



Republika e Kosovës
Republika Kosovo-Republic of Kosovo
Kuvendi - Skupština - Assembly

Law No. 03/L-067

ON THE PRIVATIZATION AGENCY OF KOSOVO

The Assembly of Republic of Kosovo,

On the basis Article 65(1) of the Constitution of the Republic of Kosovo,

For the purpose of enacting legislation on the Privatization Agency of Kosovo that complies with the Comprehensive Proposal for the Kosovo Status Settlement;

Recognizing that the economic reconstruction and development of Kosovo and the welfare of its population is of paramount importance and requires the proper administration, privatization and liquidation of socially-owned enterprises in a timely manner,

Recognizing that enterprises and assets that were in social ownership on or after December 31, 1988 may be subject to potentially conflicting ownership claims, including private and social ownership claims; and further recognizing that determining the validity of such claims will, in light of the complexity of both the evidentiary issues involved and the potentially applicable historical legislative and legal norms, require a very substantial amount of time and professional effort;

Determining that the persistent legal uncertainty as to the ownership of such enterprises and assets is greatly impairing investment in, and the operation of, those enterprises and assets; and further determining that such legal uncertainty is seriously and negatively affecting the general economic and social situation of Kosovo by, inter alia, exacerbating unemployment levels; depressing domestic production; increasing Kosovo's trade imbalance; limiting public tax and fiscal receipts; impairing Kosovo's ability to fund critical public projects and programs, including social assistance schemes; and increasing the demand on such schemes;

Resolved to quickly address the substantial negative economic and social effects arising from that legal uncertainty and to promote investment in the concerned enterprises and assets by establishing the Privatization Agency of Kosovo and providing such agency, inter alia, with broad public administrative authority over such enterprises and such assets, including, but not limited to, the mandate and authority to sell or otherwise transfer such enterprises and/or the assets to private investors, or liquidate them, in an open, transparent and competitive process and without delay.

Further resolved to ensure that any person claiming to hold an ownership or creditor right or interest in, to or against such an enterprise or such an asset is provided with (i) adequate rights of due process to have such claim heard and its validity determined, and (ii) if such claim is determined to be valid, adequate monetary compensation for the loss or impairment of the concerned right or interest; and

Mindful that the administration of publicly-owned enterprises will be regulated in separate legislation;

Hereby adopts:

THE LAW ON THE PRIVATIZATION AGENCY OF KOSOVO

CHAPTER I

Legal Status, Purposes and Definitions

Article 5

Establishment and Legal Status of the Privatization Agency of Kosovo

The Privatization Agency of Kosovo (hereafter the “Agency”) is established as an independent public body that shall carry out its functions and responsibilities with full autonomy. The Agency shall possess full juridical personality and in particular the capacity to enter into contracts, acquire, hold and dispose of property and have all implied powers to discharge fully the tasks and powers conferred upon it by the present law; and to sue and be sued in its own name. The Agency is established as the successor of the Kosovo Trust Agency regulated by UNMIK Regulation 2002/12 “On the establishment of the Kosovo Trust Agency”, as amended, and all assets and liabilities of the latter shall be assets and liabilities of the Agency.

Article 2

Objective and Purposes

2.1 The Agency, in accordance with the terms of the present law, shall have the authority to administer - which shall include the authority to sell, transfer and/or liquidate - Enterprises and Assets as defined under the present law.

2.2 To serve this objective, the Agency shall:

- a) pending their sale or other disposition in accordance with the present law, hold and administer Enterprises and Assets in trust for the benefit of the relevant Owners and Creditors in accordance with the present law and other Applicable Law;
- b) sell, transfer or liquidate Enterprises and Assets in accordance with Articles 6, 8 and 9 of the present law, without undue delay;
- c) carry out, within the limits of its administrative resources, reasonable ancillary activities to preserve or enhance the value, viability and governance of Enterprises and Assets, to the extent this does not unreasonably delay the performance of the duty set out in b) above;
- d) satisfy, as provided for in the present law, timely and valid claims from Creditors and Owners relating to Enterprises or Assets from those monetary proceeds that have been derived from the administration, sale, transfer or liquidation of such Enterprise and/or such Assets; for which purpose all such funds shall be held in trust for the benefit of the relevant Owners and Creditors and preserved by the Agency;
- e) transfer all residual funds held in trust by the Agency to the Government of Kosovo after the satisfaction of all Owner and Creditor claims that have been timely filed and determined to be valid and the expiry of the applicable time limits for the submission of such claims;
- f) perform such other tasks as may be assigned to it by Applicable Law.

2.3 The Agency shall act in accordance with the principles set forth in the European Convention on Human Rights and its Protocols.

Article 3 **Definitions**

3.1 For the purpose of interpreting and applying the present law, the following defined terms shall – whenever used in the present law - have the indicated meaning unless the context within which such term appears clearly intends another meaning:

“**Agency**” means the Privatization Agency of Kosovo.

“**Applicable Law**” means (i) the law applicable in Kosovo as specified in UNMIK Regulation No. 1999/24 of 2 December 1999, as amended, “On the Law Applicable in Kosovo”; and (ii) laws and subsidiary legal acts lawfully promulgated or issued by a public authority of the Republic of Kosovo.

“**Asset**” means an asset or Minority Stake over which the Agency has authority pursuant to Articles 5.1(a)(ii) and 5.1(a)(iii) of the present law.

“**Board**” means the Board of Directors of the Agency.

“**By-laws**” means the by-laws of the Agency as defined in Article 14.1 of the present law.

“Corporation” means a limited liability company or a joint stock company registered in Kosovo and recognized as such under the Regulation on Business Organizations.

“Creditor” means a person or entity with a valid claim as a creditor against an Enterprise and/or to an Asset.

“Director” means a member of the Board.

“Director of the Executive Secretariat” means the director of the Executive Secretariat.

“Enterprise” means an enterprise over which the Agency has authority pursuant to Article 5.1(a)(i) of the present law.

“Executive Secretariat” means the executive secretariat to the Board as established by Article 11.5 of the present law.

“FRY and SFRY” means the former Federal Republic of Yugoslavia and the former Socialist Federal Republic of Yugoslavia, respectively.

