



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

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**Law No. 04/L-035**

**LAW ON THE REORGANIZATION OF CERTAIN ENTERPRISES  
AND THEIR ASSETS**

**Assembly of Republic of Kosovo,**

Based on Article 65 (1) of the Constitution of the Republic of Kosovo;

Approves:

**LAW ON THE REORGANIZATION OF CERTAIN ENTERPRISES  
AND THEIR ASSETS**

**PART I**  
**SCOPE AND DEFINITIONS**

**Article 1**  
**Purposes and Scope**

1. The purpose of this law is to create a legislative framework establishing the rules and procedures governing the reorganization and liquidation of certain Enterprises and their assets and liabilities under the administrative authority of the Privatization Agency of Kosovo (PAK) or its predecessor the Kosovo Trust Agency (KTA) to enable the rehabilitation of such enterprises and the recovery of their viability as on-going businesses and for the benefit of the economy of the Republic of Kosovo.
2. The rules and procedures established by this law shall govern the reorganization or liquidation of any Enterprise for which an application for reorganization has been submitted to the Special Chamber by the Privatization Agency of Kosovo or its predecessor the Kosovo Trust Agency.

3. Reorganization or liquidation proceedings shall be conducted by the Special Chamber only in respect of such an Enterprise and only in accordance with this law. Such proceedings shall apply to all Assets of such an Enterprise. No other reorganization or liquidation proceedings, wherever conducted, shall have any effect on such an Enterprise or its Assets.

## **Article 2**

### **Definitions and References**

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

1.1. **Administrative Expense Claim** - a claim for an administrative expense that was actually incurred and necessary for the preservation and protection of the assets of the Enterprise, including – but not limited to - necessary expenses for the continued operation of the Enterprise after the date of the Moratorium Decision and credit obtained by the Administrator pursuant to Article 13 of this law.

1.2. **Administrative Expense Claims Bar Date** - the date as determined in subparagraph 2.1 of paragraph 2 of Article 28 of this law.

1.3. **Administrator** - the Agency acting in the capacity of the administrator under this law.

1.4. **Agency** - the Privatization Agency of Kosovo.

1.5. **Advertisement Provisions** - the provisions relating to advertisements in Article 43 of this law.

1.6. **Alternative Reorganization Plan** - an alternative proposal for the Reorganization of an Enterprise submitted by a Qualifying Creditor or Qualifying Group of Creditors;

1.7. **Appointment Date** - the date on which the Agency first assumes the duties of the Administrator under this law, which – for any Enterprise that was made the subject of reorganization proceedings under UNMIK Regulation 2005/48 – shall be the effective date of this law.

1.8. **Asset** - an asset of an Enterprise and includes any and all property and legal rights - of any description, tangible or intangible – held by such Enterprise and/or over which such Enterprise holds a right of use, ownership, possession or control.

1.9. **Business Day** - a day other than a Saturday or Sunday or a holiday observed by the Government.

1.10. **Day** - a calendar day.

- 1.11. **Claim** - an alleged right to payment from or performance by the Enterprise.
- 1.12. **Claims Deadline** - the date as determined in accordance with subparagraph 1.3 of paragraph 1 of Article 17 of this law.
- 1.13. **Claims Deadline Notice** - the notice specified in paragraph 1 of Article 17 of this law.
- 1.14. **Confirmed Reorganization Plan** - the Reorganization Plan or Alternative Reorganization Plan confirmed by the Court pursuant to Article 26 of this law.
- 1.15. **Corporation** - a corporation established by or on the behalf the Agency or its predecessor the Kosovo Trust Agency pursuant to the applicable laws and regulations in effect at the time of establishment.
- 1.16. **Court or Special Chamber** - the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters and any specialized panel, sub-panel or single judge thereof assigned to conduct proceedings under this law.
- 1.17. **Creditors Committee** - the committee of creditors appointed by the Court pursuant to Article 20 of this law.
- 1.18. **Employee Representative** - a Person appointed pursuant to subparagraph 3.2 of paragraph 3 of Article 12 of this law.
- 1.19. **Enterprise** - an Enterprise under the administrative authority of the Agency and means and includes all of such Enterprise's Assets.
- 1.20. **Initial Creditors Meeting** - the initial meeting of creditors held pursuant to Article 19 of this law.
- 1.21. **Interest** - an alleged ownership interest in the Enterprise or an Asset of the Enterprise.
- 1.22. **PAK Law** - the Law on the Privatization Agency of Kosovo.
- 1.23. **Leasehold** - 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.
- 1.24. **Lien** - a right or interest in or against property securing payment of a debt or performance of an obligation.
- 1.25. **Liquidation Authority** - the Authority appointed for conducting a liquidation proceeding pursuant to the PAK Law.

1.26. **Management with respect to an Enterprise** - the officers, key executives, managers and directors of such Enterprise.

1.27. **Moratorium Decision** - a decision of the Court accepting an application for the reorganization of an Enterprise, whether issued under this law or prior legislation.

1.28. **Moratorium Notice** - the notice specified in paragraphs 4 and 5 of Article 5 of this law.

1.29. **Person** - a natural person, an undertaking or a public authority.

1.30. **Plan** - a Reorganization Plan or an Alternative Reorganization Plan.

1.31. **Public Authority** - any governmental executive authority, public body, ministry, department, agency, or other such authority that exercises executive, legislative, regulatory, public administrative or judicial powers. The term “public authority” shall also include any otherwise private organization or establishment to the extent it exercises any of the afore-mentioned powers pursuant to a grant of authority under a normative or subnormative act or pursuant to a delegation of authority from another Public Authority.

1.32. **Proof of Claim** - a document submitted by an alleged creditor of the Enterprise in the form prescribed by the Court and setting forth the information and details about the concerned Claim prescribed by Article 17 of this law.

1.33. **Proof of Interest** - a document submitted by an alleged owner of the Enterprise or an asset of the Enterprise in the form prescribed by the Court and setting forth the information and details about the alleged ownership interest prescribed by Article 17 of this law.

1.34. **Qualifying Creditor** - a creditor who has submitted one or more registered Proofs of Claim relating to Claims that individually or in the aggregate represent an amount, calculated in Euros, equal to five percent (5%) of the estimated total value of all outstanding obligations of the Enterprise as calculated by the Administrator based on the information available at the time; provided, however, that any aspect of such a Claim that has been rejected or denied in accordance with this law shall be excluded and not counted when making this determination.

1.35. **Qualifying Group of Creditors** - two or more creditors having submitted registered Proofs of Claim relating to Claims that individually or collectively represent an amount, calculated in Euros, equal to five percent (5%) of the estimated total value of all outstanding obligations of the Enterprise as calculated by the Administrator based on the information available at the time; provided, however, that any aspect of such a Claim that has been rejected or denied in

accordance with this law shall be excluded and not counted when making this determination.

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

1.37. **Registered Interest Holder** - a Person who has filed a Proof of Interest that has been accepted, in whole or in part, by the Administrator; 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 Administrator shall only become a “Registered Interest Holder” if and when the Court orders the Administrator to accept such Proof of Interest in whole or in part.

1.38. **Reorganization** - the professional restructuring of the debts and/or business operations of an Enterprise in a manner that can reasonably be expected to restore the viability of the Enterprise as a going concern into the future and that provides for the final disposition of all Claims and Interests in accordance with this law.

1.39. **Reorganization Plan** - the Administrator’s proposal for the Reorganization of an Enterprise.

1.40. **Secured Claim** - 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.

1.41. **Professional Service Provider** - a person providing professional services to the Administrator.

1.42. **Undertaking** - any enterprise, partnership, joint venture, legal person, association, project, branch, office, or any other organization or establishment (regardless of ownership, domicile or place of business or establishment).

1.43. **Utility Service Provider** - a supplier or provider of utility service including, but not limited to, a provider or supplier of electricity, gas, heating, water, waste, postal or telecommunications services.

2. Unless the context clearly requires another interpretation, any reference in this law to another law, regulation or subnormative act, or any specific provision(s) thereof, shall be interpreted as including any and all amendments thereto. If such a law, regulation or subnormative 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.

3. Words of any gender used in this 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.

## **PART II**

### **COMMENCEMENT OF REORGANIZATION AND MORATORIUM**

#### **Article 3**

##### **Application for the Reorganization of an Enterprise**

1. The Agency may submit to the Court an application seeking the commencement of reorganization proceedings for an Enterprise if:

1.1. such Enterprise is unable to fulfill its undisputed obligations as they come due for a period exceeding six months or such Enterprise has undisputed liabilities in an amount exceeding the value of its assets, and

1.2. the Agency has reasonable grounds to believe that the Enterprise can continue or recommence its business activities in a commercially feasible way as a result of the reorganization.

2. An application for the commencement of reorganization proceedings shall be submitted in the form prescribed by the Court for this purpose and shall be accompanied by documentary evidence demonstrating that one of the conditions specified in subparagraph 1.1 of paragraph 1 of this Article has been met.

