



UNMIK/REG/2005/18
22 April 2005

REGULATION NO. 2005/18

**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 UNMIK Regulation No. 2001/9 of 15 May 2001 on a Constitutional Framework for Provisional Self-Government in Kosovo, in particular sections 8.1 (q) and (r),

Having promulgated UNMIK Regulation No. 2002/12 of 13 June 2002 on the Establishment of the Kosovo Trust Agency,

For the purpose of facilitating the implementation of economic reconstruction and development of Kosovo by the Kosovo Trust Agency,

Hereby amends sections 2, 3, 5, 6, 8, 9, 10, 13, 14, 15, and 31 of UNMIK Regulation No. 2002/12,

Consequently, the regulation will have the following wording as of the date on which the present regulation enters into force:

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 UNMIK Regulation No. 2001/9 of 15 May 2001 on a Constitutional Framework for Provisional Self-Government in Kosovo,

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

For the purpose of establishing the Kosovo Trust Agency,

Hereby promulgates the following:

Chapter 1 **Legal Status, Purposes and Definitions**

Section 1 **Legal Status of the Kosovo Trust Agency**

The Kosovo Trust Agency (hereafter the “Agency”) is established as an independent body pursuant to section 11.2 of the Constitutional Framework. The Agency shall possess full juridical personality and in particular the capacity to enter into contracts, acquire, hold and dispose of property and have all implied powers to discharge fully the tasks and powers conferred upon it by the present Regulation; and to sue and be sued in its own name.

Section 2 **Objective and Purposes**

2.1 The Agency, in accordance with the terms of the present Regulation, shall administer Enterprises within the context of section 8.1 (q) of the Constitutional Framework. With respect to the Enterprises (other than Publicly-owned Enterprises or their assets), the Agency shall have the additional powers mentioned in section 6.2 of the present Regulation.

2.2 To serve this objective, the Agency shall:

(a) administer Enterprises as trustee for their Owners in accordance with the present Regulation and other regulations, as well as administrative directions

and determinations as the Special Representative of the Secretary-General may issue thereunder;

(b) carry out ancillary activities to preserve or enhance the value, viability and governance of Enterprises;

(c) carry out other activities to preserve or enhance the value or viability of the activities concerned and take such other steps or measures as it in its discretion deems appropriate (taking into account any guidance from the SRSG) which encourage the economic reconstruction and development of Kosovo and the welfare of its inhabitants or those of any specific region; and

(d) Perform such other tasks as may be assigned to it by regulation.

Section 3 Definitions

For purposes of the present Regulation:

“Agency” means the Kosovo Trust Agency.

“Applicable Law” means the law applicable in Kosovo pursuant to UNMIK Regulation 1999/24 of 2 December 1999, as amended, On the Law Applicable in Kosovo.

“Assets” means the assets referred to in Section 5.1(ii).

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

“Constitutional Framework” means the Constitutional Framework for the Provisional Self-Government in Kosovo (UNMIK Regulation No. 2001/9 of 15 May 2001).

“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 of Directors of the Kosovo Trust Agency.

“Enterprise” means any entity or assets that the Agency has the authority to administer pursuant to section 5.

“FRY” means the Federal Republic of Yugoslavia.

“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 the remainder ownership stake in any legal entity,

- (i) which at the time of its founding fell within paragraph 3 of Article 2 of the Law on Enterprises; and
- (ii) where the majority of its assets are in private ownership or where the majority capital comprises private capital.

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

“Publicly-owned Enterprise” means an enterprise that at the time of its creation was founded as a public enterprise under the Law on Enterprises.

“Regulation on Business Organizations” means UNMIK Regulation No. 2001/6 of 8 February 2001 On Business Organizations.

“Socially-owned Enterprise” means

- (i) a legal entity (other than a Publicly-owned Enterprise), which, at the time of its founding, fell within paragraphs 1 or 2 of Article 2 of the Law on Enterprises; or
- (ii) a legal entity;
 - (a) which at the time of its founding fell within paragraph 3 of Article 2 of the Law on Enterprises and
 - (b) where the majority of its assets are in social ownership or where the majority capital comprises social capital.

