

ALBANIA & KOSOVO LEGAL NEWSLETTER

KALO & ASSOCIATES RANKED TOP TIER BY CHAMBERS EUROPE 2010

Kalo & Associates last year (2009) was the only Albanian law firm to be ranked in the top tier. This year (2010) **Chambers Europe** has reaffirmed the firm's position ranking it again in the top tier for all key practice areas rated: (i) Corporate/Commercial; (ii) Projects; (iii) Dispute Resolution; (iv) Real Estate and (v) IP.

Although Chambers Europe does not conduct awards for the best law firm in Albania, we consider the repeated top ranking given to this firm

as a deserved acknowledgement of the quality of our client service. Chamber Europe: *"...This distinguished firm has strong expertise in international transactions and a significant client portfolio. It has acted on many of the country's largest projects, including extensive operations related to energy, privatisation and PPP."*

Clients say: *"They are extremely familiar with Western standards, they provide advice of the highest quality and they have excellent relationships with the country's industry leaders."*

IFLR1000: Chambers is not the only rating agency of the legal market that recognises the excellence of the firm. **International Financial Law Review 2010** also ranked the firm as one of the leading firms in finance and corporate law. "One of the oldest firms in Albania, Kalo & Associates is recognised by peers and clients as one of the top four firms in the country, with **"real expertise"**, according to one client.

INCREASE IN SOCIAL SECURITY AND HEALTH INSURANCE FOR SELF-EMPLOYED

On July 30th 2010 the Council of Ministers met and decided to change the minimum and maximum monthly salaries only for the purpose of calculation of social and health insurance contributions. The Council of Ministers' Decision no.477, dated 30.06.2010, "On some changes and additions to the decision of the Council of Ministers no. 1114, dated 30.07.2008" specifies that as of 1st July 2010 the minimum monthly salary for the purpose of calculation of social security and health insurance will be **16,820** leke, and the maximum monthly salary will be **84,100** leke.

However, it is important not to confuse this change with the minimum monthly salary to be paid to all employees whose employment is regulated according to the Labour Code which shall remain the same. This minimum monthly salary will be as defined in the Decision of the Council of Ministers no. 522 "To the definition of minimum salary", dated 13.05.2009, and remains at **18,000** leke.

Therefore, in effect, the changes are only applicable to non-employees

(i.e. not within the remit of the decision mentioned above). These changes in the minimum salary have led to the increase of the minimum sum of contributions from **4,497** leke per month to **4,693** leke per month. Those self-employed in partnership or self-employed and have hired a third party, aside from those self-employed people working in agriculture, shall pay a mandatory contribution for health and social insurance in the amount of 30% of the monthly minimum salary, from which 23% goes towards social insurance and 7% goes towards health insurance. Therefore, the above mentioned self-employed shall pay contributions in the amount of **5,046** leke per month (i.e. 30% of the new minimum salary of 16,820 to be used for calculation).

As an exception, the increase of the minimum salary as from 01.07.2010 means that the mandatory contribution for social security and health insurance for **self-employed people** engaged in commercial/service street vending



Author: **Anastas Konstandini**

Title: **Abstract**

activities and for house workers shall be a fixed sum of **1,440** leke per month.

The change to increase these contributions inevitably imposes greater costs on small entrepreneurs paying for their own social security and health insurance. The intention it would seem was to address informality in the declaration of these contributions; it is suspected that many self-employed in fact earn more money but declare social security and health insurance contributions based on the minimum salary.

**Emel Haxhillari, Associate
Tax & Employment Department**



PROJECT UPDATES

ALBPETROL SHA

The government of Albania has now selected international consultants Baker Potts as transaction advisors.

The Council of Ministers Decision Nr 275, dated 26.04.2010, has also determined that state-owned companies 'Alpetrol' Sh.a, 'Oil Plant Refinery Kucova' Sh.p.k and 'Mechanical Plant Patos' Sh.p.k are to be merged. ME'ITE shall be responsible for the issuing of further decisions for the implementation of this restructuring.

INSIG SHA

The invitation to tender and the teaser has now been published by INSIG (and BNP Paribas as transaction advisors), in which it is stated that in Albania INSIG enjoys a market share of 12.4% in non life insurance and a market share of 20.3% in life insurance in 2009. In Kosovo and Macedonia, INSIG has a 2009 market share of c. 8.3% and c. 3.0% respectively. After the exercise of the IFC's and EBRD's put option for 39% of the shares 100% is now freely available for foreign and domestic investors in INSIG shares. The law No 10168, dated 22.10.2009, has confirmed the form and structure of the sale.

