



Commercial Real Estate

2017

Third Edition

Contributing Editors:
John Condliffe & Anthony Newton

CONTENTS

Preface	John Condliffe & Anthony Newton, <i>Hogan Lovells International LLP</i>	
Albania	Evis Jani & Lareda Zenunaj, <i>Gjika & Associates</i>	1
Australia	Cameron Charlton & Matthew Glenn, <i>Minter Ellison</i>	8
Canada	Paul D. Logan, Daniel Kofman & Yannick Beaudoin, <i>Blake, Cassels & Graydon LLP</i>	21
China	Edward Lehman & Jacob Blacklock, <i>Lehman, Lee & Xu</i>	32
Cyprus	Christos Vezouvios & Lefkios Tsikkinis, <i>Andreas Neocleous & Co LLC</i>	41
England & Wales	Nicholas Roberts, Rosie Kent & Jamie Hyams, <i>Hogan Lovells International LLP</i>	52
France	Catherine Saint Geniest & François d’Ornano, <i>Jeantet AARPI</i>	63
Germany	Carsten Loll, <i>DLA Piper UK LLP</i>	70
Hungary	Patrick Tausz, <i>Szecskey Attorneys at Law</i>	82
India	Shailesh Vaidya & Kunal Vaidya, <i>M/s. Kanga and Company, Advocates and Solicitors</i>	93
Ireland	Gillian Beechinor, Brian O’Rourke & Mark Barr, <i>Arthur Cox</i>	104
Japan	Kohtaro Tamura, <i>Ushijima & Partners</i>	115
Northern Ireland	David Jones, <i>Tughans</i>	126
Portugal	Filipa Arantes Pedroso & Rita Ferreira Vicente, <i>Morais Leitão, Galvão Teles, Soares da Silva & Associados</i>	135
Romania	Florian Nițu & Ela Marin, <i>Popovici Nițu Stoica & Asociații</i>	146
Russia	Oleg Mosgo & Anton Shamatonov, <i>Mosgo & Partners Law Firm</i>	158
Spain	Diego Armero & Javier Colino, <i>Uría Menéndez</i>	169
Switzerland	Cécile Berger Meyer & Fabiano Menghini, <i>Lenz & Staehelin</i>	181
Turkey	Serhan Koçaklı, Alp Erçetin & Gözde Kabadayı, <i>Kolcuoğlu Demirkan Koçaklı Attorneys at Law</i>	190
USA	John P. Napoli & Roy K. Meilman, <i>Seyfarth Shaw LLP</i>	201
Zambia	Joseph Alexander Jalasi Jr., Lubinda Linyama & Eric Suwilanji Silwamba, <i>Eric Silwamba, Jalasi & Linyama Legal Practitioners</i>	210

Albania

Evis Jani & Lareda Zenunaj
Gjika & Associates

Leasing

Practical points

(a) *Securing the premises*

The occupation of the premises may be secured by entering into a pre-let agreement or conditional lease agreement, which becomes effective upon completion of the construction or upon the existing occupier ending their occupancy.

(b) *Taxes and fees payable*

By virtue of Law 9632/2006 “On local taxes”, all taxes on immovable property are borne by the owner of such property.

Considering that the premises will be used for commercial purposes, the occupier/lessee is subject to local taxes, such as the advertising billboard tax, the amount of which depends on the kind of billboard and the region, and varies from 13,500 Albanian Lek (ALL)/m²/year to 90,000 ALL/m²/year. The relevant municipality may impose additional taxes such as the environmental tax, which are approved on a yearly basis by the council of the relevant municipality.

The rent is VAT-exempt for lease agreements entered into for more than two months.

By virtue of Decision of Council of Ministers 469/2015, the lease agreements should be entered into in the form of a notarial deed for tax purposes, and the notaries’ fees are, in practice, borne by the lessee. The notary fees for the notarisation of the lease purchase agreement amount to 3,500 ALL.

Further, in case of a lease for a term of more than nine years, the lease agreement should be filed with the respective Property Registration Office (**IPRO**) for opposability to third parties for the period exceeding the term of nine years; in practice, the filing fees are borne by the lessee. The registration fee is 3,500 ALL.

(c) *Fitting-out works*

The Albanian Civil Code does not stipulate an obligation for the occupier to get approval from the landlord. However, by virtue of Article 816 of the Civil Code, in case of improvements made to the premises without the approval of the landlord, the lessee is not entitled to be reimbursed for the expenses related to such improvement of the premises upon termination of the lease.

In practice, the project of the fitting-out works is agreed between the parties and constitutes an integral part of the lease agreement.

(d) *Codes of practice*

There are no industry codes or guidelines a potential occupier could benefit from when negotiating the lease. The relationship between the occupier and the owner is governed by the Civil Code provisions and the terms and conditions set forth in the lease agreement.

