

International **Comparative** Legal Guides



Digital Business **2020**

A practical cross-border insight into digital business law

First Edition

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ISBN 978-1-83918-051-4
ISSN 2732-5237

Published by

glg global legal group

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Printed by

Ashford Colour Press Ltd.

Cover image

www.istockphoto.com

Strategic Partners



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This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

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From the Publisher

Dear Reader,

Welcome to the first edition of the *ICLG – Digital Business*, published by Global Legal Group.

This publication provides corporate counsel and international practitioners with comprehensive jurisdiction-by-jurisdiction guidance to laws and regulations relating to digital businesses around the world, and is also available at www.iclg.com.

The question and answer chapters, which in this edition cover 21 jurisdictions, provide detailed answers to common questions raised by professionals dealing with digital business laws and regulations.

The publication's opening expert analysis chapter provides further insight into navigating business digitalisation.

As always, this publication has been written by leading lawyers and industry specialists, for whose invaluable contributions the editors and publishers are extremely grateful.

Global Legal Group would also like to extend special thanks to contributing editors Davey Brennan and Alex Brodie of Gowling WLG for their leadership, support and expertise in bringing this project to fruition.

Rory Smith
Group Publisher
Global Legal Group

Kosovo

Boga & Associates



Renata Leka

1 E-Commerce Regulations

1.1 What are the key e-commerce legal requirements that apply to B2B e-commerce in your jurisdiction (and which do not apply to non-e-commerce business)? Please include any requirements to register, as well as a summary of legal obligations specific to B2B e-commerce.

There are no specific regulations on B2B e-commerce in Kosovo. Pursuant to Law No. 04/L-109 “On Electronic Communications”, entrepreneurs have the right to engage in electronic communications activities after undertaking the notification procedure established by the Regulatory Authority of Electronic and Postal Communications, which then registers the operators or service providers in the electronic database.

1.2 What are the key e-commerce legal requirements that apply to B2C e-commerce in your jurisdiction (and which do not apply to non-e-commerce business)? Please include any requirements to register, as well as a summary of legal obligations specific to B2C e-commerce.

Law No. 06/L-034 “On Consumer Protection” regulates distance contracts which are defined as contracts concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded. In this regard, the Law on Consumer Protection provides for certain information that a trader must share with the consumer when concluding a distance contract, as follows:

- i. the main characteristics of the goods or services, to the extent appropriate to the communication means and to the goods or services;
- ii. the identity of the trader, such as his trading name;
- iii. the geographical address of trader’s location and the trader’s telephone number, fax number and e-mail address, or the address of the trader on whose behalf he is acting, to enable the consumer to contact and communicate efficiently;
- iv. the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges and any other costs or, where those charges cannot

- v. reasonably be calculated in advance, the notice that such additional charges may be payable;
- v. in the case of a contract of indeterminate duration or a contract containing a subscription, the total price shall include the total costs per billing period. Where such contracts are charged at a fixed rate, the total price shall also mean the total monthly costs or the manner in which the price will be calculated;
- vi. the cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate;
- vii. the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the services and, where applicable, the trader’s complaint handling policy;
- viii. where a right of withdrawal exists, the conditions, time limit and procedures for exercising such right. In principle, the consumer shall have a period of 14 days to withdraw from the distance contract, without giving any reason or incurring any costs (except in cases provided for by law);
- ix. where applicable, that the consumer will have to bear the cost of returning the goods in case of withdrawal and, if the goods, by their nature, cannot normally be returned by mail, the cost of returning the goods;
- x. in cases when a right of withdrawal does not apply (e.g. for the supply of goods which are liable to deteriorate or expire rapidly), the consumer shall be provided with information that he will not benefit from withdrawal or, where applicable, the circumstances under which the consumer loses his right of withdrawal;
- xi. a reminder of the existence of a legal guarantee of conformity for goods;
- xii. where applicable, the opportunity and the conditions of after-sale consumer assistance, after-sales services and commercial guarantees;
- xiii. where applicable, presentation of relevant codes of conduct that determine the behaviour of a trader that assumes the obligation;
- xiv. the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;
- xv. where applicable, the minimum duration of the consumer’s obligations under the contract;
- xvi. where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader;
- xvii. where applicable, the functionality, including applicable technical protection measures, of digital content;

- xviii. where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of; and
- xix. where applicable, the possibility of filing the complaint to extrajudicial mechanisms, where the trader is subject to, and the manner to access it.