“International Civilian Representative” means the authority responsible, under the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007 and other relevant act, to, inter alia, supervise the implementation of the said Comprehensive Proposal.

“Law on Enterprises” means the SFRY Law on Enterprises (77/88), as amended by the SFRY laws 40/89, 46/90 and 61/90.

“Management” means the Managing Director and the Deputy Managing Directors of the Agency, both collectively and individually.

“Minority Stake” means a stake of 50 percent or less that is defined by Applicable Law as social capital or socially-owned in any legal entity that is otherwise privately owned.

“Owner” means a person or entity with a valid claim to an ownership interest or right in or to an Enterprise or an Asset.

“Proceeds” means the proceeds of a sale, transfer or liquidation of an Enterprise or Asset pursuant to Articles 6, 8 or 9 of the present law, net of any payments required to be made under Article 10 of the Regulation on the Transformation of Immovable Property.

“Publicly-owned Enterprise” means an enterprise that (i) was created as public, publicly-owned or state-owned under the Law on Enterprises or (ii) was created by, or is defined as, publicly-owned by an element of the Applicable Law promulgated on or after 10 June 1999, without regard to whether such enterprise is incorporated in accordance with the Regulation on Business Organisations.

“Regulation on Business Organizations” means UNMIK Regulation No.2001/6 of 8 February 2001, “On Business Organizations”, as amended from time to time.

“Regulation on Essential Labour Law” means UNMIK Regulation No.2001/27 of 8 October 2001, “On Essential Labour Law in Kosovo”, as amended from time to time.

“Regulation on Reorganization and Liquidation of Enterprises” means UNMIK Regulation No.2005/48 of 21 November 2005, “On the Reorganization and Liquidation of Enterprises and their Assets under the Administrative Authority of the Kosovo Trust Agency”, as amended from time to time.

“Regulation on Transformation of Immovable Property” means UNMIK Regulation No.2003/13 of 9 May 2003, “On the Transformation of the Rights of Use to Socially-owned Immovable Property”.

“Review Committee” means a committee established under Article 24 of the present law.

“Socially-owned Enterprise” means a legal entity (other than a Publicly-owned Enterprise) that:

a) on or after 1 January 1989, (i) fell within paragraph 1 or 2 of Article 2 of the Law on Enterprises, or (ii) fell within paragraph 3 of Article 2 of the Law on Enterprises and a majority of whose assets were in social ownership or a majority of whose capital was social capital; and

b) was registered or was required to have been registered in Kosovo under the then Applicable Law.

“Special Chamber” means the Special Chamber within the Supreme Court of Kosovo established in accordance with UNMIK Regulation No. 2002/13 of 13 June 2002, “On the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters”, as amended from time to time.

“Transformation” means, any of the following with respect to a legal entity: a merger, transformation, (re-) registration, incorporation as a joint stock or limited liability company or partnership or other legal entity, bankruptcy, liquidation, insolvency, organization into a distinct form or other entity or any other event or process by which any of the following is altered with respect to that entity: its legal identity, form or nature, or the form or nature of its ownership or capital, or its seat, and where any such event or process or any part thereof took place at any time between 22 March 1989 and 13 June 2002.

3.2 Words of any gender used in the present law shall include any other gender and words in singular number shall be held to include the plural and the plural to include the singular.

Article 4 **References**

Unless the context clearly requires another interpretation, any reference in the present law to another law, regulation or sub normative act, or any specific provision(s) thereof, shall be interpreted as including any and all amendments thereto. If such a law, regulation or sub normative act is repealed and replaced with successor legislation governing the same subject matter, such reference shall be interpreted as meaning such successor legislation and, where applicable, the analogous provision(s) thereof.

CHAPTER II

Tasks and Powers of the Agency

Article 5

Enterprises under the Administration of the Agency

5.1 a) The Agency shall have the authority to administer:

(i) Socially-owned Enterprises, regardless of whether they underwent a Transformation; and

(ii) any assets located in the territory of Kosovo, whether organized into an entity or not, which comprised socially-owned property on or after 22 March 1989, regardless of whether they underwent a Transformation though subject to Article 5.1(b) below; and

(iii) Minority Stakes, regardless of whether the relevant legal entity underwent a Transformation.

b) If a regulation or law promulgated by a public authority in Kosovo after 10 June 1999 assigns responsibility for administering assets described in Article 5.1(a)(ii) to another public authority, the Agency shall not have authority over such assets as of the effective date of such regulation or law.

5.2 Notwithstanding its obligations set out in Article 2.1, the Agency may take all actions and exercise such rights as Applicable Law provides in relation to Enterprise property located outside of the territory of Kosovo as the Agency deems reasonably appropriate, provided such Enterprise property is readily accessible taking into account the limits of the Agency's administrative resources as referred to in Article 7.1. In deciding on such matters, the Agency shall take duly into account any relevant policies that may be adopted by the Government or Assembly of Kosovo in accordance with Applicable Law.

5.3 a) If an Enterprise underwent a Transformation, such Transformation shall not affect the authority of the Agency under Article 5.1 or the rights and powers of the Agency under Articles 6, 8 and 9 unless:

(i) the Transformation was based on and carried out in full compliance with Applicable Law, including but not limited to the payment of full consideration for, and issuance of, any shares upon Transformation, to the extent required by Applicable Law and/or any valid contract; and

(ii) the Transformation was neither discriminatory nor in breach of the principles of the European Convention on Human Rights.

b) In exercising its rights and powers under articles 6, 8 and 9 in respect of an Enterprise or Asset that underwent a Transformation, the Agency shall be entitled to assume that the Transformation does not meet all requirements set out in paragraph (a) above, unless clear evidence is readily available to the Agency, which conclusively establishes that the Transformation meets these requirements. In such case, paragraph c) below shall apply.

c) If, in accordance with paragraph b) above, the Agency finds that the Transformation of an Enterprise or Asset meets all requirements set out in paragraph a), the following rules shall apply:

(i) if clear evidence is readily available to the Agency, which conclusively establishes the allocation of shareholder (or ownership) rights over such Enterprise (or Asset) between social capital (or ownership) and private capital (or ownership), the Agency shall cease to exercise any authority over such Enterprise (or Asset) other than for the purpose of: (A) exercising all socially-owned shareholder (or ownership) rights over the relevant Enterprise (or Asset) that are provided for by the Applicable Law (including the right to sell such rights); and (B) releasing to the relevant Owners all privately-owned shareholder (or ownership) rights over the relevant Enterprise (or Asset), in accordance with Article 5.6(iii);

(ii) in the absence of such evidence, the Agency shall continue to exercise its rights and powers under articles 6, 8 and 9 in respect of such Enterprise or Asset, and articles 5.4 to 5.7 shall apply.

