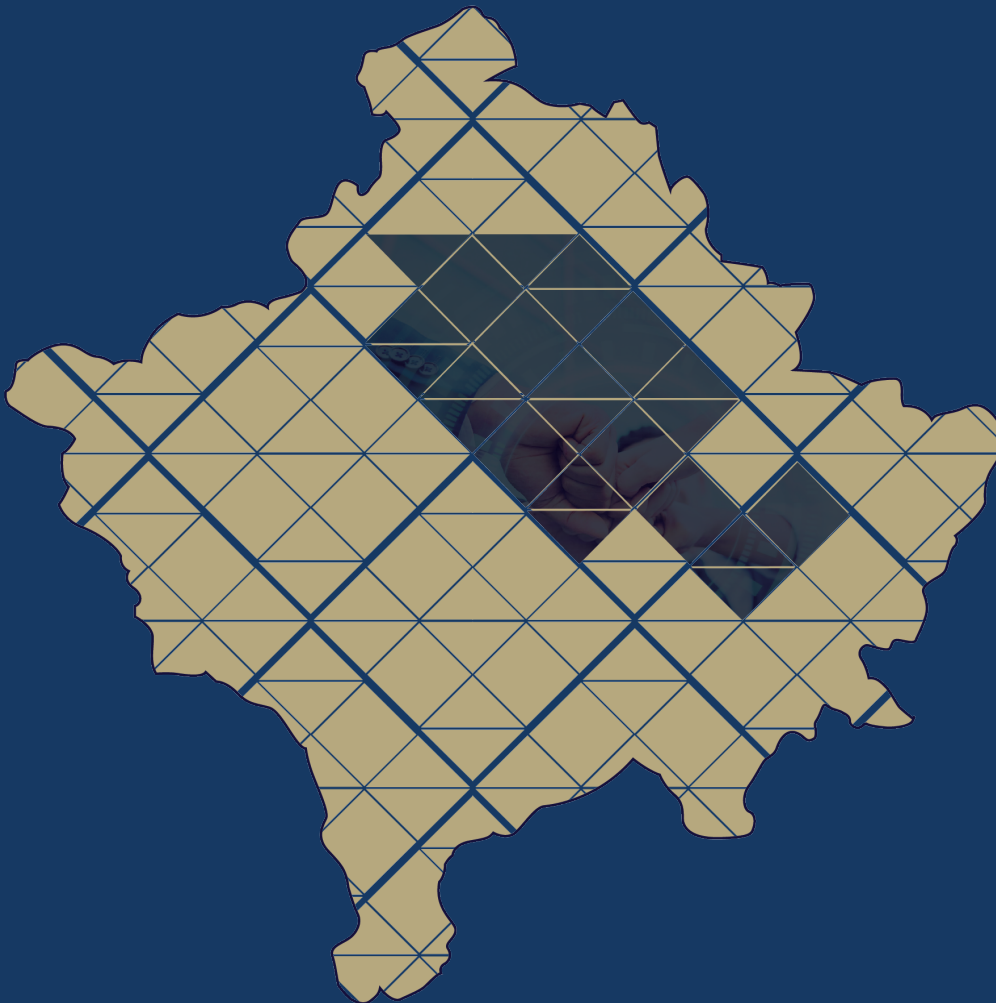


*A COMPREHENSIVE LEGAL RESOURCE*



# LEGAL GUIDE TO INVESTING IN KOSOVO 2024

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First edition



## **LEGAL GUIDE TO INVESTING IN KOSOVO**

This inaugural edition of the Legal Guide to Investing in Kosovo considers the relevant legislation in Kosovo up to December 15, 2023.

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## **Word of the Partners**

On behalf of Vokshi & Lata Law Firm, KAS, KD WV and the authors of the “Legal Guide to Investing in Kosovo,” we are pleased to introduce this important document. Our goal is to provide a practical guide for foreign investors looking to operate in the Republic of Kosovo.

Kosovo offers substantial investment opportunities, yet it has not received the attention it deserves from foreign investors for various reasons. The “Legal Guide to Investing in Kosovo” represents our effort to dispel these misconceptions and bring Kosovo to the forefront as an attractive destination for foreign investment.

This document summarizes the key legal requirements that foreign investors need to understand and comply with in Kosovo. We have leveraged our legal knowledge and experience to create a clear and user-friendly manual for investors. We aim to update this document annually to reflect changes in Kosovo’s laws and regulations.

Kosovo has a unique demographic advantage as it is the house of the youngest population in the region. This vibrant and energetic community serves as a valuable asset for prospective investors, granting access to both skilled workforce and thriving consumer market.

The Kosovar diaspora worldwide is a valuable resource for Kosovo, playing a significant role in promoting our country and supporting its development. Their assistance and investments are essential for our economic progress, and this guide aims to attract even more investors from the Kosovar diaspora.

We should also acknowledge the substantial contributions made by the European Union, the United States and other countries in assisting Kosovo in developing its legal framework. Thanks to their ongoing support, Kosovo has modernized its legal system and created a conducive environment for foreign investments. We want to emphasize this and express our gratitude for their continued contributions.

We encourage you to read this “Legal Guide to Investing in Kosovo” carefully and share your comments, observations, and suggestions. Your feedback is highly valuable to us and will help us improve the document and provide more value to our readers.

Thank you for choosing this guide as a source of information, and thank you for supporting our mission to promote investments in Kosovo.



## ABOUT VOKSHI & LATA

Vokshi & Lata Law Firm is one of the leading law firms in Kosovo, focused on assisting domestic and international clients in all areas of business and commercial law. As a full-service law firm, we advise major local & international companies and financial institutions in Kosovo.

Our team consists of experienced partners and young motivated associates. The internal organizational structure enables the firm to provide specialized and client-oriented services while maximizing the responsibility for the services provided. By offering full-service, our clients are able to get necessary legal advice on one-stop-shop.

The team spirit between eminent partners and sharp-witted youngsters enables us to provide services based on experience, knowledge, and creativity. The organizational structure of the firm also facilitates providing clients with services in a short time, despite the workload. We collaborate with a large group of experts from different areas of law, with whom we consult regularly in order to offer our clients the best quality services.

By providing professional and practical advice, we have built long-term relationships with industry leaders. We approach to each client with personally tailored legal advice. We work individually with each of our clients in order to guarantee special attention to all our cases.



## ABOUT THE KONRAD ADENAUER FOUNDATION

The Konrad-Adenauer-Stiftung is a German political foundation that developed from the Society for Christian Democratic Educational Work that was founded back in 1955. Since 1964, it has borne the name of the first Federal Chancellor, Konrad Adenauer.

We feel bound to Adenauer's political memory and legacy; his principles serve as our guidelines, mission and commitment. We are therefore politically affiliated with the Christian Democratic Union of Germany but are financially and organisationally independent.

The promotion of liberal democracy and a social market economy, of peace and freedom, transatlantic relations, and European unification – this is what the Konrad-Adenauer-Stiftung stands for.

Although the work in Kosovo started much earlier through various projects, KAS was formally registered in Pristina in June 2007. Since then, KAS has focused on political education, civic education and strengthening of civil society, European integration, support of inter-ethnic and inter-religious dialogue, promotion of free market economy and other topics, which together with our local and international partners, we have addressed through seminars, conferences, discussions and numerous publications.





## ABOUT THE GERMAN-KOSOVAR BUSINESS ASSOCIATION

The German-Kosovar Business Association (Kosovarisch-Deutsche Wirtschaftsvereinigung - KD WV) is a member-driven business association that is dedicated to further strengthen bilateral ties and trade exchange between Germany and Kosovo. KD WV was founded through an initiative of the Embassy of the Federal Republic of Germany in Pristina, and currently represents over 200 member companies. It advises, supports and represents German companies in Kosovo that are seeking to develop or expand their business activities. It also supports and advises Kosovar companies, which trade with Germany on a wide range of goods and services and creates opportunities for business and networking. Since KD WV sits at the heart of the German business community in Kosovo, the organization plays an active role to improve the local business environment, by providing a respected voice for its members vis-à-vis ensuring their priorities and concerns are heard from the policy and decision makers. KD WV's opinions are regularly sought by policymakers and parliamentarians – the Association has been helping to shape Kosovo's business agenda for more than 12 years.



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# INTRODUCTION

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## **1. INTRODUCTION**

Kosovo is the youngest country in Europe. It declared its independence on 17 February 2008. Its official languages are Albanian and Serbian. Kosovo's capital is Pristina and its largest city.

### ***1.1. ABOUT KOSOVO***

Kosovo is the youngest state in Europe, situated in the heart of the Balkans Peninsula, offering by its situation a strategic position. Kosovo is landlocked with borders in the southwest with Albania, southeast with North Macedonia, west with Montenegro, and north and east with Serbia. Kosovo's territory covers 10,887 km<sup>2</sup>.

Kosovo's geographical location provides it with a strategic position in the Balkans region. Its location offers numerous opportunities for economic development, trade, and regional collaboration.

The territory of Kosovo has a suitable road infrastructure for the development of different business activities. The country's road infrastructure is well-developed as Kosovo is an important linking point of Western Europe with the Adriatic Sea.

Kosovo's climate is largely continental, with warm summers and cold winters (average temperature within the country ranges from +30 °C in summer to – 10 °C in winter) suggesting an exceptional climate business-wise.

Due to the good climatic conditions Kosovo grows various agricultural crops and plants, influencing agricultural production. Also, the climate has affected the development of the energy sector, because of its potential for the production of solar and wind energy.

The Kosovo Plain in the east and the Dukagjin Plain in the west are the two main plains and the main area of Kosovo's economic activity. Although Kosovo has no access to the sea, it has some lakes and many rivers. The main rivers are White Drini in the South, Iber River in the northwest and Lepenc River in the south-eastern part.

### ***1.2. POPULATION***

Kosovo's population is estimated to be around 1.8 million. Kosovo's population is characterized as the youngest population in Europe, with a medium age of 31. A significant percentage of Kosovo's population lives in large cities and towns such as Prishtina and Prizren. Urbanization has been increasing, while rural areas remain populated as well.

Kosovo's youth stand out for their remarkable motivation and possess a versatile skill set, which includes proficiency in foreign languages and computer skills. The Kosovo population is highly educated and is equipped with various working skills such as knowledge of foreign languages (such as English, German, Turkish, etc.), also the young people of Kosovo have exceptionally high computer skills, with knowledge of various programming skills.

Albanian ethnic communities represent more than 90% of the population. The Serbian minority is mostly concentrated in the north of the country and in some enclaves in the south. Other ethnic communities include Bosniac, Turkish, Ashkali, Egyptian, Gorani and Roma.

Islam accounts for more than 95 % of the population. Most Albanian are Muslim, although there is a minority of Albanian Catholics. Serbs are mostly Orthodox.

### 1.3. *ECONOMIC OVERVIEW*

Since 2008, Kosovo has successfully established a stable economy, with steady GDP growth and a continuous increase in foreign investments.

The Growth Domestic Product (“GDP”) of Kosovo account for 9.43 billion US dollars in 2022. With an average annual growth rate of 4.3% since 2009, Kosovo’s GDP has demonstrated remarkable resilience and steady progress over the years. Despite facing economic challenges in 2020 due to the global pandemic, Kosovo’s economy rebounded vigorously in 2021, registering an impressive growth rate of 10.5%. While the growth rate moderated to 3.5% in 2022, it’s essential to note that Kosovo’s economic recovery has been going smoothly and steadily, underpinned by effective fiscal and financial policies, as well as a conducive legal framework that fosters business development and foreign investments.

Kosovo’s economic dynamism can be attributed to several key factors:

**Stimulating Fiscal and Financial Policies:** Kosovo has pursued policies that have stimulated economic growth by encouraging investment and development.

**Business-Friendly Legal Environment:** The country offers an attractive environment for businesses, with favorable regulations that promote entrepreneurship and foreign investment.



**Strong Private Consumption:** A healthy domestic market and strong consumer spending have contributed significantly to Kosovo’s economic vitality.

**Diaspora Tourism:** The Kosovar diaspora’s interest in their homeland has led to increased tourism, further boosting the economy.

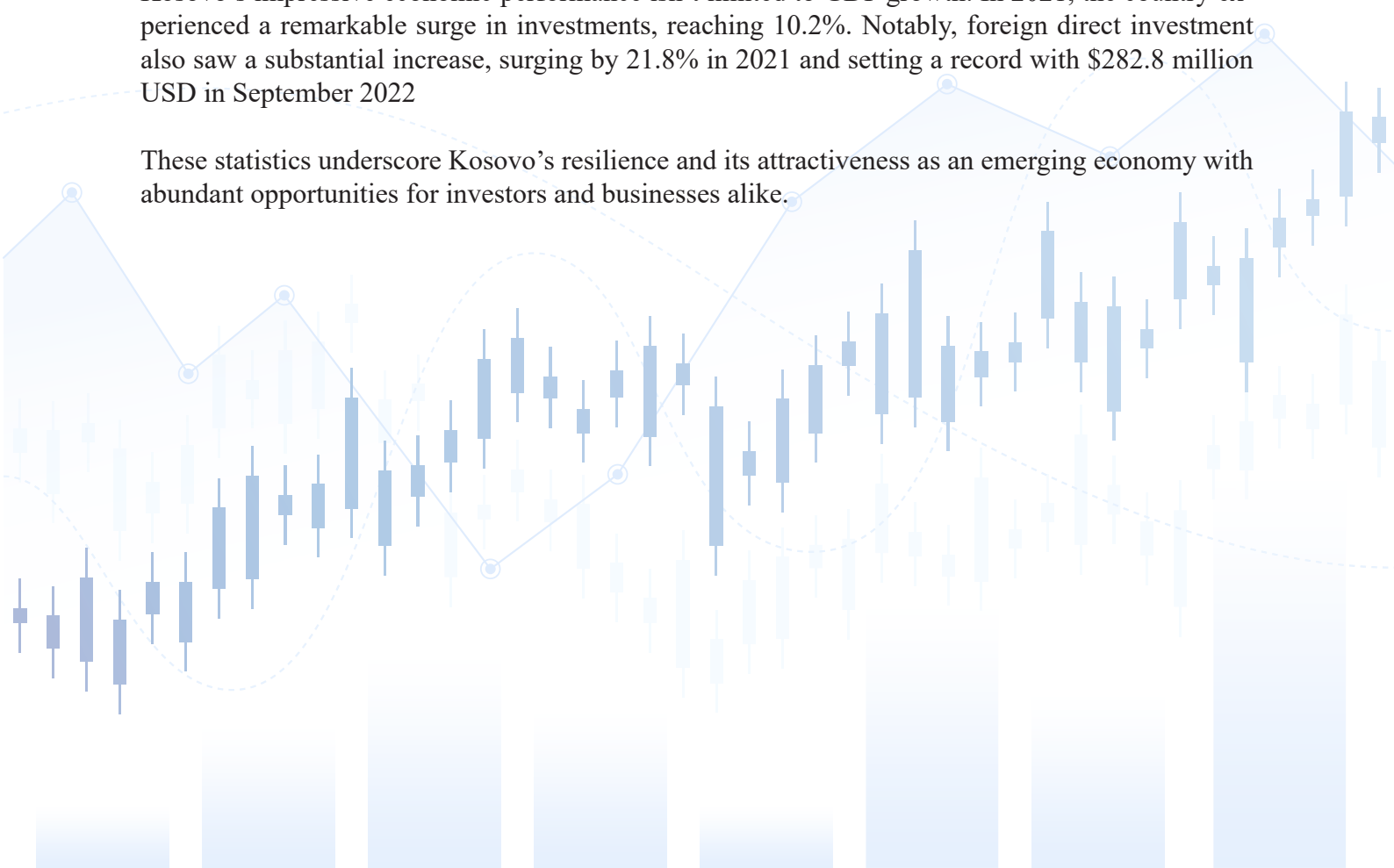
**Export Growth:** Kosovo has witnessed significant growth in exports, contributing to its overall economic strength.

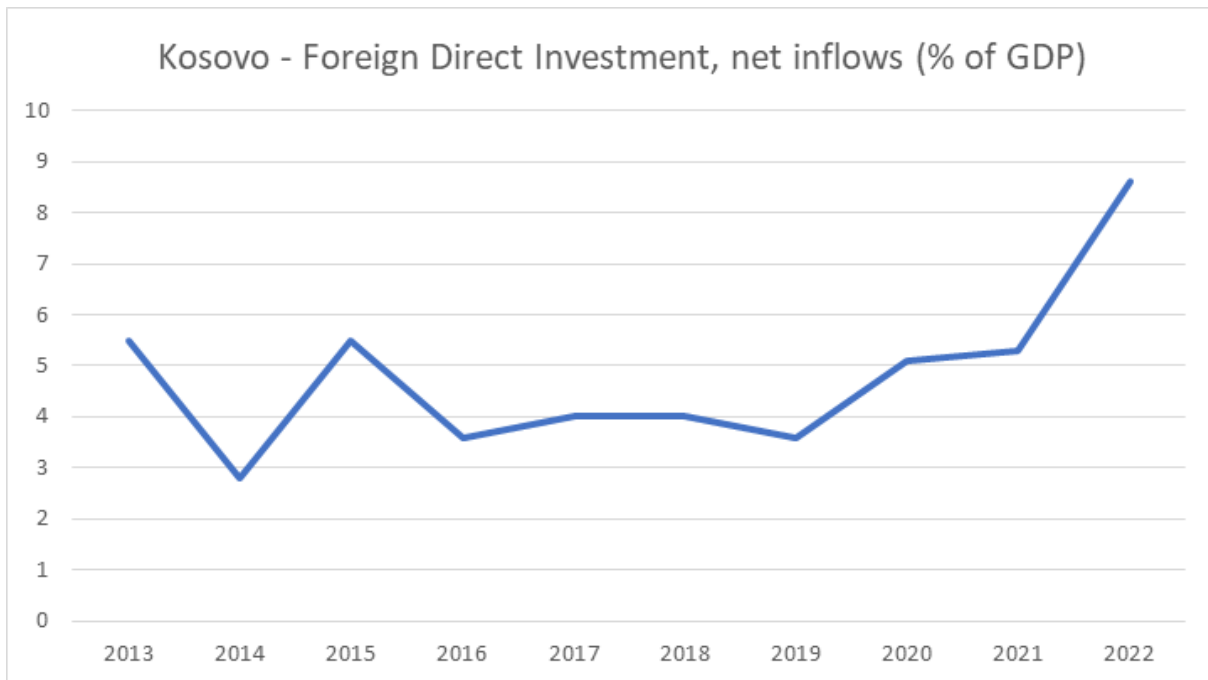
Country	Real GDP (%)			
	2019	2020	2021	2022
Kosovo	4.8	5.3	10.5	3.5
Republic of North Macedonia	3.9	6.1	4.0	2.0
Montenegro	4.1	15.3	12.4	6.6
Albania	2.1	3.5	8.5	4.2
Bosnia and Herzegovina	2.8	3.2	2.8	4.0
Serbia	4.3	0.9	7.4	2.3

Source: CBK, Annual Report 2022

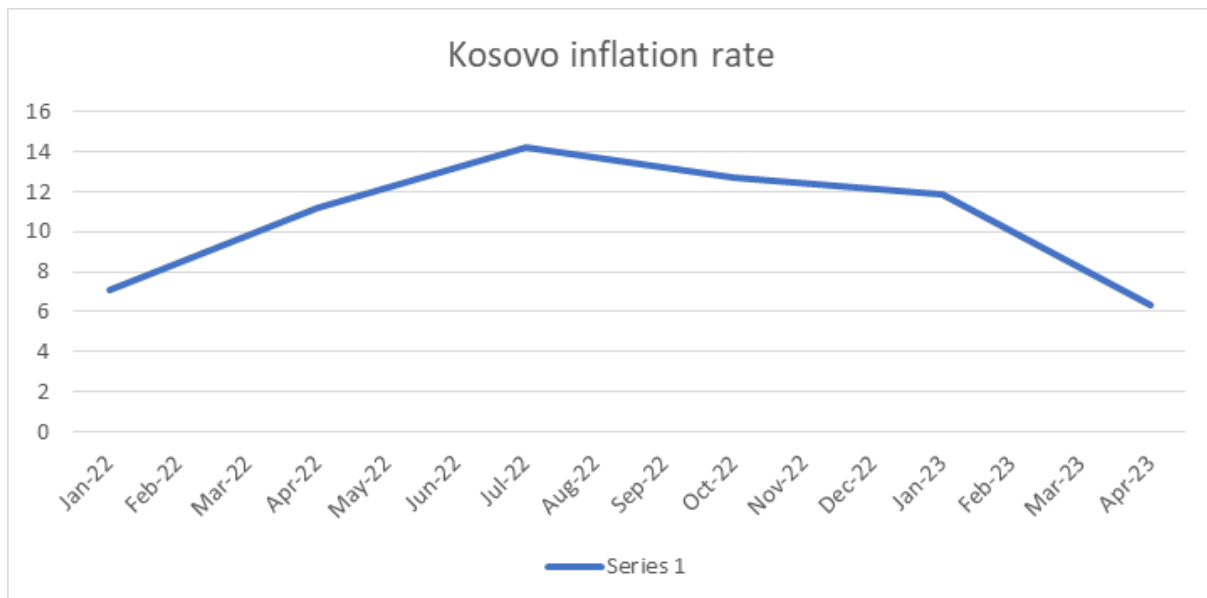
Kosovo’s impressive economic performance isn’t limited to GDP growth. In 2021, the country experienced a remarkable surge in investments, reaching 10.2%. Notably, foreign direct investment also saw a substantial increase, surging by 21.8% in 2021 and setting a record with \$282.8 million USD in September 2022

These statistics underscore Kosovo’s resilience and its attractiveness as an emerging economy with abundant opportunities for investors and businesses alike.





Source: World Bank Data



Source: Kosovo Agency of Statistics

**Labour market:**

Kosovo's labour market offers a youthful, innovative, and cost-competitive workforce that promises continuous growth and fresh ideas for investors. With a focus on entrepreneurship, a multilingual population, and a welcoming business environment, Kosovo stands as a promising gateway for international businesses seeking to expand their horizons in Southeast Europe.

**Vibrant workforce:** Kosovo boasts a youthful and energetic labor force, with a medium age of just 31. This demographic advantage is a testament to the country's potential for continuous growth and innovation. As these young professionals enter the workforce, investors can expect a steady influx of fresh talent and ideas to drive their businesses forward.

**Internationally Educated Youth:** Kosovo's youth is renowned for its extensive international exposure and education. Many young professionals have pursued higher education in prestigious universities worldwide. They return to Kosovo equipped with global perspectives, language proficiency, and a broad skill set, making them valuable assets for international investors looking to establish a presence in the region. This international education enhances cross-cultural communication and fosters a diverse and adaptable workforce.

**Competitive Labor Costs:** Kosovo offers a competitive advantage when it comes to labor costs. The average gross monthly salary in 2022 stood at an affordable 521 euros, making it an attractive destination for investors and businesses seeking cost-effective labor solutions.

The public sector, as of now, offers the highest average gross wage, standing at 604 euros. While, with an average gross monthly salary of 473 euros, the private sector remains an affordable option for employers, further enhancing Kosovo's competitiveness in the global market.

**Innovation and Entrepreneurship:** Kosovo's labor force is marked by its entrepreneurial spirit and a commitment to innovation. The country's startup ecosystem is thriving, with a vibrant community of tech enthusiasts and entrepreneurs who are eager to collaborate with foreign investors.

**Multilingual Workforce:** Kosovo's population is multilingual, with many citizens fluent in multiple languages, including English, German, and Turkish. This linguistic diversity makes Kosovo an attractive destination for businesses seeking to serve diverse international markets. It facilitates smoother communication and cultural understanding, reducing barriers when dealing with global clients and partners.



**Cultural Diversity and Adaptability:** The people of Kosovo are known for their openness, adaptability, and strong work ethics. This cultural diversity, combined with a pro-business mindset, ensures a smooth transition for foreign investors, who will find a welcoming and collaborative work environment.

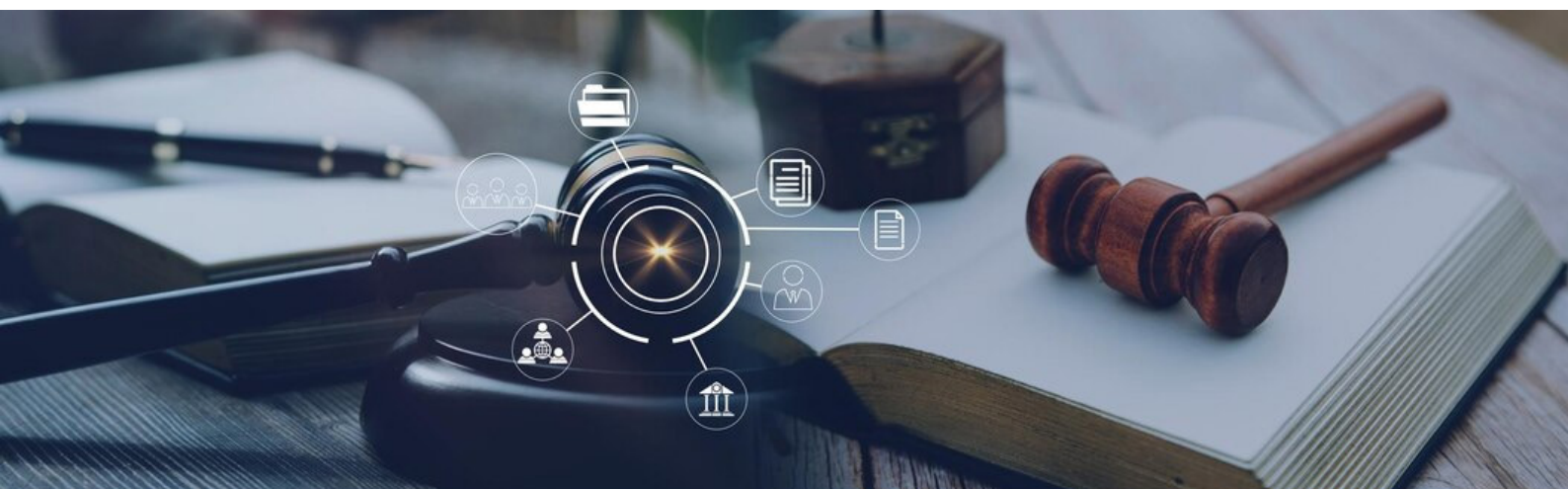
**Opportunities Across Various Sectors:** Kosovo's labor market isn't confined to a single sector. It spans a wide range of industries, including information technology, manufacturing, energy, agriculture, and services. This diversity allows investors to explore a variety of opportunities tailored to their specific business goals.

In conclusion, Kosovo's labor market is a compelling asset for foreign potential investors. With a growing and educated workforce, competitive labor costs, a business-friendly environment, and strategic location, Kosovo offers a unique opportunity for businesses seeking to expand their horizons and capitalize on the dynamic growth and potential of Southeast Europe. As Kosovo continues to make strides in enhancing its economic landscape, the labor market stands as a testament to the country's commitment to creating a prosperous environment for both local and foreign investors.

#### **1.4. LEGAL SYSTEM**

Along with the most promising economies in the region Kosovo has been actively developing a legal system aligned with European standards and the principles of democracy since its declaration of independence. The legal framework in Kosovo is oriented toward European regulations and directives.

**Constitutional system:** Kosovo is a multi-party democratic republic based on the principles of separation of powers. Constitution is the highest norm. It is a Parliamentary system, where the Assembly exercises the legislative power. The 120 members of the Assembly are elected every 4 years.



