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

The challenges facing the Privatisation Agency of Kosovo are considerable.

Positive change is underway

The Privatisation Agency of Kosovo is delivering on its responsibilities and commitments to support the Kosovo economy.

INFORMATION TO STAKEHOLDERS
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PAK Contact Details

PAK Headquarters
Str. Ilir Konushevci No.8,
10 000 Prishtina, Kosovo,
Tel: 038 500 400,
E-mail: info@pak-ks.org

Prishtina Regional Office:
Contact person: Ekrem Ademi - Head of Regional Office
Address: Str. Rexhep Mala No. 2, Prishtina
(near Riinvest)

Peja Regional Office:
Contact person: Ardita Lokaj - Head of Regional Office
Address: Str. Vëllëzërit Gërvalla, Onix Building I-st floor, Peja
(near the train station)

Prizren Regional Office:
Contact person: Nexhat Elshani - Head of Regional Office
Address: Str. Pushkatarëve No: 9, Prizren
(in Shadervan)

Mitrovica Regional Office:
Contact person: Muhamedin Hetemi - Head of Regional Office
Address: Str. Mbretëresha Teutë, Mitrovicë
(Near sports center)

Gjilan Regional Office:
Contact person: Zeqirja Morina – Head of Regional Office
Address: Str. Bujanovci, Gjilan
(Batteries Factory IBG)

Chairman's Statement

The challenges facing Privatisation Agency of Kosovo are considerable. A fundamental review of the legal framework and work practices of the Agency have indicated a need for far reaching change. The Agency and its governing laws need to be restructured and this will not happen overnight but positive change is now underway.

PAK's privatisation performance has been generally successful but the same cannot be said for liquidation.

Over the past two years, the Agency and many of its stakeholders have been questioning liquidation performance and the failure to distribute almost €530 million trust funds to rightful creditors and owners and ultimately the Government of Kosovo. These questions have led the Agency to fundamentally review the liquidation process and compare it with those of other countries in the region together with the World Bank Principles for Effective Creditor Rights and Insolvency Systems; with some surprising results.

Firstly, the Kosovo liquidation process was designed to respect the requirements of the Comprehensive Proposal for the Kosovo Status Settlement with special emphasis on the protection of the interests and human rights of minorities. The result was a highly complex procedure with review layers that are unique to Kosovo coupled with an appeal system that proved to be unworkable in practice. Unwittingly, the legislation worked against the very interests it was designed to protect, denying claimant their right to be paid and creating hardship for workers with entitlements under the 20% scheme.

Kosovo, quite unlike any other country in the region, has independently appointed members of liquidation committees, review committees, the PAK Board Secretariat and three non executive PAK board members. It became obvious, that the PAK law as drafted is singularly unsuited to enable efficient liquidation and the Agency's ability to make distributions to workers under the 20% scheme was irretrievably compromised by shortcomings in the structure and functioning of the Special Chamber of the Supreme Court not to mention that Court's failure to recognise PAK and provide the Agency with the right to a fair trial.

In April 2011, the Government adopted our findings and this resulted in a formal review of the legal framework led by the Ministry for Economic Development (MED). PAK and MED were pleased to have the opportunity to consult widely with ministries, the donor community, European Commission Liaison Office (ECLO), the International Civilian Representative (ICR) and EULEX on proposed changes. As a result of this combination of factors, three new drafts laws were prepared namely, a new PAK Law, a new Reorganization Law on certain Enterprise and a revised Law on the Special Chamber of the Supreme Court of Kosovo. This complex and detailed process was preceded by the preparation of policy papers to govern the drafting process and these are attached as appendices to this Special Stakeholder Report.

With the promulgation of these new laws, PAK will continue to work closely with the Government of Kosovo to assist on the broader objective to build a vibrant sustainable economy. PAK appreciates the generous grant support it has received over the last three years from ECLO and is looking forward to a continuation of its valuable advice and counsel in the coming years. PAK is also appreciative of the tremendous support provided by the ICR, US Embassy and USAID.

In precipitating a review of the PAK legal framework, the Government has acknowledged the importance of the Agency to the development of the Kosovo economy and has been fully supportive of the far reaching change that needs to take place to enable the timely completion of the privatisation and liquidation process. The challenges facing PAK are considerable. The Agency and its governing laws needed to be restructured and this has not happened overnight but positive change is now underway.

Dino Asanaj
Chairman of the PAK Board of Directors

Overview

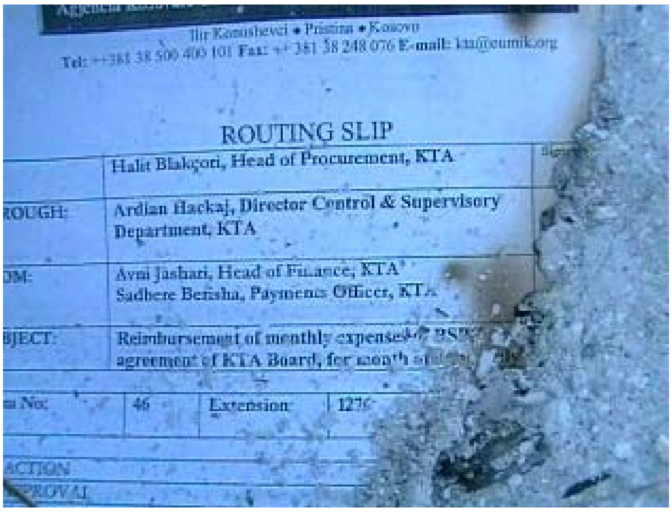
Mandate

The Privatization Agency of Kosovo (PAK) is an independent public body (under Article 142 of the Constitution of the Republic of Kosovo) that shall carry out its functions and responsibilities with full autonomy. The Agency possesses full legal personality and in particular the capacity to enter into contracts, acquire, hold and dispose of property and have all implied powers to discharge fully the tasks and powers conferred upon it by the Law on the Privatisation Agency of Kosovo.

PAK has extensive powers over Socially Owned Enterprises (SOEs) including the power to privatise and liquidate the enterprises, and PAK exercises these powers on the basis Article 159 of the Constitution of the Republic of Kosovo.

Establishment

In 2008, the KTA ceased operations on June 30th while the PAK law was promulgated on June 15th. But it took until end August for PAK representatives (with the assistance of the Kosovo Police) to gain access to the former KTA offices.
We were astonished to find that the entire documentation and office equipment had been removed and in the headquarters yard were found traces of the burned documents, while some of the trash bins were loaded with original and some confidential documents. Documents were also missing from all five former KTA Regional Offices.



All of the above was reported to the respective Institutions of the Republic of Kosovo and stake holders at the time. Subsequently the office equipment and relevant documentations were returned., and it took until the early 2009 for PAK to reassemble the organisation and hire a full complement of staff.

It is notable that the PAK operations, financial statements, donors funding, trust funds etc, have been extensively audited by the Office of the General Audit of Kosovo, by external independent audits and of course by the PAK Internal Audit Unit. These audits have provided the necessary assurances regarding the levels of transparency, correctness and professionalism of the Agency while conducting its duties.

Since its establishment, the PAK in full compliance with the existing legislation has reported on a regular basis to the Assembly of the Republic of Kosovo, the Government of the Republic of Kosovo and other relevant stake holders, through work reports (PAK Work Report 2008-2009), through quarterly reports and on an annual basis (Annual Report 2009 and 2010), as summarized in table below:

Reports to relevant authorities and institutions	Quarterly Reports	Annual Reports	Other Reports	Year
KTA (6 year of operation)	0	0	0	earlier - 2008
PAK (3 years of operation)	2	0	0	2008
	4	1	1	2009
	4	1	0	2010
	2 – and ongoing	on-going	on-going	2011
Total	12 - and on going	2	1	Total different reports to Assembly of the Republic of Kosovo–23.

In addition, the activities of the Agency are published on the official website (www.pak-ks.org), where details of all privatisation waves, liquidation assets sales and 20% workers lists are freely made available to the public and the media. The website also contains details of governing laws, regulations and rules of tender. And there is a section that provides details of the Board of Directors, job opportunities, procurement and reports issued by the Agency. In common with many other websites, it includes sections about Kosovo, press and media reports and useful links to other sites.

Managing Director’s Statement

We are determined to do everything possible to build on the changes; to rebuild the foundations and underpin the Agency’s ability to complete liquidations over the next five years and through successful privatisation and liquidation renew the confidence of all stakeholders in the organisation and significantly contribute to the building of a vibrant successful and sustainable Kosovo private sector.

The three year period since PAK was formed has been tough. Starting out in June 2008 with no hand over from its predecessor (KTA) and evidence of attempted destruction of files and documents in the headquarters courtyard, it took until the beginning of 2009 to recover files and office equipment and complete the task of hiring staff. The legally imposed need to have independent representatives in all the key organs of liquidation effectively stopped liquidation altogether during 2009 and the early part of 2010 due to delays in appointing or deploying appointees.

In the meantime, PAK was being pressed to deliver on its responsibilities by many stakeholders and faced demands to distribute funds (especially by protesting workers). The Agency has always striven to deliver its commitment to support the development of the Kosovo private sector through privatisation and the disposals of any remaining assets through liquidations. The Agency is approximately 60% through with privatisations but liquidation of the stock of 600 Socially Owned Enterprises is at an early stage and the Agency was not helped by the fact that it inherited a deeply flawed liquidation methodology from the KTA; the latter took a year of institutional development to correct with the assistance of technical support funded by ECLO.

