Material for discussion on socially-owned and publicly-owned enterprises in the Republic of Kosovo

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## Contents

1. EU requirements and standards for corporate governance and privatization ............................................. 3

2. Privatization and liquidation of socially-owned enterprises .............................................................................. 4
   2.1. Legal and institutional framework ............................................................................................................ 4
   2.2. Status and challenges ............................................................................................................................... 5
   2.3. Trepça mines ............................................................................................................................................ 7
   2.4. Brezovica Ski Centre ............................................................................................................................. 9

3. Corporate governance, corporatization, restructuring, concession and privatization of publicly-owned enterprises .......................................................................................................................... 10
   3.1. Legal and institutional framework ........................................................................................................... 10
   3.2. Status and challenges ............................................................................................................................... 11
   3.3. KEK ....................................................................................................................................................... 14
   3.4. PTK ....................................................................................................................................................... 16
   3.5. Prishtina International Airport ................................................................................................................. 18
   3.6. Kosovo Railways ..................................................................................................................................... 18
   3.1. Bus Stations .......................................................................................................................................... 19
   3.2. Water and Waste Companies ................................................................................................................... 19
   3.3. (Central) Heating Companies .................................................................................................................. 20
   3.4. Issues for considerations ......................................................................................................................... 21

4. Summary ....................................................................................................................................................... 22
1. EU requirements and standards for corporate governance and privatization

The EU member states approach towards privatization depends on socio-economic conditions of these countries, such as unemployment rate, economic growth, foreign investments, etc., therefore there is no single approach required by the EU legislation. Irrespective of this, privatization has been a key element of broader reformatory policies in the majority of EU member states during past two decades in order to grow economic efficiency, restructuring of economic sectors, increase of income levels, cutting subsidies and improvement of financial situation of publicly-owned enterprises, etc.

EU principles in the field of privatization are closely related with the fields of domestic market, competition, corporate governance, etc. EU has established its key principles through Rome Convention, and it has advanced them through subsequent conventions, which include: market opening and liberalization, transparency, open and fair competition without violating public providers of services on citizens’ interest, elimination of monopoly and/or dominant position in the market, avoiding privileging approach in financial institutions, accountability, stopping national-based discrimination, stopping agreements on pricing, stopping limitation and control of production/market and investments, stopping application of unequal conditions during transactions to create competitive disadvantage, etc.

Competition may be avoided by EU relevant institutions only in cases when it is necessary to protect vulnerable enterprises due to structural or natural conditions, or when it promotes technical and economic progress that provides consumers with proportional benefits.

State assistance (grants, tax relief, provision of preferential conditions, etc.) is allowed as long as it is necessary for the public interest, economic development of underdeveloped regions or promotion of environment protection, research and development, etc. This assistance is not allowed in cases when it distorts or jeopardizes free and fair competition or joint interest of the EU.

Regarding corporate governance, the EU has started its debate in 2002 through a report from the Group of senior experts on corporate rights. The EU has established the European Forum for Corporate Governance which aims at good and transparent governance of corporates, which is essential for increasing competition and efficiency of businesses in the European Union, as well as strengthening shareholders with rights and protection of third parties.

Through Communiqué on “Modernization of company law and enhancing corporate governance in EU – the Plan to move forward” in 2003, the EU initiated the process of harmonization of regulations on company law and corporate governance in order to protect shareholders, increase efficiency and competition, regulate the proportionality between equity and control, increase of the role of executive directors, provision of freedom to establish companies, etc.²

The European Commission in 2010 has drafted a Green Paper in order to improve mechanisms of corporate governance. Some of the key principles of the EU in this field include:

- Boards must be balanced between executive and non-executive directors, while the roles of the Chairman and Chief Executive must be separated.
- Composition of non-executive of directors in the Board must be based on criteria of qualification, experience, professionalism, independence and diversity of candidates.
- Salary policy and remuneration of directors must be transparent.
- Companies must have a risk management plan and must be monitored by their boards.
- Conflict of interest must be avoided in every aspect.

² The EU approach to corporate governance, 2008, p.3-5.
Companies in public interest must establish an Auditing Committee, which provides advice to the Board.

There is a large number of EU directives that are related to the principles of privatization and company management, which refer to specific sectors or even cases.

As a conclusion, it can be said that EU core requirements regarding privatization of publicly-owned or socially-owned companies are for the process to be transparent, to guarantee an expected outcome and not to influenced by political interference.

2. Privatization and liquidation of socially-owned enterprises

2.1. Legal and institutional framework

The sector of socially-owned enterprises (SOEs) employed about 20,000 people while the number of people in the employee lists reaches up to 60,000 (for example, 40,000 were on unpaid leave). SOEs operated in a variety of sectors including metal processing, plastic, paper, hotels, mines, agro-industry, agriculture, forestry, construction materials, construction, textile, winery and vineyards, beer, tobacco, and retail and wholesale. It has been calculated that SOEs represented about 90% of the industry and mining in Kosovo, 50% of the sale for retail commercial sales and less than 20% of agricultural land – including commercial agriculture land and the majority territory of Kosovo’s forestry. The majority of industrial assets in Kosovo, agriculture land, forests, urban commercial land and commercial properties were in possession of SOEs.

Kosovo Privatization Agency (KPA) was established as a successor agency of Kosovo Trust Agency (KTA) regulated with UNMIK Regulation 2002/12 “on establishment of Kosovo Trust Agency” with amendments, all assets and responsibilities are assets and responsibilities of KPA. KTA was established by UNMIK in 2002 and had started privatization process in Kosovo in 2003. However, KPA did not inherit the KTA mandate over publicly-owned enterprises (POEs).

KPA was established with passing of the Law on Kosovo’s Privatization Agency (Law no. 03/L-067) which entered into force on 15 June 2008. The law includes relevant provisions of the Comprehensive Proposal on Status Settlement of Kosovo dated 26 March 2007 (Annex VII, Article 2), which became part of the Constitution of the Republic of Kosovo (article 145 of the Constitution of the Republic of Kosovo). KPA was established as an independent public institution and it exercises its functions and responsibilities with full autonomy. KPA has full legal competence to enter contracts, to take, keep or sell property and it also has all competences to fulfil tasks and competences granted by law; and to sue or be sued on its behalf.

So far, five members (including Chairman of the Board) of the KPA Board of Directors were nominated by the Assembly of the Republic of Kosovo and three international members by the International Civil Representative in compliance with the provisions of the Law on establishment of KPA. Board of Directors is the highest decision-making body and it has full jurisdiction over KPA, while KPA organization structure, as is envisioned by Law on KPA, in addition to the Board of Directors, also includes the executive section that is led by the director and two deputy-directors. The KPA executive

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3 The EU approach to corporate governance, 2008p.5-8.
4 Full package of relevant documents can be found in European Commission website: http://ec.europa.eu/internal_market/company/official/index_en.htm.
The Special Chamber of the Kosovo Supreme Court on Issues related to KTA (Special Chamber) was established by UNMIK in 2003 as an international court to provide a strong, independent and impartial mechanism in privatization process in Kosovo. Upon deployment of EULEX mission to Kosovo, staff of 30 persons is engaged in the institution. EULEX judges in Special Chamber have executive functions and they comprise the majority of judges in every panel.

