

**OCTOBER 2005**

**FREQUENTLY ASKED QUESTIONS**

**Claims against the Kosovo Trust Agency (KTA) and/or an Enterprise under KTA's administration pursuant to UNMIK Regulation 2002/12 on the Establishment of the Kosovo Trust Agency, as amended by UNMIK Regulation 2005/18.**

Potential claimants should ensure they consider all relevant laws and regulations carefully and consider obtaining expert legal advice in relation to any claims they may have against the KTA and/or any Enterprise under the administration of the KTA.

This document does not have the force of law and is no more than a summary of certain of the matters that should be considered by any potential claimant. This summary document, by definition, is not comprehensive and does not cover all areas of law and procedure. There is no substitute for reviewing the laws and regulations, in particular those referred to in paragraph 1 below. Potential claimants should note that this document is not legally binding and should not be considered as constituting legal advice.

**IMPORTANT NOTE:**

This document relates to (i) the **registering of claims** and (ii) the **commencement of proceedings** in the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters (the "**Special Chamber**") generally.

If you are intending to make a complaint in relation to employee lists under **Section 10 of UNMIK Regulation 2003/13 of the Right to use Socially-owned Immovable Property** or submit a **Liquidation Claim**, the general provisions referred to below may not all apply. The timetable and procedure is different in such circumstances. It is your responsibility to ensure compliance with the law and all applicable regulations.

**1). Is there a difference between this Claim Form and the Liquidation Claim Form?**

**Yes.** You should use the KTA Claim Form if you have any claim related to the ownership of an SOE/POE or any creditor claim (whether secured, unsecured, claim for damages, claim for unpaid salary etc). The KTA will register your claim and inform you of the number of your claim. The KTA does not have judicial authority to resolve your claim. The KTA Claim Form is not appropriate for claims relating to employee list complaints under Section 10 of the Land Use Regulation.

You should use a Liquidation Claim Form if you have a creditor claim against an SOE **and** a Notice of Liquidation has been published in the local media advising that the SOE is to be liquidated. More information on how to file a Liquidation Claim Form can be found on the KTA web site: [www.kta-kosovo.org](http://www.kta-kosovo.org) under the section "Liquidation Claim Form".

**2) Where do I find the law relating to the KTA and the Special Chamber?**

See the following at [www.unmikonline.org](http://www.unmikonline.org)

- a) UNMIK Regulation 2002/12 on the Establishment of the Kosovo Trust Agency, as amended by UNMIK Regulation 2005/18 (the "**KTA Regulation**");
- b) UNMIK Regulation 2002/13 on the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters (the "**Special Chamber Regulation**");

- c) UNMIK Administrative Direction 2003/13 Implementing UNMIK Regulation 2002/13 on the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters (the “**Special Chamber AD**”); and
- d) UNMIK Regulation 2003/13 on the Right to use Socially-owned Immovable Property (the “**Land Use Regulation**”).

**3) How do I register a claim against a Socially-owned Enterprise (SOE) or a Publicly-owned Enterprise (POE), under the administration of the KTA?**

If you have a claim related to an SOE/POE under the administration of the KTA, you should register the claim with the KTA by completing and filing with the KTA a **KTA Claim Form**, the form of which is attached as **Annex A**.

The completing of the KTA Claim Form is purely an administrative process whereby the KTA records that you have registered a claim or potential claim.

You should note that:

- the KTA does not have judicial authority to resolve your claim. The only body that is authorized to resolve your claim judicially is either the Special Chamber or, in certain circumstances, a regular/local court; and
- completion and filing of the KTA Claim Form does **not** constitute notice under Sections 29 and 30 of the KTA Regulation (see paragraph **15** below) as it does not relate to an intent to take legal action.

If you have a claim or potential claim against the KTA, you do not need to complete a KTA Claim Form.

**4) From where can I obtain a KTA Claim Form?**

KTA Claim Forms can be found at the KTA HQ (Pristina) reception or the KTA HQ (Pristina) Claims Unit - LD (Pristina); KTA Regional Offices: in Pristina, Prizren, Mitrovica, Peja/Pec and Gjilan/Gnjilane; as well at the EU Belgrade Office; and on the KTA web site: [www.kta-kosovo.org](http://www.kta-kosovo.org) under the section “Claim Forms”.