Throughout the period to August 2011, the Agency was saddled with a complicated time consuming legal framework and struggled to make progress with liquidations. It also suffered from sustained opposition from the Special Representative of the UN Secretary General who insisted that he had the sole right to represent the KTA in court cases, a view that was supported by the Special Chamber of the Supreme Court of Kosovo (SCSC).

As part of our commitment to the government and people of Kosovo, the Agency created an ‘interim distribution’ scheme to relieve the hardship being caused to workers with 20% entitlements and almost €42 million was paid out. But there is much more to be done with over €60 million remaining to be paid out and much of this is being delayed by the slowness of SCSC decisions on contested lists. Last autumn, the Agency completed the opening of satellite offices in three enclaves that are staffed by local management and we are succeeding in offering privatisation and liquidation services in a difficult political climate.

As part of our long term action plan, the organisational structure and management team will be extensively restructured to reflect revised priorities and make PAK more fit for purpose.

One of the priorities is to ensure that lessons learned from the review of the legal framework feed into the development of new policies and procedures and contribute to a comprehensive overhaul of how the Agency manages liquidations.

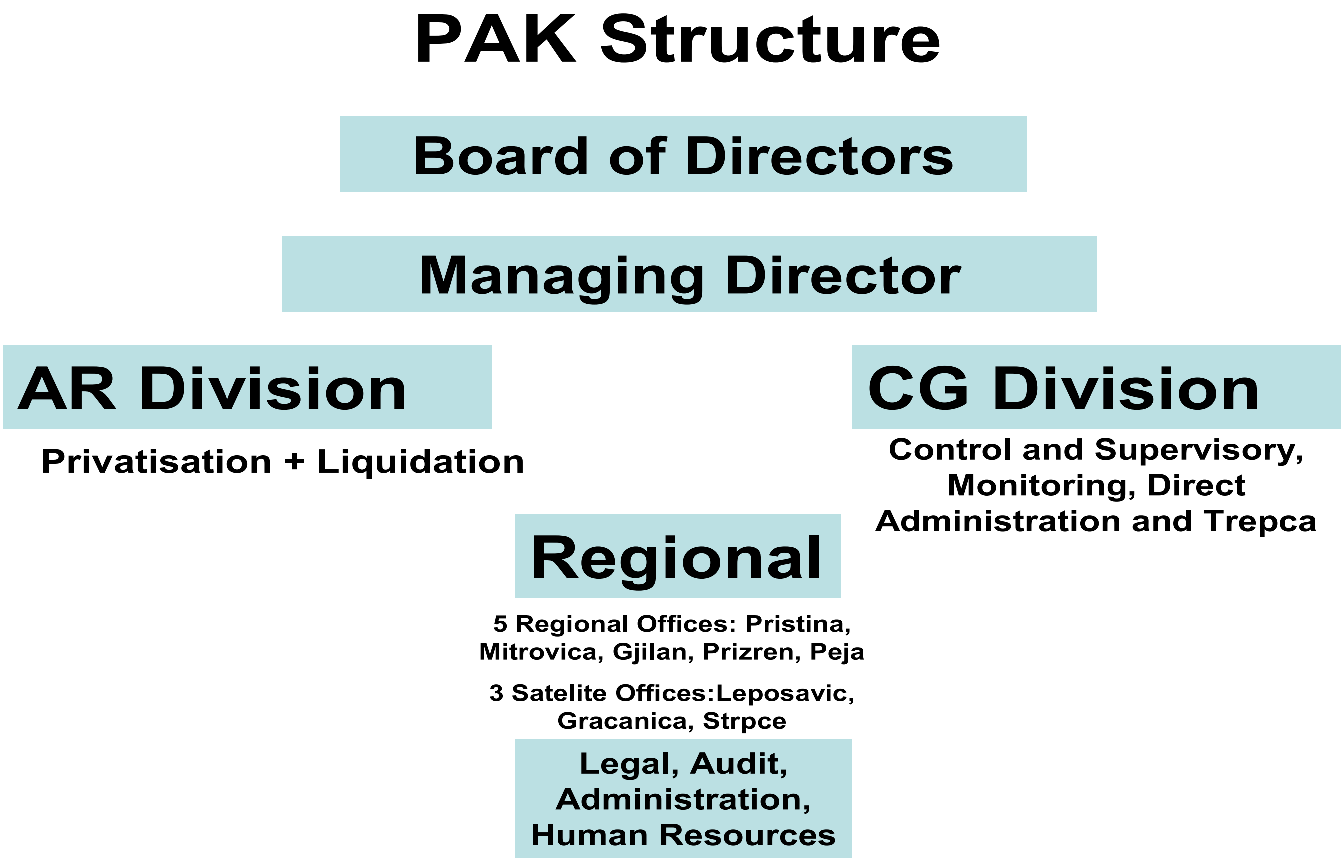
With the passage of time, the Agency will become a smaller organisation but working itself out of a job is a key part of the mandate. The sooner privatisation and liquidation is completed, the quicker the pace of private sector economic growth and development will happen.

We are determined to do everything possible to build on the changes; to rebuild the foundations and underpin the Agency’s ability to complete liquidations over the next five years and through successful privatisation and liquidation renew the confidence of all stakeholders in the organisation and significantly contribute to the building of a vibrant successful and sustainable Kosovo private sector.

Shkelzen Lluka
Managing Director

Organisational structure

The organisational structure of the PAK, as dictated by the PAK Law is composed of four functional areas: the PAK Board of Directors as the decision making body, and then the executive part of the Agency consisting of Asset Sale (AR) Division, the Corporate Governance (CG) Division and the Executive Branch under the direct supervision of the management of the Agency, while the Internal Audit Unit and Press and PR Unit reports directly to the management of the Agency and in specific matters to the Board of Directors.



The above structure will be changed to reflect the new PAK law and the revised structure will be in place by the end of 2011.

Institutional Cooperation and Interaction

Since its inception, PAK has entered into important agreements (formalised though Memorandums of Understanding) with several Kosovo institutions such as:

- Ministry of Internal Affairs (Background checks on investors)
- Ministry of Trade and Industry (Business Registry changes only with PAK agreement)
- Ministry of Public Services (Occupation of SOE property by Kosovo institutions)
- Central Bank of Kosovo (Terms and Conditions for maintenance of Trust Funds)
- Tax Administration of Kosovo (Transfers of tax liabilities to investors and SOE taxation).

Finally it should be noted that the promulgation of the Law No.03/L-226 on allocation for use and exchange of immovable property of Municipality, has been a corner stone with significant positive impact to the relationship between PAK and municipalities toward the common goal of improving the welfare of the citizens of the Republic of Kosovo. The main purpose of the law is to determine the procedures upon which the municipalities can allocate to third parties its municipal immovable properties ***as well as setting out the procedures enabling the exchange of the municipal immovable property with Socially Owned immovable property under PAK's administration, for public benefit purposes.***

Privatisation

Privatisation has been an ongoing process since 2002 and an overall summary follows:

There are 600 SOEs listed in the PAK register. Approximately 400 of them were considered viable businesses or have assets that are suitable for privatisation and the remaining 200 will be dealt through the liquidation process.

To date close to 300 SOE's have been privatized in full or partially through creation of 619 NewCo's and an additional 175 liquidation sales of different assets have been successfully completed. It is therefore fair to say that with some notable exceptions, the majority of large SOE's have already been privatized and overall privatisation is well on its way to completion.

During the KTA mandate, the methods used for sale of assets through privatisation were the so-called Ordinary Spin-offs (OSO), Conditional Spin Offs (CSO), Special Spin-offs and finally liquidation sales.

While the OSO had no conditions attached beside the highest price offered which determined the winning bid was carried with one round of bidding, the CSO and SSO's beside the highest price (50% of the points) the winning bid was determined based on the employment commitments (25% of the points) and investments commitments (25% of the points) made by the bidders, and in addition there were two rounds of bidding where the second round of bidding included only the three highest bidders from the first round.

The PAK continued the OSO method for the sale of assets, meaning that the winner is determined by the highest price offered, in one round bidding, but in special cases the PAK might require relevant expertise from potential bidders and in specific sectors the provision of reasonable assurance as regards the success of such privatisations.

Furthermore, the PAK has been applying a policy that in case of withdrawal of a winning bidder, beside the confiscation of the bid deposit (in cases of defaults) the NewCo will be offered to the second or third bidder only if they agree to match the price offered by the initial winning bidder.

This policy has helped to prevent defaults observed in KTA initial privatisation waves. It also assists the elimination of possible collusions and coercions during the bidding process. Each and every winning bid, prior to any sale conclusion, is subject to close verifications by the specialized units of Police under the procedure of the background checks.

Another initiative of the PAK has been the opening of Satellite Offices in Leposavic, Strpce and Gracanica. This has resulted in the privatisation of several SOE's and their assets in the northern municipalities of the Republic of Kosovo. As a consequence, , PAK has become one of the few Institutions in the Republic of Kosovo that has established its authority and exercised its mandate over the entire administrative territory of the Republic of Kosovo.