3. Such an application and evidence may be submitted to Court by the Agency or, if authorized by the Agency, the Enterprise.

#### **Article 4**

##### **Processing of Application by Court; Moratorium Decision**

1. The Court shall register an application for reorganization upon receipt regardless of any deficiency in the application or the accompanying documentation, indicate the time and date of the receipt on the face of the application and immediately send a registration receipt to the Agency and the Enterprise concerned.

2. If the application does not comply with the requirements in Article 3 of this law, the Court shall, within seven (7) days after the date the application was received by the Court, issue an order specifying the deficiencies and requiring the applicant to rectify

these within a specified time from the date such order is served on the applicant. If the Court does not issue such an order within the referenced seven (7) days, the application shall be deemed to be without deficiency and accepted by the Court.

3. The Court shall reject the application by a decision to be served on the Agency and the Enterprise concerned if the applicant does not fully and timely comply with an order issued by the Court under paragraph 2 of this Article or if the application remains otherwise noncompliant with the requirements of Article 3 of this law.

4. If the applicant has timely complied with an order issued by the Court under paragraph 2 of this Article or no order requiring rectification of deficiencies has been timely issued by the Court, and the Court has not otherwise rejected the application under paragraph 3 of this Article, the Court shall issue a decision accepting the application and immediately serve this decision on the Agency and the Enterprise (the Moratorium Decision). Such Moratorium Decision shall be issued:

4.1. if the Court has not timely issued an order under paragraph 2. of this Article, within thirty (30) days after the receipt of the concerned application, or

4.2. If the Court has timely issued such an order, within fourteen (14) days after the applicant has fully and timely complied with such order.

## **Article 5 Moratorium**

1. As of the date of a Moratorium Decision all actions, proceedings and acts of any kind aimed at determining the validity of, enforcing or satisfying any Claim or Interest with respect to the concerned Enterprise or its Assets shall be suspended and shall only continue with the permission of the Court.

2. Such suspended actions, proceedings and acts shall include, but not be limited to, any action, proceeding or decision, including any judicial action, proceeding or decision:

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:
  - 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 this law and in this Article 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, registered pledges or similar encumbrances relating to Assets of the Enterprise.
4. Within fourteen (14) days from the date of the Moratorium Decision, the Agency shall publish a notice containing information specified in paragraph 5. of this Article (the Moratorium Notice). The publication of the Moratorium Notice shall be done in accordance with the Advertisement Provisions of this law.
5. The Moratorium Notice shall include the following information:
  - 5.1. the date and a description of the Moratorium Decision;
  - 5.2. a reference to this law and a general description of the rights of Persons having Claims or Interests;
  - 5.3. a statement that the Agency is to serve as the Administrator of the Enterprise as provided in Article 7 of this law;
  - 5.4. a statement that, in accordance with Article 17 of this law, the Agency will publish within the next three hundred and sixty (360) days another notice (the “Claims Deadline Notice”) that will provide details on the method for filing Proofs of Claim and Proofs of Interest and establishing the deadline for the filing of such Proofs of Claim and Proofs of Interest; and



- 5.5. a statement that only Registered Creditors, as determined in accordance with this law, shall be afforded an opportunity to vote on a Reorganization Plan for the Enterprise.
6. The Agency may include other information in the Moratorium Notice as it considers appropriate.
7. After the Moratorium Date and before a Plan of Reorganization is confirmed, the Administrator shall obtain the prior written approval of Court before the Enterprise may lawfully conclude any of the following transactions:
- 7.1. the sale, disposal, acquisition, transfer or rental of any immovable property or capital asset of the Enterprise;
  - 7.2. the creation of pledges, mortgages or other security against any property of the Enterprise;
  - 7.3. the entering into any loan agreements;
  - 7.4 . the cancellation or termination of any contracts or agreements;
  - 7.5 . the commencement or termination of legal or arbitration proceedings;
  - 7.6. the waiver of rights or entitlements;
  - 7.7. any other acts as designated by the Court; and
  - 7.8. the payment of salaries to employees.
8. The Court may impose any conditions that it deems reasonable upon an approval granted under paragraph 7. of this Article. The Court may assign to the Agency the authority and responsibility for conducting the sale or other disposition of immovable property or capital assets of the Enterprise under subparagraph 7.1. of paragraph 7. of this Article.

## **Article 6**

### **Service Obligations of Utility Service Providers**

1. A Utility Service Provider may not alter, refuse or discontinue its services to an Enterprise because an application for the reorganization of the Enterprise has been filed, a Moratorium Decision applicable to the creditors of the Enterprise has been issued or a Reorganization Plan for the Enterprise has been confirmed.
2. If a Moratorium Decision applicable to the creditors of an Enterprise has been issued, 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 Moratorium Decision. The Enterprise shall be required to pay for utility services provided after the date of the Moratorium Decision.

## **PART III ADMINISTRATOR**

### **Article 7 Administrator**

1. As of the date of the Moratorium Decision the Agency shall serve as the Administrator of the Enterprise. The Agency shall serve in that capacity throughout the reorganization process.
2. The Agency may acquire, or otherwise ensure that it is provided with, the services of such Professional Service Providers as may be needed to ensure that the Enterprise is properly represented in the reorganization proceedings. The Agency may delegate, the performance of any of its Administrator responsibilities to one or more such Professional Service Providers; however, such a delegation shall not relieve the Agency of its position or duties as the Administrator or its obligation to ensure that each delegated responsibility is professionally, diligently and lawfully performed by the concerned Professional Service Provider(s).
3. If the Agency uses its budgetary resources or any other public money to acquire the services of such Professional Service Provider(s), the Agency shall do so, as soon as practicable, pursuant to a competitive tender conducted in accordance with the Law on Public Procurement in Kosovo. When conducting such tender, the Agency shall establish such minimum qualification requirements and contract requirements as it deems necessary to ensure that only properly qualified Person(s) may submit tenders and that the duties of the Professional Service Provider(s) are fully and properly described in the tender and in the contract. The Agency shall also ensure that the contract requires the winning tenderer to post the bond required by paragraph 2. of Article 10 of this law, which shall serve as guarantee for proper performance of the duties specified in the contract.
4. No Person shall be eligible to submit a tender or to be engaged or serve as a Professional Service Provider or otherwise permitted to provide advice or assistance to the Administrator or the Enterprise if such Person has any specifically identifiable financial or other material interest that is materially adverse as to the Agency, the Enterprise or any Registered Creditor or Registered Interest Holder.
5. The Agency shall, in addition to complying with all applicable provisions of the Law on Public Procurement, clearly inform all potential tenderers of the requirements and

restrictions specified in paragraphs 4. of this Article and in this paragraph in the contract notice and in the tender documents. The Agency shall also so inform all potential tenderers of the potential for removal by the Court pursuant to Article 8 of this law; and that such removal shall result in the forfeiture of the bond required by paragraph 2. of Article 10 of this law.

## **Article 8**

### **Removal of Persons Carrying out the Administrator's Responsibilities**

1. At any time, a Qualifying Creditor or the Creditors Committee may make an application to the Court seeking the removal of any Person carrying out the Administrator's responsibilities.

2. Any application for the removal of any such Person can only be made on the grounds that such Person:

2.1. has demonstrated an inability to properly discharge, or to ensure the proper discharge of, the duties of the Administrator;

2.2. has repeatedly and materially failed to properly discharge, or to ensure the proper discharge of, the duties of the Administrator;

2.3. has clearly demonstrated an unjustifiable bias against or in favor of one or more Registered Creditors or Registered Interest Holders;

2.4. at any time has engaged in illegal or sanctionable acts in relation to professional conduct or as an administrator for any Enterprise or other undertaking; or

2.5. has any specifically identifiable financial or other material interest that is materially adverse as to the Agency, the Enterprise or any Registered Creditor or Registered Interest Holder.

3. Any application seeking such removal must be accompanied by evidence supporting the basis of such challenge as set out under paragraph 2. of this Article. The Court shall provide the concerned Person with a reasonable opportunity to respond to any such application.

4. If the Court orders the removal of such a Person, the Court may – if such removal can reasonably be expected to delay the performance of the duties of the Administrator - suspend the reorganization proceedings for such time as may be needed by the Agency to replace such Person, and the Person so removed shall:

4.1. until a replacement is assigned by the Agency, comply with any instructions issued by the Court with respect to the conduct of the Person's duties; and

4.2. after a replacement is assigned by the Agency, provide such co-operation to the replacement as the replacement may reasonably require, including ensuring the orderly and professional transfer of records and accounts relating to the administration of the Enterprise.

## **Article 9**

### **Remuneration and Expenses of Administrator and Professional Service Providers**

1. Any remuneration or expense of the Administrator or a Professional Service Provider shall be subject to Court approval, which shall not unreasonably be withheld, if such remuneration or expense is to be the subject of a claim under Article 34 of this law.
2. Any such court-approved remuneration or expense shall be paid from the cash resources of the Enterprise or from the proceeds of the sale of assets of the Enterprise or ownership interests in the Enterprise in accordance with the priority established by subparagraph 1.1.2 of paragraph 1. of Article 34 of this law.
3. The Agency or a third party may pay a Professional Service Provider's Court-approved remuneration and expenses in full or in part; and, in such event, the Agency or such third party shall be entitled to recover any amounts so paid in accordance with paragraph 2. of this Article in place of the concerned Professional Service Provider.