“Special Chamber” means the Special Chamber within the Supreme Court of Kosovo established in accordance with UNMIK Regulation No. 2002/13 on the Establishment of a Special Chamber of the Supreme Court of Kosovo.

“Transformation” means, any of the following with respect to a legal entity: a merger, transformation, (re-) registration, incorporation as a joint stock or limited liability company or partnership or other legal entity, bankruptcy, liquidation, insolvency, organization into a distinct form or other entity or any other event or process by which any of the following is altered with respect to that entity: its legal identity, form or nature or the nature of its ownership, or of its 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.

Section 4 References

References to chapters, sections, and paragraphs are to those in the present Regulation, unless otherwise expressly stated.

Chapter 2 **Tasks and Powers of the Agency**

Section 5 Enterprises under the Administration of the Agency

- 5.1 (a) The Agency shall have the authority to administer
- (i) Publicly-owned Enterprises and Socially-owned Enterprises that were registered in Kosovo as at 31 December 1988 or any subsequent date (whether or not such Enterprise was the subject of a Transformation);
 - (ii) any assets located in the territory of Kosovo (whether organized into an entity or not), which comprised socially-

owned property as at 22 March 1989 or any subsequent date (whether or not the subject of a Transformation), subject to Section 5.1(b) below; and

- (iii) Minority Stakes in Socially-owned Enterprises that were registered in Kosovo as at 31 December 1988 or any subsequent date (whether or not such Enterprise was the subject of a Transformation).

(b) If an UNMIK Regulation is promulgated which, in the opinion of the Agency, assigns responsibility for administering Enterprises to another public body other than the Agency, then the Agency shall not have jurisdiction for such Enterprises with effect from the date such UNMIK Regulation comes into force.

5.2 Notwithstanding the Agency's obligations set out in section 2.1, the Agency may, but shall have no obligation, to take such actions (including exercising such rights held by any persons under Applicable Law in relation to social capital) as it deems reasonably appropriate in relation to (i) minority Stakes referred to in section 5.1(a)(iii) above, and (ii) assets located outside of the territory of Kosovo of the Enterprises where such assets, in the opinion of the Agency, are readily accessible, in either such case (i) or (ii) taking into account the limits of the Agency's administrative resources, as referred to in section 7.1.

5.3 Following the completion of an action by the Agency as referred to in section 6.2(b), (c) and (d) resulting in the disposition of asset(s) under the Agency's authority:

(a) subject to Section 5.4 below, any Owner(s) of such asset(s) shall have the rights of owners (without prejudice to the rights of creditors and other interested third parties) to the proceeds of such disposition (net of any payments required to be made under Section 10 of UNMIK Regulation 2003/13 on the Transformation of the Right to Use Socially-Owned Immovable Property) ("Proceeds"); and

(b) the Agency shall determine the identity of the Owner(s) to whom the Proceeds shall be paid.

5.4 (a) If an Enterprise was the subject of a Transformation, such Transformation shall not affect the rights and powers of the Agency under sections 6, 8 or 9.

(b) As part of determination of the identity of the Owners and the distribution of the Proceeds, if the Agency finds that:

- (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 any shares upon Transformation, to the extent required by Applicable Law or any applicable contract; and
- (ii) the Transformation was neither discriminatory, nor in breach of the principles of the European Convention of Human Rights,

then the Transformation shall be taken into account for the sole purpose of identification of the Owners and distribution of the Proceeds. If the Agency finds that the Transformation does not meet the requirements of either (i) or (ii) above, then in relation to the determination of the identification of the Owner(s) and distribution of the Proceeds to them, the Agency shall disregard the Transformation.

In relation to sections 5.3 and 5.4, the principles of Article 1, Protocol 1, European Convention of Human Rights shall be followed.

