



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

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**Law No.04/L-034**

**ON THE PRIVATIZATION AGENCY OF KOSOVO**

**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;

Adopts

## **LAW ON THE PRIVATIZATION AGENCY OF KOSOVO**

### **CHAPTER I LEGAL STATUS, PURPOSES AND DEFINITIONS**

#### **Article 1**

#### **Establishment and Legal Status of the Privatization Agency of Kosovo**

1. The Privatization Agency of Kosovo (hereafter the “Agency”) is an independent public body that shall carry out its functions and responsibilities with full autonomy. The Agency shall possess full legal 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.

2. The Agency is the successor of the Kosovo Trust Agency (KTA) that was established and regulated by UNMIK Regulation 2002/12 “On the establishment of the Kosovo Trust Agency and all assets and liabilities of the latter shall be assets and liabilities of the Agency.

## **Article 2**

### **Objective and Purposes**

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. To serve this objective, the Agency shall:

2.1 until its sale or other disposition in accordance with the present Law hold and administer each Enterprise and Asset in trust for the benefit of the relevant Owners and Creditors in accordance with the present Law and other applicable provision(s) of the Law of Kosovo.

2.2 sell, transfer or liquidate Enterprises and Assets in accordance with Articles 6, 8 and 9 of the present Law, without undue delay;

2.3 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 paragraph 2.2 above;

2.4 satisfy, in the manner and to the extent provided for in the present Law, valid claims that have been timely submitted by Creditors and Owners relating to an Enterprise or Asset from the Proceeds that have been derived from the sale, transfer, liquidation or other disposition of such Enterprise or Asset; for which purpose all such funds, with the exception of Residual Funds, shall be held in trust for the benefit of the relevant Owners and Creditors and preserved by the Agency;

2.5 after the expiry of the applicable time limits for the submission of concerned Owner and Creditor claims, identify and transfer – in accordance with Article 19.3 - all Residual Funds held in trust by the Agency to the Government of Kosovo;

2.6 perform such other tasks as may be assigned to it by the present Law and other applicable provision(s) of the Law of Kosovo.

3. The present Law shall be implemented in accordance with the principles set forth in the European Convention on Human Rights and its Protocols.

## **Article 3**

### **Definitions**

1. Terms used in this Law shall have the following meaning:

- 1.1. **Agency** - the Privatization Agency of Kosovo.
- 1.2. **Asset** - an asset, interest or property over which the Agency has authority pursuant to paragraph 1 or 2 of Article 5 of the present Law.
- 1.3. **Board** - the Board of Directors of the Agency.
- 1.4. **By-Laws** - the by-Laws of the Agency as defined in Article 14.1 of the present Law.
- 1.5. **Corporation** - a limited liability company or a joint stock company established and registered in Kosovo.
- 1.6. **Creditor** - a person or entity with a valid claim as a creditor against an Enterprise and/or to an Asset. "Creditor" also includes a person having a valid claim as an owner of a specific Asset.
- 1.7. **Director** - a member of the Board.
- 1.8. **Director of the Executive Secretariat** - the director of the Executive Secretariat.
- 1.9. **Enterprise** - an enterprise over which the Agency has authority pursuant to Article 5.1.1.1 of the present Law.
- 1.10. **Executive Secretariat** - the executive secretariat to the Board as established by Article 11.5 of the present Law.
- 1.11. **FRY and SFRY**, means the former Federal Republic of Yugoslavia and the former Socialist Federal Republic of Yugoslavia, respectively.
- 1.12. **International Civilian Representative** - the authority responsible, under the Constitution of the Republic of Kosovo and the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007, for supervising the implementation of said Comprehensive Proposal.
- 1.13. **Law on Enterprises** - the SFRY Law on Enterprises (77/88), as amended by the SFRY Laws 40/89, 46/90 and 61/90.
- 1.14. **Law of Kosovo** - the Constitution of the Republic of Kosovo, the Laws and sublegal acts adopted and promulgated pursuant thereto in accordance with the Constitution, and the legislation that was in force on the date of the entry into force of the Constitution to the extent such legislation has continuing applicability under paragraph 2 of Article 145 of the Constitution. "Law of Kosovo" does not include any such Law, legislation or sublegal act, or any part thereof, that has

been Lawfully repealed, superseded, voided, or invalidated or the applicability of which has otherwise been Lawfully terminated.

1.15. **Management** - the Managing Director and the Deputy Managing Directors of the Agency, both collectively and individually.

1.16. **State Owned Interests** - any and all socially owned interests, including social capital, in any Enterprise or other legal entity that, by operation of Article 159.2 of the Constitution, are now owned by the Republic of Kosovo.

1.17. **Owner** - a person or entity with a valid claim to an ownership interest or right in or to an Enterprise.

1.18. **Proceeds** - 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 the administration fees of the Agency provided for in Article 21.2 of the present Law and the payments required to be made under Article 10 of the Regulation on the Transformation of Immovable Property.

1.19. **Publicly-owned Enterprise** - any enterprise that has, at any time, been identified or validly classified as a Publicly Owned Enterprise by or pursuant to a provision of Article 3 of the Law on Publicly Owned Enterprises.

1.20. **Law on Business Organizations** - Law No. 02/L-123 “On Business Organizations”.

1.21. **Regulation on Reorganization and Liquidation of Enterprises** - 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”.

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

1.23. **Residual Funds** - any Proceeds held in trust by the Agency that are reasonably determined, in accordance with Article 19.3, to not be necessary for the satisfaction of claims that have been timely filed by the concerned Creditors and Owners.

1.24. **Review Committee** - a review committee established under any predecessor legislation to the present Law: i.e. the KTA Regulation or Law No. 03/L-067.

1.25. **Socially-owned Enterprise** - a legal entity (other than a Publicly-owned Enterprise) that, on or after 1 January 1989:

1.25.1. fell within paragraph 1 or 2 of Article 2 of the Law on Enterprises,  
or

1.25.2. 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

1.25.3. was registered or was required by Law to be registered in Kosovo.

1.26. **Special Chamber** - 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.

1.27. **Transformation** - any of the following with respect to a legal entity: a merger, transformation, registration, re-registration, incorporation as a joint stock or limited liability company 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.

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.

3. Terms that are defined in Article 2 of Annex 1 shall – when used in this Law - have the meaning indicated in that article unless the context within which such term appears clearly intends another meaning.

#### **Article 4** **References**

Unless the context clearly requires another interpretation, any reference in the present Law or in Annex 1 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 and Assets Subject to the Administrative Authority of the Agency**

1. The Agency shall have exclusive administrative authority over:
  - 1.1. socially-owned Enterprises, regardless of whether they underwent a Transformation;
  - 1.2. 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, except as provided in Article 5.1 paragraph 2 below; and
  - 1.3. all shares in Corporations and subsidiary Corporations established pursuant to the present Law; and all State Owned Interests in an Enterprise or other legal entity, regardless as to whether the Enterprise or legal entity underwent a Transformation.
2. If a regulation or Law that is in force and that was promulgated by a competent public authority in Kosovo after 10 June 1999 assigns responsibility for administering assets described in Article 5. paragraph 1.2 to another public authority, the Agency shall not have authority over such assets as of the effective date of such regulation or Law.
3. The extent of the Agency's administrative authority under 5 paragraph 1.1 shall extend to all property in the ownership or possession of an Enterprise, including property located outside of Kosovo; provided, however, that - notwithstanding its obligations set out in Article 2 paragraph 1 - with respect to such property located outside of Kosovo, the Agency is only required to exercise its authority over such property to the extent that the Agency deems such exercise reasonable, taking into account value and accessibility of such property and the limits of the Agency's administrative resources as referred to in Article 7.1. In deciding on such matters, the Agency shall take into account any relevant policies that may be adopted by the Government or Assembly of Kosovo.
4. If an Enterprise underwent a Transformation, such Transformation shall not affect the authority of the Agency under Article 5.1 or 5.2 or the rights and powers of the Agency under Articles 6, 8 and 9 unless:
  - 4.1. the Transformation was based on and carried out in full compliance with the Law applicable to the Transformation;
  - 4.2. all obligations connected with the Transformation, whether arising concurrently with or subsequent to the Transformation, whether imposed by Law or contract - including but not limited to obligations requiring the payment of full

consideration for, and the actual issuance of, shares - have been fully performed; and

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

5. In exercising its rights and powers under articles 6, 8 and 9 in respect of an Enterprise that underwent a Transformation, the Agency shall be entitled to assume that the Transformation does not meet all requirements set out in paragraph 4 above, unless clear evidence is readily available to the Agency, which conclusively establishes that the Transformation meets these requirements. In such case, paragraph 6 below shall apply.

6. If, in accordance with paragraph 5 above, the Agency finds that the Transformation of an Enterprise meets all requirements set out in paragraph 4, and the Agency has not previously completed an action with respect to such Enterprise or any of its Assets under Article 6.2, the following rules shall apply:

6.1. if clear evidence is readily available to the Agency, which conclusively establishes the allocation of shareholder (or ownership) rights over such Enterprise between social capital (or ownership) and private capital (or ownership), the Agency shall cease to exercise any authority over such Enterprise other than for the purpose of exercising all shareholder (or ownership) rights arising from the social capital (ownership) portion of the total capital of the Enterprise, which shall include the right to sell such shareholder (ownership) rights; and

6.2. In the absence of such evidence, the Agency shall continue to exercise its rights and powers under articles 6, 8 and 9 and the other provisions of the present Law over such Enterprise.

7. All matters related to or arising in connection with the liquidation of an Enterprise or Corporation pursuant to the Agency's authority under Article 6, paragraph 2.1, including but not limited to the determination of the validity of any claim made by an alleged Creditor or any assertion of equity or ownership interest made by an alleged Owner and the determination of appropriate distribution of Proceeds to Creditors and Owners - shall be the responsibility of the concerned Liquidation Authority, which shall comply with the rules established by Annex 1 of the present Law. Any person filing such a claim or alleging such an interest who disagrees with the Liquidation Authority's determination affecting that claim or alleged interest shall have the right to challenge such determination at the Special Chamber by timely complying with the procedural requirements set forth in Article 37.7 of Annex 1.



**Article 6**  
**Scope of the Administrative Authority of the Agency**

1. The Agency shall have broad and exclusive administrative authority over all Enterprises, Assets, interests, shares and property falling within the scope of Articles 5.1 and 5.2. Such authority shall include any action that the Agency considers reasonable and appropriate, within the limits of the Agency's administrative resources, to better enable the sale, liquidation, transfer or other disposition of an Enterprise, Asset or State Owned Interest. Without prejudice to the generality of the foregoing sentence, it is specifically provided that, with respect to Enterprises, such authority includes any action that the Agency considers reasonable and appropriate to preserve or enhance the value, viability, or governance of an Enterprise, including:

- 1.1. appointing and replacing the chairman, directors and managers of an Enterprise;
- 1.2. creating, confirming or recomposing the supervisory board, managing board, workers' council or other managing or supervisory body of an Enterprise;
- 1.3. modifying the authority of any of the persons or bodies referred to in subparagraph 1.1 or 1.2 above;
- 1.4. issuing instructions regarding an Enterprise's operations, in particular policies for sound financial management;
- 1.5. assuming direct control over an Enterprise, including its accounts and assets, and administering such accounts and assets, separately from the Agency's accounts;
- 1.6. carrying out external audits of an Enterprise either directly or through designated agents;
- 1.7. requiring any employee or contractor or other business contact of an Enterprise to provide information in his possession regarding such Enterprise;
- 1.8. requiring any person with control over documents regarding an Enterprise to provide access to such documents for their review, reproduction and safekeeping;
- 1.9. entering and inspecting the premises of Enterprises;
- 1.10. approving business plans and investment plans of Enterprises;
- 1.11. issuing or modifying charters, by-Laws and other relevant documents of Enterprises;
- 1.12. effecting the registration in Kosovo of Enterprises not properly registered;

