

# World Universities Comparative Law Project

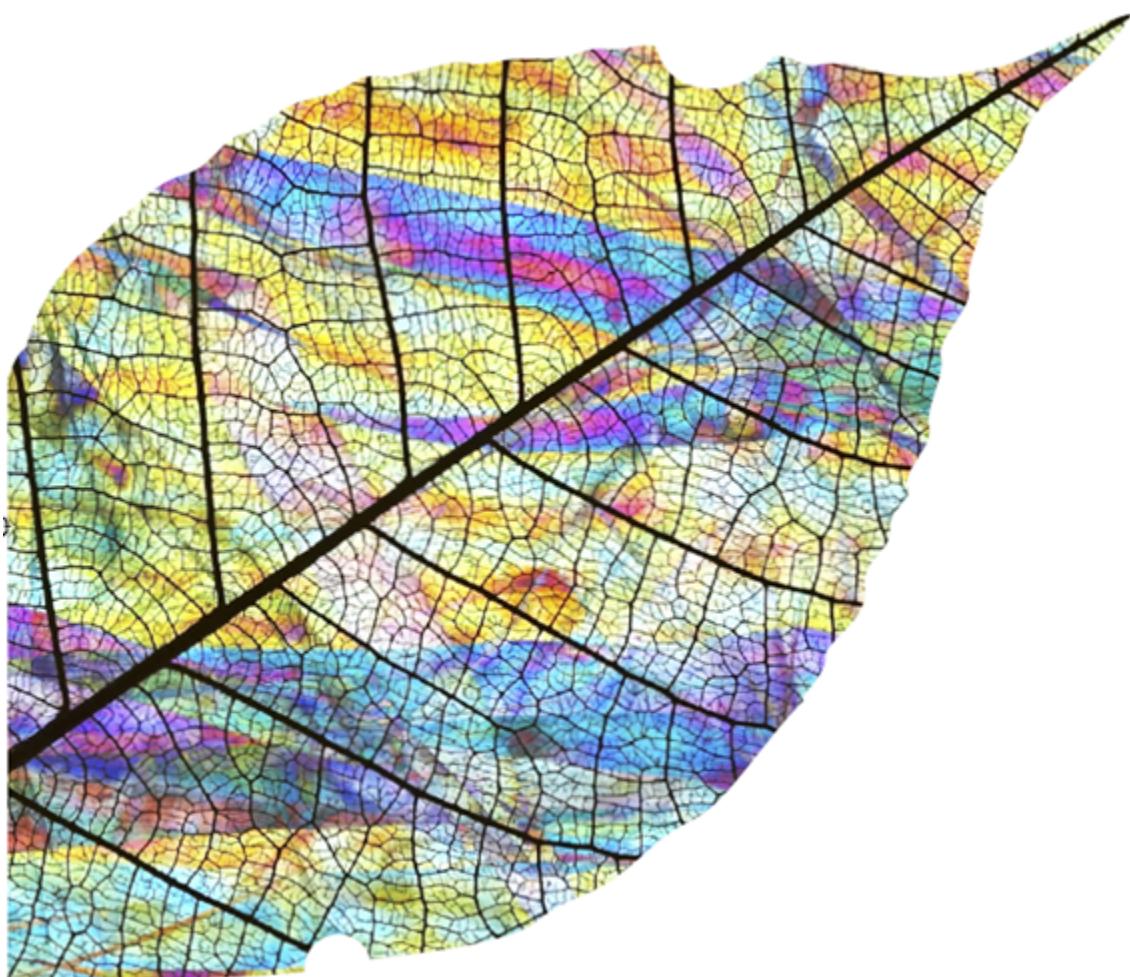
## Legal rating of Albania

carried out by students at University of New York Tirana,  
European University of Tirana and Luarasi University

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A production of the Allen & Overy Global Law Intelligence Unit

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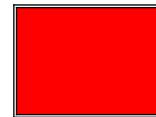
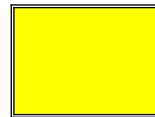
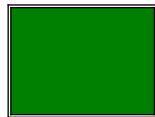
October 2014

# **World Universities Comparative Law Project**

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# World Universities Comparative Law Project

The World Universities Comparative Law Project is a set of legal ratings of selected jurisdictions in the world carried out by students at leading universities in the relevant jurisdictions. This legal rating of Albania was carried out by students at University of New York Tirana, European University of Tirana and Luarasi University.

The members of the Practitioner Expert Panel with whom the students could discuss the questions in the survey were:

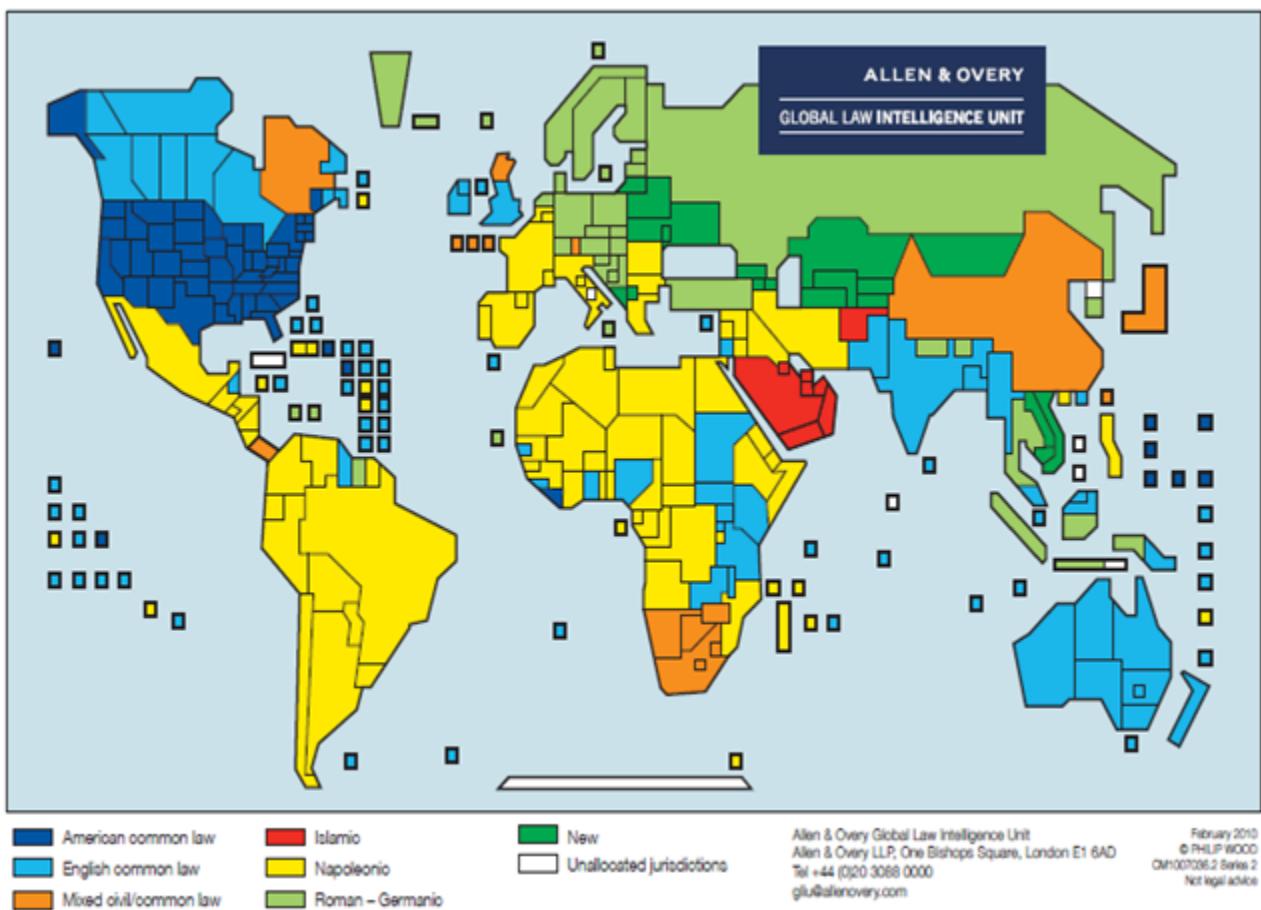
**Perparim Kalo**, Managing Partner of KALO & ASSOCIATES Law Firm (Albania and Kosovo)

