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Global Legal Group

The International Comparative Legal Guide to: Real Estate 2011

A practical cross-border insight
into real estate law

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1 Real Estate Law

- 1.1 Please briefly describe the main laws that govern real estate in Kosovo. Laws relating to leases of business premises should be listed in response to question 10.1. Those relating to zoning and environmental should be listed in response to question 11.1.**

Real Estate in the Republic of Kosovo is mainly governed by the following laws:

1. Law No. 03/L-154 dated 25.06.2009 “On property and other real rights”.
2. Law No. 2003/25 dated 18.02.2009 “Law on cadastre” (as amended).
3. Law No. 2002/05 dated 17.10.2002 “On the establishment of an immovable property rights register” (as amended).
4. Law No. 03/L-139 dated 26.03.2009 “On expropriation of immovable property”.

- 1.2 What is the impact (if any) on real estate of local common law in Kosovo?**

The legal system in Kosovo is based on Civil Law therefore common law has no impact.

- 1.3 Are international laws relevant to real estate in Kosovo? Please ignore EU legislation enacted locally in EU countries.**

International laws are not relevant to real estate in Kosovo.

2 Ownership

- 2.1 Are there legal restrictions on ownership of real estate by particular classes of persons (e.g. non-resident persons)?**

The old legislation restricting/prohibiting the transfer of the property title to foreigners expired on 31st December 1990. The current legislation does not provide for such restriction, it instead guarantees fair and equal treatment of foreign investors with the local investors and no discrimination. Notwithstanding the above, it is common that the court refuses to certify the contract for sale or otherwise transfer of real estate between a Kosovo citizen and a foreigner.

3 Real Estate Rights

- 3.1 What are the types of rights over land recognised in Kosovo? Are any of them purely contractual between the parties?**

The Law on property and other real rights” (Law No. 03/L-154) recognises the following rights over the land in Kosovo: a) ownership/co-ownership; b) usufruct; c) rights of pre-emption; d) real servitudes; e) realty charges; f) mortgages; and g) building rights.

From the abovementioned rights only usufruct and building rights are created purely by contract.

4 System of Registration

- 4.1 Is all land in Kosovo required to be registered? What land (or rights) are unregistered?**

The land in Kosovo should be registered with Municipal Cadastral Offices.

- 4.2 Is there a state guarantee of title? What does it guarantee?**

No state guarantee of title is available in Kosovo.

- 4.3 What rights in land are compulsory registrable? What (if any) is the consequence of non-registration?**

Under the Kosovo legislation the following rights in land are compulsory registrable: ownership/co-ownership; usufruct; rights of pre-emption; real servitudes; realty charges; mortgages; and building rights.

The law on establishment of the immovable property rights register (Law No. 2002/05) foresee that entries in the register of immovable property rights enjoy the presumption of accuracy, truthfulness, and legality until and unless corrected by means of the procedures established by this law.

Failure of the party responsible for the registration to comply with this mandatory requirement affect the new owner since without registration in the Cadastre office it cannot properly use the land (i.e. sell it or register the land for a mortgage).

4.4 What rights in land are not required to be registered?

The current legislation does not require that the rights deriving from a lease should be registered.

4.5 Where there are both unregistered and registered land or rights is there a probationary period following first registration or are there perhaps different classes or qualities of title on first registration? Please give details. First registration means the occasion upon which unregistered land or rights are first registered in the registries.

In Kosovo there is no probationary period following first registration or different classes or qualities of title on first registration.

4.6 On a land sale, when is title (or ownership) transferred to the buyer?

Under Article 115 of the Law on Property and Other Real Rights (Law No. 2002/05) it is provided that acquisition, variation, transfer and termination of ownership, a right of pre-emption or a limited right relating to immovable property requires a legally valid contract and registration of the relevant transaction in the immovable property rights register.

4.7 Please briefly describe how some rights obtain priority over other rights. Do earlier rights defeat later rights?

The priority of rights is based on their registration with the real estate registration register. The rights registered earlier defeat rights registered later.

5 The Registry / Registries

5.1 How many real estate registries operate in Kosovo? If more than one please specify their differing rules and requirements.

The Kosovo Cadastral Agency (hereinafter the "KCA") has the authority for overall administration of the register in Kosovo. The KCA is composed of the central office operating in Pristina and under its authority the Municipal Cadastral Offices shall record immovable property rights in the register.

5.2 Does the Land Registry issue a physical title document to the owners of registered real estate? Can any transactions relating to registered real estate be completed electronically? Can information on ownership of registered real estate be accessed electronically?

