



REPUBLIC OF KOSOVO
Ministry of Trade and Industry

THE LEGAL GUIDE TO **KOSOVO**

2nd Edition

IPAK
Investment Promotion Agency of Kosovo
Office in Vienna - Implemented by
eciks
Economic Initiative for Kosovo

WOLF THEISS

TOP 10 REASONS TO INVEST IN KOSOVO



1

Youngest population in Europe



2

High availability of skilled and cost effective labor



3

EURO as the official currency



4

Free access to markets of EU, US and CEFTA



5

Low taxes



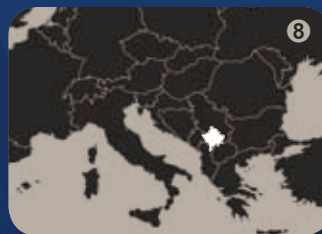
6

Stabilizing political environment



7

EU-compatible legislation



8

Strategic location and developing infrastructure



9

Sound banking system



10

Great investment opportunities

THE LEGAL GUIDE TO **KOSOVO**

*Corporate-, Tax-, and Employment Law
and other Regulations*

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CONTACTS:

Ministry of Trade and Industry

Muharrem Fejza Street n.n.

Lagja e spitalit

10000 Prishtinë, Kosovo

Tel: +381 (0) 38 512 164

Fax: +381 (0) 38 512 798

Web: www.mti-ks.org

Investment Promotion

Agency of Kosovo

Muharrem Fejza Street n.n.

Lagja e spitalit

10000 Prishtinë, Kosovo

Tel: +381 (0) 38 200 36 527

+381 (0) 38 200 36 542

Fax: +381 (0) 38 212 807

Email: info@invest-ks.org

Web: www.invest-ks.org

Investment Promotion

Agency of Kosovo

Office in Vienna Implemented by

Economic Initiative for Kosova (ECIKS)

Nussdorfer Strasse 20/23

A - 1090 Vienna, AUSTRIA

Tel: +43 (0) 1 890 50 26

Fax: +43 (0) 1 890 50 26 26

Email: info@ipak-vienna.org

info@eciks.org

Web: www.ipak-vienna.org

www.eciks.org

CONCEPTION AND EDITING:

WOLF THEISS Rechtsanwälte GmbH

Schubertring 6, 1010 Vienna

Tel: +43 (1) 515 10

Fax: +43 (1) 515 10-25

Contact: Christian Mikosch

E-mail: christian.mikosch@wolftheiss.com

Gw Legal LLC

13 Gazmend Zajmi

Pristina, Kosovo

Tel: +44 (771) 722 05 03

Contact: Gail Warrander

E-mail: gail@gwlegalonline.com

DISCLAIMER

This brochure was correct at the time it went to press, i.e. October 2010; however, legislative changes and changes in interpretation by the authorities and courts can occur frequently in Kosovo. This brochure contains information that is summarized and, in part, simplified. It does not substitute for specific legal and tax advice. Despite attempting to exercise care in compiling this brochure, the authors can not warrant the accuracy, completeness, or up-to-date character of its contents. Any liability on the part of Wolf Theiss, Gail Warrander/GW Legal LLC, ECIKS and IPAK is therefore excluded.

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1

General Overview



THE REPUBLIC OF KOSOVO was declared independent on 17 February, 2008. In April 2008 the Assembly of the Republic of Kosovo adopted the new constitution which has entered into force on 15 June 2008.

Kosovo's constitution is based on the Comprehensive Proposal for a Status Settlement for Kosovo, submitted by United Nations Special Envoy for the resolution of Kosovo's status (the „Ahtisaari Plan“), which provides for supervised independence, overseen by two international institutions, namely European Union Rule of Law Mission in Kosovo (EULEX) and the International Civilian Office (ICO). The Ahtisaari Plan provides a number of overriding protections for Kosovo's minorities and authorizes EULEX to assist Kosovo authorities in the rule of law area, with a particular focus on police, judiciary and customs. In this respect, EULEX retains limited executive powers, in particular to investigate, prosecute and adjudicate serious and sensitive crimes in cooperation with the Kosovo justice institutions. ICO, on the other hand, is responsible for supervising the implementation of the Ahtisaari Plan.

1.1 History of the Legal System

UNDER THE 1974 CONSTITUTION of the Socialist Federal Republic of Yugoslavia (SFRY), Kosovo was an “autonomous province” within the SFRY and, as such, enjoyed substantial sovereign rights.

As an autonomous province in the SFRY, Kosovo had a parliament, government, judiciary, constitutional court and a national bank. In March 1989, following the rise to power of Slobodan Milosevic, Kosovo's autonomy was unlawfully abolished and Serbia assumed full control over the province. Shortly thereafter, the newly installed regime dismissed all Kosovo Albanians from their public positions, including the judiciary. Following the disintegration of SFRY, the aforementioned constitutional changes were sanctioned into law by the 1992 constitution of the Federal Republic of Yugoslavia, which was constituted of only Serbia and Montenegro. While some of dismissed Kosovo Albanian judges and prosecutors moved to the private practice, the lawlessness and widespread corruption that ensued the installation of the Milosevic regime in the province rendered their roles as attorneys obsolete. Consequently, most of them were

forced out of the legal profession completely. Following the end of the war in June 1999 the province was placed under an international protectorate, pursuant to United Nations Security Council Resolution 1244, and was administered by United Nations Mission in Kosovo (UNMIK), while NATO based Kosovo Force (KFOR) provided for overall security.

In accordance with UNSC Resolution 1244, UNMIK assumed full competencies in the legislative, executive and judicial branches of government that were exercised by the Special Representative of the Secretary General (SRSG). In order to fill the legislative gap created during the decade of Milosevic's rule, UNMIK enacted laws in the form of executive decrees, commonly referred to as “UNMIK Regulations”. UNMIK regulations were intended to complement, and govern the precedence of, different legal instruments enacted in the past. Indeed, while the bulk of Kosovo legislation remained relevant, a number of laws enacted during Milosevic's rule, which introduced discriminatory provisions against the Kosovo Albanian community, were repealed. Consequently, UNMIK authorized the application of the provincial law as it was in effect as of 22 March 1989 (before the abolishment of Kosovo's autonomy) except in cases where these legal instruments were enacted prior to 22 March 1999 and were discriminatory. During its mandate, UNMIK progressively developed a comprehensive modern legal framework, which culminated with the enactment of the Constitutional Framework of Kosovo, on the basis of which, the people of Kosovo were able to democratically elect their representatives in the local and central level. In 2000, UNMIK established an emergency justice system exclusively composed of local judges and prosecutors, who were subsequently joined by a limited number of international judges and prosecutors, who were responsible for serious and sensitive crimes. While, in the executive and legislative branches of government, UNMIK gradually transferred its competencies to Kosovo authorities, UNMIK retained executive control over the judiciary until Kosovo's independence.

Although following the entry into effect of Kosovo constitution in 2008, UNMIK's role became largely redundant; UNMIK is still present in Kosovo and continues to facilitate Kosovo's relations with countries that have not formally recognized its independence in general and Serbia in specific.

1.2 Applicable Law

THE APPLICABLE LAW IN KOSOVO stems from different sources with the following order of precedence:

- Laws passed by the Kosovo Assembly after the constitution came into force in June 2008, provided they are consistent with the constitution and the „Ahtisaari Plan“
- UNMIK Regulations (with supporting Assembly laws) passed between June 1999 and June 2008
- Laws dated prior to 22 March 1989
- Laws dated between 22 March 1989 and 10 June 1999 which are not discriminatory.

1.3 The Court System

KOSOVO'S REGULAR COURT SYSTEM is currently composed of 25 municipal courts, five district courts, one commercial court, the constitutional court and the Supreme Court (the latter three being in Prishtina). The minor offences court system, which adjudicates over administrative offences as well as public order and traffic violations, includes 25 municipal courts for minor offences and the high court for minor offences.

„Parallel courts“, run by Kosovo Serbs and supported/financed by Belgrade, operate without Kosovo government authorization in a number of Serbian enclaves throughout Kosovo. Moreover, Serbia has retained the continuity of the public administration, healthcare and justice institutions from the Milosevic regime by simply transferring the seats of these institutions from Kosovo to different towns in south-eastern Serbia after the end of the war. However, decisions by these parallel courts have no legal effect in Kosovo and have been recognized neither by UNMIK nor by the authorities of newly independent Kosovo.

The municipal courts operate as courts of first instance for criminal offences punishable with sentences of up to five years imprisonment¹ and as courts of first instance for civil inheritance matters, labour relations and other civil matters.

The district courts hear appeals on decisions by the municipal courts. They also serve as courts of first instance for criminal offences punishable by an imprisonment term of more

than five years, major property disputes and family law matters.

The commercial district court has Kosovo-wide first instance jurisdiction over disputes between 2 incorporated entities, disputes pertaining to insolvency proceedings and certain commercial criminal offences. It also hears cases referred by the Special Chamber of the Supreme Court.

The Supreme Court of Kosovo serves as a third instance appellate court in a limited number of criminal cases, hears direct appeals on cases originating in the district courts administrative appeals and other matters as provided by law.

Finally, the Constitutional Court has the final authority for the interpretation of the Constitution and the compliance of laws and government actions with the Constitution. During the transitional period, the Constitutional Court will be composed of six (6) national judges and three (3) international judges appointed by the International Civilian Representative, upon consultation with the President of the European Court of Human Rights.

A new law providing for the reorganisation and simplification of territorial and subject-matter jurisdiction of the court system is in the process of being promulgated. Furthermore, in the beginning of 2009, an Independent Judicial and Prosecutorial Commission (IJPC), consisting of five international members from United States and Europe, was established to conduct a one-time comprehensive review of the suitability of all individuals who seek appointment as a judge or prosecutor in Kosovo. The vetting process, conducted by IJPC, requires full financial disclosure and background checks for all judicial and prosecutorial candidates as well as a high degree of professional competence in addition to professional and personal integrity. The process, which is funded by the Government of the United States and the European Union, will be conducted in three phases and is expected to be concluded by the end of 2011.