Section 6

Administrative Powers of the Agency over Enterprises

6.1 The Agency shall have administrative authority with respect to all Enterprises. Such authority shall include any action, other than those set out in section 6.2, that the Agency considers appropriate to preserve or enhance the value, viability, or governance of the Enterprise concerned, including:

- (a) appointing and replacing the chairman, directors and managers of an Enterprise;
- (b) creating, confirming or recomposing the supervisory board, managing board, workers' council or other managing or supervisory body of an Enterprise;
- (c) modifying the authority of any of the aforementioned bodies;
- (d) issuing instructions regarding an Enterprise's operations, in particular policies for sound financial management;

(e) assuming direct control over an Enterprise, including its accounts and assets, and administering such accounts and assets, separately from the Agency's accounts;

(f) carrying out external audits of an Enterprise either directly or through designated agents;

(g) requiring any employee or contractor or other business contact of an Enterprise to provide information in his possession regarding such Enterprise;

(h) requiring any person with control over documents regarding an Enterprise to provide access to such documents for their review, reproduction and safekeeping;

(i) entering and inspecting the premises of Enterprises;

(j) approving business plans and investment plans of Enterprises;

(k) issuing or modifying charters, by-laws and other relevant documents of Enterprises;

(l) effecting the registration in Kosovo of Enterprises not properly registered;

(m) entering into arrangements for the management, reconstruction or reorganization of Enterprises;

(n) granting concessions or leases with respect to Enterprises;

(o) establishing in accordance with the Regulation on Business Organizations one or more corporate subsidiaries of Enterprises, owned by those Enterprises but administered by the Agency, and transferring part or all of the assets of such Enterprises to such subsidiaries;

(p) transforming Enterprises into Corporations;

(q) restructuring an Enterprise into several Enterprises and/or Corporations and transferring part or all of the assets of such Enterprise to such subsidiary Corporations in accordance with Sections 8.1 to 8.3;

(r) contracting out part of the activities of Enterprises; and

(s) initiating bankruptcy proceedings with respect to Enterprises and/or representing such Enterprises in bankruptcy proceedings.

6.2 Pursuant to the provisions of section 2.2(c) of the present Regulation, with respect to Enterprises (other than Publicly-owned Enterprises and their assets) under the administrative authority of the Agency pursuant to section 5.1, the Agency shall, in addition to the authority set out in section 6.1, have authority to take the following actions that the Agency considers appropriate:

(a) to establish one or more corporate subsidiaries of such an Enterprise and transfer part or all of the assets of such Enterprise to such subsidiaries in accordance with section 8;

(b) to sell all or part of the shares of subsidiaries established under paragraph (a) above in accordance with section 8;

(c) to liquidate such Enterprises in accordance with section 9; and

(d) to dispose of monies and other assets of such Enterprises.

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

Section 7 Exercise of Powers

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

7.2 In the case of section 7.1, the day-to-day business of Enterprises shall be conducted by the managing and other control bodies of the Enterprise, without prejudice to the powers of the Agency under section 6.1.

7.3 The Agency may assume that the persons acting as directors and managers of Enterprises and the bodies exercising management or control powers as of the date of entry into force of the present Regulation have been appointed or constituted in accordance with the Applicable Law unless and until a court of proper jurisdiction decides otherwise.

Section 8
Establishment of Subsidiary Corporations of Enterprises

8.1 The Agency may, on behalf of an Enterprise, establish one or several Corporations and transfer to such Corporations the rights and interests in all or part of the assets of the Enterprise concerned. The Agency shall decide on a case-by-case basis whether and, if so, to what extent the Corporation or Corporations thus established shall assume liabilities of the Enterprise concerned. The shares of the Corporation(s) thus established shall be administered by the Agency pursuant to this Regulation.

8.2 Procedures under this section shall be governed by the Regulation on Business Organizations, except that the requirements of founders' agreement and foundation meeting of section 25 of the aforementioned Regulation shall all be waived and that a founder's statement signed by a duly authorized representative of the Agency shall be a valid substitute for a founders' agreement.

8.3 As long as no registry of business organizations authorized to confer juridical personality exists in Kosovo, the Agency may, through administrative instruction, establish a business registry for Corporations it founds pursuant to this section. The registration of such Corporations according to the procedures in the administrative instruction shall confer upon them juridical personality.