## **Article 10**

### **Liability, Accountability and Reporting**

1. Any Person when carrying out the duties of the Administrator, shall:
  - 1.1. perform such duties in an independent, unbiased and professional manner; and
  - 1.2. otherwise exercise reasonable and professional fiduciary care and diligence in the performance of such responsibilities.
2. A Professional Service Provider that has been engaged by the Agency pursuant to a contract awarded under the Law on Public Procurement as provided in Article 7 of this law shall provide a bond to the Agency in an amount sufficient to serve as a guarantee for such Person's proper performance of the concerned contract and the concerned duties of the Administrator provided for by this law. The amount of such bond shall be determined by the Agency.
3. The Administrator 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 Administrator or Professional Service Provider to perform their responsibilities in accordance with requirements specified in paragraph 1. of this Article; or
- 3.2. damages arising from the failure of the Enterprise to perform obligations established by or pursuant to laws or regulations.
4. The Administrator may, in accordance with subparagraphs 2.4. - 2.6. of paragraph 2. of Article 11 of this law, seize and/or dispose of any asset if the Administrator - 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 Administrator 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. of this Article.
5. Any person claiming to have a lawful interest in any property that has been sold or otherwise disposed of by the Administrator may apply to the Court for adequate monetary compensation within the ninety (90) 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.
6. The Administrator shall keep orderly records on the performance of his functions. The Administrator shall promptly enter in such records a detailed description of each of his actions in relation to the exercise of his responsibilities and powers under Article 11 of this law and the administration of the Enterprise,
7. The Administrator shall submit every six (6) months a progress report, which shall include copies of the Administrator's records, to the Creditors Committee and the Court. The Administrator shall provide a copy of such report to any Registered Creditor upon such creditor's written request.
8. Without prejudice to the foregoing provisions, the Administrator shall provide such additional information and updates in relation to its activities from time to time as may reasonably be ordered by the Court acting on its own initiative or upon application by the Creditors Committee.

**Article 11**  
**General Responsibilities and Powers of the Administrator**

1. The Administrator shall have the authority to instruct the Management and/or employees of the Enterprise to take such actions as the Administrator may deem necessary or advisable. The Administrator may seek such orders from the Court as may be necessary to obtain compliance with such instructions.

2. Subject to any other specifically applicable provisions of this Law, the Administrator shall have the responsibility and authority to take any action as may be reasonably necessary or appropriate for managing the affairs, business and property of the Enterprise aiming at promoting the Enterprise's Reorganization, including, but without limitation to, the following:

2.1. representing and carrying on the business of the Enterprise;

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

2.3. keeping and maintaining the books and business correspondence of the Enterprise;

2.4. 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 Administrator deems expedient;

2.5. with the prior approval of the Court, after a written request has been submitted to the Court and a copy thereof provided to the Creditors Committee and such other parties-in-interest as the Court may direct: selling, leasing or otherwise disposing of any Asset(s) of the Enterprise, or any interest in such Asset(s), by competitive public tender (which shall be conducted by the Agency), or by private contract, including selling such Assets free and clear of all liens and interests; provided, however, that prior Court approval shall not be required if:

2.5.1. such a sale, lease or disposition is in the ordinary course of the Enterprise's business, *and* the Administrator provides the Court with a copy of the concerned transactional documents and a document that: summarizes all material terms of the transaction; explains the business reasons therefore; and describes the method or reason for selecting the other party to the transaction; or

2.5.2. there is in place a Confirmed Reorganization Plan authorizing such sale, lease or disposition, *and* the terms of such transaction and the method or reason for selecting the other party to the transaction are authorized by or otherwise consistent with the terms of the Confirmed Reorganization Plan;

2.6. with the prior approval of the Court, after a written request has been submitted to the Court and a copy thereof provided to the Creditors Committee and such other parties-in-interest as the Court may direct, or as may be provided in a Confirmed Reorganization Plan: granting or accepting a lease or tenancy of any Asset of the Enterprise and taking out a lease or tenancy of any property required or convenient for carrying on the business of the Enterprise;

2.7. with the prior approval of the Court after a written request has been submitted to the Court and a copy thereof provided to the Creditors Committee and such other parties-in-interest as the Court may direct, or as may be provided in a Confirmed Reorganization Plan: subject to the provisions of Article 13, raising or borrowing monies and granting third parties security interests in one or more Assets of the Enterprise;

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

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

2.10. 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 Administrator;

2.11. subject to Articles 7, 9 and 10 of this law, engaging or otherwise obtaining the services of such Professional Service Providers as may be needed by the Administrator to assist in the performance of the Administrator's duties and functions under this law;

2.12. with the prior approval of the Court after a written request has been submitted to the Court and a copy thereof provided to the Creditors Committee and such other parties-in-interest as the Court may direct, or as may be provided in a Confirmed Reorganization Plan: 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 or other interests or to further the operation and/or Reorganization of the Enterprise;

2.13. appointing any agent to do any necessary business of the Enterprise, which the Administrator is unable to do himself or which can more expediently be done by an agent;

2.14. employing and dismissing employees;

- 2.15. taking out, terminating or maintaining insurance in respect of the business and Assets of the Enterprise;
  - 2.16. asserting and pursuing any legal rights the Enterprise may have against any Person who is indebted or who otherwise has an obligation to the Enterprise, and exercising any rights of the Enterprise as a creditor of any such Person;
  - 2.17. presenting or defending a petition for the liquidation of the Enterprise in accordance with this Law;
  - 2.18. establishing or changing the registered office or registered agent of the Enterprise;
  - 2.19. Examining Proofs of Claim and Proofs of Interest submitted under this 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 with the Court, in whole or in part;
  - 2.20. selling perishable goods requiring significant maintenance costs as the Administrator sees fit.
  - 2.21. 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.
3. With the prior approval of the Court, after a written request has been submitted to the Court and a copy thereof provided to the Creditors Committee and such other parties-in-interest as the Court may direct, the Administrator 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 to pay such debt; any proceeds remaining after such payment shall be handled as directed by the Court.
  4. With the prior approval of the Court, after a written request has been submitted to the Court and a copy thereof provided to the Creditors Committee and such other parties-in-interest as the Court may direct, the Administrator may disclaim or otherwise dispose of any of the following Assets of the Enterprise:
    - 4.1. any onerous or unprofitable Asset that, in the reasonable opinion of the Administrator, is not capable of a profitable realization;
    - 4.2. any Asset, in the reasonable opinion of the Administrator, over which effective control cannot be exercised by the Enterprise, the Administrator or the Court.



5. The Court shall make a decision on any request submitted by the Administrator under this article no earlier than twenty (20) days, and no later than sixty (60) days, after the date on which the request is submitted to the Court and a copy thereof has been provided to the Creditors Committee and such other parties as the Court may direct. Any party opposing such request shall file its brief in opposition within twenty (20) days after being provided with the request. The Administrator shall have twenty (20) days to respond to any such brief in opposition after being provided with such brief.

## **Article 12**

### **Specific Actions of the Administrator**

1. Between the Appointment Date and the date the Court confirms a Reorganization Plan, the following acts of the Administrator require the prior approval of the Court:

1.1. the sale, disposal, alienation, transfer or lease of any Asset of the Enterprise, in whole or in part, including any transfers for the satisfaction of existing obligations, where the value of the transaction exceeds one hundred thousand euro (€100,000) or - in the case of a lease – requires payments having a value greater than ten thousand euro (€10,000) per month;

1.2. the cancellation or termination of any contract or agreement, other than the termination of an employment contract, having a value greater than one hundred thousand euro (€100,000);

1.3. the commencement or termination of legal or arbitration proceedings;

1.4. any waiver of rights or entitlements having a value greater than one hundred thousand euro (€100,000);

1.5. the creation of pledges or mortgages or other security interests in or against any Asset of the Enterprise; and

1.6. any other acts out of the ordinary course of the Enterprise's business as determined by the Court.

2. The Court shall make a decision on any request submitted by the Administrator for the Court's approval of an act specified in paragraph 1. of this Article no earlier than twenty (20) days, and no later than sixty (60) days, after the date on which the request is submitted to the Court and a copy thereof has been provided to the Creditors Committee and such other parties as the Court may direct. Any party opposing such request shall file its brief in opposition within twenty (20) days after being provided with the request. The Administrator shall have twenty (20) calendar days to respond to any such brief in opposition after being provided with such brief.