In August 2011, the Assembly of the Republic of Kosovo passed the new Law on KPA no. 04/L-034, as well as Law on Special Chamber of the Kosovo Supreme Court on issues related to KPA no. 04/L-033 and these laws have created conditions to accelerate privatization process, liquidation, distribution of 20%, and acceleration of transfer of assets to private investors and distribution of trust fund to creditors and legal owners.

2.2. Status and challenges

Upon approval of the Law on Kosovo Privatization Agency (KPA), the privatization process of socially-owned enterprises (SOEs) restarted in the summer of 2008\(^7\) (after temporary interruption as a result of ending of KTA mandate from UNMIK Pillar IV, known as European Union Pillar, in June 2008), but at a slower pace and without producing any significant impact on Kosovo’s economy. Since 2009, the process was more dynamic, but still with delays\(^8\) and with a considerable number of enterprises still to be privatized\(^9\).

Due to EULEX neutrality towards Kosovo’s political status, Special Chamber from the very beginning refused to recognize KPA as a legal successor of KTA. For more, the Special Representative of the Secretary General (SRSG) had set exclusive authority over any issue dealing with KTA (even though KTA \textit{de facto} didn’t exist any longer). This situation created legal uncertainties and significantly influenced prolongation of the processes developed by KPA.

The methods used by Kosovo Trust Agency included: i) regular spin-off, ii) conditional spin-off, and iii) special spin-off. Enterprises and their assets were privatized with regular spin-off based on the highest bid during a wave, without any additional condition. Conditional and special spin-off included, in addition to the highest bid, required meeting conditions such as commitments for employment and investments; the process was organized in two waves, and only three bidders selected from the first wave participated in the second wave.

According to the Law no. 04/L-034, KPA does not apply special spin-off method since it proved to be a complex method and resulted with several privatized enterprises which prolonged meeting their commitments for employment and investments (furthermore contracts were entered based on England’s laws which do not correspond to Kosovo’s laws). Therefore, KPA decided to apply only regular spin-off method, and selling of assets through liquidation.\(^10\)

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\(^6\) [Link to document](http://www.pak-ks.org/repository/docs/Information_to_Stake_Holders_august_2011_alb_ver_FINAL..pdf).
\(^10\) Feasibility study questionnaire, p.138-139.
Overall number of SOEs included in privatization/liquidation as of the start of the process until today is 313, while the number of new companies put on tender from these SOEs is 696, 675 sale contracts were closed, while only three SOEs were liquidated. In 25 SOEs privatized through special spin-off, 7,108 employees were hired as opposed to 8,340 that were committed.

Regarding privatization of agricultural land, it is done in compliance with the Law no. 02/L26 on agricultural land and the Law 2003/14 on spatial planning, to ensure that privatized agriculture land is not used for construction purposes. So far 28,842ha were privatized, and 17,303ha are in the process of getting privatized from a total of 46,145ha.

Until 30 September 2012, overall revenues from privatization were 572,040,806 €, while the revenues from liquidation were 60,565,419 €. Due to different legislative and operational difficulties, complaints of creditors are not resolved, so KPA has contracted Deloitte Central Europe to accelerate resolving of complaints/appeals and it is expected that all complaints will be resolved by mid-2013 for 179 SOEs that are in the liquidation process at the moment.

Revenues from the process are held in a trust fund at Kosovo’s Central Bank. 20% of the funds are reserved for SOE employees who are entitled to a part of shares, 5% are administrative fees for KPA, while 75% of the remaining funds serve for resolving complaints of creditors. So far, creditors have been paid only about 45,000 EUR in relation to the three SOEs liquidated by KPA. On the other hand, KPA has published 86 lists of employees by 30 September, from whom about 33,000 employees have benefited about 67 million EUR from the 20%.

By 2011 KPA activities were mainly funded from donors’ grants, while operations were supervised by the International Civilian Office (ICO). But, as part of Kosovo’s transition from supervised to full independence, KPA is integrated into the overall government budget. It is expected that from 2013 onwards KPA will fund capital investments from privatization-generated revenues. Furthermore, 5% of revenues from privatization process are considered administrative fees and it will be available for KPA to cover its administrative and operational expenses for next five years. Thus, KPA it is not part of expenditure limits determined by the government, because it is self-funded and it defines expenditures independently. KPA budget for next three years is forecasted to be as shown in Table 1.

Table 1: Approved expenditure limits

11 The number of new companies in the tendering process does not mean the number of sold companies, because tendering process may end without a sale for different reasons.
12 Feasibility study questionnaire, p.266. 2,508ha were privatized through special spin-off; 25,334 through regular spin-off.
13 Liquidation has been less successful thus far, and revenues from this process are not included in budget planning. Latest information on revenues from privatization and liquidation are from KPA official sources.
15 Latest information on distribution of 20% of funds are from KPA official sources.
17 Feasibility study questionnaire, p.138-139.
<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total</strong></td>
<td>6,857,010</td>
<td>9,894,880</td>
<td>9,849,880</td>
<td>26,601,770</td>
</tr>
<tr>
<td>Salaries and bonuses</td>
<td>3,600,000</td>
<td>3,600,000</td>
<td>3,600,000</td>
<td>10,800,000</td>
</tr>
<tr>
<td>Goods and services</td>
<td>2,889,010</td>
<td>5,971,880</td>
<td>5,971,880</td>
<td>14,832,770</td>
</tr>
<tr>
<td>Utilities</td>
<td>98,000</td>
<td>98,000</td>
<td>98,000</td>
<td>294,000</td>
</tr>
<tr>
<td>Subsidies and transfers</td>
<td>100,000</td>
<td>100,000</td>
<td>100,000</td>
<td>300,000</td>
</tr>
<tr>
<td>Capital expenditures</td>
<td>170,000</td>
<td>125,000</td>
<td>80,000</td>
<td>375,000</td>
</tr>
<tr>
<td>Number of staff</td>
<td>271</td>
<td>271</td>
<td>271</td>
<td></td>
</tr>
</tbody>
</table>

Source: KASH 2013-2015

Privatization is expected to be completed in next two years, however, liquidation of SOEs will continue\(^{20}\), while according to latest predictions of the Government the entire process of privatization and liquidation will end in 2016.\(^{21}\)

However, considering the pace of the development of these processes so far and knowing that the portfolio of remaining SOEs to be privatized/liquidated is more problematic due to lack of cadastral documents and other ownership issues, this prediction might not be realistic. For more, KPA performance is being affected largely from significant delays in nominating members to the Board of Directors, which makes its strategic decision-making more difficult.

During UNMIK administration, the commercialization process of some SOEs took place by signing ten-year concession contracts. From 18 contracts signed, nine of them are suspended due to non-fulfilment of contractual requirements, one is still in effect while other SOEs were privatized. Due to weaknesses encountered during application of this process and modest results in meeting requirements by investors, KTA had decided to stop that process and continue with privatization process.

Even though privatization of SOEs in Kosovo has its importance for property transformation, as an important component of market economy, this process has not achieved desired effects for Kosovo’s economy. Probably many factors have influenced this, such as political uncertainties due to delay in definition of Kosovo’s political status; hesitation of UNMIK administration to start the process before 2003 (and its interruption after second wave of privatization) which as affected in reduction of the value of assets, further loss of markets of SOEs and discouragement of potential investors; keeping privatization funds in a “frozen” status (on justification for legal-ownership uncertainties) which disabled use of those funds for important projects that would influence growth of economic development, etc.