With the establishment of the administration of United Nation Mission in Kosovo (UNMIK) in Kosovo in 1999, UNMIK mission arranged 10 year leases (commercialisation) of a number of strategically important Socially Owned Enterprises. So far, of the original 18 commercialisation agreements only one remains to be dealt with namely Fapol in Podujevo, the rest or the commercialization agreements were terminated or those SOE's and their assets were subject to privatization.

One notable commercialization, the Sharr Cement case, was subject to privatization which was concluded successfully in December 2010. The commercialization agreement provided the lessee with the right to buy the plant at fair market price and this obliged the Agency to enter into direct negotiations with the lessee, the Titan Group. The Agency appointed international transaction advisors to assist the negotiations and the price achieved of €30.1 million was at the highest end of the transaction advisor's valuation spectrum. In addition, the buyer committed to additional capital investments amounting to €35 million over 5 years and guaranteed the jobs of all current workers for the next 3 years.

During the six year period of its existence, the KTA carried out 30 waves of privatisation resulting in the sale of 418 NewCo's and 36 liquidation sales. By comparison PAK has held 22 waves of privatisation since 19 November 2008 (less than three years) resulting in the succesful sale of 201 NewCo's and 139 liquidation asset sales. The total combined so far adds up to 794 contracts (SSO, CSO, OSO and liquidation Sales), as described in the table below:

Contracts signed by the KTA over 6 years – total of 30 privatisation rounds			
No.	Method of Sale	No. of contracts signed	€ Value of contracts signed
1	Special Spin – off	24	91,723,495
2	Spin – off	381	244,556,961
3	Conditional Spin-off	13	15,358,885
4	Liquidation	36	4,293,164
	Sub - total	454	355,932,505
Contracts signed by the PAK over 3 years – total of 22 privatisation rounds			
No.	Method of Sale	No. of contracts signed	€ Value of contracts signed
1	Special Spin – off	1	103,000
2	Spin – off	199	144,601,634
3	Conditional Spin-off	1	335,000
4	Liquidation	139	27,662,116
	Sub - total	340	172,701,750
Total of Contract Signed by KTA/PAK – in total 52 privatisation rounds			
No.	Method of sale	No. of contracts signed	€ Value of contracts signed
1	Special Spin – off	25	91,826,495
2	Spin – off	580	389,158,595
3	Conditional Spin-off	14	15,693,885
4	Liquidation	175	31,955,280
	TOTAL KTA/PAK	794	528,634,255

As can be seen from the above, privatisation and liquidation sales to date has yielded € 528,6 million and 20% of this has been set aside for the benefit of workers who qualify for the 20% scheme. When privatisation of an SOE is completed the next step is to dispose of any remaining assets and then deal with the claims of creditors and owners through liquidation.

In the meantime, until the liquidations are completed, the proceeds from privatisation and liquidation are held in trust by the Central Bank of the Republic of Kosovo (CBRK). These trust funds also include all proceeds from privatisation and liquidation conducted by the predecessor Agency (the KTA).

Since the establishment of the PAK in August 2008, PAK has, on several occasions, requested clarifications on the CBRK security policy and decision making process in relation to the trust funds and in particular the extremely low interest rates received (0.1 % annual interest rate) at the time.

To resolve this matter, the PAK signed a Memorandum of Understanding with the CBRK in August 2010 which in essence regulates the relationship between the PAK and CBRK in regard to the security and investment of the trust funds. As a result, a significant part of the trust funds held in the current accounts, were transferred into time deposits on the recommendation of the CBRK and in compliance with its financial and banking policies.

Following from the MoU and the implementation of the CBRK's recommendations, s the interest rate earned is now approximately 8 (eight) times higher (or approximately € 5 million more) than the one that would have been gained if the trust funds were left in current accounts.

Privatisation of Agricultural Land

The PAK continues with the privatisation of the agricultural land, with pre-determined destination. The PAK cannot change the destination of certain land surfaces, and that is clearly stipulated in all privatisations materials, due to the fact that such authorisations belong to the Municipal Assemblies (Law on Agricultural Land No.02/L-26 and also regulated under the Law on Spatial Planning and Law on Protection of Environment).

The following table shows that the outset the total portfolio of land entrusted to KTA/PAK was 46, 145 hectares, of which KTA sold 23,930 hectares.

ance of nearly 1%, being minor plots of land in the hands of more than 70 SOE's.

In other words, the process of selling SOE land in Kosovo was largely completed by KTA, with the remaining portfolio consisting of a hard core of enterprises, whose sale requires the resolution of a set of intractable legal and other problems. It is worth noting, notwithstanding transition issues, the processes and procedures used by PAK were inherited from KTA, and it is believed they reflect international best practice (as it appears they were developed by international specialists, supported by International Consultants).

Status	Hectares	%
Sold by KTA	23,930	52%
Sold by PAK	4,912	11%
Sold in liquidation	265	1.6%
To be Sold	17,038	35.4%
Total	46,145	100%

So far, the PAK has sold 4,912 hectares. As regards sales, four transactions totalling 543 Hectares were actually re-offers of lots tendered by KTA and for which bids were rejected. Nevertheless the recent practice shows that PAK was able to more than double some of the previous offers.

In short, the remained portfolio of slightly more than 17,000 hectares of land to be sold is spread out over nearly 90 SOE's. This however, is in itself i a misleading picture as the analysis shows: out of over 17,000 hectares left, nearly 75% or over 12,000 hectares belongs to only seven SOE's, while 24% or over 4,000 hectares controlled by nine SOE's, leaving the remaining bal-

As to comments whether selling in large lots might be leading to poor results, there is no real evidence of that, particularly when one considers that small plots are inevitably unsustainable for agriculture and as such almost always real estate plays. Furthermore, according to the analysis carried by PAK in relation to the land prices the indications based upon the results, to date, result that PAK has more than doubled the average price per hectare of land sold compared to KTA. Having said the above, PAK managed to set the performance sights higher than those of KTA, as the enclosed table shows, while overall average land market prices in Kosova show an upward trend, prices reached are admirable.

TOTAL KTA/PAK LAND SOLD				
Plot Size Hectare	No of Plots	Total Hectares	Price paid	Average Price per Hectare
<5	133	91	20,390,616 €	224,188 €
>5<10	11	82	3,803,354 €	46,513 €
>10 <100	85	4,294	26,786,851 €	6,238 €
>100<500	66	14,003	34,360,799 €	2,454 €
>500<1000	4	3,009	3,501,090 €	1,163 €
<1500	2	2,346	5,398,332 €	2,301 €
<2500	1	2,200	4,302,900 €	1,956 €
TOTAL	302	26,025	98,543,942 €	tot/ ave/pri/he 3,786 €

Going forward, the PAK will focus on its strategy to complete our task of privatisation and liquidations including the agricultural land.

The strategic upcoming privatisations remaining to be dealt with are as follows:

Trepca

Trepca is a conglomerate with assets and branches located in virtually all regions of the country including in the northern part of the Republic of Kosovo. Its extractable mineral wealth has been the subject of heated debate with expert opinions on valuation ranging from €8 to €12 billion. In the former Yugoslavia it was one of the largest employers with more than 20,000 workers. Trepça is made up of 40 subsidiary enterprises that include its main mineral and metallurgical components, processing capacities and other industrial products as well as supporting service activities for production, processing and technical support services. The majority of these are in the territory of the Republic of Kosovo but also abroad. Hence without any doubt Trepça has an extraordinary importance for the Republic of Kosovo and its citizens and is pivotal to the economy, society and politics of the country and indeed to some of its neighbours.

The Trepca conglomerate was not immune from political interference and interim measures during the Milosevic regime and parties with ‘claims’ against the assets started to emerge that resulted in suspension of executions as a result of a ‘moratorium’ imposed by the SCSC following a request from the UNMIK SRSG. In November 2005, UNMIK issued a Regulation (2005/48) on Reorganisation and restructuring of certain enterprises. With the benefit of hindsight, it is clear that 2005/48 is less than ideal and, if used, would result in the control of Trepca’s destiny being ceded to a private sector administrator. As a consequence, 2005/48 has been replaced with a new reorganization law that will ensure that reorganisation of Trepca is managed and controlled by the Agency for the benefit of the citizens of the Republic of Kosovo. The Agency will have the power to engage the services of international mining and insolvency experts to design a reorganization plan that will be best suited to this complex enterprise together with specialised legal experts to address claims.

The Agency remains convinced that any plan for revitalization of Trepça must happen as soon as possible but must comply with the internationally recognized standards in regards to the re-organization and restructuring of strategic enterprises. This will require significant engagement of all relevant stakeholders because successful revitalization of Trepça in essence implies that the enterprise should be freed from inherited problems and given the opportunity to flourish again.

Brezovica

Tourist Center Brezovica is located in Strpce, municipality in the south-western corner of the Gjilan region and its ski lifts go right to the border with Republic of Macedonia to the south.

SOE Brezovica Ski Centre- is the only winter tourism centre in Kosovo having exceptional natural conditions for skiing. The Enterprise currently employs 225 people who are mainly working in hotel facilities. Due to the fact that similar facilities do not exist in Kosovo, Brezovica has no significant local winter tourism competitors. Brezovica has all prerequisites to become one the best recreation/ski resort in this part of the Balkans. It provides attractive views from the Sharr mountain range and offers excellent climatic conditions enabling skiing from November to May.

