

# Albania

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## One stop shop – the new facility abolishing barriers in business registration

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Albania is moving away from a cumbersome business registration system which was often open to delays and sometimes corruption. Consultants advising the Albanian Government on the anti-corruption project, focusing mainly on the reform of business registration, the tax system and public procurement rules, have prepared a draft law which unifies the registration form and simplifies procedures. This article is a comparison of the existing and proposed systems.

### Forms of company

Foreign investors can do business in Albania by setting up either a new company fully owned by a parent company or a subsidiary/branch fully owned by the parent company or a representative office, or by acquiring shares in an existing company.

Under Albanian company law a company may have one of four forms: (i) general partnership; (ii) limited partnership; (iii) limited liability; or (iv) joint stock. The first two proposed legal forms are not very practicable in Albania; this is probably because liability remains with the capital holders or the partners. A special form of limited liability company is sole proprietorship. Investors may also form a partnership to do business in Albania. This is an unincorporated type of partnership which is formed, operated and liquidated according to the Albanian Civil Code. Partnership is also used as the main legal ground for forming unincorporated joint ventures.

### Registration of a company

For companies (apart from simple companies) to acquire legal personality they must

register with the Commercial Register which is being held by Tirana Court. A judge is appointed to consider the registration of the new company, by assessing the registration and various documents pertaining to its formation. Such documents include Articles of Association, Articles of Memoranda (also known as Articles of Foundation) and a Bank Certificate proving the payment of initial capital. Registration with the commercial register at the Tirana Court should be finalised within a legal term of eight days. However, in practice this procedure takes about two to three weeks.

The above registration exhausted, there are various other public bodies the company must register with to become operative:

- The labour office or labour inspectorate (the process takes one to two days);
- The city municipality where the company's registered office is located (one to two days);
- The tax authority of the city where the activity is carried out (five days); and
- The Chamber of Commerce of the city where the registered office is located (within one day).

### Proposed new procedures for business registration

The above process of registration is rather cumbersome in its formality and also very costly. The government is therefore proposing the establishment of a "one stop shop". This registration procedure is to be taken out of the jurisdiction of the courts and placed with an administrative body that is proposed to be named the National Registration Centre (NRC). The NRC will maintain the commercial register and also the register of non-profit organizations.

This one stop shop will be what its name suggests. Rather than having to register the company at all the above-mentioned authorities, the company can register just once at the new administrative body. This new model aims at reducing procedures; reducing time

through a principle of silent acceptance; and widening the concept of company object activities.

In addition, the draft law proposes several new concepts such as the applicant's right to reserve the name of the company, the right to have an inactive status, the obligation to register even partnerships, and electronic methods of recording. The NRC will be extended throughout Albania, with the establishment of local service windows operating near municipalities and communes. This is quite different from the current commercial register held by Tirana Court for all businesses operating in Albania, regardless of where their registered office is located.

In addition to the existing forms of registrable companies, simple companies (partnerships) will also be subject to registration. (This is a brand new concept in the Albanian legal framework – simple companies have been treated as companies without legal personality that reflect purely contractual obligations and relations, and therefore need not be registered.) Subjects seeking to establish as companies must register with the NRC within 15 days of their decision to do so; or in the case of further filings within 30 days of the moment the act for amending their status was signed. This provision fills a legal gap; however, this time period seems to be very short and onerous.

Under the proposed system, the accuracy of the data/documents submitted with the application for registration of the company will not be scrutinized. This means that applications for registration of companies and other subsequent filings (e.g. change of company name) may be realized freely, regardless of the accuracy of data/documents, and only the interested party may raise a claim against them once the filings are published. Presently the role of the judge in considering the applications for registrations often causes delays due to the considerations (sometimes subject to manipulation) he/she gives to the applications. This new procedure of not having to

discuss or consider the merits of the cases will allow for easier registration and for further filings. However, it could also result in an increase in litigation and court cases as a result of invalidities of the acts already filed. The draft law purports to impose administrative sanctions on the subject applying for the registration or further filings, if information and data relating to documents are proven to be inaccurate.

The commercial register will be held electronically, which is also a new regulation. But applications together with the enclosed documents will be archived in written form as well. The system of registration, treatment and processing of the information notified and filed with the register will be carried out through a computerized system. This too is a new practice put forth in the draft law.

The draft law is expected to provide detailed stipulation for the use of company names, forbidding the use of identical or similar names or those deemed contrary to public order and morals. It is also introduces a new concept of reserving the name of the company. Accordingly any person will be entitled to reserve at the commercial register, on his behalf or for a third party, one or more names for the purposes of registration.

Further, the draft law proposes simultaneous registration with the tax authorities, the social security and health insurance scheme and the labour inspectorate. For purposes of the initial registration, and issuance of the registration certificate, applicants also declare mandatory data according to the tax, social security and health insurance legal provisions. Applicants are given an identification number, namely the Subject Unique Identification Number, which identifies the applicant for registration with the commercial register, the local and national tax authorities, the social security and health insurance schemes, the labour inspectorate and any other statistical or identification matter.

The proposed model will allow for a much easier and more appealing procedure for the establishment of companies in Albania for foreign investors in particular; especially when the proposal for permitting electronic signatures for applications is accepted. Time will only tell now if the Albanian administrative system has the capacity to sustain these changes.

## Financial and corporate

### Recommended firms

#### Tier 1

Boga & Associates  
Kalo & Associates  
Loloçi & Associates  
Tonucci & Partners  
Wolf Theiss

Legal services are in demand in Albania as consolidation in the banking and insurance sectors steps up a gear. Following Sanpaolo IMI's acquisition of an 80% stake in Italo-Albanian Bank last year, the bank returned to Albania to take over the American Bank of Albania. And banks from Greece and France are also seeking an Albanian presence.

