

## Legal News

May – June – July 2017

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### 1. Law No.05/L-118 on amending and supplementing the Law no. 04/L-139 on enforcement procedure

This Law has been published in the Official Gazette of Republic of Kosovo on 11<sup>th</sup> of May 2017 and has entered into force fifteen (15) days after its publication.

The purpose of this Law is to amend and supplement the Law No. 04/L-139 on Enforcement Procedure (Official Gazette of the Republic of Kosovo No. 3, 31.01.2013)

The main legal news that derives from this Law are the definition of the "bank's account register" and that no legal remedy is allowed against conclusions on implementation of some actions and to conduct the procedure. The basic Law foresees that the Creditor is obliged to prepay all the procedure expenses to and related with the Enforcement Procedure, while the new law has specified that the execution efficiency fee is a fee which is paid by the creditor only after the completion of the enforcement only with respect to the value enforced and its amount shall be determined by an agreement between the creditor and the private enforcement agent within the maximum and minimum limit determined by a sub-legal act of the Minister.

Thus, with the new changes in addition to the execution efficiency fee which is determined by agreement between the private enforcement agent and the creditor, other fees are paid in advance by the creditor, and after the completion of the procedure they are charged to the debtor.

Furthermore, according to the new law, an

agreement which is concluded pursuant to the Law on Mediation, shall be considered as enforcement document and it doesn't have to be authenticated from the Court, as envisaged in Article 22 paragraph 1, sub – paragraph 1.4 of the Basic Law.

According to the basic law, if the enforcement decision or writ assigns the payment of interest, the enforcement body shall calculate the expenses of the enforcement creditor, except if the collection of interest is to be done from the deposited money in bank account. The new law supplements this provision further, foreseeing that bank makes the calculation with the expenses of the debtor. In cases when the calculation is made by the bank, the enforcement body is obliged to mark in the writ of enforcement the degree of exact interest, the precise guidelines for calculating the time of the interest, and all other details necessary for the banks to enable calculation interest correctly. If in the writ of enforcement there are insufficient information, unclear or incomplete regarding the calculation of interest, the enforcement body is obliged to meet the writ of enforcement at the request of banks".

Paragraph 1 of Article 72 of the basic law, which foresees the deadline by when the Court shall deliver to the opposing party the objection against decision on enforcement is entirely deleted, and paragraph 2 of the same Article is reformulated in the way that the enforcement authority shall deliver the statement of the objection and the supporting evidence to the opposing party and to all other parties to the enforcement proceeding within three (3) days after the court receives the objection. The Court shall decide on the objection within a deadline of thirty (30) days from the date of receipt of objection.

The law foresees other changes with regard to the Public Sale Sessions, and it reformulates article 155 of the basic law on the sequestration and enforcement on the bank account through Bank Account Registry. According to these changes the enforcement authority shall submit to the commercial banks an enforcement decision or order on the bank account through the electronic system of the Bank Account Holder Registry.

Commercial banks are obliged to freeze the bank accounts of the debtor within sixty (60) minutes from the moment of receipt of the enforcement decision or order. Commercial bank shall, within one hundred and twenty (120) minutes notify the enforcement body on freezing of the bank account as per the enforcement decision or order.

The law envisages that within eighteen (18) months after the entry into force of this law, the Ministry of Justice will amend and supplement the Administrative Instruction on fees for rewards and compensation of the expenses for private enforcement agents. Until then provisions of the Administrative Instruction shall apply.

## **2. Law no. 05/L-132 on vehicles**

This law has been published in the Official Gazette of Republic of Kosovo on 11<sup>th</sup> of May 2017, and has entered into force fifteen (15) days after its publication.

The purpose of this Law is to determine the basic conditions of equipment and installations vehicle should have, dimensions, greater measures allowed and vehicle axle load, as well as the standards vehicles must fulfil in traffic, conditions for importation, type of vehicle homologation, components, independent technical unit, technical control of vehicles, roadside inspection, vehicle registration, end of life vehicle and other related issues.