But Brezovica requires substantial investments and very careful planning. The Agency in close cooperation and with the support of the ECLO in Kosovo has managed to prepare a plan for future development and expansion in this area and currently is planning for the necessary pre privatisation steps.

Liquidation

There are 600 SOEs under PAK's mandate and all of them will be the subject of liquidation as this is the only legal method available to identify creditors and owners who are entitled to the proceeds of privatisation and any assets sold during the liquidation process.

The KTA commenced 120 liquidations but were unable to finish them for a variety of reasons but a significant cause was the lack of a liquidation methodology and essential liquidation management tools. PAK has started an additional 59 liquidations and commenced a series of liquidation asset sales. Clearly the liquidation programme is in its early stages with only two liquidations completed at the time of this report.

In general, liquidation can be divided into three components; realisation of assets, dealing with claims and distribution of funds to eligible creditors and any surplus will go to the Kosovo Budget. But the most time consuming part is dealing with claims. A chart showing the liquidation time line pursuant to the existing laws is provided at the end of this section of the report. It will be seen from this chart that the minimum timeline is 42 months (in practice this is much longer when delays occur that are outside the control of the Agency – such as delays in the Courts). It is estimated that the combined effect of changes to the PAK law and the SCSC law will result in reducing the 42 months timeline to maximum 20 months.

It is clear that the liquidations have been taking too long and the exceptionally slow rate of case closure needed to be remedied. Various estimates based on existing legislation and practice indicated that it would take 18 to 20 years to complete the liquidation process at a very significant cost estimated at over € 100 million.

The Agency examined all areas of activity and conducted a comparison of Kosovo Law and Regulation with other countries in the region. This review also took particular account of the World Bank Recommended Principles for Effective Creditor Rights and Insolvency Systems and special attention was paid to the processing and payment of claims (which is the time consuming component of all insolvency systems).

It became apparent from this review that shortcomings on several fronts were contributing to the problems in Kosovo. Also, there were internal and external factors influencing the outcomes and all needed to be addressed if a solution was to be found.

Firstly, the Kosovo liquidation process was designed to respect the requirements of the Comprehensive Proposal for the Kosovo Status Settlement with special emphasis on the protection of the interests and human rights of minorities. The result was a highly complex procedure with review layers that are unique to Kosovo coupled with an appeal system that proved to be unworkable in practice. Unwittingly, the legislation worked against the very interests it was designed to protect, denying claimants their right to be paid and creating hardship for workers with entitlements under the 20% scheme. Kosovo, quite unlike any other country in the region, has independently appointed members of liquidation committees, review committees, the PAK Board Secretariat and three non executive PAK board members. It became obvious, that the PAK law as drafted is singularly unsuited to enable efficient liquidation and the Agency's ability to make distributions to workers under the 20% scheme was irretrievably compromised by shortcomings in the structure and functioning of the Special Chamber of the Supreme Court not to mention that Court's failure to recognise PAK and provide the Agency with the right to a fair trial.

In Kosovo, first instance determination of whether a claim will be accepted or rejected rests with the Liquidation Committee (LC). A rejected claim could be referred by the claimant to an internal PAK Liquidation Review Committee (LRC) that was chaired by an ICO appointee. If the claimant is unhappy with the LRC decisions, the claimant had the right to refer the claim to the SCSC and then, within itself, the SCSC has yet another appeal procedure. In other words, claims could go through four assessments before being finally determined. By comparison, the majority of jurisdictions provide a two stage determination, the first being the performed by the liquidator and the second by the Courts. Crucially a final appeal is provided and may be referred to a Constitutional Court in matters that relate to human rights.

The LC and LRC structure was not working and decisions on claims were often not being communicated to claimants. In several cases, claims were rejected because they were not submitted in English! It was abundantly apparent that changes could be introduced that would speed up the processing of claims, distribution of funds and closure of liquidation cases without in any way compromising accountability and transparency but these changes would only be possible with the introduction of new structures.

The new PAK law provides for the replacement of the LC and LRC structure by Liquidation Authorities (LA) serviced and supported by a panel of professional firms that will be paid on results to process claims and complete liquidations. The new incumbents will be selected based on experience and ability to deliver the required services. A Framework Contract (FC) will be established to facilitate this arrangement and contractors will report to PAK which will manage delivery and approval the work done. The Agency is confident that the new PAK law will provide a legal framework that is compliant with World Bank Recommended Principles for Effective Creditor Rights and Insolvency Systems. This new legal framework will speed up the processing of claims and the minimum 42 months needed to process a claim under the old PAK law will be reduced to maximum 20 months. There are no hard statistics of the pattern of distributions to creditors and owners. However, the World Bank Doing Business annual survey indicates a range of between 2 and 3.3 years to complete liquidation for 8 countries in the region.

A reduction of the liquidation timeline would be tremendously beneficial to creditors, owners and the Kosovo economy at large. PAK currently holds almost € 530 million in trust funds that is destined for its rightful claimants and that includes the Kosovo budget which is entitled to any liquidation surplus.

The following chart is a ready reckonner that shows the steps necessary to complete liquidation under the existing law. The New PAK Law combined with the new SCSC law aim to reduce the time taken from 42 months to maximum 20 months.

THE PROCESS OF LIQUIDATION AND DEALING WITH CLAIMS

Pursuant to PAK Law, PAK Operational Policies, UNMIK "SCSC" Regulations 2008/4 and 2008/19 & Administrative Direction 2008/6,

No	Phase	Controlling Body	Step		Reference	Ready Reckonner: Activity Days	Cum Days from Start	% Completed (Days)	Days to End	% to Complete (Days)
1	Liquidation	Liquidation Committee ("LC") (1 ICO Member)	1	**Board Decision to Liquidate SOE**		0	0	0%	1,264	100%
			2	Liquidation notice to Business Registry	PAK Op Pol 6.4	5	5	0%	1,259	100%
			3	Minimum notice of sale of assets	PAK Op Pol 6.4 (d)	30	35	3%	1,229	97%
			4	Examination of SOE Books and Records	PAK Op Pol 6.5	0	35	3%	1,229	97%
			5	Inventory of Assets	PAK Op Pol 6.5	0	35	3%	1,229	97%
			6	Notices to all known Creditors	PAK Op Pol 6.5	0	35	3%	1,229	97%
			7	Determination of method of Assets Sale	PAK Op Pol 6.5	0	35	3%	1,229	97%
			8	Advertise Liquidation - 1st Advert	PAK Op Pol 6.5	0	35	3%	1,229	97%
			9	Advertise Liquidation - 2nd Advert	PAK Op Pol 6.5	0	35	3%	1,229	97%
			10	Publish List of Assets for Sale	PAK Op Pol 6.5	0	35	3%	1,229	97%
			11	Notification to Courts to suspend legal actions	UNMIK Reg 2005/48 S.49.1	0	35	3%	1,229	97%
			12	Claims to be received within 60 days of 2nd advert	PAK Op Pol 6.9.1	60	95	8%	1,169	92%
			13	Organise Sale of Assets	PAK Op Pol 6.11.1 (Sale< 60 days of step 9) -LC may adjourn	0	95	8%	1,169	92%
			14	LC assessment of Creditor Claims	PAK Op Pol 6.9.2	30	125	10%	1,139	90%
			15	LC notification of its assessment of Creditors Claim	PAK Op Pol 6.9.2	5	130	10%	1,134	90%
			16	Creditor appeal against LC assessment of claim	PAK Law S.24.3	60	190	15%	1,074	85%
2	Appeal 1 (Internal)	Liquidation Case Review Committee ("LCRC") ICO Chaired	17	LCRC review of LC assessment of claim	PAK Law S.24.6	60	250	20%	1,014	80%
			18	Time allowed for LCRC review	PAK Law S.24.7	30	280	22%	984	78%
			19	Notification of LCRC decision	UNMIK 2008/6 s.69.3	14	294	23%	970	77%
			20	LCRC Advert in the event of non delivery or returned notifications	UNMIK AD 2007/1 S 8.3	14	308	24%	956	76%
			21	Notification of Creditor appeal against LCRC decision	UNMIK 2008/6 s.69.5	30	338	27%	926	73%
3	Appeal 2 (1st Instance)	SCSC Trial Panel	22	Creditor appeal to SCSC against LCRC review	PAK Law S.24.8 & UNMIK 2008/6 S.28.2 (d)	270	608	48%	656	52%
			23	PAK defence of a Claim to be filed with SCSC	UNMIK 2008/6 S.29.1 - may be extended by SCSC	30	638	50%	626	50%
			24	SCSC Proceedings to consider Claims	UNMIK 2008/6 S.28. Duration not specified -Estimated	90	728	58%	536	42%
			25	Creditor deadline for submission of corrected Claim	UNMIK 2008/6 S.28.5 Duration not specified -Estimated	14	742	59%	522	41%
			26	SCSC Proceedings to consider corrected Claims	UNMIK 2008/6 S.28.5 Duration not specified -Estimated	30	772	61%	492	39%
			27	Supplementation of Claim & defence by reply and rejoinder	UNMIK 2008/6 S.30 Duration not specified -Estimated	90	862	68%	402	32%
			28	SCSC preliminary report following close of written proceedings	UNMIK 2008/6 S.34.1	30	892	71%	372	29%
			29	SCSC orders further burdens of proof	UNMIK 2008/6 S.34.3 Duration not specified -Estimated	30	922	73%	342	27%
			30	Application to set a default judgment aside	UNMIK 2008/6 S.53.2	30	952	75%	312	25%
4	Appeal 3 (2nd Instance)	SCSC Appeal	31	Appeal to the SCSC Appellate Panel	UNMIK 2008/6 S.59.1	60	1,012	80%	252	20%
			32	Filing a response to appeal to the SCSC Appellate Panel	UNMIK 2008/6 S.61.1	60	1,072	85%	192	15%
			33	SCSC Proceedings to appeal and response	UNMIK 2008/6 S.61.4 Duration not specified -Estimated	60	1,132	90%	132	10%
			34	Reply and rejoinder by parties to the appeal	UNMIK 2008/6 S.62	30	1,162	92%	102	8%
			35	Parties may submit additional evidence to Appelate Panel	UNMIK 2008/6 S.64	15	1,177	93%	87	7%
			36	SCSC Disposal of Appelate Proceedings	UNMIK 2008/6 S.65 Duration not specified -Estimated	30	1,207	95%	57	5%
5	Closure	LC (1 ICO Member)	37	Final Distribution of Funds	PAK Law S 5.7 (b) Interims not ruled out	10	1,217	96%	47	4%
			38	Board Approval of Conclusion of Liquidation	Board Meetings Once a Month (PAK Op Policy 6.17.1	29	1,246	99%	18	1%
			39	Application to SCSC for Order of Closure	Estimated	15	1,261	100%	3	0%
			40	Notice to Business Registry of Case Closure	Estimated	3	1,264	100%	0	0%
							42	Months		