- 1.13. entering into arrangements for the management, reconstruction or reorganization of Enterprises;
  - 1.14. granting concessions or leases with respect to Enterprises;
  - 1.15. establishing and registering, in accordance with the Law on Business Organizations and Articles 8 paragraph 1 and 8 paragraph 2 of the present Law, one or more subsidiary Corporations of an Enterprise, the shares of which shall be owned by such Enterprise but administered by the Agency, and transferring part or all of the assets of such Enterprise to such subsidiary Corporation(s). ;
  - 1.16. transforming an Enterprise into a Corporation and establishing and registering such Corporation in accordance with the Law on Business Organizations;
  - 1.17. restructuring an Enterprise into several Corporations, transferring the Assets of such Enterprise to such Corporations, and establishing and registering such Corporations in accordance with the Law on Business Organizations;
  - 1.18. contracting out part of the activities of Enterprises; and
  - 1.19. initiating, pursuant to UNMIK Regulation 2005/48, court-supervised reorganization or liquidation proceedings with respect to an Enterprise and participating in such proceedings in the capacity and manner provided for in that regulation.
2. The Agency shall, in addition to the authorities set out in Article 6.1, have authority to take any of the following actions as the Agency in its reasonable discretion considers appropriate:
- 2.1. to sell, transfer or otherwise dispose of, in accordance with the requirements of Article 8 of the present Law, all or part of the shares of a Corporation or subsidiary Corporation referred to in Article 6.1.15, 1.16 or 1.17
  - 2.2. to liquidate, in accordance with Article 9 and Annex 1 of the present Law, an Enterprise or Corporation referred to in Article 6.1; or
  - 2.3. to sell transfer or otherwise dispose of any Asset under the administrative authority of the Agency.
3. The Law No. 03/L-212 “On Labour” shall not be applicable in relation to any action taken by the Agency under the authority of this Article 6; provided, however, that Article 76.7 of such Law shall be used to determine the amount of the severance pay that may be validly claimed pursuant to Article 40 of Annex 1.

**Article 7**  
**Exercise of Powers**

1. Unless the Board decides otherwise, the Agency shall fulfill its responsibilities under this chapter by exercising general management oversight over Enterprises and Corporations within the limits of its administrative resources.
2. Unless the Board decides otherwise, the day-to-day business of Enterprises and Corporations shall be conducted by the managing and other control bodies of the Enterprise or Corporation, without prejudice to the powers of the Agency under the present Law.

**Article 8**  
**Establishment of Corporations; Sale of Shares**

1. As provided in Article 6, Paragraph 1.16 and 1.17 the Agency may transform or restructure an Enterprise into one or more Corporations. If the Agency takes such action the shares of the Corporation(s) shall initially be titled in the name of the Republic of Kosovo, and the Agency shall have, by operation of the present Law, the authority to exercise all attendant shareholder rights of the Republic of Kosovo including the authority to sell, transfer or otherwise dispose of such shares under Article 6.paragraph 2.1.The Agency shall also have the authority to liquidate any such Corporation as provided for in Article 6 paragraph 2.2. Any Proceeds resulting from any such an action shall be held in trust for the benefit of the Creditors and Owners of the original Enterprise and otherwise subject to the applicable provisions of the present Law and Annex 1 governing the distribution of Proceeds.
2. As provided in Article 6.paragraph 1.15 the Agency may, on behalf of an Enterprise, establish one or more subsidiary 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 a claim is made by a Creditor on an obligation or liability that has been assumed by such a Corporation pursuant to an Agency decision pursuant to this paragraph, such Creditor shall have no right to a distribution from any Proceeds resulting from a sale of shares of the Corporation or the sale of any Asset (unless the Creditor had a validly documented security interest therein); in such case, the Creditor's exclusive recourse shall be the right to assert the claim against the Corporation.
3. The Agency shall have, by operation of the present Law, the authority to exercise all shareholder rights of the Enterprise that owns the shares of a subsidiary Corporation established pursuant to Articles 6 paragraph 1.15 and 8.2, including the right to sell,

transfer or otherwise dispose of part or all of such shares on behalf of such Enterprise. Any resulting Proceeds shall accrue to the Enterprise that had owned the shares

4. The Agency shall hold, administer and distribute any and all Proceeds resulting from a sale, transfer or disposition of shares in a Corporation or subsidiary Corporation in accordance with the applicable provisions of the present Law and Annex 1.

5. Any sale, transfer or other disposition of shares in a Corporation or subsidiary Corporation under Article 6 paragraph 2.1 and this Article 8 shall only be done after the conduct of an open and competitive bidding procedure.

6. Notwithstanding any other provision of the present Law, if the Agency exercises a contract right to reacquire or cancel the shares of a subsidiary Corporation previously sold by the Agency or its predecessor, the Agency may take any of the actions specified in Article 6 paragraph 2.2 with respect to that subsidiary Corporation or any or all of its assets. In such event:

6.1. the other parties to the contract shall have only such rights as may be specifically provided for by the concerned contract, and

6.2. all of the funds received by the Agency as a consequence of such action - net of the five percent (5%) administration fee of the Agency provided for under Article 21 paragraph 2 of the present Law, and the Agency's documented expenses incurred in exercising such contract right and taking such action – shall be used to satisfy the creditors of such subsidiary Corporation; and

6.3. if any such net funds remain after satisfying the contract rights of the other parties to the contract and the subsidiary Corporation's creditors, such remaining funds shall be included in the Proceeds that will be used to satisfy the claims of the Creditors and Owners of the Enterprise that originally held the assets that were transferred to the subsidiary Corporation when it was established.

## **Article 9**

### **Liquidations by the Agency**

1. The Board may initiate a liquidation of any Enterprise, Corporation or Asset or any part thereof by issuing a Liquidation Decision 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 by Annex 1.

2. All powers of the management and control bodies of an Enterprise or Corporation that is subject to a Liquidation Decision shall be ceded to the concerned Liquidation Authority established pursuant to Annex 1.

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

## **Article 10 Operational Policies**

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

1.1. ensuring compliance with the Agency’s duties under the present Law and the other applicable elements of the Law of Kosovo; and

1.2. promoting, within the limits of the administrative resources of the Agency available therefore, the taking of reasonable measures to preserve and enhance the value, viability, and governance of Enterprises.

2. With respect to the exercise of the Agency’s powers under Article 6 paragraph 2, the operational policies shall, inter alia:

2.1. generally set out rules and procedures that ensures that actions taken by the Agency are in conformity with the requirement of Article 2 paragraph 3 of the present Law;

2.2. for an action taken pursuant to Article 6 paragraph 2.1 set out transparent and uniformly applied rules governing the bidding procedures as required by Article 8 paragraph 5 that ensure fair competition of bidders and are reasonably aimed at obtaining a fair market value for the shares; and

2.3. Ensure that such rules and procedures are made available to the public.

3. The operational policies shall include procedures for public notification of actions taken by the Agency under:

3.1. Article 6 paragraph 1.14 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;

3.2. Articles 6 paragraph 1.16 ,1.17, 1.19 and 6.2.1

3.3. Article 6 paragraph 2.2 provided that such procedures are in accordance with Article 49 of Annex 1; and

- 3.4. Article 6.2.3 where the concerned transaction involves one or more Assets that constitute a substantial portion of the total assets of an Enterprise, as set out in the operational policies, and such procedures are in accordance with Article 49 of Annex 1.
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:
- 4.1. promote compliance with the financial reporting and external audit requirements established by the Law of Kosovo;
  - 4.2. 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**

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.
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.
3. The Managing Director shall be the chief executive officer of the Agency. The Managing Director and the two Deputy Managing Directors shall be appointed and removed by the Board. They shall exercise those powers of the Agency vested in them by the Board or the present Law.
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.

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**

1. The Board shall consist of eight (8) Directors.
2. The Assembly of Kosovo shall appoint five (5) Directors, including a representative of a non-Albanian Community and a representative of the labor unions, and shall designate one of these appointees as Chairman of the Board.
3. The International Civilian Representative shall appoint three internationals as Directors of the Board. The Board shall, with the consent of the ICR, appoint a citizen of Kosovo as Director of the Executive Secretariat of the Board; this person shall not be a member of the Board. The Board shall also appoint one of its members, other than the Chairman, to serve as Vice Chairman. The appointment, removal or change in the terms of reference of the Director of the Executive Secretariat shall require the affirmative vote of a majority of the Board Directors, including each of the international directors.
4. The Managing Director and the two Deputy Managing Directors shall not be members of the Board.
5. Directors shall serve on the Board in a personal capacity, and shall attend in person all Board meetings.
6. No person may become or remain a Director if such a person:
  - 6.1. has been convicted of a crime involving elements of dishonesty, after due process in accordance with international and Kosovo standards;
  - 6.2. has been excluded or suspended for serious professional misconduct, after due process in accordance with international standards, from the exercise of his profession;
  - 6.3. has or acquires a direct or indirect interest or claim in or against any Enterprise or in any person or entity seeking or asserting any such interest or claim;; or
  - 6.4. Otherwise has interests or engages in other conduct conflicting with his responsibilities under Article 15.

7. 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.

8. 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**

1. The Chairman, Vice-Chairman and the Director of the Executive Secretariat of the Board shall be appointed for a three (3) year mandate. The other members are appointed for a two (2) year mandate with the possibility of reappointment.

2. 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.

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

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

4.1. become ineligible to serve as Directors under Article 12.6;

4.2. use their office for their personal benefit or the benefit of any person or entity other than the Agency;

4.3. become unable to perform their duties for a period of at least three months;

4.4. fail to comply with a decision taken pursuant to Chapter 5; or

4.5. breach their duties.

### **Article 14 Procedures of the Board**

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



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.
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.
4. The Board shall have a quorum if at least five Directors, at least one of whom shall be an international Director, are present.
5. Decisions of the Board shall be made by consensus and, where no consensus is reached, by voting.
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.
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 paragraph 2.7 shall require the affirmative vote of the three international Directors.
8. Each Director shall have one vote. In case of an equal division of votes, the vote of the Chairman shall decide the matter.
9. Notwithstanding Articles 14 paragraph 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.
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.
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**

1. The Board shall have general responsibility for the activities of the Agency and shall take, in the fulfillment of this responsibility, any action required or permitted by the present Law.
2. The following decisions of the Board shall be taken by a qualified majority and may not be delegated to any person:
  - 2.1. approval of the charter, By-Laws, general organizational structure, financial and auditing policies, remuneration, staffing and employment policies of the Agency;
  - 2.2. approval of operational policies under Article 10;
  - 2.3. the appointment or dismissal of the Managing Director, a Deputy Managing Director or other official whose appointments the Board has reserved to itself;
  - 2.4. 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;
  - 2.5. the placing under direct Agency administration of an Enterprise pursuant to Article 6.paragraph 1.5;
  - 2.6. the approval or modification of the charter, by-Laws or similar documents of an Enterprise;
  - 2.7. 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.
  - 2.8. 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. paragraph 1.13;
  - 2.9. the granting of concessions or leases with respect to property, rights or activities of an Enterprise pursuant to Article 6 paragraph 1.14 ;
  - 2.10. the approval of plans for the reorganization or restructuring of an Enterprise;
  - 2.11. the approval of the creation of one or more Corporations pursuant to Article 8;

- 2.12. the sale and transfer of part or all of the shares of a Corporation created under paragraph 2.11 above to an outside party;
  - 2.13. the issuance of a Liquidation Decision;
  - 2.14. the decision to initiate reorganization or liquidation proceedings with respect to an Enterprise in accordance with the Regulation on Reorganization and Liquidation of Enterprises;
  - 2.15. the approval of the budget and the business plan of the Agency for the following calendar year;
  - 2.16. the approval of the performance of the Management on the basis of the annual audit report;
  - 2.17. 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
  - 2.18. the establishment of any internal control functions, procedures or units within the Agency the Board deems appropriate.
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**

1. The Managing Director, with the assistance of the two Deputy Managing Directors, shall be responsible for:
  - 1.1. performing all functions delegated to him by the Board;
  - 1.2. conducting the ordinary business of the Agency in accordance with any policies and instructions that might be issued by the Board;
  - 1.3. 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;
  - 1.4. preparing the meetings of the Board and ensuring the implementation of the decisions of the Board; and

- 1.5. With the concurrence of the Board, performing any functions pursuant to Article 2.paragrph 2.2.
2. The Managing Director shall report and be accountable to the Board and to no other party.
3. The Managing Director and the two Deputy Managing Directors shall be appointed by the Board. The Chairman shall be responsible for nominating candidates for these positions in accordance with procedures that shall be set out in rules adopted by the Board and issued by the Agency. The Managing Director and the Deputy Managing Directors 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 paragraph 5 below. The Managing Director or one of the Deputy Managing Directors designated by the Managing Director shall be present at each meeting of the Board for the purpose of providing advice and information to the Board and responding to questions put to them by Board members. When the Board is discussing any issue of specific personal interest to the Managing Director or Deputy Managing Director present, the Chairman may require such person to be absent during such discussions. The Managing Director and the two Managing Directors shall have no right to vote at Board meetings.
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.
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.
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.
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.
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.

