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UNMIK/REG/2004/2
5 February 2004

REGULATION NO. 2004/2

**ON THE DETERRENCE OF MONEY LAUNDERING AND RELATED
CRIMINAL OFFENCES**

The Special Representative of the Secretary-General,

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

Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 1999/1 of 25 July 1999, as amended, on the Authority of the Interim Administration in Kosovo,

Recognizing that money laundering threatens Kosovo's economic development, rule of law, security, and stability, and contributes to an atmosphere conducive to organized crime, corruption and terrorism,

For the purpose of establishing a legal framework to deter and detect all forms of money laundering and related activity in Kosovo,

Hereby promulgates the following:

Section 1
Definitions

For the purposes of the present Regulation:

1.1 "Advocate" means a member of a Bar Association in Kosovo or in Serbia and Montenegro who is practising law in Kosovo;

1.2 "Banking Regulation" means UNMIK Regulation No. 1999/21 of 15 November 1999 on Bank Licensing, Supervision and Regulation;

- 1.3 “Bank” means an entity defined as a bank in the Banking Regulation;
- 1.4 “Beneficiary” means a person or entity which has the right to possess, use or convey property, even though the person or entity may not have legal title or have current possession or use of the property. Such right may exist either in law or because of an arrangement between the beneficiary and the owner or legal possessor and it need not be legally enforceable;
- 1.5 “BPK” means the Banking and Payments Authority of Kosovo;
- 1.6 “BPK Regulation” means UNMIK Regulation No. 1999/20 of 15 November 1999, as amended, on the Banking and Payments Authority of Kosovo;
- 1.7 “Business organization” means a person or persons defined as a business organization in section 2 of UNMIK Regulation No. 2001/6 of 8 February 2001 on Business Organizations;
- 1.8 “Certified accountant” means an accountant certified by a professional accounting association in accordance with section 6 of UNMIK Regulation No. 2001/30 of 29 October 2001 on the Establishment of the Kosovo Board on Standards for Financial Reporting and a Regime for Financial Reporting of Business Organizations;
- 1.9 “Client” means a person or entity which conducts a transaction with or uses the services of a bank, financial institution, attorney, certified accountant or licensed auditor. The term “client” includes the person or entity which conducts a transaction with or receives services from the bank, financial institution, attorney, certified accountant or licensed auditor, as well as any owner or beneficiary or other person or entity on whose behalf the transaction is conducted or the services are received;
- 1.10 “Currency” means an item, including a coin and a banknote, which circulates as a medium of exchange in Kosovo or elsewhere;
- 1.11 “Entity” means an entity that exists in a legally-recognized form, including but not limited to: a legal person, a business organization, an NGO, a political party, a trust, a socially-owned enterprise and a publicly-owned enterprise;
- 1.12 “Financial institution” means an entity other than a bank which conducts as a commercial undertaking one or more of the following activities or operations:
- (a) Acceptance of deposits or other repayable funds from the public;

(b) Lending, including but not limited to consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfaiting);

(c) Transmission of currency or monetary instruments, by any means, including by an informal money transfer system or by a network of persons or entities which facilitate the transfer of money outside of the conventional financial institutions system;

(d) Money and currency changing;

(e) Issuing and managing means of payment, including but not limited to credit and debit cards, cheques, traveler's cheques, money orders and bankers' drafts, or electronic money;

(f) Making financial guarantees and commitments;

(g) Trading on one's own behalf and/or on behalf of other persons or entities in one or more of the following:

(i) Money market instruments (cheques, bills, CDs, derivatives etc.);

(ii) Foreign exchange;

(iii) Exchange, interest rate and index instruments;

(iv) Transferable securities; and

(v) Commodity futures trading;

(h) Individual and/or collective portfolio management;

(i) Participation in securities issues and the provision of financial services related to such issues;

(j) Safekeeping and administration of cash or liquid securities on behalf of other persons or entities, unless the person engaging in the activity is an attorney, certified accountant, or licensed auditor;

(k) Investing, administering or managing funds or money on behalf of other persons or entities, unless the person engaging in the activity is an attorney, certified accountant, or licensed auditor;

(l) Acting as an insurance company, reinsurance company or insurance intermediary as defined in section 1 of UNMIK Regulation No. 2001/25 of 5 October 2001 on Licensing, Supervision and Regulation of Insurance Companies and Insurance Intermediaries; and

(m) Acting as a fiduciary as defined in section 1 of UNMIK Regulation No. 2001/35 of 22 December 2001 on Pensions in Kosovo;

1.13 “Immovable property” means land, buildings and apartments;

1.14 “Immovable property right” means a right pertaining to immovable property, including ownership, mortgages, servitudes and rights of use of socially-owned, publicly-owned and state-owned property;

1.15 “KFOR” means the international security presence established pursuant to United Nations Security Council resolution 1244 (1999) in the territory of Kosovo;

1.16 “Licensed auditor” means a person licensed as an auditor pursuant to section 1 of UNMIK Regulation No. 2001/30 of 29 October 2001 on the Establishment of the Kosovo Board on Standards for Financial Reporting and a Regime for Financial Reporting of Business Organizations;

1.17 “Monetary instruments” means currency; travellers’ cheques; personal cheques; bank cheques; payment orders; money orders; cashier’s cheques of any description; and/or investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

1.18 “Money laundering” means a criminal offence defined in section 10.2 ;

1.19 “NGO” means an entity defined as a Non-Governmental Organization in section 1.2 of UNMIK Regulation No. 1999/22 of 15 November 1999 on the Registration and Operation of Non-Governmental Organizations in Kosovo;

1.20 “Police” means the Civilian Police of UNMIK, also known as UNMIK Police, as well as the Kosovo Police Service which acts under the supervision of UNMIK Police;

1.21 “Predicate criminal offence” means a criminal offence punishable by a year or more of imprisonment under the applicable law in Kosovo or under the law of the jurisdiction in which the criminal offence was committed;

1.22 “Proceeds of crime” means any property derived directly or indirectly from a predicate criminal offence. Property derived indirectly from a predicate criminal offence includes property into which any property directly derived from the predicate criminal offence was later converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such property at any time since the commission of the criminal offence;

1.23 “Property” includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to, or interest in, such property;

1.24 “Suspicious act or transaction” means an act or transaction that generates a reasonable suspicion that the property involved in the act or transaction is proceeds of crime. Guidance on what constitute such acts and transactions may be issued by the Financial Information Centre;

1.25 “Terrorist activity” means an offence under section 2 of UNMIK Regulation No. 2001/12 of 14 June 2001 on the Prohibition of Terrorism and Related Offences; and

1.26 “UNMIK” means the international civil presence established pursuant to United Nations Security Council resolution 1244 (1999) in the territory of Kosovo, incorporating the Police and Justice Pillar; the Interim Civil Administration (United Nations) Pillar; the Institution-Building (OSCE) Pillar; and the Economic Reconstruction and Development (EU) Pillar.

Section 2

Authority of the Financial Information Centre

2.1 The Financial Information Centre (“the Centre”) is hereby established within the Police and Justice Pillar. It shall receive funding from the Kosovo Consolidated Budget. The Head of the Centre shall be appointed by the Special Representative of the Secretary-General on the recommendation of the Deputy Special Representative of the Secretary-General for Police and Justice. The Centre shall submit reports every quarter to the Deputy Special Representative of the Secretary-General. The composition and structure of the Centre shall be set forth in an Administrative Direction. The Centre shall be authorized to:

- (a) Receive and analyze reports and information,
 - (i) Made or kept under sections 3 through 9,

(ii) Provided to the Centre by bodies responsible for law enforcement (including INTERPOL or any other international or intergovernmental body), the Provisional Institutions of Self-Government, UNMIK or KFOR, and/or

(iii) Concerning suspicions of money laundering or of the financing of terrorist activities and voluntarily provided to the Centre;

(b) Collect information that is relevant to money laundering activities or the financing of terrorist activities and that is publicly available, including through commercially available databases;

(c) For purposes of analyzing suspected money laundering or financing of terrorist activities, request records and information from any of the Provisional Institutions of Self-Government or UNMIK concerning a person, entity, property or transaction, which agencies shall promptly provide the requested information unless specifically prohibited by law;

(d) Create and maintain a database of all information collected or received relating to suspected money laundering or financing of terrorist activities and such other materials as are relevant to the work of the Centre;

(e) Pursuant to agreements, exchange and request information with bodies responsible for law enforcement outside Kosovo relating to suspected money laundering or financing of terrorist activities;

(f) Compile statistics and records and based thereon make recommendations to the Minister of Finance and Economy, the Deputy Special Representative of the Secretary-General for Police and Justice, the Director of the Department of Justice, the police and the Customs Service in Kosovo regarding measures which may be taken and legislation which may be adopted to combat money laundering and the financing of terrorist activities;

(g) Make such public reports as will be helpful in carrying out its tasks;

(h) Conduct, in consultation with the police and the Customs Service in Kosovo, training programs for government institutions, entities and persons subject to the present Regulation regarding money laundering and the financing of terrorist activities;

(i) Disseminate, in accordance with sections 2.2 and 2.3, reports and any necessary information to the relevant authorities;

(j) In accordance with sections 2.4 through 2.7, supervise compliance with the present Regulation.

