



AGJENCIA KOSOVARE E PRIVATIZIMIT
KOSOVSKA AGENCIJA ZA PRIVATIZACIJU
PRIVATISATION AGENCY OF KOSOVO

How to Register a Claim against a Socially Owned Enterprise in Liquidation
FREQUENTLY ASKED QUESTIONS

Liquidation Claims against a Socially Owned Enterprise (SOE) under the administration of the PAK pursuant to Law No 04/L-034 of the Privatisation Agency of Kosovo (PAK Law)

Potential creditor claimants should ensure they have considered entire relevant legislation laws and regulations carefully and consider obtaining expert legal advice/representative in relation to any claim(s) they may have against any SOE in liquidation.

This document does not have the force of law and is no more than a summary of certain of the matters that should be considered by any potential creditor claimant. This summary document, by definition, is not comprehensive and does not cover all areas of law and procedure. There is no substitute for reviewing the laws and regulations, in particular those referred to in paragraph 2 below. Potential claimants should note that this document is not legally binding and should not be considered as such but as basic legal remedy.

IMPORTANT NOTE:

This document only relates to the filing of claims by any person who believes they have a claim against an SOE that the Board of Directors of PAK has given notice to liquidate pursuant to section 9.1 of PAK Law

1. What is liquidation?

Liquidation is the process whereby PAK will deal with asset sale and liabilities remaining after the viable parts of the SOE have been privatised. When the assets and liabilities have been dealt with, the name of the SOE is deleted from the Business Register maintained by the Ministry of Trade and Industry of Kosovo and the SOE is considered “dissolved”. SOE assets are sold and funds raised through asset realisations are applied towards payment or partial payment of SOE liabilities towards creditors. Liquidation is therefore another method of privatisation but less bureaucratic than privatisation as the PAK can sell assets such as small pieces of land, scrap metal, individual warehouses or shops or the miscellaneous stock of an Enterprise without having to establish a new company as is the case with privatisation.

During the process of liquidation anyone who has a claim against an SOE shall have the opportunity to submit the claim that shall be reviewed by an independent Authority (known as the “Liquidation Authority”) that shall assess all the claims and notify the individual creditor as to whether their claim has been accepted. If the creditor claim is reviewed and accepted, a payment may be made to the creditor. The process of liquidation has two elements; (i) the sale of assets/real estate; and (ii) collection, assessment and payment of claims. ***This set of questions and answers deals only with the second element of liquidation or the claims side.***

2. Where do I find the relevant legislation relating to the PAK’s rights and the liquidation procedure?

The following key Regulations can be found on the PAK website at www.pak-ks.org under “*Laws and Regulations*”. This is not an exhaustive list of the applicable legislation as civil law such as the Law on Contract and Torts and laws regulating ownership-juridical property relations, Law on Contentious Procedure etc. The applicable law will depend on the dates and nature of the matter to which your claim relates. For example, several Regulations govern contracts and obligations of SOEs as follows:

- a) Law No.04/L-034 on PAK, annex to this Law
- b) Main regulation governing internal PAK policies “PAK Operational Policies” in conformity to Article 10 of PAK Law (“PAK regulation”).
- c) UNMIK Regulation no. 2003/13 on transformation of right of use of socially-owned property, as amended by UNMIK Regulation 2004/45 (“**Regulation on land use**”).
- d) Law no. 02/L-123 on Business organizations (and amendments)
- e) Law No.04/L-033 On Special Chamber of Supreme Court of Kosovo for matters related to Privatisation Agency of Kosovo (Law on Special Chamber).

Please note that the above list is **indicative only** and is not intended to be a comprehensive list of relevant laws and regulations

3. What is a Creditor Claim?

Creditor Claim is the Claim made by any person or entity claiming SOE has default liability.

4. How do I register a Creditor Claim against an Enterprise in Liquidation?

If you have a claim related to an SOE for which a Notice of Liquidation has been published you should register your claim with the PAK by completing and filing with Proof of Claim Form (CLAIM) within PAK.

