ALBANIA & KOSOVO LEGAL NEWSLETTER

KALO & ASSOCIATES - ALBANIA MAINTAINS ITS TOP RANKING POSITION BY IFLR1000 FOR THE 2013 GUIDE

ILFR1000, a reputable and highly regarded legal guide for financial and corporate legal services, has reviewed the Albanian market for many years now and has consistently recognised KALO & ASSOCIATES as a top tier firm in financial and corporate practice. ILFR1000 identifies the firm as being “well respected and deeply entrenched on Albania’s legal landscape. The firm is a strong choice for international firms looking to team up with local counsel on significant cross-border transactions … have a sturdy reputation in banking and finance matters and its broad practice ranges from small to large-scale transactional and regulatory finance.”

Also ranked again as leading lawyers are Managing Partner - Perparim KALO, Alban CAUSHI (partner), and Sophia DARLING (partner). Other noted partners from the office include Ardjana SHEHI (banking partner) and Anisa RRUMBULLAKU (corporate partner), both regarded by a client as having “been attentive to detail and give us good analysis and good feedback”.

TRANSFER PRICING IN ALBANIA

Albania has local Transfer Pricing (TP) rules in place but no legislation specifically addressing TP. The existing TP rules include the relevant legal provisions in the income tax legislation including the specific TP regulation of the Minister of Finance, tax procedure legislation, the effective DTT-s, etc.

The existing TP provisions refer to the arm’s length principle and contain very basic components that are typically addressed in TP legislation such as definitions of related parties and inter-company transactions and a list of TP methods and the comparability analyses and application are regarded as the most appropriate and acceptable for corporate income tax purposes.

Albania adheres to existing international standards by expressly accepting the OECD Guidelines, i.e. the existing TP rules specifically outline TP methods by making reference to the methods described in the OECD Guidelines. Even the TP required documentation provisions are very limited, the existing legislation very remotely makes an attempt to provide for such documentation and only recently have the local financial accounting provisions become sufficiently comprehensive. For the purposes of implementation of the TP rules the Albanian Ministry of Finance has set up a committee – the Commission of Transfer Pricing – a subordinate of the General Tax Department and the main task of this commission is the determination of the market price in transactions between related parties and the final decision has to be rendered by the General Tax Director. The implementation of the existing TP rules in Albania has the support of the existing legal framework including administrative appeal procedures and the court system.

Post TP adjustment risk is seen as the most probable obstacle for the usage of TP in Albania. Specifically, the provision on TP in the Income Tax Law expressly provides that any transaction which is concluded between two related companies by disregarding the arm’s length principal shall be subject to price adjustment by the tax authority; any TP price adjustment is ruled by the general.

FIRM HOLDS 1930s PHOTO EXHIBITION

As part of the celebrations of the 100th Anniversary of the Independence of Albania, KALO & ASSOCIATES hosted an exhibition displaying rare photos showing Albania in the late 1930-s. The copies of the originals, currently in the possession of our partner Ardjana Shehi, were taken by a professional photographer who was on the staff of Mr Hugh Grant, the US Ambassador to Albania (from 1935-1939). Most of the photos give a rare and unique view of the rural areas of Albania at that time. Also on display is some declassified correspondence of that time between Ambassador Hugh Grant and others state department officials (kindly donated by the well-known Albanian historian Mr Paskal Milo). To accompany the displays the firm showed a short film giving a rare moving image glimpse of Albania from 1914 until the beginning of the communist era. This photo exhibition will remain open until the end of November 2012. Please contact our offices for information.

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Recently the hydrocarbon sector subcontractors involved in exploration and development operations have been faced with a tax-related uncertainty that has been generated by a letter of the General Tax Department. These subcontractors ordinarily enjoy VAT exemptions that derive from the law and from the Petroleum Agreements between the State and the Oil & Gas contractors who have hired the subcontractors to conduct certain works.

The GTD letter instructs the regional tax offices not to acknowledge the VAT exemption confirmations already issued by AKBN (Agency of Natural Resources) if the services are not related to exploration and development operations. This is despite the fact that the law expressly provides that it is AKBN that has the authority to confirm whether the services provided by subcontractors are related to exploration and development operations or not. Thus, it should be the case that once AKBN certifies the works as being related to such the VAT exemption should apply. It is however a matter of fact now that regional tax offices have already started to implement the instruction of that letter, considering it as a normative act and have begun to initiate some tax audits under the auspices of having the authority to determine what works are related to exploration and development or not.

**Calculation of the Raw Material Value Used for Mineral Enrichment**

Recently an ad-hoc commission appointed by the Minister of Finance issued a Report determining the list of reference values based on the technological normative of the products that are using minerals. The Report issued by the ad-hoc commission has detailed the method of calculation of the value of the raw material used for the enrichment of the by-products (i.e. enriched minerals).