The government, which head is the Prime Minister, exercise executive power. The Prime Minister is elected by the Assembly after the parliamentary elections.

The President of Kosovo is the head of the state and is elected by the Assembly for a 5 years term with the right to be re-elected for only one additional term.

The judicial power is independent and exercised by the courts. The Constitutional Court is the final interpretation of the Constitution and the competent authority for the constitutional review of the law.

**Civil legal system:** Kosovo has a civil law legal system with ongoing efforts for codification. Civil law is currently regulated by special laws.

**Court system:** The court system of the Republic of Kosovo consists of seven Basic Courts of first instance, the Court of Appeals, and the Supreme Court. The Basic Courts are competent for cases in first instance. Court of Appeals operates as second instance and Supreme Court is the highest judicial authority and has jurisdiction over the entire territory of Kosovo.

A recent addition, the Commercial Court of Kosovo is a specialized judicial institution dedicated to resolving commercial disputes and matters related to business and trade. It serves as a vital forum for businesses, both domestic and international, seeking efficient and impartial resolutions to commercial conflicts. With a focus on expediency and expertise in commercial law, the Commercial Court plays a pivotal role in promoting a favorable business environment in Kosovo.



The Commercial Court acts as a court of First Instance and Second Instance for all commercial disputes from private and public law. To facilitate a streamlined procedure, the Chamber of the First Instance assesses and resolves legal cases through the following specialized departments:

- Economic Matters Department: which operates the division for disputes concerning foreign investors;
- Fiscal Department;
- Administrative Matters Department;
- General Department.

### **Notary and Private Enforcement Systems**

Kosovo has effective mechanisms for notary services and private enforcement. Notaries play a crucial role in legalizing and authenticating documents, while private enforcement procedures offer businesses a cost-effective mechanism to enforce legal documents as well as collect debts.



# FOREIGN INVESTMENT

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## **2. FOREIGN INVESTMENT**

Kosovar regulation applies the principle of non-discrimination to foreign investors. As such, there is no restriction for foreigners in regard to, requirements to open a business (cf. Section 3 of this guide), taxation (cf. Section 5 of this guide), or public procurement (cf. Section 7 of this guide).

Main principles applicable to foreign investment are set in the Law No. 04/L-220 on Foreign Investment (“Law on Foreign Investment”).

Worth mentioning in regard to foreign investments, are the free trade agreements and treaties, which aim at creating more secure and transparent conditions for trade and investment.

Besides that, Kosovo’s legislative bodies are in the final process of adopting the Law on Sustainable Investment, which is set to provide even more favorable terms and incentives for foreign investing, reinforcing Kosovo’s commitment to providing a conducive and welcoming atmosphere for those looking to participate in the nation’s economic growth.

### ***2.1. LAW ON FOREIGN INVESTMENT***

Currently, foreign investment is regulated by Law No. 04/L-220 on Foreign Investment (“Law on Foreign Investment”). The purpose of this law is to protect, promote and encourage foreign investment in Kosovo, and to provide foreign investors with the fundamental rights and guarantees necessary to ensure the protection of their investments.

Foreign investors, as defined by this law, include foreign natural and legal persons. It also includes the Kosovar diaspora (any natural person who is a citizen of the Republic of Kosovo, but has a residence abroad).

The Law on Foreign Investment defines investment as any asset owned or otherwise lawfully held by a Foreign Person in the Republic of Kosovo for the purpose of conducting lawful commercial activities.

Foreign investments include, but are not limited to:

- rights in and to movable and immovable property;
- intangible and intellectual property, as well as goodwill, technical processes and knowledge;



- cash, securities, commercial paper, guarantees, shares of stock or other types of ownership interests in the Republic of Kosovo or foreign business organization; bonds, debentures, and other debt instruments;
- claims or rights to the money, goods, services, and performance under the contract;
- concessions or licenses conferred by law, administrative act, or contract;
- returns yielded by an investment in the Republic of Kosovo or an investment elsewhere.

According to the Law on Foreign Investment, a foreign investment organization is defined as any business entity lawfully established within the Republic of Kosovo, that meets at least one of the two following criteria:

- *Capital Contribution:* A business organization is considered a foreign investment organization if at least 10% of its capital has been contributed, either directly or indirectly, by a foreign investor.
- *Control:* Alternatively, an organization can be classified as a foreign investment organization if it is under the control of one or more foreign investors, as specified in a written contract. This control can manifest through the rights to exercise a majority of the organization's voting shares or similar ownership rights. Additionally, it can result from the rights to appoint the majority of its board of directors or other principal supervisory bodies.

### **2.1.1. Foreign Investors' Rights**

The Law on Foreign Investment in Kosovo safeguards the rights and principles essential to foster a favorable investment climate, including:

**Principle of Fair and Equal Treatment:** Kosovo adheres to the principles of international law, ensuring that foreign investors are treated fairly and equally. The Republic of Kosovo refrains from interfering in the legitimate activities and interests of foreign investors.

**Principle of Non-Discrimination:** Regardless of citizenship, origin, residency, place of business establishment, or control, Kosovo extends the same treatment to all foreign investors. Discrimination is strictly prohibited.

According to Kosovo's legal framework regarding foreign investments no law, regulation or other legal act shall have retroactive force or be applied retroactively to the detriment of a foreign investor or the investment of a foreign investor. Such regulation best explains the Republic of Kosovo determination to offer foreign investors the stability and security needed for an unbothered and serious investment environment.

**Recognition and Respect of Rights:** Public authorities in Kosovo are bound to recognize and respect all rights of foreign investors, including those related to contract rights, property (both real and personal), intellectual property, and other assets.

**Right to employ foreign personnel** - A foreign investor has the right to employ foreign personnel to provide or perform, in the Republic of Kosovo, professional, management, administration, supervision, or consultancy services or skilled technical functions. Such personnel will be permitted to enter and remain in the Republic of Kosovo for the period required by their contract with the foreign investor in accordance with the applicable law. (cf. section 4 of this guide).



**Compensation:** The law outlines specific situations in which foreign investors are entitled to compensation if the Republic of Kosovo's public authority fails to fulfill its obligations, despite security measures in place for foreign investments. These situations include:

- **Change or Revocation of Investment Laws:** If a foreign investor has made an investment in the Republic of Kosovo and, within five years of the investment, any provision of the Law on Foreign Investment is amended or revoked, resulting in negative consequences for the investor or their investment, the government of the Republic of Kosovo is obliged to compensate the investor for all damages and expenses incurred due to the change, revocation, or issuance of such act.
- **Acts Beyond Authority and Failure to Act:** If the public authority, acting beyond its competence, issues an act or undertakes obligations concerning a foreign investor, the investor has the right to seek compensation for losses and expenses incurred due to their good-faith reliance on the validity of such act or obligation. Compensation may also be sought in cases of the public authority's failure to act.
- **Expropriation and Nationalization:** The law strictly prohibits the expropriation and nationalization of foreign investments, except in cases of special public interest established by law. In such instances, expropriation or nationalization must be accompanied by immediate, adequate, and effective compensation to the affected foreign investor.

In the event of a conflict between a provision of the Law on Foreign Investment and a provision of a bilateral or multilateral international agreement related to foreign investment and to which the Republic of Kosovo is a party, such international agreement shall prevail. This disposition holds significant value, especially considering the fact that the Republic of Kosovo has signed the Stabilization and Association Agreement with EU, is part of the Central European Free Trade Agreement, and is on route to being a member of the EU.

It is important to note that, to better serve and understand foreign investors' needs, Kosovo has established a specialized Agency. Kosovo Investment and Enterprise Support Agency ("KIESA") is a state agency whose mandate is to promote and support investments in Kosovo. Some of the activities that foreign investors can benefit from KIESA are:





- Guiding applicants through the necessary permit and license application processes.
- Facilitating meetings with local and central institutions, as well as potential local and international partners.
- Assisting in the allocation of businesses to economic zones and business incubators.
- Offering sector-specific information, project details, and potential collaboration opportunities.
- Keeping stakeholders informed about legal changes, tax updates, and essential information for successful investments.

## **2.2. DISPUTE RESOLUTION**

Foreign investors enjoy the right to resolve investment-related disputes through agreed procedures. In cases where there's no prior agreement outlining the dispute resolution process, foreign investors retain the option to settle their disputes either by pursuing litigation within local courts or by engaging in local and international arbitration.

### **2.2.1. Court Proceedings**

In practice, many foreign investors choose litigation as their preferred choice for dispute resolution. This often involves initiating court proceedings within the Commercial Court of Kosovo. Of particular significance to foreign investors, the Commercial Court is legally mandated to house a specialized division known as the "Division for Foreign Investors' Disputes." This division exclusively handles cases initiated by foreign investors, emphasizing the special attention given to foreign investment-related disputes within the Kosovo legal framework.

This unique approach to handling foreign investments offers several advantages. Notably, it ensures that cases involving foreign investments are granted priority in terms of scheduling and adjudication. Consequently, the resolution of disputes through the court is characterized by even greater efficiency and expediency, a highly favored feature.

The presence of the Division for Foreign Investors' Disputes serves as a testament to Kosovo's commitment to creating a favorable environment for foreign investors. It underscores the importance of safeguarding their interests and ensuring that their concerns are addressed promptly and effectively through the local court system.

The Commercial Court's commitment to swift and efficient dispute resolution not only constitutes a benefit for foreign investors but also serves to enhance Kosovo's reputation as a destination that prioritizes the needs and concerns of foreign investors. This legal framework encourages foreign investment and supports a secure and stable business environment for both local and international businesses operating in Kosovo, contributing to the nation's economic growth and prosperity.

### **2.2.2. Arbitration**

In addition to the court system, foreign investors can opt for dispute resolution through local or international arbitration bodies. This alternative dispute resolution method is often preferred to avoid litigation, reducing delays and costs while ensuring a fair resolution. Although not commonly engaged in local business agreements, arbitration clauses are more frequently included in agreements by the foreign parties.

## General dispositions on arbitration in Kosovo

Arbitration in Kosovo is governed by the Law No. 02/L-75 on Arbitration. This law covers various aspects of arbitration, including the composition of the Arbitral Tribunal, jurisdiction, proceedings, awards, and enforcement.

*Arbitration Agreement:* An arbitration agreement is a written contract between two or more parties to submit legal disputes to arbitration. It can be integrated into a larger contract or treated as a separate and independent agreement.

*Jurisdiction:* The arbitral tribunal determines jurisdiction and the validity of arbitration agreements. Challenges related to jurisdiction must be raised early in the proceedings.

*Local Arbitration Institutions:* Besides the international arbitral bodies, Kosovo also offers local arbitration institutions such as the Permanent Tribunal of Arbitration of the Kosovo Chamber of Commerce (PTA-KCC) and the Arbitration Center of the American Chamber of Commerce in Kosovo..

*Enforceability:* Arbitral awards are enforceable to the same extent as final decisions from the highest court in Kosovo.

*Binding Nature:* Arbitral awards are considered final and binding on all parties, including the Republic of Kosovo. Legal immunity cannot be claimed as a bar to award enforcement.

*Applicable Law:* The law agreed upon by the parties in writing governs investment disputes. In the absence of such an agreement, Kosovo's law applies, excluding international law rules.

*Investor-State Arbitration:* Notably, in cases involving foreign investors and disputes with the Republic of Kosovo, the law grants automatic consent from the state for foreign investors to initiate arbitration proceedings against the government. This signifies that the foreign investor can initiate such arbitration proceedings without the need for an arbitration agreement, as the state is considered to have given its consent for arbitration proceedings according to the provisions of the Law on Foreign Investments. Meanwhile, foreign investors have the flexibility to provide their consent at any time by directly submitting a request for arbitration or by furnishing a written statement to the competent state authority expressing their consent.


The foreign investor, pursuant to Law on Foreign Investment, may choose any of the following procedural rules to govern the arbitration of the investment dispute:

- the ICSID Convention, if the foreign investor is a citizen of a foreign country and that country and the Republic of Kosovo are both parties to that convention at the time of the submission of the request for arbitration;
- the ICSID Additional Facility Rules, if the jurisdictional requirements “*ratione personae*” of Article 25 of the ICSID Convention are not fulfilled at the time of the submission of the request for arbitration;
- the UNCITRAL Rules, in such case the appointing authority referred to therein shall be the Secretary General of ICSID; or
- the ICC Rules.

*Recognition and Enforceability of Arbitral Awards:* Arbitral awards are considered final in Kosovo and are binding. However, for enforcement within Kosovo, they must be declared enforceable by the court, and sometimes, undergo court recognition process. The process varies based on the origin of the award. If the award originates from a local arbitral body, it only requires declaration and enforcement by the court. However, if it’s issued by an international or foreign arbitral body, apart from being declared enforceable, it must also go through a recognition process within the court. These processes are expedited and are under the jurisdiction of the Commercial Court.

It is crucial to emphasize that the process of recognizing and enforcing arbitral awards fully complies with the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, as stipulated by Law No. 04/L-118.

This comprehensive legal framework promotes an investor-friendly climate, ensuring the efficient resolution of foreign investors’ concerns, thus contributing to Kosovo’s reputation as a destination that prioritizes foreign investment and economic growth.



### 2.3. DRAFT LAW ON SUSTAINABLE INVESTMENT

Kosovo's legislative bodies are currently in the final stages of approving the Law on Sustainable Investments. The first part of this draft law aims to replace the existing Law on Foreign Investments, providing a more contemporary and comprehensive framework that reinforces the state's commitment to principles concerning the protection, promotion, support, and enhancement of both foreign and local investments.

In this regard, unlike the Law on Foreign Investment, this updated draft regulates all investments made within the Republic of Kosovo, but with a primary focus on foreign investments. It sets forth national objectives aimed at advancing the state's interests by promoting and safeguarding investments. These objectives include boosting manufacturing and exports, enhancing competitiveness in the domestic industry, increasing employment opportunities, fostering innovation and technology development, and more.

Additionally, the draft specifies priority sectors for investment in the Republic of Kosovo, including but not limited to areas such as:

- manufacturing and processing;
- agriculture;
- information and communication technology;
- education and training, research and innovation,
- health, tourism, energy and mining.

The second part of the draft outlines the regulations governing strategic investments in the Republic of Kosovo. Attaining the status of a strategic investor requires a formal application, which is only applicable to priority sectors. Upon receiving this status, strategic investors gain advantages in various administrative processes, benefitting from reduced timeframes. Most significantly, through a negotiated process, the Government may grant strategic investors the right to use public or socially owned property or assets previously belonging to state-owned Enterprises for a maximum period of 99 years.

It's worth noting that this draft law is partially aligned with Regulation (EU) 2019/452 of the European Parliament and the Council of 19 March 2019, which establishes a framework for screening foreign direct investments into the European Union. This legislation underscores Kosovo's commitment to modernizing its investment environment and fostering economic growth while adhering to international standards.

### 2.4. FREE TRADE AGREEMENTS AND TREATIES

#### 2.4.1. *Central European Free Trade Agreement*

Kosovo is party to Central European Free Trade Agreement (CEFTA) along with Albania, Bosnia and Herzegovina, Moldova, Montenegro, North Macedonia, and Serbia.

CEFTA aims at enhancing trade in goods and services by establishing a free trade area and promoting investments in the region through fair, clear stable and predictable trades and rules. It also aims to harmonize its Parties' regulatory framework with the EU standards.

In regard to CEFTA's general principles regarding investments, parties should promote as far as possible investments made by investors of the other parties in its territory, admit such investments in accordance with domestic laws and regulations and grant the necessary permit and authorizations in connection with it.

Each party should ensure the principles of fair and equitable treatment of investments and no discrimination in regard to investments or the establishment of companies from any other parties.

The fundamental objective, and indeed the underlying historical rationale for the existence of such an agreement, is to mobilize the collective efforts of European states toward integrating with and becoming familiar to the free trade market. This preparatory step is essential as it paves the way for the member states along Kosovo to seamlessly transition into the European Union market when they eventually join it.

#### ***2.4.2. Stabilization and Association Agreement***

The Stabilization and Association Agreement (SAA) was signed between Kosovo and the EU in 2015 and entered into force on the first half of 2016. In regard to economic relations, it aims at developing trade and investment, which are considered crucial to economic restructuring and modernization.

The SAA includes the commitment of both parties to establish within 10 years a bilateral free trade area. It sets a principle of non-discrimination in regard to the establishment of EU businesses in Kosovo (and reciprocally). It allows, under conditions, for the EU company established in Kosovo, to employ in Kosovo EU or Kosovo nationals. Under SAA, parties should also ensure free movement of capital relating to direct investment and establishment of companies.

SAA also includes a disposition related to the promotion and protection of investment, which states that cooperation of the parties should aim to bring a favorable climate for private investment, both domestic and foreign. The aim of cooperation shall be for Kosovo to improve its legal framework so as to favor and protect investment.

The SAA also includes the objective for Kosovo to negotiate with other countries that have signed an SAA with the EU with a view to concluding bilateral agreement to enhance their scope of cooperation, in particular in regard to the establishment of free trade area, movement of workers, services and capitals.

Much like Kosovo's participation in the CEFTA Agreement, the primary objective of signing this agreement is to prepare Kosovo for eventual European Union membership in the near future.





# **BUSINESS STRUCTURES**

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### **3. BUSSINES STRUCTURE**

With a “starting a business score” of 95.9/100, the World Bank ranked Kosovo 12 over 190 countries in regard to its procedures, time, cost and paid-in minimum capital requirement necessary to open a business in Kosovo . Foreign companies can conduct business in Kosovo without any specific restriction: the opening process is the same for local or foreign businesses and the same laws apply for both. In accordance with the stipulated requirements applicable to domestic businesses, foreign companies seeking to engage in economic activities within the territory of Kosovo are mandated to initiate the process of business registration in the Kosovo Business Registration Agency (hereinafter “KBRA”), as a preliminary step.

In itself, starting a business in Kosovo is a pretty straightforward and fast process. The process of registration of the business in the KBRA takes an average of 3 days. The physical presence of owner or the director of the company is not mandatory.

Application for registration can be done physically in one of the 29 municipal centres of KBRA, depending on the location of the activity. It can also be done online on the Business Registration platform of KBRA.

It is important to note that there is no mandatory obligation to document or furnish records pertaining to the ultimate beneficial owner (hereinafter “UBO”) when establishing the company before KBRA. However, there may be such a request when opening a bank account.

After registering the company and obtaining the Business Certificate, the first general steps are opening a bank account that as well does not require the presence of owner, designing of a company seal and obtaining a VAT certificate (if company is voluntarily declared for VAT at time of establishment).

Investors can carry business through business structures without or with separate and distinct personality from its founders. However, business organisations with distinct legal entity, such as **Lim-ited Liabilities Company (3.1)** or **Joint Stock Companies (3.2)**, will be preferred to **structures without (3.3)**, in order to protect the investors. There is also some **specific business organisation (3.4)** open to foreign companies.





### 3.1. LIMITED LIABILITIES COMPANY (L.L.C)

LLC is the most common business type in Kosovo, especially for foreign investors, as it involves less administrative burden compared to other structures like JSC while providing limited liability protection to its shareholders. LLCs require less paperwork, fewer formalities and fewer ongoing compliance requirements. Shareholders of LLC can be individuals, corporations, other entities and they can choose how they want to manage the business. LLCs are subject to mandatory registration to KBRA.

To register an LLC in Kosovo, you must prepare a set of essential documents, including the registration form obtained from KBRA, the company charter, shareholder agreement, copies of identification documents (such as IDs and passport copies) for the owners and authorized individuals involved in the business, and the consent of the registered agent. It's important to note that the registered agent must be a resident of Kosovo, as per legal requirements.

Established by one or more founders, an LLC is separate and distinct from its shareholder and therefore has its own legal personality. The LLC is liable for all of its debts and other obligations with all of its assets while shareholders are not liable for any debts or obligations of the LLC solely by reason of being shareholders.

#### 3.1.1. *Shareholding*

LLC may have one or more shareholders. Shareholders can be natural or legal persons and/or business organisations. NGOs cannot be shareholders. A share may be owned by more than one shareholder. Co-owners are jointly and severally liable for all obligations in relation to their shares but exercise their right in the LLC through a single joint representative.

##### • **Contributions**

There is no minimum share capital requirement for LLC.

Payment for shares may be made through money transfer, tangible or intangible assets, or labour and services already rendered. The valuation of non-monetary contributions should align with the LLC Charter. In cases where the charter doesn't specify a valuation method, it should be determined unanimously by the shareholders.

Shareholders must pay the LLC in due time, as specified in the Charter or other agreements between shareholders. LLC Memorandum of incorporation may establish penalties or sanctions in case of failure of shareholders to pay.

##### • **Distribution of dividends**

Dividends may be paid to the shareholders from net profit or from retained profit from previous years from which losses from previous years have been deducted, on the basis of the approved annual financial report.

Dividends may be distributed to shareholders at any time with the unanimous consent of Shareholders, unless the LLC Charter sets a voting method requiring a smaller majority. Distribution shall be equal for all, unless provide differently in the charter.

LLC shall not make a distribution of dividends which may result in the LLC total assets being less than its total liabilities or if the LLC would be unable to pay its debts and obligations due in the ordinary course of the Business. Law on Business Organisations sets personal liability for the return of prohibited dividends for knowingly receiving or distributing such dividends. If more than one person is involved, their liability is joint and several.

### 3.1.2. *Managing Bodies*

#### • **Managing Director**

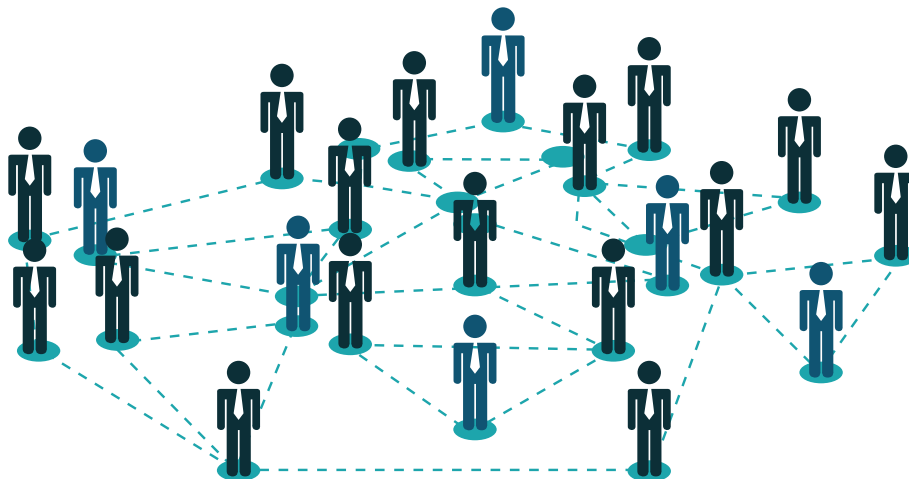
LLC shall be managed by at least one Managing Director, who represents the LLC and, as such, is allowed to conduct ordinary business activities and sign agreements or other documents necessary to exercise Business Activity. Managing Director shall be designated and can be removed by Shareholders or if established (see below) by the Board of Directors. It is not mandatory for the managing director to be a Shareholder. Unless provided differently in the Charter, Managing Director is appointed until removed or replaced by Shareholders or the Board of Directors or until resignation.

Managing Director is responsible for maintenance of books and records of the LLC and for providing to shareholders access to them. However, LLC owners can restrict the managing director's rights and authorisations through the company's charter. The financial report is signed by the Managing Director or Chair of the Managing Board.

#### • **Board of Directors**

LLC may also establish a Board of Directors, but this is not mandatory. Its members are elected and removed by the Shareholder Assembly. The board of directors is regulated by the charter of the LLC, which, in particular, must establish the board's authorizations, number of members, manner of appointment, term and voting method. If established, the Board of Directors can designate and remove Managing Director(s).

The Board of Directors can appoint more than one Managing Director, and if so, each of them may represent the LLC in performing all transactions unless the Board of Directors has decided that all or some of Managing Directors may represent the LLC jointly. Joint representation shall apply with regard to third persons only if it is entered in the Registry and published by the KBRA. For the Board of Directors of the LLC shall apply the provisions regarding to the Board of Directors of the Joint Stock Company.



### • Shareholder Assembly

Shareholder Assembly is the highest decision-making body of the LLC. Reserved matters of the Shareholders include amendment of the Charter of the LLC, issuance of new Shares, transfer of shares or admission of new Shareholders, decision to sell or transfer more than half of the company's assets, decision to elect or remove the Managing Director and the members of the Board of Directors. Providing responsibility of shareholders, the Shareholders Assembly may also adopt decisions within the competence of the Managing Director or board of directors.

There is at least one meeting per year of the Shareholder Assembly. Notice of the meeting must be sent at least 30 days before the scheduled date. An extraordinary meeting may be convened by the Managing Director or Chair of Board of Directors or by request of shareholders representing 10% of votes on matter at stake. Notification of extraordinary assembly must be sent at least 7 days before the scheduled date. The meeting of the Shareholders' Assembly can also be held online.

Unless provided differently in the charter, decisions are made by simple majority vote, but unanimous vote is however required for amendment of the Charter and the sale, lease, pledge, mortgage or other transfer or disposition of 51% or more of the total value of the assets of the LLC. If LLC has only one shareholder, the sole shareholder exercises all competence of the Shareholder Assembly.

## 3.2. JOINT STOCK COMPANY (J.S.C)

JSC is owned by one or more Shareholders and has a separate personality from its Shareholders. The company is liable for all its debts and obligations. JSCs are subject to mandatory registration to KBRA.

JSC is created after registration at KBRA of Charter and Memorandum of incorporation signed by founders. To register a JSC in Kosovo, you must prepare a set of essential documents, including the registration form obtained from KBRA, the company charter, the organization agreement, copies of identification documents (such as IDs and passport copies) for the owners and authorized individuals involved in the business, and the consent of the registered agent. It's important to note that the registered agent must be a resident of Kosovo, as per legal requirements.

JSC may have bylaws, with provisions governing the management and operation of JSC.

### 3.2.1. Shareholding

JSC can have one or more shareholders. Shareholders can be natural or legal persons and/or business organisations. NGOs cannot be shareholders.

Shareholders are not liable for the obligations of the JSC, except in case of abuse of the JSC for fraudulent or unlawful purposes or use of the assets of the JSC as if they were their own.

JSC may issue two types of shares: common shares and preferred shares, which number is determined by the Charter. JSC may also create or issue securities other than shares: bonds, securities convertibles into shares and options to acquire shares.

At least one common share must be issued. Every share has the same value as other shares of the same type and class. Common shares cannot be converted into preferred shares or into securities.

**• Contributions**

The minimum initial capital requirement is 10.000 euros. Payment for shares should be made in money transfer or with tangible or intangible property. Unless provided by Employee Share Scheme, JSC may not accept labour or services as contribution. Value of non-monetary contribution should be assessed in a report established by an outside, independent, authorized appraiser, engaged by the prospective shareholder. This report shall be approved by the board of directors before issuance of shares.

No public offering for shares should be made until the initial charter capital has been fully paid. Increase of charter capital can be made by amending the JSC Charter.

