



ADMINISTRATIVE DIRECTION NO. 2005/6

**IMPLEMENTING UNMIK REGULATION NO. 2002/12 ON THE
ESTABLISHMENT OF THE KOSOVO TRUST AGENCY, AS AMENDED**

The Special Representative of the Secretary-General,

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

In conformity with United Nations Interim Mission in Kosovo (UNMIK) Regulation No. 2001/9 of 15 May 2001, On the Constitutional Framework for Provisional Self-Government in Kosovo,

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

For the purpose of establishing procedures to be followed in exercising the authority to transform Enterprises into Corporations granted to the Agency pursuant to Section 6.1(p) of UNMIK Regulation 2002/12, as amended,

Hereby issues the following Administrative Direction:

Section 1
Scope of Application

This Administrative Direction sets forth the procedures to be followed and actions to be taken by the Agency, certain governmental institutions and administrative bodies in Kosovo in connection with the transformation of Enterprises into Corporations pursuant to Section 6.1(p) of UNMIK Regulation No. 2002/12.

Section 2
Definitions and References

2.1 The definitions in Section 3 of UNMIK Regulation No. 2002/12 shall apply to this Administrative Direction.

2.2 For purposes of this Administrative Direction, the following additional definitions shall apply:

“Amended Plan of Transformation” has the meaning set forth in Section 3.6 of this Administrative Direction.

“Certificate of Transformation” means a certificate in the form attached hereto as Annex A, to be issued by the Registrar upon the filing of a Plan of Transformation by the Agency, together with all other documents as required under the present Administrative Direction.

“New Corporation” means a Corporation formed as a result of a transformation pursuant to this Administrative Direction.

“Plan of Transformation” means a written plan, established in accordance with the requirements of Section 3.2 of the present Administrative Direction, to transform an Enterprise into one or more Corporations.

“Registrar” means the Registrar of the Kosovo Registry of Business Organizations and Trade Names.

“Registry” means the Kosovo Registry of Business Organizations and Trade Names.

2.3 The headings in this Administrative Direction are included for convenience only and shall not affect the construction of this Administrative Direction.

2.4 Words denoting the singular shall include the plural and vice versa. Words denoting gender shall include the other gender. Words denoting persons shall include bodies corporate, unincorporated associations and partnerships.

2.5 References to any form or document, including any UNMIK Regulation or Administrative Direction, shall refer to such form or document as amended, supplemented or replaced from time to time.

2.6 References to Annexes, Chapters, Sections and Sub-sections are references to Annexes, Chapters, Sections and Sub-sections of the present Administrative Direction.

2.7 References to any office within UNMIK, a PISG Ministry or other regulatory or administrative body in Kosovo shall include its successors.

Section 3 Procedures for Transformation

3.1 For the transformation of an Enterprise into one or more Corporations, the Agency is required to follow the procedures set forth in this Administrative Direction.

3.2 In order to transform an Enterprise into one or more Corporations, the Board shall approve a Plan of Transformation, which shall include the following:

(a) the name of the Enterprise to be transformed, including all other names under which such Enterprise or any divisions or units thereof conducted business prior to the transformation, to the extent such names could be ascertained by the Agency;

(b) the current registration number of the Enterprise, including all other registration numbers under which such Enterprise or any divisions or units thereof conducted business prior to the transformation, to the extent such registration number could be ascertained by the Agency;

(c) the name of each New Corporation;

(d) a copy of the charter of each New Corporation, which satisfies the requirements of UNMIK Regulation No. 2001/6;

(e) in the event that more than one New Corporation is being formed, a record detailing all assets and liabilities that are being allocated to the respective New Corporations; and

(f) a certification from an independent accountant that each New Corporation has net assets at least equal to the charter capital as provided under its corporate charter.

(g) the effective date of the transformation, which may be the date of the issuance of the Certificate of Transformation by the Registrar or any other time after such date as specified by the Agency.

3.3 To effect the transformation, the Agency shall file with the Registrar:

(a) a copy of the Plan of Transformation, together with a copy of the Board resolution that adopted the Plan of Transformation;

(b) the charter of each New Corporation being formed pursuant to such Plan of Transformation; and

(c) such other documents that are required in accordance with the applicable law in connection with the formation of Corporations.

3.4 Upon receipt of the documents as set out under Sub-section 3 above and the respective filing fees relating thereto, the Registrar shall:

(a) file the Plan of Transformation;

(b) issue a duly completed Certificate of Transformation, with a copy of the Plan of Transformation annexed thereto; and

(c) issue a certificate of registration for each New Corporation pursuant to UNMIK Administrative Direction No. 2002/22.

