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# PAYMENT REVOLUTION

# The new legislation on capital market - the right investment for developing and deepening the Albanian financial system

*The partial application of MIFID II in Albania is not only convenient, but also helps in developing this market, by setting higher standards, in order to increase investor confidence in the market.*



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The new Law No.62/2020 "On Capital Markets", which entered into force on September 1<sup>st</sup>, 2020, aims at contributing to the deepening of the financial sector, seeking the development of the capital market as a whole, but at the same time, linking such development with transparency, market integrity and investor protection. The law is partially harmonized with a series of European Union directives, mainly the Markets in Financial Instruments Directive II (MIFID II), which standardizes the behavior of actors, participating in capital markets.

**How appropriate is the MIFID application for a country like Albania, where the capital market**

## is in its early stages?

The understanding of financial and capital markets as a whole is closely related to the importance of investor confidence in financial markets, a very important factor for the development of a new capital market, as in case of Albania. Confidence is a factor, which is quite difficult to build up. Market abuses, lack of transparency, as well as market failures in general,



The new law on the capital market is a precondition and a driving factor for a transparent, well-regulated and reliable capital market, however, the development of this market will also depend on a number of other factors, such as: expanding the investor base, improving market infrastructure, the range of financial instruments, matching demand and supply for securities, investors and issuers' financial education, or encouraging companies to be listed on stock exchange, through a public offering.

affect the decline of confidence. Should the confidence be low, then it would not be possible to create capital markets, as investors would

not invest in investment products/ financial instruments, offered by the capital market.

In this regard, a partial application of MIFID II in Albania is not only convenient, but also helps in developing this market, by setting higher standards, in order to increase investor confidence in the market. The new law, which is based on investor protection, categorizes investors into eligible/acceptable parties, professional investors, non-professional investors, and qualified investors. The purpose of such division is primarily to ensure that non-professional investors receive the appropriate level of protection, regarding their ability and willingness to take risks, as well as to set specific requirements, regarding the transparency, brokerage firms must provide, when offering financial instruments to these investors. The law prescribes requirements for all brokerage firms to conduct the investor suitability test, as well as providing sanctions for all firms that do not conduct such test. Through the suitability test, the brokerage company ensures the right information about investors' knowledge or experience with financial markets, their financial situation, the ability to weather losses, as well as their investment objectives and risk tolerance. In this way, the investment is carried out in accordance with the investor's profile.

A very important element for proper functioning of the capital



market is both corporate governance and the requirements for a quality audit of listed companies. The recent Wirecard scandal proved how important the audit quality is, for listed companies, which are considered of high public interest. Thus, the new law on the capital market sets specific criteria, regarding the transparency of listed companies, as well as special requirements for disclosure and publishing information. The law also provides criteria, regarding the auditors of financial statements of these companies.

The MIFID directive is often criticized for imposing high requirements on corporate governance, as well as new requirements regarding the organization of brokerage firms, indirectly increasing costs for companies operating in the market. The new legislation in the field of capital market has been drafted with the aim of approximating the requirements for governance and organization of brokerage companies with European standards, but also adapting to the current stage, in which the development of capital market in Albania is. In order to improve the functioning of capital market in the country, the new legislation stipulates high standards in the process of selecting key persons and officials, who will play a key role in managing the activity of these companies, as well as a completely new model of certification for key personnel, in line with European standards, by enabling smaller companies to delegate certain functions. Hence, the aim is to attract and activate serious brokerage companies in the capital market, which have clear business plans and ideas, and which also have a qualified staff, with necessary professional skills and experience to operate in a market, in which the participation of experienced players is a must, to promote its further development.

In order to promote the development of the capital market, the new Law "On Capital Markets" provides special requirements for licensing of banks, when the latter provide investment services, aiming at a less bureaucratic process. The financial market in Albania is chiefly dominated by the banking sector, which has shown so far high levels of professional responsibility. Banks play an important role in providing investment services, not only in Albania, but in almost all Southeast European countries. Seen from another perspective, today, when we talk about capital markets, we are talking about integrated and global markets. Investors today can trade freely, where they want, and the harmonization of legislation with more developed countries helps increasing the investors' protection. The law provides special requirements regarding foreign companies, which may offer investment services in Albania, by establishing a representative office, or through a related agent, but at the same time, setting requirements for Albanian brokerage firms, which will decide to offer services.

In addition to the Stock Exchange, as a very important market institution, the new law sets requirements for new forms and structures of market organization, such as: multilateral trading platform, or organized trading platform. The Authority has currently licensed the Albanian Stock Exchange - ALSE, in which only government securities are currently traded. Listing the first companies with public offering remains a very important challenge for the development of the capital market. AFSA is working with the Ministry of Finance & Economy, through a joint working group, to analyze the possibility of transforming state-owned companies into public offering companies.

The public offering of securities' is regulated through a special chapter, which stipulates, among other things, the obligation to publish the Prospectus, as the most important document, which serves at informing the investor about characteristics of the offer, as well as relevant risks accompanying such offer, aiming at maximum transparency with investor, so that the latter makes a well-informed decision when deciding to invest in capital market products. The Offering Memorandum is another document, similar to the prospectus, but presented in a more simplified way, adapted, mainly for professional investors, or individuals within a limited number, in order to simplify the issuance process and, at the same time, maintain high transparency standards.

The law has conferred the Authority sufficient power to ensure its effective enforcement. Thus, foresees the increase of the Albanian Financial Authority competencies, in terms of conducting administrative investigations, in order to prevent market abuse, as well as to impose sanctions on all entities that violate legal requirements.

The new law on the capital market is a precondition and a driving factor for a transparent, well-regulated and reliable capital market, however, the development of this market will also depend on a number of other factors, such as: expanding the investor base, improving market infrastructure, the range of financial instruments, matching demand and supply for securities, investors and issuers' financial education, or encouraging companies to be listed on stock exchange, through a public offering. All these factors are closely related to the role that the main stakeholders in the capital market should play in promoting and developing this market.