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CONCEPT DOCUMENT
on the Establishment of the Sovereign Fund of the Republic of Kosovo

April 2022

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SUMMARY OF CONCEPT DOCUMENT

Title	Concept Document on the Establishment of the Sovereign Fund of the Republic of Kosovo
Entity responsible	Executive Commission for the Establishment of the Sovereign Fund
Contacting person	Dr. Besnik Pula, Chairperson of the Working Group, besnikpula@gmail.com
Strategic priority	This Concept Document addresses the plan for the establishment of the Sovereign Fund of the Republic of Kosovo, foreseen under Priority 1.2 of the <i>Program of the Government of the Republic of Kosovo, 2021/-25</i> .
Working group	<ol style="list-style-type: none"> 1. Dr. Besnik Pula, Chairperson 2. Dr. Arta Hoxha, member 3. Emanuel Bajra, member 4. Tea Blakaj-Hoxha, member 5. Edison Jakurti, member
Main issue	<p>This document describes the state of play in the sector of publicly owned enterprises (POEs) and assets under the administration of the Privatization Agency of Kosovo (PAK) and problems addressed in relation to these and other economic areas by establishing the Sovereign Fund of the Republic of Kosovo (SFRK). The document takes into consideration, describes and analyses various international models of state investment funds and sovereign funds. The document reviews the current legal framework and provides recommendations for drafting new legislation and amending the relevant legislation in order to prepare the legal basis for the establishment of the SFRK. The document envisages and recommends liquid start-up capital financing models, as well as non-liquid assets that are transferred to the ownership of the SFRK. The document describes in detail the goals, status, governance and organization of the SFRK, the investment strategies framework and other developmental influences that the SFRK can play in relation to the economic base and financial system of Kosovo. The document proposes the implementation strategy and gives relevant recommendations for the form and methodology of implementation of the plan for establishment of the SFRK in the shortest possible period of time.</p>

The proposed option	The Executive Committee and the Government are recommended to draft the Law on the Sovereign Fund and to follow the organizational and financial model proposed in this document.
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Main expected impacts	
Budgetary impacts	The document proposes funding models for the establishment of the SFRK, without impact on Government operating expenditures. It is envisaged that with the establishment of the SFRK as a self-financing unit, the Government in the medium term (2-5 years) manages to restore and increase the profitability of POEs which are currently a budgetary burden for the country, providing the Government with financial resources from dividends and the establishment of a Reserve Fund for fiscal emergency needs.
Economic impacts	The economic impacts of SFRK are multifaceted. In addition to improving the financial situation and business performance of the commercial POE sector, the SFRK affects the development of the financial system of Kosovo by influencing the issuance and trading of securities, increasing access to finance for J.S.C private sector through the internal investment strategy (<i>equity financing</i>) as an alternative mechanism to bank loans, as well as in raising the standards and quality of corporate governance in the country. In the long run, this directly affects the growth of employment, growth of technological excellence and skills in the country and increase of the country's competitiveness in the international economy. SFRK also influences the attraction of foreign investments as well as the increase of the share of Kosovar capital in the international financial markets.
Social impacts	The corporate governance and investment strategies of the SFRK will be based on gender equality requirements (especially in management and managerial positions) as well as the participation of trade unions and/or employee councils in the corporate governance of enterprises owned by the SFRK or benefiting from its investments.
Environmental impacts	The environmental benefits will be significant given that the SFRK investment policies will be based on requirements to reduce and/or eliminate pollutant emissions and CO ₂ emissions. SFRK creates a new quasi-public instrument to encourage investment in green and renewable technologies in the country.

Next steps	
<p>Short-term <i>(after approving the Concept Document)</i></p>	<p>Following the approval of this Concept Document, the Commission should appoint a Plenipotentiary Coordinator at Government level, to whom the Commission will give full powers, including budgetary authorizations and support from the necessary administrative staff, to implement and execute the steps proposed in this Concept Document along with other relevant measures adopted by the Commission during the process of reviewing the proposals of this Concept Document.</p> <p>The Coordinator, according to the mandates of the Executive Commission, shall:</p> <ul style="list-style-type: none"> ● draft the terms of reference for the establishment of a specialized legal team, which will draft the Law on the Sovereign Fund and the Statute of the SFRK. ● submit the same to the Executive Commission for review and approval, and for further processing at the Government and the Assembly. <p>The Government, namely the Ministry of Economy, to continue and deepen the process of restructuring of Publicly Owned Enterprises, in order to prepare them for transfer to ownership of the SFRK.</p> <p>The Government should review future legislative projects, related to the activity of the SFRK, proposed in this document.</p> <p>PAK, in cooperation with the Coordinator and other relevant parties, to finalize the list of assets to be transferred to the SFRK and/or entities owned by the SFRK.</p>
<p>Medium term <i>(after the approval of the legislative draft and the approval of the legal act by the Assembly)</i></p>	<p>After the approval of the Law on the Sovereign Fund by the Assembly, the Coordinator, according to the new mandate decided by the Assembly and/or the Government, shall draft the terms of reference for contracting consulting services, finalize the organizational structure of SFRK and its Statute and commence the management staff recruitment process.</p> <p>The Executive Commission or other relevant authority, shall appoint the founding Supervisory Board of the SFRK, according to the mandates provided in this document.</p>