The Real Estate Registration Office issues to the owner of the property the Ownership Certificate that is accompanied by the Copy of the Plan, reflecting all information on the property.

It is not possible to perform any transaction regarding real estate electronically or to electronically access the information on the ownership of registered real estate.

5.3 Can compensation be claimed from the registry/registries if it/they makes a mistake?

The current legislation does not foresee the compensation for registry mistakes, but it gives the chance for any person to claim that the registration of an immovable property right is not legally justified and that his/her own immovable property rights are adversely affected thereby and thus may request the MCO to supplement the register accordingly. The register shall be supplemented by entering a caveat with respect to the registered immovable property right.

5.4 Are there restrictions on public access to the register? Can a buyer obtain all the information he might reasonably need regarding encumbrances and other rights affecting real estate?

The law on establishment of the immovable property rights register (Law No. 2002/05 as amended), in its article 7.2, provides that entries in the register shall be made accessible to the general public.

6 Real Estate Market

6.1 Which parties (in addition to the buyer and seller and the buyer's finance provider) would normally be involved in a real estate transaction in Kosovo? Please briefly describe their roles and/or duties.

Kosovo does not have Public Notaries, even though the Law on Notary was passed a long time ago. The first notaries in Kosovo are expected to be endorsed during the beginning of 2011.

Instead of Public Notaries, the Municipal Courts are competent to certify the correct form of a transaction.

In this regards, the following parties are engaged in a real estate transaction:

- (i) Real estate agents, who identify the marketable real estate properties and act as intermediary between the seller and buyer.
- (ii) Lawyers, who advise the parties on the legal aspects of the transaction, draft the sale purchase contracts and often conduct a due diligence on the property title on behalf of the buyer.

6.2 How and on what basis are these persons remunerated?

The remuneration of the real estate agents consists of a percentage of the transaction value.

The lawyers may receive as remuneration a percentage of the transaction values or fixed fees (i.e. the Chamber of Attorneys has a guideline price of 1% of the transaction price).

6.3 How has the real estate market in Kosovo recovered or reacted following the global credit crunch and worldwide recession in 2008/2010? Please include both local and international investors in your answer.

The global credit crunch and worldwide recession has considerably affected the real estate market in Kosovo. The number of purchases by international and local investors has notably decreased compared to 2008. The credit crunch has also affected the financing of real estate purchases, since the banks have approved restrictive lending conditions and they are still applying higher interest.

7 Liabilities of Buyers and Sellers in Real Estate Transactions

7.1 What (if any) are the minimum formalities for the sale and purchase of real estate?

The minimum formalities for the sale and purchase of real estate are as follows:

- i) Execution of a contract between the buyer and seller and its certification by the Municipal Court where the real estate is situated.
- ii) Payment of tax related to the transfer of the ownership title over the real estate.
- iii) Registration of the executed sale purchase contract with the Municipal Registration Office of the area where the property is located.

7.2 Is the seller under a duty of disclosure? What matters must be disclosed?

The seller must disclose all issues related to or affecting the ownership title over the real estate such as mortgages, real rights registered over the property, any encumbrances and liens or court claims.

7.3 Can the seller be liable to the buyer for misrepresentation?

Yes, the seller will be liable to the buyer for misrepresentation.

7.4 Do sellers usually give contractual warranties to the buyer? What would be the scope of these? What is the function of warranties (e.g. to apportion risk, to give information)? Are warranties a substitute for the buyer carrying out his own diligence?

Sellers usually warrant the transfer of an ownership title from encumbrances, lines or burdens of any kind. Based on such warranties the buyer may hold the seller liable, in case of misinterpretation of the latter. The warranties may be interpreted as a substitute for the buyer carrying out his own due diligence on the ownership title. However, while carrying out a real estate transaction the buyer is recommended to conduct due diligence over the ownership title.

7.5 Does the seller warrant its ownership in any way? Please give details.

Yes, the seller warrants its ownership i.e. the seller represents that the title of ownership over the land/building is in his name, the land/building is not mortgaged or has burdens of any kind.

7.6 What (if any) are the liabilities of the buyer (in addition to paying the sale price)?

Usually the buyer takes the obligation to pay all the expenses related to the sale purchase contract (e.g. the court tax) and also the fees related to the registration of the said contract with the Real Estate Registration Office.

8 Finance and Banking

8.1 Please briefly describe any regulations concerning the lending of money to finance real estate. Are the rules different as between resident and non-resident persons and/or between individual persons and corporate entities?

