Albania

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1 Framework

1.1 What are the overall policies and objectives for the electronic communications industry and have these been published in draft or final form? What legislation is relevant to telecommunications and radio frequencies?

The electronic communication industry in Albania revamped in 2008 due to the new Law no. 9918 "On Electronic Communications in Republic of Albania" (the "Law"). This Law aims to be in line with the regulatory package of the European Union on electronic communications (2002), based on the commitments made by Albania under the Stabilisation and Association Agreement, approximating it legislation with that of the European Community member countries.

The Law introduces the principle of the 'technology neutrality' based in the efficiency of the electronic communications infrastructure, promoting the competition among the market players of the electronic communications in Albania. The content of the electronic communications and the radio television broadcasting transmission services are not subject of the Law.

The legal framework governing the telecommunications and the radio frequencies in Albania is mainly the following:

- The Law no. 9918 dated 19.05.2008 "On Electronic Communications in Republic of Albania" (i.e. the Law).
- The Council of Ministers Decision no. 379 dated 31. 5.2001 "On approval of the national plan of radiofrequency".
- The Council of Ministers Decision no. 582 dated 21.08.2003" On the approval of the methodology of the tariffs settings of the operator having significant power market offering public telephony services and leasing lines".
- The Council of Ministers Decision no. 288 dated 18.06.1999 "On the approval of the development policy of the telecommunication sector in Republic of Albania" as amended.
- 1.2 Is Albania a member of the World Trade Organisation? Has Albania made commitments under the GATS/GATT regarding telecommunications and has Albania adopted the WTO Basic Telecommunications Agreement?

Albania became the 138th member of the World Trade Organisation on 8th of September 2000. According to the 'Protocol of Accession of Albania' to the Marrakesh Agreement establishing the World Trade Organisation, Albania made commitments under the General Agreement on Trade on Services "GATS" and General Agreement on Tariffs and Trade 1994 "GATT 1994". Anyhow, this Protocol provides that Albania may maintain a measure inconsistent with GATS/GATT (article I paragraph 4).

Further, the 'Report of the Working Party on the accession of Albania to the World Trade Organisation', provides that the commitments undertaken by Albania in telecommunication services are based on the scheduling principles provided by the following documents: (i) Notes for Scheduling Basic Telecom Services Commitments (S/GBT/W/2/REV.1); and (ii) Market Access Limitations on Spectrum Availability (S/GBT/W/3).

1.3 How is the provision of electronic communications networks or services regulated? Is the provision of electronic communications networks or services open to competition in Albania?

The Providers of electronic communication services are eligible to offer networks and electronic communications services upon *General* and/or *Individual Authorisation* (replacing the licensing procedure of the former telecommunication law). General Authorisation comprises all and any kind of electronic communications networks and services that do not involve the use, by the provider, of frequencies and numbers. Whilst the Individual Authorisation is granted to those providers whose activity involves use of frequencies and numbers. Individual Authorisation would be subject to availability of the said as frequencies and serial numbers and to those considerations and restrictions explained in our response to question 2.1 herein below.

As mentioned in our comments under question 1.1 above, the Law's main objective is to promote the competition creating an open market of the electronic communications services based on the principles of non-discrimination and transparency.

1.4 Which are the regulatory and competition law authorities? How are their roles differentiated? Are they independent from the government?

The government authorities supervising the electronic communication market are: (i) the Electronic Communications and Mail Authority; and (ii) the Albanian Competition Authority (according to Law 9121 dated 28.07.2003 "On protection of competition").

The Electronic Communications and Mail Authority (hereinafter the "Authority"), previously known as the Telecommunications Regulatory Entity, is the regulatory body which supervises both the electronic communications and mail services market (i.e. the mail service shall be subject to a separate law). The Authority encourages the competition ensuring to all categories of users qualified electronic communications services, subject to tariffs non superior to the average tariffs applicable in the European Union countries. According to the Law, the Authority should conduct its

activity and run its duties based on the principles of transparency, non-discriminatory and proportional rights, conditions and procedures regarding the providers of networks and electronic communication services.

The Authority is obliged by the Law to cooperate with the Albanian Competition Authority for the issues relating to applicability of competition law affecting the market of electronic communications and the mail services (article 12 of the Law).

