



ICLG

The International Comparative Legal Guide to:

Project Finance 2014

3rd Edition

A practical cross-border insight into project finance

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Albania



Renata Leka



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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 an important additional means of supporting and developing private sector entrepreneurship. By ensuring project finance to 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 is an area which has been delivered not only to private companies, but there are also 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 development in terms of the amount invested and in the variety of sectors covered in the financing process. Key sectors in which project finance support has been applied are:

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

The EBRD is one of the largest investors in the private sector in Albania. Its main areas of focus are supporting the financial sector and small-medium production enterprises, improving infrastructure, and developing natural resources. The Bank is also engaged in 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.

The Bank signed a total of 12 projects in Albania in 2012, totalling €69 million, 70 per cent of which were in the private sector.

In the transport sector, the EBRD provided additional financing of €7.5 million for the completion of the new road between the cities of Levan and Vlore in south-western Albania. The road was opened to the public in July 2012 and has significantly improved accessibility in the Albanian Riviera.

The EBRD continued to support private sector investment in renewable energy through the Western Balkans Sustainable Energy Direct Funding Facility (WeBSEDF). In 2012 the Bank extended a €6 million loan to finance the construction of the Ternove hydropower plant in north-east Albania and a €5.2 million loan for the construction of the Verbe-Selce hydropower plant near the city of Korçë in south-east Albania. With a combined generation capacity of 13.3 MW, these utilities will generate up to 66.2 GWh of electricity per year, and help offset over 45,000 tonnes of CO₂ annually.

In 2012, the Bank continued to support the Albanian financial sector by providing long-term funding to micro-credit institutions aimed at increasing the role of non-bank financial institutions, supporting their lending to SMEs and improving corporate governance and credit management procedures. The Bank committed a €5.0 million small and medium-sized enterprises credit line to Veneto Banca, €1.3 million credit line to NOA, €1.1 million credit line to Fondi Besa and €1.0 million credit line to Credins Leasing.

In the natural resources sector the EBRD extended the second tranche of €19.2 million to Bankers Petroleum to support in the remediation and redevelopment of the Patos-Marina oilfield, the largest in Albania. In the construction materials sector the Bank provided additional equity support of €4.4 million to Antea Cement Factory, a greenfield cement plant built two years ago with capacity to produce 1.5 million tonnes of cement annually, and located about 30 km north of Tirana.

Source:

<http://www.ebrd.com/downloads/research/factsheets/albania.pdf>

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?

Albanian law permits the creation of security interest over almost all assets and rights held by project companies.

Securities over movable property are governed by Law no. 8537 dated 18.10.1999 “On Securing Charges”. 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.

Pledges are governed and regulated by the Albanian Civil Code. The pledge agreement must contain a description of the pledged asset.

Securities granted over immovable property are subject to a mortgage agreement, which should contain a description of the collateral, and are registered with the immovable properties registry kept by the local Real Estate Registration Office where the property is located.

2.2 Can security 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. machinery and equipment).

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 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.

The pledge is a possessory security and is only given/taken over movable assets/debtor's rights for securing either a present or a future debt. In addition a requirement for the creation of the pledge is the possession of the asset/title by the creditor or by any third party, agreed by mutual agreement between the parties.

There is no specific register where the pledge is registered, with the exception of the pledge over shares which is perfected upon registration with the Company Shares' Ledger and the Commercial Register.

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

In light of the recent changes that have affected the Law on Securing Charges, based on which intangible assets may no longer be subject to a securing charges agreement, security over receivables would be granted/taken under the form of pledge.

The pledge is governed and regulated by the Albanian Civil Code. The latter does not contain any specific provisions that regulate the granting of security over receivables.

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

Security over cash deposits is governed and regulated by the Law on Payment Systems, which provides for the financial collateral agreement.

The security created by means of the financial collateral agreement serves the purpose of securing repayment of all kind of obligations, either present or future ones, existing, conditional or eventual ones that the collateral provider or any other third party has contracted by the collateral taker or its legal representative.

Considering that the law has recently entered into force, it is noteworthy that there is no consolidated practice regarding its implementation as yet.

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

Security over shares is permitted under Albanian law and it may be acquired by means of a pledge over shares agreement. The agreement must contain a description of the pledge. The pledge over shares is perfected upon its registration with the Company Share Ledger. In addition, the pledge over shares agreement is also filed with the Commercial Register.

Currently in Albania, 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 recorded with the Company Share Ledger.

2.6 What are the notarisation, 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 require notarisation of the securing charge agreement or pledge agreement. However, in practice the security documents are drawn up by the Notary Public and the notarisation 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 notarisation fee for mortgage agreements varies 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 notarisation 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 8,000 (approx. EUR 56) to ALL 25,150 (approx. EUR 181), 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 from the application date. The same time limit applies to

the registration of the share pledge agreement with the Commercial Register.

