



Republika e Kosovës
Republika Kosova-Republic of Kosovo
Kuvendi - Skupština - Assembly

Law No. 03/L-087

ON PUBLICLY OWNED ENTERPRISES

The Assembly of Republic of Kosovo,

Based on Article 65(1) of the Constitution of the Republic of Kosovo,

To establish a legal framework governing the exercise of ownership rights in publicly owned enterprises;

To provide for the corporate governance of publicly owned enterprises in accordance with internationally recognized principles of corporate governance for publicly-owned enterprises; and

To establish effective reporting and accountability arrangements to facilitate appropriate oversight of the activities of publicly owned enterprises;

Hereby adopts:

LAW ON PUBLICLY OWNED ENTERPRISES

CHAPTER I

GENERAL PROVISIONS

Article 1
Scope of Application

1.1 The present law shall provide a legal framework for the ownership of Publicly Owned Enterprises and for their corporate governance in accordance with internationally recognized principles of corporate governance for publicly owned enterprises.

1.2 Other provisions of the law of Kosovo – including, but not limited to - the Law on Business Organizations - governing joint stock companies, their directors, their management, their shareholders and the rights and obligations of each, shall fully apply to POEs, their directors, their management and their shareholders unless the present law specifically and explicitly provides otherwise.

Article 2

Definitions and References

2.1 For the purposes of interpreting and applying the present law, the following defined terms shall – whenever used in the present law - have the indicated meaning unless the context within which such term appears clearly intends another meaning:

“Affiliate” shall, with respect to a POE, mean and include any of the following: (i) any other POE, (ii) any enterprise that is controlled or 50% or more owed, directly or indirectly by such POE or any other POE; and (iii) any entity or enterprise that, directly or indirectly, controls a POE or owns 50% or more of the shares or other ownership interests in a POE.

“Audit Committee” shall have the meaning assigned thereto by Section 24 of the present law.

“Board of Directors” shall mean the board of directors of a POE as provided for in the Law on Business Organizations.

“Central POE” means and includes any POE described in Article 3.1 of the present law.

“Control” means, with respect to an enterprise, the holding of the majority of the voting shares (or corresponding instrument) in such enterprise, or else the ability to otherwise exercise – either directly, or through other persons, or with the cooperation of other persons; either solely or jointly with other persons; and by means of either voting or contractual rights, or otherwise – dominant influence over the most relevant decisions falling within the competence of the shareholders’ meeting (or other the highest decision making body) of the enterprise.

“Director” shall mean any member of the Board of Directors of a POE.

“Financial Interest” means any relationship, including without limitation any ownership interest, held by the relevant person or any person who is a fourth degree (each degree being the number of the family relationships – such as marriage or parenthood – linking one person to another person, calculated by ascending from the first person to the first common ancestor and descending to the second person; by way of

example, two brothers are second degree relatives, and two first cousins are fourth degree relatives), or closer, relative of such person.

“Government” means the Government of the Republic of Kosovo.

“Government Privatization Committee” shall have the meaning specified in Section 9.2 of this Law.

“Local POE” means and includes any POE described in Article 3.2 of the present law.

“Minister” means the Minister of Economy and Finance.

“Ministry” means the Ministry of Economy and Finance.

“Municipality” shall have the meaning assigned thereto by the Law on Local Self-Government.

“Municipal Shareholder Committee” shall have the meaning specified in Article 5.2 of this Law.

“Permanent Secretary” means the Permanent Secretary of the Office of the Prime Minister.

“Publicly Owned Enterprise” or **“POE”** is a general term that means and includes any of the enterprises identified in the schedules attached to the present law, including any modifications to such schedules made by the Government pursuant to Article 3.3 of this Law.

“POE Policy and Monitoring Unit” shall have the meaning specified in Section 37.

“Recommendation Committee” means a committee established by the Permanent Secretary of the Office of the Prime Minister in accordance with Article 15.2 of this Law.

“Related Party Transaction” means any transaction, of any nature whatsoever, whereby a POE acquires or transfers, in any manner, goods or services from, or to, any natural or legal person who (each a “Related Party”):

- a) is an Affiliate of the POE;
- b) is a shareholder of the POE or any of its Affiliates holding more than fifteen per cent (15%) of the voting rights;
- c) has been, in the last three (3) years, the Controlling shareholder of the POE;
- d) has been a director, officer or senior manager of the POE or any of its Affiliates within the last five (5) years;
- e) is a business associate of the POE or any of its Affiliates, or is an Affiliate, director, officer or senior manager of such venture;

f) is a joint venture in which the POE or any of its Affiliates is a venturer, or is an Affiliate, director, officer or senior manager of such joint venture;

g) is a third degree, or closer, relative of any natural person falling within the above categories; or

h) is a business organization or other legal person that is controlled or significantly influenced by any natural or legal person falling within the above categories.

“Public authority” means any of the following: (i) any public body, authority or agency that exercises - pursuant to an authorization in a law or other primary normative act - executive, legislative, regulatory, public-administrative or judicial powers, and includes (ii) any department or other part or subunit of such a public body or authority.

“Select Committee” means the select committee of Ministers contemplated by Article 5.1 of this Law.

“Shareholder” means (i) with respect to a Central POE, the Republic of Kosovo, and (ii) with respect to a Local POE, any municipality holding shares therein.

2.2 Unless the context clearly requires another interpretation, any reference in the present law to another law, regulation or sub-normative act, or any specific provision(s) thereof, shall be interpreted as including any and all amendments thereto. If such law, regulation or sub-normative act is repealed and replaced with successor legislation governing the same subject matter, such reference shall be interpreted as meaning such successor legislation and, where applicable, the analogous provision(s) thereof.

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

Article 3 Ownership

3.1 Each enterprise identified in Schedule 1 attached to the present law shall be a Central POE. Every Central POE shall be owned by the Republic of Kosovo.

3.2 Each enterprise identified in Schedule 2 attached to the present law shall be a Local POE. Every Local POE shall be owned by the municipality or municipalities specified in Schedule 2, and the percentage ownership of each such municipality shall be as indicated in Schedule 2.

3.3 Subject to the restriction in Article 3.4, the Government shall have the authority and duty to modify the attached schedules as necessary to add and properly classify any enterprise that is validly determined to be 50% or more publicly owned, directly or indirectly, in the aggregate by the Republic of Kosovo and/or one or more public authorities of the Republic of Kosovo if that enterprise is not already specified in such schedules. If an enterprise so identified is providing services either to less than three (3)

municipalities or in the field of waste collection, it shall be a Local POE, otherwise it shall be a Central POE. A Local POE so identified shall be owned by the municipality or municipalities in which it is providing service as of the date of its identification as a Local POE. If such a Local POE is providing service to more than one municipality, the ownership percentage of each municipality shall be equal to the percentage of such Local POE's registered customers located in that municipality. Such percentage shall be determined by the Government within thirty (30) days after its identification in accordance with the most recently available official data of such Local POE on the location of its registered customers.

3.4 An enterprise shall not be added to such schedules if the Law on the Privatization Agency of Kosovo places such enterprise and/or any ownership interests therein under the administrative authority of the Privatization Agency of Kosovo, or such enterprise was previously under the administrative authority of the Kosovo Trust Agency as a socially owned enterprise.

Article 4 Organization; Shares

4.1 Every POE shall be organized as a joint stock company under the applicable law on business organizations.

4.2 If a POE is not organized as a joint stock company as of the effective date of the present law, its owner(s) shall be required to effect such organization within one hundred and fifty (150) days after such date. If the owner(s) fail to effect such organization within such time period, the Minister shall have the authority to effect such organization on their behalf; in such event the Minister shall, under the authority of the present law, be the lawful agent of the owners having the authority to do whatever may be necessary to effect such organization. If the POE is a Local POE, the Minister shall exercise such authority only after consulting with Government and the mayors of the concerned municipalities.

4.3 All ownership interests in a POE shall be represented by shares, and all such shares shall be registered.

4.4 The POE Policy and Monitoring Unit at the Ministry shall be the custodian of all physical certificates representing shares in POEs that are owned by the Republic of Kosovo or any public authority.

Article 5 Exercise of Shareholder Rights

5.1 The Government shall have exclusive competence in the exercise of shareholder rights of the Republic of Kosovo in Central POE's. The Government shall decide on such matters by a simple majority vote. In order to prepare the debate in the Government, a select committee of Ministers shall present proposals or observations on such matters.