These authorities are both independent governmental agencies.

1.5 Are decisions of the national regulatory authority able to be appealed? To which court or body?

Decisions of the Authority may be appealed before the Authority Board of Directors within 10 days; the Board then has to make a decision within 30 days from filing of the appellant. The decision of the Authority Board of Directors may be appealed within 30 days before the competent district court (i.e. a first instance court).

2 Licensing

2.1 If a licence or other authorisation is required to install or operate electronic communications networks or provide services over them, please briefly describe the process, timescales and costs.

As mentioned in question 1.3 above, the Providers are free to offer networks and electronic communications services upon (i) General Authorisation and (ii) Individual Authorisation following each of this process:

- (i) General Authorisation: Through written notification addressed to the Authority along with certain required documents, in case the offer of networks and electronic communications services does not require use of end-resources (numbers and frequencies). The Authority registers in the electronic database the Provider within 15 days from the notification confirming in writing to the Provider the registration in the electronic database. The registration is considered done, in cases where the Authority does not reply to the applicant within the period of 15 days (i.e. tacit approval).
- (ii) Individual Authorisation: After notification and granting the right to use the end-resources in case the offer of networks and electronic communications services requires such resources. The Authority issues the Individual Authorisation for the use of frequencies and numbers based on the Plan of the Frequencies Utilisation and Plan of the Numbers Utilisation.

The Provider submits to the Authority the application for being equipped with the individual authorisation for the use of frequencies and numbers along with certain required data and documents. The Authority is obliged to provide for such authorisation within 30 days from the application date, unless it is refused based on certain criteria provided by the Law, which mainly relates to dangerous interferences on electronic and electric equipments, harmful of the public order or national security.

No costs are provided in Law for these authorisations.

2.2 What other requirements, permits or approvals must be met or obtained before networks may be installed or operated and services provided?

The networks of electronic communications and related infrastructure must be constructed according to the applicable laws on urban planning, constructions and environmental protection.

The Providers while constructing/using the networks of communication services must keep safe public order/security and public health.

The Providers of the public electronic communication networks are required to provide for joint utilisation of the facilities and assets for the purpose of respecting the urban planning and environmental protection when constructing/installing their networks. The Providers of public electronic communication networks are obliged by Law to enter into agreements for joint utilisation of the facilities and assets based on an applicable fee. A Provider may refuse to enter into an agreement for joint utilisation in case it is technically impossible or if the party requiring such joint utilisation refuses to pay the applicable fee.

2.3 May licences or other authorisations be transferred and if so under what conditions?

The Law is silent on the transfer of the General Authorisation while it prohibits the transfer of the Individual Authorisation i.e. meaning the right to use a frequency and/or number without prior approval by the Authority. The holder of the Individual Authorisation should address the written request to the Authority for the transfer. The Authority pursues verification on the proposed transferee in order to prevent any distortions of the electronic communications market and ensure the efficiency of the electronic network and services and to protect the public interest.

Anyhow, Providers under the General Authorisation are obliged to provide the Authority with all the information amending the data deposed with electronic database held by the Authority, within 30 days from the date of such amendment(s) (article 14.4 of the Law).

2.4 What is the usual or typical stated duration of licences or other authorisations?

According to the Law, the Authority issues the Individual Authorisation for a period of up to 15 years, which can be renewed provided that all Law requirements have been fully compiled with by the Provider. The Individual Authorisation used for air and sea movable services are issued for perpetual duration depending on the operability of such services (airplane, maritime services). Further the Individual Authorisation for use of the frequencies on researches and tests of the radio communication equipments is issued by the Authority for a period of at least 90 days and for specific events for a period of time not more than 60 days.

The Law is silent on the duration of the General Authorisation issued for electronic communication services not involving the use of numbers and frequencies.

3 Public and Private Works

3.1 Are there specific legal or administrative provisions dealing with access and/or securing or enforcing rights to public and private land in order to install telecommunications infrastructure?

The Law (article 93) recognises in principle to the Provider the right to use and access both private and state owned properties for passing through the network infrastructure and/or settlement of the electronic communication equipments and/or their maintenance. In the case of a private owned property, the Provider's rights of use and access would be agreed upon between the property owner and the Provider, subject to an agreement.

