

### RECENT DEVELOPMENTS

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- New Regulation for the Salary in-kind
- Recommendations of the Albanian Competition Authority to the Albanian Energy Regulatory Entity
- Bilateral Social Security Agreements

#### Kosovo

- New Draft-Law “On Consumer Protection”
- New Law “On Standardization”

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### • Customs Value of Goods

On 23.01.2018, the Minister of Finance and Economy approved Instruction no. 3, dated 23.01.2018 “On valuation of goods for customs purposes” (the “Instruction”), entering into force upon its publishing in the Official Journal (i.e. 26.01.2018).

The customs valuation is the procedure of determining the value of the goods and services related to them for customs purposes, which is the basis for calculation and payment of ad valorem customs duties (including VAT).

#### Transaction Value Method

Pursuant to law no. 102/2014 “Customs Code of the Republic of Albania” (the “Customs Code”), there are six methods for assessing the value of goods. The first and main method is the “Transaction Value” method, according to which the value of goods corresponds to the price actually paid or payable for the goods when sold for export to the customs territory of Albania, adjusted, where necessary. The paid or payable price is the full payment carried out (or that shall be carried out) by the buyer to the seller (or a third person for the benefit of the seller) and includes all payments made or to be made as a condition of sale of the imported goods.

However, the transaction value shall apply provided that all of the following conditions are fulfilled:

- a) there are no restrictions as to the disposal or use of the goods by the buyer, other than any of the following:
  - (i) restrictions imposed or required by a law or by the public authorities in Albania;
  - (ii) limitations of the geographical area in which the goods may be resold;
  - (iii) restrictions which do not substantially affect the customs value of the goods;
- b) the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
- c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made;
- d) the buyer and seller are not related, or the relationship did not influence the price.

The “Transaction Value” is used as the valuation method when the main documentation submitted for this purpose is complete and from the reviewing of the circumstances under which the transaction is carried out and the risk classification, there are no reasonable doubts that the declared transaction value is different from the total amount paid or payable.

The documentation required for performing the determination of the customs value includes:

- invoices, including the trading invoice or any equivalent document and the transport invoice (when transport of goods is not included in the main invoice);
- insurance of goods document;
- quality certificate;
- certificate of the origins of goods.

#### Risk indicators

The following is a non-exhaustive list of risk indicators, which may serve as basis for the customs authorities to perform an in-depth assessment of the transaction:

- the history of customs regulations violations;
- there is an evident difference between the declared value compared to the prices found in the National Valuation Database or prices

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- published in stock exchanges/international agencies;
- the value of goods has been declared by means of pro-forma invoices or invoices issued only for customs purpose;
- there are indications for possible relation between the supplier and the operator;
- there are different prices declared for the same product, by similar suppliers/origins;
- the place of origin imposes risk;
- the country of origins is different from the country where the goods are transported/delivered;
- the content of the invoices from the same supplier is not the same;
- there are successive sales (chain sales);
- a third trader or company is involved in the transactions;
- the goods come from a country which does not have an agreement of reciprocal assistance with our country;
- the payments are not carried out directly by the economic operator to the supplier;
- the loading country does not correspond to the country and the address of the exporter;
- there is a clear difference between the declared price and the prices of publications in various markets;
- the value of the product cannot be lower than the values of the raw material with which they have been produced.

### Additional documentation

When there are doubts on the accuracy of the transaction, additional clarifications and documentation may be required. The additional documentation includes the following:

- the sale contract, in order to support different aspects of the sale;
- document evidencing the payment;
- the intellectual property rights contract;
- the commission contract;
- the transport documentation;

- documentation related to the expenses for insurance of the imported goods;
- accounting data of the company;
- other documents and data.

Where the customs authorities have reasonable doubts whether the declared transaction value represents the total amount paid or payable, they shall inform the declarant on the grounds of such doubts. Upon request of the importer, the customs authorities shall notify in writing the customs valuation performed and the methods used by them.

### Alternative methods

Where the customs value of goods cannot be determined on the basis of the Transaction Value, it shall be determined by proceeding sequentially from points (a) to (e) of below (“Alternative Methods”), until the first point under which the customs value of goods can be determined:

- a) *Transaction Value of Identical Goods*: based on the transaction value of identical goods sold for export to the customs territory of Albania and exported at or about the same time as the goods being valued;
- b) *Transaction Value of Similar Goods*: based on the transaction value of similar goods sold for export to the customs territory of Albania and exported at or about the same time as the goods being valued;
- c) *Deductive method*: based on the unit price at which the imported goods, or identical or similar imported goods, are sold within the customs territory of Albania in the greatest aggregate quantity to persons not related to the sellers;
- d) *Computed Value method*: consisting of the sum of:
  - (i) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
  - (ii) an amount for profit and general expenses;
  - (iii) the costs of transport and insurance of the imported goods and loading and handling

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charges associated with the transport of the imported goods.