Key commercial terms

(a) *Rent*

In practice, the rent is usually paid through bank transfer, in advance, and on a monthly basis. The rent is freely agreed between the parties in the lease agreement; however, it may not be under the minimum level determined in the DCM 469/2015.

(b) *Rent adjustments*

Unless otherwise agreed between the parties in the lease agreement, the rent does not change during the occupation period. In practice, the lease agreement provides for the indexation of the rent on an annual basis on the first day of January, on the basis of the Harmonized Index of Consumer Prices.

(c) *Other occupational costs*

The tenant usually bears the costs for daily maintenance of the occupied premises, the condominium fee, and any costs related to utilities, such as electricity, water supply, heating and air conditioning.

(d) *Period of occupation*

By virtue of Article 803 of the Civil Code, the lease may not be executed for a period of more than 30 years, unless otherwise provided by any specific law.

In practice, commercial leases are executed for a period of 10 years.

(e) *Remaining in occupation*

By virtue of Article 821 of the Civil Code, the lease terminates upon the expiry of the term. However, in case the tenant continues to use the premises beyond the term, and provided that there are no objections from the landlord, the lease agreement shall be considered automatically renewed with the same terms and conditions.

The parties may further agree that the tenant shall have the right to request a renewal of the lease, and by Article 804 of the Civil Code, the latter has the right to be preferred over third parties provided that the tenant has correctly executed all obligations under the lease agreement.

(f) *Disposing of the premises*

The tenant may dispose of the premises and may terminate the lease prior to the expiry of the term and without any causes provided that the parties have so agreed in the lease agreement. The Albanian Civil Code does not provide for any statutory notification period to be observed; therefore, the notification period is also agreed in the lease agreement between the parties.

Unless otherwise agreed, the tenant is entitled to sublease the premises, but may not assign the lease without the prior approval of the landlord.

(g) *Alterations*

The Albanian Civil Code does not provide the type of alterations that the tenant is allowed to make. However, by virtue of Article 814 of the Civil Code, the tenant should return the premises to the landlord in the same condition as it was handed over, with the exception of normal wear and tear.

In practice, the allowed alterations are agreed between the parties in the lease agreement. Further, by virtue of Article 816 of the Civil Code, the tenant is entitled to be compensated for expenses related to the alteration, provided that such alterations have the prior approval of the landlord.

(h) *Repair of the premises*

The landlord is liable for the repair of the premises. In case of urgent repairs, the tenant may perform the repair works, and the expenses shall be reimbursed by the

landlord, provided that the tenant has immediately informed the landlord. The tenant is liable for the everyday maintenance of the premises.

Investment

Practical points

(a) *Exclusivity*

In order to ensure that the owner does not sell the same property to another party, the parties may sign a restriction agreement limiting the right of the owner to sell it to any third party other than the investor, which should be filed with the relevant IPRO.

(b) *Restrictions on disposing of property*

Foreign investors may freely purchase buildings, and they may purchase plots of land provided that the investment in the land is not less than three times the value of the land.

Further, foreign investors may not purchase agricultural land, forests, meadows or pastures. However, foreigners may lease them for a period of up to 99 years.

(c) *Impacts on timing*

The due diligence on the origin and ownership of the immovable property to be purchased and negotiation of the price, if applicable, are the main issues that drive the timetable for the completion of the transaction.

(d) *Key milestones in acquisition process*

The following are the key stages in the acquisition process of immovable property:

- Verification of the origin, ownership and status of the immovable property by means of a due diligence.
- Negotiation of the terms and conditions of the sale-purchase agreement.
- Signature of the agreement in front of a notary public once the parties agree on the terms and conditions and after the purchaser has paid the purchase price to the notary public's account.
- The sale-purchase agreement should be filed with the IPRO within 10 days of its signing by the notary public or the parties.
- The notary public transfers to the seller the purchase price, after deducting the income tax in case the seller is an individual, and transfer the tax amount to the tax authorities.
- The transfer of the ownership of the immovable property is valid as of the signing date of the sale-purchase agreement. The registration of the agreement with the IPRO is not required for the purpose of validating the transfer, but only for publicity purposes to third parties.

(e) *Requirement for transfer of monies*

Please refer to our answer above. The overall process for the transfer of money in practice takes up to 15 days.

(f) *Execution procedure*

By virtue of the Albanian Civil Code, the agreement for the sale purchase of the immovable property should be in writing and as a notarial deed. The parties may sign the agreement personally or by their authorised persons.

The notary public requests documents proving that the person signing on behalf of each party is duly authorised to sign, i.e., an excerpt of the register of commerce where the foreign company is incorporated, identifying the persons duly authorised to represent the company, and a copy of the passport of the signatories.