The Kosovo legislation and the internal rules of the Central Bank don't treat real estate differently from the financing of other business activities.

The same general rules apply to resident and non-resident persons and/or between individual persons and corporate entities.

8.2 What are the main methods by which a real estate lender seeks to protect itself from default by the borrower?

The most common protection sought by lenders in order to secure the credit obligation of the borrower is by the registration of mortgage over immovable properties under the ownership of the borrower.

8.3 What minimum formalities are required for real estate lending?

The minimum formalities required for real estate lending are the following:

- (i) evaluation of the financial conditions and credit history of the borrower;
- (ii) evaluation of the immovable property to be mortgaged as a guarantee for the loan repayment;
- (iii) execution of the loan agreement between the lender and the borrower; and
- (iv) execution of the mortgage contract and registration of such contract with the Real Estate Registration Office.

8.4 How is a real estate lender protected from claims against the borrower or the real estate asset by other creditors?

Usually the lenders secure the repayment of the loans by registering mortgages over the immovable properties of the borrowers.

The laws on establishment of the immovable property rights register (Law No. 2002/05) provides that the mortgage must be entered into the immovable property register in order to be effective.

The Registration Office determines the priority rank of creditors over that property.

In case of a borrower's default the creditors may request the seizure and execution of the mortgaged property. The creditor that has registered the first mortgage over the property shall be totally repaid and afterwards the other creditors shall be paid according to their rank.

In addition, as mentioned in question 8.3 above, the lending institutions, before granting a loan, shall make an assessment of the financial conditions of the borrower and of the collateral.

9 Tax

9.1 Are transfers of real estate subject to a transfer tax? How much? Who is liable?

The tax is applicable in case of the transfer of ownership title on buildings and other real estate properties. Real estate transfers are

subject to: standard court taxes at a rate of 0.5% of the value of the sale purchase transaction; municipal taxes on real estate transaction, which are variable among the municipalities (i.e. for Prishtina the tax is €150 for nature/type of land and in Prizren the municipal tax on real estate transactions is from 0.5% until 1% of value of the sale purchase price); and a registration fee for the real estate transfer at the Cadastre Office of €20.

9.2 When is the transfer tax paid?

The transfer tax is paid upon the verification of the sale purchase contract at the Municipal Court and prior to filing, for registration with the Real Estate Registration Office, the deed (contract) providing for the transfer of the ownership title of the immovable property.

9.3 Are transfers of real estate subject to VAT? How much? Who is liable? Are there any exemptions?

Transfers of real estate properties are not subject to VAT.

9.4 What tax or taxes (if any) are payable by the seller on the disposal of a property?

Kosovo legislation doesn't foresee taxes for the seller on the disposal of a property.

9.5 Is taxation different if ownership of a company (or other entity) owning real estate is transferred?

There is no difference.

10 Leases of Business Premises

10.1 Please briefly describe the main laws that regulate leases of business premises.

Kosovo legislation doesn't provide specific regulation for the lease of business premises. Lease contracts are governed by the provisions of the Law on Contracts and Torts No. 29/1978 on 26 May 1978 (as amended).

10.2 What types of business lease exist?

There are no specific provisions for residential or business leases.

10.3 What are the typical provisions for leases of business premises in Kosovo regarding: (a) length of term; (b) rent increases; (c) tenant's right to sell or sub-lease; (d) insurance; (e) (i) change of control of the tenant; and (ii) transfer of lease as a result of a corporate restructuring (e.g. merger); and (f) repairs?

Due to the fact that the Law on Contracts and Torts has been in force since 1978, there are no provisions regulating the business leases, however business lease contracts do cover the length of term, rent increases, tenant's right to sell or sub-lease, insurance, transfer of lease as a result of a corporate restructuring, and repairs.

(a) Length of term

The length of term for leases of business premises is not restricted since, based on general principle of the Law, the contracting parties have full freedom in agreeing on the duration of the lease and it is

a matter of the mutual consent of the parties.

(b) Rent increases

The law doesn't provide specific provisions with regards to the rent increase but it is subject to the agreement between contracting parties.

(c) Tenant's right to sell or sub-lease

Based on Article 586 of the Law, the lease-holder may lease the object leased to a sublesor or he may give it to another person on some other ground, but only after making sure that this shall cause no loss to the lessor.

The tenant may not sell the premises without the approval of the landlord.

(d) Insurance

The Law lacks provisions on insurance, however the parties may make such provision in their lease agreement.