8.4 The Agency may sell and transfer part or all of the shares in a Corporation created pursuant to this section on behalf of an Enterprise (other than a Publicly Owned Enterprise or its assets), which owns such shares. The notice and waiting periods provided in the Regulation on Business Organizations with respect to shareholders' meetings shall be waived.

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

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

8.7 Any action taken by the Agency under this section shall be without prejudice to ownership titles in the relevant Enterprise.

Section 9
Voluntary Liquidations of Enterprises

9.1 The Agency may initiate a voluntary liquidation of an Enterprise or any part thereof (other than a Publicly Owned Enterprise and its assets) where it deems such proceedings are in the interest of the Creditors and/or Owners of such Enterprise. The Agency shall conduct the liquidation pursuant to the procedures established under the Regulation on Business Organizations, unless otherwise provided in the present Regulation.

9.2 All powers of the management and control bodies of such Enterprise shall be ceded to the liquidation committee that is to be established pursuant to section 39 of the Regulation on Business Organizations except that the Agency shall have the power to appoint the members of such liquidation committee.

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

(a) proof of submission of the notice described in section 39.3 of the Regulation on Business Organizations (when the object of the liquidation proceeding is a Corporation);

(b) proof of publication of information contained in such notice in a major Albanian language publication of general circulation in Kosovo once a week for two consecutive weeks, and a major Serbian language publication pursuant to criteria to be established by the Board;

(c) proof of appearance in the website of the Agency in Albanian, Serbian and English if a website exists at the time of liquidation; and

(d) proof of notification to entities which the Agency believes or should reasonably have believed have a claim against the Enterprise concerned.

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

Section 10
Operational Policies

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

- (a) ensuring compliance with section 24.2;
- (b) preserving and enhancing the value, viability, and governance of Enterprises; and
- (c) allocating the limited administrative resources of the Agency into activities generating the most added value.

10.2 With respect to the exercise of the Agency's powers under section 6.2, the operational policies:

(a) shall set out transparent and uniformly applied procedures for purposes of ensuring fair competition of bidders and obtaining a fair market value for shares in Corporations and the payment of transaction costs;

(b) shall, with respect to the authority of the Agency referred to in paragraphs (b), (c) and (d) of section 6.2, set out procedures for the purposes of ensuring compliance by the Agency with the principles of Article 1, Protocol 1 of the European Convention on Human Rights, as required by section 6.3, including processes with respect to matters of prompt due process, giving of notices and adequate compensation; and

(c) shall establish the circumstances under which the Agency may require parties bidding for shares in Corporations to present a viable business plan for that Corporation, including proposed activities, investments and employment levels, and evidence of the financial means to make the investments anticipated in the business plan and specify how these criteria shall be taken into account by the Agency in evaluating a bid.

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

- (a) sections 6.1 (p), (q), (s) and 6.2 (a) to (c),

(b) section 6.1 (n) where such concessions or leases relate to a substantial portion of the most significant operations of the Enterprise, as defined in the operational policies, and

(c) section 6.2 (d) where such disposal involves a substantial portion of the total assets of the Enterprise, as defined in the operational policies -

such procedures shall provide that the Agency, in a major Albanian language publication of general circulation in Kosovo and a major Serbian language publication, give notice of the transaction at least two weeks before such transaction is finalized and given legal effect.

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

(a) promote compliance with the financial reporting requirements under Applicable Law;

(b) ensure annual external audits of Enterprises in accordance with Applicable Law; and

(c) establish safeguards against misuse of managerial powers, including, but not limited to, insider dealing, asset stripping, and profit skimming.

10.5 The operational policies shall set forth a procedure for the registration of shares under the administration of the Agency at a share registry under the authority of the Agency, pending the disposal of such shares pursuant to section 8.4. This responsibility shall be transferred to a general share registry once established.

Chapter 3

Organization and Management

Section 11

Organizational Structure

11.1 The Agency shall have a Board of Directors (“the Board”), a Managing Director and two Deputy Managing Directors (the “Management”) as well as professional and clerical staff.