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 Law on Business Organizations.

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**

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 the Law of Kosovo, and may not be reduced. Neither the Republic of Kosovo nor the Kosovo Consolidated Budget shall be liable for the liabilities of the Agency.

### **Article 18 Liability, Due Diligence and Responsibility of the Agency**

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.

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.

3. Assets of Enterprises administered by the Agency shall be held in trust separately from the 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.

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

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. For the avoidance of doubt, it is specifically provided that this paragraph shall not impair the operation of any provision of any contract between the Agency and any person engaged or employed by the Agency that establishes the liability and indemnification rights and obligations of the parties' vis-à-vis each other.

## **Article 19**

### **Financial Policies; Identification and Transfer of Residual Funds**

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.

2. Except as provided in paragraph 3.3 of this Article, any Proceeds collected by the Agency as a result of its activities under Articles 8 and 9 of the present Law and held in trust, 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.

3. For each liquidation initiated by the Agency or its predecessor under paragraph 2.2 of Article 6 and Article 9 of the present Law, or under the analogous provisions of any predecessor legislation to the present Law:

3.1. the Agency shall conduct or shall cause the concerned Liquidation Authority to conduct a systematic review of all Proceeds resulting from such action to determine the portion of such Proceeds that constitute Residual Funds.

3.2. for the exclusive purpose of making such determination, the Agency or Liquidation Authority shall, until such time as the actual validity and value of the concerned claim or interest has been established with finality in accordance with the present Law and, if the claim or interest is timely made the subject of an action before the Special Chamber, the Law on the Special Chamber:

3.2.1. assume that a claim that has been timely made by a purported Creditor with respect to the concerned Proceeds has a value equal to the maximum value stated in such claim, but only if such claim is supported by substantial and credible documentary evidence that has been timely submitted by the Creditor by the applicable deadline(s) established by the present Law and Annex 1; and

3.2.2. assume that an ownership interest that has been timely asserted by a purported Owner with respect to the concerned Proceeds is valid to the full extent of the interest asserted but only if such asserted interest:

3.2.2.1. was not issued pursuant to requirements imposed by Law or established by contract that are materially connected, directly or indirectly, with a transformation that the Agency is entitled to assume does not meet the requirements of Article 5.paragraph 4;and

3.2.2.2. is supported by substantial and credible documentary evidence that has been timely submitted by the purported Owner by the applicable deadline(s) established by the present Law and Annex 1 but only if such evidence clearly demonstrates that the issuing Enterprise or legal entity did in fact receive full payment for the ownership interest in accordance with the terms of any applicable contract or, in the absence of such a contract, in an amount that approximated the fair value of the interest.

3.3. The Agency shall determine and declare as “Residual Funds” up to seventy-five percent (75%) of any Proceeds that exceed the aggregate estimated maximum value of the concerned Creditor claims and the asserted Ownership interests, and immediately transfer such Residual Funds, to the Government of Kosovo, which shall then become “public money” and handled in accordance with the LPFMA that shall be used for the economic development of the country, with the approval of the Assembly of Kosovo.

3.4. In the event that the amount remaining in a trust fund from which Residual Funds have been transferred to the Government under subparagraph 3.3 above is insufficient to satisfy all claims that have been finally determined to be valid, PAK shall notify the Government and the Government shall immediately return the concerned funds to the trust fund from which they were transferred.

**Article 20**  
**Reports, Budget and Accounts**

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

1.1. financial statements of the accounts of the Agency;

1.2. separately from the accounts of the Agency, statements of the accounts and other assets held by the Agency in trust;

1.3. a record of Enterprises placed under the direct administration of the Agency pursuant to Article 6.1;

1.4. a record of transactions pursuant to Article 8 accomplished during the reported year and those transactions pending;

1.5. a record of Enterprises liquidated pursuant to Article 9; and

1.6. a record of Enterprises over which reorganization proceedings were initiated.

2. 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**  
**Funding; Dedicated Revenue**

1. The Agency shall be funded by the Kosovo Consolidated Budget in accordance with the provisions of the Law on Public Financial Management and Accountability (“LPFMA”) applicable to independent agencies.

2. All revenue of the Agency shall be the dedicated revenue of the Agency as provided for in Article 64 of the LPFMA. In addition, five percent (5%) of all funds received as a consequence of any past or future sale, transfer, privatization, liquidation or other disposition of any Enterprise or Asset, whether conducted by the Agency or its predecessor - shall be the administration fee of the Agency to cover its general administrative and operating costs; and such fee shall also be the dedicated revenue of the Agency. The Agency shall promptly transfer and deposit all such fees into the Kosovo Consolidated Fund in accordance with the applicable rules issued pursuant to the LPFMA; the Treasury and the Ministry of Finance shall ensure that all such funds are placed and held in the Agency’s dedicated revenue account.

3. All dedicated revenue of the Agency shall be subject to the appropriations process established by the LPFMA for independent agencies. Any such dedicated revenue that is



not appropriated to the Agency for expenditure during a calendar year under the concerned annual Appropriations Law shall be maintained in the dedicated revenue account of the Agency and may only be used to make future appropriations to the Agency.

4. The Agency may also receive financing from third parties, provided that the provision and receipt of such financing is done in accordance with the LPFMA and the other applicable elements of the Law of Kosovo.

## **Article 22 Tax Treatment**

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.

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**

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

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

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

2.1. the present Law;

2.2. or any other legislation applicable in Kosovo;

2.3. 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

2.4. any international agreement relating to Kosovo that confers functions and obligations on the Agency.

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**

##### **Disbandment of Review Committees; Disposition of Pending Claims**

1. All Review Committees established pursuant to the predecessor legislation to the present Law shall be disbanded and no further Review Committees shall be established. The Agency shall, as promptly as may be practicable, return to the applicant any complaint that has been submitted for review by a Review Committee and that has not become the subject of a final decision of a Review Committee prior to the effective date of the present Law. When returning a complaint to an applicant, the Agency shall include a notice, dated the day of dispatch, to the applicant that the complaint is being returned in accordance with requirements of this Article 24, and that – pursuant to Article 24.2 of the present Law - the applicant has sixty (60) days from the date of the notice to re-file the complaint with the Special Chamber, and that failure to do so will mean that the applicant shall thereafter be forever barred from bringing such complaint – or alleging any matter that is the subject of such complaint - in any judicial or administrative tribunal or proceeding.

2. An applicant to whom a complaint is returned under Article 24.1 shall have sixty (60) days to re-file the complaint with the Special Chamber. If the applicant fails to re-file the complaint with the Special Chamber within this sixty (60) day period, the applicant shall thereafter be forever barred from bringing such complaint – or alleging any matter that is the subject of such complaint - in any judicial or administrative tribunal or proceeding.

3. When returning a complaint to an applicant, the Agency shall do so by regular mail and shall only use the latest address for the applicant that has been provided to the Agency by the applicant. The sixty (60) day period specified in 24.2 shall commence to run at midnight on the day the returned complaint is dispatched to the applicant.

4. Within forty-five (45) days after Agency returns a complaint under this Article 24, the Agency shall also refund to the concerned applicant any fee paid by the applicant in connection with its original submission of the complaint to the Agency.

#### **Article 25**

##### **External Audits**

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

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**

When requested by the Agency, the Government, the Kosovo Police and other public authorities shall provide all assistance necessary to enforce the Agency's powers and orders issued under the present Law.

### **Article 27 Imposition of Fines**

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

1.1. 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 thousand Euro (€ 1000) per day for each day of failure to comply up to a maximum of one hundred thousand Euro (€100,000);

1.2. knowingly providing false information to a duly authorized representative of the Agency - up to one hundred thousand Euro (€100,000);

1.3. the destruction, falsification, fabrication or concealment of records relating to an Enterprise - up to one hundred thousand Euro (€100,000);

1.4. the knowing concealment or illegal transfer of assets of an Enterprise - up to fifty thousand Euro (€50,000) or an amount equal to three times the value of the concerned assets , whichever is greater; and

1.5. failures to surrender any assets of the Enterprise to the Agency upon a written order by the Board - up to fifty thousand Euro (€50, 000) or an amount equal to three times the value of the assets not surrendered, whichever is greater.

2. Any order imposing a 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. The order shall become effective immediately upon its issuance. The concerned Enterprise or person shall have thirty (30) days after being served with such order to challenge such order before the Special Chamber. The Special Chamber shall deal with any such challenge as a matter of urgency and may – until it resolves the matter – suspend the order and impose any interim relief measures the Special Chamber may deem necessary or appropriate during the period of litigation.

### **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**

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

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

1. The present Law shall prevail over any provisions of the Law of Kosovo that are inconsistent herewith. Without prejudice to the general application of the foregoing sentence, it is specifically provided that the Law on Administrative Procedures shall not be applicable:

1.1. to any action taken by the Agency under the authority of the present Law with respect to the privatization, liquidation, sale, transfer, restructuring, reorganization or other disposition of any Enterprise, Corporation or Asset, and

1.2. the handling and determination by the Agency or a Liquidation Authority of any claim or interest made or asserted by any person as a purported Creditor or Owner.

2. This Law repeals Law No. 03/L-067, “on the Privatization Agency of Kosovo”

3. The Agency takes over all assets and liabilities that its predecessor may have held, acquired or incurred under UNMIK Regulation 2002/12. The Board and management of the Agency shall fulfill all responsibilities of any predecessor Board or management appointed under UNMIK Regulation 2002/12.

4. Without prejudice to the generality of the foregoing paragraph or paragraph 2 of Article 3 of the present Law, it is specifically provided that the Agency is the Lawful and exclusive successor to any and all rights and obligations of the KTA specified in or arising in connection with a contract previously executed by the KTA and one or more third parties having as its principal subject matter the management, operation, sale, transfer, liquidation or other disposition of an Enterprise, a Corporation, an Asset, or any interest in any of these. Any references in such a contract to the KTA shall be conclusively interpreted to mean the Agency. Any reference in such a contract to the Special Representative of the Secretary General shall be conclusively interpreted to mean the Board of the Agency. If the contract contains one or more provisions specifying that the contract is to be governed by the Law of a foreign jurisdiction:

4.1. neither that provision nor the Law of the specified jurisdiction shall be used, interpreted or applied in any manner that avoids or diminishes the foregoing requirements of this paragraph , and

4.2. this paragraph shall not be interpreted as validating or invalidating, in whole or in part, in any manner, the choice of Law specified in such provision; such validity or invalidity shall be determined in accordance with the applicable rules of international private Law.

5. The Directors of the Board appointed by the ICR pursuant to Article 12, paragraph 3, shall remain in their positions after the conclusion of the ICR's mandate and shall be compensated from PAK dedicated revenue unless otherwise decided by the ICR prior to the completion of his mandate.

