



VOKSHI & LATA  
LAW FIRM

# REAL ESTATE

## LEGAL GUIDE TO INVESTING IN KOSOVO



## 8. REAL ESTATE

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### 8.1. CONSTRUCTION SECTOR – SPECIAL FOCUS

The construction sector in Kosovo is currently undergoing a remarkable period of expansion and development. This growth is exemplified by the presence of numerous construction companies actively involved in the execution of large-scale projects. What's particularly noteworthy in this matter is the significant number of foreign investors who have recognized the potential and opportunities within Kosovo's construction industry, leading to substantial investments.

This influx of foreign investment has not only further enriched Kosovo's legal framework but has also played a pivotal role in fostering best practices within the industry. As a result, Kosovo not only possesses comprehensive legal framework but also actively implements it to ensure the protection of investors' rights in this dynamic sector. This commitment to both legal adherence and best practices underscores Kosovo's dedication to creating a conducive environment for sustainable growth and development in the construction sector.

*Joint Investment Agreements on Construction:* Joint investment Agreements are a common practice in Kosovo's construction industry, where construction companies enter into detailed agreements with landowners where buildings are planned. These agreements are mandatory to be signed before a notary to ensure the safety of all parties involved. They establish the terms under which landowners provide their land to investors for building construction in exchange for property rights in the upcoming building. On the investor's side, two or more investing companies can be involved.

This practice is vital for construction businesses, allowing them to invest in land without cash compensation, offering landowners a share of the building units instead. Given the high cost of land, this approach is advantageous for investors.

*Construction Permit:* Along with the reaching of the agreement as above, in order for the building to take place, the construction permit must also be secured. In Kosovo, obtaining a construction permit is governed by Law No. 04/L-110 on Construction. Generally, a construction permit is required for various construction activities, including new constructions, reconstruction, demolition, significant repairs, and interventions on existing structures' facades and structures.





The law categorizes construction projects into three classes based on their risk level and national significance: Category I (Low-Risk), Category II (Medium-Risk), and Category III (High-Risk and those with national interest). Depending on the category, either the Municipality or the Ministry is the competent authority for issuing construction permits.

Foreign investors or their authorized representatives can submit construction permit applications, which must include site plans, property certificates, construction conditions (if required), construction documentation, environmental impact assessments, and details of temporary works. The competent authority typically issues construction permits within 30 days for Category I and within 45 days for Categories II and III, assuming all conditions are met and fees are paid.

In conclusion, Kosovo's construction sector is surging with growth and investment opportunities, driven by both domestic and foreign players. The government's commitment to robust legal regulations and best practices ensures that foreign investors have a secure and conducive environment for their investments. With favourable joint investment practices and efficient construction permitting processes, Kosovo's construction industry is poised for continued expansion, contributing to the nation's economic development.

## PROPERTY TYPES AND RIGHTS

***Right of Property:*** The right of property is guaranteed by the Constitution of Kosovo in its article 46, which states that no one shall be arbitrarily deprived of property. Under the same article, it is provided that the Government may however expropriate property if expropriation is authorized by law, it is necessary to achieve a public purpose, or to promote the public interest. If that's the case, the person(s) whose property has been expropriated receive immediate and adequate compensation. The right of property is further regulated by the Law No. 03/L-154 on Property and Other Real Rights of 2009 ("Law on Property"), which states, on its Article 2, that unless provided differently by law, any person can acquire real rights.

***Movable and Immovable property (Personal and Real Estate):*** Under Law on Property tangible property rights are divided into movable and immovable property. Immovable property is the ground itself, and any object that is physically attached to it, i.e., plants enrooted in the ground, and buildings firmly connected to the ground, but this does not include natural resources in the subsoil, which has special legal treatment. Every other thing is considered to be movable property, which can be defined as independent objects which are capable of being moved.

***Ownership and joint ownership:*** The Law on Property defines ownership as the right over a thing. Joint ownership is when several persons are sharing ownership of a property. Unless specified differently, or proven otherwise, joint owners' shares are presumed equal. A joint owner may dispose of his share without the consent of the other joint owners. The fruit of immovable property is divided between joint owners according to their shares. If the fruits are not divisible, the joint owners acquire joint ownership of the fruits.