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

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

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

Section 12 Composition of the Board

12.1 The Board shall consist of eight Directors, including four international Directors and four residents of Kosovo.

12.2 The Special Representative of the Secretary-General shall appoint the Kosovo Directors, designating one as Vice Chairman. Three of the Kosovo Directors shall be ministers of the Provisional Institutions of Self-Government, including a minister from the Kosovo Serb Community. The fourth Kosovo Director shall be the President of the Federation of Independent Trade Unions of Kosovo.

12.3 The international Directors shall be:

(a) the Deputy Special Representative of the Secretary-General for Economic Reconstruction who shall *ex officio* be the Chairman of the Board;

(b) the Deputy to the Deputy Special Representative of the Secretary-General for Economic Reconstruction, who, in the absence of the Chairman of the Board, shall act as the Chairman;

(c) the Deputy Special Representative of the Secretary-General for Civil Administration; and

(d) the Managing Director of the Agency.

12.4 Every Director shall designate a person to serve on the Board in his absence. Designations under this section will become effective on their confirmation by the Special Representative of the Secretary-General.

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

(a) has been convicted, after due process in accordance with international standards, to imprisonment of one year or more;

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

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

(d) otherwise has interests conflicting with his responsibility under section 15.

Section 13 Terms of Directors

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

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

13.3 Directors shall perform their duties impartially with a view to the purposes of the Agency set out in section 2. They shall not receive any instructions in the exercise of their duties except by the Special Representative of the Secretary-General pursuant to chapter 5 of this Regulation, and as provided by other applicable law.

13.4 Directors may be removed from office by the Special Representative of the Secretary-General if they:

(a) become ineligible to serve as Directors under section 12.5;

(b) use their office for the benefit of any person or entity other than the Agency;

(c) become unable to perform their duties for a period of at least three months;

(d) fail to comply with a decision of the Special Representative of the Secretary-General under chapter 5; or

(e) grossly neglect their duties.

13.5 Directors shall be liable to the Agency for the consequences of decisions in which they substantially participate if they:

(a) have acted in violation of section 13.4;

(b) knew or reasonably should have known that such decision was in violation of the present Regulation, or any other applicable law, or a decision of the Special Representative of the Secretary-General; or

(c) grossly neglected generally accepted due diligence standards, which should apply to those in their position.

Section 14 Procedures of the Board

14.1 The procedures of the Board shall be set forth in by-laws of the Agency to be adopted by the Board (the “by-laws”).

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

14.3 The Board shall have a quorum if at least five Directors are present.

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

14.5 Unless provided otherwise in the present Regulation or the by-laws of the Agency, decisions shall be made by a simple majority of the members present.

14.6 Where a qualified majority is provided by the present Regulation or the by-laws of the Agency, at least five affirmative votes shall be required.

14.7 Each Director shall have one vote. In case of an equal division of votes, the vote of the Chairman (or his alternate) shall decide.

14.8 The by-laws may specify decisions that may be taken by the Chairman (or his alternate) alone. In an emergency, the Chairman may take decisions subject to confirmation by the Board in the next Board meeting.

Section 15 Responsibilities of the Board

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

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

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

(b) approval of operational policies under section 10;

(c) the appointment and dismissal of the Managing Director, provided that the Managing Director shall not participate in such decision and his vote is exercised by the person designated by the Chairman pursuant to section 12.4;

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

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

(f) the placing under direct Agency administration of an Enterprise pursuant to section 6.1 (e);

