

ALBANIA & KOSOVO LEGAL NEWSLETTER

FINALIST IN THE LAWYER EUROPEAN AWARDS 2012

THE LAWYER
EUROPEAN AWARDS 2012
SHORTLISTED

For the third year running KALO & ASSOCIATES has been shortlisted in the prestigious Lawyer European Awards for the category of "Law Firm of the Year Eastern Europe & the Balkans". The Lawyer publication is very much respected within the legal field around the world as are its ratings and awards. The judging panel was made up of senior partners of first class international law firms and of in-house counsel of a range of major leading companies; and the judging criteria focused on ethos, culture, training programs, expertise, deal list, annual growth, strategy and future vision.

The firm is delighted to be honoured again with this accolade, which demonstrates the firm's unshakeable commitment to maintaining the best quality standards in Albania and Kosovo.

3RD ANNUAL CONFERENCE ON FOREIGN INVESTMENT IN ALBANIA



Managing Partner, Perparim Kalo was a panellist in the Conference which aimed at reinforcing the position of Albania on the world investment map by highlighting profitable business opportunities readily available in the country.

<http://www.idbgbf.org/portal/event.aspx?id=9>

NEW STRATEGY ON PROPERTY RIGHTS FINALIZED

The Albanian Ministry of Justice has finalized a new strategy on property rights that, as the ministry says will resolve issues with property rights in Albania. Property rights are one of the areas of concerns that the EU Commission has expressed in almost all of its reports addressed to Albania. Many primary and secondary legal acts have been passed over the last 10 years in an attempt to resolve this main area of concern for interested investors.

With the help of World Bank the systematic first registration of properties is in the final stages and hopefully with the creation of a digitalized property register all future transactions of any immovable property will be stored electronically thus speeding up the process of the transfer of ownership title

and establishing a secure database for storage of all property rights data. The new Strategy proposes a tight schedule for the Albanian Government aiming to finalize the process of restitution and compensation by 2017.

In brief the new proposed strategy on property rights is a well drafted document but the actual successful and timely implementation of remains to be seen. The key obstacles in implementing such a challenging strategy are two-fold: (i) how to fund the challenging process of restitution and compensation and (ii) reaching a cohesive process by involving each and any stakeholder interested in property rights to assure that the strategy will be implemented no matter what happens to the composition of the central government and parliament.

KEY POINTERS FOR HYDRO- POWER PLANT INVESTMENT

The government of Albania has been very keen to attract investment in the hydro power sector, and investors (including from Austria, Italy, UK, France, Czechoslovakia, and Israel) have indeed shown interest. There are very many existing small hydro power plant concession (SHPP) requiring outside investment.

Investors look for and bankable projects to be able to secure that extra financing required completion of the construction phase and to ensure a decent return on the investment, and all face similar problems and obstacles in Albania. Below are some key pointers (from a legal perspective) investors (typically buying into the project company) should bear in mind when embarking on SHPP investments:

- ▶ SHPP concession structures are not typically on the expected basis of non-recourse finance. The project shall be implemented by a project company (required to be established after execution of the

concession agreement) but both the Concessionaire/Sponsor and Project Company shall remain jointly and severally liable until commissioning of the SHPPs. Concession agreements vary in the manner in which they have drafted over the years, some may not even limit this joint and several liability until the point of commissioning of the plants. Typically this can only be dealt with contractually, allocation of risks and rights using waivers and indemnification tools; other option is to secure an amendment of the concession agreement.

- ▶ Anticipating available types of security is important. Many concession agreements do not envisage step-in rights, and the law at present does not have a sufficiently detailed step-in mechanism. Assignment of the concession rights is thus a rather more complex issue and often discouraging for financing institutions. A common form of security



LEGAL TAX UPDATES

New law "On Excises" and Amendment to the Law "On Tax Procedures"

On 24th May 2012 the Albanian Parliament passed Law no 61/2012 "On excises in the Republic of Albania" which will replace the existing law "On excises". This new law was published in the Official Gazette on 9th August 2012 and shall enter into force on 1st October 2012. Under the transitory provisions excise taxpayers as of 24th August 2012 must now follow the relevant procedures with the Customs Authorities instead the Tax Authorities.

Correspondingly, the Albanian Parliament on 24th May 2012 also passed Law no. 62/2012 which amends law no. 9920, dated 19.05.2008 "On tax procedures in the Republic of Albania",

as amended. This law, also published in the Official Gazette on 9th August 2012 and also taking effect as of 1st October 2012 confirms that as of that time excise will be administered by the General Customs Directorate.

