

INCORPORATION PROCESS OF PUBLICLY OWNED ENTERPRISES

The KTA implemented an incorporation process for all 26 Publicly Owned Enterprises (“POEs”) under its supervision by transforming and incorporating the old legal entities into modern-style Joint Stock companies (“JSCs”). This process included the introduction of best practice corporate governance and capacity building. The incorporated enterprises include all 17 enterprises from the Water, Waste and Irrigation Sector, the major POEs like PTK, Pristina International Airport, Kosovo Railways, KEK, District Heating Termokos and Gjakova. A new company, KLMC, was created to manage the landfill activities under the KTA’s remit, and KOSTT was created as a separate transmission system and market operator from KEK.. It was necessary to incorporate the POEs as JSCs under the Law on Business Organisations since these, like many other former socialist enterprises, had an unclear legal status and management structures, unfamiliar to investors, banks, suppliers, consultants and auditors. .

The incorporation process included the following:

- Transformation of the old entity into a Joint Stock Company (“JSC”) (“Holdco”) and incorporation of a new entity. The creation of a Holding Company and an Operating Company (“Opco”) allows the separation of contingent liabilities from the operations of the POEs as well as the creation of a clean Balance Sheet, which should facilitate the POE in its business and increases transparency. Registration of the newly created entities at the Kosovo Business Registry. Execution of the Transformation Plan and Contribution and Subscription Agreement to accomplish the creation of both entities;
- Financial due diligence: verification and revaluation of assets resulting in a restated opening Balance Sheet for the incorporated entities, a list of assets to be attached to the Subscription and Contribution Agreement so that each asset and liability is transferred to the Opco, whilst leaving some (contingent) liabilities behind;
- Legal due diligence Report: the report lists all important legal information (e.g. contracts with suppliers, legal actions,) and high lights areas with scope for improvement – the aim is for management to be able to hand over this report to investors etc. In some cases an Information Memorandum was produced for this purpose.
- Introduction of proper corporate governance structures, by which the owners (in this case the KTA as shareholder/trustee) controls the management of POEs by establishing Boards of Directors, which is responsible for the strategy of the POE and the supervision of its management. The rules applying to the interaction between the shareholder, Board of Directors and management are set out in the respective POE’s Bylaws as well as in Applicable Law.
- Ensuring stakeholder by-in of the process by informing them and having them participate in the Boards of Directors, in preparation of the Board Members being replaced by independent experts.
- Addressing the principal-agent theory by allowing the MD and CFO to participate as executive Directors on the Board of Directors.

In short, incorporation is meant to improve corporate governance, financial transparency, accounting procedures, and the effectiveness and efficiency of the POEs, making them more attractive to outsiders, be it investors, lenders, or donors as well as facilitating the control and supervision for the shareholders and other important stakeholders.

Timeline:

The incorporation process started in December 2004 and was finalized in the first quarter of 2008: PTK (with the assistance of Curtis Mallet Prevost and Grant Thornton) and PIA (assisted by Wolf Theiss and Grant Thornton) were incorporated in June 2005, using their own funds. In January 2006, with funding from the European Agency for Reconstruction (EAR), the KTA (assisted by Wolf Theiss and Deloitte Touche) completed the incorporation of the Kosovo Energy Corporation (KEK), resulting in the spin-off of KOSTT from KEK Kosovo Railways, and the district heating enterprises Termokos and Gjakove. KLMC was incorporated by the KTA at the end of 2005. The incorporation of all 17 water, waste, and irrigation enterprises was completed in December 2007, with funding from EAR (water sector), KfW and SDC (waste and irrigation) and the respective assistance of Curtis Mallet Prevost, Grant Thornton and Pohl Consulting.