



UNMIK/REG/2005/48  
21 November 2005

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**REGULATION NO. 2005/48**

**ON THE REORGANISATION AND LIQUIDATION OF ENTERPRISES AND  
THEIR ASSETS UNDER THE ADMINISTRATIVE AUTHORITY OF THE  
KOSOVO TRUST AGENCY**

The Special Representative of the Secretary-General (SRSG),

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,

In conformity with section 8.1 (q) and (r) of the Constitutional Framework for Provisional Self-Government in Kosovo (UNMIK Regulation No. 2001/9 of 15 May 2001), and having consulted members of the Economic and Fiscal Council and the Government,

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

Taking into account UNMIK Regulation 2001/6 of 8 February 2001, on Business Organizations,

Cognizant of the provision in UNMIK Regulation 2003/13 of 9 May 2003 on the Transformation of the Right of Use to Socially-owned Immovable Property, which relates to the liquidation of Enterprises and the entitlement of employees in the liquidation process,

For the purpose of reorganizing to recover business viability or liquidating Enterprises and their assets under the administrative authority of the Kosovo Trust Agency, which are illiquid or over indebted, in the interests of their creditors, owners and other stakeholders, and for benefit of the economy in Kosovo,

Hereby promulgates the following:

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

Section 1  
Scope

1.1 The present Regulation sets forth the procedures for the reorganization or liquidation of Enterprises and their assets currently under the administrative authority and management of the Kosovo Trust Agency and is not applicable to Publicly-owned Enterprises.

1.2 Reorganization or liquidation proceedings shall only be conducted in respect of such Enterprises or assets that are located in Kosovo. Any reorganization or liquidation procedure conducted outside of Kosovo shall have no effect on Enterprises or assets located in Kosovo.

Section 2  
Definitions

2.1 For the purpose of the present Regulation:

“Administrator” means the person appointed by the Court under the present Regulation to act as administrator of an Enterprise.

“Agency” means the Kosovo Trust Agency, established by UNMIK Regulation 2002/12 of 13 June 2002, as amended;

“Advertisement Provisions” means the provisions relating to advertisements in section 49 of the present Regulation.

“Alternative Reorganization Plan” means an alternative reorganisation plan submitted by a qualified creditor pursuant to section 21;

“Appointment Date” means the date of the appointment of the Administrator by the Court;

“Applicable Law” means the law applicable in Kosovo in accordance with UNMIK Regulation 2000/59 amending UNMIK Regulation 1999/24, On the Law Applicable in Kosovo.

“Appointment Notice” means a notice published in accordance with section 17;

“Business Day” means a week day on which UNMIK institutions are open for business in Pristina, Kosovo and excluding Saturdays, Sundays and UNMIK holidays in Kosovo.

“Claims Bar Date” means the date as determined in section 30.2 (a).

“Confirmed Reorganization Plan” means the Reorganization Plan or Alternative Reorganization Plan confirmed by the Court pursuant to section 28.

“Corporation” means a corporation established by or on behalf of the Agency pursuant to the KTA Regulation.

“Court” means the Special Chamber of the Supreme Court of Kosovo as established by UNMIK Regulation 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 (the Special Chamber Regulation).

“Creditors Committee” means the committee of creditors formed pursuant to section 19.

“Enterprise” means any entity or assets that the Agency has the authority to administer pursuant to Article 5 of the KTA Regulation, excluding Publicly-owned Enterprises.

“Initial Creditors Meeting” means the meeting of creditors pursuant to section 23.

“KTA Regulation” means UNMIK regulation 2002/12 of 13 June 2002, as amended, on the Establishment of the Kosovo Trust Agency.

“Leasehold” means the rights to property as described in UNMIK Regulation 2003/13 of 9 May 2003 on the Transformation of the right to use Socially-owned Immovable Property, as amended.

“Liquidation Committee” means the committee appointed for conducting the liquidation proceedings pursuant to section 43.

“Manager or Management” means the key executive officer or officers from time to time of an Enterprise.

“Moratorium Decision” means a decision by the Court to accept the application for the reorganization of an Enterprise pursuant to section 4.4.

“Officer” means any key executive officer from time to time of an Enterprise.

“Person” means an individual, legal or public entity including a corporation, a partnership, a trust, an unincorporated organization, a government or any agency or subdivision thereof.

“PISG” means the Provisional Institutions of Self-Government as established under UNMIK Regulation 2001/9 of 15 May 2001, on a Constitutional Framework for Provisional Self-Government in Kosovo.

“Proof of Claim” means a claim and information about such claim as submitted by a creditor setting out details pursuant to section 17.2.

“Qualifying Creditors” means creditors who individually or collectively may file an Alternative Reorganization Plan as provided for in section 17.1

“Registered Creditor” means a creditor having filed a Proof of Claim reasonably accepted by the Administrator pursuant to section 24.1

“Reorganization” means the professional restructuring of an Enterprise and its business operations under the present Regulation with the aim to recover such viability of the business operations that allows for the satisfaction of all due and outstanding contractual and monetary obligations of the Enterprise.

“Secured Claim” means any claim pursuant to section 34 for which the Enterprise has granted security to the creditor.

“Service Provider” means an individual or entity engaged in providing professional services to the Administrator pursuant to section 7.1.

## **PART II** **COMMENCEMENT OF REORGANIZATION AND MORATORIUM**

### **Section 3**

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

3.1 The Agency may commence reorganization proceedings for an Enterprise that is unable to fulfil its due obligations for a period exceeding six months or has liabilities in an amount exceeding the value of its assets, if the Agency deems that the Enterprise can continue its business activities in a commercially feasible way as a result of the reorganization.

3.2 The Agency shall commence reorganization proceedings by applying to the Court in writing, using the form prescribed in Annex to the present Regulation and attaching all of the following:

- (i) documentary evidence that the Enterprise is unable to meet its due obligations or has liabilities exceeding the value of its assets;

(ii) in the case of an application by an Enterprise, documentary evidence of the consent of the Agency to the application;

(iii) one or more proposals from the Agency for the appointment of an Administrator who will provide a plan for the reorganization of the Enterprise (Reorganization Plan).

3.3. The Court may presume that an Enterprise is unable to fulfil its due obligations if obligations in the amount of fifty thousand euro (€50,000) or more remain outstanding for a period exceeding six months, notwithstanding that during that period some obligations have been fulfilled, otherwise settled or discharged by the Enterprise or on its behalf.

#### Section 4

##### Reorganization Proceedings by the Court

4.1 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.

4.2 If the application does not comply with the requirements in section 3, the Court shall issue an order within five (5) Business Days of the date the application was received by the Court, specifying the deficiencies and requiring the Agency to rectify these within a specified time from the date such order is served on the Agency. If the Court does not issue such order within five (5) Business Days of the date the application was received by the Court, the application shall be deemed without deficiency and shall be accepted by the Court.

4.3 The Court shall reject the application by a decision to be served on the Agency and the Enterprise concerned, if the Agency does not comply within the time specified with the order requiring rectification of deficiencies or if the application remains otherwise noncompliant with the requirements of section 3.

4.4 If the Agency has rectified the deficiencies as ordered by the Court or no order requiring rectification of deficiencies has been issued within the specified time, the Court shall within fifteen (15) Business Days of the time as determined in accordance with subsection 4.2 above issue a decision accepting the application and immediately serve this decision on the Agency and the Enterprise (the Moratorium Decision).

#### Section 5

##### Moratorium

5.1 As of the date of the Moratorium Decision all actions, proceedings or acts of any kind aimed at enforcing or satisfying any claim against the Enterprise concerned

or its assets shall be suspended and shall only continue with the permission of the Court.

(a) Such suspended actions, proceedings or acts shall include, but not be limited to:

(i) any act or decision, including judicial proceedings or decisions, for the collection, recovery or enforcement of a claim for debts, taxes, penalties or obligations of any kind;

(ii) any act to create, modify, increase, perfect, register or enforce a mortgage, pledge or other form of encumbrance of any asset of the Enterprise;

(iii) any act to realise, seize, or sell any pledged or mortgaged or otherwise encumbered asset or to exercise control over assets of the Enterprise; and

(iv) 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.

(b) The suspension of actions, proceedings or acts of any kind shall not apply to any:

(i) court action by the Enterprise, or by the Agency on behalf of the Enterprise, directed against third parties;

(ii) court action directed against Officers and Managers where the proceedings are not involving assets of the Enterprise;

(iii) criminal proceedings against the Enterprise, its Officers and Managers;

(iv) transfer or dispositions of assets of the Enterprise in the ordinary course of business of the Enterprise, including transactions provided for under the present Regulation and in this section 5 in particular;

(v) 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

(vii) inspections and requests for inspection made by holders of registered mortgages, perfected pledges or similar encumbrances relating to assets of the Enterprise.

5.2 Within ten (10) Business Days from the date of the Moratorium Decision, the Agency shall publish a notification in accordance with the Advertisement Provisions on two consecutive workdays and the following weekend.