3. In preparation for the publication of the Claims Deadline Notice and the holding of the Initial Creditors Meeting, the Administrator shall take the following actions:

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

3.2. hold consultations with representatives of any employees of the Enterprise who are reasonably expected to claim to be creditors of the Enterprise and with any union representatives who are known to the Administrator and available, in order to identify not more than five (5) individuals who shall be appointed by the Administrator as employee representatives and entitled to attend the Initial Creditors Meeting and to vote on the employees' behalf at the Initial Creditors Meeting; and

3.3. commence developing the first draft of a proposed Reorganization Plan for the Enterprise.

4. As soon as reasonably practicable after the Appointment Date, the Administrator 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.

5. The Administrator 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 Administrator. If necessary, the Administrator shall apply to the Court for an order to enforce such a demand. If the concerned asset is located outside of Kosovo, the Administrator may apply to any court having jurisdiction over the asset and the authority to enforce such a demand, or the Administrator may apply to the Court to issue a request for international legal cooperation under 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 Administrator may submit a written request to the Court, under paragraph 4 of Article 11 of this law, for authority to disclaim or otherwise dispose of the Enterprise's interest in the Asset.

6. The Administrator shall, using the best information available to the Administrator, 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 prior to the publication of the Claims Deadline Notice and shall thereafter be immediately updated when and as new information requires such action, including information about property collected by the Administrator 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."

7. The Administrator shall promptly provide a formal notice to the Kosovo Business Registry, the Kosovo Pledge Registry, the Kosovo Mortgage Registry and the Tax Administration of each of the following events as and when they occur, 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:

7.1. the issuance of a Moratorium Decision;

7.2. the confirmation by the Court of a Reorganization Plan; and

7.3. the closing of the reorganization proceedings and the Confirmed Reorganization Plan.

### **Article 13** **Obtaining of Secured and Unsecured Credit**

1. The Administrator may obtain unsecured credit in the ordinary course of the business operations of the Enterprise. Such credit shall be subject to approval of the Court and, if so approved, shall be an Administrative Expense Claim and shall be paid in accordance with the priorities set out in Article 34 of this law.

2. The Administrator may encumber or grant a security interest in property or assets of the Enterprise if required to borrow money to operate the business of the Enterprise.

3. The Administrator may grant a security interest in an encumbered Asset that ranks higher than the encumbrances and security interests in that Asset existing prior to the Moratorium Decision, if:

3.1. the Court has given its approval, which the Court shall only give if such pre-existing encumbrances and security interests will be adequately protected; and

3.2. the Enterprise cannot obtain financing in any other way.

4. The Court shall make a decision on any request submitted by the Administrator for the Court's approval of an act specified in paragraphs 1 – 3 of this Article no earlier than twenty (20) days, and no later than sixty (60) days after the date on which the request is submitted to the Court and a copy thereof has been provided to the Creditors Committee and such other parties as the Court may direct. Any party opposing such request shall file its brief in opposition within twenty (20) days after being provided with the request. The Administrator shall have twenty (20) days to respond to any such brief in opposition after being provided with such brief.

**Article 14**  
**Acceptance and Rejection of Contracts**

1. The Administrator may, with the Court's approval and at any time prior to the confirmation of a Plan of Reorganization, either accept or reject a contract that was entered into by the Enterprise prior to the Moratorium Decision and that has not yet been fully performed by the other party, provided that any rejection by the Administrator 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 1.5 of paragraph 1 of Article 34 of this law.
2. If the Enterprise is in default under or has breached a substantive term of such a contract, the Administrator may, with Court approval, 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, the filing of the reorganization application for the Enterprise or the failure of the Enterprise to pay a penalty;
  - 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 - with Court approval - the Administrator accepts a contract, and the Administrator later rejects such contract, either in a Confirmed Reorganization Plan or prior to the entry into force of a Confirmed Reorganization Plan, 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 subparagraph 1.1.5 of paragraph 1 of Article 34 of this law.
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 Administrator may, with the Court's approval, 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 Administrator fulfills the conditions specified in subparagraphs 2.1 and 2.2 of paragraph 2 of this Article 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.
6. The Court shall approve any proposal of the Administrator to reject, accept or assign a contract if such proposal is based on the reasonable, good faith business judgment of the

Administrator, the proposal appears beneficial to the Enterprise and the applicable requirements of this Article are fulfilled.

7. The Court shall make a decision on any request submitted by the Administrator for the Court's approval of an act specified in this Article no earlier than twenty (20) days, and no later than sixty (60) days, after the date on which the request is submitted to the Court and a copy thereof has been provided to the Creditors Committee and such other parties as the Court may direct. Any party opposing such request shall file its brief in opposition within twenty (20) days after being provided with the request. The Administrator shall have twenty (20) days to respond to any such brief in opposition after being provided with such brief.

## **Article 15**

### **Voidance of Transactions**

1. Upon the request of the Administrator 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 Moratorium 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 30 of this law 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 of this Article no earlier than twenty (20) days, and no later than sixty (60) days after the date on which the request is submitted to the Court and a copy thereof has been provided to the Creditors Committee and such other parties as the Court may direct. Any party opposing such request shall file its brief in opposition within twenty (20) days after being provided with the request. The party submitting the request shall have twenty (20) days to respond to any such brief in opposition.

### **Article 16 Duty to Cooperate with Administrator**

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 Administrator 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 REORGANIZATION PLAN**

### **Article 17 Creditor Notification and Proofs of Claim or Interest**

1. No later than three hundred and sixty (360) days after the Moratorium Notice is first published in a publication specified by the Advertisement Provisions the Administrator shall publish another notice, the “Claims Deadline Notice”. The Claims Deadline Notice shall:

1.1. be clearly titled “Notice of Deadline for Filing Claims; [Name of Enterprise].”

1.2. include a reference to this law, and specify 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 Administrator;

- 1.3. include 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 on the appropriate form by a specified time and date (the "Claims Deadline") which shall be 16:00 CET on a business day occurring not less than sixty (60) days nor more than that ninety (90) days after the date on which the Claims Deadline Notice has been fully published in accordance with all requirements of the Advertisement Provisions.
  - 1.4. 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.
  - 1.5. include a clear statement in bold type that all Claims and Interests not properly filed by the Claims Deadline shall be rejected and forever barred and unenforceable.
  - 1.6. 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;
  - 1.7. include a clear indication as to where and how a Person may obtain a list of the Assets of the Enterprise.
  - 1.8. provide estimated timetables relating to the Administrator's duties under this law;
  - 1.9. include a statement that the Administrator is responsible for developing and distributing a proposed Reorganization Plan for the Enterprise concerned;
  - 1.10. include a notification that a Qualifying Creditor or a Qualifying Group of Creditors, as those terms are defined in Article 2 of this law, shall be permitted to file an alternative proposal for reorganizing the Enterprise (an "Alternative Reorganization Plan") in accordance with the provisions of Article 22 of this law; and
  - 1.11. provide any other relevant information that the Administrator deems appropriate.
2. The Administrator shall also, within ten (10) days after the date the Claims Deadline Notice is first published in a publication specified by the Advertisement Provisions, mail a copy of such 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 reiterating and emphasizing the requirement specified in subparagraph 1.4 of this Article. The requirement of this paragraph 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.

3. Within thirty (30) days to forty (40) days after the initial publication of the Claims Deadline Notice, the Agency shall again publish such notice in accordance with all requirements of the Advertisement Provisions. For the avoidance of doubt, this publication of the Claims Deadline Notice shall not affect the date and time of the Claims Deadline, which shall remain as specified in the notice as originally published.

4. The form for a Proof of Claim shall require the following information:

4.1. the name, address and other contact details of the alleged creditor;

4.2. the total monetary amount of the alleged Claim (with any 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 or whether the Claim requires the Enterprise to perform a particular obligation other than the payment of money to the claimant;

4.3. a detailed description of any prior legal actions taken by the alleged creditor to assert or defend the Claim;

4.4 details of currency conversion rates used, if any;

4.5. copies of any written contract and other documents purporting to substantiate the Claim;

4.6. 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

4.7. any other relevant information in relation to the Claim that the alleged creditor desires to submit.

5. The form for a Proof of Interest shall require the following information:

5.1. the name, address and other contact details of the alleged interest holder;

5.2. the nature of the alleged Interest and a description of how and when the alleged Interest arose, and whether the alleged Interest is claimed to exist in the Enterprise or in a specific asset of the Enterprise.

5.3. a detailed description of any prior legal actions taken by the alleged interest holder to assert or defend the alleged Interest.