**5) Can I register a claim against several Enterprises by using one KTA Claim Form?**

If you wish to register claims against several different Enterprises, you should use a separate KTA Claim Form for each Enterprise.

**6) Where do I submit the completed KTA Claim Form?**

You should submit the completed KTA Claim Form with all relevant supporting documents at any one of the KTA HQ-Reception, the KTA Regional offices or at the EU Belgrade Office (referred to in paragraph **3** above).

**7) How should I submit the KTA Claim Form to the KTA?**

You can submit your completed KTA Claim Form to the KTA by mail, courier or in person. You are advised to obtain a confirmation of receipt.

**8) Do I have to pay any registration fee for submitting a KTA Claim Form?**

No registration fees are payable.

**9) What languages can the KTA Claim Form be in?**

English, Albanian or Serbian. You do not need to submit it in all three languages.

**10) Do I have to use the KTA Claim Form?**

No; the completion of the KTA Claim Form is not a legal requirement. However, it is strongly recommended that the KTA Claim Form is used as it ensures that the KTA is aware that you have a potential claim and it should ensure that you do not miss out any vital information in advising the KTA of your potential claim; it will also allow the KTA to process/record your claim more easily.

**11) What is the date that the KTA Claim Form is considered delivered to the KTA?**

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

**12) How do I know (i) whether my KTA Claim Form is registered with the KTA and (ii) the applicable claim number?**

Your claim will be registered at the KTA -LD- Claims Unit, and will be allocated a claim number. You will receive back a copy of the KTA Claim Form stamped by the KTA. Please use this claim number in any future correspondence with the KTA in relation to your potential claim.

Please note the Special Chamber has another separate numbering system to record claims filed with the Special Chamber, although, as mentioned in this document, this is a separate matter. Registration of a KTA Claim Form with the KTA is not a part of the Special Chamber or their processes.

**13) What answer should I expect from the KTA when I have delivered my completed KTA Claim Form?**

The KTA will allocate a claim number to your claim. As mentioned, the KTA does not adjudicate or make any decision in relation to your claim (which would usually fall within the jurisdiction of the applicable court, if you decide to take the matter further). It is possible that the KTA might, however, contact you with a settlement offer. The KTA-LD-Claims Unit aims to respond to you with your claim number within 7 days of the KTA Claim Form reaching them; please bear in mind that it may take some time for the form to be submitted to the KTA Claims Unit by another entity/office of the KTA.

**14) So why do I register my KTA Claim Form at all if it is not a legal requirement and if it does not constitute notice under Sections 29 and 30 of the KTA Regulation (as referred to in paragraph 15 below)?**

The purpose of registering your claim with the KTA is to inform the KTA of matters affecting an SOE or POE and of its liabilities; these matters might be of certain importance in the context of a possible privatization, for example; it is also important to notify the KTA that you have a potential claim in relation to a given entity so that there is a record of your potential interest in the SOE or POE. It is also possible that the KTA might contact you in certain circumstances with a settlement offer.

**15) But as well as notifying the KTA of my claim against an SOE or POE, I actually want to sue the SOE, POE or a Corporation in the Special Chamber. Furthermore, I also (or as a separate matter) may wish to sue the KTA in the Special Chamber. What should I do?**

The filing of the KTA Claim Form is merely notice to the KTA that you may have a claim. It does not have anything to do with the taking of legal action in the Special

Chamber. In particular, it does not constitute notice of intent to file a suit for the purposes of Sections 29 or 30 of the KTA Regulation, as referred to below.

