

# ALBANIA & KOSOVO LEGAL NEWSLETTER

## KALO & ASSOCIATES again in IFLR 1000 Top Tier



In IFLR1000's Energy and Infrastructure Guide 2015, KALO & ASSOCIATES is ranked as a top tier firm. IFLR 1000 conducts in-depth research of legal markets and ranks law firms around

the world.

A client who worked with the firm on a project finance matter says: "the firm was very professional and experienced. They understood international project finance banking needs and were able to translate that into how to best achieve our goals in the Albanian context." Yet another client with experience of a number of firms says that "in some matters, KALO seemed to have more experience with - in particular - negotiation strategies with the Albanian government and possibilities for what they could provide that would support the lenders' needs."

The firm's position in the market is indicated by its advisory work to the International Finance Corporation (IFC) and the European Bank of Reconstruction and Development (EBRD) on the proposed changes to the country's renewable energy legislation. The firm has also advised the EBRD and the Albanian Government on the drafting of legislation relating to building energy efficiency, a project the EBRD is working on across the Balkans.

In terms of transactional highlights, the team acted for the IFC and the Albanian Government on the concession for the Milot-Morine Highway PPP (public-private partnership) and has assisted other confidential clients on regulatory matters relating to hydropower concessions.

<http://www.iflr1000.com/Firm/Kalo-Associates/Profile/960#review>

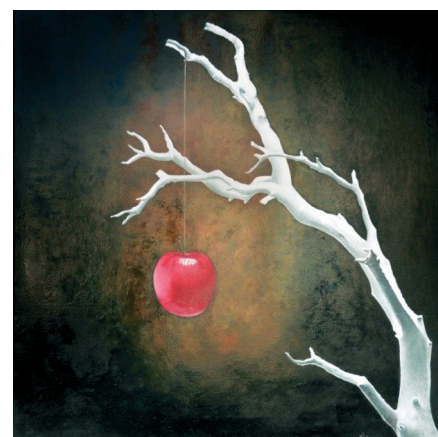
## BERLIN PROCESS AND THE SEPTEMBER CATAclySM

by **Përparim KALO**, Managing Partner

The visit of Chancellor Merkel in Albania and her Western Balkan tour to push the countries to embrace the challenging project, the "Berlin Process", through complex reforms was a signal that the Federal Republic of Germany continues efforts to push for Western Balkan EU integration en bloc. In addition, it could be seen as a historical moment to forge further the excellent bilateral relations between Albania and Germany. In other words, Chancellor Merkel is supporting her project not just believing blindly in the governments or leaders of each country, but only based on the performance assessment, and therefore she is reiterating the need to strengthen legal certainty and law enforcement.

But what exactly did Chancellor Merkel say Albania should do to improve the performance?

In substance, she confirmed that the process of integration of Albania will not be artificially delayed by the EU countries, but she also emphasized the importance of the reforms Albania should complete. These reforms include the strengthening of rule of law, the legal reform which should provide certainty, and the judicial reform, which would contribute in creating conditions for increasing the confidence of investors



Edi Leksani, *Climate change*

here. She suggested Albania can utilize the experience of Europe in the area of law enforcement, and particularly in the area of fighting corruption.

Thus, Chancellor Merkel reminded our Government and the politicians more or less of the key element in the long "to-do-list", already identified and strongly recommended in the EU Progress Report – legal and judicial reform.

We have been hearing from the Parliament and personally from Prime Minister Rama that the month of September will be the month to mark drastic changes in that direction; the month when the corrupt in the judicial system will walk away to be replaced by the uncorrupt. If so, September might be remembered as the month of a cataclysm!

## ICSID - MAMIDOIL VS REPUBLIC OF ALBANIA

*Mamidoil Jetoil Greek Petroleum Products Societe S.A. vs. The Republic of Albania*, was an arbitration case between the Greek petroleum company and the Republic of Albania, which was tried by the International Centre for Settlement of Investment Disputes (ICSID). The ICSID tribunal accepted jurisdiction based on the 1991 Greece-

Albania bilateral investment treaty (BIT).

