

**REGULATION NO. 1999/21
ON BANK LICENSING, SUPERVISION AND REGULATION**

The Special Representative of the Secretary-General,

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

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

For the purpose of establishing rules for the licensing, supervision and regulation of banks by the Banking and Payments Authority of Kosovo (BPK),

Hereby promulgates the following:

GENERAL PROVISIONS

Section 1
SCOPE OF OPERATION

The present regulation shall apply to banks and financial institutions, their shareholders, administrators, employees, agents and affiliated entities.

Section 2
DEFINITIONS

Wherever used in the present regulation, the following terms shall have the following meanings:

“Administrator” means any person who is an officer of a bank, or other juridical person, including any member of its Governing Board or Audit Committee and any person who alone or together with one or more others has the authority to enter into commitments for the account of such bank or juridical person;

“Affiliate” of a bank or other juridical person means a subsidiary of such bank or juridical person or a company of which such bank or juridical person is a subsidiary or a company that is under common control with such bank or juridical person;

“Bank” means a juridical person engaged in the business of accepting deposits in Kosovo as a local entity or as a branch of a foreign bank and of employing such funds either in whole or in part for the purpose of granting extensions of credit or making investments at its own risk;

“Branch office” means a place of business, which forms a legally dependent arm of a bank, not separately incorporated, and which conducts directly all or some of the bank’s financial activities;

“Capital” means the net worth or funds of a bank that is the difference between its assets and liabilities in accordance with balance sheet accounts that reflect international accounting standards or other sound accounting principles acceptable to the Banking and Payments Authority of Kosovo (the “BPK”);

“Capital distribution” means a distribution of cash or other property by a bank to its owners made on account of that ownership, but not including any dividend consisting only of shares of the institution or rights to purchase such shares or any amount paid on deposits of a cooperative bank that the BPK determines is not a distribution for purposes of section 27.3;

“Credit” means any loan or direct or indirect commitment to disburse money in exchange for a right to repayment of the amount disbursed and outstanding and to the payment of interest or other charges on such amount, any extension of the due date of a debt, any guarantee or letter of credit issued, and any commitment to acquire a right to payment of a sum of money; the term “credit” shall not include bank deposits and the purchase of debt securities in the secondary market;

“Credit documentation” means a loan agreement entered into by a bank and its supporting documents, including but not limited to reasonably current financial statements of the borrower or of any guarantor of the borrower's indebtedness; a document of assignment or similar grant of charge in any collateral over which the lender is given any mortgage, security interest or lien as security for the due payment of the loan and an appraisal of the value of such collateral; and a term sheet setting forth the principal terms of the loan, such as its principal amount, its rate of interest, its schedule of repayments and the borrower's use of the proceeds and purpose of borrowing;

“Debt security” means any negotiable instrument of indebtedness and any other instrument equivalent to such instrument whether or not in certificated or in book-entry form;

“Deposit” means a sum of money paid to a bank on condition that it is to be repaid in full by the bank, with or without interest or premium either on demand or at an agreed time and not referable to the provision of property or services or the giving of security whether or not evidenced by any entry in a record of the bank, or by any receipt, certificate, note or other document;

“Equity interest” means any ownership right or voting right with respect to a juridical person or enterprise;

“Financial activity” means any of the activities that are listed in section 25;

“Financial institution” means a juridical person that is not a bank that is licensed by the BPK to engage in one or more of the following activities: extending credit; underwriting, dealing in, brokering, or distributing securities; acting as investment company manager or investment advisor or providing other financial services such as equipment leasing finance services, micro-finance services or foreign exchange or other financial informational, advisory or transactional services;

“Guidelines” means non-obligatory recommendations issued to banks, financial institutions or to a particular bank or financial institution;

“License” means an authorization issued by the BPK granting the right to engage in banking or financial activities specified by that license;

“Order” means an obligatory directive of the BPK issued to a bank, financial institution or any particular group thereof in implementation of the present regulation or of a rule;

“Person” includes an individual, a company, enterprise, partnership, association and any group of persons acting in concert, whether or not incorporated;

“Principal shareholder” means a person that owns directly or indirectly ten percent or more of any class of voting shares of a bank or company;

“Regulatory capital” means capital defined by the BPK from time to time for regulatory purposes;

“Remedial action” means measures to correct the infractions described in section 37;

“Rule” means an obligatory directive in implementation of the present regulation issued by the BPK to all banks and or all financial institutions;

“Significant interest” means a direct or indirect holding of an interest in a juridical person or enterprise that represents twenty percent or more of its outstanding voting shares, or that, in the opinion of the BPK, makes it possible to exercise a controlling influence over its management or policies;

“Subsidiary” means any juridical person in which another person or group of persons acting in concert holds directly or indirectly the equivalent of fifty percent or more of any class of voting shares or a significant interest that permits such other person or group of persons to exercise a controlling influence over the management or policies of the subsidiary; and

“Voting shares” means common shares in the capital of the issuer and any other shares of any designation or description that carry the right to vote on any resolution at a general or special meeting of the issuer.

Section 3

PROHIBITIONS AND EXEMPTION

3.1 No person shall engage in the business of a bank or financial institution without an effective license issued by BPK.

3.2 No person shall use the word “bank” or derivatives of the word “bank” in respect of a business, product, or service without a license issued by the BPK, unless such usage is established or recognized by the present regulation, an international agreement or where the context in which the word “bank” is used does not concern financial activities.

3.3 No bank or financial institution shall use words in its title that are misleading concerning its financial condition, legal status or connection with government or international institutions.

3.4 No bank or financial institution organized outside Kosovo shall be permitted to engage directly in any financial activity in Kosovo unless the activity is undertaken through a branch office or subsidiary for which a license has been issued by the BPK.

3.5 No person shall make a misstatement of material fact or a false or misleading representation or do anything to create a false or misleading appearance or engage in any manipulative device or practice in relation to taking deposits.

3.6 The BPK may exempt, in whole or in part from the application of the present regulation, banks whose deposit taking is intended to promote financial savings by identified classes of persons and whose total deposit liabilities remain less than Deutsche Marks 250,000 DM; provided, however, that any such banks shall not use the word “bank” in their name.

LICENSING OF BANKS

Section 4

LICENSING RESPONSIBILITY OF THE BPK

The BPK shall have sole responsibility for the issuance of licenses to banks and financial institutions.

Section 5

MINIMUM CAPITAL

The BPK shall have sole responsibility for establishing the required amounts of minimum paid-in capital to be maintained by banks, which required amounts may never be less than one million DM. The BPK may increase such required amounts from time to time by rule or order.

Section 6

LICENSE APPLICATION

6.1 Applications for licenses shall be in such form as prescribed by the BPK and shall be accompanied by the following information:

- (a) The qualifications and experience of the administrators of an existing or proposed bank, including business and professional history for the past ten years;
- (b) The amount of the actual or proposed capital of the bank and, for proposed banks, the amount that may have previously been paid in or subscribed provided that no more than ten percent of bank capital may be contributed in kind;
- (c) A business plan setting out, *inter alia*, the organizational structure, the types of financial activities envisaged, projected financial statements for three years and, for existing banks, financial statements and annual reports for the past two years;
- (d) The name, residence, business and professional history for the past ten years, and financial statements for the past three years, of each person who is or proposes to be a principal shareholder of or has or proposes to have a significant interest in the bank, and the amount and percentage thereof; the proposed ownership interests of affiliated or related persons shall be aggregated to determine the amount of such interest; and
- (e) Such additional information as an applicant deems appropriate.