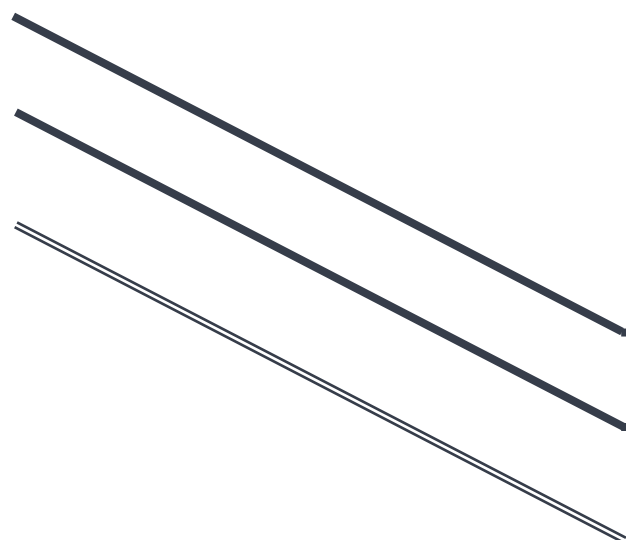
**• Distribution of dividends**

Owners of Common shares have the right to receive equal dividends for each common share. If agreed in the Charter, owners of preferred shares may have a priority against common shares in regard to dividends.

Authorisation to declare and pay dividends on shares may be taken by shareholders. Dividends may be paid in money or other property including shares or other securities unless provided differently in the charter.

JSC shall not make distribution of dividends, if after giving effect to payment:

- the net assets of the Joint Stock Company would be less than the sum of the Joint Stock Company's subscribed and paid in charter capital;
- the total assets of the Joint Stock Company would be lesser than the liabilities of the Joint Stock Company;
- the company would be insolvent or unable to pay its debts and other obligations due in the ordinary course of business activities;
- the payment would exceed the amount of the JSC's profits in the immediately preceding financial year plus any profits brought forward and sums drawn from reserves available for this purpose, less any losses brought forward and sums placed in reserves.



### 3.2.2. *Managing Bodies*

After registration, founders of JSC have no further authorisation in management or governance of JSC.

#### • **Board of Directors**

Establishment of a Board of Directors is mandatory. Directors shall be natural persons and do not need to be shareholders or residents of Kosovo, unless prescribed in the charter. The number of members shall be determined in the charter. The minimum number of board members is one if JSC has less than 10 shareholders and 3 members if 10 and more shareholders.

The board of directors shall manage the business activity of the JSC. Provided that the charter doesn't provide otherwise, the board of directors has exclusive competence to manage the business activity, including business strategy, internal control, risk management. It shall prepare the initial agenda of the shareholders assembly and convene annual and extraordinary shareholders assemblies. It shall approve the JSC's annual report, which shall be submitted to the shareholders for approval.

The charter of JSC or a decision of shareholders may confer to the board of directors the power to:

- issue shares within the limits stated by charter or shareholder decision for each type and class of shares;
- issue of bonds, options to acquire shares and other securities;
- declare and pay dividends on shares.

#### • **Managing Directors**

The board of directors shall appoint at least one Managing Partner, who reports to the board. Salaries and compensation of Managing Directors shall be determined by the board of directors. Managing Director may be removed by the board, at its discretion and at any time.

Managing directors represent and manage the JSC and have other power assigned by charter or delegated by the board of directors, relating to the conduct of business, if not expressly attributed by law, the bylaws or the charter to the board (see above) or shareholders (see below).

Managing partners are authorised representatives of the JSC in relation to third persons. If several managing directors are appointed, each may represent the JSC in performing transactions, unless the board of directors has decided that all or some managing partners may represent the JSC jointly. Joint representation shall apply with regard to third persons only if it is entered in the Registry and published by the KBRA.

### Shareholders Assembly

Shareholder assembly is the highest decision-making body of the JSC. Reserved matters of the Shareholders include the amendment of the charter, the election and removal of directors, the dissolution of the JSC or initiation of Bankruptcy, the approval of the JSC's annual financial statements, the matters reserved to the assembly by charter and submitted by the board of directors.

JSC shall hold an annual meeting of the shareholder assembly. Extraordinary meeting shall be held at the demand of at least 10 % of the votes or on the call of the board of directors or persons authorised by the charter. Within 15 days after the date the request is received by the Joint Stock Company, the board of directors shall adopt a decision to convene or refuse to convene the extraordinary assembly.

Owners of common shares participate in the shareholders assembly and have the right to cast one vote per common share. If agreed in the charter, owners of preferred shares may have special voting right or no voting rights. On matters requiring group vote, owners of preferred shares have the right of one vote per share. The charter may provide that owner of preferred vote have the right to vote, together with owners of common shares, on all matters. Unless provided differently in the charter, quorum is constituted if a majority of votes on a matter is represented and decisions are made by majority vote.



### **3.3. BUSINESS STRUCTURES WITHOUT DISTINCT LEGAL ENTITY**

As LLC and JSC, they are subject to mandatory registration to KBRA. Even though they do not have legal personality, they may enter into contract, own property, sue and be sued in their own name.

#### **3.3.1. Individual Business**

A person may only own one individual business and has unlimited personal liability for all debts and other obligations of the organisation. Liability extends to all property and assets owned by the owner, regardless if they are used for business, personal or household purposes, unless agreed otherwise with the entity that has claims or in the contract which has created the liability.

#### **3.3.2. General Partnership**

General Partnerships can be two or more legal, natural persons and/or business organisations, specified in the General Partnership Agreement. Contribution can be made in the form of money, property, labour, services or obligation to provide such contributions in the future. There is no minimum capital requirement.

##### **• Principle of liability**

General Partners are jointly and severally liable for all debts and other obligations of the organisation. Liability extends to all property and assets owned by the owner, unless agreed otherwise with the entity that has claims or in the contract which has created the liability. A general partner, that is admitted into an existing General Partnership (GP) is jointly and severally liable for all debts and obligations, including pre-existing ones.

Unless GP Agreement states otherwise, each partner should make equal contribution to cover the losses of the Partnership and also, after dissolution, to fulfil requests of third parties. General Partner who resigns or leaves the GP is liable for debts and obligations incurred or created before. All partners have equal rights to profits and dividends, unless provided differently in GP Agreement.

##### **• Management**

Unless provided differently in GP Agreement, voting and management right are equal among General Partners and decisions are taken by simple majority. Requires however a unanimous vote: amendment of GP Agreement, distribution of dividends, admission of new General Partner, dissolution, deregistration, initiation of bankruptcy of GP, sale of a substantial part of GP's assets or change of the nature of activity of the GP. GP Agreement can also establish different categories of General Partners, with different voting and management rights. Unless GP Agreement provides differently, without the consent of all other partners, General Partner may only transfer his Partnership Interest to another partner or to her/his heirs after death.

A general partner can act for the purpose of carrying out usual business, unless the general partner has no authority in this matter in regard to GP Agreement and the person or organisation with whom business was conducted was aware that the general partner lacked the necessary authorisation. Joint representation by all or some general partners is possible if authorised and delimitate in GP Agreement and registered and published by KBRA.

### **3.3.3. *Limited Partnership***

Limited Partnership is composed of at least one General Partner and at least one Limited Partner, which may be natural person(s), legal person(s) and/or business organisation(s). Limited Partnership (LP) must have an LP Agreement. There is no minimum capital requirement.

#### **• Principle of liability**

General Partner is/are jointly and severally liable for the debts and obligations of the organisation. A Limited Partner is not liable for the debts and other obligations of a Limited Partnership. However, if a Limited Partner violates the prohibition in participating in the control or management of the Business Activities or operations of the Limited Partnership, such Limited Partner shall become liable for the debts and other obligations of the Limited Partnership to the same extent as a General Partner

#### **• Management**

Only general partners are authorised to act or to create obligations on behalf of the LP. Limited partners are not authorized to do so. Transaction attempted by a limited partner on behalf of the LP can only be enforced if ratified by a general partner. Limited partners cannot participate in the control, management or operation of the LP. If they violate this prohibition, are liable for the debts and other obligations of the LP to the same extent as a general partner.

### **3.4. SPECIFIC BUSINESS STRUCTURES FOR FOREIGN COMPANIES**

Whether to conduct business or just to ensure representation, foreign companies may also register a branch or a representative office.



### **3.4.1. *Branch of a Foreign Business***

A foreign business has the opportunity to carry out economic activities through the establishment and operation of its branch.

Branch shall be registered at the KBRA. Registration must include the name of the authorised representative(s) of the branch and if they can represent the branch alone or must act jointly. Joint representation shall apply with regard to third persons only if it is entered in the Registry and published by the KBRA.

The necessary documents for the registration of the Branch of a Foreign Business in Kosovo include the form which is obtained for the purpose of the registration of the Branch in KBRA, the decision on the opening of the foreign company, the decision on the appointment of the director and the registered representatives including copies of their ID/Passports, the business certificate of the foreign company that is establishing the branch office (original or notarized copy, not older than three months from the date of issue, which must be in English, Albanian or Serbian), copy of the passport of the owner and director of the Foreign Company, consent of the registered representative. It is mandatory for the registered agent to be resident of Kosovo.

Foreign business organizations conducting their business activities in Kosovo through their Branch, shall keep, in their address in Kosovo, books and separate financial records related to its business activities in Kosovo.

### **3.4.2. *Representative Office***

A representative office is not a legal person and is considered part of the foreign company. Its purpose is only to conduct market research, engage in marketing and promotional activities and represent a Foreign Business Organization.

The representative office must be registered at KBRA. However, requirements for registration and amendment of registration and treatment of existing representative offices are supposed to be specified through a sub-legal act to be adopted by the government.



# EMPLOYMENT AND LABOUR LAW

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## **4. EMPLOYMENT AND LABOUR LAW**

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In an era where employment and labour law are continuously evolving, employment and labour law plays a pivotal role in safeguarding the rights and interests of both employees and employers. Kosovo, a dynamic and emerging country, is no exception to the global need for a robust legal framework that governs the complex relationship between workers and their employers.

At the heart of employment and labor law in Kosovo is Law No. 03/L-212 on Labour, applicable to all individuals in the private sector, including foreign nationals working within Kosovo's borders. However, it's essential to note that international missions and diplomatic and consular missions of foreign states have separate regulations governing employment relationships.

Kosovo is in the process of developing new regulations pertaining to employment and labor relationships, which encompass remote work as well.

In addition to the primary law, several other regulations complement Kosovo's employment landscape, including laws related to pension funds, safety and health at work, labor inspectorate, and more.

Kosovo's employment and labor law presents a comprehensive structure that addresses the multifaceted dimensions of labor relations. This guide will delve into the key provisions and regulations set forth by the aforementioned laws, shedding light on the rights and responsibilities of employees and employers. It will also explore the mechanisms in place to ensure a fair and equitable work environment in this dynamic nation.

### **4.1. TERMS AND CRITERIA FOR DEFINING EMPLOYMENT RELATIONSHIP IN KOSOVO**

#### **Age Requirements**

Individuals who are 18 years old or older are eligible to enter into employment contracts. Furthermore, individuals aged between 15 and 18 are allowed to engage in employment relationships, provided that the nature of the work poses no threat to their well-being or developmental progress.

#### **Reporting Obligations**

Every employer is obliged to report its employees to the Tax Administration of Kosovo and Kosovo's pension savings fund.

## 4.2. EMPLOYMENT CONTRACT

The rights, duties, and responsibilities of both, the employers and the employees shall be regulated with an employment contract. The employment contract shall be concluded in written form and signed by the employer and employee.

An employment contract should include the following key details:

- Data on the employer and employee;
- Designation, nature, and form of the labour or services;
- Job description;
- Place of work (or a statement indicating work at various locations);
- Working hours and schedule;
- Date of commencement of work;
- Duration of the employment contract;
- Basic salary and any other allowances or income;
- Period of vacations;
- Termination of the employment contract;
- Any other data considered important by the employer and employee for the regulation of their relationship.

### *Employment Contract Types*

Kosovo's laws recognize various types of employment contracts based on different criteria:

- ***Employment Contracts with a Fixed Period of Time:*** These contracts have a predetermined duration, but they may not be concluded for a cumulative period exceeding ten (10) years.

- ***Employment Contracts with an Indefinite Period of Time:*** An employment contract that contains no indication of its duration shall be deemed to be for an indefinite period of time. Even in case a contract for a fixed period of time that is continued for more than ten (10) years shall be deemed to be a contract for an indefinite period of time.



- **Employment Contracts for specific tasks and duties:** These contracts are limited to one hundred and twenty (120) days within a year. Employees under such contracts have rights and duties as stipulated in the law, except when the law specifies otherwise. For example, employees on specific task contracts do not have the right to annual leave.

### **Probationary Work and Internship Work**

While not considered separate employment contracts, employers can engage individuals for probationary work and internships through written agreements that include specific provisions.

#### ***Probationary Work***

Probationary periods, lasting no longer than six (6) months, are part of the employment contract and can be terminated with prior seven days' notice.

#### ***Internship Work***

Interns may be engaged without pay. However, the employer must provide occupational safety and protection as per the law. An intern, under a contract with the employer, has the same rights and obligations as regular employees. Interns engaged without compensation must be reported to relevant institutions.

Duration of Internship Work:

- Postgraduate, university, and higher education interns: Up to one (1) year.
- Secondary education interns: Up to six (6) months.

### **4.3. WORKING HOURS AND LEAVES**

*Working hours:* Full-time employees are typically expected to work forty (40) hours per week, with a daily break of 30 minutes, which is considered part of their working hours. However, employees under eighteen (18) years of age should not work more than thirty (30) hours per week.

*Overtime:* when the volume of work increases or there are other necessary cases, the employer can request the employee to work for another eight (8) hours, which are considered extended working hours or overtime. Overtime may only last as long as it is necessary.



Employees under eighteen (18) years of age, part-time employees, pregnant employees, single parents with a child under three (3) years old, and employees with disabilities are exempt from mandatory overtime.

*Night Shifts:* Night shifts are between 22:00 and 06:00 and entitle the employee to an additional 30% of their remuneration for each hour worked during these hours.

*Daily Rest:* employees are entitled to a rest of at least 12 hours between two continuous days.

*Weekly Rest:* employees are entitled to a weekly rest for at least twenty-four (24) continuous hours. Working during the weekend entitles employees to an additional 50% remuneration per hour worked.

*Annual leave:* Full and part-time employees are entitled to at least 4 weeks of annual paid leave, with an additional day added for every five years of service. Employees in roles with harmful effects are entitled to at least 30 days of annual leave. Mothers with children up to 3 years, single parents, and persons with disabilities are entitled to 2 additional days. Unused annual leave days are not compensated monetarily unless the employment relationship is ending.

Employees establishing employment relationships for the first time will be entitled to annual leave only after six (6) consecutive months of work.

*Maternity leave:* Employed women are entitled to 12 months of maternity leave: 6 months with 70% of the salary paid by the employer, then 3 months with 50% of the Salary paid by the Government of Kosovo, and 3 additional months without payment. During pregnancy or maternity leave, the employer shall not terminate the employment contract of the mother or transfer her to another job position. After maternity leave, in case of a child that requires special care due to poor health conditions or with permanent disabilities, one of the parents shall be enabled to work part-time until the child becomes 2 years old.

*Paternity leave:* Fathers are entitled to take paternity leave in case that mother dies or abandons the child before the end of maternity leave. Father has the right to 2 days of paid leave at the birth of the child and 2 weeks of unpaid leave after the birth or at any time before the child reaches the age of 3 years old. The last 6 months of maternity leave can be conveyed to the father of the child in agreement with the mother.

*Prohibition on Termination of Contract:* During pregnancy, maternity leave, and absence from work due to special care for the child, the employer is prohibited from terminating the employee's contract or transferring them to another position.



#### 4.4. SALARY AND OTHER BENEFITS OF EMPLOYEES

*Salaries:* in Kosovo are paid in the official currency Euro (€) as defined in the employment contract and employees should receive their salary and other allowances at least once per month.

*Overtime Pay:* Employees are entitled to overtime pay, calculated as a percentage of their basic salary:

- Twenty percent (20%) per hour for extra shifts: Additional compensation for hours worked beyond the regular shift;
- Thirty percent (30%) per hour for night shifts: Compensation for hours worked during the night shift between 22:00 and 06:00;
- Thirty percent (30%) per hour for extended working hours: Additional pay for overtime hours worked when the volume of work increases or in other necessary cases;
- Fifty percent (50%) per hour for work on national holidays: Enhanced compensation for hours worked on recognized public holidays; and
- Fifty percent (50%) per hour for work on weekends: Increased pay for hours worked on weekends.

#### 4.5. SAFETY AND PROTECTION DURING WORK

Ensuring the safety and well-being of employees during their work activities is a fundamental obligation placed on employers in Kosovo. This commitment to safeguarding the lives and health of workers is not only a moral duty but also a legal requirement, as stipulated in both the Law on Labour and the Law on Safety and Health at Work.

##### *Legal Foundations*

*Law on Labour:* The Law on Labour serves as a cornerstone in outlining the rights and responsibilities of employers and employees in Kosovo. It sets the framework for employment relationships, including the expectation that employers must create and maintain a safe and secure work environment.

*Law on Safety and Health at Work:* This specific legislation further elaborates on the safety and protection aspects of work in Kosovo. It provides comprehensive guidelines and regulations that employers must adhere to in order to prevent workplace accidents, reduce health risks, and promote overall well-being among employees.





## **Employer Obligations**

Employers in Kosovo have several key obligations when it comes to safety and protection during work:

*Providing Safe Work Conditions:* Employers must ensure that workplaces are free from hazards which could endanger the lives or health of the employees. This includes addressing physical, chemical, biological, and ergonomic risks.

*Safety Training:* Employers should provide appropriate training and information to employees to enable them to work safely and use protective equipment correctly.

*Reporting and Investigation:* Employers are required to promptly report and investigate any workplace accidents, injuries, or illnesses, with the goal of preventing their recurrence.

*Protective Measures:* Employers should supply the necessary protective measures, equipment, and clothing to reduce or eliminate risks.

## **4.6. DISCIPLINARY MEASURES AND EMPLOYMENT RELATIONSHIP TERMINATION**

### ***4.6.1. Disciplinary Measures***

The employer may impose disciplinary measures on the employee in the event of a violation of labour duties. Disciplinary measures are verbal warnings, written warnings, position demotion, temporary suspension, and termination of the employment relationship.

Verbal warning, written warning, and demotion shall be imposed for minor violations of job duties in compliance of the employer's internal act and the employment contract, whereas temporary suspension and termination of employment relationship shall be imposed for serious violations of work duties in compliance with employer's internal acts and the employment contract.

The employer's decision must be formally issued in written, providing clear reasoning and guidance on legal remedies for the imposed measures.

### ***4.6.2. Employment Relationship Termination***

The termination of an employment relationship is a critical aspect of labour law that holds immense significance for both the employer and the employees.

The law recognizes different ways in which an employment contract can be terminated:

- **Termination of Employment Contract on Legal Basis:** This occurs due to various reasons, such as an employee's death, the employer's death (in cases where the work or services are of a personal nature and can't be extended to the employer's successors), the contract's expiration, reaching the retirement age of sixty-five (65), loss of labor competencies, the employee receiving a sentence exceeding six (6) months, a competent court's decision leading to termination, enterprise bankruptcy or liquidation.
- **Termination of Employment Contract with Agreement:** The employer and employee may agree to terminate the contract in written. In such cases, the employer must pay the employee's salary up to the termination date.
- **Termination of the Employment Contract by the Employee:** The employee can unilaterally terminate the contract. Fixed-term contracts require a fifteen (15) calendar days' notice, while indefinite-term contracts require a thirty (30) calendar days' notice.
- **Termination of the Employment Contract by the Employer:** The employer may terminate the contract for economic, technical, or organizational reasons, or if the employee is unable to perform the job. In both cases, the employer can terminate the contract if it is not feasible to transfer the employee to another job or provide the necessary training.

The employer may also terminate the contract for serious misconduct or unsatisfactory performance, as long as the internal regulations are followed. For the termination for dissatisfactory performance of work duties, the employer shall notify the employee with a written description of unsatisfactory performance within a specified period of time within which they must improve on their performance as well as a statement that failure to improve the performance shall result with dismissal from work without any other written notice. Employer shall follow a disciplinary procedure against the employee in order to terminate the employment contract.

The employer is obliged to hold a meeting with the employee to explain the termination of an employment contract or for the purpose of issuing a warning. The employee is entitled to be accompanied by a representative of his/her choice.



### 4.6.3. NOTIFICATION OF THE TERMINATION

The employer's decision to terminate the employment contract must be documented in written and include a reasoning explaining the grounds for this decision.

The notification period for termination varies based on the type of employment contract – whether it is for a fixed term or an indefinite period – and the duration of the employment relationship.

For indefinite-term employment contracts, the notice period varies based on the employee's years of service:

- For employees with six (6) months to 2 years of employment: thirty (30) calendar days.;
- For employees with two (2) to ten (10) years of employment: forty-five (45) calendar days;
- For employees with more than ten (10) years of employment: sixty (60) calendar days.

Fixed-term contracts require a thirty (30) calendar days' notice for termination.

If the employer does not intend to renew a fixed-term contract, they must inform the employee at least thirty (30) days before the contract's expiry. Failure to do so entitles the employee to an extension of employment with full pay for thirty (30) calendar days.

Regardless of the type of termination, the employer is obligated to pay the employee's salary and any other allowances up to the day of the employment relationship's termination."

## 4.7. SPECIAL PROTECTION CATEGORIES

### *Protection of Youth*

Kosovo's employment and labor regulations include special protections for workers under the age of 18. These regulations aim to ensure their safety and well-being. Young workers can't do risky jobs that may harm them. Employers must check for dangers, assess risks for young workers, and ensure their safety.

### *Protection of Women*

Rules are in place to ensure the safety and health of pregnant and breastfeeding women in the workplace. These regulations prohibit them from taking on roles that could endanger their own well-being or the health of their children. This includes physically demanding work and positions with potential health risks.



### *Protection of Persons with Disabilities*

Employees with disabilities receive special protection and support from Kosovo's employment and labor regulations.

Employees with disabilities can continue working in their current roles or similar tasks if their remaining work capacity allows it without professional rehabilitation. If an employee's work capacity improves after professional rehabilitation, they can take on special tasks. In these cases, the employer will provide suitable work for the employee after their recovery from rehabilitation.

#### **4.8. PROHIBITION OF DISCRIMINATION**

Kosovo's legal framework is rooted in the constitutional principle of non-discrimination, as stated in Article 7 of the Kosovo Constitution. This principle underscores gender equality as a core value.

Additionally, the Law on Labour reinforces anti-discrimination measures, covering areas like individuals with disabilities, equal pay for equal work, and equal opportunities for all genders in recruitment. In cases of alleged discrimination, employees can seek resolution through their employer, administrative bodies, or the court. Potential remedies may include reinstatement and compensation.

- Law No 05/L-020 on Gender Equality;
- Law No 05/L-021 on the Protection from Discrimination.

#### **4.9. PROTECTING EMPLOYEES' RIGHTS: PROCEDURES AND REMEDIES**

##### Protection of Employees' Rights by the Employer

- The employee who considers that his labour rights have been violated may submit his request to the employer or relevant bodies of the employer.
- The employer must decide within 15 days from request submission.
- The decision as stated above shall be delivered in a written form to the employee within the term of eight (8) days.



### ***Judicial Protection of Employees' Rights***

If the Employee is not satisfied with the employer's decision or does not receive an answer within the deadline, he can initiate a work dispute at the Competent Court.

- If the Court finds it unlawful in regard to the Law on Labour, it may order the employer to pay the employee compensation, in addition to any allowances and other amounts to which the employee may be entitled.
- In cases where the dismissal is considered unlawful due to discrimination, the court may reinstate the employee in their previous employment and award compensation for lost salaries and benefits during the period of unlawful dismissal.

### ***Protection of Employees' Rights by the Labour Inspectorate***

The Labour Inspectorate, as regulated by Law No. 2002/9 on Labour Inspectorate of Kosovo, plays a vital role in ensuring the implementation of labor law and issues fines in case of employee rights infringement. Employees may submit an appeal to the Labour Inspectorate at any time for issues falling under the competencies of this body and the Inspectorate is obliged to issue a decision regarding the employee's appeal within thirty (30) days.

*Mediation:* Disputes can also be resolved through mediation, as governed by Law No. 06/L-009 on Mediation. Mediation may provide a conflict resolution method without the need for court procedures.

## **4.10. EMPLOYMENT OF FOREIGNERS**

Kosovo's legal framework offers a valuable opportunity for foreigners to work within its borders through the acquisition of a Temporary Residence Permit, which can be requested at the diplomatic or consular mission of the Republic of Kosovo for foreigners who require a visa for entry into the Republic of Kosovo.

If the foreigner does not need a visa, the application for a Temporary Residence Permit can also be submitted to the Foreigners Division in the Republic of Kosovo. This request should be made before the expiration of the short-term Residence, and the applicant may stay in the Republic of Kosovo until a decision is made regarding this request.

An important advantage to highlight is that citizens from over 100 countries can enter the Republic of Kosovo without the need for a visa. This streamlined entry process greatly simplifies travel arrangements and promotes accessibility for foreigners, making Kosovo an even more attractive place to work.





#### ***4.10.1. Who can Submit an Application for a Temporary Residence Permit?***

The application can be submitted personally by the person who wishes to obtain a Temporary Residence Permit, and their employer can also submit it. If the Temporary Residence Permit applicant has children, they can also submit the request on his behalf.

#### ***4.10.2. Procedural Aspects***

The process for obtaining a Temporary Residence Permit is simple, non-bureaucratic, and doesn't consume much time for the applicant. Furthermore, the response regarding the application is also highly efficient and fast.

Regarding the request for a Temporary Residence Permit, the Department for Citizenship, Asylum, and Migration decides within thirty (30) days of receiving the request. Temporary Residence permits are issued for a period of up to one (1) year, except when otherwise provided by law. Such a permit can be extended based on the employee's request, which must be submitted no later than thirty (30) days before the expiration of the temporary Residence permit.

Foreign nationals who have submitted a request for the extension of this permit can stay in the Republic of Kosovo until a decision is made regarding the request.

The validity period of the travel document must be at least three (3) months longer than the period for which the temporary Residence permit is issued.

Close family members of the foreigner staying in the Republic of Kosovo based on a one-year work-related Temporary Residence Permit may be granted a Temporary Residence Permit for family reunification purposes only if the foreigner seeks family reunification in the Republic of Kosovo and has at least two (2) years of Temporary Residence.

This exception does not apply to corporate transfers, whose family members have the right to apply for a Temporary Residence Permit at the same time as the sponsor.



#### ***4.10.3. Criteria for Granting a Temporary Residence Permit***

A foreigner will be granted a Temporary Residence Permit if:

- Demonstrates the purpose of Temporary Residence.
- Possesses a valid travel document with a validity period of at least 3 months longer than the required Temporary Residence period.
- Has no entry and residence restrictions in the Republic of Kosovo or does not pose a risk of illegal immigration or illegal residence in the Republic of Kosovo.
- Provides evidence of absence of criminal record or on-going investigation, issued by the state whose citizen the foreigner is or the state of the last residence, translated into one of the official languages of the Republic of Kosovo.
- Has sufficient means of subsistence, demonstrated through bank statements, employment contracts, or other evidence showing that the foreigner has sufficient financial resources for subsistence.
- Possesses health insurance.
- Has an employment contract, in accordance with the labor legislation in the Republic of Kosovo, except when the foreigner is a business owner.
- Has a business registration certificate.
- Provides evidence of education, qualifications, and skills, except when the foreigner is a business owner.
- Provides evidence of vaccination in cases where the foreigner is coming from countries where an epidemic situation has been declared.





# TAXATION

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## 5. TAXATION

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Kosovo has made significant strides in its efforts to establish an attractive and competitive tax system. The tax landscape in Kosovo is characterized by low tax rates making it a favourable destination for investors and businesses seeking to operate in the region.

