement.

7.8 Is there any restriction (under corporate law, exchange control, other law or binding governmental practice or binding contract) on the payment of dividends from a project company to its parent company where the parent is incorporated in Albania or abroad?

There are no restrictions on the transfer of dividends from the project company to its parent company, incorporated in Albania or abroad.

7.9 Are there any material environmental, health and safety laws or regulations that would impact upon a project financing and which governmental authorities administer those laws or regulations?

Environmental issues in Albania are governed by:

- (i) Law no. 10431 dated 09.06.2011 “On environmental protection”.
- (ii) Law no. 8990 dated 23.01.2003 “On environmental impact assessment”, as amended (note that the said law is to be repealed soon by Law no. 10440 dated 07.07.2011 “On environmental impact assessment” entering into force by the end of January 2013). Subject to the aforementioned laws, the competent authority to ensure the proper execution and supervise the compliance with the said legislation is the Ministry of Environment, Water Administration and Forestry, along with the National Environmental Agency.
- (iii) Law no. 10448 dated 14.07.2011 “On environmental permits” entering into force on February 2013.

Health and safety issues are mainly dealt with by Law no. 10237 dated 18.02.2010 “On health and safety in the working premises”. The governmental agency empowered to supervise the proper execution and compliance with the said law is the National Labour Inspectorate.

Any entity operating in Albania should ensure compliance with the laws.

7.10 Is there any specific legal/statutory framework for procurement by project companies?

As a general rule, public procurement legislation does not apply to private entities, unless: (i) the majority of the voting shares into the share capital are owned by the State; or (ii) it is administered by the State or the State controls/appoints more than half of the administration/supervising body.

8 Foreign Insurance

8.1 Are there any restrictions, controls, fees and/or taxes on insurance policies over project assets provided or guaranteed by foreign insurance companies?

Law no. 9267 dated 29.07.2004 “On activities of insurance, reinsurance and intermediation in insurance and reinsurance”, as amended, prohibits the direct insurance provided by foreign insurance companies for risks related to persons, assets or liabilities seated within the Albanian territory, except when an international agreement adopted by the Republic of Albanian provides otherwise.

The Albanian Supervising Authority may exceptionally authorise direct insurance provided by foreign insurance companies only in those cases where the risk may not be covered by domestic insurance companies.

8.2 Are insurance policies over project assets payable to foreign (secured) creditors?

The Albanian legislation does not contain any restrictions and/or prohibitions in this respect.

9 Foreign Employee Restrictions

9.1 Are there any restrictions on foreign workers, technicians, engineers or executives being employed by a project company?

There are no restrictions on the employment of foreign workers by the project company. Subject to the Law on Foreigners, all foreigners engaged in employment in Albania must obtain a working and residency permit.

10 Equipment Import Restrictions

10.1 Are there any restrictions, controls, fees and/or taxes on importing project equipment or equipment used by construction contractors?

There are no restrictions on importing project equipments or equipment used by the construction contractors.

Equipment may be subject to customs duties of up to 10% of the customs value, unless a free trade agreement provides otherwise. VAT, currently at the rate of 20%, is payable upon importation.

Additionally, equipment and machineries used by construction contractors may be imported under a temporary regime. Under this regime, no taxes are payable provided that the equipment will be exported back within a year. Such period may be extended to 12 months. If the equipments would be definitely imported, the importer may take advantage of deferred payment of VAT. Under such scheme, the VAT that is payable upon importation may be deferred for 12 months.

10.2 If so, what import duties are payable and are exceptions available?

VAT law has been recently amended to broaden the VAT exemptions to include the import of iron and steel used as raw materials for the construction of hydropower plants, the import of machineries and equipments used for the implementation of investment contracts with a value equal to or higher than ALL 50 million, the import of machineries and equipment used in the inward processing industry and agribusiness, regardless of the investment value will be exempted from VAT.

11 Force Majeure

11.1 Are force majeure exclusions available and enforceable?

Force majeure exclusions are enforceable under Albanian legislation.

12 Corrupt Practices

12.1 Are there any rules prohibiting corrupt business practices and bribery (particularly any rules targeting the projects sector)? What are the applicable civil or criminal penalties?

