

## SUMMARY PAPER

### LEGAL FRAMEWORK ON INVESTMENTS, CURRENT DEBATES AND CHALLENGES

June 2018

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#### ***I. Introduction***

In the framework of the integration processes of the country to the EU and at regional level,<sup>1</sup> the Regional Economic Agenda (REA) has been now formalised. A REA component is also the Regional Investment Reform Agenda (RIRA)<sup>2</sup>, which *inter alia* aims also a harmonisation of the legal and regulatory framework in the country with the best international practices (*Annex 1*).

Investment Council (IC) since April 2016, in the framework of the analysis ‘Investment Promotion Incentives: Albania vis-à-vis Balkan countries’ has underlined that *compared to the other regional countries, the package of laws and bylaws in Albania is ambitious and with strategic objectives*<sup>3</sup>.

Based on the consultations conducted by the IC during that time, it came out that investors assessed positively the current legal framework, but they were sceptical on the effectiveness of its implementation.<sup>4</sup> Among others, it came out that although there was in place a liberal non-discriminatory legislation for foreign investors, there was still a lot to be done in regards to the transparency on incentives and sectorial programmes; limitations of vague discretionary interpretations of laws and bylaws from the competent authorities or needs for further simplification of bureaucratic administrative procedures.

Recently there have been several initiatives from donors (IFC/SECO), as well as Ministry of Finance and Economy to discuss the process of updating and harmonisation of the current legislation on investments. In this context, the IC Secretariat in collaboration with IFC/SECO experts and the Ministry of Finance and Economy organised a consultation meeting with stakeholders on the options for the ‘*harmonisation of the current legal framework with the best international practices*.’ The meeting was attended by over 60 representatives from foreign and local chambers and associations, reputable local and foreign companies as well as consulting legal and tax firms.

Currently, the discussions for the improvement of the current legal framework may be grouped in two main pillars: 1) Is the current legal framework harmonised with the recommendations of best international practices like UNCTAD<sup>5</sup> recommendations? 2) Is this framework motivating and ‘easy applicable’ for the local and foreign investors to choose Albania as a destination for new investments?

<sup>1</sup> Western Balkans Regional Economic Area Initiative

<sup>2</sup> In May 2018, in the framework of the regional initiative of 06 Western Balkans countries, it was formalised in Tivat, Montenegro, Regional Investment Reform Agenda (RIRA). Purpose of RIRA is a better harmonisation of WB<sup>2</sup> investment policies with the standards of the European Union and best international practices, in the framework of the South-eastern Europe Strategy 2020, Central European Free Trade Agreement (CEFTA) and pre-accession and accession processes to the EU.

<sup>3</sup> Strategic Investment Law targets the category of potential investors with high capitals and as per sector claimed strategic. Minimal monetary limits of the proposed investments aim immediate growth of the foreign investment flow in the country. For more details, read Annex 3.

<sup>4</sup> E.g. minimal monetary limits of the proposed projects to be considered as strategic were assessed as very high.

<sup>5</sup> World Investment Report 2018-UNCTAD

In this context, it is important to clarify if ‘discussions or needs for improvements’ are related to: a) the current legal framework for foreign investment; b) incentives and strategic investors; c) the functioning of the investor grievance mechanism;<sup>6</sup> or d) a wider framework for the legal environment and investment climate related to the implementation issues of the rule of law, instability of the legislation, role of the administration and institutions (including here also AIDA), weak justice system, unfair competition and informal economy.

Clarifying the attitudes by discussing the above issues will serve to facilitate the decision-making authorities toward a legal framework on investments ‘agreed’ among stakeholders. Currently, there is no draft-law or accepted framework that can be shared in advance for consultation with the IC members<sup>7</sup>.

This paper provides a brief overview of the main identified discussions on legal framework on investments, taking into consideration the current legislation context since the approval of the Law ‘*On Foreign Investment*’ in 1993, the work of foreign and local experts who assist the reforms in this direction, the consultation process in the working groups and with groups of interest in the first half of 2018.

This process is documented by the IC Secretariat as an actor on the facilitation of the consultation, in compliance with what was agreed in the IC Meeting XII (13 February 2018).

In this paper, it is also included a material prepared by IFC experts on the best practices to be considered in the alignment process of the Albanian legislation (*Annex 2*), consulted with a working group by the Ministry of Finance and Economy, as well as a comparative matrix of IGM instruments in 6 various countries prepared by the Secretariat (*Annex 3*).

## ***II. Current assessment on the investment climate in the country***

Investments (either private or public) are considered as the main engine to guarantee the economic growth of the country in the mid-term and long-term. In addition, directing the economy toward a model based on investment (and exports) creates the grounds for a sustainable development in the mid-term and long-term.<sup>8</sup>

Over the years, the progress of public investments has been unstable, depending also on the policy priorities and budgetary indicators at the time. As it can be noted also from the national accounts in graph 1 below, foreign direct investment flows have supported the Albanian economy in a sustainable way. Their importance becomes obvious especially after 2009, when the ratio between FDI flow and GDP registered a higher level compared to the ratio between public investments and nominal GDP. Meanwhile, although the indicator of public investments within the GDP had a declining tendency from year to year, the one of FDI continues to have a positive trend despite fluctuations.