(g) *Other procedural requirements*

As mentioned above, the agreement should be signed in front of a notary public and should then be registered with the IPRO.

It should be noted that, in accordance with Law 9920/2008 on tax procedures, foreign owners with no residence in Albania should appoint a tax representative in Albania for tax purposes.

(h) *Taxes and fees payable*

The following taxes and fees are applicable: (i) the tax on the transfer of ownership, borne by the seller; (ii) the tax on immovable properties, which is paid on an annual basis by the owner on behalf of local authorities, including tax on buildings, the amount of which depends on the location of the land and varies from 40 ALL/m² to 400 ALL/m², and tax on the plot of land which ranges from 12 ALL/m² to 20 ALL/m²; (iii) the notary fees for the notarisation of the sale purchase agreement amounting to 0.23% to 0.35% of the purchase price; and (iv) the fee for registering the sale purchase agreement with the IPRO, amounting to 3,500 ALL.

Key commercial terms

(a) *Deposit*

The owner may request the buyer to deposit in advance an amount of money in order to be secure about the serious intentions of the buyer to acquire the land. This deposit should be transferred to the owner of the land before the signing of the sale purchase agreement.

(b) *Timing*

The usual time for completion of the transaction for the purchase of the immovable property is approximately 20 days.

(c) *Employees*

Usually, the acquisition of an immovable property is not followed by acquisition of the business activity, nor is it mandatory by law. In case the acquisition of the property is not followed by the acquisition of the activity, the new owner does not have any obligation toward the current owner's employees. If the acquisition of the land is followed by a transfer of business activity, the new owner should comply with the existing employment contracts.

(d) *Warranties for construction of building*

By virtue of Articles 864–866 of the Albanian Civil Code, the constructor should provide warranties and guarantees to the investor for the defects and defaults of the construction. Such warranty lasts for two years as of the delivery of the construction works, and the defect and defaults should be notified to the constructor no later than 60 days from their identification.

Further, by virtue of Article 866 of the Civil Code, regarding construction works, which by their nature have a long life, the constructor remains liable to the investor or any third parties that have acquired any right on the building for a period of 10 years as of the completion of the works, in case of complete or partial destruction of the building, due to the land or defaults in construction works, or in case there is an obvious risk of the building being destroyed, or in case of other serious defects. In any case, the investor should notify the constructor as to the defaults within one year as of their identification.

(e) *Transfer of other tax or financial benefits*

There are no other taxes or financial benefits to be transferred to the incoming investor.

Development

Practical points

(a) *Land ownership and assembly*

Information on the owners of different parcels of land may be obtained by filing a request in writing to the respective IPRO.

In principle, the owner may not be required to sell their land. However, in case of projects in the public interest, the expropriation may be applicable in full compliance with the procedures stipulated by Law 8561/1999 “On expropriations and temporary use of private property for the public interest”.

(b) *Land transfer*

The developer has the right to purchase the land straight away. In accordance with Article 746 of the Civil Code, the seller, being the owner of the land, and the developer may agree that the latter shall pay the price in instalments, and that the transfer of ownership shall be effective upon payment of the last instalment.

(c) *Taxes and fees payable*

The following taxes and fee are applicable: (i) the tax on the transfer of ownership of the land, which is borne by the seller; (ii) the tax on the plot of land, paid on an annual basis by the owner on behalf of local authorities, the amount of which depends on the location and varies from 12 ALL/m² to 20 ALL/m²; (iii) the tax on infrastructure impact for all new constructions, for which a construction permit is required, which amounts to 1% to 3% of the investing value for residential buildings, except in the Tirana Municipality where the amount is from 2% to 4% of the investing value. For residential or service buildings, which are not intended for use in the tourism or industry sector or for public use, the tax on infrastructure amounts to 4% to 8% of the sale price per square metre; (iv) the notary fees for the notarisation of the sale purchase agreement, which amount to 0.23% to 0.35% of the sale price; and (v) the fee for registering the sale purchase agreement with the IPRO, which amounts to 3,500 ALL.

Key commercial terms

(a) *Price*

The value of development land in Albania is regulated by DCM 89/2016 “On the approval of the land value map in the Republic of Albania”, stipulating the reference price of the immovable property for each region in ALL/m².

In case the purchase price is less than the reference price, the latter shall be taken into consideration for the purpose of calculation of taxes.

(b) *Payment structure*

By virtue of the Albanian Civil Code, the ownership of the immovable properties is transferred upon signature of the sale purchase agreement, and therefore the payment of the price is not a condition for the transfer of the ownership.

Further, in case the parties agree that the purchase price will be paid in instalments, they may agree that the ownership shall be transferred upon payment of the last instalment; such condition should be clearly stipulated in the contract.

