CHAMBERS GLOBAL – RANKS KALO & ASSOCIATES TOP OF MARKET

Once again KALO & ASSOCIATES is ranked at the top of the competition by Chambers Global, a leading legal guide and rating agency. All research conducted by Chambers is done in a highly confidential and ethical manner with a cross-section of clients and members of the legal professions in the market being interviewed.

Chambers rates the firm as a leader across the board in Albania. It is a member of the South East Europe Legal Group (SEE Legal) and has an office in Kosovo. It has been heavily involved in many of the country’s recent projects and PPP deals, and has the ability to work on more niche issues’ relating to healthcare, pharmaceuticals, product liability and other areas. Chambers notes that clients praise the firm’s “keen awareness of how Western companies operate”.

This is a firm that offers all international and domestic companies excellent legal services in Albanian, English, Italian and French.

For more information visit http://www.chambersandpartners.com/Global/Editorial/42170

FIRM ANNOUNCES PROMOTIONS AND REDEFINES DEPARTMENTS

The firm is delighted to announce promotions of two experienced lawyers as Partners and two other lawyers as Senior Associates.

Fatos LAZIMI and Anisa RRUMBU-LLAKU were promoted as partners.

Fatos is a legal expert with 15 years of experience in public and private sectors. He has been heading the litigation department within the firm and now covers also property matters.

Anisa has 6 years of experience as a lawyer and has been involved in mergers and acquisitions as the head of corporate department.

From now on she will be also managing the intellectual property work for corporate clients.

Jona BICA and Dorian KASHURI were promoted as Senior Associates.

Jona BICA will deal with banking, insurance, finance.

Dorian KASHURI shall deal with natural resources and energy.

By these promotions each partner will have supervisory role on various departments:

• Corporate and Intellectual Property;
• Energy and Natural Resources;
• Infrastructure, Concessions and PPPs;
• Litigation and Property;
• Tax, Employment and Banking.

ROLE OF MEDIATION REINFORCED AS ADR METHOD

Law No. 10385, dated 24.02.2011 “On mediation in settling disputes” (replacing the old law of 2003 on mediation) was enacted reinforcing the role of mediation as an alternative dispute resolution method in the spirit of EC Directives. This method addresses out-of-court settlements of a wide range of disputes pertaining to civil, commercial, labour, family issues; and civil claims related to criminal matters where mediation is expressly required by law.

A marked improvement in this new law is that courts are mandatorily required to invite parties to settle disputes through mediation (parties are, of course, free to refuse), where for e.g.:
In civil and family matters where the legal rights and interests of minors are involved
Conciliation is required for divorce cases
To address pecuniary claims in an amount of up to 500,000 ALL.

Imposing this procedural obligation on the adjudicating authorities in Albania should in specific situations increase the role of mediation as ADR methods, which are ultimately more cost and time effective than going to court.

The new law also places more emphasis on the regulation of the mediator, the licensing and potential for the withdrawal of such licence. For this purpose the Mediator Licensing Committee was established and the Mediator Registry which is held within the Ministry of Justice. This law has both tightened up and diversified the legal requirements that a mediator should meet to gain a licence, e.g. a foreign national may be a mediator in

From its first year in existence TA is proving that its professional approach towards the relevant tax administration yields satisfactory results for the taxpayer.

By Aigest Milo - Associate
Tax, Employment and Banking Dept.

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New Procedural Requirements for Capital Increase
Amendments have been recently introduced to Instruction no. 5, dated 30.1.2006 “On income tax”, as amended, regarding taxation on capital increase of a company. This Instruction provides that cash contributions made by individuals (either shareholders or third parties) not originating from the company (i.e. not contributions from dividends distributed by the company etc) that are used for the purpose of capital increase shall be subjected to income tax where tax has not already been paid on this sum before. In this case the individual shall submit to the tax authorities a declaration certifying the origin of personal income contributed for capital increase (to identify that tax has already been paid on that contribution) and if not pay the personal income tax at the rate of 10% on that sum contributed. This declaration or evidence of the payment being made must also be filed with the National Registration Centre no later than the date of the deposit of the cash contribution used for capital increase. Without either evidence the capital increase shall not be registered. Additional documents certifying the value of the contribution and payment of personal income tax should also be attached to this declaration.

By Loriana Robo, LLM - Associate
Corporate and Intellectual Property Dept.

**LEGAL UPDATES**

The Taxpayers’ Advocate: additional voice of taxpayers
The Taxpayers Advocate (“TA”) is a newly established body within the General Tax Directorate (“GTD”). Although an internal body of GTD, TA is established to be an independent actor (i.e. independent from the GTD and nominated by the Minister of Finance). The mission of TA is to protect the rights and interests of the taxpayers in their relationship with the Tax Authorities. The key function of TA is to provide taxpayers with comprehensive information and to present the problems and concerns of the taxpayers to the relevant administrative organs as well as to ensure that taxpayers’ rights are respected by the tax authorities.