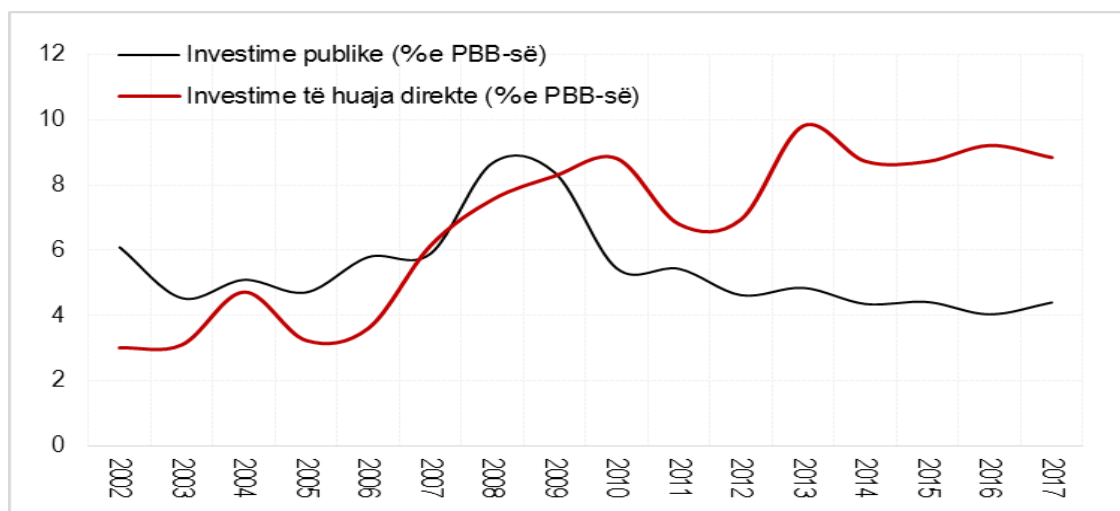
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<sup>6</sup> IGM-Investor Grievance Mechanisms

<sup>7</sup> Considering that there is no preliminary draft to serve as a base for discussion, this paper does not contain any specific comments and recommendations by the Secretariat.

<sup>8</sup> In the National Strategy for Development and Integration, one of the pillars for a sustainable economic growth is ‘ensuring the growth through competitiveness and innovation’ (NSDI, 2015-2020, page 33). Improving productivity and competitiveness constitutes a national strategic objective, among others through ‘the promotion of the business and foreign direct investments.’

**Graph 1. Public investments and FDIs in the nominal GDP**



Public and private investments remain the main engine of growth in the country's economy. In 2017, foreign investments are considered as main catalysts of the economic growth, as the FDI flow reached 8% of the GDP meanwhile public investments in average through the years has been 4-5% of the GDP.

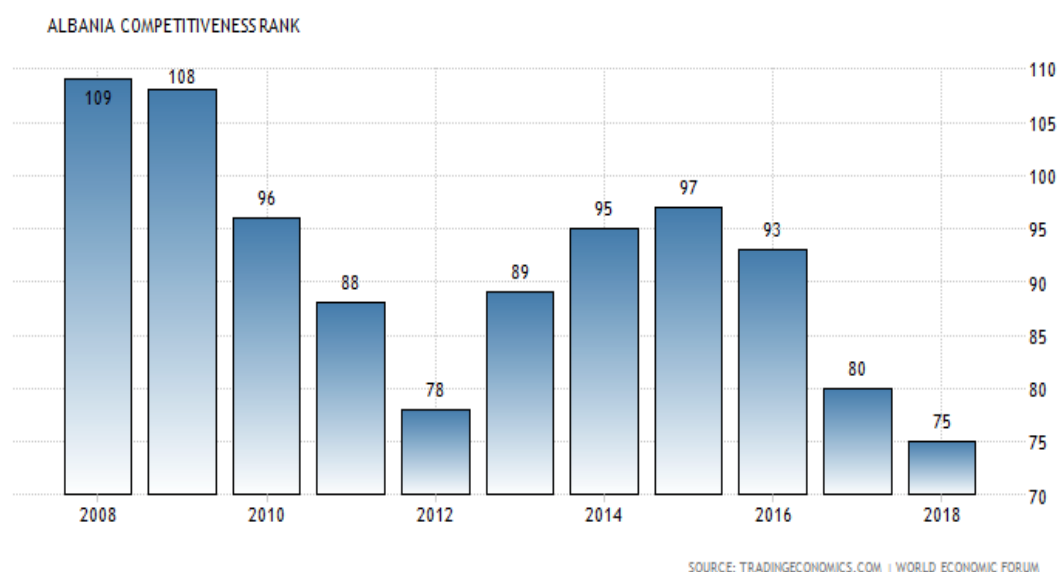
An important factor in the potential for investments growth is considered good governance, a sustainable and predictable system of taxes, sustainable rules and laws as well as an efficient system for the provision of public services.

According to WB *'Doing Business 2018'*, Albania is ranked 65 out of 190 countries, where the most positively assessed indicators are 'Protecting minority investors,' 'Trading across borders' and 'Access to finance.'

EU *'Progress Report 2018'* acknowledges Albania's progress as relates to the economic criteria and it highlights also the reforms made by Albania 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.

**Graph 2. Albania's ranking in the 'Global Competitiveness Index 2017-2018'**



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.*'

Despite the conveyed optimism, the international reports highlight the need for: a) further structural and institutional reforms, b) implementation of the public administration reform, c) alignment of the local legislation with *acquis communautaire*; d) final registration of properties and resolution of properties rights; d) high expectations on the results of the justice reform. The latter one has been identified also by the Business Associations and Chamber of Commerce as one of the most crucial reforms, expected to increase to a new level the optimism on the investment climate in the country.

### ***III. A liberal legal framework with ambitious objectives to increase the investment potential***

The existence of an appropriate legislation that provides investors with legal guarantees for investment protection and minimal administrative barriers are considered important instruments for attracting investments. Since long, Albania has adopted a liberal legislation, especially with regard to foreign investments in the country based on the principle of non-discrimination between domestic and foreign investors.

The legal framework on companies as per general rule does not impose barriers for establishing companies with 100% foreign capital<sup>9</sup>. More specifically:

- Foreign investors can establish companies<sup>10</sup> freely without any prior approval or authorization under the provisions of Law no. 9901 dated 14.04.2008 '*On Entrepreneurs and Commercial Companies*,' which are the same as for domestic investors.
- No restrictions for buying private properties for housing purposes. Foreigners can acquire concession rights in natural resources and resources of mutual interest, as defined by the *Law on Concessions and Public-Private Partnerships*.
- Restrictions apply only to the purchase of immovable properties. Agricultural land cannot be purchased by foreign citizens or companies but can be leased for a period up to 99 years<sup>11</sup>. Other commercial properties can be purchased, but only if the proposed investment is estimated three times higher than the land price<sup>12</sup>.