- e) *Available Data method*: applied when the customs value cannot be determined under the other methods. It implies the determination of value on the basis of data available in the customs territory of Albania, using reasonable means consistent with the principles and general provisions of the

- **New Regulation for the Salary in-kind**

On 07.02.2018 the Council of Ministers approved Decision no. 68 “*On thresholds and criteria for the determination of the compensation pertaining to the salary in-kind and that is added to the salary payable during annual leave*” (“DCM no. 68”) entering into force upon its publishing on the Official Journal (i.e. 09.02.2018). DCM no. 68 abolished Decision no. 139, dated 14.03.2007.

According to DCM no. 68, all employers that due to conditions or nature of work organization are not in a position to provide dining facilities for their employees, with suitable hygienic conditions, shall compensate their employees for the food consumed during the work-break.

The compensation amount shall be equal to the difference between food’s cost when prepared by the employee (or in shared kitchens) with restaurant retail prices.

### Value, methods and criteria

According to DCM no. 68, the compensation shall correspond to an amount up to 300 ALL per one meal and up to 500 ALL for more than one meal in a working day.

The individual or collective employment agreement may provide for other treatments as well as change of the thresholds indicated above, on the basis of the consumption price index.

agreement on implementation of Article VII of the General Agreement on Tariffs and Trade (GATT), article VII of GATT and provisions of Customs Code.

Based on the risk analysis, the customs authorities shall carry out controls on the customs value even after the customs clearance.

The compensation can be granted to the employee in the form of meals, vouchers or goods. However, in case none of such options is available, the employer may compensate the employee in cash and for tax purposes, such amount shall be treated as salary.

The amount of the salary paid in-kind cannot exceed 20% of the monthly salary.

### Accommodation

In case the employee is unable to return to his place of residence due to the distance of the later to the workplace, the employer shall provide for the accommodation of the employee.

### Compensation during annual leave

For purposes of calculating the salary payable during the annual leave, the compensation pertaining to the salary in-kind is calculated as the ratio of the working days during which the employee has received the salary in-kind with the overall number of days actually worked, multiplied by the number of working days during the annual leave period and daily salary in-kind, as defined in the collective or individual employment agreement.

- **Recommendations of the Albanian Competition Authority to the Albanian Energy Regulatory Entity regarding the terms of license in natural gas distribution**

Due to the development of the natural gas activity in Albania, the institutions have started to prepare the market for the activity of the operators and exploitation of natural gas.

In this view, the Albanian Energy Regulatory Entity (hereinafter referred to as “ERE”) has started the procedure of drafting and approving the licenses on the activity of distribution, supply and trade of natural gas in the country.

On 20.10.2017, ERE approached the Albanian Competition Authority (“ACA”) asking for an opinion of ACA regarding the following decisions of ERE:

1. No. 161, dated 12.10.2017 “On the commencement of drafting and approval of natural gas distribution activity license”.
2. No. 162, dated 12.10.2017 “On the commencement of procedures on the approval of the supply of natural gas activity license”
3. No. 163, dated 12.10.2017 “On the commencement of procedures on the approval of trade of natural gas activity license”.

ACA provided its recommendations on each of the above-mentioned draft-licenses as follows:

### Recommendations of ACA

1. *Draft-license of natural gas distribution activity* (Decision no. 481, dated 16.11.2017)

ACA made its observations on the draft-license of the distribution operator and recommended to ERE to include in the draft license the obligation of ongoing reporting by the license-holder and its continuous monitoring on the achievement of planned investments. It recommended to impose

penalties in case of non-compliance with the planned investments.

Regarding the vertically integrated companies, ACA recommended to include in the draft license all the legal provisions mirrored by Article 51 of the law no. 102/2015 “On Natural Gas” and article 26 “Unbundling of distribution system operators” of directive 73/2009/EC, dated 13.07.2009.

Another recommendation was to define in the draft-license, the obligation of the Natural Gas Distribution System Operator to publish all the data of the distribution market in order to keep updated all market operators and network users.