### **Article 32 Entry into Force**

This Law shall enter into force after its publication in the Official Gazette of the Republic of Kosovo

**Law No. 04/L-034  
31 August 2011**

**President of the Assembly of the Republic of Kosovo**

\_\_\_\_\_  
**Jakup KRASNIQI**



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

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**ANNEX of the Law No.04/L-034 ON THE PRIVATIZATION AGENCY OF KOSOVO**

**PART I**  
**GENERAL PROVISIONS**

**Article 1**  
**Scope and Applicability of the Present Annex**

This Annex establishes the grounds and procedures for the liquidation of Enterprises and Assets over which the Agency has authority pursuant to the PAK Law and the rights and obligations of all participants and affected parties.

**Article 2**  
**Definitions**

1. For the purpose of interpreting and applying the present Annex, the terms defined in Article 3 of the PAK Law and the following additional defined terms shall – whenever used in the present Annex - have the indicated meaning unless the context within which such term appears clearly intends another meaning:

1.1. **Advertisement Provisions**, means the provisions relating to advertisements in Article 49 of this Annex.

1.2. **Business Day**, means a week day on which Kosovo institutions are open for business in Pristina, excluding Saturdays, Sundays and public holidays in Kosovo;

1.3. **Court**, means the Special Chamber of Supreme Court of Kosovo.

- 1.4. **Claims Submission Deadline**, means the date as determined in Article 7.
- 1.5. **Liquidation**, means the legal process involving the disposal of the assets of an Enterprise, the distribution of the Proceeds in accordance with Article 40 of this Annex and the termination of the existence of the Enterprise pursuant to the provisions of this Annex;
- 1.6. **Liquidation Decision**, means a decision of PAK Board of directors to initiate liquidation.
- 1.7. **Liquidation Decision Date**, means the date on which PAK Board adopts a Liquidation Decision
- 1.8. **Liquidation Authority**, means the Agency or person(s) authorized by the Agency and appointed by the Board under the present Law to act as Liquidation Authority of an Enterprise in a liquidation proceeding.
- 1.9. **Manager or Management** means the key executive officer or officers of an Enterprise.
- 1.10. **Leasehold** means the rights to property as described in UNMIK Regulation 2003/13 of 9 May 2003 on the Transformation of the right to use Socially-owned Immovable Property, as amended.
- 1.11. **PAK Law**, means the Law on the Privatization Agency of Kosovo of 2011, to which this Annex is attached.
- 1.12. **Person**, means a natural person, legal person, an undertaking or a public authority.
- 1.13. **Professional Service Provider**, means an individual or entity engaged in providing professional services to the Agency.
- 1.14. **Proof of Claim**, means a document submitted by an alleged creditor of the Enterprise in the form prescribed by the Agency and setting forth the information and details about the concerned Claim prescribed by Article 23 of this Annex.
- 1.15. **Proof of Interest**, means a document submitted by an alleged owner of the Enterprise or an asset of the Enterprise in the form prescribed by the Agency and setting forth the information and details about the alleged ownership interest prescribed by Article 23 of this Annex.
- 1.16. **Registered Creditor**, means a Person/Creditor who has filed a Proof of Claim that has been accepted, in whole or in part, by the Liquidation Authority; provided that such Person shall lose its status as a “Registered Creditor” if and when the Proof of Claim to be rejected in its entirety. A Person whose Proof of Claim has been rejected in its entirety by the Liquidation Authority shall only



become a “Registered Creditor” if and when the Court orders the Liquidation Authority to accept such Proof of Claim in whole or in part.

1.17. **Registered Interest Holder**, means a Person who has filed a Proof of Interest that has been accepted, in whole or in part, by the Liquidation Authority; provided that such Person shall lose its status as a “Registered Interest Holder” if and when the Court subsequently orders such Proof of Interest to be rejected in its entirety. A Person whose Proof of Interest has been rejected in its entirety by the Liquidation Authority shall only become a “Registered Interest Holder” if and when the Court orders the Liquidation Authority to accept such Proof of Interest in whole or in part

1.18. **Secured Creditor** means Creditor with security rights or rights to satisfy their claims from specified assets or rights that are registered in registries or other public books are secured creditors.

1.19. **Secured Claim** means any Claim that has been properly and lawfully secured by an encumbrance on or against any Asset of the Enterprise, whether in the form of a lien, pledge, mortgage, hypothecation or other lawful security interest.

### **Article 3**

#### **Scope**

The provisions of this Annex shall govern the process of Enterprise liquidation, whether commenced under the PAK Law or any predecessor legislation thereto.

## **PART II INITIAL PROCEDURES**

### **Article 4**

#### **Grounds for initiation of a liquidation case and liquidation decision**

A liquidation case under the PAK Law is initiated by the PAK Board of Directors with a decision that is issued pursuant to PAK’s authority under Article 9.1 of the PAK Law and such decision complies with the requirement of Article 15.2.13 of the PAK Law.

### **Article 5**

#### **Liquidation Commencement**

The management of PAK shall prepare a proposal to the Board to commence the liquidation of an Enterprise. The form and content of the proposal shall be defined in the Operational Policies issued by the Board pursuant to Article 10 of PAK Law.

**Article 6**  
**Consequences of Board Liquidation Decision.**

Upon a Liquidation Decision the Board shall appoint a Liquidation Authority, pursuant to the procedure stated in Article 12 of this Annex.

**Article 7**  
**Notice of Liquidation**

1. Within ten (10) Business Days from the Liquidation Decision Date the Agency shall publish, or shall cause the Liquidation Authority to publish, a notice containing the information specified in paragraph 2 of this article (the Liquidation Notice). The publication of the Liquidation Notice shall be done in accordance with the Advertisement Provisions of this Annex.

2. The Liquidation Notice shall be titled, in capitalized bold print, “notice to all creditors and owners of name of enterprise”, and shall include the following information:

2.1. the date and a general description of the Liquidation Decision;

2.2. a reference to the present Law and this Annex and a general description of the rights of Persons having Claims or Interests;

2.3. a statement that the Liquidation Authority will administer the liquidation under the present law and this Annex;

2.4. details on how to obtain the forms for Proofs of Claim and Proofs of Interest and the method for filing Proofs of Claim and Proofs of Interest, together with a clear indication in bold type of the absolute deadline for the filing of such Proofs of Claim and Interest (the “Claims Submission Deadline ”);

2.5. a statement that only Registered Creditors and Registered Interest Holders, as determined in accordance with the present law and this Annex, shall be eligible to participate in distributions from the Proceeds resulting from the liquidation of the Enterprise, and only to the extent provided for by the present law and this Annex.

2.6. a notice that:

2.6.1. specifies the address and other contact details to be used for the

submission of Proofs of Claim and Proofs of Interest and other communications with the Liquidation Authority;

2.6.2. includes a clear statement that all Persons alleging to hold Claims and/or Interests in or against the Enterprise or any Asset of the Enterprise are required to file a Proof of Claim and/or Proof of Interest using the designated form together with all required supporting documentation by the Claims Submission Deadline, which shall be 16:00 CET on a business day occurring forty five (45) days after the date on which the Liquidation Notice has been fully published in accordance with all applicable requirements of the Advertisement Provisions;

2.6.3. include a clear statement in bold type that all Persons alleging to hold Claims or Interests in or against the Enterprise or any Asset of the Enterprise are required to comply with the requirements specified in the notice, without regard as to whether they have previously informed the Court, the Agency or the Agency's predecessor (the Kosovo Trust Agency) with respect thereto.;

2.6.4. include a clear statement in bold type that all Claims and Interests not properly filed by the Claims Submission Deadline shall be rejected and forever barred and unenforceable; and

2.6.5. Include a clear indication as to where and how a Person may obtain the standard forms and instructions for filing a Proof of Claim and a Proof of Interest.

3. The Liquidation Authority may include other information in the Liquidation Notice as it considers appropriate.

4. The Liquidation Authority shall within ten (10) business days after the date the Liquidation Notice is first published in a publication specified by the Advertisement Provisions, mail a copy of the Liquidation Notice to every Person who has previously and in writing informed the Agency or the Court of a Claim against, or an alleged Interest in, the Enterprise or any Asset of the Enterprise. The Agency shall include a letter informing such Person that they must file a Proof of Claim or Proof of Interest in accordance with the Liquidation Notice. The requirement of this paragraph 4 shall not be applicable if the address of the concerned Person or such Person's legal representative is not readily ascertainable from the Agency's records or the records of the Court that substantially relate to the concerned Enterprise.

5. Within fifteen (15) days after the initial publication of the Liquidation Notice, the Liquidation Authority shall again publish such notice in accordance with all requirements of the Advertisement Provisions. For the avoidance of doubt, this publication of the Liquidation Notice shall not affect the date and time of the Claims Submission Deadline, which shall remain as specified in the notice as originally published.

**Article 8**  
**Cancellation of all labor contracts**

As of the midnight on the Liquidation Decision Date all labor contracts then in force, if any, between the Enterprise and its employees are cancelled.

**Article 9**  
**Cessation of rights of Enterprise management or other business management authority**

As of midnight on the Liquidation Decision Date, the rights of Enterprise management or other business management authority, representative, or attorney, as well as the management body and supervisory bodies of the Enterprise shall cease and these rights shall be transferred to the Liquidation Authority.

**Article 10**  
**Suspension of actions**

1. Any judicial, administrative or arbitration action, proceeding or act involving or against an Enterprise (or any of its assets) that is the subject of a Liquidation Decision shall be suspended upon the submission by the Liquidation Authority of a notice of the Liquidation Decision to the concerned court, public authority or arbitral tribunal. Such notice shall refer to this Article 10 and be accompanied by a copy of the Liquidation Decision and a copy of the published Liquidation Notice.

2. Any such suspended action, proceeding or act shall only continue or be effective with the permission of the Liquidation Authority or the Court. Such suspended actions, proceedings and acts shall include, but not be limited to, any action, proceeding or act:

2.1. concerning the collection, recovery or enforcement of a Claim for debts, taxes, penalties or obligations of any kind;

2.2. concerning the creation, recognition, modification, increase, perfection, registration or enforcement of any Claim or Interest against or to the Enterprise or any Asset of the Enterprise;

2.3. any act to realize, seize, or sell any pledged or mortgaged or otherwise encumbered asset or to exercise ownership or control over any Asset of the Enterprise; and

2.4. regulatory proceedings or actions with regard to the prevention of or remedy for any violation of the regulatory provisions, rules or decision, to the extent that these involve monetary Claims against the Enterprise.

3. The suspension of actions, proceedings and acts shall not apply to any of the following:

- 3.1. court action by or on behalf of the Enterprise directed against third parties;
- 3.2. criminal proceedings against the Enterprise or one or more members of its Management;
- 3.3. transfers or dispositions of Assets of the Enterprise in the ordinary course of business of the Enterprise, including transactions provided for under the present Law and in this Article 10 in particular;
- 3.4. regulatory proceedings or actions with regard to the prevention of or remedy for any violation of regulatory provisions, rules or decision, to the extent that these do not involve monetary Claims against the Enterprise; and
- 3.5. inspections and requests for inspection made by holders of registered mortgages, perfected pledges or similar encumbrances relating to Assets of the Enterprise.

### **Article 11** **Service Obligations of Utility Service Providers**

1. A Utility Service Provider may not alter, refuse or discontinue its services to an Enterprise because the Board has adopted a Liquidation Decision involving or affecting the Enterprise.
2. If a Liquidation Decision has been adopted, a Utility Service Provider may not alter, refuse or discontinue its services to the Enterprise because such Enterprise has failed to pay for services provided prior to the date of such Liquidation Decision. The Enterprise shall be required to pay for utility services provided after the date of the Liquidation Decision.

## **PART III** **LIQUIDATION AUTHORITY**

### **Article 12** **Establishment of Liquidation Authority; Appointment of Members**

1. The Liquidation Authority is deemed established as of the date of Liquidation

Decision.

2. The Board appoints the person(s) who shall serve in the Liquidation Authority following the Liquidation Decision.

**Article 13**  
**Composition of the Liquidation Authority**

1. The PAK Board shall appoint one or more Professional Service Providers to serve as the Liquidation Authority for every liquidation except where the object of the liquidation is an Enterprise having no assets or against which no claims have been timely filed, in which case the members of the Liquidation Authority may be appointed from the staff of PAK.