Secondary legislation promulgated by virtue of Article 42 shall set forth rules on the procedures of the select committee. The select committee shall always include the Minister of Economy and Finance; Minister of Energy and Mining; Minister of Trade and Industry; Minister of Transport and Telecommunications; and Minister of Environment and Spatial Planning. The decisions of Government shall be implemented by the Minister, who shall, to such end, be entitled to act on behalf of the Republic of Kosovo and shall act in compliance with the Law on Business Organizations.

5.2 Where a municipality is a shareholder of a Local POE, its shareholder rights shall be exercised by a Municipal Shareholder Committee, which shall consist of (i) a member appointed by the mayor and (ii) two other members appointed by the Municipal Assembly. To such end, the Municipal Shareholder Committee shall be entitled to act on behalf of the relevant Municipality and shall act in compliance with the Law on Business Organizations. Each Municipal Shareholder Committee shall, by a simple majority vote, determine how to exercise the municipality's shareholder rights on any particular matter.

Article 6

Adoption and Disclosure of Ownership Policy

6.1 The Government shall develop and issue, within ninety (90) days after the effective date of the present law, an ownership policy that defines the overall objectives of the Republic of Kosovo with respect to its ownership of Central POEs, including - if the Government desires - its strategic guidelines on the development of the business activities of such POEs, and its role in the corporate governance of Central POEs. Such ownership policy shall be consistent with the provisions of the present law and the other applicable provisions of the law of Kosovo. Such ownership policy shall also contain detailed provisions on how such ownership policy will be implemented.

6.2 The Municipal Shareholder Committee of each municipality owning shares in a Local POE shall develop and issue, within one hundred and twenty (120) days after the effective date of the present law, an ownership policy that defines the municipality's overall objectives with respect to its ownership of such Local POE and its role in the corporate governance of Central POEs. Such ownership policy shall be consistent with the provisions of the present law and the other applicable provisions of the law of Kosovo. Such ownership policy shall also contain detailed provisions on how such ownership policy will be implemented. If more than one municipality owns shares in a Local POE, the concerned Municipal Shareholder Committees shall cooperate on the development of a joint ownership policy. In the event agreement cannot be reached on any element of the content of such joint ownership policy, the issue shall be decided by a majority vote of the concerned Municipal Shareholder Committees.

Article 7

Oversight by Shareholders and the POE Policy and Monitoring Unit

7.1 The Shareholder(s) of a POE shall exercise continuous and rigorous oversight over the conduct of the Boards of Directors and Audit Committees of such POE.

7.2 If the performance of a POE deviates from the targets set in the business plan adopted by the Board of Directors for the relevant financial year, the Shareholder(s) shall require the Board of Directors to prepare and submit a report to the Shareholder(s) setting out the reasons explaining the underperformance, and the Shareholder(s) shall take any appropriate remedial action.

7.3 In any event, if a POE fails to meet its performance targets over two consecutive financial years, the person(s) responsible for exercising the concerned Shareholder rights shall have an obligation to consider removing and replacing the Board of Directors or a majority of its members. Such action may be taken even in the absence of clear evidence of negligence by the Board or the concerned members, unless the Shareholder(s) establish that the underperformance was largely due to objectively unforeseeable adverse circumstances or events. The persons responsible for exercising the concerned Shareholder rights shall report any decisions taken pursuant to this Section 7.3, and the reasons therefore, to: (i) in the case of a Central POE, the Assembly, or (ii) in the case of a Local POE, any concerned Municipal Assembly.

7.4 The POE Policy and Monitoring Unit shall review the minutes of every meeting of the Boards of Directors and the Audit Committees of POEs and the documents submitted thereto. Whenever necessary, the POE Policy and Monitoring Unit shall require the submission of more specific information and may also require a meeting with the Board of Directors. Whenever such minutes, documents or information raise concerns over the performance of the Board of Directors, the POE's management or the POE, the POE Policy and Monitoring Unit shall notify the concerned Shareholder(s) of such concerns.

7.5 Communications between the Shareholder(s) or the POE Policy and Monitoring Unit and a POE's Board of Directors or Audit Committee shall ordinarily be channelled through the chairman of, as the case may be, the Board of Directors or the Audit Committee.

7.6 The oversight duties specified in this Article 7 shall not be exercised in any manner that interferes, or is intended to interfere with, the operations of the POE or the independence of a POE's Board of Directors or Audit Committee.

7.7 The POE Policy and Monitoring Unit shall maintain as confidential and shall not disclose any information that a Board of Directors indicates is confidential.

Article 8

Reporting to the Public on Shareholder Performance

8.1 The Government shall be accountable to the Assembly for the manner in which it, the Minister and the POE Policy and Monitoring Unit carry out the authorities and responsibilities assigned to them by the present law. The Government shall report annually to the Assembly on the performance of such authorities and responsibilities and on the achievement of the objectives specified in the ownership policy required by

Article 6.1 of this Law. The Government shall provide quantitative and reliable information to the public and the Assembly on how Central POEs are managed in the interests of the Republic of Kosovo.

8.2 Each Municipal Shareholder Committee shall be accountable to its Municipal Assembly for the manner in which it carries out the authorities and responsibilities assigned to it by the present law. The Municipal Shareholder Committee shall report annually to its Municipal Assembly on the performance of such authorities and responsibilities, and on the achievement of the objectives specified in the ownership policy required by Article 6.2 of this Law. The Municipal Shareholder Committee shall provide quantitative and reliable information to the public and the Municipal Assembly on how each concerned Local POE is being managed in the interests of the concerned Municipality or Municipalities.

Article 9 Sale of Shares

9.1 Shares in a Central POE may be freely sold if the Government adopts a written decision authorizing a Government Privatization Committee to proceed with the tendering and selling of such shares and such decision is approved by a simple majority vote of the Assembly of Kosovo. After such a decision has been adopted by the Government and approved by the Assembly, the Government Privatization Committee shall then have the authority to conduct a tender for and to sell the concerned shares.

9.2 Each Government Privatization Committee shall be composed of five members: (i) the Minister of Economy and Finance, who shall chair the committee, (ii) the Minister of Trade and Industry, (iii) the minister of the ministry having the leading policy-making role for the sector in which the Central POE operates; and (iv) two other ministers appointed by the Government. The Government shall have an obligation to ensure that one of the ministers on each Government Privatization Committee is from a non-majority community.

9.3 The Government Privatization Committee shall be supported by a secretariat that shall be established for that purpose by the Minister at the POE Policy and Monitoring Unit of the Ministry of Economy and Finance; and such secretariat shall include or be supported by such outside professional advisors as the Government Privatization Committee may deem necessary.

9.4 The tendering and sale of shares in a Central POE shall be done by the Government Privatization Committee in an open, transparent and competitive procedure. The terms of that procedure shall be developed by the concerned privatization committee, which must – at a minimum - ensure that the tendering and sale of such shares complies with the procedural requirements of the Law on the Procedure for the Award of Concessions.

Article 10
Shareholder Financing

10.1 A Shareholder shall have no obligation to provide a POE with financing; and a Shareholder shall not provide any financing to a POE except as may be specifically authorized by the applicable Annual Appropriations Law or another law adopted by the Assembly of Kosovo; in such event, the provision of such financing shall comply with the applicable provisions of such law and the Law on Public Financial Management and Accountability.

10.2 Without prejudice to the foregoing, it is specifically provided that the earnings or other financial resources of one POE shall not be transferred, loaned or otherwise used to subsidize or provide any other type of financial or capital support to another POE.

Article 11
Establishment of New Publicly Owned Enterprises

11.1 After the effective date of the present law, any new publicly owned enterprise may be established only if authorized by a Government decision.

11.2 Unless specifically provided otherwise in such law, such a publicly owned enterprise shall be a Central POE.

CHAPTER II

Conditions Governing Activities of Publicly Owned Enterprises

Article 12
General Obligations of a POE and its
Directors

12.1 A POE shall engage in its activities with a view to maximizing long-term enterprise and shareholder value.

12.2 Consistent with their rights and duties established by other legislation, directors of a POE shall act in accordance with the business and financial strategies described in the POE's approved business plan.