To secure the future payments, parties may agree on a bank guarantee to be provided by the buyer. Further, the Civil Code provides for last payment interest in case of failure of the buyer to make a payment on time, without prejudice to compensation for damages.

(c) *Deal structures*

Forward purchase agreements are common, in most cases of which the price is paid in instalments.

Pre-let agreements are also common.

(d) *Taxes and fees payable*

The following taxes and fee are applicable: (i) the tax on the transfer of ownership of the land, which is borne by the seller; (ii) the tax on the plot of land, which is paid on an annual basis by the owner on behalf of local authorities, the amount of which depends on the location and varies from 12 ALL/m² to 20 ALL/m²; (iii) the tax on infrastructure impact for all new constructions for which a construction permit is required, which amounts to 1% to 3% of the investing value for residential buildings, except in the Tirana Municipality where the amount is from 2% to 4% of the investing value. For residential or service buildings which are not intended for use in the tourism or industry sector or for public use, the tax on infrastructure amounts from 4% to 8% of the sale price per square metre; (iv) the notary fees for the notarisation of the sale purchase agreement, which amount to 0.23% to 0.35% of the sale price; and (v) the fee for registering the sale purchase agreement with the IPRO, which amounts to 3,500 ALL.

Financing

Practical points

(a) *Level of loan*

Albanian legislation does not stipulate the percentage of the loan, but in practice, lenders are usually willing to advance 70% to 75% of the value of the premises.

(b) *Security*

For the purpose of securing the loan, lenders usually require: the mortgage of the property which is the subject of the transaction, or any other immovable properties of the investor/borrower or third parties; personal guarantee, pledge or securing charge over the movable assets; as well as financial collateral over the bank accounts, receivables and shares of the investor if it is a company.

(c) *Lender due diligence*

Lenders carry out due diligence in relation to the business activity of the borrower, analysing its financial documents, such as financial statements of previous years, agreements entered into with third parties, development permits, construction permits, as well as their investment plan for the future.

(d) *Enforcement*

Lenders are entitled to take enforcement action in case the borrower/investor fails to comply with the terms of the agreement in relation to the payment of the loan and interest. In this case, they are entitled to request to the court the issuance of an enforcement order, which is then enforced by the bailiff by executing the immovable and movable assets of the investor.

Key commercial terms

(a) *Length of loan*

Financing arrangements for commercial purposes usually last from 5 to 10 years.

(b) *Interest rate and payment dates*

The interest rate may be fixed or variable, and when variable it consists of the fixed rate plus the variable rate (Euribor). The interest is paid as per the schedule determined in the loan agreement.

(c) *Repayment*

Usually, the lender is entitled to require the repayment of the loan in case the investor/borrower fails to pay the instalments, or interest in due time under the terms determined in the loan agreement, if the loan is not used for the purpose set out in the loan agreement.

**Evis Jani****Tel: +355 4 240 0900 / Email: ejani@gjika-associates.com**

Evis Jani joined Gjika & Associates as a Senior Associate when it was established, and as of January 2014 she became a Partner. She graduated from the Law School of the University of Tirana and holds an LL.M. in European Law from the University of Geneva.

She has long experience in providing legal counsel to domestic and international multinational companies, focused on business and commercial, tax and employment law, administrative and public procurement law, mergers and acquisitions, reorganisations, corporate governance, as well as litigation before Albanian courts. She is regularly involved in all aspects of real estate investment including structuring, financing, acquisitions, lease negotiations and other landlord and tenant matters, comprehensive tax structuring advice, giving comprehensive advice in relation to dispute avoidance and dispute resolution matters, and on environmental liability issues in relation to real estate.

**Lareda Zenunaj****Tel: +355 4 240 0900 / Email: lzenunaj@gjika-associates.com**

Lareda Zenunaj joined Gjika & Associates as a Senior Associate as of February 2016. She graduated from the Faculty of Law, University of Vlora, Albania, and holds an LL.M. in Taxation from the University of Miami School of Law. She has been a member of the Albanian National Bar Association since 2009. She has extensive experience in tax and real estate, and advises clients in relation to business and commercial law, employment law and administrative law. She is regularly involved in due diligences related to real estate.

Gjika & Associates

Aba Business Center, Papa Gjon Pali II Street, Tirana, Albania
Tel: +355 4 240 0900 / URL: <http://www.gjika-associates.com>

www.globallegalinsights.com

Other titles in the **Global Legal Insights** series include:

- **Banking Regulation**
- **Bribery & Corruption**
- **Cartels**
- **Corporate Tax**
- **Employment & Labour Law**
- **Energy**
- **International Arbitration**
- **Litigation & Dispute Resolution**
- **Merger Control**
- **Mergers & Acquisitions**



Strategic partner