2. *Draft-license of natural gas distribution activity* (Decision no. 482, dated 16.11.2017)

ACA recommended as follows:

- The natural gas supply activity should be licensed after or simultaneously with the approval of the Natural Gas Market Model provided in article 8 of Natural Gas Law to provide for clear operations’ conditions, role and function of the supply operators.
- The draft-license should delineate the term for the change of supplier (free of charge) which shall be not more than 3 weeks from the commencement of the change of supplier procedure, pursuant to the provisions of article 3(6)(a) of the Directive 73/2009/EC.
- ACA recommends as well including in the draft license a paragraph on the obligation of the licensee to keep the clients and gas companies informed by publishing the data and consumption of natural gas market.
- The draft-license should distinguish the ownership in case the operator is a vertically integrated undertaking.
- The draft-license should provide a paragraph stating that invoices should have distinctive signs to identify each of the licensed activities

used, in order to avoid double expenditures or double registrations of the activities of the licensee.

3. *Draft-license of trade of natural gas activity (Decision no. 483, dated 16.11.2017)*

The draft license proposed by ERE contains the terms of the activity, obligations of the licensee, performance check of the licensed activity, revocation of the license, emergency situations, conflict resolution and the right of appeal.

After reviewing the draft license, ACA observed various issues and recommended to ERE as follows:

- The licensing of the trade activity should occur after or simultaneously with the

- **Bilateral social security agreements**

The expansion of international trade relationships and the growth of international investment projects in Albania, is accompanied with a considerable intensification of the human capital exchange. This has called for a greater attention from the Albanian government to improve the legal framework affecting employment of expats in Albania. In addition to the amendments of domestic laws and the ratification of several multilateral conventions<sup>1</sup>, Albania has also intensified its efforts towards signing many bilateral agreements in this area.

*Inter alia*, Albania has signed and ratified eight bilateral agreements regulating social protection that are currently being implemented:

1. **Belgium** (*ratified with Law no. 35/2014, dated 03.04.2014*);
2. **Czech Republic** (*ratified with Law no. 34/2016, dated 24.03.2016*);

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<sup>1</sup> See for example: International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, 1998; International Covenant on Social, Economic and Cultural Rights, 1966; Migration for Employment Convention (Revised), No. 97,

approval of Natural Gas Market Model, based on which are determined the levels of the Natural Gas Market.

- The draft-license should expressly determine the role and function of the primary and secondary market, wholesale and retail market as well as the role and function of the operator which will carry out the trade activity in the Natural Gas Market Model.
- The draft-license should also determine the validity period of the license as set forth in the law.
- The draft-license should include a provision which states that the accounts of licensed activities of the operator are kept separately.

3. **Germany** (*ratified with Law no. 23/2016, dated 10.03.2016*);
4. **Hungary** (*ratified with Law no. 151/2015, dated 21.12.2015*);
5. **Luxembourg** (*ratified with Law no. 42/2015, dated 16.04.2015*);
6. **Macedonia** (*ratified with Law no. 123/2015, dated 12.11.2015*);
7. **Romania** (*ratified with Law no. 42/2016, dated 14.04.2016*);
8. **Turkey** (*ratified with Law no. 9066, dated 15.05.2003*).

According to the publicly available information, negotiations with the following countries: Italy, Greece, France, Bulgaria, Netherland, Croatia, Canada and Austria, are undergoing.

Below you may find a brief information on the mentioned bilateral agreements.

and Migration for Employment Convention Recommendation, No. 86, 1949; European Convention on the Legal Status of Migrant Workers, 1977 etc.

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## General provisions

The scope of agreements is to avoid double coverage of social security contributions (covering payments for sickness, maternity, invalidity, work accidents etc.) for temporary assignments in the other country. This also implies that international assignees do not lose their social security benefits entitlement in their home country.

The applicable legislation on social security is determined according to the general rule that a person exercising professional activity (i.e. employed or self-employed) in the territory of a contracting country (one of the parties in a bilateral agreement) shall be subject only to the legislation of that contracting country, regardless of the country in which the employer has its registered seat.

Generally speaking, the bilateral agreements provide that if an employee of a company is assigned by the latter in a country other than the one where the registered seat is located, the employee shall remain subject to the legislation of the initial country, provided that the assignment does not

exceed 24 months<sup>2</sup>, unless the competent authorities of each contracting party decide otherwise, upon the request of the employee and employer. Specific rules are provided for civil servants and companies offering transport services.