A brief description of some of the SOEs that have strategic importance and which have not been privatized yet is given below.

### 2.3. Trepça mines

Trepça is a conglomerate in Mitrovica region with assets and branches spread in different regions of the Republic of Kosovo and former Yugoslavia. In the past, it has been one of the largest enterprises of former Yugoslavia and at some point it had more than 20,000 employees. Trepça conglomerate has three key elements: mines, industrial park in Mitrovica, and metal fusion premises in which the conglomerate is established. Also, there are many accompanying activities for which processes lead,

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\(^{20}\) Feasibility study questionnaire, p.138-139.

sinc, cadmium or silver is used. Overall, it includes 42 sites, including a number of those that are located outside the Republic of Kosovo.

During 1990s, Trepça went through a number of suspicious transformations. In 1990, Serbia’s Government imposed violent measures on 14 out of 19 companies that belonged to Trepça at the time. Violent measures resulted with firing and replacement of Albanian managers with Serb ones. This incited broad-based protests and strikes of employees, which resulted with the loss of workplaces for many Albanian employees, especially in the period between 1990-1992.

In 1999, after NATO forces entered Kosovo, Trepça continued its business in the northern part, while in southern part Albanian employees could not return to their workplaces until December 1999 when an agreement was signed between UNMIK and Trepça Trade Union which allowed 214 employees to enter Stantërg to prepare the mine for production. In August, KFOR and UNMIK were forced to close down metallurgical capacities in Zveçan due to environment pollution.

In November 2005 UNMIK issued Regulation 2005/48 (similar to Chapter 11 in USA) which in principle allowed appointment of an administrator who would complete re-organization of the company (in order to select productive assets that could be reactivated and to define assets that would have to go through liquidation). In December 2005, KTA Board authorized Special Chamber of Kosovo’s Supreme Court (Special Chamber) for administration of Trepça and then later in Mars 2006, Special Chamber issued “Decision for Moratorium” for re-organization of “Trepça under KTA Administration”. 22

This means that up to the moment of administrator appointment, Special Chamber agreed to a temporary moratorium to freeze actions in Kosovo courts and to prevent payment and execution of filed complaints from courts outside Kosovo against the company. Regulation on Re-organization also determined the schedule within which KTA was obliged to organize the tender for services of an administrator. The final authority for appointment of the Administrator was placed within Special Chamber and not KTA. However, KTA was not able to present its report with recommendation to Special Chamber for the suitable bidder for administrator and the process of re-organization has been stuck since then. 23

According to applicable laws in the Republic of Kosovo, and in compliance with article 50 of the Law on Re-organization and Liquidation of Certain Companies and Their Assets, Law no. 04/L-035 that entered into effect on 26 October 2011 (Law), with regard to the Decision of the Special Chamber of the Kosovo’s Supreme Court no. SCR-05-001, dated 9 March 2006, as well as subsequent decisions of the Special Chamber of Kosovo’s Supreme Court no. SCR-05-001-R008, R009 and R011, dated 19 May 2011, Kosovo Privatization Agency has published the announcement on Essential Enterprises of Trepça and other Enterprises of Trepça. 24

From 8 November 2011, all actions, procedures and any type of actions dealing with determination of valuation, implementation or fulfillment of requirements or interest related to enterprises mentioned in the announcement 25, or their Assets, were suspended and can continue only with permission from

25 List of enterprises in the Announcement: Trepça Essential Enterprises that consist of: (a) NSh Minierat dhe Flotacionet Stantrg Fi 690/89, (b) NSh Minierat dhe Flotacionet Kishnicë dhe Novo Berdo Pristhinë, (c) NSh Minierat dhe Flotacionet Trepça Kopaonik, Leposaviç Fi 804/89, (d) NSh Metalurgjia Plumbit Zveçan Fi 684/89, (e) NSh Metalurgjia Zinkut, Mitrovicë Fi 983/90, (f) NSh Industria Kimike, Mitrovicë (g) NSh Industria Akumulatorëve Trepça, Mitrovicë Fi 697/89, (h) NSh Fabrika e Pajisjeve Përpunuese, Mitrovicë Fi 683/89, (i) NSh Trepça Energjitika, Zveçan - (j) NSh Intituti Trepça, Zveçan (k) NSh Trepça Trans, Zveçan (l) NSh Qendra Llogaritare, Mitrovicë, (m) NSh
Special Chamber of Kosovo’s Supreme Court on Issues related to Kosovo Privatization Agency. From 8 November 2011, Kosovo Privatization Agency serves as an Administrator of the Enterprises mentioned in the Announcement during the entire re-organization process.²⁶

In compliance with Article 17 of the Law, KPA within 360 days will publish another announcement (“Announcement on Requests’ Deadlines”), which will provide details for the way to submit Evidence of Request or Interest and setting timelines for submission of that Evidence for Requests and Evidence for Interest.²⁷

Prolongation of moratoriums negatively affects the value of assets and increases the cost of maintenance and insurance of Trepça assets. Also, delay in re-organization of this mining conglomerate is an obstacle to attraction of investments to replace the out-dated technology and re-activation of production capacities which would enable opening of new jobs and revitalization of mining industry.

2.4. Brezovica Ski Centre

Brezovica Ski Centre SOE is the only winter touristic centre in Kosovo and has incredible natural conditions for skiing. It offers attractive views over Sharri Mountains as well as excellent climate conditions that enable skiing from November to May. It is located in an altitude of 900m to 2.500m above sea level. Only skiing area is calculated to be around 230 ha. As an attractive touristic winter and summer destination, amongst else, it consists of two hotels, five cable cars, ski tracks of average length of 3.000m and 300 different villas.

Kosovo Trust Agency had started efforts for privatization of Brezovica in 2006, but after strong reactions from the Republic of Serbia at United Nations, UNMIK asked KTA to cancel the privatization process. Former UNMIK Pillar IV head Paul Acda, stated in September 2006 that “privatization of Brezovica was postponed upon request of the Mayor of the Municipality (Shtërpca) and managers of Brezovica resort” and that “privatization of the resort would not take place until Kosovo’s status is defined”.²⁸

In wave 40 of privatization in Kosovo, KPA had put into tender process cafeteria “Shtërpca”, restaurant “Kasollia Brezovicë”, and small cottage “Murzhicë-Brezovicë”. With this KPA announced beginning of privatization of the resort which at that time had attracted the interest of many potential bidders, but KPA withdraw these three units from wave 40 and the same were transferred for the next wave of privatization. However, they were withdrawn again thus proving one more time that privatization of assets of Brezovica resort requires a broader consensus of central and local institutions of the Republic of Kosovo as well as the support from international institutions present in Kosovo to undertake required steps towards bringing private capital in the resort.

