

# ALBANIA LEGAL NEWSLETTER

## KALO & ASSOCIATES BRANCHES OUT INTO KOSOVO.

The firm has opened an office in Prishtina, Kosovo, to address the increasing demand for legal services in the region.

*Further information can be obtained from our Tirana Office.*

## “GERDEC RECONSTRUCTION FUND”

was set up to aid and assist the victims of the March 15th, 2008 explosion at the munitions depot in Gerdec. Kalo & Associates law firm together with the Albanian-American Enterprise Fund, the American Bank of Albania, UNIQA Group, and SIGAL, have created a fund having contributed an initial 50,000 EUR. We kindly ask for your contribution, which should be made to the: **GERDEC RECONSTRUCTION FUND**, care of the American Bank of Albania: LEK A/C 1051634301; US\$ A/C 1051634303; Euro A/C 1051634302

## DIGITALISATION OF ALBANIA

### Setting the right legal framework

As part of its obligations under the Stabilization and Association Agreement, Albania has made significant efforts towards the implementation of the legal framework for electronic communications. The primary focuses are to follow the EU directives in strengthening the capacity and the role of the telecommunications regulator (ERT).

In a move towards the digitalization of Albania, a move very much endorsed by the Government of Albania, a new draft law ‘On Electronic Communications’ has been introduced and is now being discussed in the Parliamentary commissions.

As technology develops at a rapid pace, the need to develop the legislative framework to support operations is becoming paramount. So too is the need to implement an open and competitive market in order to provide a new and solid basis for the enlargement of telecommunication services.

The primary aim of this initiative is to establish a regulatory framework, in accordance with domestic market principles, for relationships between suppliers of networks and services that will result in sustainable competition, compatibility of electronic communications services and resulting consumer benefits. It should establish rights and obligations for operators and for companies or persons seeking interconnection and/or access to their networks or associated facilities.

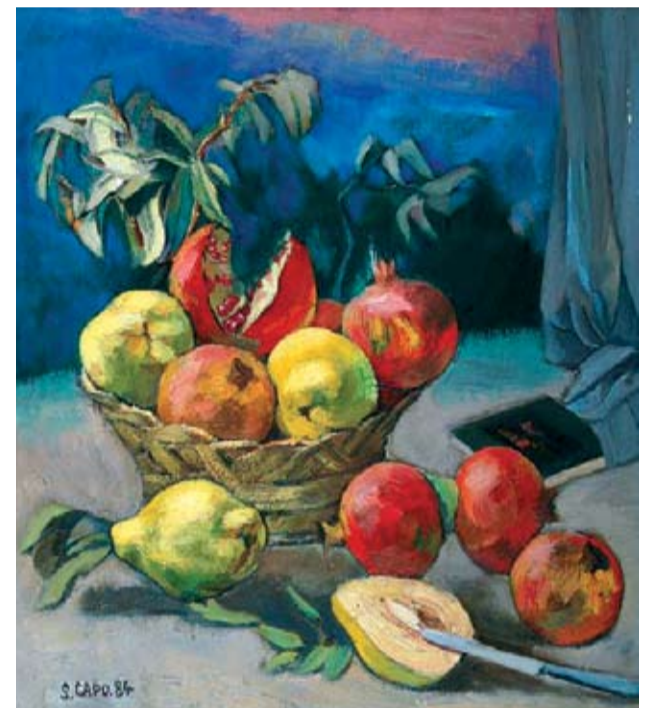
For information, there are currently three licensed operators, AMC being the first (operating from 1996), the second Vodafone that had acquired its licence through an international tender

in February 2001, and the third operator Eagle Mobile was given a licence by the Telecommunications Regulatory Authority (TRE) though this company have yet to offer their services to the public.

The existing operators in Albania did not hesitate to represent their views and offered proposals regarding this draft law. Their particular concern was to ensure transparency reflected in proposed drafts of this law.

Having reviewed the draft law we have already noted some deviations from the principles of the EU Directives. It seems that insufficient consideration has given to the business environment and infrastructure in Albania, which are vitally important factors to be taken into account in drafting this new law. We have highlighted below some proposals suggested to the parliamentary group with a view to amending the current draft.