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

- (h) the decisions and determinations under Section 5.3 and 5.4 above.
- (i) the conclusion of an arrangement for the management, reconstruction or reorganization of an Enterprise, or lease agreement with respect to an Enterprise pursuant to section 6.1 (m);
- (j) the granting of concessions or leases with respect to property, rights or activities of an Enterprise (other than a Publicly-Owned Enterprise or its Assets) pursuant to section 6.1 (n);
- (k) the approval of plans for the re-organization and/or restructuring of an Enterprise;
- (l) the approval of the creation of one or more Corporations of an Enterprise pursuant to section 8;
- (m) the sale and transfer of part or all of the shares of a Corporation created under paragraph (l) above to an outside party;
- (n) the decision to liquidate an Enterprise or parts thereof pursuant to section 9;
- (o) the decision to initiate bankruptcy proceedings with respect to an Enterprise;
- (p) the approval of the budget and the business plan of the Agency for the following calendar year;
- (q) the approval of the performance of the Management on the basis of the annual audit report; and
- (r) the decision whether an individual Enterprise or defined group of Enterprises shall be considered by the Agency as satisfying the requirements of section 5.

Section 16
Management and Staff

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

- (a) performing all functions delegated to him by the Board;

(b) conducting the ordinary business of the Agency in accordance with any policies and instructions that might be issued by the Board;

(c) organizing, appointing and dismissing the staff (other than the Deputy Managing Directors and other officials whose appointment the Board has reserved to itself) in accordance with any decision made and/or instructions issued by the Board;

(d) preparing the meetings of the Board and ensuring the implementation of the decisions of the Board; and

(e) with the concurrence of the Board, performing any ancillary functions pursuant to section 2.2 (b).

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

16.3 The Managing Director and the Deputy Managing Directors shall be appointed by the Board on nomination by the Chairman. They may at any time be dismissed by the Board. The Board shall determine the remuneration and other terms of service of the Managing Director and the Deputy Managing Directors, without prejudice to section 16.5 below.

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

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

16.6 In the discharge of their offices, the Management and the staff owe their duty entirely to the Agency and to no other party or entity. They shall not receive any instructions with respect to the discharge of their office from any authority other than the Special Representative of the Secretary-General pursuant to chapter 5 of the present Regulation, the Board, or their hierarchical superior in the Agency.

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

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

16.9 The Board, Management and the staff shall not be liable to any party other than the Agency for any action or inaction on behalf of the Agency within the scope of the authority vested in them by the Agency. The Board, Management and the staff shall be liable to the Agency for any neglect of duty in accordance with their contracts with the Agency without prejudice to section 16.5.

Chapter 4 **Financial Provisions**

Section 17 Capital of the Agency

The Agency shall have a charter capital of ten million euro (€10,000,000), of which one million euro (€1,000,000) shall be paid in cash or in kind within six months following the constituent meeting of the Board. The remainder shall be subject to call by the Board when and to the extent required to meet obligations of the Agency.

Section 18 Liability, Due Diligence and Responsibility of the Agency

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

18.2 The Agency shall not be liable for any debt, action or inaction attributable to Enterprises, and Enterprises shall not be liable for any debt, action or inaction

attributable to the Agency. The Agency shall not be liable for any action or inaction of directors, managers or other control persons of Enterprises regardless of whether or not such directors, managers or other control persons have been appointed by the Agency.

18.3 Accounts and other asset of Enterprises administered by the Agency shall be held in trust separately from each other and separately from the accounts and other assets of the Agency.

18.4 With respect to any action or inaction under section 18.1, the Agency, without prejudice to a claimant's recourse available under UNMIK Regulation No. 2002/13 on the Establishment of a Special Chamber of the Supreme Court of Kosovo, shall only be liable if such action or inaction:

(a) is either outside the authority vested in the Agency by the present Regulation or any other regulation or administrative direction of the Special Representative of the Secretary-General;

(b) represents a gross misuse of the powers of the Agency under the present Regulation; or

(c) represents a breach of contractual obligations incurred by the Agency on its own account.

18.5 Any liability of the Agency pursuant to section 18.4 shall be limited to persons suffering a financial loss as a direct result of the action or inaction giving rise to the Agency's liability. The Agency shall in no case be liable for any indirect, consequential, or punitive damage.

Section 19 Financial Policies

The Board shall issue financial policies with a view to ensuring that the Agency carries out its activities in accordance with sound and prudent management practices and can meet its financial commitments without calling in unpaid capital pursuant to section 17. Such policies may provide for administrative, transaction and service fees to be charged by the Agency to Enterprises, Corporations and any other beneficiaries of the Agency's activities, provided that such fees are transparent, non-discriminatory and reasonable.

