

SUMMARY OF MEETING MINUTES
DISCUSSION TABLE ON THE LEGAL FRAMEWORK FOR INVESTMENT (IC)

*Albania Investment Council in collaboration with the Ministry of Finance
and Economy and IFC*

Tirana, 23 May 2018, 14:30 – 17:00

The meeting was moderated by the Secretariat of Albania Investment, with the presence in the panel of Deputy Minister of Finance and Economy, Ms Albana Shkurta, IFC Representative in Albania, Ms Laura Qorlaze, IFC experts, Mr Marc Reichel and Mr Harald Jedlica. Attended the meeting over 60 participants, from reputable foreign and local Chambers/Associations, Companies and Legal & Tax Consulting Firms.

I. Opening of the meeting

The meeting was opened by Head of Investment Council Secretariat, Ms Diana Leka, with a short welcoming message to the participants and a brief note on the role of the Secretariat. The issue of the notification and consultation in time of laws and regulations is becoming a subject of discussion among all stakeholders (Government, Business and Donors' Community) for several reasons. Clearly, this takes time and efforts but in the meantime it is important to continue with the reform process since it plays an important role on the country's image and on the ability and willingness of companies to invest. Do we really need to change the legal frame considering that the issue of predictability of laws is one of the main business concerns as relates to the Albanian investment climate? What further efforts and improvements in the legislation are required to improve the investment climate and to attract more investors?

The agenda item for this meeting was voted by IC members in December 2017 as an issue to be considered for further debate in the IC during 2018. Raised comments, concerns and findings on the investment legal framework during this meeting will be noted by experts of the IFC (which attains a wide range of expertise in matters related to investment legislation) for further consideration in screening the current legislation. On the other hand, the Secretariat will present at the upcoming IC meeting in June, a summary of comments discussed in this meeting, along with other working materials.

II. Context and process for a Unified Law on Investment

Deputy Minister of Finance and Economy, Ms Albana Shkurta, stated that work in the investment area is particularly important in the framework of the regional economic area where investment is one of the main pillars in the Western Balkans Initiative, creation of a zone which will constitute for foreign investors an investment destination attracting investment which will develop all the region, not a particular country. As a novelty to be brought this time, is a review of the investment politics in our region, a study carried out by UNCTAD. Ms Shkurta delivered a brief presentation on the five dimensions which have been measured and compared with a focus on Albania's evaluation. This is quite relevant to the debate on the investment framework

which the government is trying to draft. The five pillars in the UNCTAD Report are: a) FDI-specific legal framework, b) International investment agreements, c) Business regulation, d) Taxation, e) Labour policy and skills.

III. IFC contribution for enhancement of the investment climate in Albania

IFC Representative in Albania, Ms Laura Qorlaze stated that this roundtable discussion with representatives from various groups from the business community, has the objective to discuss the gaps and shortcomings of the existing legal framework on investments and the necessity to fill in the gaps and unify the existing pieces of legislation into a streamlined and comprehensive one to duly address the issues and respond to the needs for increased investments and growth in Albania. Despite the progress made, significant shortcomings remain in the business environment such as heavy regulatory burden, inadequate framework for private investments in addition to other constraints such as informality, etc. Albanian business environment remains yet unattractive by global standards. Thus, greater alignment of investment policies with international good practice standards, in particular in investment promotion and attraction, entry and establishment, as well as protection and retention, is a key conduit for economic integration and attraction of more and higher quality investments to Albania.

IV. Best international practices and challenges for a contemporary legal framework on investments

Mr Marc Reichel, IFC Expert, delivered a presentation on: i) The objectives of a good investment law, ii) Main content of a good investment law, iii) What does this mean for Albania? After his presentation, the discussion floor was left to the participants, especially in regards to the scope of investment legal framework, grievances mechanism, strategic investments, etc.

V. Comments by participants

Mr Marc Reichel, IFC, asked participants if investment state grievance mechanisms are important to investors, and what added value they could bring and what it should be like if it helps investors.

