

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.

The Draft Law "On Electronic Identification and Trust Services in Electronic Transactions"

On 29.06.2021, the procedure for the adoption of the Draft Law no. 08/L-022 on Electronic Identification and Trusted Services in Electronic Transactions was initiated before the Assembly of Kosovo ("**Draft Law**").

With the entry into force of this Law, the chapter regarding the use of electronic signatures in the Law no. 04/L-094 on Information Society Services is expected to be repealed. The provisions mentioned in the said law were not used in practice, as the secondary legislation necessary for their implementation was never adopted.

This Draft Law is fully in line with Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on Electronic Identification and Trusted Services for Electronic Transactions in the Internal Market which repealed Directive 1999/93 / EC.

The Draft Law regulates trust services and establishes a legal framework for the use of electronic signature, electronic seal, electronic time stamp and equipment for their creation

conditions of issuance and use of qualified certificates for certification of services and website authentication.

Trust Services: The Draft Law sets out rules for Kosovo trust services. A Trust Service Provider ("**TSP**") is defined as a natural person or legal entity that, usually for remuneration, provides one or more of the following electronic services:

i. the creation, verification, and validation of electronic signatures, electronic stamps or electronic time stamps, electronic registered delivery services and certificates related to those services;



- ii. the creation, verification and validation of certificates for website authentication; or
- iii. the preservation of electronic signatures, seals or certificates related to those services.

The Draft Law lays down security requirements to be met by TSPs as well as the requirements that TSPs must meet in order to be considered a "qualified" TSP (such as qualified employed staff, the reliability and knowledge necessary to exercise the activity as a qualified trust service provider, the use of products that apply measures against data forgery and theft etc.)

Electronic Signature: The Draft Law defines "simple" electronic signature, advanced electronic signature and qualified electronic signature. The electronic signature is defined as a set of data in electronic form, which are attached or logically linked to other data in electronic form and which are used by the signatory to sign. The Draft Law provides that such electronic signature will be valid and acceptable, and its validity or weight of the proof will be not denied just because it is in electronic form.

Advanced electronic signature is defined as an electronic signature which meets the following requirements: (i) that is uniquely related to the signatory; (ii) that enables clear identification of the signatory; (iii) that uses the data for the creation of the electronic signature which are in the sole control of the signatory; (iv) that is linked to the data the signatory signs so that any subsequent changes are detectable.

Qualified electronic signature is defined an advanced electronic signature that is based on a qualified certificate for electronic signatures and created by a qualified electronic signature creation device.

The qualified electronic signature certificate is issued by a qualified TSP and contains, *inter alia*, the information: (i) that identifies the legal or natural entity issuing the qualified certificate, (ii) that uniquely identifies the signatory (i.e. name

and surname, personal identification number etc.), (iii) on the validity period of qualified certificate for electronic signature, (iv) on the electronic certificate identity code, that must be unique for the qualified service provider etc.

A qualified electronic signature creation device should ensure (i) the confidentiality of data used for creating the electronic signature or seal, (ii) that the electronic signature or seal creation data occur only once, (iii) that the electronic data are not obtained outside of electronic signature creation device; (iv) that the electronic signature is reliably protected against forgery using currently available technology, as well as ensure that (v) data protection used for the creation of an electronic signature from unauthorized use. Qualified electronic signature will have the same legal effect as handwritten signature.

Exceptions to the use of electronic signatures: The Draft Law lists the cases when the electronic signature cannot be used, as follows:

- (i) in the field of family law and inheritance, which are subject to special legal requirements;
- (ii) in legal actions for which public legalization, notarial deed or court authorization is required,
- (iii) in legal actions related to the property guarantee for bail;
- (iii) whenever by special law the use of electronic signature is not allowed.

Electronic Seal: Electronic seal is an electronic equivalent of a stamp that is applied on a document to guarantee its origin. The Draft Law provides that an electronic seal shall be considered valid and admissible and shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements for qualified electronic seals.

Further, the Draft Law sets the requirements for the advanced qualified electronic seal, i.e. (i) that is uniquely linked to the creator of the seal, (ii) that

BOGA & ASSOCIATES

it identifies the creator of the seal, (iii) that is created using the electronic seal creation data and (iv) that is linked to the data to which it relates in a way that would detect any subsequent change in them. Such advanced qualified electronic seal enjoys the presumption of integrity of the data and of correctness of the origin of data to which the qualified electronic seal is linked.

Website authentication: The Draft Law regulates website authentication, which is defined as an electronic process that enables verification of website data integrity and reliability of its use, and is based on a website authentication certificate, namely a qualified website authentication certificate (issued by a qualified trust service provider). Website Authentication Certificates are electronic certificates used to carry out the authentication of the website and the connection with the natural or legal person (i.e. the owner of the website) to whom the certificate is issued.

Electronic Registered Delivery Service: The Draft Law gives the legal framework for establishing the Electronic Registered Delivery Service which is a service that permits the electronic transfer of data between parties (i.e. public administration bodies, companies and citizens). It provides proof of sending and receiving the data and protects against the risk of loss, theft, damage or unauthorized alterations. For example, it enables the online sharing of legal documents between parties in a secure manner, without the need for the parties to meet physically.

BOGA & ASSOCIATES

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

Pristina Office

50/3 Sylejman Vokshi Str.
10000 Pristina
Kosovo
Tel +383 38 223 152
Fax +383 38 223 153
www.bogalaw.com

BOGA & ASSOCIATES TOP TIER ACHIEVEMENTS 2021

IFLR1000 2021: Ranked in Tier 1 in Financial and Corporate

Chambers Global 2021: Ranked in Band 1 in General Business Law

Chambers Europe 2021: Top Ranked in 4 practice areas

The Legal 500 2021: Top Ranked in Legal Market Overview

Benchmark Litigation Europe 2021: Top Ranked in Dispute Resolution

WTR1000 2021: Top Ranked in Trademarks

The Newsletter is an electronic publication edited and provided by Boga & Associates to its clients and business partners. The information contained in this publication is of a general nature and is not intended to address the circumstances of any particular individual or entity. The Newsletter is not intended to be and should not be construed as providing legal advice. Therefore, no one should act on such information without appropriate professional advice after a thorough examination of the particular situation. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. You can also consult the Newsletter on the section “Library” of our website.

© 2021 Boga & Associates. All rights reserved.

This publication is copyrighted and is protected to the full extent of the law. Nevertheless, you are free to copy and redistribute it on the condition that full attribution is made to Boga & Associates. If you have not received this publication directly from us, you may obtain a copy of any past or future related publications from our marketing department (marketing@bogalaw.com) or consult them in our website (www.bogalaw.com). To unsubscribe from future publications of Newsletter, please send “Unsubscribe” by replying to our email accompanying this edition.

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. 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.