5.4 Following the completion of an action by the Agency under Article 6.2(b), (c) or (d) resulting in the disposition of an Enterprise or Asset under the Agency's authority, the Owners of such Enterprise or Asset – as they may be identified after the completion of the Agency's action in accordance with and on the basis of any evidence that is admissible under the Applicable Law – shall have the rights of owners to the Proceeds resulting from such disposition, without prejudice to the rights of creditors and other interested third parties. Such ownership rights shall be dealt with pursuant to article 5.6.

5.5 The Agency shall determine the identity of Creditors of Enterprises and the amount of their claims by evaluating and assessing them in accordance with Applicable Law; and the Agency shall pay such Creditors in accordance with Article 5.7.

5.6 The Agency shall determine the identity of Owners of Enterprises or Assets under its administrative authority by evaluating respective claims to ownership in accordance with Applicable Law, and shall:

(i) pay such Owners (pursuant to article 5.7) the Proceeds resulting from an action of the Agency pursuant to article 6.2(b), if the Agency has previously completed such action; or

(ii) pay such Owners (pursuant to article 5.7) the Proceeds resulting from the liquidation of the relevant Enterprise pursuant to article 6.2(c), if the Agency has previously completed such liquidation, or

(iii) release and transfer to such Owners all their interests, rights and related documents in the relevant Enterprise or Asset, if the Agency has not previously completed an action pursuant to article 6.2(b) or article 6.2(c);

(iv) and pay such Owner any other funds held in trust for the benefit of the Owner.

5.7 a) The Agency shall consolidate and simultaneously review and consider all Owner and Creditor claims that have been made with respect to a particular Enterprise or Assets in respect of which the Agency has previously completed an action pursuant to article 6.2(b) or article 6.2(c). Such claims shall be satisfied exclusively with funds drawn from

the relevant Proceeds, as provided in paragraph (b) and in accordance with Applicable Law.

b) The Agency shall distribute such Proceeds among Creditors and Owners in accordance, *mutatis mutandis*, with the priorities established in Article 44 of the Regulation on Reorganization and Liquidation of Enterprises; *provided, however*, that: Claims falling under Article 44.1(e) shall be satisfied exclusively with funds drawn from the relevant Proceeds;

(i) the class of claims that may be brought under Article 44.1(f) shall, in addition to unpaid wage claims, include claims for legally required severance pay brought by employees who have been made redundant as a consequence of, or in connection with, an action taken by the Agency under Article 6.1 or 6.2; and

(ii) after Creditor claims are satisfied, the remaining Proceeds shall be distributed to Enterprise Owners under Article 44.1(h); however, each such Owner shall receive that percentage of the remaining Proceeds that is equal to such Owner's percentage ownership in the Enterprise.

5.8 The principles of Article 1, Protocol 1 of the, European Convention on Human Rights shall be complied with in the application of Articles 5.3, 5.4, 5.5 and 5.6.

Article 6

Administrative Powers of the Agency over Enterprises

6.1 The Agency shall have administrative authority with respect to all Enterprises and Assets. Such authority shall include any action that the Agency considers reasonable and appropriate, within the limits of the Agency's administrative resources, to preserve or enhance the value, viability, or governance of an Enterprise, including:

- a) appointing and replacing the chairman, directors and managers of an Enterprise;
- b) creating, confirming or recomposing the supervisory board, managing board, workers' council or other managing or supervisory body of an Enterprise;
- c) modifying the authority of any of the persons or bodies referred to in sub-paragraph (a) or (b) above;
- d) issuing instructions regarding an Enterprise's operations, in particular policies for sound financial management;
- e) assuming direct control over an Enterprise, including its accounts and assets, and administering such accounts and assets, separately from the Agency's accounts;
- f) carrying out external audits of an Enterprise either directly or through designated agents;
- g) requiring any employee or contractor or other business contact of an Enterprise to provide information in his possession regarding such Enterprise;

- h) requiring any person with control over documents regarding an Enterprise to provide access to such documents for their review, reproduction and safekeeping;
- i) entering and inspecting the premises of Enterprises;
- j) approving business plans and investment plans of Enterprises;
- k) issuing or modifying charters, by-laws and other relevant documents of Enterprises;
- l) effecting the registration in Kosovo of Enterprises not properly registered;
- m) entering into arrangements for the management, reconstruction or reorganization of Enterprises;
- n) granting concessions or leases with respect to Enterprises;
- o) establishing in accordance with the Regulation on Business Organizations one or more corporate subsidiaries of Enterprises, owned by such Enterprises but administered by the Agency, and transferring part or all of the assets of such Enterprises to such subsidiaries;
- p) transforming Enterprises into Corporations;
- q) restructuring an Enterprise into several Enterprises or Corporations and transferring part or all of the Assets of such Enterprise to such subsidiary Corporations;
- r) contracting out part of the activities of Enterprises; and
- s) initiating reorganisation or liquidation proceedings with respect to Enterprises or representing such Enterprises in reorganisation or liquidation proceedings.

6.2 With respect to Enterprises, the Agency shall, in addition to the authorities set out in Article have authority to take the following actions that the Agency considers appropriate:

- a) to establish one or more corporate subsidiaries of such an Enterprise and transfer part or all of the assets of such Enterprise to such subsidiaries in accordance with Article 8;
- b) to sell all or part of the shares of subsidiaries established under paragraph (a) above in accordance with Article 8;
- c) to liquidate such Enterprises in accordance with Article 9; and
- d) to dispose with money and other assets of such Enterprises;

6.3 The Regulation on Essential Labour Law shall not be applicable in relation to any action taken by the Agency under the authority of this Article 6; *provided, however,* that Article 12.2(f) of such Regulation shall be used to determine the amount of the severance pay that may be validly claimed pursuant to Article 5.7(b)(ii).

