



Energy

2019

Seventh Edition

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glg global legal group

CONTENTS

Preface	Philip Thomson & Julia Derrick, <i>Ashurst LLP</i>	
Albania	Genc Boga & Alketa Uruçi, <i>Boga & Associates</i>	1
Bangladesh	A.S.A. Bari & Hossain Ali Al Razi, <i>A.S & Associates</i>	8
Brazil	Fabiano Ricardo Luz de Brito & Ana Carolina Katlauskas Calil, <i>Mattos Filho, Veiga Filho, Marrey Jr. e Quiroga Advogados</i>	16
Bulgaria	Mariya Derelieva, <i>Georgiev, Todorov & Co.</i>	26
Canada	Sharon Wong & Christine Milliken, <i>Blake, Cassels & Graydon LLP</i>	34
Chile	Rodrigo Ochagavia, Ariel Mihovilovic & Vicente Allende, <i>Claro y Cia.</i>	43
China	Xiangman Shen, Kehua Zhang & Sizhe Huang, <i>Stephenson Harwood Wei Tu (China)</i>	52
Cyprus	Michael Damianos & Christina Aloupa, <i>Michael Damianos & Co LLC</i>	62
Finland	Andrew Cotton, Laura Leino & Ella Rinne, <i>HPP Attorneys Limited</i>	72
Germany	Felix Fischer, Carmen Schneider & Joyce von Marschall, <i>Chatham Partners</i>	84
Ghana	Dominic Dziewornu Kodzo Quashigah, Kweki Quaynor Ahlijah & Nana Takyiwa Ewool, <i>Reindorf Chambers</i>	96
Guatemala	Gabriela Roca, <i>QIL+4 Abogados</i>	108
India	Abhishek Khare, Prapti Kedia & Sanchita Hule, <i>Khare Legal Chambers LLP</i>	114
Ireland	Eoin Cassidy & Peter McLay, <i>Mason Hayes & Curran</i>	124
Japan	Hajime Kanagawa, <i>Kanagawa International Law Office</i>	134
Korea	Chi-Hyoung Cho & YoungWoo Kim, <i>HMP Law</i>	146
Kosovo	Genc Boga & Sokol Elmazaj, <i>Boga & Associates</i>	156
Nigeria	Jennifer Douglas-Abubakar, Fatimah Dattijo Muhammad & Oluwasimisola Salau, <i>Miyetti Law</i>	160
Portugal	Mónica Carneiro Pacheco & João Marques Mendes, <i>CMS – Rui Pena & Arnaut</i>	173
Russia	Rustam Kurmaev & Vasily Malinin, <i>Rustam Kurmaev and Partners</i>	182
Slovenia	Matjaž Ulčar & Polona Božičko, <i>Ulčar & Partnerji</i>	192
South Africa	Jackie Midlane, Lizel Oberholzer & Jarrett Whitehead, <i>Norton Rose Fulbright South Africa Inc.</i>	202
Spain	Javier Olmos & Federico Belausteguigoitia, <i>RCD</i>	209
Sweden	Markus Olsson & Bruno Gustafsson, <i>Roschier</i>	216
Switzerland	Phyllis Scholl & Jean-François Mayoraz, <i>Bär & Karrer Ltd.</i>	225
Turkey	Levent Lezgin Kılınç, <i>Kılınç Law & Consultancy</i>	232
Ukraine	Taras Dumych, Sergii Zheka & Olena Kravtsova, <i>Wolf Theiss LLC</i>	243
United Kingdom	Julia Derrick & Justyna Bremen, <i>Ashurst LLP</i>	254
USA	Robert A. James & Stella Pulman, <i>Pillsbury Winthrop Shaw Pittman LLP</i>	269
Uzbekistan	Umid Aripdjanov, <i>Centil Law Firm</i>	279
Zimbabwe	Nikita Madya, <i>Wintertons</i>	290

Kosovo

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Jurisdiction particularities of the Republic of Kosovo

Until 2008, Kosovo was administered by the United Nations Interim Administration Mission in Kosovo (UNMIK). The mandate of UNMIK was established by the Security Council in its resolution no. 1244 (1999), [<https://unmik.unmissions.org/united-nations-resolution-1244>] aiming to help ensure the conditions for a peaceful and normal life for all inhabitants of Kosovo and to advance regional stability in the Western Balkans.

Kosovo declared independence on 17 February 2008 and adopted its constitution on 15 June 2008. The Constitution of the Republic of Kosovo (art. 143) makes reference to the Comprehensive Proposal for the Kosovo Status Settlement of 26 March 2007 produced by the Special Envoy, Mr. Martti Ahtissari, in line with UN Resolution no. 1244 (1999) [<http://www.kuvendikosoves.org/common/docs/Comprehensive%20Proposal%20.pdf>].

The Parliament of the Republic of Kosovo enacted the Law on Publicly Owned Enterprises (law no. 03/L-087 as amended), which paved the way for the privatisation of publicly owned enterprises (POE).

Serbia challenged the independence of Kosovo before the International Court of Justice but, according to the Court's opinion, Kosovo's declaration of independence did not violate any applicable rule of international law.

Privatisations and unbundling of distribution and supply of electricity

From October 2006 until 8 May 2013, the generation, distribution and supply of electrical energy in Kosovo was owned, controlled and carried out by Korporata Energjitike e Kosoves SH.A / Kosovo Energy Corporation J.S.C. (KEK), incorporated in 2005 as a fully integrated, state-owned company. All energy assets on the territory of Republic of Kosovo, including assets in the northern part of Kosovo, were transferred to KEK upon its incorporation.