According to Kosovo law, arbitration is a recognized instrument for the resolution of local and international disputes between physical persons and legal entities. Under the Regulation on Foreign Investments, companies under international ownership can always

¹ With the exception of, inter alia, traffic accidents with death casualties that are punishable with up to eight years of imprisonment.

choose arbitration. UNCITRAL and ICC arbitration are the two recognized systems, although neither one maintains a permanent chamber in Kosovo.

A local arbitration court is being set up and panel members have been appointed. This will operate through the American Chamber of Commerce and Kosovo Chamber of Commerce.

1.4 The Concept of Social Ownership

BEFORE 1989 ALMOST ALL economic activities were operated through Socially Owned Enterprises (SOEs).

The concept of social ownership is a long-standing legal concept of the SFRY. It stems from the communist doctrine of common ownership in the means of production (i.e. everything is owned by the workers, who contribute to the betterment of society). The SOEs reflected this concept. Enterprises existed that were entirely socially owned. These enterprises were managed by a works council. Combinations of socially and privately owned enterprises were introduced by later laws. These laws provided for the possibility of acquiring private ownership in previously entirely socially owned enterprises (e.g. through the transfer of shares to employees). The concept of private ownership rights in enterprises was continuously refined, and resulted in socially owned enterprises issuing shares to employees and private entities. In most cases, this resulted in mixed enterprises that were partially socially and partially privately owned. However, the legal system prior to 1989 did not provide for rules on the sale of socially owned property, the liquidation of enterprises in social ownership or the privatization of such entities. Only after 1989 was the sale of socially owned property or entire enterprises in social ownership provided for in the SFRY legislation. All of these laws have now been replaced and are relevant only for a better understanding of the history of SOEs.

1.5 Publicly Owned Enterprises

A PUBLICLY OWNED ENTERPRISE (PoE) was (pre March 1989) defined as a subcategory of SoEs, performing infrastructure operations in the public interest. Today, in Kosovo there are basically two different types of POEs, the ones that are owned by the Republic of Kosovo, i.e.

Central POEs and the ones that are owned by municipalities, i.e. Local POEs. Local POEs are mostly local water and waste companies, local transport or heating companies.

As of today the following Central POEs exist in Kosovo:

- Kosovo Energy Corporation JSC (KEK)
- Transmission System and Market Operator JSC (KOSTT)
- Post and Telecommunications of Kosovo JSC (PTK)
- Kosovo Railways, JSC
- Kosovo Landfill Management Company JSC
- HPE Iber Lepenc, JSC
- Radio Television of Kosovo (RTK)
- Pristina International Airport JSC (has been given by way of concession to the Limak-Airport de Lyon consortium in 2010)

A legal framework for the ownership of POEs, respectively their corporate governance is laid down by the Law on Publicly Owned Enterprises, law no 03/L-087 (POE Law). Under this law, POEs have to be organized as joint stock companies. This has occurred with all major PoEs.

2

Corporate Law



CORPORATE LAW IN KOSOVO is laid down in the Law on Business Organizations, law no. 02/L-123 promulgated and entered into force on 27 May 2008. It supersedes UNMIK Regulation no. 2001/6 and UNMIK Administrative Direction 2002/22.

The Law on Business Organizations specifies the types of business organization through which business activity may be conducted in Kosovo, establishes the applicable registration requirements for each type of business organization, lists the legal provisions applicable to each type of business organization with respect to its legal capacity and structure as well as its rights and obligations, and the rights and obligations of its owners, managers, directors, legal representatives and third parties. It also establishes the legal provisions that promote and facilitate the orderly and efficient creation, operation and dissolution of such business organizations.

Similar to common practices in EU countries, only certain types of business can be registered in Kosovo. According to the Law on Business Organisation these types are:

- (i) individual person enterprise (i.e. individual entrepreneur or sole trader),
- (ii) general partnership,
- (iii) limited liability company,
- (iv) limited partnership; and
- (v) joint stock company.

It is also possible to register as a branch of a foreign company.

2.1 Establishment of Companies

2.1.1 Individual Business Enterprises and General Partnerships

A PERSONAL BUSINESS ENTERPRISE is established by the operation of a business by a sole proprietor who is a natural person engaged in commerce. No further acts of establishment are necessary. This is the most common business form in Kosovo and more than 95% of businesses are registered in this form. The owner has unlimited liability, meaning his individual assets can be pursued in the event of default.

A general partnership comes into existence either through registration or by operation of

law. In the latter case, a general partnership is assumed to exist, if two or more persons and/or organizations cooperate in the conduct of business activity. A written partnership agreement is not a precondition to establish a general partnership, thus it is sufficient, if such cooperation is based on an oral agreement. The general partners are jointly and severally liable for all debts and obligations incurred by the general partnership.

2.1.2 Limited Partnership

A LIMITED PARTNERSHIP CONSISTS of at least one general partner and at least one limited partner. It is incorporated by registration of the limited partnership memorandum – which is the founding and constitutional document of a limited partnership. The Business Registry issues a certificate of registration, which serves as public conclusive evidence that the limited partnership was properly incorporated. In case of a lack of such a memorandum, a limited partnership has not been incorporated, and all persons who have paid-in their contributions become partners of a general partnership (and are thus fully and personally liable). Each limited partner must have paid-in his contribution by the time the limited partnership memorandum is registered.

The general partner of a limited partnership is jointly and severally liable for the debts of the partnership without limitation, whereas the limited partner is jointly and severally liable only with his contribution to the limited partnership. Natural persons as well as legal persons can be partners in a limited partnership.

A limited partner cannot represent the partnership. The limited partnership memorandum and the limited partnership agreement as well as the business signs, letterhead and other means that expose the limited partnership's name to third parties must include the name of at least one general partner and the words "a limited partnership".

Every limited partnership has a limited partnership agreement containing provisions governing the management, the operation of the business, as well as provisions specifying the contributions to the partnership capital of each partner.

2.1.3 Corporations

A CORPORATION MAY EITHER be a Joint Stock Company, JSC, (articles 126 et seq.) or a Limited Liability Company, LLC (articles 78 et seq.). The corporation has to indicate its legal form in its name.

A corporation is created only upon the registration of its charter, which is the founding and constitutional document of a limited liability company and a joint stock company.

The charter must contain i.a.:

- the name of the corporation;
- the address in Kosovo at which the corporation will have its principal place of business; the address of its registered office and the name of the corporation's registered agent at that address (the registered agent must be a person with a Kosovo ID who is present in Kosovo for most of the year);
- the business purpose of the company, which may be described as "any lawful business purpose"; but the Business Registry requires you to also use a list of activities which must be identical to the list of codes and business descriptions in the Excel spreadsheet list on the Registry web site;
- the charter capital (which must be at least EUR 1,000 for an LLC / EUR 25,000 for a JSC);
- the denomination of the share capital, i.e. nominal value and number of shares;
- the names and addresses and IDs or passport numbers of the founders;
- the names and addresses of the owners and their respective ownership interest (only for the LLC); and
- the directors' names and addresses of their residence in or outside Kosovo.

Furthermore, there must be a company agreement i.e. articles of association (LLC) or by-laws (JSC), containing provisions governing the management and operations of the company.

The charter capital can be paid up in cash or in kind. In the case of joint stock companies there are stricter rules regarding the valuations of in-kind contributions (article 149).

In addition to registering with the Business Registry, it is necessary to complete a registration form, produce photocopies of foreign passports of the directors and shareholders

and Kosovo residence IDs for any Kosovar citizens.

Where a subsidiary or a branch of a foreign company is being founded by a foreign entity, a notarized copy and certified translation of the foreign shareholder's business registry extract or equivalent and of the decision to found the company must be submitted. It is possible to use a lawyer's or an accountant's office or similar as the registered office either on a permanent or temporary basis.

2.1.4 Duration and costs of the foundation

IN ACCORDANCE WITH THE Law on Business Organizations the Minister of Trade and Industry will publish a schedule of fees regarding the registration of companies and other services provided by the Registry. Current provisions regarding fees of the foundation are provided in Administrative Direction no. 2008/15 of 18 September 2008 by the Ministry of Trade and Industry.

In practice, however, the Business Registry has (already prior to the adoption of this direction) applied a simple fee structure of EUR 23 for filing any document related to a limited liability company, joint stock company, limited partnership or foreign company and EUR 5 for any document related to a personal business enterprise, limited partnership or general partnership. The fee must be paid into the central business registry account at the bank and evidence of payment must be submitted with the filing.

If a document delivered to the registrar for filing meets all requirements of the Law on Business Organizations, the registrar should register this within ten calendar days of receipt. In the case of shortcomings in the filing, the registrar should return the filing to the applicant within ten calendar days of receipt, together with a brief written explanation of the reasons for refusal. In practice, written explanations are not usually given but are given orally when the person registering visits the Business Registry.

2.1.5. The Business Registry

THE BUSINESS REGISTRY IS a central register that maintains the records of all registered companies and trade names. Each registered company can be found online by entering the

company name or business ID on www.arbk.org/arbk. Application forms also are available on that site, although note that many of them are now out of date and not accepted by the registry.

The Business Registry is responsible for:

- the registration of new companies;
- the registration of termination, voluntary dissolution and merger of companies;
- the registration and reservation of trade names; the registration of foreign business organizations;
- handling new pledge registrations;
- the receipt of the annual report of every registered business organization; and
- the receipt of annual financial statements and business reports of LLCs and JSCs.

2.1.6 Foreign Business Organization

A FOREIGN BUSINESS ORGANIZATION is any organization that has been established under the law of a jurisdiction outside of Kosovo and engages in any kind of business activity in Kosovo. Such a foreign business organization may engage in business activity in Kosovo to the same extent as a Kosovo business organization. Prior to that, it has to register with the Business Registry and has to submit a “foreign business organization memorandum” meeting the information requirements according to the Law on Business Organizations.

A foreign business organization has to comply with such regulations, prior to engaging in business in Kosovo. A notarized copy of the certificate (translated into English, Albanian or Serbian if not in any of those languages) must be presented along with the same data as mentioned above (2.1.3).