(a) The notification shall include the following information:

(i) the date and a description of the Moratorium Decision;

(ii) a reference to the present Regulation and the rights of creditors thereunder; and

- (iii) that an Administrator will be appointed in within the time limit specified in section 8.1;
- (iv) details of the claims filing process; and
- (v) a notice of the opportunity to vote on a Reorganization Plan for the Enterprise.

(b) The Agency may include other information within the notification so published as it considers appropriate.

5.3 As of the date of the Moratorium Decision until the date of the appointment of an Administrator, the Enterprise shall continue to be managed under the administrative authority of the Agency, which shall cause the Enterprise to promptly prepare an inventory of all its property, assets and known liabilities.

(a) The inventory of all property, assets and known liabilities shall continue to be updated by the Enterprise until the date of the appointment of an Administrator, and shall include but not be limited to all:

- (i) movable, immovable, tangible or intangible property, wherever located, whether in the custody or possession of the Enterprise or any third parties, regardless of any encumbrance thereon;
- (ii) claims and legal actions of the Enterprise against any person;
- (iii) assets acquired by the Enterprise after the date of the Moratorium Decision;
- (iv) rent, income and proceeds generated from the use of the property of the Enterprise or operation of the business of the Enterprise; and
- (v) contractual rights, licenses, or other rights created or granted under Applicable Law.

(b) The inventory of all property, assets and liabilities shall not include “pension assets” or “vested rights” as defined in UNMIK Regulation No. 2001/35 “On Pensions in Kosovo.”

5.4 As of the date of the Moratorium Decision until the Appointment Date and subject to the provisions of subsection 5.5 below, the Enterprise shall require prior permission in writing from the Agency for the validity of any of the following transactions:

- (a) The disposal, acquisition or transfer of any property of the Enterprise, other than land asset;
- (b) The entering into any loan agreements;
- (c) The cancellation or termination of any contracts or agreements;
- (d) The commencement or termination of legal or arbitration proceedings;

- (e) The waiver of rights or entitlements; and
- (f) Any other acts as designated by the Agency.

(e) The payment of salaries to employees, provided that the Agency shall approve such payments only to the extent that funds used for such payments are available from the revenues of the Enterprise or made available partly or in full to the Enterprise by the PISG, the Kosovo Consolidated Budget or a donor.

5.5 As of the date of the Moratorium Decision until the Appointment Date, the Enterprise with the written consent of the Agency, or the Agency, shall be required to obtain an order from the Court for the validity of any of the following transactions:

- (a) The sale, disposal, alienation, transfer or rental of any land assets of the Enterprise, in whole or in part; and
- (b) The creation of pledges, mortgages or other security against the property of the Enterprise or any part thereof.

#### Section 6 Service Obligations of Utilities Service Providers

A utility service provider including, but not limited to, a supplier of electricity, gas, district heating, water, waste, postal or telecommunications services, may not alter, refuse or discontinue such services to the Enterprise for reasons that an application for the reorganization of the Enterprise has been filed, a Moratorium Decision has been issued, a Reorganization Plan has been confirmed or the Enterprise has failed to pay for services; provided that the Enterprise shall pay for such utility services that were received after the date of the Moratorium Decision. Providers of utility services may insist on reasonable pre-payment for goods or services to be provided after such date and the Administrator shall make appropriate provisions for such pre-payments in the Reorganization Plan.

### **PART III** **ADMINISTRATOR**

#### Section 7 Tendering for Administrator and Service Providers

7.1 As soon as practicable, the Agency shall issue a tender seeking offers from suitable bidders to act as Administrators or Providers of other professional services (Service Provider) in a reorganization procedure under the present Regulation.

(a) The Agency shall advertise a tender notice in accordance with the Advertisement Provisions.

(b) The advertisement for the tender notice shall include the minimum qualification criteria, the evaluation criteria relating to the bidder's qualifications, and the requirement for bidders to provide proof of previous experience in acting on international insolvencies of entities with debts and assets of a value and nature similar to those of the Enterprise concerned.

7.2 Tender bids received by the Agency shall be evaluated based on the criteria advertised and shall take into account the proposed fees to be charged by the bidders, considering that such fees shall be sufficient to attract competent and qualified bidders.

(a) The Agency shall appoint a committee to evaluate all submitted bids and to prepare an evaluation report for the Court including proposals for the most suitable bidders to be appointed by the Court as Administrators and Service Providers. The Committee shall consist of five members appointed by the board of the Agency.

(b) Within five (5) Business Days of the preparation of the evaluation report the Agency shall submit the report together with proposals for the most suitable Administrators and Service Providers to the Court.

## Section 8

### Appointment and Removal of Administrator

8.1 No later than three (3) months from the date of the Moratorium Decision, the Court shall appoint an Administrator for the Enterprise taking into account the proposals and the evaluation report submitted by the Agency (the Appointment Date). Upon application by the Agency, the Court may extend the period for appointing an Administrator by such additional time it deems necessary, provided the total time from the date of the Moratorium Decision to the Appointment Date shall not exceed four (4) months.

8.2 The Court shall appoint not more than three Administrators to act in a consortium jointly and severally as Administrator of the Enterprise concerned. The Court shall appoint one or more of the proposed Service Providers as necessary.

8.3 At any time a Qualifying Creditor or the Creditors Committee may make an application to the Court challenging the proposed appointment or seeking the removal of the Administrator.

(a) Any challenge to the proposed appointment or a request for the removal of the Administrator can only be made on the grounds that the appointee or the Administrator:

- (i) is not qualified to be the Administrator of the Enterprise;
- (ii) is likely to be unduly biased towards the Enterprise or one or more creditors;
- (iii) at any time prior or after the appointment has engaged in illegal acts in relation to his professional conduct as an administrator for an enterprise or Administrator, or
- (iv) is subject to a conflict of interest.

(b) Any application challenging the proposed appointment or seeking the removal of the Administrator must be accompanied by evidence for:

- (i) the grounds of such challenge as set out under (a) above;
- (ii) the nomination of alternative appointee or Administrator, and
- (iii) the written approval by the Agency indicating acceptance of such nomination.

8.4 If the Court orders the removal of the Administrator, the incumbent Administrator shall provide such co-operation to the alternative Administrator or the Agency as the alternative Administrator or the Agency reasonably require, including turning over records and transferring accounts relating to the administration of the Enterprise.

### Section 9

#### Administrator's Remuneration and Expenses

9.1 The amount of the Administrator's remuneration and expenses shall be determined by the Agency in accordance with the tender bids submitted and shall include the remuneration and expenses of any Service Providers retained.

9.2 The Administrator's remuneration and expenses shall be paid from the cash resources of the Enterprise or from the proceeds of the sale of assets of the Enterprise in accordance with the priority established by section 36.

9.3 The Administrator or the Agency may agree with the Government of Kosovo (the Government), a creditor or any third party who agrees to pay the Administrator's remuneration and expenses in full or in part, that the Government, creditor or third party shall be entitled to recover such payment of the remuneration and expenses in full or in part in accordance with section 9.2 and 36 in place of the Administrator.

9.4 In the event the Administrator, or the donor, government or creditors who agree to fund the Administrator's remuneration and expenses, are dissatisfied with the

amount the Agency has determined as the Administrator's remuneration and expenses, the Court upon an application by the Administrator or the donor, government or creditors that has agreed to fund the Administrator's remuneration and expenses shall adjudicate such remuneration and expenses as it deems appropriate.

### Section 10

#### Liability, Accountability and Reporting of Administrator

10.1 The Administrator shall be independent of the Agency, the Enterprise, the creditors and the PISG and shall exercise reasonable care and diligence in the exercise of his responsibilities and powers.

10.2 The Administrator shall be obliged to deposit an amount with the Court or provide a bond to the Court to serve as a guarantee of the proper performance of all duties under the present Regulation.

10.3 None of the Administrator, the Agency and their respective employees, staff or consultants shall be held liable for

(i) losses incurred by a creditor, the Enterprise, any employee, or any other party for consequences or damages resulting from decisions made or actions taken or not taken within the scope of their duties, provided that in the case of the Administrator he has exercised the standard of care set out in sub-section 1 above;

(ii) obligations of the Enterprise with regard to the prevention or remediation of violations of health, safety or the environment.

10.4 Without prejudice to the liabilities of the Enterprise and the Management, where the Administrator seizes or disposes of any property that is not the property of the Enterprise, and at the time of seizure or disposal believes, and has reasonable grounds for believing, that he is entitled to seize or dispose of that property, the Administrator is not liable in respect of any loss or damage resulting from the seizure or disposal of such property unless that loss or damage is caused by the Administrator's own gross negligence.

10.5 The Administrator shall keep a record of the performance of his functions and for that purpose shall enter each of his actions in relation to the exercise of his responsibilities and powers under section 11 and the administration of the Enterprise in records in accordance with international best practice.