(k) Develop forms and instructions to be used for reporting information to the Centre in accordance with the present Regulation; and

(l) Issue administrative directives, instructions and guidance on issues related to ensuring or promoting compliance with the present Regulation, including but not limited to: (i) the use of standardized reporting forms; (ii) the nature of suspicious acts or transactions for the purposes of the present Regulation, including the development of lists of indicators of such acts and transactions; and (iii) the exemption of persons or entities or categories of persons or entities from reporting obligations under the present Regulation and the methods of reporting such exemptions.

Disclosure and Dissemination of Information and Records

2.2 The Centre may only disclose the following information, or records containing such information in accordance with section 2.3:

(a) Any data concerning a person or entity which is a subject of a report held by the Centre that would directly or indirectly identify the person or entity, including but not limited to a name or address;

(b) Any identifying data concerning a transaction, including but not limited to the date, location, amount or type of property, account number, or transaction number; and

(c) Any data concerning a person or entity which has provided information or records to the Centre that would directly or indirectly identify the person or entity.

2.3 The information referred to in section 2.2 may be disclosed by the Centre under the following circumstances:

(a) To the appropriate unit of the police, the Financial Investigation Unit, the competent Public Prosecutor, the UNMIK Customs Service, the Tax Administration Department of the Ministry of Finance and Economy or KFOR, if the information would be relevant to investigations within its competence, or to a body outside Kosovo with similar functions to the Centre in accordance with an agreement concluded by the Special Representative of the Secretary-General;

(b) To any of the Provisional Institutions of Self-Government or UNMIK, if such disclosure of information is necessary for the Centre to obtain information pursuant to sections 2.1(c);

(c) To bodies responsible for law enforcement outside Kosovo, if such disclosure is necessary to obtain information pursuant to section 2.1(e); and

(d) To the appropriate supervisory body, if, in performing its functions pursuant to sections 2.4 through 2.6 or otherwise, the Centre has a reasonable suspicion that there has been a violation of sections 3 through 7.

Supervision

2.4 An authorized official or officials, assigned to the Centre, may, at any time during ordinary business hours, enter any premises other than a residence, if there is a reasonable suspicion that it contains records which are maintained pursuant to sections 3 through 7 or documents relevant to determining whether obligations under sections 3 through 7 have been complied with. The authorized official or officials may demand and inspect the records or documents; copy or otherwise reproduce any such record or document; and ask questions in order to locate and understand such records or documents. The authorized official or officials shall limit the inspection to that part of the premises in which the relevant records or documents are reasonably likely to be found and they shall only perform actions which are necessary for, and proportionate to, the purpose of inspection of such records.

2.5 If the authorized official or officials reasonably believe that records maintained pursuant to sections 3 through 7 or documents relevant to determining whether obligations under sections 3 through 7 have been complied with are located in a residence, the authorized official or officials may enter the residence, and perform their duties in accordance with section 2.4,

(a) With the consent of an occupant of the residence; or

(b) Pursuant to a ruling issued by an Investigating Judge of the District Court in which the residence is located. The Investigating Judge shall issue such ruling on an *ex parte* motion of an authorized official of the Centre, if he or she finds that

(i) There are reasonable grounds to believe that the residence contains records maintained pursuant to sections 3 through 7 or documents relevant to determining whether obligations under sections 3 through 7 have been complied with;

(ii) Entry to the residence is necessary for any purpose that relates to ensuring compliance with sections 3 through 7; and

(iii) Entry to the residence has been refused or there are reasonable grounds to believe that it will be refused.

2.6 The owner or person in charge of the premises being inspected and every person present in the premises shall give the authorized officials all reasonable assistance to enable them to carry out their responsibilities, including identifying the relevant records or documents and furnishing any information requested to enable the authorized officials to locate and understand such records or documents. Such persons shall also assist the authorized officials in accessing and copying or reproducing records and documents maintained electronically, and shall permit the use of any copying equipment located on the premises.

2.7 A person in premises subject to an inspection pursuant to sections 2.4 through 2.6 may refuse to allow the inspection or copying of a record or document if he or she asserts that:

(a) It is not maintained pursuant to sections 3 through 7 and is not relevant to determining whether obligations under sections 3 through 7 have been complied with; or

(b) It contains information that is subject to attorney-client privilege.

In the event of such refusal, an authorized official conducting the inspection shall place the disputed record or document in an envelope or other appropriate container, which shall be sealed in the presence of the person or his or her representative, and signed by the official and the person or representative. The sealed record or document shall be presented within 10 days to an Investigative Judge of the competent District Court, who shall inspect it, and determine whether it, or any part of it, is subject to inspection and copying pursuant to the present section.

2.8 If a person considers that he or she has been the subject of actions under sections 2.4 and 2.5 which are unlawful, he or she may submit a complaint within 30 days of the inspection to an Investigative Judge of the competent District Court who shall adjudicate on the lawfulness of the actions referred to in the complaint and decide on compensation where appropriate. Authorized officials of the Centre shall provide the Investigating Judge with such documents as he or she shall request and shall, on request, provide oral testimony.

2.9 The powers of the Centre under the present section shall be subject to the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 and UNMIK Regulation No. 2000/47 of 18 August 2000 on the Status, Privileges and Immunities of KFOR, UNMIK and Their Personnel in Kosovo.

Section 3 Obligations of Banks and Financial Institutions

Identification of Clients

3.1 Banks and financial institutions shall verify the name and address, and, in the case of persons, the date of birth, of all clients before:

- (a) Opening an account;
- (b) Taking stocks, bonds, or other securities into safe custody;
- (c) Granting safe-deposit facilities; or
- (d) Engaging in any single transaction in currency of more than €10,000. Multiple currency transactions shall be treated as a single transaction if the bank or financial institution has knowledge that the transactions are conducted by or on behalf of one person or entity and total more than €10,000 in a single day.

3.2 A person engaging in a transaction under section 3.1 shall certify in writing to the bank or financial institution, in a format specified by BPK, that he or she is acting:

- (a) On his and her own behalf as both the owner and the beneficiary of any property that is the subject of the transaction; or
- (b) As an authorized agent of one or more persons or entities identified pursuant to sections 3.3 or 3.4, having taken reasonable steps to verify that each identified person or entity is the owner or the beneficiary of any property that is the subject of the transaction, and believing in good faith that each identified person or entity is the owner and/or beneficiary of any property that is the subject of the transaction.

3.3 A person's name shall be verified by the presentation of an original, unexpired official document that bears a photograph of such person. The person's address and date of birth shall be verified by the presentation of a document or documents capable of providing proof thereof.