Meanwhile, this year, the EU office in Kosovo has funded a Master-plan, which will serve as a basis for development of a touristic centre in Brezovica, on the western part, close to the existing ski centre. The new centre will have the capacity to accommodate more than 10 thousand visitors. The plan aims to make Brezovica an attractive place for investors, at the same time paying attention to the unique natural environment.²⁹

3. Corporate governance, corporatization, restructuring, concession and privatization of publicly-owned enterprises

3.1. Legal and institutional framework

Publicly-owned enterprises (POEs) are of strategic importance for the country. They offer vital services for the citizens and they employ 14,463 employees, from whom 88% are male and only 12% female\(^{30}\).

Since 1999 POEs have been under supervision of UNMIK, while upon establishment of Kosovo Trust Agency, in June 2002, POEs were put under KTA supervision. KTO has incorporated all POEs (a total of 25) that were in its portfolio and KTA established a new structure of corporate governance, by establishing Boards of Directors as highest decision-making bodies in all POEs. Upon completion of KTA mission, the majority of members appointed by KTA resigned and due to delays in new appointments by Government, the POE Boards remain *de facto* non-operational. As a result, at the moment when the Government took over POEs’ management, in July 2008, POEs (with exception of KEK) didn’t have boards.

The legal basis for full or partial privatization of a POE in the Republic of Kosovo is found in the Law on Publicly-Owned Enterprises. Selling of shares is enabled by the Law on POEs, article 4 in particular, according to which all POEs need to organize themselves as shareholding companies (SCs). According to the Law on Trade Companies, article 126 respectively, a SC is “a legal entity that is owned by its shareholders, but which is legally separate from its shareholders”. The Law on Trade Companies does not limit the transfer of shares from the Government of the Republic of Kosovo to another entity. Specifically, article 9 of the Law regulates privatization of central POEs. The Law, in addition to defining the ownership, it also defines functioning of POEs, funding models, appointment of Board members, recruitment of director and managerial staff and definition of salary levels, etc.

Transformation of POEs into private ownership can occur in two ways: i) through the regular privatization process (selling of POE shares to a private entity through a public tendering process), and ii) through public-private partnership and/or granting through concession to construct, use and/or utilize public property infrastructure, and to offer public services.

According to article 9.1 of the Law on POEs, procedures for privatization of a central POE include the following: 1) The Government approves a decision in writing which authorizes a Government Privatization Commission (GPC) to continue thereafter with tendering process and selling of POE shares; 2) The decision of the Government must be approved by the Assembly of the Republic of Kosovo, and 3) GPC continues with the tendering process and selling of shares, respectively with full or partial privatization of the POE.

Based on this Law, tendering process and selling of shares of a central POE must take place through an open, transparent and competitive procedure, but the format of this procedure is determined by GPC. The Law stipulates that this procedure must be at least in compliance with procedural requirements of the Law on Procedures for Granting Concessions.

KPA is eliminated from the privatization procedures of POEs, irrespective of its experience in privatizing big enterprises. POE privatization is an exclusive competence of the Government.

\(^{30}\) POE report 2010, p.19-20
Public-private partnership is another way to have a POE privatized for a certain period of time by granting it through concession. Procedures and other issues for public-private partnership are stipulated in the Law on Public-Private Partnership.

The goal of the Law on PPP is to set define legal framework for granting public-private partnership and concession to construct, use and/or utilize public property infrastructure and to other public services. In particular, the Law on PPP “regulates the rights to use and/or utilize public property infrastructure and/or to offer public services for all economic and social sectors”.

As envisioned by article 2, the Law on PPP is implemented for a broad range of fields, including, but not limited to, transport, energy, heating, water, telecommunication, education, health and many other fields. Subsequently, agreements may be made between the Republic of Kosovo and a private entity to enter a partnership in relation to taking ownership and management of a certain public-private partnership, or in a simpler way granting through concession the entity to a private person, and each for a period up to 45 years. The process of implementation of a PPP or granting a POE through concession to a private party is strictly determined to be under the authority of the Government.

The main issues dealing with the POE, in order to prepare the debate at the Government, are reviewed by an Inter-ministerial Commission on POEs (that is composed of respective ministers of MF, MESP, MED, MI and MTI). While the Unit for Policies and Monitoring of Publicly-Owned Enterprises (UPMPOE) established according to article 37 of the Law on Publicly-Owned Enterprises no. 03/L-087 is responsible to supervise and monitor POEs, collect data, do analyses and provide recommendations in relation to POE issues that are under the competence of the Ministry and Government, provides support for budget department on budgetary issues of POEs, etc. UPMPOE operates under the Ministry for Economic Development (MED), it is run by its director, and it has one assistant and 5 economic analysts trained in a high professional level.

POE activities are monitored and influenced in another way by independent agencies such as Public Procurement Regulatory Commission (PPRC) and Procurement Review Body (PRB) in the area of public procurement; Office of the Auditor General of Kosovo (OAG) which conducts auditing of the legality of the Kosovo’s consolidated budget, its budgetary organizations and other institutions that receive more than 50% of its budget from the Kosovo Budget; Kosovo Commission on Competition (KCC) as a quasi-legal body that monitors competition rules of all institutions in Kosovo.

3.2. Status and challenges

Kosovo has a quite large public sector which has a significant influence on Kosovo’s economy with an average of more than 20% during past five years.

Table 2: Participation of public sector in economy

<table>
<thead>
<tr>
<th>Description</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>% of GDP</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total revenues</td>
<td>29.0%</td>
<td>24.2%</td>
<td>29.3%</td>
<td>27.8%</td>
<td>28.4%</td>
</tr>
<tr>
<td>Tax revenues</td>
<td>21.2%</td>
<td>20.6%</td>
<td>20.8%</td>
<td>21.3%</td>
<td>23.0%</td>
</tr>
<tr>
<td>Total expenditure</td>
<td>19.5%</td>
<td>24.5%</td>
<td>29.0%</td>
<td>30.1%</td>
<td>29.9%</td>
</tr>
<tr>
<td>Actual expenditure</td>
<td>14.9%</td>
<td>15.4%</td>
<td>18.4%</td>
<td>17.8%</td>
<td>17.8%</td>
</tr>
<tr>
<td>Capital expenditure</td>
<td>4.6%</td>
<td>9.0%</td>
<td>10.2%</td>
<td>10.9%</td>
<td>11.5%</td>
</tr>
</tbody>
</table>

32 MED - http://mzhe.rks-gov.net/npmnp/?page=1,2
KTA was the sole shareholder of all POEs by keeping in trust 100% of POEs’ shares. Even though incorporation has not changed the status of the ownership status of POEs (since UNMIK did not have a clear position on POE ownership due to non-definition of Kosovo’s political status, KTA was not given the mandate to privatize POEs), the process has put them into a clear legal framework by bringing them one step closer to privatization.

The process of appointment of members to POEs Boards of directors, as the highest decision-making body of a POE, has been quite challenging and it experienced interferences from various stakeholders, such as political parties, government, municipal leadership, ICO, etc. A closer look to the process, analysed by different non-governmental and governmental, has concluded that appointments of new members to Boards did not result always with professional and independent boards. The current process of appointing members to boards, started this year, is being accompanied by numerous delays that have negative influences in strategic decision-making and efficient functioning of POEs.