One of the most compelling aspects of the tax system in Kosovo is the relatively low tax rates it offers. Kosovo's corporate income tax rate stands at a flat 10%, which is notably competitive in comparison to many other European nations. This favourable corporate tax rate is a key driver in attracting businesses to Kosovo and encouraging domestic and foreign investment.

Furthermore, Kosovo's unique advantage lies in its exemption of dividend income from taxation. This tax-free treatment of dividends serves as a compelling incentive for potential investors, rendering Kosovo an exceptionally attractive destination for businesses seeking expansion in the region.

Kosovo has implemented a simplified VAT system with a standard rate of 18%. However, it's important to note that VAT is set at 0% on exported goods and services, making Kosovo highly competitive in international trade. Additionally, Kosovo offers a reduced VAT rate of 8% for essential goods and services. This simplified VAT structure contributes to a transparent and business-friendly environment, enhancing the ease of doing business.

Kosovo has been proactive in negotiating double taxation treaties with various countries, promoting international trade and investment. These treaties help in preventing double taxation on the same income and offer tax relief through tax credits and exemptions. Kosovo has signed double taxation treaties with multiple countries, further bolstering its appeal as a hub for international business operations.

Furthermore, Kosovo has implemented several incentive schemes aimed at attracting foreign investors, including reduced tax rates for specific sectors, such as IT and tourism. These incentives are designed to stimulate economic growth and job creation in key industries.

### 5.1. CORPORATE INCOME TAX

Corporate Income Tax ("CIT") is regulated in Kosovo by the Law No.06/L-105 on Corporate Income Tax ("Law on CIT").



### 5.1.1. Taxpayers

Taxpayers are taxable corporations and business enterprises with legal person statute; business organisations operating with public or socially owned assets; NGOs and non-resident persons with a permanent establishment in Kosovo. Resident taxpayers are taxable for their Kosovo and foreign income sources. Non-resident taxpayers are taxable for their Kosovo income sources.

*Declaration:* Tax declaration and financial statements shall be submitted to Tax Administration of Kosovo (“TAK”) by March, 31st of the year following the tax period.

### 5.1.2. Taxable Income

Taxable income, as per Kosovo’s legislation, refers to the income that is subject to taxation. It is calculated as the difference between the gross income received and accrued and the allowable deductions. In other words, it represents the portion of income that is eligible to be taxed after accounting for deductions and exemptions, in accordance with Kosovo’s tax laws.

*Avoidance of double taxation:* Kosovar residents who receive income from foreign business activities, for which they pay income taxes to another state, are entitled to a tax credit for the amount paid abroad. However, this deduction cannot exceed the tax liability calculated under the Kosovar tax rate. These provisions are overridden by any existing double taxation treaties. Kosovo has such treaties in place with Albania, Austria, Belgium, Croatia, Finland, Germany, Luxembourg, Hungary, Ireland, Latvia, Lithuania, Saudi Arabia, Malta, Macedonia, the Netherlands, Slovenia, Switzerland, Turkey, the United Arab Emirates, and the United Kingdom. Additionally, Kosovo has double taxation treaties with the Czech Republic, France, and Italy, although they are not yet in force.

In Kosovo’s tax system, the prevention of double taxation is governed by specific rules:

*Residency Requirements:* To qualify for double taxation relief in Kosovo, individuals or companies must meet certain residency criteria. This often involves spending a specified period within Kosovo’s territory during a defined timeframe.

*Required Documentation:* To claim double taxation relief, individuals or companies may need to provide relevant documentation to confirm their eligibility. This typically includes certificates issued by the tax authorities of their home country.

*Dividend Taxation:* Kosovo generally refrains from taxing dividends at the source to avoid double taxation on such income.

By way of illustration, let’s consider the double taxation avoidance agreement between Kosovo and Germany.



This agreement outlines specific provisions to prevent double taxation, which include:

*Residency Determination:* The agreement establishes clear guidelines for determining an individual's tax residency, often based on the number of days spent within a country.

*Threshold for Residency:* Usually, there is a specified threshold (e.g., 183 days in a tax year) to determine tax residency.

*Exceptions for Certain Income:* The agreement may exempt certain types of income, such as income from government services or earnings by students and apprentices working abroad.

*Tie-Breaker Rule:* In cases where an individual is considered a tax resident in both contracting countries, the agreement often includes a tie-breaker rule to definitely determine their primary tax residency. This rule considers factors such as the individual's permanent home, center of vital interests, habitual abode, and nationality.

*Business Residency:* For businesses, the agreement typically defines criteria, such as the location of effective management or the headquarters, to determine their tax residency.

*Government Employee Limitations:* Specific rules may apply to government employees working abroad for a set period.

In summary, Kosovo's double taxation avoidance agreement with Germany outlines clear criteria and thresholds for tax residency. It also addresses exceptions for income and includes tie-breaker rules to resolve disputes over tax residency.

### **5.1.3. Exemptions from CIT**

Are exempted from CIT:

- NGOs to the extent that their income is only used for public benefit purposes;
- Central Bank of Kosovo and international financial institutions;
- financial instruments issued or guaranteed by public authority of Kosovo;
- religious communities;
- foreign contractors and subcontractors for supply contracts to foreign governments and certain international organisations and agencies;
- income received from grants, subsidies and donations;
- dividend paid or received for resident and non-resident persons.

#### 5.1.4. Deductions

Can be deducted from gross income the expenses in connection with the taxpayer's economic activities, such as:

- health insurance for employees and dependents;
- education and training;
- donation and sponsorship for humanitarian, health, education, religious, scientific, cultural, environmental protection and sports, up to 10% of taxable income (with an additional 10% if special deduction is provided in a specific law);
- representation, advertisement and promotion expenses (to the limit of 1% of the gross annual income);
- bad debt expenses (under certain conditions);
- depreciation of buildings and other constructed structures (5% rate), vehicles, office furniture, equipment and instruments, livestock (20% rate), plants and machinery, rolling stocks and locomotives, airplanes, ships, etc. (10% rate);
- repairs or improvements of 1,000 euros or less for any asset (repair or improvement greater than 1,000€ euros, if it extends the lifespan of the asset for at least one year, shall be capitalized and added to the basis of the asset);
- amortisation (depreciation) of intangible assets for their useful life or, if not determined, for 20 years;
- amortisation (depreciation) of research and development costs in respect of natural resources;
- capital loss, which means the loss incurred from the sale or other alienation of capital property, including movable (personal) property, real estate and securities. Capital losses are recognised as business losses (as opposed to capital gains, which are realised from the same transaction, and are recognised as business income).
- tax losses, which occur when, under tax reporting rules, expenses are greater than revenue. Tax losses may be transferred as a deduction for up to 4 successive tax periods. If the business changes its type of business organization or has an ownership change of more than 50%), the transfer will no longer be applicable.
- etc.

The Law on CIT explicitly excludes from deduction expenses such as the cost of acquisition and improvement of land; fines, penalties, costs interest imposed by a public authority; income taxes and deductible VAT; tax loss from transactions between related persons, (unless in compliance with the open market value); pension contributions above the maximum amount allowed; expenses on gifts (except those with the name and logo of the business); expenses for entertainment and recreation; etc.

Provisions for expected losses are generally not deductible, except under specific conditions and limitations, such as expected losses from loans for Bank, Microfinance, and non-bank financial institutions, which can be deducted up to 80%. Within specified limits, financial insurance and reinsurance institutions can deduct their expenses for technical and mathematical provisions.



### 5.1.5. *Transfer Pricing*

The *transfer price* is the pricing for multinational enterprises of intra-group, cross-border transfer of goods, intangibles and services. Such transactions are referred to as “controlled transactions”. Kosovo Transfer pricing taxation rules are based on OECD guidelines and are set in the Administrative Instruction on Transfer Pricing No 02/ 2017, which purpose is to establish rules and procedures for the management and implementation of transfer pricing in line with the Law on CIT.

Kosovo CIT taxpayers are taxable for their controlled transactions between related parties. Parties are considered to be related if one person holds or controls 50% or more of the other; or controls the other directly or indirectly; or both persons are controlled by a third person, or when persons are relatives.

Depending on the circumstances, different methods are used to set the transfer price (comparable uncontrolled price method; resale price method; Cost Plus Method; transaction net margin method and the profit split method).

Taxpayers with control transactions exceeding 300,000 euros are required:

- to submit the Transfer pricing documentation, prepared according to the requirements of the Code of Conduct of the European Union on Transfer Pricing Documentation for Associated Companies (2006/C176/01); and
- to submit to TAK the annual controlled transactions form at the latest on the date for annual CIT declaration (March, 31st).

Under 300,00 euros, taxpayers:

- must also prepare documentation but are considered to meet the requirements for transfer pricing documentation, even if in the case of using foreign comparable transactions;
- are not subject to submission of annual controlled transaction form.





### **5.1.6. Payment**

Taxpayers in Kosovo are required to make advance tax payments every quarter on the following dates: April 15th, July 15th, October 15th, and January 15th.

For taxpayers with an annual gross income not exceeding 30,000 euros who have not chosen to submit a tax declaration, the quarterly payments are determined as follows:

- 3% of the gross income derived from trade, transport, agricultural, and similar commercial activities, with a minimum payment of 37.5 euros.
  - 9% of the gross income from services, professional activities, craftsmanship, entertainment, and similar activities, with a minimum payment of 37.5 euros.
  - 10% of the net rental income, reduced by any previously withheld amounts for the quarter.
- Other taxpayers who are required to submit (with gross income exceeding 30,000 euros) or opt for tax declaration shall make quarterly payments as follows:

A quarter of the total tax liability for the current tax period based on estimated taxable income, reduced by any amounts already withheld for the quarter.

For the second and subsequent tax periods, at least a quarter of 110% of the total tax liability from the previous tax period, reduced by any amounts withheld for the quarter.

## **5.2. PERSONAL INCOME TAX**

Personal Income Tax (“PIT”) is regulated in Kosovo by the Law No 05/L-028 on Personal Income Tax (“Law on PIT”).

### **5.2.1. Taxpayers**

The taxpayers are resident and non-resident natural persons, personal business enterprises, partnerships and associations of persons.

Residents are taxable for their income from Kosovo and foreign sources. Non-residents are taxable for their income from Kosovo.

### **5.2.2. PIT Rates**

The PIT rates are as follows:

- 960 euros or less: 0%;
- 961 to 3,000 euros: 4% of the amount over 960 euros;
- 3,001 to 5,400 euros: 81.6 euros + 8% of the amount over 3,000 euros.
- Over 5,400 euros: 273.6 euros + 10% of the amount over 5,400 euros



### 5.2.3. *Taxable Income*

Taxable income is the difference between gross incomes received and accrued and the allowable deductions.

Taxable incomes include

- wages, including wages for work, bonuses, commissions, health and life insurance paid by the employer, forgiveness for employee debt, compensation for personal expenses, and benefits in kind. Gross income from wages does not include reimbursement for business travel expenses, indemnity for work accidents, gains in kind in the form of meals and transport, reimbursement and benefits for transportation from residence to the workplace (under conditions).
- rents generated by immovable property and rented equipment and vehicles;
- the use of intangible property;
- interest, from loans, bonds and accounts (but not interest from pension funds);
- capital gains, including those resulting from the sale of a capital asset;
- pensions;
- lottery and game of chance winnings;
- gifts for a value exceeding 5,000 euros per tax period
- income from Business activities;

Any other income not exempted.

### 5.2.4. *Exempted Income*

Are exempted from PIT:

- wages of representatives, officials and personnel of international organisations, foreign countries and their agencies; donor agencies or their contractors.
- compensation for damage or destruction of property;
- life insurance policies payable as the result of the death of the insured person
- interest on financial instruments issued or guaranteed by a Public Authority of Kosovo;
- Wages of persons with disabilities;
- Pensions and social welfare assistance;
- Assets inherited;
- gifts between spouses, a parent to their children, or from children to their parents, regardless of their value;
- educational and training program expenses paid by an employer on behalf of an employee (under certain conditions and limitations);
- scholarships;
- expropriation compensation;
- Mandatory contributions paid by the employer for health insurance for the employee;
- Compensations received through courts decisions;
- grants, subsidies and donations;
- dividends;

### 5.2.5. Payments Obligations

Taxpayers earning income from business, rent, or intangible property are required to make quarterly payments to an account specified by the Tax Administration of Kosovo (TAK).

Business Income:

For taxpayers with an annual gross income from business activities not exceeding €50,000, who have chosen not to maintain detailed books and records, the quarterly payments are determined as follows:

- 3% of the gross income from trade, transport, agriculture, and similar commercial activities, with a minimum payment of €37.5.
- 9% of the gross income from services, professional activities, craftsmanship, entertainment, and similar activities, with a minimum payment of €37.5.

Other taxpayers, including those with gross incomes exceeding €50,000 or those who have opted to maintain detailed books and records, are required to make quarterly payments as follows:

- One-quarter of the total tax liability for the current tax period, based on estimated taxable income, reduced by any amount withheld during the quarter,
- For the second and subsequent tax periods, at least one-quarter of 110% of the total tax liability from the previous tax period, reduced by any amount withheld during the quarter.



*Rental Incomes:*

Quarterly payments for rental incomes should be calculated as 10% of the taxable rental income received during the preceding quarter, after adjusting for any amounts withheld during the quarter in accordance with the Corporate Income Tax legislation.

*Intangible Property Incomes:*

Quarterly payments for income from intangible property should be calculated as 10% of the taxable income received from intangible property during the preceding quarter, after adjusting for any amounts withheld as royalties.

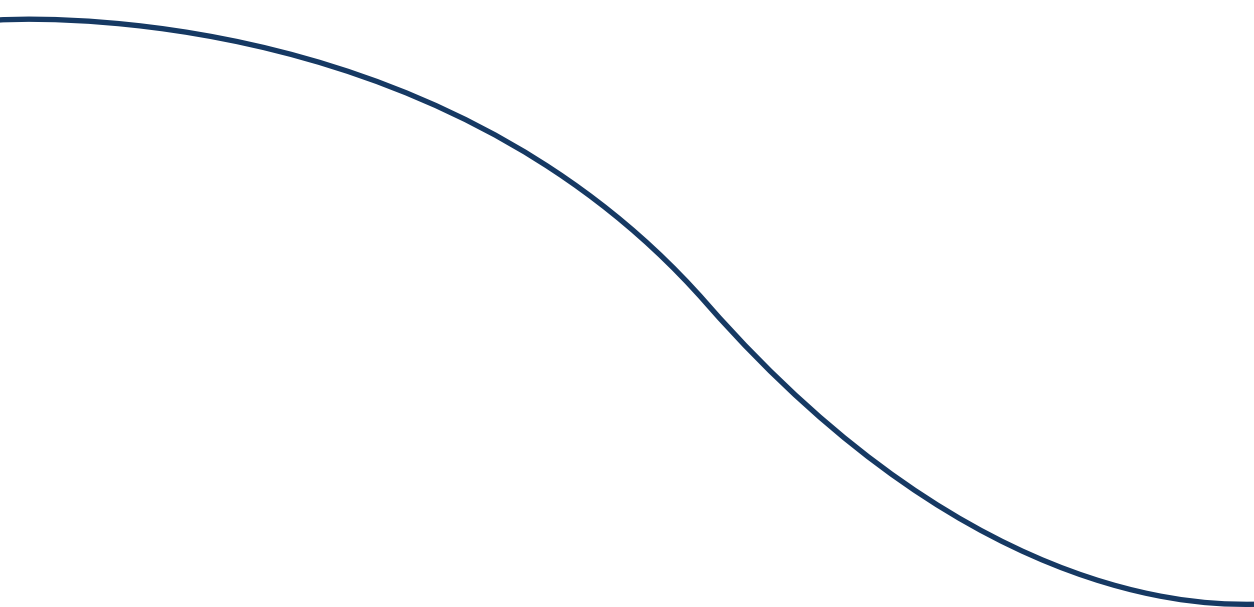
*Other Sources of Taxable Income:*

Taxpayers with taxable incomes from other sources, including capital gains, are required to make their tax payments on or before March 31st of the year following the end of the tax period.

**5.2.6. Declaration**

Taxpayers are required to prepare and submit an annual tax declaration on or before March, 31st of the year following the tax period.

Are not required to submit an annual declaration, taxpayers receiving income from:

- wages;
  - business activities, for taxpayer with annual not exceeding 50,000 euros or who did not opt to keep books and record (cf. above) - taxpayers may however opt for annual declaration;
  - rent, where full payment has been made quarterly (cf. above) - taxpayers may however opt for annual declaration;
  - interest;
  - lottery winning;
  - income from intangible property; and
  - income from special categories (farmers, collectors of recycling materials, berries, herbs and similar).
- 

### 5.3. VALUE-ADDED TAX

Value Added Tax (VAT) in Kosovo is regulated by Law No. 05/L-037 on Value Added Tax, aligned with EU Directives. VAT is applicable to goods and services produced in Kosovo by taxable persons or imported into Kosovo.

#### 5.3.1. Taxable Persons

Taxable persons are those who independently engage in economic activities, whether regularly or irregularly. Economic activities include manufacturing, trading, and the supply of goods and services, encompassing mining and agricultural activities. This also covers the exploitation of tangible or intangible assets to generate regular income.

Foreign entities conducting economic activities in Kosovo are considered taxable from the commencement of their operations in Kosovo.

The following are not considered taxable:

- Non-profit organizations, except when they receive payments as a result of economic activities.
- International organizations, foreign countries, and their agencies.
- Public authorities at central and local levels and other entities defined by law. However, if these entities engage in specific activities to a significant extent, such as telecommunications, water and energy supply, and transportation services, they become taxable.

#### 5.3.2. Registration

Taxable persons must register with the Tax Administration of Kosovo (TAK) when their annual turnover exceeds €30,000 within a calendar year. Registered entities receive a registration certificate, which must be displayed at their place of business. Individuals conducting multiple economic activities in different locations within Kosovo are identified by a single VAT number. Partnerships and groups of persons are assigned a single VAT registration number.

Entities not established in Kosovo must register for VAT at the commencement of their activities in Kosovo. They should appoint a tax representative and register under the representative's name within five days of the representative's appointment and before commencing operations. However, entities not established in Kosovo are not required to register if they exclusively supply goods or services to VAT-registered entities in Kosovo.

For entities not obligated to register, voluntary registration with TAK is an option.



### 5.3.3. VAT Rates

Kosovo applies a standard VAT rate of 18%. A reduced rate of 8% is applicable to the supply and import of specific goods and services, including water (except bottled water), electricity (including transmission and distribution services), grains and grain-based products for human consumption, certain dairy products, salt for human consumption, eggs, textbooks, serial publications, and more.

### 5.3.4. Exemptions

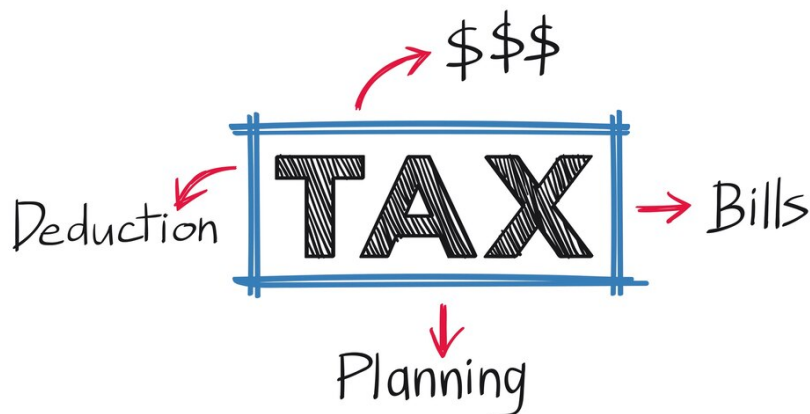
Exemptions without the right to deduct VAT (zero-rated supplies) apply to activities in the public interest, such as hospital services, medical care, and services for children and young people. Exemptions also include education, Trade Unions, NGOs, political and religious organizations, public media, newspapers, electronic media, public transportation services, and more.

Exemptions with the right to deduct VAT are applicable to specific importations, including the supply of precious metals and banknotes to the Central Bank of Kosovo, import of gas and electricity, machinery and raw materials for production, IT equipment, and more.

### 5.3.5. Deduction

The right to deduct input VAT arises when VAT becomes chargeable. Input VAT is deductible if it is related to purchases of goods and services used or intended for use in the taxpayer's taxable transactions. VAT cannot be deducted for certain assets like yachts, private aircraft, cars, and motorcycles used for non-business purposes. For cars used for both private and business purposes, input VAT can be deducted up to 50%. Costs related to real estate property used for both business and private purposes are only deductible for business use.

When goods and services are used for both deductible and non-deductible transactions, only the non-deductible portion is excluded. Taxable persons can calculate the proportion of the deduction when authorized by TAK and with adequate justification.



## 5.4. CUSTOMS DUTIES AND EXCISE TAXES

### 5.4.1. Customs Duties

Customs duties in Kosovo range from 0% to 10%. Imports from countries that are members of CEFTA (Central European Free Trade Agreement) are typically duty-free. Furthermore, since April 1, 2016, several agricultural goods, fish, and fishery products from the European Union have also become exempt from customs duties in Kosovo.

As per the Turkey-Kosovo Free Trade Agreement (FTA), some goods already face reduced customs duties. Kosovo is committed to eliminating all customs duties on goods specified in the FTA within a 9-year period starting from the FTA's entry into force on September 1, 2019.

For countries that do not have a free trade agreement with Kosovo, most goods are subject to a 10% customs duty.

### 5.4.2. Excise Taxes

Excise taxes are imposed in Kosovo on specific manufactured goods. These taxes apply to items such as cigarettes, liquor, water, soft drinks, and oil. They are calculated as a fixed amount for a certain quantity of the goods.

The current excise tax rates can be found in Law No. 03/L-220, which amends and supplements Law No. 03/L-112 regarding excise tax rates in Kosovo.



# FINANCIAL SECTOR

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## **6.FINANCIAL SECTOR**

Kosovo's financial sector is experiencing remarkable growth and resilience, reflecting the nation's commitment to economic stability and development. As of December 2022, the total assets of Kosovo's financial system surged to an impressive 9.89 billion euros, marking a substantial annual increase of 10.7% compared to the previous year, as detailed in the CBK's annual report for 2022.

The backbone of Kosovo's financial sector, the banking sector, reached an asset value of 6.76 billion euros in 2022, comprising a significant 68.3% of the overall financial landscape. This sector serves as a key driver of Kosovo's economic growth, offering essential financial services to individuals, businesses, and investors.

In addition to the banking sector, microfinance and non-banking finance have emerged as dynamic and continually expanding segments of Kosovo's financial market. With combined assets valued at 400.8 million euros in 2022, these sectors contribute 4% to the country's diverse financial ecosystem. Their role is vital in providing financial solutions to underserved and emerging markets, promoting financial inclusion, and driving economic inclusivity.

Kosovo's financial sector encompasses other key components, such as insurance and pension funds. The insurance sector, representing 2.7% of the financial landscape, plays a crucial role in safeguarding assets and managing risk.

Overseeing and regulating financial sector authority is the Central Bank of Kosovo ("CBK"), established as an independent public legal entity through the Law on CBK. The CBK plays a pivotal role in ensuring the stability, integrity, and effectiveness of Kosovo's financial system, working in harmony with market participants to maintain a robust and resilient financial environment.

Kosovo's financial sector serves as a testament to the nation's dedication to fostering economic growth, financial stability, and ensuring that financial services are readily accessible to all. For potential investors, Kosovo's microfinance and non-bank financial institutions represent a unique and compelling opportunity to engage with a flourishing financial ecosystem, primed for even greater success in the years to come.

### **6.1. BANKS**

Kosovo's banking sector stands as a testament to its advanced financial infrastructure. With a total of 12 banks operating in Kosovo, a noteworthy majority of 9 are in foreign ownership, reflecting international confidence in Kosovo's financial system. While 3 other banks are locally owned.





What sets Kosovo apart is the strategic presence of these financial institutions. While 3 banks function as branches, affirming their commitment to Kosovo, a significant majority of 9 have gone a step further by being established as Joint Stock Companies in Kosovo.

This dynamic presence has forged an environment of fierce competition, to the great advantage of both businesses and individuals alike. The diverse array of banking options provides users with the power to select from a spectrum of offerings. This includes highly competitive pricing structures, attractive interest rates, and access to some of the most cutting-edge banking systems available globally.

In essence, Kosovo's banking system is a testament to modernity and customer-centricity, where a multitude of financial choices converge to deliver unmatched value, ushering businesses and individuals into a realm of financial prosperity and innovation.

### **Legal Requirements for Financial Institution**

The establishment and operations of banks are governed by Law No. 04/L-093 on Banks, Micro-finance Institutions, and Non-Bank Financial Institutions (commonly referred to as the "Law on Banks"). Under this regulatory framework, the Central Bank of Kosovo (CBK) assumes a pivotal role in licensing and supervising banks, including granting licenses for new banks and permits for foreign banks to establish representative offices. Additionally, any decisions regarding the closure, relocation, or establishment of branches or offices, both local and foreign, require prior approval from CBK.

Banks can only be established as joint-stock companies and they must meet stringent capital and liquidity requirements while having their charters and statutes approved by CBK.

Foreign banks interested in operating in Kosovo can open a branch, but the requirements mirror those for local banks, with additional scrutiny. CBK necessitates evidence that the foreign bank's home supervisory authority approves the establishment and exercise global consolidated banking supervision over the foreign bank. Furthermore, CBK will seek assurances from the foreign bank's home jurisdiction supervisory authority, particularly regarding the organization, licensing, capital, and liquidity of the applicant.

For foreign banks seeking a more limited presence, CBK can grant authorization for the establishment of a representative office in Kosovo. However, these offices are expected to primarily engage in information provision, liaison activities, market research, and studying investment opportunities. They are not permitted to conduct banking operations within Kosovo.

## **6.2. MICROFINANCE INSTITUTIONS AND NON-BANK FINANCIAL INSTITUTIONS**

While the banking sector continues to be the cornerstone of Kosovo's financial system, it's equally crucial to recognize the burgeoning and vibrant presence of microfinance and non-bank financial institutions. These sectors, with combined assets of 400.8 million euros in 2022, constitute 4% of Kosovo's financial ecosystem. They play an indispensable role in delivering innovative financial solutions to underserved markets, advancing financial inclusivity, and propelling economic growth.

### **6.2.1. Microfinance Institutions**

Microfinance Institutions (MFIs) are entities defined by the Law on Banks, which can be organized as non-governmental organizations (NGOs) or joint-stock companies. They primarily offer loans and a limited range of financial services to micro and small legal entities, low-income households, and low-income individuals. Currently, Kosovo has 10 registered MFIs, with most of them being non-governmental and non-profit organizations.

The criteria for licensing banks also apply to the registration of MFIs. An MFI organized as an NGO must be registered with the Ministry of Public Administration for tax-exempt status, while MFIs organized as joint-stock companies should first register with the Ministry of Trade and Industry.

MFIs are authorized to engage in various activities, including providing payment services in connection with loans, acquiring funds through grants or borrowings, borrowing from and placing funds in approved markets and institutions, acquiring, owning, or disposing of property for business purposes, providing financial, technical, and professional assistance to clients, and other financial activities determined by the Central Bank of Kosovo (CBK) through Regulation or Order.

### **6.2.2. Non-Bank Financial Institutions**

NBFI are legal entities that are not a bank or microfinance Institution and that is licensed by the CBK to be engaged in one or more of the following activities:

- to extend credit, enter into loans and leases contracts financial-leasing;
- underwrite, trade-in or distribute securities;
- act as an investment company or an investment advisor;
- provide other financial services such as foreign exchange and money changing, credit cards, factoring, or guarantees;
- provide other financial advisory, training, or transactional services.