NATIONAL LOTTERY

Proposed changes to the Law on Gambling are being discussed and underway in readiness for offer of the licence for the Albanian National Lottery. It shall eventually be offered under tender procedures pursuant to a decision of the Ministry of Finance (who has already been empowered by a decision of the council of ministers to initiate 'competitive procedures').

KESH HPPs

The Government plans to privatise medium sized Hydro Power Plants currently under KESH operation, that altogether amount to some 100MW.

SKAVICA HPP

Tender procedures for the concession on this HPP shall soon be re-opened; the Government are currently assessing the technical situation to select the optimal solution.

Other potential privatisation deals in the pipeline could be that of 15% state-owned stake in ARMO and parts of the remaining state-owned shares in OSSH.

LEGAL UPDATES

Concession Law Amendment – Introducing Control on Project Deadlines

The Council of Ministers on the 16th June 2010 approved its decision "On some amendments to the Decision of the Council of Ministers no.27, dated 19.1.2007 "On the approval of the Rules for the Evaluation and Granting of Concessions", as amended".

According to this new amendment Contracting Authorities are now expressly entitled to impose time limits on concessionaires for the obtaining of all relevant and required permits, licences and authorizations and for the completion of the detailed project design. The time limits that can now be imposed are:

- (i) up to 12 months for HPPs with an installed capacity not higher than 5 MW;
- (ii) up to 18 months for HPPs with an installed capacity more than 5 MW but not higher than 20 MW; and
- (iii) up to 24 months for HPPs with an installed capacity higher than 20 MW.

These new terms shall also apply to existing HPP concessions. Such limits however for both new and existing concessions, prior to taking effect, shall have to be incorporated as part of the concession agreement. These amendments have not yet been published in the Official Gazette and hence are not yet in force.

Increase of State Royalty over Minerals

The Albanian Parliament approved the increase of State Royalty over minerals. According to the recent Law no.10280, dated 20.5.2010 "On some amendments and additions to Law no.9975, dated 28.7.2008 "On national taxes", as amended", the royalty that is paid by mining companies has been increased. For example for chromium and copper the State Royalty has increased from 4% of the quantity of minerals sold per month to 6% of such quantity.

The new law was published on 29th July 2010, and will have entered into force on 15th June of the same year.

Olti Skrame, Associate Infrastructure & Natural Resources

National Licensing Centre to deal with Energy Licences:

The National Licensing Centre (NLC) shall be entitled to also deal with the issuance of energy related licences. According to the Decision of the Council of Ministers no.385, dated 19.5.2010, published in the Official Gazette on 30th June 2010, those subjects wishing to apply for an energy li-

cence may choose to submit their application to the NCL which is serving as a one-stop-shop for submission of all applications. Regardless of this one point of contact for submission the procedures for the review of such applications remain the same.

New Agency for Investments Development to be operative soon

The Council of Ministers has approved a draft law for the establishment of a new agency for investments development (which is to replace Alb-Invest) and such agency shall serve as "one-stop-shop" for potential investors wishing to invest in Albania. The Chairman of this new agency will be the Prime Minister and other ministers, and representatives from private companies shall also make up the Board of Directors.

KALO & ASSOCIATES as local legal consultant for Chemonics International Inc successfully completed the drafting of the secondary legislation of the new Territorial Planning Law to regulate the creation and operation of the National Territorial Planning Register.

Based on the new Law on Territorial Planning the Millennium Challenge Corporation Albania Threshold Program II (MCCA2) worked to establish a National Territorial Planning Registry so as to increase transparency and reduce opportunities for corruption in planning and regulatory processes through the application of IT standards.

Both drafts have been approved by the Albanian Council of Ministers (on 16th of June 2010) but are yet to be published in the Albanian Official Gazette.

The first of the two Decisions approved was "On the organization and functioning of the Territorial Planning Register". The Territorial Planning Register (TPR) is meant to be a public inventory of information created, saved, maintained and updated in an electronic database and in hard copy. The information in this inventory shall relate to territorial planning (e.g. requests for development permits, the master plans, regional plans, partial urban studies) provided by all levels of planning authorities and other units of the state institutions (including e.g. KESH).

The services provided by the TPR will be freely accessed through the identification, viewing and downloading facilities through a central web portal administered and maintained by National Agency for Territorial Planning.

Potential investors in commercial

continue page 3



from page 2

property shall now have a central point of reference for dependable information on planning and development matters related to the site they have an interest in, rather than having to acquire sporadic information from a variety of sources. This database is expected to be more time and cost efficient for such investors.