The Constitution of the Republic of Kosovo states that “the Republic of Kosovo is owner of all enterprises in the Republic of Kosovo, that are recognized as POE ... All obligations that derive from this ownership will be obligations of the Republic of Kosovo ... Ownership rights of a POE that provides services only in a specific municipality or in a limited number of municipalities will belong to that/those municipalities, ... as well as respective obligations ...”.

POEs in Kosovo are divided into Central Publicly-Owned Enterprises (CPOEs) which Government can privatize, grant through concession or rent, and Municipal Publicly-Owned Enterprises (MPOEs) where the municipalities have ownership, as defined by Law 04/L-111 on changing and amending the law no. 03/L-087 on publicly-owned enterprises.

The government and municipalities administer POEs in their ownership only through mechanisms envisioned by the given above-mentioned law, and they have no rights to interfere with the management and property of POEs. On the other hand, the Law on Local Self-Governance is a core and comprehensive law that regulates and establishes a normative system of local self-governance as a right guaranteed by the Constitution. According to this law, municipalities have full and exclusive rights for providing public services in local interest. This gives an opportunity to municipalities to choose the way for provision of public services: directly through a department of a municipality, through a private company contracted by the municipality, or through POEs. Due to non-harmonization of this law with the laws that regulate management of the POEs confusion is created with regard to the competences of municipalities over some POEs and as a result some municipality mayors have asked for full control and management of these POEs, or to allow them to establish municipal POEs.

The current POE portfolio includes 31 POEs, 15 of which are Central POEs while 16 are Municipal POEs.

Table 3: List of CPOEs and MPOEs

<table>
<thead>
<tr>
<th>Sector</th>
<th>Central POEs</th>
<th>Municipal POEs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telecommunication</td>
<td>Post and Telecommunication of Kosovo Sh.A. (PTK)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>[Post is divided as a independent legal entity]</td>
<td></td>
</tr>
</tbody>
</table>

33 KTA – Analysis, Organization and Functioning of municipal public services, p.10-14.
| Energy | Kosovo Energy Corporation Sh.A (KEK) [without units on Distribution and Supply; which are already privatized] Kosovo Operator System, Transmission and Trade Sh.A (KOSTT) NPH Iber Lepenci Sh.A [the same company as the one on irrigation below] | City Heating Termokos Sh.A (Prishtinë) City Heating Sh.A (Gjakovë) City Heating, Mitrovicë [not operational] |
| Transport | International Prishtina Airport “Adem Jashari” Sh.A (ANP) [divided in two companies: i) flight and passenger services company (in concession), and ii) air traffic control company (under state ownership and management)] Kosovo Railways Sh.A [divided into two POEs: TrainKos and Infrakos] |  |
| Trade |  | NP Tregu, Mitrovicë |
| Accomodation |  | Apartment Publicly-owned Enterprise, Prishtinë |

Source: UPMPOE – POE report 2010 (with amendments from recent decisions on restructuring)

Many POEs continue to a burden for the government budget due to impossibility to achieve required level of financial sustainability by them. POEs are given direct subsidies, grants for capital investments or loans to cover operational costs, funding for specific projects, etc. Based on projected policies in the Midterm Expenditure Framework (MEF), subsidies to POEs are in a downturn trend as of 2009 for 35% as a result of increased financial sustainability of these enterprises.34

The Table below shows subsidies allocated from Kosovo budget to POEs, during past five years.

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34 POE report 2010, p.9-10.
Table 4: POE and Trepça subsidies during past 5 years

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy – KEK</td>
<td>27,350,000</td>
<td>29,035,995</td>
<td>64,221,073</td>
<td>23,000,000</td>
<td>11,451,000</td>
</tr>
<tr>
<td>Energy import – social cases</td>
<td>4,483,494</td>
<td>4,499,979</td>
<td>4,499,764</td>
<td>-</td>
<td>4,500,000</td>
</tr>
<tr>
<td>Kosovo Railways</td>
<td>500,000</td>
<td>500,000</td>
<td>500,000</td>
<td>-</td>
<td>45,581</td>
</tr>
<tr>
<td>Central Heating</td>
<td>1,947,996</td>
<td>1,403,289</td>
<td>1,933,000</td>
<td>999,962</td>
<td>2,486,904</td>
</tr>
<tr>
<td>Water and Waste</td>
<td>1,266,111</td>
<td>587,896</td>
<td>780,892</td>
<td>651,335</td>
<td>1,862,057</td>
</tr>
<tr>
<td>Trepça Mines</td>
<td>1,911,380</td>
<td>3,082,870</td>
<td>4,739,431</td>
<td>984,058</td>
<td>3,089,431</td>
</tr>
<tr>
<td>Total</td>
<td>37,458,981</td>
<td>39,110,029</td>
<td>76,674,161</td>
<td>25,635,355</td>
<td>23,434,973</td>
</tr>
</tbody>
</table>

Source: MF (Feasibility study questionnaire, p.210)

Irrespective of this, many POEs despite subsidies and investments from the Government are still not able to maximize investments or to improve the quality of services as per citizens’ demands. Also, the level of collection from consumers for the provided services is very low, especially in the sector of waste where collection fee rate is around 60%, in water-supply sector around 67%, while KEK has increased its collection rate significantly during 2011, by collecting around 13% more than in 2010 where collection rate was 88 %.35

In order to structure the country’s economy and to provide a larger space for the private sector, as a precondition for establishing a market economy in all economic sectors, the Government has initiated the privatization process of two most important POEs in the country: PTK and KEK and has granted through long-term concession Prishtina International Airport. Involvement of private sector in public sector is based on the Law on POEs and on the Law on Public-Private Partnership36 as well as on the Kosovo’s Economic Vision Action Plan 2011-2014.

Brief descriptions of main publicly-owned enterprises are given below.

3.3. KEK

KEK is a Central POE which owns and operates assets for generation and distribution of electrical power and lignite mining. In the long-term plan lignite is the main source for energy production in Kosovo. Operational and financial performance of KEK since 1999 has been improving with regard to coal production, energy production, reduction of losses and increase of collection rates. Despite these improvements and technical and budgetary assistance, KEK still suffers from many technical problems (out-dated technology), personnel issues (large number of employees) and managerial issues. Commercial losses are high, level of stealing and non-payment is high which causes increase for energy demand (disproportional to economic growth), energy import and reduction of KEK revenues.

Construction of New Kosovo will not end by 2017, and it is expected that until then Kosovo will be faced with a difficult situation in energy sector with potentially negative consequences in the development of private economic sector. Meanwhile KEK continues to be supported by the Government for increasing financial performance, capital investments and funding a part of energy import, as preconditions for stabilizing energy system. For a more sustainable energy sector, the Government as part of Energy Strategy 2009-2018 has set ten-year strategic targets in compliance with the EU directives for promoting

36 POE report 2010, p.17.
renewable energy, use of bio-fuels and other renewable fuel for transport, environment protection, etc.\textsuperscript{37}

Kosovo Operator System of Transmission and Trade of Energy (KOSTT) was established in 2006, in compliance with the Law on Electrical Energy and requirements of Convention on Energy Community. KOSS is a POE responsible for operation, planning, maintenance and development of distribution network and interconnections with neighbouring energy systems, in order to maintain energy supply in Kosovo. Kosovo is part of Regional Energy Community and it is connected to the regional system through interconnections with Serbia, Macedonia, Montenegro and Albania. The main source of revenues for KOSS comes in the form of fees for distribution that are paid by KEK and set by Energy Regulatory Office.\textsuperscript{38}

In 2008 Government approved new separation of KEK and establishment of a new company for distribution and energy supply (KEDS), according to EU requirements, for the purposes of privatization.\textsuperscript{39} With privatization of KEDs it is aimed to increase collection rates, reduction of losses in distribution, stopping of government subsidies and opening of energy market.\textsuperscript{40} Signing of sales agreement with the winning consortium Çalik-Limak (with the financial bid of 26.3 mil.) took place on 17 October 2012.