2.1.7 Local Registration of each premises

UNDER THE LOCAL GOVERNMENT Finance Act 2008, each municipality can also require a business that has any premises (whether or not its headquarters) in its municipality to register such premises as a further “business registration”. A copy of the Central Registration certificate and Business Information sheet must be provided. The fee for such municipality registration is based on the activity types of the business (as registered or as should be registered). Each municipality sets its own fees per activity type. The business registration fee ranges from EUR 100 (which

is the fee for example for a market stall in Pristina) to EUR 1000 for a bank branch or EUR 20,000 or more in some municipalities for airlines or mining companies.

2.2 Main Focus: Corporations

ACCORDING TO THE LAW on Business Organizations a corporation is a business organization whose capital is divided into a specified number of shares (JSC) or ownership interests (LLC). A corporation is a legal entity that is legally separate and distinct from its owners. Its shareholders may be legal or natural persons.

A corporation is liable for its obligations with all of its assets. The founders are jointly (and regarding the LLC severally) liable for the corporation’s obligations if they have not paid-in their contributions to the charter capital as well as for founders’ action before registration.

	Limited Liability Company	Joint Stock Company
Minimum charter capital	EUR 1,000 ²	EUR 25,000
Number of shareholders	Unlimited, co-ownership possible	Unlimited
Transfer of shares	Company agreement may impose restrictions: otherwise no pre-emption rights exist by default	By public offering (after charter capital has been fully paid) or free transfer, i.e., no pre-emption rights but they can be put in a shareholder agreement

2.2.1 Management of a Corporation

JSCs HAVE TO ALLOCATE management functions among the shareholders’ meeting, the board of directors, and the officers of the company.

LLCs are managed by the owners’ (shareholders) meeting and one or more managing director, who has the authority to represent the company in the conduct of its normal and customary business activities.

2.2.2 Shareholders’ Liabilities

SHAREHOLDERS’ PRIMARY LIABILITY is to pay their contributions. Partial payments are allowed. Thus, within the first 30 days following its initial registration a JSC may issue all or any parts of its shares of stock in return

² According to section 3 of the Administrative Direction 2001/24 amending Administrative Direction 1999/2 and implementing UNMIK Regulation no. 1999/4 on the currency permitted to be used in Kosovo, any reference to an amount payable in DM shall be replaced by the equivalent amount in Euros at the conversion rate of 1 EUR = 1.95583 DM.

for partial payment. Altogether no less than 25% of the par value of the shares must be paid. The unpaid balance must be paid by a date that is no more than two years from the date of the initial registration. A penalty for non-payment is provided by article 151 of the Law on Business Organizations (forfeiture of shares, court complaint).

Article 151 provides that the shareholders who did not pay in their entire contributions to the charter capital are liable to the company for their unpaid balance. Moreover, no public offering may be made until the charter capital has been fully paid (article 153). Therefore, the full payment of the initial charter capital is important in connection with the shareholders' protection and the issuance of shares.

The share capital of the LLC must be paid into the company within 14 days after registration. Before that, the company may not engage in business in Kosovo. However, any person taking action on behalf of the company, before the share capital has been paid, is jointly and severally personally liable.

2.2.3 Board of Directors

THE BOARD OF DIRECTORS manages the business of the company (JSC) and therefore has the exclusive authority and competence to:

- approve overall business strategy plans;
- hire and discharge officers;
- purchase – under certain circumstances – own shares of the corporation on behalf of the corporation;
- convene and administer the shareholder meeting;
- determine the officers' compensation;
- determine the disposition of the corporation's reserves;
- ensure the observance of applicable law and accounting standards by the corporation; and
- issue shares and bonds within the limits stated in the company's charter.

In general, the directors can not assume obligations on behalf of the corporation vis-à-vis third persons individually. However, the corporation may furnish individual directors with the authorization to conclude certain agreements.

As part of the business registration an "Information" sheet is produced, which usually shows the authorization of each director. This is reviewed by companies and authorities in Kosovo to see if someone has the power to sign.

The number of members of a JSC's board of directors depends on the number of total shareholders:

- one or more members for a company with less than ten shareholders,
- at least three members for a company with ten or more shareholders and
- at least seven members for a company with more than 500 shareholders.

2.2.4 Directors' Liability

NO DIRECTOR SHOULD BE held liable for any action under the Law on Business Organizations if he can prove, that he reasonably believes that he acted with proper authority and in the company's best interests and that he has acted in good faith and with due and diligent care and attention to his responsibilities (subject to the conflict of interest rule below).

The director is obliged by law to declare any conflict of interest and not to vote in relation to such matter.

Compared to other continental European concepts of director liability, the Kosovo standards for directors' liability under this so-called "business judgment rule" are somewhat more lenient. The standard is a subjective one (good faith of the director) and not the usual standard of an objective one (comparison with a prudent director). However, there are provisions in the Criminal Code, which make a director liable for other offences such as entering into an unfavourable contract.

2.2.5 Officers

OFFICERS OF A JSC ARE appointed by the board of directors and have the powers and authorities assigned to them by the by-laws. Each corporation must have a secretary who is responsible for the preparation and administration of shareholder meetings and board meetings.

Officers are liable in the same way that directors are.

2.2.6 Transfer of shares in a Limited Liability Company

IT IS POSSIBLE TO transfer shares ("ownership interests") in a Kosovo limited liability company freely in whole or in part, provided the company agreement does not provide oth-

erwise and subject to pre-emption rights for other shareholders (unless excluded).

If shares in a limited liability company are transferred, the registered charter of the company must be amended accordingly and the changes must be notified to the Business Registry.

In practice, this has often caused considerable confusion, since the requirements of the Business Registry were often perceived as arbitrary. In the following we have summarised the procedure provided by law and last applied in practice in Pristina:

- Adoption of a resolution of the owners authorizing an amendment to the registered charter;
- Such resolution authorizing the amendment shall instruct an “authorized person” (note: every document to be submitted for registration shall be signed by such person, which is either an officer of the company or an officer of the board of directors or a founder of the company if the document is submitted in connection with the initial registration of the company) to sign and submit a notice to the Business Registry, containing:
 - the name and registration number of the limited liability company;
 - the text of each amendment adopted;
 - the date of each adoption of each amendment by the owners;
- a statement that the amendment was duly approved by the owners in a manner that is consistent with the present law, the charter and the by-laws;
- a statement that the person signing and submitting such notice is an “authorized person” and that such person has been duly authorised to sign and submit the notice
- a copy of the respective resolution(s);
- the text of the concerned document (here: the registered charter) as amended (the law states that such document does not need to be signed by the owners of the limited liability company)

In practice, the application should also contain:

- an original or certified copy of the share purchase agreement regarding the transfer of the ownership interest
- a confirmation that the respective purchase price has been duly transferred and received

- copies of the passports of the signing individuals
- the completed form no. “A 8” (see: website of the Business Registry under <http://www.arbk.org/arbk/>)
- a “proof of payment” regarding the registration fees

In case the parties applying for a registration are not individuals, it might also be advisable to provide for official excerpts regarding these legal entities.

Once all the documents are submitted to the Business Registry (it is not possible to electronically submit documents) a respective payment form is issued. Such payment form provides for the transfer of registration fees to an “authorized bank” and must (after the transfer of fees is confirmed on such form) be immediately submitted to the Business Registry.

2.3 Share certificates and share registers

SHARES DO NOT NEED to have certificates. There must however be a share register kept at the company’s registered office.

2.4 Annual general meetings and reports

ANNUAL GENERAL MEETINGS OF JSCs must be held within 60 days after the board receives the company’s audited financial statements, but not later than 90 days after the end of the company’s financial year. Every registered business organization must submit an annual report to the Business Registry between January 1 and April 30 of each year together with a copy of the accounts.

2.5 Transformation of entity types

THE CURRENT BUSINESS LAW does not provide for a transformation from one entity type to another.

In practice, the registry does permit this. In order to conduct a transformation, a certificate must be produced by the tax authority showing all taxes have been paid. There is no need to notify creditors of such transformation.

3

**Increase in Borrowing,
Capital & Bonds**

4

**Foreign
Investors**



PROVISIONS REGARDING INCREASES IN the charter capital of a corporation are provided by the Law on Business Organizations. The shareholders' meeting can increase the charter capital by either increasing the par value of shares or by issuing additional shares. More detailed information on the increase of charter capital can be found in the Law on Business Organization (LLC article 79, JSC article 154 et seq).

3.1 Bankruptcy Provisions

LAW NO. 2003/4 OF the Assembly of Kosovo on the liquidation and reorganization of legal persons in bankruptcy, promulgated by UNMIK Regulation no. 2003/7, provides that a creditor can submit an insolvency petition to a court if (a) the debtor has failed to pay a debt that is at least 60 days overdue; or (b)

the total amount of the overdue debt exceeds EUR 5,000. A debtor can initiate insolvency proceedings under the same conditions. There are also advertisement requirements. Secondary legislation exists setting out the rules for both liquidation and reorganisation and the requirements of the liquidator, administrator and creditor committees.

Public and social enterprises are not subject to this Law but to a separate insolvency regulation 2005/48.

ACCORDING TO UNMIK REGULATION no 2006/28 on Foreign Investment, foreign investors are granted the same treatment as resident investors and do not require a further licence or approval. Therefore, foreign investors may establish subsidiaries, branches, and representative offices to the same extent as domestic business organizations and foreign investors must not be taxed less favourably than domestic business organizations, etc.

In addition foreign investors may:

- open bank accounts in the currencies that are legally permitted (Bank accounts in any foreign currency also may be opened);
- transfer into and out of Kosovo profits after the payment of taxes;
- use their investments and any income lawfully received for any lawful purpose; and

- retain the profits of their investment, and convert such into another currency in any domestic or foreign market.

Detailed provisions concerning the protection of foreign investors against unjustified expropriation were also incorporated in this law.

Furthermore, the Ministry of Trade and Industry of Kosovo has established the Investment Promotion Agency of Kosovo (IPAK), which is intended to provide a one-stop shop service to both local and foreign investors seeking investment opportunities in Kosovo.