The most important laws that address issues related to foreign investments are:

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<sup>9</sup> According to the Albanian legislation 100% property ownership from foreigners is allowed in almost all the sectors with some exclusions, as below:

- International passengers air transport (limited to 49% of ownership for investors outside the European Common Aviation Area);
- Transmission of electricity (which should be 100% owned by the state);
- Broadcasting (no entity can have more than 40% of the shares of a television company);
- Foreign nationals are not allowed to own more than 49% of the capital of an Albanian-flagged vessel or of commercial companies engaged in commercial fishing;

<sup>10</sup> According to the Doing Business Report 2017, in order to establish a commercial company in Albania in average are needed 5 procedures for a duration of 5 days.

<sup>11</sup> Law No. 8337, date 30.04.1998 'For the transfer of ownership of agricultural land, forests, meadows and pasture lands.'

<sup>12</sup> Law "On Land Purchase" No. 7980, dated 27.07.1995, as amended by Law No. 8260, dated 26.11.1997.

- Law No. 7764/1993 'On Foreign Investments' amended with Law No. 10316 dated 16.09.2010 and Law No. 46/2017 dated 13.04.2017.
- Law 55/2015, 'On Strategic Investments.'<sup>13</sup>
- Law no. 9789/2007 'On the Establishment and Functioning of Economic Zones' was amended by Law no. 54/2015 'On the Creation and Functioning of Technology and Economic Development Areas' which provided specific fiscal incentives for the economic activity of new industries, innovative technologies, information technologies, industries that meet international standards of pollution elimination, efficient industries on energy use as well as high productivity industries, in relation to employees.
- Law 9901/2008 'On Entrepreneurs and Commercial Companies.' It outlines general rules and regulations on the merger of commercial companies.
- Law No. 110/2012 'On Cross-Border Mergers.' The purpose of this law is to determine the conditions, procedures and legal consequences of a cross-border merger between Albanian companies and European companies, as well as the provision of protective measures for the employees and creditors of these companies;
- Law No. 9121/2003 'On Protection of Competition.' It stipulates provisions for the protection of competition, and the concentration of commercial companies;
- Law No. 10198/2009 'On Collective Investment Enterprises' (as amended). It regulates conditions and criteria for the establishment, constitution, and operation of collective investment enterprises and management companies;

Albania is also party to 43 Bilateral Investment Agreements (BITs)<sup>14</sup> (out of which 37 are in force) signed during 1993-2013 with other states. The provisions of these International Agreements prevail over the provisions of domestic law in the event of possible discrepancies between them.

## 1. Law No. 7764/1993 'On Foreign Investments'

This law is exclusively to foreign investments<sup>15</sup> and it contains the general guarantees that the Albanian state offers to foreign citizens or companies that carry out economic activity in the territory of the Republic of Albania.

- a) The main guarantees for foreign investors as per this Law are the following:
  - It allows 100% foreign ownership of companies established in the Republic of Albania. There is no limit on the quotes/shares and the number of foreign investors in a company (100% foreign ownership is possible);
  - Foreign investments are allowed and treated in equal positions with domestic investments with some minimum restrictions;

<sup>13</sup> Law on Strategic Investments Nr.55/2015 legally enables foreign investments in the most important sectors to move more quickly and to avoid many non-productive and administrative impediments that investors face. The assessment on the effectiveness of this relatively new law, should take into account the number of strategic investors that have received this status, value of foreseen investments and the economic impact in general of these investments.

<sup>14</sup> Bilateral Investment Treaty <http://investmentpolicyhub.unctad.org/IIA/LiasByCountry#iiaInnerMenu>

<sup>15</sup> Not every country has a dedicated law on foreign investments/investors. For example, countries similar to Albania such as FYROM and Ireland do not have a specific law. For the full list of countries which have/do not have a specific law visit: <http://investmentpolicyhub.unctad.org/InvestmentLaws>.

- No special prior authorization is required for foreign investments. There are no sectorial restrictions;
- Foreign investments cannot be expropriated or become state owned directly or indirectly, except in special cases when this is in the public interest and under specific legislation;
- Foreign investors have the right to repatriate all capital and contributions in kind;
- Regardless of the domestic legislation, any foreign investment will in any case have equal treatment and the highest standard of protection in accordance with internationally recognized practices.

The 2010 amendments to *Law No.7764 'On Foreign Investments'* expanded the guarantees of the Albanian State to foreign investors with additional guarantees, providing special legal protection for foreign investors by 31 December 2014, foreseeing to make investments for more than 10 million Euros and involved in judicial disputes with third-party private parties.

Law No.7764 was again subject to amendments during 2017, which aimed at extending the deadline for special state protection until 31 December 2018 and benefitting from this protection automatically also strategic investors/investments, special procedures that have taken this status in accordance with the provisions of *Law No.55/2015 'On Strategic Investments in the Republic of Albania.'*

## 2. Law 55/2015, 'On Strategic Investments'

In an effort to increase investments in strategic sectors, Law 55/2015 was adopted. The law identifies the country's strategic sectors (*Article 8*)<sup>16</sup> and provisions detailed and special administrative favourable procedures, facilitating or accelerating support and services to domestic and foreign investors (*Article 21 and Article 22*).

Under the Law, *the Albanian Investment Development Agency (AIDA)* is the Secretariat of the Strategic Investment Committee (SIC) which approves the status of every strategic investor and at the same time serves as a unique window for foreign investors in relation to Albanian institutions.

The administrative procedures provisioned in this law related to the preparation, implementation, development and realization of a strategic investment project as well as to the issuance of licenses/permits/authorizations and opinions pursuant to this law are of the highest priority and are followed by an accelerated procedure for all public institutions/entities/public authorities, directly or indirectly involved in these procedures.

