

SUMMARY OF MEETING MINUTES
INVESTMENT COUNCIL (IC)
MEETING XIII

Legal Framework on Investments in Albania,
Current debates and challenges

Tirana, 18 June 2018, 12h15 – 13h15

The meeting was chaired by Mr Arben Ahmetaj, Minister of Finance and Economy, with special participation of EBRD Vice President, Mr Alain Pilloux and EBRD Director for Western Balkans, Ms Zsuzsanna Hargitai.

I. Opening of the meeting and speech by IC Chair, Minister Arben Ahmetaj

The IC Chair, Minister Arben Ahmetaj, opened the meeting thanking the participants and in particular EBRD's Vice President, Mr Alain Pilloux for being part of this special meeting. In the focus of this meeting was the investment climate and the current debates on the improvement of the investment legal framework. Minister Ahmetaj reiterated that the Investment Council is a visible success, tangible by the business community and government. In the table of the Investment Council have been discussed and recommended many issues of various aspects of fiscal and procedural character and also elements of investment climate, with the objective to increase the investments in wholeness and foreign investments in particular. The IC has become a direct advocate of business investors, not only by referring to specific issues, but also referring to organic issues for the improvement of business climate.

According to Minister Ahmetaj, during the Q1 of 2018, the foreign investment flow reached 284 Mln Euro, with an annual increase of 62%, and with the highest level of the last 8 years. While during 2017 the foreign investments reached the amount of 907 million euro. If reference and comparison is made to the progress of the first quarter of 2017, then it is expected that this year will be again a record, with up to 1 billion dollars of foreign investments. There is an expressed interest on various sectors, strategic to the country such as tourism, ICT, energy, agriculture, infrastructure, and manufacturing.

In difference from other countries, which base their investment promotion policy only on the fiscal aspect, the Albanian Government has chosen a combination, between fiscal incentives, growth in the productivity of sectors and improvement of the public services. On the fiscal aspect, the Ministry of Finance and Economy is lately discussing and consulting with groups of interest the fiscal package for 2018, with substantial alleviations for the entrepreneurship on some sectors.

It has been some time since the Ministry of Finance and Economy has been discussing with AIDA or even other institutions regarding the new investment law. Minister Ahmetaj expressed his personal engagement, since 2015 in the drafting of a comprehensive framework for the promotion of foreign investments, which includes four laws, important pillars: Law on Technological and Economic Development Areas (differently denoted as the Law for Free Zones); Law on Tourism; Law on the Public Private Partnership; and Law on Strategic

Investments. Since long, Albania has adopted a liberal legislation, especially in regards to foreign investments in the country, based on the principle of non-discrimination between local and foreign investors. The legal framework for commercial companies as a rule does not provide for barriers to the establishment of 100% foreign-owned companies. The Law on Strategic Investments provides for special status, where contracts are potentially approved by Parliament, at the request of investors. Arbitration is a major form of dispute settlement today. The concept of business advocate in Albania is regulated with the Taxpayer's Advocate for tax related matters, while the establishment of the Administrative Court gives solutions to matters of this nature.

Different from various countries in the region, which do not have a specific law on investments, such as Croatia and Macedonia, Albania has institutionalised also a range of protection mechanisms for investors. In addition, in the new format of government cabinet, the Ministry of State protects the interest and promotes the dialogue between parties.

What remains important to the state for any development in the legal framework is to guarantee clarity, transparency and predictability for all investors. And in this regard, the main principle for legislation development, is to identify together all the elements of the current framework and to make respective amendments, if necessary, to improve their functioning and not only, but also to put new elements on the legal framework, which precede government's ambitious goals for economic growth, diversification, increased competitiveness of the economy, and consequently opportunities for significant investment and employment.

II. EBRD Support to the Business in Albania

Mr Alain Pilloux, EBRD, said that Albania remains a very important country for the EBRD. The EBRD supports the operations of the IC, and commends the work done by it so far. The IC recommendations are concrete, well grounded, and either implemented or taken into consideration by the Government. Speaking on behalf of the EBRD, Mr Pilloux encourages the government to continue to improve the business climate, as very important to promote investments, to address issues such as property rights, informality, commercial disputes, landownership, and capacity of public administration, tackled also by the IC.