12.3 Notwithstanding the rights and duties of shareholders established in other legislation, the directors of a POE shall ensure that all of the POE's shareholders are treated equally.

12.4 A director shall have an affirmative obligation to devote sufficient time, including time attending and preparing for Board meetings, to ensure the proper discharge of his duties as a director.

Article 13

Equal Legal Conditions

13.1 Except as specifically provided otherwise by the present law, every POE and its officers and directors shall be subject, without exception, to the same laws, regulations and sub-normative acts that govern privately owned business organizations. Notwithstanding the foregoing, it is specifically provided that the Special Chamber of the Supreme Court shall have exclusive jurisdiction over any insolvency, liquidation or reorganization proceedings involving a POE.

13.2 Without prejudice to the foregoing, it is specifically provided that a POE shall be fully subject to any legislation establishing special obligations and requirements, including regulatory requirements, for participants in the industry or sector in which the POE conducts its business activities.

13.3 Except as otherwise specifically provided in the present law, every POE shall also be subject to and comply with any applicable element of Kosovo law that establishes provisions governing publicly owned enterprises.

Article 14

Financial Reporting

14.1 A POE shall comply with any and all financial reporting requirements and accounting principles established for joint stock companies by the law on business organizations.

14.2 A POE shall comply with administrative instructions issued by the Treasury for the purpose of preparing financial reports required by the Law on Public Financial Management and Accountability.

14.3 The financial accounts of every POE shall separately identify, in accordance with the accounting principles referred to in Section 14.1, all expenditures and revenues incurred or received in connection with fulfilling its public service obligations, if any. Upon the approval of its annual financial statements, a POE shall prepare and publish on its publicly accessible web-site a comprehensive statement on its realised performance in relation to the targets set in its business plan.

CHAPTER III

DIRECTORS OF POEs

Article 15

Election of Directors of a Central POE

15.1 The board of directors of a Central POE shall consist of five (5) or seven (7) directors. The number of directors for any specific Central POE shall be the same as the number of directors of that POE as of the effective date of the present law; provided, however, that if, on such date, a Central POE has eight (8) or more directors, the number of its directors shall be seven (7). All directors except one shall be elected by the Government; and each such elected director shall have a term of three (3) years. The other director shall be the POE's CEO, who shall be selected by the POE's board of directors in accordance with Section 21 of the present law. In electing directors to the board of directors of a Central POE, the Government may only elect persons who have been recommended to the Government by the concerned Recommendation Committee established by paragraph 2 of this Article. In electing directors, the Government shall ensure that at least two (2) directors are proficient in, or at least have an adequate knowledge of, accountancy as required by Article 17.4 of this Law.

15.2 The Permanent Secretary shall appoint, for each POE, a Recommendation Committee of seven (7) persons to identify and recommend to the Government candidates for director positions on the board of such POE. When appointing the members of a Recommendation Committee, the Permanent Secretary shall (i) appoint only senior civil servants or highly qualified outside experts who have relevant industry, financial or corporate governance expertise; (ii) not appoint more than one person from any specific public authority or other institution, (iii) if a ministry has a leading policy role for the sector in which the concerned POE is operating, appoint one person from that ministry. If properly qualified, a person may serve on more than one Recommendation Committee.

15.3 The Permanent Secretary shall develop and promulgate rules that shall be observed by each Recommendation Committee, including rules on the identification and handling of conflicts-of interest and rules on the scoring methodology to be used when rating candidates.

15.4 Each Recommendation Committee shall recommend to the Government only persons who (i) meet the requirements of paragraphs 1-3 of Article 17 and (ii) have executed the affidavit required by Article 17.5 of this Law. Each Recommendation Committee shall also ensure that a sufficient number of recommended candidates are proficient in, or at least have an adequate knowledge of, accountancy, to enable the Government and the Minister to ensure compliance with Article 17.4 of this Law.

15.5 Each Recommendation Committee shall ensure that each and every person seeking to be considered for a director position receives a positive or negative written recommendation that (i) is based solely on eligibility, merit and professional suitability,

(ii) is made only after conducting a search for qualified candidates on the basis of an open, transparent and publicly advertised competition, and (iii) is made only after each member of the Recommendation Committee has signed and submitted a written affidavit that: (A) identifies, to the best of the member's knowledge, any direct or indirect familial, personal or business relationship that such member has with the concerned candidate, (B) identifies, to the best of the member's knowledge, any other potential conflict-of-interest or outside influence that might have influenced, or might appear to have influenced, the member's decision and (C) affirms that such recommendation has in no way been based on or affected by any such relationship, conflict of interest or outside influence, whether or not disclosed in such affidavit.

15.6 The deadline for director candidates to submit applications to the Recommendation Committee shall be at least thirty (30) calendar days after the date the public advertisement required by Article 15.5 of this Law is first published. The Recommendation Committee shall interview and evaluate all candidates. The Recommendation Committee shall not consider applications submitted after the deadline specified in the concerned advertisement.

15.7 Whenever possible, the Recommendation Committee shall recommend to the Government that number of qualified candidates that is at least five (5) more than the number of elected director positions on the Board of Directors. The Recommendation Committee shall provide the Government with the Recommendation Committee's written evaluation of each candidate recommended. When making its recommendations to the Government, a Recommendation Committee shall give due consideration to the need of the concerned POE for a Board of Directors having members with a combination of different talents and professional expertise.

15.8 If a member of a POE Board is unable to complete his/her term, a successor shall be chosen by the Government (i) from the list of candidates most recently recommended by the Recommendation Committee or, (ii) if no such candidate is then available, in accordance with then procedure prescribed above.

15.9 A current director of a Central POE may be recommended by the concerned Recommendation Committee more than once if he is not ineligible by reason of Section 17.2(h) and he will not become ineligible by reason of Article 17.2(h) during the concerned term.

15.10 No person shall attempt, directly or indirectly, to influence a Recommendation Committee in the conduct of activities involving the identification and recommendation of candidates.

15.11 The Government shall have the authority and responsibility for designating one of the elected directors of a Central POE to serve as the Chairperson of that POE's Board of Directors. The Minister shall have the authority and responsibility to designate a director to serve as the acting Chairperson until the Government has designated the Chairperson.

15.12 No member of a POE's Board of Directors, other than the member who is also the POE's CEO, shall have executive powers. The CEO may not serve as the chairperson or acting chairperson of the Board of Directors.

15.13 Any person who is determined to have knowingly submitted a materially false or misleading affidavit under paragraph 5 of this Article, or who is determined to have influenced or attempted to influence a Recommendation Committee in violation of paragraph 10 of this Article shall have committed a criminal violation and shall be subject to a fine of up to 10,000 Euros. In addition, if such person is a civil servant, the Government shall immediately dismiss such person from the civil service; if such person is an elected political official, the Government shall report such violation and the name of the official to the Assembly.

Article 16

Election of Directors of a Local POE

16.1 The board of directors of a Local POE shall consist of five (5) directors.

16.2 Four (4) of such directors shall be elected at a shareholders meeting as provided for in the Law on Business Organizations; and each such elected director shall have a term of three (3) years. A municipality's Municipal Shareholder Committee shall represent the municipality at such meeting and such committee shall exercise the municipality's voting rights as provided in Section 5.2 of this Law. The other director shall be the POE's CEO, who shall be selected by the POE's board of directors in accordance with Section 21 of the present law.

16.3 If more than one municipality owns shares in the Local POE: (i) each Municipal Shareholder Committee shall have the right to elect one director; and (ii) the remaining directors who are subject to shareholder election shall be elected by the concerned Municipal Shareholder Committees in accordance with the provisions of the Law on Business Organizations governing the election of directors of a joint stock company.

16.4 In electing directors, the Municipal Shareholders Committee(s) shall ensure that at least two (2) elected directors are proficient in, or at least have an adequate knowledge of, accountancy, as required by Section 17.4 of this Law.

16.5 No person may be nominated or elected to a director position unless he meets the eligibility, independence and professional suitability criteria specified in paragraphs 1-3 of Article 17 of this Law and he has executed the affidavit required by Section 17.5 of this Law. Each Municipal Shareholder Committee shall have the right to identify and nominate qualified candidates for election to a Local POE's Board of Directors; provided, however, that any person so nominated must meet the referenced eligibility and professional suitability criteria and must have executed the referenced affidavit.