The applicable civil legislation aims to prevent situations that might lead to any conflict between public and private interests of public officers vested with decision-making powers in the framework of their public activity. The said area is governed by Law no. 9361 dated 07.04.2005 “On prevention of conflict of interest in the exercise of public office”, as amended, Law no. 9131 dated 08.09.2003 “On ethics’ rules in the public administration”, as amended, and secondary legislation enacted in virtue of the above laws. Upon Law no. 8635 dated 06.07.2000, the Republic of Albania has ratified the Civil Convention “On anti bribery”.

The Law “On prevention of conflict of interest in the exercise of public office”, as amended, provides that any breach of the obligations of the public officer subject to the said law, constitutes a civil offence and shall be subject to a fine as indicated in the said law.

Corruptive practices are punishable under Albanian Criminal Law as well. Such actions are subject to imprisonment from 3 (three) months up to 5 (five) years. Additionally, fines apply ranging from ALL 200,000 (two hundred thousand Leke) up to ALL 3,000,000 (three million Leke) (approx. EUR 1,500 up to EUR 21,000).

13 Applicable Law

13.1 What law typically governs project agreements?

Subject to Law no. 9663 dated 18.12.2006 “On concessions”, as amended, concessions agreements are governed by Albanian law.

13.2 What law typically governs financing agreements?

Financing agreements are generally governed by Albanian legislation. However, the parties may choose by way of contract the foreign law as governing law.

13.3 What matters are typically governed by domestic law?

Concessions and Albanian security agreements are generally governed by Albanian law.

14 Jurisdiction and Waiver of Immunity

14.1 Is a party’s submission to a foreign jurisdiction and waiver of immunity legally binding and enforceable?

According to the Albanian Civil Procedure Code, when at least one of the parties is not Albanian, the parties may agree to submit disputes for resolution before a court of foreign jurisdiction.

The Albanian legislation is silent on waiver of immunity.

15 International Arbitration

15.1 Are contractual provisions requiring submission of disputes to international arbitration and arbitral awards recognised by local courts?

In case of contractual provisions providing for an international arbitration (i.e. *the parties have their habitual place of residence in different Contracting States, as per the Geneva Convention as of 21.04.1961 “European Convention on International Commercial Arbitration”*), the foreign arbitral tribunal award is subject to recognition by the competent Appeal Court (i.e. *exequature*), under provisions of the Albanian Civil Procedures Code and New York Convention on Recognition and Enforcement of the International Arbitral Awards, of June 1958. Such award is enforced by the competent bailiff office.

15.2 Is Albania a contracting state to the New York Convention or other prominent dispute resolution conventions?

The Republic of Albania is a party to the “New York Convention” (Law no. 8688 dated 09.11.2000 “On ratification of the New York Convention on Recognition and Enforcement of the International Arbitral Awards, dated 10.06.1958”). Albania has also adhered to the European Convention on International Commercial Arbitration of April 1961 (Law no. 8687 dated 09.11.2000 “On ratification of the Geneva Convention” dated 21.04.1961 “European Convention on International Commercial Arbitration”).

15.3 Are any types of disputes not arbitrable under local law?

The local law provides that any patrimonial claims or actions deriving from patrimonial relationships are arbitrable disputes.

15.4 Are any types of disputes subject to mandatory domestic arbitration proceedings?

There are no types of disputes subject to mandatory domestic arbitration.

16 Change of Law / Political Risk

16.1 Has there been any call for political risk protections such as direct agreements with central government or political risk guarantees?

To the best of our knowledge, there has been no call for political risk protection so far.

17 Tax

17.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

According to the Albanian Law on Income Tax, a withholding tax at the rate of 10% should be withheld from the gross interest (unless a Double Tax Treaty provides otherwise), paid on loans from

foreign lenders or domestic persons not registered with the tax authorities. The proceeds of a claim under a guarantee or the proceeds of enforcing security would be subject to withholding tax if they consist of interest amounts.

17.2 What tax incentives or other incentives are provided preferentially to foreign investors or creditors? What taxes apply to foreign investments, loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

Albanian tax legislation does not provide any preferential incentive to foreign investors or creditors. On the other hand there are no taxes applied to foreign investments, loans or other security documents, either for purposes of effectiveness or registration.

18 Other Matters

18.1 Are there any other material considerations which should be taken into account by either equity investors or lenders when participating in project financings in Albania?