3.4 The identity of any entity shall be verified by the presentation of:

(a) A business registration certificate issued pursuant to UNMIK Regulation No. 2001/6 of 8 February 2001 on Business Organizations;

(b) An NGO registration certificate issued pursuant to Section 4.6 of UNMIK Regulation No. 1999/22 of 15 November 1999 on the Registration and Operation of Non-Governmental Organizations in Kosovo;

(c) A political party registration certificate issued pursuant to UNMIK Regulation No. 2002/8 of 4 April 2002, amending UNMIK Regulation No. 2000/16, As Amended, on the Registration and Operation of Political Parties in Kosovo; or

(d) Where an entity is not a business organization, NGO or political party, any other document or documents which enables the verification of the identity of the entity, legal form, address, directors, and provisions regulating the power of agents, officers or directors to bind the entity.

3.5 Any person acting as an authorized agent shall present documents in accordance with sections 3.3 and 3.4 for him/herself and for the authorizing person or entity and shall provide a document authorizing him or her to conduct transactions on behalf of such person or entity.

3.6 Notwithstanding compliance with sections 3.2 through 3.5, a bank or financial institution shall take any additional reasonable measure necessary to identify every person and entity on behalf of which a person engaging in a transaction under section 3.1 is acting, including the owner and beneficiary of the property.

3.7 If a bank or financial institution is unable to verify the identity of a client, the business relationship shall be terminated, any account closed and the property returned to its source. Such actions shall be without prejudice to the obligation of the bank or financial institution to report suspicious acts or transactions pursuant to section 3.9 and to report additional material information pursuant to section 3.10.

3.8 Banks and financial institutions shall make copies of all documents which shall be presented under sections 3.1 through 3.5 and shall retain them for at least five years after the account has been closed or the relations with the client have ended, whichever is later.

Reporting

3.9 Banks and financial institutions shall report to the Centre, in the manner and in the format specified by the Centre:

(a) All suspicious acts or transactions within 24 hours of the time the act or transaction was identified as suspicious; and

(b) All single transactions in currency of €10,000 or more. Multiple transactions shall be treated as a single transaction if the bank or financial institution has knowledge that the transactions are by or on behalf of one person or entity and total more than €10,000 in a single day.

3.10 Banks and financial institutions shall continue to report to the Centre any additional material information regarding the transaction(s) that is acquired by the bank or financial institution after the report under section 3.9 is filed.

3.11 The Centre may exempt, either on written application or on its own initiative, certain transactions or categories of transactions from the obligations under section 3.9, where the transactions or category of transactions are routine and serve a legitimate purpose, or are otherwise not of interest to the mandate of the Centre. Any such exemptions shall be granted in writing and copies of them shall be submitted within 24 hours of issuance to the Deputy Special Representative of the Secretary-General for Police and Justice. A decision of the Centre to deny an application for an exemption shall be final and is not subject to appeal.

3.12 Directors, officers, employees and agents of any bank or financial institution who make or transmit reports pursuant to the present section shall not provide the report, or communicate any information contained in the report or regarding the report, to any person or entity, including any person or entity involved in the transaction which is the subject of the report, other than the Centre or BPK, unless authorized in writing by the Centre, a Public Prosecutor, or a Court.

3.13 Banks and financial institutions shall maintain all reports and records made in accordance with sections 3.9 and 3.11 for at least five years following the transaction generating the record or the filing of the report, whichever is later.

Suspension of a Suspicious Transaction

3.14 A bank or financial institution shall notify the Centre prior to taking any action in connection with any suspicious act or transaction, including an action

under section 3.7, that would result in the release or transfer of the property subject to the transaction from the control of the bank or financial institution. The notification may be made orally, but such notification does not abrogate the duty to file written reports pursuant to sections 3.9 and 3.11.

3.15 Upon notification pursuant to section 3.14, the Centre may instruct the bank or financial institution to suspend the taking of an action referred to in section 3.14 in connection with a suspicious act or transaction for a maximum of 48 hours, or 2 working days, whichever period is longer. Such suspension of an action pursuant to the present section shall not be communicated to any person or entity, including the client, without the consent of the Centre.

Internal Programs of Banks and Financial Institutions

3.16 Banks and financial institutions shall appoint a contact person to be responsible for interaction and information exchange with the BPK and the Centre, and compliance with the reporting and record keeping obligations under the present Regulation. The bank or financial institution shall inform the Bank Supervision Department of the BPK and the Centre of the identity of the contact person within 30 days of the promulgation of the present Regulation, and, thereafter, within 30 days of any change in the designated contact person.

3.17 Banks and financial institutions shall promulgate written internal procedures and controls for the prevention and detection of money laundering and shall enforce them. Such procedures shall include, but need not be limited to, the following:

- (a) A client identification procedure;
- (b) A procedure for collecting information and maintaining records in accordance with the present Regulation, and for preventing unauthorized access;
- (c) A procedure for reporting to the Centre in compliance with sections 3.9 through 3.15;
- (d) Measures to be taken by a bank or financial institution from the moment of the detection of a suspicious act or transaction to the submission of the report to the Centre in accordance with sections 3.9 through 3.15;
- (e) Rules for processing, or taking further action in connection with, a suspicious act or transaction, including measures to prevent further action in connection with a suspicious act or transaction without notification to the Centre in accordance with section 3.14;

(f) Procedures for ensuring the institution and provision of an employee training program on the responsibilities set forth in the present section and the prevention of money laundering; and

(g) An audit function to test the reporting and identification system.

3.18 Banks and financial institutions shall submit the internal procedures set forth in section 3.17 to the Centre no later than 60 days after the entry into force of the present section or 30 days after the establishment of the bank or financial institution. If the procedures are in breach of the present Regulation, the Centre shall notify the bank or financial institution of the breaches. The bank or financial institution shall submit amended procedures within 30 days.

Penalties and Measures

3.19 For the purposes of sections 37 and 38 of the Banking Regulation, any breach of the present section shall be considered a violation of the Banking Regulation. Any penalty or measure imposed in accordance with sections 37 and 38 of the Banking Regulation shall be without prejudice to any criminal proceedings.

3.20 Any penalty or measure imposed under section 3.19 shall be judicially reviewable in accordance with Section 66 of the BPK Regulation.

Effective Date

3.21 The present section shall enter into force on 1 May 2004.

Section 4 Obligations of NGOs

4.1 Except as provided in section 4.3, an NGO shall not accept any contribution in currency in excess of €1,000 from a single source in a single day.

4.2 Except as provided in section 4.3, an NGO shall not disburse currency in excess of €5,000 in a single day to any single recipient.

4.3 NGOs seeking a one-time or recurring exemption from the obligations under sections 4.1 and 4.2 may file a written request for exemption with the Centre setting forth the nature of the exemption sought and the reasons for it. The Centre shall respond to the request in writing within 30 days, and may decide to grant,

conditionally grant, or deny the exemption. The Centre's decision shall be final and is not subject to appeal. If the Centre decides to grant or conditionally grant an exemption, it shall provide a copy of its decision to the UNMIK NGO Registration and Liaison Unit or its successor agency.

4.4 NGOs shall maintain accounts that document all income and disbursements. The accounts shall identify income by source, amount, and manner of payment, such as currency or payment order, and identify disbursements by recipient, intended use of funds, and manner of payment. Account documents shall be maintained for five years and shall be available for inspection upon demand by the Centre and the UNMIK NGO Registration and Liaison Unit or its successor agency.

4.5 NGOs shall report any suspicious act or transaction to the Centre within three business days and prior to taking further action in connection with any such act or transaction.

4.6 When filing an annual report pursuant to section 5 of UNMIK Administrative Direction No. 2000/10, an NGO shall disclose in the report

(a) Each contribution in currency during the year from a particular source, if the total value in currency of the contributions from that source during the year is in excess of €5,000, identifying the source, amount and date of each contribution; and

(b) Each disbursement in currency during the year to a particular recipient if the total value in currency of disbursements to that recipient is in excess of €10,000, identifying the recipient, amount and date of each disbursement, and the intended use of the money.

4.7 When filing an annual report pursuant to section 5 of UNMIK Administrative Direction No. 2000/10, an NGO shall certify that it has complied with all obligations under the present section.

4.8 UNMIK may suspend or revoke the registration of an NGO for violation of any provision of the present section pursuant to section 5.2 of UNMIK Regulation No. 1999/22 on the Registration and Operation of Non-Governmental Organizations in Kosovo. The imposition of such sanction shall be without prejudice to any criminal proceedings.