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Before starting the construction works on the public owned plot of lands and premises, the Provider must inform the respective authorities and respect the rules set on by the same Law, including but not limited to environment protection. The Law does not address clearly how the right of access and/or use of a state owned property would be recognised practically to the Provider.

The Providers must use the private properties (lands, objects) in agreement with their owners according to the applicable laws. In case of damages to the private property from the instalment and/or maintenance of the electronic communication equipments the provider is obliged to remunerate such damages to the owner.

3.2 Is there a specific planning or zoning regime that applies to the installation of telecommunications infrastructure?

The Law is silent on application of specific planning or zoning regime, nevertheless the provider must construct networks of electronic communications in accordance with the applicable laws on urban planning, constructions and environmental protection. This means that before starting to construct its network infrastructure, the Provider needs to obtain the relevant information from the local authorities (i.e. Municipality or Commune).

3.3 Are there any rules requiring established operators to share their infrastructure, e.g. masts, sites, ducts or cables (i.e. dark fibre)? Are there any proposals to mandate 'passive access' to such basic infrastructure?

The Providers of the public electronic communication networks are required, to provide for joint utilisation/share of the facilities and assets for the purpose of respecting the urban planning and environmental protection when constructing/installing their networks. The Providers of public electronic communication networks are obliged by Law to enter into agreements for joint utilisation of the facilities and assets based on an applicable fee. The Provider may refuses to enter into agreement for joint utilisation in case the joint utilisation is technically impossible or the party requiring such joint utilisation refuses to pay the applicable fee. In both events the Authority resolves on settlement of the dispute.

4 Access and Interconnection

4.1 Is network-to-network interconnection and access mandated, and what are the criteria for qualifying for the benefits of interconnection?

The Providers of the public electronic communications networks must provide with an access and interconnection offer to other Providers (which possess a valid General Authorisation issued by the Authority), within 30 days of receiving the due payment in order to ensure the communication between end users and offer service interoperability to all community.

The Providers have the right to negotiate and enter into written agreement for access and interconnection. The offer for access and interconnection and the executed interconnection agreement must be filed with the Authority (article 47).

4.2 How are interconnection or access disputes resolved? Does the national regulatory authority have jurisdiction to adjudicate and impose a legally binding solution?

In case the Providers fail to negotiate the terms of access and interconnection agreement (see our comments in question 4.1

above) within 45 days from the request for such access and interconnection, any of the Providers may submit request for dispute resolution at the Authority. The latest resolves and enforces the access and interconnection between the parties. The Providers might be subject of fines imposed by the Authority is case they refuse to comply with the order issued by Authority on such regard.

4.3 Are any operators required to publish their standard interconnection contracts and/or prices?

The Providers of the public electronic communications networks qualified by the Authority as Providers with Significant Market Power ("SMP") are obliged to publish within 45 days from their appointment as SMP a reference offer for interconnection ("ROI") and access services and/or facilities, including the respective tariffs. The Authority supervises and imposes to the Providers with SMP to change the ROI, in case it observes that the ROI does not comply with principles of fairness, non-discrimination, transparency, reasonableness, and timeliness.

4.4 Looking at fixed, mobile and other services, are charges for interconnection (e.g. switched services) and/or network access (e.g. wholesale leased lines) subject to price or cost regulation and, if so, how?

Please refer to our comments in questions 4.3 above and questions 5.1; 5.2 below.

4.5 Are any operators subject to: (a) accounting separation; (b) functional separation; and/or (c) legal separation?

The legal entities pursuing activities other than the offer of the services and/or the networks of the electronic communication services, but own networks or offer services of electronic communications for private use, are obliged to notify the Authority and be equipped with the General Authorisation in case they decide to offer such networks and electronic communications services to the public (according to the procedures mentioned in question 2.1 above). These legal entities are either obliged by the Law to keep on separate accounts the revenues coming for these services or to establish a new legal entity pursuing this specific activity.

Further the Providers with SMP are obliged to detail the cost separately for each service related to access and interconnection aiming to prevent the mutual unfair subsidy, therefore the SMP Provider must make their wholesale tariffs and the tariffs of internal transfers transparent (article 41 of the Law).

