



**BANKING AND PAYMENTS AUTHORITY OF KOSOVO**  
**AUTORITETI BANKAR DHE I PAGESAVE I KOSOVËS**  
**BANKARSKI I PLATNI AUTORITET KOSOVA**

Pursuant to the provisions of UNMIK Regulation No. 2005/20, On Pensions in Kosovo, dated of 29 April 2005, on Amending UNMIK Regulation No 2001/35,

For the purpose of execution of Section 20 of the UNMIK Regulation No. 2005/20 (Pensions Regulation), in prescribing rules and procedures in the termination of Supplementary Employer Pensions,

The Governing Board of the Banking and Payment Authority of Kosovo, at its meeting held on March 16, 2006 adopts the following:

## **Rule 21 on Amending Rule on the Termination of Pension Funds dated October 23, 2002**

### **Section 1**

#### **Scope and Purpose of this Rule**

##### **1.1 Scope of Rule**

This Rule applies to Supplementary Employer Pension Funds (Pension Funds), the governing bodies of Employers, the governing bodies of Pension Funds and Special Managers appointed by the BPK consistent with this Rule.

##### **1.2 Purpose of the Rule**

This Rule prescribes guidelines and requirements that must be satisfied in the termination of Pension Funds, the duties of the Sponsor, the governing board of the Pension Fund and the Special Manager appointed by the BPK to conduct the liquidation and distribution of pension assets. This Rule seeks to protect participants when a Pension Fund is terminated. In addition, this rule addresses the termination of Pension Funds established prior to the effective date of the regulation, were never licensed and are providing unauthorized pensions.

### **Section 2**

#### **General Provisions**

##### **2.1 Definitions**

All terms used in this Rule are as defined in the Pensions Regulation and/or as further defined in this Rule.

“Enforcement action”, in this Rule, means the order or directive of the BPK relating to the suspension or revocation of the Pension Fund license and/or the

termination of the Pension Fund. The term includes the orders or directives of the BPK in regard to the licensing of unauthorized pensions and/or its orders to terminate such unauthorized pensions.

“Involuntary termination” refers to a termination of a Pension Fund or an unauthorized pension arrangement resulting from an enforcement action of the BPK consistent with the provisions of the Pensions Regulation and this Rule.

“Special Manager” means the individual or person appointed by the BPK to administer and manage a Pension Fund in liquidation.

“Termination by operation of law” refers to a condition where a Pension Fund is terminated because of the liquidation or bankruptcy of the sponsoring Employer.

“Voluntary termination” refers to a termination of a Pension Fund that is initiated by written notification made by the governing body of the Pension Fund to the participants and to the BPK.

“Unauthorized pensions” refer to any and all pension arrangements, including those that existed at the time the Pensions Regulation entered into force, that are being carried out by any Employer or any natural or legal person without a valid Pension Fund or Pension Provider license issued by the BPK.

## **2.2 Regulatory Considerations in the Termination of Pension Funds**

The Pensions Regulation and these Rules promote the growth and expansion of every Pension Fund and ensure that enforcement actions resulting in the termination of Pension Funds are undertaken only when necessary to protect the interests of participants and beneficiaries.

In the termination of Pension Funds, the following termination conditions shall be observed:

- a) In the case of voluntary termination, the governing body of the Pension Fund must satisfy the BPK that the termination plan will protect the interests of the participants in the pension assets.
- b) In the case of termination by operation of law, the governing board of the Pension Fund and the Employer must have complied with their fiduciary obligations to timely notify participants about the liquidation or bankruptcy of the Employer.
- c) In the case of involuntary termination, the BPK shall observe the requirements of prior notice, unless the interests of the participants are in immediate jeopardy, affording the governing body of the Pension Fund:
  1. Reasonable time to remedy the deviations, breaches or violations constituting the ground for the enforcement action.
  2. Proper notice of the enforcement action(s).
  3. Opportunity to adopt procedures to protect the interests of the participants and beneficiaries of the Pension Fund.

4. The professional services of a Special Manager, if necessary, to administer and manage the Pension Fund in liquidation in order to:
  - (i) Provide for the smooth liquidation and distribution of the pension assets to the participants and beneficiaries.
  - (ii) Distribute the pension assets of participants to another provider of pension, if pension entitlement is not yet due.
5. Involuntary termination procedures shall apply when an Employer providing unauthorized pensions does not come forth, or having applied for a license fails to obtain a license according the applicable regulation and Rules.