2. If a Liquidation Authority is not comprised of Professional Service Providers, the PAK Board shall ensure that at least one member of that Liquidation Authority is a representative of a minority community.

3. The PAK Board shall designate one member of a Liquidation Authority to serve as its chairperson; such designation shall also be made in accordance with the Operational Policies.

**Article 14**  
**Appointment of Professional Service Providers**

The Board may appoint Professional Service Providers should it deem their services to be needed by the Liquidation Authority. Such appointments shall be in accordance with the Operational Policies.

**Article 15**  
**Qualifications of a professional service provider serving on, or providing services to, a Liquidation Authority**

1. Any Professional Service Provider shall be:

1.1. a licensed accountant, auditor, lawyer, professional with excellent knowledge of the European Convention on Human Rights or other person possessing training or experience appropriate to the needs of the case; and

1.2. must possess at minimum an advanced university degree and at least three years of professional experience; or

2. A person may not be appointed as a member of a Liquidation Authority or engaged as a professional service provider if such person:

2.1. was convicted for an intentional crime other than a minor traffic offense, or was, as a sanction for misconduct, deprived of the right to hold senior management or governing body posts or positions;

2.2. appears as a suspect, accused or defendant in criminal proceedings in progress at the time of proposed appointment;

2.3. has a claim against or obligation to the Enterprise of over 500 Euros;

2.4. has been recognized as lacking capacity or of limited capacity;

2.5. within the last year has been a member of the governing body or senior management, accountant, independent auditor, or attorney for the Enterprise or is an immediate family member or close relative of a member of governing body or senior management, accountant, independent auditor, or attorney for the Enterprise;

2.6. an individual or legal person that is subject to an insolvency proceeding;

2.7. was removed from the position of Liquidation Authority or member of Liquidation Committee during the last 5 years at the initiative of the Agency or Court for serious misconduct;

2.8. has been determined by a court or other independent body or tribunal to have engaged in professional misconduct or negligence;

2.9. possess any other attribute that presents a conflict of interest or impedes the ability of the Professional Service Provider to perform his duties in accordance with this Law.

## **Article 16**

### **Professional Service Providers compensation**

1. The Professional Service Provider's fees and expenses shall be paid from the funds that have been appropriated to the Agency or from funds provided by a donor. The Agency or donor paying such fees shall be entitled to claim reimbursement for such fees and expenses in the priority specified in Article 40 of this Annex;

## **Article 17**

### **Liability, Accounting and Reporting**

1. When carrying out its duties, a Liquidation Authority and its members and any Professional Service Providers shall:

1.1. perform such duties in an unbiased and professional manner; and

1.2. otherwise exercise reasonable and professional fiduciary care and diligence in the performance of such responsibilities.

2. If a Person other than an Agency representative is appointed to the Liquidation Authority, such Person shall provide a bond to the Agency in an amount sufficient to serve as a guarantee for such Person's proper performance of the Liquidation Authority's duties under the present Law. The amount of such bond shall be determined in accordance with the Operational Policies of the Agency.

3. The members of the Liquidation Authority and Professional Service Providers shall not be liable for:

3.1. damages incurred by the Enterprise or any other Person as a result of decisions or actions taken or not taken within the scope of their duties, unless such damages were directly caused by intentional or grossly negligent failure of the Liquidation Authority members or Professional Service Provider to perform their responsibilities in accordance with requirements specified in paragraph 1 above; or

3.2. damages arising from the failure of the Enterprise to perform obligations established by laws or sub normative acts with regard to labor, health, safety or environmental matters.

4. The Liquidation Authority may, pursuant to this law, seize and/or dispose of any asset if the Liquidation Authority - through the exercise of reasonable care and diligence - establishes that there are reasonable legal grounds to believe that the asset is an asset of the Enterprise. If such an asset is sold or otherwise disposed of, and it is later determined by the Court that a person other than the Enterprise held - at the time of such sale or disposition - a currently valid and enforceable right in such asset under the law of Kosovo, the Liquidation Authority shall not be liable for any loss or damage to any person resulting from such sale; however, any person claiming to have a lawful interest in such asset shall have the rights specified in paragraph 5 below.

5. Any person claiming to have a lawful interest in any property that has been sold or otherwise disposed of by the Liquidation Authority may apply to the Court for adequate monetary compensation within the thirty (30) day period following such sale or disposition. If the Court finds in favor of such person, the Court shall order the payment to such person of adequate monetary compensation equal to the reasonable value of his interest in the property that was negatively affected by such sale or disposition. Such



compensation shall be paid from the proceeds received from the sale or other disposition of such property. If the Court determines that such proceeds are not sufficient to provide the concerned person with the required adequate monetary compensation, the difference shall be admitted as an unsecured creditor in the liquidation.

6. The Liquidation Authority shall keep orderly records on the performance of its functions. The Liquidation Authority shall promptly enter in such records a detailed description of each of its actions in relation to the exercise of his responsibilities and powers under Article 18 and the administration of the Enterprise.

7. Annually the Liquidation Authority shall publish a general public report on the conduct of the liquidation that shall, at minimum, contain the following information:

7.1. list of property sold, transferred or otherwise disposed of;

7.2. list of cash receipts and payments;

7.3. an indication, if available of the likely outcome of the liquidation

7.4. an explanation of any matters that are delaying the closure of the liquidation case;

8. Without prejudice to the foregoing provisions, the Liquidation Authority shall provide such additional information and updates in relation to activities from time to time as reasonably requested by a creditors committee if established or the Agency.

9. Reports prepared by the Liquidation Authority shall be made available for inspection by any of the confirmed creditors upon request and will be published on the Agency's website with a Press notification to draw public attention to the report

## **Article 18**

### **General Responsibilities and Powers of the Liquidation Authority**

1. Subject to any other specifically applicable provisions of the present law, the Liquidation Authority shall have the responsibility and authority to take any action as may be reasonably necessary or appropriate for conducting the liquidation, including, but without limitation to, the following:

1.1. establishing and completing an inventory of all assets and liabilities of the Enterprise and its subsidiaries;

1.2. keeping and preserving the books and business correspondence of the Enterprise;

1.3. taking possession of, collecting, retrieving and taking all steps necessary for the realization of the Assets of the Enterprise and, for that purpose, entering into or commencing such proceedings as the Liquidation Authority deems expedient;

1.4. with the prior approval of the Board, selling, or otherwise disposing of any Asset(s) of the Enterprise by competitive public tender (which shall be conducted by the Agency), or in exceptional cases by direct negotiations, including selling such Assets free and clear of all liens and interests;

1.5. executing in the name and on behalf of the Enterprise any contract, deed, receipt or other document;

1.6. drawing, accepting, making out and endorsing any bill of exchange or promissory note in the name and on behalf of the Enterprise;

1.7. operating, opening, closing and consolidating bank accounts of the Enterprise and making or causing the making of any payments incidental or necessary for the performance of the functions of the Liquidation Authority;

1.8. close all existing Enterprise bank accounts, to open a special liquidation account in an Agency approved bank located and registered within the Republic, to deposit all funds received in the name of the Enterprise and any of the Enterprise' s funds from existing accounts into this account prior to their closure;

1.9. convert non-cash property of the Enterprise into cash pursuant to the provisions provided in the Law;

1.10. engaging or otherwise obtaining the services of such Professional Service Providers as may be needed by the Liquidation Authority to assist in the performance of the Liquidation Authority' s duties and functions under this law;

1.11. bringing, defending and entering into any arrangement or compromise to avoid or end any other action or legal proceedings in the name and on behalf of the Enterprise if this is necessary or advisable to protect or enhance the value of the Enterprise or its Assets;

1.12. appointing any agent to do any necessary business of the Enterprise, which the Liquidation Authority is unable to do itself or which can more expediently be done by an agent;

1.13. taking out, terminating or maintaining insurance in respect of the business and Assets of the Enterprise;

- 1.14. asserting and pursuing any legal rights the Enterprise may have against any Person who is indebted to the Enterprise, and exercising any rights of the Enterprise as a creditor of any such Person;
  - 1.15. establishing or changing the registered office or registered agent of the Enterprise;
  - 1.16. examining Proofs of Claim and Proofs of Interest submitted under the present Law and, where a reasonable basis to challenge such a Claim in whole or in part is found to exist, rejecting and/or filing objections thereto, in whole or in part;
  - 1.17. selling perishable goods requiring significant maintenance costs as the Liquidation Authority sees fit.
  - 1.18. taking all such other acts as may be incidental to the exercise of the foregoing activities or as may otherwise be ordered by the Court.
2. The Liquidation Authority may surrender to the security holder any Asset that is determined to be subject to a valid security interest, or – if it is reasonably believed that the value of such Asset materially exceeds the amount of the concerned debt – sell such asset by competitive public tender (which shall be conducted by the Agency) and use the resulting proceeds towards the settlement of other creditor claims;
  3. The Liquidation Authority may, with the permission of the Court, disclaim or otherwise dispose of any of the following Assets of the Enterprise:
    - 3.1. any onerous or unprofitable Asset that, in the reasonable opinion of the Liquidation Authority, is not capable of a profitable realization;
    - 3.2. any Asset, in the reasonable opinion of the Liquidation Authority, over which effective control cannot be exercised by the Enterprise, the Liquidation Authority or the Court.
  4. The Court shall make a decision on a request for permission submitted by the Liquidation Authority under paragraph 3 above no later than forty five (45) days after the date on which the request is submitted to the Court and a copy thereof has been provided to the Creditors Committee (if one has been established by the Liquidation Authority) and such other parties as the Court may direct. Any party opposing such request shall file its brief in opposition within fifteen (15) days after being provided with the request. The Liquidation Authority shall have fifteen (15) days to respond to any such brief in opposition after being provided with such brief.

**Article 19**  
**Specific Actions of the Liquidation Authority**

1. Immediately after the Liquidation Decision Date, the Liquidation Authority shall take the following actions:

1.1. conduct a cursory review of the documentation available and calculate the total value of all obligations of the Enterprise based on a best estimate following such review;

1.2. engage the services of ex-employees as specialists for the purpose of confirming the reliability of the Enterprise information; and

2. As soon as reasonably practicable after the Liquidation Decision Date, the Liquidation Authority shall take all acts appropriate in the prevailing circumstances to locate, take possession of, seal, safeguard, protect, and apply reasonable measures required for the maintenance of the Assets of the Enterprise.

3. The Liquidation Authority shall issue a notice to any third party that has custody or possession of an Asset of the Enterprise demanding such third party to terminate such custody or possession and to turn such Asset over to the Liquidation Authority. If necessary, the Liquidation Authority on behalf of the Agency shall apply to the Court for an order to enforce such a demand. If the concerned asset is located outside of Kosovo, the Liquidation Authority may apply to any court having jurisdiction over the asset and the authority to enforce such a demand, or the Liquidation Authority may apply to the Court to issue a request for international legal cooperation under paragraph 2 of Article 19 of the Court's general rules of procedure set forth in the Annex to the Special Chamber Law. If the enforcement of such a demand proves to be unsafe, impractical or not expedient, the Liquidation Authority may submit a written request to the Court, under paragraph 4 of Article 19, for authority to disclaim or otherwise dispose of the Enterprise's interest in the Asset.

4. Where Enterprise property is located in other countries and cannot be realized, the Liquidation Authority shall ask the Court for permission to disclaim this property. The Agency shall establish a register of the disclaimed property and shall handover this property to the State of Kosovo to be held in trust. When and if Enterprise property in other countries is realized by the government of Kosovo, the proceeds from sale of such property shall be transferred to the Agency to be held in trust for the general benefit of registered creditors and registered interest holders pursuant to the provisions set in this law. For this purpose the Liquidation Authority shall keep a register of disclaimed property of the Enterprise and an extract from this register shall be attached to the final report of the Liquidation Authority in the case closure.