Strategic investors can benefit from the two of the following investors status:

1. Status 'Investment/Strategic Investor, Assisted Procedure,' taking advantage of the following services:
  - Preparatory actions, preparation of documents and administrative application with an accelerated procedure by the assisting agent, including the necessary

<sup>16</sup> Energy, agriculture, tourism, oil and extraction of natural resources are strategic sectors. These sectors offer the opportunity to earn long-term revenues from investing in a quickly growing economy and with low cost, with unused natural resources and a flexible working force.



documents accompanying the application when issued by a state administration body at the request of another state administration body;

- Treatment with priority in the preparation of documentation, give opinions or comply with procedures, which are included in the activity area of state administration bodies, represented in the operational group, for the preparation and implementation of strategic investment;
- Land consolidation;
- Supporting programs;
- Support with ancillary infrastructure;
- Making available to the investors state owned real estate properties for the development of strategic investment projects, according to the legislation in force.

2. Status *Investment/Strategic Investor, special procedure*, it guarantees additionally to the above mentioned services, also the following:

- Expropriation of immovable properties, private property, to enable the development of strategic investment projects;
- Approval by the Albanian Parliament, when evaluated by the Council of Ministers, of the relevant strategic investment contracts upon the request of the strategic investor to enhance the security of the regulated legal relationship between the investor and the Albanian State.

In total, SIC has approved 9 strategic investment projects, out of which 6 have earned the status of strategic investor/assisted procedures and 3 the status of strategic investor/specific procedures. Since beginning of 2016 and until to date, AIDA has assisted 30 investment projects, out of which 17 have gone through all the processes of strategic investments and have been addressed for decision-making in the SIC. 8 other projects are still in the consultation/assistance phase for preparation of documents and 5 projects are still in the phase of expression of interest. No assessment document has been identified related to the impact of the approval of the above legal framework.

### 3. The Investment Policy Guide of the Government of Albania<sup>17</sup>

The Guide as a declarative document expresses the commitment of the Albanian Government to create a favourable climate for domestic and foreign investment by identifying *the principles of good investment policies* that should be included in the relevant investment legislation. These principles are:

- Ensuring non-discrimination between domestic and foreign investors: Ensure equal treatment for all domestic and foreign investors/investments in respect of the expansion, operation and protection of their investments not less favourable than those provided in situations similar to domestic investors, in accordance with the provisions laid down in the laws, regulations and policies.

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<sup>17</sup> *Approved with DCM No. 579 dated 03.08.2016*

- Provision of effective property protection: Protect private property and investment from expropriation or similar measures, unless expropriation is carried out for a public purpose on a non-discriminatory basis and as a last resort in accordance with national legislation and international law principles and through prompt, appropriate and effective compensation payment.
- The pursuit of good regulatory practices.
- Effective investor management mechanisms should be implemented in order to strengthen trust, to ensure that investment is preserved in time and to increase regulatory and administrative transparency.
- Using planned incentives when needed and promoting full transparency in providing these incentives.
- Ensuring environmental and social standards. Ensuring that all regulations on work, health, safety and environment are implemented by domestic and foreign investors.
- Facilitating entry and temporary staffing. To facilitate the temporary entry and stay of foreign technical and managerial personnel, as well as their families, in order to engage in activities related to foreign investment.

For the purpose of achieving the above goals in the Guide it is considered the possibility of preparing a unified investment law along with relevant legal acts, improving investor's confidence by creating mechanisms for attracting, maintaining investments, handling their complaints (*grievance mechanism*) and improving the institutional framework.

#### ***IV. Main identified concerns from the discussions of the legal framework on investment<sup>18</sup>***

Based on the consultation process on the harmonisation of the legal framework on investments, some of the main comments and issues that are suggested to be taken into consideration from policy-making authorities are related to:

##### *a) Clarification of strategic objectives and national policies which orient investments*

- Despite the fact that investors take risks in return for profit, they consider sustainability and clarity of strategic priorities, as one of the main drivers in decision-making. Based on Secretariat's consultations with the business, it comes out that companies demand a sustainable and clear focus on economic policies in the sectors/activities (e.g. services) that are in coherence with the Albania's competitive advantage (e.g. cheap labour);
- In the framework of enhancing country's competitiveness, directing public investments toward the improvement of infrastructure, institutions and services for the business, would strengthen the impact of legislative reforms in the investment climate;

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<sup>18</sup> Included concerns are a synthesis of previous Secretariat's analyses, comments by the business and institutions, as well as a synthesis of the consultation meeting held on 23 May 2018.



- Clarity in the structural reforms, if priority would be given to SMEs or to big companies that represent scale-up of economy. This implies that economic policies should be further clarified.

b) *Administration and Institutions*

- Re-dimensioning of the administration to guarantee the responsible and effective implementation of the principles sanctioned in the laws;
- Supporting institutions for the investors and responsible structures for addressing their complains;

c) *Access, transparency and assessment of incentives on investments.*

More specifically:

- ***New legal framework on investments or existing framework?***

*It is suggested preparation of a new law. A new law on investments might encourage the administration to a more positive will toward investors and a new starting point. A new investment law is good to have, but a single law cannot resolve all the issues. It is deemed necessary also a preliminary analysis on the progress of the strategic investment law, to analyse what did not work before making a certain legal amendment. Rather than the investment law, the entire legislation for the business has problems and it needs to be revised in regards to sectorial legislation.*

- ***IGM in the framework of investment law - alternative for the resolution of investor-state institution grievances***

*IGM is considered as an interesting mechanism. The proposal for its provision in the law would give an institutional impetus to the investor grievance resolution at early stage, to avoid investors to resort to their countries ambassadors or directly to the Prime Minister. Although, for example concession contracts have legal provisions on how to resolve complains and disputes between investors and the state, provision in the law would serve as an additional alternative for the parties.*

- ***IGM instrument for systematic resolution of investors' concerns – challenge for the institutions and administration***

