

LEGAL BULETIN

INSIDE THIS ISSUE

PG. 2

Summary of Law No.63/2020, dated 14.05.2020 “*On improvement of business areas*”.

PG. 3

Summary of Law No.62/2020, dated 14.05.2020 “*On capital markets*”.

PG. 7

Summary of Law No.66/2020, dated 21.05.2020 “*On financial markets based on distributed registry technology*”, etc.



JULY 2020 ISSUE

Muja Law brings you the Legal Bulletin. This publication is a collection of the most important legal and tax updates published by our office during July.

The purpose of this monthly issue is to help professionals and businesses have a clear understanding of the dynamics of Albanian legislation and easily navigate through recent legal changes frequently published by our legal office.

“ON IMPROVEMENT OF BUSINESS AREAS”

Law No.63/2020, dated 14.05.2020 “*On improvement of business areas*” (hereinafter referred to as “*Law No.63*”) provides the concept of Business Improvement District (“*BID*”), which encompasses the contracting community of commercial units’ owners in the *BID* area. *BID*’s activity aims to revitalize business areas in cities and urban towns, facilitating their development, economic growth and sustainable development in the respective *BID* areas, where there is a high concentration of small businesses.

Law No.63 regulates the legal status, purpose, term, financing, legal relations, basic principles and rules for the functioning of business areas in Albania.

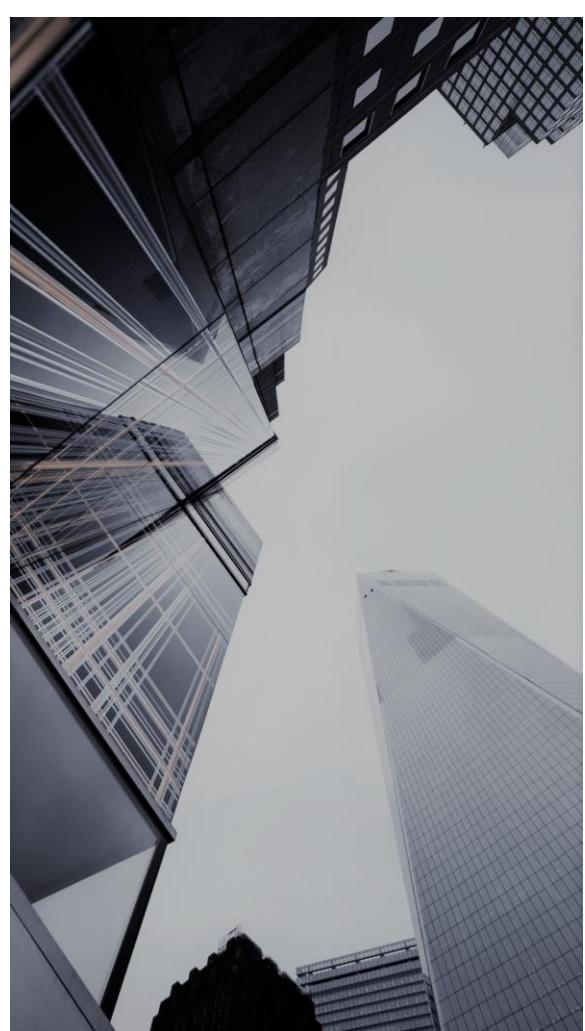
➤ Respectively, Law No.63 aims:

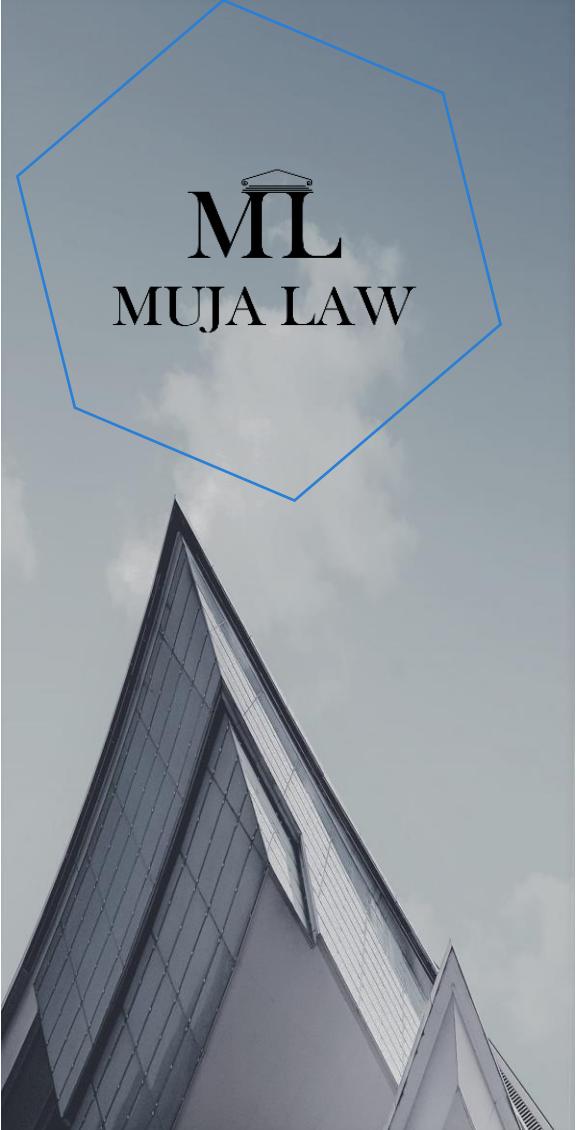
- a) to create a mechanism where the owners of commercial units, which are used for business purposes, are encouraged to participate in the process of sustainable development of the *BID* area, through private contributions, which are used for additional services for businesses in the respective *BID* area and for improvements in public property;
- b) to consolidate and develop the urban renewal of cities, recognizing the unique needs and common challenges faced by businesses with different local characteristics;
- c) to facilitate the identification of certain geographical areas, to improve and increase the provision of municipal services within them;
- d) to clearly define the conditions under which a *BID* is created and to ensure that the holders of commercial units within the proposed *BID* areas are fully involved in the relevant processes, thus facilitating their participation in the issues of the area and city.

➤ The purpose of *BID* is:

- a) to assist in economic growth and sustainable development in the respective *BID* areas;
- b) to assist the development of commercial units in areas with different functions;
- c) to enable a cooperative approach between the respective municipality and the private sector, in the provision, improvement and addition of municipal services;
- d) to facilitate investments of common interest in *BID* areas.

- A *BID* shall be established for a specified period as specified in the relevant *BID* prospect, but in any case, for a period of not less than 3 years and not more than 7 years, with the right of renewal.
- After the authorization of the *BID* proposal by the municipality, the *BID* proposer, including but not limited to the municipality when acting as a *BID* proposer, prepares the *BID* prospect, according to the *BID* prospect model.



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- If within 30 calendar days from the publication of the BID notice, the BID prospect is accepted by more than 50% of all eligible voters in the respective BID area, by signing the voting form of the BID prospect, the BID prospect is considered accepted.
 - If within 30 calendar days from the publication of the BID notice, the BID prospect is rejected by at least 50% of all eligible voters in the respective BID area, by signing the voting form of the BID prospect, the BID prospect is considered unaccepted and cannot be implemented.
 - With the approval of BID by persons with voting rights located in the BID area, the BID organization is created, where the respective municipality can participate as a member of the organization and/or as a member of the decision-making body depending on the type of non-profit organization that will be created.

LAW NO.62/2020, DATED 14.05.2020
“ON CAPITAL MARKETS”

- Law No.62/2020, dated 14.05.2020 “*On capital markets*” (hereinafter referred to as “*Law on Capital Markets*”), regulates capital markets, the manner and conditions for the provision, purchase and sale of financial instruments in the Republic of Albania, as well as determines the procedures for the regulation and supervision of the markets of financial instruments.
- The Law on Capital Markets provides the following:
 - a) conditions for the establishment, licensing, exercise of activity, supervision and dissolution of companies that exercise activities regulated according to this law;
 - b) conditions for the provision of regulated activities and related ancillary services;
 - c) conditions for trading of financial instruments in a regulated market or outside a regulated market;
 - d) conditions for offering securities to the public and accepting securities in a regulated market;
 - e) obligations for providing information by companies that exercise activities regulated according to this law;
 - f) measures to prevent market abuse and trading of securities based on privileged information;
 - g) competencies and activity of the Authority in implementing this law.
- This law applies to all subjects that exercise regulated activities in the territory of the Republic of Albania or from the Republic of Albania for clients located abroad.