5. The Liquidation Authority shall, using the best information available to the Liquidation Authority, prepare an inventory of all of the Enterprise's Assets (tangible and intangible) and known liabilities (including contingent liabilities), of any kind or description. The

inventory shall be completed as soon as is practical and shall thereafter be immediately updated when and as new information requires such action, including information about property collected by the Liquidation Authority on behalf of the Enterprise or acquired by the Enterprise in the ordinary course of its business. The inventory of all assets and liabilities shall not include “pension assets” or “vested rights” as defined in UNMIK Regulation No. 2001/35 “On Pensions in Kosovo.”

6. Within ten (10) business days after the date of first publication of the Liquidation Notice, the Liquidation Authority shall provide a formal notice pursuant to Articles 7 and 10 of this Annex to the concerned courts, the Kosovo Business Registry, the Kosovo Pledge Registry, the Kosovo Mortgage Registry, the Kosovo Cadastral Agency, the bank(s) of the Enterprise and the Tax Administration, and those bodies shall be responsible for ensuring that a copy of such notice is properly filed in any records maintained by them with respect to the Enterprise or its Assets. Such notice shall include a reference to this paragraph 6 and the obligation of the concerned institution imposed hereby.

7. The Court shall make a decision on any request submitted by the Liquidation Authority no earlier than thirty (30) days, and no later than forty five (45) days after the date on which the request is submitted to the Court and a copy thereof has been provided to the Creditors Committee (if such exists) and such other parties as the Court may direct. Any party opposing such request shall file its brief in opposition within fifteen (15) days after being provided with the request. The Liquidation Authority shall have fifteen (15) days to respond to any such brief in opposition after being provided with such brief.

## **Article 20**

### **Acceptance and Rejection of Contracts**

1. The Liquidation Authority may accept or reject a contract that was entered into by the Enterprise prior to the Liquidation Decision Date and that has not yet been fully performed by the other party, provided that any rejection by the Liquidation Authority of such a contract shall give rise to an unsecured Claim for damages by the other party, and such Claim shall be classified under, and have the priority specified by, subparagraph 1.7 of paragraph 1 of Article 40 of this Annex.

2. If the Enterprise is in default under or has breached a substantive term of such a contract, the Liquidation Authority may accept the contract only if:

2.1. any default or breach that is capable of being cured is cured; provided, however, that a default or breach need not be cured if it is based on the insolvent status of the Enterprise;

- 2.2. the other party can be and is adequately compensated for any damages caused by such breach or default, and
  - 2.3. the other party is given adequate assurances with respect to the future performance of the contract by the Enterprise.
3. If the Liquidation Authority accepts a contract, and the Liquidation Authority later rejects such contract, the other party shall have a Claim for damages that will be classified as an Administrative Expense Claim and shall have the priority specified in item 1.3.5 of subparagraph 1.3 of paragraph 1 of Article 40.
  4. The amount of any damages that may be made the subject of a Claim under this Article shall be determined in accordance with the provisions of the contract and the law applicable to the determination of such damages.
  5. Notwithstanding any contractual provision prohibiting an assignment, the Liquidation Authority may accept and then assign any contract to which the Enterprise is a party. If the Enterprise has breached or is in default under the contract, an assignment may only be made after the Liquidation Authority fulfills the conditions specified in subparagraphs 2.1 and 2.2 of paragraph 2 above and the proposed assignee gives the other party adequate assurances with respect to its future performance of the contract. Upon assignment, the Enterprise shall be relieved of all liability for subsequent breaches by the assignee.

## **Article 21**

### **Voidance of Transactions**

1. Upon the request of the Liquidation Authority or any creditor or interest holder, the Court shall issue an order voiding any transfer, transaction or contract involving or affecting the assets or capital of the Enterprise made during the period from 22 March 1989 to the date of the Liquidation Decision (and rejecting and dismissing any Proof of Claim or Proof of Interest based thereon), if, in light of the available evidence and the circumstances prevailing at the time, the Court reasonably determines that such transfer, transaction or contract, or any payment or supply in relation thereto:
  - 1.1. was made for less than fair value;
  - 1.2. reduced the total assets of the Enterprise;
  - 1.3. had the purpose or effect of harming the interests of creditors;

1.4. had the purpose or effect of defeating, delaying or hindering the ability of creditors to collect claims by transferring assets to any third party where the third party knew or should have known of such purpose or effect;

1.5. was a result of a transaction with a creditor, through which the creditor obtained more than a proportional share of the assets of the Enterprise and the transaction occurred at a time when the creditor reasonably should have known that the Enterprise was or would be unable to fulfill its obligations;

1.6. was in breach of any United Nations Security Council resolution or European Union Council Regulation imposing international sanctions, notwithstanding that it may have been subsequently recognized by a court decision or arbitral award;  
or

1.7. is voidable or determined to be unenforceable on any of the bases specified in Article 36 or any other legal basis.

2. A transfer for the purpose of this Article shall include any mode (direct or indirect, absolute or conditional, voluntary or involuntary) of conveyance or transfer, sale, exchange, gift, disbursement, disposal, grant of a pledge, mortgage or other rights.

3. The Court shall make a decision on any request submitted under paragraph 1 no earlier than thirty (30) days, and no later than forty five (15) days after the date on which the request is submitted to the Court and a copy thereof has been provided to the Creditors Committee (if such exists) and such other parties as the Court may direct. Any party opposing such request shall file its brief in opposition within fifteen (15) days after being provided with the request. The party submitting the request shall have fifteen (15) days to respond to any such brief in opposition.

## **Article 22**

### **Duty to Cooperate with Liquidation Authority**

The Enterprise, the Management, the employees of the Enterprise, including former employees, and all other relevant Persons, including all public authorities, shall cooperate with the Liquidation Authority and shall provide access to all documents and information concerning the activities and operations of the Enterprise and its Assets, including, but without limitation to, all information about Claims, disbursements, transfers or alienations of property and Assets of the Enterprise and of all payments, transfers or business dealings with the Enterprise.

## **PART IV**

### **CREDITORS, CREDITORS MEETING AND PROOFS OF CLAIMS**

**Article 23**  
**Proofs of Claim or Interest**

1. The form for a Proof of Claim shall require the following information:
  - 1.1. the name, address and other contact details of the alleged creditor;
  - 1.2. the total monetary amount of the alleged Claim (with any alleged accrued interest identified separately) and a description of the nature of the Claim identifying how and when the alleged Claim arose and specifying whether the Claim is directed against a particular Asset of the Enterprise and, if applicable, whether the Claim requires the Enterprise to perform a particular obligation other than the payment of money to the claimant;.
  - 1.3. a detailed description of any prior legal actions taken by the alleged creditor to assert or defend the Claim;
  - 1.4. details of currency conversion rates used, if any;
  - 1.5. copies of any written contract and other documents purporting to substantiate the Claim;
  - 1.6. particulars of any collateral held, the value of such collateral, the date it was given and details of any registration or other action required to render the creditor's interest in the collateral valid against third parties; and
  - 1.7. any other relevant information in relation to the Claim that the alleged creditor desires to submit.
  
2. The form for a Proof of Interest shall require the following information:
  - 2.1. the name, address and other contact details of the alleged interest holder;
  - 2.2. the nature of the alleged Interest and a description of how and when the alleged Interest arose.
  - 2.3. a detailed description of any prior legal actions taken by the alleged interest holder to assert or defend the alleged Interest.
  - 2.4. copies of any written contract and other documents purporting to substantiate the alleged Interest;
  - 2.5. any other relevant information in relation to the alleged interest that the alleged interest holder desires to submit.



3. The Liquidation Authority shall have the right to require a person who submitted a Proof of Claim or a Proof of Interest to provide any other information or documents that the Liquidation Authority reasonably deems necessary or appropriate to determining the validity of the concerned Claim or Interest.

4. Claims that have not matured or become due shall be deemed matured or due as of the Liquidation Decision Date for the purposes of submitting a Proof of Claim.

5. The Agency or a third party who has paid Professional Service Provider's remuneration or expenses shall only be required to submit a Proof of Claim for such payments when directly requested by the Court. The Government of the Republic of Kosovo shall not be required to submit a Proof of Interest with respect to the Republic of Kosovo's ownership interest in the Enterprise and/or its Assets established by paragraph 2 of Article 159 of the Constitution of the Republic of Kosovo.

6. A register of all Proofs of Claim and Proofs of Interest shall be kept by the Liquidation Authority and shall be made available for inspection, any Registered Creditor, or any other party who potentially has a direct financial interest in the Enterprise. Appropriate arrangements shall be made for any such Person to review or photocopy the register during normal business hours.

## **Article 24**

### **Protection of Creditors Interests**

1. At any time following the Liquidation Decision, and upon providing adequate and appropriate evidence, a Registered Creditor of the Enterprise may apply to the Court for an order that the Enterprise's business and Assets are being or have been managed by the Liquidation Authority in a manner that is unfairly prejudicial to the interests of the creditors generally or some part of the creditors and at least to the applicant Registered Creditor; or that any actual or proposed act or omission of the Liquidation Authority is or would be unfairly prejudicial.

2. The Court shall make a decision on any such application no earlier than thirty (30) days, and no later forty five (45) days after the date on which the application is submitted to the Court and a copy thereof has been provided to the Liquidation Authority, the Creditors Committee (should such exist) and such other parties as the Court may direct. The Liquidation Authority may file a brief in opposition to the application within fifteen (15) days after being provided with the application. The applicant shall have fifteen (15) days to respond to any such brief in opposition.

**Article 25**  
**Creditor's Meeting**

1. The Liquidation Authority may, but is not required to, hold a Creditor's Meeting.
2. The Liquidation Authority shall, at least fifteen (15) days in advance of any Creditors Meeting that the Liquidation Authority decides to hold, provide a notice of such meeting to all creditors who filed a Proof of Claim on or before the Claims Submission Deadline; provided, however, that - with the exception of the Employee Representatives - the Liquidation Authority shall not be required to provide this notice to an employee creditor who has only filed a Proof of Claim classifiable under subparagraph 1.3 of paragraph 1 of Article 40.
3. The meeting shall be held on a Business Day commencing during usual business hours at a location within Kosovo that is designated by the Liquidation Authority. The notice shall specify the date, place and time of the meeting.
4. The Creditors Meeting shall be chaired and presided over by the Liquidation Authority which may require the attendance of PAK representatives or Professional Service Providers.
5. In addition to the Persons specified in paragraph 4, only Persons entitled to notice under paragraph 2 may attend the meeting. Any such Person who is unable to attend may authorize a representative to attend on their behalf. Such Persons shall have the right to raise and discuss any issue relating to the administration of the Enterprise liquidation.
6. No Person other than those specified in paragraphs 4 and 5 may be present at the meeting.
7. The Liquidation Authority may from time to time hold such further meetings of Registered Creditors as it may deem appropriate to ascertain the views of the Registered Creditors. The meeting shall be noticed, held and conducted in accordance with the same rules governing the Creditors Meeting as specified in paragraphs 2-6 above.

**Article 26**  
**Creditors Committee**

1. The Liquidation Authority may, but is not required to, establish a Creditors Committee. The Creditors Committee shall be comprised of a group of Persons that may reasonably be regarded as representative of all creditors.
2. Any Creditors Committee so established shall include two (2) of the Employee Representatives and at least three (3) but not more than seven (7) of the other non-employee creditors who have timely filed Proofs of Claim with the Liquidation Authority

on or before the Claims Submission Deadline. If one or more public authorities in Kosovo have filed a Proof of Claim, the Minister of Trade and Industry, Minister of Finance or his/her duly designated representative shall be included as one of the non-employee creditors on the Creditors Committee.

3. Creditors with incomplete or disputed claims by Liquidation Authority cannot serve as members of the creditors committee. Such creditors shall become eligible for members of the creditors committee upon acceptance of their claim or Court decision in their favor in case of dispute.