20% Workers Lists

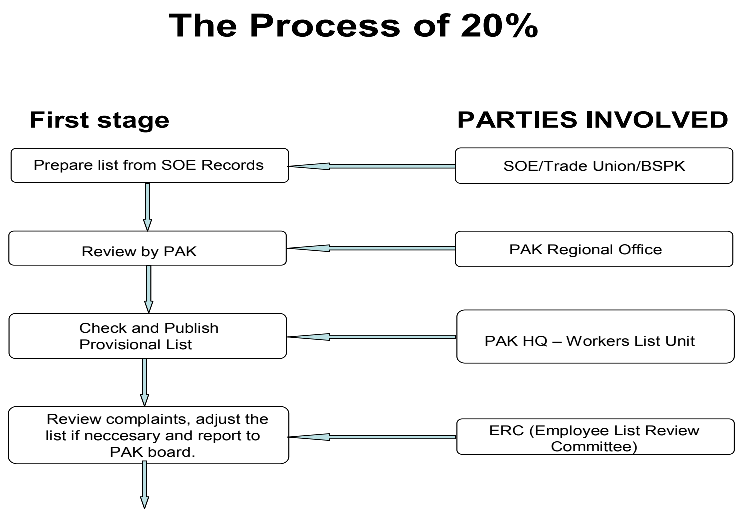
Because of the special status of employees in Socially-owned Enterprises in relation to these Enterprises and the impact that the privatization will have on this status, eligible employees are entitled to a share of the proceeds from privatization and liquidation on a priority basis.

The process begins once the first sale of an SOE's assets has been successfully completed and 20% of the proceeds is set aside as a trust fund for the benefit of
eligible employees. However, the current process is quite complex and lengthy, particularly when it comes to the review and decision making by the SCSC.

Essentially the process of the 20% can be divided into three main stages as described below:

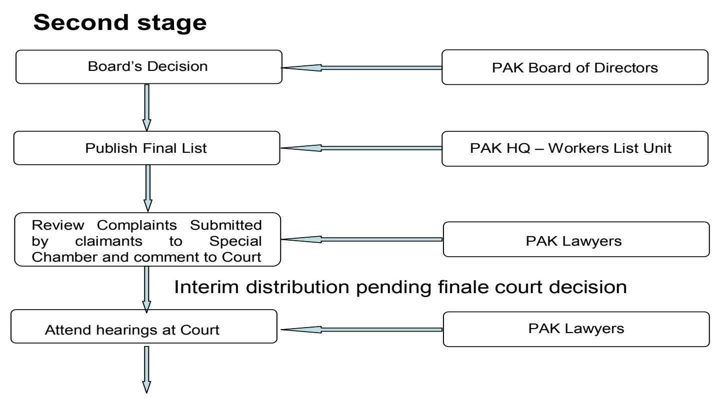
First stage

The first stage is the preparation of the so-called initial list, which is prepared by the SOE representatives and reviewed by PAK. As soon as the initial list is ready it published in the newspapers. The purpose is to allow workers the opportunity to review the list and provide PAK with any corrections they believe need to be made.



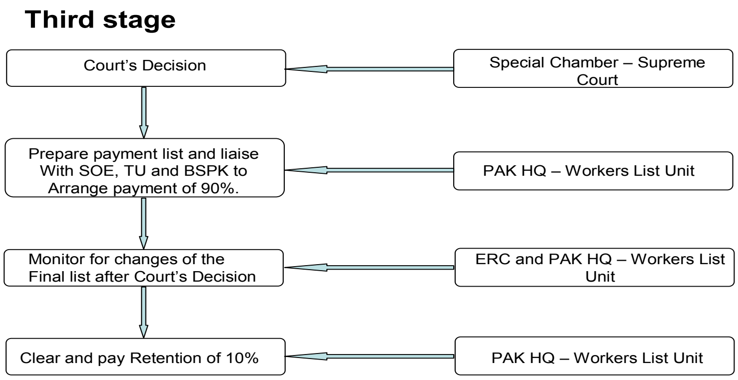
Second stage

The second stage is the preparation of the final list after the review of all claims received in relation to the initial list. Once approved by the PAK Board of Directors, the final list is published and any aggrieved party may address their complaints to the SCSC.



Third stage

The third stage includes the review of all claims against the final list by the SCSC. Between the receiving of the claims and the decision of the SCSC, the Agency with the approval of the PAK Board of Directors can proceed with interim distribution of part of the 20% pending the final decision of the SCSC.



It will be seen from the following summary that only 60 of the 193 final lists submitted to the SCSC have been approved by this Court. It will be appreciated that the full value of workers entitlements cannot be released by PAK until a list is approved by the SCSC. Notwithstanding, PAK has initiated an interim distribution scheme to relieve the hardship on workers whereby part of the amount to be distributed is paid out and to date the total paid out by PAK amounts to €26 million.

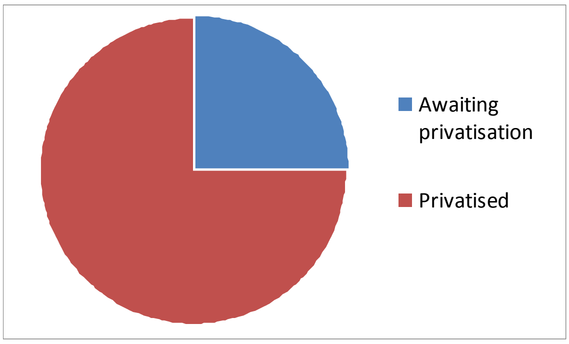
Summary of 20% Workers List Distributions	KTA (over 6 years)	PAK (over 3 years)	Totals
Number of Preliminary Lists	41	119	160
Number of Final List	66	127	193
Number of Lists approved by SCSC	59	1	60
Total amount to be distributed	€ 21,144,934	€ 41,204,274	€ 62,349,208
Amounts distributed (including interim distribution)	€ 15,657,121	€ 26,083,131	€ 41,740,252
Number of Employees paid (final and interim distribution)	9,394	12,918	22,312

But the full value of the final lists submitted to the SCSC amounts to €62 million (out of total entitlements of over € 100 million) and the remaining €21 million cannot be released until the SCSC approves the final lists. It will also be noted that PAK has finalised 127 workers lists in its 3 years of existence and this compares very favourably with the 66 lists finalised by KTA over a period of 6 years. This is the result of a deliberate 2009 policy decision by PAK to speed up the processing and distribution of worker entitlements.

Summary analysis

PAK's core activities namely privatisation, liquidation, 20% workers lists and the disposition of the trust funds from KTA during 6 years period and PAK during its 3 years period is summarised as follows:

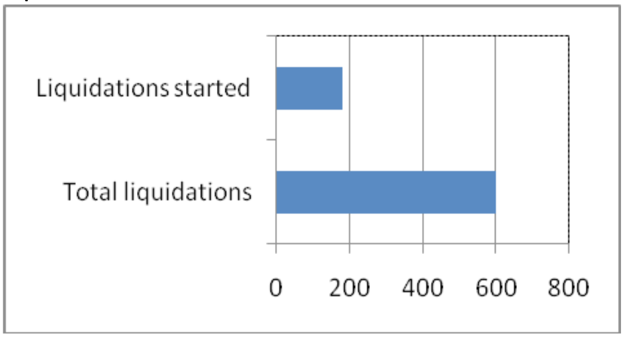
Privatisation



There are 600 SOEs listed in the PAK register, and approximately 400 of them were considered viable businesses or assets that are suitable for privatisation and the remained 200 that are or will be dealt through the liquidation process.