According to the relevant legislation this exercise is accomplished primarily through ordering the relevant bodies of the tax administration to carry out verifications or investigations and through advising the tax authorities on solutions to problems faced by the taxpayers. TA is also entitled to make assessments, suggest ways to solve issues and to suggest possible changes of tax procedures. In addition, TA could recommend the application of unified procedures in order to prevent the implementation of different practices in cases with similar circumstances. The TA is to be independent from the examination, collection and appeal operations of the Tax Administration and, thus, such independence will serve to ensure that TA will not be influenced by the structures of the Tax Administration perceived as less friendly by taxpayers.

It is noteworthy to mention that approaching TA is not part of the tax appeal procedure and it does not replace it. However, the powers vested in TA can be significant and meaningful for the taxpayers who face problems and who are sometimes subject to unfavourable treatment by the Tax Administration.

**PROJECT UPDATES**

**ALBPETROL SHA**
No news has yet been published on strategy or manner of privatization of this state owned company. Meanwhile in a 5-year deal with Albpetrol signed two years ago bankers have taken over its low production wells, redeveloping and optimizing them, giving back a percentage of old production as a royalty. It seems there is no interest at present in view of the depleting wells and assets of this company.

**INSIG SHA**
After the first attempt in 2009, the Government of Albania intends to privatize all shares it holds in the insurance sector, yet there have not been any signs of interest expressed to initiate the privatization process.

**NATIONAL LOTTERY**
This licence is still intended to be offered and no changes have since occurred in terms of the initiation of the tender procedures.

**HPPs operated by Albanian Power Corporation (KESH)**
IFC has already initiated tender procedures to contract consultant, and various companies have now been shortlisted. The final offers are to be submitted in early May.

**TIRANA-ELBASAN MOTOR WAY**
A tender for this motor way (including a 2-3 km tunnel) was opened with some 25 companies already having expressed interest. The Greek company AKTOR succeeded in winning the tender and are due to start works very soon.
SECONDMENT OF EMPLOYEES

Secondment of employees is widely used, and Albania is no exception to this occurrence with the increasing number of global companies having a presence here and also for specialised short term projects. Although not much utilised until recently this practice of seconding staff has been supported by legislation, specifically in the Labour Code (Law no. 7961, dated 12.7.1995)

Why “Secondment”?

Secondment is an arrangement where the original employer “lends” their employee to another employer (the host). The host will typically pay the original employer for the salary and other costs/expenses arising from the employment of the seconded employee. The idea behind this arrangement is that the seconded employee will remain employed by the original employer for the duration of the secondment and thereafter return to work to the original employer.

Companies, especially those set up here as branches or affiliates of foreign companies find the secondment of staff to be a very attractive option. It enables the movement of employees from one company branch to another or even from one company to another, within or from outside the country, in a much more time and cost effective manner particularly where specialised experience is required.

Who is the Employer during the secondment period?

This is a particular key issue to determine who bears the obligations and liabilities set under the Labour Code for the seconded employee. The Host bears only the liability of securing the health, safety and hygiene in the work place of the seconded employee, in the same manner as for its own other employees. The Labour Code provides that the labour contract between the original employer (i.e. the one seconding the employee) and the seconded employee remains in force. However, regardless of this, there is room for an interpretation that the seconded employee may be considered to be an employee of the Host, thus the latter taking on the various ‘employer’ obligations towards that employee.

How to regulate this three-party arrangement?

Secondment is a three-party relationship and, therefore, it requires a written agreement to appropriately allocate obligations and liabilities for the secondment period. The issues to be covered include protection of personal data, who is responsible for the salary (including payment of the respective income taxes and social and health insurance), protection of intellectual property, who is supervising the seconded employee, etc. In addition, the three-party agreement should also clarify to what extent the ’new employer’ shall take on obligations towards the seconded employee, and should also take into consideration effects of vicarious liability.

It is advisable that such agreements be prepared with professional legal advice, preferably with a specialist in employment and secondments matters.

By Emel Haxhillari, LLM - Associate Tax, Employment and Banking Dept.

FINAL PACKAGE FOR RENEWABLE ENERGY LAW

On April 2010, the International Finance Corporation (“IFC”) officially launched the Renewable Energy Albania Project (RE Albania) as part of the wider Western Balkan Renewable Energy Program – BREP. In addition to the regulatory improvements, RE Albania aims to provide support to SHPP sponsors to improve their designs and business plans and create a framework to enhance the bankability of energy projects (in particular for SHPPs).