- 5.4. copies of any written contract and other documents purporting to substantiate the alleged Interest;
- 5.5. any other relevant information in relation to the alleged interest that the alleged interest holder desires to submit.
6. The Administrator and the Court 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 Administrator or Court reasonably deems necessary or appropriate to determining the validity of the concerned Claim or Interest.
7. Claims that have not matured or become due shall be deemed matured or due as of the date of the Moratorium Decision for the purposes of submitting a Proof of Claim.
8. If the concerned Person provides a compelling justification for late filing, the Court may in its sole discretion admit a Proof of Claim or Proof of Interest submitted within thirty (30) days after the Claims Deadline.
9. The Agency or a third party who has paid the Administrator's and/or a Professional Service Provider's Court-approved remuneration or expenses shall only be required to submit a Proof of Claim for such payments when directly requested by the Administrator or 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.
10. After receiving a Proof of Claim or a Proof of Interest, the Administrator shall - within ninety (90) days or such additional time as may be allowed by the Court - notify the Person submitting such Proof of Claim or Proof of Interest of any objection the Administrator has thereto.
11. A register of all Proofs of Claim and Proofs of Interest shall be kept by the Administrator and shall be made available for inspection by the Enterprise, any Registered Creditor, the Agency or any other party who potentially has a direct financial interest in the Enterprise or the Confirmed Reorganization Plan for the Enterprise. Appropriate arrangements shall be made for any such Person to review or photocopy the register during normal business hours.

## **Article 18**

### **Protection of Creditors Interests**

1. At any time following the Appointment Date, 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 Administrator 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 Administrator is or would be unfairly prejudicial.

2. The Court shall make a decision on any such application no earlier than twenty (20) days, and no later than sixty (60) days after the date on which the application is submitted to the Court and a copy thereof has been provided to the Administrator, the Creditors Committee and such other parties as the Court may direct. The Administrator may file a brief in opposition to the application within twenty (20) days after being provided with the application. The applicant shall have twenty (20) days to respond to any such brief in opposition.

### **Article 19** **Initial Creditor's Meeting**

1. The Administrator shall set a date for the Initial Creditors Meeting that is no earlier than thirty (30) days and no later than ninety (90) days after the Claims Deadline. Upon a request by the Administrator, the Court may extend the time period for holding the Initial Creditor's Meeting by thirty (30) days additional.

2. The Administrator shall, at least ten (10) days in advance of the Initial Creditors Meeting, provide a notice of such meeting to all creditors who filed a Proof of Claim on or before the Claims Deadline; provided, however, that - with the exception of the Employee Representatives - the Administrator 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 34 of this law.

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 Court. The notice shall specify the date, place and time of the meeting.

4. The Initial Creditors Meeting shall be chaired and presided over by the Court. The Administrator shall attend the meeting, as may any Professional Service Providers assisting the Administrator.

5. In addition to the Persons specified in paragraph 4. of this Article, only Persons entitled to notice under paragraph 2. of this Article 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 or reorganization of the Enterprise. Such Persons shall also have the right to provide their views to the Court with respect to any proposed composition of the Creditors Committee.

6. No Person other than those specified in paragraphs 4. and 5. of this Article may be present at the meeting.

7. The Administrator may from time to time hold such further meetings of Registered Creditors as he 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 Initial Creditors Meeting as specified in paragraphs 2-6 of this Article.

8. The Administrator may adjourn the Initial Creditors Meeting and any subsequent Registered Creditors meeting for up to twenty (20) days and on no more than two (2) occasions. If, immediately prior to adjourning a meeting, the Administrator informs the participants of the date, place and time that such meeting shall be reconvened, the Administrator is not required to give any further notice with respect thereto.

## **Article 20 Creditors Committee**

1. A Creditors Committee shall be appointed by the Court during the Initial Creditors Meeting. The Creditors Committee shall be comprised of a group of Persons that may reasonably be regarded as representative of all creditors. The Creditors Committee 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 Administrator on or before the Claims Deadline. If one or more public authorities in Kosovo have filed a Proof of Claim, the Minister of Finance or his/her duly designated representative shall be included as one of the non-employee creditors on the Creditors Committee.

2. The Court shall have the authority to issue any order that it deems necessary or advisable with respect to the functioning or representation of the Creditors Committee, including - but not limited to – an order designating a suitably qualified and independent third party to act on behalf of all creditors when the Creditors Committee fails to function fairly or effectively.

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

3.1. the right to receive a copy of the reports of the Administrator concurrently with the Court, such reports shall be provided by the Administrator every six (6) months;

3.2. the right to receive any request or application for Court action;

3.3. the right to request the Administrator to answer questions concerning the Enterprise;

3.4. the right to request the Administrator to initiate an action to avoid a transaction under Article 15 or to reject a Claim under Article 30 of this law;

- 3.5. the obligation to share with all Registered Creditors access to information obtained about the Enterprise;
  - 3.6. the right to receive reimbursement for reasonable travel and other costs incurred to attend Creditors Committee meetings;
  - 3.7. if requested by the Administrator, to act as consultation group for the Enterprise and the Administrator and to assist the Enterprise and the Administrator in their decision-making processes; and
  - 3.8. such other rights or obligations provided for by this law or by Court order.
4. The Administrator may seek the removal of a member of the Creditors Committee where the Administrator 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 reorganization process or to impair or damage the Enterprise, its business or its continuing viability. Such removal may also be sought by the majority of the other members of the Creditors Committee. In either case, an application for the concerned member’s removal shall be submitted to the Court. If the application is granted, the Court shall remove the concerned member and replace such member with another Registered Creditor.

## **Article 21**

### **Requirements for a Reorganization Plan**

1. A Reorganization Plan shall contain information sufficient to allow a reasonable business person to make an informed choice on whether or not to vote in favor of such plan. A Reorganization Plan shall:
  - 1.1. include an introduction:
    - 1.1.1. describing the Enterprise’s business activity, its current financial circumstances and the circumstances leading to its current financial difficulty;
    - 1.1.2. summarizing the fundamental aspects of the plan;
    - 1.1.3. setting forth a general explanation comparing the plan’s treatment of each class of Claims and Interests with the treatment that each such class would likely receive under a liquidation of the Enterprise, which shall be based on the opinion or report of an independent expert appraiser with respect to the liquidation value of the Assets of the Enterprise, and such opinion or report shall be attached to the plan as an exhibit.

- 1.2. designate the classes of Claims and any class or classes of Interest;
- 1.3. identify any class of Claims or Interests that will not be negatively affected by the plan;
- 1.4. describe in detail the treatment of any class of Claims or Interests that will be negatively affected by the plan;
- 1.5. provide the same treatment for each Claim or Interest of a particular class, unless a particular claimant or interest holder agrees to a less favorable treatment of such particular Claim or Interest;
- 1.6. provide adequate means for the plan's implementation, such as (the following items are illustrative only):
  - 1.6.1. retention, sale or other disposal by the Enterprise of all or any part of its Assets;
  - 1.6.2. transfer of all or any part of the Enterprise's Assets to one or more entities (including any entity or entities that are to be established pursuant to the plan after its confirmation);
  - 1.6.3. merger or consolidation of the Enterprise with one or more entities (including any entity or entities that are to be established pursuant to the plan after its confirmation);
  - 1.6.4. sale of all or any part of the Enterprise's Assets, either subject to or free of any lien, or the distribution of all or any part of such Assets among Persons who have currently valid and enforceable rights in such Assets under the law of Kosovo;
  - 1.6.5. satisfaction or modification of any lien;
  - 1.6.6. cancellation or modification of any debt obligation, indenture or similar instrument;
  - 1.6.7. curing or waiving of any default;
  - 1.6.8 extension of a maturity date or a change in an interest rate or other term of an outstanding debt instruments or securities;
  - 1.6.9 amendment of the Enterprise's charter or of the charter of any entity referred to in item 1.6.2 or 1.6.3 of this subparagraph; and/or
  - 1.6.10 issuance of securities of the Enterprise or of any entity referred to in item 1.6.2 or 1.6.3 of this subparagraph for cash, property or other items

of value, or in exchange for Claims or Interests, or for any other appropriate purpose;

1.7. provide for the inclusion in the charter or foundation document of the Enterprise, or of any entity referred to in subparagraph 1.6.2 or 1.6.3 of paragraph 1.6 of this Article of a provision:

1.7.1. prohibiting the issuance of nonvoting shares or other ownership interests, and

1.7.2. providing, if there is more than one class of shares or ownership interests possessing voting rights, an appropriate distribution of such voting rights among such classes; including – if a class of shares or ownership interests has preference over another class with respect to dividends - adequate provisions for the election of directors representing such preferred class in the event of a default with respect to the payment of such dividends;

1.8. contain a description of the proposed management structure for the Enterprise and details of their proposed compensation;

1.9. contain a description of the proposed employment structure of the Enterprise including a description of any proposed redundancies; and

1.10. contain a description of any proposed methods for the sale of Assets or entities, including a description of the extent to which the Administrator intends to use the methods and resources of the Agency to conduct such sales, and the criteria that will be used for selecting winning bidders;

1.11. provide a statement regarding the approximate time periods for completing the plan and an approximate schedule for implementing major components thereof; and

1.12. in the case of the Administrator's Reorganization Plan set forth the notice required by paragraph 7 of Article 22 of this law.

2. Subject to paragraph 1 of this Article, a plan may:

2.1. negatively affect or leave unaffected any class of Claims, secured or unsecured, or of Interests; setting forth a general explanation as to how the confirmation and implementation of the plan would – for each class of creditors - result in treatment equal to or better than the treatment such class would receive in a liquidation of the Enterprise.