6.2 The BPK may require an applicant to submit additional or supplemental information.

6.3 A license application for a branch office of a foreign bank with its head office in a jurisdiction other than Kosovo (hereinafter referred to as “foreign bank”) shall be submitted by the foreign bank and accompanied by such information as the BPK shall require.

Section 7

LICENSE DECISION

7.1 Within three months from the date of its receipt of a complete application for a bank license, the BPK shall preliminarily approve or deny it, and notify the applicant of its decision in writing; notifications of the denial of a license shall state the grounds on which the license was denied.

7.2 The BPK shall grant a license only if it is satisfied that:

- (a) The business plan is based on sound analysis under reasonable assumptions;
- (b) The bank will comply with all provisions of the present regulation; and
- (c) The qualifications, experience and integrity of its administrators, principal shareholders and those who propose to have or have significant interests are appropriate for the bank’s business plan and financial activities.

7.3 In the case of preliminary approval of an application for a bank license the BPK shall

enumerate the conditions for the bank to receive the license to commence its operations. Such conditions shall relate only to:

- (a) The payment by shareholders to the bank of its initial capital funds;
- (b) The hiring and training of the staff of the bank;
- (c) The lease or purchase of operations equipment and the establishment of operations systems, including internal audit and controls;
- (d) The lease, purchase or occupancy of bank premises; and
- (e) The engagement of an external auditor in accordance with section 33.

7.4 If a bank fails to comply within one year with the conditions to receive the license to commence operations, the preliminary approval of the application shall be revoked.

7.5 If the BPK determines that the conditions in this section have been satisfied, it shall issue a license.

7.6 Licenses concerning a subsidiary or one or more branch offices of a foreign bank shall be granted only if:

- (a) The foreign bank is authorized to engage in the business of receiving deposits or deposit-like funds in the jurisdiction or foreign country where its head office is located;
- (b) The competent authorities that supervise the foreign bank at its headquarters have given their written consent to the granting of such license; and
- (c) The BPK determines that the bank is adequately supervised on a consolidated basis by its supervisory authorities.

Section 8 **LICENSE**

8.1 A license shall be granted for an indefinite period of time and shall not be transferable. Subsequent to initial licensing, banks properly entitled may apply to the BPK to engage in additional activities. The BPK may approve such application or provide reasons in writing for denying it.

8.2 The BPK may charge fees for the processing of a license application, the issuance of a license and for the possession of a license. All such fees shall be non-refundable.

Section 9 **REGISTER OF BANKS**

A central register shall be kept by the BPK for inspection by the public that shall record for each licensed bank the name, the head office and branch office addresses, and current copies of its charter or equivalent establishing documentation and by-laws. A list of banks, the licenses of which have been revoked, shall be maintained in the register, but their chartering documentation shall be removed.

Section 10

REVOCAION OF A LICENSE

10.1 The license of a bank may be revoked only by decision of the BPK upon a request of the bank; following an infraction, pursuant to section 37 below; or on one or more of the following grounds:

- (a) The license has been obtained on the basis of false information submitted by or concerning the applicant;
- (b) The bank has not commenced operations within ninety days after the receipt of the license, or such further period as may be determined by the BPK, or has ceased for more than eight months to engage in the business of receiving deposits;
- (c) Another bank that holds a significant interest in the bank has had its license revoked;
- (d) A merger, amalgamation or sale of substantially all of the assets of the bank has occurred;
- (e) The owner or owners of the bank have decided to dissolve or to liquidate the bank, or the bank has ceased to exist as a legally or operationally independent entity;
- (f) The activities of the bank during its first three years of operation differ substantially from those presented in the application for a license and, in the opinion of the BPK, such difference is not justified; or
- (g) A foreign bank does not have the authority, or has lost the authority, to engage in the business of receiving deposits in the country of its head office.

10.2 A decision by the BPK to revoke or not to revoke a license shall be communicated in writing to each bank or branch office concerned and shall give the grounds for the decision and shall be effective on the date of such communication.

Section 11

PUBLICATION OF LICENSE REVOCATION

A decision to revoke a license shall be published in one or more newspapers of general circulation wherever the offices of the bank are located.

ORGANIZATION AND ADMINISTRATION OF BANKS

Section 12

ORGANIZATION AND INDEPENDENCE OF BANKS

12.1 Banks shall be organized as joint stock companies with limited liability under applicable law, with all shares registered in the name of their beneficial owners.

12.2 The provisions of the applicable law on enterprises or company law shall apply to banks to the extent not inconsistent with the present regulation. However, registration with a court is not a condition precedent to commencing banking operations after a license has been received by a bank.

12.3 Each bank shall enjoy legal, operational, financial and administrative autonomy from any other person, including the BPK and any agency, instrumentality or political subdivision of the government, unless the law, the present regulation or rules or orders issued pursuant thereto specifically provide otherwise. This autonomy shall be respected and no person shall seek improperly to influence any administrator of a bank in the discharge of his or her duties or to interfere in the activities of any bank, except in the execution of a specific directive or duty under law.

12.4 Each bank shall have legal status including the right to contract, to own and dispose of movable and immovable property, and may be a party to legal proceedings.

Section 13

CAPITAL REQUIREMENTS

The minimum amounts that banks must maintain as regulatory capital, and the minimum absolute amount of capital, shall be prescribed from time to time by rule or order.

Section 14

RESTRICTIONS ON OWNERSHIP AND HOLDINGS

14.1 The transfer of an equity interest in a bank shall require the prior written authorization of the BPK if, as a result of such transfer, any one person or number of persons acting in concert would, directly or indirectly, become a significant shareholder in such bank or would own more than twenty percent of any class of voting shares of the bank. Determinations by the BPK shall be based upon the criteria described in section 7 and upon such further factors as the BPK may reasonably consider.

14.2 No bank shall, alone or in concert with one or more other persons, without prior written authorization of the BPK, directly or indirectly hold an equity interest in a juridical person or undertaking that is engaged in other than financial activities that either represents a significant interest or exceeds as to its net current value the equivalent of fifteen percent of the bank's regulatory capital or permit the aggregate net current value of all such equity interests to exceed the equivalent of one hundred percent of the bank's regulatory capital.

14.3 Notwithstanding section 14.2 no authorization shall be required for:

- (a) Equity interests that have been acquired by a bank in foreclosure on or in lieu of repayment of a loan granted by the bank, in which case the bank shall dispose of such

equity interests within one year from the date they are acquired or within such longer period as the BPK may permit; or

- (b) Equity interests held by a bank as an agent or trustee.

Section 15

MERGERS OF BANKS

Merger, amalgamation or sale of substantially all the assets of a bank shall require the prior written authorization of the BPK. Determinations shall be based upon whether the proposed transaction would result in the substantial lessening of competition in any market served by the bank and on the criteria described in section 7.

Section 16

CHARTER AND BY-LAWS

16.1 Each bank shall have a charter or equivalent establishing documentation that shall specify its corporate name and address; its purposes; the jurisdiction and authority of its Governing Board; and the amount of its capital, the classes, numbers and nominal values of its shares, and the voting rights attaching to its shares. No amendment of the charter or equivalent establishing documentation of a bank shall take effect without the prior written approval of the BPK.

16.2 Each bank shall be governed by by-laws, approved by its Governing Board, which in compliance with its charter shall establish:

- (a) The structure of the organization and administration of the bank, including its operational and administrative units, their sub-units and functions, supervisory positions, and reporting relationships;
- (b) The duties of each departmental director and the units under his or her supervision;
- (c) The functions of: the Audit Committee, the Credit Risk Management Committee, the Asset and Liability Management Committee and other permanent committees of the Governing Board; and
- (d) The limits of the authority of the administrators and other employees of the bank to bind the bank in contract.