### **Section 3**

#### **Termination of a Supplementary Employer Pension**

##### **3.1 Revocation of Pension Fund License**

The BPK shall revoke the license in the following circumstances:

- a) Voluntary surrender of the license. In a voluntary surrender of a Pension Fund license, the following requirements must be fulfilled:
  1. The board of directors of the Pension Fund asks the BPK, by written notice, for the termination of the Pension Fund, specifying the reasons and surrendering the Pension Fund license.
  2. A written notice for this voluntary termination is given to all participants and the BPK, 90 days before the intended date of termination.
  3. Immediately upon providing this notice, the Board of Directors shall prepare a valuation of pension assets and take all steps necessary to protect the interests of participants and beneficiaries.
  4. At its discretion, in order to afford the best possible means of protecting the interests of the participants and beneficiaries, BPK may issue an order to freeze the assets of the Pension Fund; or revoke its license, or both, and assign a Special Manager to manage the pension assets in accordance with the procedures described under Section 4 of this Rule.
- b) By operation of law. The license of the Pension Fund is revoked by the BPK without need of prior notice, order or directive when the Sponsoring Employer is liquidated or declared bankrupt. In order to provide the best possible protection of the interest of participants and beneficiaries, the BPK shall:
  1. Immediately issue an order to freeze the pension assets and revoke the Pension Fund license and
  2. Assign a Special Manager in accordance with Section 4 of this Rule.
- b) Involuntary revocation. The BPK takes specific enforcement action to revoke the license of the Pension Fund based on grounds specified in the Pension Regulations and Rule 1. The revocation of a Pension Fund license shall use the following procedure:
  1. Notice. In cases where BPK revokes the license of a Pension Fund:
    - (i) A written notice of not less than 30 days prior to the intended date of revocation must be served to the board of directors of the Pension Fund and the Sponsor(s).
    - (ii) The notice shall clearly indicate the grounds for the revocation.

(iii) The notice shall give the board of directors a period of no less than 30 days to show cause that the revocation order should not be issued.

(iv) Within that period of 30 days from receipt of the notice the board of directors of the Pension Fund submits a written compliance plan to remove the ground on which the order of revocation is based.

(v) If the BPK is satisfied with the compliance plan, the order of revocation, if one is already issued, is lifted and the license is restored subject to certain restrictions, limitations or conditions as the BPK may impose.

(vi) If the board of directors fail to submit a compliance plan within the specified number of days, or if the BPK is not satisfied with the compliance plan submitted by the board of directors, the BPK may proceed to revoke the license of the Pension Fund and issue other enforcement actions and orders to terminate the Pension Fund according to this Rule.

### **3.2 Enforcement Actions**

Following the revocation of a Pension Fund license, or the issuance of an order to terminate unauthorized pension arrangements, the BPK shall take the following enforcement actions:

a) Issue and serve a “freeze order” on the pension assets, or make a prior “freeze order” permanent, to the Custodian, Asset Manager(s) or Depositories of pension assets including thereon a copy of the order of revocation or termination.

b) Issue an order to the governing body of the Pension Fund or to the sponsor or administrator of unauthorized pension arrangements to cease and desist from accepting pensions contribution and of contracting or paying new or existing pension entitlements.

c) Order the termination of the Pension Fund or the unauthorized pension arrangement and the liquidation of pension assets in accordance with Section 4 of this Rule.

d) Appoint a qualified Special Manager to manage the pension assets to obtain most favorable asset distribution to participants and beneficiaries.

e) Order the governing body of the Pension Fund or the sponsor or administrator of the unauthorized pension arrangement to transmit to the Special Manager (or to the BPK) all records and documents pertaining to the pension assets within the time frame and following the applicable procedures set forth in the Pension Bylaws, or Agreements to provide pensions, unless the BPK, in the interest of the participants and beneficiaries, orders an earlier time or a different manner to effect such transmittal.

## **Section 4**

### **Procedures to Terminate Pension Funds or Unauthorized Pensions**

#### **4.1 The Special Manager**

At its discretion, the BPK may appoint a Special Manager to administer and manage the pension assets of a Pension Fund that is terminated. However, in the case of involuntary termination the BPK must appoint a Special Manager.