**Aigest Milo**, Associate at KALO & ASSOCIATES, Tax and Banking Department

The Allen & Overy Global Law Intelligence Unit produced this survey and is most grateful to the above for the work they did in bringing the survey to fruition.

All of those involved congratulate the students who carried out the work.

## Families of law



## Foreword

We are delighted to present this legal risk rating of Albania, which is one of a series of similar risk ratings carried out by students around the world.

The aim is to produce a survey of the wholesale financial and corporate law in Albania looking at how Albania fits in with the rest of the world.

We hope that you will find the colour-coded methodology and the technique of selecting symbolic and resonant legal indicators to be an expressive and creative way of signalling some of the main contours of wholesale financial, corporate and related law in Albania. We certainly find the result to be most fascinating and helpful and we hope that the reader will agree.

We are most grateful to the four excellent universities in Albania for being willing to participate in this project. In particular I am warmly appreciative of the opportunity I have had to discuss this legal risk rating with the students concerned. I would like to pay a special tribute to their intellectual flair and dedication.

**Mr Përparim Kalo** (LLM, Suffolk University, Boston, USA), Founder and Managing Partner of KALO & ASSOCIATES Law Firm (Albania and Kosovo) and **Mr Aigest Milo** (LLM, Paris Ouest Nanterre La Defense, Paris, France), Associate at KALO & ASSOCIATE, Tax and Banking Department, who managed and guided this project, made a special contribution to the successful achievement of the survey.

Philip R Wood QC (Hon), BA (Cape Town), MA (Oxon), LLD (Lund, Hon)

Head, Allen & Overy Global Law Intelligence Unit

Special Global Counsel

Visiting Professor in International Financial Law, University of Oxford

Yorke Distinguished Visiting Fellow, University of Cambridge

# Description of the legal rating method

## Introduction

This paper assesses aspects of the law in Albania with a view to rating the law in the relevant areas. The survey is concerned primarily with wholesale financial and corporate law and transactions, not with retail law.

Legal risk has increased globally because of the enormous growth of law; because of its intensity; because many businesses are global but the law is national; because nearly all countries are now part of the world economy; and because the law is considered to play a very significant role in the fortunes of our societies. Liabilities can be very large and reputational losses severe.

The survey was carried out by students at University of New York Tirana, European University of Tirana, and Luarasi University. The survey was designed by the Allen & Overy Global Law Intelligence Unit.

The students were requested to express their views freely and in their own way. The views expressed are their views, not necessarily those of the Global Law Intelligence Unit or the members of Allen & Overy.

## Methodology

The survey uses colour-coding as follows:

True		False		Can't say

**Blue** generally means that the law does not intervene and the parties are free, i.e. the law is liberal and open.

**Red** generally means that there is intense legal intervention, usually in the form of a prohibition.

**Green** and **yellow** are in-between.

The purpose of this colour-coding is to synthesise and distil information in a dramatic way, rather than a legal treatise. The colours correspond to a rating of 1, 2, 3 or 4, or A, B, C or D.

The cross in the relevant box signifies the view of the students carrying out this assessment of the position of Albania. This is followed by a brief comment, e.g. pointing out qualifications or expanding the point. These comments were written by the students.

The colour-coding does not usually express a view about what is good or bad. Whether the law should intervene in a particular arena is a matter of opinion. The scale is from low legal intervention to intense legal intervention or control. This is not a policy or value judgment as to whether or not the law should or should not intervene. Jurisdictions often disagree on whether the law should intervene and how much. So one of the main purposes of this survey is to endeavour to identify some of the points of difference so as to promote fruitful debate.

## Black letter law and how it is applied

This survey measures two aspects of law. The first is black letter law, i.e. what the law says or the written law or law in the books.

The second measure is how the law is applied in practice, regardless of what it says. Thus, the law of Congo Kinshasa and Belgium has similar roots but its application is different.

Although there is a continuum, these two measures have to be kept separate. Otherwise we may end up with just a blur or noise or some bland platitude, e.g. that the law depends upon GDP per capita.

In fact, only the last two questions deal with legal infrastructure and how the law is applied. All of the others deal with the written law, without regard to enforcement or application.

## Key indicators

The survey uses key indicators to carry out the assessment. It is not feasible to measure all the laws or even a tiny fraction of them. The law of most jurisdictions is vast and fills whole libraries.

The key indicators are intended to be symptomatic or symbolic of the general approach of the jurisdiction. To qualify as useful, the indicator must usually be (1) important in economic terms, (2) representative or symbolic and (3) measurable. In addition, the indicators seek to measure topics where jurisdictions are in conflict. There is less need for measuring topics where everybody agrees.

An important question is whether this method is useful or not, and, if it is, whether the indicators are relevant.

## Legal families of the world

Most of the 320 jurisdictions in the world, spread just under 200 sovereign states, can be grouped into legal families. The three most important of these are: (1) the common law group, originally championed by England; (2) the Napoleonic group, originally championed by France; and (3) the Roman-Germanic group, originally championed by Germany, with major contributions from other countries.

The balance of jurisdictions is made up of mixed, Islamic, new and unallocated jurisdictions.