*Under Section 29.1 of the KTA Regulation, “no legal proceedings against an Enterprise shall take place in a court without the claimant providing proof that written notice of intention to file an action was submitted to the Agency specifying the name of the claimant, the name of the Enterprise or Corporation and other relevant identifying data, the basis of the claim, and the relief sought.”*

*Under Section 30.2 of the KTA Regulation, “The Special Chamber shall not admit any suit against the Agency unless the claimant submits evidence of having notified the Chairman of the Board of his intention of filing such suit at least sixty (60) days prior to the actual filing. The Special Chamber, at the request of the Agency, may suspend the opening of proceedings on a suit against the Agency for a period not exceeding sixty (60) days of the receipt of such suit to facilitate an amicable settlement.”*

### **If you intend to sue an SOE/POE/Corporation**

You must provide written notice to the KTA complying with Section 29.1 of the KTA Regulation. Completion of the KTA Claim Form does not satisfy this independent requirement to notify the KTA. This notice must specify the name of the claimant, the name of the Enterprise or Corporation and other relevant identifying data, the basis of the claim and the relief sought.

### **If you intend to sue the KTA**

Please see paragraph **16** as to when you can sue the KTA (as opposed to an SOE/POE/Corporation). If you wish to sue the KTA, you must have provided 60 days prior written notice to the Chairman of the KTA Board complying with Section 30.2 of the KTA Regulation, prior to making a filing in the Special Chamber. Completion of the KTA Claim Form does not satisfy this independent requirement to notify the Chairman. Although not specified in the KTA Regulation, this notice of intent to sue the KTA should also specify the name of the claimant, the name of any Enterprise or Corporation also being sued in respect of the claim, the basis of the claim, the relief that the claimant will seek and any other relevant identifying or relevant data.

Such notification should be addressed as follows:

Chairman of the Board of the Kosovo Trust Agency  
Kosovo Trust Agency  
No 8, Ilir Konushevci Street  
Pristina  
Kosovo

or it can also be addressed to the KTA care of the EU office in Belgrade, in which case it should be addressed as follows:

Chairman of the Board of the Kosovo Trust Agency  
Kosovo Trust Agency  
EU Pillar IV Belgrade Office,  
Tolstojeva 47-49,  
11000 Beograd  
Serbia

It is suggested that any such letters are headed "Notice for the purposes of Section 30 of UNMIK Regulation 2002/12"

Where you wish to sue an Enterprise or Corporation and the KTA, the notices under Section 29 and Section 30 should be done in separate notification forms. Furthermore, it is preferable to provide separate notices for each claim.

Once these requirements have been complied with, you then need to file the claim itself at such appropriate later date with the Special Chamber in accordance with the provisions of Sections 22 and 24 and related provisions of the Special Chamber AD. Section 25 of the Special Chamber AD should also in particular be considered when filing a claim with the Special Chamber. Among other things, the Special Chamber will consider whether the appropriate time periods have been complied with.

**16) OK, but when can I actually sue the KTA in the Special Chamber?**

You should be aware that the KTA is not the appropriate respondent in all cases for claims against SOEs, POEs and Corporations; the claimant should therefore have due regard to the laws referred to in paragraph 1 above in considering whether the KTA (instead of just the Enterprise or Corporation) is the appropriate respondent. The claimant should take legal advice on this matter.

Whilst review of the law in its entirety should be made for these purposes, specific reference is made to the following:

- Section 18 (Liability, Due Diligence and Responsibility of the Agency) of the KTA Regulation;
- Section 29 (Rights of the Agency in Legal Proceedings against Enterprises) of the KTA Regulation;
- Section 30 (Lawsuits against the Agency) of the KTA Regulation;
  
- Section 4 (Jurisdiction) of the Special Chamber Regulation;
- Section 5 (Claimants and Respondents) of the Special Chamber Regulation
- Section 6 (Period of Time to File a Claim Challenging Decisions or Actions of the Agency) of the Special Chamber Regulation
  
- The Land Use Regulation

**17) What is the date that the notification under Sections 29 and 30 to the KTA is considered delivered to the KTA?**

Although there is no express guidance for the purposes of the 60-day notice period under Section 30.2 of the KTA Regulation, reference should be made to the principles set out in Section 8 (Effecting Service) of the Special Chamber AD. In order to avoid any doubt or confusion, it is submitted that the 60-day period should be considered as starting to run when the KTA has actually received the notice on behalf of the Chairman.