16.3 Each bank shall maintain on file with the BPK a duly certified copy of its charter or equivalent establishing documentation, its by-laws, and a list of the officials of the bank who are currently authorized to obligate the bank, together with their specimen signatures and a description of the limits of their authority.

Section 17

GOVERNANCE OF BANKS

17.1 Each bank shall be administered by a Governing Board consisting of an uneven number of not less than five members, of which two shall be non-executive directors, and

shall have an Audit Committee, a Credit Risk Management Committee, and an Asset and Liability Management Committee.

17.2 The Governing Board shall be elected by the bank's shareholders and shall be responsible for establishing its policies and for supervision of their implementation.

17.3 The Governing Board shall be appointed by the general meeting of its shareholders for terms of not more than two years; and may be reappointed for subsequent similar periods. The general meeting of shareholders may establish remuneration for Board members; provided, however, that remuneration of the Governing Board and senior management of a bank shall be subject to approval of the BPK for the first three years of a bank's operations, and thereafter, if necessary, in the judgement of the BPK.

17.4 The Governing Board shall operate in accordance with the bank's by-laws.

17.5 The Governing Board and its members may not delegate their responsibilities to others.

Section 18

ADMINISTRATORS

All persons elected or appointed as administrators of a bank must be fit and proper and of good repute and must meet the criteria established by the BPK regarding qualifications, experience and integrity. Prior to their assuming office, members of the Governing Board must be approved by the BPK.

Section 19

ADMINISTRATORS AND PRINCIPAL SHAREHOLDERS; DISQUALIFICATION AND REMOVAL

19.1 A person shall not be eligible to become a member of a bank's Governing Board or shall by decision of the general or special meeting of shareholders of the bank be relieved of his or her membership on the Governing Board or, if it fails to act within 30 days of notice of the disqualification, by the BPK, in the event that such person:

- (a) Has by law been deprived of the right to sit on the governing board of a juridical person;
- (b) Serves, or has served at any time during the immediately preceding twelve-months with the BPK;
- (c) Has been convicted of a crime;
- (d) Has, in the judgement of BPK, been a party to a transaction that violates the present regulation or any rule or order; or
- (e) Has been subject to an insolvency proceeding as debtor.

19.2 Members of the Governing Board, except those who have filed a written objection

against the granting of such credits, shall be jointly and severally liable for losses sustained by a bank from credit extended in violation of sections 23, 27 or 30. Such liabilities may not be paid directly or indirectly by the bank or any of its affiliates which they serve or by the proceeds of any professional liability insurance or other indemnity policy of the bank.

19.3 A natural person who is a principal shareholder of a bank or a principal shareholder of an affiliate of a bank shall promptly after disqualification divest his or her interest in voting shares of such bank or affiliate to a level below that of a principal shareholder. If he or she fails to do so within 60 days of becoming disqualified, such shares shall lose the right to vote and shall receive a capital distribution. After such period, if the divestiture is not accomplished within 60 days, the BPK may order that all the shares in the bank held directly or indirectly by such principal shareholder be transferred to a trustee for sale at auction and the net proceeds, less expenses of sale, will be remitted to the disqualified shareholder.

Section 20 COMMITTEES

20.1 Each bank shall establish an Audit Committee that shall consist of at least two non-executive members of the Governing Board. The Audit Committee shall:

- (a) Establish appropriate accounting, operational and administrative internal controls, supervise compliance with policies and procedures, commission audits at the expense of the bank of the bank's records;
- (b) Monitor compliance with the present regulation and applicable rules or orders and report to the Governing Board thereon;
- (c) Engage experts at the expense of the bank to assist in the fulfillment of the Committee's responsibilities; and
- (d) Deliver opinions on any matters submitted to it by the Governing Board or that it wishes to address.

20.2 The Audit Committee shall meet once per quarter and when convened by the Governing Board or by two of its members. Decisions shall be taken by a majority of the members present and voting. Minutes of meetings shall be recorded in such manner as prescribed by the BPK.

20.3 Each bank shall establish a Credit Risk Management Committee and an Asset and Liability Management Committee each to be chosen from among respectively qualified senior officers by the Governing Board.

20.4 The Credit Risk Management Committee shall:

- (a) Meet weekly or whenever business so requires under procedures pursuant to the by-laws;
- (b) Establish and monitor implementation of policies and procedures for credit underwriting, loan administration, and loan collection;

- (c) Monitor compliance with the present regulation and other rules and orders applicable to credit and report to the Governing Board thereon; and
- (d) Deliver opinions on any matters submitted to it by the Governing Board or that the Committee wishes to address.

20.5 The Asset and Liability Management Committee shall:

- (a) Meet once per month or when convened by the Governing Board or by two of its members pursuant to the by-laws;
- (b) Take decisions by a majority of the members present and voting; and
- (c) Establish and monitor the implementation of policies and procedures for funding needs projections and proper matching of maturities and rates of assets and liabilities.

Section 21 **SECRECY**

Present and past administrators, employees, and agents of a bank or financial institution shall keep secret, and not use for personal gain or gain by other than the bank that they serve or have served, or permit to be examined by others, any non-public information that they obtained in the course of their services to the bank. Such information may be disclosed only to the BPK, including its inspectors and the auditors appointed by it, to external auditors of the bank, to judicial authorities as the law shall provide, to foreign bank supervisory authorities, and when the protection of the bank's own interest in legal proceedings requires disclosure.

Section 22 **PREVENTION OF MONEY LAUNDERING**

22.1 No bank or financial institution shall conceal, convert, or transfer cash or other property, if it knew or ought to have known that such cash or other property is derived from criminal activity, or aid or abet any person in concealing or disguising the illicit origin of any cash or property.

22.2 Banks and financial institutions shall inform the BPK of any evidence which suggests that property may be derived from criminal activity and provide any additional information to the appropriate authorities, in accordance with applicable law.

Section 23 **CONFLICTS OF INTEREST AND FIDUCIARY OBLIGATIONS**

23.1 An administrator of a bank or of a financial institution who is a party to a material contract or a proposed material contract with the bank or is an administrator of, or has a material interest in or a material relationship to any person who is a party to a material contract or a proposed material contract with the bank, shall disclose in writing to the bank

the nature and extent of the material interest or relation. The administrator shall make such disclosure when the contract or proposed contract comes or ought reasonably to come to the attention of the administrator.

23.2 A notice in writing to the Governing Board of the bank by an administrator annually disclosing the names, addresses and particulars of such administrator's material commercial, financial, agricultural, industrial or other business or family interests that such person has at the time shall be a sufficient declaration of conflict of interest in any contract for purposes of section 23.1.

23.3 An administrator who has a material interest or a material relationship within the scope of this section shall leave any meeting at which the contract or proposed contract is discussed, and shall refrain from voting on any matter related thereto that comes before the Governing Board of the bank.

23.4 An interest shall be material if it is significant with reference to the financial, business or family (any person who is related by marriage or to the second degree of consanguinity) interests of the person having the interest, and a person has a material interest in any company if the person owns, directly or indirectly, a significant interest in the company, or is an administrator of the company and has a significant interest in any partnership if the person is a partner.

23.5 Where an administrator fails to disclose a material conflict of interest in accordance with this section a court of competent jurisdiction may, on the application of the bank, a bank shareholder, or the BPK, set aside the contract on such terms as it thinks fit. In addition, the BPK may, by written order, suspend the administrator from office for any period not exceeding one year, or remove the administrator from office permanently.

23.6 Banks shall introduce suitable arrangements and procedures so that they and their administrators and employees are not placed in a situation where their duty to one customer conflicts with their duty to another, or where their own interest conflicts with their duty to a customer.

