

PROVISIONAL INSTITUTIONS OF SELF GOVERNMENT

KUVENDI I KOSOVËS
СКУПШТИНА КОСОВА
ASSEMBLY OF KOSOVO

Law No.2004 / 14

ON INTERNATIONAL FINANCIAL AGREEMENTS

The Assembly of Kosova,

Pursuant to UNMIK Regulation No. 2001/9 on the Constitutional Framework for Provisional Self-Government in Kosova, Chapter 5.1 (a), (b) and Chapter 5.6; Chapter 8.1 (c), (i), (m) and (o); and Chapter 9.1.26 (a) and 9.3.3;

Taking into account Section IX on loan restrictions, guarantees, lending and capitalizations, Articles 44, 45 and 46 of the Law No. 2003/2 on the Management of Public Finances and Liabilities; and Acknowledging the need to regulate international financial agreements and the guarantees thereof:

Approves the following :

LAW ON INTERNATIONAL FINANCIAL AGREEMENTS

Article 1

Scope of Application and Definitions

1.1. This law shall apply to all International Financial Agreements that are signed and enter into effect after the approval of this law.

1.2. For the purpose of this law, an “International Financial Agreement” means any agreement that:

- a. is concluded for UNMIK by the Special Representative for a period of two years or more with one or several States, international financial institutions and/or other international organizations and/or corporations incorporated outside of Kosovo; and
- b. establishes an actual or contingent financial obligation, including any loan agreement, guarantee agreement, investment protection agreement or other financial instrument.

1.3. Law 2003/2 means the Law on Public Financial Management and Accountability, adopted by the Assembly of Kosovo and promulgated in Regulation 2003/17 of 12 May 2003.

1.4. “SRSG” means the Special Representative of the Secretary-General of the United Nations in Kosovo.

1.5. “UNMIK” means the United Nations Interim Administration Mission in Kosovo.

Article 2

Liability Accounts; No Liability of United Nations

2.1. International Financial Agreements shall specify the entity or party responsible for servicing financial obligations incurred under such agreements.

2.2. No International Financial Agreement concluded under this Law shall establish any actual or contingent financial obligation of UNMIK or the United Nations. All International Financial Agreements concluded under this law shall contain clear and apparent language clarifying that the agreement is neither guaranteed nor otherwise secured by UNMIK or the United Nations.

Article 3

Procedure

3.1. The negotiating delegation shall include three representatives of UNMIK, who shall be appointed by the SRSG, and three representatives of the PISG who shall be appointed by the Government. The PISG representatives shall be headed by the Minister of Finance and Economy in close cooperation with the SRSG.

3.2. An International Financial Agreement shall only become effective and create obligations to Kosovo, after it is approved in writing by the Government, approved in writing by the Assembly, and signed by the SRSG for UNMIK. The Special Representative may only sign an International Financial Agreement if the procedure set out in subsections 3 through 5 has been observed.

3.3. Any proposal for the conclusion of an International Financial Agreement shall be submitted for approval by the Minister of Finance and Economy to the Government. A copy of such submission shall be forwarded concurrently to the SRSG.

3.4. Upon approval by the Government, the proposed International Financial Agreement shall be submitted to the Assembly for its endorsement. Such submission to the Assembly shall contain a summary of the information provided to the Government and any additional information and comments that the Government may decide to provide. A copy of such submission shall be forwarded concurrently to the SRSG.

3.5. After endorsement by the Assembly, a proposed International Financial Agreement shall be submitted to the SRSG who may:

- a. conclude the agreement as endorsed by the Assembly and sign it into effect;
- b. resubmit an amended agreement to the Government which may resubmit it to the Assembly; or
- c. decline the conclusion of the proposed agreement.

Article 4
Cross-reference to Law No. 2003/2

4.1. Part IX of Law No. 2003/2 shall apply to International Financial Agreements, unless otherwise stipulated in the present law.

4.2. International Financial Agreements may be concluded with any juridical person referred to in section 1.2 (a) of this law and section 46.1 and schedule B of Law No. 2003/2.

4.3. Section 19.5 (a) (v) of Law No. 2003/2 shall not apply to any International Financial Agreement signed by the SRSG that become effective within the fiscal year 2004.

Article 5
Commitment to Legal Succession

Unless an International Financial Agreement provides otherwise, any and all obligations incurred in or by means of an International Financial Agreement, including all and any contingent obligations, shall be binding upon the PISG or any successor government or authority exercising administrative powers with respect to Kosovo for the entire period such International Financial Agreement remains effective. Such obligations shall become binding upon the PISG only for agreements concluded based on this law.

Article 6
Safeguards

6.1. In case of a conflict between the terms of an International Financial Agreement and the applicable law in Kosovo, the International Financial Agreement shall at any time prevail over any provision of the law applicable in Kosovo at present or in the future.

6.2. No amendment to this law shall be applied to an International Financial Agreement that was signed by the SRSG before such amendment enters into force.

6.3. No provision of an International Financial Agreement may be repealed, amended or declared inapplicable or void, except:

- a. by agreement of the parties after receiving the written approval of the Government and the Assembly; and
- b. otherwise in accordance with the procedures and conditions provided in such International Financial Agreement.

Article 7
Dispute Resolution and Choice of Law

7.1. International Financial Agreements shall include provisions for the resolution of disputes arising thereunder. Such provisions may provide for international arbitration, adjudication by Kosovo courts, or adjudication by the courts of any jurisdiction to be specified.

7.2. Subject to Article 7.1 of this law, International Financial Agreements shall provide for international arbitration in accordance with internationally recognized arbitration rules, such as the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) or the Arbitration Rules of the International Centre for Settlement of Investment Disputes (ICSID).

7.3. International Financial Agreements may provide for the applicability of the laws of any jurisdiction outside of Kosovo. In the absence of a choice-of-law provision, and unless otherwise provided in the International Financial Agreement concerned, the law applicable in Kosovo at the time such International Financial Agreement becomes effective shall apply to any question arising under the Agreement.

Article 8 IFA Monitoring Council

8.1. The Assembly, on the proposal of the Government, shall establish a council to monitor, on behalf of the PISG, the proper implementation of all International Financial Agreements, including the efficient, transparent and proper use of all proceeds covered by or received under such agreements.

8.2. The monitoring council shall be comprised of (1) a lawyer having substantial experience with international financial and/or commercial agreements, (2) an auditor, and (3) an experienced procurement professional.

8.3. The monitoring council shall have the right and authority to obtain and copy any International Financial Agreement and all documents related thereto or to the use of any proceeds covered by or received under such agreement.

8.4. Within thirty (30) days from the close of every calendar quarter, the monitoring council shall prepare and submit to the Government and the Assembly routine reports on the implementation of International Financial Agreements and the use of all proceeds covered by or received under such agreements. The monitoring council shall also be responsible for immediately reporting to the Assembly and the Government any unusual or irregular activity relating to such agreements or to such proceeds.

Article 9. Applicability of the Law on Public Procurement

9.1. Unless the conditions specified in Section 3.2 of the Law on Public Procurement in Kosovo (Law No. 2003/17 promulgated by UNMIK Regulation 2004/3 of 9 February 2004) are present, all procurements using proceeds that are covered by or received under an International Financial Agreement shall comply fully with such law.

9.2. The Law on Public Procurement in Kosovo shall also apply to the selection of any entity, institution or organization that offers or otherwise desires to enter into an International Financial Agreement if such entity or institution is not a recognized international financial institution or international organization.

Article 10
Entry into Force

This law enters into force after its adoption by the Assembly on the date of its promulgation by the Special Representative.

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6 May 2004