

# LEGAL FRAMEWORK ON INVESTMENTS, DEBATES AND CHALLENGES

SECRETARIAT OF INVESTMENT COUNCIL
Tirana, 18 June 2018



#### I. OBJECT

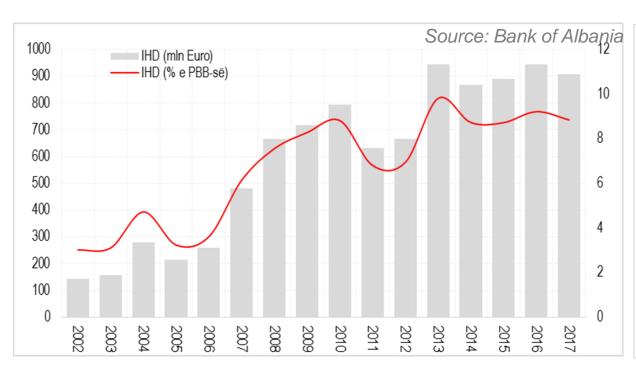
To identify main business concerns on the current legal framework on investment (to reflect best contemporary practices WIR 2018, RIRA)

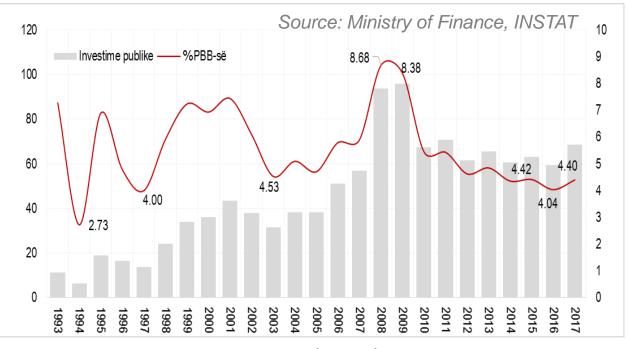
To discuss how "motivating" and "easy applicable" for domestic and foreign investors is this legal framework to make Albania a destination for new investment?

To structure the debate and facilitate the process of drafting a new legal frame, discussed and agreed in advance with relevant partners.



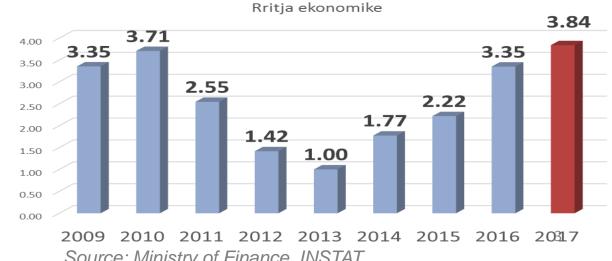
### Context of Investments 2018 – engine for economic growth





In macro economic terms, the growth has been influenced by:

- Improved trust by the private sector,
- Increased foreign demand,
- High level of FDIs,
- also favourable conditions in financing.



Source: Ministry of Finance, INSTAT

# **International Reports on Investment Climate**

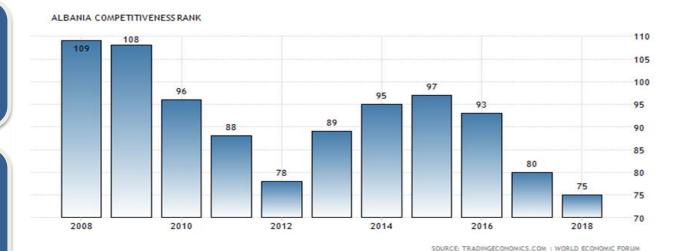


According to WB '*Doing Business 2018*', Albania is ranked 65 out of 190 countries, most positively assessed indicator is 'Protecting minority investors.'

EU 'Progress Report 2018' acknowledges Albania's progress for the improvement of the business climate, although further efforts are deemed necessary, including reducing informal economy.

According to 'Global Competitiveness Index 2017-2018,' Albania is ranked 75<sup>th</sup> out of 137 selected countries, with the highest score compared to other countries in the region.

According to the 'Investment Climate Statement' (2017) by the US State Department, the 'legal framework provides guarantees to all investors (natural or legal persons) who wish to invest in Albania.'