(a) If the functions of the Administrator are carried out by two or more persons any dispute between them and the resolutions taken shall be entered in the records.

(b) The Administrator shall submit three-monthly progress reports including copies of the records to the Agency, the Creditors Committee and the Court and shall provide copies upon written request to any creditor.

(c) Without prejudice to the foregoing provisions, the Administrator shall provide such additional information and updates in relation to his activities from time to time as reasonably requested by the Agency or the Creditors Committee.

### Section 11

#### Responsibilities and Powers of the Administrator

11.1 The Administrator shall be authorized to direct the Management to take actions in accordance with any instructions lawfully given by the Administrator or the Agency. The Administrator shall have the responsibility and powers to take any action as may be necessary or appropriate for managing the affairs, business and property of the Enterprise aiming at reorganizing the Enterprise into a viable business operation, including, but without limitation to, the following:

- (a) Representing and carrying on the business of the Enterprise;
- (b) Establishing and completing an inventory of all assets and liabilities of the Enterprise and its subsidiaries as compiled by the Enterprise under the supervision of the Agency,
- (c) Keeping and maintaining the books and business correspondence of the Enterprise;
- (d) Taking possession of, collecting, retrieving and taking all steps necessary for the realization of the property of the Enterprise and, for that purpose, entering into or commencing such proceedings as the Administrator deems expedient;
- (e) Selling, leasing or otherwise disposing of any asset of the Enterprise by public auction or private contract, provided that the terms of sale or selection of bidders for any material asset of the Enterprise shall be published in accordance with section 49; the terms of any sale and the selection of bidders in any tender for sale, including any investment, employment, environmental or other commitments required from or made by bidders or buyers shall reflect the terms of the Confirmed Reorganization Plan;
- (f) Granting or accepting a surrender of a lease or tenancy of any property of the Enterprise and taking out a lease or tenancy of any property required or convenient for carrying on the business of the Enterprise;
- (g) Raising or borrowing monies and granting securities therefore over the assets of the Enterprise subject to the provision of section 13;

(h) Executing in the name and on behalf of the Enterprise any deed, receipt or other document;

(i) Drawing, accepting, making out and endorsing any bill of exchange or promissory note in the name and on behalf of the Enterprise;

(j) Operating, opening, closing and consolidating bank accounts of the Enterprise and making or causing to make any payments incidental or necessary for the performance of the functions of the Administrator;

(k) Appointing lawyers, accountants, valuers or other professionally qualified persons necessary to assist the Administrator in the performance of his functions;

(l) Bringing, defending and entering into any arrangement or compromise to avoid or end any action or other legal proceedings in the name and on behalf of the Enterprise if this is necessary for the operation and reorganization of the Enterprise;

(m) 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, including the Agency;

(n) Employing and dismissing employees;

(o) Taking out, terminating or maintaining insurances in respect of the business and property of the Enterprise;

(p) Ranking and claiming in the bankruptcy or liquidation of any person indebted to the Enterprise, receiving dividends and acceding to trust deeds for the Enterprise as a creditor of any such person;

(q) Presenting or defending a petition for the liquidation of the Enterprise in accordance with the present Regulation;

(r) Changing the situation of the registered office of the Enterprise;

(s) Taking all such other acts as may be incidental to the exercise of the foregoing activities.

11.2 The Administrator may disclaim the following property or assets of the Enterprise, including but not limited surrender of such property or assets that are subject to valid security interests, provided the Administrator has applied to the Court for the granting of such disclaimer and the Court has granted such disclaimer:

(a) Any onerous or unprofitable property or asset, which is not in the reasonable opinion of the Administrator capable of a profitable realisation;

(b) Any property or asset over which the Administrator in his reasonable opinion cannot cause the Enterprise to exercise effective control or over which the Administrator himself or the Agency itself cannot exercise effective control;

11.3 The Administrator may apply to the Court for the grant of a disclaimer notwithstanding that he, the Agency, or the Management has taken possession of, endeavoured to sell or otherwise exercised rights of ownership or management in relation to the property or assets intended to be disclaimed.

11.4 The Court shall make a decision on such application for a disclaimer within five (5) Business Days of the application by the Administrator.

## Section 12

### Effects of Appointment and Immediate Actions by the Administrator

12.1 Between the Appointment Date and the date of confirmation of the Reorganization Plan the following acts require the consent of the Court, provided that Management and Officers of the Enterprise require written consent from the Administrator to act for or on behalf of the Enterprise:

(a) The sale, disposal, alienation, transfer or rental of property of the Enterprise, in whole or in part, including any transfers for the satisfaction of existing obligations above a value of five thousand euro (€5,000) , or in the case of property rentals, rental payments above a value of two thousand euro (€2,000) per month where the contract is for less than 6 months;

(b) The cancellation or termination of any contracts or agreements other than the termination of employment contracts, above a value five thousand euro (€5,000) ;

(c) The commencement or termination of legal or arbitration proceedings;

(d) Any waiver of rights or entitlements above a value of five thousand euro (€5,000);

(e) The creation of pledges or mortgages or other security against property of the Enterprise; and

(f) Any other acts as determined by the Administrator.

12.2 Immediately after the Appointment Date and in preparation for the publication of the Appointment Notice and the holding of the Initial Creditors Meeting the Administrator shall take the following actions:

(a) Conduct a cursory review of the documentation available and calculate the total value of all obligations due from the Enterprise based on a best estimate following such review;

(b) Hold consultations with representatives of such employees of the Enterprise which are claiming to be creditors of the Enterprise and with any union representatives known to the Administrator and available, in order to agree upon not more than fifteen (15) individuals who may attend the Initial Creditors Meeting to represent such employees and vote on the employees behalf; provided that in case the Administrator, such employee and union representatives fail to reach agreement within ten (10) Business Days, the Administrator shall be entitled to appoint such representative attending and voting at the Initial Creditors Meeting on behalf of employees claiming to be creditors; and

(c) Commence the drafting of the Reorganization Plan that shall be finalized within four (4) months of the Appointment Date.

12.3 As soon as reasonably practicable after the Appointment Date, the Administrator shall take all acts appropriate in the prevailing circumstances to locate, exercise distraint, seal, safeguard protect, and apply reasonable measures required for the maintenance of the property of the Enterprise.

(a) The Administrator is authorised to sell perishable goods and property requiring significant maintenance costs as he sees fit;

(b) Subject to any disclaimer under section 11.2, the Administrator shall issue a notice of distraint to any third party that has custody or is in possession of property or assets of the Enterprise, and as deemed necessary, issue a request for turning over the custody or possession of such property or assets.

(c) The Administrator shall apply to any court that is competent to receive a notice of distraint for any property or assets of the Enterprise which customarily should be located in Kosovo, but are for the time being located outside of Kosovo, unless it is unsafe, impractical or not expedient to do so. In such circumstances the Administrator may disclaim such property pursuant to section 11.2 of the present Regulation.

12.4 As soon as reasonably practicable after the Appointment Date, the Administrator shall liaise with the Management to finalise the inventory of all property, assets and known liabilities of the Enterprise as defined in section 5.3.

(a) The inventory of all property, assets and known liabilities shall be completed not later than three (3) months after the Appointment Date.

(b) The Court may, at the request of the Administrator, extend this deadline provided that the total time for the completion of this inventory does not exceed six (6) months from the Appointment Date.

(c) After its completion the Administrator shall update the inventory with information about all property collected by the Administrator on behalf of the Enterprise or acquired by the Enterprise in the ordinary course of its business.

### Section 13 Obtaining of Secured and Unsecured Credit

13.1 The Administrator, or as of the date of the Moratorium Decision until the Appointment Date, the Enterprise with the prior written approval from the Agency, or the Agency, may obtain unsecured credit in the ordinary course of the business operations of the Enterprise. Such credit shall be an administrative expense and shall be paid in accordance with the priorities set out in section 36.

13.2 The Administrator may encumber or grant security over property or assets of the Enterprise without prior Court approval, if required for the purposes of raising finance to operate the business of the Enterprise in its ordinary course. The Administrator may grant security over encumbered assets, which ranks higher than encumbrances and securities existing prior to Moratorium Decision, provided that:

(a) The Court has given its approval;

(b) It is reasonable to expect that the property or assets so encumbered have sufficient value to secure the existing Secured Claim despite its lower ranking to the claim that has arisen only after the date of the Moratorium Decision; and

(c) The Enterprise cannot obtain finance in any other way.

### Section 14 Continuation and Rejection of Contracts

14.1 The Administrator may elect to reject or continue a contract that has not been materially performed by a creditor, provided that any rejection by the Administrator to perform a contract shall give rise to a claim for damages by the creditor.

14.2 In the event the Administrator rejects a contract that has more than three (3) years to run to its expiration or next termination date, the damages payable shall be limited to ten per cent (10%) of the value of the contract.

(a) The value of such contract shall be the amount of money reasonably anticipated to be owed to the creditor until the earlier of:

- (i) the expiration date; or
- (ii) the next termination date

of the contract.