23.7 Administrators and employees of banks have a fiduciary duty of independence, loyalty and diligence to the bank that they serve and to the bank's depositors to place the bank's interests before their own interests.

23.8 No bank shall extend credit to its affiliate on preferential terms as to credit quality, interest rate, fee, maturity or valuation of collateral nor shall any bank purchase an asset from an affiliate in the form of a loan which is not performing.

23.9 No bank shall extend unsecured credit to any one of its affiliates in amounts exceeding 10% of its total minimum regulatory capital except with the prior permission of the BPK.

23.10 No bank shall have outstanding in the aggregate at any one time extensions of credit to all affiliates exceeding 25% of its total minimum regulatory capital except with the prior written permission of the BPK.

OPERATIONAL REQUIREMENTS

Section 24

GENERAL PRINCIPLES

24.1 Banks shall conduct their administration and operations in accordance with sound policies and procedures, the requirements of the present regulation and of applicable rules and orders.

24.2 Banks shall maintain such risk-based capital and shall hold such liquid assets as shall be prescribed by rule.

24.3 Banks shall ensure diversity of risk assets as prescribed by rule.

Section 25

FINANCIAL ACTIVITIES

25.1 Banks shall be authorized in their licenses to engage in the financial activities described in this section.

25.2 Banks with the minimum amounts of required capital in accordance with section 5, as adjusted from time to time, may engage in the following financial activities:

- (a) Receiving deposits (in the form of demand deposits, time deposits, or other forms of deposit) bearing interest or not in one currency;
- (b) Buying and selling for a bank's own account debt securities issued or guaranteed by governments or central banks of the European Union that are denominated and payable in the currency of the bank's deposits and that have a term to maturity not exceeding one year;
- (c) Providing payment and collection services;
- (d) Issuing and administering means of payment (including payment cards, travelers' checks and bankers' drafts);
- (e) Buying and selling foreign exchange for cash for the account of a customer;
- (f) Providing for safekeeping of securities and other valuables; and
- (g) Such other financial activities as the BPK shall determine by rule.

25.3 Banks that have Deutsche Marks three million in capital or such further amount as may be determined by rule or order from time to time, may engage in the financial activities described in section 25.2 and in addition the following financial activities:

- (a) Receiving deposits whether bearing interest or not in more than one currency;
- (b) Extending credit, including: consumer and mortgage credit; factoring with or without

recourse; and financing of commercial transactions;

- (c) Borrowing funds and buying and selling for a bank's own account or for the account of customers (excluding underwriting) of money market instruments (including notes, bills of exchange and certificates of deposit); debt securities; futures and options relating to debt securities or interest rates; or interest rate instruments;
- (d) Money brokering;
- (e) Financial leasing;
- (f) Providing credit information services;
- (g) Providing services as a financial agent or consultant (not including services described in sections 25.4(a) and (b)); and
- (h) Dealing in one or more currencies other than the currency in which the bank's balance sheet is denominated, including contracts for the future purchase or sale of foreign currencies.

25.4 Banks that have DM five million DM in capital or such further amount as may be determined by rule or order from time to time, may engage in the financial activities described in sections 25.2 and 25.3, and in addition the following financial activities:

- (a) Providing trust services, including, the investment and administration of funds received in trust and administration of securities;
- (b) Providing services as an investment portfolio manager or investment adviser;
- (c) Underwriting and distribution of debt and equity securities and dealing in equity securities; and
- (d) Such other financial activities related to securities transactions, as the BPK shall determine by rule.

25.5 No bank or financial institution shall engage in financial activities that exceed those specifically authorized by its license.

Section 26

PROHIBITED TRANSACTIONS AND PRACTICES

26.1 Banks and financial institutions shall refrain from entering into transactions or engaging in practices of any kind that would provide them, alone or together with others, a position of dominance in the money, capital or foreign exchange markets, and from engaging in manipulative devices or predatory pricing practices that could result in an unfair advantage for themselves or for third parties.

26.2 No bank shall require any person to contract to receive any financial service or any goods or other service from an affiliate as a condition of being permitted to contract with the bank to receive any other financial service from the bank or an affiliate.

26.3 No bank shall provide credit enhancement for, or extend credit to facilitate, the purchase of securities underwritten, placed or distributed by its affiliate.

Section 27

PRUDENTIAL REQUIREMENTS

27.1 Banks shall observe the following maximum limits as prescribed by the BPK:

- (a) The maximum ratios and exposures to be maintained by a bank concerning its assets, risk-weighted assets, and off-balance sheet items and various categories of capital and reserves;
- (b) The maximum aggregate amount of credits, expressed as a percentage of its regulatory capital, that a bank shall be permitted to have committed or outstanding to or for the benefit of any single person or group of interrelated persons; and
- (c) The maximum aggregate amount of credits, expressed as a percentage of the aggregate amount of all its credits, that a bank shall be permitted to have committed or outstanding to or for the benefit of the ten borrowers (including groups of interrelated persons) with respect to whom the bank's exposure on account of credit transactions is the greatest.

27.2 Banks shall observe the following requirements as prescribed by the BPK:

- (a) Requirements concerning the minimum aggregate amount of liquid assets or specific categories of such assets in relation to the value or change in value of assets (including guarantees and collateral received) or specific categories thereof, or in relation to the amount or change in amount of liabilities or specific categories of liabilities, provided, however, that banks shall be permitted to meet their liquidity requirements by maintaining with the BPK money deposits of an equivalent value;
- (b) Requirements concerning the maximum aggregate amount of real estate and fixed assets held, or specific categories thereof;
- (c) Requirements concerning the classification and evaluation of assets and provisions to be made on the basis of such classifications and evaluations against substandard and

non-performing loans, and the time when earnings on non-performing loans may no longer be accounted for as income except as received in cash; and

- (d) Prohibitions, restrictions or conditions concerning the types or forms of credits and investments made; matching as to maturity and interest rate in respect of assets and liabilities (contingent or otherwise); and unhedged positions in foreign currencies, precious metals or precious stones, exceeding limits prescribed by the BPK.

27.3 No bank shall make a capital distribution or pay a dividend if, in the opinion of the BPK, after making such distribution, the bank would have less than the minimum regulatory capital required by the present regulation or by rule or order.

27.4 No bank may engage directly in industry, commerce, or activities other than financial activities.

27.5 No bank shall extend credit secured by its own equity securities.

27.6 No bank shall purchase its own equity securities without prior authorization from the BPK.

Section 28

CORPORATE RECORDS AND RECORDS OF TRANSACTIONS

28.1 Every bank shall prepare and maintain at its head office written records containing:

- (a) Its charter or equivalent establishing documentation, its by-laws and all amendments thereto;
- (b) A register of its beneficial shareholders, including the number of shares registered in the name of each;
- (c) Minutes of meetings and resolutions of its Governing Board;
- (d) Minutes of meetings and resolutions of shareholders meetings and Committee meetings;
- (e) Accounting records exhibiting clearly and accurately the state of its business affairs, explaining its transactions and financial position so as to enable the BPK to determine whether the institution has complied with all the provisions of the present regulation and with applicable rules and orders;
- (f) Records showing, for each customer of the bank, on a daily basis, particulars of its transactions with or for the account of that customer, and all balances owing to or by that customer; and
- (g) Such other records as are required by the BPK.

28.2 Every bank shall create and maintain at the head office of the bank in Kosovo, proper credit documentation and any other information concerning its business relations with its

customers and other persons that the BPK may prescribe by rule.