4.6 How are existing interconnection and access regulatory conditions to be applied to next generation (IP-based) networks?

The Law is silent on access regulatory conditions applicable to socalled next generation networks or IP-based networks.

4.7 Are owners of existing copper local loop access infrastructure required to unbundle their facilities and if so, on what terms and subject to what regulatory controls? Are cable TV operators also so required?

The Authority may request to the SMP Providers to unbundle the access to the local loop, in such case the ROI must include: (a) network elements to which access is offered; (b) information concerning the locations of the physical access sites and the

availability of local loops in specific parts of the access network; (c) technical conditions related to access and use of local loops, including the technical characteristics of the lines in the local loop; and (d) restrictions procedures (article 52.7 of the Law).

As mentioned in question 1.1 above the television broadcasting transmission services are not governed by this Law.

4.8 Are there any regulations or proposals for regulations relating to next-generation access (fibre to the home, or fibre to the cabinet)? Are any 'regulatory holidays' or other incentives to build fibre access networks proposed?

The Law is silent on provisions regarding next-generation access (fibre to the home, or fibre to the cabinet) and/or incentives to build fibre access networks and to the best of our knowledge there are no regulations proposed on such regard by the competent authorities so far.

5 Price and Consumer Regulation

5.1 Are retail price controls imposed on any operator in relation to fixed, mobile, or other services?

The Authority controls both the retail and wholesale prices. In case findings from the analysis performed on the access and interconnection market (i.e. the whole sale market) and on the endusers/consummator market (i.e. the retail market) show that there is no effective competition, which means the SPM Provider(s) has applied unjustified expensive or cheap tariffs in disfavour to the end-users, the Authority may resolve on the adjustment of such price/tariff.

5.2 Is the provision of electronic communications services to consumers subject to any special rules and if so, in what principal respects?

Providers set up the tariffs of the electronic communications services based in the principles of cost orientation, non-discrimination of the end users and prevention of the non competition behaviours in the electronic communications and services market. Nevertheless, the Authority reserves the right to adjust or impose the tariffs of electronic communications services as mentioned in question 5.1 above.

6 Numbering

6.1 How are telephone numbers and network identifying codes allocated and by whom?

The telephone numbers and the network identifying codes are allocated by the Authority which is in charge of administering the Plan of Numbering, and ensuring the efficient use of the numbers/serial numbers by the Providers of the electronic communication services

6.2 Are there any special rules which govern the use of telephone numbers?

The use of numbers and the serial numbers must have prior approval of the Authority. The provider of the public electronic communications networks and services must submit request at the Authority for being provided with numbers/serial numbers. The provider is obliged to deliver to Authority the numbers/serial

numbers in case of non utilisation of such numbers. Further the provider may not transfer, lease the numbers/serial numbers without prior approval by the Authority and they are obliged to use such numbers/serial numbers only for the purpose for which are granted.

6.3 How are telephone numbers made available for network use and how are such numbers activated for use by customers?

The Law is silent on the procedures of number activation for use by the customers. Anyhow the customer (either prepaid or post-paid) must be subscribed with any of the Providers in the electronic communications market and register it owns identity, data in order to have the number activated for use.

6.4 What are the basic rules applicable to the 'porting' (i.e. transfer) of telephone numbers (fixed and mobile).

The Providers (mobile and fix) of the public electronic communication services and networks offer to their subscribers the possibility of numbers porting. The porting of number is not applicable from the public networks of fix electronic communications to public networks of mobile electronic communications.

The Providers may charge the subscriber or the other providers for the transfer/porting of telephone number. Such charge must be cost oriented and must not serve as an obstacle for the subscriber to use the service of number porting.

7 Submarine Cables

7.1 What are the main rules governing the bringing into Albania 's territorial waters, and the landing, of submarine cables? Are there any special authorisations required or fees to be paid with respect to submarine cables?

The Law and the regulations of Authority are silent to the rules governing the bringing into Albania territorial waters and the landing of submarine cables. Anyhow reference is made to the provisions of the Albanian Maritime Code upon which the installation of permanent submarine cables or platforms should have prior approval by the naval authorities and must not impede the circulation of the naval vehicles. Such installation must be reflected in the naval maps.