On 21 March 2011, KALO & ASSOCIATES together with Gide Loyrette Nouel serving as legal advisor for IFC on the regulatory part of this project and successfully concluded the final phase of the Renewable Energy Regulatory Improvements in Albania. This followed several rounds of discussions with the relevant stakeholders.

The outputs included (i) step-in right for the concession law – providing something much more detailed in the law than presently exists; (ii) improved standard concession contract (for SHPP) – developing on the existing contract taking into account the market requirements, and comments of stakeholders and legal advice; (iii) improved selection criteria for SHPP concessions; (iv) Renewable Energy Law – drafting basic framework for renewable energy sources and the incentive of a ‘Feed-in Tariff’ which shall be benefited by producers of categories to be determined; (v) standard power purchase agreement; and (vi) standard grid connection agreement. Whilst each individual output is much developed and enhanced and do alleviate many oversights currently in the framework, it is the whole package that reflect a responsive outlook of the needs of the energy market as a whole and take into account the EU legislative requirements but at the same addressing the actual realities of the Albanian market model as it is today. The package is expected to get the seal of approval by Parliament where necessary in the next few months.
KOSOVO NEWS

LIQUIDATION PROCEDURES STAGNATE

The reform for the creation of a legal infrastructure for judicial reorganization and liquidation in Kosovo has been stalled for unknown reasons.

Currently the one law that is enforceable in Kosovo is Law 2003/4 On Liquidation and Reorganization of the Legal Persons in Liquidation applicable as of 14 April 2003 though in essence it is not functional as there is no secondary legislation in the form of administrative instructions or directives enacted to facilitate or enable its efficient implementation thus making the law, in effect, inapplicable.

Moreover, to date there are no licensed liquidators to conduct the liquidation procedures as required by the liquidation law. The original intention was for the project for licensing to be completed by 2010. However the liquidators had been terminated for unknown but it is said that the project as such is still very much active.

We are not aware of when these liquidators will be licensed and when the practical implementation will be taking place for cases of involuntary liquidation of companies.

In practice the Commercial Court in Pristina is the only judicial institution responsible for implementing the procedures of liquidation and reorganization of businesses in Kosovo. We understand that in the archive of this Court are “several” proposals for initiation of judicial liquidation procedures filed earlier and all these initiatives have stagnated due to the reasons mentioned above.

By Gazmend Nushi
Partner

PROJECT UPDATES

PRIVATIZATION OF KEK:

The prequalification of interested companies for privatization of Distribution Network and Supply of KEK has been concluded with the deadline for pre-qualification having closed on 18th March 2011. The process of distribution privatization of KEK has begun and is expected to conclude in 2011 and the representatives of the appropriate institutions that are responsible for this exercise have been announced. Emsale Limani, financial advisor of the Privatization Committee of KEK, said that is in the best interest of Kosovo to privatize KEK as soon as possible and in compliance with the best international standards for more transparency. The following 6 companies submitted qualification: Calik Holing (Turkey), Limak Holding (Turkey), Park Holding (Turkey), G.C.T.s.r.i.l. (Italy), Elsewedy Power (Egypt), Union D. Energy Systems Development Corporation (Great Britain); those that pre-qualified are “Limak”, “Çalik”, “TAIB” and “Elsewedy”.

CONTACT
info@kalo-attorneys.com

MFI TRANSFORMATION

Most Micro-financing Institutes in Kosovo have been established as NGOs pursuant to the NGO Law and subsequently acquiring a MFI ‘registered status’ licence from the central Bank of Kosovo. This has enabled them to collect deposits of up to 125,000 EUR. However, these institutes now face a problem if they wish to expand this service, specifically if they wish to collect deposits of over 125,000 EURO. In order to expand their loan portfolio they must acquire a MFI Licence from the Central Bank of Kosovo. Among other requirements they must be a registered entity with the Ministry of Trade and Industry, which essentially means that if they are already established as an NGO they must somehow convert their legal existence into a private commercial entity. This one obligation creates a host of legal complications deriving from the fact that there is no framework of ‘transformation’ so to speak of an NGO into a commercial entity. Thus the only option is to set up an entirely new company and potentially lose the history as an already existing NGO when applying for the MFI Licence.

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.

PTK PRIVATIZATION PROCESS:

The governing coalition of Kosovo put together in March 2011 managed to secure the majority of votes to adopt the Law on Budget which allows the establishment of Post and Telecommunication of Kosovo despite objection of opposition parties and the trade unions of PTK employees. According to local media the government plans to transfer the ownership of PTK to private investor(s) by September of this year.

By Rafael Dembo
“Peizazhi”

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