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- All persons who are subject to this law, must comply with the requirements arising from the legislation in force to prevent money laundering and terrorism financing, as well as with the bylaws implementing it.
 - Licensed entities are obliged, without prior notice and involvement of suspects or affected persons, to immediately notify the General Directorate of Money Laundering Prevention and the Authority for any case when they know or suspect that it has been committed, is being committed or there is an attempt to commit money laundering and terrorism financing.
 - The Financial Supervision Authority is the authority that licenses, supervises and regulates the activities regulated according to this law.
 - The objectives of the Authority's activity are:
 - a) promoting and guaranteeing confidence in impartiality, efficiency, free competition, transparency and legality of the capital markets' sector and any activity related to this sector;
 - b) protection of investors' interests; and
 - c) prevention of financial crime.
 - The activities regulated according to this law are exercised in the territory of the Republic of Albania by the licensed subjects, registered or known, in implementation of this law.
 - The exercise of activities regulated in contradiction with above is considered a criminal offense within the meaning of article 170/ç "*Unlicensed exercise of financial activities*", of the Criminal Code of the Republic of Albania.
 - All licensed, registered or known subjects, according to this law must:
 - a) have their seat in the Republic of Albania; or
 - b) have registered a branch or representative office of a foreign subject in the Republic of Albania;
 - c) be related agents of a licensed subject in the Republic of Albania or a licensed subject in one of the countries of the European Union or another country determined by regulation from the Authority;
 - d) to be well-known subjects, regardless of the fact that their seat is located in another country.
 - No subject may be licensed, registered or recognized for the exercise of a regulated activity if and for how long the Authority has not received and approved the information and documentation necessary to ascertain whether the requesting subject, its shareholders and administrators or the key officials, have the appropriate skills and meet the criteria to exercise regulated activity.
 - The Authority shall assess whether the requesting subject, its shareholders and administrators have the appropriate skills to exercise a particular function and, in particular, whether the person concerned:
 - a) possesses the necessary qualities to fulfill the duties and responsibilities of the respective position in the company;



- b) has the integrity, honesty and due diligence to fulfill his duties;
- c) possesses the necessary qualifications and meets the criteria of professional experience in accordance with the responsibilities of the respective position;
- d) is able to maintain independence, so that the interests of society are not affected by conflicts of interest that may arise during the exercise of duty.

- Banks, which are licensed by the Bank of Albania to exercise the financial activities provided by the law in force "*On banks in the Republic of Albania*", can provide securities investment services only after being licensed by the Authority to exercise this activity.
- Any person who is or proposes to become an affiliated agent of a licensed subject may file an application for registration with the Authority, to be allowed to exercise the regulated activity for the licensed brokerage company in one or more qualities.
- No subject may establish or operate a stock market, assist in the creation or operation of a stock market, or claim to offer or operate a stock market unless that subject is licensed or recognized by the Authority.
- The stock market is established as a joint stock company in accordance with the provisions of this law and the law in force "*On entrepreneurs*".
- The governing bodies of the stock market are the general assembly, the supervisory board/board of directors and the administrators.
- The share capital of the stock market is determined by a sub-legal act.
- All shares of the stock market must be registered shares.
- The initial capital of the stock market is paid in full in cash. The shares that make up the share capital cannot be issued until their full value has been paid.
- Stock market shares may be admitted to trading on a regulated market only with the approval of the Authority and provided that the relevant listing requirements set forth in this law have been met.
- With the entry into force of this law, law no. 9879, dated 21.2.2008, "*On securities*", as well as law no. 10158, dated 15.10.2009, "*On bonds of joint stock companies and local government*" are repealed.
- *This law enters into force on September 1st, 2020.*

Law on Capital Markets has been partly approximated with the following directives and regulations:

- a) Directive 2014/65/EU of the European Parliament and of the Council, dated 15 May 2014, "*On financial instruments' markets amending Directive 2002/92/EC and Directive 2011/61/EU*", as amended;
- b) Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2014 "*On the harmonization of transparency requirements*

regarding information on issuers whose securities have been admitted to trading on regulated markets which amends Directive 2001/34/EC, as amended;

- c) Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 “*On criminal penalties for market abuse*” (Market Abuse Directive);
- d) Regulation (EU) No. 909/2014 of the European Parliament and of the Council, dated 23 July 2014, “*On improving the settlement of securities in the EU and central securities’ depositaries amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No.236/2012*”, as amended;
- e) Regulation (EU) 2017/1129 of the European Parliament and of the Council, dated 14 June 2017, “*On the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market and repealing Directive 2003/71/EC*”, as amended;
- f) Regulation (EU) No. 462/2013 of the European Parliament and of the Council, dated 21 May 2013, “*On amending regulation (EC) No.1060/2009 on credit rating agencies*”;



LAW NO.66/2020, DATED 21.05.2020
“ON FINANCIAL MARKETS BASED ON
DISTRIBUTED REGISTRY
TECHNOLOGY”

- ❖ The object of this law (“*Law No.66*”) is to regulate the issuance of digital tokens and/or virtual currencies, the licensing, monitoring and supervision of subjects that exercise the activity of distribution, trading and storing of digital tokens and/or virtual currencies, the agent of digital tokens, innovative service providers and automated collective investment ventures.
- ❖ This law applies to all regulated activities and subjects that exercise activities under this law, in or from the territory of the Republic of Albania.

“Responsible authorities” are the Financial Supervision Authority (FSA) and the National Agency for Information Society (NAIS).

“Decentralized Market DLT” is a market, which uses DLT technology, where the private key to access the digital token(s) and/or virtual currencies, which are subject to transactions on this market, is held by the market users themselves.

“Digital token” is a digital marker, which:

- 1) is fundamentally dependent on DLT technology; and
- 2) is included exclusively in one of the categories of digital tokens listed below:
 - a) digital payment token;
 - b) digital securities token;
 - c) digital services token;
 - c) digital assets token.

“DLT Market” is a centralized or decentralized DLT market, in which:

- a) digital services tokens, digital payment tokens and digital asset tokens can be listed and traded; and

b) in addition to the activities listed above, exchanges may be made with FIAT currency and/or virtual currencies against digital service tokens, digital payment tokens, digital asset tokens and vice versa; and

c) in addition to the activities listed above, can be performed listing and trading or exchange between tokens of virtual securities and which holds a license for DLT market from FSA and NAIS.

“DLT” or “Distributed Registry Technology” is a decentralized database in which information and/or data are securely recorded, consensually verified, and distributed synchronously over a multiple network of nodes or other technical means, in accordance with the definition of the innovative technology agreement and where all copies of the distributed database are considered original.

“FIAT currency” is a financial instrument in the form of banknotes and coins, local or foreign, which have a legal exchange rate.

“Margin trading” is the activity of transactions through the use of a financial lever on DLT stock markets or DLT trading facilities, where users or the DLT stock markets or DLT trading facilities lend to users, for using as collateral, for the purpose of investing on these DLT stock markets or DLT trading facilities, taking interest from these loans.



LAW NO.66/2020, DATED 21.05.2020
ON FINANCIAL MARKETS BASED ON DISTRIBUTED REGISTRY TECHNOLOGY

The types of licenses approved by the authorities responsible for carrying out the activities provided in this law are:

a) the license of the TD agent, which is issued by the FSA for a legal person, after meeting the general conditions and special criteria;

b) DLT market license, which is issued by the FSA and NAIS for a legal person, after meeting the general conditions and special criteria. The DLT market license is divided into three categories, as follows:

i. category "A" includes DLT centralized stock market licenses and licenses such as decentralized DLT stock market, where only "digital service tokens and/or digital payment tokens" and/or "digital asset tokens" can be traded;

ii. category "B" includes DLT centralized stock market licenses or licenses such as decentralized DLT stock market, where, in addition to the activities listed in category "A", FIAT money and/or virtual currencies can be traded against digital service tokens, payments and assets and vice versa;

iii. category "C" includes licenses such as centralized DLT stock market and decentralized DLT licenses and stock markets, where, in addition to the activities listed in the category "B", digital securities can also be traded;

c) the license of the innovative service provider, which is issued by NAIS (without the involvement of a TD agent) for a legal entity after meeting the general conditions and special criteria of this law;

c) the license of the third-party portfolio custodian, issued by the FSA and NAIS for a legal entity, after fulfilling the general conditions and special criteria;

d) the license of the automated collective investment enterprise DT, issued by NAIS for a collective investment enterprise, after fulfilling the general conditions and special criteria.