(b) If such contract is for the supply of goods or services by the Enterprise and such goods or services have been paid for, the value of the contract shall be the fair market value of such goods or services that the Enterprise has agreed to supply until the earlier of:

- (i) the expiry date, or
- (ii) next termination date.

Provided that the termination date shall be the first date on which either the creditor or the Enterprise may terminate the contract; and provided further that the fair market value shall be determined by the Administrator and may be challenged by the creditor in the Court.

14.3 If the Enterprise is in default of or has breached a contract, the Administrator may elect to continue the contract, provided the default or breach can be substantially cured and the creditor is put in a position equal to the position before the breach. The Administrator shall give appropriate assurances as to the ability of the Enterprise to perform under the continued contract.

14.4 In the event the Administrator has elected to continue a contract and such contract is subsequently materially breached by the Enterprise, the damages for such breach shall be dealt with as a claim under the Confirmed Reorganization Plan.

14.5 Notwithstanding any contractual provision prohibiting an assignment, the Administrator may elect to assign any contract, including a contract that the Administrator has elected to continue. If the creditor objects to the assignment, the Court shall approve such assignment, provided:

- (a) The assignee is reasonably likely to perform the contractual obligations;
- (b) The creditor does not suffer unreasonable harm as a result of the assignment; and
- (c) The assignment is necessary for the effective implementation of the Confirmed Reorganization Plan.

14.6 The Administrator shall elect to continue or reject a contract not later than twenty (20) days after the date the Court has issued the Confirmed Reorganization Plan.

Section 15  
Voidance of Transactions

15.1 The Administrator may apply to the Court for an order that any transfer of property or assets of the Enterprise made during the period from 22 March 1989 to the date of the Moratorium Decision shall be void, provided evidence of any of the following criteria applies and such transfer:

- (a) Was made for less than fair value;
- (b) Reduced the total assets of the Enterprise ;
- (c) Was intended to harm the interests of the creditors;
- (d) Was intended to defeat, delay or hinder 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 intent;
- (e) Was a result of a transaction with a creditor, through which the creditor obtained more than a pro-rated 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 unable to fulfil its obligations; or
- (f) The transaction, or payment or supply in relation to the transaction, was in breach of one or more United Nations Security Council resolution or European Union Council Regulation (EC) imposing international sanctions, notwithstanding that such transfer may have been recognized by a court decision or arbitral award.

15.2 Any transfer for the purpose of this section shall include any mode, direct or indirect, of conveyance, sale, exchange, gift, disbursement, disposal, grant of a pledge, mortgage or other rights.

15.3 The Court while considering an order under this section shall balance the interests of the Enterprise and the need to treat creditors fairly with:

- (a) The rights of bona fide transferees of assets of, and rights against, the Enterprise;
- (b) The need to maintain reasonable certainty in commercial transactions; and

- (c) The need to deal with the Administrator's application expeditiously.

#### Section 16

##### Duty to Cooperate with Administrator

The Enterprise, the Management, employees of the Enterprise, including former employees, and all relevant persons, including any public authorities, the PISG and the Agency shall co-operate with the Administrator and shall provide access to all documents and information concerning activities and operations of the Enterprise, 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**

#### Section 17

##### Creditor Notification and Proof of Claim

17.1 On the Appointment Date, the Court shall serve a notice of such appointment on the Agency, which shall issue a public notification of such appointment (Appointment Notice) pursuant to the Advertisement Provisions under section 49 of the present Regulation within three (3) weeks of the Appointment Date. The Appointment Notice shall include:

- (a) The name and contact details for the Administrator(s) appointed by the Court with a reference to the present Regulation;
- (b) The approximate timetables relating to the Administrator's duties under this Regulation;
- (c) The information that the Administrator will compile and distribute the proposed Reorganization Plan for the Enterprise concerned;
- (d) A notification that creditors whose debt individually or collectively represents an amount calculated in Euros, which is equal to 5% of the total value of all outstanding obligations of the Enterprise (Qualifying Creditors), such amount being the Administrator's best estimate on the information available at the time, shall be permitted to file an alternative proposal for reorganizing the Enterprise (Alternative Reorganization Plan); and

(e) Any other relevant information that the Administrator deems appropriate.

17.2 The Appointment Notice shall further include a notification from the Administrator to potential creditors of the Enterprise requiring formal submissions in any reasonable (including electronic) format that the Administrator deems appropriate of all claim and creditor information as required by the Administrator (Proof of Claim) including the following:

(a) The name and address including other contact details of the creditor or claimant;

(b) The total monetary amount of the claim, with any interest identified separately, and the nature of the claim identifying if the claim is directed against a particular asset of the Enterprise concerned or requires the Enterprise to fulfil a particular obligation that is not a payment to the claimant or creditor;

(c) Details of any currency conversion rates used;

(d) A copy of any document by reference to which the obligation or claim can be substantiated;

(e) Particulars of how and when the obligation was incurred or the claim arose;

(f) 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 collateral valid against third parties; and

(g) Any other relevant information in relation to the obligation or the claim as the creditor or claimant may consider appropriate or which the Administrator deems appropriate to request to be submitted.

17.3 Claims which have not matured or become due shall be deemed matured or due as of the dated of the Moratorium Decision for the purposes of submitting a Proof of Claim.

17.4 A creditor, the Government or any third party who has agreed to fund the Administrator's remuneration and expenses shall only be obliged to submit claim and creditor information under this Regulation if so required by the Administrator for the recovery of any Administrator's remuneration or expenses paid.

17.5 Upon receiving the required claim and creditor information from potential creditors, the Administrator shall without undue delay notify any person he is of the reasonably opinion to be a shareholder of the Enterprise or whose claim he is of the reasonable opinion to be evidently false or incorrect of such opinion.

Section 18  
Protection of Creditors Interests

18.1 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 affairs, business and property are being or have been managed by the Administrator in a manner which 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.

18.2 Upon an application for an order under this section, the Court may make such order as it sees fit.

Section 19  
Creditors Committee

19.1 A Creditors Committee shall be constituted by Registered Creditors during the Initial Creditors Meeting and shall comprise such persons that may reasonably be regarded as representative of all Registered Creditors. The Creditors Committee shall include at least three (3) and not more than seven (7) Registered Creditors.

19.2 The constitution of the Creditors Committee or any decisions relating to such Creditors Committee shall be referred to the Court in the event that:

- (i) circumstances prevail where it is manifestly inappropriate or not possible to form a Creditors Committee that is representative of all Registered Creditors, or
- (ii) an existing Creditors Committee ceases to function fairly or effectively.

The Court shall make any appropriate order, including but not limited to ordering that a suitable third party or the Agency may act on behalf of all Registered Creditors.

19.3 The Creditors Committee shall have the following responsibilities and powers:

- (a) To receive a copy of the three-monthly reports of the Administrator concurrently with the Court and the Agency;
- (b) To receive notices of motions and other requests for Court action that are likely to substantially affect the rights of the Registered Creditors;

(c) To request the Management or representatives of the Enterprise appointed by the Administrator for this purpose to answer questions concerning the Enterprise;

(d) To request the Administrator to initiate an action to avoid a transaction under section 15 or reject a claim under section 32 of the present Regulation;

(e) To share with Registered Creditors who are not members of the Creditors Committee access to information it has obtained;

(f) To receive reimbursement of costs in accordance with section 36, provided that such costs are limited to the cost of reasonable travel and subsistence cost related to attendance at the Creditors Committee meetings;

(g) To act as consultation group for the Enterprise, the Agency and the Administrator and to assist the Enterprise, the Agency and the Administrator in their decision-making processes; and

(h) Such other responsibilities or powers as provided for by the present Regulation or any implementing subsidiary legislation.

19.4 The Administrator may refuse to provide information to or allow a Registered Creditor to participate in meetings of the Creditors Committee in circumstances where the Administrator has reasonable grounds to believe that such Registered Creditor has a conflict with the interests of the Enterprise. In circumstances where such conflict of interest is significant and continuing, the Administrator may seek the removal of such Registered Creditor from the Creditors Committee pursuant to the following:

(a) Upon an application of the Administrator or any Registered Creditor or the majority of the members of the Creditors Committee, excluding the vote of the Registered Creditor whose removal is sought, to the Court, the Court may remove a member of the Creditors Committee and replace it with another Registered Creditor.

(b) The grounds for the removal of a member of the Creditors Committee shall be limited to the following:

(i) the member is likely to be unduly biased towards the Enterprise or one or more other Registered Creditors,

(ii) the member has a significant and continuing conflict of interest pursuant to subsection 19.5 above or is likely to be lacking the ability to contribute effectively to the work of the Creditors Committee.