3.5 No founders' agreement or foundation meeting shall be required for the formation of a New Corporation pursuant to this Administrative Direction.

3.6 In the event that the Agency determines that any name, registration number, asset or liability required to be listed in the Plan of Reorganization pursuant to Sub-section 2 above was omitted from that Plan the Agency may file with the Registrar an Amended Plan of Transformation which adds such name, registration number, asset or liability to the Plan of Transformation. Upon receipt of the Amended Plan of Transformation and the respective filing fee the Registrar shall:

(a) file the Amended Plan of Transformation; and

(b) issue a duly completed Amended Certificate of Transformation, with a copy of the Amended Plan of Transformation annexed thereto, which shall include the previously omitted additional name, registration number, asset or liability. The effective date of any Amended Plan of Transformation shall be the same as that of the original Plan of Transformation.

Section 4 Effect of Transformation

4.1 Following issuance of a Certificate of Transformation, and on the effective date specified in the Plan of Transformation, any Enterprise covered by such Certificate of Transformation shall become one or more Corporations in accordance with the Plan of Transformation. The provisions of UNMIK Regulation No. 2001/6 shall apply to each New Corporation except as expressly set forth in the present Administrative Direction.

4.2 Following the effective date of the Transformation, each New Corporation shall register the Agency, or such other New Corporation that is established to exercise holding

functions for New Corporations, as its sole shareholder. In addition to the powers with respect to Enterprises pursuant to its mandate under UNMIK Regulation No. 2002/12, the Agency shall exercise the powers of a shareholder as contemplated by UNMIK Regulation No. 2001/6 in a manner consistent with this mandate. A New Corporation may exercise the rights that are ascribed under the Applicable Law to Enterprises or Corporations exercising equivalent functions.

4.3 The assets and liabilities of an Enterprise transformed pursuant to the present Administrative Direction shall not be affected by the transformation. In the event that one New Corporation is formed as a result of the transformation, the New Corporation shall exercise all the rights and be responsible for all of the obligations and liabilities, including any contingent liabilities, of the transformed Enterprise. In the event that more than one New Corporation is formed as a result of the transformation, each New Corporation shall have the assets and liabilities allocated to it pursuant to the Plan of Transformation, and each New Corporation shall only be responsible for such liabilities and exercise such rights relating to the assets and liabilities that were allocated to it pursuant to the Plan of Transformation.

4.4 A transformation pursuant to this Administrative Direction shall not be deemed a liquidation of the transformed Enterprise.

4.5 Except as expressly provided under the present Administrative Direction, no other approval, consent, filing, notice, act or permit of any kind shall be required for the effectiveness of a transformation. The issuance of a Certificate of Transformation shall constitute conclusive evidence that an Enterprise covered by such Certificate of Transformation has been transformed into a Corporation.

4.6 Following the effective date of a Transformation, each Governmental agency or administrative body in Kosovo, including, and without limitation to, any court in Kosovo with jurisdiction over the transformed Enterprises, any cadastral offices, any tangible or intangible property rights register, and any pledge filing office, shall, upon presentation of a certified copy of the Certificate of Transformation, amend its records to reflect the transformation and the new name and other identifying information of the transformed Enterprise.

Section 5 Public Notification

5.1 Public notification of each transformation shall be made pursuant to Section 10.3 of UNMIK Regulation No. 2002/12.

5.2 In the event that more than one Corporation is being formed as a result of the transformation, the public notification shall include a statement that:

(a) the liabilities of the Enterprise and the extent to which they are being allocated to one or more New Corporations, and

(b) creditors of the transformed Enterprise have two years from the effective date of the transformation in which to assert in a court of competent jurisdiction any claim they may have against the New Corporations.

Section 6
Applicable Law

The present Administrative Direction shall supersede any provisions in the Applicable Law which may be inconsistent with it.

Section 7
Entry Into Force

The present Administrative Direction shall enter into force on 19 May 2005.

Søren Jessen-Petersen
Special Representative of the Secretary-General

ANNEX A

FORM OF CERTIFICATE OF TRANSFORMATION

Government of Kosovo

KOSOVO REGISTRY OF BUSINESS ORGANIZATIONS AND TRADE NAMES

Certificate of Transformation

1. Name of Enterprise(s) Transformed	
2. Registration Number(s) of Each Enterprise Transformed	
3. Name of Corporation	
4. Registration Number of the Corporation	
5. Business Address of the Corporation	
6. Effective Date of Transformation	
7. Additional Information	

Plan of Transformation Annexed

This Certificate is issued on _____, 20__.

Seal & Signature