The Government of the Republic of Kosovo and KEK completed the unbundling of the distribution system operation and supply functions into Kompania Kosovare per Distribuim dhe Furnizim me Energji Elektrike SH.A. / Kosovo Electricity Distribution and Supply Company J.S.C. (KEDS), which shares were acquired in a competing privatisation process by a consortium of two Turkish private groups, Limak and Çalik. This process was successfully finalised on 8 May 2013.

On 1 January 2015, the licensed supply activities were transferred from KEDS to Kosovo Electricity Supply Company J.S.C. (KESCO), a company newly established by the same consortium, Limak and Çalik. Functional unbundling was completed by the adoption of a

compliance programme by Kosovo Energy Regulator Office (ERO) in July 2015 and the appointment of a compliance officer.

Therefore, KEDS operates only as a distributor system operator (DSO) licensed to carry out its activity covering the entire territory of the Republic of Kosovo.

Opening of the energy market

Kosovo* together with Albania, Bosnia and Herzegovina, FYROM, Georgia, Moldova, Montenegro, Serbia and Ukraine, is a member of the Energy Community (an international organisation founded under the Treaty establishing the Energy Community signed in October 2005 in Athens, Greece, in force since July 2006). The key objective of the Energy Community is to extend the EU internal energy market rules and principles to countries in South East Europe, the Black Sea region and beyond, on the basis of a legally binding framework.

Kosovo has reached a high level of compliance in the electricity sector legal framework.

In June 2016, the Parliament of Kosovo adopted:

- (i) the Law on Energy (Law No. 05/L-081), transposing partially Directive 2009/72/EC on common rules for the internal market in electricity, the Regulation No. 714/2009/EC on conditions for access to the network for cross-border exchanges in electricity, and Directive No. 2009/28/EC concerning promotion of the use of energy from renewable energy sources;
- (ii) the Law on Electricity (Law No. 05/L-085), transposing partially the Directive No. 2009/72/EC on common rules for the internal market in electricity and the Regulation No. 714/2009/EC on conditions for access to the network for cross-border exchanges in electricity; and
- (iii) the Law on Energy Regulator (Law No. 05/L-084), transposing partially the Directive 2009/72/EC on common rules for the internal market in electricity, the Regulation No. 714/2009/EC on conditions for access to the network for cross-border exchanges in electricity, Directive No. 2009/73/EC on common rules of the internal European natural gas market Regulation No. 715/2009/EC on conditions of access to natural gas transmission networks, and Directive No. 2009/28/EC concerning promotion of the use of energy from renewable energy sources.

In addition to the above, the secondary legislation necessary for opening of the market was also adopted.

The Law on Electricity sets common rules for the generation, transmission, distribution, supply, trade and organised market, as part of the regional and European electricity markets, and establishes rules for: the access of parties in the market; public service obligations; consumer rights; and competition conditions. The law transposes the requirements for ownership unbundling of the transmission system operator in line with the *acquis*. Therefore, the Government of Kosovo owns the generation company KEK, while the Parliament controls the transmission system operator Operator Sistemi, Transmisioni dhe Tregu – KOSTT SH.A. As mentioned above, the unbundling of the distribution system operator KEDS from supply activities has been already completed.

According to the Law on Electricity, all customers are eligible to freely choose a supplier of their choice. The law establishes general principles of supplier switching based on which ERO adopted the relevant rules in October 2016.

In addition, the law limits regulation to supply prices for household and small customers

under universal service. ERO reassesses annually the price methodology, the level of prices and the need for further regulation.

In January 2017, ERO issued a guideline for liberalisation of the market, which terminated regulation of the generation price on 31 March 2017. The guideline also includes an action plan for the deregulation of retail prices. Transmission and distribution system operators have started to procure electricity for network losses at non-regulated prices.

ERO started to issue supply licences, resulting in three licensed suppliers so far. By the decision of ERO, KESCO was entrusted with universal supply obligations and remunerated based on tariffs approved by ERO.

A tender for the appointment of a supplier of last resort was announced by ERO in accordance with the Law, however, it appears that no application has been submitted so far.

It also appears that the rules are reflected properly in the paper, nevertheless it remains to be seen whether new players entering the market will benefit from the opening.



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Genc Boga is the founder and Managing Partner of Boga & Associates, which operates in both jurisdictions of Albania and Kosovo. Mr. Boga's fields of expertise include business and company law, concession law, energy law, corporate law, banking and finance, taxation, litigation, competition law, real estate, environmental protection law, etc.

Mr Boga has solid expertise as an advisor to banks, financial institutions and international investors operating in major projects in energy, infrastructure and real estate. Thanks to his experience, Boga & Associates is retained as legal advisor on a regular basis by the most important financial institutions and foreign investors.

He regularly advises EBRD, IFC and World Bank in various investment projects in Albania and Kosovo.

Mr. Boga is continuously ranked as a leading lawyer in Albania by major legal directories: *Chambers Global*, *Chambers Europe*, *The Legal 500* and *IFLR 1000*.

He is fluent in English, French and Italian.



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Sokol joined Boga and Associates in 1996. He is a partner of the firm and Country Manager for Kosovo.

He has extensive expertise in corporate, mergers and acquisitions, project financing, privatisation, energy, telecommunications, real estate projects, and dispute resolution. He is continuously involved in providing legal advice to numerous project-financing transactions mainly on concessions and privatisations, with a focus on energy and infrastructure, both in Albania and Kosovo.

Sokol has also conducted a broad range of legal due diligences for international clients considering investing in Albania or Kosovo in the fields of industry, telecommunications, banking, real estate, etc.

Sokol is continuously ranked as a Leading Lawyer in the major directories *Chambers Global*, *Chambers Europe*, *The Legal 500* and *IFLR1000* as a Corporate and Finance Law expert. He is authorised to practise in Albania and is an arbitrator in Kosovo.

Sokol is fluent in English and Italian.

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