This Law is in compliance with Directive of the European Parliament and of the Council No. 2014/45/EC of 3 April 2014 on periodic roadworthiness tests for motor vehicles and their trailers; 2014/46/EC of 3 April 2014 on the registration documents for vehicles; 2014/47/EC of 3 April 2014 on technical roadside inspection of the roadworthiness of commercial vehicles; 2007/46/EC of 5 September 2007 on establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive); 2000/53/EC of 18 September 2000 on the end of life vehicles; 1999/37/EC of 29 April 1999 on the registration documents for vehicles

In the framework of this Law, the Law into force on minor offences is applicable unless otherwise stipulated by this Law. The provisions of this Law apply to all state institutions, legal entities, and road traffic participants as foreseen by this Law.

This Law foresees fines starting from 130 € up to 600 € for the driver/legal entity who operates a vehicle which does not fulfil the criteria for the general mass, the dimensions and the axletree rod of the vehicle.

The Law excludes homologation of road vehicles designed and dedicated to the needs of the Kosovo Security Force, the Police of Kosovo or the needs of fire-fighters; road vehicles dedicated for use in construction, superficial digging, quarries, ports and airports; labour vehicles; road vehicles whose maximum construction speed is not above six (6) km/h; road vehicles dedicated for recreation out of public roads; mopeds; equipment of vehicles designed in special manner to be used in forestry; equipment of forestry vehicles, the apparatus installed in the chassis of the vehicle used for agricultural work; road vehicles which are temporarily imported to be used in races, fairs and other events organized in the Republic of Kosovo, in which case the temporary importation of these vehicles can last for a maximum of thirty (30) days; road vehicles dedicated for driving in road traffic and which are not registered; road vehicles dedicated exclusively for racing;

Responsible for determining the conditions, the manner and procedure for granting homologation and the form and content of the homologation certificate is the respective ministry for transport.

This Law also determines the conditions on participating in traffic. Each vehicle prior entering in traffic shall be registered. In accordance to this Law the Ministry of Internal Affairs is responsible for:

- the procedure for the registration of vehicles, the issuance and validity of the vehicle registration certification, for the plates, type, content and form of registration plates, test (probation) plates, change of data as well as de-registration of the vehicles ;

- traffic license form and other forms used in the procedure of registration of the vehicle;
- the value (price) of printed forms which are used in vehicle registration procedure, as well as the value of registration plates and test plates which are paid by the party.

Vehicles of the Kosovo Security Force, are exempted for the above rule, since they are registered according to the procedure of the respective Ministry of Security Forces in Kosovo.

According to this Law, vehicles older than ten (10) years and vehicles which do not meet Euro four (4) standard cannot be imported to Kosovo. This restriction shall start its application from 1<sup>st</sup> of January 2018.

Upon entry into force of this Law, the Law No.02/L-70 on Road Traffic Safety and all administrative instructions that have derived from this Law are repealed.

### **3. Administrative Instruction No. 04/2017 on rules and measures for restricting energy supply in emergency situations**

This Administrative Instructions has been issued based on article 27 of the Law no.05/L-081 on Energy and shall enter into force 7 days after being signed by the Minister of Economic Development.

The Administrative Instruction determines the rules on measures for restricting energy supply, as well as special obligations for energy enterprises, with the aim of protection of consumers and ensuring security of the system in emergency situations.

According to the Administrative Instructions, the Government shall take a decision for application of supply restriction measures in:

- Electricity energy
- Thermal energy, and
- Natural gas.

The above-mentioned measures shall be taken under cases foreseen in article 25 of

the Law on Energy, respectively in the following cases:

- in extraordinary situations, in accordance with the determination in the Constitution of the Republic of Kosovo;
- in other emergency situations, in the event the Government declares that such emergency situations are necessary in the energy sector;
- any material accident with installations for the generation, transmission, or distribution of electricity, thermal or natural gas;
- any unexpected long-term shortage of energy generation capacity or energy transmission or distribution capacity; or
- any terrorist activity and war act.

According to the Administrative Instruction, the Minister of the Economic Development, shall establish the Technical Emergency Committee with the aim of providing counselling on the possible impact of the emergency situation on the energy supply and the operation and liquidity of the energy market, its management and the ways to reduce negative effects on both the supply and the market during the domination of emergency situation.