4. Members of the Creditors Committee shall have the following rights and obligations:

4.1. the right to receive a copy of the reports of the Liquidation Authority, such reports shall be provided by the Liquidation Authority annually;

4.2. the right to request the Liquidation Authority to answer questions concerning the Enterprise;

4.3. the right to request the Liquidation Authority to initiate an action to void a transaction under Article 21 or to reject a Claim under Article 36 of this Annex;

4.4. the obligation to share with all Registered Creditors access to information obtained about the Enterprise;

4.5. if requested by the Liquidation Authority, to act as a consultation group for the Enterprise and the Liquidation Authority and to assist the Enterprise and the Liquidation Authority in their decision-making processes; and

4.6. a meeting of creditors committee may be called at the initiative of creditors, Liquidation Authority, or the chairperson of the creditors committee. Creditors who initiate the meeting shall cover all expenditures made for organizing the meeting.

4.7. creditors committee shall decide among themselves who will be chairperson with simple majority vote.

4.8. the expenses related to meetings called at the initiative of the Liquidation Authority shall be covered at the expense of the Enterprise property.

4.9. the Creditors Committee shall have such other rights or obligations provided for by the present Law or by Court order.

5. The Liquidation Authority may remove of a member of the Creditors Committee where the Liquidation Authority has reasonable grounds to believe that such removal is necessary or desirable; such grounds may include, – but are not limited to – the existence

of facts tending to demonstrate that such member is using its status as a member of the Creditors Committee to undermine the liquidation process or to impair or damage the Enterprise. Such removal may also be sought by the majority of the other members of the Creditors Committee.

## **PART V PROPERTY OF THE ENTERPRISE IN LIQUIDATION**

### **Article 27 Property of the Enterprise in liquidation**

1. The Liquidation Decision creates a liquidation estate consisting of all Assets in the ownership or possession of the Enterprise at the time when the decision was adopted, including but not limited to:

- 1.1. all movable, immovable, tangible or intangible property, wherever located, whether in the possession or custody of the Enterprise or a third party;
- 1.2. claims and legal actions against third persons;
- 1.3. proceeds from actions recovering fraudulent or preferential transfers;
- 1.4. inheritance, insurance and other funds received within 6 months of the Liquidation Date;
- 1.5. rent, income and proceeds generated from the use of the property of the Enterprise or operation of the Enterprise's business;
- 1.6. contractual rights, licenses, or other rights created or granted by law; and
- 1.7. any other Assets identified by the Liquidation Authority.

### **Article 28 Restrictions on the transfer of property**

1. From the moment of the adoption of a Liquidation Decision, the sale, disposal, alienation, transfer or initiation of a rental of any property of the Enterprise's estate, in whole or in part, including any transfers for the satisfaction of existing obligations, or creation of pledges or security interests against the Enterprise's property that is not initiated by the Liquidation Authority is prohibited without a Court order

2. Any transfers for the satisfaction of existing obligations, or creation of pledges or security interests against the Enterprise's property is prohibited without the approval of the Court, except for the sale or transfer of goods in the ordinary course of operation of the Enterprise's business where the business operations continue to function.

#### **Article 29**

##### **Goods in transit in which the Enterprise has not yet acquired ownership rights**

1. If goods sold to the Enterprise are in transit at the moment of the Liquidation Decision, and the Enterprise has not yet acquired ownership rights to those goods, the seller may seek to have the goods returned, whereby the seller shall bear all the expenses connected with return, and shall repay any advance payment made by the Enterprise.

2. Notwithstanding paragraph (1) of this Article, the Liquidation Authority may demand delivery of the goods, if the Liquidation Authority causes the estate to pay the total contractual amount of the transaction.

#### **Article 30**

##### **Property held on behalf of third persons**

1. Where the Enterprise is the agent or broker of a third party authorized to receive or sell property belonging to the third party, that party may rescind the status as broker or trustee and seek return of the property held in the Enterprise's custody by submitting a written request for such to the Liquidation Authority.

2. Where at the time of the request for the return of the property it is impossible to return all or part of the property held in the Enterprise's custody on behalf of a third party, the third party is entitled to submit a claim at the contract price. Where it is impossible to determine the contractual price, sales price as of the Liquidation Decision date shall govern.

3. Where at the time of the request for the return of the property, the Enterprise possesses property to be sold, but its specifications are subject to rapid and severe decline in value, as in the case of perishable goods, then owner is entitled to submit a claim for the contractual price of the property.

4. Any property returned under this Article shall be executed at the expense of the person who has requested the return.

#### **Article 31**

##### **Proceeds from sales of property**

Proceeds received from the sale of property of the enterprise, pursuant to this law, are the property of the enterprise and shall be protected and properly accounted for by the Liquidation Authority.

**Article 32**  
**Proceeds from property use**

Proceeds received from the use of Enterprise property (such as rents) are the property of the enterprise in liquidation and shall be protected and accounted for by the Liquidation Authority.

**Article 33**  
**Expenses of sale**

Expenses of the sale of secured property shall be recovered at first instance from the proceeds of the sale of secured property.

**Article 34**  
**Adequate protection of assets subject to secured claims**

1. Where Enterprise property is secured by a pledge, lien or security interest, and the creditor holding the pledge, lien or security interest is prevented from exercising its right to seize, possess or sell the property due to the operation of the Liquidation Decision, the secured creditor is entitled to adequate protection of the secured property in order maintain its condition and value as it was at the time the Liquidation Decision came into being.
2. Where the property subject to a security interest is not being adequately protected, the secured creditor may submit a written request to the Liquidation Authority demanding adequate protection.
3. If the Liquidation Authority fails to protect the property, the secured creditor has the right to petition the Court which must issue a ruling on the request for adequate protection within twenty (20) days of its submission.

**PART VI**  
**CLAIMS, PRIORITIES, DISTRIBUTION**

**Article 35**  
**Creditor Notification and Claims Submission Deadline**

1. In accordance with Article 7 of this Annex, the Liquidation Authority shall publish a notice in accordance with the Advertisement Provisions calling all creditors and interest holders to submit their Proofs of Claim and Interest.
2. Where Liquidation Authority is considering whether a claim has been properly made within the relevant limitation period, it shall treat delivery of claims to the Agency as suspending the running period from the of such delivery.
3. If the alleged creditor or interest holder provides compelling justification for late filing, the Liquidation Authority may in its sole discretion accept a Proof of Claim or Interest submitted after the Claims Submission Deadline, if the proof of Claim or Interest is filed not later than thirty (30) days after the Claims Submission Deadline.

**Article 36**  
**Invalid and Improper Claims**

1. The Liquidation Authority shall deny, in whole or in part, the validity of any Claim or alleged equity or ownership interest if such denial is required or permitted by the present law or another element of the Law of Kosovo or an order issued by the Court.
2. Without limiting the scope or applicability of paragraph 1 above, the following shall constitute good and sufficient legal grounds under the present law for rejecting a Claim or an alleged equity or ownership interest:
  - 2.1. the Claim or allegation is time-barred by applicable time limitations;
  - 2.2. the documentation for the Claim or alleged interest presented by the alleged creditor or alleged interest holder remains incomplete after a request from the alleged creditor for supplementary documents or evidence; or
  - 2.3. any aspect of the documentation presented is fraudulent or there is good and substantial evidence to believe the Claim or alleged interest is fraudulent; or
  - 2.4. there is reason to believe that the transaction:
    - 2.4.1. was not approved though the proper internal procedures of the Enterprise;
    - 2.4.2. was executed on behalf of the Enterprise by someone without actual legal authority to bind the Enterprise;

2.4.3. would not have been approved had it been submitted for proper internal approval, including but not limited to contracts that should have been approved by the Management or an Officer of the Enterprise at the relevant time but were not so approved;

2.4.4. was entered into at the relevant time in breach of a fiduciary or other duty towards the Enterprise or a third person by the Management or an Officer under the law then applicable; or

2.4.5. was in violation of a regulation issued by the UN or a regulation or similar act issued by an authorized body of the European Union; *and*, in each case specified in items 2.4.1 – 2.4.5 immediately above the concerned creditor or interest claimant knew or, in the exercise of reasonable professional diligence, should have known of the concerned violation, breach or lack of authority.

2.5. at the time the transaction was entered into the creditor knew or, in the exercise of reasonable professional diligence, should have known that the Enterprise was insolvent and the transaction resulted in the creditor being put in a more favorable position than other creditors;

2.6. the transaction was done at a value that was materially less than the then prevailing market value;

2.7. the payment or supply in relation to the transaction was in breach of one or more United Nations Security Council resolutions or European Union Regulations imposing international sanctions; or

2.8. the Claim relates to a transaction that took place outside of Kosovo and:

2.8.1. it concerns an entity or purported entity or business unit that, at the time of the effective liquidation Decision, is separately managed from the Enterprise's operations in Kosovo and

2.8.2. the Liquidation Authority has determined that it is not practicable to seize in the name of the Enterprise the property or assets of such entity. Any such transaction concluded in the name of the Enterprise shall include transactions for which the business purpose was confined to the independent entity or business unit.

## **Article 37**

### **Calculation and Set Off of Claims**



1. The provisions in this Article shall override any contradictory provision in a contract, settlement, agreement, judgment or other authoritative arrangement entered into by, on behalf or in respect of the Enterprise.

2. Claims for money which are denominated in a currency other than Euro, shall be converted into Euro using the exchange rate of the date of the Liquidation Decision. Claims for money denominated in a currency that has ceased to exist or was replaced by another currency on or before the date the Liquidation Decision was issued, shall be converted to the successor currency or currencies using the exchange rate in place at the time when such currency or currencies was replaced and shall thereafter be converted into Euro using the exchange rate in effect as of the date the Liquidation Decision was issued.

3. All Claims made against the Enterprise may include interest on any principal amount that accrued prior to the date of the Liquidation Decision, provided that such interest shall not exceed 10 % (ten per cent) of the principal amount.

4. Immediately following the Claims Submission Deadline, the Liquidation Authority shall evaluate the validity, extent and priority of claims and any related pledge or mortgage presented against the Enterprise and notify the concerned claimants of the results of that evaluation; provided, however, that:

4.1. claims that are barred by a limitation period established by the law applicable thereto and claims that have not been properly and timely brought in a court having jurisdiction with respect thereto, shall be rejected and shall not be eligible to participate in any distributions from the liquidation; and

4.2. pledges and mortgages shall only be valid if perfected or registered in accordance with the law applicable thereto.

5. The Liquidation Authority may request such further information and evidence as is necessary to carry out the evaluation.

6. If the Liquidation Authority rejects, in whole or in part, or reduces the amount of a claim submitted, it shall notify the affected creditor in writing, giving an explanation for the rejection or reduction of the claim.

7. The affected creditor is entitled to apply to the Court within thirty (30) days of the dispatch of such notice by the Liquidation Authority for determination of his claim and failing such timely application the creditor shall be precluded from objecting further to the Liquidation Authority's decision.

8. The Court shall make a decision on a request submitted by such an affected creditor no later than forty five (45) days, after the date on which the request is submitted to the

Court and a copy thereof has been provided to the Liquidation Authority, Creditors Committee (if such exists) and such other parties as the Court may direct.

9. In addition to other grounds for objecting to any Claim, the Liquidation Authority shall also have, without limitation, the right to:

9.1. convert, in whole or in part, any Claim based on a contract into a claim for monetary compensation;

9.2. object to a Claim, in whole or in part, on the grounds that the Claim has been otherwise satisfied; and

9.3. object to a Claim, in whole or in part, as necessary to set off against the Claim an amount due to the Enterprise: provided that:

9.3.1. there have been mutual dealings between the Enterprise and the Person submitting the Claim or such Person's predecessor-in-interest;

9.3.2. the concerned amounts constitute liquidated amounts;

9.3.3. the concerned amounts due have not arisen by way of assignment or other transfer as a result of a transaction that took place within the three (3) month period immediately preceding the date of the Liquidation Decision; and

9.3.4. the concerned amounts were due and payable before the date of the Liquidation Decision.

### **Article 38 Secured Claims**

1. Any Claim secured by an encumbrance, such as a lien, pledge, charge, mortgage or other security over any property or asset of the Enterprise (Secured Claim) shall not prevent the Liquidation Authority from disposing of or otherwise exercising his powers over or prevent a third Person from acquiring such property or asset unencumbered and free of any security, provided that such disposal or exercise of the Liquidation Authority's powers requires a notification to the Creditor.