THE KOSOVO TAX SYSTEM is a young system. The first state duties were introduced in 1999 by the implementation of a customs regulation. Since 2000, further taxes have been implemented continuously, e.g. municipal taxes. However, until now there has been no integrated fiscal code governing all tax aspects, but rather several regulations issued to cover the main taxes applicable in Kosovo. Recently the government of Kosovo has approved a package of tax cuts which are valid starting from 1 January 2009. Corporate income tax was reduced to a flat-rate of 10%, VAT was increased to 16%.

The regulations aim to strengthen the development of the economy and be generally consistent with European standards.

The most important taxes are:

- corporate income tax,
- personal income tax;
- value added tax;
- rent withholding tax;
- custom duties;
- excise tax;
- municipal tax (immovable property tax and business licence fee); and
- quarrying and mining tax.

5.1 Fiscal Number

ALL BUSINESS ORGANIZATIONS registered in Kosovo must apply for, and receive, a fiscal number from Tax Administration of Kosovo-TAK before beginning any economic activity. Applications for the fiscal number must be made to the applicable TAK regional office within 15 days after company registration.

TAK may make an official visit to the business location prior to issuing of a fiscal number. The visit must take place within 5 business days after receiving the application. TAK must make a decision on whether to issue a number, or not, within 10 days after receiving the application.

5.2 Corporate Income Tax

ON 29 DECEMBER 2009 the Kosovo Assembly adopted the Law on Corporate Income Tax (Law No. 03/L-162), which entered into force on 1 January, 2010. In the following it is referred to this law.



The following are subject to corporate income tax:

- corporations or other business organizations that have the status of a legal person under applicable law in Kosovo;
- companies operating with public or socially owned assets;
- organizations registered with UNMIK as non-governmental organizations; and
- permanent establishments in Kosovo of non-residents. Such permanent establishments include but are not limited to: plants, branch offices, representation offices, factories and construction sites. (See section 5.10 below.)

The corporate income tax rate is as of 1 January 2009 10 % of the profits (for further rules, see section 5.2.3). Certain revenues like some revenues of non-governmental organizations where those organisations have the public benefit status certificate are exempted from corporate income tax.

5.2.1 Deductible Items

EXPENSES ARE CONSIDERED DEDUCTIBLE if they are incurred during the tax period wholly and exclusively in connection with conducting the business activity.

In particular, representation costs (advertisements, marketing) are partially deductible, up to 2% of the annual turnover, as are donations made for humanitarian, health, educational, religious, scientific, cultural, environmental and sports purposes, up to 5% of the taxable income before taxes.

There is a cap on expenses that can be claimed for the maintenance of vehicles. The tax authority also will not allow as an expense an invoice from a company that is not registered in Kosovo when it should be. The tax authority also does not easily recognize the validity of inter-company agreements, e.g. for services provided by the parent company or headquarters.

Expenses that are not deductible include, for example, costs associated with the acquisition of real estate, the acquisition of goods that can be amortized, contributions to reserve funds/provisions, fines and the value added tax for which the taxpayer claims a deduction of input tax. Further, expenses which are €500 or more are only deductible if paid by bank transfer and all expenses need the business registration number, fiscal number and full

name of the supplier and business registration number, fiscal number and full name of the purchaser on the coupon or invoice. A list of all expenses over €500 with details of supplier and the nature of the expense must be submitted by 31 March each year to the tax authority.

5.2.2 Losses Carried Forward

LOSSES MAY BE CARRIED forward and may be settled against future profits for seven consecutive fiscal years unless the owner changes by more than 50% in which case the loss is “terminated”. First, losses have to be settled against profits of the same category of income (horizontal loss adjustment). Currently there are no grouping provisions in Kosovo that would enable losses in one company to be offset against the taxable profit in another company in the same group.

5.2.3 Corporate Assessments and Payments

THE FISCAL YEAR CORRESPONDS to the calendar year.

Taxpayers are required to make quarterly advance payments for the immediately preceding quarter to any authorized bank. These advance payments have to be made on or before 15 April, 15 July, 15 October and 15 January of each year.

Enterprises with an annual turnover of less than EUR 50,000 can be taxed either on an actual profit basis (i.e. after deducting expenses as above) or a presumptive tax basis (based on turnover).

The turnover basis applies if the taxpayer does not opt for taxation on the actual profit basis and its turnover is less than EUR 50,000. These enterprises pay three percent (3%) of each quarter's gross income, if the income is generated from trade, transport, agricultural and similar commercial activities and five percent (5%) of each quarter's gross income, if the income is generated from services, professional, vocational, entertainment and similar activities. In any case the enterprises must pay no less than thirty seven euros and fifty cents (€37.50) per quarter. The turnover basis option is not available to branches of foreign companies.

However, such enterprises can also opt to be taxed on the basis of 10% of actual taxable income by submitting a form. They must then produce related financial statements.

The payments of enterprises that opt for the “real” and not presumptive tax basis are as follows:

- $\frac{1}{4}$ of the estimated corporate income tax liability for the year, less any amount already withheld in relation to a resident or non-resident person with respect to interest, dividends and rent; or
- $\frac{1}{4}$ of the 110% assessed tax liability of the previous tax period reduced by any amount already withheld in relation to a resident or non-resident person or with respect to rent.

Additionally, such tax payers are obligated to submit an annual tax declaration to the tax administration on or before the 1 April of the year subsequent to the tax period and to pay the taxes that have not been paid up to such date. Together with the tax declaration, these taxpayers are also required to submit financial statements.

Together with the submission of the final tax declaration, a confirmation of the already paid taxes should be submitted. The taxpayer is entitled to receive a refund for any surplus.

5.2.4 Taxation of Permanent Establishments

A PERMANENT ESTABLISHMENT is considered to be any workplace through which a non-resident person carries on a business in Kosovo. This place can be a plant, a branch office, a representative office, a factory, a shop, etc.

In practice, such non-resident person is subject to corporate income tax for the profits made in Kosovo.

Non-resident persons with a permanent establishment in Kosovo can obtain an official document from the Kosovo tax administration, certifying the amount of taxes they have paid, so that this can be used to obtain a credit if permitted by the foreign tax authority.

The test for corporate income taxation in Kosovo is far-reaching and the tax authority under Law 162-3 taxes companies who acquire income as a result even of a short consultancy visit to Kosovo, even when they have no permanent office or staff in Kosovo if their com-

pany bills work for more than 90 cumulative staff days spent in Kosovo or are present for more than 185 days. After such a period tax is due retrospectively.

VAT is also chargeable by entities doing business in Kosovo irrespective of the period of residence and even for services. Kosovo has enacted the “place of supply rules” from the 6th Directive.

There is a 5% withholding tax on payments for services to any entity, which is not registered in Kosovo but should be.

5.2.5 Withholding Tax

LAW 162-3 ON CORPORATE Income Tax also provides for regulations of the withholding tax. This Law provides that each taxpayer who pays interest or royalties to a resident or a non-resident person is liable for withholding 10% tax at the time of payment.

The income generated by a non-resident person or entity from entertainers in Kosovo is subject to a withholding tax, if the non-resident person or entity has no permanent establishment in Kosovo and the gross compensation received is more than five thousand (5,000) € in any tax period. The withholding tax applied is five percent (5%) of the gross compensation.

There is also a withholding tax on rent. Whenever a legal person, e.g. a limited liability company, pays rent, 9% of the gross rent must be withheld.

Any person on whose behalf tax is withheld can request receipt of a certificate from the taxpayer concerning the withholding of the above tax. This certificate has to be issued by 1 March of the subsequent year. Please note that such certificate is not issued by the Kosovo tax administration, but rather by the payer itself in the form established by the tax administration.

5.2.6 Avoidance of Double Taxation

THE LAW ON CORPORATE Income Tax provides that any applicable bilateral agreement on the avoidance of double taxation supersedes domestic legal provisions.

- Kosovo authorities do not recognise the tax treaties signed by the former Federal

Republic of Yugoslavia. There is one double taxation treaty that has been signed with Albania. The Free Trade Agreements with Bosnia and Macedonia also require entry into double taxation treaties but none exist.

- The absence of double taxation treaties in particular causes problems in cash-flow and bureaucracy, and is most acute for ex-pat workers whose time is divided between Kosovo and other countries.

5.3 Personal Income Tax

THE LAW ON INCOME TAX 3-115 of December 2008 regulates the personal income tax regime. As this was the case in introducing the corporate income tax, this regulation aims to introduce one single tax for all sources of income derived by individuals.

5.3.1 Taxable Persons

TAXABLE PERSONS ARE RESIDENT and non-resident natural persons who receive income in Kosovo. A resident is defined as a natural person who has his principal residence in Kosovo. A natural person is also deemed resident if physically staying in Kosovo at least 183 days in one fiscal year.

Therefore, the following individuals are subject to Kosovo's personal income tax:

- residents on taxable income derived from Kosovo source income and foreign source income; and
- non-residents on taxable income derived from Kosovo source income.

5.3.2 Taxable Income

THE TAXABLE INCOME FOR a tax period is calculated using the difference between gross income and any allowed deductions.

Gross income consists of income from: a) wages, b) business activities, c) rent, d) use of intangible property, e) interest, f) dividends, g) capital gains (note: the relevant regulations in article 14 of this statute shall become in force on 1 January 2010), h) lottery or other game of chance prizes, i) pensions and h) any other income that increases the taxpayer's net worth.

5.3.3 Tax Rates

THE PERSONAL INCOME TAX rate system is a progressive tax system with a 10% maximum tax rate. Taxes must be withheld by employers on a monthly basis at set amounts.

Income taxes are zero for the first EUR 80 per month, 4% for the next EUR 170, 8% for the next EUR 200. For earnings above this per month, they are 10%. In other words, for earnings above EUR 450 per month the tax

Annual taxable income	Tax rate, as of 1 January 2009
Up to EUR 960	0%
EUR 961 up to EUR 3,000	4% of the amount exceeding EUR 960
EUR 3,001 up to EUR 5,400	EUR 81.60 + 8% of the amount exceeding EUR 3,000
More than EUR 5,400	EUR 273.60 + 10% of the amount exceeding EUR 5,400

is EUR 273.6 plus 10% on the amount above EUR 450.