16.6 The board of directors of a Local POE shall, immediately after election, elect one of its members to serve as its chairperson. No member of a Local POE's Board of Directors, other than the member who is also the POE's CEO, shall have executive

powers. The CEO may not serve as the chairperson or acting chairperson of the Board of Directors.

Article 17

Director Eligibility, Independence and Professional Suitability Requirements

17.1 A person shall be eligible to serve as a director only if such person meets all of the following requirements and the independence and professional suitability requirements established by paragraphs 2 and 3 of Article 17 of this Law:

- a) he has never been convicted or determined by a court of competent jurisdiction, unless such conviction or determination has ultimately been reversed by an appellate court, to have committed a criminal or civil offence involving fraud, misrepresentation, corrupt practices, theft, money laundering, embezzlement, misuse or misappropriation of funds, bribery or kickbacks under the laws or regulations applicable in Kosovo or in any country or jurisdiction, or under international treaties or conventions;
- b) he has never been determined by a court or by a body or organization responsible for enforcing codes of ethics or other standards of conduct, unless such determination has ultimately been reversed by an appellate court or body, (i) to have engaged in professional misconduct, (ii) to have violated a code of ethics or other standards of conduct, (iii) to have misappropriated or misused public money or resources, (iv) to have misused or misappropriated information acquired while acting as a public official or civil servant, or (v) to have misused a public office or a civil service position for personal gain or for the gain or advantage of a relative or acquaintance;
- c) he has never made material misrepresentations in any affidavit or any other sworn, sealed or notarized document; and
- d) he has not, in the past ten (10) years, been declared bankrupt.

17.2 All directors except the CEO must be independent. A person shall not be regarded as independent and shall not be eligible for election as a director of a POE if such person:

- a) is currently an officer or manager of the concerned POE, or has in the past five (3) years been an officer or manager of the concerned POE;
- b) is currently an employee of the concerned POE, or has in the past three (3) years been an employee of the concerned POE;
- c) has currently, or has had in the past three (3) years, any material business relationship (except as an individual consumer of the concerned POE's services) with the concerned POE or any of its Affiliates either directly or indirectly;
- d) is a shareholder, director, officer or senior employee of a business organization or other legal person that has a material business relationship with the concerned POE or any of its Affiliates;

e) receives, or has received within the past three (3) years, additional remuneration from the concerned POE or any of its Affiliates (apart from a Director's fee or the incentive remuneration specifically referred to in Section 20.1), or is a member of the pension scheme of the concerned POE or any of its Affiliates;

f) holds cross-directorships or has significant links with other directors of the concerned POE through involvement in other business organizations or bodies;

g) represents a shareholder holding more than ten per cent (10%) of the voting shares of the concerned POE;

h) has served on the Board of Directors of the concerned POE for more than nine (9) years from the date of his, or her, first election;

i) is a third degree or closer relative (as determined in accordance with the definition of "Financial Interest" in Section 2 of the present law) of any person falling within any of the above categories other than that specified by item (b); or

j) is either (i) an employee, officer, director or shareholder of, or who has a Financial Interest in, a non-listed business organization that competes with the Company, or (ii) a senior manager, officer, director or shareholder (holding more than two per cent (2%) of the voting rights) of, or have a significant Financial Interest in, any listed business organization that competes with the Company;

k) is, or at any time during the 36-month period immediately preceding the date of his application, has been (i) an elected public official, (ii) a political appointee or (iii) the holder of a leading or decision-making position in a political party;

l) is subject to any other conflict-of-interest that, by its nature, would cause such person to be unable to routinely, faithfully, independently and objectively fulfil his/her fiduciary duties to the Shareholders and the POE.

17.3 Every person desiring to be considered for a director position must meet the following basic professional suitability requirements:

a) he shall be a person of recognized integrity, taking into account, inter alia, any past material breach of any fiduciary duty owed by such person to any other person; and

b) he shall either (i) have at least five (5) years of experience – at least at a senior management level – in the field of business administration, corporate finance, finance, treasury management, banking, business or industry consultancy, or any other field of science or knowledge that has special relevance for the business activities of the POE; or (ii) for at least five (5) years, have been a public accountant, a qualified lawyer, or a qualified member of any other profession that has special relevance for the business activities of the POE

17.4 Every Board of Directors of a POE shall have at least two (2) directors who are proficient in, or at least have an adequate knowledge of, accountancy.

17.5 Each person holding or applying for a director position shall execute a sworn affidavit truthfully attesting that he meets the eligibility, independence and professional

suitability requirements of paragraphs 1-3 of this Article. Any material misrepresentation - whether intentional or the result of negligence - or any material change in the information set forth in such affidavit shall result in the immediate disqualification and, if applicable, termination of such person.

17.6 All directors of a POE shall be required, once a year, to attend a training course on corporate governance. The POE Policy and Monitoring Unit shall be responsible for organizing such course and ensuring that every POE Director complies with the requirement of this Section 17.6. If a Director fails to comply with this requirement, the POE Policy and Monitoring Unit shall notify the Government of such failure and the concerned director shall be ineligible for reappointment at the end of his/her term.

Article 18 Oversight by the Board of Directors

18.1 The Board of Directors of a POE shall exercise continuous and rigorous oversight in particular over the conduct of the POE's officers.

18.2 If the performance of the POE deviates from the targets set in the business plan of the relevant financial year, the Board of Directors shall request a report by the CEO setting out the reasons explaining the underperformance, and shall take any appropriate remedial action.

18.3 In any event, if the POE fails to meet its performance targets over two consecutive financial years, the Board of Directors shall have an obligation to consider removing and replacing the CEO. Such action may be taken even in the absence of clear evidence of negligence, unless the Board of Directors establishes that the underperformance was largely due to objectively unforeseeable adverse circumstances or events. The Board of Directors shall report any decisions taken pursuant to this Section 18.3, and the reasons therefore, to: (i) in the case of a Central POE, the Government, or (ii) in the case of a Local POE, the concerned Municipal Shareholder Committee(s).

Article 19 Enforcement of Directors' Fiduciary Duties

19.1 Whenever credible information suggests that the Board of Directors or an individual director of a POE may have acted in breach of their fiduciary duties, the Shareholder(s) shall thoroughly investigate the matter without delay.

19.2 If the Shareholder(s) establish that such a breach has in fact occurred, the Shareholder(s) shall (i) promptly remove and replace the responsible director or directors and (ii) the POE shall be required to promptly seek legal redress against the breaching director(s) whenever the available evidence appears reasonably sufficient to successfully sustain a legal action seeking compensation for the damage caused to the POE by such breach; provided, however, that the POE shall not be required to pursue such a legal

action against the breaching director(s) if it is reasonably likely that the amount of damages that may be recovered is less than the reasonably anticipated legal costs that the POE will ultimately have to bear in pursuing such action.

19.3 If the Shareholder(s) have reason to believe that a breach of the relevant directors' fiduciary duties has probably occurred, it shall promptly remove and replace the director or directors who are reasonably believed to have breached their fiduciary duties, even in the absence of clear evidence, irrespective of the risk that the POE may become bound to award damages to the dismissed directors.

Article 20

Remuneration of POE Directors

20.1 Directors shall be paid a basic fee, established in accordance with Section 20.2, for time actually spent in Board meetings. Directors shall also be paid a POE performance incentive remuneration in accordance with the remuneration policy statement developed and disclosed by the Audit Committee of the Board of Directors in accordance with paragraph 4 of this Article.

20.2 The basic fee for POE directors shall be established by (i) in the case of a Central POE, a written decision of the Government of Kosovo, and (ii) in the case of a Local POE, a decision of the concerned Municipal Shareholders Committee(s). The basic fee established for the directors of a Local POE shall not be more than that established by the Government for the directors of a Central POE. If a Local POE is owned by more than one municipality, the decision on the basic remuneration fee shall be subject to a vote of the Municipal Shareholders Committees, where each such committee shall have the right to cast that number votes that is equal to the shares owned by the concerned municipality.

20.3 The level of the basic fee shall be established at a level that can be expected to attract applications from highly competent persons (i) who meet the requirements established by paragraphs 1-4 of Article 17 of this Law, and (ii) who can reasonably be expected to professionally and responsibly discharge the director duties provided for by the present law and the Law on Business Organizations.

