

BOGA & ASSOCIATES NEWSLETTER

To keep you up to date with the latest legal and economic developments, this newsletter prepared by our Team provides information that may affect the operation of your business in Kosovo.



Changes to Legislation in Kosovo

Law “On Property Rights of Foreign Citizens” in the Republic of Kosovo

On 21.01.2022, the Assembly of the Republic of Kosovo adopted Law no. 08/L-013 on **Property Rights of Foreign Citizens** in the Republic of Kosovo (the “**Law**”). The Law aims to regulate the property rights of the foreign natural and legal persons including creation, content, transfer, protection, limitation or retention pursuant to the requirements and procedures set out in the respective laws of the property rights or other rights.

In accordance with the principle of reciprocity and requirements specified in this law or other international agreements, foreign legal and natural persons are entitled to be holders of property rights in the territory of the Republic of Kosovo. Ministry of Justice shall determine the reciprocity and shall maintain a database on the reciprocity with particular countries in relation to ownership rights of foreigners to immovable property.

The Law provides that foreign legal and natural persons may acquire property rights over immovable property by virtue of a valid legal transaction, inheritance, decision of a state body or other valid ways of property acquisition as provided by law. Additionally, EU Member State citizens and legal persons established under the law of an EU member state, may be holders of ownership rights over immovable property under the same conditions as the citizens and legal entities of Kosovo.

With regard to ownership rights over movable property, the Law provides that the conditions provided for the citizens and legal entities of Kosovo, shall also apply to foreign persons and entities.

Despite the above, foreign persons may not hold property rights on the following public property:

1. Natural resources;
2. Public goods for general use;
3. Agricultural land in public ownership;
4. Forests and forestry lands in public ownership;
5. Movable or immovable public property announced a cultural heritage of special significance;
6. Immovable property which is located within the radius of 1 kilometer from the border;
7. Immovable property which is located in the area which presents protection of the interest and security of state and to which, by a separate law, foreign citizen shall not have the ownership right;
8. Immovable property in public ownership which, based on the applicable laws, cannot be transferred to private ownership of Kosovo citizens.

Nevertheless, a foreign natural person may acquire ownership rights over agricultural properties, forests and forestry lands with an area of up to 5000 m² if the subject of agreement relates to residential building located in that area. A foreign person may also have the right to long-term rent, concession and other agreement over immovable properties (listed in points 1 to 6), under the same conditions as national persons.

Finally, the Law stipulates that the same procedure for registering property rights in the Immovable Property Rights Register applies to both Kosovo and foreign citizens.

Law “On the Commercial Court”

The Assembly of Kosovo approved Law no. 08/L-015 on the **Commercial Court** of the Republic of Kosovo (the “**Law**”), which seeks to improve access to justice for the business community by shortening time in resolving commercial and administrative cases related to economic issues. The Law partially repeals law no. 06/L-054 On Courts, while setting out rules on the establishment, organization and functioning of the Commercial Court in the Republic of Kosovo.

The Law applies to commercial disputes between all legal and natural persons in the Republic of Kosovo, including business organizations as defined in the applicable Law on Business Organizations.

In the framework of the establishment and functioning of a court within which there are two levels of the judiciary, independent of each other, in order to handle lawsuits and complaints in a single forum, the Commercial Court adjudicates matters within its competence in its First Instance Chambers and the Second Instance Chambers.

The First Instance Chambers comprise of:

- Economic Matters Department – attached to which functions the Division responsible for reviewing foreign investor disputes;
- Fiscal Department;
- Administrative Matters Department; and
- General Department.

Further, cases in the First Instance Chambers are reviewed and adjudicated by an individual judge, while Second Instance Chambers review and adjudicate cases in panels composed of 3 (three) judges.

Decisions of the First Instance are equivalent to the decisions of the Basic Court, while the decisions of the Second Instance Chambers are equivalent to the decisions of the Court of Appeals.