The activity of "*Margin Trading*" can also be performed in the centralized or decentralized stock markets DLT.

The general competencies of each authority are as follows:

a) NAIS evaluates all the conditions and technological criteria presented by the requesting subject, in cases when NAIS has exclusive or joint competence for the issuance of a license, authorization or certification;

b) The FSA evaluates all financial and regulatory aspects, in accordance with this law, in cases when the FSA has exclusive or joint competence to issue a license, authorization or certification. In the event that only one of the activities is allowed, the individual, who is on more than one payroll, does not receive the financial assistance in the minimum wage.

Each DLT licensed market must be registered in the DLT market register, regulated and maintained by the FSA, which specifies whether the respective DLT market has received a category "A", "B" or "C" license.

The subject requesting a license as TD agent must meet the additional specific criteria, as follows:

- a) make available the documentation proving that the subject has the necessary technical and legal skills and knowledge to exercise the activity related to TD agents;
- b) prove that has a minimum initial capital of ALL 18,000,000 (eighteen million), by making available the copy of the relevant document/guarantee issued by the bank.



The offers of digital tokens and/or virtual currencies, which are regulated by this law, are as follows:

- a) the offer of digital securities token (STO), when the offer to the public is foreseen to have a total value equal to or higher than 1000 000 (one million) euros or the equivalent of this amount in lek, within a 12-monthly period;
- b) the offer of digital securities token (STO), when the offer to the public is foreseen to have a total value lower than 1 000 000 (one million) euros or the equivalent of this amount in lek, within a period of 12 months;
- c) the initial offer of digital token/virtual currency (ICO), when the offer to the public is foreseen to have a total value equal to

or higher than 8 000 000 (eight million) euros or the equivalent of this amount in lek, within a period 12 months;

- c) for initial offers of digital tokens/virtual currencies, which are expected to have a total value of less than 8 000 000 (eight million) euros (or the equivalent of this amount in lek), within a period of 12 months, will be requested the publication of an informative document regarding the offer, the form and content of which is determined through the regulation issued by the FSA.

An issuer shall:

- a) exercise its activity with honesty and integrity;
- b) exercise its activity, taking into account the interests and needs of each of the buyers of digital tokens/virtual currencies during the exercise of its activity;
- c) treat fairly, clearly and non-abusively all buyers of digital tokens/virtual currencies;
- c) have an appropriate corporate governance code;
- d) maintain system and security protocols to the highest appropriate standards;
- dh) establish, itself or through a third party, systems for the prevention, detection and elimination of financial crime risk;
- e) establish, alone or through a third party, systems for the prevention, detection and elimination of money laundering and terrorism financing risk;
- ë) have sufficient financial resources.

The issuer bears legal responsibility for all damages that are directly caused as a result of the purchase of digital tokens/virtual currencies by a person, through the ICO, STO, DLT stock market or DLT trading environment, in cases where the purchase in question is based on false, inaccurate or incomplete information found in the full prospectus/offer/presentation, and/or the issuer's website and/or advertisements.

Is exempted from legal liability any person who:

- a) certifies that he/she had reasonable grounds to believe, without malice, that the information was accurate and true and complete; or
- b) at the moment of ascertaining a false information, inaccurate or incomplete, has immediately taken all necessary measures to inform the public about the untruthfulness, inaccuracy or incompleteness of the information in question.

Any legal entity that wants to exercise the activity as "custodian of the portfolio of third parties", in accordance with this law, must have:

- a) the relevant license from the Bank of Albania;
- b) license as custodian of third-party portfolios; and
- c) registration in the register of portfolio custodians of third parties.