Albania is a country in rapid and continuous development and Albanian legislation is continuing to adapt and harmonise its legislation to bring it in line with the *acquis communautaire*. No additional major shake-up is expected, however, and in today's more stable environment most of the necessary legislative framework for investors is already in place. Further amendment is necessary, though, to finalise this process.

18.2 Are there any legal impositions to project companies issuing bonds or similar capital market instruments? Please briefly describe the local legal and regulatory requirements for the issuance of capital market instruments.

Issuance of bonds and other capital market instruments is mainly regulated by Law no. 9879 dated 21.02.2008 "On Securities" and Law no. 9901 dated 14.04.2008 "On Entrepreneurs and Commercial Companies", as amended.

The law sets out types of securities applicable in Albania, relationships created upon emission thereof, etc. The Law on Securities determines the entities entitled to issue securities and registration duties pertaining to them, as well as terms and procedures for the trade and transfer of securities. The term 'securities' includes shares, bonds emitted either by commercial companies or local government authorities, treasury bills and bonds emitted by the Albanian state, securities emitted by the Bank of Albania, shares and quotas of investment funds, as well as other financial instruments similar to shares and bonds and considered as such by the Albanian Financial Supervisory Authority (i.e. the regulatory authority designated by law for the supervision and monitoring of the securities market).

Securities may be equity instruments, debt instruments and shares or quotas of investment or pension funds. Companies emitting securities must register them with the authorised registrars, in accordance with the terms and procedures approved by the Financial Supervisory Authority. The registrars are organised and established in accordance with the Law on Securities and are authorised to carry out of their activity by the Financial Supervisory Authority.

Companies aiming to undertake an emission of securities should prepare, publish and deliver to the potential investors a prospectus (containing the features set forth by the Law on Securities). Publicly listed companies are subject to several additional requirements mostly connected with the prospectus features.

**Renata Leka**

Boga & Associates
Ibrahim Rugova Street, P.O. Box 8264
Tirana
Albania

Tel: +355 4 225 1050
Fax: +355 4 225 1055
Email: rleka@bogalaw.com
URL: www.bogalaw.com

Renata is a Partner at Boga & Associates; she joined the firm in 1998. Her project finance experience covers both international and domestic work across the full range of corporate, concession, renewable energy sectors and infrastructure projects. She represents clients in all aspects of their business including acquisitions, mergers and joint ventures, as well as compliance with regulatory and general corporate governance matters. Renata graduated in Law at Tirana University, Albania (1996), and also holds Practice Diplomas in International Intellectual Property Law and Anti-Trust Law, from the College of Law of England and Wales, UK. Renata is fluent in English and Italian.

**Besa Velaj (Tauzi)**

Boga & Associates
Ibrahim Rugova Street, P.O. Box 8264
Tirana
Albania

Tel: +355 4 225 1050
Fax: +355 4 225 1055
Email: btauzi@bogalaw.com
URL: www.bogalaw.com

Besa is a senior associate with Boga & Associates; she joined the firm in 2006. She practises in the areas of corporate, financial, environment protection, public procurement and privatisation law. She has advised on a wide range of privatisation processes where the firm has assisted international clients, or the Albanian State acting as the vendor. Besa has also advised EBRD, regarding several project financing in Albania. Besa has also been widely involved in matters focused on Albania's environmental law relative to projects in the industrial sector as well as corporate law. She graduated in Law at the University of Naples "Federico II", Italy in 2005. Besa is fluent in English, Italian and French.

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Boga & Associates, established in 1994, has emerged as one of the premier law firms in Albania, earning a reputation for providing the highest quality of legal, tax and accounting services to its clients. Boga & Associates also operates in Kosovo (Pristina) offering full range of services. Until 1st of May 2007, the firm was a member firm of KPMG International and the Senior Partner/Managing Partner, Mr. Genc Boga was also Senior Partner/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 Kosovar business environment.

Boga & Associates is recognised as a top tier firm by the most prestigious ranking companies in Corporate/Commercial, Dispute Resolution, Intellectual Property, Real Estate by Chambers and Partners (2012) and in Financial and Corporate Law by IFLR1000 (2013). The firm is praised by clients and peers as a "law firm with high-calibre expertise" and is distinguished "among the elite in Albania" and as "accessible, responsive and wise".

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59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: sales@glgroup.co.uk

www.iclg.co.uk