The Law on Consumer Protection further provides that if the contract is concluded through a means of distance communication which allows limited space or time to display the information, the trader shall provide to the consumer, prior to the conclusion of such a contract, at least the pre-contractual information regarding the main characteristics of the goods or services, the identity of the trader, the total price, the right of withdrawal, the duration of the contract and, if the contract is of indeterminate duration, the conditions for terminating the contract.

2 Data Protection

2.1 How has the domestic law been developed in your jurisdiction in the last year?

The Kosovo Parliament has adopted the Law on Protection of Personal Data (Law No. 06/L-82), which entered into force on 12 March 2019. The provisions of the said law and its main principles are in line with General Data Protection Regulation (EU) 2016/679 (GDPR). The above law sets out the requirements for lawful processing of personal data as well as the rights of the data subject with regard to access of personal data, rectification and erasure, the right to object the processing of personal data and not to be subject to automated decision making. The application of the above law in practice and its effectiveness has yet to be tested.

2.2 What privacy challenges are organisations facing when it comes to fintech, AI and digital health?

The Law on Protection of Personal Data affects AI-based decisions on individuals, particularly those related to automated decision making and profiling. In this regard, article 21 of the Law on Protection of Personal Data provides that data subjects shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects on the data subject or similarly significantly affects the data subject. This restriction does not apply if such automated decision (i) is necessary for entering into, or performance of, a contract between the data subject and a data controller, (ii) is authorised by a specific law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, or (iii) is based on the data subject's explicit consent.

2.3 What support are the Government and privacy regulators providing to organisations to facilitate the testing and development of fintech, AI and digital health?

To the best of our knowledge, currently there is no such support provided by the Government.

3 Cybersecurity Framework

3.1 Please provide details of any cybersecurity frameworks applicable to e-commerce businesses.

Law No. 03/L-166 "On prevention and fight of the cybercrime" (hereinafter the "Law") provides for criminal offences related to the misuse of computer systems and computer data. Said law entered into force on 5 August 2010 with the aim of preventing and sanctioning cybercrime, i.e. violations committed through computer systems.

Such criminal offences include unauthorised access to computer systems, criminal acts against confidentiality, integrity and availability of the computer systems data, unauthorised interception and transfer of data, hindrance of computer systems operations, the unauthorised entry of data, change or deletion of computer data, and the unauthorised limitation of access to such a data resulting in inauthentic data, etc.

In order to prosecute cybercrime, it is important to determine the jurisdiction, i.e. the territory within which the crime was committed. In the case of cybercrime, determining the jurisdiction can be challenging since the perpetrator and the victim may be located in different countries or the perpetrator may use computer systems in several countries. Kosovo laws that stipulate criminal offences of cybercrime are applicable to the criminal offences committed within the Kosovo territory as well as to persons who have committed criminal offences outside the territory of Kosovo, if that is provided for by an international agreement by which Kosovo is bound.

3.2 Please provide details of other cybersecurity legislation in your jurisdiction, and, if there is any, how is that enforced?

Other legislation pertaining to cybersecurity includes:

- Law No. 06/L-074 "Criminal Code of The Republic of Kosovo".
- Law No. 04/L-094 "On the information society services".
- Law No. 04/L-109 "On electronic communications".
- Law No. 05/L-030 "On interception of electronic communication".
- Law No. 06/L-082 "On the protection of personal data".
- Law No. 04/L-149 "On the execution of penal sanctions", as amended.
- Law No. 04/L-065 "On copyright and related rights", as amended.
- Law No. 04/L-093 "On banks, microfinance institutions and non-bank financial institutions".

4 Cultural Norms

4.1 What are consumers' attitudes towards e-commerce in your jurisdiction? Do consumers embrace e-commerce and new technologies or does a more cash-friendly consumer attitude still prevail?

Based on the Kosovo Central Bank Report on Card Use in Kosovo, published in August 2019 (<https://bqk-kos.org/repository/docs/SystemiIPagesave/Perdorimi%20i%20kartelave%20ne%20Kosove.pdf>), the number of online payments has steadily increased in the last three years, and such payments are dominated by the younger demographic group, aged 26-36. Online card purchases are mainly used to purchase goods or services, book a hotel, pay for a travel ticket, etc. The report indicates

that most such online purchases are made in small amounts, i.e. up to a value that is not subject to customs duties.