**18) Is there a deadline as to when I can file my claim at the Special Chamber challenging decisions or actions of the KTA?**

Yes. According to the Section 6 of the Special Chamber Regulation, you have to submit your claim challenging a decision or action of the KTA with the Special Chamber within 9 months from the later of:

- a) the date you knew or with reasonable diligence should have known of the decision or action of the KTA;
- b) the date on which the Special Chamber gives public notice that it is able to accept claims. This date is considered by the Special Chamber to be 16 June 2003.

Of course you must have given the KTA 60 days notice of your claim prior to those dates, if required.

With claims relating to employee lists and eligibility for a part of the 20% proceeds of privatization under the Land Use Regulation, you must file your claim at the Special

Chamber directly within 20 days after the final publication in the media of the list of eligible employees by the KTA, as required by Section 10.6 of the Land Use Regulation.

With Liquidation Claim Forms you must file them within **2 months** of the publication of the second of the two Notice of Liquidation. Failure to register your Liquidation Claim Form within the two-month deadline will exclude your claim from the distribution of proceeds of sale.

**19) OK, so I also have to file the claim formally with the Special Chamber (in addition to completing the KTA Claim Form and the notices required under Section 29 and/or Section 30 KTA Regulation). When and how do I do this?**

Once you have waited the required notice periods and if you still wish, and are able to proceed based on your review of the laws applicable to claims, you then have to submit your full claim with formal evidence/supporting documentation to the Special Chamber (See Sections 22, 24 and 25 of the Special Chamber AD for what your pleading should contain as a minimum). There is no specific form of document for making a filing at the Special Chamber.

**20) Do I need to instruct a lawyer?**

See Section 21 of the Special Chamber AD. Claimants and respondents (other than the KTA) must be represented by a member of the bar association in Kosovo or in Serbia or Montenegro except for natural persons who may choose to represent themselves (subject to the comments below). The Presiding Judge of the Special Chamber, at his discretion, may allow a member of a foreign bar who has the necessary competence and experience to represent you.

Upon application by any party or upon the motion of the Presiding Judge, the Presiding Judge may order that a party be represented by a member of the bar association in Kosovo or in Serbia or Montenegro, in certain circumstances. Please note the provisions relating to financial assistance with legal representation, should this be required, which are set out in Section 21 of Special Chamber AD.

Under Section 21.3 of Special Chamber AD, any appointed lawyer must submit to the Registry of the Special Chamber a copy of the power of attorney granting the authority to represent such party in the proceedings before the Special Chamber.

You do not need a lawyer to complete the KTA Claim Form or to give notice to the KTA under Sections 29 and 30 of the KTA Regulation.

In general, even if not required to by law, the KTA would recommend that you engage a lawyer to help you prepare your case.

**21) How many copies of pleadings must I file with the Special Chamber?**

According to Section 22.1 of the Special Chamber AD, you must file an original, together with six copies for the Special Chamber, and a copy for every other party to the proceedings. Consider carefully Sections 22, 24 and 25 of the Special Chamber AD in relation to your initial pleadings and any other applicable section of the Special Chamber AD.

**22) What are the rules on translations for filings at the Special Chamber?**

Under Special Chamber AD, Section 22.7, pleadings and supporting documents must be submitted to the Special Chamber in Albanian, Serbian or English. However if submitted in Albanian or Serbian, an English translation must be provided. This translation is at your expense.

**23) What if I do not have money to pay for translations?**

Under Sections 22.8 and 22.9 of the Special Chamber AD, you can apply to the Special Chamber for assistance in the translations if you can demonstrate you do not have the financial means to pay.

**24) How does the Special Chamber respond?**

The Special Chamber will give you a claim number and may ask you for further documents/clarifications.

**25) What does the Special Chamber do next?**

Once the Special Chamber has received and registered the claim, the claim is referred to a Rapporteur of the Special Chamber who will examine the admissibility of the claim and whether, assuming the truth of the allegations made in the claim, any relief can be awarded in respect of the claim as a matter of law.

Section 25.2 of the Special Chamber AD sets out the matters that need to be satisfied for the claim to be considered as admissible. If the Rapporteur determines that the requirements of Section 25.2 are not met, he/she may issue an order for completion/correction by you within a certain period. If you fail to respond, then the Special Chamber will reject the claim for inadmissibility.