Many aspects of private law are determined primarily by the family group, but this is not true of regulatory or economic law.

## Excluded topics

This survey does not cover:

- transactions involving individuals
- personal law, such as family law or succession
- competition or antitrust law
- intellectual property
- auditing
- general taxation
- macroeconomic conditions, such as inflation, government debt, credit rating or savings rates
- human development, such as education, public health or life expectancy
- infrastructure, such as roads, ports, water supply, electricity supply
- personal security, such as crime rates, civil disorder or terrorism.

## Banking and finance

### Introduction

Banks and bondholders (typically banks, but also insurance companies, pension funds and mutual funds) provide credit or capital. Their main risk is the insolvency of the debtor and therefore the key indicators intended to measure whether the law supports those habitual creditors or debtors, such as large corporations

as borrowers, when it matters, i.e. on bankruptcy. This is when commercial law is at its most ruthless in deciding who survives and who drowns.

This debtor or creditor decision is implemented mainly through the bankruptcy ladder of priorities. A feature of common law systems is the presence of super-priority creditors who are paid before anyone else – creditors with a set-off or a security interest and beneficiaries under a trust. For example, if a bank has universal security over all the assets of a company, the bank is paid before all other creditors, including employees and trade creditors. This regime therefore protects significant creditors who such as banks.

Jurisdictions based on the English common law model give super-priority to all three claimants. Traditional Napoleonic jurisdictions typically do not allow insolvency set-off, have narrower security interests and do not recognise the trust. Their bankruptcy ladder favours greater equality of creditors. Most traditional Roman-Germanic jurisdictions are in-between. They allow insolvency set-off and have quite wide security but most do not recognise the trust. There are wide exceptions to these generalisations.

### **Insolvency set-off**

**Generally** if set-off of mutual debts is allowed on insolvency, the creditor is paid. If it is not allowed, then effectively the creditor is not paid. Very large amounts are involved in markets for foreign exchange, securities, derivatives, commodities and the like, so that the question of whether exposures should be gross or net is a matter of policy as to who the law should protect.

**Q1** In Albania, creditors can set off mutual debts on the insolvency of a debtor if they are incurred before notice of the insolvency.

True	False	Can't say
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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#### **Comment:**

According to the Albanian law no. 8901, dated 23.05.2002 “On Bankruptcy”, as amended (“Bankruptcy Law”) article 79, in case that, by law or agreement, at the time of initiation of bankruptcy proceedings the bankruptcy creditor has a right to claim compensation on mutual claims, this right is not affected by the bankruptcy proceedings.

However, article 80 of the same provides exceptions which do not allow set-off in the following situations:

- a) the obligations of a bankruptcy creditor to the bankruptcy mass were borne just after the opening of bankruptcy proceedings;
- b) the right of a bankruptcy creditor to set-off has been transferred from another creditor only after the initiation of bankruptcy proceedings;
- c) a bankruptcy creditor has obtained the right to set-off through an action that should be avoided;
- d) a creditor whose claim should be met from the unencumbered property of the debtor has an obligation toward the bankruptcy mass.

**As a conclusion it may be stated that the right of a creditor to set-off its claim against the debt such creditors owe to the debtor is limited during the insolvency proceedings.**

## **Security interests**

**Generally** Security interests give priority to the creditor with security – typically banks – who are the main providers of credit in most countries.

In traditional common law jurisdictions, a company can create universal security over all its present and future assets to secure all present and future debt owed to a bank. Once registered, the security is valid against all creditors, except that the floating collateral ranks after preferred creditors – typically wages and taxes. The security can be granted to a trustee for creditors. On a default there are no mandatory grace periods and the creditor can enforce out-of-court by appointing a receiver (a type of possessory manager) or by private sale. But in some common law jurisdictions there are freezes on enforcement in the event of a judicial rescue of the debtor. Also, in some of these jurisdictions there are stamp duties.

On the other hand, in many traditional Napoleonic jurisdictions, universal security is not possible, and neither is security for all future debt. There is no trustee to hold the security. On enforcement, there are grace periods and no receiver. Sale is through the court and a public auction. Preferential creditors rank ahead. Some countries have a freeze on enforcement under a judicial rescue statute.

The main policy issue is therefore whether security should be encouraged or whether the law should intervene to impose greater equality.

The main tests are (1) scope of eligible assets, (2) debt secured, (3) trustee, (4) priority over preferred creditors, (5) private enforcement and receiver, (6) no rescue freezes and (7) low costs.

**Q2** In Albania, the law offers a security interest which is highly protective of the secured creditor.

True	False	Can't say
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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**Comment:**

**In Albania, setting a security interest over the owned assets is permitted. According to Article 35 of the Bankruptcy Law, the secured creditors are protected during a bankruptcy procedure. Secured creditors are considered as preferred creditors and are satisfied first of all.**

**Also, according to Articles 45 and 133 of the Bankruptcy Law, secured creditors during the Bankruptcy procedures have the right to execute the securities outside of the bankruptcy proceedings.**

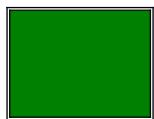
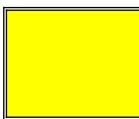
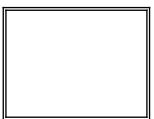
## **Universal trusts**

Under a trust, one person, called the trustee, holds title to the assets of another person, called the beneficiary, on terms that, if the trustee becomes insolvent, the assets go to the beneficiary and are not used to pay the trustee's private creditors. The assets are immune and therefore taken away from the debtor-trustee's bankrupt estate.

The main examples of trusts are custodianship of securities, pension funds, securities settlement systems and trustees of security for bondholders and syndicate banks. The amounts involved are enormous.

All jurisdictions have an effective trust of goods (called bailment or deposit). The common law group has a universal trust for all other assets (land and intangible property). Most members of the civil code group do not have a universal trust, subject to wide exceptions, especially for custodianship of securities. A few countries in this group have a universal trust by statute, e.g. France and China.

## Q3 Albania has a universal trust for all assets.

True	False	Can't say
		
		

### Comment:

In Albania, there are no laws protecting the investments placed with banks by way of custodianship.

### Other indicators

Other bankruptcy indicators not measured here include freezes on the termination of contracts, fraudulent preferences, the priority of rescue new money, the presence and intensity of corporate rescue proceedings and recognition of foreign insolvencies. Director liability for deepening the insolvency is dealt with below.

Other financial law topics not covered in this survey include the regulatory regime, especially capital, liquidity, authorisation of financial business, conduct of business, control of prospectuses, control of market abuse and frauds, such as insider dealing, and the insolvency regime for banks. Financial regulation is a very large field.