4.9 Notwithstanding any other provision of law, reports filed by NGOs pursuant to UNMIK Regulation No. 1999/22 on the Registration and Operation of Non-Governmental Organizations in Kosovo, and any Administrative Directions

or Rules promulgated thereunder, shall be made available upon request to the Centre.

Effective Date

4.10 The present section shall enter into force on 1 July 2004.

Section 5 Obligations of Political Parties and Registered Candidates

5.1 Political parties and registered candidates shall not accept any contribution in currency in excess of €1,000 from a single source in a single day.

5.2 Political parties and registered candidates shall not disburse currency in excess of €5,000 in a single day to any single recipient.

5.3 Political parties shall maintain accounts that record all income and disbursements. The accounts shall identify income by source, amount, and manner of payment, such as by currency or payment order, and disbursements by recipient, intended use of funds, and manner of payment. Accounting documents shall be maintained for five years and shall be available for inspection upon demand to the Centre and the Political Party Registration Office.

5.4 Political Parties shall report any suspicious act or transaction to the Centre within three working days and prior to taking further action in connection with such act or transaction.

5.5 Annual reports filed pursuant to Section 5 of UNMIK Regulation No. 2002/8, Amending UNMIK Regulation No. 2000/16, As Amended, on the Registration and Operation of Political Parties in Kosovo, shall identify the amount and source of:

(a) Each contribution in currency from a particular source during the year, if the total value in currency of the contributions from that source during the year is in excess of €1,500; and

(b) Each disbursement in currency to a particular source during the year, if the total value in currency of the disbursements to that source during the year is in excess of €10,000, identifying its intended use.

5.6 A political party shall certify in its annual report that it has complied with all obligations under the present section. A candidate shall certify in his/her

candidate registration form submitted to the Central Election Commission that he/she shall comply with sections 5.1 and 5.2.

5.7 The Political Party Registration Office may investigate a political party's compliance with the present section and may suspend or revoke a registration for a violation of any provision of the present section in accordance with section 5 of UNMIK Regulation No. 2002/8, Amending UNMIK Regulation No. 2000/16, As Amended, on the Registration and Operation of Political Parties in Kosovo. A sanction under the present paragraph shall be without prejudice to any criminal proceedings.

5.8 Notwithstanding any other provision of law, reports filed by political parties pursuant to UNMIK Regulation No. 2002/8, Amending UNMIK Regulation 2000/16, As Amended, on the Registration and Operation of Political Parties in Kosovo shall be made available upon request to the Centre.

Effective Date

5.9 The present section shall enter into force on 1 July 2004.

Section 6

Obligations of Attorneys, Certified Accountants, and Licensed Auditors

Identification of Clients

6.1 Attorneys, certified accountants, and licensed auditors (hereafter "covered professionals") shall verify the name and address, and, in the case of persons, date of birth, of every client before performing professional services for the client. Sections 3.3 through 3.7 shall apply to verification and identification. If the covered professional is unable to identify a client or verify his or her identity, he or she shall not accept property from or on behalf of the client for any purpose.

Handling of Clients' property

6.2 When a covered professional at any time comes into possession of property on behalf of a client or third party, the covered professional shall:

(a) Hold the property in an account of, or in the safekeeping of, a bank subject to the supervision of the BPK, unless the client explicitly agrees that the property should be dealt with otherwise, or the nature of the property does not permit;

(b) Indicate in the title or designation of the account that the property is held on behalf of a client or clients of the covered professional;

(c) In the case of cash or liquid securities, maintain a sum in the account that at all times equals or exceeds the sum of the client's property held by the covered professional; and

(d) Maintain full and accurate records, available to the client upon request, showing all dealings with the client's property and distinguishing the client's property from other property held by the covered professional.

Reporting

6.3 Any covered professional who, in the course of performing services for a client, receives more than €10,000 in currency in a transaction or related transactions from a client, shall file a report with the Centre within 15 days of the reportable transaction.

6.4 For the purposes of section 6.3, a "transaction" includes, but is not limited to: a sale of goods or services; a sale of real property; a sale of intangible property; a rental of real or personal property; an exchange of currency for other monetary instruments, including other currency; payment of a preexisting debt; a reimbursement of expenses paid; the making or repayment of a loan; or the payment of fees in currency to the covered professional for his or her services. A transaction shall also be reported if the covered professional receives the currency as an intermediary, that is, he or she intends to transfer the currency to a third party on behalf of the client. A transaction may not be divided into multiple transactions in order to avoid reporting under the present section.

6.5 For the purposes of section 6.3, the term "related transactions" means all transactions conducted between the client and the covered professional in a 24-hour period or all transactions conducted between the client and the covered professional during a period of more than 24 hours if the recipient knows or has reason to know that each transaction is one of a series of connected transactions. Multiple payments to an attorney for representation in a single case are connected transactions.

6.6 The form and manner of the report shall be prescribed by the Centre, and shall include:

(a) The name and address, and such other identifying information as the Centre may prescribe, of the person or entity from whom the currency was received and any agent on whose behalf the person or entity is acting;

- (b) The amount of currency received;
- (c) The date and nature of the transaction; and
- (d) Such other information, including the identification of the person or entity filing the report, as the Centre may prescribe.

6.7 Certified accountants and licensed auditors shall report any suspicious act or transaction to the Centre within three business days and prior to taking further action in connection with any such act or transaction. Reports shall be made in a form and manner prescribed by the Centre.

6.8 Except as provided in section 6.9, attorneys engaged in specified activities shall report any suspicious act or transaction to the Centre within three business days and prior to taking further action in connection with any such act or transaction. Specified activities include:

- (a) Assisting or representing a client or clients in:
 - (i) Buying and/or selling of immovable property or business organisations;
 - (ii) Handling of clients' money, securities, or other assets;
 - (iii) Opening or managing bank, savings or securities accounts;
 - (iv) Organization of contributions necessary for the creation, operation or management of companies;
 - (v) Creation, operation or management of companies, trusts or similar structures; or
- (b) Acting on behalf of or for the client in any financial or immovable property rights transaction.

Reports shall be made in a form and manner prescribed by the Centre.

6.9 An attorney shall not, without authorization from the client or by court order, provide information he or she received from a client or obtained on a client in order to represent the client in criminal or judicial proceedings, unless the attorney reasonably believes that the client is seeking the attorney's advice or assistance to commit a criminal offence.

6.10 Records collected pursuant to section 6.1 shall be maintained for a period of five years from the date that the business relationship or representation ended. Records relevant to a suspicious act or transaction shall be maintained for a period of five years from the date on which the suspicious act or transaction was reported to the Centre. To the extent possible, records maintained pursuant to the present section shall be maintained separately from files containing information subject to attorney-client privilege.

6.11 Covered professionals shall ensure the training of all staff members, employees and agents in their obligations under the present Regulation.

6.12 The Centre, in consultation with the Kosovo Bar Association and the Kosovo Board on Standards for Financial Reporting, shall establish minimum standards, written procedures and controls for the prevention and detection of money laundering by covered professionals and supervise them. These procedures shall include, but need not be limited to, the following:

- (a) A client identification procedure;
- (b) A procedure for collecting information and maintaining the records pursuant to the present Regulation and for preventing unauthorized access;
- (c) A procedure for reporting to the Centre in compliance with sections 6.3 through 6.9;
- (d) A detailed list of the indicators of a suspicious act or transaction, taking into account the particular crime problems of Kosovo and Kosovo's legal and business systems;
- (e) Measures to be taken by the covered professional from the moment of the detection of a suspicious act or transaction to the submission of the report to the Centre;
- (f) Procedures for ensuring the institution and provision of an employee training program on the obligations under present section and the prevention of money laundering;
- (g) An audit function to test the reporting and identification system.

6.13 The Kosovo Bar Association and the Kosovo Board on Standards for Financial Reporting shall inform their members of the approved procedures and

other obligations and the sanctions of the present Regulation relating to covered professionals.

Sanctions

6.14 A sanction imposed by the competent Bar Association and the Kosovo Board on Standards for Financial Reporting for a breach of the present Regulation shall be without prejudice to any criminal proceedings.