Përparim Kalo, Kalo & Associates, in the case of grievance between investors this issue is actually covered in the contract. The contract can provide different stages of settlement, like expert opinion, technical expertise, etc. In the case of a grievance mechanism between the state and an investor, like licencing, normally this is also part of the practice. There have been cases when the government has negotiated a settlement before going to exit. There will always be a need for a special mechanism as the government may be accused of settlements, some kind of hidden agenda.

Mr Marc Reichel, IFC, the average cost of an exit case is 5-7 million dollars. We want to avoid the court case, at the very early stage, as a complaint. The idea of grievance mechanisms is a quick call to ombudsman.

Ilir Daci, Optima, it is not the problem of provisioning the investment law with articles related to the IGM. In practice, it is often proven that although the laws clearly provide for the institutions or procedures to be followed, the problem remains their implementation by the administration. It should be increased the awareness of the administration on the importance of legal provisions

and their proper implementation according to the will of the lawmaker and for the purpose of protecting the investors interests. If a proper IGM mechanism will be provided, its procedure needs to be detailed, while the role of any administrative chain for complaint handling should be defined and it should be transparent for all actors involved.

Genti Beqiri, Baker Tilly, the IGM should be foreseen as a mechanism within the Investment Law, despite the fact that concession contracts have legal provisions on ways of resolving complaints and disputes between investors and the state. It is suggested that IGM to be part of AIDA, the latter being a one-stop shop for investors in Albania. AIDA itself is not capable at this stage to solve the issue.

Current legislation lacks concrete incentives that are easily applicable at the disposal of investors and without bureaucratic administrative procedures. For example, there is no complete information on where investors can invest in public properties. The latter are not in the market.

Turker Sengonul, FIAA, IGM is considered an interesting mechanism. The proposal for its creation would give an institutional impetus to resolving complaints at the foreseen stage, in order to prevent investors from resorting to the ambassadors of their state or to the Prime Minister.

The initiative for a new investment law should be supported but at the same time it is important that the Government's vision for investment climate be shared and supported by all institutions and administrations. Investors' issues should not be considered a problem solely for a ministry or a sector, but for the entire administration. The latter one should support the vision for a better investment climate, with an adequate sub-legal framework and in line with overall policy.

Enida Bezhani, Amcham, if an IGM is to be foreseen, the procedure and the institution that will deal with it should be very clear, so as not to create overlapping with existing institutions such as Minister of State for Protection of Entrepreneurship (MSPE). Considerations should be given to staff issues that will deal with the handling and resolution of these complaints.

Alketa Knuti, Ministry of State for Protection of Entrepreneurship (MSPE), the IGM is currently handled by the MSPE. Indeed, there is a legal problem related to how public administration can be self-corrected when it takes action on wrong administrative acts. Actually, this is done through the use of legal facilities such as in the case of correcting tax assessments through the follow-up of re-control procedures. First, it should be considered the solution of this legal gap, rather than the creation of an additional IGM that could create overlap with the current institutions.

Ms Albana Shkurta, Deputy Minister of Finance and Economy, the design of an IGM model aims to resolve disputes in the preliminary phases and not overlap with other institutions and workplaces. Currently, an IGM model is close to Qato's structure which has already created experience on business issues by preparing a database that will then serve to make the necessary analysis for the relevant interventions.

Alketa Uruci, Boga & Associates, it would be of interest to get acquainted first with the Government's attitude or plan regarding the plan for incentives in general or strategic investments in particular. In its absence, considerations that can be made for a new legal framework in the field of investment can only be general. A new investment law is good to exist, but we should be aware that a single law cannot solve all the issues. The IGM may in practice create an overlap with the administrative appeal structures that currently exist. It is not the problem whether or not these mechanisms exist, but how effective and viable they are.

Mr Marc Reichel, IFC, in response to the question of why a new investment law is needed, explained:

- Everything new has a starting point and the new law brings a new spirit that can serve as a competitive advantage for Albania, replacing an old law with a newer form and content.
- The existence of an IGM serves institutions to have a clear idea of systemic problems and their systemic solution. It gives a lot of information on policy advocacy.

Mr Dritan Nako, Antea Cement, regarding the self-correction of institutions in the case of incorrect decisions on investor practices, stated that he does not think it is a problem of the instrument. If there is an institutional will, then the instrument is found. The new investment law should push the administration toward a positive will for the investors. For example, it may be specified the principle of the administrative silent approval in the case of procedures or permits relating to a new investment law.