- The draft has provided for ‘a dual existence’ of regulatory authorities in the same field, i.e. the Authority of the Electronic Communications (AEC) and the Competition Authority (CA). *The competences of these authorities should be clearly and carefully clarified.*
- A missing element in the draft law is the responsibility and accountability of the AEC in the event of an abuse of confidential information of licensed operators. There should be *clearer, more dependable concrete provisions in relation to infringements* within the draft law. Penalties should be specified, even those against the AEC where infringement



Painting by Sotir Capo · 1984

on their part has been proved. Such potential disclosure of confidential information may very well have considerable economic consequences for the operators. Consideration should be given to the potential cost of third party claims.

- The draft law proposed that the AEC shall be the competent body to regulate mail (postal) service, leading us to suppose that perhaps too much power and discretion is given to one regulatory body, which will in effect be regulating both postal and electronic communications (which may be considered as competing markets).
- As mentioned above, the main concern was the fact that the process of the drafting of this law was a closed one, reflecting a lack of transparency, and failure to consider the essential views of interested stakeholders and industry experts. This was raised with the Ministry of Public

Relations, Transport and Telecommunications (MPRTT).

In general the proposals put forward by the draft have been based on consideration of the legislative framework of many EU countries, including Portugal, Italy and Slovenia, countries that are obliged to follow the EU directives. Pursuant to the Stabilisation and Association Agreement, this draft law proposed by the Ministry of Public Works, Transport and Telecommunications, should reflect the principles of the EU Directives, *without the need to exceed those requirements and rules*, taking into consideration that the Directives suggest continual revision and frequent adaptation of the requirements in the law.

It was proposed to the parliamentary group that there should be a rewording (reformulation) of Article 23, to reflect the relevant EU Directives:

- Defining the annual payment, either in a specified amount or as a percentage should be avoided. Instead it could provide that the appropriate Minister shall define at any time the amount; the amount of the payment shall be imposed at the competence of the Minister and should be applied only upon his decision.
- Pursuant to the proposed draft all operators must allocate to ACE, on an annual basis 0.5% of their incomes which shall be used to cover

administrative expenses necessary for the supervision of the electronic communication market. The difference between the amounts collected from the operators and the administrative expenditures of the ACE shall be allocated by the latter to the state budget. The established fees/payments should be in proportion with the administrative expenses of the AEC and placed in an analytic expenses report prepared by the ACE and approved by the Albanian Parliament. The figures established by the proposed draft law are the highest of all EU and non EU countries.

The above proposals presented to the parliamentary group were based upon the Directive 2002/20/EC. In this Directive it states that the requirement of fees and payments is not intended to create any obstacle to entering the market and moreover should not surpass the administrative costs of the National Regulatory Authority in the member state.

- Another comment and suggestion is in relation to the administrative appeal procedure, in which is it declared that the period in which a complaint may be lodged should be as that in court appeal cases, for both parties a period of 30 days.
- The extent of the fines is thought to be excessive: at 7-10 % of the

incomes of the licensed operators. In countries such as Portugal, Slovenia etc., which can be referred to for comparative purposes, considering the economic factors for development, market size and the number of users of the services for electronic communication, the fines are applied in flat amounts and not in terms of percentage calculated on the incomes. To conclude this brief analysis we are very much of the opinion that the first point to be addressed is the issue of transparency. *All the operators in the market and other interested groups ought to be invited for 'round tables discussions' with the relevant minister and senior civil servants involved in proposing draft recommendations. Secondly, the draft should be prepared in the line with the Framework Directive 2002/20/EC, 2002/21/EC, 2002/22/EC and of course by taking into consideration the market size, the general economic conditions in the country and number of users.*



By **ALKETA XHELILI**  
ICT/IP Department

## SOME PROJECT UPDATES

**ARMO** - The Government of Albania announced a tender for the sale of 85% of shares in the Albanian Refinery and Marketing of Oil (ARMO), where 18 companies expressed interest. The second round of evaluation of offers shall conclude the selection of the winner. The whole process is thought to be finalized by the end of May 2008.

**INSIG** - The Government of Albania has postponed the privatization of 61 per cent of the shares in INSIG, as another tender was recently organized to select the company that would evaluate and establish the sale price per share.

**KESH** - The shares of OSSH (Distribution Company) to be offered for sale shall be very shortly

announced, with the pre-qualification phase of the tender procedure to being very soon.

**ASHTA** - The concession of the design, financing, construction, transfer, operation and maintenance for hydro power plant on the Drin River, has offered and the selection of pre-qualified bidders announced. The bid evaluation is expected to take place very soon with a winner being declared.

**Devolli Hydropower Plant** - The Government of Albania awarded a concession for a hydropower plant in Devolli River to EVN and is currently negotiating the Concession Agreement.