Section 29

NOTIFICATION OF TERMS AND CONDITIONS

Each bank shall regularly notify its customers of the current policies and procedures regarding the business of the bank, and of the terms and conditions, and methods of calculation associated with deposits made and credits received by them, including the compound annual rates of interest and such other information as may be prescribed by the BPK.

Section 30

TRANSACTIONS WITH RELATED PERSONS

30.1 Banks and financial institutions shall not enter into a transaction with or for the benefit of a person who is related to them, if such transaction would be entered into on less favorable terms and conditions, or not at all, with or for the benefit of persons who are not so related. For the purposes of this section, persons who are related shall include without limitation any administrator of the bank; any principal shareholder or holder of significant interest in the bank; any person who is related to such administrator, principal shareholders or holders by marriage, consanguinity to the second degree, or business interest; any person that has a significant interest in a juridical person in which the bank has a significant interest. Notwithstanding the foregoing, no bank shall extend credit to or for the benefit of a person so related to the bank if as a result thereof the aggregate amount outstanding on all credits extended by the bank to persons so related to the bank would exceed an amount in relation to the bank's regulatory capital as prescribed by the BPK.

30.2 Credit extended by any bank to any related bank or financial institution shall be subject to such additional conditions or restrictions as shall be prescribed by rule. For the purposes of this paragraph, a related bank or financial institution shall include, without limitation: any private or governmental person or institution, or any number of such persons or institutions acting in concert, that has a direct or indirect significant interest in the bank extending the credit and any juridical person or undertaking in which the bank holds a significant interest.

Section 31

CREDIT TO EMPLOYEES OF BANKS

A bank shall not provide financial assistance to any of its employees, or for their benefit, in excess of limits established by the BPK.

ACCOUNTS AND STATEMENTS, AUDIT, REPORTING AND INSPECTION

Section 32

ACCOUNTS AND FINANCIAL STATEMENTS

32.1 Banks shall maintain accounts and records and prepare annual financial statements adequate to reflect their operations and financial condition in accordance with international accounting standards and shall also reflect the operations and financial condition of its subsidiaries and branch offices, both on an individual and on a consolidated basis.

32.2 Accounts and financial statements shall be in such form and detail and in accordance with international accounting standards or such other accounting standards as shall be prescribed by the BPK.

Section 33

AUDIT

33.1 Each bank shall appoint, upon the recommendation of its Audit Committee, an independent and qualified external auditor approved by the BPK who shall:

- (a) Assist in maintaining proper accounts and records;
- (b) Prepare an annual report together with an audit opinion as to whether the financial statements present a full and fair view of the financial condition of the bank in accordance with the provisions of the present regulation;
- (c) Review the adequacy of internal audit and control practices and procedures and make recommendations for remediation; and
- (d) Inform the BPK about any fraudulent act by an employee of the bank or any of its subsidiaries or any irregularity or deficiency in its administration or operations that may reasonably be expected to result in a material loss for the bank or such subsidiary.

33.2 For banks whose assets do not exceed the amount established by the BPK, the functions described in section 33.1 may be performed by the bank's internal auditor provided that such auditor shall have had no less than ten years of professional experience in auditing.

33.3 A bank whose assets or activities so warrant in the judgment of the BPK shall employ, with the advice and consent of its Audit Committee, a fit and proper internal auditor.

33.4 The internal auditor shall report to the Audit Committee, which shall set his or her compensation.

33.5 The internal auditor shall be given meaningful access to management and members of management to discuss matters relevant to their functions and shall have the right, upon request, to obtain from them any information or documentation which he or she shall require.

33.6 The internal auditor shall have no authority to bind or represent any bank in contracts

or other transactions.

33.7 The internal auditor shall operate independently of management and shall be possessed of a special fiduciary duty of care and loyalty to the bank.

33.8 The internal auditor shall:

- (a) Establish systems of internal controls, satisfactory to the Audit Committee, to monitor and critique policies and procedures with respect to accounting, administration, operations and the safeguarding of assets;
- (b) Establish and implement internal programs, satisfactory to the Audit Committee, to surprise test for non-compliance and irregularities in selected departments based on the internal auditor's risk assessments of such departments;
- (c) Report non-compliance and irregularities to the Audit Committee at such intervals and pursuant to such procedures as shall be set by the Audit Committee and where exigent circumstances so dictate, to the BPK;
- (d) Assist, cooperate with and monitor the external auditor in the performance of his or her duties; and
- (e) Perform such other duties as may be provided in the bank's by-laws.

Section 34

PUBLICATION OF BALANCE SHEET, AUDITOR'S OPINION, ANNUAL REPORT

34.1 Each bank shall within thirty days of each calendar quarter, publish in a national newspaper a fair and true summary of its quarterly balance sheet as at the end of the previous calendar quarter. Each bank shall also, within four months of the end of its financial year, publish in a national newspaper a fair and true summary of its balance sheet and its auditor's opinion for the preceding financial year.

34.2 Each bank shall also publish its annual report and provide copies to the public on request without charge.

Section 35

BRANCHES OF FOREIGN BANKS

Branch offices of foreign banks shall publish balance sheets and income statements on a consolidated basis and shall submit them to BPK on a quarterly basis and at such other times as the BPK shall require. All such financial reporting shall be in accordance with international accounting standards.

Section 36

REPORTS AND EXAMINATION

36.1 Each bank shall prepare and submit to the BPK reports concerning its administration and operations, liquidity, solvency, and profitability, and those of its subsidiaries on an individual and a consolidated basis. The reports shall be prepared in such form and detail and shall be submitted at such intervals as shall be prescribed by the BPK.

36.2 Each bank and each of its subsidiaries shall be subject to examinations by examiners of the BPK or by auditors appointed by the BPK. Such examiners may include officials of the authority of another country that is charged with the monetary or prudential supervision of financial activities in that country if it concerns the examination of a bank that is a branch or subsidiary of a foreign bank that has its head office in that country or has a significant interest in a foreign bank that is located in that country.

36.3 In their examinations of banks and their subsidiaries, the BPK and auditors appointed by it may:

- (a) Examine the accounts, books, documents and other records of the bank or subsidiary; and
- (b) Require administrators, employees and agents of the bank or subsidiary to provide all such information on any matter relating to its administration and operations as they shall reasonably request.

36.4 Each bank and each of its subsidiaries shall admit and cooperate fully with the examiners of the BPK and the auditors appointed by the BPK. No one shall attempt to harass, hinder, delay, impede, intimidate or exert undue influence on an inspector of the BPK or the auditors appointed by it.

36.5 Each affiliate of a bank and providers of professional or operations services to banks shall provide information to the BPK as the BPK may reasonably request concerning the bank's operations and relations with such persons.

INFRACTIONS, PENALTIES AND REMEDIAL MEASURES

Section 37

INFRACTIONS, PENALTIES AND REMEDIAL MEASURES

37.1 The BPK shall determine the remedial measures and penalties provided for infractions described in this section.

37.2 The BPK may take the following actions, or impose the following penalties, with respect to a bank or financial institution if it determines that the bank, financial institution or any of its administrators, principal shareholders and or those holding significant interests in it has violated a provision of the present regulation or of any rule or order of the BPK, has violated any condition or restriction attached to an authorization issued by the BPK or has engaged in unsafe or unsound practices in the judgement of the BPK:

- (a) Issue written warnings;

- (b) Conclude a written agreement with the Governing Board providing for a program of remedial action;
- (c) Issue written orders to cease and desist from such infractions and to undertake remedial action;
- (d) Impose fines on the bank, financial institution or on its administrators, principal shareholders and those holding significant interests in it, in amounts of from 500 DM to 5,000 DM for each day that the infraction continues provided that fines shall be of similar amount for entities with comparable total assets for the same type of infraction;
- (e) Suspend temporarily or dismiss management or a member or members thereof, the Board of Governors or a member or members thereof; and
- (f) Revoke the license of the bank or financial institution and appoint a receiver.