Services and activities determined for third party portfolio custodians may be performed only by those third-party portfolio custodians who have the relevant license and only during the period of validity of that license.

No one shall commit or be liable for any act intended to:

- a) to convey false or misleading information as if digital token/virtual currency trading is taking place, a DLT stock market or a multilateral trading platform in the territory of the Republic of Albania; or
- b) convey false or misleading information regarding the purchase or pricing of any of these digital tokens/virtual currencies.

Market manipulation are considered:

- a) transactions or trading orders which give or are likely to give false or misleading signals in connection with the supply, demand, or price of digital tokens/virtual currencies, or which provide retention through one person or several persons acting in conjunction with the price of one or more of the digital tokens/virtual currencies at an artificial level, unless the person who conducted the transaction or gave the trading order proves that his reasons for doing so are legitimate and that these transactions or trading orders are consistent with accepted market practice;
- b) transactions or trading orders carried out through the use of fictitious devices or any other form of fraud;
- c) the dissemination of information through the media, including the Internet, or by any other means, which gives or is likely to give false or misleading digital token/virtual currency signals, including the dissemination of false or misleading gossip and news, to the case where the person who made the distribution was aware, or should have been aware, that the information was false or misleading.

No one shall enter into or be involved in the conduct, directly or indirectly, of a number of digital tokens/virtual currency transactions which have or may result in:

- a) false raising;
- b) false reduction; or

c) falsely determining, maintaining or stabilizing the price or trading volume of digital tokens/virtual currencies, with the aim, inter alia, of encouraging other persons to buy or sell these digital tokens/virtual currency or digital tokens/other related virtual currencies, whether or not these persons have this purpose.

For the purposes of the above, transactions relating to digital tokens/virtual currencies include:

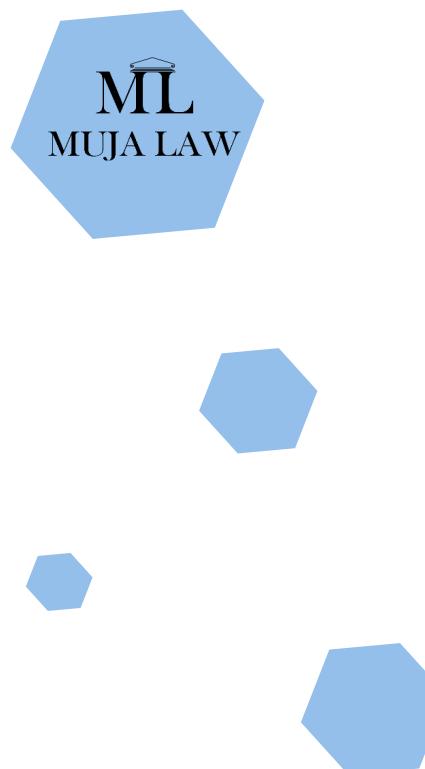
- a) submission of an offer for the sale of digital tokens/virtual currencies; and
- b) submission of an invitation, regardless of how it is expressed, by which a person is expressly or implicitly invited to offer to sell or buy digital tokens/virtual currency.

Committing actions contrary to the above is considered a criminal offense in virtue of the Albanian Criminal Code.

All DLT markets and trading platforms define and implement procedures and measures, which aim at detecting and preventing market manipulation practices.

In any case, DLT stock markets or trading platforms shall inform the authority, on the basis of the information to which they have access, of cases which they reasonably suspect that constitute market abuse.

Law No.66 enters into force on September 1, 2020.



- ❖ NORMATIVE ACT OF THE COUNCIL OF MINISTERS NO.30, DATED 20.7.2020 “ON SOME AMENDMENTS TO NORMATIVE ACT NO. 3, DATED 15.3.2020, OF THE COUNCIL OF MINISTERS, “ON TAKING SPECIAL ADMINISTRATIVE MEASURES DURING THE PERIOD OF INFECTION CAUSED BY COVID-19”, AS AMENDED”, (HEREINAFTER REFERRED TO AS “NORMATIVE ACT NO.30”)

Subjects which do not implement the order given by the competent bodies for non-provision of service in closed premises of bars, pubs and restaurants, are punished with a fine in the amount of 1 000 000 (one million) ALL and, in case of repetition, the closure of activity for a period of 6 months is added.