Amendment to the Law "On Income Tax"

The Albanian Parliament on 28th June 2012 passed Law no 71/2012 amending Law no. 8438, dated 28.12.1998 "On income tax", as amended. It was been published in the Official Gazette on 31st July 2012 and shall enter into force on 1st January 2013. This amendment provides that, as of its entry into force in January 2013 profit tax (corporate tax) prepayments shall be paid every three months. However, taxpayers may choose to pay the profit tax

prepayments on a monthly basis within date 15 of each month.

Amendment to the Instruction "On Income Tax"

The Minister of Finance on 25th July 2012 issued a new Instruction no. 16, amending Instruction no. 5, dated 30.01.2006 "On income tax", as amended. This amendment Instruction was published in the Official Gazette on 13th August 2012 and effective as of its date of publication. The Instruction has amended several provisions by better clarifying the meaning of 'Tax Residence', the procedures of personal income tax declaration as well as the procedures for capital increase of companies contributed by individuals whose incomes have not been taxed before.

For all queries on Tax issues please contact a.shehi@kalo-attorneys.com.

KEY POINTERS FOR HYDRO- POWER PLANT INVESTMENT

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is the use of a share pledge for which prior contracting authority (ministerial) approval shall be required. Other security options include assignment of receivables (power purchase agreement(s)), securing charge over bank accounts and possibly also securing charge over the plant and equipment.

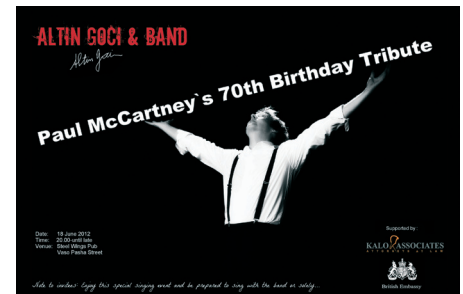
- ▶ One of the most important conditions to closing the investment deal is the approval of the Ministry of Economy, Trade and Energy (METE) for the transfer of the shares (if investment is by way of acquisition of shares). There are no clear published criteria or procedure for the approval process thus delays can occur. METE is keen to expedite the process and help sponsors secure the financing and expertise required to conclude the projects, but without clear published rules and timeframes there is a lack of legal certainty for investors.
- ▶ A matter not to be underestimated is the process of negotiation with local sponsors which can be unnecessarily protracted at times and much lost in translation. It is not unusual for there to be a big divide in the expectations of investor and of the sponsor. From

experience it is advisable and shall ultimately be to the benefit of the investor (both in terms of time and cost) to engage experienced lawyers at the early stages to help bridge that gap in expectations and facilitate negotiations and implementation of the investment.

As local legal consultants KALO & ASSOCIATES, together with GIDE (international law firm) advised and assisted the IFC with the preparation of a package of documents including amendments to the Concession Law to provide an appropriate step-in mechanism which was intended to facilitate and resolve some of the issues mentioned above. This package of documents also included template concession agreement (specifically structuring non-recourse financing), power purchase agreement, grid connection agreement, and a draft Renewable Energy law and of which had been drafted and prepared for the government to pass through Parliament many months ago. These documents were drafted with the full consultation and input of all interested stakeholders including financing institutions, ERE, METE, AKBN, HPP sponsors, CEZ, OST and others.

**By Sophia Darling, Partner
Energy & Natural Resources**

KALO & ASSOCIATES AND BRITISH EMBASSY SUPPORTS McCartney's B-DAY 70th CELEBRATION



For the 70th birthday celebration of the legendary Beatles member, Paul McCartney, Alvin Goci accompanied by his musical band, who known for their passion for the rock legend McCartney, put on a great show to honour the outstanding contribution to international music of Paul McCartney.

The event was supported by the KALO & ASSOCIATES together with the British Embassy in Albania. On a Monday evening at a popular venue in Tirana, Paul McCartney and his music brought together musicians, professionals, foreigners and natives. Popular hits, and those less known songs of the repertoire of the Beatles and Paul McCartney were sung by Alvin Goci and his bank, and guests were also invited to sing and share their passion for the work of the music legend Paul McCartney.



IMPORTANCE OF ROLE OF BANKRUPTCY ADMINISTRATOR

The licensing of bankruptcy administrators should be the first step taken to ensure that Albania has adequately specialized and duly qualified bankruptcy administrators. The licensing process for the first group of bankruptcy administrators will open the door for the next important step, that of the training the bankruptcy administrators. In accomplishing at least these two steps the efforts and costs incurred for the preparation of the specialized bankruptcy administrators shall be focused. Certainly the licensing and training of the bankruptcy administrators shall bring many benefits to the bankruptcy process that ought to be recognised as an accessible process for businesses assuring legal “exit” from the market thus allowing these businesses the opportunity of a “fresh start”.