Secondly, Mr Pilloux said that all the stakeholders and institutions should work together to support the growth of the private sector in the Albanian economy, and in particular in very important sectors such as tourism and agriculture. EBRD intends to do this primarily through risk sharing with local commercial banks, also to encourage them to step up lending to the real economy (particularly in local currency). This will continue to be done in close collaboration with the Central Bank.

EBRD is designing with the government and the EU an innovative programme which will blend EBRD funding and EU grants, around 100 million EUR in total. This programme will aim at developing competitiveness of the tourism sector, in particular by investing in enabling infrastructure, such as rural roads and municipal infrastructure. EU grants will be used also to restore cultural and natural heritage sites. EBRD is also considering advisory support and financing channelled via banks for micro and SMEs active in the tourism value chain. This is the first time that this programme is implemented by EBRD in the region, and Mr Pilloux thanked the Minister of Finance and the EU for working with the Bank on this.

EBRD has also worked with many foreign investors, some of them sitting in this meeting, not only to provide financial support but also to mitigate risk. This will continue in all sectors of the economy, including renewable energy which seems set to continue attracting investments.

In infrastructure, EBRD has been particularly involved on roads, railways, in the port of Durrës, and Tirana's airport. Good cooperation continues also with KESH and in the small renewables sector with private investors. Infrastructure will continue to be a priority for the Bank.

III. Presentation on the 'Legal Framework on Investment in Albania, main pillars of current debate' – Secretariat of Investment Council

Ms Diana Leka, IC Secretariat, delivered a brief presentation, taking into account that the materials of the meeting had already been sent to the IC members before this meeting. International reports show an improvement of Albania's ranking in various indicators. Ms Leka presented some issues on investment climate and legal framework assessed by the Secretariat during its 3 years of work, as well as some comments and questions raised by the business community during the consultation table held in collaboration with the MFE and IFC on 23 May 2018. These comments have been grouped by the Secretariat in the Summary Paper on i) the legal aspect, ii) institutions and administration, and iii) policy. Eventually, the Secretariat raises some questions for the participants for discussion.

IV. Summary of the main comments raised during the Meeting

- There should exist no difference between foreign and domestic investors. It is important for investors of all categories (small, medium big) be protected. It is an essential factor, the guarantee of documents produced by the state. If the state issues a construction permit or a property deed there should be no returning back. These constitute 90% of the problems faced by the foreign and domestic investors in all kinds of investments, especially in tourism and agriculture. Each document issued by the state should have the guarantees that the law provides.
- Another issue raised is the infrastructure tax. There are models in the region, where around 40% of the infrastructure tax goes directly for investment on the infrastructure, while 60% goes to the budget of the local government. Therefore, it was proposed that for investments on the tourism sector, a part of the infrastructure tax should be related to the approved investment. For example, for an investment of 100 million EUR, the infrastructure tax paid by the investor for the amount of 10 million EUR, goes entirely to the improvement of the water supply of the village, which has nothing to do with the implemented investment. Therefore, this issue needs to be reconsidered by the government.
- In regards to the issue whether the new law will be a framework or an exhaustive one, it was suggested that the new law on investments could have a clarifying character, to regulate some acts where a part of them are under approval or some others need to be adapted. Participants raised some questions on the objective of the Law: Is the law going to be an incentivising one with clear financial incentives for certain types of investments? Will there be a tendency to reduce more the discretion level highlighted also in the Law on Strategic Investments? Concerns have been shared with the IC, public administration and in various business forums, especially related to indirect tax. Application model of indirect taxation is not in alignment with EU directives applicable in the European countries for some industries.
- In regards to the new investment law, there were questions whether the new legal framework should consider also the regional context and initiatives, in order also for those countries which do not have a law on investment, to have a common policy in this aspect. A special thank was also provided to EBRD for the support given to the private sector in the whole region, and more specifically for the recent support in regards to the online Regional Investment Platform.

- Enlisting the steps, elements and the intentions for improving the foreign investments and investment climate of the country, is very encouraging for foreign investors because it brings clarity, transparency and also focus on incentives. However, it remains very important to focus on the implementation. Although there might be in place a good law, it is important that it is understood and implemented by all the institutions, and it does not create a conflict with other regulations and laws in the country. One day Albania will become an EU Member, does this law create any conflict with EU regulations and laws?
- In regards to the guarantees for the investors, incentives and the clarity of the detailed framework, it is important to look at the other countries, because after all it is a competitive environment. Whatever is put on plate, should be competing with the other countries as well. It was asked that the draft law should be shared in due time also with investors for their respective comments and opinions.

