The UK Embassy jointly with the International Business & Diplomatic Exchange (IBDE) held a UK-Albanian Investment Forum on 25th January 2012 in a bid to attract more British investors to do business in Albania. The forum was very well attended by many high government representatives including Minister of METE, Minister of Agriculture, Food and Consumer Protection, Minister of Information, Communications, Technology and Innovation, and the Minister Tourism, Culture, Youth and Sports. All had positive news of business activity in Albania and the general investment climate and highlighted key areas as being energy, tourism, agriculture and ICT. Other opportunities with the Municipality of Tirana were emphasised by the Deputy Mayor, Ms Jorida Tabaku. Areas mentioned included potential PPPs for projects for a transport passenger hub, a business park, expansion of the central Boulevard together with other projects.

Managing Partner, Përparim Kalo, was also invited to speak, with other private sector speakers, in his capacities as a board member of FIAA, a well respected lawyer, and a member of the Albanian business community to share his views on how best to approach the Albanian market. Key suggestions he offered to potential investors were that they should do their due diligence when assessing the market, engage lawyers to help from the beginning, and ensure (when selecting consultants) obtaining independent professional advice.

Late in December 2011, the Energy Regulatory Entity (“ERE”) approved the new feed-in tariffs to be applied for the purchase of electricity from new and existing SHPPs, to be implemented for the year 2012. Pursuant to the ERE’s decision, the new price for the purchase of the electricity from new SHPPs with installed capacity up to 15 MW has been set at 9.3 Lek/kWh, an increase of 34% compared to the feed-in tariff for the year 2011. The calculation of the feed-in tariff is based on a formula adopted by the Council of Ministers that takes into account the average retail price of electricity in the international market during the past year and such increase of the price is due to the increase of the demand for electricity in the region. With the entry into force of the Law on Renewable Energy (still in draft form), the methodology for estimation of the feed-in tariff will change and shall be based on new indicators for calculation of the feed-in tariff. The Energy & Natural Resources department of Kalo & Associates has been assisting and advising the IFC, who was contracted by METE to help draft this law (and other instruments), from the inception of this drafting project and continues to help see the law through Parliament.

By Dorian Kashuri, Senior Associate Energy & Natural Resources
**Foreign citizens to submit a personal income tax declaration in Albania**

Starting from this year 2012, all Albanian tax residents should submit to the tax authorities their individual annual income declaration. According to Albanian legislation an Albanian tax resident is considered to be any individual who stays in Albania for more than 183 days in any one year (i.e. 365 days), so this self-declaration rule shall apply also to foreign citizens who meet this criterion. Foreign citizens who reside in Albania for more than 183 days in a year and hence should be considered to be tax resident should also, however, be aware of the related benefits provided by any corresponding applicable Double Taxation Treaty in place.

**LEGAL TAX UPDATES**

**Tax mitigation for the issue of a Tax Representative in Albania**

The recent amendment of the Instruction “On VAT” relating to the liability of Foreign Service Providers supplying services in Albania being required to appoint a Tax Representative in Albania is proving to be quite problematic in practice and not entirely clear in its application. It is notable for Foreign Service Provider(s) and the Albanian service receiver(s) that the existing tax legislation has room for tax mitigation in this regard and that the existing legal provisions in their entirety (i.e. referring not just to the provisions of the Albanian tax legislation) can be used effectively to protect their best interest.

**Extension of the Fiscal Amnesty deadline**

The deadline of the Fiscal Amnesty has been extended until 31st March 2012. Such postponement has been approved through a Normative Act of the Council of Ministers dated 28.12.2011 (published in the Official Gazette on January 4th 2012). This Normative Act must be ratified by the Albanian Parliament within 45 days.

**Newly Applicable Double Taxation Treaties**

On 1st January 2012, three further Double Taxation Treaties took legal effect:

i. DTT between Albania and Germany, ratified by Law no. 10287, dated 10.06.2010;
ii. DTT between Albania and Ireland, ratified by Law no.10214, dated 21.01.2010, and
iii. DTT between Albania and Singapore, ratified by Law no.10402, dated 24.03.2011.

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

**ADDITIONAL RULES FOR BANKS**

The Law no. 10481, dated 17.11.2011 “On some changes to the Law no.9962 dated 18.2.2006 “On banks in the Republic of Albania” (“Amendment”) entered into force on 24 December 2011. The aim of the Amendment was to improve and address those problems identified throughout the implementation of the original Banking Law of 2006; and, in addition, to also introduce new concepts as a way forward to realising the full approximation of the Albanian banking legislation with the respective EU rules. This article highlights some of changes introduced:

**Electronic Money Institutions:** Following the Amendment, the activity of the emission of payments in the form of electronic money is now considered to be a financial activity, as opposed to it previously being defined as a “banking activity” (hence conducted only by banks). Following this the emission and administration of electronic money may now also be conducted by “Electronic Money Institutions”, which under the Amendment are non-banking financial institutions licensed by the Bank of Albania with the purpose of emitting electronic money.