Effective Date

6.15 The present section shall enter into force on 1 July 2004.

Section 7 Obligations of Business Organizations

7.1 The present section shall apply to all business organizations, except banks, financial institutions, attorneys, certified accountants, and licensed auditors.

7.2 Any person or entity which is engaged in a trade or business, and who, in the course of such trade or business, receives more than €10,000 in currency in a transaction or related transactions, shall file a report with the Centre within 15 days of the reportable transaction.

7.3 Transactions include, but are not limited to: a sale of goods or services; a sale of real property; a sale of intangible property; a rental of real or personal property; an exchange of currency for other monetary instruments (including other currency); payment of a preexisting debt; a reimbursement of expenses paid; or the making or repayment of a loan. A transaction may not be divided into multiple transactions in order to avoid reporting under the present section.

7.4 For the purposes of the present section the term “related transactions” means all transactions conducted between a payer (or its agent) and a recipient of currency in a 24-hour period or all transactions conducted between a payer (or its agent) and a recipient of currency during a period of more than 24 hours if the recipient knows or has reason to know that each transaction is one of a series of connected transactions.

7.5 The form and manner of the report shall be prescribed by the Centre.

Effective Date

7.6 The present section shall enter into force on 1 July 2004.

Section 8
Immovable Property Transactions

8.1 When a transfer of immovable property rights involves a transaction or transactions of a monetary amount in excess of €10,000, each transaction shall be made by payment order or bank transfer.

8.2 The Municipal Cadastral Office (MCO) shall not register a transfer of immovable property rights unless it receives, in addition to the other documents that are presented in accordance with law for the registration of the transfer, a declaration, in the manner and in the format specified by the Centre, signed by the transferor and transferee that certifies:

- (a) The transferor and transferee of record;
- (b) The identity of any person or entity which has a financial interest in or is a beneficiary of the property being transferred, and the nature of that interest or beneficiary status;
- (c) The purchase price and the manner of payment, including, if the payment is made, in whole or in part, by transfer of property other than cash, a description and an estimate of the value of the property;
- (d) If the transfer is subject to section 8.1, the financial account number or numbers from which the payment was or will be debited and to which it was or will be transferred, and the names in which the accounts are held.

8.3 The MCO shall maintain the declaration together with the other documents that are presented in accordance with law for the registration of the transfer. In addition, the MCO shall forward copies of all declarations received to the Centre on a monthly basis.

8.4 A decision by the MCO to reject registration on the grounds of failure to comply with the present section, shall be made, and may be reviewed, in accordance with Law No. 2002/5 on the Establishment of an Immovable Property Rights Register, as promulgated by UNMIK Regulation No. 2002/22 of 20 December 2002.

Effective Date

8.5 The present section shall enter into force on 1 July 2004.

Section 9

Movement of monetary instruments into and out of Kosovo

9.1 Every person entering or leaving Kosovo and carrying monetary instruments of a value in excess of €10,000 shall declare the amount of the monetary instruments and the source of such monetary instruments in writing, in a format to be prescribed by the Director General of the UNMIK Customs Service, to an authorized customs officer, and, if so requested by the officer, shall present the monetary instruments. For the purposes of the present section, a person shall be considered to be carrying monetary instruments, if, *inter alia*, they are in the physical possession of such person or in a private vehicle or other conveyance being utilized by such person.

9.2 Every person sending from Kosovo to a place outside Kosovo, or receiving in Kosovo from a place outside Kosovo, via post or commercial courier, monetary instruments of a value in excess of €10,000, shall declare the amount of the monetary instruments and the source of such monetary instruments in writing, in a format to be prescribed by the Director General of the UNMIK Customs Service, to an authorized customs officer, and, if so requested by the officer, shall present the monetary instruments. The person may meet his or her reporting duty under the present paragraph by means of a notification of the contents of a parcel in a customs declaration or in international freight documentation.

9.3 The UNMIK Customs Service shall forward copies of all declarations filed pursuant to sections 9.1 and 9.2 to the Centre.

Minor Offence Procedure

9.4 Any person who fails to comply with the provisions of sections 9.1 or 9.2 commits a minor offence punishable by a fine of 25% of the amount of the undeclared monetary instruments.

9.5 The authorized customs officer shall issue to a person who has committed a minor offence under section 9.4 a written notification on a standard form stating the nature of the minor offence and the fine imposed which shall be paid immediately.

9.6 If the fine imposed is not paid immediately, the authorized customs officer shall seize and retain 25% of that portion of the amount of the monetary instruments in excess of €10,000. If the monetary instruments are not divisible in a manner that permits the seizure and retention of the exact amount of the monetary instruments to be seized and retained, the authorized customs officer shall seize a greater amount which shall be as close in value as possible to such amount.

9.7 Upon seizure under section 9.6, the authorized customs officer shall issue to the concerned person a written receipt stating the relevant facts and the amount of the monetary instruments seized and retained.

9.8 The monetary instruments seized and retained in accordance with the present section shall, where possible, be held in a special non-interest bearing account in the name of UNMIK with the BPK or otherwise be held in safe custody with the BPK until such time as the fine is paid in full or as otherwise ordered by a court of competent jurisdiction or as otherwise provided in the present section.

9.9 If a person whose monetary instruments were seized pursuant to section 9.6 pays within 30 days of such seizure the fine that was originally due, the competent authority shall make arrangements for the return of the monetary instruments seized or the equivalent value thereof as appropriate, unless there is a legal basis either for the confiscation of the monetary instruments or the equivalent value thereof or for their continuing to be withheld from the person from whom the monetary instruments were seized. Such arrangements are to be made within 5 days from the date of receipt of payment of the fine.

9.10 If a person who pays the fine within the 30-day period in accordance with section 9.9 is unable to collect in person the seized monetary instruments, he or she may:

(a) Grant a power of attorney to another person authorizing such person to collect the seized monetary instruments on his or her behalf and/or provide the competent authority with a signed written and notarized document instructing such authority to return the monetary instruments to another named individual; or

(b) Submit a request in writing addressed to the BPK to deposit the monetary instruments in a special UNMIK account in the name of such person until such time as the monetary instruments are collected personally by the person concerned or by a person authorized to do so in accordance with section 9.10(a).

9.11 If a fine is paid in full within the 30-day period specified in section 9.9, but the monetary instruments seized are not collected within 12 months from the date

of the seizure, such monetary instruments shall be forfeited to UNMIK and deposited in the Kosovo Consolidated Budget.

9.12 If a person does not pay a fine imposed under section 9.4 within 30 days, the matter shall be referred to a competent court for minor offences for determination in accordance with the procedure set forth in sections 9.14.

9.13 A person against whom a fine under section 9.4 has been imposed, or whose monetary instruments have been seized pursuant to section 9.6, may contest the imposition of the fine or the seizure in the competent court for minor offences within 30 days from the date of issuance of the written notification of the imposition of such fine or the written receipt confirming such seizure.

9.14 A competent court for minor offences seized of a case pursuant to sections 9.12 or 9.13 may:

(a) Confirm the fine and/or the seizure. The balance thereof shall be forfeited to UNMIK and deposited in the Kosovo Consolidated Budget; or

(b) Set aside or reduce the amount of the fine, or set aside the seizure or reduce the amount of monetary instruments subject to seizure, if the court determines that the fine was assessed or the seizure was performed not in conformity with the present section. The monetary instruments of the value thereof shall be retained for up to 6 months from the date of the court order if the concerned person does not appear in the court or fails to collect them. On the expiration of this 6-months time limit, if the concerned monetary instruments are not claimed by the concerned person and no determination or order is made by a competent court for minor offences, the monetary instruments of the value thereof shall be forfeited to UNMIK and deposited into the Kosovo Consolidated Budget.

9.15 A fine or seizure and retention effected pursuant to sections 9.4 through 9.14 shall be without prejudice to any criminal proceedings against a person, the temporary seizure of monetary instruments pursuant to section 9.17, confiscation pursuant to section 11 or temporary measures for securing property pursuant to section 12.