8 Radio Frequency Spectrum

8.1 Is the use of radio frequency spectrum specifically regulated and if so, by which authority?

The spectrum of frequency is considered in virtue of Law as a natural end-resource and is administered by (i) the Electronic Communications and Mail Authority (i.e. the Authority) for the frequency spectrum determined for civil use, excluding the frequency spectrum for radio and television broadcasting which is administered by (ii) the National Council of Radio and Television and by (iii) the Ministries of Defence, and of Internal Affairs and the State Information Service (i.e. the intelligent service) for frequency spectrum defined for the national security and the governmental services. The administration of the frequency spectrum by the above mentioned authorities is based on the National Plan of Frequencies approved by Council of Ministers decision.

Based on the National Plan of Frequencies, the Authority compiles

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the Plan of Frequencies Utilisation for the frequencies under it administration. The providers must use frequencies only after granting the individual authorisation by Authority.

8.2 How is the use of radio frequency spectrum authorised in Albania? What procedures are used to allocated spectrum between candidates - i.e. spectrum auctions, comparative 'beauty parades', etc.?

The radio frequency spectrum is used by the individuals or legal entities only upon the Individual Authorisation issued by the Authority (see procedures mentioned in our comments of question 2.1 above). The right to use the frequencies is restricted only for non-availability and under the obligation to make efficient use of the said as frequencies. In this case the Authority grants the frequencies' right of use base on an open bid, following prior approval of the Minister in charge (article 66.2 of the Law).

8.3 Are distinctions made between mobile, fixed and satellite usage in the grant of spectrum rights?

The Law does not make a distinction between mobile, fixed and satellite usage when granting the spectrum rights.

8.4 How is the installation of satellite earth stations and their use for up-linking and down-linking regulated?

The Law is silent on regulation and installation of satellite earth stations and their use for up-linking and down-linking.

8.5 Can the use of spectrum be made licence-exempt? If so, under what conditions?

The Law makes exceptions for use of the frequencies for the purpose of national defence and security. Such use of frequencies does not require the individual authorisation of Authority.

8.6 If licence or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?

According to the Law (i.e. articles 78 and 119.2) the use of radio frequency spectrum is subject to fees to be approved by the Council of Ministers Decision. As of today the Council of Ministers has not decided on such regard.

8.7 Are spectrum licences able to be traded or sub-licensed and if so on what conditions?

The Law prohibits the trade of licence wile the transfer must be made upon prior approval by the Authority. Please also refer to our comment under question 2.3 above.

9 Data Retention and Interception

9.1 Are operators obliged to retain any call data? If so who is obliged to retain what and for how long? Are there are data protection (privacy rules) applicable specifically to telecommunications?

The Providers of electronic communications networks and services are obliged to retain and administer the data files of their subscribers up to two years. Such files should contain (i) the data to enable the full identification of the subscriber, (ii) the identification of the end point equipment, (iii) the time, date and duration of the communication as well as (iv) the called number. All this files upon request must be available to the authorities determined in the Albanian Penal Procedure Code.

There is no specific law applicable for the data protections of the telecommunications services. Providers are obliged to maintain the provisions of the Law no. 8517 dated 22.07.1999 "On protection of personal data" (as amended).

9.2 Are operators obliged to maintain call interception (wiretap)capabilities?

No. The Law does not foresees any Provider's obligation to maintain capabilities for call interception (wire-tap).

9.3 What is the process for authorities obtaining access to retained call data and/or intercepting calls? Who can obtain access and what controls are in place?

The lawful interception of the electronic communications in Albania must be done in accordance with the applicable laws (i.e. the Albanian Penal Procedures Code, articles 221 to 226). The Providers of the services and networks of electronic communications should abide with such laws.

According to Law 9157 date 04.12.2003 "On telecommunication interception", the State Intelligent Services (SHISH) and the State Police authority are legible to obtain access and intercepting calls based on the request for access and interception addressed to the Albanian General Prosecutor.

The General Prosecutor based on the request of the Head of State Intelligent Services and/or Minister of Internal affairs, and/or Minister of Justice decides to approve the interception of telecommunication calls. The decision of the General Prosecutor for the calls interception is valid for up to three months.