The special manager is:

- a) A person with the necessary qualifications of education, training and experience in pensions or in asset management or administration and who passes the standards and tests of “fit and proper” adopted by the BPK to apply to a member of the governing board of Pension Funds.
- b) Not an affiliated person of the Employer or any labor organization representing the employees of the Employer, or any member of the governing body of the Pension Fund or the Employer or an employee, or member of the governing body of any labor organization representing the Employees of the Employer.
- c) A person who accepts the duties and responsibilities in the administration and management of the pension assets as a fiduciary of the participants and beneficiaries.
- d) Compensated from the pension assets for his services; the amount of such compensation shall be determined and approved by the BPK.
- e) The BPK shall develop and maintain a roster of persons qualified to serve as Special Managers and shall provide for procedures whereby persons can apply to be added to such roster. The information contained on the roster should include the name, profession, qualifications, and proposed method of calculating the compensation of the individual for serving as Special Manager.

#### **4.2 Termination (Liquidation) of the Pension Fund or Unauthorized Pensions**

The procedures and requirements for the termination of Pension Funds or unauthorized pensions shall ensure best possible protection of the interests of participants and beneficiaries. In the termination of a Pension Fund or unauthorized pensions, the following guidelines apply:

- a) Termination by a Special Manager
  1. The liquidation of and the distribution of pension assets shall be based on a liquidation plan approved by the BPK.
  2. The Special Manager submits to the BPK a liquidation plan.

The plan must contain details of the following:

    - (i) The date or number of days, not to exceed 1 year, within which the liquidation is completed.
    - (ii) A statement of the vested rights of the participants.
    - (iii) The manner in which the assets are disposed and a justification therefore.
    - (iv) The time and manner of distribution of the pension assets to participants and beneficiaries to an alternative pension arrangement and a justification therefore.
    - (v) The time frames when the specific assets are disposed and a justification for such timing.
    - (vi) The amount of expected proceeds that may be realized from the disposition of the assets.
    - (vii) In case of unauthorized pension arrangements that are unfunded and where there are no pension assets, the employer’s plan for meeting the obligation to pay the vested rights of the participants, in conformity with the Regulation, either through funding the obligations or through the purchase of supplementary individual pensions.
    - (viii) The proposed fee of the Special Manager.

3. The liquidation plan is reviewed by the BPK and within a period of 30 days, if acceptable, approves the plan subject to certain result or performance indicators that measure or validate the plan from time to time.

4. If the BPK rejects the liquidation plan, the Special Manager must submit to the BPK an alternative plan within a period of 90 days.

5. Within 90 days of his or her appointment, the Special Manager shall:

(i) Cause the valuation of pension assets.

(ii) Pursue claims against third parties and

(iii) Settle legitimate liabilities of the Pension Fund.

(iv) Submit to the BPK a summary of valuations and a preliminary statement of amounts due to individual participants.

6. If the accounting of assets indicates that there are enough liquid assets to make full payments of all individual balances due, the Special Manager notifies the participants of their option to immediately transfer their account balances to another Pension Fund or to Pension Provider. The period within which to exercise this option must be indicated in the notice.

7. The Special Manager pursues all legitimate claims on behalf of the Pension Fund, including any Employer contributions due.

8. Without prior written approval of the BPK no interim or partial distribution to individual participants, retirees and beneficiaries may be made.

9. The Special Manager submits to the BPK a report on the status of the liquidation every interval of 180 days or as often as the BPK requires.

10. During the period of liquidation and prior to distribution or transfer of pension assets to another Pension Fund or Pension Provider, the Special Manager has full power and authority to manage the pension assets and may retain or remove any asset manager or custodian, or appoint new ones in their stead.

11. All distributions of pension assets are made in accordance with the terms and conditions of the approved liquidation plan. Upon distribution, the Special Manager certifies to the BPK the amount, time and manner of such distribution.

12. The distribution of pension assets shall only be made by transferring the amounts due individual participants to another Pension Fund or to a Pension Provider consistent with the provisions of Rule 20 of these Rules.

13. Within a period of 30 days prior to making a transfer of amounts due the participants, the special manager notifies all participants and beneficiaries of the final amount, time and manner of the distribution and transfer out of pension assets.

14. The transfer of pension asset as described above, following the requirements of Rule 20, terminates the Pension Fund.

15. Any unauthorized pension arrangement terminates on the date the BPK serves notice of termination. The pension assets are liquidated according to the plan of liquidation submitted by the Special Manager and approved by the BPK.

b) Termination by the Board of Directors of the Pension Fund

1. The board of directors of the Pension Fund notifies all participants and beneficiaries and the BPK of its intention to terminate the Pension Fund.