As part of their purpose, NBFI may also engage in the following activities:

- providing payment services in connection with credit extended to clients;
- acquiring funds by grant, investment or borrowings for the purpose of lending or for their own use;
- borrowing from and placing funds in markets and institutions approved by the CBK for the purpose of managing their liquidity;
- providing credit to finance the purchase of equipment;
- acquiring, owning, leasing, renting, maintaining, transferring, selling or disposing of any movable or immovable property that is used for carrying out their business;
- transferring and receiving money, or payment services, on payments originating within or outside the country; and
- providing financial, technical and professional assistance and training to their clients or assisting them in obtaining services in such fields.

When setting up an NBFi with a credit granting activity, should be taken into account the limitations on the maximum loan amount that NBFi may provide to a person. The maximum amount of credit an NBFi can extend to a single person or a legal entity may not exceed 20% of the current loan portfolio.

There are currently 82 NBFi registered in Kosovo, of which 58 are financial auxiliaries, registered with the activity “currency exchange”. Even though financial auxiliaries represent the largest number of financial institutions, the value of their assets only represents 0.4% of the financial sector in Kosovo.

### 6.3. INSURANCE

Insurance, reinsurance and insurance intermediaries’ activities are regulated by the Law No. 05/L-045 on Insurances (“Law on Insurances”).

In regards to Insurers (i.e., insurers and/or reinsurers), insurance intermediaries and claims handlers, CBK has sole responsibility for licensing, supervision and regulation. Each license is granted for specific insurance class(es). Pursuant to the Law on insurance, insurance classes are divided in Kosovo into non-life insurance and life insurance. In 2022, non-life insurance represented 91.6% of the total assets of the sector, while life assurance constitutes the remaining part.

Non-life insurance includes insurance for: accidents; health; land vehicles; rail vehicles; aircrafts; shipping; transported goods; fire and force of nature; other property damages; general liability; loans; guarantees; financial losses; legal protection; and assistance; etc. Licenses for non-life insurance are issued by CBK for separate classes.

Life insurance includes: life insurance; insurance of marriage and birth; life insurance linked to collective investment enterprises; additional insurance related to death or disability due to accidents, permanent inability to work or disability at work, hospital and medical services, incurable diseases; etc. Licenses for life insurance are issued by CBK separately or for all classes.

CBK may also grant permission for a representative office to a foreign insurer, on the condition that the foreign insurer does not engage in insurance activities and limit its activities to providing information and liaison activities, and studying the markets and investment opportunities.



Insurance companies in Kosovo can only be established in the form of a joint stock company, registered at the Business Registration Agency. Copy of the Founding act and statute of the insurer must be approved by the CBK. The charter capital of all non-life insurers may not be lower than 2,200,000 euros, or 3,200,000 euros where one or several of the following risks are included: liability for use of vehicles, aircrafts, ships, general liability, loan insurance and guarantee insurance. The insurer must also have an additional fund for initial expenses which should not be less than 20% of the capital.

An insurance intermediary is a natural person or a legal entity contracted by the insurer and licensed by CBK to conduct the presentation, proposal and other preparatory activities, until the signing of the contract of insurance, as well the assistance during the period of validity of the contract. Insurance intermediaries operate whether mainly on account of the insurer or of the insured.

Claims handlers are legal persons contracted by the insurer and the insured or licensed by CBK to perform damage assessment activities and other assessment activities related to insurance.

# PROCUREMENT

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## **7. PROCUREMENT**

Kosovo has developed comprehensive legislation and regulations in regard to public procurement, and ensures accessibility, transparency and fairness of the procurement process, in particular through its E-procurement system.

Besides “traditional” public procurement, where the services, works or goods are directly purchased by the Public Authority, Kosovo offers now a favorable legal and economic environment for the development of Public-Private Partnership (“PPP”). PPP tends to grant the whole implementation of the project to a single entity. By opening investment opportunities and mobilizing private investment, PPP appears in many ways as an economically efficient and sustainable solution.

### **7.1. PUBLIC PROCUREMENT**

Public procurement refers to the process by which public authorities, such as government or local authorities, purchase work, goods, or services from companies. In Kosovo, the entire public procurement procedure takes place online through the e-procurement system. The Republic of Kosovo started to apply this system in public procurement by mid-2016. Since January 1st, 2019, the full application of the e-procurement system of public procurement has begun.

E-procurement system implementation in Kosovo can be considered a success story and main procurement reform in recent years. The e-procurement system is fully operational and in use with major system modules, E-tendering, Centralized Procurements, Complaints administration module.

Economic operators may submit a tender, a request for participation, or other document required or that is permitted to be filed during the procurement activity, in Albanian, Serbian, or English language.

In Kosovo, Public procurement is regulated by the Law no.04/L-042 on Public Procurement in Republic of Kosovo, amended and supplemented by the Law no.04/L-237, Law no.05/L-068 and the Law no.05/L-092 (“Law on Public Procurement”). The Law on Public Procurement was adopted and amended in order to reform public procurement and ensure the compatibility of Kosovo regulations with EU Directives.

The Public Procurement Regulatory Commission Board, based on the responsibilities and authorizations provided by Article 87.2 (4) of Law no.04/L-042 on Public Procurement amended and supplemented by Law no.04/L-237, Law no.05/L-068 and the Law no.05/L-092, has formalized and proclaimed secondary acts:

- A01 Regulation No.001/2022 on Public Procurement, and
- A02 Guideline No. 001/2023 for Public Procurement.

The Law on Public Procurement aims to ensure the most efficient, cost-effective, transparent, and fair use of public funds, public resources, and any other funds and resources of contracting authorities in Kosovo. It also aims to ensure the integrity and accountability of public officials, civil servants, and other persons conducting or involved in procurement activities.

This Law applies to the procurement activities of contractual authorities (i.e. public authorities and bodies governed by public law) and work concessionaires.

### 7.1.1. *General principles*

*Cost-Effectiveness and Efficiency:* The contracting parties shall ensure that public funds and resources are used in a cost-effective and efficient manner. Public funds and resources made available for the purposes of a public contract shall be used only within the scope of such contract.

*Equality of Treatment/Non-Discrimination and Transparency:* A contracting authority shall treat economic operators equally and non-discriminatorily and shall act in a transparent way. In particular, a contracting authority shall not conduct any aspect of a procurement activity in a manner that reduces or eliminates competition among economic operators or that discriminates against or in favour of one or more economic operators. A contracting authority shall not require an economic operator to (or not to) employ or utilize any specific person or undertaking or to (or not to) supply or provide, products or services originating from a specific person, undertaking, or geographic area.

### 7.1.2. *Central institutions*

The Law on Public Procurement has established three central procurement institutions, namely:

- *The Public Procurement Regulatory Commission (PPRC):* The PPRC is an independent regulatory agency.

It is responsible for the overall development, operation, and supervision of the public procurement system in Kosovo. PPRC has the responsibility and authority to conduct monitoring of procurement and contract management activities; and issue opinions to contracting authorities regarding their decisions, actions, or omissions during procurement and contract management activities.

PPRC is also responsible for establishing and publishing detailed public procurement rules to ensure the proper implementation of the Law on Public Procurement; preparing procurement manuals, guidelines, standard forms, models and contract documents. PPRC shall provide technical assistance and advice to both contracting authorities and economic operators.

- *The Central Procurement Agency (“CPA”):* For reasons of professional expertise, cost-effectiveness, efficiency or other legitimate concerns, the Minister of Finance can designate the CPA as the responsible contracting authority for the conduct of procurement activities. In such a case the Ministry of Finance shall notify the concerned contracting authority or authorities of such determination, which shall no longer have any authority to conduct the concerned procurement. CPA shall prepare and submit to the Minister of Finance an annual report that reflects the public procurement activities led by the CPA.

- *The Procurement Review Body (“PRB”):* The PRB is an independent administrative review body. It is responsible for implementing the procurement review procedures.

The legislation on the right to legal remedy is broadly in line with the EU acquis. Appeals can be lodged through the e-procurement platform. The Procurement Review Body is a quasi-judicial body reviewing complaints from bidders.

PRB has the competence to enquire and review complaints from interested parties of violation of the law on Public Procurement; to conduct investigation or procurement review proceedings and to take any action necessary to verify arguments or claims made by the parties. The PRB has also powers of suspension of the process; suspension and termination of the procurement activity; cancellation

or revocation of the decision of the contracting authority, etc.

### **7.1.3 Procurement procedures**

#### *Advertisement Notices and Tender Dossier*

*Indicative notice:* the contracting authority shall issue an indicative notice if, over a 12-month period, it has the intention of awarding one or more supplies, services or works contracts, for an estimated value of 500.000 euros.

*Contract notice:* the contracting authority shall issue a contract notice when it intends to conduct a procurement using open or restricted procedures, competitive negotiated procedures, and price quotation. The contracting authority shall state in the contract notice (and specify in full in the tender dossier): all selection criteria and time limits for receipt of participation or tenders (depending on the type of process), the documents or information to include for request of participation or tender, the contract award criteria(s).

*Awards notice:* for public contracts awarded using open, restricted, or negotiated procedures, or price quotation procedures, the contracting authority should prepare a contract award notice.

Indicative, contract, and award notices should be submitted immediately to PPRC, which should publish the notices, within two days from reception, on the PPRC's website and in the Public Procurement Register.

*Tender Dossier:* The contracting authority shall draw up a tender dossier providing all relevant information, including all material terms and conditions and in particular the applicable procurement procedure, the eligibility requirements or selection criteria, and the procedure governing complaints. If the concerned procurement activity requires the publication of a contract notice, the tender dossier shall contain a copy of such notice and such other relevant information that may be necessary to clarify and supplement the information contained in such notice.



## The Award Criteria

A contracting authority shall in the contract notice and the tender dossier specify the criteria to be used for awarding the contract. The criteria can be either the lowest price only or the economically most advantageous tender.

*Lowest price:* the cheapest offer is awarded the contract. In the case of multiple service contracts or contracts for unit prices, prices may be weighted based on the importance of each category of service or any item.

Economically most advantageous tender: assessment of the economically most advantageous tender is based on a series of criteria, such as quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sale service, and technical assistance. Any element of the award criteria must be converted into points and then weighed according to the formula and weights specified in the Contract Notice and Tender Dossier.

### 7.1.4. Basic principles of procurement review

The procurement review proceeding shall be conducted and concluded in an expeditious, fair, and non-discriminatory manner in order to achieve a fair, lawful, and effective resolution of the subject matter involved. Neither the conduct of any review proceeding nor any decision by the PRB shall be done or made in any manner that discriminates in favour of or against any participant in the proceeding or any other person or undertaking. All interested parties shall have equal access to the procurement review proceedings and remedies.



### ***7.1.5 Complaints in procurement procedures***

A request for review may be submitted, free of charge, by an interested party at any stage of any procurement activity and with respect to any act or omission of the concerned Contracting Authority that is alleged to violate the Law on Public Procurement or acts issued in its implementation within the Contracting Authority which conducted the procurement activity. Review requests may relate to contract notices, tender documents, or other announcements and decisions, in the course of performance of the concerned procurement activity.

A complaint to the PRB may be submitted only after a preliminary procedure for resolution of the dispute and submitted within ten days following a decision issued by the Contracting Authority in the preliminary dispute resolution procedure in accordance with Article 108/A of LPP.

The PRB shall issue its final written decision, together with a written statement of the factual and legal basis justifying such decision, and any order required to give effect to such decision. A PRB decision to re-evaluate the selection of tenderers or award the contract does not imply a change in the initial result.

If a complainant believes that a final decision or determination of the PRB is contrary to the facts or the present Law, the complainant may request the Commercial Court to review such decision. The request to the Basic Court must be filed within a time limit of thirty days from the publication of the PRB decision.

## **7.2. PUBLIC-PRIVATE PARTNERSHIPS**

A Public-Private Partnership (“PPP”) is any contractual or institutional cooperation between one or more public authorities and one or more private partners whereby the private partner provides a service public or a public infrastructure.

Before 2009, PPPs were mostly used by municipalities for real estate projects and land concessions. To support Kosovo’s needs for infrastructure, the legal framework was further developed. The first major PPP project implanted in accordance with the 2009 Law on Public-Private Partnership and Concessions was the PPP for the operation and expansion of Pristina International Airport between the Republic of Kosovo and Limak Kosovo International Airport (JSC). PPPs are currently regulated by the Law No 04/L-045 on Public-Private Partnership (“Law on PPP”), which entered into force in December 2011 and replaced the 2009 law.

The Law on PPP, in accordance with UNICITRAL and EBRD legislative provisions, further harmonizes Kosovo’s PPP legal framework with EU directives. By implementing the condition for the introduction of private capital and expertise, the new law favors the implementation and expansion of infrastructure and public services on central and municipal levels.

### ***7.2.1. Types of PPPs***

#### *Contractual PPPs*

PPP may be in the form of a concession or a public contract, which are governed by the law on PPP. Pursuant to the public contract, the private contractor provides a public service or public infrastructure on behalf of the public authority and receives regular payment for it. Concessions (works or service) are of the same type, but the private partner is compensated, in whole or in *part*, from the

exploitation of the object of the contract. The award of a PPP in the form of a public contract follows the rules and procedures established in the Law on Public Procurement (Cf. sections 7.1).

### *Institutional PPPs*

Cooperation of public and private sectors within the form of a PPP may also be Institutional, i.e. within a distinct entity held jointly by the public and private partner.

Institutional PPPs may be established by municipalities by the acquisition by private partner(s) of shares owned by such Municipality in an existing publicly-owned enterprise. The purpose of such Institutional PPP must be the performance of the public service. When the institutional PPP's purpose is to implement a concession, the selection of the private partner falls under the Law on PPP. For implementation of other public contracts, the selection is governed by the Law on public procurement (cf. sections 7.1).

Institutional PPPs requiring the sale of a Kosovo national publicly-owned enterprise shall be subject to approval by the Government and Assembly of Kosovo.

### **7.2.2. Competent bodies**

The Law on PPP establishes the **Public-Private Partnership Committee (“PPPC”)** and the **Central PPP Department (“PPP Department”)**.

The PPPC oversees and coordinates PPP projects. PPPC composition differs depending on the level of the PPC (local or central), but it includes, in any case, 5 permanent members: the Minister of Finance (chairman) and 4 members designated by the Government. PPPC provides leadership and recommendations to the Government regarding PPP policies. It issues implementing regulations and clarifications regarding PPP regulations and procedures. PPPC reviews and approves or disapproves Project proposals. It oversees and reviews the performance and execution of the PPP Projects, and reviews and approves proposed amendments to agreements. It maintains the PPP registry.

The PPP Department is a governmental department within the Ministry of Finance. It assists and advises the PPPC, the Minister of Finance and other public authorities, in particular regarding technical assistance, regulations and viability of projects. It issues standards and recommendations on practice and procedures related to PPP. It is responsible for the diffusion of information regarding PPP programs and projects. It coordinates activities relating to PPPs in all economic and social sectors. The PPP department may be involved at any stage of the PPP project.

### **7.2.3. PPP procedures**

*Identification and approval:* Any public authority, the PPPC or the PPP Department may identify, propose and initiate a PPP. The Public authority is responsible for carrying out a project feasibility study of the PPP Project and shall submit it to PPPC when requesting approval. PPP projects shall be approved by PPPC prior to any tendering procedures.

### **Negotiated procedures**

*Pre-selection:* The invitation to pre-selection shall be published and shall include in particular a description of the project and its essential elements, the main terms and conditions, the procedure for pre-selection, the criteria for pre-selection (professional, technical, economic and financial), the

proposed timeline for the tendering process, the incorporation requirements. Bidders shall have not less than 20 days from publication to submit their application. The public authority makes a decision and invites all pre-selected bidders to submit proposals.

*Request for proposals:* After payment of applicable fees, the public authority shall publish and provide to pre-selected bidders a request for proposals. In case some elements of the projects (project specification, performance, financial or contractual terms), cannot be described in the request for proposal, the public authority may use a two-staged procedure, which allows for revision of the request for proposals after discussions with the bidder. In any case, the Public Authority may review and revise the request for proposal and shall promptly communicate the changes to each candidate who received it.

*Submission of proposals:* Bidders shall submit their proposal, in written, signed and sealed, not less than 40 days from the receipt of the request for proposal.

*Final negotiations:* The public authority shall rank all proposals and invite the best bidder for final negotiation. If the negotiation is not conclusive, the public authority will invite for negotiation the next best bidder. The public authority shall submit the final agreement to PPPC for approval. PPPC may decline approval if the agreement differs significantly from the project approved earlier or if it does not meet the affordability and Value for money requirements.

### **Negotiation without negotiated procedures**

If authorized by PPPC, the public authority may negotiate an agreement without negotiated procedures, if the project involves national security matters or if, due to unforeseen circumstances, the award of additional works or services is rendered necessary for the performance of the initial signed agreement.

### **Signature of the agreement**

The Agreement shall be signed by the authorized representative of the private partner and the Public Authority. The signed agreement shall be published in the PPP Registry.

# REAL ESTATE

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## **8. REAL ESTATE**

### **8.1. CONSTRUCTION SECTOR – SPECIAL FOCUS**

The construction sector in Kosovo is currently undergoing a remarkable period of expansion and development. This growth is exemplified by the presence of numerous construction companies actively involved in the execution of large-scale projects. What's particularly noteworthy in this matter is the significant number of foreign investors who have recognized the potential and opportunities within Kosovo's construction industry, leading to substantial investments.

This influx of foreign investment has not only further enriched Kosovo's legal framework but has also played a pivotal role in fostering best practices within the industry. As a result, Kosovo not only possesses comprehensive legal framework but also actively implements it to ensure the protection of investors' rights in this dynamic sector. This commitment to both legal adherence and best practices underscores Kosovo's dedication to creating a conducive environment for sustainable growth and development in the construction sector.

*Joint Investment Agreements on Construction:* Joint investment Agreements are a common practice in Kosovo's construction industry, where construction companies enter into detailed agreements with landowners where buildings are planned. These agreements are mandatory to be signed before a notary to ensure the safety of all parties involved. They establish the terms under which landowners provide their land to investors for building construction in exchange for property rights in the upcoming building. On the investor's side, two or more investing companies can be involved.

This practice is vital for construction businesses, allowing them to invest in land without cash compensation, offering landowners a share of the building units instead. Given the high cost of land, this approach is advantageous for investors.

*Construction Permit:* Along with the reaching of the agreement as above, in order for the building to take place, the construction permit must also be secured. In Kosovo, obtaining a construction permit is governed by Law No. 04/L-110 on Construction. Generally, a construction permit is required for various construction activities, including new constructions, reconstruction, demolition, significant repairs, and interventions on existing structures' facades and structures.



The law categorizes construction projects into three classes based on their risk level and national significance: Category I (Low-Risk), Category II (Medium-Risk), and Category III (High-Risk and those with national interest). Depending on the category, either the Municipality or the Ministry is the competent authority for issuing construction permits.

Foreign investors or their authorized representatives can submit construction permit applications, which must include site plans, property certificates, construction conditions (if required), construction documentation, environmental impact assessments, and details of temporary works. The competent authority typically issues construction permits within 30 days for Category I and within 45 days for Categories II and III, assuming all conditions are met and fees are paid.

In conclusion, Kosovo's construction sector is surging with growth and investment opportunities, driven by both domestic and foreign players. The government's commitment to robust legal regulations and best practices ensures that foreign investors have a secure and conducive environment for their investments. With favourable joint investment practices and efficient construction permitting processes, Kosovo's construction industry is poised for continued expansion, contributing to the nation's economic development.

## PROPERTY TYPES AND RIGHTS

***Right of Property:*** The right of property is guaranteed by the Constitution of Kosovo in its article 46, which states that no one shall be arbitrarily deprived of property. Under the same article, it is provided that the Government may however expropriate property if expropriation is authorized by law, it is necessary to achieve a public purpose, or to promote the public interest. If that's the case, the person(s) whose property has been expropriated receive immediate and adequate compensation. The right of property is further regulated by the Law No. 03/L-154 on Property and Other Real Rights of 2009 ("Law on Property"), which states, on its Article 2, that unless provided differently by law, any person can acquire real rights.

***Movable and Immovable property (Personal and Real Estate):*** Under Law on Property tangible property rights are divided into movable and immovable property. Immovable property is the ground itself, and any object that is physically attached to it, i.e., plants enrooted in the ground, and buildings firmly connected to the ground, but this does not include natural resources in the subsoil, which has special legal treatment. Every other thing is considered to be movable property, which can be defined as independent objects which are capable of being moved.

***Ownership and joint ownership:*** The Law on Property defines ownership as the right over a thing. Joint ownership is when several persons are sharing ownership of a property. Unless specified differently, or proven otherwise, joint owners' shares are presumed equal. A joint owner may dispose of his share without the consent of the other joint owners. The fruit of immovable property is divided between joint owners according to their shares. If the fruits are not divisible, the joint owners acquire joint ownership of the fruits.

***Property rights of foreign citizens:*** According to Article 121.2 of the Constitution, foreign natural persons and foreign organizations may acquire ownership rights over immovable property in accordance with conditions established by law or international agreement. The Law No. 08/L-013 On Property Rights of Foreign Citizens in the Republic of Kosovo regulates that the foreigners, whether natural or legal persons, have the right to hold property rights in Kosovo, provided reciprocity in the foreigner's country. In the case of foreign double citizenship, reciprocity is determined in regard to the country of residence. The procedure for registration of immovable property rights is the same as for the citizens of Kosovo.

The law however sets some restrictions in regard to the access to property by foreigners. In particular, foreign citizens do not have the right to own natural resources, public goods for general use, public agricultural land in public ownership, public forests and forestry lands, property announced a cultural heritage of special significance, immovable property within 1 kilometre from the border or in some area with interests in regard to the protection of the state. However, the law regulates that foreign person may have the right to long-term rent, concession and other agreement over those immovable properties, under the same conditions as the national persons.

## **8.2. IMMOVABLE PROPERTY RIGHTS**

*Immovable property rights*, according to Kosovo's legislation, include:

- ownership;
- servitudes;
- the right to build;
- the right of first refusal;
- right of pledge (which also includes mortgages);
- the property burdens and charges; and
- the right of use of municipal, public, social and state property.

### ***8.2.1. Acquisition of Ownership of Immovable Property***

Transfer of ownership of immovable property requires a valid contract, which constitutes the legal ground for registration of the transfer. The contract must be concluded in written, in presence of both parties and in front of notary. The transfer also requires the registration of the change of ownership in the Immovable Property Rights Register.



*Acquisition by prescription* is also possible after 20 years of uninterrupted possession or after 10 years of uninterrupted possession, if the proprietary possessor is registered as so in the Immovable Property Rights Register and no objection against this registration is filed during this period.

*Registration of Immovable property rights:* As a general rule, immovable property rights must be registered in the Immovable Property Rights Register. Registration is made on the basis of the Cadastre, in which are described the cadastral units for parcels, buildings, part of buildings and utilities. Request for registration at the Immovable Property Rights Register shall be made in written to the Municipal Cadastral Office which has local jurisdiction over the property. Such request must be accompanied by supporting documentation that establishes the origin of immovable property rights. This documentation may include the transfer contract, court decision, administrative body decision, the decision or contract for privatisation issued by the Kosovo Privatisation Agency, the decision by the Housing and Property Claims Commission for the reconstruction of Cadastre or for the regulations of lands, and so forth. MCO decides on the application no later than 15 days after the receipt of the request and informs immediately the applicant of its decision.

*Ownership of a separate building unit* (flat, office or garage parking space), can be created by contract among the joint owner of the building, or by division by the owner of the building into shares of joint ownership. If the immovable property is encumbered with a mortgage, the creation of separate units is subject to the mortgagee's consent. Mortgages are transferred to the ownership of the building unit.

### 8.2.2. Mortgages

A mortgage is a legal encumbrance on debtor's immovable property or associated rights, which grants the creditor the right to satisfy their claim from the proceeds generated by selling the immovable property or those rights. A mortgage may secure obligations under credit agreements, promissory notes or other contractually based financial obligations.

A mortgage is created by a written agreement between the owner of immovable property, whose signature needs to be certified, and the mortgage creditor, and by registration of the mortgage at the Immovable Property Rights Register

The Mortgage of a land parcel applies to the entire land parcel. However, a building unit may be mortgaged without subjecting the rest of the structure of the land parcel to the mortgage. A share of a joint ownership of an immovable property unit may also be encumbered with mortgage without the consent of the others joint owners.



An aggregate mortgage may be created for the same claim over several immovable property units, belonging to the same owner or different owners, each property being liable for the entire claim.

The mortgage remains valid against the person who acquires the mortgaged immovable property. The mortgage creditor, in case of alienation of the immovable property, is deemed to have consented to the takeover of the mortgage. The mortgage creditor can, however, within 3 months of the written request by the alienator, issue a denial of consent.

Unless agreed differently, with the transfer of the secured claim, the mortgage is also transferred to the new creditor. In order to be effective, the transfer of the mortgage needs to be registered in the Immovable Property Rights Register.

Mortgage secures the claim until complete payment. Partial payment does not affect the mortgage.

### **8.2.3. *Servitudes***

Law on Property determines that there are two kinds of servitudes, the first being real servitude, which grants the owner of an immovable property (dominant plot) the right to use in a specific manner another immovable property (subserving plot) owned by another owner. The second type of servitudes is called personal servitude, which contains the right of a person to use another's immovable property in a specified way, e.g., usufruct, usus and habitation.

As it can clearly be seen, the main difference between those two types of servitudes lies in the bearer of the right, where on the real servitude, the right is bonded with the dominant plot, while on the personal servitude, the right is only bonded with the person.

Servitudes may be established by contract, decision of a state body or by law. The contract must be established in written, and the servitude must be registered in the Immovable Property Rights Register.

# INTELLECTUAL PROPERTY

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## 9. INTELLECTUAL PROPERTY

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Intellectual property refers to the creations of the mind, such as inventions, literary and artistic works, designs, symbols, names, and images in commerce. Kosovo has undergone an imperative development regarding the music and film industry, fashion industry and Kosovar singers, filmmakers and fashion designers are well known among the worldwide alike industries.

Kosovo not only has a very active youth but also a very active business environment, which led Kosovo to create a robust intellectual property regulation. In order to fulfill its social and economic requirements and to stay updated on European regulations and directives, Kosovo has recently profoundly reformed and amended its IP Legislation. In 2022 Kosovo approved the new Trademarks, Patents, Industrial Design, and Trade Secret laws.

Kosovo provides comprehensive regulation regarding intellectual property and has set the necessary implementation and enforcement of such regulations.

The enforcement and implementation of these regulations are the responsibilities of two distinct bodies: the Copyright and Related Rights Office, functioning as an administrative body under the Ministry of Culture, Youth, and Sports, and the Industrial Property Agency, which serves as an administrative central entity within the Ministry of Trade. These administrative bodies are responsible for the overseeing the implementation of copyrights and other related rights, trademarks, industrial designs, designations of origin, geographic indicators, and other issues arising from all the laws that regulate Intellectual Property.

Apart from the administrative protection, in 2022 Kosovo also established the Commercial Court which is competent to adjudicate, among others, all disputes from copyright and industrial property rights including trademarks, patents, industrial design, and commercial secrets.

While having both, an updated legal framework and the proper implementation and enforcement of such a legal framework, Kosovo presents an outstanding Intellectual Property environment. Individuals and businesses in Kosovo benefit from strong protection of their intellectual property rights.

