

UNMIK/REG/2008/27  
27 May 2008

---

**UNMIK REGULATION NO. 2008/27**

**AMENDING UNMIK REGULATION NO. 2002/12 ON THE ESTABLISHMENT OF THE KOSOVO TRUST AGENCY**

The Special Representative of the Secretary-General,

Pursuant to the authority given to him under United Nations Security Council resolution 1244 (1999) of 10 June 1999,

Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 1999/1 of 25 July 1999, as amended, on the Authority of the Interim Administration in Kosovo, and the Constitutional Framework for Provisional Self-Government in Kosovo (UNMIK Regulation No. 2001/9 of 15 May 2001, as amended),

Having consulted the Economic and Fiscal Council and the Provisional Institutions of Self-Government in Kosovo,

Having promulgated UNMIK Regulation No. 2002/12 of 13 June 2002 on the Establishment of the Kosovo Trust Agency and UNMIK Regulation No. 2005/18 of 22 April 2005 amending UNMIK Regulation No. 2002/12 on the Establishment of the Kosovo Trust Agency,

For the purpose of enhancing the implementation of International Human Rights Standards in the operations of KTA,

Hereby promulgates the following amendments to UNMIK Regulation No. 2002/12, as amended:

Section 1  
Amendments

A. Section 3 of UNMIK Regulation No. 2002/12, as amended<sup>1</sup>, shall be deleted and a new section 3 shall be inserted reading as follows:

---

<sup>1</sup> By UNMIK/REG/2005/18 of 22 April 2005

“Section 3  
Definitions

For the purpose of the present Regulation:

“Agency” means the Kosovo Trust Agency.

“Applicable Law” means the law applicable in Kosovo pursuant to UNMIK Regulation No. 1999/24 of 2 December 1999, as amended, on the Law Applicable in Kosovo.

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

“By-laws” means the by-laws of the Agency as defined in section 14.1 of the present Regulation.

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

“Creditor” means a person or entity with a claim as a creditor against an Enterprise or encumbrance with regard to any property of an Enterprise.

“Director” means a member of the Board.

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

“Enterprise” means any entity or assets, including Minority Stakes, which the Agency has the authority to administer pursuant to section 5.1 of the present Regulation.

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

“Law on Enterprises” means the SFRY Law on Enterprises (77/88), as amended by the SFRY laws 40/87, 46/90 and 61/90.

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

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

“Owner” means a person or entity with a valid claim to ownership with respect to an Enterprise.

“Proceeds” means the proceeds of any sale, transfer or liquidation of an Enterprise or Minority Stake pursuant to sections 6, 8 or 9 of the present Regulation, net of any payments required to be made under Section 10 of the Regulation on the Transformation of Immovable Property.

“Publicly-owned Enterprise” means an Enterprise that was created as public, publicly-owned or state-owned under the Law on Enterprises or as publicly-owned by or pursuant to a legislative instrument promulgated by the Special Representative of the Secretary-General, regardless whether such Enterprise is incorporated in accordance with the Regulation on Business Organizations.

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

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

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

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

“Socially-owned Enterprise” means a legal entity other than a Publicly-owned Enterprise, which is referred to or defined as socially-owned under the Law on Enterprises.

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

“Transformation” means, any of the following with respect to a legal entity: a merger, transformation, (re-) registration, incorporation as a joint stock or limited liability company or partnership or other legal entity, bankruptcy, liquidation, in-

solvency, organization into a distinct form or other entity or any other event or process by which any of the following is altered with respect to that entity: its legal identity, form or nature, or the form or nature of its ownership or capital, or its seat, and where any such event or process or any part thereof took place at any time between 22 March 1989 and 13 June 2002.

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

B. Section 5 of UNMIK Regulation No. 2002/12, as amended, shall be deleted and a new section 5 shall be inserted reading as follows:

“Section 5  
Enterprises under the Administration of the Agency”

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

- (i) Publicly-Owned Enterprises, Socially-owned Enterprises and Minority Stakes in Socially-owned Enterprises that were registered or were required to have been registered in Kosovo under the Applicable Law, whether or not such Enterprises were the subject of a Transformation; and
- (ii) any assets located in the territory of Kosovo, whether organised into an entity or not, which comprise socially-owned property in accordance with Applicable Law, whether or not the subject of a Transformation, subject to section 5.1(b) below.

(b) If Applicable Law assigns responsibility for administering Enterprises to another public body, the Agency shall not have jurisdiction over such Enterprises with effect from the date such law comes into force.

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

5.3 (a) If an Enterprise underwent a Transformation, such Transformation shall not affect the rights and powers of the Agency under sections 6, 8 and 9 unless:

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

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

(b) In exercising its rights and powers under sections 6, 8 and 9 in respect of an Enterprise that underwent a Transformation, the Agency shall be entitled to assume that the Transformation does not meet all requirements set out in paragraph (a) above, unless clear evidence is available to the Agency, which conclusively establishes that the Transformation meets these requirements. In such case, the Agency shall cease to exercise any authority over such Enterprise other than for purposes pursuant to section 5.6.

5.4 Following the completion of an action by the Agency as referred to in section 6.2(b), (c) or (d) resulting in the disposition of an Enterprise or Minority Stake under the Agency's authority, any party, having duly been identified as Owner of such Enterprise or Minority Stake only after the completion of the Agency's action in accordance with and on the basis of evidence admissible under the Applicable Law, shall have the rights of owners, without prejudice to the rights of creditors and other interested third parties, to the Proceeds. Such ownership rights shall be dealt with pursuant to section 5.6.

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

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

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

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

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

and pay such Owner any funds held in trust for the benefit of the Owner.

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

Section 2  
Entry Into Force

The present Regulation shall enter into force on 27 May 2008.

Joachim Rucker  
Special Representative of the Secretary-General