Regarding New Kosovo, Energy Strategy 2009-2018, for the purpose of sustainable development of the energy sector, envisions involvement of expertise and capital from abroad. According to the Strategy “New Kosovo” Project must be constructed in phases, where the first phase (1000 MW) would enable replacement of the power-plant Kosova A (its de-commissioning), would fulfil local needs and it would enable rehabilitation of Kosova B power-plant, in order to increase its reliability and to bring it to compliance with EU environment standards. A production unit of New Kosova power-plant could used for export. The second phase (1000 MW) would fulfil the growing demand and would enable later closure of Kosova B thermal power-plant.\textsuperscript{41}

Bidding invitation and agreements on the project have been finalized during 2011 and the plan was to announce the winner during 2012. But the Government’s approach on this has changed several times and this has caused delays in the process and it has resulted with the loss of interest by renowned companies in energy sector. However, it has been decided to separate Kosova B from the New Kosova project due to the crisis in the Euro zone and non-willingness of investors to invest in Kosova B, but also in order that the new investor does not create monopoly in energy production. The plan now is to build New Kosova with capacities of 600 MW and to rehabilitate two blocs of Kosova B and to open a new lignite mine in Sibovc, all through PPP where the state ownership will be 31% in generation and 49% in mining.\textsuperscript{42}

In March 2012 the Government announced the request for bids for four pre-qualified investors, and it planned to end the process by mid-2013\textsuperscript{43}. While the plans are to complete all three projects by the end of 2017 in full compliance with EU directives dealing with environment protection, energy efficiency, etc.

Even though the Strategy envisions closing down of Kosova A, the Government has decided to complete rehabilitation of several blocs for supply of about 40% of overall production of energy in the country,
and to continue using them until 2017. The decision was made due to delays regarding New Kosova, increase of energy demand, reduction of import, etc.\textsuperscript{44}

Prices of electrical energy and central heating are determined by Energy Regulatory Office (ERO) based on the authority granted by the Law on Energy Regulatory 03/L-185 and based on the Regulation of the Principles for Calculating Fees in Electrical Energy Sector (Pricing Regulation). ERO determines electrical energy fees for the domestic consumers. ERO set energy fees for other consumers only if its concluded, based on ERO criteria, that the competition of energy market is not effective. Currently there is no effective competition in the energy sector, therefore ERO has determined fees for all consumer categories. Based on the Pricing Regulation, electrical energy fees include: Fees for Selling Electrical Energy to Public Supplier; Transmission Fees (Transfer); and Distribution Fees. Due to KEK financial issues, ERO decided in August 2012 to increase electrical energy fees and it is expected that in the near future there will be another increase, especially for domestic consumers, which results with amnesty for non-payers and punishment for regular payers of fees. Fees for central heating are set based on the Law 03/L-116, according to which ERO sets prices and fees based on an annual proposal of the distributor. ERO Board of Directors is run by Chairman and it has five members. Each one of them is appointed for an alternating period of five years.

One part of KEK activities is regulated by the Independent Mines and Mineral Commission (IMMC) which regulates mining activities in Kosovo in line with the law and by-laws. Its authority is defined by the Law on Mines and Minerals. IMMC ensures regular examination and exploitation of mining resources in Kosovo: it issues, transfers, extends, suspends and revokes licences and permits; it establishes and maintains a database of geographic information on mines. IMMC provides technical assistance for the Government in its areas of expertise. IMMC has a Board of Directors of five members and a directorate run by a Director.

\textbf{3.4. PTK}

In December 2008 the Government established the Intergovernmental Commission to analyze privatization options for PTK. All aspects of PTK and potential market have been estimated. Upon the proposal of this Commission and the Government, in July 2010 the Assembly of Kosovo adopted in principle to privatize 75\% of PTK while in March 2011 granted its final approval for privatization. Simultaneously, in 2010 the Telecommunications Regulatory Authority (TRA), upon the recommendation of the Government imposed a five-year moratorium on issuing new licenses for mobile telephony in order for the privatization process to be transparent. However, based on the European Commission assessment, this TRA Decision disregards the interests of customers and diminishes the competition in the sector\textsuperscript{45}.

Out of the five companies that had applied in the pre-qualification phase, in June 2011 Hrvatski Telekom and Telekom Austria have been selected to continue the competition. Following the withdrawal of Hrvatski Telekom, the Commission proposed to start over the process and in the meantime conduct some reforms to add the value of PTK, such as divide the Post, cost-effectiveness etc. The division of Post started in November 2011 and ended in August 2012, while retendering of PTK was initiated in

\textsuperscript{44} Feasibility study questionnaire, p.459-460.
\textsuperscript{45} Progress Report, 2010, p. 29.
March 2012. In the meantime, the Government has drafted the implementation plan for the privatization and has contracted a new transaction consultant. In June 2012, the call on pre-qualifying potential investors was announced. The pre-qualified companies are: Albright Vaptial Management LLC (USA); Avicenna Capital LLC in consortium with Twelve HORNBEAMS (United Kingdom and Poland); Columbia Capital in consortium with ACP Axos Capital Gmbh (USA and Germany); M1 International Limited (United Kingdom and Virgim Islands); Turkcell (Turkey).

The Government has planned to complete the privatization process for PTK by the end of 2012. This is expected to contribute not only on increasing foreign direct investments in Kosovo, it will improve bank balance during 2013 and it would enable the Government to absorb any potential financial turbulences. In case privatization of PTK fails again or is delayed, there is a risk of reducing bank balance.

From August 2012 PTK is divided into two companies that operate independently: i) Posta e Kosovës (Post of Kosovo) and shall remain under the state ownership, and ii) Telecommunications that includes services of mobile and landline telephony and Internet is in the privatization process.

The Mobile Telephony Service covers round 99% of the population and 88% of the Kosovo territory, out of which Vala covers over 67% of the Kosovo market; Internet Services (broadband) cover round 34% of the market, while Telekomi i Kosovës cover round 93% of the market for landline telephony services. On the other hand the Post offers local and international postal services. PTK closed year 2010 with 34 mil EUR of net profit, or round 11 m EUR less than the previous year. Hence the net profit for 2011 was round 46 m EUR.

PTK operates on a competitive market. On the market of mobile telephony Vala for several years has been the sole operator of services in Kosovo. In December 2007 entered the market the new operator IPKO which gained a considerable share of the PTK market. In addition to IPKO, there is another mobile telephony that operated in the market: Z-Mobile established as an MVNO in partnership between PTK and a private operator. Additionally, in some parts of Kosovo territory operate illegal operators as well as operators of neighboring countries that operate in some areas using trans-border devices. Such operators do not have customers in Kosovo, but due to the great coverage they have a considerable part of roaming users.