Section 20
Reports, Budget and Accounts

20.1 The Board shall submit quarterly reports to the Special Representative of the Secretary-General summarizing the activities of the Agency and reflecting the financial results.

20.2 The Board shall publish an annual report of the Agency which shall include:

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

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

Section 21
Allocation of Net Income

The Board shall determine the allocation of the net income of the Agency on the recommendation of the Managing Director. To the extent suggested by prudent management practices, such income shall be allocated to reserves. The remainder may be allocated to a special account designated by the Board to finance activities furthering the Agency's objective under section 2 of the present Regulation. Unallocated net income shall accrue to the Kosovo Consolidated Budget.

Section 22
Solicitation of Voluntary Contributions

The Agency may solicit voluntary contributions to the special account referred to in section 21. Such contributions shall be expended for purposes agreed with the contributor, provided that such purposes are related to the Agency's objective under section 2 of the present Regulation.

Section 23
Tax Treatment

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

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

Chapter 5
Supervision and Accountability

Section 24
Accountability of the Board

24.1 The Board shall exercise its independent business judgment in carrying out its responsibilities under the present Regulation.

24.2 The foregoing provision notwithstanding, the Board collectively and the Directors severally shall be accountable to the Special Representative of the Secretary-General for compliance of the Agency at any time with:

- (a) United Nations Security Council resolution 1244 (1999);
- (b) the provisions of the present Regulation and any other regulation, Administrative Direction, administrative instruction or determination which the Special Representative of the Secretary-General may issue in relation to the present Regulation;
- (c) any other law applicable in Kosovo; and

(d) the charter, by-laws, operational, financial, staff policies and business procedures of the Agency unless modified or repealed in accordance with the present Regulation.

24.3 The Special Representative of the Secretary-General may at any time:

(a) repeal or modify any decision of the Board or the Management if he determines such decision fails to comply with section 24.2; and

(b) order any action of the Agency which he determines necessary to comply with section 24.2.

24.4 The Special Representative of the Secretary-General may appoint the Managing Director if the Board fails to appoint the Managing Director within thirty (30) days of its constituent meeting or within thirty (30) days of the date when the position of Managing Director becomes vacant.

Section 25 External Audits

25.1 There shall be annual audits of the Agency, including external financial audits, in accordance with standard operating procedures established by the Central Fiscal Authority, as well as such additional audits as the Special Representative of the Secretary-General may determine.

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

Chapter 6 **Enforcement and Dispute Resolution**

Section 26 Assistance by UNMIK, KFOR and the Provisional Self-Government

The Agency may seek the assistance of the police and other enforcement agencies of UNMIK, KFOR and the Provisional Institutions of Self-Government to enforce its powers under the present Regulation.

Section 27
Imposition of Fines

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

(a) the failure to respond within five working days of the receipt of a written request by a duly authorized representative of the Agency for information or documentation in the possession of the addressee - up to one hundred euro (€ 100) per day for each day of failure to comply up to a maximum of five thousand euro (€ 5,000);

(b) knowingly providing false information to a duly authorized representative of the Agency - up to ten thousand euro (€10,000);

(c) the destruction, falsification, fabrication or concealment of records relating to an Enterprise - up to ten thousand (€10,000);

(d) the knowing concealment or illegal transfer of assets of an Enterprise - up to ten thousand euro (€10,000) or the value of the concealed property, whichever is greater; and

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

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

Section 28
Liability for Damages

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

Section 29
Rights of the Agency in Legal Proceedings against Enterprises

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

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

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

Section 30
Lawsuits against the Agency

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

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

Chapter 7
Final Provisions

Section 31
Applicable Law

The present Regulation shall supersede any provision in the Applicable Law which is inconsistent with it.

Section 32
Entry Into Force

The present Regulation shall enter into force on 22 April 2005¹.

Søren Jessen-Petersen
Special Representative of the Secretary-General

¹ The original text was promulgated on 13 June 2002