Minister Arben Ahmetaj agreed that the guarantee of documents issued by the state is a fundamental issue. Protection of foreign and domestic investors from the legal point of view is consolidated. Regarding ownership problems and guarantee of the administrative documents issued by the state, it is an element which is worth to be considered in the new law. The debate is whether this will be a framework law or a detailed and exhaustive law. No conclusion has been reached yet. Regarding the infrastructure tax, he agreed that it is an issue that might be considered by the government. While on the regional concepts, he mentioned that are considered only principles which need to be present in the local legislations and they should reflect the best international practices. No regional law is possible because of many factors such as sovereignty etc. All laws in the Western Balkans should reflect the principle of non-discrimination, best international procedures for licencing, etc. Every investor in the region will have the same treatment in the aspect of protection, transparency, fiscal procedures, or transferring capital and profit, etc.

As relates to the law, Minister Ahmetaj reiterates that it will not contain financial incentives nor positive discrimination of sectors. These are policies that will be addressed in specific laws, e.g. the package for tourism. In the new law on investments will be consolidated the main principles, such as non-discrimination (parity), transfer of capital and profit, acknowledgement of the property right, guarantees in case of disputes post licencing or post authorisation, e.g. property deeds conflicts. Specific elements are not envisaged to be included in this law. The term 'exhausting' it is meant in the organic framework of foreign investments.

Ms Monika Bylaite, EU Delegation, congratulates the Minister Ahmetaj for his efforts in the improvement of the investment climate in the country and also for the consultation of the respective legislation with the business community and the IC Members. The economy of the country is expanding thanks to the domestic demand and partly also due to the key role of FDI's, where the EU remains the biggest source, with over 50% of total stock. In order to maintain the increase of this flow, there are still a few elements that need to be addressed starting from the fair treatment of companies and fair transparency on investment policies, and in particular highlighting the need for a fully functional cadastre, the issue of land ownership etc. In addition, she reiterates the importance on the progress of the justice reform and the fight against corruption.

Minister Arben Ahmetaj, expresses his pleasure for having a great project on tourism financed by the EBRD and EU Delegation. He also mentioned other important projects in the areas of tourism and infrastructure with other international development partners such as the World Bank. Minister Ahmetaj expressed his opinion against competing with taxes as this destroys the

economy and distorts the competition. Eventually, many countries have gone back to the macro stability. Rule of law, justice reform and infrastructure are the key elements, and of course the clarity of the legislation and the major principles inherited in best practices are indisputably to be included in our legislation.

V. Closing of the meeting

Minister Ahmetaj said that the process of gathering comments will remain open for some more time and encourages the business community to work with the Council for any additional comments. The draft law will be circulated to all the potential contributors in due time and also will be presented in one of the upcoming IC meetings.

The meeting was closed at 13h15.

List of participation

Representatives from the Government

1. Mr Arben Ahmetaj, IC Chair/Minister of Finance and Economy
2. Ms Natasha Ahmetaj, Deputy Governor, Bank of Albania
3. Ms Vasilika Vjero, General Tax Director
4. A representative, in the absence of General Customs Director, Ms. Belinda Ikonimi
5. Mr. Genc Çeli, in the absence of AIDA's CEO, Mr Sokol Nano

Business Community

1. Mr Edmond Spahiu, CEO, Alb-Star Sh.p.k.
2. Mr Turker Sengonul, Vice President of FIAA, in the absence of FIAA's President, Mr Tom Kristian Larsen,
3. Ms Ines Muçostepa, Chair of Union of Chambers of Trade and Industry (UCCIAL)

International Partners

1. Mr Alain Pilloux, EBRD Vice President, Banking
2. Ms Monika Bylaite, Head of Political, Economic and Information Section, European Delegation in Albania
3. Ms Maryam Salim, Country Manager of the World Bank for Albania

Former IC Members from the Business Community, 2015-2017

1. Mr Samir Mane, President, Balfin Group
2. Mr Dritan Nako, Antea Cement Sh.A.

Not attended:

1. Mr Grigor Joti, Chair of the Association of Trade Union of Albania
2. Mr Seyhan Pencabligil, CEO, BKT
3. Mr Isuf Ferra, CEO, Ferraco
4. Ms Laura Qorlaze, Representative of IFC in Albania