5. Should the same form be filed for ownership claim?

No, in case you have ownership claim against the SOE then you must fill in the Proof of Interest form.

6. How will I know that a Notice of Liquidation has been published?

PAK shall publish or shall request Liquidation Authority to publish notice of liquidation within 10 working days after the decision to initiate liquidation procedure. Liquidation Notice shall also be published in PAK web page.

7. Where can I obtain the Proof of Claim or Proof of Interest (CLAIM)?

PAK Liquidation Claim Forms can be obtained from the PAK Headquarters (Pristina) reception or PAK Regional Offices in Prishtina, Prizren, Mitrovicë, Pejë and Gjilan. Liquidation Claim forms can be downloaded from the PAK web site: www.pak-ks.org in the section “*Liquidation Claims*”.

8. Why should I file a Liquidation Claim Form?

You should use and file the Liquidation Claim Form if you have any claim related to the SOE, including any creditor claim (Proof of Claim) (whether secured, unsecured, claim for damages, claim for unpaid wages or salary etc). And ownership claim against the SOE (Proof of Interest), including a land ownership claim, or a claim relating to an asset that you think is not an asset of the SOE and therefore should not be sold in liquidation.

Liquidation Claim Forms must only be filed in respect of those SOEs for which a Notice of Liquidation has been published.

9. Is there a deadline for registering my Liquidation Claim Form?

Yes. You should submit Proof of Claim or Proof of Interest via respective form together with all supporting documentation within deadline for submitting claims in a business day after 45 days upon publishing the liquidation notice.

10. Can I register a claim against several SOEs by using one Liquidation Claim Form?

If you wish to register claims against several different SOEs in liquidation, you must use a separate Liquidation Claim Form for each claim against SOEs. Failure to do so will result in the exclusion of your claim in the liquidation of SOEs due to fact claims have not been submitted separately.

11. Where do I submit the completed Liquidation Claim Form?

You should submit the completed Liquidation Claim Form with all relevant supporting documents to Liquidation Authority within PAK Regional offices. Details of the relevant PAK Regional Office shall be on the Notice of Liquidation and the PAK web site.

12. How should I submit the Liquidation Claim Form to the PAK?

You can submit your completed Liquidation Claim Form to the PAK by mail, courier or in person. You are advised to obtain a confirmation of receipt. Forms may be faxed to the relevant Regional Office but the Liquidation Authority reserves the right to ask for an original of the Liquidation Claim Form at any stage. It is therefore advisable to submit an original of your Liquidation Claim Form.

We regret that Liquidation Claim Forms submitted by email **cannot** be accepted.

13. Do I have to pay any registration fee for submitting a Liquidation Claim Form?

No registration fees are payable.

14. What languages can the PAK Claim Form be in?

Official languages (Albanian or Serbian). You do not need to submit it in both languages. Any supporting documentation should be submitted in the original language (which may be something other than Albanian or Serbian). If you have translations please add them indicating that they are translations.

15. Do I have to use the Liquidation Claim Form?

Completion of the Liquidation Claim Form is required in terms of the PAK Operational Policies 7.6, failure to submit a properly supported Liquidation Claim Form in a timely manner will render your claim invalid. Proper completion of the Liquidation Claim Form will also allow the PAK to process/record your claim more easily.

16. What is the date that the Liquidation Claim Form is considered delivered to the PAK?

A Liquidation Claim Form should be considered as registered/received by the PAK on the date when it was received at the PAK HQ or Regional Office (if delivered in person or by courier) or the date of the stamped mail (if delivered by mail).

17. How do I know whether my Liquidation Claim Form is registered with the PAK?

Your claim will be registered at the Regional Office within Liquidation Authority dealing with the liquidation. They will contact you pursuant to article 7.4 of annex of Agency Law.

Liquidation Authority shall inform you whether your claim has been assessed as valid. If assessed as valid you will be asked to provide your bank details.

18. Do I need to register my Creditor Claim again if I have already registered a claim against the Enterprise before the Notice of Liquidation?