**ID Cards and Passport** - The Government of Albania has opened the tender for a concession for the produc-

tion of ID cards and passports. The offers were submitted and the Bid Evaluation Commission set up in accordance with the Concession law is in the process of evaluation.

**FIERI Thermo Power Plant** - The Government of Albania awarded a concession for the rehabilitation and operation of the thermo power plant of Fieri to ATERMON and is now in the process of negotiating the Concession Agreement

**CEMENT PLANT** - An-tea, an Albanian company of Titan, has been awarded the concession over two quarries for a period of 99 years, and is considering constructing a cement plant valued at nearly 150million EUR..

## COMPETITION AUTHORITY “BLESSES” BIG DEALS IN ALBANIA

The recent published decisions of the competition Authority (CA) indicate the increased commercial activities impacting on competition in the market. Further the competition legislation is being successfully implemented. Many of the large enterprises exercising, and wishing to exercise commercial activity in Albania are notifying the CA of their proposed transactions that potentially create a concentration of commercial interest in accordance with the terms provided by the Competition Legislation. The examples below of such notifications just in the beginning of year 2008 reflect the fast moving and changing commercial face of Albania.

On 11<sup>th</sup> of January 2008, the Competition Authority, decided to authorize the concentration realized through the **acquisition of control over 25.4% of the shares of Credins Bank by the companies BFSE Holding and SIFEM**. In completion of this transaction, BFSE Holding BV will own 22.2 % of shares of Credins Bank and SIFEM AG will own 3.2 %. The remainder 74.6 % of shares will be owned by 12 of the Bank's shareholders. The participating undertakings in this concentration exercise financial and banking activities in specific geographical markets and have no common customers. Thus it was concluded that the market remains open to the competition, with no barriers to entry and fast-moving in

regards to geographical extension and introduction of new products.

*The notification was preceded by a consulting process, which is a new practice followed by the Competition Authority in Albania. It was introduced to increase transparency in the decision making process, both actual and perceived.*

On 21<sup>st</sup> of January 2008, the Competition Authority was notified of the proposed concentration in which the company **“Strabag SE” with its legal seat at Villach, Austria, was acquiring the control of 51% of the share capital of the Albanian company “Trema Engineering 2” located in Tirana**. This transaction, according to the share purchase agreement signed by the participating parties was completed on date January 14<sup>th</sup> 2008.

After prior examination, the Authority considered the notified transaction in compliance with the Competition Law and that a procedure of Control of the Concentration will be followed. Approval is still outstanding.

The Competition Commission, in its meeting of 29<sup>th</sup> January 2008 approved by Decision No. 71, the concentration realized through the **acquisition of control over 45.62% of the shares of Sigal Holding SH.A by Uniqa International Beteiligungs-Verwaltungs GmbH (UNIQA)**. The concentration notification process was

concluded with the legal assistance of Kalo & Associates Law Firm and resulted in acquisition of control. The share purchase of 45.62% represented a huge growth and strengthening of this shareholder's position (who prior to the transaction possessed only a minority share of 0.02%), and importantly does not bring any change in the general structure of the Albanian insurance market. Furthermore, the said concentration does not create a dominant position of the companies participating in this concentration.

The increase of foreign investment through this acquisition of control in the Sigal Holding Sh.A is expected to bring about a positive effect in the development of the market, increase the number and quality of the products, improve the standards of provision of service; and all whilst increasing competition of the whole or of specific parts of the market.

This can only result in more benefits to end consumers.

*(Please note that this information is based upon that published on [www.caa.gov.al](http://www.caa.gov.al))*



By JONA BICA  
Acting Head of Banking/Finance

## UPDATE ON THE NATIONAL REGISTRATION CENTRE

From the 10<sup>th</sup> of September, the day that the National Registration Centre opened its doors to the public, we have seen vast improvement in the process of business registration. The reform intended to establish a one-stop-shop where businesses can electronically file all registration related documents for new enterprises or renew the registration of existing ones, and to revise the administration rules so that approval is automatically granted if a relevant agency does not respond within a given time.

At first it seemed quite a chaotic sight when visiting the NRC, it being faced with problems, which are describe below.

However more than five months has lapsed and there has been a vast im-

provement and the initial intended reforms seem well within reach, i.e. the creation of a unified registration form and simplified registration procedures. The turn around time for registration is dramatically shorter when compared with the old court registration system. It is actually getting closer to the promised 24 hour turn-around time.

Another notable improvement is the manner in which the staff communicates with the public.