- 2.2. provide for the assumption, rejection, or assignment of any unexpired contract or lease of the Enterprise that has not previously been rejected by the Administrator under Article 14 of this law;
  - 2.3. provide for:
    - 2.3.1. the settlement or adjustment of any claim or interest belonging to the Enterprise; or
    - 2.3.2. the retention and enforcement by the Enterprise or the Administrator of any such claim or interest;
  - 2.4. provide for the sale of any or all of the assets of the Enterprise, and for the distribution of the proceeds of such sale among holders of valid Claims or Interests in accordance with the priorities established by Article 34 of this law;
  - 2.5. modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims; and
  - 2.6. include any other appropriate provision not inconsistent with the applicable provisions of this title.
3. Notwithstanding paragraph 1. of this Article, if it is proposed in a plan to cure a default, the amount necessary to cure the default shall be determined in accordance with the underlying agreement and law applicable thereto.
  4. A class of Claims or Interests shall be deemed to be negatively affected by a plan unless, with respect to each Claim or Interest in such class, the plan -
    - 4.1. leaves unaltered the legal and contractual rights of the holder with respect to such Claim or Interest; or
    - 4.2. notwithstanding any legal or contractual provision that entitles the holder of such Claim or Interest to demand or receive accelerated payment of such Claim or Interest after the occurrence of a default:
      - 4.2.1. cures any such default that occurred before or after the commencement of the reorganization process under this law;
      - 4.2.2. reinstates the maturity of such Claim or Interest as such maturity existed before such default;

4.2.3. compensates the holder of such Claim or Interest for any damages incurred as a result of any reasonable reliance by such holder on such provision; and

4.2.4 Does not otherwise alter the legal or contractual rights of the holder with respect to such Claim or Interest.

## **Article 22**

### **Administrator's Reorganization Plan; Alternative Reorganization Plan**

1. Within nine (9) months after the date of publishing the Claims Deadline Notice in accordance with Article 17 of this law, the Administrator shall prepare a proposed Reorganization Plan and shall submit such plan to the Creditors Committee. A copy of such plan shall be simultaneously filed with the Court. The Court may extend the referenced nine-month period for up to a maximum of fifteen (15) months upon one or more requests submitted to the Court by the Administrator setting forth the reasons for such request.

2. At the same time the Administrator submits his Reorganization Plan, the Administrator shall send a written notice to all Registered Creditors who are not on the Creditors Committee informing them of this fact, providing them with information on how they may obtain a copy of the plan, and setting forth the notice required by paragraph 7 of this Article; provided, however, that the Administrator shall not be required to send this notice to any Registered Creditor who has only made an employee Claim classified under subparagraph 1.3 of paragraph 1 of Article 34 of this law.

3. Within thirty (30) days after the submission of the Administrator's proposed Reorganization Plan, any Qualifying Creditor or Qualifying Group of Creditors that plans to prepare and submit an Alternative Reorganization Plan shall provide the Creditor's Committee, the Administrator and the Court with a "Notice of Intent to Submit an Alternative Reorganization Plan." Any such notice shall be accompanied by appropriate evidence demonstrating that the person or persons providing such notice meet the definition of "Qualifying Creditor" or "Qualifying Group of Creditors" specified in Article 2 of this law.

4. Any Qualifying Creditor or Qualifying Group of Creditors that timely provides the notice specified in paragraph 3 of this Article may submit an Alternative Reorganization Plan to the Creditors Committee and the Administrator within the sixty (60) day period following the date on which the Administrator submitted the Administrator's Plan of Reorganization. Any Alternative Reorganization Plan so submitted shall be simultaneously filed with the Court and provided to the Administrator. The Court may extend the referenced sixty (60) day period for up to an additional thirty (30) days upon a request submitted to the Court by the concerned Qualifying Creditor or Qualifying Group of Creditors setting forth the reasons for such request.



5. All expenses related to the preparation, submission and filing of an Alternative Reorganization Plan shall be paid by the concerned Qualifying Creditor or Qualifying Group of Creditors.

6. The Administrator's Reorganization Plan and any Alternative Reorganization Plan shall comply with Article 21 of this law.

7. In addition, the Administrator's Reorganization Plan shall set forth a notice on the cover page, or the page following the cover page, in bold type:

7.1. stating that any Qualifying Creditor or Qualifying Group of Creditors has the right to submit an Alternative Reorganization Plan in accordance with the provisions of this Article;

7.2. reciting the requirements that must be met to exercise such right;

7.3. reciting the definitions of "Qualifying Creditor" and "Qualifying Group of Creditors" specified in Article 2 of this law;

7.4. providing the Administrator's then best estimate of the total value of all outstanding obligations of the Enterprise in accordance with the terms of those definitions; and

7.5. providing the names and addresses of all Persons specified in paragraph 4 of this Article to whom an Alternative Reorganization Plan must be submitted or provided.

### **Article 23**

#### **Notice of Confirmation Meeting**

1. If the thirty (30) day period specified in paragraph 3 of Article 22 expires and no Qualifying Creditor or Qualifying Group of Creditors has provided the notice specified in that paragraph, the Administrator shall immediately:

1.1. provide a written notice to the Court, the members of the Creditors Committee, and any Person having a Registered Proof of Claim or Interest, specifying the date, commencement time and location of the confirmation meeting on the Administrator's Reorganization Plan. The date specified in the notice for the holding of the confirmation hearing shall be a Business Day occurring no earlier than twenty (20) days, and no later than thirty (30) days, after the date of dispatch of the notice. The commencement time specified in the notice shall be a time that occurs during usual business hours, and the location specified in the notice shall be a location in Kosovo that has been designated by the Court; and

- 1.2. provide each Registered Creditor with a proxy voting form together with a detailed explanation as to how to exercise their right to vote by proxy and the deadline for submission, as determined in accordance with paragraph 1 of Article 24 of this law.
2. If any Qualifying Creditor or Qualifying Group of Creditors has provided the notice specified in paragraph 3 of Article 22 of this law within the thirty (30) day period specified in that paragraph, the Administrator shall provide the notice and proxy voting form specified in subparagraphs 1.1 and 1.2 of paragraph 1 of this Article immediately after the earlier of:
  - 2.1. the date on which all Alternative Reorganization Plans so noticed have been submitted, or
  - 2.2. the date on which the time period for the submission of all such plans, as determined in accordance with paragraph 4 of Article 22 of this law, expires.

#### **Article 24**

#### **Confirmation Meeting; Voting on the Reorganization Plan**

1. At the confirmation meeting, only Registered Creditors shall have the right to vote, by class and a majority shall be decided by value, whether in person or by proxy. All proxy forms and proxy votes shall be signed by the Registered Creditor or a Person duly authorized by the Registered Creditor. Any proxy form or proxy vote that has not been received by the Administrator at least five (5) days prior to the confirmation meeting shall be invalid and not counted or considered.
2. In the event that one or more Alternative Reorganization Plans have been properly and timely submitted in accordance with Article 22 of this law, the Administrator shall first provide an objective comparative analysis of the material differences between the Administrator's Reorganization Plan and each Alternative Reorganization Plan.
3. The Administrator shall record the votes in favor and against each of the plans on the basis of the value of the votes, provided that the value of each vote is calculated according to the value of the Claim submitted in the Proof of Claim by the Registered Creditor taking into account any reduction reasonably made by the Court pursuant to an objection to the Claim.
4. The value of each Claim for voting purposes shall be the Administrator's reasonable calculation in accordance with Article 31 of this law. The Administrator may reduce or vary the amount of any Claim submitted in the Proof of Claim for voting purposes if he forms the reasonable opinion that such Claim does not represent the true and legitimate value of such Claim having taken into account all evidence available to the Administrator, and the Administrator shall notify the creditor of any such decision as promptly as is reasonable in all the circumstances.

5. Any Person affected by a decision of the Administrator pursuant to this Article can apply to the Court to challenge the Administrator's opinion, provided that such application is made within seven (7) days from the date a notification of the Administrator's decision was received. The Court shall only override the Administrator's judgment if the Administrator has acted in a manifestly unreasonable manner.

6. For the avoidance of doubt, any decision taken by the Administrator on accepting or rejecting a potential creditor as Registered Creditor or reducing the value of the Claim of a Registered Creditor for the purpose of determining attendance or voting rights at the confirmation hearing, shall be without prejudice to the right of the Administrator to accept or reject the same Claim or to make a different assessment of the value of the Claim for the purpose of receiving any benefits under the Confirmed Reorganization Plan.

## **Article 25**

### **Court Confirmation of Plan**

1. Before or during the confirmation meeting a Plan proponent may file written amendments to their Reorganization Plan or their Alternative Reorganization Plan. After the Plan proponent files an amendment to such Plan with the Court, the Plan as amended becomes the Plan of the proponent. Any Registered Creditor that has accepted or rejected a Plan is deemed to have accepted or rejected, as the case may be, such Plan as amended, unless, within the time fixed by the Court, such Registered Creditor formally and in writing notifies the Administrator otherwise. In light of the discussion and voting at the confirmation meeting, the Court shall form an opinion on the Reorganization Plan and on any Alternative Reorganization Plan that has been timely submitted.