6.4 In exercising any of the actions referred to in paragraphs (b), (c) and (d) of Article 6.2, the Agency shall comply with the principles of Article 1, Protocol 1 of the European Convention on Human Rights.

Article 7
Exercise of Powers

7.1 Unless the Board decides otherwise, the Agency shall fulfil its responsibilities under this chapter by exercising general management oversight over the Enterprises within the limits of its administrative resources.

7.2 Unless the Board decides otherwise, the day-to-day business of Enterprises shall be conducted by the managing and other control bodies of the Enterprise, without prejudice to the powers of the Agency under the present law.

Article 8
Establishment of Subsidiary Corporations of Enterprises

8.1 The Agency may, on behalf of an Enterprise, establish one or several Corporations and transfer to such Corporations the rights and interests in all or part of the Assets of the Enterprise concerned. The Agency shall decide on a case-by-case basis whether and, if so, to what extent the Corporation or Corporations thus established shall assume liabilities of the Enterprise concerned. The shares of the Corporation or Corporations thus established shall be administered by the Agency pursuant to the present law. If claim is made by a Creditor on an obligation or liability that has been assumed, pursuant to an Agency decision pursuant to this paragraph, by a Corporation, such Creditor shall have no right to a distribution under Articles 5.5 and 5.7; such Creditor shall instead have the right to assert that claim against the Corporation.

8.2 Procedures under this article shall be governed by the Regulation on Business Organizations, except that the requirements for founders' agreement and foundation contained in the Regulation on Business Organizations shall be waived and that a founder's statement signed by a duly authorized representative of the Agency shall be a valid substitute for a founders' agreement.

8.3 The Agency may sell and transfer part or all of the shares in a Corporation created pursuant to this article on behalf of the Enterprise that owns such shares; such sales or transfers shall be preceded by an open competitive bidding procedure. The notice and waiting periods provided in the Regulation on Business Organizations with respect to shareholders' meetings shall be waived.

8.4 The Agency shall have the right to administer cash proceeds or shares resulting from the permitted sales of shares of an Enterprise administered by the Agency.

8.5 Proceeds from the permitted sale of shares shall accrue to the Enterprise which had owned the shares, provided that such proceeds shall be held in trust by the Agency for the benefit of Creditors and Owners of the Enterprise concerned.

Article 9

Voluntary Liquidations of Enterprises

9.1 The Agency may initiate a voluntary liquidation of an Enterprise or Asset or any part thereof where it deems such proceedings are in the interest of the concerned Creditors or Owners. The liquidation process shall be conducted pursuant to the procedures established under the Regulation on Business Organizations, unless otherwise provided in the present law, and the Regulation on Reorganisation and Liquidation of Enterprises or other Applicable Law.

9.2 All powers of the management and control bodies of such Enterprise shall be ceded to the liquidation committee of such Enterprise that is to be established pursuant to Article 39 of the Regulation on Business Organizations except that the Agency shall have the power to appoint the members of such liquidation committee, unless otherwise provided hereinafter. Each liquidation committee shall have an international member, who shall be appointed by the International Civilian Representative. The other members, who shall have appropriate relevant experience, shall be appointed by the Agency, which shall ensure that an appropriate number of members are appointed from non-Albanian communities in Kosovo, with each liquidation committee having at least one member from a non-Albanian community in Kosovo.

9.3 Any legal action against an Enterprise subject to liquidation pursuant to this article shall be suspended upon application by the Agency to the court of the place where the action is filed. Such application shall be accompanied by:

- a) proof of submission of the notice described in Article 39.3 of the Regulation on Business Organizations;
- b) proof of publication of information contained in such notice in a major Albanian language publication of general circulation in Kosovo once a week for two consecutive weeks, and one or more major Serbian language publications pursuant to criteria to be established by the Board;
- c) proof of appearance in the website of the Agency in Albanian, Serbian and English if a website exists at the time of liquidation; and
- d) proof of notification to entities which the Agency believes or should reasonably have believed to have a claim against the Enterprise concerned.

9.4 Upon application by the Agency, the Special Chamber may rescind any transaction of an Enterprise undergoing a liquidation proceeding under the present law if the transaction occurred less than ninety (90) days before the date of the second publication described in Article 9.3 (b).

9.5 Every liquidation committee is an integral part of the Agency. All acts and omissions of a liquidation committee shall be the acts and omissions of the Agency. Every person serving on, or engaged or assigned to assist, a liquidation committee shall be “a person employed or engaged by the Agency” within the meaning of Article 18.5.

Article 10 **Operational Policies**

10.1 The Board shall issue operational policies guiding the Agency in the exercise of its powers under this chapter with a view to:

- a) ensuring compliance with the Agency’s duties under the present law and Applicable Law;
- b) ensuring, within the limits of the Agency’s administrative resources, that reasonable measures are taken to preserve and enhance the value, viability, and governance of Enterprises; and
- c) allocating the limited administrative resources of the Agency into activities reasonably expected to most enhance an Enterprise’s value.

10.2 With respect to the exercise of the Agency’s powers under Article 6.2, the operational policies shall:

- a) set out transparent and uniformly applied rules governing the bidding procedures as required by Article 8.3 thereby ensuring fair competition of bidders, obtaining a fair market value for shares in Corporations and the payment of transaction costs. The rules so established shall be made available to the public; and
- b) with respect to the authority of the Agency referred to in paragraphs (b), (c) and (d) of Article 6.2, set out procedures for the purposes of ensuring compliance by the Agency with the principles of Article 1, Protocol 1 of the European Convention on Human Rights, as required by Article 6.3, including processes with respect to matters of prompt due process, giving of notices and adequate compensation.