Nearly all benefits are taxable except for the mandatory payments to the State pension scheme and up to EUR 50 per month in benefits in kind such as provision of a canteen lunch at work or a mobile phone.

5.3.4 Taxation of Foreigners

THE ONLY CONCESSION FOR the taxation of foreigners is that foreigners do not need to pay personal income tax on the accommodations provided for them or on school fees. However, the employer must withhold 9% of the rent owed to the landlord of the employee's apartment. Expatriate personnel usually are employed under a Kosovo labour contract and consequently, liability for taxes is incurred as of the first day of work. The employer must withhold income tax on pay for ex-pats just as such employer must do for locals. The only difference is that there is no obligation to make the pension contributions for ex-pats.

5.4 Value Added Tax

THE VAT REGIME IN KOSOVO follows the main principles of the EU 6th Directive with some subtle differences such as requirements to pay VAT on goods at the border. Thus, it is a tax that is added to the sale of all goods and services. Kosovo enacted the rules on reverse charge VAT from 1 August 2010.

5.4.1 Basic VAT Rules

VAT IS CHARGEABLE ON taxable values of imports and domestic supplies of goods and services. Generally, the VAT rate is 16%. Yet, the export of goods is zero-rated, meaning that 0% VAT is charged for the export of goods.

The law also defines what is considered a supply of goods versus a supply of services. The taxable value of a taxable supply in Kosovo is the total consideration payable for that supply. For imports, the taxable value is the customs value plus customs duties, excise taxes, transport costs and other charges levied in customs.

No VAT has to be paid i.a. for:

- exports of goods (0%);
- imports, and supplies of the goods listed in the Annex of the law (0%);
- import of a traveller's personal effects or of tourist duty free goods (not taxable);

In addition, the Regulation on VAT provides for certain rebates or exemptions, for example for some donor funded projects. Supplies of financial services are also VAT exempted.

5.4.2 “Persons” obligated to register

INDIVIDUALS, AS WELL AS legal, public and private persons, are all obliged to register with the tax authorities if they perform the following activities:

- import and export of goods or services; or
- supply of goods or services (which are neither imports nor exports) with a turnover exceeding EUR 50,000 per calendar year or whereby the turnover is likely to exceed EUR 50,000 over 12 months; registration must in any event occur within 15 business/calendar days of exceeding the turnover.

5.4.3 Deduction of input tax

ONLY REGISTERED SUPPLIERS ARE entitled to deduct input taxes on supplies on which VAT is imposed. A deduction of input taxes only may be applied to items used for supplies that are subject to VAT.

A deduction of input tax requires that the suppliers be in possession of authentic customs documents for imports or exports or, in the case of other supplies, in possession of an authentic invoice issued by the taxable person or in possession of proof that the debt has been paid.

The following supplies do not qualify for a deduction of input tax:

- fuel purchases;
- travel, representation, lodging, meal and entertainment expenses; and
- 50% of the expenses related to cars.
- for major capital goods and machinery, there is a 6-month deferral period if the taxpayer (the enterprise) is a newly established business for the payable VAT

5.4.4 VAT Compliance

VAT COMPLIANCE PROVIDES FOR the monthly submission of VAT returns to the competent tax authority and monthly payment of VAT due by the 20th of the month following the reporting month. The submission has to be completed by the 20th of the month subsequent to the reporting month, at the latest. Late filings or the payment of taxes is subject to penalties and interest.

The deduction of input tax is calculated based on the information recorded in the sales and purchases books. VAT records have to be kept for 5 years.

5.4.5 Reverse VAT charge

THE MINISTER OF ECONOMY and Finance has issued a sub-legal act to provide that the person liable for payment of VAT should be the taxable person to whom supplies are made, where the service is in effect “imported” e.g. supply of legal or IT services to a bank in Kosovo.

5.5 Social Security and Health Insurance Charges

CURRENTLY, KOSOVO HAS ESTABLISHED only one mandatory social charge in the form of pension contributions, which are administered and managed by the Kosovo Pension Savings Trust (Trusti). The pension law 2008 provides that both employees and employers should contribute to the individual savings pension system. This is a defined contribution scheme, with an account held for each individual who has invested therein. Each individual receives an annual account statement. Foreigners are not obligated to make such pension contribution.

Employees have to contribute 5% of their monthly wages to their pensions, which is matched by another 5% contribution contributed by their employer.

In practice, employers withhold and pay for both elements.

Only 5% is deductible by the employer as a corporate tax expense, unless the employer withholds income taxes on the contribution as well.

There are currently two licensed supplementary pension schemes.

Similarly, income taxes must be withheld on any payment to a health insurance scheme, as it is treated as a taxable benefit. Insurance schemes for accidents or death on the job are not treated as taxable benefits.

5.6 Salary Taxes and Pension Charge Compliance

EMPLOYERS ARE OBLIGATED TO withhold an employee's pension contributions and personal income taxes, and to pay such contributions and taxes by the 15th of the month following the reporting month.

At the same time, employers are obligated to submit a monthly payroll record, a wage tax withholding and remittance statement, and a statement of pension contributions and remittance form. A monthly pension report form must also be submitted.

Foreign individuals are not obligated to contribute to the local pension system, but may choose to do so.

5.7 Customs Duties and Customs Code

CUSTOMS ARE REGULATED BY the Customs and Excise Code (no 03/L 109) and the Administrative Instruction of the Minister of Economy and Finance implementing this Code. The regulation on customs provides for a customs rate of 10 % for all goods imported into Kosovo. The goods listed in the annex of this regulation are excluded from this rate.

The current customs tariff is based on the harmonized system of the World Customs Organisation.

5.8 Excise Duties

THE LAW ON EXCISE Taxes, amended in 2008 and 2009, provides a list of goods subject to excise tax. The goods subject to excise taxes include: coffee, wine, cigarettes, and other tobacco products, oils, fruit juice and other drink concentrates, cars and other motor-operated vehicles. Fixed amounts are provided for certain goods.

5.9 Real Estate Tax

THE MUNICIPAL PROPERTY TAX is regulated by UNMIK Regulation no. 2003/29, at last amended by UNMIK Regulation no. 2006/59. In general, the person liable for paying this tax is the real estate owner. The rate is set on an annual basis between 0.05 % and 1 % of the market value of the real estate. There are different rates for residential and commercial property. The annual tax has to be paid in two equal portions no later than on 30 June and 31 December of the tax period.

The municipalities in each jurisdiction must assess the real estate and update the market value of each real estate parcel every three to five years. Furthermore, the municipality has the authority to collect the tax for the real estate (Law no. 03/L-049 on Local Government Finance).

6

Labour Law

7

Public Procurement Laws

6.1 Protection against Discrimination

LABOUR LAW PROTECTS EMPLOYEES against discriminatory treatment because of race, colour of skin, sex, religion, age, family status, political opinion, national origin, sexual orientation, language or union membership.

6.2 Labour Unions

EMPLOYEES HAVE THE RIGHT to organize labour unions. Until 1989, labour unions had great influence on corporate management. During the war and afterwards, the influence of worker organizations started to weaken and many of them are no longer active. Therefore, many collective agreements that were the basis for most employment contracts no longer apply.

6.3 Labour Contracts

LABOUR LAW ESTABLISHES CERTAIN mandatory standards to be provided for in labour contracts by giving flexibility to their contents, as long as it does not conflict with applicable law. The law permits defined term employment contracts for a maximum of 10 years as well as indefinite employment contracts. Contracts must be in the mother tongue of the employee and must be in writing.

Labour law mainly contains provisions regarding the termination of employment contracts. Please note that economic, technological, or structural changes to the enterprise are also reasons that justify a termination by an employer.

When a minimum of 20 employees are discharged within a 6-month period, it is considered a large-scale layoff, to which certain protective provisions apply. These are essentially:

- 1 month prior notification of the plans to decrease the number of personnel and notification of the measures to be taken to alleviate the consequences of such dismissals;
- measures to be taken to limit the number of dismissals;
- severance payments to be paid according to the duration of the employment relationship (between one and seven monthly salaries).

EMPLOYMENT RELATIONSHIPS ARE GOVERNED by UNMIK Regulation no. 2001/27 on Essential Labour Law in Kosovo concerning employment contracts and collective agreements, as well as by the predecessor 1989 Kosovo Labour Law. The regulation also provides for the protection of employees' rights against anti-union discrimination and gender discrimination. Additionally, the regulation provides for annual leaves, minimum wage, overtime pay, maternity leave and sick leave. At the time this brochure went to print a new Labour Law was discussed in the Parliament of Republic of Kosovo.

6.4 Working Hours

THE KOSOVO LABOR LAW NO. 03/L-212 contains detailed provisions regarding working hours, such as that working hours ought not to exceed 40 hours per week and a working day ought not to exceed 12 hours. Overtime may not exceed 20 hours per week or 40 hours per month. The regulation provides that overtime has to be paid at a rate of 20% to 50% per hour or if the employee agrees be compensated with corresponding time off.

6.5 Paid Leave

THE LAW PROVIDES FOR the following paid leaves:

- The annual leave of 4 weeks.
- Official holidays: If an employee works on such day, the hours are considered as overtime (50% supplemented).

There are also various entitlements like:

- 5 days for wedding.
- 5 days for family funerals.
- 1 day for blood donations.

Maternity leaves entitle female employees to 6 months of paid maternity leave at 70% of their salary paid by employer and a further 3 months at 50% paid by the government and 3 months unpaid. There is a right to parental leave of 2 weeks before the child is 3. There is also rights to part-time working.

6.6 Unpaid Leave

THIS TYPE OF LEAVE is subject to an agreement between the employee and employer.

6.7 Sick Leave

AN EMPLOYEE IS ENTITLED to 20 working days paid sick leave.

6.8 Working Conditions

WORKING CONDITIONS ARE SUBJECT to supervision by the labor inspectorate. Fines for violating labor regulations vary from EUR 5,000 to EUR 10,000 (Law on Labour Inspectorate no 2002/9, amended by Law no 2008 03/L-017).