Further, pursuant to the Instrument for Pre-Accession Assistance (IPA II) 2014-2020 (https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/annexes/03._ad_eu_for_innovation.pdf), most of the e-commerce businesses in Kosovo operate with cash on delivery. The document lists essential problems regarding e-commerce in Kosovo, as follows:

- a) lack of payment systems offered by financial institutions and its high cost;
- b) use of e-commerce and online payments by using a credit card or other e-payment methods are underdeveloped;
- c) the safety of existing possibilities for online transactions is not at the standard recognised by eIDAS;
- d) most international e-commerce sites and international e-payment methods do not recognise Kosovo; and
- e) absence of a specific code top-level domain (ccTLD) in Kosovo, so most domestic e-commerce businesses use .com or .al (Albania) registered domains.

4.2 Do any particular payment methods offer any cultural challenges within your jurisdiction? For example, is there a debit card culture, a direct debit culture, a cash on delivery type culture?

According to a report by the Report of the Central Bank of Kosovo on the use of cards in Kosovo published in August 2019, out of 1.79 million Kosovo residents, a total of 1,011,888 have debit cards and 173,471 have credit cards. However, most online purchases are still done by cash on delivery which allows customers not to provide bank account information when buying online.

4.3 Do home state retailer websites/e-commerce platforms perform better in other jurisdictions? If so, why?

To the best of our knowledge, that is not the case given that home state retailers mainly offer their products to citizens within the territory of Kosovo.

4.4 Do e-commerce firms in your jurisdiction overcome language barriers to successfully sell products/services in other jurisdictions? If so, how and which markets do they typically target and what languages do e-commerce platforms support?

Please see the answer to question 4.3.

4.5 Are there any particular web-interface design concepts that impact on consumers' interactivity? For example, presentation style, imagery, logos, currencies supported, icons, graphical components, colours, language, flags, sounds, metaphors, etc.

There are no such particular web-interface design concepts.

5 Brand Enforcement Online

5.1 What is the process for online brand enforcement in your jurisdiction?

Kosovo still does not have a country domain.

5.2 Are there any restrictions that have an impact on online brand enforcement in your jurisdiction?

This is not applicable.

6 Data Centres and Cloud Location

6.1 What are the legal considerations and risks in your jurisdiction when contracting with third party-owned data centres or cloud providers?

This is not specifically regulated; however, the Data Protection Law regulates the transfer of personal data to other countries and international organisations that are processed or are intended to be processed after transfer. In this regard, the transfer may take place only if the country or the international organisation in question ensures an adequate level of data protection.

The Data Protection Agency has published a list of countries which provide an adequate level of data protection, which includes mostly Member States of the European Union and members of European Economic Area. In cases of the transfer of data in countries and international organisations which are not part of the said list, it is required to obtain prior authorisation from the National Agency for the Protection of Personal Data in order to transfer the data.

6.2 Are there any requirements in your jurisdiction for servers/data centres to be located in that jurisdiction?

Please see the answer to question 6.1.

7 Trade and Customs

7.1 What, if any, are the technologies being adopted by private enterprises and government border agencies to digitalise international (cross-border) trade in your territory?

There is no specific technology adopted or to be adopted in the foreseeable future that may have any impact in digitalising international trade. The law on VAT provides for the issuance and sending of invoices by electronic means and documents serving as invoices, but the use is subject to sub-legal acts to be issued by the Minister of Finance.

7.2 What do you consider are the significant barriers to successful adoption of digital technologies for trade facilitation and how might these be addressed going forwards?

The acceptance of e-invoice domestically and internationally will lower the barriers for the adoption of digital technologies.

8 Tax Treatment for Digital Businesses

8.1 Can you give a brief description of any tax incentives of particular relevance to digital businesses in your jurisdiction? These could include investment reliefs, research and development credits and/or beneficial tax rules relating to intellectual property.

There are no tax incentives or benefits relevant for digital technologies.

8.2 What areas or points of tax law do you think are most likely to lead to disputes between digital businesses and the tax authorities, either domestically or cross-border?

A withholding tax at the rate of 10% is imposed on the royalties paid to resident and non-resident suppliers. The said tax should be withheld even in case the supplier is registered with tax authorities in Kosovo, significantly increasing the tax burden of the taxpayers involved in digital products.

The local legislation provides a vague definition of royalties, which practically creates room for different interpretation. Tax authorities are keen to include all digital products (e.g. shelves software) and requires withholding tax to be paid in each step of the chain of supply.