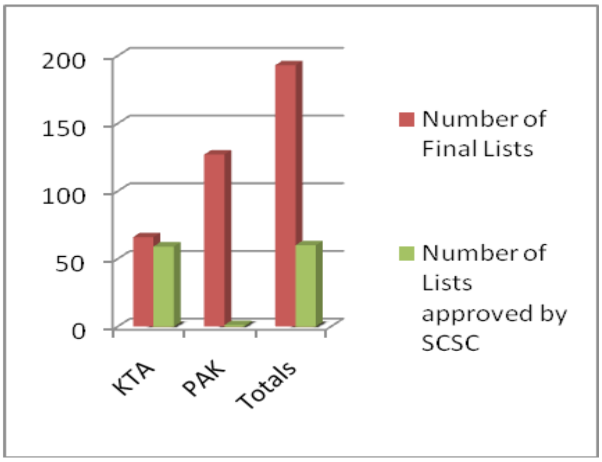
With approximately 300 privatisations already completed out of a potential 400 SOE's privatisation is well on its way to being finalised.

Liquidation



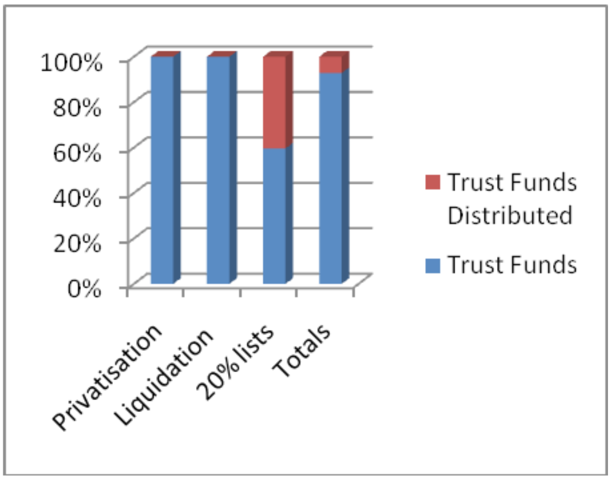
With 179 liquidations started and the majority less than 10% complete, there is a lot of work to be done to finish the liquidation process. And liquidation case closure controls the distribution of funds to claimants and owners.

20% Workers Lists



In the last 2 years, PAK has finalised 127 lists but only one has been approved by the SCSC of Kosovo. There is an urgent need for reform of the SCSC of Kosovo to get workers lists approved and so enable PAK to distribute over €60 million to the eligible employees.

Trust Funds



The Agency has almost €530 million held in trust that cannot be distributed until liquidations are completed with the approval of the SCSC of Kosovo. The recently proposed changes to the PAK and SCSC laws will address the bottlenecks and release the trust funds to rightful creditors and owners which will undoubtedly, benefit the domestic economy.

Corporate Governance

PAK has extensive administrative authority over SOEs as provided by PAK Law Article 6. This authority includes the power to take any action that the Agency considers reasonable to preserve or enhance the value, viability or governance of an enterprise. This authority is almost universal and is detailed in 19 sub articles that are not repeated here. In addition, PAK Law, Article 7 grants the Agency general management powers over the SOEs and allows the PAK the discretion to allow the day to day business of the SOEs to be conducted by the managing and other control bodies of the SOE without prejudice to the powers of PAK as regards privatisation and liquidation.

The PAK itself collects and collates data including financial reports from SOEs on a regular basis to support the privatisation and liquidation processes.

The Corporate Governance Division manages the SOE's which are not yet subject of Privatisation or Liquidation.

It also monitors those SOE's which are subject to commercialisation contracts from the past, follows up on the investor commitments of SOE's privatised by KTA through the method of Special Spin-off and manages the SOE's that are under the Direct Administration of PAK. Finally the Corporate Governance Division supervises the ongoing Trepca operations.
As is noted elsewhere in this report there is only one SOE remaining that is subject to a commercialisation contract (Fapol, Podujeva).

The supervision and control of SOEs not yet privatised or liquidated has brought cases of management failure to PAK's attention and in egregious cases, PAK has taken control of the enterprise through Direct Administration. Where possible, the enterprise is privatised in order to transfer it to the private sector and in cases where there is no prospect of recovery, the SOE is liquidated. Currently, PAK has 7 SOEs under Direct Administration and all are under active consideration for privatisation or liquidation in the short term future.

Special Spin Offs (SSOs) involved commitments on the part of investors in terms of employment and investment and many of these have encountered difficulties that have resulted in contractual defaults. As stated above the PAK does not apply the method of special spin-off privatisation, nevertheless the dealing with the inherited special spin offs proved to be extremely complex and time consuming for the management and in particularly for the Board of Directors. The complications occurred mainly due to the so-called tailor made contracts by the predecessor agency and in particularly due to default and negligent monitoring by the KTA of the fulfilment of obligations in regards to the investment and employments commitments.

Of the original 25 SSOs, 15 complied with their commitments and have been released from PAK monitoring. The most notable of the success stories are enterprises such as Ferronikeli , Peja Brewery, Banja e Kllokotit, IMN Brick Factory, Balkani, Rahoveci Winery, Pipe Fctory, Tullorja Kemnice, Mulliri Ferizaj, Seed Factory, Flour Mill Fushe-Kosova, M&Sillosi, Modeli etc.

At the other end of the spectrum, Llamkos in Vushtri went bust in a spectacular fashion in 2008 and its holding company in Bulgaria went into liquidation in 2010 with over €1 billion in debts. The demise of Llamkos resulted from wholesale asset stripping and mismanagement resulting in the loss of 450 jobs that was a major blow to the local community. PAK went back into possession of Llamkos in 2010 and following a protracted hunt for a new investor is now at an advanced stage in securing international investors who have the expertise and marketing skills to put this valuable plant back into production. The Corporate Governance Division continues to monitor 9 SSOs.

A summary table with details on SSO's follows below.

A Comprehensive Summary of Special Spin offs

No.	NewCo	Date of contract	Sale Price	Committed Investments	Value according to audit	% of fullfilment	Committed Working places	Number according to audit	% of fullfilment
SSO released from Commitment Agreement by KTA									
1	Perparimi	23/03/2005	1,198,749	2,000,000	2,001,530	100.08%	150	154	102.67%
2	SunflowerOil	26/06/2006	460,000	-	-	-	169	174	102.96%
SSO released from Commitment Agreement by PAK									
3	Banja e Kllokotit	24/11/2005	1,805,550	3,150,000	3,252,000	103.24%	201	201	100.00%
4	Peja Brewery[5]	29/06/2006	11,130,000	15,206,000	15,234,098	100.18%	612	612	100.00%
5	IMN Brick Factory	28/07/2006	5,689,432	-	-	-	666	667	100.15%
6	Ballkan L.L.C	21/07/2005	1,400,000	6,000,000	5,902,277	98.37%	375	375	100.00%
7	Feronikeli	20/04/2006	30,554,371	20,000,000	59,677,464	298.39%	1,000	1,045	104.50%
8	Rahoveci Winery	31/07/2006	4,302,900	5,000,000	4,772,692	95.45%	250	252	100.80%
9	IMK Pipe Factory	20/11/2007	3,657,000	13,200,000	12,488,583	94.61%	360	364	101.11%
10	Tullorja Kamenice	04/06/2008	160,189	-	-	-	81	84	103.70%
11	Mulliri Fabrika e Bukes, Ferizaj	28/04/2008	568,750	5,000,000	4,673,121	93.46%	80	83	103.75%
12	Seed Factory[1]	11/06/2006	201,999	-	-	-	-	-	-
13	FlourMill Fushe Kosova	10/07/2007	2,505,555	15,000,000	14,362,698	95.75%	260	260	100.00%
14	Shpk"M&SILLOSI"	11/05/2005	1,000,000	19,887,564	19,328,797	97.19%	358	367	102.51%
15	Modeli	13/04/2007	630,000	2,200,000	2,040,906	92.77%	170	170	100.00%
SSO to which Call Option was exercised									
16	Lamkos Steel LLC	21/07/2005	4,151,000	15,000,000	1,666,265	11.11%	500	500	100.00%
SSO which are under monitoring									
17	Minex[2]	12/07/2010	103,000	-	-	-	145	145	100.00%
18	Hotel Iliria[3]	31/07/2006	1,610,000	3,000,000	5,987,044	199.57%	250	131	52.40%
19	KosovaTex	31/08/2006	3,112,001	4,000,000	4,073,502	101.84%	200	207	103.50%
20	FAN[4]	23/03/2006	2,310,000	2,800,000	1,808,000	64.57%	236	138	58.47%
21	NBI Suhareka	27/08/2007	4,175,999	8,600,000	4,234,550	49.24%	345	156	45.22%
22	Grand Hotel	13/10/2006	8,160,000	20,200,000	1,244,373	6.16%	540	540	100.00%
23	Xim Stezovci	13/12/2007	730,000	14,300,000	138,073	0.97%	238	11	4.62%
24	Magnezite Mine Goleshi LLC	11/12/2007	810,000	16,200,000	117,570	0.73%	355	58	16.34%
25	IDGJ Tabacco	14/08/2006	1,400,000	5,599,000	1,057,876	18.89%	799	287	35.92%
		Total	**91,826,495**	**196,342,564**	**164,061,419**		**8,340**	**6,981**	

[1]New Co Seed Factory as a condition of the Commitment Agreement had the turnover in the amount of 200.000€, which shall be achieved as a result of production, processing and sale of seeds

[2] Employees presented in the table for New Co Minex, is the number of employees reported by the buyer for the first year of reporting which is subject to external audit.