Major business activities of Mamidoil were transport, storage and sale of petroleum products. The company built and operated an oil tank farm in the Durrës port area which led to a series of increasingly



## ICSID - MAMIDOIL VS REPUBLIC OF ALBANIA

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substantial investments in 1999 and 2000. The tank farm is situated close to a residential area and this created concerns regarding the social impact of the tank farm, so the Albanian Government, in tandem with the World Bank and the European Union, introduced a re-zoning that would relocate Durrës tank farms. Albania contended that the ban on fuel vessels at Durrës was part of its long-term transport sector strategy as part of the modernization of its port system. Mamidoil contended that Albania encouraged it to invest in the country and the tribunal found that the investor's business activities clearly constituted an investment under the ICSID Convention.

The claimant based its claim exclusively on the BIT and the ICSID Convention. The claimant's brief, however, subsequently asserted that the respondent's consent to ICSID arbitration of the dispute was also found in the Energy Charter Treaty (ECT). The tribunal noted that, "to the extent the Parties both took positions as to the propriety of the Respondent's conduct under the ECT, for this reason alone the Tribunal will consider the ECT when addressing the existence and legality of an investment under each of the BIT and the ECT and Respondent's compliance with both the BIT and the ECT."

The claimant submitted that Albania had indirectly expropriated its investment under both the BIT and the ECT. It relied on the following key facts: in June 2000, Durrës was re-zoned to exclude the investment; in July 2000, the investor was ordered to suspend construction of the tank

farm, which was subsequently re-authorized; and, as of July 2009, Durrës was closed to petroleum vessels.

The tribunal disagreed, finding that re-zoning was transportation policy and that in any case the claimant had been allowed to operate profitably until the port was closed in 2009. It pointed out that "[r]egulations that reduce the profitability of an investment but do not shut it down completely and leave the investor in control will generally not qualify as indirect expropriations" (para. 572), referencing *El Paso v. Argentina*.

In summary, the Tribunal found that on one hand Mamidoil was able to operate successfully in Albania until the closing of the port of Durres and that in 2009 and on the other hand, the Tribunal recognized the Republic of Albania's due diligence in its general customs policy and in its specific measures. The Tribunal found that under the prevailing circumstances, the Republic of Albania has not breached its obligation under Article 10.1 of the ECT to constantly protect and secure the investment of Mamidoil.

*(The full text of the award can be found in: [www.italaw.com/sites/default/files/case-documents/italaw4228.pdf](http://www.italaw.com/sites/default/files/case-documents/italaw4228.pdf))*



Fatbardh Kalvari, *Battle of Waterloo*

## NEW DRAFT ON INCOME TAX UNDER PUBLIC DISCUSSION

by **Tax & Finance Team**

The Ministry of Finance of Albania has already prepared the draft of a new law on income tax (herein New Law). This New Law includes specific sections related to personal income tax, corporate tax and withholding tax. Herein you may find a brief description of the main findings from the New Law which ought to be observed by the taxpayers in Albania.

**I. Corporate income tax (CIT)** the New Law provides as follows: 1. Economic scope of the transaction(s) (article 46) - This article provides for a broad discretion given to the tax authorities to judge about the economic scope of the transaction(s) performed by the taxpayer subject to CIT and for purposes of CIT. The criteria provided by this article to consider the transaction(s) as transactions with economic scope for the taxpayer are drafted in a way to limit the number of transactions which may be considered as transactions with economic scope and which lead to the increase of the tax burden for the taxpayer. 2. Deductibility of bad debt (article 55) - The New Law provides for the deductibility of the bad

debt and not only for the deductibility of the full amount if certain conditions are met (e.g. to follow the legal actions, etc.), but also for the partial deductibility of the bad debt, such partial deductibility subject to certain criteria and limitations (for further info please see the draft law). 3. Losses (article 56) - The New Law provides that the financial losses can be carried forward over the next 5 (five) consecutive fiscal years. 4. Thin capitalization (article 32) - The interest expenses will not be considered as deductible expenses if the excess net interest expense exceeds 30% of taxable earnings before interest and taxes ("EBIT"). The EBIT is determined based on the financial statements using the accounting rules with tax adjustments as provided by the New Law. 5. Depreciation (article 53 point 4 & 5) - The provisions of the New Law related to depreciation provide for the change and the use of methods which will lead to the increase of non-deductible expenses if the provided rules will be applicable to the existing assets. 6. Deductible expenses (article 52) - (i) The New Law provides that only the payments up to

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Adnan Kastrati, *Fashion runway*

a certain threshold (such to be provided by the New Law) for the voluntary life insurance and health insurance for the employees will be considered as deductible for tax purposes; (ii) Various special or legal reserves or provisions will not be considered as deductible; (iii) Bribery fees are not recognized as deductible (we assume that this is related to the amount spent by the taxpayers for small gifts up to the relevant amount permitted by law).

