KALO & ASSOCIATES reaches its 15 year milestone, having become a business that developed beyond all recognition from the initial start-up in 1994. With 15 years having passed by, any new client or visitor would not be able to imagine the efforts made to reach the today’s modern, spacious premises reminiscent of a contemporary art-gallery where over 30 qualified lawyers work. They will be unacquainted with the driving force that pushed a firm with modest beginnings to now rank as the top law firm in Albania (ranked by the likes of Global Chambers 2009, IFLR1000); but some people who witnessed the inception and then the growth of Kalo & Associates: Stephen Baister (UK Bankruptcy Judge) and Lulzim Lika (REUTERS) can testify to the vigour that lead to the present success.

Practicing in Albania in the nineties when the country had only just opened up and under circumstances of shortages of laws, professional literature and experience, lack of models to refer to and most of all, lack of awareness by people and entrepreneurs – the law firm Kalo & Associates in the face of those adversities serviced large foreign investors and grew rapidly. Indeed Kalo & Associates is now a brand that has come to be appreciated as being synonymous with quality legal services.

We here at Kalo & Associates, of both Tirana and Pristina, are immensely proud of the evolution and achievements of the firm.

THOMSON REUTERS: LULZIM LIKA, Business Representative (Albania & Kosovo) comments on the journey of the firm ...

“Thinking back 15 years ago on how we started to cooperate with the legal firm established by Mr. Kalo, reflecting on the “tiny” and “large” issues we have put the firm up against to solve and observing the enthusiasm with which Mr. Kalo and the people comprising his team showed in approaching and solving these issues, it has become natural for us to contact one of his associates or other members of his team in Albania or Kosovo, confident that the issues we face will always be looked after with the highest level of quality and dedication.

One does not often, if that, get the chance to bear witness to a great company in the making. But I am proud to say that for me it has been different. I have seen Kalo & Associates propelled from a tiny firm to the undisputable success it is now. I am happy for being among the first to put my full faith and trust in the capabilities of this firm when things were not as clear, and, doubtlessly, they have been repaid by the professionalism, perseverance and success which the name Kalo & Associates has come to represent today in the Albanian market.”

DR. STEPHEN BAISTER (Chief Bankruptcy Registrar of the High Court of Justice, London Hon. Secretary, British-Albanian Legal Association) also comments...

“I first met Përparim Kalo in the early 1990s when he was working on international relations at the Ministry of Justice. He had a difficult job as Albania was opening up to the rest of the world. My solicitor colleagues and I were sufficiently impressed by him to invite him to the UK for a study trip as a result of which he was the first Albanian lawyer to come to this country to try to get to grips with its legal system.

It was inevitable that he would go into private practice. From the earliest days it was clear that he wanted to set up a firm that would offer in Albania the kind of service that law offices in the rest of Europe were providing. I recall his first office where he started practising with another colleague: a small flat in the centre of Tirana, primitive, as everything was at that time, but already equipped with a computer and, more importantly, manned by at that stage just one lawyer, Përparim himself, with a will to succeed.

In those early days he also undertook a case for me: trying to recover for an East German client a substantial debt due from a state owned chemicals company. I had told the client it was hopeless as there was no money in Albania and the state was in chaos. But somehow Përparim recovered the money - a happy ending for the client which left my advice looking pretty silly.

Since those early days Kalo & Associates have gone from strength to strength. Clients from all over the world use the services of the firm, confident that they will get the kind of legal service they have come to expect internationally. It is an amazing achievement to have come so far in just 15 years in a country where conditions have been and, no doubt, sometimes still are, far from easy for legal practitioners.

I wish Përparim Kalo and his associates continued success and a bright future.”

BECHTEL: GABRIELLE HURLEY (Senior Counsel)...

“Bechtel first made contact with Kalo & Associates in August 2005, during a visit organised to meet and appoint local Albanian counsel to advise on the Albanian legal system in general, and specifically in relation large infrastructure project...”
partners have continued to advise us during the implementation of our project.

We have had a successful collaboration with the firm, which has provided us with advice in relation to the wide range of issues which naturally arise in the context of the execution of large infrastructure projects. These have included corporate, tax, property and employment issues. We wish the firm every success at a time when it is celebrating its 15th anniversary.”

On March 28 lawyers and support staff of Kalo & Associates’ visited Reps, Kalimash, to see the works of its one of its biggest clients. Albania’s largest infrastructure project is being constructed in the north of Albania. Durres-Kukes motorway is a connection between the centre and north of Albania (Durres-Kukes) and more importantly between Albania and Kosovo, and is expected to boost tourism and the nation’s economy. Part of this project (the most difficult part Rreshen-Kalimash) is being executed by the American Turkish joint venture Bechtel-Enka, which is one of the largest clients of the firm.

This section includes 61 km of motorway, 29 bridges and also a 5.5 km long tunnel built in Kalimash through an area in the mountainous region, the longest tunnel project in Albania.

The project is the largest employer in the area; out of the more than 3,500 people working on the scheme, two-thirds are Albanian.