10.3 The operational policies shall include procedures for public notification of actions of the Agency. In the case of transactions under

- a) Articles 6.1 (p), (q), (s) and 6.2 (a) to (c);
- b) Article 6.1 (n) where such concessions or leases relate to a substantial portion of the most significant operations of the Enterprise, as set out in the operational policies; and
- c) Article 6.2 (d) where such disposal involves a substantial portion of the total assets of the Enterprise, as set out in the operational policies, and such procedures shall provide that the Agency, in a major Albanian language publication of general circulation in Kosovo and one or more major Serbian language publications, give notice of the transaction at least two weeks before such transaction is finalized and given legal effect.

10.4 The operational policies shall establish standards of good corporate governance to be imposed by the Agency on Enterprises to the extent practicable. The standards shall in particular:

- a) promote compliance with the financial reporting requirements under Applicable Law;
- b) ensure annual external audits of Enterprises in accordance with Applicable Law; and
- c) establish safeguards against misuse of managerial powers, including, but not limited to, insider dealing, asset stripping, and profit skimming.

CHAPTER III

Organization and Management

Article 11

Organizational Structure

11.1 The Agency shall have a Board of Directors, a Managing Director and two Deputy Managing Directors, a Director of the Executive Secretariat and professional and clerical staff.

11.2 All powers of the Agency shall be vested in the Board. The Board may delegate the exercise of its powers to the Managing Director, save those powers reserved to the Board by Article 15.

11.3 The Managing Director shall be the chief executive officer of the Agency. The Managing Director and the two Deputy Managing Directors shall exercise those powers of the Agency vested in them by the Board or the present law.

11.4 The Managing Director shall, under the general control of the Board, conduct the ordinary business of the Agency. The Managing Director shall be responsible for the organisation, appointment and dismissal of the staff, except the appointment and dismissal of the two Deputy Managing Directors and such other staff as the Board may determine. The Managing Director shall exercise such other powers as may be delegated to him by the Board.

11.5 The Executive Secretariat shall provide the Board with all information necessary for the Board to exercise its function and conduct meetings, and shall perform such other functions as the By-Laws may provide.

Article 12

Composition of the Board

12.1 The Board shall consist of eight Directors, including the Managing Director.

12.2 The Assembly of Kosovo shall appoint five Directors, including a representative of a non-Albanian Community and the President of the Federation of Independent Trade Unions of Kosovo, and shall designate one of these appointees as Chairman of the Board.

12.3 The International Civilian Representative shall appoint three internationals as Directors of the Board and an international as Director of the Executive Secretariat of the Board, who shall not serve as a member of the Board. The Board shall appoint the Managing Director of the Agency from its staff, who shall also serve as a Director on the Board. The Board shall also appoint one of its members, other than the Chairman or the Managing Director, to serve as Vice Chairman.

12.4 Directors shall serve on the Board in a personal capacity, and shall attend in person all Board meetings.

12.5 No person may become or remain a Director if such a person:

a) has been convicted of a crime involving elements of dishonesty, after due process in accordance with international and Kosovo standards;

b) has been excluded or suspended for serious professional misconduct, after due process in accordance with international standards, from the exercise of his profession;

c) has or acquires a direct or indirect interest in any Enterprise or in any person or entity seeking an ownership interest in any Enterprise; or

d) otherwise has interests or engages in other conduct conflicting with his responsibilities under Article 15.

12.6 To be eligible as Director, any person shall have at least five years of relevant work experience in the areas of public administration, law, accounting, finance, enterprise management, regulatory work or any similarly relevant area.

12.7 Directors may be seconded to the Agency from other institutions. In such cases, their remuneration, if any, and personal conditions of service shall depend on their contract with the seconding institution. Privileges and immunities of seconded Directors, if any, shall depend on the privileges and immunities of the seconding institution and the contractual relationship of the Directors concerned with such institution. This rule shall also determine the liability of seconded Directors to taxation in Kosovo.

Article 13 **Term and Duties of Directors**

13.1 Directors other than the Chairman, the Vice-Chairman of the Board and the Director of the Executive Secretariat of the Board shall be appointed for renewable two-year terms.

13.2 Directors shall not receive compensation for attending Board meetings; however, they may receive reimbursement for reasonable costs they incurred in connection with attending Board meetings and the reasonable costs incurred in the discharge of their other official functions on behalf of the Agency.

13.3 Directors shall perform their duties impartially with a view to the purposes of the Agency set out in Article 2. They shall not receive any instructions in the exercise of their duties.

13.4 Directors shall owe the Agency the same fiduciary duties as directors of joint stock companies under the Regulation on Business Organizations.

13.5 Directors may be removed from office by the party appointing them if they:

- a) become ineligible to serve as Directors under Article 12.5;
- b) use their office for the benefit of any person or entity other than the Agency;
- c) become unable to perform their duties for a period of at least three months;
- d) fail to comply with a decision taken pursuant to Chapter 5; or
- e) breach their duties.

Article 14 **Procedures of the Board**

14.1 The procedures of the Board shall be set forth in By-Laws of the Agency to be adopted by the Board.

14.2 Regular Board meetings shall be convened at least once a month. The Chairman may at any time convene additional meetings and shall do so at the request of at least two Directors.

14.3 The two largest international donors of the Agency shall have the right to attend any meeting of the Board as observers without voting rights.

14.4 The Board shall have a quorum if at least five Directors, at least one of whom shall be an international Director, are present.

14.5 Decisions of the Board shall be made by consensus and, where no consensus is reached, by voting.

14.6 Unless provided otherwise in the present law or the By-Laws of the Agency, decisions shall be made by a simple majority of the members present.

14.7 Where a qualified majority is required by the present law or the By-laws of the Agency, decisions shall be made by at least five affirmative votes. Any decision on the payments to be made in accordance with Article 15.2(g) shall require the affirmative vote of the three international Directors.

14.8 Each Director shall have one vote. In case of an equal division of votes, the vote of the Chairman shall decide.

14.9 Notwithstanding Articles 14.6 and 14.7, the three international members of the Board acting jointly and unanimously may suspend any decision made by the Board, if they decide that such decision is in conflict with the principles enshrined in the European Convention on Human Rights including any of its Protocols or Applicable Law, and refer the matter to the Special Chamber for a decision. The Special Chamber shall make such decision as a matter of urgency. The respective Board decision remains suspended until the Special Chamber has reached its decision.