The Law provides that the Commercial Court has the power and the exclusive jurisdiction to adjudicate in its Chambers of First Instance the following:

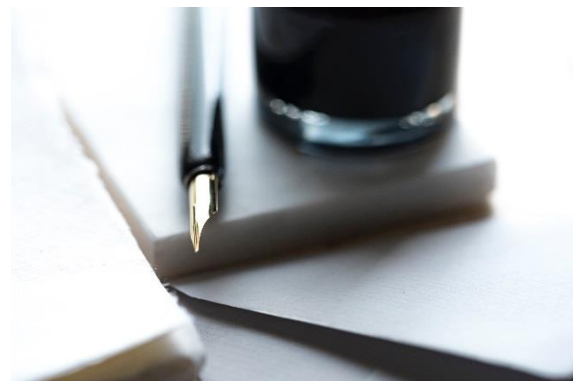
- disputes between local and foreign business organizations related to mutual business issues, besides from disputes between private and public legal persons on mutual business issues and other disputes among them;
- all legal remedies, as provided by the applicable law on enforcement procedure, regarding disputes falling under jurisdiction of this Court;
- recognition and enforcement of domestic and international arbitral awards;
- court disputes arising from the Law on Business Organizations;
- reorganization, bankruptcy and termination of business organizations;
- disputes concerning obstruction of possession between business organizations, as well as disputes related to real rights, as defined in the Law on Property and Other Real Rights and the Law on Business Organizations;
- disputes related to the violation of competition, abuse or monopoly and dominant position in the market, as well as monopoly agreements including the assessment of illegality;
- protection of copyright and industrial property, including trademarks, patents, trade secrets and other forms of industrial property as provided in the relevant legislation;
- disputes among aviation companies subject to the Aviation Law, excluding disputes related to passenger rights;
- administrative disputes initiated by business organizations against the final decisions of Tax Authorities, Customs Authorities, Ministry of Finance and any other public body in charge of imposing taxes or other state duties;
- administrative disputes initiated by business organizations against final decisions in administrative proceedings;
- other cases as provided by the law.

The Second Instance Chambers are competent to handle:

- i. all appeals against the decisions of the Chambers of First Instance within the competencies listed above;
- ii. all appeals against a transfer order, or refusal to transfer, of a case within the first instance departments, which have been filed within the prescribed time limit;
- iii. conflicts of jurisdiction from the Chambers of First Instance, within a period of thirty (30) days;
- iv. other matters as may be provided by law.

The provisions on matters regulated by the Law, take precedence over the Law on Contested Procedure, the Law on Administrative Disputes and the Law on Courts.

Decisions of the Commercial Court are drafted in writing and are binding upon all natural and legal persons. The court shall publish all judgments on their official website, within 60 (sixty) days from the date of issuance of the decision. Upon receipt of notification from the President of the Commercial Court on the functioning of the latter, the current pending cases before the Basic Courts or the Court of Appeal, which fall under the jurisdiction of the Commercial Court, shall be transferred in a timely manner. The Kosovo Judicial Council shall be responsible for issuing guidelines on case transfer procedures and determining the standards on which it shall be assessed whether pending cases are suitable for transfer.



Law “On Foreign Trade”

On 08.02.2022, the Assembly of the Republic of Kosovo adopted Law no. 08/L-021 on **Foreign Trade** (the “**New Law**”), which abrogates the previous Law no. 04/L-048 on Foreign Trade. The law regulates foreign trade in accordance with the best international practices by protecting domestic manufacturers against unfair international trade.

The New Law establishes the general principles and rules governing import, export and transit of goods and services to and from Kosovo’s territory in a manner consistent with the best international practice, WTO agreements and the legislation of the European Union.

The provisions of the said law shall apply to all physical and legal persons, public enterprises and goods and objects involved in foreign trade in or having effects within the Republic of Kosovo.