*An IGM would serve as impeding instrument for the abusive activity of the administration. On the other hand, it would serve for raising the awareness regarding the proper implementation of the legal provisions according to the will of the lawmaker, in order to achieve the goal of protecting the interests of investors and creating a more favourable business climate. IGM identifies **systemic issues** and leads the decision-making authorities toward **systematic resolutions**.*

*The administration is still perceived to have a low awareness on its own actions or inactions as a factor in attracting or putting off investors. It is suggested that such a mechanism together with a higher awareness of the administration on its own role would bring mutual benefits to investors and the administration by minimising the mutual costs for cases of dispute resolutions in the judicial jurisdiction or in international arbitration.*

***Lack of self-correcting instruments available to the administration and the institutional will.*** *It is claimed that there is a legal concern related to the way the public administration can be self-corrected when it takes actions through wrong administrative acts. This issue should be considered case by case, but the administration from the legal point of view has the opportunity to make use of revocation/abrogation institutes as foreseen by the Code of Administrative Procedures. Some comments suggest that the problem of lack of self-correction by*

*the administration is not lack of legal instruments, but often the lack of institutional will to find solutions in the case of conflicts.*

- ***IGM procedure should be detailed and transparent***

*If a proper IGM is to be foreseen, it is suggested for the procedure to be detailed, where the role of each administrative link for handling the complaints is clear and transparent for all the involved stakeholders. For this reason, the sub-legal framework should be detailed and clear and not make room for misinterpretations.*

- ***Institutionalisation of the IGM model – careful with institutional overlaps***

*If the law on investments will foresee an IGM model, it should be made very clear the institution that will exercise such a function, in order not to create overlapping with existing institutions such as Ministry of State for the Protection of Entrepreneurship (MSPE). Presently, MSPE is an IGM model which has now established an experience on the concerns submitted by the business by developing a database which will later serve for necessary analyses for respective interventions. There are suggestions that the IGM might be under the umbrella of AIDA as an institution which deals with the promotion and aftercare services to investors. Some stakeholders claim that the IGM might create in practice an overlapping with the administrative appeal links which currently exist. It is not the problem whether or not these mechanisms exist, but how effective and applicable they are.*

- ***Raise the awareness and the access to concrete incentives***

*Current legislation lacks concrete incentives which are easily applicable at the disposal of investors and without bureaucratic administrative procedures. For example, there is no complete information available to investors on which public properties they should invest. These are not in the market and not transparent. In addition, it is suggested to be considered for example the application of silent approval principle in the case of administrative procedures or permits related to a new investment.*

## ***V. Some models of IGMs in various countries<sup>19</sup>***

In the framework of the consultation process for the improvement of the legal framework, the Secretariat prepared also a comparative overview, on some models of IGM as per classical or similar meaning to them, in 6 countries with different features.

This analysis briefly outlines:

1. Purpose for setting up these mechanisms is to provide legal guarantee on the application of rule of law, the application of the principle of predictability and the effective ability of investors to put in place their violated or denied rights by the administration.
2. The positive aspects of IGM can be summarized as follows:
  - A simple, fast and cost-free alternative to solving investor complaints;
  - An opportunity for the institution responsible for the IGM to better understand the business issues and to promote at the same time the services of the institutions in the framework of facilitating the investment climate;
  - Existence of an IGM serves to institutions to have a clearer idea of systemic issues and their systemic solution.

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<sup>19</sup> Annex No. 2

- Guarantees a quick response to the unprocessed investor's complaint without bureaucratic procedures.
- 3. Macedonia and Croatia do not have a specific IGM model because they do not have a special law on investments/foreign investments.
- 4. Serbia has an IGM model which is mainly described declaratively in the pertinent law on investments as a general guarantee for investors, but it is not clear how complaints are handled, which complaints can be filed or the deadline for their review.
- 5. Greece has an interesting model of *Business Ombudsman* adapted since 2013 under the umbrella of *Enterprise Greece* (Investment Promotion Agency) focusing not to solve the issues and complains as part of the administrative appeal, but in function of the mediation for solving complaints in their preliminary stage. The Jurisdiction of *Business Ombudsman* is limited only to complaints related to the licensing procedures of investors.
- 6. Ukraine has a special “*sui generis*” model for addressing the investors’ complaints, which can be put into function only upon the exhaustion of at least an administrative appeal procedure. Rather than an IGM model in the classical sense, *Business Council Ombudsman* is similar more to an institution such as the People’s Advocate in Albania.
- 7. In Georgia operates *Georgia Business Ombudsman* as a separate institution and not as an IGM. This institution addresses business complaints related mainly to tax and related procedures, similar to Taxpayers’ Advocate in Albania. *Georgia Business Ombudsman* was established in 2015 and it replaced *Tax Ombudsman* functional until 2011.

## VI. Next steps

FDIs constitute already a structural element for the Albanian economy. Therefore, it is very important to improve the legal framework and to adapt to regional developments and best modern practices. Meanwhile, the implementation of obligations arising from contracts with investors constitutes an essential element to increase the credibility and interest of investors in the country.

### ***a) A contemporary legal framework, unified and harmonised with sectorial investment laws, for a ‘new motivation for investors’<sup>20</sup>***

A unified investment law could bring a new image to the country by creating a stronger law, greater compliance with regional policies and BIT provisions. However, in any case, policy-making authorities should dedicate enough time to evaluate and bring a mature suitable solution for a new unified law or not in the investment area.

The package of main laws on investments, Law No. 7764, Law No.55/2012 and Law No. 9789 and bylaws is ambitious, serious and with strategic objectives. Despite this, because of the dynamics in the international grounds regarding best practices on

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<sup>20</sup> Included here also the point of view of the IFC experts - see PPT presentation in Annex 2-Slide 11 and following slides.

investments<sup>21</sup>, as well as the long time period since the approval of base law no.7764 ‘On Foreign Investment,’ the latter one may be subject of further improvements in regards to:

- Provision of guarantees also for the Albanian investors;
- Provisions of additional missing definitions such as direct investments;
- A more complete provision on the *freedom to invest* and the investors’ obligations;
- Provision of a grievance mechanism between investors and state agencies in the early stage, to avoid legal (administrative and/or judicial) disputes.