20.4 The Audit Committee shall develop and publicly disclose a remuneration policy statement that covers the POE's directors and officers.

20.5 Such remuneration policy statement shall, inter alia, (i) specify the relationship between remuneration, especially performance incentive remuneration, and performance and include measurable standards that emphasize the longer run interests of the POE over short term considerations; (ii) cover the payments, if any, to be made when terminating the contract of an officer; and the employment contracts of all officers shall reflect and incorporate the relevant provisions of such remuneration policy, (iii) limit the annual performance incentive remuneration payable to a director, if any, to no more than the aggregate annual amount of the basic fee provided for pursuant to paragraph 2 of this Article, and (iv) if the remuneration policy provides for performance incentive remuneration payable to the CEO in connection with his performance as an officer, it

shall not permit the CEO to also participate in the performance incentive remuneration payable to directors, if any.

20.6 The POE shall be responsible for paying all required remuneration to its directors. The directors of a POE shall not receive any other remuneration or benefits from the POE.

CHAPTER IV

OFFICERS OF POEs

Article 21

Selection and Appointment of POE Officers

21.1 The officers of a POE are appointed by the POE's Board of Directors. Such officers serve at the pleasure of the Board, and the Board may, at any time by majority vote, terminate their contracts with or without stated cause. Notwithstanding the foregoing, the Audit Committee shall have exclusive authority to appoint and remove the Internal Audit Officer, who shall serve at the pleasure of the Audit Committee and which may, at any time by majority vote, terminate his contract with or without stated cause. This Section 21.1 shall prevail over any contrary provision, whether established by contract or law, and shall be reflected in the POE's Bylaws.

21.2 The Bylaws adopted by the Board of Directors pursuant to Section 34 shall, *inter alia*, specify the title, duties and responsibilities of each of the POE's officers.

21.3 Every POE shall have the following four officers: (i) a Chief Executive Officer, (ii) a Treasurer & Chief Financial Officer, (iii) a General Counsel/Corporate Secretary and (iv) an Internal Audit Officer. If necessary due to its size and/or the diversity of its operations, a POE may – if so decided by its Board of Directors and provided in its Bylaws - also have one or two vice president positions.

21.4 In selecting persons to be appointed as the officers of the POE, the Board of Directors shall conduct an open, transparent and open competition aimed at ensuring that all such appointments are based exclusively on merit. The Board of Directors shall ensure that all persons appointed as officers are persons of recognized integrity who (i) meet the eligibility requirements of Section 17.1, , (ii) meet the independence criteria established by Section 17.2, items (d), (f), (j), (k), and (l), and (iii) have the appropriate professional background and education required for the concerned officer position; *provided that* (i) the Chief Financial Officer/Treasurer shall possess a university degree and substantial professional experience in business finance and/or accounting; (ii) the General Counsel/Corporate Secretary shall possess a university degree in law and substantial professional experience in corporate governance or business organization law; and (iii) the Internal Audit Officer shall be a person proficient in accountancy.

Article 22
Remuneration of POE Officers

22.1 The remuneration and benefits for a POE's officers shall be established by the POE's Board of Directors in accordance with the POE's remuneration policy statement developed and disclosed by the Audit Committee as required by Section 20.4 of this Law.

22.2 The remuneration and benefits for POE officers shall be established at a level that can be expected to attract applications from highly competent persons who can reasonably be expected to professionally and responsibly discharge, on a full-time basis, the duties of the concerned officer position. Different levels of remuneration and benefits may be established for each specific officer position within each specific POE. In establishing the level of remuneration and benefits to be paid or provided to a specific officer position in a specific POE, consideration shall be given to the duties of that specific position and the size, nature and complexity of the business of the concerned POE.

22.3 The POE shall be responsible for paying the required remuneration and providing the required benefits to its officers.

Article 23
Enforcement of Officers' Fiduciary Duties

23.1 Whenever credible information suggests that any of the officers (excluding the Internal Audit Officer, over whom the Audit Committee shall have exclusive competence) may have acted in breach of their fiduciary duties, the Board of Directors shall thoroughly investigate the matter without delay.

23.2 If the Board of Directors establishes that an officer has breached any of his fiduciary duties, the Board of Directors shall (i) promptly remove and replace such officer, and (ii) the POE shall be required to promptly seek legal redress against the breaching officer whenever the available evidence appears reasonably sufficient to successfully sustain a legal action seeking compensation for the damage caused to the POE by such breach; provided, however, that the POE shall not be required to pursue such a legal action against the breaching officer if it is reasonably likely that the amount of damages that may be recovered is less than the reasonably anticipated legal costs that the POE will ultimately have to bear in pursuing such action.

CHAPTER V

AUDIT COMMITTEE

Article 24 Audit Committee

24.1 Each POE shall have an Audit Committee. Each Audit Committee shall consist of three (3) elected directors. The Audit Committee shall be designated by the Shareholder(s). At least two (2) members so designated shall be directors who are proficient in, or at least have an adequate knowledge of, accountancy. The third member shall be a director other than the CEO or the chairperson.

24.2 The Audit Committee shall verify that the business and affairs of the POE are conducted lawfully, responsibly, and in the exclusive interest of the Shareholder(s).

24.3 The Audit Committee shall designate its own chairman.

Article 25 Functions and Competencies of the Audit Committee

25.1 The competencies of the Audit Committee shall be exclusive.

25.2 The Audit Committee shall, under its collective responsibility:

- a) abide by the POE's charter and by-laws;
- b) review the long term strategic, investment and financial plan of the POE – and any amendment thereto – and the annual business plan and annual budget prior to their adoption by the full Board of Directors, and provide the latter any observations or objections it deems necessary;
- c) prior to their adoption by the Board of Directors (i) review the annual balance sheet and profit and loss statement of the POE and any other financial statements required by law, and the annual report on the management, business policy and financial and industrial situation of the POE; and (ii) submit to the Board of Directors a report on the adequacy, accuracy, truthfulness and compliance with law of such documents;
- d) regularly review the financial condition of the POE and its planned financial requirements, and provide the Board of Directors any observations or suggestions it deems necessary;
- e) regularly verify the adequacy and proper functioning of the internal – including financial – controls, and provide the Board of Directors any observations or suggestions it deems necessary;
- f) regularly verify the adequacy and proper functioning of the systems and procedures intended to guarantee that the books and records of the POE, including financial records, are kept in compliance with the applicable accounting standards and laws, and that the

draft annual financial statements are properly prepared, and provide the Board of Directors any observations or suggestions it deems necessary;

g) regularly verify the adequacy and proper functioning of the systems and procedures intended to guarantee that the POE observes all applicable laws in the conduct of its business and affairs, and provide the Board of Directors any observations or suggestions it deems necessary;

h) appoint, remove and replace the Internal Audit Officer, and determine his, or her, compensation and benefits, which determination shall be reflected in the remuneration policy statement required by Section 20.4;

i) ensure that the internal audit office is properly and adequately organized and staffed, and regularly verify its adequacy and proper functioning, and conduct continuous and rigorous oversight over the conduct of the Internal Audit Officer and internal audit office;

j) review all Related-Party Transactions, authorize those whose terms are reasonable and fair for the POE or, where the restriction imposed by Section 36.1 applies, advise the Shareholder(s) on their reasonableness and fairness;

k) observe strict confidentiality over any non-anonymous report by any employee concerning alleged wrongdoing of a director, officer or other employee of the POE; protect the identity of any employee that may be subject to retribution as a result of such report; and – while protecting any relevant confidential information – briefly inform the reporting employee of the outcome of any investigation initiated as a result of such report; and

l) when necessary, propose to the Board of Directors measures that may be needed to enforce the fiduciary duties of the Internal Audit Officer.

Article 26 Powers of the Audit Committee

The Audit Committee shall have the authority to:

a) instruct the Internal Audit Officer to perform tasks and actions falling within the scope of the competencies of the Audit Committee;

b) obtain any information concerning the business and affairs of the POE from any officer or employee of the POE;

c) seek the advice of independent professionals, procured in accordance with the Procurement Law, whenever the matter reasonably requires the independence of such advisors from the officers or senior managers of the POE;

d) request the holding a meeting of the Board of Directors, indicating the agenda;

e) submit any matter concerning the POE to the courts or the competent law enforcement agencies; and

f) withhold from the Board of Directors any information concerning its own activities in respect of which confidentiality is reasonably required until such activity is completed.