In the context of trade in goods, the New Law stipulates that most-favored-nation-treatment shall be accorded to imported or exported goods, with respect to customs duties and charges of any kind imposed on or in connection with imports or exports, internal taxes or other internal charges, the levying of such duties and charges, as well as the rules and formalities related to importation and exportation, unless otherwise required by an international agreement or the law provisions.

Additionally, with regards to the national treatment in trade in goods, products that have been imported in Kosovo shall be accorded no less favorable treatment than that accorded to domestic like products in respect of all laws, sub-legal acts and other acts of general application affecting internal sale, offering for sale, purchase, transportation, distribution or use of products. These products shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products.

The national and most-favored-nation treatment apply to the trade in services (including cross-border supply, consumption abroad, commercial presence and presence of national persons) and the trade-related aspects of intellectual property rights, as well.

Quantitative restrictions through quotas or other measures of equivalent effect, which may be instituted or maintained on the import of foreign products or on the export of any product destined to the territory of another country are prohibited, unless otherwise provided by this law.

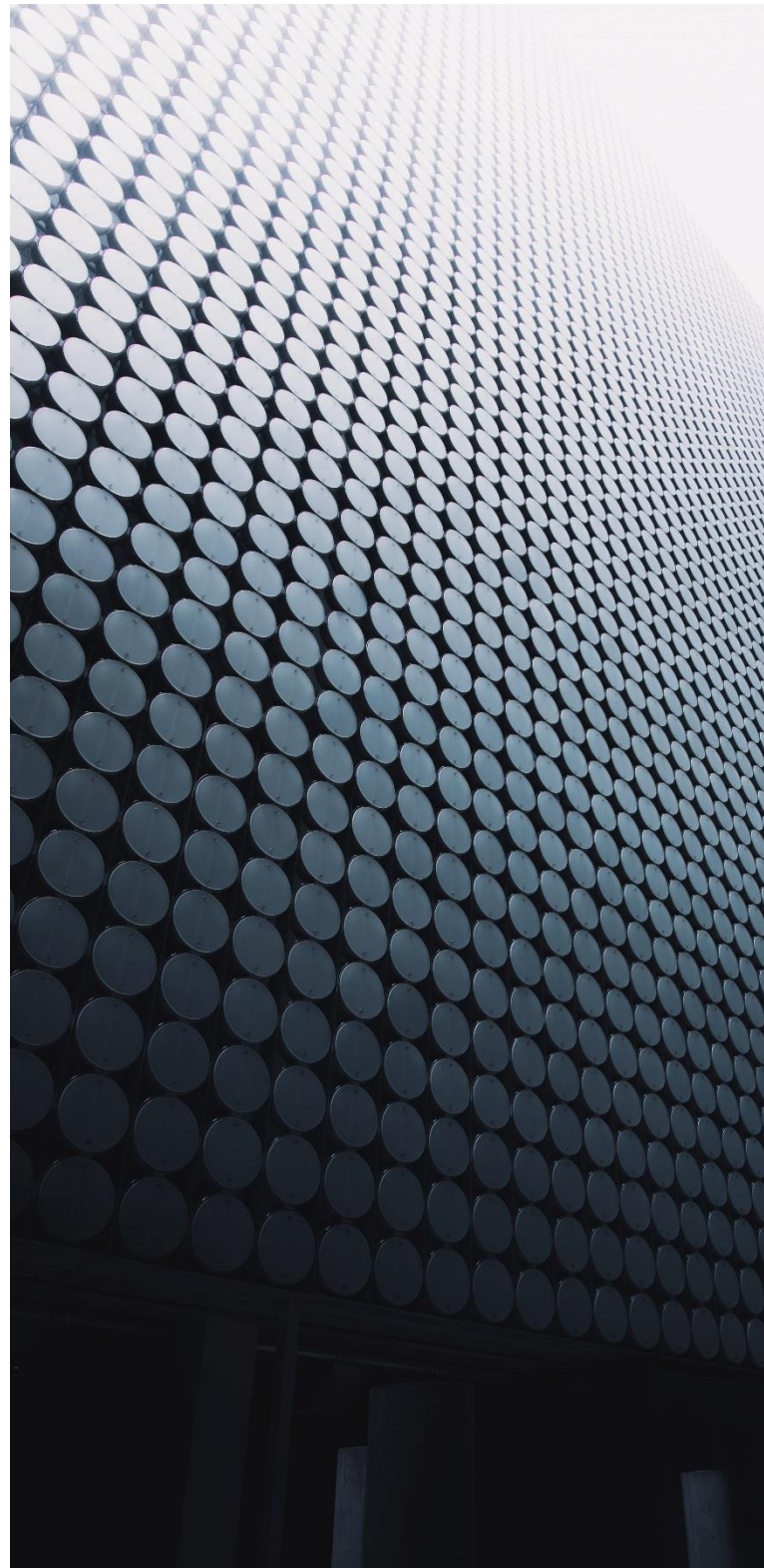
Further, imported goods in order to be released for free circulation in the territory of the Republic of Kosovo, must meet special requirements of the legislation in force pertaining to:

- sanitary and phytosanitary requirements;
- regulations and technical standards.

The freedom of transit and the possibility for domestic or foreign natural persons to import and export goods for non-commercial purposes are also guaranteed. However, the import or export of specific goods may be prohibited by law or by a sub-legal act. The Government of Kosovo may also apply trade restrictions on the basis of economic or non-economic reasons.

The New Law also lays down rules on matters relating to customs duties, customs valuation and classification of goods in accordance with the customs legislation in force. The procedures for applying, reviewing, granting, refusing and revoking licenses, must be accomplished in accordance with the Law on the System of Permits and Licenses and the Law on General Administrative Procedure.

Appeals against decisions issued under the law are permitted and shall be carried out according to the relevant law on general administrative procedure.





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If you wish to know more on issues highlighted in this edition, you may approach your usual contact at our firm or the following:

info@bogalaw.com

Tirana Office

40/3 Ibrahim Rugova Str.

1019 Tirana

Albania

Tel +355 4 225 1050

Fax +355 4 225 1055

www.bogalaw.com

www.bogalawip.com

Pristina Office

50/3 Sylejman Vokshi Str.

10000 Pristina

Kosovo

Tel +383 38 223 152

Fax +383 38 223 153

www.bogalaw.com

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TOP TIER ACHIEVEMENTS 2021-2022**

IFLR1000 2022: Ranked in Tier 1 in Financial and Corporate

Chambers Global 2022: Ranked in Band 1 in Corporate/Commercial

Chambers Europe 2022: Top Ranked in 4 practice areas

The Legal 500 2021: Top Ranked in Legal Market Overview

Benchmark Litigation Europe 2022: Top Ranked in Dispute Resolution

WTR1000 2022: Top Ranked in Trademarks

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Boga & Associates

Boga & Associates, established in 1994, has emerged as one of the premier law firms in **Albania** and **Kosovo**, earning a reputation for providing the highest quality of legal, tax and accounting services to its clients. From the year 2000 until May 2007, the firm was a member firm of KPMG International and the Senior Partner/Managing Partner, Mr. Genc Boga, was also the Senior Partner/Managing Partner of KPMG Albania.

The firm's particularity is linked to the multidisciplinary services it provides to its clients, through an uncompromising commitment to excellence. Apart from the widely consolidated legal practice, the firm offers the highest standards of expertise in tax and accounting services, with keen sensitivity to the rapid changes in the Albanian and Kosovo business environment. The firm delivers services to leading clients in major industries, banks and financial institutions, as well as to companies engaged in insurance, construction, energy and utilities, entertainment and media, mining, oil and gas, professional services, real estate, technology, telecommunications, tourism, transport, infrastructure and consumer goods.