

Legal News

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I. Law No. 05/L-087 on Minor Offences

New Law on Minor Offences No. 05/L-087 was published in the Official Gazette of the Republic of Kosovo on 8 September 2016 and will enter into force in January 2017. The Law has been harmonized with the EU Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings and Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings.

The Law regulates conditions for determining minor offences and sanctions on minor offences, parties and minor offence liabilities, special procedures for juveniles and minor offence sanction execution procedure. The Law applies to any person who commits a minor offence within the territory of the Republic of Kosovo and excludes persons with diplomatic immunity. The Law foresees the liability of a legal person in cases when a minor offence is committed by an act or omission of the legal person, or by a person in charge of the legal person, or by an act allowing another person who was authorized to act on behalf of the legal entity, within his/her authorizations, in order to obtain a benefit for the legal person or a third party. This liability does not exclude the liability of the perpetrator of the minor offence.



Foreign natural persons, foreign legal entities and responsible persons of a foreign legal entity are liable same as local natural and legal persons. A foreign legal entity shall be held liable and sentenced in relation to a minor offence committed in the territory of the Republic of Kosovo if it has a business unit or branch registered in Kosovo.

Following punishments are foreseen by the Law and include reprimand, fine, penalty points, revocation of driving license, prohibition to drive motor vehicles, prohibition of exercising a profession, activity or duty, expulsion of a foreigner from the country. For minor offences committed by a legal entity, only minor sanctions by fines apply, which range from €500 to €20,000.

The Law provides for special minor offense measures such as confiscation of assets and property gains and sequestration of the object that are used or indented to be used for carrying out the minor offence.

The Law also provides for a right for an administrative conflict against the final decision on minor offences rendered by the body on minor offence. The claim may be filed by a person (natural or legal) against whom a sanction has been imposed, his legal representative, the injured party and the owner of the confiscated/sequestered object. This claim may be filed only if there exist reasons stipulated in Article 66 of the law.

II. Law No. 05/L-088 on Road Traffic Provisions

The Law No. 05/L-088 on Road Traffic Provisions was published in the Official Gazette of the Republic of Kosovo on 5 September 2016, and entered into force 15 days after publication in the Official Gazette.

The new law partially abolishes the Law No. 02/L-70 on Road Traffic Safety.

The Law transposes partially Directive 2014/37/EU of 27 February 2014 amending

Council Directive 91/671/EEC relating to compulsory use of safety belts and child restraint systems in the vehicle, Directive 2014/47/EU of the European Parliament and of the Council of 3 April 2014 on the technical roadside of commercial vehicles circulating and repealing Directive 200/30/EEC, Directive 91/671/EEC of 16 December 1991 on the approximation of the laws of the Member States relating to compulsory use of safety belts in vehicles of less than 3.5 tones.

There are a number of novelties in the Law. The Law provides for "School Zones" and imposition of negative points for over speed, passing through red lights, overpassing and failure to respect the sign or order of the authorized person, and driving under alcohol influence. If a driver collects at least 9 negative points, his driving license will be suspended and if the driver re-collects 9 negative points his driving license will be cancelled and the driver may only after two years enter the driver exam. Each negative point is valid for 2 years.

The Law also provides for an obligation for pedestrians to hold a reflecting equipment or source of light in areas with limited visibility while crossing the road and prohibits the use of cell phones, headsets or other similar equipment that might distract pedestrian.

The use of seatbelt shall be done according to manufacturer's instructions and if the vehicle does not have a special child seat, the child must be under supervision of an elder person.

The Law provides punitive sanctions for all violators, drivers and pedestrians.

A fine from €100 to €300 is foreseen for traffic violations to the driver of a vehicle, who engages in race, breaks abruptly, and increases speed abruptly, and such person gets one (1) negative point.

The highest speed allowed in residential areas is 50km/h unless otherwise indicated

by traffic signs. Whoever drives in residential area more than the allowed speed will be subject to fine from €300 to €900 and received 5 negative points.

The allowed speed on roads outside residential areas is 130km/h on the highway; 110km/h in motorway; 100km/h in the national road with two tracks for one direction with physical separation of road tracks, and 80km/h in the national road with one track for traffic in one direction, regional and local roads. Fines foreseen for violation of this speed limit range from €20 to €600.

The Law also foresees a fine from €100 to €300 for overpassing and the same range of fines applies for whoever during the winter season (from November 15 to March 15) does not have winter equipment.

If the traffic participant pays an imposed fine within eight (8) days from the day of violation of a traffic rule, he/she will pay only 50% of the imposed fine.

III. Administrative Instruction No. 14/2016 on Trademark Registration

The Ministry of Trade and Industry issued the Administrative Instruction No.14/2016 on trademark registration, which was published in the Official Gazette of the Republic of Kosovo on 1 September 2016.

The AI on trademark registration is based on Article 112 (3) of the Law No. 04/L-026 on Trademarks, Law No. 05/L-040 on amending and supplementing the Law No.04/L-026 on Trademarks, and Article 38 (6) of the Regulation No. 09/2011 on the Rules of Procedure of the Government of the Republic of Kosovo as well as Article 8.1.4 and Appendix 8 of the Regulation No. 02/2011 on Areas of Administrative Responsibility of the Office of the Prime Minister.

The AI on Trademark Registration repeals the Administrative Instruction No. 13/2012 on Trademark Registration. According to new AI, the Industrial Property Agency

replaces the Industrial Property Office, and all trademark-registration request forms are updated to reflect this change.

The new AI makes reference to the Nice Classification for goods and services.

With respect to well-known trademarks, the AI provides for discretion of the IP Agency to reject the registration of a well-known mark within the territory of the Republic of Kosovo or outside of it pursuant to Article 6, paragraph 1.8 of the Law on Trademark.

The AI has a new chapter on observations by third parties, which is considered a non-legal action as opposed to trademark objection, which is a legal action. In this regard, the AI provides that before a trademark is registered anyone can make a "third party observations" and lists the documents needed to support such observation. Third party observations suspend the registration procedure for published trademarks and the Agency shall bring a decision for third party observations in accordance to the ex-officio procedure within 30 days after receiving the response to the observation from the trademark registration applicant.

According to the new AI on trademark registration, separate requests shall be made for the registration of the same license for two or more registrations of the same owner and relevant fees shall be paid separately for each license to be registered. The same goes for registration of pledge where separate requests may be made for registration of the right of the same pledge related to two or more registrations of the same owner. The old AI provided for only one request for both.

According to new AI, validity of the trademark shall terminate with the expiration of the legal time limit set for registration of the trademark, when: it is not renewed by the trademark owner; when the application for renewing the trademark registration has been rejected;

and with a decision of the Agency or Court in other cases provided for by law.

The Administrative Instructions contains two chapters, one on community trademarks and another one on provisions related to international registration of trademarks, and these chapters will enter into force on the day when the Madrid Agreement and/or Madrid Protocol is signed by the Republic of Kosovo, and after the membership of the Republic of Kosovo in the European Union.

Deloitte Contacts:

Afrore Rudi

Director | Tax & Legal Services
Deloitte Kosova sh.p.k.
Rr. Ali Hadri n.n., 10000
Prishtina, Republic of Kosovo
Cell: +386 (0)49 590 807
Email: arudi@deloittece.com

Luljeta Plakolli - Kasumi

Manager | Legal Services
Deloitte Kosova sh.p.k.
Rr. Ali Hadri n.n., 10000
Prishtina, Republic of Kosovo
Cell: +386 (0)49 780 769
Email: lplakollikasumi@deloittece.com

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