As lawyers for the company, having advised on almost all pertinent legal aspects of the project, it was enlightening to see the near end product. Part of the success of our firm is in knowing our clients’ businesses and their goals, which is essential in helping them to achieve their objectives.

**FIRM ATTENDS VIENNA ECONOMIC FORUM IN PRISHTINA**

Partners from Kalo & Associates law firm from both the Tirana and Pristina offices attended the Vienna Economic Forum (VEF) that was held for the first time in Prishtina, Kosovo (the firm also sponsored the event). More than some 180 business and institution representatives from 19 countries attended, many of whom we are already familiar with, to discuss the investment opportunities in Kosovo this year and in the years to come. The meeting was organized and held by the VEF on 25 and 26 March under the patronage of the Prime Minister of Kosovo, Hashim Thaci.

The Managing Partner of both the Tirana and Pristina office, Mr Perparim Kalo, was a speaker in one of the round table panels that was moderated by the Director of the Kosovo Investment Promotion Agency Mr Mustafe Hasani, and he talked on the topic of investment policy and opportunities for concrete projects in Kosovo with a focus on energy, infrastructure and finances. Mr Kalo not only introduced the services of Kalo & Associates but was also able to highlight the key legal issues investors always need to firstly address when considering investment in emerging markets, and perhaps more so in such large investment opportunities. Such key issues tend to include enforcement of court judgements/remedies, property rights (including IP), security facilities, tax regime and exit strategies. (You may visit the website of the Vienna Economic Forum for further details.)

The Prime Minister had stressed how open and welcoming Kosova was to foreign investment and in fact the Kosova Central Bank announced that foreign investments in Kosovo in 2008 comprised EUR 350 million. Some of the larger projects discussed included the new Airport concession, the motorway from Morine – Pristina – Merdare (Route No. 7), PTK privatization; privatization of KEK Distribution Network and Supply and construction of new generating capacities from lignite known as Kosova C. The Government has also selected 18 locations for construction of small hydro power plants to be financed through private investment.

Finally, the Investment Promotion Agency and Agency for Support of SME is inviting small and medium enterprises to apply for establishing their businesses in the “Business Park in Drenas”, an area of 24 ha with the capacity to accommodate 76 business units mainly of manufacturing and services as part of the future industrial zone with an additional 1130 ha in an attractive location in the central part of Kosovo 5 km from Pristina International Airport.
LEGAL UPDATES

Consolidation of LICENSING Procedures

A long awaited and very important law “On Licenses, Authorizations and Permits” (published at the Gazeta Zyrtares no.31 of 23.3.2009) has been recently approved by the Albanian Parliament. This law establishes the National Licensing Centre (Qendra Kombeante e Licensimit – QKL), a body that shall be entitled to issue, in collaboration with other relevant state bodies, licenses/authorizations/permits.

This initiative is part of phase two of the Millennium Challenge Program (by USAID), and a follow-up to the establishment of the one-stop-shop for business registration. This is proposed to be a ‘one stop shop’ National Licensing Centre that will allow businesses to submit and track standardized business license applications electronically.

Such licenses/authorizations/permits shall include inter alia those needed for: food production and/or trade thereof; drug production and/or trade thereof; activities affecting the environment; natural resources, power, oil and gas activities; territorial studies; transport; establishing private educational institutions; notaries; private bailiff activities; casinos etc. The law is effective as of 07.04.2009. A key transitory note is that all existing legal acts which are not in compliance with this new law must be amended within 2 months of the afore-mentioned date.

The new Albanian Air Code

The Ministry of Public Works, Transport and Telecommunication in close collaboration with a number of foreign institutions specialized in the field of Aviation (EUROCONTROL WP2 Team) have drafted a new Air Code that represents the most important legislative act for air transport, air operation, aerodromes operation, groundhandling etc as well as the reorganization of the governmental body which is responsible for the implementation and execution of the law.

This new law Nr.10040, dated 22 December 2008 “Air Code of Albania” had officially come into effect on 29th January 2009. This law abrogated the previous Law “For the Civil Aviation” Law “On the Security Albanian Civil Aviation” and Law “For the Usage of the Albanian Republic Air Space”. Secondary legislation to support the provisions of the new Air Code have yet to be enacted but are expected to be enacted very soon.

This new Air Code provides that the competent authority for the application of this Air Code is the Civil Aviation Authority (CAA) which has taken all responsibilities of the former General Directorate of the Civil Aviation (GDCA). According to the Air Code the CAA is a public entity financed through revenues generated by its own activities. The CAA is in charge inter alia for licensing and certification of air carriers, administration of the civil aircraft register and any other civil aviation register, licensing and ratings of pilots and flight crew members and other aviation personnel, certification and licensing of aerodromes, auditing of the technical and operational conditions and economic fitness of aviation undertakings and aviation training facilities etc.

The Air Code is one of the many steps that has been taken by the Albanian authorities in effort to comply with the best international standard as was the ratification by the Albanian parliament in 2006 of the Cape Town Convention which has attracted several aviation companies to do business in Albania of which K&A has very recently represented some 5.