***Property rights of foreign citizens:*** According to Article 121.2 of the Constitution, foreign natural persons and foreign organizations may acquire ownership rights over immovable property in accordance with conditions established by law or international agreement. The Law No. 08/L-013 On Property Rights of Foreign Citizens in the Republic of Kosovo regulates that the foreigners, whether natural or legal persons, have the right to hold property rights in Kosovo, provided reciprocity in the foreigner's country. In the case of foreign double citizenship, reciprocity is determined in regard to the country of residence. The procedure for registration of immovable property rights is the same as for the citizens of Kosovo.

The law however sets some restrictions in regard to the access to property by foreigners. In particular, foreign citizens do not have the right to own natural resources, public goods for general use, public agricultural land in public ownership, public forests and forestry lands, property announced a cultural heritage of special significance, immovable property within 1 kilometre from the border or in some area with interests in regard to the protection of the state. However, the law regulates that foreign person may have the right to long-term rent, concession and other agreement over those immovable properties, under the same conditions as the national persons.

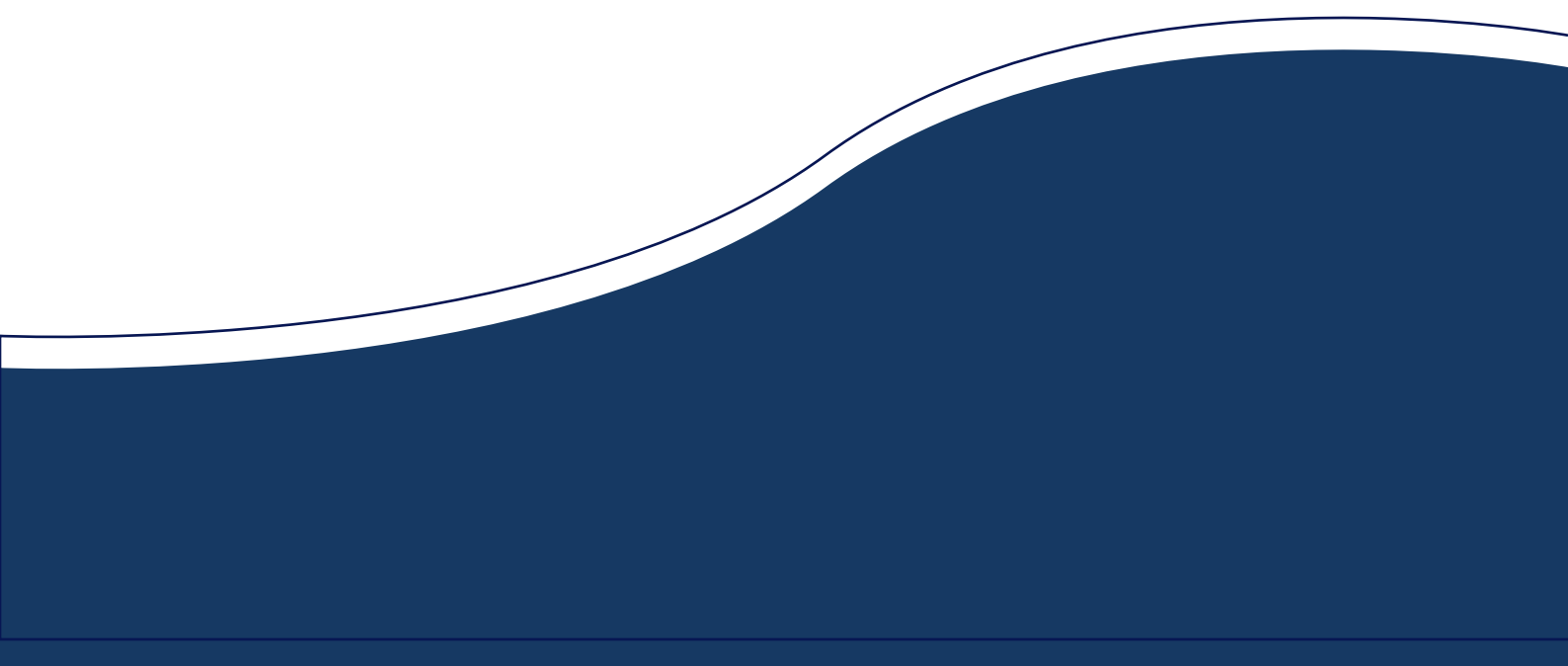
## **8.2. IMMOVABLE PROPERTY RIGHTS**

*Immovable property rights*, according to Kosovo's legislation, include:

- ownership;
- servitudes;
- the right to build;
- the right of first refusal;
- right of pledge (which also includes mortgages);
- the property burdens and charges; and
- the right of use of municipal, public, social and state property.