	Albania	Bosnia and Herzegovina	Montenegro	Republic of Moldova	Serbia	The former Yugoslav Republic of Macedonia	Kosovo*
1. Openness for FDI	B	Е	В	В	E	В	В
2. Screening of FDI	•	+		•	<b>•</b>	+	•
3. Treatment of investors	•	+	Ð	•	Ð	•	
4. Protection of investors	В	Е	Ð	•	•	•	В
5. Responsible investment	•	Е	Ŧ.	Е		+	Е

# CURRENT LEGAL FRAMEWORK ON INVESTMENTS, DYNAMICS





# **PUBLIC RELEASES – April 2016**

on the Trans-Adriatic pipeline (TAP).



□ Business climate conditioned by the judiciary reform, public administration, fight against corruption and organized crime.
 □ Unpredictability of relations with public administration, especially tax administration.
 □ Legal uncertainty and unpredictability of economic policies.
 □ FDI in Albania are impeded by the lack of real feasibility projects.
 □ A notable revival of investment underpinned economic growth, particularly private investment - both foreign and domestic. Albania has a high potential for growth, taking into account the geographic location and its demography.
 □ Faster growth is expected in 2016 on the back of an improved external environment (especially in the Eurozone) and the start of major construction work

It is necessary a strategic "whole-of-government" approach to policy making and prioritises the capacity building of civil servants, increased professionalism in public institutions, improved inter-ministerial co-ordination and reinforced stakeholder consultation mechanisms.

FIAA

**AmCHAM** 

DIHA

**ATTSO** 

BB

**EBRD** 

OECD/EU

# Comments on Legal Framework...



- Law "On Foreign Investments" (1993) and sectoral laws.
- Scope Current Law covers only foreign investors. Best practice suggest it should cover both domestic and foreign investors.
- □ Guarantee Current law covers the principle of direct expropriation for public interest (via a due legal process, fair and due compensation and with no discriminatory purpose), but it does not cover the indirect expropriation.
- Most favoured nation treatment a concept which means countries cannot normally discriminate between their trading partners, should be included.

# **Comments on Legal Framework...**



- □ *Grievance mechanism*. As an alternative to other dispute resolution mechanisms it is not currently foreseen. It could resolve disputes in an efficient manner and suggest systemic changes for systemic investor's issues.
- □ Current law lack of some principles and definitions: (a) freedom to invest; (b) freedom to manage own enterprise; (c) investors obligations.
- □ Bilateral Investment Agreements (BITs) Albania is also party to 43 BITs (out of which 37 are in force) signed during 1993-2013 with other states.
- □ Current *Law "On Foreign Investments" (1993)* provides only for ICSID as international arbitration, while BIT's suggest also ICC Paris etc.

# **Comments from Consultation...**



- □ New Law on investment or improvement of the current law? Alignment with sectorial laws?!
- ☐ IGM in the framework of investment law, BUT dependent on the will and capacity of Administration
  - Alternative for solving of complaints investitor- state institutions
  - ❖ Instrument for sistemic solution of investor problems challenge for institution and administration, lack of legal instrumentit of self-correction
  - IGM Procedure to be elaborated well detailed and transparent, be careful with institutional overlapping!
- ☐ Increased transparency and access to concrete incentives
- ☐ Clarification of strategic policy objectives on priorities of investment for example public infrastructure to support tourism?

## Conclusions...





- Simplification and harmonization of investment legal frame benchmark Albania – WB Countries, WIR 2018;
- Legal clarity and enforcement of contracts, predictability;
- Equal treatment between investors (domestic & foreign);
- IGM Investor Grievance Mechanism;
- Detailed Law or Frame Law?

#### Conclusions...





- Institutional awareness for equal and faire treatment of investors;
- Strong institutions, prerequisite to ensure the right implementation of the legal framework;
- "Grievance mechanism"- an alternative for sistemic resolution of problems.

# Conclusions...





- Consistence and Coherence of economic policies, for example where will be focused the strategy for increasing the value added in the economy, competitive advantages — low labor cost or natural advantage (like minerals, green energy, water resources) and orientation of public investment to the development of competitive advantage;
- Clarity of the structural reforms objectives, if priority will be given to the SMEs or to big companies that represent scale-up of economy.



# The challenges for decision-making - Keep up the momentum

Currently, Albania has a "large public investment gap" as well as a limited number of green field projects (IMF, 2018).

- > What could be improved to "attract and retain" investments?
  - Alignment of the legal framework and a new "impetus" for investments in the country.
  - Responsible and capable institutions and public administration to share the vision of the law and Government
  - IGM and specific/easy applicable incentives as a motivation for new investments and further improvement.
- ➤ How to create an optimal environment to support and provide guarantees for investments? (economy macro-stability indicators, predictability of the legislation and sustainability of institutions, informality, consolidation of the "rule of law").