6.9 Work permits

EMPLOYEES OF FOREIGN INVESTORS are subject to the same laws (applicable in Kosovo) to which employees of Kosovar enterprises are

subject. Foreign investors are entitled to employ staff of any nationality. However, the Law on foreigners requires work permits to be obtained for any foreigners working in Kosovo. The documents required for obtaining such permits are numerous including evidence of your residence in Kosovo from your local residents association and your landlord, evidence your landlord has paid his property taxes, a residence permit (which includes evidence of sufficient funds in Kosovo for your planned period of residence), police checks from the home country and from Kosovo, evidence of yours and all your business tax compliance in Kosovo, evidence of health insurance and some cases health checks. The rules set out minimum employment ratios of foreigners to Kosovars. It takes between 2 and 6 months to obtain this work permit.

7. Public Procurement Laws

PUBLIC PROCUREMENT IN KOSOVO is subject to the Law on Public Procurement in Kosovo (law no. 2003/17, promulgated by UNMIK Regulation no. 2004/3 and amended by UNMIK Regulation no 2007/20) and the Law on the Procedure for Awarding Concessions (law no. 02/L-44 promulgated by UNMIK Regulation no. 2006/27).

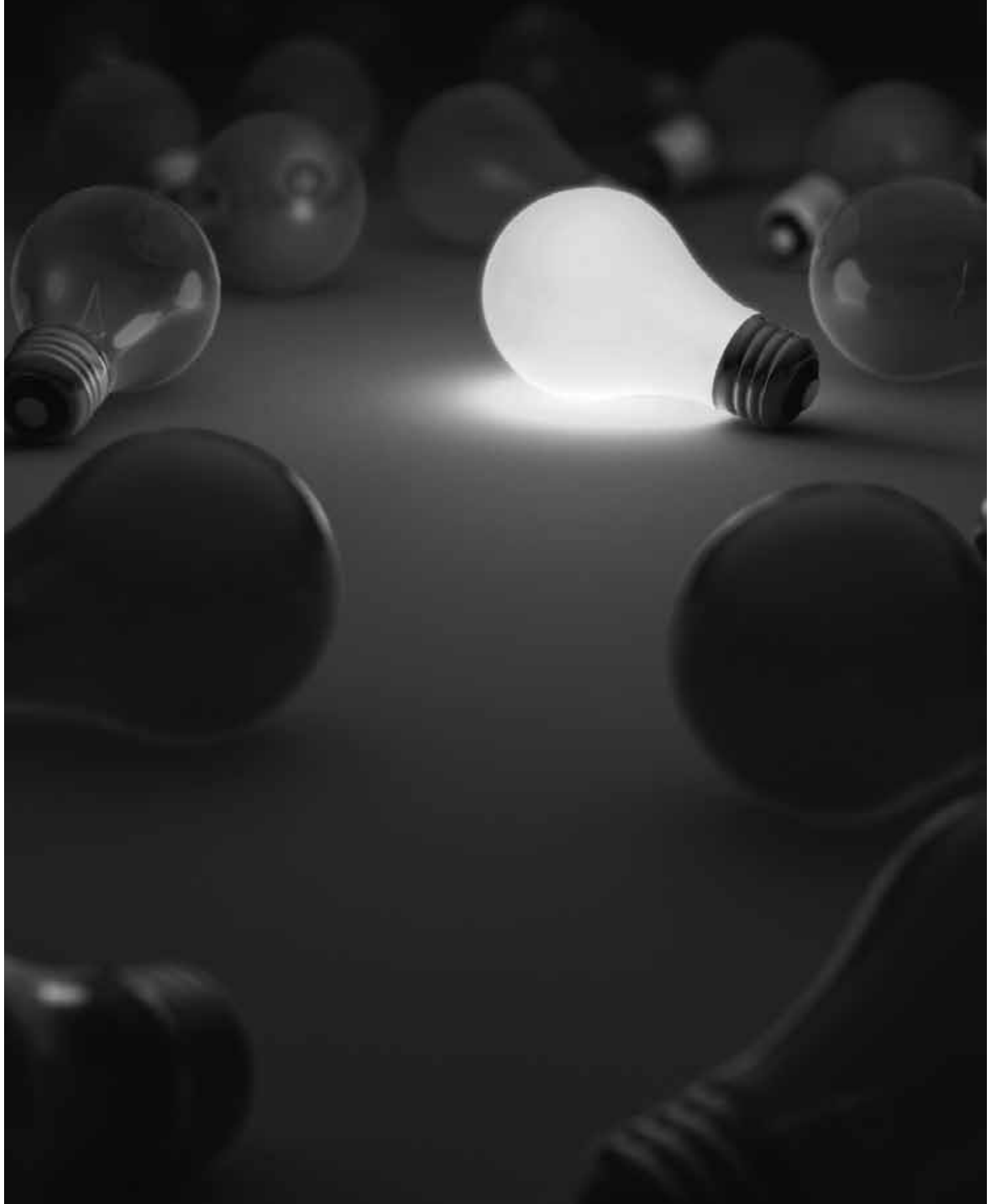
The law on public procurement governs the procurement of public construction, delivery and service contracts and, under the amendment, will also cover service concessions.

Concessions law governs infrastructure concession agreements. Besides rules concerning the award procedure and the mandatory content of offers, public procurement law also contains legal protection rules. There is a very short period during which complaints may be submitted. The concession law was set up particularly with regard to the implementation of infrastructure projects and therefore contains special rules for issuing construction concessions in this context. The concession law provides for a subsidiary application of the public procurement law, provided such public procurement law contains nothing contrary to the concession law.

In practice, as no detailed concessions rules have been drafted, the public procurement tender templates and rules are followed for concessions.

8

Intellectual Property Protection



A COMPREHENSIVE LEGAL FRAMEWORK on intellectual property protection was established in Kosovo, including the protection of the following intellectual property rights:

- patents,
- trademarks,
- industrial design and
- copyright and related rights.

Furthermore, new legislation on product piracy entered into force in Kosovo in 2008.

8.1 Patents, Trademarks and Industrial Design

8.1.1 Registration Procedures

PROTECTION OF PATENTS, TRADEMARKS and industrial design in Kosovo can be obtained by registration in the respective property right register conducted by the newly established Industrial Property Office³ of Kosovo.

The Industrial Property Office was established in Pristina in November 2007. The registration procedure before the Industrial Property Office is governed by three Administrative Instructions (AI) corresponding to the respective intellectual property rights (patent, trademark or industrial design)⁴.

The English version of the application form for the registration of a patent, a trademark or an industrial design is attached to the respective Instruction. The application must be filed with the Office in the official language of Kosovo (Serbian or Albanian).

Applicants without residence in the territory of Kosovo shall appoint a so-called authorized representative to be responsible for the procedures before the Industrial Property Office (AI No. 2007/11⁵). Such authorized representatives are registered in the Representatives Registrar headed by the Office⁶.

Official fees in all procedures regarding registration and maintenance of patent rights, trademarks and industrial design and the procedure of payment are regulated by the Administrative Instruction No. 2007/19⁷.

8.1.2 Patent Protection

PATENT RIGHTS ARE GOVERNED by the Patent Law No. 2004/49 promulgated by the UNMIK Regulation No. 2004/56. In Kosovo, an invention shall be protected by a patent if it is new, involves an inventive step and is industrially applicable. The terms “novelty”, “inventive step” and “industrial applicability” are defined by the Patent Law.

In accordance with internationally recognised standards in this field, a patent constitutes a property right. The patent owner is entitled for a limited period of time to exploit the protected invention and to exclude others from producing, using or selling the invention without permission.

On the other hand, any person (natural or legal) may file a motion with the Industrial Property Office of Kosovo to declare a patent null and void for reasons stipulated by the Patent Law (e.g. the invention was not new or did not include an inventive step as of the priority date). The Office finally issues the decision on the declaration of nullity of a patent (entirely or partially) or on the refusal of the motion.

The right to exploit the protected invention may be assigned by a license contract. A patent may be transferred completely or partially.

The patent right is granted for a period of 20 years after the filing date of the patent application, provided that annual maintenance fees are paid duly for the third and each subsequent year.

8.1.3 Trademark Protection

THE INDEPENDENCE OF Kosovo declared by the Kosovo government had significant impacts on the system of trademark protection.

Former trademark rights granted as national Serbian trademarks or international trademarks of the WIPO⁸ (with the Republic of Serbia as the required designation) ceased to be valid in Kosovo. Since the deadline for revalidation of these former rights expired in November 2008, trademark protection shall be obtained only in form of new national Kosovo trademarks registered by the Industrial Property Office⁹ of Kosovo.

National Kosovo trademark law meets the European Union requirements¹⁰ and inter-

³ Industrial Property Office as a part of the Ministry of Trade and Industry, <http://www.mti-ks.org/index.php?cid=2,381>.

⁴ AI No. 2007/10 on the Procedure of Registration of Patents, AI No. 2007/13 on Trademark Registration Procedures and AI No. 2007/12 on the Industrial Design Registration Procedures.

⁵ Administrative Instruction No. 2007/11 on Representation of Rights in the Sphere of Industrial Property.

⁶ The AI 2007/11 stipulates requirements for registration as an authorized representative of Kosovo, such as certain professional qualifications or an exam before the panel of the Industrial Property Office.

⁷ Administrative Instruction No. 2007/19 on Administrative Taxation of Industrial Property Objects.

⁸ World Intellectual Property Organisation (WIPO), www.wipo.int.

⁹ Industrial Property Office as a part of the Ministry of Trade and Industry, <http://www.mti-ks.org/index.php?cid=2,381>.

¹⁰ First Directive 89/104/EEC of the Council, of 21 December 1988, to Approximate the Laws of the Member States Relating to Trademarks (OJ EC No L 40 of 11.2.1989, p. 1).

nationally recognised best standards and practices in this field. The Law No. 02/L-54 on Trademarks was adopted by the Kosovo Assembly and promulgated by the UNMIK resolution No. 2006/38.