The second Decision approved was “On the approval of the structure and common geodesic standards, and GIS”. This Decision aimed at creating the geodesic common standards and the Geographic Information System (GIS), mandatorily to be enforced by the territorial planning authorities, other public institutions and legal entities. The scope of this Decision is to create a database the language of which used for data registration is modelled in such a way so as to be interoperable with other information systems.

The use of these GIS standards facilitates the provision of the information on geographic objects, their characteristics and other data relating to land, as well as providing the methods, means and services for the management of the information registered in the database.

The common geodesic standards and GIS described following the ISO standards of the category 19000 in this Decision include the following: (i) standards governing the specification of data and metadata, and; (ii) standards describing data formats and encoding, and; (iii) standards specifying the network services.

Enforcement of the common geodesic standards and GIS will enable the TPR to guarantee data sharing by and between other governmental databases. Users of the TPR shall benefit from the use of these standards and be able to gather and cross-reference information from other governmental databases with more ease.

**Av. Zamira Xhaferri, LLM,
Senior Associate, Head of Property**

KALO & Associates selected by IFC, together with Gide Loyrette Nouel, to advise the Government of Albania on the **improvement of the regulatory framework for Renewable Energy**. This follows many transactions and cases in which the firm has advised IFC, including the concession offer for ASHTA HPP, the privatisation of procedure for OSSH, analysis of potential PPP and also a further new mandate in Kosovo for the implementation of a PPP structure in solid waste management.

MANAGING PARTNER PANNELIST AT 2010 EBRD ANNUAL CONFERENCE

This year’s annual EBRD Meeting was held in May 2010 in Zagreb, Croatia. The key purpose of this annual meeting was to analyze investment opportunities in the countries where EBRD operates, typically in the SEE emerging markets. This year Managing Partner, Mr. Perparim Kalo, was a key speaker invited to talk about the investment climate in Albania.

In its 15 years Kalo & Associates law firm has been active in the area of investments having offered its services to major investors, and also often for IFIs. It realises all too well the importance of the country’s efforts in improving the investment climate to attract and increase the interest of investors.

Investments in Albania have been typically in telecommunications, banking and financial services, cement production, food and beverages, industrial parks, airport infrastructure, leisure, hotels, commercial complexes and agriculture. However, recently key investments have focused on areas such as renewable energy, power generation, natural resources, and air transport.

Mr. Kalo pointed out in his presentation that the role of the government has been, and should continue to be, to improve the infrastructure of public registries, water and power supply, waste management, industry regulation, competition rules and public procurement processes. The government still needs to continue making legal/judicial reforms and tax/taxation reforms. He noted that that very often investors are curious to ask about political stability, effectiveness of contract enforcement, general cost of doing business, employee protection and exit options.

In Mr Kalo’s view Albania has clearly demonstrated itself to be a safe country for investments and continues to attract foreign investors from various locations. As perhaps with most, if not all, countries targeted for investment before undertaking any projects, investors should in particular conduct a detailed due diligence on title, corporate history of target, and in the case of green field projects the terms (contractual and statutory implications) of the investments and regulatory issues.

VALBONA – PART OF UNDISCOVERED HIGH ALBANIA

(Impressions of a young visitor who climbed and reached the source of Valbona)

Our firm, having previously taken a trip to Theth, on the second weekend of June, took another trip to northern Albania, to visit and enjoy the unexplored Valbona. The people participating in this expedition visited the beautiful village of Valbona, from which the river with the same name gushes.

With the tour guide Jani Ziso we set off from Tirana at 5.30am to drive to Koman, where we took the ferry heading to Fierza. We were accompanied by a film crew from Top Channel that was following the tour guide to promote the touristic potential of the Albanian mountains. Once on the ferry, from the deck you could see the beauty of the lake as you breathe the fresh mountain air. After a quick lunch break we walked along the impressive valley of the Valbona River. We could feel the cold but crystal-clear waters. A small lake (named by locals as ‘James Lake’) was awaiting us ten minutes from the village.

The next morning we took a two hour long hike to the river source, climbing up



mountains as high as 2300-2400m. Under the hot sun everyone had a special feeling that reaching and dominating heights is associated with.

To allow our Kosovan office partners and lawyers to join, we also visited the city of Prizren. This excursion was certainly made easier by the new motorway connecting the two cities. Albania is a country of great natural beauty, and we strongly encourage everybody to take the opportunity to explore these places. The office fully supports the initiatives of the GTZ and the Albanian Association of Alpinists and would like to thank them for this deeply satisfying experience.



KOSOVO NEWS

EXPANSION OF KOSOVO OFFICE

Kalo & Associates Pristina office has enjoyed much success in the last year, having secured many significant mandates; recently been selected also by IFC, together with Gide Loyrette Nouel, to advise the Republic of Kosovo on a Potential PPP transaction in the solid waste management sector in Kosovo.