Section 20  
Reorganization Plan

20.1 The Reorganization Plan shall contain information sufficient to allow a reasonable business person to make an informed choice on whether or not to vote in favour of such plan and shall include:

- (a) A brief introduction generally describing the Enterprise's business activity and the circumstances leading to its financial difficulty;
- (b) A description of the method and means for implementing the plan, clarifying in sufficient details what measures are intended to be taken for the accomplishment of the reorganisation, including any financial projections upon which the feasibility of the Reorganization Plan is based;
- (c) The details of any proposed transfer of all or part of the Enterprise's business to a new corporation or other entity;
- (d) The details of any prospective issue of shares or new capital structure in either a new corporation or the Enterprise in order to enable the satisfaction of claims or the issue of any new debt instrument;
- (e) A concise analysis of the approximate amount of money that may be available for creditors if the Enterprise was liquidated rather than reorganised in accordance with the proposed plan;
- (f) A statement of the approximate amount of money and assets that are available for the full or partial satisfaction of creditor claims, the procedure for the satisfaction of these claims and the approximate timings for any payments to be made in satisfaction of such claim;
- (g) A description of the procedure to be used for the sale of any assets, describing what assets would be sold, whether with or without continuation of any encumbrance thereon, and the intended use of any proceeds from such sales;
- (h) A statement of the approximate time periods for completing the plan and an approximate schedule for implementing major components thereof;
- (i) A description of the management of the Enterprise and details of their proposed future compensation;
- (j) A statement of any intention to retain or make redundant employees and the approximate numbers and categories of employees to be retained by the Enterprise;

(k) A description of any proposed arrangement, scheme, composition or compromise with creditors in relation to payment of their debts;

(l) Detailed proposals for the award of concession contracts, operation agreements or similar arrangements for achieving value for the Enterprise accompanied by an explanation how this will improve the situation of the creditors;

(m) Any proposed methods of sale, including the extent to which the Administrator will use the methods and resources of the Agency, and the criteria that will be used for selecting winning bidders of sales or contracts, including any non-price criteria such as investment, employment, environmental or economic regeneration commitments and other similar commitments; and

(n) The date the plan is proposed to come into effect.

20.2 All statements made in the Reorganization Plan are subject to amendments and any such amendment shall not cause any liability to the Administrator, the Enterprise or the Agency. The Administrator shall notify creditors of details of essential amendments to the Reorganization Plan prior to the Initial Creditors Meeting.

## Section 21 Alternative Reorganization Plan

21.1 Any Qualifying Creditor is entitled to submit an Alternative Reorganization Plan to the Administrator. The Alternative Reorganization Plan shall contain such information as set out in section 20 of the present Regulation and statements made in the Alternative Reorganization Plan are subject to the same amendment and notification provision as the Reorganization Plan. Amendments to such statements shall not cause any liability to the Qualifying Creditor.

21.2 The Qualifying Creditor must notify the Administrator in writing within three (3) months from the Appointment Date about the intention to submit an Alternative Reorganization Plan. In any event, the Qualifying Creditor shall submit a copy of the Alternative Reorganization Plan to the Administrator no later than four (4) weeks prior to the Initial Creditors Meeting together with appropriate evidence of his status as a Qualifying Creditor.

21.3 The Administrator shall take all reasonable steps to notify and keep apprised any Qualifying Creditor of the anticipated date of the initial creditors meeting in order for any Qualifying Creditor who has notified the Administrator of his intention to submit an Alternative Reorganization Plan to comply with the time limit for submitting a copy of the Alternative Reorganization Plan for creditors to consider.

21.4 All expenses related to the formulation and submission of any Alternative Reorganization Plan shall be paid by the Qualifying Creditors preparing such plan.

Section 22  
Notification of Reorganization Plan

22.1 Within six (6) months of the date of his appointment, the Administrator shall notify the Agency, creditors of the Enterprise, the claim and address details of which are known to the Administrator, and any person having registered a Proof of Claim under section 17, of the date, time and location of the first meeting to be held of the creditors of the Enterprise (Initial Creditors Meeting) and send to those persons:

- (a) A copy of the Reorganization Plan;
- (b) A copy of any Alternative Reorganization Plan that he has received and that meets the requirements of section 21 of the present Regulation prepared by a Qualifying Creditor pursuant to section 17 and received by the Administrator;
- (c) A proxy voting form together with detailed descriptions as to exercising the right to vote by proxy;
- (d) An invitation to attend the Initial Creditors Meeting including a request to submit a Proof of Claim to the extent that at the time of the request no such proof has been submitted; and
- (e) A statement advising creditors that any failure to submit a Proof of Claim at least five (5) Business Days prior to the Initial Creditors Meeting will result in precluding the creditor from voting at the Initial Creditors Meeting;

Provided that upon an application by the Administrator, the Court may order that the time period for the distribution of such documents be extended. Any such extension by the Court shall not exceed eight (8) months from the Appointment Date.

22.2 Concurrently with the notification under subsection 1 above the Administrator shall publish in accordance with the provisions under section 49 a public notice stating that documents referred to in this notification will be provided free of charge to any creditor of whom the Administrator has not been made aware and who applies in writing to the Administrator before a reasonable deadline set by the Administrator. Such deadline shall be no more than two (2) weeks before the Initial Creditors Meeting.

Section 23  
Initial Creditor's Meeting

23.1 The date set by the Administrator for the Initial Creditors Meeting shall be no earlier than one (1) month and no later than two (2) months after the Reorganization Plan has been sent out pursuant to section 22 of the present Regulation.

23.2 The Initial Creditors Meeting shall be chaired by the Administrator, and held on a Business Day, commencing during usual business hours, at a location within Kosovo which is reasonably convenient for the Administrator and Registered Creditors.

23.3 Upon the application of the Administrator to extend the time period until the Initial Creditor's Meeting is held, the Court may extend such time period, provided that the total period of time until the Initial Creditors Meeting is held shall not exceed three (3) months following the date the Reorganization Plan was sent out.

#### Section 24 Attendance, Voting and Business of the Meeting

24.1 A creditor of the Enterprise, who has submitted at least five (5) Business Days prior to the Initial Creditors Meeting a Proof of Claim reasonably accepted by the Administrator as sufficient claim and creditor information (Registered Creditor), and representatives of the Agency shall be entitled to attend the Initial Creditors Meeting.

24.2 Creditors with claims that the Administrator can reasonably ascertain fall outside the period of limitation under Applicable Law or that have not been properly brought in a competent court, including where appropriate in the Court, within the period of limitation shall not be considered Registered Creditors and are ineligible for voting.

24.3 The Initial Creditors Meeting shall enable all Registered Creditors of the Enterprise:

(a) To discuss, consider and vote on the Reorganization Plan proposed by the Administrator,

(b) In the event that any Alternative Reorganization Plan has been submitted, to consider the contents of all submitted plans and decide by vote on which plan would have the greater preference of the Initial Creditors Meeting, provided that the Registered Creditors shall vote on each plan submitted;

(c) To raise and discuss any issue in relation to the administration of the Enterprise, and

(d) To constitute the Creditors Committee and decide by vote on its membership.

24.4 A Registered Creditor who is unable to attend the Initial Creditors Meeting in person shall be permitted to vote by proxy or by facsimile message, hand delivery or

mail to the address provided in the invitation for the meeting. The Agency or the Administrator may be appointed as proxy of a Registered Creditor.

Section 25  
Voting at the Meeting

25.1 All proxy forms and proxy votes shall be signed by the Registered Creditor or a person duly authorised by the Registered Creditor. Any proxy form or proxy vote that was not received by the Administrator at least five (5) Business Days prior to the Initial Creditors Meeting shall be invalid.

25.2 In the event that one or more Alternative Reorganization Plans have been tabled before the Initial Creditor's Meeting, the Administrator shall record the votes in favour and against each of the plans on the basis of:

- (i) initially, 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 Administrator; and
- (ii) thereafter, the number of votes from Registered Creditors.

25.3 The value of each claim for voting purposes shall be the Administrator's reasonable calculation in accordance with section 33 of the present Regulation. 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.

25.4 Any person affected by a decision of the Administrator pursuant to this section can apply to the Court to challenge the Administrator's opinion, provided that such application is made within five (5) Business 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.

25.5 The vote of a creditor with a Secured Claim shall count to the full extent of the value of the Secured Claim, subject to the provisions of section 34 of the present Regulation.

25.6 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 Initial Creditors Meeting, 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.

Section 26  
Adjournment and Further Meetings

26.1 The Administrator may from time to time call such further meetings of creditors as he shall deem appropriate to ascertain the wishes of the creditors of the Enterprise, and such meetings shall be called by reasonable written notice to all creditors of whom the Administrator is aware and held in accordance with the provision for the Initial Creditors Meeting in section 23.2.

26.2 The Administrator may adjourn the Initial Creditors Meeting and any subsequent creditors meeting for up to twenty one (21) days and on no more than two (2) occasions. The Administrator shall not be obliged to notify creditors of such adjournments. Any adjourned meeting shall comply with the provisions of section 23.2.