The telecommunication market is regulated by TRA, who is responsible for licensing and supervising service providers on telecommunication in Kosovo. It sets the standards for service providers of telecommunication, encourages market competition and ensures protection of customers. Its role is defined on the Law on Telecommunications. The Board is comprised of five members each of them enjoys a five-year term.

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46 Feasibility study questionnaire, p.142-148.
3.5. Prishtina International Airport

Prishtina International Airport (PIA) “Adem Jashari” is an enterprise that operates in the area of civil and military transport, enabling flights to and from Kosovo in many countries of the world. In addition to flights, PIA offers other services such as cargo - transport of goods, duty free shops and restaurants/other shops, banks and post offices, etc. PIA as a strategic asset for the citizens of Kosovo and for the development of the country has been included in the PPP from the Government in 2010 to create a better environment, infrastructure and high quality services, in accordance with international standards.  

Prior to concession, The Airport was divided into two companies: i) the flight operating company and services to passengers that is under the concession for 20 years by the consortium Lion Limak and ii) the company that controls the air space, that is under the state ownership and management. The concession of the Airport is the first PPP project in Kosovo and the investor is expected to construct new terminal, new runways for airplanes, new parking area, etc. The investor is committed to secure employment for all the current employees for the next three years.

The operation of Kosovo aviation is regulated by the Kosovo Civil Aviation Authority of Kosovo (CAAK), established by Law on Civil Aviation is a regulatory agency. It is responsible to safeguard the security of civil aviation, economic regulation of airports and air navigation services in Kosovo. It issues licenses and ordinances of air navigation as provided on the law. The Supervisory Board is comprised of five members; two of them have a two year term (including the Chairman), while the rest of them (three) have a four year term. The members of the Board are appointed by the Government. It reports directly to the Assembly.

3.6. Kosovo Railways

Law 04/L063 and AU 2-2012 on the Railways provides an open and non-discriminatory access to operators that provide services in the area of railways. The Transport Model Strategy was approved in November 2009 and envisages the development of railways up to year 2030, including division of railway infrastructure in two Enterprises: TrainKos and Infrakos (that was completed in September 2011) and capital investments on about 252 kilometers of railway network.

Railway transport provides transport of goods, passengers and container transport. The Railways in 2010 succeeded to reduce operational losses for 75% and net financial losses for 82% compared to 2009.  

The annual or financial/audit reports in Trainkos and Infrakos are not available in their respective web pages (as their division took place in September 2011 and their financial performance appraisal compared to 2010 is not possible.

Railways sector is regulated by the Railways Regulatory Authority (RRA) that works as an independent body and reports to the Assembly of Kosovo. RRA defines the rules and criteria to have access in the railways market and licenses railway operators, issues security certificate for railways operators and issues security instructions, in accordance with European Licenses and SEETO. The current operators in

49 SAPD: Economy, Financial Issues, Statistics, 1 June 2011, p. 11.
50 2010 POEs Report, p.29-30.
Kosovo (TrainKos and Infrakos) are in the process of being licensed and certification of security\textsuperscript{51}. The security of Railways is monitored by the Department of Security of Railways within RRA, while railways accidents are investigated by the Commission in the sector of aviation and railways in Prime minister’s Office based on the Prime minister’s Office 03/68 and Law on Railways 03/L076.\textsuperscript{52}

In 2011 the transport of goods in Kosovo Railways boosted for 24%.

3.1. Bus Stations

Bus Stations are considered as socially-owned enterprises and subsequently have been under the administration of PAK. In some cities in Kosovo such as Prizren, Ferizaj, Gjilan they have been privatized: transport, maintenance of premises out of the bus stations that belong to SOE “Kosovatrans”, while all SOEs “Kosovatrans” that had organized transport, are not operational currently due to the competition of private operators that have grabbed their market share they used to have. Following the privatization, in some cases, bus stations have lost their previous designations and they been sold more real estate, as no guarantee to sustain the bus station services after the privatization was imposed.

Based on Law No 04/L-11 on Amending Law No 03/L-087 on Publicly-Owned Enterprises, 23 bus stations were transferred to municipal ownership. It would be of interest that the municipal leadership in cooperation with the Government work out the most suitable option to maximize profit for such important assets, aiming to provide the best possible conditions to operators that would have impact on improving the quality of services for citizens. A possible model to achieve such objectives would be a Public Private Partnership.

3.2. Water and Waste Companies

Based on the law on water, management of water resources is a competence of the Republic of Kosovo implemented through ministries, municipalities and other relevant institutions and public enterprises. Regardless that the main responsibility lies with the Ministry of Environment and Spatial Planning (MESP), the amended law on POE-s provides for that half of the members of the POE Board of Directors for water is to be appointed on the proposal of municipalities and such POEs send their reports to the Mayors of the respective municipalities, hence giving municipalities the opportunity to be more involved in the management of water services.

The operations of water and waste companies are regulated by the Water and Waste Regulatory Office (WWRO) that supervises the water and solid waste services in Kosovo, licenses service providers for water and waste and sets the fees. It also sustains the standards of services provided to customers. The Office operates based on the legal framework on the Law amending UNMIK Regulation 2004/49 on operations of service providers for water, sewage and waste. It is managed by a Director and Deputy Director that are appointed by the Assembly for a five year term.

\textsuperscript{51} Feasibility study questionnaire, p.443-444.  
\textsuperscript{52} Feasibility study questionnaire, p.437-438.
WWRO has licensed all POEs that provide water services and currently there is no private operator in this area.\textsuperscript{53}

Performance of POEs for water has improved on the last years, however a lot of improvements are necessary as there is a great loss of water (round 60%), low collection rate (round 65%), customers dissatisfaction, overall negative balance from the financial aspect.\textsuperscript{54}

Law on waste provided two levels of responsible authority on waste management: Ministry of Environment and Spatial Planning (MESP) with other central level institutions responsible for drafting policies, licensing and identifying the methodology on setting fees, monitoring etc. and municipalities on the waste administration and establishing the conditions for the provision of services by public and private companies.\textsuperscript{55}

Landfill Management Company is the only Central POE, while all the other enterprises in the waste sector are Local POEs. 47\% of the overall population is covered by municipal waste collection.\textsuperscript{56}

WWRO has licensed POEs that provide waste management services and no other private operator has been licensed. Waste collection operators may be contracted by POEs and this was the case in some municipalities. Sanitary landfills are central POEs; however it is expected to be transferred as a municipal competence\textsuperscript{57}. Furthermore, the Government is considering options to involve private capital on this area.\textsuperscript{58}

Like water POEs, POEs providing waste collection and management services are subsided by the Government as a result of the negative financial balance. Additionally, these POEs face low investment and revenues due to poor collection. Waste in Kosovo need to be recycled in order to meet European standards (the amount of waste in sanitary landfill is increasing every year). IFC (International Financial Corporation) has been contracted by the Government to analyze the situation and possibilities to involved private capital in this sector.\textsuperscript{59}

3.3. (Central) Heating Companies

Heating Companies operate in Prishtina, Gjakova and Mitrovica as Local POEs (the latter is not operational). Altogether they generate only 3\% of the heating demand in Kosovo (only Prishtina comprises round 80\% of this capacity). They supply the most populated areas of the cities and public premises such as hospitals, schools and administrative buildings. Such systems suffer from out of date technologies, poor management, great commercial losses caused by non-payment of bills that leads to unsustainability, no state subsidies\textsuperscript{60}. The co-generative project between Kosovo B and Termokos is on

\textsuperscript{53} Feasibility study questionnaire, p.143-144.
\textsuperscript{54} POEs Report 2010, p.45-47.
\textsuperscript{55} Feasibility study questionnaire, p.491-492.
\textsuperscript{56} Feasibility study questionnaire, p.491.
\textsuperscript{57} Feasibility study questionnaire, p.491-492.
\textsuperscript{58} Feasibility study questionnaire, p.143-144.
\textsuperscript{59} POEs Report 2010, p.82-84.
\textsuperscript{60} Power Strategy 2009-2018, p6-14.
the implementation stage, and it is expected to be environment-friendly, to reduce costs for Termokos and reduce demand for electricity and heating.  