## Coverage

The categories covered by the agreements vary depending on each country, however, in general they cover payments related to pensions, sickness, maternity, invalidity and work accidents. The agreements provide the obligation to pay the social and health insurance contributions and any other contribution (if any) in accordance with the respective legislation.

## Implementation of the agreements

The full implementation of the bilateral agreements, is subject to supplementary mechanisms. The contracting countries shall enter into “administrative agreements” that *inter alia* define the respective competent institutions, and regulate particular provisions concerning benefits.

## RECENT DEVELOPMENTS IN KOSOVO

- **New Draft-Law “On Consumer Protection”**

The new draft law “On Consumer Protection” (hereinafter the “Draft Law”) is undergoing a review by the functional committee of the Kosovo Assembly, after which it will be submitted to the Assembly for consideration at the plenary meeting. The Draft Law will repeal the Law No. 04/L-121 “On Consumer Protection” (hereinafter “the existing law”) and any secondary legislation that is contrary to the Draft Law.

The Draft Law is compiled in compliance with EU Directives regarding consumer protection, which are listed in article 2 of the Draft Law. Based on such EU Directives, the Draft law introduces new categories of consumer protection.

The Draft Law regulates market conditions in business-to-consumer relations, product labeling, price indicators, consumer protection in relation to contracts, administrative and judicial protection of consumer etc.

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<sup>2</sup> This period of such assignment is 12 months in the agreement with Romania.

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We have listed below some of the significant novelties introduced by the Draft Law.

## Scope

The Draft Law will apply only to consumers residing in the Republic of Kosovo and unlike the existing law, the Draft Law will not apply to non-resident consumers.

## Consumer responsibilities

The Draft Law introduces the consumer's duty to be constantly attentive of what products he/she buys or consumes, in order not to become subject of market malpractice, thereby endangering his/her personal and family health.

## Special protection for minors

The Draft Law introduces a provision on special protection of minors, prohibiting the sale, serving and offering of alcoholic beverages to consumers under the age of 18. In case of doubt about the age of the consumer, the trader is not obliged to sell or serve alcoholic beverages, until the consumer proves the age with an identification document.

## Consumer rights in relation to distance and off-premises contracts

The Draft Law lays down the mandatory information that should be provided to the consumer before the consumer concludes a distance or off-premises contract, as well as the formal requirements regarding the provision of such information.

Distance contract is defined as any contract concluded 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 at the time of concluding the contract. Off-premises contract is defined as any contract between the trader and consumer concluded in the simultaneous physical presence of the trader and the consumer, in a place, which is not the business premises of the trade.

The Draft Law provides for the right of consumers to withdraw from a distance or off-premises at no cost and without having to provide any reason, by using the withdrawal form or by means of a declaration of withdrawal from the contract.

## Consumer Complaints

The Draft Law introduces the right of the consumer to file a written complaint against the trader from whom the product was purchased, in case of nonconformities of the product and the contract, with respect to the issues covered by guarantee, due to reasons related to the purchase and other similar reasons. Such complain should be submitted in written form or in another durable medium (i.e any instrument which enables the consumer to store information in a way accessible for future reference for a period of time and which allows the unchanged reproduction of the information stored).

The seller is obliged to respond in writing or in some other form on a durable medium no later than 15 days after the receipt of the complaint. The response should include the assessment of the complaint and the proposal relating to its resolution.

If the trader fails to respond to the customer's complaint within the above deadline, the consumer may file a request for protection of his rights to the inspection body in charge. If the trader rejects the complaint, the consumer may seek protection of his rights through judicial or extrajudicial procedure.

## Collective Action

Based on the Draft Law, against a trader who violates the collective interests of consumers by using unfair contractual provisions, business practices, or in any other way violates consumer rights, can be initiated a collective action.

Collective action may be initiated by:

- Consumer organizations;
- Chambers and associations of economic interests in the relevant filed of business;
- Regulatory Authorities within their specific fields.



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The trader must be informed of the intention to initiate collective action and should be given a period of 14 days to terminate the violation.

The Department for Commercial Matters within the Basic Court in Pristina has the exclusive jurisdiction over proceedings on collective action.

If the collective claim is grounded, the court may order:

- **New Law “On Standardization”**

On 26.01.2018, the Kosovo Assembly enacted law no. 06/L-019 “On Standardization” (the “Law”), therefore abolishing law no.03/L-144 “On Standardization”.