## Corporations

### Introduction

Financial law involves competition between debtors and creditors so that jurisdictions can be positioned on a straight line. Corporate law however involves three main competitors: (1) shareholders, (2) creditors; and (3) managers – a triangle. If the key indicators show that a jurisdiction strongly favours one or other of the parties at the points of the triangle, whether creditors, shareholders or management, then one can begin to build up a picture of the choices which the jurisdiction habitually makes in resolving the conflicting interests of the parties.

For example, a very tough prohibition on financial assistance (which is protective of creditors against shareholders) tends also to support an attitude to other principles of the maintenance of capital or to support the proposition that mergers by fusion are difficult (because they can prejudice creditors). This would be true of the English regime in 1948. Similarly, a view which easily imposes personal liability on directors for deepening an insolvency might also show a legal approach which is not supportive of the veil of incorporation in other areas, e.g. shareholder liability and substantive consolidation on insolvency.

The two extreme corporate law models are the Delaware model and the traditional English model, exemplified by the English Companies Act 1948 (now superseded). Napoleonic and Roman-Germanic models are in-between to varying degrees.

The Delaware regime is highly protective of management in the key areas. The traditional English regime favours creditors on most of the key contests and, where creditor interests are not involved, it tends to favour shareholders as opposed to managers.

### Director liability for deepening an insolvency

**Generally** If the law imposes personal liability on directors for deepening an insolvency, e.g. carrying on business and incurring debts where there is no reasonable prospect of paying them, then the regime is hostile to the interests of management. The legal risks of management are increased.

There are basically four regimes internationally: (1) directors are hardly ever liable for deepening the insolvency, e.g. Delaware and most U.S. jurisdictions, plus some traditional English jurisdictions which only punish fraudulent trading; (2) directors are liable for serious negligence (England, Singapore, Australia, Ireland); (3) directors are liable for mere business misjudgements deepening the insolvency (France); and (4) directors are liable if they fail to file for an insolvency proceeding after the company becomes insolvent (France, Germany and others).

**Q4** In Albania, the law rarely imposes personal liability on directors for deepening the insolvency and there is no rule that the directors must file for insolvency when the company is insolvent.

True	False	Can't say
<input type="checkbox"/>		
<input type="checkbox"/>		
<input type="checkbox"/>		
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**Comment:**

**Pursuant to article 16 of the Bankruptcy Law, the directors of the company should file the request for initiation of the bankruptcy procedures within 21 days from the date when the company becomes insolvent. The directors are personally liable towards the creditors in case of financial losses of the latter due to the failure to submit the request within 21 days.**

### Financial assistance to buy own shares

**Generally** Many jurisdictions prohibit a company from giving financial assistance to buy its own shares. The typical example would be where a bidder finances the acquisition of a target company by a loan and after the takeover arranges for the target to guarantee the loan and charge its assets to secure the guarantee. The commercial effect is similar to the repayment of the share capital of the target before its creditors are paid. Shareholders should be subordinated to creditors.

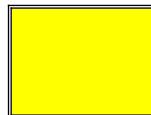
The prohibition therefore favours creditors against shareholders of the target.

The Delaware regime does not prohibit financial assistance. The traditional English regime has a wide prohibition (not England any more). Most Roman-Germanic regimes are against it, with Napoleonic regimes hesitant. The EU has a prohibition against financial assistance by public companies. Some countries allow financial assistance by private companies if solvency is established.

A contravening transaction is usually a criminal offence and void.

## **Q5** Albania permits a company to grant financial assistance for the purchase of its own shares.

True



False



Can't say

**Comment:**

According to Albanian law, it is not permitted for the company itself to grant financial assistance for the purchase of its own shares. Only the shareholders of the company can grant financial assistance in order to purchase the shares of the company.

Law no. 9901, dated 14.04.2008 “On entrepreneurs and commercial companies” does not allow the company itself to interfere with its own capital.

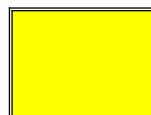
### **Public takeover regime**

Generally A public takeover regime which is free and open tends to favour managers who can guard against takeovers by poison pills and the like and who have relative freedom to acquire other companies. An example is the Delaware regime. A restrictive regime along the lines of the British system tends to favour shareholders.

The chief features of a restrictive regime are: (1) the bidder must make a mandatory bid in cash when a threshold of shares in the target is reached, e.g. 30%; (2) the bidder must pay the same price to all shareholders (sharing the control premium); (3) no partial bids (getting control on the cheap); (4) proof of certain funds to implement the offer; (5) compulsory acquisition of dissenting minorities (squeeze-out); (6) fixed timetable; (7) no ability of the managers to frustrate a bid by poison pills without shareholder approval; and (8) control of the content of circulars, especially forecasts.

## **Q6** Apart from exchange controls and restrictions on foreign direct investments, the public takeover regime in Albania is open and has few restrictions.

True



False



Can't say

**Comment:**

The public takeover in Albania is not commonly used, because of a lack of public companies. The offer for the takeover of a public company before being published must be approved by the Albanian Financial Supervisory Authority. However, for the time being there are no practices in Albania regarding public takeovers.

## Other indicators

Other important indicators are corporate governance (difficult to measure), free ability to merge companies by fusion, the one-share-one-vote rule, and, to a lesser extent, minority protections. Other indicators relate to quick and cheap incorporation, the *ultra vires* rule, maintenance of capital, no par value shares, shareholder liability, substantive consolidation on insolvency and disclosure. These are not measured here.

## Commercial contracts

### Introduction

Contract is at the heart of commercial life, and is everywhere. In fact, the main tenets of contract law across the main families of jurisdictions are consistent – it is in the fields of insolvency and property law where the main differences emerge. It is true that there are contract differences, for example, between writing requirements, open offers, the time of acceptance and specific performance, but often these differences are of lesser significance in practice in the business field.

The key indicators the survey chooses all tend to symbolise whether the approach of the jurisdiction to contract is hard or soft. If the approach is hard, then the jurisdiction tends to support predictability in business contracts so that certainty and freedom of contract are valued more than mitigating the risk of occasionally abusive behaviour and unfair results, especially for weaker parties. A soft jurisdiction tends to give greater primacy to notions of good faith and the like.

### Exclusion of contract formation

**Generally** Commercial parties often wish to be able to negotiate heads of terms commercially without being bound by a contract. In some jurisdictions, the courts are ready to infer that the parties are bound if the terms are sufficiently clear, even if they have said expressly that they do not intend to be bound.

**Q7** In Albania, parties are not bound to heads of terms if they expressly state that the terms are "subject to contract" or some such clear phrase.