14.10 The By-Laws may specify decisions that may be taken by the Chairman (or his alternate) alone. In an emergency, the Chairman and the Vice-Chairman, acting jointly, may take decisions subject to confirmation by the Board in the next Board meeting.

14.11 The Director of the Executive Secretariat of the Board shall have the duties specified in the By-Laws.

Article 15

Responsibilities of the Board

15.1 The Board shall have general responsibility for the activities of the Agency and shall take, in the fulfilment of this responsibility, any action required or permitted by the present law.

15.2 The following decisions of the Board shall be taken by a qualified majority and may not be delegated to the Managing Director:

a) approval of the charter, By-laws, general organizational structure, financial and auditing policies, staffing and employment policies of the Agency;

b) approval of operational policies under Article 10;

c) the appointment or dismissal of a Deputy Managing Director or other official whose appointments the Board has reserved to itself;

d) the creation, confirmation or composition of the supervisory board, worker's council or other supervisory body of an Enterprise and any determination or modification of the powers and responsibilities of such body;

e) The placing under direct Agency administration of an Enterprise pursuant to Article 6.1 (e);

f) the approval or modification of the charter, by-laws or similar documents of an Enterprise;

g) the decision on payments to be made from any proceeds resulting from the Agency's activities under Articles 8 and 9 or otherwise held in trust for the benefit of Creditors and Owners, unless the Special Chamber has previously issued an immediately enforceable decision requiring such payment to be made.

h) the conclusion of an arrangement for the management, reconstruction or reorganization of an Enterprise, or lease agreement with respect to an Enterprise pursuant to Article 6.1 (m);

i) the granting of concessions or leases with respect to property, rights or activities of an Enterprise pursuant to Article 6.1 (n);

j) the approval of plans for the reorganization or restructuring of an Enterprise;

k) the approval of the creation of one or more Corporations of an Enterprise pursuant to Article 8;

- l) the sale and transfer of part or all of the shares of a Corporation created under paragraph (k) above to an outside party;
- m) the decision to liquidate an Enterprise or parts thereof pursuant to Article 9;
- n) the decision to initiate reorganisation or liquidation proceedings with respect to an Enterprise in accordance with the Regulation on Reorganisation and Liquidation of Enterprises;
- o) the approval of the budget and the business plan of the Agency for the following calendar year;
- p) the approval of the performance of the Management on the basis of the annual audit report;
- q) the decision whether an individual Enterprise or defined group of Enterprises shall be considered by the Agency as satisfying the requirements of Article 5; and
- r) the establishment of any internal control functions, procedures or units within the Agency the Board deems appropriate.

15.3 The Agency shall take decisions on privatization or liquidation of Enterprises only after consultations with officials from municipalities in which the relevant Enterprise is located.

Article 16 Management and Staff

16.1 The Managing Director, with the assistance of the two Deputy Managing Directors, shall be responsible for:

- a) performing all functions delegated to him by the Board;
- b) conducting the ordinary business of the Agency in accordance with any policies and instructions that might be issued by the Board;
- c) organizing, appointing and dismissing the staff (other than the Deputy Managing Directors and other officials whose appointment the Board has reserved to itself) in accordance with any decision made or instructions issued by the Board;
- d) preparing the meetings of the Board and ensuring the implementation of the decisions of the Board; and
- e) with the concurrence of the Board, performing any functions pursuant to Article 2.2 (b).

16.2 The Managing Director shall report and be accountable to the Board and to no other party.

16.3 The Managing Director and the two Deputy Managing Directors shall be appointed by the Board on nomination by the Chairman. They may at any time be dismissed by the Board. The Board shall determine the remuneration and other terms of service of the

Managing Director and the two Deputy Managing Directors, without prejudice to Article 16.5 below.

16.4 Persons ineligible for appointment as a Director of the Board under Article 13.4 shall also be ineligible for appointment as Managing Director or Deputy Managing Director, respectively. They shall also be ineligible if they hold a public office or are a member of the executive body of a political party.

16.5 Management and other staff may be seconded to the Agency from other institutions. In such cases, their remuneration and personal conditions of service shall depend on their contract with the seconding institution. Privileges and immunities of seconded staff, if any, shall depend on the privileges and immunities of the seconding institution and the contractual relationship of the staff concerned with such institution. This rule shall also determine the liability of seconded staff to taxation in Kosovo.

16.6 In the discharge of their offices, the Management and the staff owe their duty solely to the Agency. They shall not receive any instructions with respect to the discharge of their office from any authority other than the Board, or their hierarchical superior in the Agency.

16.7 The Management and the staff shall maintain the confidentiality of information obtained in their service for the Agency both during and following their service for the Agency.

16.8 The Management and staff shall not directly or indirectly have any interest in an Enterprise or any party seeking an interest in such Enterprise. The Management and staff shall also be barred from receiving a benefit from any party other than the Agency in relation to any action or inaction of the Agency without prejudice to Article 16.5.

16.9 The Management and staff shall owe to the Agency the same duties of care, diligence and good faith as officers, management and staff of joint stock companies under the Regulation on Business Organizations.

16.10 The Board, Management and the staff shall not be liable to any party other than the Agency for any action or inaction on behalf of the Agency within the scope of the authority vested in them by the Agency. The Board, Management and the staff shall be liable to the Agency for any breach of their duties under the present law or in accordance with their contracts with the Agency, without prejudice to Article 16.5.

CHAPTER IV

Financial Provisions

Article 17

Charter Capital and Funding

17.1 The Agency has a subscribed charter capital of ten million euros (€10,000,000), of which one million euros (€1,000,000) has been paid in cash or in kind; the remainder shall be subject to call by the Board when and to the extent required to meet obligations of the Agency. The Agency's share capital may be increased by the Assembly of Kosovo

with funds drawn from the Kosovo Consolidated Budget in accordance with Applicable Law, and may not be reduced. Neither the Republic of Kosovo nor the Kosovo Consolidated Budget shall be liable for the liabilities of the Agency.

17.2 The Agency shall be funded by the Kosovo Consolidated Budget in accordance with applicable law, and may receive funding or financing from third parties.