Problems, however, do still remain from the inadequacy of the technical quality of the extracts issued, to the still uncertain and often discretionary parameters on the evaluation of the registration documents filed of the existing companies or of the pending companies by the centre. It was in the spirit

of the new law to create a Commercial Registration procedure in which the liability for the authenticity of submitted documents would remain with the applicant together with the notary. This would have been a natural consequence of the transformation of the procedure from that of a judicial one to a simply administrative one. Unfortunately we are still seeing, in the practice of the centre, the inclination to evaluate the documents not only in respect of their formal conformity with the requirements of the law but a further subjective evaluation suitable only for a judicial procedure.

As such the struggle to improve and erase the old habits of the Albanian Public Administration still continues.

Another problem that remains is the

quality of the extracts issued. The centre is not yet able to issue a true historical extract with all the applications made at the register. The printing of the previous judicial decisions are often not sufficient to be deemed as usable extracts. Furthermore if you wish to make a new application in the register, the system seems to permanently delete all the dates you merely want to modify, substituting the old with the

new. Thus changes are not being retained for future reference. This purely technical problem ought to be resolved as soon as possible as they could result in potentially serious legal consequences.

We are not yet quite at the One Stop Shop phase, with all types of authorisations and licenses being directly dealt with by the NRC. The ultimate goal would be the capacity to make on-line

applications which, strictly speaking, will only be possible upon the approval of the law on electronic signature.



By **ALBAN ULQINI**  
Associate

## BENEFITING FROM THE NEW ACCOUNTING LAW

The new Accounting Law no 9228 dated 29.4.2004 "On Accounting and Financial Statements" came into force as of January the 1st, 2008 (hereinafter the Accounting Law). This law defines the principles and the general rules for the preparation of the national accounting standards and of financial statements as well as for accounting.

According to this new law, all for-profit entities including the financial institutions and the controlling companies, regardless of their legal form and of special legal requirement, that are duly established in the Republic of Albania are subject to this Accounting Law. In addition, this law is also applicable to the non-for-profit entities unless their financial statements and accounting is subject to other special laws and regulations.

The law provides that the National Accounting Council prepares the National Accounting Standards (NAS) to be used by the Albanian for-profit and non-for-profit units and that the NAS become mandatory after they are proclaimed by the Minister of Finance. Essentially this new law means that Albanian companies can use the standards prepared by the Board of the International Accounting Standard (IASB) i.e. the International Accounting Standards and the International Financial Reporting Standards. The Accounting Law provides that the International Accounting Standards are mandatory for the following business units:

(i) the companies listed in a securities stock exchange and their subsidiaries,

subject to consolidated accounts;

(ii) the second tier banks, financial institutions similar to banks, insurance and reinsurance companies, investment funds and all companies licensed to perform investment activity in securities whether they are registered with any securities stock exchange;

(iii) other big business units that are not listed with a securities stock exchange, exceeding the limit determined by the Council of Ministers relating to the annual incomes and number of employees. That is why the Council of Ministers issued decision no.742 dated 7.11.2007 "On the criteria of selection of the business units which have to apply the international accounting standards" which established the criteria as required by the law. The business units are subject to IAS if they simultaneously have in the last two years an annual turnover over 1.250.000.000 Lek and, the average number of employees over 100.

The Law provides that the IAS and IFRS translated without any change into the Albanian language are proclaimed by the Minister of Finance. Only then, the IAS and IFRS apply and are mandatory for business units in Albania. At the moment the strictly translated version of the International Accounting Standards has not yet been published by the National Accounting Council.

The National Accounting Standards are now effective. These standards bring some new regulation; they require businesses to re-evaluate the assets value according to market prices. In addition, these standards bring some other new

regulations which bring benefits and have to be used by the Albanian companies. But, if the tax legislation is considered one can easily appreciate that the tax legislation has not followed the new principles and regulations introduced by the new accounting standards. In these circumstances, the new accounting standards do not bring any legal benefit for tax purposes unless the tax legislation is amended accordingly. More specifically, no reassessment of the assets according to the market price can have any legal value until the tax legislation and, particularly the income tax law, is changed. The problem is that the tax basis will be dramatically reduced by the very high rates of depreciation. In this situation where two important laws contradict each other this question appears: Which of the laws prevails in these conditions: the new accounting law or the existing tax legislation? Nevertheless, in this situation one thing is clear: the new accounting standards are yet to bring any legal benefit for tax purposes.



By **ARDJANA SHEHI**  
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