A clearer provision of the principle of non-discrimination among foreign investors.

***b) Government’s vision on investment policies is conditioned by the well-functioning of stable and trustworthy institutions***

The legal framework on the investment area should be supported by institutions and administration with the right mindset. Government’s vision on the investment climate should be shared and supported by all the institutions and administration. Investors’ issues should not be considered as a problem of one single ministry or sector, but of the entire administration. The latter one should support the vision for a better investment climate, being aware on the importance of investments, particularly of the new ones and their impact to the economy, as well as to guarantee the preparation of a suitable and easily applicable sublegal framework.

***c) IGM - mechanisms for identifying systemic issues, raising the awareness and finding mutual solution without any cost***

Yet, there is no consolidated international practice regarding the way of organization and functioning of these mechanisms, as well as on the competencies or the nature of the respective institution charged with this mediation role. Meanwhile, addressing investors’ complaints about the actions or inactions of the public administration is very important to prevent legal conflicts which may go to the administrative jurisdiction, judicial or international arbitration jurisdiction. Such mechanisms economize time and costs in finding appropriate solutions at a mediation stage.

These mechanisms are considered as part of the aftercare service provided by the Investment Promotion Agencies or other institutions which are established for the purpose of mediating conflicts between the investors (business) and the public administration.

*Preparation of a certain model is related to the legal and institutional framework in place in a given country as well as on issues that are intended to be solved through the implementation of a such mechanism, thus remaining dependent on the Government’s decision-making.*

***d) Access and information on incentives should be monitored***

Investment incentives are considered as measurable economic advantages that governments provide to certain enterprises or groups of enterprises, in order to orient investments in specific sectors and regions or to influence the nature of these

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<sup>21</sup> This would be in line also with UNCTAD 2017 recommendations under the “UNCTAD Policy Review for the Region” and MAP REA for 6 Western Balkans countries.

investments. These benefits may be fiscal (as as tax relief) or non-fiscal (such as grants, loans or regulatory facilities to support business development or increase the competitiveness)<sup>22</sup>.

Initiatives are mainly foreseen at sectorial level (e.g. 6% VAT for tourism accommodation facilities or certified agribusiness companies), depending on the Government's expectations on their social and economic impact. Incentives at regulatory level and for reducing administrative costs are mainly foreseen in the law on strategic investments, while another set of fiscal and non-fiscal incentives are foreseen to stimulate development in TEDAs.

In any case, incentives should be measurable and easily implementable and accessible by investors. It is suggested for incentives to be sustainable and to guarantee a fair competition by ensuring predictability for investors. According to investors, a fast-moving and responsible administration is the best incentive.

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<sup>22</sup> Sebastian James, September 2013, 'Tax and Non-Tax Incentives and Investments: Evidence and Policy Implications,' Investment Climate Advisory Service of the World Bank

## ANNEX No. 1

### Regional Investment Reform Agenda for the Western Balkans Six – Policies Framework and Reform Actions

Policy Area	Reform Topic	Reform Actions
<b>I. Investment Entry &amp; Establishment</b>	<i>1. Enhancing entry and establishment opportunities for investors</i>	<p>1.1 Review domestic laws and regulations in the WB6 for inconsistencies with entry and establishment non-discrimination principles (Entry Gap Analysis) and publish a consolidated list of legal entry barriers to increase transparency for investors.</p> <p>1.2 Use the above to inform a discussion on existing barriers to investment in the WB6 region.</p>
	<i>2. Improving business establishment policies and procedures</i>	<p>2.1 Support the development of a business portal to catalogue, provide and compare information on procedures to establish and operate a business in the region by building upon the initiated and already existing cooperation of the region's business registration agencies.</p> <p>2.2 Compare, review and align where possible business registration requirements on regional level.</p> <p>2.3 Facilitate and expedite work permit and affiliated procedures on economy level.</p>
<b>II. Investment Protection &amp; Retention</b>	<i>3. Aligning the legal frameworks for investment, including IIAs, with international good practice and EU standards</i>	<p>3.1 Undertake a detailed mapping and in-depth comparative review of the WB6' international investment agreements (IIAs)<sup>23</sup>, with particular focus on BITs, benchmarking them with new generation IIAs to enhance alignment with reform-oriented standards in new generation IIAs / EU standards<sup>24</sup></p> <p>3.2 Perform a gap analysis of the economies' specific domestic investment legislations with their IIAs and new generation IIAs, based on a comprehensive analysis of the economies' legal investment frameworks that will be carried out after the adoption of the regional investment reform agenda.</p> <p>3.3 Upgrade domestic legislations in line with standards provided in new generation IIAs</p> <p>3.4 Strengthen the mandate of the SEEIC-CEFTA Joint Working Group on Investments to establish it as a mechanism for regional exchange on IIA standards, modernizing IIAs, and, if deemed</p>

<sup>23</sup> Collectively, any international agreement that regulates investments is referred to as international investment agreement (IIA). International investment commitments are set out in treaties, either bilateral, or in regional or multilateral agreements. Some treaties deal only with foreign investment (usually referred to as bilateral investment treaties, or "BITs"). Others address investment alongside other related issues, such as trade, government procurement, competition and intellectual property (preferential or free trade agreements, or "PTAs"). Further, there are some multilateral treaties that provide special protections in the energy sector (the "Energy Charter Treaty") or that provide for access to dedicated dispute resolution bodies (the ICSID Agreement). Further, numerous legal instruments, including for example double taxation treaties (DTTs).