Article 27 Meetings

The bylaws shall regulate the procedures of the Audit Committee in a manner that ensures its independence and efficient and timely discharge of the functions and competencies assigned to it by the present law.

CHAPTER VI

MISCELLANEOUS PROVISIONS

Article 28 Performance Appraisal of Board of Directors

28.1 The Board of Directors of a POE shall also, on an annual basis, conduct a systematic evaluation of its own performance. The chairperson shall be principally responsible for ensuring the proper and timely conduct of the evaluation. The evaluation shall scrutinize both overall board performance and the effectiveness and contribution of individual board members. The evaluation shall also, inter alia, assess the board's required mix of skills and experience and other professional qualities in order to assess the effectiveness of the entire Board and its committees. In carrying out the evaluation, the board may seek advice from external and independent experts as well as from representatives of the Shareholder(s).

28.2 The Board shall ensure that the results of the evaluation under paragraph 1 of this Article are summarized in a written report that is provided to (i) in the case of a Central POE, the Minister and the Government of Kosovo, and (ii) in the case of a Local POE, the members of its Municipal Shareholders Committee(s).

28.3 The POE Policy and Monitoring Unit shall, on an annual basis, assess the performance of the directors of each POE. All officers and directors of the concerned POE shall fully cooperate with the POE Policy and Monitoring Unit during its conduct of such assessment. The POE Monitoring Unit may engage, in accordance with the Law on Public Procurement, one or more professional consultants or consulting firms to assist with the conduct of any such assessment. The POE Policy and Monitoring Unit shall publish this annual assessment on its web-site.

Article 29
Customer Satisfaction Reports

Under the responsibility of the CEO, the POE shall regularly test the satisfaction of its customers with the services it provides, adopting adequate procedures, and shall issue a brief, plain-language report setting out the level of customers' satisfaction and the CEO's observations on any material changes in the level of satisfaction. The report shall be submitted to (i) the POE Policy and Monitoring Unit, which shall publish the report on its web-site and (ii) as appropriate, the Government or the concerned Municipal Shareholder Committee(s).

Article 30
Business Plan

30.1 The Officers of every POE shall, by October 31 of each calendar year, prepare its Business Plan for the upcoming calendar year. Such Business Plan shall be submitted for approval first to its Board of Directors. After such approval is obtained the Business Plan shall be provided for information purposes only to, as appropriate, to the Minister and the Government or to the concerned Municipal Shareholder Committee(s). The Business Plan must analyze at least the following:

- a) the description of the business and financial targets to be achieved by the POE and the timetable for implementation;
- b) the choice of means for achieving those targets;
- c) the definition of total cost of operations and the manner in which this cost will be financed;
- d) the specific actions to be undertaken in order to achieve the targets set; and
- e) the POE's obligations vis-à-vis consumers and the public.

30.2 Every such Business Plan shall be public information. However, if the concerned POE operates in a market that is currently characterized by competition or that is reasonably expected to be characterized by competition in the next 24 months, any information in such a Business Plan that, if made public, could reasonably be expected to negatively affect the POE's competitive position on the market shall be maintained as confidential and shall not be made public. In such a case, the POE shall prepare a public version of its Business Plan that does not contain such information.

Article 31
Annual and Quarterly Reporting Obligations

31.1 The Officers of a POE shall, within 30 days from the close of every calendar quarter, prepare and submit to the POE's Board of Directors a report on the quarter just ended (the "concerned quarter") containing the following:

- a) an outline of the organizational structure of the POE including an indication of any significant changes that have been made during the concerned quarter;
- b) a review of the business and financial performance over the concerned quarter;
- c) a summary of all pending or threatened judicial or arbitral proceedings involving, or that may involve, the POE;
- d) any judicial or arbitral proceedings that the POE expects to initiate in the current quarter;
- e) significant transactions involving the POE or its subsidiaries; and
- f) suggestions and proposals for changes that could reasonably be expected to improve the POE's performance.

31.2 The POE's Board of Directors shall review, modify as may be deemed necessary, approve and submit – within 30 days after receipt - each such quarterly report to, as appropriate, the Minister and the Government or the concerned Municipal Shareholder Committee(s).

31.3 The Officers of a POE shall, within 45 days from the close of every calendar year, prepare, in accordance with Section 14.1, and submit to the POE's Board of Directors, an annual report on the calendar year just ended describing the actions taken, financial results achieved and overall performance realized in relation to the targets set in the Business Plan. The POE's Board of Directors shall review, modify as may be deemed necessary, approve and submit – within 30 days after receipt - such annual report to (i) the POE Policy and Monitoring Unit, which shall publish the report on its web-site and (ii) as appropriate, the Government or the concerned Municipal Shareholder Committee(s). The POE's Board shall also publish such annual report on a publicly accessible website maintained by the POE.

31.4 The Board of Directors of a POE shall promptly and fully respond to any request for POE information made by the person or body that exercises Shareholder rights in that POE (the Minister or a Municipal Shareholder Committee, whichever is applicable).

31.5 The reporting requirements established by this Section 31 shall be in addition to other reporting requirements established by Kosovo law.

Article 32 **Consolidated Annual Financial Statement for all** **POEs**

The POE Policy and Monitoring Unit shall prepare and publish on its website a consolidated annual financial statement for all POEs.

Article 33
External Audit of POEs

33.1 Each POE shall be subject to an annual, objective, external audit conducted by an independent, competent and qualified auditor.

33.2 The auditor shall be required to provide the Board and the Shareholders with a certified professional detailed assessment as to whether the financial statements of the POE fairly represent, in accordance with the rules and accounting principles contemplated by Section 14.1, the financial position and performance of the POE in all material respects. In addition the auditor shall also include an opinion on the manner in which the POE's financial statements have been prepared and presented. The auditor owes a fiduciary duty to the POE and the Shareholder(s) of the POE to exercise due professional care in the conduct of the external audit and the preparation of the assessment and opinion required by this Section 33.2.

33.3 The POE's Procurement Officer shall procure the services of an auditor to conduct such external audit in accordance with the requirements of the Law on Public Procurement, and the requirements of this Section 33. The concerned contract shall have a maximum term of three (3) years.

33.4 The Audit Committee of the POE shall assist the Procurement Officer of the POE with the development of the professional suitability criteria to be used in the conduct of such procurement. Such criteria shall ensure the independence and competence of the auditor procured to provide the external audit services. The Audit Committee shall also develop those provisions of the concerned contract establishing the scope of and plan for the concerned external audit.

33.5 No person shall be eligible to submit a tender for a contract to provide external audit services to a POE if the award of such contract to that person would cause or require the concerned person to provide external audit services to the concerned POE for more than three years in any six year period. An auditor who has been awarded a contract by a POE to perform an external audit on that POE shall not be eligible, from the conclusion of that contract, to be otherwise employed or engaged by the POE for a period of two (2) years.

33.6 An auditor who has provided non-audit services to any POE within the twelve (12) month period preceding the deadline for submission of tenders, shall not be eligible to submit a tender in a procurement by a POE for external audit services.

33.7 If an auditor has a current contract with a POE for the conduct of external audit services, such auditor shall not, during the term of that contract, provide non-audit services to that POE or any other POE; and any contract that is awarded by a POE to an auditor for external audit services shall contain a provision imposing this restriction on the auditor.

33.8 All directors, officers, employees and contractors of the POE shall cooperate fully with the auditor during the conduct of the external audit.

33.9 Each director and officer of a POE shall be responsible for ensuring that the POE complies with the external audit requirements established by this Section 33. If a director or officer fails to take all necessary and appropriate measures within the scope of his authority to ensure the POE complies with this requirement, this shall serve as sufficient legal cause for his immediate removal by: (i) in the case of a director, the Shareholder(s) or (ii) in the case of an officer, by the Board.

Article 34 **Bylaws**

34.1 Every POE shall establish and put in force bylaws as required by the Law on Business Organizations. The adoption, amendment and repeal of a POE's Bylaws shall be within the exclusive competence of the POE's Shareholder(s); however, the POE's Shareholder(s) shall ensure that such bylaws are consistent with the present law and the model bylaws promulgated by the Minister under paragraph 4 of this Article.