9 Employment Law Implications for an Agile Workforce

9.1 What legal and practical considerations should businesses take into account when deciding on the best way of resourcing work in your jurisdiction? In particular, please comment on the advantages and disadvantages of the available employment status models.

Pursuant to the Labor Law, employment contracts may be concluded for:

- i. an indefinite period;
- ii. a fixed period; and
- iii. specific tasks and duties.

A contract for a fixed period may not be concluded for a cumulative period of more than 10 years and such contract that is expressly or tacitly renewed for a continued period of employment of more than 10 years shall be deemed to be a contract for an indefinite period of time.

A person who has concluded an employment contract for an indefinite and fixed period has all the rights and duties stipulated in the Labor Law, such as the right to a monthly salary, annual leave, the right to termination of employment based on procedures provided by the law and the right to a termination notice, etc.

A contract for a specified task may not be concluded for a longer period than 120 days within a year. An employee for specific tasks does not enjoy the right to annual leave and other rights that may be stipulated in the collective contract and employment contract.

9.2 Are there any specific regulations in place in your jurisdiction relating to carrying out work away from an organisation's physical premises?

There are no such regulations in place. However, the Labor Law provides that if the work is performed in different locations, the employment contract must include a provision to that effect.

10 Top 'Flags' for Doing Business as a Digital Business in Different Jurisdictions

10.1 What are the key legal barriers faced by a digital business operating in your jurisdiction?

Although there is a legal basis to enable digital business, such business in Kosovo is still underdeveloped, mainly due to lack of investment in infrastructure to support digitalisation.

10.2 Are there any notable advantages for a digital business operating in your jurisdiction?

Please see the answer to question 10.1.

11 Online Payments

11.1 What regulations, if any, apply to the online payment sector in your jurisdiction?

Law No. 04/L-155 "On Payment System" and the Regulation of the Central Bank of Kosovo On Electronic Payment Instruments dated 26 December 2019 apply to the online payment sector.

11.2 What are the key legal issues for online payment providers in your jurisdiction to consider?

Regulation of the Central Bank of Kosovo On Electronic Payment Instruments dated 26 December 2019 establishes minimum information that agreements signed by the financial institution and holder of electronic payment instruments should contain, as well as those entered between the financial institution and merchant on acceptance of the payments via electronic payment instruments.

Electronic payment instruments include (i) the remote access payment instruments, providing to the holder the possibility to access funds in his banking account, by using electronic and/or technical means, such as banking cards or immediate payments, (ii) other electronic services, such as mobile banking, e-banking, etc., and (iii) electronic money instruments.

In addition, that Regulation provides for obligations of the financial institution and the holder of electronic payment instruments regarding the use of such instruments, including the liability of the holder for losses resulting from the loss or theft of electronic payment instruments, as well as the financial institution's liability to cover financial damage caused to the holder of electronic payment instruments during the use thereof.



Renata Leka is a Partner at Boga & Associates, which she joined in 1998.

Her practice is mainly focused on commercial transactions, regulatory advice, project finance, advising numerous foreign investors in acquisitions and implementation of general business law matters, energy, project finance, procurement and concession. Her experience covers both international and domestic work across the full range of industry sectors, corporate, concessions, and infrastructure projects.

Renata also leads the intellectual property practice and is described as "*highly regarded*" and ranked as a "*leading individual*" by major international legal directories. She is an authorised trademark agent and has ample experience in trademark filing strategy, portfolio management and trademark prosecution, and handles a range of international matters involving IPR issues.

Renata also advises on matters of consumer protection, product liability and competition in both Albania and Kosovo.

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

Our firm's particularity is linked to the multidisciplinary services it provides to its clients. Apart of the wide consolidated legal practice, the firm also offers significant expertise in tax and accounting services with a keen sensitivity to the rapid changes in the Albanian and Kosovo business environment.

The firm maintains its commitment to quality through the skills and determination of a team of attorneys and other professionals with a wide range of skills and experience.

With its diverse capabilities and experience, the firm acts for leading businesses in most major industries, including banks and financial institutions, as well as companies working in insurance, construction, energy

and utilities, entertainment and media, mining, oil and gas, professional services, real estate, technology, telecommunications, tourism, transport, infrastructure and consumer goods sectors.

The firm offers its clients every legal, tax and accounting service they may need to do business in Albania and Kosovo. Over the years, the firm has advised on privatisation transactions, concessions, real estate transactions, setting up businesses, credit facilities and customs and tax issues, all with a keen sensitivity to developments in the Albanian business environment.

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