37.3 For banks whose regulatory capital is determined by the BPK to be less than two-thirds of the required minimum regulatory capital, in addition to the measures described in section 37.2, the BPK may take one or more of the following actions:

- (a) Require that the average total assets of the bank during any calendar quarter not exceed its average total assets during the preceding calendar quarter;
- (b) Require that the bank not acquire any equity interest in any juridical person or undertaking, establish or acquire any additional branch office, or engage in any new line of business;
- (c) Require that the bank not grant any extension of credit to an affiliate unless such credit is collateralised by marketable securities issued or guaranteed by a government of the European Union, held in custody by an escrow agent, whose market value exceeds at all times 125% of the amount of the credit; and
- (d) Require that the interest rates the bank pays on deposits not exceed the prevailing rates of interest on deposits of comparable amounts and maturities in the region where the bank is located, as determined by the BPK.

37.4 For banks whose regulatory capital is determined by the BPK to be less than one-half of the required minimum regulatory capital, in addition to the measures that may be taken that are described in sections 37.2 and 37.3, the BPK may take one or more of the following actions or impose the following penalties:

- (a) Require the bank or any of its subsidiaries to alter, reduce or terminate any activity that the BPK determines has caused material losses to the bank;
- (b) Require the bank to dismiss one or more administrators who had held office for more than 180 days immediately before the bank became undercapitalized, as determined by the BPK;

- (c) Require that the bank divest itself of or liquidate any subsidiary if the BPK determines that the subsidiary is in danger of becoming insolvent or has caused material losses to the bank; and
- (d) Require that no administrator receive any bonus or receive compensation at a rate exceeding that person's average rate of compensation (excluding bonuses, stock options and profit sharing) during the twelve calendar months preceding the month in which, in the determination of the BPK, the bank became undercapitalized.

37.5 For banks whose regulatory capital is determined by the BPK to be less than one-quarter of the required minimum regulatory capital, in addition to the measures that may be taken that are described in sections 37.2, 37.3 and 37.4, the BPK shall appoint a receiver for the bank.

37.6 The measures and penalties provided in this section shall not preclude application of other civil penalties or criminal penalties as provided under applicable law.

37.7 Any fines or revenue imposed in accordance with this section shall be paid to the Kosovo Consolidated Budget.

37.8 Penalties described in section 37.2 may be applied to any person who violates any of the provisions of section 3 and the BPK shall also, notwithstanding any other provision of law, be empowered to seek the liquidation of the business of such person under the provisions of applicable law.

Section 38

SUSPENSION AND REMOVAL OF PERSONS RELATED TO A BANK

38.1 If the BPK determines that any administrator, employee or holder of a significant interest in a bank has willfully or repeatedly committed any violation of the present regulation or any rule or order that has resulted in a material loss to the bank or financial gain to such person or has engaged in unsafe or unsound practices and has persisted in such violations or practices following a written warning from the BPK, the BPK may issue an order containing any or all of the following provisions:

- (a) Requiring the dismissal of the person from his or her position in the bank;
- (b) Prohibiting such person from serving in or engaging in the banking or financial business for a stated period or for life;
- (c) Prohibiting the person from direct or indirect exercise of voting rights attached to shares of the bank;
- (d) Requiring the person to dispose of all or any part of his or her direct or indirect ownership interest in the bank or cease to hold a significant interest in it; and
- (e) Requiring the person to reimburse the bank for losses caused by such violations.

38.2 If any such person is charged with any criminal offense, the BPK may issue an order temporarily suspending such person from his or her position in the bank and, if applicable, suspending the exercise of voting rights of shares in the bank by such person pending the determination of the criminal case. A dismissal of the criminal case or decision of not guilty on the merits shall not preclude the BPK from taking any enforcement action with respect to a person authorized by the present regulation.

38.3 No person may hold any position in, or participate in any manner in the conduct of the activity of, any affiliate of a bank that is engaged in financial services, without the prior written approval of the BPK, if such person is subject to an order of the BPK suspending or removing him or her from a position in a bank, prohibiting the exercise of his or her voting rights in shares of a bank, or requiring him or her to dispose of his or her ownership interest in a bank.

38.4 In the event that any person does not sell or dispose of voting shares of a bank pursuant to an order issued under this section within the prescribed period of time, the BPK may order that all the shares in the bank held by such person be transferred to a trustee for sale at auction and the net proceeds, less expenses of sale, will be remitted to that person.

RECEIVERSHIP

Section 39

BASES FOR INITIATION OF RECEIVERSHIP DUE TO INSOLVENCY

39.1 If the BPK determines that a bank is insolvent or has revoked its license or that it may reasonably be expected to become insolvent within the next ninety days the BPK shall revoke the license of that bank and shall forthwith take possession and control of that bank through a receiver appointed by the BPK. This proceeding shall be known as Receivership.

39.2 For the purposes of the present regulation:

- (a) A bank shall be deemed to be insolvent if it is not paying its obligations in full as they fall due or the value of its liabilities exceeds the value of its assets;
- (b) The value of a bank's assets, liabilities and regulatory capital shall be determined in accordance with valuation standards and procedures prescribed by the BPK; and
- (c) In determining the value of a bank's assets and liabilities for a future date, the bank's reasonably anticipated future income and expenses until that date shall be taken into account.

39.3 A receiver may be a person from the private sector or an official of the BPK who meets the qualifications prescribed by the BPK. The BPK may, for good cause, dismiss a receiver. The terms of the receiver's compensation may include incentives for meeting the objectives described in section 41.1 and may include penalties for failure to meet such objectives.

39.4 The compensation of the receiver and experts that he or she engages, reimbursement of their expenses and expenses of the BPK in execution of the present regulation with respect

to a bank shall be paid from the assets of the bank. Payments to the receiver shall be made on a current basis if in the judgment of the receiver there are sufficient liquid assets; provided, however, that the receiver and agents of the receiver shall not receive in any calendar month a larger *pro rata* share in payment of their claims for fees and expenses than depositors described in section 43.1(b) receive in payment of their claims. Any moneys owing to the receiver at the end of the term of receivership shall be paid from the proceeds from the sales of the bank's assets with the priority described in section 43.

Section 40

NOTICE AND REGISTRATION OF RECEIVERSHIP

40.1 The receiver shall within two days of his or her appointment post in each office of the bank a notice announcing such action pursuant to the present regulation, specifying the effective date and time of possession by the receiver and specifying that:

- (a) Authorizations of persons to engage the financial responsibility of the bank have been cancelled;
- (b) Persons who previously had authorization to give instructions on behalf of the bank with respect to payment or transfer of the bank's assets or assets managed by the bank are no longer so authorized; and
- (c) The bank's license has been revoked.

40.2 The receiver shall publish a notice specifying the actions taken in one or more newspapers of general circulation in the communities in which the bank maintains offices and arrange for the publication of such notice each week for the next four weeks and shall inform as necessary the competent authorities and shall transmit copies of such actions to the BPK within two days of such action.

Section 41

POWERS AND DUTIES OF RECEIVER AND EFFECTS OF RECEIVERSHIP

41.1 A receiver shall have all the powers of the administrators and shareholders of the bank concerned and, notwithstanding that the bank's license has been revoked, may, subject to section 41.2, operate the bank in its own name, and shall take any action in selling the bank or its assets that, in the receiver's opinion, is likely to result in satisfying more of the bank's liabilities to depositors and other creditors within one year from the date of appointment than would any alternative action; the BPK may extend the receivership for a further period of up to six months if, in its opinion, such extension will result in a material increase in the satisfaction of the bank's liabilities. Subject to the primary objective of maximum satisfaction of the bank's liabilities to creditors, the receiver shall expedite the sale of the bank or its assets and payments to creditors.