34.2 A complete and current copy of the POE's bylaws shall be published and maintained on a publicly accessible web-site maintained by the POE.

34.3 The provisions of POE's bylaws shall comply with all requirements imposed by Kosovo law. In addition, a POE's bylaws shall contain provisions containing a detailed description of the following:

- a) the titles, duties and authorities of the Officers of the POE;
- b) the POE's policy for management recruiting and performance assessment according to standards of fairness and transparency,
- c) the POE's procedure for monitoring and controlling conflicts-of-interest;
- d) the POE's policy governing Related Party Transactions, and the monitoring, reporting and approval procedure therefor;
- e) the POE's procedure for publicly announcing material information about (i) the POE (including information about its significant transactions, its financial condition, and significant decisions of its Board), and (ii) the economic activities of insiders; and
- f) the rules governing transactions among/with subsidiaries of the POE; the POE's procedure for monitoring such transactions and ensuring their disclosure to the Board of Directors and the body or bodies exercising Shareholder rights in such POE (the Government or Municipal Shareholder Committee(s)).

34.4 The Ministry shall have the authority and duty to promulgate a model set of bylaws for use by POEs, and each POE shall ensure that its bylaws are consistent with such model bylaws. The Ministry shall ensure that such model bylaws comply with the present law and other applicable laws of Kosovo and reflect widely accepted international standards for the corporate governance of publicly owned enterprises. The Ministry shall

also give due consideration to the model bylaws for POEs previously adopted by the Kosovo Trust Agency.

Article 35 **Corporate Code of Ethics**

35.1 Every POE shall prepare, adopt and implement a mandatory code of ethics and corporate governance.

35.2 Such code of ethics and corporate governance shall (i) commit the POE to the highest standards of corporate conduct and business practice; and (ii) be sufficiently detailed as to give clear guidance as to the expected behaviour of all directors, officers, employees and professional consultants/advisors of the POE; and (iii) establish a whistleblower protection program.

35.3 Each director and officer of the POE shall execute a written commitment to abide by such code of ethics and corporate governance and to take all reasonable measures to ensure its implementation by the POE and all persons employed or professionally engaged by the POE.

35.4 The Ministry shall have the authority and duty to promulgate a model code of ethics and corporate governance for use by POEs, and each POE shall ensure that its code is consistent with such model code. The Ministry shall ensure that such model code complies with the present law and other applicable laws of Kosovo and reflects widely accepted international standards for codes of ethics and corporate governance. The Ministry shall also give due consideration to the model code of corporate governance for POEs previously adopted by the Kosovo Trust Agency.

Article 36 **Conflicts of Interest**

36.1 The directors and officers of a POE may not enter into agreements with that POE, unless such agreement is first approved by the Shareholders. This restriction shall not apply to the employment contracts of the Officers, which shall only require approval by the Board of Directors.

36.2 The directors and officers of a POE shall fully and fairly disclose in writing to the Board of Directors of the POE any personal interest of any nature they may have in respect of any action or business decision to be taken by the POE; in particular, they shall always disclose any Financial Interest that they may have in the POE's (i) business competitors; (ii) creditors; (iii) suppliers of goods or services; or (iv) business customers.

36.3 The disclosures required by the previous section shall be made by each individual at the time the relevant interest arises or at the time the individual assumes the relevant office in the POE.

36.4 An officer or director shall be absolutely prohibited from attending, participating in, or attempting to influence – directly or indirectly - any meeting, discussions, negotiations, decisions or proposed decisions of or involving the POE’s Board of Directors or its Officers that relate in any way to any matter in which such officer or director has a personal interest (including a Financial Interest) that may, even potentially, conflict with the interests of the POE.

36.5 Any resolution or decision that is adopted by the Board of Directors or by the Audit Committee that has been voted on or influenced by an officer or director in violation of Section 36.4 shall be null and void, and any shareholder or director may formally and in writing submit a request to the Board of Directors or the Audit Committee, as the case may be, to formally nullify such resolution or decision. If the Board of Directors or Audit Committee fails or refuses to act upon such request within thirty (30) days after it has been submitted, any shareholder or director may file a complaint with the competent court seeking an order declaring such resolution null and void.

36.6 An officer shall abstain from taking any action on any matter in which he has a personal interest (including a Financial Interest) that may, even potentially, conflict with the interests of the POE, unless such action merely implements a currently valid decision or resolution previously adopted by the Board of Directors or the Audit Committee.

Article 37
The POE Policy and Monitoring Unit at the
Ministry

37.1 A POE Policy and Monitoring Unit (the “POE Unit”) shall be established by the Minister at the Ministry for the purpose of supporting the POE-related responsibilities of the Minister and the Government provided for in the present law. The Head of the POE Unit shall be appointed by the Minister.

37.2 In addition, the POE Unit shall:

- a) prepare and submit to the Minister, for transmission to the Government, analysis and recommendations on Central POE issues that fall within the Minister’s and/or the Government’s competence;
- b) prepare and submit to the Minister proposed procedures for supervising Central POEs and monitoring their compliance with the present law and other significant legislation; and
- c) collect relevant information on POEs and provide assistance, as needed, to the Budget Department on any POE-related aspects of the KCB.

37.3 The POE Unit shall establish a web-site on which it shall publish the consolidated annual financial statement for all POEs required by Section 32.

37.4 The POE Unit shall also publish for each POE:

a) all information, reports, financial statements, and assessments required by the present law concerning the POE or its Board;

b) the charter and bylaws of the POE;

c) the public version of the POE's Business Plan;

d) any decisions or actions taken by the Government, the Minister or any Municipal Shareholder Committee under the present law or the Law on Business Organizations concerning the POE or its Board, including - but not limited to: (a) any action or decision taken in the exercise of shareholder rights, and (b) any action or decision taken to enforce the fiduciary duties of a Board of Directors and the outcome of such action or decision, including a description of the alleged breach, the remedy sought and any related court decision; *provided, however*, that no such information shall be published if and so long as such publication would prejudice the conduct of an on-going investigation into the alleged breach;

e) the remuneration, and the terms of remuneration, of each director and officer of a POE;

f) all material information on each and every Related Party Transaction, and a statement – under the collective responsibility of the board of directors – as to whether each of such transactions has been made at market terms;

g) all large-value procurement contracts as defined in the Law on Public Procurement;

h) all procurement contracts – regardless of their value – entered into without the use of a competitive tendering procedure; and a statement – under the collective responsibility of the board of directors – as to whether each of such transactions has been made at market terms;

i) the public service obligations assigned to the POE by law;

j) all conflicts of interests declared by directors and officers;

k) the list of its ten most important suppliers by value of supplies; and

l) the number of its employees, with a break-down by division, indicating changes monthly.37.5 The POE Unit shall also publish any subnormative acts, model codes or model bylaws issued under the authority of the present law.

37.6 The POE Unit shall maintain on its website each of the items required by paragraphs 3-5 of this Article for a period of five (5) years.

37.7 The Government, the Ministry, every POE and every Municipal Shareholder Committee is required to immediately provide to the POE Unit any item specified in paragraph 4 of this Article as and when such item comes into its possession or control.

37.8 All of the items described in paragraphs 3-5 of this Article shall also be subject to public access and disclosure in accordance with the Law on Access to Official Documents. This paragraph shall not be interpreted or applied as limiting the applicability of such law.

CHAPTER VI

FINAL AND TRANSITIONAL PROVISIONS

Article 38

Present Law to Prevail over Prior Legislation

38.1 The present law shall supersede and prevail over any provision of any prior legislative or normative act that is inconsistent herewith; provided, however, that if there is any conflict between the present law and Articles 21-30 of the Law on Radio Television of Kosovo, those articles of the Law on Radio Television of Kosovo shall prevail.

38.2 As of the effective date of the present law, the Law on Internal Audit shall not apply to POEs.

Article 39

Disposition of Shares and Obligations Previously Acquired or Assumed by Holding Companies

39.1 Any business organization previously created by the Kosovo Trust Agency and holding shares in one or more publicly owned enterprises (a "Holding Company") shall immediately transfer such shares to the Ministry of Economy and Finance. Any shares in a Local POE that are received by the Ministry shall be immediately transferred by the Ministry to the concerned Local POE, which shall then distribute such shares to the relevant municipality or municipalities in accordance with Schedule 2. After receiving all POE shares from a Holding Company, the Minister shall have the full legal authority and responsibility for doing whatever acts may be needed to dissolve such Holding Company.