9.16 A fine imposed under section 9.4 or seizure and retention of monetary instruments pursuant to section 9.6 shall remain valid and in effect notwithstanding any contestation of such fine or seizure and retention, pending the determination of the contestation.

Temporary Seizure of Monetary Instruments

9.17 A customs officer or a police officer may seize any monetary instruments carried by a person entering or leaving Kosovo, if there is a grounded suspicion that such monetary instruments are the proceeds of crime or were used or intended to be used to commit or facilitate money laundering or the predicate criminal offence from which the proceeds of crime were derived. Such customs officer or police officer shall notify the competent District Public Prosecutor within 48 hours of the seizure. Within 10 days of such notification, the District Public Prosecutor shall:

(a) Submit a motion for confiscation of the property pursuant to section 11;

(b) Submit a motion for a temporary measure for securing the property pursuant to section 12.1; or

(c) Notify in writing the competent authority that no action shall be taken in relation to the property seized.

If the District Public Prosecutor makes a notification that no action shall be taken in relation to the property seized, the competent authority shall return the monetary instruments to the person from whom they have been seized within five working days.

9.18 Customs officers and police officers shall not be personally liable or held accountable for damages or loss resulting from good faith acts or omissions in the course of their official duties under the present section.

Section 10 Criminal Offences

10.1 District Courts shall have jurisdiction for all criminal offences under the present Section.

Money Laundering

10.2 Whoever, knowing or having cause to know that certain property is proceeds of some form of criminal activity, and which property is in fact proceeds of crime, or whoever, believing that certain property is proceeds of some form of criminal activity based on representations made as part of an undercover

investigation conducted pursuant to UNMIK Regulation No. 2002/6 of 18 March 2002 on Covert and Technical Measures of Surveillance and Investigation:

(a) Converts or transfers, or attempts to convert or transfer, the property for the purpose of concealing or disguising the nature, source, location, disposition, movement or ownership of the property;

(b) Converts or transfers, or attempts to convert or transfer, the property for the purpose of assisting any person who is involved in, or purportedly involved in, the commission of the criminal offence that produced the property to evade the legal consequences, or apparent legal consequences, of his or her actions;

(c) Converts or transfers, or attempts to convert or transfer, the property for the purpose of avoiding a reporting obligation under the present Regulation;

(d) Converts or transfers, or attempts to convert or transfer, the property for the purpose of promoting the underlying criminal activity; or

(e) Acquires, possesses or uses, or attempts to acquire, possess or use, the property

commits a criminal offence punishable by a term of imprisonment of up to ten years and a fine of up to three times the value of the property which is the subject of the criminal offence.

10.3 For purposes of section 10.2, representations may be a basis for the belief that certain property constitutes the proceeds of crime, even if those representations only indirectly support the belief that the property constitutes the proceeds of crime.

10.4 Without prejudice to the applicable criminal law with regard to a person who has committed related criminal offences outside the scope of the present paragraph:

(a) A person may be convicted of the criminal offence of money laundering, even if he or she has not been convicted at any time of the predicate criminal offence from which the proceeds of crime in the criminal offence of money laundering were derived;

(b) The same person may be prosecuted and convicted in separate proceedings of the criminal offences of money laundering and the predicate criminal offence from which the proceeds of crime in the criminal offence of money laundering were derived; and

(c) The courts of Kosovo may have jurisdiction over a criminal offence of money laundering, even if they do not have territorial jurisdiction over the predicate criminal offence from which the proceeds of crime in the criminal offence of money laundering were derived, since it has been committed outside Kosovo.

Other Criminal Offences

10.5 Whoever, in providing any information, or in making reports, certifications or declarations pursuant to section 3.1 through 3.5; 3.9 through 3.11; 4.3 through 4.7; 5.3 through 5.6; 6.1; 6.3; 6.7; 6.8; 7.2; 8.2; 9.1; or 9.2 of the present Regulation, knowingly:

(a) Makes any materially false statement or wilfully omits to disclose material information; or

(b) Makes or uses any document knowing the document to contain a materially false statement or entry, a material omission or a material error;

commits a criminal offence punishable by imprisonment of up to five years and a fine of up to €100.000.

10.6 Whoever wilfully

(a) Destroys or removes any record which shall be maintained pursuant to section 3.8, 3.13, 4.4, 5.3, 6.10, or 8.3; or

(b) Fails to make a report in accordance with section 3.9, 3.11, 4.5, 5.4, 6.3, 6.7, 6.8 or 7.2;

commits a criminal offence punishable by imprisonment of up to two years and a fine of up to €100.000. If any criminal offence provided for in the present paragraph is committed with the intent to obstruct a regulatory or law enforcement function, the offender shall be punished by imprisonment of up to five years and a fine of up to €100.000.

10.7 A person acting as a bank or financial institution, or an officer, director, agent or employee of a bank or financial institution, who wilfully violates section 3.12 of the present Regulation commits a criminal offence punishable by imprisonment of up to two years and/or a fine of up to €100.000. If any criminal offence specified in the present paragraph is committed with the intent to obstruct

any regulatory or law enforcement function, the offender shall be punished by imprisonment of up to five years and/or a fine of up to €100.000.

10.8 Whoever wilfully accepts or disburses currency in violation of section 4.1, 4.2, 5.1 or 5.2 of the present Regulation commits a criminal offence punishable by imprisonment of up to two years and a fine of up to €5.000 or twice the amount of the currency accepted or disbursed, whichever is greater.

10.9 An official of the Centre who wilfully:

(a) Reports information or discloses information pursuant to section 2.3, or discloses information to a Public Prosecutor or a court, knowing such information to contain a material falsehood, a material omission or a material error;

(b) Destroys or removes any record which shall be collected by the Centre pursuant to the present Regulation, other than as provided for in a document retention and destruction policy established by the Centre; or

(c) Discloses any information described in section 2.2 other than as provided by section 2.3, unless authorized in writing by the Deputy Representative of the Secretary-General for Police and Justice;

commits a criminal offence punishable by imprisonment of up to two years and a fine of up to €100.000. If the criminal offence set forth in the present paragraph is committed with the intent to obstruct a regulatory or law enforcement function, the offender shall be punished by imprisonment of up to ten years and a fine of up to €100.000.

10.10 In sections 10.5 and 10.9 information or the failure to provide information may be material even if the recipient is not influenced or misled by it.

10.11 Whoever acts as a bank or financial institution as defined in the present Regulation without registering in accordance with section 3.1 of the Banking Regulation, commits a criminal offence punishable by imprisonment of up to one year and a fine of up to €100.000.

10.12 Whoever unlawfully refuses or obstructs an inspection lawfully undertaken pursuant to sections 2.4 or 2.5, or wilfully conceals records which shall be kept and presented pursuant to the present Regulation, commits a criminal offence punishable by imprisonment of up to one year and a fine of up to €100.000.

10.13 Whoever wilfully violates a ruling ordering a temporary measure for securing property under section 12 commits a criminal offence punishable by imprisonment of up to five years of imprisonment and a fine of up to €100.000.

10.14 For the purposes of sections 10.5 through 10.9, 10.12 and 10.13, a “wilful” act is an act which is performed not only intentionally, but also deliberately and is not performed unintentionally, carelessly or accidentally.

Criminal Liability of Legal Persons

10.15 The criminal liability of legal persons for the criminal offences provided for in the present section shall be set forth in a Regulation to be promulgated within six months of the date of signature of the present Regulation.

Section 11 Confiscation

11.1 A Public Prosecutor may submit a motion for the confiscation of property that is the proceeds of crime or was used or intended to be used to commit or facilitate money laundering or the predicate criminal offence from which the proceeds of crime are derived. Such motion may be submitted regardless of whether criminal proceedings have been initiated against a person in connection with the property and is without prejudice to the initiation of such criminal proceedings. It shall be submitted

(a) In the event of the initiation of criminal proceedings for the criminal offence of money laundering under section 10.2, to the District Court at which the criminal proceedings have been conducted; and

(b) In all other circumstances, to the District Court within whose territory the property or part of the property is located, unless the property is located outside Kosovo, in which case the motion shall be submitted to any District Court in Kosovo.