Yes, you do need to re-file your claim with up-to-date information. The need to re-file your claim arises because the liquidation is a new legal procedure distinct from transition period prior to liquidation initiation.

19. What about supporting documents? Should I send originals or just copies of the supporting documents e.g. the cadastre documents, the contract etc? If I send originals will I get them back?

You should submit all relevant documentation to assist the Liquidation Authority in assessing your creditor claim. Please provide as much detail as possible and if applicable provide copies of contracts, invoices, reminder letters, evidence of judgments, details of interest rates, cadastre records, building permits etc.

You should provide a list of all of the documents you are submitting and attach it with the documents to the Liquidation Claim Form. If you believe it will assist the Liquidation Authority in making an assessment of your creditor claim you should also attach a brief history explaining how your claim arose.

However, please **do not** send the original documents at this stage. The PAK may however ask to see the original documents at a later stage.

20. Do I have to re-file any supporting documentation submitted prior to the Notice of Liquidation when I file my creditor claim?

A PAK Board decision to Liquidate an SOE results in a change in the legal status of the SOE and it will unfortunately be necessary to file your claim with supporting documentation including the Liquidation claim form.

21. Can interest be claimed?

Yes, interest can be claimed at the amount allowed by law.

22. Who will evaluate my Creditor Claim?

The Liquidation Authority will evaluate your Creditor Claim on the basis of the completed Liquidation Claim Form and supporting documentation. This will also apply to claims relating to ownership of individual assets.

23. Who will evaluate my Ownership claim?

The PAK Board of Directors will make decisions on claims relating to the ownership of an SOE.

24. Who appoints the Liquidation Authority and who shall comprise the Liquidation Authority?

The PAK Board of Directors appoints the Liquidation Authority, but it may delegate this power to the Managing Director. Liquidation Authority shall consist of: Chairman, Case

officer, Professional Service Provider, if the Liquidation Authority does not have Professional Service Provider, then Board shall appoint at least one member of minority community.

25. When can I expect a decision on my creditor claim from the Liquidation Authority?

The Liquidation Authority shall assess your claim within a reasonable time and shall notify you with regard to admissibility of your claim.

This will only be a preliminary assessment as to validity of your claim. If the Liquidation Authority accepts your claim, an assessment of the actual amount that you will be paid will only be possible after all creditor claims and liquidation expenses have been assessed.

26. When can I expect a decision on my ownership claim?

The decision on ownership of an Enterprise will be made by the PAK Board of Directors and will be communicated to you as soon as it is made.

Other decisions on ownership of assets will be made by the Liquidation Authority and will be communicated to the claimant.

27. Will I receive all the money I claim in my Liquidation Claim Form?

How much money you may receive depends on several factors including examination of all the SOE's liabilities and the total number of creditors. It also depends what "priority" or ranking your claim has. Claims have different priorities or classes; for example all secured claims must be paid in full before any unsecured claim is paid. This may mean that even where the Liquidation Authority assess a claim as valid, the creditor may not receive any money and in many instances an amount of money may have to be divided proportionally amongst creditors of the same priority or class.

28. How will I receive my money if the Liquidation Authority accepts my claim?

The Liquidation Authority will notify you in writing if they accept your claim. It will request that you provide them with your bank details into which any payment will be made following approval by the PAK Board of Directors to distribute the proceeds of liquidation. Any bank transfer fees will be deducted from the payment made to you.

29. What can I do if the Liquidation Authority declines my Claim?

You may challenge a decision of the Liquidation Authority by filing a written claim to Special Chamber of Supreme Court of Kosovo for matter related to Privatisation Agency of Kosovo and Socially-Owned Enterprises administered by the Agency.

30. How can I find out more information about appealing to the Special Chamber?

As stated above, the decision of the Liquidation Authority is the final decision of PAK. However, such decision may be challenged in the Special Chamber of the Supreme Court of Kosovo which has jurisdiction in accordance to article 4, paragraph 1.7 of the Law No. 04/L-033 on Special Chamber of Supreme Court of Kosovo for matters related to Privatisation Agency of Kosovo.