2. The notice must be served at least 90 days before the intended termination date.

3. Within 90 days of notice the board of directors shall prepare an accounting of the pension fund indicating all its assets and liabilities and a preliminary statement of amounts due the participants and beneficiaries and submits a copy of these reports to all participants and beneficiaries and to the BPK.
4. If the accounting indicates sufficient liquid assets to make full payment of all "vested rights", the participants shall be notified of their right to immediately transfer their balances to another Pension Fund or Pension Provider.
5. If there are insufficient liquid assets to make full payment of vested rights, the board of directors shall submit a liquidation proposal for approval by the BPK. The proposal shall also be sent to all participants and beneficiaries.
6. The liquidation proposal shall be in the form and substance as that required of a special manager with the added requirement that it includes explanation as to all the efforts made or to be made to collect contributions due from the sponsoring Employer and other claims of the Pension Fund.
7. The BPK may approve or reject the liquidation proposal within 30 days from the date it is submitted.
8. If the liquidation proposal is rejected, BPK may require the Board to submit an alternative proposal or it may order a Special Manager to liquidate the Pension Fund who shall then proceed in accordance with Sub-section 4.2 a) above.
9. The liquidation and distribution of pension assets shall be made in accordance with the approved liquidation plan.
10. During the period of liquidation and prior to distribution of assets the board of directors remains to have full powers of administration over the pension assets.
11. All distribution of pension assets shall be made only by transferring the amounts due to individual participants to another Pension Fund or Pension Provider, consistent with the provisions of Rule 20 of these Rules.
12. The board of directors notifies all participants and beneficiaries of the final amounts, time and manner of distribution. No distribution or transfer out payments may be made until after the expiration of 30 days from date of the notification.
13. The distribution of assets by direct transfer of individual balances to the participant's new Pension Fund or Pension Provider, made according to Rule 20 of these Rules, terminates the Pension Fund.

## **Section 5**

### **Insufficient Funds to Pay Vested Rights**

- 5.1 If there are insufficient funds remaining in the Pension Fund to pay vested rights, and if the Special Manager has exhausted all remedies for collecting unpaid contributions or other claims, the Special Manager shall propose a schedule for partial payment of vested rights.
- 5.2 The Special manager shall calculate a present value of vested rights and propose partial payments of present values due to participants.
- 5.3 Participants who are already receiving pensions and meet the minimal pension age for Basic Pension (65) shall have priority in this schedule.
- 5.4 The transferee Pension Entity, to which Pension Assets are transferred, if that is the case, shall not have liability for such unfunded vested liabilities of the transferor Pension Fund.

## **Section 6**

### **Absence of Pension Funds to which pension assets may be transferred**

6.1 If there are no licensed Pension Entities to which Pension Assets may be transferred upon termination of a Pension Fund, the Special Manager must propose a procedure for payments to participants.

6.2 Participants who are already receiving pensions and meet the minimal pension age for Basic Pension (65) should receive a cash payment.

6.3 Participants who are already receiving pensions but do not meet the minimal Pension Age for Basic Pension (65) can choose to receive a cash payment or a transfer of their vested rights to the extent paid in the proposed schedule to the Kosovo Pension Savings Trust.

6.4 Participants who are not receiving pensions and are below Pension Age shall receive a transfer of their vested rights to the extent paid in the proposed schedule to the Kosovo Pension Savings Trust.

## **Section 7**

### **Rights of Participants in the Termination of Pension Funds**

#### **7.1 Right of Participants and Beneficiaries to Pursue Claims**

Participants to a Pension Fund that is terminated have a right to pursue claims against the Pension Fund board of directors, sponsoring Employer, asset managers and custodian and/or the special manager, or any fiduciary or affiliated parties of these entities, against whom he/she or they can establish a cause or causes of action. To enforce this right a participant or participants may proceed with the following actions:

- a) The participant(s) presents his/her claim to the BPK for resolution with the cited fiduciaries of the Pension Fund and its assets, or
- b) The participant(s) files an action in court (such as breach of fiduciary duty) against any or all of the fiduciaries of the pension assets.

## **Section 6**

### **Entry into Force**

This Rule as amended shall enter into force on April 01, 2006.

Michel Svetchine  
Managing Director