11.2 A motion submitted under section 11.1 shall include the following:

(a) A detailed description of the nature and location of the property for which confiscation is sought;

(b) Identifying details of all persons or entities which the public prosecutor has reason to believe may own or be beneficiaries of the property; and

- (c) A statement of the grounds for confiscation of the property.

If the motion under section 11.1 is not submitted following a conviction for money laundering under section 10.2, the motion shall also contain a statement of the action taken to identify persons or entities which may own or be beneficiaries of the property.

Notice

11.3 On receipt of a motion for confiscation under section 11.1, the court shall issue:

- (a) A notice which shall be posted for thirty days at the courthouse;
- (b) A notice which shall be posted for ten days in an Albanian-language and Serbian-language newspaper of general circulation in the territory of the court, or, if there is no such newspaper, made by radio announcement in Albanian and Serbian language programs on 10 consecutive days; and
- (c) A notice which shall be personally served in accordance with the provisions of the applicable Law on Criminal Procedure on all persons and entities which the court has reason to believe may own or be beneficiaries of the property, unless it is impracticable to execute such personal service.

Each notice shall specify:

- (a) The nature and location of the property which is the subject of the motion and, in the case of property which is the subject of temporary measures for securing property under section 12, the location from which it was seized; and
- (b) The procedure for filing a petition to claim the property.

Petitions claiming ownership or beneficiary status

11.4 A person or entity may file a petition with the court claiming to be the owner or the beneficiary of the property which is the subject of the motion for confiscation within 30 days of the latest of the issuances of the notices under section 11.3. The petition shall identify:

- (a) The property which is the subject of the claim;
- (b) The amount and nature of the ownership or beneficiary status in regard to the property claimed;

(c) The date and circumstances under which the ownership or beneficiary status in regard to the property was acquired;

(d) The legal basis for the claim; and

(e) Any evidence relevant to the claim.

Rulings on the Confiscation of Property

11.5 On the expiry of the period of 30 days provided for in section 11.4, the court shall determine whether the property which is the subject of the motion of the Public Prosecutor is the proceeds of crime or used or intended to be used to commit money laundering or the predicate criminal offence from which the proceeds of crime are derived. If one or more petitions are filed pursuant to section 11.4, the court shall hold a hearing at which the claimant or claimants and the Public Prosecutor shall be heard and may present evidence.

11.6 If the court finds that that the property is proceeds of crime, then the court shall render a ruling that the property be confiscated unless:

(a) The claimant is a bona fide purchaser for value of the property; and

(b) The claimant did not know and could not reasonably have known that the property was proceeds of crime.

11.7 If the court finds that the property was used or intended to be used to commit or facilitate money laundering or the predicate criminal offence from which the proceeds of crime are derived, the court shall render a ruling that the property be confiscated unless:

(a) The claimant is the true owner of the property;

(b) The claimant did not know and could not reasonably have known that the property was used or intended to be used to commit or facilitate money laundering or the predicate criminal offence from which the proceeds of crime were derived; and

(c) Upon learning that the property was used or intended to be used to commit or facilitate money laundering or the predicate criminal offence from which the proceeds of crime were derived, the claimant did all that could be reasonably expected to terminate such use of the property.

11.8 In the event of a motion for confiscation following a conviction under section 10.2, if the court establishes that the property which is the subject of the motion is the proceeds of crime or was used or intended to be used to commit or facilitate money laundering or a predicate criminal offence from which the proceeds of crime are derived, but such property:

(a) Cannot be located through reasonable efforts; or

(b) As a result of an act or omission of the offender, the property has been transferred or sold to a third party, concealed, spent, destroyed or diminished in value, placed beyond the jurisdiction of the court, or commingled with other property which cannot be divided without difficulty,

The court shall render a ruling that property owned by the offender that is of equivalent value to the property which is the subject of the motion be confiscated.

Disposal of Confiscated Property

11.9 Property which is to be confiscated under a ruling rendered under the present section shall be made available for the execution of a decision in favour of an injured party pursuant to Chapter X of the applicable Law on Criminal Procedure, if no other property belonging to the offender is available for the realization of the property claim of the injured party. The court shall order that any remaining property be sold in accordance with the procedures to be established pursuant to an Administrative Direction.

Section 12

Temporary Measures for Securing Property

12.1 Upon a written motion of the Public Prosecutor, the District Court shall render a ruling ordering a temporary measure for securing property where:

(a) There is a grounded suspicion that the property is the proceeds of crime or was used or intended to be used to commit or facilitate money laundering or the predicate criminal offence from which the proceeds of crime are derived; and

(b) There is a substantial likelihood that the property will be unavailable for confiscation at the conclusion of the proceedings under section 11 if a temporary measure for securing the property is not taken.

12.2 If the Public Prosecutor submits a motion under section 12.1 during criminal proceedings, the Investigating Judge shall have jurisdiction before the indictment has been raised and the presiding judge of the trial panel shall have jurisdiction thereafter. If no criminal proceedings are being conducted in connection with the property which is the subject of the motion, the Investigating Judge of the District Court within whose territory the property or part of the property is located shall have jurisdiction.

12.3 The motion of the Public Prosecutor shall contain the following:

- (a) A detailed description of the nature and location of the property which is the subject of the motion;
- (b) Identifying details of the persons or entities which are in possession of the property; and
- (c) A statement of the grounds for the temporary measure for securing the property.

12.4 A ruling ordering a temporary measure for securing property shall be in writing and shall order one or more of the following for a period of up to 30 days:

- (a) That no person or entity may sell, transfer, encumber, destroy or otherwise deal with the property;
- (b) That no bank or financial institution may transfer the property, conduct transactions relating to the property or allow access to the property if it is held by the bank or financial institution;
- (c) That, in the case of immovable property, the competent authorities shall refuse to verify a contract of sale or to register the transfer of the property;
- (d) That, in the case of immovable property, police or customs officers shall post a notice on the property stating that the property is the subject of a ruling under the present section and may not be transferred or encumbered;
- (e) That, in the case of immovable property or a business organisation, all rents or other income from the property shall be paid into the custody of the police or the customs service, which shall deal with such property as provided for in section 12.9.

(f) That a trustee shall be appointed by the court take control of, manage or otherwise deal with the property if such property may generate income or otherwise requires management;

(g) That, in the case of movable property, authorized customs officers or authorized police officers shall seize the property and keep it in accordance with sections 12.9 and 12.10 or as otherwise ordered by the court; and

(h) That some other measure shall be taken to temporarily secure the property.

12.5 Upon the written motion of the Public Prosecutor, a ruling ordering a temporary measure for securing property may be extended by further rulings for periods of up to 30 days if the conditions set forth in section 12.1 continue to apply.

12.6 Upon written motion by the Public Prosecutor, the court may decide that the motion and the ruling under section 12.4 not be disclosed for a period not exceeding 30 days to persons or entities other than those specified by name or otherwise identified in the ruling if there is a grounded suspicion that the property may be hidden, transferred or otherwise made unavailable if the motion and the ruling were known. If the ruling under section 12.4 is extended for a further period of up to 30 days, the court may, upon further written motion by the public prosecutor, decide to extend the period of non-disclosure under the present paragraph for a period not exceeding 30 days for justified reasons.

Execution of the Ruling

12.7 Unless otherwise ordered pursuant to section 12.6, copies of a ruling rendered under sections 12.4 or 12.5 shall, within 10 days of the date on which the ruling was rendered, be personally served in accordance with the applicable Law on Criminal Procedure on each of the following persons and entities, unless it is impracticable to execute such personal service:

(a) Every person or entity which the court has reason to believe is the owner or beneficiary of the property together with a specification of the procedure for seeking termination of the ruling;

(b) Every person or entity which shall be obliged under the ruling to take action to implement it; and

(c) Any other person or entity which is obliged under the ruling not to take certain action with regard to the property, if the court considers that personal

service of the ruling will increase the likelihood that that person or entity will not take the action in question.