Any signs, particularly words, designs, letters, numerals, audio marks and three-dimensional configurations capable of distinguishing goods of one undertaking from those of another undertaking shall be protected as trademarks in Kosovo.

The proprietor of a registered trademark owns exclusive rights to use the trademark in relation to goods or services covered by the registration. On the other hand, a registered trademark can be revoked if it has not been used by the proprietor in Kosovo within five years from the date of registration and there is no proper justification for non-use.

A trademark is registered for a period of ten years. The registration may be renewed for further ten-year periods by payment of a renewal fee.

8.1.4 Industrial Design Protection

IN COMPLIANCE WITH THE European Union standards, the Law on Industrial Design (Law No. 02/L-45¹¹) establishes the conditions for the protection of the design of a product in form of an industrial design. The design can be protected by an industrial design in Kosovo if it is an innovation with a specific character. The terms “design innovation” and “specific character” are exactly defined by the Law on Industrial Design with respect to the availability to the public and consumers’ impression.

The owner of an industrial design right is granted the exclusive right for exploitation of the registered design and the right to bar other persons from using the same design without permission.

Industrial design may be licensed entirely or partly or transferred onto other persons. The license can be granted for the whole or for a part of the territory of Kosovo.

The protection of the industrial design lasts five years and can be extended for further five-year periods up to a maximum of 25 years by payment of extension fees.

8.1.5 Rights Enforcement

OWNERS OF PATENTS, TRADEMARKS and industrial designs protected in Kosovo are entitled to a civil action before the competent court against any person who infringes their property rights.

The substantive laws on patents, trademarks and industrial designs create the legal basis for the respective intellectual property right enforcement by defining the infringements of the rights, as for example selling products manufactured according to a patent invention, using a sign that is identical or deceptively similar to the registered trademark or imitating the protected design of a product without consent of the respective owner.

If the right holder deems his right was infringed or there is a risk of infringement of his right, he may request ordering provisional measures before the final decision of the court comes into effect. If appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, the court may order interim injunctions, such as the order to cease and desist from acts infringing the intellectual property right or to seizure products resulting from such infringements.

The interim measures are explicitly stated in the Patent Law and the Law on Industrial Design. According to the Law on Trademarks, any judicial remedy that is available to proprietors of other types of property rights shall also be available to proprietors of a registered trademark.

8.2 Copyright

AUTHORS (NATURAL PERSONS) OF works in the literary, scientific and artistic field enjoy protection with respect to their works and their use according to the Law No. 2004/45 on Copyright and Related Rights promulgated by the UNMIK Resolution No. 46/2006 (“Copyright Law”).

In particular, spoken and written works, musical and theatrical works, film and photographic works, works of architecture or computer programmes are considered as copyright works.

¹¹ Promulgated by the UNMIK Regulation 2006/17.

8.2.1 Granting of Copyright Protection

IN COMPLIANCE WITH INTERNATIONALLY recognised standards, a created work is considered protected by copyright as soon as it exists. No prior administrative formalities are requested for granting copyright protection.

8.2.2 Rights of Authors and Related Rights to Copyright

A COPYRIGHT CONSISTS OF

- non-assignable exclusive moral (personal) rights, especially the right of first disclosure and the right of recognition of authorship,
- exclusive economic rights, especially the right of use of the work and connected rental,
- other rights of the author, as for example the right of exhibition of the work.

The Copyright Law also comprises special provisions on copyright contract law with special copyright contracts, such as a publishing or performance contract.

In general, the copyright shall be valid for the life of the author and for 70 years beyond his/her death. Only economic rights and other rights of the author and the execution of moral rights which last beyond the death of the author are subject to succession.

The Copyright Law of Kosovo also regulates the so-called “related rights to copyright” with a specific (mostly shorter) duration which have rapidly developed over the last decades (such as rights of performing artists, producers of sound recordings, film producers, broadcasters or publishers etc).

8.2.3 Protection of Foreigners

ACCORDING TO COPYRIGHT LAW, foreigners enjoy the same protection as domestic persons; this protection is based on

- international agreements,
- factual reciprocity,
- certain criteria stipulated by the Copyright Law, such as domicile in Kosovo, first publication of the work in Kosovo or work performance in Kosovo.

With respect to moral rights, foreign authors and performers finally enjoy protection under Copyright Law in any case.

8.2.4 Rights Enforcement

IN CASE OF INFRINGEMENT of their rights granted by the Copyright Law, right holders may demand judicial protection in Kosovo by raising a claim corresponding to the kind of infringement as stipulated by the Copyright Law.

The Copyright Law provides comprehensive claims on rights protection, including the statement of the infringement of rights, recovery of material and non-material damages and the publication of the judgement in public media at the infringer’s expense.

8.3 Product Piracy

UNMIK REGULATION No. 2008/22 on Implementing Customs Measures Regarding Goods Infringing Intellectual Property Rights establishes customs procedures to enable UNMIK Customs Services to take action against goods infringing intellectual property rights, such as counterfeit goods bearing a registered trademark without authorization of the trademark holder, pirated goods and goods infringing certain intellectual property rights (patents, geographical designation, etc).

Intellectual property rights protected under this Regulation include rights registered in any country (not only in Kosovo); only the infringement is to be defined by legislation applicable in Kosovo.

Actions by the Customs Service of Kosovo may be initiated either by the rights holder or by a Customs Officer who suspects intellectual property right infringements as a result of the importation or transit of goods and notifies the person considered to be the holder of the rights.

The Regulation stipulates comprehensive enforcement measures to protect intellectual property rights, such as suspension of the goods, detention and seizure as well as financial sanctions.

9

Environmental Laws

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13

Privatisation

ON 19 MARCH 2009, the new Laws on Environmental Protection and on Environmental Impact Assessment came into force. An environmental impact assessment is required inter alia for projects in the following sectors: industry, mining, energy, traffic, tourism, agriculture, forestry, and water management. Projects that are subject to an Environmental Impact Assessment cannot commence without an Environmental Permit from the Ministry of Environment and Spatial Planning. For other projects, which may cause damage to the environment but for which an Environmental Impact Assessment is not required, a municipality environmental license needs to be obtained.

Further there is a Law on Air Protection no. 2004/30, promulgated by UNMIK Regulation no. 2004/48, a waste law (law no. 027/L-30, promulgated by UNMIK Regulation no. 2006/31) and a Water Law (UNMIK Regulation no. 2004/41).

At the moment, environmental law provides that a purchaser of social property does not have successor liability for cleaning up such property.

The Ministry of the Environment and Spatial Planning and local municipalities (who each have inspectorates) are responsible for executing and specifying the general conditions set out in the above laws. There is a considerable amount of secondary legislation critical to interpreting the laws, which has not yet been drafted or is in process of being drafted. In addition, there are some pending laws, including one law on environmental permits.

10. Arbitration

ARBITRAL AWARDS MADE BY an arbitral tribunal inside and outside of Kosovo are recognized and declared enforceable by the Kosovan courts under the Law on Arbitration (law no. 02/L-75, promulgated by UNMIK Regulation no. 2008/30). This law establishes a set of rules that apply to arbitration agreements, arbitration proceedings, jurisdiction of arbitral tribunals and the recognition and enforcement of arbitral awards. Arbitration is also expressly recognized under the Law on Foreign Investment (see section 4).

Kosovo courts enforce arbitral awards made outside of Kosovo if they are recognized and published as enforced. Therefore a request for



recognition and enforcement has to be submitted to the Commercial Court.

11. Foreign Investors

KOSOVO HAS A LAW on Mining, which regulates the issuance of mining licenses (exploration and exploitation), and a Law on Energy, which together with the Law on Electricity regulates energy licenses. Foreigners can apply for licenses but must have a certain person resident status in Kosovo during the license period.

12. Foreign Investors

THE UNMIK REGULATION ON Banking and Insurance permits foreign banks and insurers to open either a subsidiary or a branch office upon satisfying certain non-discriminatory conditions of the Central Bank of Kosovo (CBK). The CBK has the authority to license and or register non-bank micro finance institutions. Before engaging business, a micro finance institution has to register with CBK and if the business of collecting deposits, exceeds EUR 125,000 the registered micro finance institution needs a valid licence issued by CBK.

13. Privatisation

A VERY IMPORTANT ASPECT of the Kosovo economy is the privatization of socially-owned and publicly owned enterprises (SOEs and POEs).

13.1 Privatisation of SOEs

THE NEWLY ESTABLISHED KOSOVO Privatization Agency, "PAK" (Law No. 03/L-067), took over the agenda of its predecessor, the Kosovo Trust Agency. It is responsible for the administration, privatization and liquidation of SOEs. In the past, around 300 new companies were created from privatised SOEs, bringing revenues of around EUR 380 million and there are still up to 200 SOEs left to be privatized by the Kosovo Privatization Agency.

SOEs are privatised through spin-offs and voluntary liquidation. The 'Spin-Off' is a two-step procedure whereby the assets of the SOEs are transferred to a joint stock company, which initially will be 100% owned by the SOE. The PAK is then able to sell shares to private investors. The proceeds from the sales are held in trust by the PAK, without preju-

dice to ownership or creditor claims against the old enterprise. The Liquidations allow an inexpensive exit from the market for those enterprises which clearly have no survival prospects. Proceedings would be out of court following the procedures outlined in the Law on Business Organisations (UNMIK Reg. 2008/26).

13.2 Privatisation of POEs

BEFORE SHARES OF A CENTRAL POE can be sold, the Government has to adopt a written decision authorizing the Government Privatization Committee to proceed with the tender offer and the sale of the shares. Such a government decision has to be approved by a simple majority vote of the Assembly of Kosovo.

The POE Law states that a Privatisation Committee consisting of five ministers shall be responsible for the tender, which shall be conducted according to the procedure set out in the Law on the Procedure for the Award of Concessions. These procedural rules correspond in essence to the other concession rules in the CEE/SEE region.