2. In the event that encumbered property or assets are disposed of or have otherwise become subject to the exercise of the Liquidation Authority's powers, the Secured Claim of the creditor shall have the same priority as it would have had in respect of such property or assets which were disposed of or which became subject to the exercise of the Liquidation Authority's powers if the Liquidation Authority took these actions for the mere purpose of generating proceeds for the distribution to creditors.

3. In the event that the disposal of or the exercise of the Liquidation Authority's powers over encumbered property or assets has generated, or is estimated to generate, liquid funds which are insufficient to fully satisfy the Secured Claim, the portion of the Secured Claim remaining or estimated to remain unsatisfied shall be admitted as an unsecured Claim.

### **Article 39 Final Claims List**

1. No later than thirty (30) days after the evaluation of all Claims including the determination of objections against the Liquidation Authority's decision by the affected creditor relating to the rejection or reduction of a Claims in accordance with Article 37, the Liquidation Authority shall compile a final list of Claims, indicating their amount and status in accordance with the priority categories set forth in Article 40 of the present Law.

2. A copy of the final list of Claims shall be posted on the PAK Website and provided to the Creditors Committee (if such exists) and shall be available to any creditor upon the submission of a request to the Liquidation Authority.

### **Article 40 Priorities of Claims and Interests**

1. In liquidation proceedings all Claims of creditors shall be satisfied according to classes 1.1 – 1.8 hereunder and in the following order:

1.1. the costs of selling or otherwise realizing the property or assets of the Enterprise;

1.2. post Reorganization Petition secured credit incurred in accordance with Article 13 of UNMIK Regulation 2005/48 or the Law on the Reorganization of Certain Enterprises, whichever is then in force, to the extent that such credit was approved by the Court. This priority relates only to proceeds from the sale or other transfer of assets securing the credit;

1.3. priority Claims, in the following order:

1.3.1. court expenses;

1.3.2. expenses of the Liquidation Authority and any supporting advisors;

1.3.3. expenses of the Liquidation Authority required for the maintenance and protection of the property and assets of the Enterprise;

1.3.4. expenses for the continued operation of the Enterprise after the decision of the Agency or Court to commence liquidation proceedings; and

1.3.5. all Administrative Expense Claims incurred during any reorganization or during the liquidation proceedings;

1.4. secured Claims to the extent realized from Assets securing such Claims and in the amount of such Secured Claims and Claims;

1.5. claims based on the ownership of specific assets including real assets;

1.6. preferential workers claims in the following order:

1.6.1. claims for such wages of employees, which have remained unpaid until the date of decision by the Court or the Agency to commence liquidation proceedings, limited to three months gross salary per person;

1.6.2. legally required severance pay claims brought by employees who have been made redundant as a consequence of the Enterprise Liquidation Decision, or in connection with, an action taken by the Agency under Article 6.1 or 6.2 of PAK law;

1.7. unsecured Claims, including wage Claims that are not subject to higher priority treatment;

1.8. claims of owners, shareholders, founders, participants or partners of the Enterprise.

2. Claims within the same class or the same order shall rank equal regardless of the time such Claims became existent.

3. Claims shall be satisfied according to priority by class and order as set forth in this Article. Payments for the satisfaction of Claims shall be made in accordance with paragraphs 2 and 3 of Article 41 of the present law and otherwise follow the procedures established by the Liquidation Authority in accordance with the Financial Policies of the Agency issued in accordance with Article 15 of Law on PAK.

#### **Article 41** **Satisfaction of Claims and Interests**

1. Claims and interests shall be satisfied according to priority by class and order as set forth in Article 40 of this Annex.

2. The satisfaction of Claims and interests that belong to a subsequent class of lower priority may be initiated only after the complete and full satisfaction of the Claims of the previous class of higher priority.

3. Where resources are sufficient to fully satisfy all claims of a given class, including providing cover for the reservations made by the Liquidation Authority for the disputed claims of a given class or order, interim distribution to these classes of creditors may be proposed to the Board by the Liquidation Authority.

4. If resources are insufficient to fully satisfy all Claims or interests of a given class or order, including to provide cover for the reservations made by the Liquidation Authority for the disputed claims of a given class or order, the Claims of that class or order shall be satisfied in proportion to the amount of each Claim, including the claims for which the Liquidation Authority made reservation.

#### **Article 42 Reserved Funds**

1. With the approval of the Board, Liquid funds, monies or other assets may be set aside by the Liquidation Authority into a separate escrow fund held by an escrow agent that is appointed by the Board for the satisfaction of:

2. Claims that are in dispute and have not yet been resolved by the Court;

3. Claims for payments that are subject to redemption for which documents, identification or coupons are required to be submitted, including convertible securities, bearer bonds, or similar instruments;

4. Future expenses in connection with the maintenance of certain property or assets of the Enterprise, and

5. Future Claims certain to arise but unascertainable at the time of the Claims Submission Deadline.

**PART VII**  
**LIQUIDATION CASE CLOSURE**

**Article 43**  
**Final report**

1. The Liquidation Authority or shall, after completion or substantial completion of realization of the Enterprise property pursuant to a liquidation, or after Liquidation case closure, submit a Final Report to the Court.
2. The Final Report shall contain the following:
  - 2.1. a list of all property sold or otherwise disposed of;
  - 2.2. a list of cash receipts and payments
  - 2.3. a final list of all claims allowed clearly indicating what amount of distribution or what property was transferred in full or partial satisfaction of each;
  - 2.4. a list of residual bank account balances with an explanation of the purpose;
3. The Liquidation Authority shall send a notice of the approval of the Final Report by the Court to creditors, creditors committee (if such exists) within five (5) days of receiving the Court's approval to close the liquidation case. The notice shall contain either the Final Report itself, or a summary thereof on the condition that the full report be made available for inspection to interested parties and that a copy of the report be sent to any creditor requesting a copy. The final report shall be posted on the PAK website.
4. The Court on its own motion, upon review may object to the Final Report within fifteen (15) days of its submission. Where such objection is notified to the, the Liquidation Authority shall respond to the objection and submit it to Court within thirty (30) days from date of Court motion or within the time stipulated in the instruction by Court.

**Article 44**  
**Case closure**

1. Except as provided in paragraphs 2 and 3 below, case closure shall occur when the Court approves the final report of the Liquidation Authority as per Article 43 of this Annex.
2. At the request of the Liquidation Authority, at any stage of the procedure, where it is determined that the concerned Proceeds are insufficient to cover the costs of Priority

Claims set forth in the Article 40, paragraph(1), subparagraph 1) of this Annex, the Court shall issue a decision permitting closure of the liquidation case.

3. At the request of the Liquidation Authority, where no creditors have submitted claims by the Claims Submission Deadline, the Court shall issue a decision permitting closure of the liquidation case.

**Article 45**  
**Consequences of case closure.**

Upon the closure of a liquidation case pursuant to Article 43 of this Annex, the existence of the Enterprise shall be terminated, and the Agency shall provide written notification thereof to the concerned Municipality and the institutions and public authorities specified in Article 19.6.

**Article 46**  
**Discharge of the Liquidation Authority**

1. The Court shall include in any order closing the Liquidation proceedings for:

1.1. the relief of the Liquidation Authority of any further duties in relation to the Enterprise and the liquidation proceedings, save for the execution by the Liquidation Authority of any final distributions that have not yet been effected; and

1.2. the approval of the final payment of any unpaid remuneration and expenses of the Liquidation Authority.

2. Any such order by the Court shall not limit the liability of the Liquidation Authority for any illegal acts or omissions during its term as a Liquidation Authority.

**Article 47**  
**Discharge of debts**

Upon closure of the liquidation case by the Court pursuant to Article 44 of this Annex, all Claims due from the Enterprise are extinguished by operation of law and any action to collect such extinguished debts shall be enjoined and prohibited, except as the Court may order prior to closure of or in the order closing the Liquidation Case

## **PART VII MISCELLANEOUS PROVISIONS**

### **Article 48 Directions from the Court**

1. At any time during the Liquidation procedure the Liquidation Authority may submit a written request to the Court seeking direction concerning a point of Law, including but not limited to an issue on compliance with this law. The Liquidation Authority shall contemporaneously provide a copy of such a request to the Creditors Committee (if such exists) and such other parties-in-interest as the Court may direct. The Court shall issue a decision on such request with fifteen (15) Business Days after submission.
2. Upon receipt of an application pursuant to paragraph 1 above, the Court shall notify the party directly affected by such application and allow such party to file a brief to the Court within fifteen (15) days after receipt of the notification.
3. The Court may issue any order, process, or judgment that is reasonable and necessary or appropriate to carry out the provisions of the present law or to further the liquidation of an Enterprise.
4. No provision of the present law providing for the raising of an issue by any party shall be construed to preclude the Court from taking, on its own motion or initiative, any action or making any determination necessary or appropriate to enforce or implement Court orders or rules, or to prevent an abuse of process.

### **Article 49 Public Notices and Advertisements**

1. Any formal notices under this Law shall, at a minimum, be published as follows;
  - 1.1. in both the Serbian and the Albanian languages in a newspaper enjoying wide circulation in Kosovo; and
  - 1.2. in the Serbian language in one or more Serbian language newspapers enjoying wide circulation in Serbia and in Montenegro, where considered necessary by the Liquidation Authority to notify creditors.
  - 1.3. in an English language publication enjoying wide circulation in Europe, where considered necessary by the Liquidation Authority to notify creditors.



2. The various language versions of any specific notice shall be published as contemporaneously as may be practicable under the circumstances.

#### **Article 50**

#### **Languages of Key Documents**

1. Proofs of Claim and Proofs of Interest, and all supporting documentation, must be submitted in either the Albanian or Serbian language. Any subsequent communications with the Liquidation Authority may be submitted in either of the aforementioned languages.

2. Standardized formal communication documents, invitation letters and forms prepared by the Liquidation Authority must be produced and available in Albanian, Serbian and English

### **PART IX**

#### **ADMINISTRATIVE SANCTIONS**

#### **Article 51**

#### **Submission of False Claim Documents**

1. Any Person who knowingly makes any materially false or misleading statement, orally or in writing, in connection with proceedings conducted under the present law, or who knowingly submits a document in such proceedings containing such a materially false or misleading statement, or who knowingly assists or encourages any other person to commit such an act shall be liable for an administrative fine not exceeding one hundred thousand Euros (€100,000) per instance. In the case of a natural person such person may in addition become subject to criminal proceedings in accordance with the applicable provisions of the Criminal Code.

2. Any Person knowingly submitting a false Claim or false document or making a false statement in a document submitted to the Liquidation Authority or Court in proceedings under the present Law, shall be liable for an administrative fine not exceeding one hundred thousand Euro (€100,000) per instance. In the case of a natural person including officers and directors of legal persons, such persons may in addition become subject to criminal proceedings in accordance with the applicable provisions of the Criminal Code.

#### **Article 52**

#### **Misappropriation and Concealment of Assets**

1. Any Person acting in the capacity of a member of a Liquidation Authority, or hired to work under the supervision of the Liquidation Authority, Agency or Enterprise, or the

Enterprise knowingly misappropriating, destroying, damaging, stealing, directly or indirectly, any documents, property or Assets of the Enterprise shall be liable for the amount of the item concerned as well as an administrative fine of up to one hundred thousand Euros (€100,000) per instance. In the case of a natural person or such person may in addition become subject to criminal proceedings in accordance with the Criminal Code.

2. Any Person knowingly transferring, concealing or failing to turn over any documents, property or Assets of the Enterprise to the Liquidation Authority, a Person acting in the capacity or as a representative of an Liquidation Authority, or to the Court to evade the processes and procedures of the present Law shall be liable for an administrative fine not exceeding one hundred thousand Euros (€100,000) per instance. In the case of a natural person or such person may in addition become subject to criminal proceedings in accordance with the Criminal Code