2. Within fourteen (14) days after the conclusion of the confirmation meeting, the Court shall make an order with respect to each Plan so submitted. Such order shall take into account the following:

2.1. the voting of the Registered Creditors;

2.2. the views of the Administrator;

2.3. whether, under a Plan, the proposed reorganization of the Enterprise will achieve a greater return to creditors than a liquidation of the Enterprise;

2.4. the extent to which a Plan can reasonably be expected to preserve or create employment opportunities.

3. The Court may make such order as it sees fit including, but not limited to:

- 3.1. approving a Plan as drafted or with such modifications as may have been proposed by the Administrator or the Creditors Committee or as the Court may deem appropriate;
  - 3.2. rejecting the Reorganization Plan and any Alternative Reorganization Plan and requesting a revised Reorganization Plan from the Administrator within a set time period; or
  - 3.3. rejecting the Reorganization Plan and any Alternative Reorganization Plan and requiring the Agency to put the Enterprise into liquidation pursuant to Article 41 of this law.
4. The Court shall have the authority to confirm a Plan of Reorganization over the objection of one or more dissenting creditors or classes of Claims and/or Interests if: (i) at least one class of Claims negatively affected by the plan has accepted the plan and (ii) the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of Claims or interests that is negatively affected under, and has not accepted, the plan.
5. A class of claims or interests is not negatively affected by a Plan if, with respect to each claim or interest of such class, the Plan leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest.

## **Article 26**

### **Effects of Confirmed Reorganization Plan**

1. As of the date of the order issued by the Court determining a plan for the reorganization of an Enterprise and any amendments thereto (Confirmed Reorganization Plan), all Claims, interests, and rights of the creditors and other interested parties and obligations of the Enterprise as specified by the Confirmed Reorganization Plan are reformulated and governed by the terms stated within the Confirmed Reorganization Plan.
2. No actions of the Enterprise shall be in conflict with the Confirmed Reorganization Plan. The Management of the Enterprise shall undertake all measures set out in the Confirmed Reorganization Plan and any measure undertaken by the Management shall conform to, and comply with, the relevant provisions of the Confirmed Reorganization Plan. The Administrator shall monitor compliance with the provisions of the Confirmed Plan.
3. A Confirmed Reorganization Plan or an order of the Court may transfer or provide for the transfer to a third party of any Asset of the Enterprise, unless the transfer of such an Asset is specifically and expressly prohibited by another aspect of the law of Kosovo.
4. If an Asset of the Enterprise is an interest in immovable property that is determined to have been in social ownership prior to the effective date of the Constitution but is now

owned by the Republic of Kosovo as provided for in Article 159.2 of the Constitution, a Confirmed Reorganization Plan or an order of the Court may transfer or provide for the transfer to a third party of a secure and transferable Leasehold over such immovable property. Such Leasehold shall have a term of ninety-nine years and shall otherwise have the rights specified in Section 2.1 of UNMIK Regulation 2003/13.

**Article 27**  
**Breach of Confirmed Reorganization Plan**

1. A creditor or other party affected by a material failure of the Enterprise to abide by the provisions of the Confirmed Reorganization Plan may submit to the Court a notice of material breach of the Confirmed Reorganization Plan. The Court shall serve a copy of the notice to the Enterprise and the Administrator within seven (7) days of receiving the application and schedule a hearing on the matter not later than fourteen (14) days after the date a copy of the notice was served by the Court.

2. In the event that the Court finds a material breach of the Confirmed Reorganization Plan has occurred, it shall make such order as it sees fit, including the following:

2.1. directing that the breach be cured within a period of time specified by the Court, failing which the Enterprise may become subject to liquidation procedures;

2.2. ordering the reorganization procedure ended and directing the Enterprise to become subject to liquidation procedures in accordance with Article 41 of this law;

2.3. giving leave to the Enterprise or the Administrator to submit amendments to the Confirmed Reorganization Plan, which shall be further considered by the Court; or

2.4. issuing any other decision to remedy the breach as may be appropriate and consistent with this law and other applicable legislation.

**PART V**  
**CLAIMS, PRIORITIES, DISTRIBUTION**

**Article 28**

**Creditor Notification and Administrative Expense Claims Bar Date**

1. Within seven (7) days of the filing of the confirmation order on the Confirmed Reorganization Plan, the Administrator shall publish a notice in accordance with the Advertisement Provisions informing all creditors about such Court order and the date the Court issued the order.

2. In the published notice the Administrator shall:

2.1. request the filing of Administrative Expense Claims;

2.2. advise all potential creditors and claimants that failure to file an Administrative Expense Claim on or before the Administrative Expense Claims Bar Date will result in such creditors and claimants being unable to participate in and benefit from the Confirmed Reorganization Plan and their Claims being discharged in accordance with Article 40 of this law.

2.3. if a creditor provides compelling justification for late filing, the Court may in its sole discretion admit an Administrative Expense Claim submitted after the Administrative Expense Claims Bar Date, provided that the Enterprise has sufficient funds for the relevant class of creditors to meet such additional Claim.

**Article 29**

**Registration and Evaluation of Administrative Expense Claims**

1. Immediately following the Administrative Expense Claims Bar Date, the Administrator shall evaluate the validity, extent, and priority of Administrative Expense Claims, provided that Administrative Expense Claims that are untimely or otherwise not allowed shall be ineligible to participate in and benefit from the Confirmed Reorganization Plan.

2. The Administrator may request such further information and evidence as is necessary to carry out the evaluation.

3. If the Administrator rejects, in whole or in part, or reduces the amount of an Administrative Expense Claim, the Administrator shall promptly notify the affected creditor in writing, giving an explanation for the rejection or reduction of the Claim and notifying the creditor of his right to appeal under paragraph 4 of this Article.

4. The affected holder of such Administrative Expense Claim shall have the right to apply to the Court within thirty (30) days after receipt of such notice for a review of the Administrator's decision.

5. The Court shall schedule a hearing to occur no later than fourteen (14) days after the filing of the application for review and shall make a determination on the Claim no later than seven (7) days after the hearing.

### **Article 30** **Invalid and Improper Claims**

1. The Administrator 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 this law or another element of the Law of Kosovo or an order issued by the Court in the concerned proceeding.

2. Without limiting the scope or applicability of paragraph 1. of this Article, the following shall constitute good and sufficient legal grounds under this 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 claimant or alleged interest holder remains incomplete after a request from the Administrator 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 through 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 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 this sub-paragraph 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 (i) it concerns an entity or purported entity or business unit that, at the time of the effective date of the Confirmed Reorganization Plan, is separately managed from the Enterprise's operations in Kosovo and (ii) the Administrator 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 31**

#### **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 Moratorium 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 Moratorium 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 Moratorium 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 Moratorium Decision, provided that such interest shall not exceed 10 % (ten per cent) of the principal amount.

4. In addition to other grounds for objecting to any Claim, the Administrator shall also have, without limitation, the right to:

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

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

4.3. 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:

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

4.3.2 .the concerned amounts constitute liquidated amounts;

4.3.3. 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 Moratorium Decision; and

4.3.4. the concerned amounts were due and payable before the date of the Moratorium Decision.

### **Article 32 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 Administrator 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:

1.1. any such disposal or exercise of the Administrator's powers requires an application by the Administrator to the Court, which may be made by way of including the proposed disposal or exercise of the Administrator's powers in the Reorganization Plan; and

- 1.2. the Court is convinced that the disposal of or exercise of the Administrator's powers over the encumbered property or asset is necessary to promote the effective implementation of the Confirmed Reorganization Plan.
2. In the event that encumbered property or assets are disposed of or have otherwise become subject to the exercise of the Administrator'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 Administrator's powers if the Administrator 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 Administrator'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 considered an unsecured Claim.

### **Article 33 Final Claims List**

1. No later than ninety (90) days after the evaluation of all Claims including the determination of objections against the Administrator's decision by the affected creditor relating to the rejection or reduction of Administrative Expense Claims in accordance with Article 29 of this law, the Administrator shall compile and submit to the Court a final list of Claims, indicating their amount and status in accordance with the priority categories set forth in Article 34 of this law.
2. A copy of the final list of Claims shall be transmitted to the Enterprise, the Agency and the Creditors Committee and shall be available to any creditor upon the submission of a request to the Administrator.