### 9.1. INTELLECTUAL PROPERTY OBJECTS

Businesses use different Intellectual Property objects, copyrights, trademarks, patents, and industrial designs to acquire innovations and other commercial results from their economic activity.



Another method that enables the acquisition of the results of business innovation is the protection of trade secrets. The rights of producers may also be protected through the registration of geographical indications.

For foreign individuals/entities seeking to register their intellectual property rights in Kosovo, it is imperative to engage official authorized representatives designated by the Industrial Property Agency. By mandating the involvement of such authorized representatives, Kosovo aims to provide a structured and compliant approach to foreign entities seeking to protect their intellectual property within the country.

### 9.1.1. Copyrights

Copyrights are the intellectual property rights that creators have over their works in literary, scientific, and artistic works. Because of the creativity and innovation of creators, copyrights are a factor of great importance in the economic development of a country. Kosovo's copyright regulation is based on international copyright agreements and the latest European Regulations, and provides for the protection of the rights of creators of original works, such as authors, musicians, artists, and software developers.

Copyrights in Kosovo are constitutionally guaranteed, safeguarded by Law No. 08/L-205 on copyright and related rights (referred to as the "Copyright Law"), and sanctioned by the Criminal Code.

The copyright belongs to the author with the fact of creation. Therefore, no administrative procedure is required to be fulfilled in order for the copyright to be protected.

Copyright grants the creator of an original work the exclusive right to use and distribute their work, and to prevent others from doing so without their permission. It runs for the life of the author and for seventy years after his death (or seventy years from the death of the last surviving co-author in case of co-author's work) or for seventy years after the lawful disclosure of the work in case of collective work.

The Law in Kosovo stipulates the same protection of copyright for foreigners as for domestic persons if international agreements or the law provide so, or in case factual reciprocity exists. Foreign authors and performers enjoy the same protection of moral rights recognized by the law. Foreign authors of works of art enjoy the protection of the law regarding the resale of the right, but only when factual reciprocity exists.

When the author's work is created by the employee during his working relationship, while fulfilling his work duties or according to the instructions given by the employer, it is considered that the property rights and other author's rights were assigned exclusively and without limitations to the employer, for a period of ten years, unless otherwise provided by the employment contract or by another signed act with the employer.





With the 2023 law on Copyright and Related Rights, Kosovo offers Sui Generis protection on the rights of the Database Creators. A creator of a database that involves significant qualitative and/or quantitative investments in obtaining, verifying, or presenting its contents is entitled to prohibit the extraction and/or substantial re-utilization, both qualitatively and quantitatively assessed, of the entire database or a significant portion of its contents. The rights of the database creators are protected from the date of completion of the making of the database until the expiry of fifteen years.

Another positive step that Kosovo has taken in order to provide a healthy environment regarding copyright and other related rights is the fact that Kosovo has established the Task Force against Piracy since 2013. The main duties of the Task Force are the implementation of the strategy against piracy and counterfeiting.

In case of any violation of rights, the copyright holder may raise claims in order to find evidence of the violation, prohibit the continuation of the infringement, have the infringing goods removed and destroyed, and recover material or non-material damages. Violation of copyrights is considered a criminal offense under Art. 290 of the Criminal Code. Civil and Criminal proceedings remain however quite rare.

### 9.1.2. Trademarks

A mark is a distinctive sign which identifies the goods or services of one (or a group of) person(s) or enterprise(s) from those of others. It must be distinctive, available, and not mislead the public about the product it represents.

In Kosovo, the creator's right protection of marks is based on the first-to-file system. Therefore, filing is the only way to acquire the right over a mark. The trademark registration process takes around twelve months. This right is granted for a period of ten years, which starts retroactively from the filing date and is renewable for the same amount of time every ten years.

According to the official database of the Industrial Property Agency, until now there are around 40,000 applications for trademark registration. The number of applications is rising every year with local and international applicants.

The Industrial Property Agency updates its database regularly, so every interested party can see the status of their trademark, if it filed, registered, rejected, renewed, opposite or expired.



To secure trademark protection, specific registration procedures must be followed. Initially, the registration application is made public by the Industrial Property Agency (referred to as “IPA”) in the Official Bulletin. Subsequently, any interested parties have a 90-day window to file opposition against the trademark application. Following both the ex officio examination and the assessment of any opposition, if the application aligns with the legal prerequisites, the IPA will, upon the applicant’s request, issue the certificate confirming the registration of the trademark.

Traditional visible signs are protected under Kosovo trademark regulations, in particular words, including personal names or drawings, letters, numbers, colors, the shape of goods, or their packaging. The New Law No 08/L-075 on Trademarks (hereinafter “Trademark Law”) however sets some limits, in particular, prohibits the registration of a mark that has a similarity with a geographical indication, a traditional wine expression, a traditional specialty, or a plant variety denomination.

The non-traditional signs are not specifically protected under the current Trademark Law in Kosovo. However, the shape of goods or their packaging may be registered as a trademark. Administrative Instruction 08/2023, published on August 7, 2023, provides guidance on the registration of three-dimensional trademarks, motion marks, multimedia marks, and hologram marks, thereby enabling registration of such trademarks.

Kosovo also recognizes Sound and multimedia marks, they can be registered under the Trademark Law and must be submitted in the form of a sound or audio-visual recording. Apart from sound, other non-visual marks, such as smell, are still not protected by Kosovar Law.

Kosovo Customs plays a pivotal and proactive role in safeguarding the rights of trademark owners. Since most of the infringed products are imported from other countries, the role of the Kosovo Customs was obviously important. Kosovo Customs has taken an active role in offering the protection needed to the trademark owners by taking active role in destroying infringed goods and materials.

Along with the administrative protection for the trademark owners, Kosovo’s legislation also provides them with judicial protection. Civil action can be intended by the trademark holder or by an authorized person or eventually a licensee in order to establish and/or stop the infringement and prohibit further infringement. The applicant may also ask for the withdrawal or seizure of infringed goods and materials, the removal of the infringed mark, and the destruction of the goods. Upon request of the trademark owner, the court may order provisional measures, including termination and prevention of the Infringement or measure to preserve evidence.

Since there is an updated legal framework in place, the Industrial Property Agency and the Commercial Court have been adjudicating respectively large number of cases lately, which once again confirm that the trademark protection system in Kosovo is very effective.

### 9.1.3. Patents and Industrial Designs

Patent and industrial designs regulations are governed by the new Law No 08/L-059 on Patents and Law No 08/-055 on Industrial Design, respectively published on 20 and 21 January 2022, which abolished previous Kosovo laws on these matters and align further Kosovo legal framework to European Directives.

#### *Patents*

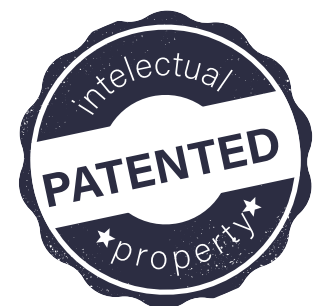
A patent is an exclusive right granted for an invention in all fields of technology that is new, involves an inventive step, and is susceptible to industrial application. Protection of patent rights is granted through registration at the Industrial Property Agency.

The right to a patent belongs to the inventor or his legal successor. An inventor is a person who has created an invention in the course of his/her creative work. In the case of the joint invention, two or more co-inventor (or their successor) may own the right to the patent. However, in case of commissioned work or execution of an employment contract, the right to Patent belongs to the person who commissioned the work or the employer, unless otherwise provided by the contract.

A patent confers the exclusive right to the owner to prevent third parties from commercially exploiting the patented invention. Patent protection is granted for a limited period of 20 years from the application's filing date. Annual fees shall be payable for the third and every subsequent year, calculated from the date of filing.

Overall, Kosovo's legal framework for patents offers a reliable and stable environment for investors looking to protect their intellectual property rights. With a strong legal framework, a professional and efficient Industrial Property Agency, and a supportive environment for innovation, Kosovo is an attractive destination for anyone looking to invest in research and development and protect their patents.

According to the latest IPA data, in Kosovo, there are over 1000 patent registration applications.





### ***Industrial designs***

An industrial design consists of the outer appearance of the whole or of a part of a product resulting from features of shape, form, color, lines, contours, texture, or materials of the product itself or its ornamental features. The acquisition of industrial designs is granted through registration at the Industrial Property Agency. In order to be protected, the design must be new and have an individual character.

The right to an industrial design belongs to the designer or his legal successor. The designer is the natural person who created the industrial design. In case of joint creation of an industrial design, the co-designer (or their successor) may own the right to the design. However, in the case of commissioned work or execution of an employment contract, the right to an industrial design belongs to the person who commissioned the work or the employer, unless otherwise provided by the contract.

The owner of the industrial rights has the exclusive right to register it and to prevent third parties from using the design without his/her decision. Industrial Design protection is granted for a period of 5 years from the filing date and may be extended one or more additional periods of 5 years, on a total period of 25 years. The request and payment for renewal should be done within 12 months before the expiration of the industrial design right.

The Industrial Design application is subject to other party opposition if the industrial design does affect his previous rights. IPA examines each application and opposition and then issues the certificate of industrial design registration.

#### ***9.1.4. Geographical Indications***

A geographical indication is a distinctive sign used to identify products with a specific geographical origin and qualities or reputation related to that origin. Geographical indications are protected under Law no. 05/L-051 on Geographical indications and Designations of Origin, through registration at the Industrial Property Agency.

Any association of producers or processors working with the same product, a single natural or legal person provided he is the only producer in the certain area at the time of the application can apply for registration. The application for registration should include the details of the applicant, the description of the product, the definition of the geographical area, the product specifications, the description of the connection between the product and the geographical origin, and the evidence of payment of the fees.



The protection starts from the date of entry in the Register of designations of origin or geographical. The right of use of the designation of origin or geographical indications last for ten years from the date of entry of the authorized user in the Register of Authorized Users and may be renewed indefinitely for 10 years, as long as a designation of origin or geographical indication is registered.

### **9.1.5. Trade Secrets**

Besides trademarks, copyrights, and patents, another method that enables the acquisition of the results of business innovation is the protection of access to information that is valuable for the business and that is not widely known. This valuable information, which is undisclosed and intended to remain so, is called a trade secret.

Law No. 08/L-076 on the Protection of Trade Secrets, which entered into force on June 15, 2022, aims to protect trade secrets from illegal acquisition, use, and disclosure. This law defines a trade secret as information that meets the following requirements:

- it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally or readily accessible to persons within the circles that normally deal with the kind of information in question;
- it has commercial value because it is secret; and
- it has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

Whereas the acquisition of trade secrets, according to this law, is always considered illegal when carried out through unauthorized access, which means the acquisition or copying of various documents, objects, or materials, which contain the trade secret and which are legally under the control of the holder of trade secret, as well as any other behavior which according to the circumstances of the case is considered contrary to honest commercial practices.

Likewise, the use of a trade secret is also considered unlawful when the person has violated the confidentiality agreement or any other obligation not to disclose the trade secret.

Law No. 08/L-076 enables the protection of trade secrets in judicial proceedings. In most of its provisions, the Law defines the procedures, measures, orders, and court decisions, through which it is possible to ascertain or stop the violation of the trade secret, to fine the violator of the trade secret, as well as the adequate compensation for the party damaged by trade secret violation.

It is important that companies draw up agreements with employees, as well as issue relevant decisions and regulations on this matter, to benefit as soon as possible from the implementation of this law.

## 9.2. INTELLECTUAL PROPERTY AGREEMENTS

Provisions concerning intellectual property rights may be found in various types of contracts, including nondisclosure and confidentiality agreements, distribution and manufacturing agreements, IT-related contracts, and joint venture agreements.

Below, we will discuss the three most common types of agreements where intellectual property rights are either the primary focus (transfer of ownership or assignment and license contracts) or a fundamental component (franchise agreements).

### 9.2.1. *Intellectual Property Assignment*

An intellectual property assignment is the transfer of the ownership of intellectual property rights. Patent, industrial design, and trademark regulations include a few dispositions related to assignment. Pursuant to these dispositions, patents, industrial, and trademarks may be transferred.

Trademarks can be transferred as part of the transfer of enterprise ownership or separately. Transfer of trademarks can be done for some or all of the goods and services for which it has been registered.

At the request of one of the parties, the transfer of patent, industrial design, or trademark, may be registered on the corresponding register and published in the IPA bulletin. In regards to patents and industrial design, the transfer shall have an effect against third parties only after its entry in the relevant register. This however does not apply to the Patent if the third parties already had knowledge of the transfer.

Copyright law permits authors and copyright owners to assign their exclusive economic rights and rights to remuneration through copyright contracts. This means that the assignee becomes the new copyright owner. The author cannot however transfer his/her moral rights to another person.



### **9.2.2. License Contract**

An intellectual property license is a contract between an IP rights owner (“licensor”) and a third party (“licensee”) that allows the latter to use the IP rights in exchange for monetary compensation. The scope of the activity and the IP rights licensed should be clearly defined in the agreement. A patent, an industrial design, or a trademark may be licensed for the whole or part of the territory of the Republic of Kosovo. A trademark may be licensed for some or all of the goods or services for which it is registered.

The license may be exclusive or non-exclusive. In the case of an exclusive license, no person or company, other than the licensee, can exploit the licensed IP rights. In the case of a nonexclusive license, the licensor remains free to exploit the licensed IP right or to allow any number of Licensees to do so.

At the request of one of the parties, the license contract may be registered on the corresponding register and published in the IPA bulletin. The license agreement shall have an effect against third parties only after its entry in the relevant register, unless, for patents or trademarks, the third parties already had knowledge of the license.

Copyrights and trade secrets may be licensed through license agreements. However, there is no specific disposition regarding such agreement in Law No. 08/L-205 on copyright and related rights and No. 08/L-076 on the Protection of Trade Secrets.

### **9.2.3. Franchise Agreement**

The franchise agreement is a contract under which the franchisor gives the franchisee the right to commercialize the franchisor’s products or services under its name and system, in exchange for financial compensation.

There are no specific legal requirements for franchising in Kosovo. In absence of local regulations, the European Commission’s Guideline on vertical restraints will be generally used in order to regulate such agreements. There are however a few legal dispositions that apply to a franchise agreement in Law No 08/L-056 on Protection of Competition and in Law no. 08/L-028 on Private International Law.

The Law on Protection of Competition allows an exception to the prohibition of agreements aimed at preventing, restricting, or distorting competition for “vertical agreement”, between enterprises not operating at the same level of production or distribution. Such exception should apply to Franchise agreements under conditions set in Paragraph 2 of Article 5 of the law, in particular if it benefits the market and the consumer and if the impact on competition is relatively minor. Determining the categories of agreements and circumstances which could benefit this exemption should however be further defined in a sub-legal act.

It is worth also mentioning Paragraph 1.5 of Article 76 of the Law no. 08/L-028 on Private International Law, which states, in absence of a choice of the applicable law by the parties, that a franchise contract shall be governed by the law of the state where the franchisee has his/her habitual residence.

# COMPETITION

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## 10. COMPETITION

Kosovo has approved Law No 08/L-056 on the Protection of Competition with the goal of fostering a more competitive market, preserving fair competition, and ultimately promoting a more efficient economy. Kosovo's legal framework, through competition regulation, has established a secure market environment that welcomes the participation of small and emerging businesses, ensuring their safety and providing opportunities for them in the marketplace.

The legal framework has prioritized the protection of free competition in the national market, ensuring that businesses can operate freely. Law No 08/L-056 on the Protection of Competition aligns with EU standards.

Law on Protection of Competition applies to all forms of prevention, restriction or distortion of competition by enterprises, inside or outside Kosovo, if their activity affects the market of Kosovo. Competent for the supervision of competition abuse in the market is The Kosovo Competition Authority (KCA) which is the main authority, responsible for preventing anti-competitive practices, including prohibiting cartel agreements, misuse of dominant position and the regulation of concentration.

KCA over the years has been very active by issuing punitive acts for competition violators to protect competition in the market, ensuring loyal competition in the marketplace.

### 10.1. PROHIBITION OF CARTELS AGREEMENTS

#### 10.1.1. Prohibited Agreements

Agreements that stifle competition or create monopolies are illegal. This includes price-fixing agreements among competitors, market allocation agreements, and agreements that limit the ability of businesses to compete freely.

The Kosovar legal framework protects free competition, so it encourages businesses to operate more efficiently, innovate, and offer better products or services at lower prices.

Law on Protection of Competition prohibits all cartels agreements which aim at preventing, restricting or distorting the competition in the relevant market and in particular those that:

- directly or indirectly impose purchase and sale prices or any other trading conditions;
- limit or control production, market, technical development or investments;
- share markets or sources of supply;
- implement unequal conditions to the same transactions with other commercial enterprises, consequently placing them in an unfavorable competitive position;
- condition the conclusion of the contract with the acceptance of additional obligations by contracting parties that by nature or commercial use are not related to the object of the contract.

If an enterprise or a group of enterprises enters into any prohibited cartel agreements or participates in such agreements, the KCA (Kosovo's Competition Authority) may impose fines. These fines can amount to up to 10% of the total worldwide turnover realized in the last year for which the financial report has been concluded.

### **10.1.2. Exclusions**

*Exclusion of agreements overall beneficial for the market and the consumers:* Prohibition of cartels does not apply to agreements which, for their entire duration contribute to the improvement of the production or distribution of goods or to the promotion of technical or economic progress and allow consumers a fair share of the benefit. In order to achieve these objectives, the agreement should also not impose unnecessary restrictions on the enterprise and should not enable the enterprise to avoid competition for a significant part of the relevant products.

The Law on Protection of Competition includes provisions for the exclusion of certain agreements from its prohibition. These exclusions are categorized into various types, such as vertical agreements, which involve agreements between enterprises that do not operate at the same level of production or distribution. This category encompasses exclusive distribution agreements, selective distribution agreements, exclusive purchase agreements, and exclusivity agreements.

Additionally, horizontal agreements, which are agreements between enterprises operating at the same level of production or distribution, are considered excluded, especially those related to research, development, and specialization. Furthermore, the law provides exclusions for agreements pertaining to the transfer of technology, distribution, and servicing of vehicles, as well as insurance agreements.

Lastly, agreements between enterprises within the transport sector also fall under this category of exclusions. These exemptions aim to strike a balance between encouraging healthy competition and allowing for specific collaborative arrangements that may benefit the market and consumers.

*Exclusion of agreements of minor importance:* Should also be excluded from the prohibition agreements for which both the parties and the enterprises they control have an insignificant market position and their common market share does not exceed

- 10%, for horizontal agreement;
- 15%, for vertical agreement;
- 10% for agreement with both the characteristics of horizontal and vertical agreements or if it is difficult to determine whether the agreement is vertical or horizontal;
- 30%, if the agreements between the different participants have a significant effect on the market and the individual participation of each participant does not exceed 5% of each individual market where the effects of the agreement appear.



## 10.2. PROHIBITION OF MISUSE OF DOMINANT POSITION

The dominant position is not in itself prohibited, only the misuse of the dominant position is. It's essential for businesses that hold a dominant position in a market to understand the rules and obligations related to competition law to avoid engaging in practices that could lead to breach of law.

### 10.2.1. Dominant Position

Pursuant to the Law on Protection of Competition, shall be deemed to have a dominant position, the enterprise which can, in the relevant market, operate significantly independently of current or potential competitors, consumers, purchasers or suppliers.

It is especially in dominant position the enterprise which, in the relevant market, has no significant competitors or has substantial power as compared to current or potential competitors (especially, according to the Law on Protection of Competition, in regard to the enterprise participation and position in the market; the enterprise financial strength; its access to supplies or market; its connection with other enterprises; its ability to impose market conditions on its supply or demand; its ability to exclude competitors from the market by orienting them to other enterprises; or the legal or factual barriers of entrance of other enterprises in the market).

Unless proven otherwise by the enterprise, the enterprise with at least 40% of the relevant market is presumed to have a dominant position. Enterprises whose joint market exceeds 60% of the relevant market, if they operate significantly independently from competitors, consumers, purchasers or suppliers and if they operate together in the relevant market are also presumed to have a dominant position. Under the described threshold (40% for one enterprise or 60% for group of enterprises), the KCA have the burden of proving the dominant position.



### ***10.2.2. Misuse of Dominant Position***

The misuse of a dominant position, also known as abuse of dominance or monopolistic behavior, refers to anticompetitive practices undertaken by a dominant company in a market. When a single company or a group of companies hold a significant share of a market and use their market power to harm competition, consumers, or other market participants, it can be considered an abuse of dominance.

Misuse of a dominant position is prohibited. Pursuant to the Law on Protection of Competition, an enterprise or group of enterprises shall be considered to misuse its dominant position if it:

- directly or indirectly impose an unfair purchase or sale price or other unfair trading conditions;
- restrict production, markets or technological development to the detriment of consumers;
- applies different conditions for equivalent transactions with other enterprises, putting them at a competitive disadvantage;
- conditions the conclusion of the contract with additional obligations that by nature or commercial use are not related to the object of the contract;
- impose prices or other conditions that have the purpose or effect of preventing the entry into the relevant market or the removal from the relevant market of specific competitors or their products;
- deny other enterprise access, in return for adequate remuneration, to the network or infrastructure, making it impossible for it to act as a competitor.

Misuse of dominant position must be asserted by decision of the KCA, which will determine the measures and fines to be taken.

If any enterprise or group of enterprises misuse their dominant position, the KCA will fine the enterprise up to 10% of the total worldwide turnover realized in the last year for which the financial report has been concluded.

### 10.3. CONCENTRATION

#### 10.3.1. Definition

Concentration of competition is an important aspect in the field of economics and market competition. This includes several concepts and strategies that companies and organizations can use to gain market advantage and to survive and grow in a competitive environment.

Concentration is defined by the Law on Protection of Competition as a change of control of enterprises, where one or more enterprises acquire direct or indirect control over all or part of other enterprises, in particular by earning shares or gaining the majority of voting rights. Acquisition of control is made especially with:

- transfer of the ownership, or of the right to use whole or part of the assets of enterprises;
- transfer of rights or contracts that have a decisive influence on the composition, voting or decisions of the bodies of enterprises.

The national law does not consider concentrations:

- the purchase of shares, only for resale within 12 months, by a financial, credit or insurance institution;
- the purchase of shares due to internal restructuring;
- the transfer of control of the enterprise to the bankrupt administrator or liquidator;
- establishment by independent enterprises of a joint venture, where one enterprise coordinates the competitive behaviour of the others.

Concentration that may result in a significant distortion of competition, in particular a dominant position, is prohibited.

#### 10.3.2. Obligation of Prior Authorization of KCA

Concentrations are permitted as long as they do not result in anti-competitive practices and actually enhance competitiveness and competition. KCA is authorized by law to monitor and limit market concentration and anti-competitive actions to protect free competition and consumer preferences.

When companies merge or form alliances, it may reduce competition, lead to higher prices, and limit consumer choices. Therefore, KCA reviews proposed concentrations to ensure they comply with the laws and do not harm competition.

To safeguard competition, when the combined turnover of participating enterprises exceeds the legally mandated thresholds, both at the international and domestic levels, they must seek prior authorization from the KCA, for their proposed concentrations.

The concentration must be permitted to the authority for review if the combined worldwide turnover of the participants is over 20 million and one of the participants has a turnover of over 1 million euros in the domestic market, or if at least two of the participants have over 3 million of turnover on the domestic market. The turnover is calculated according to the financial reports of the financial year that precedes the year of concentration. If the participant is a financial institution, it should include its revenue and the revenue of insurance and reinsurance company.

Concentration should be permitted if KCA deems the concentration does not significantly distort competition or if KCA does not draw conclusions within 30 days after receiving the full application for concentration.

If KCA considers that the concentration may impede effective competition, it shall initiate the concentration assessment procedure. During the assessment, if KCA considers that concentration may only be authorized under conditions, it should notify without delay the applicant, which has 30 days to propose the appropriate measures, conditions and deadlines to avoid harmful effects of concentration. Within 60 days from the conclusion for initiating the concentration assessment, KCA should announce the authorization (with or without conditions and deadlines) or declare the concentration prohibited.

In case the concentration is carried out illegally, contrary to the decision prohibiting it or without submitting the above-mentioned application, KCA shall determine the measures, conditions and deadline for resetting the effective competition. KCA may also:

- order the sale or transfer of acquired shares;
- prohibit or restrict the exercise of voting rights in the participating enterprises in the concentration;
- order the termination of the joint venture;
- prohibit other forms of gaining control that led to illegal concentration;
- impose a fine of up to 10% of the total worldwide turnover realized in the last year for which the financial report has been concluded on the enterprise or group of enterprises that participated.

KCA has demonstrated heightened diligence when it comes to reviewing and granting approvals for mergers and acquisitions. Through its practices, it has proven to be effective in safeguarding and promoting fair competition.



# CONSUMER PROTECTION

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## 11. CONSUMER PROTECTION

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Consumer protection main regulation in Kosovo is the Law No 06/L-034 on Consumer Protection (Law on Consumer Protection). It is in line with EU Directives regarding consumer protection. It aims to regulate the market conditions in business-to-consumer relations, the consumers' rights in relation to contracts and the protection of their interests.

Among its many dispositions, here can be highlighted the regulations related to unfair commercial practices; labels, packaging and indicators of prices; and the consumer rights in relation to contracts.

### 11.1. UNFAIR COMMERCIAL PRACTICES

The law plays a crucial role in safeguarding against unfair commercial practices, encompassing those that are both aggressive and deceptive in nature. These legal safeguards are designed to protect consumers, competitors, and the integrity of the marketplace. Unfair commercial practices can include a range of activities, such as misleading advertising, deceptive pricing, or aggressive sales tactics that could exploit or harm consumers. By setting clear rules and regulations, the law not only establishes ethical standards for businesses but also ensures that consumers can make informed decisions without falling victim to unscrupulous or unethical practices. Ultimately, the law seeks to maintain a fair and transparent commercial environment in which all participants, whether businesses or consumers, can engage with confidence and trust in the marketplace.

In relation to aggressive commercial practice, the Law on Consumer Protection specifies that, in order to determine if a commercial practice uses harassment, coercion or undue influence, shall be taken in account, its timing, location, nature or persistence, the use of threatening or abusive language or behaviour, the exploitation of misfortune or circumstances of the consumer, any non-contractual barrier to the exercise of the consumer's contractual rights, any threat of action that cannot legally be taken.

*Misleading actions:* The Law on Consumer Protection also prohibits misleading actions, meaning false information about the existence or nature of the product and its main characteristics, which deceive or is likely to deceive the average consumer and cause or is likely to cause a transaction. Misleading actions include false information about the price; the need for a service, part, replacement or repair; the nature, attributes and rights of the trader; the consumer's legal right. It also includes marketing creating confusion with products, marks and trade names of a competitor, and non-compliance by a trader to comply with commitments contained in codes of conduct by which the trader has undertaken to be bound.

*Misleading omissions:* The omission of material information (i.e. that the average consumer needs to take an informed transactional decision), may be considered as misleading and therefore is forbidden. Providing the said information in an unclear, unintelligible, ambiguous or untimely manner or if the information fails to identify the commercial intent of the commercial practice, is also considered misleading omission. Limitations set by the trader, including space and time, in order to give access to consumers to the information, must be taken into account in deciding whether information has been omitted.



## 11.2. ADVERTISING AND PROTECTION OF MINORS

*Advertising Responsibility and Quality:* In the realm of consumer protection, businesses are held accountable for the accuracy and quality of goods and services they promote through advertising materials. This ensures that the messages and materials they disseminate accurately represent the quality of what they offer, fostering transparency and trust in advertising and empowering consumers to make informed choices.