<sup>24</sup> The CEFTA agreement will not be affected by this reform action.



		necessary by the participating economies, for enabling development of a strategic approach to negotiating/revising IIAs.
	<i>4. Strengthening investment retention mechanisms in the region</i>	<p>4.1 Upgrade established investor grievance mechanisms in interested economies, while taking into consideration the differing levels of development and support needed for capacity building.</p> <p>4.2 Strengthen the mandate of the SEEIC-CEFTA Joint Working Group on Investment to establish it as a regional platform for exchange of experiences on managing grievances and preventing investment disputes.</p>
<b>III. Investment Attraction &amp; Promotion<sup>25</sup></b>	<i>5. Developing a regional investment promotion initiative</i>	<p>5.1 Establish a regional framework for coordination and information exchange among individual economy investment promotion intermediaries (IPIs) or agencies (IPAs), considering the option of creating a coordination unit within the existing regional structures.</p> <p>5.2 Support the development of a regional investment portal on regulatory requirements and investment opportunities across the region that builds on the existing regional investment portals, such as that of the WB6 Chamber Investment Forum and others, where deemed appropriate.</p> <p>5.3 Support the individual economy investment promotion intermediaries to contribute effectively to the regional investment promotion initiative.</p> <p>5.4 Undertake an in-depth sector scan to identify sectors and value propositions for regional investment promotion, with clear horizontal links to the MAP REA pillar on smart specialization.</p>
	<i>6. Streamlining incentives, and improving their transparency and governance</i>	<p>6.1 Implement incentive standards and principles related to transparency, governance and predictability in accordance with the obligations stemming from the EU pre-accession process (chapter on competition and state aid)</p> <p>6.2 Improve access to information on incentives by publishing economy level inventories that centralize key provisions and data related to these instruments.</p> <p>6.3 Engage in peer-to-peer learning on methodologies for cost-benefit evaluation and experiences on incentives' governance and administration in the context of the SEEIC-CEFTA Joint Working Group on Investments.</p> <p>6.4 Systematically engage in monitoring and evaluation of incentives to assess the effectiveness and cost-benefit considerations on economy level.</p>

<sup>25</sup> Opportunities for linking with WBIF (EIF) funding will be explored for the reform actions on investment promotion where possible and deemed appropriate.

ANNEX No. 2

*Harmonization of Investment Legislation with  
Best International Practices*

### ANNEX No. 3, *Models of Investor Grievance Mechanisms (IGMs)*

	MACEDONIA <sup>26</sup>	SERBIA <sup>27</sup>
<b>LEGAL FRAMEWORK - INSTITUTIONS</b>	There is no specific law on foreign investment. The legal framework contains separate laws, where the most important one is the Law for Companies (2004). The institution dealing with the promotion of investment opportunities is Invest Macedonia-Agency of the Government of Macedonia. There is no proper mechanism for investor grievance.	<i>Law No. 89/2015 "On Investments" (Foreign &amp; local investments) (Art.3/2). Development Agency of Serbia (under Ministry of Economy) is the institution which addresses the investors complains (Art. 18/1) regarding the work of institutions.</i>
<b>OBJECTIVE</b>	N/A	The agency does not have any specific objectives to address the investors complains. The agency was established to implement development, expertise and operational activities for promoting and implementing direct investments, promote and increase exports, development and enhancement of business competitiveness, raise reputation and development of the Republic of Serbia in the area of economy and regional development (Art. 27).
<b>AREA OF COMPETENCIES</b>	N/A	The scope of competences of the Agency in regards to the approach for addressing the complains and type of complaints that could address is not clearly defined. The Agency has the competence to investigate promptly the investor's complaints and inform them about the measures taken within 15 days from the submission of the complaint. (Development Agency of Serbia shall immediately on receipt of the complaint, investigate the content of the complaint and take measures within its jurisdiction??? to eliminate complaints against the work of public authorities- (Art.18/2). It is foreseen that only in the declarative way the government institutions should address with urgency the rights of the investors as relates to the implementation and support of the investment (Art.16/2) and only when this does not happen, the Agency is put into motion as per investor's complaint.
<b>ISSUES NOT ADDRESSED</b>	N/A	Complaints related to issues in the area of competences of the National Bank of Serbia (establishment and functioning of banks and other financial institutions); 2. Complaints for issues in the area of competences of the Commission for the Protection of the Competition (Art. 18).

<sup>26</sup> <http://www.investinmacedonia.com/>

<sup>27</sup> <http://ras.gov.rs/en>

	<b>CROATIA<sup>28</sup></b>	<b>GREECE<sup>29</sup></b>
<b>LEGAL FRAMEWORK - INSTITUTIONS</b>	There is no specific law on foreign investment. The law for companies defines the judicial form of organisation of the local and foreign investors. The institution dealing with the promotion of investment opportunities is Agency for Investment and Competitiveness - Agency of the Government of Croatia. There is no proper mechanism for investor complaint grievance.	The legal framework for investments in Greece is based on 2 main laws: The new law for investment 4399/2016 which addresses small investment issues and Law 4146/2013 which addresses strategic investment issues. Enterprise Greece is the agency which operates under the supervision of Ministry of Economy, Development and Tourism to attract investments in Greece. There is a dedicated model to address the investors' complaints. In April 2013, it was approved law 4146/2013 "Establishing a friendly environment for development for strategic and private investments". This law set up the Investor Ombudsman as a structure within Enterprise Greece. Promoted as a structure promoted by the Government and its recommendations/suggestions implemented by the relevant institutions. The model of Investor Ombudsman in Greece is similar to the one of South Korea (foreign investment ombudsman (OFIO); and investment ombudsman (Philippine and Kazakhstan).
<b>OBJECTIVE</b>	There are no specific objectives to address the investor grievances. The agency intends to provide investors full services for implementing investing projects, to propose measures for the improvement of the business environment and to promote Croatia as a desirable investing destination.	Investor Ombudsman acts as a mediator for the investor in resolving specific disputes or other difficulties raised in any phase of the licensing procedure and for specific delays in the implementation of investing projects. The investor which faces impediments for aspects related to licensing procedures is served by the Investor Ombudsman. An account manager registers the investor's complaint and problems faced during the licensing procedure and identify those documents which are decisive for explaining the main causes of delay and main factors which influence negatively in the implementation of specific investment projects. Investor Ombudsman reviews specific issues of each individual case and collaborates with the competent authorities to accelerate the resolution of complex issues. It mediates on behalf of the investor during licensing procedures, aiming to resolve bureaucratic impediments, delays, disputes or other difficulties related to the state services. It should be highlighted that the Investor Ombudsman has strong political support and, consequently, it has proved to be a very effective institution.
<b>AREA OF COMPETENCIES</b>	<b>N/A</b>	<p>a) Private investment projects of 2,000,000 Euros or more which deal with delays, disputes or other difficulties arising during each stage of the licensing procedure</p> <p>b) The Ombudsman investor acts as a statutory intermediary for the investor in order to settle of the complex issues that arise during the licensing procedure to the competent licensing authorities.</p> <p>c) Investor Ombudsman identifies key issues encountered by investors during the licensing procedure and presents concrete decision-making proposals for decision-making institutions to legal improvements.</p>
<b>ISSUES NOT ADDRESSED</b>	<b>N/A</b>	<p>a) Cases that are currently being reviewed by the competent courts or those judged by them.</p> <p>b) The Ombudsman Investor does not handle complaints about transparency issues to public authorities, but can provide general information.</p> <p>c) The Ombudsman Investor does not interfere in any kind of dispute between private parties.</p>