The licensed and trained bankruptcy administrators may be used by the Bankruptcy Court whether it is prior to the opening of court bankruptcy proceedings as well as after the court decides on the opening of the bankruptcy proceedings. The specialized bankruptcy administrators shall be able to better recognize the distinction between these two important phases of the court bankruptcy procedure and take the necessary measures for securing the bankruptcy estate and the protection of creditors’ interest which is in essence the key principle in bankruptcy procedures.

The specialized bankruptcy administrators should be able to better under-

stand their role as the executive body of the debtor while the Bankruptcy Court and the creditors’ assembly constitute the decision-making body of the debtor. This basic understanding of the respective roles in the procedure will enable them to better execute not only the duties under the bankruptcy legislation but also those provided under Company Law and other related laws. This is more important especially for the debtor where the implementation of the reorganization plan has been decided as the best option. Another benefit of ensuring the specialised training of bankruptcy administrators is that it would make the court bankruptcy proceedings more time and cost efficient.

Having taken everything into consideration, i.e. the tasks and duties, nature of the training and education, a bankruptcy administrator should be required to have both a legal and economic background and preferably in business administration. Notwithstanding the criteria already provided by the law, it is crucial that there be structured training programs, not just at the beginning but on a continual basis.

Whilst I have focused the above on the need and importance of the licensing and training of the bankruptcy administrators, this is just one of the many challenges we face in achieving effective bankruptcy proceedings that shall be to the required and expected standards.

By Ardjana Shehi, Partner
Tax, Employment and Banking

ALBANIAN STRATEGY FOR DIGITAL SWITCHOVER

On 02.05.2012 the Council of Ministers approved (Decision no.292) the Albanian Strategy for Digital Switchover. This strategy aims to guide the transition from analogue to digital broadcasting by defining the principles of this switchover, the role of the state and the respective state administration structures for creating the necessary conditions for the digital switchover. It also provides an assessment of the existing technical and legal situation of the Albanian audio and visual landscape and defines the steps, procedures and timelines for completing the switchover.

The Albania Switchover Strategy is part of the global process of the transition from analogue to digital broadcasting, coordinated by the International Telecommunication Union (ITU). The Strategy calls for the transition to digital television to be completed by 17 June 2015, as defined also in the “GE-06 Agreement,” adopted in Geneva at the ITU Regional Radio communication Conference 2006 and ratified by the Albanian Parliament with Law no. 9851 dated 26.12.2007.

The approval of the Albanian Strategy for Digital Switchover paves the way for the approval of the Albanian new Audiovisual Broadcasting Law which from September 2011 is under consultation and discussion process by the Parliament Committee of Education and Public Information. However, the approval of the new law was stalled so that the new law and the Albanian Strategy for Digital Switchover are implemented simultaneously.

By Enkelejd Seitllari, Associate
Corporate & Business Licensing

ALBPETROL SHA

Following the publication of the Invitation to Bid and opening of the Data Room in June this year many prominent companies have expressed interest in participating in the bidding process (companies from China, Russia and Canada). METE had recently postponed the bid submission date to 7 Sept. 2012.

NATIONAL LOTTERY

Ministry of Finance concluded the evaluation phase of the tender process and the winning bidder was declared to be ‘Austrian Lotteries’. The tender process was reported to be subject to complaints that the evaluation criteria said not be drafted in a transparent manner with many calls for the cancellation of the process. This has however been denied and the Ministry

PROJECT UPDATES

of Finance is continuing with the process.

HPPs ON OSUMI, DRINI AND VJOSA RIVER

There is news that there had been two consortiums that submitted offers for the Osumi river HPP cascade with a projected capacity of over 300 MW and those offers under evaluation. METE is still drafting the bidding 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 theoretical capacity of over 300 MW) and issue a new bidding package within this year.

HPPs PRIVATISATION

Recently METE has announced that

the bid submission deadline for the HEC ULËZ SHKOPET and for HEC BISTRICA 1 and BISTRICA 2 HPPs has been postponed to 9th Sept. Austrian companies Verbund and EVN, and joint venture led by France’s Compagnie Nationale du Rhone are all in the running.

ALBTELECOM PRIVATIZATION

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

For more information on the project updates please contact:

info@kalo-attorneys.com.