[3] Employees presented in the table for New Co Hotel Iliria, is the number of employees reported by the buyer for the first year of reporting which is subject to external audit

[4] NewCo FAN during the regular two year commitment period has fulfilled the employment commitment in compliance whith the Commitment Agreement.

Our Strategy

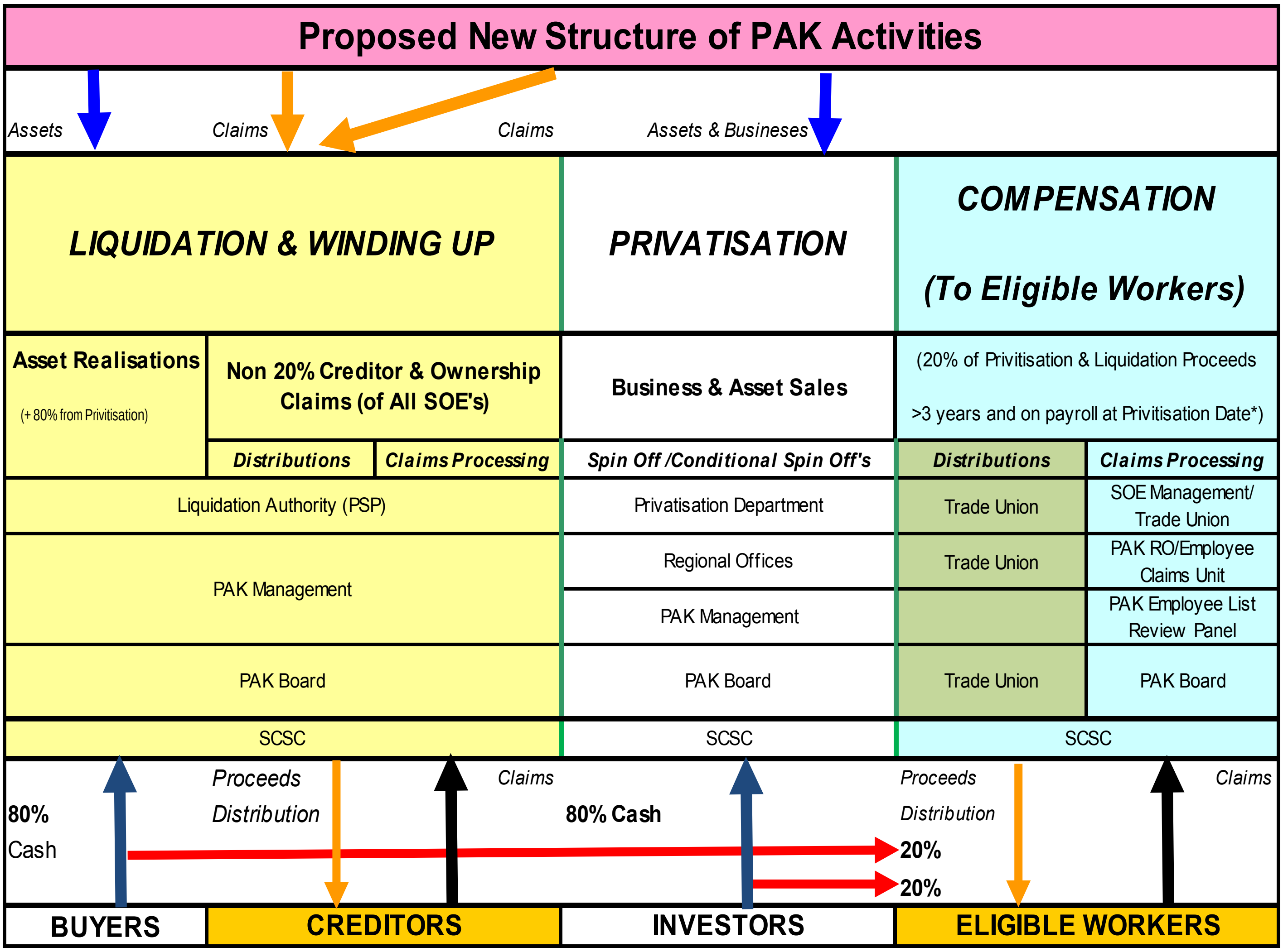
PAK's strategy is to take advantage of the revised PAK law and build a new liquidation procedure that is fit for purpose, will comply with legal deadlines and speed up the distribution of proceeds to rightful creditors and owners and renewed efforts will be made to speed up the distribution of funds to entitled workers under the 20% scheme.

A long range plan for the Agency will see it become a people-led organisation that will complete the privatisation of all viable assets and arrange the sale of any remaining assets releasing them for more productive use in the private sector.

The Agency will deal fairly and efficiently with claims and work effectively with external professional service providers who will assist the completion of 600 liquidations.

There will be better integration of the Agency's regional offices and headquarters with new policies and practices that will create a service culture to ensure that privatisation and liquidation are conducted in a timely and efficient way. As part of this approach, greater specialisation of staff will be introduced to improve work flows and outcomes.

Other goals of the new management team include ensuring that PAK's commitments are met by undertaking a restructuring of the Agency itself and a renewed focus on the delivery of responses to claimants in a timely and professional manner with due recognition of the hardship caused by the delays to date in responding to and settling claims



Policies, Objectives and Benefits of new legislation

Enclosed below are the policy objectives and benefits of change of the respective legislation, namely new PAK law and specific annex on liquidation, new Law on the reorganisation of certain enterprises considered strategic to the Kosovo economy and the thoroughly revised Law on the Special Chamber of the Supreme Court of Kosovo that will deal exclusively with matters related to the PAK.

New Law on PAK

Economic backdrop

Economic reconstruction and development of Kosovo and the welfare of its population is of paramount importance and requires the proper administration, privatization and liquidation of socially-owned enterprises in a timely manner. PAK liquidations are not progressing. This state of affairs is not sustainable. Public pressure is growing for the release of the trust funds which will inject valuable liquidity into the domestic financial market. The demolition of the old SOE environment and its replacement with a vibrant growing private sector is urgently needed.

Social implications

Distributions to workers, creditors and claimants is happening too slowly thereby contributing to economic hardship, especially for the unemployed. The transfer of assets from SOEs to private sector ownership will contribute to the creation of sustainable employment.

Desirable Policy Outcomes

A revised PAK law will accelerate the Privatisation and Liquidation with the following Government policy objectives in mind:

- Speed up the transfer of idle assets to the private sector;
- Improve the public image of the Agency through greater transparency and accountability;
- The Agency will become more accountable to the public and to creditors generally;
- Speed up the distribution of over a billion Euros to creditors, claimants and the Budget.

Finally expedite domestic and foreign investment opportunity for potential investors who are interested in assets currently in the ownership of SOEs thus contributing to general economic development.

Legal environment

The exiting PAK law contains cumbersome layers of review and appeals that are causing serious bottlenecks and significant delays. These are unintentionally delaying the distributions of the proceeds held in trust to the very same parties that this legal structure was designed to protect, namely the former employees, the creditors and rightful owners. It is vital that the legal environment is rewritten immediately to facilitate and accelerate the privatization and in particularly the liquidation process by removing all unnecessary technical and administrative processes for the benefit of the people of Kosovo and the economic welfare of this new state, which in essence is the imperative of the entire exercise and also the Constitutional Category.

Key elements of the proposed new law

- Simplified consolidated law that removes the need to cross reference to UNMIK materials;
- Improved powers for the Agency to control, speed up and administer privatization and liquidation;
- Restructure the ICO engagement at the Agency resulting in an increase in the Agency's responsibilities for the Liquidation process;
- Create new funding principles for the Agency with flexibility to raise additional funds from donor organizations. This will significantly reduce the burden on the Kosovo Budget and make Agency funding subject to the Law on Public Financial Management and Accountability;
- Facilitate the introduction of Professional Service Providers to accelerate liquidation process;
- Improved powers to appoint legal and privatization experts as transaction advisers will make privatization and liquidation more successful;
- Reduce the liquidation timeline from 42 to maximum 20 months following World Bank principles;
- Enable earlier release of trust funds to creditors and claimants with surpluses to the budget;
- Coupled with a new law on Reorganization and a revised Special Chamber of Supreme Court law, a new PAK law will benefit privatization and liquidation process and contribute to economic development by increasing the accountability of the Agency and engendering the confidence of all stakeholders, creditors included.