<sup>28</sup> <http://www.ficc.hr/objectives/>

<sup>29</sup> <https://www.enterprisegreece.gov.gr/en/invest-in-greece/ombudsman>

	UKRAINE <sup>30</sup>	GEORGIA <sup>31</sup>
<b>LEGAL FRAMEWORK - INSTITUTIONS</b>	The legal framework for investment in Ukraine consists of several laws, with the main ones being: a) The Law "On Investment Activity" (1991), which sets out the general principles for investment; b) Law "On the Protection of Foreign Investments" (1991); c) The Law "On the Foreign Investment Scheme" (1996). There is no proper mechanism dedicated to investor complaint grievance. Specific about Ukraine is the fact that it has a Business Ombudsman Council set up in 2014 ("sui generis" institution) with a decision of the Ukrainian Government and following an "Anti-Corruption Initiative" Memorandum signed between the Ukrainian Government, the EBRD and the OECD, Chambers of Commerce and Trade Unions. It is not an institution solely for solving investor complaints.	The legal framework for investment consists of two laws; these are: a) the Law on State Promotion and Investment Guarantees dated 12 November 1996; b) The Law on State Promotion and Incentives dated June 30, 2006. Invest in Georgia-Georgia's National Investment Agency is a government agency that promotes investment opportunities in Georgia and serves as the intermediary / facilitator of investor communication with the administration institutions.
<b>OBJECTIVE</b>	The Business Council Ombudsman (BCO) is an advisory structure of the Ukrainian Government, which has as a goal the transparency of the activity of central and local institutions with the objective of preventing corruption and / or other violations of legitimate business interests. BCO consists of: a) Business Ombudsman; b) 2 Deputy Ombudsmen; c) Secretariat.	The agency is different from Georgia Business Ombudsman, a separate institution and not a grievance mechanism for investors, but an institution that is available to businesses in general and mainly focuses on tax issues. The Business Ombudsman was established in 2015 and replaced Tax Ombudsman Institution in function until 2011. Business Ombudsman is appointed by the Prime Minister with the approval of the Speaker of Parliament. Business Ombudsman supervises the protection of the rights and legitimacies associated with the entrepreneurial activities (there is no clear definition of what are included in these activities) from violations of an administrative body. Business Ombudsman: a) Examines specific or group claims submitted for violations by the administrative bodies during the activity of the entrepreneur; b) detects and identifies errors in legislation and practice; c) conduct activities of a consultative and informative nature. The Business Ombudsman prepares recommendations for the administrative body to put in place the rights of the subjects in cases of verification of violations. (Article 6).
<b>AREA OF COMPETENCIES</b>	Any natural or legal person who makes business in Ukraine may file a complaint with the BCO. The complaint is investigated by the BCO and a reply is given within 3 months for the usual cases and if the case is complex the deadline for the response may be longer. The Business Ombudsman is the mediator of the dispute settlement between the parties. When disputes are resolved by conciliation, the investigation ends. Nonetheless, this Business Ombudsman can	Not clearly set out in the law the field of competence, but from the spirit of the law it seems that the sphere of action is related to tax and fiscal matters. BO Reports are submitted to: The Georgian Government, the Financial Budgetary Committee and Sectoral Economy and Economic Policy Committee of the Parliament of Georgia.

<sup>30</sup> <https://boi.org.ua/en/about/legal-acts>

<sup>31</sup> <http://businessombudsman.ge/files/laes/Laë%20on%20Business%20Ombudsman%20-%20ENG.pdf>  
<http://businessombudsman.ge/en/about-us/the-office-of-the-business-ombudsman-of-georgia>

	make relevant recommendations to the Government. Complaints addressed by the Business Ombudsman relate to a) administrative procedures; b) civil and c) criminal offenses committed against the business by the institutions. The typology of complaints includes but is not limited to: a) tax and tax issues; b) Issues relating to customs procedures; c) Issues related to business registration; d) Issues related to criminal proceedings initiated against businesses; e) Issues related to local authorities; etc.	
<b>ISSUES NOT ADDRESSED</b>	a) Complaints related to business-business disputes; b) Appeals related to disputes that are to be review before the competent courts or those judged by them, or when these disputes are related to the decisions of the courts; c) Business complaints when the business has not exhausted at least an administrative appeal procedure under the legal framework regulating the activity of the institution against which the complaint is filed. (Art.6-Rules of Procedure). Business Ombudsman does not review complaints about illegal practices of institutions for which 1 year has passed.	N/A