True	False	Can't say
		
		

#### Comment:

**The main element of contract is the contractual freedom, so the contract is based on the free will of the parties. Typical contracts are contracts at which the parties are bound to heads of terms and in cases when are not mentioned, the terms are based on the provisions of the Civil Code.**

**However, the parties may agree that the effectiveness of the contract shall be subject to subsequent conditions. In case the contract provides that the terms shall be "subject to contract" or similar wording, the parties are not bound to heads of terms.**

### Termination clauses

**Generally** Many contracts, especially loan contracts, leases of goods and long-term sales contracts, contain events of default on the occurrence of which one party can terminate the contract. Jurisdictions which uphold freedom of contract and the literal interpretation of contract give effect to these clauses and do not rewrite

the contract according to the court's notions of what is fair. Other jurisdictions prefer good faith. We ignore consumer contracts – where there may be consumer protections.

**Q8** In Albania, a termination clause in a loan or sale of goods contract between sophisticated companies (not individuals) providing for the termination of the contract immediately on certain events is usually upheld, even if the event concerned is relatively trivial.

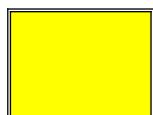
True



False



Can't say



**Comment:**

**Article 702 of the Civil Code provides that a contract can be terminated immediately even for trivial events if such a clause is provided in the contract. In the article it mainly is provided that in case the conditions of the contract were not respected by one of the parties in the contract the other party can terminate immediately such contract. However, in practice, contracts are not terminated in case of trivial events.**

### Exclusion clauses

**Generally** Contracting parties often seek to exclude their liability for defective performance of the contract. So the issue is whether these exclusion clauses are generally upheld if they are clear and whether freedom of contract is allowed in this area.

**Q9** In Albania, exclusions of liability in most commercial contracts between sophisticated companies, such as a sale of goods contract, are generally upheld if they are clear.

True



False



Can't say



**Comment:**

**In case that such contracts provide clear exclusion of liability clauses, such clauses are upheld by sophisticated companies. However, such clauses should not be upheld if they are in violation of the mandatory provisions of the Albanian legislation, such as the mandatory provisions of the Albanian Civil Code.**

## Other indicators

Other contract indicators not assessed here include writing formalities, open offers, mistake, frustration, damages, penalties, specific performance and whether notice of assignment of the contract to the debtor is mandatory if the assignment is to be valid on the insolvency of the assignor.

## Litigation

### Introduction

The first three key indicators of governing law, jurisdiction and arbitration tend to show whether the jurisdiction does or does not place a high value on international comity and freedom of contract as opposed to national primacy.

The indicator on class actions tends to show whether or not the jurisdiction's litigation system is orientated towards plaintiffs, especially mass plaintiffs in product liability cases. This indicator may also show the attitude of the jurisdiction to the protection of individual parties as against business parties, both in terms of the incidence of costs and enforcement.

### Governing law clauses

**Generally** Most countries apply a foreign governing law of a contract even if there is no connection between the contract and the jurisdiction. If the courts do not uphold the governing law, the effect is that the contract obligations may be different.

**Q10** The Albanian courts will apply an express choice of a foreign law in a loan or sale of goods contract between sophisticated companies, even though the contract has no connection with the foreign jurisdiction, but subject to Albanian public policy and mandatory statutes.

True	False	Can't say
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

#### Comment:

Pursuant to Albanian legislation, in case the parties have decided the contract should be governed by a foreign law, even though the contract has no connection with the foreign jurisdiction, and subject to Albanian public policy and mandatory provisions, the courts must apply such express choice of foreign law.

### Foreign jurisdiction clauses

**Generally** Many contracts confer jurisdiction, sometimes exclusive, on the courts of a foreign jurisdiction, usually accompanied by a choice of foreign governing law.

**Q11** The Albanian courts will generally uphold a clear submission in a loan or sale of goods contract between sophisticated companies to the exclusive jurisdiction

of the courts of a foreign country, even if there is no connection between that country and the contract.

True	False	Can't say
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Comment:**

The Albanian courts will generally uphold a clear submission in a contract between sophisticated companies to the exclusive jurisdiction of the courts of a foreign country, even if there is no connection between that country and the contract. However, pursuant to International Private Law, the Albanian courts have exclusive jurisdiction regarding some matters (e.g. real rights when the immovable property is located in Albania).

### Arbitration recognition

**Generally** Contracting parties, especially in trading and construction contracts, but less so in loan contracts, wish to submit disputes to arbitration, sometimes in a foreign country. The resulting award is often enforceable locally under the New York Arbitration Convention of 1958, to which most countries have adhered.

**Q12** In Albania, the courts allow sophisticated contracting parties to submit contract disputes to a foreign arbitral tribunal to the exclusion of the Albanian courts.

True	False	Can't say
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Comment:**

In Albania, according to Article 419 of the Civil Procedural Code parties can add in the contract a clause that permits them to choose a foreign arbitral tribunal. However contract disputes may not be submitted to a foreign arbitral tribunal in the case that Albanian court have exclusive jurisdiction pursuant to International Private Law.

### Class actions

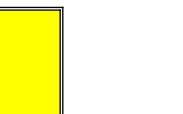
**Generally** In some countries, such as the United States, a plaintiff can be authorised by the court to sue on behalf of all claimants who are similarly situated. Claimants have to opt out or they are bound.

**Q13** In Albania, class actions where the class is bound if they do not opt out are generally not allowed.

True



False



Can't say



**Comment:**

**The Albanian legal system does not provide for class actions.**

### Other indicators

Other indicators not covered by this survey include contingent costs, loser pays the costs of the winner, prejudgment freezes or arrests, appeals, scope of disclosure (discovery of documents), efficacy of waivers of sovereign immunity and the enforceability of foreign judgments.

## Real property

### Ownership of land

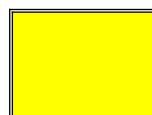
**Generally** In most countries, nationals can own land absolutely and are not restricted simply to leases for a limited term or simple rights of occupancy. However, in some jurisdictions, absolute ownership of land is not available to nationals or local corporations. If this is so, then the jurisdiction would be coloured green if citizens are able to lease land for a very long term without material restrictions, such as 999 years, and if they can also mortgage or sell the land or give it away or bequeath it under their will without official consent because the ownership is a close proximate of absolute ownership. If on the other hand citizens are entitled only to a lease of, say, 70 years or less, or to similar rights of occupancy, and if there are limitations on dealing with the land without official consent, such as mortgaging, selling or bequeathing it, then the jurisdiction would be red.

**Q14** In Albania, nationals and local corporations are entitled to own land absolutely.

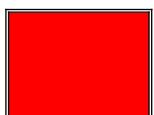
True



False



Can't say



**Comment:**

**Yes, nationals and local corporations are entitled to own land absolutely in Albania.**

## Security of land title and land registers

**Generally** Many jurisdictions improve the security of title to land by a registration system which, although not necessarily state-guaranteed, has high reliability. An example is the Torrens system, developed in Australia and used in many other countries, e.g. Canada and England.