*Prohibition of Unsolicited Advertising:* Consumer privacy and choice are protected by laws that prohibit the placement of advertising materials in mailboxes and on doors if consumers have clearly indicated their preference against such deliveries. Additionally, it's not allowed to distribute materials in locations where suitable receptacles are absent, and distributing leaflets on vehicles is also restricted, reinforcing consumer choice and privacy.

*Special Protection for Minors:* To safeguard the well-being and health of minors, the sale, service, or donation of alcoholic beverages and tobacco to individuals under age of 18 is prohibited. Both merchants and consumers must ensure compliance with this regulation. Merchants may refuse to provide these products if they have doubts about the customer's age, unless the consumer can provide valid identification, such as an ID, passport, or driver's license. These measures aim to limit minors' access to age-restricted products.



## 11.3. LABELS, PACKAGING AND INDICATORS OF PRICES

*Label and declaration of commodity:* commodities and services must be labelled including information about the producer and his address, and about the commodity (name, composition, quality, production date, time and manner of use, maintenance, risk). The label must be clear, visible and legible in the official languages.

When commodities or services do not allow labelling, information must be available at the request of the consumer. Additional information is required to be provided by the seller for unpacked commodities, such as instructions for use, guarantee, technical instructions, list of authorised services,

potential dangers, and declaration of conformity. A flag indicating the origin of the product must be placed close to the price.

A declaration of commodity is placed on every commodity, which includes the name of the producer and commodity, the specification of commodity, the production and expiration date, the details of the manufacturer (for domestic commodities) or importer, and the country of origin. All information must be clear, visible and in Albanian and eventually and simultaneously in other official languages.

**Packaging:** : packaging must be safe and adjusted to the weight and size of the commodity. Pursuant to the Law on Consumer protection, plastic bags, used for the transport of purchased commodities, with logo, trademark, slogan or name of producer or trader are promotional material and cannot be charged to the consumer. However, pursuant to Administrative Instruction 07-2023\_on Packaging and Packaging Wastes, plastic bag with handles and of over 25 microns should be charged to the consumer.

**Prices:** selling price and unit price, both including VAT and other taxes, must be indicated in a clear, visible and legible way. For unpacked products packaged, measured in the presence of the consumer, only the unit price must be indicated and must be placed near the commodity. Price for services must be displayed at the sales place, or, if not possible, available in the form of a catalogue, brochure or other adequate manner.

**Sale and discounts:** in cases of sale by action (for a certain amount of commodity and in a particular time and space), an “Action”, “Action sale” or “Discount sale” notice must be placed near the commodity. Discounts must be clearly marked, visible and legible and discount prices must be placed under or above prior prices. Discounted commodities must be separated from others. If the price of a product has been discounted several times, all price changes must be indicated. For discount before expiration, commodities must be separated from others and a “Usable until ...” notice must be placed near them.

#### 11.4. LACK OF CONFORMITY

Consumers are provided with essential rights when dealing with goods that exhibit a lack of conformity. In such cases, they have the right to request that the goods be brought into conformity through repair or replacement at no additional cost. If these remedies are not feasible or haven't been carried out within a reasonable timeframe, consumers can alternatively seek an appropriate reduction in the price or opt for a contract cancellation.

Notably, if a lack of conformity becomes apparent within six months of receiving the goods, it is generally presumed to have existed at the time of delivery, unless the nature of the goods or the specific lack of conformity suggests otherwise. It's important to understand that any prior agreements or terms that waive or limit these rights will not be binding on consumers. In the case of second-hand goods, consumers may agree with sellers on a shorter liability period, but this must be no less than one year. This legal framework ensures that consumers have recourse and protection when faced with non-conforming goods.

## 11.5. CONSUMER RIGHTS IN RELATION TO CONTRACT

Among all consumers' rights set in the Law on Consumers Protection, can be highlighted, without being exhaustive, the following:

### **Information rights:**

*For on-premises contracts, prior to contracting, the consumer must be provided with:*

- the main characteristics of the goods or services;
- the identity, address and phone of the trader;
- the total price, inclusive taxes (or, if not possible to calculate, the way the price will be calculated including costs of transportation, postal fees, and other expenses) and all additional goods, delivery or postal charges (or, if not possible to calculate, the notice that such charges may be obligatory);
- where applicable: the arrangements for payment, delivery and performance; the trader's complaint handling policy; the existence of a legal guarantee of conformity for goods, the existence and the conditions of after-sales services and commercial guarantees; the duration of contract or the conditions for terminating the contract; the functionality, and any relevant interoperability with hardware and software, of digital content.

*For distance and off-premises contracts, prior to contracting, the trader must provide the consumer with:*

- the main characteristics of the goods or services;
- the identity, address (and, if applicable, the address of the place of business), phone and email of the trader and, where applicable, the address and identity of the trader on whose behalf he is acting and where the consumer can address complaints;
- the total price, inclusive taxes (or, if not possible to calculate, the way the price will be calculated, including costs of transportation, postal fees, and other expenses) and all additional goods, delivery or postal charges (or, if not possible to calculate, the notice that such charges may be obligatory);
- for contracts of indeterminate duration or with a subscription: the total costs per billing period, the monthly costs (for contracts charged at a fixed rate), or, where total cost cannot be calculated in advance, the manner in which the price is to be calculated;
- the cost of means of communication for the conclusion of the contract, if not calculated at the basic rate;
- details about payment methods, delivery and performance;
- where applicable:
  - o the trader's complaint-handling policy;
  - o the condition time limit and procedures for withdrawal (see below about right of withdrawal), the model, and, if applicable, the cost of returning the goods;
  - o the information that withdrawal is not possible (see below) or the circumstances under which the consumer loses his right of withdrawal;
  - o the existence of a legal guarantee of conformity for goods;
  - o the opportunity and conditions of after-sale assistance and services;
  - o the presentation of relevant codes of conduct;
  - o the duration, minimum duration, or the conditions for termination of the contract;
  - o the functionality, and any relevant interoperability with hardware and software, of digital content.
  - o the possibility of filing the complaint complaint to extrajudicial mechanisms and the manner to access it

**Confirmation of the contract:** Regarding off-premises contracts, the trader shall provide the consumer with a copy of the signed contract or the confirmation of the contract on paper or, if the consumer agrees, on another durable medium.

For distance contract, the trader must provide with the confirmation of the contract on a durable medium and within a reasonable time after the conclusion of the contract and at the latest at the delivery of the goods or before the performance of the service. Unless already provided, all the information mentioned above must be included in the contract.

**Delivery:** unless agreed differently, goods must be delivered no later than 30 days from the conclusion of the contract. In case of failing to deliver the goods at the time agreed with the consumer, the trader may be fined from 1,000 euros to 10,000 euros.

**Invoices:** seller should provide with an accurate indelible, clear and eligible invoice/fiscal coupon on paper or in electronic format. It must contain the information required under the tax legal provisions.

**Right of withdrawal from a distance or off-premises contract:** the consumer shall have a period of 14 days to withdraw from a distance or off-premises contract, without giving any reason and without incurring any costs other than the direct cost of returning the goods (unless the trader has agreed to bear them or the trader failed to inform the consumer that the consumer has to bear them) and the diminished value of the goods resulting from the handling of the goods other than what is necessary to establish the nature, characteristics and functioning of the goods.

The 14 day period starts from the day of the conclusion of the service contract or from the day of reception of the goods, the last goods (for multiple goods) or the last piece of the goods (for multiple lots or pieces). For regular delivery of goods during a defined period of time, the period starts from the reception of the first good.

For distance contract, if the trader did not inform the consumer of his right of withdrawal (prior to contracting and on the confirmation cf. above), this entitles the consumer to an additional 12 months to withdraw from the contract. If this information is provided to the consumer within this 12-month period, the 14 day period starts from the notification to the consumer of this right. If the trader does not notify the consumer of the right of withdrawal, the consumer shall not be responsible for the reduced value of the goods.



The trader must reimburse the consumer for all payments made in connection with the contract no later than 14 days from the date of the withdrawal notice. If the consumer is not reimbursed within 14 days the trader may be fined from 1,000 euros to 10,000 euros. The consumer is obliged to return the goods to the trader no later than 14 days from the day he has given notice of withdrawal from the contract. The consumer is not charged extra costs due to withdrawal from the contract except for the direct cost of returning the goods.

The consumer is solely responsible for the diminished value of the goods resulting from the handling of goods other than that necessary for determining the nature, characteristics and functioning of the goods.

There are however some cases where the right of withdrawal of distance and off-premises contract does not apply, such as for service contracts after the service has been performed (with the consumer's prior consent and acknowledgement that he will lose his right to withdrawal after the performance); for the supply of goods or services for which the price is dependent on fluctuations in the financial market; for goods made to the consumer's specifications or clearly personalised, or goods which are liable to deteriorate or expire rapidly, in case of supply of digital content which is not supplied on a tangible medium and if the performance has begun and with the prior consent of the consumer, etc.



# E-COMMERCE

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## **12. E-COMMERCE**

In the current wave of e-commerce around the world, many fraudulent individuals or businesses are appearing. This creates a loss of consumer confidence in online shopping and thus harms serious businesses that offer the original products according to customer requirements. Thus legal regulations in e-commerce are vital to protect consumers from fraudulent actors, maintain their confidence in online shopping, and ensure the sustainability of reputable businesses that deliver authentic products as per customer expectations.

E-commerce-related issues are regulated by Kosovo's several different laws and regulations, which are in line with EU regulations. The main Legal regulations are:

- Law No 04/L-094 on Information Society Services (Law on Information Society Services)
- Law No 60/L-034 on Consumer Protection (Law on Consumer Protection)
- Law No 08/L-022 on Electronic Identification and Trust Services in Electronic Transactions (Law on Electronic Identification)
- Law No.06/L-082 on Protection of Personal Data (Law on Data Protection)

This set of legislation deals with several matters in relation to E-commerce such as the obligation of information, electronic invoicing and payment and electronic identification.

### **12.1. OBLIGATION OF INFORMATION**

Some important documents for E-commerce businesses in regard to contracts are:

- Terms and Conditions
- Privacy Policy
- Guide to Withdrawal from Contract
- Withdrawal form from the contract
- Confirmation of order for the buyer
- Cookie Policy

*Terms and Conditions* are the contents of the terms on which the parties agree in respect of their transaction. Customers must agree to the terms and conditions in order to make purchases from the E-commerce platform. There are two ways in which the consumer's consent is obtained: in each case of purchase or when opening an account.



Terms and conditions must contain information on who can make a purchase and the conditions that the buyer must meet (e.g. Age restrictions for making the purchase as well as determining whether the sale is only made to the last customer or even to resellers)

All information that the trader must provide for distance contracts, prior to contracting, must be included.

The language used in the terms and conditions and other parts of the Website must be clear and understandable.

*In addition to the information included in the terms and conditions*, the trader must provide other information on the website, in particular during the selection and when the consumer places his order. For each product, the trader must provide clear information on the characteristics of the product. The customer must also clearly be informed that the order implies an obligation to pay. If placing an order entail activating a button or a similar function, the button or similar function shall be labelled in an easily legible manner only with the words ‘order with obligation to pay’ or a corresponding unambiguous formulation.

Disposition from the Law on Consumer Protection on the sale price and the unit price apply. If the price cannot be calculated, the trader must provide complete information on the way the price is calculated, including costs of transportation, postal fees, and other expenses.

Dispositions of the Law on Consumer Protection on the confirmation of distance contracts, right of withdrawal, delivery and invoices apply (Cf. Section 11.5).

Regarding the deadline within which the consumer has the right of withdrawal, the Law on Information Society Services previously set a deadline of “at least” 7 days. However, Law on Consumer Protection later provided a 14 days period.

**Privacy policy:** When shopping online, businesses collect personal data from customers such as: name and surname, delivery address of the goods, telephone number, bank account, notes for bank card, etc. In this regard, businesses should be extremely careful about the legality of the collection and processing of the data. The Law on Protection of Personal Data foresees fines up to 40,000 euros or 2% to 4% of the general turnover of the previous fiscal year in accordance with GDPR. Businesses should therefore compile their Privacy Policy in accordance with legal provisions in order to notify consumers about personal data collected, the manner of processing, the legality of the processing, the right to delete these data and other rights guaranteed by law (**cf. 13. Data Protection**)

**Cookies Policy:** This important document also relates to the protection of personal data of consumers. It is sometimes included in the Privacy Policy but often is a separate and distinct document. Websites collect cookies set by users during access and navigation to the website. Some of these cookies are essential while others are alternative. They are used to better identify the user as well as to understand his access for marketing purposes. When collecting data (cookies) from users, consent must be obtained. The notice of giving consent should be clear and understandable. Users should be left the possibility to consent only to certain cookies (necessary) or to all the cookies. Users should also have the option of not giving consent to the collection of cookies.

## 12.2. INFORMATION SOCIETY SERVICES

Information Society services are any service provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services. This includes for example services such as social networks, booking services, on-demand video services, gaming apps, web hosting, etc.

This, for example, does not include:

- services which, even though they may require the use of electronic devices, are not performed at a distance, such as medical examination or treatment, automatic cash, car parks;
- services not provided via electronic means, such as services provided by telephone or fax;
- services not provided at individual request, such as radio or television broadcasting, etc.

The service provider should offer, in an easy and accessible way, its name, address, details (including email and URL), trade registration details, VAT tax number. If the activity of the provider is subject to authorisation or for regulated professions, additional information is required, such as the supervisory authority or the professional body or institution.

All commercial communications part of an information society service must be clearly identified as such. Must also be identified, the natural or legal person on whose behalf the commercial communication is made, the promotional offers, competitions or games and their conditions.

In regard to contracts concluded by electronic means, the Law on Information Society Services also specifies that, unless agreed differently by the parties who are not consumers, the recipient must be informed:

- prior to the contract of the technical steps for the conclusion of the contract; the eventual filing of the contract by the provider and its accessibility; the means for identifying and correcting input errors prior to the placing of the order; the languages offered for the conclusion of the contract;
- if existing, any codes of conduct to which the provider subscribe and how to consult them electronically.

This obligation of information does not apply to contracts concluded exclusively by exchange of electronic mail or individual communications. The same law also states that contract terms and general conditions must be made available in a way that the recipient can store and reproduce them.

### 12.3. ELECTRONIC INVOICING AND PAYMENT

Details included in electronic invoicing are set by the Law on Information Society. This includes the date of issue; a sequential number; The VAT no. (if applicable); the name and address of the taxable person and customer; quantity; price; and nature of the goods or services; the date of supply of goods or completion of service or of payment on account (if a date can be determined and differs from the date of invoice); the taxable amount, the unit price exclusive of tax, any discounts not included in the unit price, the rate of VAT applied; the amount of VAT to be paid.

It is not obligatory to sign the invoice.

Invoices may be sent on paper, or, subject to an acceptance by the customer, by electronic means. Authenticity and origin of Invoices by electronic means shall be guaranteed by means of advanced or qualified electronic signature (cf. below), or, if required, by means of electronic data interchange (EDI - electronic transfer from computer to computer of information using an agreed standard). If the customer explicitly agrees, invoices may be sent by other electronic means.

### 12.4. ELECTRONIC IDENTIFICATION

In line with Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on Electronic Identification and Trust Services for Electronic Transactions in the Internal Market and repealing Directive 1999/93/EC, the new Law No 08/L-022 on Electronic Identification and Trust Services in Electronic Transactions (“Law on Electronic Identification”) repealed the disposition of Law on Information Society related to the use of signature (Chapter XIII).

The new Law on Electronic Identification defines electronic identification as the process of using person identification data in an electronic form uniquely representing either a natural or legal person, or a natural person as a representative of a legal person.



Electronic identification should only be initiated by the person subject to identification. Electronic identification includes means of identification such as electronic signature and electronic seal.

#### **12.4.1. Electronic Signature**

The electronic signature is data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign. The signatory is a natural person.

The electronic signature cannot be used if not allowed by a special law and:

- in the field of family law and inheritance law;
- in legal actions which require public legalization, a notarial act or a court authorization;
- in legal actions related to bail for conditional release;

Electronic signatures are divided into simple, advanced and qualified signatures.

**Simple electronic signatures** do not need any identification verification and therefore provide little level of verification. The simple electronic signature is however valid and acceptable, and the validity or the weight of the proofs may not be denied solely because it is in an electronic form and does not meet a higher standard (qualified electronic signature).

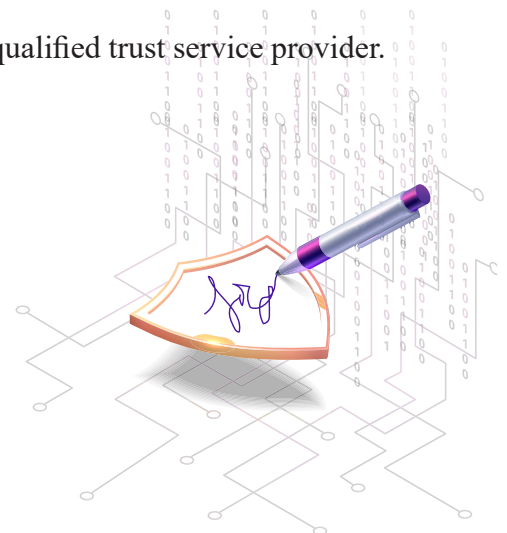
**Advanced electronic signature** must meet the following requirements:

- be uniquely linked to the signatory;
- be capable of identifying the signatory;
- use data to create an electronic signature, which are solely under the control of the signatory;
- be linked to the data that it signs, in a way that would detect any subsequent change in them.

Qualified electronic signature is an advanced electronic signature that is based on a qualified certificate for electronic signature and is created by a qualified electronic signature creation device. The qualified electronic signature has the equivalent legal effect of a handwritten signature. It is the highest level of security for electronic signatures. The signatory has the sole control of the keys used to create the signature.

The qualified certificate for electronic signature must be issued by a qualified trust service provider. It shall contain:

- the indication that it is a qualified certificate;



- the data on the qualified trust service provider and its country of registration;
- the details of the signatory, if a pseudonym is used, it shall be clearly indicated
- the electronic signature validation data that corresponds to the electronic signature creation;
- the information identifying the certificate's period of validity;
- the qualified trust service provider's certificate identity code;
- the advanced electronic seal or signature of the issuing qualified trust service and where the certificate supporting the said seal or signature is available free of charge;
- the location of the services that can be used to enquire about the validity status of the qualified certificate;
- an indication that the electronic signature creation data related to the electronic signature validation data is located in a qualified electronic signature creation device.

#### ***12.4.2. Electronic Seal***

The electronic seal is data in electronic form, which is attached to or logically associated with other data in electronic form to ensure the latter's origin and integrity. An electronic seal relies on the same mechanisms as an electronic signature, however, unlike electronic signature, the creator of the seal can only be a legal person. Like electronic signatures, electronic seals can be simple, advanced or qualified.

The simple electronic seal is valid and acceptable, and the validity or the weight of the proofs may not be denied solely because it is in an electronic form and does not meet a higher standard (qualified electronic signature).

Advanced electronic seals must meet the same requirements as advanced electronic signatures.

A qualified electronic seal is an advanced electronic seal that is based on a qualified certificate for electronic seal and is created by a qualified electronic seal creation device. It shall enjoy the presumption of integrity of the data and of correctness of the origin of that data to which the qualified electronic seal is linked. A qualified electronic seal issued in an EU Member State shall be recognised as a qualified electronic seal in Kosovo. The requirements for qualified certificates for electronic seals are similar to the ones for qualified certificates for electronic signatures (see above).





# DATA PROTECTION

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## 13. DATA PROTECTION

Data protection is regulated in Kosovo by The Law on Protection of Personal Data No.06/L-082 (“Law on Data Protection”) entered into force on 13 February 2019. It transposes the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (GDPR) on the protection of natural persons with regard to the processing of personal data and on the free movement of such data. Another law that includes several dispositions related to the protection of personal data is Law No. 04/L-109 on Electronic Communications (“Law on Electronic Communications”).

### 13.1. LAW ON DATA PROTECTION

The Law on Data Protection applies to the processing of personal data by public and private bodies and the processing of personal data in diplomatic and consular offices, including any representative office of Kosovo abroad.

The overall control over the purpose and means of the data processing is exercised by the data controller (“controller”). The controller can be a natural or legal person, a public authority, an agency or another body.

The competent authority for the supervision of the implementation of the legislation on personal data protection is the Information and Privacy Agency (“AIP”). It also provides advice to public and private bodies and informs the public on issues related to data protection. The law does not require any registration of processing of personal data to AIP. However, AIP is mandated to deliver and withdraw certification to organizations processing data. AIP may also impose fines to the data controller, up to 40,000 euros for minor violations or 2 to 4% of the annual turnover of the previous year for serious or great violations.

The Law on Data Protection sets in particular the main principles and requirements for data processing; the data subjects’ rights, the obligations of the data controllers and processors; and provides rules governing the international transfer of data.

#### *13.1.1. Main Principles and Requirements*

The law on Data Protection sets the main principles which apply to personal data processing:

- **Lawfulness, fairness and transparency;**
- **Limitation** to data collection to specified, explicit and legitimate purpose;
- **Minimisation:** collection and process only of adequate and relevant data and within the purposes of collection and process;
- **Accuracy:** accurate and up-to-date data. If not, data should be erased or rectified;
- **Storage limitation** of data to the purpose for which they are collected or processed;
- **Integrity and confidentiality** of data process, in particular, protection against unauthorized or unlawful processing and against accidental loss, destruction or damage;
- **Accountability** of the controller of the data for all above-mentioned principles.

Processing of personal data is lawful if the data subject has freely given consent to the processing of his or her data for one or more specific purposes. Processing the personal data of a child under 16 is only possible if the holder of parental responsibility over the child has given consent.

Process of personal data without the subject consent may, however, be legal in certain cases defined by the law, such as when necessary for the performance of a contract, or if the processing is necessary to protect vital interests, to perform a task carried out in the public interest, or for legitimate interests (e.g. data are used in an expected way and there is a minimum impact on privacy).

The data subject can withdraw his consent at any time. The Withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal.

Without the subject explicit consent, specifically prohibited is the processing of:

- Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership;
- Data concerning a natural person's sex life or sexual orientation;
- Genetic or biometric data for the sole purpose of identifying a natural person;
- Data concerning health;
- Law on Data Protection however sets several exceptions to these prohibitions

The data subject may however give explicit consent to the processing of the above-mentioned data unless the relevant legislation provides that the prohibition may not be lifted. Law on Data Protection also sets other exceptions to this prohibition, such as:

- When necessary, in the field of employment, social security and social protection;
- To protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent;
- Within certain limitations, for non-profit organizations;
- If processing is necessary for legal claims or courts action,
- For public interest, medical and health reasons,
- For archiving purposes in the public interest, scientific or historical research or statistic purposes.

Even in the above-mentioned exceptions, Law on Data Protection sets limits to the processing, which, in particular, must be performed in compliance with the protection of the rights and fundamental interests of the data subject.

### 13.1.2. Data Subjects' Rights

#### • Right to access:

In any case, the data subject shall have confirmation as to whether or not his or her data are being processed, and if so, access to it and to some information such as:

- the purpose of the processing;
- the identity and contact details of the controller and the contact details of the data protection officer (if applicable);
- the categories of data;
- the recipients or categories of recipients of the personal data;
- the period of storage or, at least, the criteria used to determine it;
- the existence of the right to rectification, deletion, restriction and objection (see below) and of the right to lodge a complaint with AIP;
- In case the controller intends to transfer the data to a third country or international organization, the data subject should be informed of it and of his rights relating to the transfer;
- the right to withdraw consent to process personal data
- the existence of automated decision-making, including profiling, its significance and envisaged consequences.

If there are statutory or contractual requirements to collect data, the **data subject, whose information is collected**, must be informed of such requirements and their consequences.

**When data are not collected from the data subject**, the controller must inform the subject of the source of personal data, and if applicable, whether it came from publicly accessible sources. In this hypothesis, the right to information does not apply in certain situations, such as when the data subject already has the information; or when the provision of such information proves impossible or would involve a disproportionate effort (especially for archiving purposes in the public interest, scientific, historical or statistical purposes); when there is, regarding the data, an obligation of professional secrecy.



**• Rights to rectification and deletion**

The data subject has the right to obtain from the controller the rectification of inaccurate personal data concerning him or her, and the right to have incomplete data completed including by providing a supplementary statement.

The data subject has the right to obtain deletion of his or her personal data if he or she withdraws consent. Law on Data Protection also sets other grounds for the right to deletion, such as when the personal data are no longer necessary in regards to the purpose of the process; the data subject objects (cf. below, right to object); the personal data has been unlawfully processed; the data must be erased in compliance with a legal obligation, etc.

However, the right to deletion shall not apply in certain situations, including when processing is necessary for exercising the right of freedom of expression and information, for compliance with a legal obligation or for public interest, for public health reasons, for archiving purposes in the public interest, for legal claims.

**• Right to restriction**

As an alternative to deletion, the data subject has the right to restrict the processing of their personal data when:

- the accuracy of the personal data is contested by the data subject;
- the data has been unlawfully processed;
- the controller no longer needs the personal data but the data subject requires it to establish, exercise or defend a legal claim;
- the data subject has exercised his or her right to object (see below) pending the verification of whether the legitimate grounds of the controller override those of the data subject.

If data is restricted, except to store it, data can only be processed with the data subject's consent; or for the establishment, exercise or defence of legal claims; or for the protection of the rights of another person (natural or legal); or for reasons of important public interest.



### ***13.1.3. Obligation of Data Controller and Processor***

#### **• Controller**

The data controller (“controller”) is any natural or legal person, public authority, agency or other body which, alone or jointly, determines purposes and means of personal data processing.

The controller shall implement measures to ensure compliance of processing with the Law on Data Protection. The controller shall implement appropriate technical and organisational measures, such as pseudonymization, and data minimisation, and integrate the necessary safeguards in order to protect the rights of data subjects.

The controller shall implement appropriate technical and organisation measure to ensure that, by default, only personal data which are necessary for each specific purpose of the processing are processed. Personal data should not be made accessible without the individual’s intervention to an indefinite number of persons.

In the case the controller becomes aware of a personal data breach, the controller shall, if possible, within 72 hours, notify the Information and Privacy Agency, unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons.

If the personal data breach is likely to result in a high risk to the rights and freedoms of natural persons, the controller must communicate the data breach to the data subject without undue delay, unless:

- the controller has implemented protection measures, in particular rendering the data unintelligible, such as encryption;
- the controller has taken measures to ensure that the risk is no longer likely to materialise;
- it would involve disproportionate effort whereas a public communication would be sufficient to ensure effective information of the data subjects.

If processing is carried out by a processor the controller shall use only processors providing sufficient guarantees to implement measures to ensure compliance of processing to the Law on Data Protection and protection of the rights of the data subject.

#### **• Processor**

The data processor (“processor”) is a natural or legal person, from the public or private sector who processes personal data for and on behalf of the data controller.

The processor must be appointed by a binding agreement with the controller, which states that the processor must:

- only act on the controller’s documented instructions;
- impose confidentiality obligations to all personnel who process the relevant data;
- ensure the data safety of the processed personal data;
- respects rules related to the appointment of sub-processors (see below);
- implement measures to assist the controller in complying with the rights of data subjects;
- at the choice of the controller, delete or return all the personal data to the controller at the end of service, and delete existing copies (unless Law on Archives requires data storage);

- provide the controller with all information necessary to demonstrate compliance with the above-mentioned obligation and allow for and contribute to audits conducted by the controller or another auditor mandated by the controller.

The data processor may act only within the constraints of the controller's authorizations and is not entitled to process personal data for other purposes.