Irrespective of restrictive measures on production, transmission, distribution and supply of the energy electricity, the Administrative Instruction exempt from such measures to the extent possible, the following categories:

- Presidents Office, Assembly and Government of the Republic of Kosovo;
- Military buildings;
- Kosovo Police, Fire Brigade, Correction Service, and border crossing points;
- Mines;
- Airports;
- Railway activities;
- Licensed producers, transmitters and distributors of electric and thermal energy;
- Regional water supply companies (maintenance of the water network and sewage).
- Hospitals;

- Postal, telecommunications and broadcasting services;
- Any other category or industry that the Government may consider necessary, after consultation with the Ministry and the Energy Regulatory Office.

At the recommendation of the Technical Committee, by decision, in applying emergency restriction measures, the Minister may request from energy enterprises the following:

Restrict trade in energy from/to certain places, during a certain period;

- Create fuel reserves;
- enact regulations, related to fuel reserves, in order to:
  - a. enable that these reserves are brought to a certain level within certain period of time and be maintained to a certain level; and
  - b. ensure that such fuel reserve does not fall under the certain level, as foreseen in the legislation in force.

The administrative oversight over the implementation of the present Administrative Instruction shall be done by the Energy Inspectorate that acts within the Ministry and which makes propositions to the Energy Regulatory Office to impose administrative fines in case of noncompliance with the Law No. 05/L-081 on Energy, Law No. 05/L-085 on Electricity, Law No. 05/L-084 on Energy Regulatory Office, Law No. 05/L-052 on Thermal Energy and Law No. 05/L-082 on Natural Gas.

Each consumer and/or market participant has the right to submit complaint to the responsible authority and/or the Energy Regulatory Office in the case of registered abuse or overuse of the restrictive measure

#### **4. Regulation on Value of Pension Contributions/Central Bank of the Republik of Kosovo.**

This Regulation has been approved by the Board of the Central Bank of the Republic of Kosovo, on 27<sup>th</sup> April 2017, pursuant to the Law no. 04/L-101 on Pension Funds of Kosovo.

Regulation is applied for the Supplementary Employer Pension Fund ("Pension Fund"), and accordingly for the Supplementary Individual Funds ("Pension Provider"), whereas its purpose is to establish minimal criteria's on determination of the value that could be contributed for the program of Supplementary Fund.

According to the Regulation, the Supplementary Pension Funds, through the normative acts shall each calendar year determine the amount of contribution as a basis for gaining the Supplementary Fund.

Upon its entry into force, Rule 16 on the value of pension contributions is repealed.

#### **5. Administrative Instruction (MED) Nr. 05/2017 renewable energy source targets**

This Administrative Instruction has been issued based on Article 13 paragraph 1.3 of the Law No.05/L-081 on Energy.

The Administrative Instruction adopts long-term and annual renewable energy source targets. This Administrative Instruction is partially compliant with the provisions of the Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources.

According to the Administrative Instruction, the mandatory target of renewable energy sources until 2020 is 25% of the gross final consumption of energy, as defined with article 4 of the Council of Ministers of the Energy Community Decisions No. D/2012/04/MC-EnC. Whereas, the indicative renewable energy source target for 2020 shall be 29.89% of the gross final consumption of energy.

Annual objectives in terms of new renewable energy capacities of reaching the target in 2020, are defined in Annex I, which is an integral part of the Administrative Instruction

The Administrative Instruction shall enter into force seven (7) days after it is signed by the Minister of Economic Development signs it.

#### **6. Administrative Instruction MoF-NR. 01/2017 on amending and supplementing the Administrative Instruction MoF-NR 01/2015 on using electronic equipment and fiscal system**

The purpose of this Administrative Instruction is to amend and supplement Article 26 of the Administrative Instruction MoF-No.01/2015 for the Use of Electronic Devices and Fiscal Systems, respectively to set out the criterias for promotion, motivation, collection, application of potential winners of fiscal coupons and their reimbursement.

The provisions of this Administrative Instruction are mandatory for all persons determined within the scope of the Law no. 03/L-222 on Tax Administration and Procedures, amended and supplemented with the Law No. 04/L-102 and the Law No. 04/L-223.