Most countries in the civil code groups do not have a title register but instead require documents concerning land to be notarised and filed at the registry so that they can be searched. The United States does not generally have title registers for land although there may be mortgage registers. They rely on title registration companies which provide title insurance.

**Q15** Most land in Albania is registered in a land register which records most major interests in land, e.g. ownership, mortgages and longer-term leases.

True



False



Can't say



**Comment:**

According to articles 83 and 192 of Civil Code, immovable properties, including land in Albania are registered in a real estate register. The same provisions exist even in law no. 33/2012 "On the registration of immovable properties".

## Land development restrictions

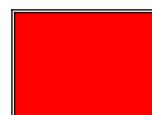
**Generally** Many countries restrict development and the change of use of land and require permits to be obtained for any development or change of use.

**Q16** In Albania, apart from environmental controls (dealt with later), the control of commercial development and the change of use of land is very light and, where required, permits are quick and cheap to obtain.

True



False



Can't say



**Comment:**

In Albania, the control of commercial development and the change of use of land is not very light and requires the fulfilment of various procedures and submission of various documents with different public authorities. All the procedures related to the commercial development and changes of use of land are provided in law no. 10119/2009 "On the territorial planning".

## Other indicators

Other indicators not surveyed include transfer costs, stamp duties and lessee protections.

## Employment law

**Generally** The indicator here is whether it is easy or hard to hire and fire employees. The measures include high minimum wages, maximum hours, minimum holidays, maternity rights, equal pay for equal work (non-discrimination) and severance costs.

**Q17** In Albania, there are few controls on hiring and firing employees or on the terms of employment.

True			False		Can't say
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

**Comment:**

The rules regulating the employment relationship are set out in the Labour Code. Pursuant to the Labour Code an employment agreement is mandatory to be entered between the employer and the employee and such employee should be declared with the tax and labour authorities. From the legal point of view, in order to fire an employee a procedure must be followed (prior notification of the employee, meeting with him/her, etc.). There is an extended court practice regarding employment issues and in practice the decisions of the courts are generally in favour of the employees.

## Environmental restrictions

**Q18** In Albania, the rules governing the environment and liability for clean-up are very light and relaxed.

True			False		Can't say
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

**Comment:**

The Albanian Environment Law contains several provisions regarding the liability for clean-up of private subjects. However such provisions are not fully implemented and in practice the liability for clean-up is not fulfilled.

## Openness to foreign business

**Generally** These indicators measure the degree to which the country is open to foreign businesses. The indicators are quite generic and therefore subjective.

## Foreign direct investment

**Q19** In Albania, foreigners may freely own and control local companies outside protected industries, such as media, banks and defence.

True	False	Can't say
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Comment:**

Pursuant to the applicable Albanian legislation, foreigners may freely control local companies.

## Exchange controls

**Q20** In Albania, there are no exchange controls. Businesses may therefore have foreign bank deposit accounts in foreign currency, borrow in foreign currency and repatriate profits to foreign shareholders in foreign currency.

True	Partly True	False	Can't say
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Comment:**

In Albania, there is exchange control regime which is regulated by Bank of Albania Regulation no. 70, dated 30.09.2009 “On foreign exchange activities”. However pursuant to such Regulation transfer of capital to and from Albania may be done freely subject to the submission of certain documents to the banks. Please note that companies may have foreign deposit accounts in foreign currency, borrow in foreign currency and repatriate profits to foreign shareholders in foreign currency freely.

## Alien ownership of land

**Q21** In Albania, foreign-controlled companies have the same rights as nationals or residents to own or lease land without a permit.

True	False	Can't say
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Comment:**

Based on the Albanian Law foreign-controlled companies have the same rights as nationals or residents considering that they are also qualified as Albanian resident companies. Therefore they may own or lease land freely.

## Application of the law

**Generally** These indicators deal with the application of the law, as opposed to what the law actually says. They are bound to be generic and subjective, a matter of impression.

**Q22** In Albania, the higher courts usually treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

True	False	Can't say
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Comment:**

From a legal point of view big businesses are treated as fairly as individuals by higher courts and local interests are not favoured over foreigners. The above is applicable also from the court practice.

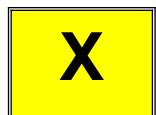
## Costs and delays of commercial litigation

**Q23** The costs and delays of commercial litigation in the higher courts in Albania are not considered materially greater than in other comparable countries.

True



False



Can't say



**Comment:**

Compared with the countries of the region, the costs and delays of commercial litigation in Albania are not materially greater. Recent developments in the Albanian judiciary system (especially the Administrative Courts) have ameliorated the time term for the review of the cases by the Courts.

## Overall ranking

This overall ranking is achieved by a survey of all the rankings as shown in this table:

	<b>Question</b>	<b>Rating</b>
1.	Insolvency set-off	Blue
2.	Security interest	Blue
3.	Universal trusts	Red
4.	Director liability for deepening insolvency	Red
5.	Financial assistance to buy own shares	Red
6.	Public takeover regime	Blue
7.	Exclusion of contract formation	Green
8.	Termination clauses	Blue
9.	Exclusion clauses	Blue
10.	Governing law clauses	Blue
11.	Foreign jurisdiction clauses	Green
12.	Arbitration recognition	Blue
13.	Class action	Blue
14.	Ownership of land	Blue
15.	Security of land title and land registers	Blue
16.	Land development restrictions	Yellow
17.	Employment law	Red
18.	Environmental restrictions	Green
19.	Foreign direct investment	Blue
20.	Exchange controls	Green
21.	Alien ownership of land	Blue
22.	Court treatment of foreign big business	Blue
23.	Costs and delays of commercial litigation	Yellow

True	False	Can't say
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## Commentary and suggestions for change

Albania is located by the side of Adriatic Sea and Peninsula of South East Europe. Albania's capital city is Tirana. Current Census indicated that the population of Albania is 3.5 million.

Albania has adopted a continental civil law system, which was introduced during the ruling of King ZOG. In the High Court of Albania a special law that prevails is "Kanuni i Lek Dukagjinit" (a customary code).

Albania recognises three religions: Orthodox, Muslim and Catholic, which have been living peacefully together due to Albanians' religious tolerance.

Albania declared its independence from the Ottoman Empire on 28 November 2012 and was recognised as such by the Conference of Ambassadors in London.

During the Second World War, Albania, under the leadership of the Communist Party, affiliated itself with the international antifascist coalition. After the war, the Communist Party seized power and ruled Albania until 1991, which marked the end of the sole-party communist ruling in Albania.

Albania is transforming its former centralised economy into an open-market one and consolidating its democracy. Albania is now in the process of EU integration and is expecting an invitation to negotiate the terms of full adherence to the European Union.