The processor shall notify the controller without undue delay of any personal data breach.

The processor shall not engage another processor (sub-processor) without prior specific or general written authorisation of the controller. In the case of general authorisation, the processor shall inform the controller of any intended changes concerning the addition or replacement of other processors, thereby giving the controller the opportunity to object to such changes. In the case of specific authorisation, the obligation applicable to the processor applies to the sub-processor, but the initial processor remains fully liable to the controller.

Processors and if applicable, their representatives, must keep records of their processing activities performed on behalf of the controller

In case of a dispute between the data controller and processor, the processor should, upon the controller's request, return all the data, without any right to keep copies or any right of further process.

#### • **Representatives of controllers or processors not established in Kosovo**

If the controller or processor is not established in Kosovo, the controller must designate in written a representative in Kosovo. There is however some case when this obligation however doesn't apply, to processing on a small scale which does not involve prohibited personal data, and to public authority or body.

The representative must be mandated by the controller or processor to be addressed in addition to or instead of the controller or the processor.

#### • **Personal data safety**

In order to achieve an appropriate level of security to ensure the protection of the data subject's rights, the controller or the processor may use:

- pseudonymization and encryption of personal data;
- ongoing reviews of security of processing systems and services;
- redundancy and backup abilities;
- regular security tests, assessments and evaluations.

Should be taken into account, in particular, the risks that may result from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data.



#### *13.1.4. International Transfer of Data*

The transfer to other countries and international organizations of personal data that are processed or are intended to be processed after transfer may take place if the country or the international organization in question ensures an adequate level of data protection. The list of such countries is established by the Information and Privacy Agency.

The Information and Privacy Agency may, however, authorize the transfer or the disclosure of personal data to a country or international organization not ensuring an adequate level of data protection if:

- it is so provided by another law or binding international treaty
- the data subject has given his or her consent;
- the transfer is necessary for the performance or implementation of a contract between the data subject and the controller or of a contract concluded in the data subject's interest;
- the transfer is necessary for public interest, for the protection of the vital interest of the data subject, for the establishment, exercise or defence of legal claims;
- the transfer is made from a public register;
- the data controller adduces adequate safeguards for the protection of personal data and the fundamental rights and freedoms of individuals as regards the exercise of adduced rights.



### 13.2. LAW ON ELECTRONIC COMMUNICATIONS

The Law No. 04/L-109 on Electronic Communication (“Law on Electronic Communications”) which includes specific dispositions related to the processing of personal data.

For example, regarding the confidentiality of communications, can be highlighted the two following dispositions:

- the use of electronic communications networks to store information or to gain access to information stored in the terminal equipment of a subscriber or user is only allowed on condition that the subscriber or user concerned is provided with clear and comprehensive information such as the purposes of the processing, and is offered the right to refuse such processing by the data controller.
- Entrepreneurs should take measures on the electronic communications systems and data processing systems to keep the secret of electronic communications and personal data, as well as to prohibit unauthorized access to the electronic communications systems and data processing systems.

Among other dispositions, the law on Electronic Communications also sets the principles of:

- deletion of traffic data when no longer needed for the purpose of the transmission of communications; information of the types of traffic data processed and duration of such processing;
- Processing for the purpose of marketing electronic communications services only for the duration necessary for this purpose and the possibility of the user or subscriber to withdraw his or her consent at any time;
- Information of the subscriber or user of the types of traffic data processed and duration of the processing;
- Information of the users or subscribers, prior to the consent, of the type of location data processed and whether the data will be transferred to a third party;
- Possibility of the user or subscriber to withdraw his or her consent for the processing of location data at any time.





# ENVIRONMENTAL LAW

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## **14. ENVIRONMENTAL LAW**

In order to implement EU Standards and the environmental provisions of the Stabilization and Association Agreement, Kosovo has adopted numerous environmental legislations and regulations in a very short period of time. The main principles of Environment Protection are set in Law No. 03/L-025 on “Environmental Protection”. These principles are also enshrined in other laws that regulate the area of environmental law. Some of these principles are:

1. Principle of Sustainable Development;
2. Principle of Integration on Environmental Protection;
3. Principle of Precaution and Prevention;
4. Principal of Gradual Harmonization with EU Standards;
5. Principle of Consistency with EU Law;
6. Principle “Polluter Pays”;
7. Principle of Public Access to Information etc.

Pursuant to Law No 04/L-175 on the Inspectorate of “*Environment, Waters, Spatial Planning and Construction*”, the Inspectorate of Environment Protection is the state body that performs, at central and local levels, environmental inspection, in order to ensure the respect of the norms and standards of environmental legislations and their implementation. Inspectorate has the power to pronounce fines and to initiate criminal proceedings for violation of environmental laws.

Among all environmental obligations which applies while setting up a business or an industrial project, it is important to highlight the licensing system: Kosovo has developed a comprehensive set of environmental management tools based on environmental licensing and water rights.

### **14.1. ENVIRONMENTAL LICENSING**

Project such as infrastructure and industrial project, construction project, mining, agriculture, energy, forestry and water project requires specific administrative environmental permits.

The Ministry of Environment and Spatial Planning (MESP) issues environmental permits, environmental consents, integrated licenses, and Environmental authorizations. Municipalities are responsible for municipal environment permits.



### ***14.1.1. Environmental Consent***

Environmental consent is issued by MESP as a precondition for the implementation of a project. Issuance of a construction permit or other permit in relation to projects subject to EIA (Environmental Impact Assessment) is conditioned to environmental consent. In order to obtain environmental consent, the applicant must submit an Environmental impact assessment (EIA) report to MESP.

Environmental Impact Assessment (EIA) will assess the environmental consequences of a project or development proposal. According to Kosovar regulation, it should be done for all projects that may result in major environmental pollution or constitute a risk to human health. It covers the projects in industry, mining, energy, traffic, tourism, agriculture, forestry, water management, and communal activities, and all the projects planned on the protected natural goods and in the protected environment values and on surrounding of culturally protected values. Without Environmental Impact Assessment, the project execution may not start.

The procedure for EIA is described in Law No 08/L-181 on Environmental Impact Assessment, which abolishes the previous legislation on this matter. The review of applications for EIA is done by the EIA Commission.

The new Law provides an extensive list of projects which are mandatory subject to EIA procedures, and of the projects that are examined case by case. In regard to the latter, in order to determine if a project may be subject to EIA, the applicant must provide information on the features of the project, the possible consequences for the environment, and the measures envisaged to avoid or prevent negative environmental consequences.

Penalty provisions of Law No. No 08/L-181 include fines from 20.000 to 40.000 euros for legal entity, 1.000 to 4.000 euros for the natural person responsible of the legal entity, in particular if it has started the project without performing the EIA, if has submitted false data, statement, document or information, or in case of failure to fulfil obligations for protection measures foreseen in EIA report.

### ***14.1.2. Environmental Permit***

Start of operation of constructed facilities, installations, and machinery that have been subject to EIA is conditioned to a previous Environmental Permit from the MESP. An Environmental Permit for operation shall be issued for a five-year period and during the application procedure and probation period for the technical approval, but not later than six months after starting of operations.

Procedure (*application, review and decision*) for environmental is described in AI No. 04/2022-MESP "On Environmental Permit". Applications are reviewed by Commission for review of the application for environmental permits.



### ***14.1.3. Integrated License***

Running of plants and activities that may have negative impact on human health and environment shall require an integrated license in order to prevent and control the environmental pollution.

Procedure (application, review and decision) for integrated licenses is described in Law No. 03/L-043 “on integrated Prevention Pollution Control”. According to the Law, permit requirement includes: all appropriate measures to prevent pollution; the use of best available techniques, good standards in term of waste managements, use of water and energy; prevention of accident and limitation of their consequences in regard to human health and environment; the necessary measures, in case of cessation of activity, to avoid any risk of pollution and to return the site of the installation to a safe, clean and natural condition

A permit shall be valid for a period of ten years. MESP shall review the conditions of a permit after every five years and also when deemed necessary in regards to: the pollution caused by the installation; changes in the best techniques available; new information that the operation requires other techniques to be used, changes in law which applies to the conditions of the permit.

The law stipulates fines ranging from 15,000 to 50,000 euros for entities found operating without MESP authorization.

### ***14.1.4. Environmental Authorization***

Operation of all activities which are not subject to Environmental consent or permit or integrated license, but could however cause an environmental disturbance, is subject to environmental authorization from the Ministry.

The procedure (application, review and decision) for environmental is described in AI No. 01/2021 “On Environmental Authorization”. Applications are reviewed by Commission for evaluation and issuance of Environmental Authorization.

### ***14.1.5. Municipal Environmental Permit***

Activities that are not subject to the above-mentioned authorization, but could cause environmental devastation, are subject to municipal environmental permit (MEP). The purpose of such a permit is to prevent or reduce the negative impact on the environment of public and private projects.

The procedure (application, review, and decision) for is described in AI No. 01/2017-MESP “For the Release of Municipal Environmental Permit”. The review of applications is done by a Commission established by the Director of the respective municipality.

Issuance of construction permits and development of relevant activities are conditioned to MEP. Termination of the MEP validity is made if the applicant does not begin the implementation of the project within 2 years.



## 14.2. WATER RIGHTS

Water rights are the legal right to use water from a specified water source. It can be issued through concessions or water permits.

### 14.2.1. Water Permit

Water permit is the right granted for using or discharging an amount of water, for a purpose and certain time. Ministry of Environment and Spatial Planning (MESP) issues water permits.

According to Law No. 04/L-147 on Waters of Kosovo, a Water permit shall be issued for:

- extracting water for general consumption;
- discharge of polluted waters;
- construction, reconstruction, or demolition of buildings and equipment that affect the water regime;
- activities of mining and geological works that affect the water regime;
- hydro-geologic research and collecting data;
- exploitation of sand, gravel, stone, and argil;
- use of water in order to use electrical and geothermal energy; and
- other activities that may affect the water regime.

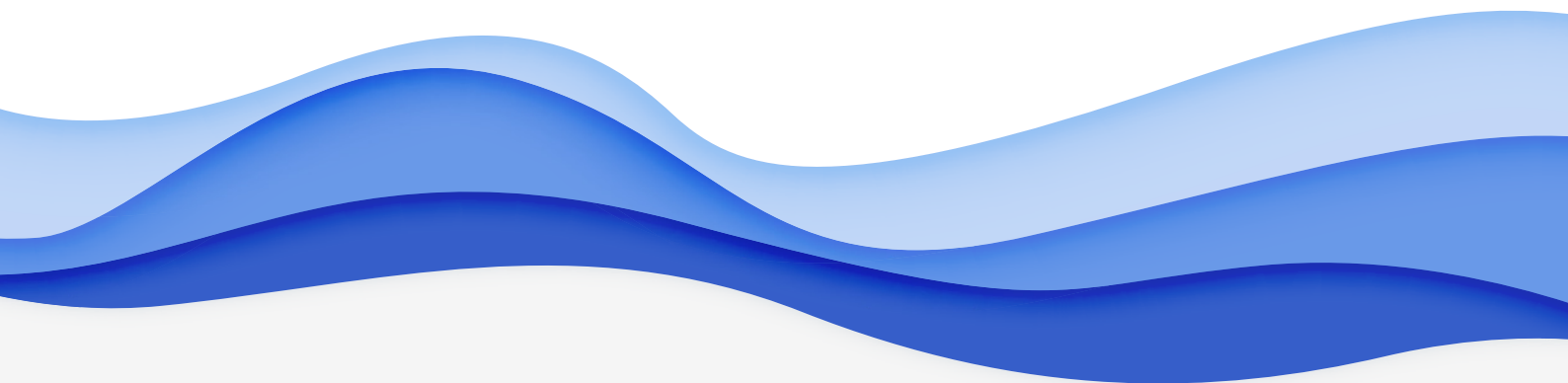
Water permits shall in particular determine the destination, method, and conditions of water use, discharge of contaminated waters, the work regime of objects and plants, and dumping of solid and liquid waste.

Procedure (*application, review, and decision*) for water permits is described in AI No. 03/2018 on procedures for Water Permits.

Depending on the type of facility and equipment, and the purpose of the water use, a water permit shall be issued for a period of no longer than 15 years, except for a permit of extraction of sand, gravel and stone from the river basins and shores of surface water bodies, which is issued for only one year, with the possibility of extension. In the case of issuing water permits for the energy needs, the permit term may be up to 40 years.

The water permit shall be revised at least every 5 years.

Violation of disposition of Law No. 04/L-147 related to the requirement of a water permit shall be fined for natural persons from 10.000 to 50.000 euros, and from 50.000 to 100.000 euros for legal persons.



### ***14.2.2. Water Concession***

Water concession is the contract which allows the holder of the concession to enjoy any exclusive right to extract, use and discharge of water, under the terms of the concession.

According to Law No. 04/L-147 on Waters of Kosovo, business activities conducted with the use of water from surface and underground water bodies shall be realized through the award of concession. Concession shall be issued for:

- use of water for irrigation systems;
- use of water power for generation of electricity;
- use of water for technological needs;
- use of mineral and thermal waters;
- filling water in bottles, for commercial needs;
- cultivation of fish and waterfowls;
- offering touristic and sports services as well as other recreational services with the construction of facilities and permanent equipment.

Concessions are awarded through public competition.

# ENERGY SECTOR

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## 15.ENERGY LAW

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Kosovo relied on coal power plants for many years to meet its energy needs. Nevertheless, Kosovo has made significant strides in shifting its energy generation from thermal power plants to renewable sources in recent years.

Kosovo's commitment to generating 35% of its energy from Renewable Energy Sources (RES) by 2031 represents a significant shift towards sustainability and environmental responsibility. This ambitious target aligns with global efforts to combat climate change and establishes an exceedingly attractive and supportive environment for investment in the energy sector.

Like many developing countries, Kosovo has a growing demand for energy. This demand is driven by population growth, urbanization, and industrialization.

Kosovo has considerable potential for renewable energy development, particularly in solar and wind power. Kosovo gives a special focus on Renewable Energy Sources. This fact has led many global investors to invest in and support renewable energy projects in Kosovo. Such an initiative is being supported by Kosovo while creating different positive policies.

The geographical location of Kosovo provides opportunities for regional energy integration with neighboring countries. This can enhance energy security and open up other opportunities for energy trading.

While in the process of upgrading and modernizing its energy infrastructure, which includes power generation, transmission, and distribution systems, Kosovo presents substantial opportunities for improving energy efficiency, especially in the residential and industrial sectors.

Due to the liberalization of its energy market, Kosovo has taken serious steps to make it more competitive. This has opened doors for many private investors to participate in the market and contribute to its sustainable development.

The government has been working on legislation and policy initiatives to encourage the transition to cleaner and more sustainable energy sources, promote market liberalization, and attract private sector investment. The Law on Foreign Investment protects, promotes, and encourages foreign investment in the Republic of Kosovo, providing foreign investors with a set of fundamental rights and guarantees to ensure foreign investors that their investments will be protected and treated with fairness in strict accordance with the accepted international standards and best.

The legal and regulatory framework of the energy sector in the Republic of Kosovo is shaped by Kosovo's membership in the Energy Community and its aspiration to be integrated into the European Union.



## 15.1. FURTHER INSIGHTS INTO KOSOVO'S ENERGY SECTOR

Kosovo's energy landscape is rich in potential, with a strategic geographical location, abundant renewable resources, and a supportive regulatory environment. It offers a promising outlook for forward-looking investors interested in harnessing the transformational potential of renewable energy.

**Energy Production and Demand:** According to the Energy Regulatory Office's Annual Balance of Electricity and Thermal Energy 2023, Kosovo is projected to generate 5,540.1 GWh of electricity from conventional power plants, while an additional 233 GWh will be sourced from renewables, mainly wind and solar. At present, Kosovo has roughly 263 MW of renewable energy capacity. The anticipated electricity demand in Kosovo for the same period is estimated at 7,021.7 GWh.

**Renewable Energy Perspective:** Kosovo's renewable energy sector offers an exceptional investment opportunity, particularly wind and solar power. The country has achieved significant milestones in its renewable energy journey in recent years. Below, you'll find more detailed information about Kosovo's wind and solar energy developments

**Wind Energy:** Wind energy production is a rapidly growing segment of the global energy landscape. In Kosovo, investments in wind energy have notably increased in recent years. Currently, there is an installed wind energy capacity of 137 MW, with several projects in the pipeline.

Kosovo's commitment to wind energy development, complemented by a favorable investment climate, regulatory support, government incentives, and a rising demand for clean energy, presents attractive prospects for investors. International developers are actively engaged in additional wind projects, offering a promising future for wind energy investments that contribute to economic growth, sustainability, and environmental advancement.

**Solar Energy:** Kosovo's geographical position makes it an ideal location for both small-scale and large-scale solar photovoltaic (PV) projects. The pace of solar project development in Kosovo is on the rise, with growing interest from investors looking to engage in new solar capacities across the country.

With a strong focus on renewable energy sources (RES), Kosovo stands as an inviting destination for investors and developers eager to participate in shaping the future energy infrastructure.



## **15.2. KOSOVO'S FIRST SOLAR AUCTION**

The Ministry of Economy recently conducted its first solar auction, focusing on awarding a guaranteed purchase price for electricity generated from a 100 MW Solar Photovoltaic Plant to be constructed on public land. It is envisioned to be the first of many renewable energy auctions to come.

The strategic aim is to establish competitive pricing, reduce costs, enhance access to affordable and sustainable energy, and bolster transparency in energy procurement. The auction contract will be awarded based on the lowest guaranteed purchase price.

By choosing to strategically hold auctions, the Government of Kosovo is seeking competitive renewable energy price setting, lower costs, expanding access to affordable and sustainable energy, and increasing the transparency of energy procurement.

## **15.3. ENERGY STRATEGY OF THE REPUBLIC OF KOSOVO 2022-2031**

By its approved Energy Strategy, Kosovo is committed to achieving a 35% share of renewable energy generation by 2031 and aims for carbon neutrality by 2050.

A key element of this strategy involves implementing market-based solutions, particularly competitive auctions, to deliver new renewable energy sources at affordable rates.

## **15.4. DRAFT LAW ON THE PROMOTION OF RENEWABLE ENERGY SOURCES**

Kosovo is actively developing legislation to promote the use of renewable energy sources across various sectors. This law aims to fulfill energy needs, bolster energy security, and enhance environmental protection. It includes provisions for feed-in premiums, feed-in tariffs, and power purchase agreements lasting 15 years.

As a result, it is notable that the business environment in the Republic of Kosovo is becoming one of the most competitive in the region. A quick and easy business registration process, favorable tax regimes, an excellent legal system, and transparent laws on foreign investment are just some of the advantages that make Kosovo an attractive and friendly destination for international and local renewable energy investors.





A particular emphasis should also be placed on these key-facts:

1. Renewable energy development is a government priority;
2. Kosovo has a goal to develop 1300 MW of new renewable energy capacities by 2031;
3. Kosovo has committed to delivering 35% of the electricity consumption from renewables by 2031;
4. New, contemporary Law on Renewable Energy Resources facilitates broad investment;
5. Kosovo is dedicated to meeting EU decarbonization obligation.





# BANKRUPTCY

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## **16.BANKRUPTCY**

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Bankruptcy in the Republic of Kosovo is governed by Law No. 05/L-083 on Bankruptcy, serving as a pivotal legal process that provides businesses with a path to relief from financial obligations when they are unable to meet them, as they lose their solvency. This legal framework plays a crucial role in Kosovo's legislation, aiming to foster entrepreneurship, reduce the stigma surrounding business failures, and, ultimately, create a more favorable economic environment.

### **16.1. OUTCOMES**

Bankruptcy proceedings in Kosovo can result in two key outcomes: reorganization and liquidation.

#### ***16.1.1. Reorganization***

Reorganization is a bankruptcy procedure designed to assist a debtor in regaining financial stability within a specified timeframe and resuming business operations. Its primary goal is to prevent liquidation, preserve business viability, and promote economic stability and growth. This process allows financially distressed companies to restructure their operations by revising costs, production methods, and services, aiming to meet obligations to creditors and maintain their economic activities.

The reorganization process begins with a voluntary request by the debtor, who files the reorganization plan. The reorganization procedure is however mandatory for Small and Medium-sized Enterprises (SMEs) (prior to any liquidation procedure) and SMEs are required to submit a reorganization plan within thirty days of commencing bankruptcy proceedings. This plan, initially drafted by the debtor, undergoes a review and approval process by the court, with the involvement of creditors. The plan is approved only if it gains the support of at least 50% of the creditors through a voting process.

Throughout the reorganization process, the debtor retains control of the company, operating under the approved plan. Nevertheless, in cases where the court believes that appointing an administrator for the debtor's company would enhance the chances of the plan's success, such a decision may be taken.

The central goal of the reorganization procedure is the restoration of the financial stability of the debtor's company, ultimately enabling it to fulfill its obligations to creditors. To achieve this, the reorganization plan typically includes measures like debt restructuring, which may involve extending payment deadlines, offering structured payment plans, and most importantly, temporarily suspending payment enforcement actions.



If the debtor successfully fulfills all its obligations outlined in the reorganization plan, the court concludes that the reorganization procedure has been successful in rehabilitating the debtor, and declares the reorganization case closed, allowing the resumption of business operations without any hindrance.

While the Law on Bankruptcy strongly favors reorganization over liquidation, it's important to acknowledge that unanticipated situations can arise during the reorganization process, leading to a shift in proceedings towards liquidation. The Law on Bankruptcy outlines specific conditions under which the court may order this transformation:

**Substantial or Continuing Loss:** If there is a significant and ongoing loss to the debtor's estate, and there's no reasonable likelihood of rehabilitation.

**Gross Mismanagement:** In cases where the debtor's bankruptcy estate has been severely mismanaged.

**Time:** If more than one year has passed since the initiation of the reorganization case, although the court has the discretion to extend this period for an additional six months.

**Insurance Neglect:** When the debtor in possession, who is in charge of the company, fails to maintain appropriate insurance, consequently posing a risk to the bankruptcy estate.

**Failure to Comply:** If the debtor in possession does not adhere to a court decision.

**Tax Obligations:** When the debtor in possession fails to pay taxes owed or submit necessary tax returns on time after the case's initiation.

**Plan Neglect:** If the debtor in possession fails to file or confirm a plan within the timeframe established by a court decision.

Should the court determine that any of these circumstances exist, it will decide to convert the case from reorganization to liquidation, subjecting it to the regulations governing the liquidation procedure.

### 16.1.2. Liquidation

Liquidation involves the sale of debtor assets to satisfy the claims of creditors and typically occurs when reorganization is not feasible or likely to succeed. In Kosovo's Bankruptcy Law, liquidation is a process aimed at selling and distributing the debtor's assets to meet creditors' demands.

The liquidation procedure commences with a court decision, appointing a bankruptcy administrator who oversees the entire liquidation process. The bankruptcy administrator takes control of the debtor, undertaking steps to identify and maximize the bankruptcy estate, which will eventually be sold and distributed among the creditors in proportion to their claims.

The duties of the administrator include, but are not limited to:

**Monetizing Assets:** The administrator's primary responsibility is to efficiently convert assets within the bankrupt estate into cash, in the best interests of all creditors, ensuring prompt realization of their value.

**Property Management:** They bear responsibility for all properties entrusted to them, guaranteeing their proper care and effective management.

**Information Duties:** The administrator convenes and presides over meetings involving the creditors, promoting transparency and fostering communication among the creditors. Unless the court dictates otherwise, the administrator shares information regarding the bankruptcy estate and its administration with all parties concerned.

**Financial Review:** They meticulously scrutinize all financial matters related to the debtor, ensuring a comprehensive grasp of the financial situation.

**Evidentiary Investigation:** The administrator possesses the authority to investigate and substantiate claims as necessary to achieve the intended objectives, while also challenging inappropriate requests.

**Final Report:** Upon the conclusion of the case, the administrator diligently prepares and submits a comprehensive final report on the administration of the case to the court.

These duties of the bankruptcy administrator play a crucial role in maintaining a fair, transparent, and efficient bankruptcy process that serves the interests of all parties involved.

Before proceeding with asset liquidation, the law allows the administrator to, with the court's approval, transform the liquidation case into a reorganization case if the administrator can demonstrate that such a conversion is likely to result in greater fulfillment of the creditors' claims.

The Bankruptcy Law also provides detailed guidance on the sale of assets in the liquidation procedure. It outlines the administrator's responsibilities in arranging the sale, which may include conducting public auctions, engaging auction houses, or utilizing other forms of public offerings. The law also establishes criteria for determining the minimum sale price, emphasizing the administrator's obligation to consider professional assessments to ensure that the sale price aligns with or approximates the asset's fair value.

The law distinguishes between two types of creditors: secured and unsecured. Secured creditors have claims protected by a mortgage, pledge, or other liens on the bankruptcy estate, while unsecured creditors have claims without such protection, relying on a successful liquidation procedure for claim fulfillment.

The Bankruptcy Law mandates that the court closes the liquidation process under two circumstances:

- **Full Asset Conversion:** When the administrator demonstrates that all assets within the bankruptcy estate have been successfully converted into cash and distributed to creditors; or
- **No Further Beneficial Administration:** When the administrator establishes that continuing the case's administration would not significantly increase distributions to the creditors.

As the primary objective of liquidation is to fulfill creditors' claims through the sale of assets, this procedure concludes upon its successful execution. Consequently, the debtor's business activities are officially terminated, and this termination is noted on the Kosovo Business Registration Agency (KBRA).

## 16.2. PROCEEDINGS

Bankruptcy cases in Kosovo are managed by the Commercial Court. The legal procedures connected to bankruptcy proceedings can be initiated through voluntary actions taken by the debtor. Here, the debtor can choose to submit either a reorganization plan or a liquidation request. These submissions define the procedure's journey, navigating through verification and approval processes overseen by the court. It's important to note that the Commercial Court prioritizes bankruptcy procedures, ensuring their expedited handling and timely resolutions for all parties involved.



Involuntary bankruptcy proceedings commence upon the submission of a petition by two or more creditors. Two (2) or more creditors may submit a petition to commence a case against an eligible debtor when:

1. same debtor has failed to pay a debt due to each of the petitioning creditors, and
  - 1.1. each debt has been due and payable for at least ninety (90) days;
  - 1.2. the total amount of the debt due is at least three thousand (3,000) Euro in amount; and
  - 1.3. each debt is not conditional or subject to pending court proceeding or an ongoing arbitration; and
- 1.2. The debtor is generally not paying its debts as they become due, and the total of unpaid debts exceeded five thousand (5,000) Euro.

In summary, Kosovo's bankruptcy regulations offer a crucial legal framework for a fair, transparent, and sustainable financial system. They provide a safety net for individuals and businesses facing debt challenges, making them essential for both local and foreign investors engaging in economic activities in Kosovo. These regulations offer legal mechanisms to safeguard the companies' interests in the face of financial distress or business challenges.



## **FINAL REMARKS**

In conclusion, this comprehensive legal guide serves as an indispensable resource for prospective investors seeking opportunities in the vibrant and growing market of Kosovo. With detailed insights into the legal and regulatory framework, investment incentives, and key considerations, this guide equips you with the knowledge needed to make informed decisions and navigate the intricacies of the Kosovo investment landscape.

Investing in Kosovo offers a world of possibilities, and we hope this guide has provided you with the confidence and understanding required to embark on your investment journey. As you explore the exciting prospects that Kosovo has to offer, remember that staying informed and working closely with legal and financial experts are key to your success.

We wish you every success in your investment endeavors in Kosovo and trust that this guide has been a valuable companion on your path to prosperity in this dynamic and welcoming market.