Section 27  
Court Confirmation of Plan

27.1 No later than one (1) month after the conclusion of the Initial Creditors Meeting the Administrator shall submit to the Court a copy of the Reorganization Plan and of any Alternative Reorganization Plan voted on by the Initial Creditors Meeting and apply for a hearing on these plans. The Court shall schedule such hearing within fifteen (15) Business Days of such application.

27.2 Before or during the hearing the Administrator may put forward written reasoned amendments to the Reorganization Plan and to any the Alternative Reorganization Plan reflecting issues raised during the Initial Creditors Meeting or raised by the Creditors Committee. As a result of the hearing the Court shall form an opinion on the Reorganization Plan and on any Alternative Reorganization Plan submitted.

27.3 The Court shall make an order on all the plans submitted within ten (10) Business Days from the date of the hearing. Such order shall take into account the following:

- (a) The voting of the Registered Creditors during the Initial Creditors Meeting;
- (b) The views of Agency and the Administrator;

(c) The extent to which a reorganization of the Enterprise based on any plan submitted will achieve a greater return to creditors than a liquidation of the Enterprise; and

(d) The extent to which a plan will achieve the preservation of employment for the current employees of the Enterprise.

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

(a) Approving a plan as drafted or with modifications by the Administrator, the Creditors Committee or of the Court's own initiative;

(b) Rejecting the Reorganization Plan and any Alternative Reorganization Plan and requesting a revised Reorganization Plan from the Administrator within a set time period; or

(c) Rejecting the Reorganization Plan and any Alternative Reorganization Plan and requiring the Agency to put the Enterprise into liquidation pursuant to section 43.

### Section 28

#### Effects of Confirmed Reorganization Plan

28.1 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 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. This shall not affect the ability of the Administrator to later dismiss the claim under section 33 of the present Regulation or to make a final evaluation of the claims pursuant to section 31 of the present Regulation.

28.2 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.

28.3 Any Property as defined in section 1 of UNMIK Regulation 2003/13 of 9 May 2003 on the Transformation of the Right of Use to Socially-owned Immovable Property, which is transferred to a third party under a Confirmed Reorganization Plan, shall be transformed into a Leasehold in accordance with section 2 of UNMIK Regulation 2003/13 upon such transfer.

Section 29  
Breach of Confirmed Reorganization Plan

29.1 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, the Administrator and the Agency within five (5) Business Days of receiving the application and schedule a hearing on the matter not later than ten (10) Business Days after the date a copy of the notice was served by the Court.

29.2 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:

(a) 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;

(b) Ordering the reorganization procedure ended and directing the Enterprise to become subject to liquidation procedures in accordance with section 43;

(c) Giving leave to the Enterprise or the Agency to submit amendments to the Confirmed Reorganization Plan, which shall be further considered by the Court; or

(d) Issuing any other decision to remedy the breach, which is consistent with this Regulation or any other applicable legislation.

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

Section 30  
Creditor Notification and Claims Bar Date

30.1 Within five (5) Business Days of the date the Court determined the Confirmed Reorganization Plan, the Administrator shall publish a notice in accordance with the Advertisement Provision under section 49 of the present Regulation, informing all creditors about such Court order and the date the Court issued the order.

30.2 In the published notice the Administrator shall:

(a) Request the filing of further Proofs of Claim within three (3) months of the date the Court determined the Confirmed Reorganization Plan (Claims Bar Date)

from those creditors or claimants who have not already filed a Proof of Claim or have filed insufficient detail in relation to a Proof of Claim;

(b) Advise all potential creditors and claimants that failure to file a Proof of Claim on or before the 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 section 42 of the present Regulation.

30.3 If a creditor provides sufficient justification for late filing, the Administrator may in his sole discretion admit a claim submitted after the Claims Bar Date, provided that the Enterprise has sufficient funds for the relevant class of creditors to meet such additional claim.

### Section 31 Registration and Evaluation of Claims

31.1 Immediately following the Claims Bar Date, the Administrator shall evaluate the validity, extent and priority of claims and any related perfected pledge or registered mortgage presented against the Enterprise. Provided that:

(a) Claims which fall outside the period of limitation under the Applicable Law or which have not been properly made in a competent court including where appropriate in the Court within the period of limitation, shall not be eligible to participate in and benefit from the Confirmed Reorganization Plan; and

(b) Pledges and mortgages shall only be valid if perfected or registered in accordance with Applicable Law.

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

31.3 A register of claims 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 and the Confirmed Reorganization Plan. Appropriate arrangements shall be made for any Registered Creditor, the Agency or any party who potentially has a direct financial interest in the Enterprise and the Confirmed Reorganization Plan to view or photocopy the register during normal business hours.

31.4 If the Administrator rejects, in whole or in part, or reduces the amount of a claim submitted, he shall notify as soon as practical the affected creditor in writing, giving an explanation for the rejection or reduction of the claim.

(a) The affected creditor is entitled to apply to the Court within twenty (20) Business Days of the dispatch of such notice by the Administrator for determination

of his claim and failing such application the creditor shall be precluded from objecting further to the Administrator's decision. Applications filed after this twenty (20) Business Day period shall be admissible only if the claimant shows that he was not in default of filing the claim within the required period. Applications filed more than forty (40) Business Days after the dispatch of the notice by the Administrator shall be inadmissible.

(b) The Court shall schedule a hearing to occur no later than ten (10) Business Days after the submission of the application by the affected creditor and shall make a determination on the claim no later than five (5) Business Days after the hearing.

### Section 32 Invalid and Improper Claims

32.1 The Administrator may reject any claim or liability arising out of a transaction if:

(a) The documentation for the liability presented by the Enterprise or the Proof of Claim presented by the claimant remains incomplete after a request from the Administrator for supplementary documents; or

(b) The documentation presented is fraudulent or there is cause to suspect an intention to defraud the Enterprise or other creditors; or

(c) There is reason to believe that the transaction:

(i) was not approved though the proper internal procedures of the Enterprise,

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

(iii) was entered into at the relevant time in breach of a fiduciary duty towards the Enterprise by the Management or an Officer under the Applicable Law

(iv) was in breach of UN regulations or regulations of the Council of the European Union.

and in each case:

(i) the creditor knew or with the exercise of reasonable diligence should have known of such violation, or

(ii) at the time the transaction was entered into, the management or an Officer knew or reasonably ought to have known that the Enterprise was

insolvent and the transaction resulted in the creditor being put in a more favourable position than other creditors; or

(d) There is reason to believe the transaction was done:

- (i) at a value which was less than the market or open value; or
- (ii) payment or supply in relation to the transaction was in breach of one or more United Nations Security Council resolution or European Union Regulations imposing international sanctions; or

(e) The claim relates to a transaction which took place outside of Kosovo and concerns what is at the time of the Confirmed Reorganization Plan an entity or purported entity or business unit that at the time of the Confirmed Reorganization Plan is independently managed from the Enterprise in Kosovo and 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.

32.2 The creditor of such claim may challenge any decision of the Administrator under this section in the Court in accordance with the provision of section 31.4.

### Section 33

#### Calculation and Set Off of Claims

33.1 The provisions in this section 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.

33.2 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.

33.3 All claims made against the Enterprise may include:

(a) The costs of civil and legal enforcement proceedings up to the date of the Moratorium Decision. Such costs are required to be identified in appropriate evidence, considered reasonable by the Administrator, justified under the Applicable Law and may not exceed 15% of the value of the claim; and

(b) The interest on any principal amount from the date it became due until the date of the Moratorium Decision, provided that such interest shall not exceed 10 % (ten per cent) of the principal amount..

33.4 The Administrator is also entitled to:

(a) Convert any claim for specific performance of a contract, including but not limited to a claim for the delivery of goods, into a claim for monetary damages;

(b) Reduce any claim to the extent that the claim has been otherwise satisfied, including by any property or assets of the Enterprise; and

(c) Set off any amount due under a claim held by the Enterprise against any amounts due under a claim against the Enterprise, provided that:

- (i) there have been mutual dealings between the parties;
- (ii) the amounts due constitute liquidated amounts;
- (iii) the amounts due have not arisen by way of assignment or other transfer as a result of any transaction which has taken place within three (3) months prior to the date of the Moratorium Decision; and
- (iv) the amounts of both claims have become due and payable before the date of the Moratorium Decision.

#### Section 34 Secured Claims

34.1 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 exercise his powers over or prevent a third person from acquiring such property or asset unencumbered and free of any security, provided that:

(a) 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

(b) The Court is satisfied 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.

34.2 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.

34.3 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.

### Section 35 Final Claims List

35.1 No later than three (3) months 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 claims in accordance with section 31, 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 section 36 of the present Regulation.