Mr Hartmut Jarosch, DIHA, appreciated the preparation of a new law, as well as the creation of an IGM model. But the devil is hidden in detail and the administration deals with the details. For this reason, the sub-legal framework should be detailed and clear and not allow room for wrong interpretations. It is important that the mentality of the administration changes.

Mr Marc Reichel, IFC, the Investment Law is an opportunity for the Government to show that they are investment friendly and that they are willing to change the investment climate. It is up to the investors to put pressure to the Government and explain the expectations from this law. Regarding the principle 'silence is consent,' this can be implemented with certain issues where there is no protection of other people. With certain issues that are health related and environmental related, an approval is needed. For cases where no feedback is received, IGM is a good mechanism where investors may demand an answer or when a negative decision is taken to discuss the reason/s and how to make improvements.

Harald Jedlicka, IFC, the discussion of grievance mechanisms and how to put them into use is spread also in other countries. It is not possible to copy a model and bring it to another country. This new investment law is a gold opportunity for anchoring this mechanism in a piece of legislation but it is needed to work on other legislations around it. It is important that this discussion has started. There seems to be a broad consensus that it is a mechanism needed, and there are a lot of questions on how. This will be worked out by the working group and other people in this table. Investors need more protection and predictability in the legal framework.

Mr Bledar Mankolla, Forscher, related to IGM, he thinks that it will be added only one additional institution. The current investment law compared to the current business legislation provides an addition element related to the protection of foreign investments. We can change a law not because it is outdated, but because it had problems in itself and in its implementation. These problems have not been listed. A good new investment law cannot include all the issues in one single package. Although investors might find a good investment law, behind this law it is hidden a legislation which bears problems.

Fjoralba Caka, AA+, asked whether the framework of incentives has been analyzed if it is in line with the EU acquis, in order to avoid cases such as the one of Hungary and Poland where national incentives were dropped by the EU after violating EU principles regarding competition protection.

Mr Marc Reichel, IFC, the new law is not intended to provide for tax or fiscal incentives, and the working group has not made such an analysis if current incentives (such as in tax legislation and free economic zones legislation) are in line with WTO and EU principles. Currently, there are incentives for strategic investments, and most likely in the new law there will be no fiscal incentives as there are currently no fiscal incentives for strategic investments. There are some general clauses/provisions that say that new incentives have to look at these points. Before

adopting, it is needed an assessment of what would be the impact on attracting investors but also on the state revenues. One of the points is to be in line with EU regulations.

Mr Dritan Nako, Antea Cement, the Law on Strategic Investments leaves too much discretion to the administration to determine which will be considered a strategic investment and which not. Is the new Investment Law intended to cover the rights of new or existing investors?

Ms Albana Shkurta, Deputy Minister of Finance and Economy, said that indeed, the legal framework for strategic investment is very detailed. The criteria are specified by sector and according to the procedures, assisted or special, are clear and based on the decision-making of the Strategic Investment Committee in AIDA.

Mr Marc Reichel, IFC, the new investment law will reflect the latest investment principles which guarantee the protection of both new and existing investors, being applicable to both categories.

VI. Closing of the meeting

Ms Albana Shkurta, Deputy Minister of Finance and Economy, thanked the participants for the valuable contribution and invited the participants to send their additional views and ideas to the Secretariat of Investment Council.