**II. Personal income tax** on the incomes generated from employment

1. Contributions in kind: The draft law provides for the consideration of the contributions in kind given to the employee as personal incomes (specific related rules are provided in the New Law)
2. Relevant tax rate: As the companies are tax agents for the personal income tax on the incomes generated from employment, it is important to note that the New Law provides for the personal income tax on the incomes generated from employment to be charged as follows:

- i. From 0 - 180,000 ALL/year, the tax rate is 0%;
- ii. More than 180,000 ALL/year and less than 1,560,000 ALL/year, the tax rate is 13%;
- iii. More than 1,560,000 ALL/year, the tax rate is 23 %.

### III. Withholding Tax (WHT)

The WHT agent has the obligation to withhold the relevant WHT (at the rate of 15%) regardless whether the payment of dividend or profit share, interest, royalties, lease, income from gambling, is going to be made to the benefit of a tax resident or non-resident.

## PROJECT UPDATES

### TRANS ADRIATIC PIPELINE PROJECT (TAP)

TAP had the ground breaking starting construction and rehabilitation work on access roads and bridges along the pipeline's route in Albania, which is key for the progress of the project but will also contribute to the modernisation of the transport infrastructure and will encourage other investments. In total, TAP is expected to build and rehabilitate approximately 100 km of road and build three new bridges and rehabilitate more than 40 existing bridges. Works are expected to be completed during 2016.

<http://www.tap-ag.com/news-and-events/2015/07/03/tap-begins-construction-of-access-roads-and-bridges-in-albania>

### ALBPETROL PRIVATIZATION

The Government of Albania has announced the privatization of the state-owned company holding oil and gas interests. The financial assessment and privatization package will be prepared with the assistance of international financial institutions. Petroleum Law was amended in April 2015 to pass the of administration rights of some free blocks from Albpetrol to the GoA, such rights remaining under Albanian Government's management after privatization.

### MILOT – MORINE HIGHWAY

The tender conducted by Albanian Ministry of Transport and Infrastructure has prequalified four consortia in the tender for granting the concession for the operation and maintenance of Milet-Morine motorway. The construction cost is said to be the region of €40 million which entails works for slop stabilization as well

as construction of Kukës bridge.

### INSTITUTIONAL BUILDING - Gasification Project

Swiss Government has provided a 6.6 million Euros grant to support building of capacities for large gas infrastructure developments in Albania. The project aims at supporting the Government of Albania when dealing with both development areas and to build the necessary capacities so that it can fulfil its responsibilities in the area of the gas market development of the country.

An invitation for bid was announced for the provision of consultancy services with respect to this project. Such services consist of developing a strategy and policy on the energy sector, such as an Energy Strategy, Gas Infrastructure Master Plan, improving the legal, technical and institutional framework and supporting the creation of new institutions for the development of the Albanian gas market.

The implementation period of the project shall be 2015-2020. Among the results expected by this contribution are energy security through energy diversification, economic growth through a strengthened investment framework and reduced greenhouse emissions through lower imports of fossil-fuelled energy.

### 5 OIL BLOCKS TENDERED

Albanian Government is issuing a license for onshore Dumre Block to major oil operator. Deadline for applications for 3 other onshore blocks has been extended to October 15, 2015, while for 2 offshore blocks application has been postponed to another date yet to be established.

# KOSOVO Office

## SUCCESS STORY - KOSOVO DEPOSIT INSURANCE FUND

On 9<sup>th</sup> of July 2015, the Ministry of Finance of the Republic of Kosovo, KfW (the German Development Bank) on behalf of the German Government and the Deposit Insurance Fund of Kosovo (DIFK) marked a successful closing of the three year cooperation project for the establishment and capitalization of the Deposit Insurance System in Kosovo.