39.2 As of the effective date of the present law, the outstanding debts and financial obligations of such a Holding Company shall be transferred to and assumed by the POE that, concurrent with its incorporation as a joint stock company under UNMIK Regulation 2001/6, received ownership or possession of all or substantially all operating and other assets of the enterprise that originally incurred such debt or obligation; provided, however, that if such assets have been transferred to more than one joint stock company, each such company shall be jointly and severally liable for the outstanding

debts and obligations of the enterprise that originally incurred such debts and obligations, and any such company shall have a right of contribution from the other(s) if it is required to pay or otherwise discharge more than its share of such debts or obligations (it's share being equal to the percentage, determined by value, of the assets of the original enterprise transferred to such company).

39.3 The Republic of Kosovo shall have unlimited liability, as guarantor, for the payment of any such debt or other financial obligation if, under the law applicable at the time such debt or obligation was incurred: (i) the founders, owners, partners, ownership interest holders or shareholders, as the case may be, of the legal person or other entity that incurred such debt or obligation - and that was later transformed into the relevant Holding Company - were unlimitedly liable for the obligations of such legal person or entity; *or* (ii) the business or entity that incurred such debt or obligation – and that was later transformed into the relevant Holding Company - did not enjoy separate legal personality from its founders, owners, partners or ownership interest holders, as the case may be. All such obligations, debts and other liabilities shall remain subject to their respective applicable laws, and nothing in this law shall adversely affect any right or prerogative of the relevant creditors that existed immediately prior to the effective date of the present law.

39.4 If a person or entity makes a claim or files a suit seeking to obtain payment of a debt or financial obligation from a POE or the Government, the POE or the Government, as the case may be, shall have the right to assert any and all legal defenses available under the applicable law to the validity or timeliness of such claim or suit.

39.5 Without prejudice to the foregoing, nothing in this Section 39 shall be interpreted as affecting the applicable statutory time limitations on a claimant's right to file a suit with the competent court for the payment of any such debt or obligation.

Article 40 **Enterprises that are Minority Publicly** **Owned**

40.1 If an enterprise is or becomes less than fifty percent (50%) owned, directly or indirectly, in the aggregate by the Republic of Kosovo and/or one or more public authorities of the Republic of Kosovo, such an enterprise shall not be a "POE" within the meaning of the present law and any reference to such enterprise in the schedules attached hereto shall be deemed to have been removed from such schedules and such reference shall have no further force or effect.

40.2 If the Republic of Kosovo and/or one or more public authorities of the Republic of Kosovo own, directly or indirectly, any shares or other ownership interests in an enterprise that is not a POE within the meaning of the present law, the associated shareholder/ownership rights and duties shall be determined in accordance with the Law on Business Organizations and other applicable legislation of the Republic of Kosovo.

40.3 Rights associated with publicly owned shares or ownership interests in such an enterprise shall be exercised by the relevant public authority or public authorities specified in Article 5 of this Law. The exercise of such rights shall comply, mutatis mutandis, with the provisions of the present law governing the exercise of shareholder rights. If such a public authority has the right to nominate candidates for the board of such an enterprise, the nomination of such candidates by such body shall be done, mutatis mutandis, in accordance the applicable provisions of 15 or Article 16 of this Law.

40.4 The sale or proposed sale of any such publicly owned shares or ownership interests shall be governed by Article 9 of this Law; provided, however, that if there is an agreement with the other shareholders or owners that was previously concluded in connection with a sale or privatization transaction that complied with the requirements of Article 9 of this Law, and such agreement contains provisions governing the sale of such shares, such provisions shall prevail in the event of a conflict with Article 9 of this Law.

Article 41

Prohibition on Pledges and Encumbrances of Publicly Owned Shares and Interests

A share or other ownership interest that is held or owned by any public authority in any business organization or other enterprise shall not be pledged, hypothecated, encumbered or used as security for the payment or discharge of any financial or other obligation.

Article 42

Secondary Legislation

The Government shall have the authority to promulgate any secondary legislation needed to ensure the proper implementation and observance of the present law.

Article 43

Transitional Board of Directors

43.1 The Government shall have the authority to appoint a transitional Board of Directors (“Transitional Board of Directors”) for each POE to serve as the POE’s Board of Directors for a maximum six-month period beginning on the effective date of the present law.

43.2 The Government shall fully exercise such authority as soon as possible after the effective date of the present law.

43.3 Each such Transitional Board of Directors shall be composed of five (5) members and shall include the POE’s CEO or senior manager. In appointing the other directors of a Transitional Board of Directors, the Government shall make best efforts to ensure that such directors meet the requirements specified in paragraphs 1 and 4 of Article 17 of this Law.

43.4 The mandate of each such Transitional Board of Directors shall expire on the earlier of (i) midnight of the day that occurs six (6) months after the effective date of the present law or (ii) the day on which a full board of directors for the concerned POE has been elected in accordance with Article 15 or Article 16 of this Law.

43.5 Any purported or attempted extension or renewal of the mandate of a Transitional Board of Directors beyond the time specified in paragraph 4 of this Article shall be prohibited, null and void. Upon the expiration of the mandate of a Transitional Board of Directors as provided in paragraph 4 of this Article, such board and its directors shall no further authority of any description to act as the POE's Board of Directors.

Article 44 Entry into Force

This Law shall enter into force on the day of publication in the Official Gazette of the Republic of Kosovo.

**Law No. 03/ L-087
13 June 2008**

President of the Assembly of Republic of Kosovo

Jakup Krasniqi

Schedule 1 Central Publicly Owned Enterprises

1. Kosovo Energy Corporation JSC (KEK);
2. Transmission System and Market Operator, JSC (KOSTT);
3. Post and Telecommunications of Kosovo J.S.C. (PTK);
4. Kosovo Railways J.S.C;
5. Pristina International Airport J.S.C;
6. Kosovo Landfill Management Company J.S.C;
7. HPE Iber Lepenc JSC;
8. Radio Television of Kosova (RTK).

Regional Irrigation Companies

1. Irrigation Company Drini i Bardhe J.S.C.;
2. Irrigation Company Radoniqi-Dukagjini J.S.C.

Regional Water Companies

1. Regional Water Company Prishtina J.S.C, Pristina
2. Regional Water Company Hidrodrini J.S.C, Peja
3. Regional Water Company Hidroregjioni Jugor J.S.C, Prizren
4. Regional Water Company Mitrovica J.S.C, Mitrovica
5. Regional Water Company Hidromorava J.S.C, Gjilan
6. Regional Water Company Radoniqi J.S.C, Gjakove

Schedule 2 Local Publicly Owned Enterprises

- | | | |
|---|-------------------------|---------|
| 1. District Heating Termokos J.S.C, Pristina | Pristina | 100% |
| 2. District Heating Gjakova J.S.C, Gjakova | Gjakova | 100% |
| 3. Regional Waste Company Cabrati J.S.C, Gjakova | Gjakova | 100% |
| 4. Waste Company JKP Standard, Mitrovica | Mitrovica | 100% |
| 5. Waste Company JKSP Zvecan, Zvecan | Zvecan | 100% |
| 6. Water and Waste Company Ibar, Zubin Potok | Zubin Potok | 100% |
| 7. Water Waste Company 24 November, Leposavic | Leposavic | 100% |
| 8. Regional Water Company Bifurkacioni J.S.C, Ferizaj | Ferizaj 85.3%;
14.7% | Kacanik |
| 9. Public Housing Enterprise, Pristina | Pristina | 100% |
| 10. POE Tregu, Mitrovica | Mitrovica | 100% |
| 11. Regional Waste Company Pastrimi J.S.C, Prishtina | | |
| 12. Regional Waste Company Ambienti J.S.C, Peja | | |
| 13. Regional Waste Company Pastertia J.S.C, Ferizaj | | |

14. Regional Waste Company Eco-Regioni J.S.C, Prizren

15. Regional Waste Company Higjiena J.S.C, Gjilan

16. Regional Waste Company Uniteti J.S.C, Mitrovica