The general structure of the tender procedure is as follows:

- 1) Publication of tender notice (i.e. invitation to participate in the pre-selection proceedings)
- 2) Pre-selection of bidders
- 3) Request for proposals (either in a single-stage procedure or a two-stage negotiated procedure)
- 4) Submission of proposals
- 5) Evaluation of proposals
- 6) Final negotiations with the best bidder
- 7) Award

Under certain circumstances, the Law on the Procedure of the Award of Concessions allows for the awarding of a contract without a prior tender procedure (e.g. in case of an unsolicited proposal for concession). However, since the relevant provisions are tailored to the award of concession contracts, it is doubtful whether these exemptions may be invoked with regard to a privatisation process.



14

Entry and Exit from Kosovo

16

Important Legislation

THE NEW LAW ON FOREIGNERS Law No. 03/L-126 has adopted the regulations for foreigners entering the Kosovo. A foreigner, in terms of this law is a person, who is not a national citizen of the Republic of Kosovo. According to the new Law on Foreigners a foreigner may only enter the Republic of Kosovo with a valid travel document, in which a Visa or a permission to stay is recorded.

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Responsible for the issuance of Visas are the diplomatic missions and / or consular offices of the Republic of Kosovo (or other bodies authorized by the government of Kosovo).

In practice, border authorities do not apply this new Visa regulation to persons from Western and European Countries, the US or Canada. There is a mutual treaty with Turkey. Visitors from countries which require visa for the EU are more likely to face an entry problem, so should seek an invitation or authorisation before arrival. If resident for more than 90 days, registering visitors must apply for a Kosovo temporary residency permit document, which is similar to those issued to residents. In practice, this materially facilitates entry and exit and avoids the needs for entry/exit stamps in one's passport and allows such person to act as the authorised representative of a branch office. This is necessary if, for example, one wishes to register one's vehicle.

Because Serbia does not recognise Kosovo borders as valid borders, exiting from Kosovo via Serbia is only possible if one's entry into Kosovo or Serbia was via a Serbian policed border.

15. Registration of Vehicles, Insurance, Import of Personal Effects

THERE IS NO COMPULSORY insurance for Kosovar employees and no need for Kosovars to carry health insurance in Kosovo. International employees must have health insurance for their work permit.

Third party liability insurance is compulsory for vehicles. As Kosovo is not part of the international Green Card scheme, foreign registered vehicles must buy separate “transit” insurance either at the border or at the Kosovo insurance centre. An ex-pat can bring his/her vehicle into Kosovo and register it in Kosovo on a temporary basis for up to 3 years without paying customs, provided it has not been de-registered overseas. No personal vehicle older than 8 years may be imported into Kosovo.

KS plates are not recognized by or permitted into Serbia proper. They are freely permitted by Macedonia, Montenegro, Albania, Bulgaria, Turkey, Greece, Croatia and most EU countries (with the exception of Spain and Slovakia), but insurance must be purchased in those countries.

Personal effects up to certain limits (which are more than 6 months old) can be brought into Kosovo without customs duties on a temporary basis by international staff.

16. Important Legislation

A BRIEF OVERVIEW OVER the most important law legislation in Kosovo (laws can be downloaded on the homepage of the Assembly of Kosovo):

- Law on Business Organizations – 2008/26
provides for creation, operation and dissolution of the common types of business organizations.
- Law on Local Government Finance – 2008/03-L049
specification of financial resources available to municipalities (e.g. immovable property tax, business licence fee)
- Law on the Privatization Agency of Kosovo – 2008/03-L067
administration, Privatization and Liquidation of socially-owned enterprises
- Law on Contested Procedure – 2008/03-L006
creation of legal provisions for resolving disputes from legal-civil relations of natural and legal persons in front of civil courts
- Law on Publicly Owned Enterprises – 2008/03-L087
governing the exercise of ownership rights of publicly owned enterprises
- Law on the Central Bank of Kosovo – 2008/03-L074
establishing the Central Bank of Kosovo and its powers
- Law on Bank Licensing, Supervision and Regulation - 1999/21
- Law on Executive Procedure – 2008/03-L008
creating legal provisions for execution of civil court’s decisions and elimination of procedural obstacles during execution
- Regulation No. 2008/22 – Implementing Customs Measures Regarding Goods Infringing Intellectual Property Rights regulating the protection of intellectual property rights in Kosovo
- Law on Arbitration – 02/L-75
governing arbitration and the recognition and the enforcement of foreign arbitration awards
- Law on General Safety of Goods – 02L-21
creating legal provisions for the general safety of products put on the market

17.1 Websites of Institutions in Kosovo

Republic of Kosovo Assembly
www.assembly-kosova.org

The Office of the Prime Minister of Kosovo
www.kryeministri-ks.net

Ministry of Trade and Industry of Kosovo
www.mti-ks.org

Kosovo Tax Administration
www.atk-ks.org

Central Bank of the Republic of Kosovo
www.bqk-kos.org

The Kosova Business Registration Agency
www.arbk.org

Privatization Agency of Kosovo
www.pak-ks.org

Kosovo Customs
www.dogana-ks.org

Statistical Office of Kosovo
esk.rks-gov.net

17.2 Websites of International Institutions in Kosovo

International Civilian Office in Kosovo
www.ico-kos.org

EULEX Kosovo
European Union Rule of Law Mission
www.eulex-kosovo.eu

European Union in Kosovo
www.euinkosovo.eu

World Bank - Kosovo
www.worldbank.org/kosovo

17.3 Business Support Institutions

Investment Promotion Agency of Kosovo

Muharrem Fejza Street. N.N.
Lagja e Spitalit
KS - 10000 Prishtina
Republic of Kosovo
Tel: +381 38 200 36 527
Fax: +381 38 212 807
Email: info@invest-ks.org
Web: www.invest-ks.org

Investment Promotion Agency of Kosovo Office in Vienna

Nussdorfer Strasse 20/23
A - 1090 Vienna,
Austria
Tel: +43 1 890 50 26
Fax: +43 1 890 50 26 26
Email: info@ipak-vienna.org
Web: www.ipak-vienna.org

Economic Initiative for Kosova (ECIKS)

Nussdorfer Strasse 20/23
A - 1090 Vienna
Austria
Tel: +43 1 890 50 26
Fax: +43 1 890 50 26 26
E-Mail: info@eciks.org
Web: www.eciks.org

Kosovo Chamber of Commerce

Nëna Terezë Street 20
KS - 10000 Prishtinë
Republic of Kosovo
Tel: +381 38 224 741
Fax: +381 38 224 299
E-Mail: info@oek-kcc.org
Web: www.oek-kcc.org

American Chamber of Commerce Kosovo

Fehmi Agani 36/3
10000 Prishtinë
Republic of Kosovo
Tel: +381 38 246 012
Fax: +381 38 248 012
Email: info@amchamksv.org
Web: www.amchamksv.org

Aleanca Kosovare e Bizneseve

Dardania SB-6 6/6 B4
10000 Prishtinë
Republic of Kosovo
Tel/Fax: +381 38 541 683
Email: alenakosovarebizneseve@gmail.com
Web: www.akb-ks.org

SME – Agency of Kosova

Muharrem Fejza Street n.n.
Lagja e Spitalit,
10000 Prishtinë
Republic of Kosovo
Tel: +381 38 200 360 07
Fax: +381 38 212 807
Email: naser.grajcevc@ks-gov.net
Web: www.sme-ks.org

Kosovo Private Enterprise Program

Radovan Zogovic Str, No.1
10000 Prishtinë
Republic of Kosovo
Tel: +381 38 233 006
Fax: +381 38 233 008
Email: administrator@usaidkpep.org
Web: www.usaidkpep.org

Kosovo - Young Europeans

Web: www.kosovo-young.com

17.4 Additional Reading

KOSOVO (BRADT TRAVEL GUIDE KOSOVO): A tourist, historical and geographical guide published in English (second edition November 2010) and available at www.amazon.com or www.amazon.de. The authors are Gail Warrander of GW Legal and Verena Knaus of Austria.

About Investment Promotion Agency in Kosovo and its office in Vienna

Our vision, mission and our services

THE INVESTMENT PROMOTION AGENCY of Kosovo was established as an Executive Agency under the administration of the Ministry of Trade and Industry, regulated by the Law on Foreign Investments no 02/L-33, article 19.

In November 2006 the Economic Initiative for Kosova (ECIKS), with financial support from the Austrian Federal Ministry of Foreign Affairs through the Austrian Development Cooperation, opened the first official representation of Kosovo abroad. The Vienna Office of the Investment Promotion Agency of Kosovo provides existing and potential foreign investors from German-speaking countries (Austria, Germany, and Switzerland) with free-of-charge services on a confidential basis.

Vision

To support the economic development of Kosovo by stimulating and facilitating foreign direct investments which will have a direct impact in reducing unemployment and increasing the social welfare of our citizens.

Mission

Improve the image of Kosovo and attract investments through a proactive marketing campaign and through offering free-of-charge information and services to foreign potential investors.

Services

One stop shop for all investors - free of charge services:

- Collection and dissemination of information and assistance during all phases of investments: pre-investments, investments and after care:
- Providing of information on the general business environment and specific industries
- Provision of information on Taxation, Employment, Customs, Real Estate and other relevant laws and regulations
- Advice on business service providers: financial, consulting etc
- Assistance with registration, licensing, work permits, and other documentation
- Linking potential investors to Brown-field, Greenfield, and JV opportunities, including site visit organization
- Assistance in dealing with administration on all levels
- After care services



Notes



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Investment Promotion Agency of Kosovo

Muharrem Fejza Street n.n.

Lagja e spitalit

10000 Prishtinë, Kosovo

Tel: +381 (0) 38 200 36 527

+381 (0) 38 200 36 542

Fax: +381 (0) 38 212 807

Email: info@invest-ks.org

Web: www.invest-ks.org

Office in Vienna Implemented by Economic Initiative for Kosovo (ECIKS)

Nussdorfer Strasse 20/23

A-1090 Vienna, Austria

Tel: +43 (1) 890 50 26

Fax: +43 (1) 890 50 26 26

Email: info@ipak-vienna.org,

info@eciks.org

Web: www.ipak-vienna.org,

www.eciks.org