(e) (i) Change of control of the tenant

There are no specific provisions in the Law that address the change of control of the tenant.

(e) (ii) Transfer of lease as a result of a corporate restructuring (e.g. merger)

There are no specific provisions in the Law that address the change of corporate restructuring.

(f) Repairs

The tenant is responsible for the ordinary maintenance and/or repairs of the leased premises, whilst the landlord is responsible for the extraordinary repairs. The tenant is entitled to reimbursement for the costs of any extraordinary repair made on the premises, provided that he has duly notified the landlord for the necessity of such repairs.

10.4 What taxes are payable on rent either by the landlord or tenant of a business lease?

The taxes paid by the landlords consist of the tax on income from the rent amounting to 9% of the rent price. The landlord is also obliged to pay the annual tax on immovable property. Such tax is calculated based on the surface of the property. The tenant is not liable for paying any tax on rent.

10.5 In what circumstances are business leases usually terminated (e.g. at expiry, on default, by either party etc.)? Are there any special provisions allowing a tenant to extend or renew the lease or for either party to be compensated by the other for any reason on termination?

The lease agreement is terminated upon expiry of the lease term or in the event of a default.

Each party is entitled to terminate the lease agreement but the landlord has to be notified in advance. The notice period is at least 30 days in advance if the parties have not agreed otherwise.

The tenant who has complied with the obligations deriving from the lease agreement is entitled to be preferred by the landlord for the signature of a new lease agreement.

10.6 Does the landlord and/or the tenant of a business lease cease to be liable for their respective obligations under the lease once they have sold their interest? Can they be responsible after the sale in respect of pre-sale non compliance?

The landlord and the tenant cease to be liable with regards to

obligations under the lease after selling their interest to a third party, unless otherwise provided under the warranties of the sale purchase agreement.

If it is not otherwise stipulated in the agreement, in case of a transaction, the new landlord should respect the provisions of the lease agreement in force.

10.7 Green leases seek to impose obligations on landlords and tenants designed to promote greater sustainable use of buildings and in the reduction of the “environmental footprint” of a building. Please briefly describe any “green obligations” commonly found in leases stating whether these are clearly defined, enforceable legal obligations or something not amounting to enforceable legal obligations (for example aspirational objectives).

The Kosovo legislation doesn't foresee green obligations and they are not commonly found in the lease agreements used in Kosovo.

11 Zoning and Environmental Issues

11.1 What are the main laws which govern zoning and related matters concerning the use and occupation of land? Please briefly describe them and include environmental laws. Can the state force land owners to sell land to it? If so please briefly describe including price mechanism.

Law No. 2003/14 On Spatial Planning, aims to ensure rational spatial planning and development, achieving balance between development and preservation of open space and protection of the environment, and bringing the spatial planning regime of Kosovo into consistency with European and international standards.

Law No. 2004/15 On Construction, provides the main requirements for design, construction, and use of construction materials, professional supervision, as well as procedures for construction permits, use permits and building inspections. The provisions of this Law regulate the design and building conditions regarding the public safety and protection of environment in Kosovo.

Environment:

The main environmental laws in Kosovo include:

Law No. 03/L-025 “On Environmental Protection”; Law No. 02/L-30 “On Wastes”; and Law No. 03/L-024 “On Environmental Impact Assessment” etc.

Expropriation:

Law No. 2009/03L-139 Law on Expropriation of Immovable Property gives the government of Kosovo the right to expropriate property if it is necessary and appropriate to the achievement of a public purpose or the promotion of the public interest. The law specifies the expropriation procedures under which financial compensation is provided to the owners, calculated on the basis of the market-value.

11.2 Which bodies control land/building use and/or occupation and environmental regulation? How do buyers obtain reliable information on these matters?

The land/building use and/or occupation are controlled by the local and central construction inspectorates. The construction inspection is composed of Inspectors and the Head Inspector from the ministry and by municipal inspectors.

The Ministry of Environment and Spatial Planning is the main environmental regulatory state body for approving an environmental permit in the cases where the activity for such permit is required.

The enforcement of environmental regulations is controlled by the regional environmental agencies.

11.3 What main permits or licences are required for building works and/or the use of real estate?

Information on the aforementioned matters may be obtained by any interested subject by filing a written request with the responsible state authorities. The aforementioned state authorities are legally required to provide an official response within thirty days as from the receipt of the written request.

11.4 Are building/use permits and licences commonly obtained in Kosovo? Can implied permission be obtained in any way (e.g. by long use)?