The office has also taken on board a further two lawyers, and to accommodate the expansion the office has now moved to larger offices at: **PEJTON, STR. MUJO ULQINAKU 5/1, 10000 PRISTINA - KOSOVO**

Visit www.kalo-attorneys.com, 'contact us' for the map.



NEW DATA PROTECTION LAW

The Kosovo Parliament on 29 April 2010 approved the Law on Personal Data Protection (Law No.03/L-172), endorsing the constitutional principle that 'every person has a right to personal data protection'. This Law applies to the processing of personal data by public bodies and private business (domestic or foreign).

When personal data can be processed:

This Law provides that personal data may only be processed with the prior consent of the data owner and personal data shall be processed fairly and lawfully without violating the dignity of data owner. The Law distinguishes between 'written consent', which is required at times for e.g. sensitive data is to be transferred, and also 'oral consent or other appropriate consent of the data subject'. It is however at times unclear in the law what type of consent is required for various actions.

What data cannot be processed:

This Law distinguishes sensitive personal data provides that it cannot be processed unless, for e.g. (i) the data subject gives prior consent, (ii) it is for the purpose of fulfilling an obligation of an employment contract; (iii) it is necessary to protect the vital interests of a person who is legally or physically incapable of giving consent; (iv) the data is processed by healthcare workers; or (v) the data is processed for public interest purpose; etc.

Regulatory body: The Law creates the Na-

tional Agency for Personal Data Protection, which shall be responsible for the supervision of the implementation of the provisions of this Law. The Agency shall, inter alia, (i) give advice to the public and private bodies on data protection related queries; (ii) address complaints of data subjects; (iii) carry out inspections and audits.

Transfer of data: Transfer to other countries and international organizations of personal data that are processed or are intended to be processed after transfer, may take place if the country or international organization in question ensures an adequate level of data protection. The Agency shall maintain a list of the countries and international organizations determined to have adequate level of data protection. Such list may include EU member states and the EEA, and as regards to other countries the Agency may adopt a decision of the EU for such or issue a decision based on its own assessment of the adequacy of the respective countries safeguards (the criteria for this is set put in the Law).

A data subject as per this Law is entitled at any time to file a complaint with the Agency if he/she believes that his or her right has been infringed. For minor offences in violation with these provisions, the Law sets fines that range from 200 Euro to 10,000 Euro.

**Vegim Kraja, Associate
Corporate & Natural Resources**

PROPOSED AMENDMENTS TO BUSINESS LAW

A draft law on amending and supplementing the Kosova Business Law is currently undergoing the approval process and is expected to be enacted quite soon. The proposed draft, among others, aims to address the following:

- Decrease the required initial capital for JSC from 25k to 10k Euro.
- Deadlines of 10 days are to be reduced to 3

days, of 60 days to be reduced to 30 days, and of 20 days to 15 days: the process of registration should thus be quicker.

- For LLCs it shall expressly permit the establishment of a board of directors to be regulated by company agreement and statute as opposed to the single Administrator currently provided for.

PROJECT UPDATES

PTK Privatisation

The pre-qualification phase is said to start in September this year and the bid opening aimed for mid-November. With decision No. 01/130 dated 16.06.2010 the Government of Kosovo has decided that 75% of the shares of PTK shall be subject to the sale and for the time being the state to retain 25%.

Potential investors had expressed little interest in the Postal service unit of PTK, and presumably as a result of this advisers have recommended that the Postal unit to be divided but subsequent to the privatization.

Other criteria, among the key best price offer, for PTK privatization will be the annual turnover of a company in competition, its assets, experience in the field of mobile telephony and number of mobile subscribers.

HPP - ZHUR

The Inter-Ministerial Steering Committee (ISC) on behalf of the Government of the Republic of Kosovo has invited all interested private investors to express their interest to participate in an open international tendering procedure for the development of Hydro Power Plant Zhur (HPP Zhur) with an installed capacity of around 305MW, and the respective ancillary facilities for connection in the transmission network.

The development of HPP Zhur is to be conducted through a concession of up to 40 years in the form of Design – Fund – Build – Operate – Own – Transfer (DFBOOT). All interested parties have been invited to express their interest by 25 August 2010.

The Government has also simultaneously tendered for transaction advisors services for assistance in attracting private sector participation for development of the new hydropower plant near village Zhur (HPP Zhur). Deadline for submission of offers is 15 August 2010.

CONTACT

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Disclaimer: This newsletter is to only provide general information and nothing in it shall be construed as legal advice, professional advice should be sought prior to any action being undertaken based on any of the contents of this newsletter.