All citizens of the Republic of Kosovo applying for Reimbursement from the collection of fiscal vouchers in the following month of every three months shall be reimbursed according to the following criteria

1. The application is made on-line in the TAK system by filling in the information requested in the application within the specified deadline. The application is made only once for the same period based on the Applicant's Personal Number;
2. The Potential Winning Number is generated by the TAK System based on an algorithm determined by TAK, based on the Number of Envelope, Name and Surname of the Citizen;
3. After expiring of the application deadline, on one of the dates from 1 to 10 of the following month TAK in cooperation with the Kosovo Lottery, will organize the withdrawal of the Potential inners (PW) through the Public Television (TV) of Kosovo;
  - 3.1. During the withdrawal process there are three (3) Potential Winning Numbers If the number of winners is over 999 to 4500;

- 3.1.1. If the number of winners drawn from the potential winning numbers is less than one thousand (1,000), it should also be withdrawn the Potential additional winning number until the completion of the prescribed condition;
- 3.1.2. Each Potential Winning Number has maximum one thousand five hundred (1,500) winners, otherwise the withdrawal is repeated;
- 3.2. The minimum number of fiscal coupons submitted must be 60 coupons, with the minimum amount of two hundred and fifty euros (250 €)
- 3.3. Potential winners are reimbursed with ten percent (10%) of the declared value, but no more than one hundred euros (€ 100).
- 4. The Applicant with the Winning Potential Number drawn in live TV broadcasting, shall submit physically his / her enclosed envelope with fiscal vouchers together with the application data in one of the TAK Regional Directorates.

Administrative Instruction shall enter into force on 1 July 2017.

#### **7. Administrative instruction No. 07/2017 on Environmental Permits**

This administrative instructions has been published in the Official Gazette of Republic of Kosovo on 21.06.2017, and shall enter into force 7 days after it is being signed by the Minister of the Environmental and Spatial Planning.

The purpose of this administrative instruction is to regulate the criteria for obtaining an environmental permit to prevent and reduce the negative impacts on the premises of public and private activities.

All activities with Environmental Consent are obliged to obtain the environmental permit. This administrative Instruction also regulates the form and content of the Environmental Permit. Furthermore, this administrative instruction has also foreseen

the procedure of the review of permits, by specifying the formation of commission for reviewing the request for environmental permits procedure, decision-making on issuing the environmental permit.

The Environmental permit may also be extended by applying for this extension at least two months prior its expiry date. The same permit may also be transferred to third parties by submitting a special request to the Ministry, pursuant to the procedures specified in administrative instruction.

This administrative Instruction has also foreseen the supervision of the implementation of the requirements derived from this administrative instruction.

Surveillance will be done by the environmental inspectorate in accordance to the Law on Environment. In case of violation of the provisions of this administrative instructions, fines shall be imposed for natural and legal person as well.

Upon entry into force of this Administrative Instruction, the Administrative Instruction number 25.2012 for granting Environmental permit is abrogated

#### **8. Administrative Instruction No 02.2017 For a list of hazardous waste According to the origin**

This administrative instruction shall enter into force 7 days after it is being signed by the Minister of Environment and Spatial Planning.

The purpose of this Administrative Instruction is to instruct the natural and legal person on how to use the list of categories of hazardous waste according to origin.

This Administrative Instruction is partially in line with some provisions of the Basel Convention over the control of transboundary movements of hazardous wastes and their disposal, adopted on March 1989 and entered into force on May 1992.

According to this Administrative instruction, upon failure to comply with the provisions of this administrative instruction, penalties will

be issued in accordance to the Law on Waste.

This administrative instruction contains also Annex I as an integral part.

#### **9. Administrative Instruction No. 01/2017 For the Release of the Municipality Environmental Permit**

This administrative instruction shall enter into force 7 days after it is being signed by the Minister of Environment and Spatial Planning.

The purpose of this administrative instruction is to prevent or reduce negative impacts on the environment on the public and private proposed project.

Via this administrative instruction are determined the rules and procedures for identifying, evaluation and reporting the impacts of certain projects on the environment and the administrative procedures of the decision making process of environmental municipality permit.

The condition for obtaining Municipality Environmental Permit (MEP) is the implementation of environmental protection measures according to the Report and Decision for MEP.

The issuing authority of the MEP is the Municipality.