Building/use permits and licences are commonly obtained in Kosovo. Implied permission is not obtainable.

11.5 What is the appropriate cost of building/use permits and the time involved in obtaining them?

For the approval of the building permits, the developers should pay, depending on the surface area, a fee of between EUR 5-20 per square metre. The cost of the permit to use can generally range between €0.30 and €7 depending on the purpose of the building.

The time period to obtain the construction permit range between 60-90 days based on the place and structure of the project. In practice this procedure takes up to 6 months due to the case load.

11.6 In what circumstances (if any) is environmental clean up ever mandatory?

In accordance with Administrative Directive No. 08/07 “On the competences of the owner and the operator concerning waste management” construction waste must be cleaned up and the operator performing such activity must be licensed by a ‘Waste Management Certificate’ issued by the local entity (commune).

For all new constructions, the buildings’ owners must use specific locations for the collection of waste.

11.7 Please briefly outline any regulatory requirements for the assessment and management of the energy performance of buildings in Kosovo.

Based on the Law on Construction Product (Law No. 02/L-14), the Kosovo Agency for Standardisation and Accreditation (hereinafter “KASA”) was established. KASA is the responsible authority for passing the standards on a building.

KASA has passed a list of standards called “Standards of Kosovo”, on which are listed approximately 3,000 standards regarding to a building.

These standards include requirements for the assessment and management of the energy performance of buildings.

12 Climate Change

12.1 Please briefly explain the nature and extent of any regulatory measures for reducing carbon dioxide emissions (including any mandatory emissions trading scheme).

Law No. 2004/30 on Air Protection provides the rules and competent bodies controlling and managing the air quality and the sanctions for the subjects breaching the provisions of this law and the approved emissions norms.

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Mr. Elmazaj joined the firm in 1996 and is also the Senior Associate in Pristina Office.

The focus of his practise is providing legal advice to financing of projects in any industry and with regard to all aspects i.e. corporate, commercial, real estate, regulatory, etc. His experience includes also legal assistance to mergers and acquisition transactions in the banking and insurance market in Albania as well as representation of lenders, developers and investors on a number of transactions.

He is also specialised in managing commercial and tax litigations. Sokol is an authorised trademarks and patents agent in Albania. He graduated in Law at University of Tirana in 1996. He is a member of Albanian Bar Association.

12.2 Are there any national greenhouse gas emissions reduction targets?

Kosovo passed the environmental strategy on the protection of the air, reduction of emissions and creation of a planning and control system that will ensure the achievement of the air quality objectives.

12.3 Are there any other regulatory measures (not already mentioned) which aim to improve the sustainability of both newly constructed and existing buildings?

All the regulatory measures which aim to improve the sustainability of both newly constructed and existing buildings are included in the laws related to the construction, mentioned above.

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Mr. Krasniqi is an associate at Boga & Associates. He joined the firm in 2009.

He has assisted on drafting the legal opinions regarding the real estate, agreements on purchase or lease of real estate properties, various mortgage and easement agreements, also participated in several due diligences over real estate properties. Mr. Krasniqi has been involved in several projects at Boga & Associates on behalf of national and international clients investing in Kosovo mainly regarding projects in fields of telecommunication, real estate, employment etc.

He graduated in Law at University of Prishtina, Kosovo. He is a LL.M candidate in South East European Law & European Integration at University of Graz, Austria.

BOGA & ASSOCIATES

LEGAL · TAX · ACCOUNTING

Boga & Associates, established in 1994, has emerged as one of the premiere law firms in Albania, earning a reputation for providing the highest quality of legal, tax and accounting services to its clients. Boga & Associates also operates in Kosovo (Prishtina) offering a full range of services.

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The firm offers to its clients all the legal, tax and accounting services required to conduct business in Albania and Kosovo, effectively. Over the years the firm has advised in the areas of privatisation of national resources and enterprises, concessions, real estate transactions, setting up businesses, credit facilities and custom and tax issues, all with a keen sensitivity to the rapid changes in the Albanian business environment.

Boga & Associates has established a Real Estate Team that delivers services to a wide range of domestic and international clients, including property owners, investors, developers, lenders, insurance companies, governmental and non-governmental agencies and public authorities across a variety of sectors from infrastructure projects to acquisition of real estate including apartments and villas.

Chambers and Partners recognised Boga & Associates as a leading law firm for the year 2010 in all practice areas of the ranking for Albania, specifically in the field of Corporate/Commercial, Dispute Resolution, Intellectual Property, Projects and Real Estate.

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