41.2 A receiver may continue any operations other than the taking of new deposits and extending credit to other than existing customers in relation to outstanding assets; and may borrow money on a secured or unsecured basis. The receiver may stop or limit the payment of any obligation, employ or dismiss any officer, employee or advisor, execute any instrument in the name of the bank and initiate or defend and conduct in the bank's name

any action or legal proceeding.

41.3 The receiver shall have unrestricted access to and control over the offices, books of account and other records, and other assets of the bank and its subsidiaries. At the request of the receiver, a law enforcement officer or officers shall assist the receiver to gain access to bank premises or control over bank records.

41.4 Any person who willfully interferes with a receiver's access to or control over the offices, books of account and other records, and other assets of a bank for which he or she has been appointed shall be imprisoned for a period of not less than one year nor more than five years or fined in an amount of not less than 1000 DM per day nor more than 5000 DM per day for each day that the infraction continues, or both.

41.5 The BPK shall approve or deny a merger of the bank with another bank, or sale of substantially all the bank's assets to any one bank, based upon the criteria in section 15.

41.6 The receiver shall have the same rights and privileges and be subject to the same duties, penalties, conditions and limitations as apply to administrators or other employees of a bank licensed under the present regulation.

41.7 The powers of the administrators and shareholders of the bank shall be suspended during a receivership; provided, however, that administrators may be instructed by the receiver to exercise specified functions for the bank; and further provided, that such persons shall be subject to dismissal by the receiver from their positions at the bank and shall thereupon cease to receive compensation from the bank.

41.8 The receiver shall secure the assets of the bank to seek to prevent their dissipation by theft or other improper action, by taking actions including, but not limited to, the following:

- (a) Changing the locks and limiting access to the new keys on external entrances to the bank's offices and on doors to internal offices which contain financial assets or information or equipment which could enable a person to gain unlawful access to financial assets;
- (b) Changing or establishing access codes to the bank's computers and granting access only to a limited number of trustworthy employees;
- (c) Issuing new photo identification passes for entrance of authorized employees to the bank's premises and controlling the access of others to the bank's premises;
- (d) Canceling authorizations of persons to engage the financial responsibility of the bank and issuing new authorizations, as appropriate, and notifying third parties;
- (e) Informing correspondent banks, registrars and transfer agents of securities, and external asset managers of the bank's assets that persons who previously had authorization to give instructions on behalf of the bank with respect to dealing in the bank's assets or assets held in trust by the bank are no longer so authorized and that only the receiver, and persons authorized by the receiver have such authority; and

- (f) Suspending the payment of capital distributions in general and payment of any kind to administrators and principal shareholders; provided, however, that base compensation may be paid to administrators for services rendered in their capacity as administrators of the bank.

41.9 The receiver shall establish a new balance sheet for the bank, based on his or her determination of liquidation values of the bank's assets with a corresponding reduction in the value of the bank's liabilities in the reverse order of priority in payment of distributions in a liquidation of a bank's assets. Liabilities shall be deemed due and payable and interest shall cease to accrue as of the date of the appointment of the receiver. Unmatured liabilities shall be discounted to present value at the rate of interest determined by the BPK.

41.10 Within one month of taking possession of a bank, the receiver shall make an inventory of the assets and property of the bank and transmit a copy thereof to the BPK, which shall make a copy available for examination by the public.

41.11 After fifteen days from the date of appointment, the receiver may make available for withdrawal by depositors or payment to other creditors such amounts as in his or her opinion may appropriately be used for that purpose; provided, however, that all depositors or other creditors who are similarly situated shall be treated in the same manner; and further provided, that before a general distribution of payments to creditors of the bank or the assumption of the bank's liabilities by another bank, creditors other than those described in section 43.1(b) shall receive no more than fifty percent of the amount of their allowed claims as determined by the receiver.

41.12 When a receiver has taken possession of a bank:

- (a) Any term, statutory, contractual or otherwise, on the expiration of which a claim or right of the bank would expire or be extinguished, shall be extended by six months from the date of such expiration or extinction;
- (b) Any attachment or security interest (except one existing six months prior to the effective date of the receivership) shall be vacated, and no attachment or security interest, except one created by the receiver in the application of this section shall attach to any of the assets or property of the bank so long as such receivership continues;
- (c) Shareholders' rights shall be extinguished except for the right to receive proceeds, if any, under section 43.3 and the right to receive any net payment received from the sale of the bank or substantially all its assets if the receiver determines that the bank had positive net worth at the time of sale; and
- (d) The receiver may issue new shares in the bank, sell the assets of the bank or arrange for the assumption of liabilities of the bank on terms he or she considers fair.

41.13 The procedures for determinations of the validity and priority of claims and for liquidation of bank assets and return of bank customers' property shall be prescribed by the BPK; provided, however, that the sale of bank assets shall be accomplished in a transparent and commercially reasonable manner.

41.14 Any assets of the bank that have not been sold at the end of the term of the receivership may be abandoned by the receiver or given to a charitable institution that promotes public health or education. Creditors of the bank shall have no claim against any such assets.

41.15 The receiver shall report each month to the BPK on the progress of the receivership in such form as may be prescribed by the BPK.

Section 42

AVOIDANCE OF PRE-RECEIVERSHIP TRANSFERS

42.1 The receiver may bring an action in court to set aside a transaction based on a forged or fraudulent document that the bank has executed to the detriment of creditors within five years of the effective date of the receivership.

42.2 The receiver may bring an action in court to set aside the following transactions affecting the assets of the bank or to recover from third parties the transfers by the bank:

- (a) Gratuitous transfers to, or to persons related to, administrators and principal shareholders of or holders of significant interests in the bank made within five years prior to the effective date of the receivership;
- (b) Gratuitous transfers to third parties made within three years prior to the effective date of the receivership;
- (c) Transactions in which the consideration given by the bank considerably exceeded the received consideration, made within three years prior to the effective date of the receivership;
- (d) Any act done with the intention of all parties involved to withhold assets from bank creditors, or otherwise impair their rights, within five years prior to the effective date of the receivership; and
- (e) Transfers of property of the bank to, or for the benefit of, a creditor on account of a debt incurred within six months prior to the effective date of the receivership which has the effect of increasing the amount that the creditor would receive in a liquidation of the bank; provided, however, that payment of deposits in an amount not exceeding 1000 DM per depositor shall not be subject to this provision.

42.3 Transactions with persons related to the bank conducted within one year prior to the effective date of the receivership, if detrimental to the interest of depositors and other creditors, may be set aside and recovered from such persons.

42.4 An action to set aside a transfer may be brought by the receiver within one year following the effective date of the receivership.

42.5 Notwithstanding the provisions of sections 42.1 to 42.4, the receiver may not set aside a payment or transfer by the bank if it was made in the ordinary course of the bank's business, or if it was part of a contemporaneous exchange for reasonably equivalent value, or to the

extent that following the transfer the recipient extended new unsecured credit to the bank which had not been satisfied by the bank as of the effective date of the receivership.

42.6 The receiver may recover property or the value of property transferred by the bank from a transferee of an initial transferee only if the second transferee did not give fair value for the property and knew that the initial transfer could be set aside under the present regulation.

42.7 The receiver may order that notice of the filing of an action to set aside a transfer be recorded in the public records for real estate ownership and any other rights in property and a person taking title to or acquiring any security interest or other interest in such property after the filing of such a notice takes his or her title or interest subject to the rights of the bank to recover the property.