New Law on Reorganisation of Certain Enterprises

Economic backdrop
Trepca is currently operating on a small scale with minimal income and large expenditures (averaging 10% of historic production). As a consequence this mining group is endemically loss making and a serious drain on the Kosovo Budget and the donor community. This state of affairs is not sustainable.
The existence of the mining assets in the Northern Part of Kosovo that refuse to report to or cooperate with (with the exception of receipt of Kosovo budget subsidies) Kosovo institutions is unsustainable.
Significant investments required both in mines and smelters in order to implement improvements necessary to revive Trepca mining and metallurgical operations.
But expert opinion indicates the group has recoverable mineral reserves valued between 8 and 12 Billion Euros and Trepca has the potential to become one of the biggest foreign currency earners in the Balkans.

Social implications
The mining workforce is aging rapidly (average age is 55 years). Within 3 to 5 years the entire workforce will be of pensionable age thus losing valuable experience and technical skills. A revitalised Trepca has the capacity to create significant sustainable jobs (certainly the biggest employer in the state) not to mention the significant knock on benefits of secondary employment and business service provision

Desirable Policy Outcomes
The legal framework will be revised and a new law created to enable successful revitalization of Trepca with the following Government policy objectives in mind:

- Revitalization of the mining industry in Kosovo through the privatization/concession/ liquidation of Trepca,
- Creation of significant sustainable employment throughout the country,
- Invite foreign direct investment from international mining groups with global reach, technical expertise, investment capability and capacity to absorb the cost of environmental clean up to participate in the revitalization,
- Create export earning opportunities and through these significant royalty earnings for the benefit of the Kosovo budget

.
Finally create the country's largest investment opportunity and put Kosovo's natural resources to work for the benefit of the Republic of Kosovo and its citizens.

Legal environment
The Privatization Agency of Kosovo (PAK) is battling to extend the Decision of the moratorium issued by Special Chamber of the Supreme Court of Kosovo (SCSC) with the end date to December 2011.
The current PAK law combined with UNMIK Regulation 2005/48 (originally drafted to accommodate the reorganization and liquidation of Trepca) do not provide an adequate legal platform for a workable methodology to reorganize or restructure Trepca.
It is vital that the legal environment is rewritten immediately to facilitate successful privatization for the benefit of the people of Kosovo and the economic welfare of our new state.

Key elements of the proposed new law

- Flexible reorganization conditions to attract the global mining investors,
- Recognition of genuine claimants and fair settlement of claims according to international benchmarks,
- Court supervision of the process to create transparency and disclosure,
- Creditor representation to ensure fairness, benefit from external advice and ensure buy in,
- Adequate powers for the Privatization Agency of Kosovo to control and administer the process,
- Wide ranging powers to appoint mining, legal and privatization experts as transaction advisers for the benefit of the Republic of Kosovo and its citizens
- Timely payment of claims in compliance with World Bank principles of creditor rights.

New Law on the Special Chamber of the Supreme Court of Kosovo

Background

Special Chamber of the Supreme Court of Kosovo (SCSC) was established in 2003 for the sole purpose of adjudicating claims relating to the decisions or actions of the then Kosovo Trust Agency (KTA). The KTA was disbanded June 2008 and replaced by the Privatisation Agency of Kosovo (PAK) which was formed under the Constitution of the Republic of Kosovo.

From the outset, the SCSC refused to recognize PAK as the legal successor of the KTA nor would it recognize the Kosovo Constitution. The relationships became more unworkable when the Special Representative of the UN Secretary General (SRSG) claimed for himself exclusive authority over any KTA related matter even though the KTA no longer existed and the SRSG was obliged to rely on PAK and return all the former KTA records.

The need for fundamental change was thus established and the PAK has been campaigning for change since its inception.

The opportunity to resolve the conundrum came in March 2011, when PAK won a landmark case against the SCSC in a 'human rights' violation case heard by the Constitutional Court which ruled that the SCSC failure to recognize PAK denied the Agency the right to a fair trial. Apart from the 'recognition' problem, the SCSC's administration is chaotic and there is a significant backlog of cases thus denying PAK and claimants the justice they deserve.

Economic reconstruction and development of Kosovo and the welfare of its population is of paramount importance and a functioning efficient SCSC is pivotal to privatization and liquidation of socially-owned enterprises in a timely manner. Also there is public pressure for the release of the Agency's significant trust funds which will inject valuable liquidity into the domestic financial market.

Far reaching change in the status and functioning of the SCSC is therefore urgent.

Desirable Policy Outcomes

A revised SCSC law will facilitate the success of Privatization and Liquidation conducted by the Agency with the following Government policy objectives in mind:

- Speed up the transfer of enterprises and assets to the private sector
- Positively affect the social status of former employees by accelerating the distribution of 20% of proceeds from privatization and liquidation of SOEs.
- Strengthen the accountability of the Agency to the public and to creditors generally.
- Speed up the distribution of Trust Funds to creditors and claimants.

Legal environment

The exiting SCSC law contains lengthy time limits that are causing serious bottlenecks and unwanted delays of proceedings.
Lengthy appeal procedures are negatively affecting the closure of liquidations that in turn impedes distributions of trust funds to creditors and claimants.
A backlog of workers lists related complaints is denying former SOEs workers their rightful share of privatization and liquidation proceeds.
It is vital that the legal environment is rewritten immediately to facilitate successful privatization for the benefit of the people of Kosovo and the economic welfare of this new state.

Key elements of the proposed new law

- Simplified consolidated law that removes the need to cross reference to UNMIK materials;
- Significantly changes in the composition of SCSC and its panels, thereby increasing the presence of national judges;
- increases the number of judges and panels handling privatization and liquidation cases;
- Increases the expediency of proceedings by eliminating the discretion of SCSC to refer cases to lower courts;
- Enables faster judicial reviews of claims and complaints by setting stricter deadlines for SCSC hearings;
- Expedites judicial reviews of challenges to decisions on claims in liquidation.

Coupled with a new law on Reorganization and a revised PAK law, a revised SCSC law will speed up privatization and liquidation and thus contribute to economic development.

Conclusions

Privatisation and Liquidation is a pillar of economic transformation of Kosovo and this statement is reflected in the key economic criteria cited in the European Union Partnership Agreement for Kosovo which states "- Significantly advance the privatisation of former socially-owned enterprises in accordance with the Privatisation Agency schedule".

All economic indicators show that the economy of Kosovo is growing, a trend that is not enjoyed by some of our neighbours and some macroeconomic observers have pinpointed the privatisation and liquidation process as one of the key drivers of private sector growth. This information is a great encouragement to the Agency to continue its work, complete the privatisation of remaining viable assets and then finish the job by releasing all other assets for employment in the private sector through liquidation asset sales.

PAK strongly believes that it has performed well in difficult and challenging circumstances and in order to increase performance and continue with the smooth operations, there was an urgent need to identify the causes of slow privatisation and stalled liquidation which has been creating much righteous anger among creditors and claimants and especially unemployed workers with valid 20% claims who were not being paid within a reasonable timeframe.

Problems and their resolution

Over the past two years, the PAK has been the focus of numerous studies, observations, comments and recommendations by independent experts. Privatisation was considered to be too slow and criticism was levelled at the predecessor of PAK as a result. This reputation was inherited by PAK even though it was undeserved as PAK recognised the validity of this criticism and has speeded up the privatisation process. But this initiative proved a much more difficult task to achieve as the KTA privatised the larger more attractive enterprises and PAK is now down to dealing with the cases that are plagued with problems such as enterprises with questionable property titles or no titles at all, businesses that have lost their markets or skills base because they have been moribund for years. Notwithstanding, PAK is succeeding in difficult circumstances.

Liquidation has proved to be a huge problem. It took a lot of time to figure out the real source of the difficulty which proved to be the governing law and a poorly designed liquidation methodology. The 2008 PAK law contained cumbersome layers of review and appeals that were causing serious bottlenecks and significant delays. Adding to the situation, the slow pace of legal case processing at the Special Chamber of the Supreme Court compounded the problems leading to near collapse of the liquidation process. Ironically, this lethal combination of problems resulted in denying justice to the very people these laws were designed to protect namely the rightful creditors and owners.

Three new laws have been written to address the liquidation conundrum, a new PAK law, a new Reorganisation Law and a substantially rewritten law on the Special Chamber of the Supreme Court. These brand new laws will create a workable legal framework to speed up liquidation and provide the Agency with the wherewithal to start distributing the trust funds to its rightful owners.

These necessary adjustments in the current legislation were required in order to enable the proper functioning of the PAK and SCSC of Kosovo which will undoubtedly accelerate the overall process of privatization and particularly liquidation together with the distribution of 20% to the eligible employees. This will allow PAK to fulfil its mandate within a reasonable time frame.

Vision

The Board of Directors remains responsible for the leadership and direction of the PAK and is accountable to stakeholders for the overall performance of PAK.

PAK will seize the initiate and opportunities created by the new legal framework and will speed up both privatisation and liquidation. Furthermore, it is expected that the SCSC of Kosovo will be more diligent in the handling of legal cases and especially the approvals of workers lists.

Finally, the overall aim remains to ensure that the lessons learned in the recent times are comprehensively implemented. We realise that the medium term future PAK will become a smaller organization, but highly professional resulting in improved performance and reduced costs.

I can assure you that the PAK Board of Directors, the PAK management and its staff are determined to do everything possible to underpin and maintain confidence of all relevant stake holders in PAK.

Transparency is a pillar of democracy and market economy.

Dino Asanaj

Chairman of the PAK Board of Directors

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