The Providers of electronic communications services are obliged by the same law to provide, free of charge, the respective infrastructure enabling to the above state authorised authorities to the calls interception.

10 The Internet

10.1 Are conveyance services over the internet regulated in any different way to other electronic communications services? Which rules, if any, govern access to the internet at a wholesale (i.e. peering or transit) and/or retail (i.e. broadband access) level? Are internet service providers subject to telecommunications regulation?

The Law does not regulate the Internet in a deferent way to other electronic communication services. In virtue of Law the internet is consider one of the components of the electronic communications services

10.2 Is there any immunity (e.g. 'mere conduit' or 'common carrier') defence available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?

The Law is silent on protection of the Providers (both telecommunications and internet services provider) from the liability for content carried over their networks.

10.3 Are telecommunications operators and/or internet service providers under any obligations (i.e. provide information, inform customers, disconnect customers) to assist content owners whose rights may be infringed by means of file-sharing or other activities?

There are no provisions in Law obligating the Providers to assist content owners whose rights is/or may be infringed by means of file-sharing or other activities.

10.4 Are telecommunications operators and/or internet service providers able to differentially charge and/or block different types of traffic over their networks? Are there any 'net neutrality' requirements?

There are no provisions in Law obliging the Providers to differently charge and/or block different types of traffic over their networks, nor any 'net neutrality' requirements.

10.5 How are 'voice over IP' services regulated?

There are no provisions in Law regulating voice over IP services.

10.6 Are there any rules to prevent, restrict or otherwise govern internet or email communications, in particular, marketing and advertising communications?

According to the Law, email communications for marketing/advertising purposes is allowed only following prior approval of the end-users.

The Law prohibits emails for marketing purposes not bearing, or hiding the identity of the sender, (or missing the address, or such address is not valid,) were the recipient may request discontinuance of such email.

11 USO

11.1 Is there a concept of universal service obligation; if so how is this defined, regulated and funded?

The Law ensures the universal service that is, the provision of a defined minimum set of services to all end-users in Albania territory, independently of geographical location, at an affordable price. The Authority elects one ore more providers of the universal services, based on the open bid procedure. The Provider/s of the universal service are obliged to ensure that the end-users can make and receive local, national and international telephone calls, facsimile communications and data communications for a bandwidth not less than 32kbit/s, at rates that are sufficient to permit functional Internet access and the possibility of the detailed billing of the services provided.

The Provider/s of the universal services is eligible of compensation from founds administered by Authority in case the service offered creates unfair addition costs.

12 Foreign Ownership Rules

12.1 Are there any rules restricting direct or indirect foreign ownership interests in electronic communications companies whether in fixed, mobile, satellite or other wireless operations?

The Law does not provide restriction related to direct or indirect foreign ownership interest in the electronic communications companies.

13 Future Plans

13.1 Are there any imminent and significant changes to the legal and regulatory regime for electronic communications?

To the best of our knowledge there are no imminent and significant changes to the legal and regulatory regime for electronic communication in Albania. Boga & Associates Albania



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Mr. Elmazaj has also acquired excellent experience in other areas such as commercial/corporate, telecommunication, competition, energy, litigation, IP issues, banking and finance, mergers and acquisition, real estates etc.

He managed a number of due diligences for international clients considering to invest in Albania or Kosovo in the fields of industry, telecommunications, banking real estate etc.

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Ms. Rama has gathered sound experience in telecommunication, energy, corporate/commercial, environment, real estate, water administration issues etc.

She has been involved in several due diligence assignment at Boga & Associates on behalf of national and international clients investing in Albania and Kosovo mainly regarding projects in the fields of telecommunication, energy, real estate etc.

Her expertise in telecommunication includes advising new entrant operators, mobile, fixed operators, rural operators and internet services providers, for both jurisdiction of Albania and Kosovo.

Ms. Rama graduated from Faculty of Law at the University of Tirana, Albania (2006) and is fluent in English and Italian.

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In 2007, 2008 and 2009, Boga & Associates was awarded from Chambers and Partners and IFLR (2010 edition) as the best law firm in Albania in the fields of Corporate, Finance, Dispute Resolution and Real Estate, Intellectual Property and Projects.