### ***8.2.1. Acquisition of Ownership of Immovable Property***

Transfer of ownership of immovable property requires a valid contract, which constitutes the legal ground for registration of the transfer. The contract must be concluded in written, in presence of both parties and in front of notary. The transfer also requires the registration of the change of ownership in the Immovable Property Rights Register.



*Acquisition by prescription* is also possible after 20 years of uninterrupted possession or after 10 years of uninterrupted possession, if the proprietary possessor is registered as so in the Immovable Property Rights Register and no objection against this registration is filed during this period.

*Registration of Immovable property rights:* As a general rule, immovable property rights must be registered in the Immovable Property Rights Register. Registration is made on the basis of the Cadastre, in which are described the cadastral units for parcels, buildings, part of buildings and utilities. Request for registration at the Immovable Property Rights Register shall be made in written to the Municipal Cadastral Office which has local jurisdiction over the property. Such request must be accompanied by supporting documentation that establishes the origin of immovable property rights. This documentation may include the transfer contract, court decision, administrative body decision, the decision or contract for privatisation issued by the Kosovo Privatisation Agency, the decision by the Housing and Property Claims Commission for the reconstruction of Cadastre or for the regulations of lands, and so forth. MCO decides on the application no later than 15 days after the receipt of the request and informs immediately the applicant of its decision.

*Ownership of a separate building unit* (flat, office or garage parking space), can be created by contract among the joint owner of the building, or by division by the owner of the building into shares of joint ownership. If the immovable property is encumbered with a mortgage, the creation of separate units is subject to the mortgagee's consent. Mortgages are transferred to the ownership of the building unit.

### 8.2.2. Mortgages

A mortgage is a legal encumbrance on debtor's immovable property or associated rights, which grants the creditor the right to satisfy their claim from the proceeds generated by selling the immovable property or those rights. A mortgage may secure obligations under credit agreements, promissory notes or other contractually based financial obligations.

A mortgage is created by a written agreement between the owner of immovable property, whose signature needs to be certified, and the mortgage creditor, and by registration of the mortgage at the Immovable Property Rights Register

The Mortgage of a land parcel applies to the entire land parcel. However, a building unit may be mortgaged without subjecting the rest of the structure of the land parcel to the mortgage. A share of a joint ownership of an immovable property unit may also be encumbered with mortgage without the consent of the others joint owners.



An aggregate mortgage may be created for the same claim over several immovable property units, belonging to the same owner or different owners, each property being liable for the entire claim.

The mortgage remains valid against the person who acquires the mortgaged immovable property. The mortgage creditor, in case of alienation of the immovable property, is deemed to have consented to the takeover of the mortgage. The mortgage creditor can, however, within 3 months of the written request by the alienator, issue a denial of consent.

Unless agreed differently, with the transfer of the secured claim, the mortgage is also transferred to the new creditor. In order to be effective, the transfer of the mortgage needs to be registered in the Immovable Property Rights Register.

Mortgage secures the claim until complete payment. Partial payment does not affect the mortgage.

### **8.2.3. *Servitudes***

Law on Property determines that there are two kinds of servitudes, the first being real servitude, which grants the owner of an immovable property (dominant plot) the right to use in a specific manner another immovable property (subserving plot) owned by another owner. The second type of servitudes is called personal servitude, which contains the right of a person to use another's immovable property in a specified way, e.g., usufruct, usus and habitation.

As it can clearly be seen, the main difference between those two types of servitudes lies in the bearer of the right, where on the real servitude, the right is bonded with the dominant plot, while on the personal servitude, the right is only bonded with the person.

Servitudes may be established by contract, decision of a state body or by law. The contract must be established in written, and the servitude must be registered in the Immovable Property Rights Register.