## Legal System

Albania is a Parliamentary Republic and sovereignty belongs to the people. The Constitution is the supreme law of the land.

The country is governed by an executive branch, based on principles of separation of executive, legislative and judicial powers and check-and-balance.

## Legislation

All legal acts must be in compliance with the Constitution. International treaties and conventions ratified by the Parliament are superior to domestic legislation. A law, after passing through the Parliament, is promulgated by the President of the Republic, and enters into force 15 days after its publication in the Official Gazette.

International agreements ratified by the Republic of Albania rank senior to domestic laws and courts interpret discrepancies in favour of international agreements

Albanian has ratified many international conventions some of which for the membership to international organisations, some for protection of foreign investments and some others with the right to international arbitration and recognition of arbitral awards.

The laws of the Albania are in the process of approximating to EU standards. In the financial sector laws cover many sophisticated areas like secured transactions, concessions, financial leasing, factoring, etc.

Albanian laws are increasingly providing comfort to foreign investments by improving the sanctioning of protection of foreign investments, especially property and intellectual property rights.

## **The Judiciary**

Justice is rendered by the courts of first instance, appeal courts and the Supreme Court. The Supreme Court is the final authority to review the lawfulness and procedural aspects of cases, and also examines cases regarding jurisdiction or competence of Albanian courts.

## **The Constitutional Court**

The Constitutional Court was established by law in 1992 as an independent court, outside the judiciary, to review constitutionality of laws and subsidiary legislation and also court judgments. The Court's decisions are final and binding.

## **High Council of Justice**

This authority is headed by the President and deals with appointment/dismissal of judges of first and second instance courts and prosecutors, and also with their promotion.

## **Bar Association**

The Bar was established in 1990 and is organised in city chambers. Membership is restricted to persons with a law degree with at least three years of experience as lawyers. The Minister of Justice may grant exceptions from these requirements.

## **Bailiff's Office**

The Bailiff's Service is in charge of enforcing judgments. In addition to state bailiffs now private bailiffs have been recognised by law as licensed service providers.

## Profiles of the contributing students

The survey was carried out by the following students:



**Erald Pina** graduated in Law from the University of New York Tirana and is a third-year Business Administration student at the Economic Faculty of Tirana University. During spring 2014 he wrote his Master thesis on Concessions, primarily focused on the Albanian Legislation in comparison with the European Union Legislation. He is interested mostly in Commercial Law, Public Private Partnership and particularly in Concession, Competition Law and Procurement Law. He can be reached at [eraldpina@gmail.com](mailto:eraldpina@gmail.com)



**Gloria Ceno** graduated in Law from the University of New York Tirana in 2014 with an MSc degree in Law. She is an LLM candidate in Energy and Natural Resources at Queen Mary University, UK. Her areas of interest include Energy and Natural Resources Trade, off-take arrangements in energy and natural resources. She can be reached at [gloriaceno@gmail.com](mailto:gloriaceno@gmail.com)



**Ina Xhepa** is a second-year graduate student at the European University of Tirana, Albania, pursuing a Master of Science degree in Business Law. She graduated in finance and accounting from the Faculty of Economics, University of Tirana. She works at the European Centre, which is a not-for-profit organisation in Tirana. She has been part of the projects dealing with the European integration of Albania and human rights issues. She can be reached at [ina.xhepa@gmail.com](mailto:ina.xhepa@gmail.com)



**Arfjona Kocibellinj** is a second-year graduate student at the European University of Tirana and pursuing a Master degree in Private Law. In 2013 she attended in the High Court and is currently working with the Administrative Court of First Instance in the legal position. She can be reached at [fjonakocibellinj@yahoo.com](mailto:fjonakocibellinj@yahoo.com)



**Melina Kabo** graduated with an MSc degree in Private and Commercial Law from Luarasi University, Tirana. She can be reached at [melina.kabo@gmail.com](mailto:melina.kabo@gmail.com)



**Silvana Ramadani** graduated in Law from Luarasi University, Tirana, pursuing a Master of Science degree in Commercial and Civil Rights. She works at the Albanian Civil Aviation as a lawyer in the Directorate of Technical Standardisation that deals with the harmonisation of domestic law in accordance with the guidelines and regulations of the European Union. Silvana is mostly interested in Civil Law, Public Law and European Law. She can be reached at: Silvana.Ramadani@hotmail.com

## Project directors

**Mr Përparim Kalo** is the Founder and Managing Partner of KALO & ASSOCIATES. Mr Kalo is an internationally respected lawyer and consultant with 20 years of legal experience working in government service, private law practice and legal and private sector reform projects. He has been actively involved in the provision of legal expertise to mainly foreign and international clients and institutions in the core areas of law such as Banking and Finance, Commercial and Corporate, Privatisations and Concessions, Mergers and Acquisitions.

With many years of excellent legal experience behind him as a lawyer in Albania, Perparim set up a private practice in Albania in 1994 and was one of the first to practice commercial law and provide legal support to foreign investors in Albania. The firm has since gone on to be a market leader in both Albania and now in Kosovo with excellent credentials and international recognition. Perparim continued his training over the years which includes attending legal courses such as Civil Law with International Development Law Organisation, in 1993; Law and Justice in Developing Economies, with Danida in Copenhagen, 1997; and the LLM Suffolk University programme tailored for lawyers engaged in international transactions, Lund (Sweden) and Budapest (Hungary) (2006-2007).

KALO & ASSOCIATES is a founding member of the South East Europe Legal Group – an alliance of premier national law firms from 12 jurisdictions providing seamless legal services including cross-border commercial transactions ([www.seelegal.org](http://www.seelegal.org)).

**Mr Aigest Milo** is a lawyer graduated in Business Law in the “Paris Ouest Nanterre La Defense”, Paris, France. Mr Milo joined KALO & ASSOCIATES in 2009 and is currently an Associate in the Tax and Finance Department consolidating his expertise with regard to all aspects of tax and finance issues and has also been involved in several financing projects between Albanian borrowers and foreign banks.

The focus of his work includes providing legal opinion on tax and finance issues. Mr Milo has provided some qualitative legal assistance to several local and foreign companies operating in industries such as banking, telecommunication, infrastructure, oil & gas, etc.

Mr Milo is currently a Lecturer of Training on Taxes and Tax Procedures in Albania organised by “ISNA Training and Certification” and has published several articles on tax issues in domestic and international (as co-author) publications.