In order to obtain such permit the applicant must submit a request to the Municipality, attaching the report for MEP that is prepared by a legal or natural person and other documents as defined in the Administrative Instruction.

The decision for approval or refusal of the permit shall be issued within 30 days from the receipt of application. In case of refusal, the applicant has the right to complain within 15 days after receiving the decision form the Municipality.

The MEP holder can transfer its permit to another person, but the transfer must be approved by the Municipality.

In case the MPE holder does not start the project in 2 year than the validity of MEP will be terminated.

In case of breach of any of the provisions of this Administrative Instruction, the Municipality Inspectorate will issue fines, according to the Law on Minor Offences.

Upon entrance into force, this administrative instruction abolished the Administrative Instruction No. 17/2015.

#### **10. Agreement between the Republic of Kosovo and Republic of Croatia For the Avoidance of Double Taxation and Prevention of Fiscal Invasion with respect to Taxes on Income and Capital**

Pursuant to the provisions of the Constitution of the Republic of Kosovo, the Law on the President, the Law on International Agreements and the Law on the Ministry of Foreign Affairs, on 11<sup>th</sup> May 2017 the President ratified the Agreement on the Avoidance of Double Taxation and the Prevention of Fiscal Invasion in Taxes on Income and Capital.

This Agreement has been signed by and between the Republic of Kosovo and the Republic of Croatia. And shall enter into force on the date of receipt of the last written notification by which one Contracting State notifies the other that its legal requirement for the entry into force have been fulfilled.

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

The existing taxes to which this Agreement shall apply are:

Kosovo:

- Personal income tax,
- Corporate income tax,

Croatia:

- The profit tax,
- The income tax,
- The local income tax and any other surcharge levies on one of these taxes.

This agreement shall remain into force until one of the Contracting States gives to other Contracting State a written notice of its intention to terminate the agreement, on or before the 30<sup>th</sup> of June in any calendar year

after the expiration of a period of five years from the date of its entry into force.

**11. Agreement between the Government of the Republic of Kosovo and the Government of the Federal Republic of Germany concerning financial cooperation 2016**

This Agreement is signed in Pristina, on 30.05.2017 between the Government of the Republic of Kosovo and the Government of the Federal Republic of Germany and has been published in official gazette on 12.07.2017.

This Agreement shall enter into force on the date on which the Government of the Republic of Kosovo has informed the Government of the Federal Republic of Germany that the national requirements for such entry into force have been fulfilled. The relevant date shall be the day on which the communication is received.

With this agreement, the Federal Republic of Germany intends to contribute to social and economic development in the Republic of Kosovo.

The Government of the Federal Republic of Germany shall enable the Government of the Republic of Kosovo to obtain from KfW (Reconstruction Loan Corporation) financial contributions totaling 30,950,000 € (thirty million nine hundred and fifty thousand euros) for those projects:

- Financial Sector Programme- Growth and Employment Promotion through Vocational Training in Rural Areas up to 3,000,000 euros (three million euros);
- Sewage Disposal in South West Kosovo VI up to 9,500,000 euros (nine million five hundred thousand euros);
- Waste Management Project II up to 7,000,000 euros (seven million euros);
- Waste Management Project II, Accompanying Measure up to 1,000,000 euros (one million euros);
- Energy Efficiency Programme- District Heating up to 5,000,000 euros (five million euros);

- Financial Services for Employment Promotion in the Field of Agriculture up to 5,450,000 euros (five million four hundred and fifty thousand euros).

These projects may be replaced by other projects if the Government of the Federal Republic of Germany and the Government of the Republic of Kosovo agree.

The Government of the Republic of Kosovo shall exempt KfW from direct taxes levied by the Republic of Kosovo in connection with the conclusion and implementation of this Agreement. Any value-added tax similar indirect taxes levied in this connection shall be borne by the Government of the Republic of Kosovo.

According to the Agreement, the Government of the Republic of Kosovo shall abstain from taking any measures that might preclude or impair the participation on equal terms of transport enterprises having their place of business in the Federal Republic of Germany.

Any dispute concerning the interpretation or application of this Agreement shall be settled by the Contracting Parties by means of talks or negotiations.

In case of divergent interpretations of the Albanian, German and Serbian texts, the English text shall prevail.



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