Registration with the Real Estate Registration Office is completed within 7 (seven) days. However, in practice such registration may be longer.

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?

The concept of “security trustee” has been recently introduced in the Albanian legislation by the Law on Payment Systems and concerns the financial collateral only. However, the “security trustee” subject to the Law on Payment Systems is appointed to act on behalf of one lender. The law is silent regarding the appointment of the security trustee by more than one lender.

Again, as mentioned above, it is worth noting that the law has recently entered into force and there is no consolidated practice regarding its implementation yet.

The enforcement of the pledge is performed by the lender/pledgee in line with the procedure described by the Albanian Civil Code, which provides for the involvement of the court.

The enforcement of securing charges over movables and mortgage is performed by the bailiff office.

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?

The enforcement of the pledge is done by the lender/pledgee without involvement of the bailiff office. Before proceeding with

the sale of the pledge, the lender, through the court, solicits the borrower to fulfil its obligation, informing that, in the absence of fulfilment, it will proceed with the sale of the pledge. In case the borrower does not oppose such request within a term of 5 (five) days, the lender may go ahead with the sale of the pledge in a public auction or, in case the good subject to pledge has a market price, sell it with the market price through an entity/person authorised for such transactions. The lender/pledgee must notify the pledgor, in case the pledgor is a different party from the borrower.

As regards security over movable property in the form of securing charges, the security agreement constitutes by law 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 expressively waives such rights, or (iv) the court considers that the notification is not necessary.

When the enforcement involves securities over 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 and Restructuring 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.

In addition, subject to article 28 of the Law on Payment Systems, notwithstanding the opening of an insolvency proceeding affecting either the collateral giver or the collateral taker, the latter would be entitled in case an enforcement event arises subject to the terms of the financial collateral agreement, to immediately proceed with the enforcement of the financial collateral as agreed in the financial collateral agreement, without prior notification and/or involvement of the court, a public authority or any other third party. However as already mentioned in question 2.4 herein above, the law has been recently introduced and the applicability of the said clause within the framework of an insolvency proceeding remains as yet untested.

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 insolvency 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?

Except as indicated in question 5.1 above with regard to the financial collateral, there are no out-of-court proceedings available for the creditor to seize the asset in an enforcement procedure. However, it is important to mention the fact that the implementation of the new law has not yet been tested.

5.5 Are there any processes other than formal insolvency proceedings that are available to a project company to achieve a restructuring of its debts and/or cramdown of dissenting creditors?

The Albanian Insolvency Law provides for the possibility of the

project company being insolvent and/or the insolvency trustee to draft a reorganisation plan and submit it to the competent section of the court dealing with insolvency proceedings. The purpose of the reorganisation plan is to avoid liquidation of the project company's assets and to enhance the chances for the project company's creditors to get their credits repaid.

5.6 Please briefly describe the liabilities of directors (if any) for continuing to trade whilst a company is in financial difficulties in Albania.

Subject to the provisions of Company Law, once they are aware or must have been aware of the company's inability to pay its debts, company administrators and members of the Board of Directors who *inter alia* fail to take the necessary steps to ensure that the company, depending on the type of its business, has sufficient capital to meet its commitments as against third parties, shall be jointly and severally liable for company commitments with all of their assets.

In addition, subject to article 98/4 of the Company Law, the administrators shall be obliged to compensate the company for the damages incurred, if he/she/they carry out contrary to the Commercial Law the following transactions:

- (i) return contributions to shareholders;
- (ii) pay interest or dividends to shareholders;
- (iii) distribute the company's assets;
- (iv) allow the company to continue to exercise its business activity when, subject to its financial situation, it is foreseeable that it would be unable to pay its debts; or
- (v) grant loans.

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 are permitted only when considered as necessary or appropriate to 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 the 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 relevant ministries in charge of the specific sector as well as local government units as applicable, have the authority to supervise and manage 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 the security package available to the project, they should be registered respectively with the Securing Charges Register, the Company Share Ledger and Commercial Register and the Real Estate Register, depending on the type of security involved (i.e. movable or immovable property, tangible or intangible).

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 of 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 Energy and Industry 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 the mining sector in the 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 Energy and Industry 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 varies depending on the type of activity performed and of 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?

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 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 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?

There are no restrictions on the remittance and repatriation of investment returns or loan payments to parties in other jurisdictions in Albania. Apart from the bank wire fee there are no other controls or fees applicable.