**Luarasi University** was established in 2003, being one of the first private universities of law. The basic orientation was to combine tradition with advanced scientific opinion, the product of research within and outside the country, based on the slogan: “We appreciate the tradition, understand the present and prepare for the future”. Its academic staff consist of professors from the traditional elite, constitutionalists, member of the Constitutional Court and Supreme Court, remarkable persons from the scientific research and publication fields, etc., as well as the younger generation of graduates from the most prominent academic centres in Europe and beyond. Luarasi University provides law programmes of European standards. The academic staff has published a significant number of scientific publications which compete in the wide market of publications in relation to law and science. The university collaborates with many universities in Europe and

has organised within and outside the country various conferences, symposiums, round tables, etc. More than 1,000 students who graduated from Luarasi University are employed in key state institutions in the country. Luarasi has signed co-operation agreements with various important institutions in the country. These agreements indicate a concrete relation of trust and collaboration between Luarasi and the institutions, and are more valuable to the students who benefit from training, practice and internships during the period of study.

**The vision of Luarasi University is:**

- to prepare qualitative scientific research in an environment that supports teaching and develops independent and creative thinking of the students;
- to ensure that research and teaching addresses the challenges and provides alternative solutions to the problems of Albanian society;
- to achieve the highest levels of academic excellence in the country and to be recognised in international rankings;
- to establish formal co-operation and academic exchanges with interest groups in order to bridge theory and practice and to introduce students to the labour market; and
- to provide lifelong learning.

**The mission of Luarasi University is:**

- to prepare senior specialists and young scientists in the relevant fields through teaching and scientific research;
- to perform scientific qualification in all study cycles;
- to conduct training courses, short-term and long-term qualifications courses based on the concept of lifelong learning; and
- to conduct studies and scientific researches, as well as to provide professional services in relevant fields.

Luarasi University offers Bachelor degrees, Professional Masters degrees and Scientific Masters degrees from the Faculty of Law and the Faculty of Economics.

**The European University of Tirana** was established in 2006, having received a licence from the Albanian Ministry of Education on 20 September 2006. The European University of Tirana is one of the most pre-eminent universities in the area to become established.

Webometrics Ranking of World Universities ranks the European University of Tirana as 11th in the nation.

The European University of Tirana offers Bachelor degrees, Professional Masters degrees and Scientific Masters degrees. The University has also acquired the right to award Doctorate degrees.

The European University of Tirana offers the opportunity to study with the most remarkable Albanian academics, as well as various distinguished visiting professors from the most prominent universities of Europe and the United States, with whom EUT has entered into a partnership agreement.

The European University of Tirana co-operates with other institutions of higher education within and outside the country, as well as with other important institutions of civil society, and the public and private sectors in order to provide various opportunities for students and academic staff. Specifically, the European University of Tirana co-operates with the University of Aston in the UK in the framework of the PhD School programmes. This collaboration involves the sharing of programmes, lecturers, students and in the future it aims to achieve joint PhD leadership with the professors of this university. The European University of Tirana closely collaborates with other institutions of higher education in Southeast Europe and the European Union in the framework of the Tempus, Jean Monnet and Erasmus programmes, as well as other institutions in the framework of support programmes for research by international and local donors such as Regional Research Promotion Programme; NUFFIC, Impact Assist / USAID, Open Society Foundation, etc.

The European University of Tirana has signed co-operation agreements with Pantheon-Assas University, France; the University of Bari, Italy; Bar-Ilan University, Israel; the University of Montenegro; South East European University, Macedonia; the University of Marseille, France; and the University of Santiago, Chile.

In May 2010, the European University of Tirana became a member of the Interuniversity Centre for Research and Cooperation with Eastern and South Eastern Europe (CIRCEOS), in Bari, Italy.

The vision of the European University of Tirana is to be a leading university for the development of knowledge in Albanian society, a centre of excellence in academic formation of our students, a centre of expertise specialised in the field of social-political, economic and legal studies in the country, with influence in the region and beyond, as well as a centre of excellence for scientific research.

The aim of the European University of Tirana is to offer our students a quality education, to serve the Albanian society through teaching, creativity, use of best practices in science, as well as partnerships with Albanian labour market and the international market.

**The University of New York Tirana (UNYT)** was inaugurated in September 2002, having received a licence from the Albanian government in 27 August 2004. It was founded in order to address the regional needs for an American educational system and to prepare future leaders and business executives with a liberal arts and business education, a cross-cultural perspective, and a competitive spirit. Its objectives are to implement flexible and innovative practices in teaching and learning in response to the globally changing face of higher education.

Currently, the University of New York Tirana offers dual Bachelor degrees conferred by the State University of New York/Empire State College and University of New York Tirana. Furthermore, as from September 2004, the UNYT in collaboration with the Institut Universitaire Kurt Bosch in Sion, Switzerland offers a Masters programme in Business Administration (MBA) leading again to a dual degree (IUKB and UNYT).

The mission of the University of New York Tirana (UNYT) is to offer students the opportunity to obtain a university degree at Bachelors, Masters or PhD level in a variety of academic and professional specialisations, which will provide them with the knowledge, skills, openness and confidence necessary to succeed in a diverse, international work environment, and prepare them for life as contributing, productive citizens of the global community. UNYT amalgamates liberal arts and applied market-oriented education with an emphasis on continuous development as a research institution.

Situated in the heart of the city of Tirana, the UNYT aspires to establish itself as a dynamic, multicultural and leading centre for higher education in the Balkans. To support the needs of its students, research and scholarship, the university is expanding its library resources, organises scientific seminars promoting research and scholarship, and engages in the original research and promotion of highly scholarly works.

The UNYT is a fascinating blend of challenge and vision, in response to the needs of a global society and era. It is for this reason why the UNYT attracts students of high ability and employs academic staff of distinction, some recognised as international leaders in their fields.

### **Allen & Overy Global Law Intelligence Unit**

The Allen & Overy Global Law Intelligence Unit is part of the international firm of Allen & Overy and produces papers, surveys and other works on cross-border and international law within the field of its practice. Allen & Overy is one of the largest legal practices in the world with approximately 5,000 people, including some 512 partners, working in 40 offices worldwide. For further information, please contact Philip Wood, [philip.wood@allenavery.com](mailto:philip.wood@allenavery.com) or Melissa Hunt, PA to the Intelligence Unit, [melissa.hunt@allenavery.com](mailto:melissa.hunt@allenavery.com).

**Philip R Wood QC (Hon), BA (Cape Town), MA (Oxon), LLD (Lund, Hon)**

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Yorke Distinguished Visiting Fellow, University of Cambridge

Visiting Professor, Queen Mary College, University of London

Philip Wood is one of the world's leading comparative lawyers and practitioners. He has written about 18 books on financial Law. He was formerly a partner and head of the banking department of Allen & Overy. For many years he has been developing innovative and pioneering methodologies for assessing legal jurisdictions and has produced a book of maps of world financial law. His university textbook on the Law and Practice of International Finance has been translated into Chinese and a Japanese version is forthcoming.

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