3.4. Issues for considerations

Despite the progress so far in improving physical and legal infrastructure in Kosovo, more needs to be done to establish a more favorable environment for investors. Some of the key challenges that need to be addressed, which are discouraging for foreign investments, are:

- **Legal and regulatory environment**: the legal environment in Kosovo still faces major deficiencies, with an emerging and inefficient judiciary that does not provide enough security for investors. There are some important laws still missing or need to be amended. Although the independent Regulators have been established during the UNMIK era, after June 2008, there are some tendencies of line ministries to interfere in the mandate of regulators by transferring particular competences from such regulators to the Government. Some regulators had difficulties operating due to gaps caused by delays in appointing board members by the Assembly. Vacancies remain open for a prolonged period of time seriously hampering the functioning of respective institutions. Furthermore, there is not sufficient political support for the work of independent institutions that consequently leads to diminished legitimacy and weak reaction from the executive branch. Practices have proved that political interferences in appointing managers and members of the board weaken corporative governance in POEs, while lack of adequate protection of customers, has negative impact in market liberalization and economic development in general.

- **Restricted access of POEs in non-majority settlements**: in some Kosovo settlements, inhabited mainly by Serb population, POEs have restricted possibility to conduct their activities or do not operate at all. For example, KEK has not been able to invoice and collect for the electricity provided to Serb population in the north of the country. Due to political reasons, KEK was not able to disconnect customers on such settlements. Addressing this issue would positively affect in attracting credible investors.

- **International Status of Kosovo**: Kosovo still did not manage to obtain membership in some important international organizations, such as the International Union of Telecommunications (IUT). This did not allow Kosovo to have its international call code that has an impact not only to diminish interest of potential investors, it also has great commercial implications for PTK.

Despite these challenges, the overall argument in favor of privatization of POEs that operate in a normal commercial environment is that private owners have more opportunities to manage more profitably a business. This is particularly important for the case of PTK, where restrictions in the area of public procurement present an extraordinary impediment for the company to operate profitably considering that PTK operates on a competitive environment. In addition, it must be stressed that POE management is often subject of political interferences and instructions that have a negative effect on the overall

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63. ICO: Economic Regulators in Kosovo – An overview of the state of their independence, p.11.
64. ICO: Economic Regulators in Kosovo – An overview of the state of their independence, p.6.
image of POEs and affect the commercial efficiency. Private management is for sure more immune in this regard.

Some of the most important aspects for the privatization of POEs in Kosovo are:

- Attaining a higher financial profit than the dividend paid by the POE (and surely, receiving the funds as a lump sum as “in advance”), funds that may be used to implement important strategic projects aiming to increase economic development and open new jobs.
- Providing better services for customers and reduce the likelihood for corruption that is perceived to be high for the companies under the public management.
- Cut subsidies for POES
- Enhance attractiveness of Kosovo as a place for foreign investments.

Nevertheless, it is important that privatization be carried out properly and transparently in order not to disrupt operations in POEs.

4. Summary

<table>
<thead>
<tr>
<th>Strengths</th>
<th>Challenges</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>PAK</td>
<td>Experience in privatization process.</td>
<td>Lack of cadastral documentation, lack of ownership documents and old cadastral registers. Delays in appointing members in the Board of Directors Insufficient human resources to speed up liquidation process.</td>
</tr>
<tr>
<td>Trepça</td>
<td>Strategic assets and wealth.</td>
<td>Delays in the reorganization process. Great number of employees that presents a financial burden. Difficulties in extending managing control in all units, assets and properties, especially for those located in the north</td>
</tr>
</tbody>
</table>

66 In 2010, the Government decided to cut some important capital investment in PTK on the justification that the POE was pending privatization.
<table>
<thead>
<tr>
<th>Brezovica</th>
<th>Strategic assets and wealth.</th>
<th>Difficulties in imposing management control on the complex due to different approaches of municipal authorities and management of the complex regarding the ownership and the future of the complex.</th>
<th>The responsible institutions need to harmonize views and identify ways of involving private capital in the complex. Any further delays degrade the value of such strategic assets and prolong revitalization of this part of the country.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bus Stations</td>
<td>Strategic Assets and Wealth.</td>
<td>Market loss and fierce competition by private operators. Different approaches of institutions and relevant actors regarding the designation of such SOEs on the form of privatization.</td>
<td>Responsible institutions need to harmonize views and identify ways of involving private capital on such SOEs.</td>
</tr>
<tr>
<td>Corporate Governance of POEs</td>
<td>Modern framework of corporate governance</td>
<td>Delays in appointing members in the Board of Directors. Possible interferences in the process of appointing board members and key POEs officials Supervising of POE boards and management. Low collection.</td>
<td>To comply the respective legal provisions in the process of appointing board members and key officials in POEs to ensure professional appointments based on merit and without political interferences. To comply with EU and OECD principles and standards on corporate governance. To ensure the most objective and proper assessment of the performance of SOE Boards and management to enhance their efficiency. To identify practical ways to ensure higher collection, respecting basic human rights.</td>
</tr>
<tr>
<td>Privatization of POEs</td>
<td>Strategic Assets and Wealth.</td>
<td>Drafting suitable privatization agencies that would ensure the widest social support. Delays in implementing tendering processes.</td>
<td>To comply with EU principles and standards for a transparent process intact from political interferences. To have a wide support of relevant actors of the society through the most</td>
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<td>The issue of the future of employees. Monitoring sale contracts.</td>
<td>comprehensive communication. Lessons learned from privatizations so far and apply for future processes. Institutional support of the new buyers and monitoring compliance of conditions and contractual obligations.</td>
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| **Regulators**  
A good and functional structure for all economic operators has been established. Legislation is mainly in compliance with that of EU. | Delays in appointing members of the board and senior management. Interferences in the mandate of regulators transfer of particular competencies from regulators to the government by amending laws. Insufficient political support for the work of independent institutions. Maintain financial independence. |
| Timely appointment by the Government and the Assembly on the decision-making bodies of the regulators. To enhance communication and cooperation with the Assembly of Kosovo For the purpose of identifying a sustainable funding model that maintains financial sustainability of regulators. To enhance objective criteria to evaluate the performance of independent institutions. |