Failure to comply with the obligation to close nightclubs, discos, lounge-bars and any kind of service of this nature indoors or outdoors, is punishable by a fine of 3,000,000 (three million) ALL and, in case of repetition, by suspension of the subject's activity for a period of one year. The authority responsible for the implementation of this provision is the State Police.

Music is prohibited in any service environment after 20:00. Failure to comply with this obligation is punishable by a fine of 1,000,000 (one million) ALL and, in case of recurrence, by suspension of the subject's activity for a period of 6 months. The authority responsible for the implementation of this provision is the State Police.

- ❖ LAW NO.91/2020 “ON SOME AMENDMENTS TO LAW NO.90/2019 “ON REEVALUATION OF IMMOVABLE PROPERTIES”, (HEREINAFTER REFERRED TO AS “LAW NO.91”)

Law No.91 provides the extension of the effects of Law No.90/2019 “On reevaluation of immovable properties”, until 31 December 2020.

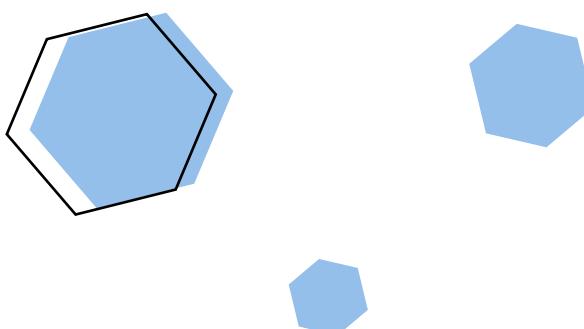
As for the above, all individuals who own real estate *have the right to re-evaluate their property at market value until 31 December 2020.*

- ❖ DECISION OF THE COUNCIL OF MINISTERS NO.576, DATED 22.7.2020 “ON SOME AMENDMENTS TO DECISION OF THE COUNCIL OF MINISTERS NO.953, DATED 29.12.2014 “ON THE IMPLEMENTING PROVISIONS OF LAW NO.92/2014 “ON VALUE ADDED TAX IN THE REPUBLIC OF ALBANIA”, AS AMENDED”, (HEREINAFTER REFERRED TO AS “DCM NO.576”).

DCM No.576 provides that the minimum registration limit for value added tax shall be the turnover of 10 000 000 (ten million) ALL in a calendar year.

The taxable subject has the right to choose to apply the normal VAT regime if the annual turnover is greater than 5,000,000 (five million) ALL.

DCM No.576 has entered into force after its publication in the Official Journal and takes effect on 01.01.2021.



If you wish to know more on our publications, legal updates, tax updates, legal bulletins, or other articles, you may contact the following:

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Muja Law is a family-run law office where we work hard for the success of our clients and to provide excellence in legal service. Our roots go back to 2001 when our Managing Partner, Krenare Muja (Sheqeraku), opened her law practice office in Tirana, Albania. Krenare's son Eno joined her in 2014, and the other son Adi entered the practice in 2019. What started in Tirana as a small, family-run law office has grown and flourished in the community for the last 20 years. The office consists of various respected and talented lawyers who possess outstanding educational and community service backgrounds and have a wealth of experience in representing a diverse client base in various areas of the law.

The office is full-service and advises clients on all areas of civil, commercial and administrative law. With significant industry expertise, we strive to provide our clients with practical business driven advice that is clear and straight to the point, constantly up to date, not only with the frequent legislative changes in Albania, but also the developments of international legal practice and domestic case law. The office delivers services to clients in major industries, banks and financial institutions, as well as to companies engaged in insurance, construction, energy and utilities, entertainment and media, mining, oil and gas, professional services, real estate, technology, telecommunications, tourism, transport, infrastructure and consumer goods. In our law office, we also like to help our clients with mediation services, as an alternative dispute resolution method to their problems.

While we have grown over the past 20 years and become recognized as one of Albania's leading law offices, we are grounded in the essence of "who" we are and "where" we started. *We understand the importance of family, hard-work, and dedication.*

MUJA LAW

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