This Law has partially transposed provisions of Regulation (EU) 1025/2012 of the European Parliament and of the Council dated 25 October 2012, which establishes requirements for standardization.

### Scope

The scope of the Law is to develop standards, adopted and approved by Kosovo Standardization Agency for all sectors of the economy.

The Law does not apply to drafted standards, adopted and approved by companies, agencies and/or other organizations, or different specifications for internal needs.

*Public Authority: Kosovo Standardization Agency (“KSA”)*

KSA is independent and the only national administration body responsible for standardization in the Republic of Kosovo, which includes development, recognition, adoption, approval and publication of standards for all sectors related to the provisions of this Law, which operates within the respective ministry for trade and industry.

- (i) cessation of use of unfair contract terms or illegal practices;
- (ii) to prevent similar actions in the future;
- (iii) order the trader to publish the court judgment if the publication can contribute to the full reduction of the adverse consequences of the violations, and
- (iv) order the trader to publish the correction of illegal advertising.

KSA is responsible to:

- adopt and maintain the Kosovo standards and to update the standards catalogue;
- review, maintain and confirm periodically the Kosovo standards status pursuant to rules and procedures of standardization adopted by KSA;
- develop and approve rules and procedures of standardization activities, pursuant to European and international standardization principles and rules;
- prepare, approve and publish working program for standardization in accordance with parties of interest;
- draft, recognize, adopt, approve, amend, repeal and publish Kosovo standards and Kosovo standardization documents pursuant to European and international standardization principles and rules;
- administer and maintain standards database;
- administer and maintain an archive with Kosovo, international and European standards, as well as selling them in accordance with applicable laws, regulations and policies of the agreements with standardization bodies;
- provide information services on standards and standardization procedures to business entities that carry out economic activity within and outside of the country;

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- act as reference point for issues related to standardization deriving from the European and International Agreements related to technical barriers to trade and Code of Good Practice for drafting, adoption and publishing of standards;
- exchange information and cooperate in standardization with foreign national standardization bodies;
- organize training and other activities related to standardization;
- publish annual bulletin and catalogue of Kosovo standards;
- initiate studies, publications, experience, research and other activities related to standardization.

Moreover, KSA, as a body of the Ministry of Trade and Industry, represents the Republic of Kosovo in the European and international standardization organizations: CEN; CENELEC; ETSI and ISO; IEC; ITU, and other organizations dealing with standards.

### Membership

Any natural or legal person, who exercises economic activity and interest in standardization area in the Republic of Kosovo, is eligible for membership in KSA.

### Technical standards and regulations

Implementation of Kosovo standards is voluntary unless made mandatory with any contract, Law or sub-legal act.

When technical regulations that transpose the EU directives refer to harmonized standards, these standards should apply to Kosovo as “Kosovo harmonized standards”. If such standards are not adopted in Kosovo, reference may be made as “harmonized European standards”.

### Sanctions

In case of violation of copyright, content, and the right to sell to any Kosovo standard or other standardization document that belongs to KSA, and if they do not constitute a criminal offense, fines can be applied varying from EUR 300 to EUR 1,500 for natural persons and from EUR 600 to EUR 3,000 for legal persons.

In case of violation of intellectual ownership about edition, reproduction, distribution and sale of draft-standards, and Kosovo standards, draft-documents, and Kosovo’s standardization documents, and if they do not constitute a criminal offense, fines can be applied varying from EUR 500 to EUR 2,000 for natural persons and from EUR 1,000 to EUR 4,000 for legal persons.

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If you wish to know more on issues highlighted in this edition, you may approach your usual contact at our firm or the following:

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## **BOGA & ASSOCIATES TOP TIER ACHIEVEMENTS 2018**

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**IFLR1000 2018:** Ranked in Tier 1 in Financial and Corporate and Project Development

**Chambers Global 2018:** Ranked in Band 1 in General Business Law

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## Boga & Associates

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

The firm’s particularity is linked to the multidisciplinary services it provides to its clients, through an uncompromising commitment to excellence. Apart from the widely consolidated legal practice, the firm also offers the highest standards of expertise in tax and accounting services, with keen sensitivity to the rapid changes in the Albanian and Kosovo business environment. The firm delivers services to leading clients in major industries, banks and financial institutions, as well as to companies engaged in insurance, construction, energy and utilities, entertainment and media, mining, oil and gas, professional services, real estate, technology, telecommunications, tourism, transport, infrastructure and consumer goods.