### **Article 34 Priorities of Claims and Interests**

1. Claims shall be classified in classes 1.1 to 1.6 and satisfied in the following order:
- 1.1. priority Claims, in the following order:
- 1.1.1 secured credit incurred in accordance with paragraph 2 Article 13 of this law to the extent that such Claims relate only to the realizations of assets which were securing the credit;
- 1.1.2. court-approved remuneration and expenses of the Administrator and Professional Service Providers assisting the Administrator, including any

payments made by the Government, a creditor or any third party towards the funding of such remuneration and expenses;

1.1.3. court expenses;

1.1.4. administrative costs of the Agency which are proven to be directly related to the support of the Administrator;

1.1.5. administrative Expense Claims;

1.1.6. permitted expenses of the Creditors Committee members in accordance with subparagraph 3.6 of paragraph 3 of Article 19 of this law;

1.1.7. if applicable, entitlements of Employees under section 10 of UNMIK Regulation 2003/13 of 9 May 2003 on the Transformation of the Right of Use to Socially-Owned Immovable Property;

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

1.2. claims based on the ownership of specific Assets;

1.3. claims for unpaid wages of employees for work performed prior to the date of the Moratorium Decision, limited to three months gross salary per person;

1.4. unsecured Claims for taxes, penalties and other debts owed to public authorities;

1.5. other unsecured Claims, including wage and pension Claims that are not subject to higher priority treatment;

1.6. interests of owners, shareholders, founders, participants or partners of the Enterprise.

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

3. If any Person provided funds that were used, with the Enterprise's knowledge and implicit or explicit consent, to pay the wages or pensions of the Enterprise's employees or other debts of the Enterprise, such Person may file a Claim to the same extent as, and in the place of, the employees or other creditors who benefited from such payments.

**Article 35**  
**Satisfaction of Claims and Interests**

1. Claims and interests shall be satisfied according to priority by class and order as set forth in Article 34 of this Law.
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. If resources are insufficient to fully satisfy all Claims or interests of a given class or order, the Claims of that class or order shall be satisfied in proportion to the amount of each Claim.
4. The procedures for paying or satisfying the Claims and interests shall be established by the Confirmed Reorganization Plan.

**Article 36**  
**Reserved Funds**

1. Liquid funds, monies or other assets may be set aside by the Administrator into a separate escrow fund held by an escrow agent that is appointed by the Court 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 Deadline.

**PART VI**  
**CLOSURE OF REORGANIZATION**

**Article 37**  
**Administrator's Final report**

1. After completion of a Confirmed Reorganization Plan, the Administrator shall submit a final report to the Court and to the Creditors Committee. The final report shall set out in detail all relevant matters that have occurred since the Court has issued the Confirmed Reorganization Plan.
2. Based on the final report the Administrator may apply to the Court for an order closing the reorganization proceedings and the Confirmed Reorganization Plan.

**Article 38**  
**Closure of the Confirmed Reorganization Plan**

1. Upon receipt of the final report and the application from the Administrator seeking closure of the reorganization proceedings and the Confirmed Reorganization Plan the Court shall within fourteen (14) days issue a written order closing the proceedings and the Confirmed Reorganization Plan, provided it is satisfied that all requirements of the Confirmed Reorganization Plan have been carried out or substantially carried out. Such order shall also provide for the discharge of the Creditors Committee.
2. At any stage of the reorganization proceedings, in the event that the resources of the Enterprise are insufficient to cover the costs of the priority Claims as set out in Article 34 of this law, and following an application of the Administrator to the Court, the Administrator may immediately submit a final report and, upon its approval, the Court shall issue a decision closing the proceedings and making such further order as the Court shall consider fit.
3. In the event that no creditor Claims have been submitted before the Claims Bar Date, the Administrator may immediately submit the final report and, upon its approval, the Court shall issue a decision closing the reorganization proceedings and the Confirmed Reorganization Plan.

**Article 39**  
**Discharge of the Administrator**

1. The Court shall include in any order closing the reorganization proceedings and the Confirmed Reorganization Plan provision for:

- 1.1. the relief of the Administrator of any further duties in relation to the Enterprise and the reorganization proceedings, save for the execution by the Administrator 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 Administrator.
2. Any such order by the Court shall not limit the liability of the Administrator for any illegal acts or omissions during his term as an Administrator.

**Article 40**  
**Discharge of Debts and Recovery of the Enterprise**

1. Upon closure of the reorganization proceedings and the Confirmed Reorganization Plan by the Court, 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 reorganization proceedings and the Confirmed Reorganization Plan.
2. Upon closure of the Confirmed Reorganization Plan the Enterprise shall be considered financially recovered and may continue business activities without further restriction or supervision.

**PART VII**  
**LIQUIDATION**

**Article 41**  
**Conversion to Liquidation**

1. The Court may order the commencement of liquidation proceedings pursuant to the Law on the Privatization Agency of Kosovo as amended, in the event that:
  - 1.1. no Reorganization Plan is submitted by the Administrator within the time limits set under Article 22 of this law;
  - 1.2. no Reorganization Plan is confirmed by the Court pursuant to paragraph 4 of Article 25 of this law; or
  - 1.3. the Enterprise materially breaches the requirements of the Confirmed Reorganization Plan and no satisfactory remedy is proposed or accepted by the Court pursuant to Article 27 of this law.

- 1.4. prior to the issuance of the Confirmed Reorganization Plan, the Administrator requests that the liquidation proceedings be commenced and no Alternative Plan has been submitted.
2. In the decision of the Court commencing the liquidation proceedings:
  - 2.1. the Administrator shall be ordered to submit a final report pursuant to paragraph 1 of Article 37 of this law; and
  - 2.2. the Agency shall be ordered to commence liquidation proceedings in accordance with the provisions of the PAK Law.

## **PART VIII MISCELLANEOUS PROVISIONS**

### **Article 42 Directions from the Court**

1. At any time during the reorganization procedure the Administrator or any Qualifying Creditor 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 or interpretation of the Confirmed Reorganization Plan. The Administrator shall contemporaneously provide a copy of such a request to the Creditors Committee and such other parties-in-interest as the Court may direct. The Court shall issue a decision on such request with twenty (20) days after submission.
2. Upon receipt of an application pursuant to paragraph 1. of this Article, 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 this law or to further the Reorganization or liquidation of an Enterprise.
4. The Court may extend any of the time limits established by a provision of this law, except to the extent that the concerned provision imposes a specific restriction on the Court's authority to extend the concerned time limit.
5. If the Court extends a time limit specified in this law, the Court shall – if necessary under the circumstances – order the Administrator to publish a notice informing the public of such extension and its effects, if any, on the rights or obligations of Persons who may have Claims or Interests.

6. No provision of this 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 43**  
**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 Montenegro; and
  - 1.3. in an English language publication enjoying wide circulation in Europe.
2. The various language versions of any specific notice shall be published as contemporaneously as may be practicable under the circumstances.

**Article 44**  
**Languages of Key Documents**

1. Proofs of Claim and Proofs of Interest must be submitted in Albania or Serbian or English, and any other communications with the Administrator may be submitted in any of these.
2. Any proposed Reorganization Plan or Alternative Reorganization Plan must be submitted in all three languages. This requirement also applies to the Administrator's report.
3. Standardized formal communication documents, invitation letters and forms prepared by the Administrator must be produced and available in Albanian, Serbian and English.

**Article 45**  
**Exemptions from the Applicable Law**

Claims filed in the Court after the date of the Moratorium Decision against the Enterprise or the Administrator under this law shall be exempted from the requirements of Sections 29.1 and 30.2 of the PAK Law.



**PART IX**  
**ADMINISTRATIVE SANCTIONS**

**Article 46**  
**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 this 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 Provisional Criminal Code.

2. Any Person knowingly submitting a false Claim or false document or making a false statement in a document submitted to the Court in proceedings under this 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 Provisional Criminal Code.

**Article 47**  
**Misappropriation and Concealment of Assets**

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

2. Any Person knowingly transferring, concealing or failing to turn over any documents, property or Assets of the Enterprise to an Administrator, the Liquidation Authority, a Person acting in the capacity or as a representative of an Administrator, or representative of a 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 Provisional Criminal Code.

**Article 48**  
**Knowing Disregard of this law**

Any Person who knowingly disregards a provision of this law may become liable to an administrative fine not exceeding five thousand Euros (5,000) per instance.

**PART X**  
**FINAL AND TRANSITIONAL PROVISIONS**

**Article 49**  
**Repeal of Prior Legislation**

This law repeals UNMIK Regulation 2005/48.

**Article 50**  
**Transitional Provision: Pending Proceedings**

For any reorganization proceeding under UNMIK Regulation in which a Moratorium Decision has been issued but an Administrator has not been appointed, the Agency shall, within fourteen (14) days after the effective date of this law, publish a Moratorium Notice with respect to that decision that complies with the requirements of Article 5 of this law; this requirement shall apply regardless as to whether a similar notice has already been published pursuant to a requirement of UNMIK Regulation 2005/48. After the publication of such Moratorium Notice, the concerned reorganization proceeding shall thereafter be governed by and handled in accordance with the procedural and substantive requirements of this law; provided, however, that the requirements of Article 3 of this law shall not be applicable and the Moratorium Decision shall be deemed to have been issued under Article 4 of this law.

**Article 51**  
**Entry into Force**

This law shall enter into force after publication in the Official Gazette of the Republic of Kosovo.

**Law No. 04/L-035**  
**22 September 2011**

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

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