This Report is issued on the basis of the relevant Decision of Council of Ministers which provides that “in the case of export of by-products, the taxable basis for the calculation of the royalty is the value of the mineral used to produce the by-product. The value is declared by the exporter and the customs authorities have the right to compare the declared value with the reference value based on the technological normative of the products that are used as raw mineral materials”. The implementation of this Report will lead to an increase of the financial burden for companies operating in this industry as the method of calculation has widened the taxable base for royalty. For more information on the Report and method of calculation please contact us.
NEW DATA PROTECTION STANDARDS TO APPLY TO BANKS FOR PROTECTION OF ITS CUSTOMERS

In the spirit of consolidating and detailing the legal framework related to the relatively new area of personal data protection in Albania, the Data Protection Commissioner recently approved a new Instruction no. 20, “On data processing in the banking sector”. This Instruction sets forth new obligations applicable to banks, branches of foreign and financial institutions that collect and process personal information within the scope of their banking and financial activity.

This Instruction introduces the higher level of protection over “negative information” that is defined as information related to the delays in payment of credit by a customer (principal, head payments, late interest and/or penalties), or other defaults under the credit agreement. As negative information directly affects a client's ability to access credit, banks and financial institutions are obliged to pay particular attention to the accuracy of data contained in the negative information such that if this registered 'negative' information proves to be fully or partially inaccurate it must be officially deleted and replaced with accurate data.

The Instruction provides that all entities concerned must enact clear and precise safety measures and enforces standard procedures that are known to all their employees with a view to respect such measures. Safety measures are particularly important with respect to files created with the scope of prevention of money laundering and terrorism financing. The Instruction provides for these data to be stored separately from the client’s files on financial services and to be subject to strong technical and organisational measures for their conservation to avoid any disclosure, processing, modification, loss, corruption or unauthorized/illegal access.

The maximum period that financial institutions may store client’s personal data is as a rule 5 years from termination of a financial relationship with the customer after this period all data must be deleted. You must tell me if I am being watched: Under this new Instruction banks must now notify their customers that their premises are being surveyed by cameras and any data stored by the surveillance system may not be stored for a period longer than 2 months.

The Data Protection Commissioner may act ex-officio or upon the request of customers claiming infringement of their personal data; administrative penalties for infringements may vary from 10,000 ALL to 1,000,000 ALL.

By Eni Kalo
Associate, Corporate & IP

ONE OF THE FIRST SUCCESSFUL BANKRUPTCY CASES

KALO & ASSOCIATES were instructed as lawyers for the Albanian American Enterprise Fund in a bankruptcy case that was initiated in December 2010. This case is the first bankruptcy court case in Albania to have exhausted all the bankruptcy court proceedings including the opening of the bankruptcy proceedings, the approval of liquidation due to bankruptcy instead of a re-organization plan, the creditors meetings etc., and through to the decision of the court declaring the bankruptcy of ALB-GRANIT SHPK. The case did prove to be a challenge in view of the very recent application of the Bankruptcy Law and relative inexperience of the courts and bankruptcy administrators. All other challenges of this first bankruptcy case, such as de-registration from the Commercial Registry on the basis of bankruptcy court decision, de-registration from the corresponding regional tax office and the local taxes office, etc. were completed successfully creating a good precedent for other companies wishing to exit the Albanian market. This bankruptcy case has proven that the legal framework for successful bankruptcy proceedings does exist and that with good legal advice and instruction the framework can be implemented and utilised effectively and efficiently.

PROJECT UPDATES

HPP’s PRIVATISATION
Following the failure of the first attempt of the privatisation of the HEC ULEZ SHKOPET and HEC BISTRICA I AND BISTRICA 2 HPPs the first time around; METE has re-issued tender proceedings – bid submission deadline to be 10.12.2012.

HPPS ON OSUMI, DRINI AND VJOSA RIVER
Two consortia bid for the Osumi river HPP cascade with a projected capacity of over 300 MW. After evaluating the offers METE declared the temporary union of companies “Genosumi” LTD, Constructora Quebec “LTDA”, “Orteng Equipamentos E Sistemas” LTD and “Pëllumb Çela” SHPK as the winners.

MEET is still the phase of drafting the bid package for Vjosa River HPP which is expected to be launched within this year (with a projected capacity of 300 MW). METE also plans to re-activate the Skavica project over the Drini I Zi River (re-evaluated with a the theoretical capacity of over 300 MW) and issue a new bid package also within this year.

ALBTELECOM PRIVATIZATION
METE has declared that the public auction for the sale of the remaining stake of the state in the telecommunication company Albanetcom (that offers fixed phone and internet service throughout Albania) shall now be opened and take place later this year from 10 December 2012.