12.8 A ruling ordering a temporary measure for securing movable property pursuant to section 12.4(g) shall be executed within 10 days of the date of the ruling, unless the court orders in the ruling that such period of time be extended. The authorized officers who execute the ruling under section 12.4(g) shall provide to the court an inventory of all property which is the subject of the ruling within three working days.

Maintenance and Disposal of Property

12.9 Unless otherwise ordered by the court, property subject to a ruling pursuant to the present section shall be held by customs officers or police officers. Such customs officers or police officers shall provide a receipt when the property is delivered and shall maintain or dispose of the property in accordance with the procedures established pursuant to an Administrative Direction. The court may at any time request that customs officers or police officers provide an accounting of the property.

12.10 Upon a motion of the Public Prosecutor, a customs officer or a police officer, the court may render a ruling authorizing a sale of the property, the proceeds of which will be held in accordance with the procedures established pursuant to an Administrative Direction. When deciding on such ruling the court may consider whether the property may perish or waste or otherwise decline in value, whether the cost of maintaining the property is disproportionate to its value and whether the persons or entities which own or are beneficiaries of the property agree to the sale.

Procedure for Claimants

12.11 On a petition of the Public Prosecutor or a person or entity which owns or is a beneficiary of the property which is the subject of a ruling under the present section, the court shall terminate the ruling where the conditions set forth in section 12.1 no longer obtain. In addition the court may modify the ruling if the temporary measure for securing the property places unreasonable hardship on the petitioner, provided that such modification does not reduce the likelihood that the property will be available for confiscation at the conclusion of proceedings under section 11.

12.12 If during pre-indictment criminal proceedings with regard to property which is the subject of a temporary measure under the present section an indictment is not filed within 90 days of the initial ruling ordering the temporary

measure, the court shall terminate the temporary measure on a petition of one of the parties referred to in section 12.11. Such termination shall be without prejudice to the submission of a further motion under section 11 or 12 with respect to the property.

12.13 If no criminal proceedings are conducted in relation to the property which is the subject of a temporary measure under the present section, the court shall terminate the temporary measure, if no motion for confiscation under section 11 is filed within 90 days of the date of the initial ruling ordering the temporary measure. Such termination shall be without prejudice to the submission of a further motion under section 11 or 12 with respect to the property.

12.14 A temporary measure under the present section shall cease to have effect on the conclusion of the proceedings pursuant to section 11 of the present Regulation.

Section 13 International Cooperation

Purpose and Scope of the Present Section

13.1 The competent authorities of Kosovo undertake to afford the widest possible measure of cooperation to the authorities of foreign jurisdictions for purposes of information exchange, investigations and court proceedings, in relation to temporary measures for securing property and orders for confiscation relating to instrumentalities of money laundering and proceeds of crime, and for purposes of prosecution of the perpetrators of money laundering and terrorist activity.

13.2 The procedures for affording cooperation under section 13.1 are set forth in the present section and in such other relevant provisions of the applicable law as do not conflict with it.

13.3 A request under the present section shall be sent through diplomatic channels to the Special Representative of the Secretary-General, who shall forward it to the Director of the Department of Justice.

Temporary Measures for Securing Property

13.4 To preserve the availability of property in Kosovo that is subject to confiscation proceedings that have been or are likely to be instituted in a foreign jurisdiction, upon the motion of a Public Prosecutor following the request of the authorities of a foreign jurisdiction, the competent District Court may:

(a) Render a ruling ordering a temporary measure for securing property;
or

(b) Enforce a temporary measure for securing property imposed by a foreign competent court.

13.5 The competent District Court may rely on information set forth in the request from the authorities of the foreign jurisdiction describing the nature of the pending investigation or proceedings and setting forth a reasonable basis to believe that the property concerned will be the subject of an order for confiscation at the conclusion of proceedings.

13.6 When a competent District Court determines that a temporary measure for securing property imposed by a foreign competent court shall be enforced, it shall render a ruling in accordance with section 12.4.

13.7 Except as provided for in sections 13.4-13.6, section 12 of the present Regulation shall apply *mutatis mutandis* to the proceedings on receipt of a motion of a Public Prosecutor under section 13.4.

Orders for Confiscation

13.8 Upon the motion of a Public Prosecutor following the request of the authorities of a foreign jurisdiction, a competent District Court may render a ruling ordering the confiscation of property located in Kosovo. The provisions of section 11 of the present Regulation shall apply *mutatis mutandis* to the proceedings initiated on the motion of the public prosecutor, if no foreign competent court has rendered a ruling that such property be confiscated.

13.9 Upon the motion of a Public Prosecutor following the request of the authorities of a foreign jurisdiction, a competent District Court may enforce the ruling of a foreign competent court that property in Kosovo be confiscated, where such court is satisfied that:

(a) The order is final, not subject to appeal, and a certified copy of such order bearing the seal or the signature of the court has been submitted;

(b) The person against whom, or in relation to whose property the order has been made received notice of the proceedings outside of Kosovo and had an opportunity to defend his or her interest in the property; and

(c) Enforcement of the order would not be contrary to the interests of justice.

13.10 Notice of the motion to enforce the order of a foreign competent court shall be made in the manner prescribed in section 11.3. Petitions claiming ownership or beneficiary status may be filed in accordance with section 11.4.

13.11 Unless the person or entity claiming ownership or beneficiary status establishes that one or more of the conditions in section 13.9 has not been met, the court may enforce the order by rendering a ruling that the property be confiscated. The court shall be bound by the findings of fact to the extent that they are stated in the foreign order.

13.12 If a court rejects a motion for the enforcement of the order of a foreign competent court, it shall notify the Public Prosecutor, who may, within 30 days, file a motion for confiscation pursuant to section 11 of the present Regulation. If the property is the subject of a ruling ordering a temporary measure for securing property following a request from the authorities of the foreign jurisdiction, the court shall render a ruling extending the duration of the temporary measure for 30 days, unless the Public Prosecutor agrees to the termination of the measure.

13.13 Where the property which is to be confiscated under the order of a foreign competent court is expressed in a currency other than the currency permitted to be used in Kosovo, the amount shall be converted into the currency permitted to be used in Kosovo on the basis of the official exchange rate prevailing at the date on which the court in Kosovo enforces the order.

13.14 Subject to sections 13.9-13.13, section 11 shall apply *mutatis mutandis* to proceedings for the enforcement of an order for confiscation rendered by a foreign court.

Section 14 Exemption from Liability

14.1 Notwithstanding any contrary provisions of applicable law, no civil or criminal liability action may be brought nor any professional sanction taken against any person or entity based solely on the good faith transmission of information, submission of reports, or other action taken pursuant to the present Regulation, or the voluntary good faith transmission of any information concerning a suspicious act or transaction, suspected money laundering or suspected financing of terrorist activities to the Centre.

14.2 UNMIK shall be immune from liability in respect of any act or omission of the Centre or its officers.

Section 15 Professional Secrecy

15.1 Notwithstanding any contrary provisions of applicable law, professional secrecy may not be invoked as a ground for refusal to provide information that:

- (a) Shall be disclosed pursuant to the present Regulation; or
- (b) Is collected and maintained pursuant to the present Regulation, and is sought by either the Centre, or by the police in connection with an investigation that relates to money laundering and is ordered by, or carried out under the supervision of, a Public Prosecutor or Investigating Judge.

15.2 Section 15.1 shall be without prejudice to sections 2.7(b) and 6.9.

Section 16 Notice of the Present Regulation

Notice of the present Regulation shall be issued:

- (a) By BPK to registered banks and financial institutions;
- (b) By UNMIK to registered NGOs; and
- (c) By OSCE to registered political parties.

Section 17 Implementation

The Special Representative of the Secretary-General may issue administrative directions for the implementation of the present Regulation.

Section 18
Applicable Law

Except where otherwise expressly indicated in the present Regulation, the present Regulation shall supersede all applicable law that is inconsistent with it.

Section 19
Entry into Force

Except where a later effective date is expressly indicated in particular sections, the present Regulation shall enter into force on 1 March 2004 and shall remain in force for an initial period of twelve (12) months. Upon review this period may be extended by the Special Representative of the Secretary-General.

Harri Holkeri
Special Representative of the Secretary-General