

ANNEX VII PROPERTY AND ARCHIVES

Article 1 Publicly Owned Enterprises

1.1 Ownership rights in publicly owned enterprises (POEs) and related obligations, including, but not limited to, pre-incorporation liabilities shall be transferred to Kosovo. Ownership rights and related obligations of POEs providing services only in a specific municipality or in a limited number of municipalities, in particular in the areas of water, waste, irrigation, and heating shall be transferred to that municipality or the relevant municipalities.⁵

1.2 Notwithstanding these ownership rights, the competent Kosovo authorities shall take appropriate measures to implement European Union principles of corporate governance and liberalization. The above-mentioned measures should specifically exclude the reversion of the status of the incorporated POEs as independent Joint Stock Companies and the corporate governance structures that have been implemented within them.

Article 2 Socially Owned Enterprises

2.1 The trusteeship for socially owned enterprises and their assets (SOEs) shall be exercised by the Kosovo Trust Agency (KTA) successor institution, as established by UNMIK Regulation 2006/xx amending Regulation 2001/12 as amended.⁶ The adjudication of claims shall be handled according to the provisions set forth in Article 3 of this Annex.

⁵ UNMIK shall issue an amending Regulation and/or Administrative Direction during the transition period that shall transfer the ownership rights and related obligations of POEs to Kosovo, and allocate the ownership rights and related obligations for the individual POEs between the central level and specific municipalities in accordance with Article 1.1 of this Annex. Such Regulation and/or Administrative Direction shall enter into effect immediately after the transition period.

⁶ UNMIK shall issue an amending Regulation establishing a KTA successor institution during the transition period, that shall include the provisions of Article 2 of this Annex and the following principles. Such regulation shall enter into effect immediately after the transition period.

- Private property shall be fully protected in accordance with principles of the ECHR;
- The privatization process of SOEs shall continue to be carried out with transparency by the KTA successor institution, with relevant international participation;
- The principle of compensation instead of physical restitution shall continue to be applied. Detailed rules on the method to determine such compensation shall be laid down in Kosovo legislation, which shall take into account relevant standards of the ECHR;
- The liquidation process of privatized enterprises and assets shall continue to be carried out with transparency by independent liquidation committees appointed by the KTA successor institution;
- The final determination of ownership and the adjudication of claims shall continue to be handled by the mechanism of a Special Chamber within the Supreme Court, in accordance with Article 3 of this Annex;
- The KTA Trust Funds comprising privatisation or liquidation proceeds shall be preserved to meet valid creditors' and ownership claims. Investment of these funds shall be placed in investments, rated investment grade by international rating agencies;
- Following the expiration of any period of time for submitting such claims and the satisfaction of all valid creditors' and ownership claims – within the limits of funds available in each case - the remaining KTA funds (socially owned property and privatization/liquidation proceeds from socially owned property) shall be transferred to the Government of Kosovo.

2.2 To monitor, in particular, compliance with principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and with applicable legislation related to the privatization and liquidation of SOEs, the ICR shall appoint:

- a. Three (3) international members of the Board of Directors of the KTA successor institution;
- b. The Director of the Executive Secretariat of the Board of Directors of the KTA successor institution;
- c. One (1) member in each of the liquidation committees.

2.3 The international members of the Board of Directors shall have the authority, acting jointly and unanimously, to suspend a decision of the KTA successor institution if they determine that such decision is in conflict with principles of the ECHR and its Protocols, and applicable law, and to refer the matter to the Special Chamber of the Supreme Court for a decision. The Special Chamber shall decide on such cases as a matter of urgency.

2.4 Each individual payment from the privatization and liquidation proceeds collected in Trust Funds shall require the consent of the international members of the Board of Directors, acting jointly and unanimously, unless the Special Chamber has already issued a decision that payments should be made.

2.5 The two largest international donors to the KTA successor institution shall have the right to attend the meetings of the Board of Directors of the KTA successor institution as observers.

Article 3 KTA Claims Adjudication Process

3.1 The final determination of ownership and the adjudication of claims shall continue to be handled by the Special Chamber within the Supreme Court established for this purpose under UNMIK Regulation 2002/13.

3.2 There shall be five specialized panels within the Special Chamber to deal with the following areas of jurisdiction: (i) privatization-related claims; (ii) employee list claims; (iii) general ownership and creditor claims; (iv) liquidation-related claims, (v) reorganization of enterprise claims. Each specialized panel shall be composed of two (2) international judges and one Kosovan judge.

3.3 There shall be an appeals panel within the Special Chamber for reviewing Special Chamber decisions. The appeals panel shall be composed of three (3) additional international judges and two Kosovan judges.

Article 4 Kosovo Property Agency (KPA)

4.1 UNMIK Regulation 2006/10, as amended by UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial Property, shall continue to be in force and implemented in accordance with the provisions of this Settlement. Adjudication of property cases should be finalized by 31 December 2007, with a view to completing implementation of decisions not later than 31 December 2008.

4.2 The following positions shall be filled with international representatives, as appointed by the ICR:

- a. Three (3) international members of the Supervisory Board, including its chairperson;
- b. The Director of the Executive Secretariat;
- c. Two (2) international members of the Property Claims Commission, including its chairperson;
- d. Two (2) international judges, in accordance with Article 5 of this Annex.

Article 5 KPA Claims Adjudication Process

5.1 Appeals against decisions of the KPA Property Claims Commission shall be decided by three-judge panels of the Supreme Court consisting of two (2) international judges and one (1) local judge.

5.2 Kosovo shall implement additional measures, in consultation with the ICR, to ensure that the adjudication process on restitution/compensation of property claims is efficient and decisions are effectively enforced.

Article 6 Property Restitution

6.1 Kosovo shall also address property restitution issues, including those related to the Serbian Orthodox Church, as a matter of priority. Kosovo shall establish an independent mechanism to formulate the policy, legislative and institutional framework for addressing property restitution issues. Representatives of the international community shall be invited to participate in such a mechanism, which shall include representatives of non-majority Communities.

Article 7 Archives

7.1 Archives, including cadastral records and other documents relating to Kosovo and its inhabitants, which were displaced from Kosovo shall be returned to Kosovo. Holdings of the State Archives of the Republic of Serbia necessary for the normal administration of Kosovo shall, in accordance with the principle of functional pertinence, be transferred to Kosovo, irrespective of where those archives were or are located.

7.2 The Republic of Serbia shall return or transfer all such archives within six months of the entry into force of this Settlement. Until the archives have been returned or transferred, the Republic of Serbia shall allow free, unhindered and effective access to them.