The air code has brought changes including that:

(i) the application for registration can now be initiated either by a company formed in accordance with the law of a Member State of the European Union or of a State party to the Multilateral Agreement for which the registered office, central administration or principal place of business is located in that State;

(ii) the liabilities that have to be sustained by the carrier in case of death or bodily injury of a passenger, delay of transportation or damage to baggage.

Law on Liens Over Ships Reinforced


The States Parties to this Convention, conscious of the need to improve conditions for ship financing and the development of national merchant fleets, recognising the desirability of international uniformity in the field of maritime liens and mortgages, and therefore convinced of the necessity for an international legal instrument governing maritime liens and mortgages.

Auditing Law

The law “On the Auditing, organization of the profession of the Auditor and of the Certified Accountant” has been recently approved by the Albanian Parliament. This law regulates the auditing of the consolidated and/or individual annual financial statements, organization of the profession of certified auditors/auditing companies and of the profession of chartered accountants and regulation of organization of these two professions, etc. Important provisions of this law include those related to the criteria and procedure in order to become a certified auditor or chartered accountant and the provisions related to the supervision of these professions, including quality control.

Under this new law, an audit on the annual financial statements is obligatory for:

(i) all commercial companies, regardless of their legal form, that apply IFRS;

(ii) all joint stock companies applying National Accounting Standards (NAS);

(iii) only those limited liability companies applying the NAS when at the closing of the financial year they meet the threshold provided for in this law. The law contains specific provisions on the mandatory auditing of listed companies, banks and insurance companies.

The law provides that the certified auditor(s) and the auditing companies ought to carry out the auditing in compliance with the international auditing standards.
IP RIGHTS TO SECURE FINANCING

Lately observers of the financial markets in many countries have been noting an important increase in the interest of using IP rights as a securing charge for the benefit of lending institutions.

WHY? Trademarks, patents, utility models and copyright all represent not only a high value asset but also a good source for access to financing. This perspective and relatively new approach can be considered as a valuable alternative financing strategy and particularly so in the current economic crisis. As provided in the Albanian Law No.8537 “On Securing Charges”, as amended, a securing charge is a property right on a movable property that can either be tangible or intangible. From a lender’s perspective IP assets have become an increasingly substantial portion of a company’s total assets. In the current economic environment where balance sheets of many businesses are thin IP is an essential piece of the collateral pool that is readily available to borrowers and lenders.

HOW? Pledge risk is often seen as a significantly low one for the lender, given that it requires the transfer of the IP rights from the borrower to the lender. Thereafter the lender shall grant the license to the borrower for the exclusive use of that IP right to enable it to continue its business. This however, in practice, may generate problems as the lender becomes the owner and holder of these rights and businesses are unlikely to take the risk of losing ownership of their IP rights as more often than not such rights are essential to the success of their business; IP rights tend to embody the goodwill of the company. Hence, what would be more appropriate is the mechanism of securitization mostly used in the fields of the cinema industry, music, biotechnology and software, which offers proper risk coverage to the lenders. Securitization is the process of conversion of existing assets or future cash flows into negotiable instruments. In other words securitization deals with the conversion of assets which are not marketable into marketable ones, including the conversion of future cash flows (known as future-flows securitization) like ticket sales, CD1 or DVD sales, or any other form of future receivables. This practice requires an adequate evaluation of IP rights, which constitutes a crucial aspect of the IP financing procedure given the need of the lending institution to be informed of the value of these assets at the time of the transaction.

The existing methods of evaluation are efficient mostly only for (those) large and important trademarks and patents and there is no prescribed method that deals indistinctively with every kind of IP asset. For this reason many countries2 are now looking forward to create and consolidate general principles of a proper evaluation of the IP rights.

ADVANTAGES: Asset based lending with IP collateral can be ideal for distressed businesses as IP rights as collateral represent a more certain and stable form of guarantee than its financial performance or cash-generating capabilities. This approach may improve the borrowing capacity of the enterprises thus enabling them, as economic operators, to achieve their intended financial goals.

IN ALBANIA … Even if the law of 1999 “On Securing Charges” provides a legal framework for this mechanism, including the IP rights in the group of intangible movable property, enterprises still hesitate to use this strategy. The modern Albanian banking system would readily welcome IP assets for securing financing of large and well-known Albanian enterprises (i.e. Tirana Beer, Ferlut, Glima, etc). Perhaps the lack of a well-defined evaluation method leads both business operators and lenders to reject such alternative of securing financing. However the future seems bright and it would be imprudent to ignore the important opportunities of new funding mechanisms based on intellectual property.

By Eni Kalo, LLM (CEIPI)
Associate: IP, ICT and Commercial Contracts

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1 In 1997 the musician David Bowie could borrow $5 million dollars, offering to assign receivables from sales of his albums as collateral.
2 The insertion of an index of security prices based on the IP rights of the companies in the American Stock Exchange.