In line with provisions of Directive 2006/48/EC of the European Parliament and of the Council 14 June 2006, and Directive 2009/110/EC dated 16 September 2009, the Amendment provides that the issuance of electronic money does not constitute a deposit taking-activity, and that Electronic Money Institutions should not be allowed to grant credits from funds received or held for the purpose of issuing of electronic money. The definition of “electronic money” introduced in the Amendment fully agrees with that given in Article 2 point (2) of the Directive 2009/110/EC. Rules and regulations for the establishment, licensing and supervision of Electronic Money Institutions are now expected to be adopted and the related benefits provided by any corresponding applicable Double Taxation Treaty in place.

**Introduction of a Bridge Bank:** The “Bridge Bank” is now introduced by the Amendment as a temporary bank established by a decision of the Bank of Albania to administer deposits or obligations of a bank that has been placed or may be placed in receivership or under mandatory liquidation. Terms for the establishment, licensing and functioning of the Bridge Bank will be defined by the Bank of Albania.

**Other changes include:**

i. the new obligations on banks in relation to consumer protection (notifying customers each time of changes to deposit and loan interests if the rate is ‘changeable’);

ii. Albanian second tier banks are now allowed to offer banking and financial services on a cross-border basis to customers located abroad but subject to special rules including prior notification to the Bank of Albania;

iii. introduction of the concept of “systemic risk” as the risk that threatens the stability, the value of assets, and/or the confidence in the banking and financial system or market, and may be caused by special events or factors to one or more participant in the system – the Bank of Albania shall be responsible for enacting bylaws determining the specific rules for the administration and prevention of system risks;

iv. reference to a special manner of establishment of a new bank being through the transformation of a branch of foreign bank exercising activity in Albania into a subsidiary of the same foreign bank;

v. an important amendment to article 127 of the Banking Law related to the Credit Registry of Bank of Albania e.g. information on credit risks in the system must now also be kept by the Credit Registry, and financial institutions which are not under Bank of Albania’s supervision, but are willing to report to the Credit Register, may do so, by means of an agreement signed by Bank of Albania and such institutions and/or their respective regulatory authority.

By Jona Bica, LLM
Senior Associate, Banking & Finance
The purpose of applying for an interim/precautionary measure is to anticipate the final judgment on the merits of a case for a certain period so as to ensure that it will be possible to enforce. The court, upon the application of the interested party may award the interim measure at any point during any stage of proceedings until the court makes the final judgment.

The right to seek interim injunctive relief is provided for under Article 202 and subsequent provisions of the Albanian Civil Procedure Code. The interim order is awarded by the court if it has reasons to believe that the enforcement of the judgment at the conclusion of the trial is expected to be difficult or impossible to be made. The criteria for the award of such an interim order are that:

a. there is a prima facie case in favour of the party seeking the order (written evidence must be shown);

b. The party seeking the order provides sufficient security to cover the potential damages which may be caused to the other party in an amount and in the form indicated by the court.

Article 206 offers a general description of the possible scope of the interim orders/measures, broadly defined to be:

a. Charges or attachments over the movable or immovable properties or of the receivables of the debtor; or

b. Other suitable measures taken by the court including a stay of execution.

Notably, the types of interim/precautionary measures are not exhaustive thus giving the court much discretion to decide upon the type of the interim measure as appropriate. Referring, however, to the Albanian legal doctrine established so far, there are generally three categories of interim measures that can be noted, i.e. a precautionary order, protective orders or those seeking to maintain the status quo. The purpose is to prevent factual changes that would undermine the enforceability of any eventual award. Such measures will enable the creditor to protect their interests against the risk of not being paid by attaching a charge over the assets of the debtor so as to prevent the debtor from disposing of the assets, alternative measures of e.g. depositing the object in dispute with an interim custodian.

Examples of precautionary measures:

- Preventative attachment of movable property or sums of money belonging to the debtor;
- Attachment by way of mortgage on real property, business assets and valuable securities.