List of Participants

No.	Category	Institution/Organisation	Name	Position
1	Association	Bashkimi Tregtar i Shqipërisë	Mira Pogaci	Executive Director
2	Association	Foreign Investors Association in Albania (FIAA)	Turker Sengonul	Vice President
3	Association	Foreign Investors Association in Albania (FIAA)	Marinela Jazoj	Executive Director
4	Association	Albania Association of Banks (AAB)	Brunilda Kostare	Legal Advisor
5	Association	AITA	Dritan Mezini	Board Chair
6	Association	Albanian Centre for Energy Regulation and Conservation - ACERC	Lorenc Gordani	Executive Director
7	Association	Nordic Association Albania	Anjeza Alia	Head of Office
8	Chamber	AmCham	Mark Crawford	Chair
9	Chamber	AmCham	Enida Bezhani	CEO
10	Chamber	AmCham	Dael Dervishi	Board Member
11	Chamber	Italian Chamber of Commerce in Albania	Alda Bakiri	General Secretary
12	Chamber	Turkish Chamber of Commerce (ATTSO)	Erinda Zhupani	General Secretary
13	Chamber	German Chamber of Commerce (DIHA)	Hartmut Jarosch	Director
14	Chamber	German Chamber of Commerce (DIHA)	Marjeta Kodra	Business Consultant
15	Chamber	Advantage Austria	Marlinda Zotaj	Head of Office
16	Chamber	UCCIAL	Majlinda Manushi	General Secretary
17	Chamber	CCI Tirana	Albana Laknori	General Secretary
18	Chamber	CCI Tirana	Fabiola Duro	Advisor
19	Company	TAP Albania	Eniada Çupi	Accountant
20	Company	Balfin Group	Bora Sinani	
21	Company	Antea Cement Sh.A	Dritan Nako	Administration & External Relations Manager
22	Company	Antea Cement Sh.A	Adrion Qirjazo	CFO
23	Company	Alpha Bank	Esmeralda Gjoshe	Legal Department
24	Company	Alpha Bank	Eduart Lekgjika	Senior Dealer, Treasury
25	Company	British American Tobacco		Regional Manager
26	Company	Bankers Petroleum	Doina Goga	Legal supervisor
27	Company	Bankers Petroleum	Eriseld Zgjana	Sales Coordinator
28	Company	Shell Upstream Albania	Rohan D'Souza	Chairman
29	Company	Colliers Albania	Stela Dhani	General Manager
30	Company	Colliers Albania	Manjola Çondi	Senior Associate
31	Company	Vodafone Albania	Artur Tomini	CFO
32	Company	Vodafone Albania	Ilir Limaj	Advisor for Regulatory Affairs

33	Company	ABCom	Ylli Pulja	C&Q Manager
34	Company	FORSCHER	Bledar Mankollari	General Manager
35	Company	Pedersen & Partners	Pranvera Papamihali	Country Manager
36	Donor	IFC	Laura Qorlaze	Representative
37	Donor	IFC	Marc Reichel	Expert
38	Donor	IFC	Blerte Kraja	Expert
39	Donor	World Bank	Harald Jedlicka	Senior Investment Policy and Promotion Officer
40	Donor	IFC	Keler Gjika	Fin Sect Specialist
41	Donor	EBRD-Advice for Small Businesses	Neritan Mullaj	Principal Manager
42	Donor	EBRD	Endrita Xhaferaj	Expert
43	Embassy-Agency	ICE – Italian Trade & Investment Agency	Elisa Scelsa	Director
44	Embassy-Agency	ICE – Italian Trade & Investment Agency	Manjola Mumajesi	Trade Analyst
45	Government	Ministry of Finance and Economy	Albana Shkurta	Deputy Minister
46	Government	Ministry of Finance and Economy	Anduena Hoxha	Head
47	Government	Ministry of Finance and Economy	Majlinda Hafizi	Director
48	Government	Ministry of Finance and Economy	Zarina Taja	Chief of Sector
49	Government	Ministry of Finance and Economy	Zamira Xhepa	
50	Government	Ministry of State for the Protection of Entrepreneurship	Alketa Knuti	Chief of Cabinet
51	Government	AIDA	Genc Çeli	Director of FDI
52	Government	AMF	Niko Kotonika	
53	Legal Firm	Kalo & Associates	Përparim Kalo	Managing Partner
54	Legal Firm	AA+ Partners (legal & consultancy)	Fjoralba Caka	
55	Legal Firm	Hoxha, Memi, Hoxha	Ilir Johollari	Lawyer
56	Legal Firm	Boga & Associates	Alketa Uruçi	Lawyer
57	Legal Firm	Baker Tilly	Genti Beqiri	Director
58	Legal Firm	Optima	Ilir Daci	
59	Tax & Audit Consulting Firm	Mazars	Teit Gjini	Auditor
60		Secretariat of Albania Investment Council	Diana Leka	Head
61		Secretariat of Albania Investment Council	Elvis Zerva	Legal Expert