35.2 A copy of the final list of claims shall be transmitted to the Enterprise, the Agency and the Creditors Committee.

### Section 36 Priorities of Claims

36.1 Claims of creditors shall be classified in classes (a) to (e) and satisfied in the following order:

- (a) Priority claims, in the following order:
  - (i) secured credit incurred in accordance with section 13.2 to the extent that such claims relate only to the realisations of assets which were securing the credit;
  - (ii) remuneration and expenses of the Administrator, payments made by the Government, a creditor or any third party towards the funding of the Administrator's remuneration and expenses;
  - (iii) court expenses;
  - (iv) administrative costs of the Agency which are proven to be directly related to the support of the Administrator;
  - (v) administrative expenses required for the maintenance and protection of property and assets of the Enterprise, including expenses incurred by the continued operation of the Enterprise after the date of the Moratorium Decision, including but not limited to credit obtained by the Administrator under section 13.1;

(vi) permitted expenses of the Creditors Committee in accordance with section 19.3;

(vii) secured Claims to the extent realized from assets securing such claims and in the amount of such Secured Claims, including claims based on judgments awarding compensation pursuant to section 10.3 of (the Special Chamber Regulation);

(b) Claims for ownership of specific assets including real assets;

(c) Claims for such wages of employees, which have remained unpaid until the date of Moratorium Decision, limited to three months gross salary per person;

(d) Unsecured claims, including wage claims that are not subject to higher priority treatment;

(e) Claims of owners, shareholders, founders, participants or partners of the Enterprise.

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

### Section 37 Satisfaction of Claims

37.1 Claims shall be satisfied according to priority by class and order as set forth in section 36 of this Regulation.

37.2 The satisfaction of claims 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.

37.3 If resources are insufficient to fully satisfy all claims of a given class or order, the claims of that class or order shall be satisfied in proportion to the amount of each claim.

37.4 The procedures for paying or satisfying the claims shall be established by the Confirmed Reorganization Plan.

Section 38  
Reserved Funds

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:

- (a) Claims that are in dispute and have not yet been resolved by the Court;
- (b) 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;
- (c) Future expenses in connection with the maintenance of certain property or assets of the Enterprise, and
- (d) Future claims certain to arise but unascertainable at the time of the Claims Bar Date.

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

Section 39  
Administrator's Final report

39.1 After completion of a Confirmed Reorganization Plan, the Administrator shall submit a final report to the Court. The final report shall set out in detail all relevant matters that have occurred since the Court has issued the Confirmed Reorganization Plan.

39.2 Based on the final report the Administrator may apply to the Court for an order closing the reorganization proceedings and the Confirmed Reorganization Plan.

Section 40  
Closure of the Confirmed Reorganization Plan

40.1 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 ten (10) Business 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.

40.2 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 section 36, 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.

40.3 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.

#### Section 41 Discharge of the Administrator

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

(a) 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

(b) The approval of the final payment of any unpaid remuneration and expenses of the Administrator.

41.2 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.

#### Section 42 Discharge of Debts and Recovery of the Enterprise

42.1 Upon closure of the reorganization proceedings and the Confirmed Reorganization Plan by the Court, all debts due from the Enterprise arising prior to the date of the Moratorium Decision are extinguished by operation of law and any action to collect such extinguished debts shall be prohibited, except as the Court may order prior to closure of or in the order closing the reorganization proceedings and the Confirmed Reorganization Plan.

42.2 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**

Section 43  
Conversion to Liquidation

43.1 The Court shall issue a decision for the commencement of liquidation proceedings pursuant to section 9 of the KTA Regulation and section 39.1 (c) of UNMIK Regulation 2001/6 on Business Organisations (Business Organization Regulation) as amended, in the event that:

(a) No Administrator has been appointed to the Enterprise in accordance with section 8 within the time period set out therein including any extension granted by the Court;

(b) No Reorganization Plan is submitted by the Administrator within the time limits set under section 27.1 of the present Regulation;

(c) No Reorganization Plan is confirmed by the Court pursuant to section 27.4 of the present Regulation;

(d) The Enterprise materially breaches the requirements of the Confirmed Reorganization Plan and no satisfactory remedy is proposed or accepted by the Court pursuant to section 29 of the present Regulation; or

(e) Prior to the issuance of the Confirmed Reorganization Plan, the Agency or the Administrator requests that liquidation proceedings be commenced and no Alternative Reorganization Plan has been submitted.

43.2 In the decision of the Court commencing the liquidation proceedings, the Administrator shall be ordered to submit a final report pursuant to section 39.1 of the present Regulation and to hand over to the Agency the remaining documentation and other matters related to the reorganization proceedings and the Enterprise. The reorganization proceedings shall be declared terminated.

43.3 In liquidation proceedings initiated by court order, the following provisions shall apply:

(a) Section 9 of the KTA Regulation;

(b) Section 39.3 of the Business Organization Regulation; and

(c) Sections 10.3, 10.4, 11, 12.3, 12.4, 15, 16, 17.3 and 17.5, 31 to 34, 35.1, 38, 46, 49, 50.2 and 50.3 and 51 to 57 inclusive of the present Regulation, provided that:

(i) the functions of the Administrator shall be exercised by a committee appointed by the Agency (Liquidation Committee), which shall have the powers and authorities as set out for an Administrator in section 11 of the present Regulation;

(ii) references to any plan, including a Confirmed Reorganization Plan, shall be references to the liquidation of the Enterprise;

(iii) references to a Moratorium Decision shall refer to the notification given under section 9.3(b) of the KTA Regulation;

(iv) the reference to the Court in section 35.1 shall be to the Board of Directors of the Agency;

(v) references to the Appointment date shall be references to the date of the first newspaper publication of the notice to creditors under section 9.3 (b) of the KTA Regulation.

(d) In the publication of the notice to creditors under section 9.3 (b) of the KTA Regulation, the Agency shall:

(i) request from creditors and claimants the filing of Proofs of Claim within two (2) months of the date of the second notice ;

(ii) advise all potential creditors and claimants that failure to file a Proof of Claim within two (2) months of the date the second notice is published will result in such creditors and claimants being unable to benefit from the distribution of the proceeds of the liquidation proceedings. Section 6.1 of the Special Chamber Regulation shall not apply.

(e) If a creditor provides sufficient justification for late filing, the Agency may in its sole discretion admit a claim submitted after two (2) months of the date of the second notice under section 9.3 of the KTA Regulation is published, provided that the Enterprise has sufficient funds for the relevant class of creditors to meet such additional claim.

43.4 Upon a decision by the Agency to liquidate an Enterprise pursuant to section 9 of the KTA Regulation, the liquidation shall be conducted in accordance with the provisions for liquidation proceedings under the present Regulation.

#### Section 44

#### Priority of Claims in Liquidation Proceedings

44.1 In liquidation proceedings all claims of creditors shall be satisfied according to classes (a) to (g) hereunder and in the following order:

(a) The costs of selling or otherwise realizing the property or assets of the Enterprise;

(b) Priority claims, in the following order:

- (i) Court expenses;
- (ii) Expenses of the Liquidation Committee and any supporting advisers;
- (iii) Expenses of the Liquidation Committee required for the maintenance and protection of the property and assets of the Enterprise;
- (iv) Expenses for the continued operation of the Enterprise after the decision of the Agency or Court to commence liquidation proceedings;
- (v) All expenses incurred during any reorganization or during the liquidation proceedings;
- (vi) Claims for secured credit obtained pursuant to section 13 during any reorganization proceeding under the present Regulation, except that such claims can only relate to the realisations of such assets that secured the credit;

(c) 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 (Land Use Regulation) as amended from time to time;

(d) Secured Claims to the extent realized from assets securing such claims and in the amount of such Secured Claims and claims based on judgments awarding a compensation pursuant to section 10.3 of the Special Chamber Regulation;

(e) Claims for ownership of specific assets including real assets;

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

(g) Unsecured claims, including wage claims that are not subject to higher priority treatment;

(h) Claims of owners, shareholders, founders, participants or partners of the Enterprise.

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

44.3 Claims shall be satisfied according to priority by class and order as set forth in this section. Payments for the satisfaction of claims shall be made in accordance with the provisions under section 37.2 and 37.3 of this Regulation and follow procedures established by the Liquidation Committee in accordance with the Financial Policies of the Agency issued under section 19 of the KTA Regulation.

Section 45  
Closure of the Liquidation Proceedings

45.1 After completion of liquidation proceedings and distribution of all fund realized from the sale or other realization of the property and assets of the Enterprise, the Liquidation Committee shall submit a final report to the Agency. The final report shall set out in detail all relevant matters that have occurred since the Agency has issued the decision to commence liquidation proceeding for the Enterprise.

45.2 Based on the final report the Agency may apply to the Court for an order closing the liquidation proceedings. Upon receipt of the final report and the application for closure the Court shall within ten (10) Business Days issue a written order closing the liquidation proceedings if it is satisfied that all property and assets of the Enterprise been liquidated to the extent reasonably practical and all funds realized have been paid out or substantially paid out.

45.3 At any stage of the liquidation proceedings, in the event that the resources of the Enterprise are insufficient to cover the expenses stated in section 44.1(b)(i) to (vi) of the present Regulation , and following an application of the Liquidation Committee to the Court, the Liquidation Committee may immediately submit a final report and, upon its approval, the Court shall issue a decision closing the liquidation proceedings and making such further order as the Court shall consider fit.