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LAWYERS SUPPORT THE FIRM’S CSR POLICY AND DONATE BLOOD

In September 2012 KALO & ASSOCIATES took part in the blood donation initiative “20 minutes to save a life”, launched by the Albanian Red Cross in collaboration with the Blood Bank to help over 400 Albanian thalassemic children under the campaign motto that “each blood donation can save a life”. The campaign of the Albanian Red Cross is extremely important and genuinely a life saving tool especially as in Albania the need for blood is 10 times higher than the existing voluntarily donated blood reserves. We strongly encourage everyone to take part and take just 20 minutes of your time to save a life.
KOSovo Office

IFLR1000 RANKS KALO & ASSOCIATES “KOSOVO OFFICE” AS ONE OF THE BEST

IFLR1000, a reputable and highly regarded legal guide for financial and corporate legal services, has reviewed the Kosovan market for the first time and in doing so recognised the KALO & ASSOCIATES Pristina office practice as top of the market. Clients are quoted as saying “I would see them as solid local players and I would consider using them again” … “I trust them and they have a certain reputation.” The IFLR1000 also ranks the lead partner Ahmet Hasolli as a recognized leading lawyer in the market for financial and corporate practice. IFLR1000’s financial law firm rankings are based on the recommendations of in-house counsel at the world’s most prominent financial institutions and companies, as well as the leading lawyers, attorneys and solicitors in each legal market covered.

Kalo & Associates Pristina office is an expansion of the Albanian operations; Ahmet Hasolli and Gazmend Nushi; two long-standing and well established Kosovar lawyers were brought in to help establish the local office in 2008 and they continue to lead the team on the ground. For the full review please follow this link: http://www.iflr1000.com/Jurisdiction/147/Kosovo.html

OFFICE SUPPORTS THE EVENT

“An Evening with Wesley K. Clark”
organized by Kosovo American Education Fund (KAEF) in Pristina

NEW DRAFT LAW ON FOREIGN INVESTMENT REJECTED BY PARLIAMENT

In the plenary session of the Assembly of Kosovo on 08.11.2012 the Draft Law “On Foreign Investment” to replace the current one, that would invalidate the Law on Foreign Investment. It was thought by the Opposition that the Draft Law favoured the foreigner investors far more and did not support economic growth.

Some of the proposed changes included had in fact limited the support to foreigners e.g. in terms of facilitating visa procedures it was proposed to not offer any additional assistance and the legal procedures be followed. Another notable change was the proposed removal of the State guarantee for compensation in cases of damages resulting from armed conflicts and civil disturbances; the State shall only provide protection and security only if resulting from its fault.

Under the existing Law on Foreign Investment, which does not exist in the proposed draft, the Republic of Kosovo guarantees compensation in the case of damages due to expropriation where payment is due from various or relevant public authorities. Foreign investors cannot rely on any state warranty but must simply chase the relevant ministry, local authority etc directly responsible.

The proposed draft also seeks to repeal the current Law on Support of Small and Medium Sized enterprises.

INSTRUCTIONS TO FACILITATE IMPLEMENTATION OF COMPETITION LAW

Pursuant to the Law no.03/L-229 “On Protection of Competition” the government has recently approved three Administrative Instructions to facilitate the implementation in the following matters: (i) requirements of the application contents and form of documents and data for submission to the authority; (ii) determining the terms and criteria that should be met for an agreement to be considered to be one with low value; and (iii) defining the criteria for the Authority to take into consideration before rendering a decision on whether to release or reduce a penalty imposed on companies engaged in horizontal and vertical agreements.

PROJECT UPDATES

PTK Privatisation

The government is continuing pre-bid negotiations with the 5 shortlisted companies including Columbia Capital, in consortium with ACP Axos Capital Gmbh, in cooperation with British Telecom - Poland (owned by British Telecom); M1 International Limited; Turkcell; Twelve HORNBEAMS, in consortium with Avicenna Capital LLC, in cooperation with Sofrecom (part of France Telecom).

PRIVATIZATION OF KEK/KEDS:

Furthering the investment in the Kosovan economy by Turkish companies, Turkish company “Limak-Calik” won the contract for 26 million Euros. The signing ceremony already took place. Turkish consortium Calik Holding and Limak bought 100 percent of KEDS, a unit of power utility Korporata Energetike e Kosoves (KEK), and pledged to invest 300 million euros over the next 15 years.

Motorway Prishtina – Hani i Elezit

The government has apparently allocated 30 million Euro for this project for 2013 to run parallel with the ongoing construction of Morine-Merdare Motorway. The IMF has in principal agreed with the government plan on Route 6, except that the last 13 km (before border with Macedonia) of this new motorway should undergo another feasibility study so that the finances are secured easily and that IMF gives consent on this.

Contact

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Disclaimer: The contents of this newsletter is for information-purposes only and are not intended in any way as legal or other professional advice. It is advised that professional advice should be sought prior to any action being undertaken based on any of the contents of this newsletter.

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