Article 18

Liability, Due Diligence and Responsibility of the Agency

18.1 Any liability incurred by the Agency, whether by contract or by operation of law, shall be limited to the assets of the Agency plus the unpaid portion of its subscribed capital. The Agency shall not be liable for any debt related to trust assets nor shall trust assets be liable for any debt of the Agency.

18.2 The Agency shall not be liable for any debt, action or inaction attributable to an Enterprise and no Enterprise shall be liable for any debt, action or inaction attributable to the Agency. The Agency shall not be liable for any action or inaction of directors, managers or other control persons of Enterprises regardless of whether or not such directors, managers or other control persons have been appointed by the Agency.

18.3 Accounts and other assets of Enterprises administered by the Agency shall be held in trust separately from each other and separately from the accounts and other assets of the Agency. Funds held in trust by the Agency shall be invested, in accordance with reasonable investment criteria, in securities and other financial instruments rated by international rating agencies as investment grade securities and instruments.

18.4 The Agency shall in no case be liable for any indirect, consequential, or punitive damage.

18.5 No person engaged or employed by the Agency, and no person who holds a managerial or director position in or with respect to the Agency, shall have any personal liability of any description to any third party for any damages suffered or alleged to have been suffered by such third party as a consequence of an act or omission of the Agency, or any act or omission of the Agency's personnel, management or Board of Directors, if such act or omission was done in the implementation or execution of the Agency's authorities and responsibilities as provided for under the present law or any other element of the law applicable in Kosovo, or in pursuance of a reasonable and good faith interpretation of such authorities and responsibilities. Any liability for such damage shall be the exclusive liability of the Agency. The Agency shall have the duty to indemnify and vigorously defend any of its personnel, managers or directors against whom a claim for such damages may be brought.

Article 19

Financial Policies

19.1 The Board shall issue financial policies with a view to ensuring that the Agency carries out its activities in accordance with sound and prudent management practices and can meet its financial commitments without calling in unpaid capital pursuant to Article

17. Such policies may provide for administrative, transaction and service fees to be charged by the Agency to Enterprises, Corporations and any other beneficiaries of the Agency's activities, provided that such fees are transparent, non-discriminatory and reasonable.

19.2 Any monies collected by the Agency as a result of its activities under Articles 8 and 9 of the present Law and held in trust for the distribution to Creditors and Owners, shall be invested by the Agency in accounts, instruments or other means rated as investment grade by international rating agencies and in accordance with reasonable and prudent investment criteria.

Article 20

Reports, Budget and Accounts

20.1 The Board shall submit to the Assembly of Kosovo and make publicly available quarterly reports summarizing the activities of the Agency and reflecting the financial results.

20.2 The Board shall submit to the Assembly of Kosovo and make publicly available an annual report of the Agency which shall include:

- a) financial statements of the accounts of the Agency;
- b) separately from the accounts of the Agency, statements of the accounts and other assets held by the Agency in trust;
- c) a record of Enterprises placed under the direct administration of the Agency pursuant to Article 6.1;
- d) a record of transactions pursuant to Article 8 accomplished during the reported year and those transactions pending;
- e) a record of Enterprises liquidated pursuant to Article 9; and
- f) a record of Enterprises over which reorganization proceedings were initiated.

20.3 The Managing Director shall prepare an annual budget of estimated revenues and expenditures of the Agency and a business plan of all activities of the Agency for approval by the Board.

Article 21

Allocation of Net Income

The Board shall determine the allocation of the net income of the Agency on the recommendation of the Managing Director. To the extent suggested by prudent management practices, such income shall be allocated to reserves. The remainder shall accrue to the Kosovo Consolidated Budget.

Article 22
Tax Treatment

22.1 The income and the property of the Agency shall be exempt from taxation, provided that such exemption shall not apply to Enterprises, Corporations accounts and other assets administered by the Agency as trustee.

22.2 The transfer of assets and the sale of shares pursuant to Articles 8 and 9 shall not be subject to value-added tax.

CHAPTER V
Accountability and Review Committees

Article 23
**Accountability of the Board, Management
and Staff**

23.1 The Board shall exercise its independent business judgment in carrying out its functions and responsibilities under the present law.

23.2 The Board collectively and the Directors severally shall be accountable for compliance by the Agency at any time with the provisions of:

- (i) the present law;
- (ii) or any other legislation applicable in Kosovo;
- (iii) the charter, by-laws, operational, financial, staff policies and business procedures of the Agency unless modified or repealed in accordance with the present Law; and
- (iv) any international agreement relating to Kosovo that confers functions and obligations on the Agency.

23.3 The duties and responsibilities of the Management shall be enforced by the Board. The duties and responsibilities of the staff shall be enforced by the Managing Director. Any application for a legal review of enforcement actions taken, upheld or reversed by the Board shall be brought directly before the Special Chamber.

Article 24
Review Committees

24.1 The Agency shall establish appropriate numbers of Review Committees based on the number of complaints received and the location of Enterprises or Assets to which such complaints relate. All Review Committees shall be provided with adequate resources to review complaints made to the Agency by persons aggrieved by any decision, action, inaction or omission of the Agency or a liquidation committee.

24.2 Each Review Committee shall have three members, one of which shall be an international member appointed by the International Civilian Representative, and shall chair the Review Committee. All other members of the Review Committee shall be appointed by the Agency, which shall ensure that an appropriate number of members are appointed from non-Albanian communities in Kosovo with each Review Committee having at least one member from a non-Albanian community in Kosovo. Review Committee members shall be chosen among persons having adequate legal professional qualifications or appropriate experience in insolvency, liquidation, commercial, financial or accounting matters, and having no interests conflicting with their duties; in particular, Review Committee members shall not be members of any liquidation committee established by the Agency.

24.3 Any person or entity aggrieved by any act or omission of the Agency or a liquidation committee shall have the right to file a written application requesting that a Review Committee review such act or omission. The application shall be made within sixty days after the complainant becomes or should reasonably have become aware of such act or omission. Failure of a Review Committee to take a decision within sixty days - or such longer period as may be established under Article 24.7 - after the filing of the application shall be construed as a decision rejecting the application.