42.8 A lessor of bank premises or a utility company or other provider of utility services including, without limitation, a company that supplies electricity, natural gas, water or telephone services, may not alter, refuse or discontinue such services to a bank because of its receivership or because the debtor has failed to pay for services prior to its receivership; provided, however, that upon request of a lessor of bank premises or a utility company, the bank shall place a security deposit in a commercial bank as a condition to the lessor's or utility company's duty to continue to provide services during the receivership, and any such deposit shall not be required in an amount greater than the cost of services provided to the bank during the month immediately prior to the effective date of the receivership.

Section 43

PRIORITIES IN PAYMENT OF CLAIMS

43.1 In any liquidation of a bank's assets, allowed secured claims shall be paid to the extent of the realization of the security or the security shall be delivered to the secured creditor. Other allowed claims shall be paid in relation to all other debts, in the order described below:

- (a) Necessary and reasonable expenses incurred by the receiver and the BPK, including professional fees, in application of the provisions of the receivership sections hereof;
- (b) Deposits of each depositor up to an amount not exceeding ten times the prevailing average monthly wage;
- (c) The amount not paid on deposits; and
- (d) Other claims of creditors against the bank.

43.2 If the amount available for payment for any class of claims is insufficient to provide payment in full, such claims shall be reduced in equal proportions.

43.3 After payment of all claims filed, any remaining allowable claims that were not filed within the time specified by rule for the filing shall not be paid. Any proceeds remaining after all claims of depositors and other creditors have been paid shall be distributed among

the shareholders of the bank in accordance with their rights.

Section 44

FINAL REPORTING TO THE BPK

Once the proceeds for the sale of assets of a bank have been distributed, the receiver shall provide a report to the BPK that includes a statement of income and expense and sources and uses of funds during the period of receivership. Upon approval by the BPK of the report, the BPK and the receiver shall be relieved of any further responsibility in connection with the receivership of a bank.

Section 45

MISCELLANEOUS RECEIVERSHIP PROVISIONS

45.1 Professional employees appointed to represent or assist a receiver or the BPK in connection with a receivership shall not be paid amounts greater than are payable to employees or agents of banks for similar services, except that the BPK may authorize payment at higher rates, if the BPK determines that paying such higher rates is necessary in order to recruit and retain necessary personnel.

45.2 The BPK shall have authority to indemnify a receiver and his or her agents for their actions on such terms as the BPK deems proper.

45.3 All claims arising out of or in connection with the insolvency of a bank or a bank in receivership against a bank receiver or the BPK in relation to a bank licensed under the present regulation shall be settled in accordance with its provisions. No appeals from the acts of a receiver or the BPK may be taken except that the bank's shareholders holding not less than ten percent of any class of shares with the right to vote may appeal against the appointment of a receiver for a bank.

45.4 Any court or administrative proceeding arising out of or in connection with a bank insolvency or a bank in receivership against a bank administrator, receiver or the BPK in relation to a bank licensed under the present regulation shall be brought before the appellate court or appropriate administrative body.

45.5 If the owners of a bank wish to voluntarily liquidate the bank under the Company Law, the Law on Enterprises, or any insolvency or bankruptcy code or other appropriate statute, they shall submit a request for approval of the voluntary liquidation to the BPK accompanied by such information as the BPK may prescribe. The BPK shall make due inquiry into the affairs of the bank and may approve the voluntary liquidation under other applicable law or determine that the present regulation applies and appoint a receiver pursuant to section 39.

MISCELLANEOUS PROVISIONS

Section 46

REGULATORY AND SUPERVISORY POWERS OF THE BPK

The BPK shall be empowered to issue such rules, orders or guidelines, to visit such offices of banks and financial institutions at such reasonable times as it deems appropriate, to examine

such accounts, books, documents and other records, and to take such other action as it shall deem necessary or advisable to give effect to the intent of the present regulation or rules or orders issued thereunder.

Section 47

RULES AND ORDERS OF THE BPK; FEES

47.1 The BPK shall publish its rules and orders, which shall take effect on the date of such publication or on such later date as such order, or rule shall specify.

47.2 The BPK shall charge fees to banks and financial institutions for its supervisory and regulatory services in order to defray its direct and indirect costs incurred in providing such services. Fees shall be assessed against banks in relation to the amount of their assets or based on any extraordinary expenses incurred by the BPK or its agents in relation to its supervisory activities with respect to a particular bank. Banks shall pay fees within ten days of presentation of a statement by the BPK.

Section 48

JUDICIAL REVIEW

In any proceeding in any court, arbitration court or administrative body in any jurisdiction brought against the BPK for any action taken in its capacity as supervisor or receiver, or against any of its officials, employees or agents:

- (a) The sole question before the court or body in determining whether a defendant acted unlawfully, wrongfully or negligently shall be whether a defendant exceeded clear authority or acted in an arbitrary or capricious manner in light of all the facts and circumstances, the provisions and intent of the present regulation, rules, orders and applicable law;
- (b) No actual or former official, employee, or agent of the BPK shall be liable for damages or otherwise liable for acts or omissions performed in good faith in the course of his or her duties; and
- (c) The action taken which is the subject of any such proceeding shall continue without restriction during the proceeding and any appeals or judicial review unless enjoined by a court of competent jurisdiction.

Section 49

INTERPRETATION

49.1 The headings of the sections in the present regulation are to be used solely for convenience of reference and are not a part of and are not intended to govern, limit or aid in the construction of any term or provision hereof.

49.2 Terms used in the conjunctive or disjunctive in the present regulation may be read

vice versa whenever the change is necessary to effectuate the obvious intention of the provision in question.

49.3 Words in the singular in the present regulation may be construed as plural and vice versa whenever the change is necessary to effectuate the obvious intention of the provision in question.

Section 50 **IMPLEMENTATION**

The Special Representative of the Secretary-General may promulgate administrative directions to implement the present regulation.

Section 51 **APPLICABLE LAW**

The provisions of applicable law shall apply subject to the provisions of the present regulation.

Section 52 **ENTRY INTO FORCE**

This regulation shall enter into force on 15 November 1999.

Section 53 **TRANSITIONAL PROVISIONS**

53.1 Entities conducting the business of a bank in Kosovo on the effective date of the present regulation that wish to operate as a bank in Kosovo must submit an application in accordance with section 7 within 30 days of that date. Entities that have not submitted an application by such date or whose application has been denied pursuant to the provisions of section 7 shall cease within 30 days to conduct the business of a bank or wind up their affairs. The BPK may appoint a receiver to liquidate the businesses of entities compelled to wind-up their affairs in accordance with the provisions of this section.

53.2 Within the period specified by the BPK (which shall not be later than 31 December 2000) by order to a bank that its organization, administration, financial condition or operations do not conform in one or more material respects with the requirements of the present regulation or with any rule or order, such bank shall promptly undertake to conform to said requirements within as short a time as possible.

53.3 Licensed banks which have registered with the central register as required under section 9 and are operating as banks shall be deemed for all purposes to be organized as joint stock companies with limited liability or as cooperative societies under the applicable law of Kosovo until such time as an effective law on enterprises or company law or on cooperatives, as the case may be, is in effect, at which time formal organization under said law shall be

immediately undertaken and effected, subject to approval by the BPK.

53.4 If no effective law on enterprises or company law is enacted within five (5) years from the effective date of the present regulation, the BPK shall have the power to review the status of all licenses granted and to take such remedial actions, as it shall deem appropriate.

Bernard Kouchner
Special Representative of the Secretary-General