

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.

A close-up photograph of a file folder divider. The divider is made of a light brown, textured material. A white rectangular label is attached to the top of the divider, featuring the words "Trade Secret" in a black, serif font. The background is blurred, showing other file folders with various colored tabs (yellow, orange, purple) and labels, including one that partially reads "Docu...".

Trade Secret

New Law “On the Protection of Trade Secrets”

On 11.05.2022, the Assembly of Kosovo adopted Law no. 08/L-076 “On the Protection of Trade Secrets” (“**New Law**”), which sets out rules on the protection against the unlawful acquisition, use and disclosure of trade secrets, without undermining fundamental rights and freedoms.

The New Law is fully aligned with the Directive (EU) 2016/943 of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

Trade secret definition

Pursuant to the New Law, a trade secret is the information, which meets all of the following requirements:

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

Lawful acquisition of trade secrets

Acquiring a trade secret is considered lawful as long as it is obtained by any of the following means:

- independent discovery or creation;
- observation, study, disassembly or testing of a product or object that has been made available to the public or that is lawfully in the possession of the acquirer of the information who is free from any legally valid duty to limit the acquisition of the trade secret;

- exercise of the right of workers or workers' representatives to information and consultation in accordance with national laws and practices;
- any other practice which, under the circumstances, is in conformity with honest commercial practices.

Unlawful acquisition of trade secrets

Acquisition of a trade secret without the consent of the trade secret holder is unlawful if it is carried out by:

- unauthorized access to, appropriation of, or copying of any documents, objects, materials, substances or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced; or
- any other conduct which, under the circumstances, is considered contrary to honest business practices.

Unlawful use and disclosure of trade secrets

Use or disclosure of a trade secret without the consent of the trade secret holder is deemed unlawful if a person is found to meet any of the following conditions:

- acquires the trade secret unlawfully;
- is in breach of a confidentiality agreement or other requirement not to disclose the trade secret;
- is in breach of a contractual or any other duty to limit the use of the trade secret.

Additionally, the acquisition, use or disclosure is unlawful, if the person concerned knew or ought to have known that the trade secret was obtained directly or indirectly from another person, who was using or disclosing the trade secret unlawfully.

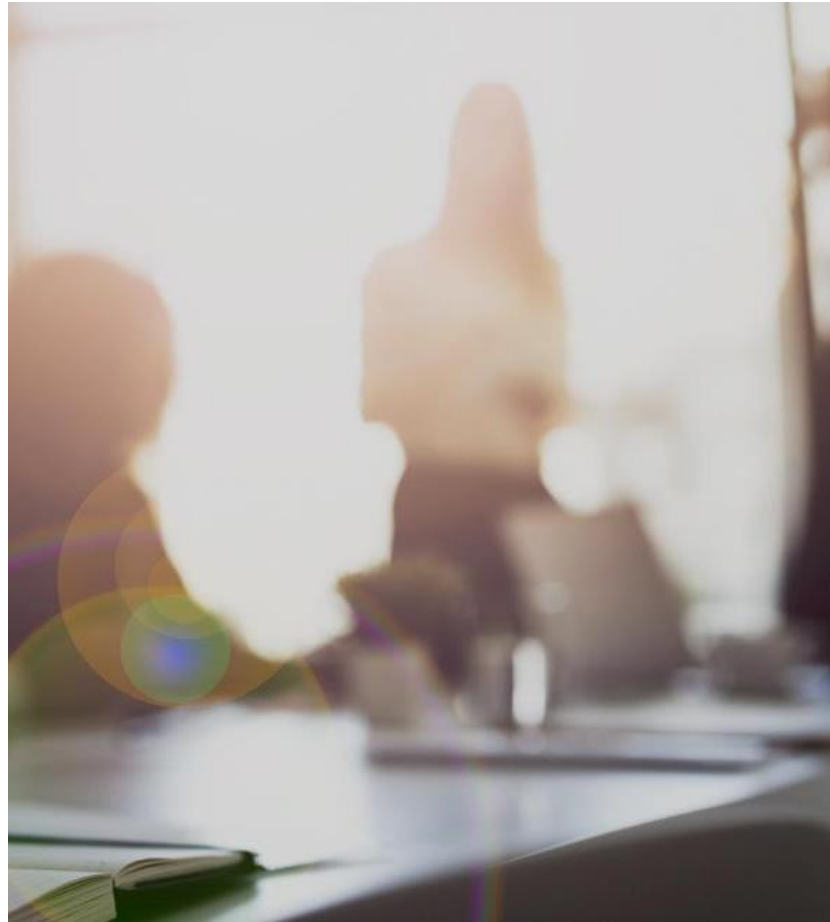
Measures, procedures and remedies

The New Law stipulates that measures, procedures and remedies against the unlawful acquisition, use and disclosure of trade secrets are initiated before the competent court. In the course of legal proceedings, all participants and every person that has access to documents which form part of such proceedings, have the obligation of maintaining the confidentiality of the trade secret.

Remedies provided for trade secret holders include the award of damages, injunctions prohibiting the defendant from using or disclosing the trade secret and the recall from the market of infringing goods. Besides, entities acting in violation of the aforesaid provisions are subject to the relevant penalties, ranging from EUR 500 to EUR 9000.

Limitation period

In view of the above, the limitation period for the said remedies and measures is 6 (six) years from the moment when the trade secret holder is informed of the violation or damages and of the person responsible for compensation.





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**BOGA & ASSOCIATES
AWARDS AND RECOGNITION 2022**

IFLR1000 2022: Ranked **Tier 1** in Financial and Corporate

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

Chambers Europe 2022: Ranked **Band 1** in 3 practice areas

The Legal 500 2022: Ranked **Tier 1** 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.