24.4 The claims registration unit of the Agency shall receive and register such applications. A Review Committee shall immediately be assigned to review such application and shall conduct its review pursuant to Article 66 of UNMIK Administrative Direction No. 2003/13, as amended.

24.5 Each Review Committee shall take into account any original evidence and submissions together with any further evidence and submissions provided by the party aggrieved by the decision or action of the Agency or the liquidation committee.

24.6 The Review Committee shall decide on applications acting fairly, equitably and impartially. It shall issue its decision giving reasoned justifications in law and fact forming the basis for its decision as soon as reasonably practicable, but in no event later than the expiration of the sixty day period referred to in Article 24.3 or, if applicable, the longer period provided for in Article 24.7. The decision of the Review Committee shall form the final decision and shall be issued by the Agency or the liquidation committee in accordance with Article 66 (5) of UNMIK Administrative Direction No. 2003/13, as amended.

24.7 If for reasons beyond its control or due to the complexity of the matter, the Review Committee is not able to complete the review within time provided by these provisions, it has the power to extend the time for the review before the sixty day period has expired, and it shall notify the complainant accordingly. Any such extension shall not exceed thirty days. If the complainant is dissatisfied with the decision to extend the time for review it may apply to the Special Chamber of the Supreme Court of Kosovo in accordance with Article 66 of UNMIK Administrative Direction No. 2003/13 of 11 June 2003, as amended.

24.8 Any final decision of the Agency, including its liquidation committees, can be challenged in the Special Chamber of the Supreme Court of Kosovo in accordance with Applicable Law.

Article 25
External Audits

25.1 There shall be annual audits of the Agency, including external financial audits, in accordance with standard operating procedures established by the Ministry of Economy and Finance, as well as such additional audits as the Assembly of Kosovo may determine.

25.2 The annual audits shall, in addition to the Agency itself, extend to any Enterprise and trust accounts administered by the Agency directly. The scope of any additional audits shall be determined by Assembly of Kosovo on a case-by-case basis.

CHAPTER VI
Enforcement and Dispute Resolution

Article 26
Assistance by the Government of Kosovo

The Agency may seek the assistance of the police and other enforcement agencies of the Government of Kosovo to enforce its powers under the present Law.

Article 27
Imposition of Fines

27.1 To enforce its powers under the present Law, the Agency may impose fines indicated in this article on Enterprises, employees and other persons with management or control functions with respect to Enterprises for the following:

- a) the failure to respond within five working days of the receipt of a written request by a duly authorized representative of the Agency for information or documentation in the possession of the addressee - up to one hundred Euro (€100) per day for each day of failure to comply up to a maximum of five thousand Euro (€5,000);
- b) knowingly providing false information to a duly authorized representative of the Agency - up to ten thousand Euro (€10,000);
- c) the destruction, falsification, fabrication or concealment of records relating to an Enterprise - up to ten thousand Euro (€10,000);
- d) the knowing concealment or illegal transfer of assets of an Enterprise - up to ten thousand Euro (€10,000) or the value of the concealed property, whichever is greater; and

e) failure to surrender any assets of the Enterprise to the Agency upon a written order by the Board - up to twenty five thousand Euro (€25,000) or the value of the assets not surrendered, whichever is greater.

27.2 Any fine under Article 27.1 shall be signed by the Managing Director or a Deputy Managing Director and served on the Enterprise or person concerned. It shall become effective thirty (30) days after being served unless the recipient within this period challenges it before a Review Committee pursuant to Article 24. In the latter case, the effectiveness of the penalty shall be suspended until it is confirmed by the Review Committee and such confirmation is served to the appellant. The appellant may appeal the confirmation to the Special Chamber. The Special Chamber may suspend the enforcement of the penalty, pending its final decision.

Article 28

Liability for Damages

Any director of an Enterprise and any other person with management or control function with respect to an Enterprise shall be liable for any damage sustained by such Enterprise as a result of his failure to comply with a lawful instruction of a duly authorized representative of the Agency acting within the powers of the Agency. The Agency shall have standing on behalf of the Enterprise concerned to seek payment of such damages in a competent court.

Article 29

Rights of the Agency in Legal Proceedings against Enterprises

29.1 No legal proceedings against an Enterprise shall take place in a court without the claimant providing proof that written notice of intention to file an action was submitted to the Agency specifying the name of the claimant, the name of the Enterprise and other relevant identifying data, the basis of the claim, and the relief sought.

29.2 The Agency shall have legal standing to pursue any rights of an Enterprise in a competent court on behalf of the Enterprise concerned.

29.3 Whenever legal proceedings are pending on behalf of or against an Enterprise, the Agency may at any time file notice with the competent court that it will act as legal representative of the Enterprise concerned, provided that it shall act as legal representative of only one Enterprise in proceedings to which more than one Enterprise is a party.

Article 30

Lawsuits against the Agency

30.1 The Special Chamber shall have exclusive jurisdiction for all suits against the Agency.

30.2 The Special Chamber shall not admit any suit against the Agency unless the claimant submits evidence of having notified the Chairman of the Board of his intention of filing such suit at least sixty (60) days prior to the actual filing. The Special Chamber, at the request of the Agency, may suspend the opening of proceedings on a suit against the Agency for a period not exceeding sixty (60) days of the receipt of such suit to facilitate an amicable settlement.

CHAPTER VII

Final Provisions

Article 31

Applicable Law

31.1 The present law shall supersede any provisions in the Applicable Law which are inconsistent therewith.

31.2 UNMIK Regulation 2002/12, as amended, will cease to have legal effect on the date the present law enters into force.

31.3 The Agency takes over all liabilities that it or its predecessor may have incurred under UNMIK Regulation 2002/12, as amended. The Board and management of the Agency shall fulfill all responsibilities of any predecessor Board or management appointed under UNMIK Regulation 2002/12, as amended.

Article 32

Entry into Force

32.1 The present law shall become effective fifteen days (15) after its publication in Official Gazette of Republic of Kosovo.

Law No. 03/L-067
21 May 2008

President of the Assembly of the Republic of Kosovo

Jakup KRASNIQI