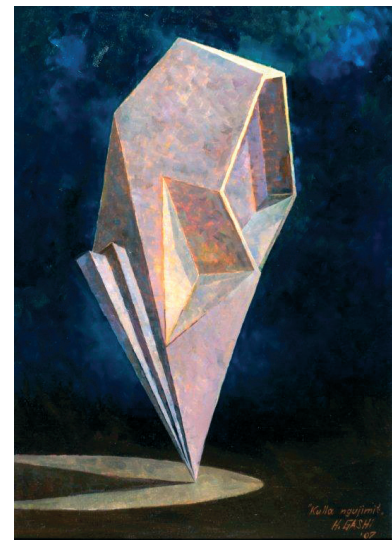
KOSOVO Office

NEW LAW ON CONSTRUCTION

The Law on Construction has been enacted on 19.06.2012 and entered into force on 18.07.2012 abolishing any other legal act that is in contradiction with this law. Among other changes to the legislation, the Government shall no later than from 3 months from entry into force of this Law harmonise the Law on Spatial Planning and other relevant laws. Also to be enacted is the Unified Construction Code within 6 months,

and until then references in this new law to the Unified Construction Code shall be considered to refer to existing construction standards.

One of the main reasons for its enactment and issues it addresses is the long and cumbersome process for acquisition of construction permits, introducing the concept of tacit approval of permits if deadlines are surpassed by the authorities.



Haxhi Gashi - Housebound Tower

PROJECT UPDATES

PTK Privatisation

The Government of Kosovo received applications of 8 interested companies to purchase 75% of shares of the public enterprise Telekom of Kosovo in this second round. The prequalified companies include: (i) Albright Capital Management L.L.C.; (ii) Avicenna Capital LLC in consortium with Twelve HORNBEAMS (Great Britain, Poland); (iii) Columbia Capital in consortium with ACP Axos Capital GmbH (USA, Germany); (iv) Elkos LLC (Kosovo); (v) Geni Capital (Luxembourg); (vi) M1 International Limited (British Virgin Islands); (vii) Monaco Telekom International SAM (Monaco); and (viii) Turkcell (Turkey). The received bids will be evaluated by a professional committee composed of officials of all Ministries represented in Committee.

KEDS Privatization

The Government Privatization Committee has announced the consortium Limak Yatirim Enerji & Çalik Enerji Sanayi as the preferred bidder for the privatization of Kosovo Electricity Distribution and Supply privatization.

The GPC proposal came after the Bid Evaluation Committee for the KEDS Privatization concluded that

Limak & Calik had bid at 26.3 million euro, while Elsewedy Electric S.A.E. bid 22.8 million. (Source: Ministry of Economic Development).

Motorway Prishtina – Hani i Eleziti

Ministry of Infrastructure announced the Invitation for Expression of Interest for the Construction of Motorway Prishtina – Hani i Eleziti that will connect Republic of Kosovo with Republic of Macedonia. This route is considered to be of high importance as it will connect Kosovo with Corridor 10. The term for submission of bids was until 27/07/2012.

KOSOVA E Re – Power Plant

The Kosovo B power plant will be removed from the tendering package of the new power plant, Kosova e Re.

The request, made by the pre-qualified companies, was approved recently by the Advisory Committee of this project. The proposal is expected to be approved by the Government in the next meeting to be held soon. Changes in the structure of the project package of “Kosova e Re” have also been confirmed by the Ministry of Economic Development.

Brezovica Ski Resort

The tender for Transaction Advisor was cancelled due to the lack of funds.

NEW LAW ON OBLIGATIONS EFFECTIVE FROM DECEMBER 2012

The Kosovo Assembly has adopted a new Law “On Obligations Relationships” (no. 04/L-077) that is to replace the current Law on Obligations that was originally drafted during the communist regime. The newly approved law will come into force 6 months after its publication (which was 22.06.2012). As part of the transitory provisions, this new law once into force shall not apply to those relationships based on obligations (including those from contract) that arose before the entry into force.

The new law will govern relationships with obligations that include: (i) contracts; (ii) torts; (iii) unjust acquisition; and (iv) public promises for reward. The scope covers relationships of obligations between physical persons and among commercial entities or vice versa.

This new Law on Obligations abandons the old ideological concepts of communist doctrine and embraces principles of free market economy. The Law is governed based on the key fundamental principles of: (i) Autonomy of Will; (ii) Equality of Parties; (iii) Conscientiousness and Fairness; (iii) Due Diligence; (iv) Prohibition of misuse of rights; (v) Equal consideration; (vi) Duty to perform obligations; (vii) Prohibition of causing damages; (viii) Principle of amicable settlement of disputes.

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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