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. 10440 dated 07.07.2011 “On environmental impact assessment”. Subject to the aforementioned law, the competent authority to ensure the proper execution and supervise the compliance with the said legislation is the Ministry of Environment, along with the National Environmental Agency.
- (iii) Law no. 10448 dated 14.07.2011 “On environmental permits”.

Health and safety issues are mainly dealt with by Law no. 10237 dated 18.02.2010 “On health and safety in the working premises” and related sublegal acts. 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 these laws.

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

As a general rule, public procurement law does not apply to private entities, unless: (i) the majority of the voting shares in 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.

However, subject to the provisions of the Concessions and PPPs Law, the subcontracting by the project company of public works or services with a value exceeding ALL 700,000,000 (seven hundred million Albanian Lek), VAT excluded, shall be subject to public procurement procedures.

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 Albania 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 specific restrictions, controls, fees and/or taxes on importing project equipment or equipment used by the construction contractors.

Unless a free trade agreement provides otherwise, equipment may be subject to customs duties from 2% to 10% of the customs value. Generally, VAT is payable upon importation.

However, equipment and machinery used by construction contractors may be imported under a temporary regime. Under the said regime, no taxes are payable provided that the equipment will be returned back within a year. Such period may be extended to another 12 months.

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

The import of machinery and equipment used for the implementation of investment contracts with a value equal to or higher than ALL 50 million is VAT-exempted in import. The same is granted to import of iron and steel used as raw materials for the construction of hydropower plants.

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 by virtue of the above

laws. Upon Law no. 8635 dated 06.07.2000, the Republic of Albanian 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 Lek) up to ALL 3,000,000 (three million Lek) (approx. EUR 1,500 up to EUR 21,000).

13 Applicable Law

13.1 What law typically governs project agreements?

Subject to the Concessions and PPPs Law, 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 by way of contract choose the foreign law as governing law.

13.3 What matters are typically governed by domestic law?

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 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 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?

The Albanian law is silent pertaining to the obligation to submit disputes to 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 for any preferential incentive to foreign investors or creditors. On the other hand, no taxes apply to foreign investments, loans or other security documents, either for purposes of effectiveness or registration, other than tariffs mentioned above.

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 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 issuing 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 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.

19 Islamic Finance

19.1 Explain how *Istina'a*, *Ijarah*, *Wakala* and *Murabaha* instruments might be used in the structuring of an Islamic project financing in Albania.

These instruments are not customary for the Albanian financing sector. On the other hand, there are no specific provisions in the Albanian legislation that would prevent the use of the mentioned instruments in a project financing in Albania.

As for Albania, which is entering into a gradual economic stabilisation and integration, policymakers are now faced with the challenge of finding an enduring solution to ensure the stability of financial systems. Islamic finance has now become an upcoming and important opportunity in shaping the future of the global financial system and reinforcing ethical and moral values that are inherent in Islamic finance principles and fundamental to promoting the stability of the global financial system.

19.2 In what circumstances may *Shari'ah* law become the governing law of a contract or a dispute? Have there been any recent notable cases on jurisdictional issues, the applicability of *Shari'ah* or the conflict of *Shari'ah* and local law relevant to the finance sector?

There are no mandatory provisions that would prevent the parties from choosing a foreign law as the governing law of their contractual rights and obligations, even in cases when both parties are Albanian residents.

Anyhow, in theory either the parties or the cause of action of the agreement should have a close connection with the choice of the governing law by the parties.

In case of eventual disputes between two domestic parties, the selection of *Shari'ah* principles as the governing law of the agreement, might present difficulties in being accepted as such by the court.

Shari'ah principles do not fit into any of the applicable Western systems (i.e. civil law and/or common law), because they are not limited/applicable to any specific territory or state structure, nor are they valid for all residents of each state. In this context, the Albania courts might not accept application of a non-national system of law such as *Shari'ah* principles.

We are not aware of any case law with regard to the applicability of *Shari'ah* law in Albania. Hence to the best of our knowledge the applicability, acceptance and/or enforcement of *Shari'ah* law principles have not been tested in front of the Albanian court.

19.3 Could the inclusion of an interest payment obligation in a loan agreement affect its validity and/or enforceability in Albania? If so, what steps could be taken to mitigate this risk?

Subject to general principles on contracts as set out by the Albanian Civil Code, a contract is valid if the requirements indicated under the Albanian Civil Code are met. The application of interests in a loan agreement is customary and allowed under the Albanian law and its inclusion in a loan agreement would not affect its validity and/or enforceability.

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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.

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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 legal, tax and accounting services to its clients. The firm also operates in Kosovo (Pristina) offering a full range of services. Until 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.

The firm's particularity is linked to the multidisciplinary services it provides to its clients. Apart from the widely 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.

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