While legal opinion in the country points to further consolidation, the insurance sector is also cashing in on foreign investment. This year, insurers from Slovenia and Austria successfully bid for two Albanian insurance companies and the domestic market has responded with local mergers and acquisitions.

But takeovers in the financial services sector haven't monopolized the legal services market; infrastructure investment is also running high. Planning for the Trans Adriatic Pipeline was completed in March 2007 and construction is expected to start in 2008. The cost is expected to run to between €500 million and €700 million and the completed pipeline will be 513km long.

Money and expertise from abroad may also be useful in restoring Albania's crumbling road network. This year Bechtel, an American company, was engaged to build a motorway from Durres in the west of the country to Kosovo in Serbia.

### Boga & Associates

Name partner Genc Boga is the hub of Boga & Associates' practice. As one competitor commented: "He's well connected and is the outstanding lawyer at his firm. He's very visible and on the major transactions, he's there."

Over the past year, the firm has pulled in a steady stream of mandates. In July 2006 the team assisted MAD Television on its acquisition of shares from Calvin Television, providing the broadcaster with due diligence advice.

Italian bank Sanpaulo IMI uses Boga & Associates as its Albanian counsel, turning to the firm for representation during the tax advisory and due diligence processes preceding its acquisition of 80% of the shares in the American Bank of Albania. The transaction was worth \$157 million and was completed in June 2007. Sanpaulo has now merged with Banca Intesa.

The firm also showed its experience in the insurance sector. In the domestic market, Boga advised Sigal on tax due diligence matters relating to the sale of shares to Uniqa Group Austria. Sigal was incorporated into Uniqa in March 2007. And proving its international credentials, the firm was chosen by Greek insurance company Aspis Pronia to represent it during its €2.2 million acquisition of InterAlbanian. The firm provided due diligence services and drafted the share purchase agreement, the shareholders' agreement and the non-compete agreement.

### Leading lawyers

Genc Boga

### Kalo & Associates

Kalo & Associates has exploited its foreign links this year, acting for a number of overseas clients on a variety of cross-border deals. Përparim Kalo, described by one peer as "one of the longest-serving lawyers who is very good in the business", heads the team.

The firm conducted due diligence for the Agricultural Bank of Greece in its attempted acquisition of 80% of the shares in the American Bank of Albania and advised Société Générale on acquiring a controlling interest in Banka Popullore. The firm also advised the European Bank for Reconstruction and Development on a €5 million bank-to-bank lending programme.

The insurance sector has provided a lot of work for Kalo & Associates. The firm advised an Albanian insurer on its attempted purchase of a 75% stake in another local insurance company. And again proving its international reputation, the firm assisted a Slovenian insurer in its successful acquisition of a controlling interest in a leading domestic insurer.

Infrastructure investment is flooding into Albania and Kalo & Associates has taken advantage of the trend. The firm advised Bechtel on a €500 million motorway project, the largest contract in Albanian history, and, acting for the arrangers, Emporiki Bank on a syndicated loan to a construction group. Bankers Petroleum, a Canadian oil exploration group, also chose the firm to help it obtain €20 million from Raiffeisen Bank.

### Leading lawyers

Përparim Kalo

### Loloçi & Associates

Loloçi & Associates retains its place in tier one this year despite one commentator's comment that the firm "is less visible in transactions this year, and the size of deal and Loloçi's involvement in transactions is limited". But the firm's

cross-border reputation is such that a quiet period is unlikely to damage its position.

This absence from the market may reflect the firm's recent focus on moving to new offices. The team has found time to advise on a few deals, including a projects on behalf of Canadian and Italian investors.

#### Leading lawyers

Krenar Loloçi

### **Tonucci & Partners**

Tonucci & Partners has had a solid past year, slowly building a good reputation in the market. The Italian firm has been seeking a more international clientele this year, choosing a more Anglo-friendly name as it seeks to maximize its alliance with Mayer Brown Rowe & Maw.

In 2006 the firm advised Export-Import Bank of the United States regarding a €47.6 million deal to modernize Albanian Air Space Management. And the firm continues to advise the Albanian government on privatizations in the energy and telecommunications sectors.

Past clients include American Bank of Albania, Raiffeisen Bank and the European Bank for Reconstruction and Development.

#### Leading lawyers

Erinda Ballanca

Gianluca Carlesso

### **Wolf Theiss**

Austrian firm Wolf Theiss frequently wins big Albanian and regional mandates, proving it is not reliant on its Vienna office for deals. However, one client commented on the proportion of work being referred back to Austria for reviewing, which pushes up the price of services. But another praised the firm, saying: "I was very happy when working with them because they provided legal services of a high quality that was up to international standards." The addition of three lawyers from Deloitte in February was a further boost to the team's credentials.

Ex-Deloitte partner Sokol Nako represented the shareholders of Banka Popullore, a domestic bank with a 5% market share, selling their majority stake to Société Générale. The firm conducted due diligence and drafted the share purchase agreement. Nako also advised Albanian Mobile Communication, the country's leading mobile phone operator, on its privatization.

Meanwhile Markus Heidinger has been busy in the insurance sector, advising Unqa on its entry into the Albanian market in March 2007. Enyal Shuke, described by one client as "good at her job", also worked on this deal.

Shuke is part of the team assisting the sponsors of the Trans Adriatic Pipeline on Albanian law issues including construction, financing and operation. When completed, the pipeline will run from Bulgaria to Italy via Greece and Albania, and will be one of the largest projects ever undertaken in the country.

#### Leading lawyers

Enyal Shuke

Dieter Spranz