If the Rapporteur determines that no relief can be awarded in respect of the claim as a matter of law, the matter will be referred to the Special Chamber with a recommendation for a rejection of the claim for that ground under Section 25.5. You will receive notice of such recommendation and will then have 14 days to respond/object.

If and when the claim is considered admissible and is not rejected for any ground referred to above, then the Rapporteur will serve the claim on the respondent. The respondent has one month to serve a defence under Section 26 of the Special Chamber AD. The Special Chamber will examine the defence and will set hearing dates. It may also set a hearing date to make practical arrangements about the overall case - "a directions hearing".

**26) How can I find out about the rules of procedure of the Special Chamber?**

You should consider Section 8 of the Special Chamber Regulation and Chapters VI, VII, VIII, IX of the Special Chamber AD.

**27) My claim is urgent because I want to stop a certain action happening – what do I do?**

If you can demonstrate and give credible evidence that immediate and irreparable injury, loss or damage will result to you if no preliminary injunction is granted, then the Special Chamber may issue such an injunction for a limited period of time (which may be extended upon application). In this instance, in certain circumstances, it might be that the KTA will waive the requirement for the KTA to be given the 60-day advance notice of claim. You should still serve notice on the KTA. See Section 52 of the Special Chamber AD.

**28) What if my claim relates to employee lists and eligibility to 20% of privatization proceeds from privatization, under the Land Use Regulation?**

These claims under Section 10.6 of the Land Use Regulation are progressed faster. If you believe you should be included on the list or are otherwise qualified to raise complaints (under Section 10), then you must file with the Special Chamber within 20 days of the employee list's final publication in the media by the KTA. The Special

Chamber will consider any complaints on a priority basis and decide on such complaints within 40 days of the date of submission. There is a tight timetable in the Land Use Regulation and the Special Chamber AD for the serving of documents. Not all the provisions of this note will always apply in relation to such expedited claims. You are advised to seek legal advice and refer in particular to the Land Use Regulation and Section 64 of the Special Chamber AD.

**29) The Enterprise has changed its name and I don't know what the new name is? What do I state on the documents?**

You should state all the names for the Enterprise that you know about (e.g. older Serbian or Albanian names); also include the full address of the Enterprise and any commercial court registration number(s) or similar information which will help the KTA and the Special Chamber identify which Enterprise the claim relates to.

**30) Can I file claims with other courts in Kosovo?**

According to the UNMIK Regulations, the Special Chamber has primary jurisdiction over certain listed areas, in particular claims relating to Enterprises under the jurisdiction of the KTA. This means that other courts should dismiss claims filed with them. Furthermore, on application by the KTA, at any time after commencement of KTA's administration of an Enterprise or Corporation, the Special Chamber may effect the removal of any action pending in any court in Kosovo to which such Enterprise or Corporation is a party. See Sections 4 and 5 of the Special Chamber Regulation.

**31) What is the Special Chamber?**

The Special Chamber is a court set up especially to deal with claims against socially and publicly owned enterprises in Kosovo and the KTA. It has 3 international judges and 2 judges who are residents of Kosovo.

**32) Will the Special Chamber hear all cases?**

The Special Chamber has primary jurisdiction for claims or counterclaims in relation to the matters set out in Section 4 of the Special Chamber Regulation. That said, it may refer specific claims or categories of claims to any court having the required subject matter jurisdiction under applicable law.

**33) Is there a right of appeal from the Special Chamber?**

There is no appeal court in Kosovo from the Special Chamber. It is the highest court in Kosovo.

**34) Can I appeal from another court to the Special Chamber?**

Yes. See Sections 55, 56 and 57 of the Special Chamber AD. There is a time limit of 2 months from the other court's decision in which to file an appeal. Note also that a decision of a court to which a matter has been referred by the Special Chamber under Section 4.2 of the Special Chamber Regulation may be appealed to the Special Chamber (and only the Special Chamber), unless the Special Chamber otherwise decides.

**35) Can I claim legal costs?**

Yes. See Section 11 of the Special Chamber Regulation and Section 53 of the Special Chamber AD.



**Annex A KTA Claim Form**