The DIFK manages the Deposit Insurance System in Kosovo with the key mandate to insure depositors and guarantee compensation in case of a license revocation and closure of a bank by the Central Bank of Kosovo (CBK). The Fund insures deposits of natural and legal persons up to a maximum coverage level of EUR 3,000 (increasing to EUR 4,000 in 2016 and to EUR 5,000 in 2018) and compensates each insured depositor within 30 days in case of license revocation and closure of a bank.

From 2012 until 2014, Global Banking Development Solutions (GBDS) fully financed by the German Government through KfW has provided DIFK with technical advice. The German

Government supported the establishment of the DIFK via two capitalizations of €4.5 million and €2.0 million. The second tranche can also be recognized as a strong commitment from the German Government to ensure a sustainable development of this project.

The excellent three-year cooperation between the involved institutions of Kosovo and the German state, namely KfW, brought its result to a success. Indeed, the support of this institution has been present and continues since the beginning of the establishment of the DIFK and “this collaboration has resulted in the establishment of a credible Kosovar institution for insuring deposits in banking institutions in the country” emphasized the Deputy Minister of Finance.

This achievement will increase confidence and stability of the financial sector in Kosovo, which means long term stability, increased deposits in banks transforming into increased financial liquidity, essential for the growth of the economy and the vitality of the entire society.

The Managing Director of the Project gave an overview of the Deposit Insurance System and main activities and achievements based on the annual report of 2014. The Deposit Insurance Fund has reached to €24.7 million after the receipt of total €17.5 million capital contributions, as well as premium payments from member banks, where the total of €11 million was provided by the Government of Kosovo (through the Ministry of Finance) and €6.5 million from the German Government (through KfW) for the purpose of establishment and to support the increase of deposit insurance limit respectively.

Compared to the end of December 2013, figures show an increase of 3.1 % to EUR 2.5 billion of the deposits in the banking sector in Kosovo as well as an increase of 6.7 % to EUR 452 million of insured deposits. At this time, at the deposit insurance level of EUR 3,000, DIFK insures just over 902 thousand depositors (or 96.7%) in eight member banks accounting for a total insured deposit volume of EUR 452 million (or 18.14 %) as of 31 December 2014.

This tendency of growth of deposits indicates continued confidence of the public in the banking sector helping in maintaining the stability of the financial system in Kosovo.

**Ahmet Hasolli, Partner**

### THE ESTABLISHMENT OF THE REVENUE AGENCY IN KOSOVO

On July 22<sup>nd</sup>, 2015 the Government adopted the Initial Plan for the creation of the Revenue Agency and authorized the Minister of Finance to make all the necessary preparations (e.g. the creation of the institutional structures, the corresponding budget and creation of human resources).

Based on this decision, the Minister of Finance must establish a qualified team to run this process (e.g. preparation of legislative amendments, detailed plan for the functioning of the revenue agency) and ensure the necessary human resources and financial resources for this Agency.

### PROJECT UPDATES

In accordance with the Government Program of the Republic of Kosovo (2015-2018) and the Action Plan 2015-2018, which foresees the unification of the Tax Administration of Kosovo (TAK) and Kosovo Customs (KC) in a joint revenue agency, the Ministry of Finance provided the steps to be taken during this process.

Pursuant to the indicative plan for the creation of the Revenue Agency (i.e. after the creation of legal basis for the drafting and adoption of the Law on the establishment and functioning of the Agency and its adoption by the Parliament), the formal unification of the

TAK and KC in an Agency is immediately expected to take form and to be fully operational by January 2017.

This unification into one Revenue Agency is based on the need to improve services to taxpayers, reducing the “tax gap” through simpler structures and more effective tax collection, increasing efficiency in tax collection and reducing costs in the process, increasing the autonomy of institutional structures that deal with revenue collection, the establishment of more effective institutional structures for the implementation of tax and customs policy, as well as satisfying the criteria needed for the EU integration process.

***Disclaimer:** The contents of this newsletter are 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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