45.5 The Court shall include in any order closing the liquidation proceedings provision for the relief of the Liquidation Committee from any further duties in relation to the Enterprise and the liquidation proceedings. The execution of any final distribution that has not been effected at the time of the closing order shall be carried out by the Agency.

45.6 Upon closure of the liquidation proceedings by the Court, the Enterprise shall be considered legally dissolved and non existent and no further creditor or ownership claims may be enforced against the Agency or the former Enterprise's assets. Within five (5) Business Days of the closure of the liquidation proceedings, the Agency shall issue a public notice in accordance with the Advertisement Provisions under section 49 of the present Regulation and send notifications to the Kosovo Business Registry, the Kosovo Pledge Registry, the Kosovo Mortgage Registry and the Tax Administration stating that the Enterprise is dissolved.

**PART VIII**  
**MISCELLANEOUS PROVISIONS**

Section 46  
Directions from the Court

46.1 At any time during the reorganization procedure the Administrator or any Qualifying Creditor may seek direction from the Court concerning a point of Applicable Law, including but not limited to an issue on compliance with this Regulation or interpretation of the Confirmed Reorganization Plan.

46.2 The Administrator may refer such issue of law by way of written request to the Court for adjudication and the Court shall decide on such issue within fifteen (15) Business Days.

46.3 Upon receipt of an application pursuant to paragraphs 1 or 2 above, the Court shall notify the party directly affected by such application and allow such party to file a brief to the Court within two weeks after receipt of the notification.

Section 47  
Consultation

The Administrator shall regularly consult with all relevant stakeholders in relation to substantial actions under this Regulation. Such stakeholders shall include the Agency, the Ministry of Trade and Industry, representatives of the employees of the Enterprise, licensors, relevant regulatory authorities and UNMIK.

Section 48  
Notifications

The Agency, and after the date of his appointment, the Administrator shall notify the Kosovo Business Registry, the Kosovo Pledge Registry, the Kosovo Mortgage Registry and the Tax Administration promptly of the following:

- (a) After the date of the Moratorium Decision, the issuance of the Moratorium Decision;
- (b) After the date the Reorganization Plan is confirmed by the Court, the determination of the Confirmed Reorganization Plan; and
- (c) The closing of the reorganization proceedings and the Confirmed Reorganization Plan.

Section 49  
Public Notices and Advertisements

49.1 Any formal notices under this Regulation shall be published in at least the following:

(a) In an Albanian language newspaper in the Albanian language and in a Serbian language newspaper in the Serbian language, both of wide circulation in Kosovo; and

(b) In a Serbian language newspaper of wide circulation in Serbia and Montenegro in the Serbian language.

49.2 If required by the subject matter and the intended addressees of the public notice such notice shall also be published in the English language in an international newspaper likely to reach the intended addressees.

Section 50  
Languages of Key Documents

50.1 The Reorganization Plan, any Alternative Reorganization Plan and the Administrator's report must be produced in Albanian, Serbian and English.

50.2 Standardised, formal communications, invitation letters and forms prepared by the Administrator must be produced in Albanian, Serbian and English, provided that if a person is clearly fluent in or has indicated a preference for one language, there shall be no obligation to send such communication, letters or forms to such person in all 3 languages.

50.3 Any claim or communications with the Administrator may be filed in any one or more of the Albanian, Serbian or English languages.

Section 51  
Exemptions from the Applicable Law

51.1 Actions by the Agency, the Enterprise, the Administrator, a Service Provider, the Liquidation Committee, their subcontractors, agents, successors or replacements, which are taken under the present Regulation shall be exempted from UNMIK Regulation 2004/3, as amended or replaced from time to time.

51.2 Claims filed in the Court after the date of the Moratorium Decision against the Enterprise, the Administrator or the KTA, including but not limited to appeals against

decisions or acts of the Administrator under the present Regulation shall be exempted from the application of sections 29.1 and 30.2 of the KTA Regulation.

Section 52  
Jurisdiction

All hearings, applications or request for orders in relation to the reorganization or liquidation proceedings for an Enterprise or any other matter under the present Regulation shall be dealt with by the Court.

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

Section 53  
Submission of False Claim Documents

53.1 Any creditor, the Enterprise, the Management, an Officer, an owner or partner of the Enterprise, or any person acting on behalf of the Enterprise knowingly submitting documents, or makes assertions within documents submitted, for the purpose of proceedings under the present Regulation, which are false or misleading, shall be liable to an administrative fine not exceeding fifty thousand (50,000) Euros per instance. In the case of a natural person such person may in addition become subject to criminal proceedings in accordance with the Provisional Criminal Code.

53.2 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 the present Regulation, shall be liable to an administrative fine not exceeding fifty thousand euro (€50,000) per instance. In the case of a natural person such person may in addition become subject to criminal proceedings in accordance with the Provisional Criminal Code.

Section 54  
Misappropriation and Concealment of Assets

54.1 Any person acting in the capacity of an Administrator, or hired to work under the supervision of the Administrator, Liquidation Committee, Agency or Enterprise, the Administrator, a member of the Liquidation Committee or the Enterprise knowingly misappropriating, destroying, damaging, stealing, directly or indirectly, any documents, property or assets of the Enterprise shall be liable to an administrative fine not exceeding twenty five thousand euro (€25,000) per instance. In the case of a

natural person such person may in addition become subject to criminal proceedings in accordance with the Provisional Criminal Code.

54.2 Any person knowingly transferring, concealing or failing to turn over any documents, property or assets of the Enterprise to an Administrator, the Liquidation Committee, a person acting in the capacity or as a representative of an Administrator, or representative of a Liquidation Committee, or to the Court to evade the processes and procedures of the present Regulation shall be liable to an administrative fine not exceeding twenty thousand euro (€20,000) per instance. In the case of a natural person such person may in addition become subject to criminal proceedings in accordance with the Provisional Criminal Code.

### Section 55

#### Liability for Torts Against the Enterprise

55.1 Managers and Officers shall be obliged to reimburse the Enterprise for any material damage caused to it as a result of transfers of property or assets made:

(a) Prior to the date of the Moratorium Decision provided that such transfer is for less than fair value and has occurred at a time when the Manager of Officer had actual or constructive notice that the value of the property and assets of the Enterprise has fallen below its liabilities; or

(b) After the date of the Moratorium Decision in violation of section 5 of the present Regulation.

55.2 For purposes of this section, constructive notice is given when at the time when reasonable opportunity exists to personally assess the circumstances leading to any of the above occurrences.

55.3 For the purpose of determining the extent of any given liability of a person under this section, the Court shall consider the degree of control of such person over the Enterprise, the extent of the involvement of such person in the actual management of the operations of the Enterprise and the person's knowledge of the circumstances of the Enterprise and such other circumstances as the Court may consider appropriate.

### Section 56

#### Knowing Disregard of the Present Regulation

Any person who knowingly disregards a provision of the present Regulation may become liable to an administrative fine not exceeding five thousand euro (€5,000) per instance.

Section 57  
Applicable Law

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

Section 58  
Entry into Force

The present Regulation shall enter into force on the 21<sup>st</sup> day of November, 2005.

Søren Jessen-Petersen  
Special Representative of the Secretary-General

## ANNEX

IN THE SPECIAL CHAMBER  
OF THE SUPREME COURT  
OF KOSOVO

Case Number:

IN THE MATTER OF *[insert name of debtor]*

To

The Special Chamber  
of the Supreme Court of Kosovo

1. The Petition of *[insert name of petitioner]* of *[insert address of petitioner]* (the "Petitioner") presented pursuant to Article 4 of UNMIK Regulation 2005/XX on the Reorganisation and Liquidation of Enterprises and their Assets in Kosovo under the Administrative Authority of the Kosovo Trust Agency ("the Reorganisation Regulation") to enter into a plan of re-organisation pursuant to UNMIK Regulation 2005/XX for the following Enterprise:

- i. *[insert name of one or more Enterprise(s)]* (the "Enterprise") is subject to the jurisdiction of the KTA pursuant to Section 5 of UNMIK Regulation 2005/18 as amended.
- ii. The principal activities of the Enterprise(s) are *[insert details of principal activities of the Enterprise]*.

2. The Petitioner believes that:

- i. the Enterprise is unable to meet all its due obligations or has liabilities exceeding the value of its assets (within the meaning of Section 3 of the Reorganisation Regulation); and
- ii. the acceptance of the Petition by the Court would be likely to achieve the confirmation of a Reorganization Plan under Section 27 of the UNMIK Regulation 2005/XX of XX November 2005 on the Reorganization and Liquidation of Enterprises and Their Assets under the Administrative Authority of the Kosovo Trust Agency (Reorganization Regulation).

3. It is intended to serve this Petition upon [ ].

**Signed by**

.....

**ENDORSEMENT**

This Petition having been presented to the Court

on **[ insert date]**

at am/pm