Conditions for ordering precautionary measures:

- When filing the application the court may ask the applicant to provide evidence that the claim has a chance of succeeding and to show that there is a risk the applicant will not be able to recover the debt from the debtor.
- The court’s order will specify the assets to be covered by the measure, i.e. up to a certain amount in proportion to the claim. Article 529 of the Civil Procedure Code covers the list of goods and assets which cannot be attached (for example: goods for personal use, including clothing, food for 3 months, certain items of furniture, half the wages, 3000 sqm agricultural land, limited number of domestic animals), to ensure that the debtor and family can still maintain a decent standard of living.

The debtor can at any time challenge the measure and apply for the attachment to be lifted. After the case has been heard on the merits the creditor can have the precautionary attachment converted into an execution order. If however, the case is found to be in favour of the debtor within 15 days after the court ruling on the merits the court must be satisfied first that Creditor (plaintiff) might suffer significant damages pending any appeal hearing or the enforcement of the final and binding judgment might become difficult or impossible. In such a case the court may also ask the Creditor (plaintiff) to place sufficient security to protect the interest of the debtor should the appeal be successful.

By Alban Çaushi, LLM
Partner

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**PROJECT UPDATES**

**ALBPETROL SHA**
The special privatisation law (setting out the form of the sale) that 100% shares shall be put up providing offer has now been approved by Parliament. Not indication yet of when the invitation to bid shall be published.

**NATIONAL LOTTERY**
The Government has approved a Council of Ministers Decision which approves the tender assessment criteria, standard documents and structure of the bid evaluation commission for the

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**HPPs operated by Albanian Power Corporation (KESH)**
Following the enactment of the privatisation law and the unbundling of the HPPs into spun off JSCs, the Electrical Energy Regulator has licensed the companies to be on offer with electricity production licences for 30 years each; and also approved their respective investment plans for 2012. For more information on the project updates please contact: info@kalo-attorneys.com.
KOSOVO Office

LEGAL UPDATES

The Kosovo Assembly has enacted several vital laws to address recommendations from the EU Progress Report for Kosovo 2011 and essentially to align local laws with EU Law, including: (i) Law no.04/L-006 “On Amending and Supplementing Law no.02/L-123 On Business Organizations”; (ii) Law no.04/L-045 “On Public Private Partnership”; (iii) Law no.04/042 “On Public Procurement”. The above legal instruments will have a decisive impact on improvement of the general business environment in Kosovo.

Amendments of the Law on Business Organizations – More Efficient Registration:

This amendment has incorporated a range of significant changes in the area of corporate governance and in particular a move towards a speedier and more efficient business registration and establishment.

The minimum initial capital requirement for establishing a Limited Liability Company was EUR 2,500 and now has been abolished so that there is now no minimum capital required. The minimum required capital for the incorporation of a JSC has also been reduced from 25,000 to 10,000 EUR.

The “Registration Tax” for establishing a company has been abolished aiming to simplify procedures for setting up business in Kosovo.

In addition, other changes address the governance structure of LLC’s, where the main decision-making procedure of LLC is no longer through the owner’s meeting but through a Shareholders Assembly.

A New Law on Public Procurement:

Latest amendments and developments have resulted in the introduction of new procedures such as: (i) electronic procurement and auction; (ii) introduction of new rules of strengthening transparency and efficiency; (iii) special rules regulating diplomatic procurement; (iv) an obligation of a minister to sign large value contracts; (v) establishment of Central Procurement Agency under the authority of Ministry of Finance.

E-Procurement is probably the most significant introduction and to date the Government of Kosovo has not issued the rules governing implementation of the electronic procurement methods, but it is to be a dynamic purchasing system and electronic auction. The use of e-procurement is not however mandatory and the particular method adopted have been left to the discretion of contracting authorities.

New Law on PPPs:

This new law has created new institutions specifically for the implementation of public private partnerships such as: (i) A PPP Central Committee consisting from 5 members on a permanent basis; and (ii) A Central PPP Department (which used to be the PPP UNIT) established under the authority of the Ministry of Finance responsible to provide assistance for 12 applicant companies/consortiums.

Projects Updates

Kosovo e Re Power Plant Project:
The Government of Kosovo is said to be on track to select a winner this year, structural reforms in the energy sector are underway to attract new investments. They speculate that in February the invitation to bid may be announced.

Privatization of PTK:
Following the cancellation of the previously initiated tender procedures, the Government of Kosovo started afresh with the selection of new transaction advisors and following the initial pre-qualification step has shortlisted 6 out of 12 applicant companies/consortiums.

Privatisation of KEDS

The four pre-qualified consortiums/companies are awaiting the issue of the RfP. The Government of Kosovo is working with IFC and supporting consultants on structuring the transaction before offer.

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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