	<p>The Ministry of Finances shall allocate the liquid capital of the SFRK, according to the financing models proposed in this document, and in cooperation with the Ministry of Economy shall compile the final list of initial non-liquid assets of the SFRK.</p> <p>The Coordinator shall implement the legal procedures for registration of SFRK as a joint stock company.</p>
<p>Long-term <i>(after the establishment of SFRK)</i></p>	<p>The Chief Executive Officer proposes and the SFRK Supervisory Board approves the initial SFRK investment strategy.</p> <p>The Government continues the transfer of assets under its management and that of the PAK to the SFRK.</p> <p>The Government to start the process of termination/transformation of the PAK.</p>

CHAPTER 1. INTRODUCTION AND DEFINITION OF THE PROBLEM

With the end of the war in June 1999, the United Nations International Administration (UNMIK) commenced taking under control and administration all former Socially Owned Enterprises (SOEs) that existed until 1989 and which the country inherited from the period of the former Socialist Autonomous Province of Kosovo (SAPK).

It is well known that after the abolition of the KSAK Constitution on 23 March 1989, the violent legal and political integration of Kosovo into the former Socialist Republic of Serbia began. As part of that process, in Kosovo began the imposition of interim measures on the economy and other institutions by the Belgrade authorities and began the mass dismissal of employees at all levels. This was the beginning of the degradation and destruction of the country's industrial economy in a systematic way. Many SOEs are "integrated" with interim legal measures in companies based in Serbia and the equipment and technology of many enterprises in Kosovo are transferred to Serbian companies. SOEs were not operationalized after the war due to outdated technology, the imposition of interim measures after the abolition of Kosovo's autonomy on 23 March 1998, the lack of investment for a long period of time, the lack of financial support, and the destruction and looting of many equipment during the war.

After the war, the UNMIK international administration legally took over the administration of the assets of the former SOEs. In 2002, UNMIK established the Kosovo Trust Agency (KTA) that became the lead agency with a mandate to manage, restructure, commercialize, liquidate, and privatize SOEs. After the declaration of independence of Kosovo in 2008, with Law No. 03/L-067 on the Privatization Agency of Kosovo (15.06.2008, repealed and replaced by Law No. 04/L-034 on the Privatization Agency of Kosovo dated 21.09.2011), the KTA was abolished and replaced by the Privatisation Agency of Kosovo (PAK), with extended mandates on restructuring, privatization and liquidation of former SOEs.

In the process of restructuring SOEs, KTA has incorporated SOEs and created twenty-five (25) Publicly Owned Enterprises (POEs) which upon approval of Law No. 03/L-087 on Public Enterprises dated 15.06.2008 were removed from the administration of the KTA and transferred to the Government of the Republic of Kosovo. This law defines the form of administration and supervision of POEs, which categorizes them into Central POEs, Regional Companies and Local POEs. At the time of approval, the Law defined the list of eight (8) Central POEs, eight (8) regional companies and sixteen (16) local POEs. The approval of the Law No. 05/L-120 on Trepca (dated 31.10.2016) regulated the status of the company Trepca JSC, where the Government is the main shareholder.

The main objectives of the Working Group were POEs of the central level, which are enterprises where the Government enjoys the majority or the whole of the ownership

shares. Despite the successful restructuring of these POEs from 2008 onwards, over the years the Government and external observers have found numerous problems with monitoring the work of POEs, from unsatisfactory levels of professionalism and management in POEs to the direct misuse of the means and assets of POEs for the interest of third parties. These problems have been accompanied by an unsatisfactory financial performance of POEs, which have necessitated the direct subsidization of POEs by the Government for operating expenses. In the period 2009-20, the Government has spent over €86 million from the state budget for capital investments and € 212 million in the direct subsidy of POEs (not including Trepca JSC), although the level of direct subsidy has decreased from that of the first years after independence and has stabilized after 2014 (see figure 1.1).

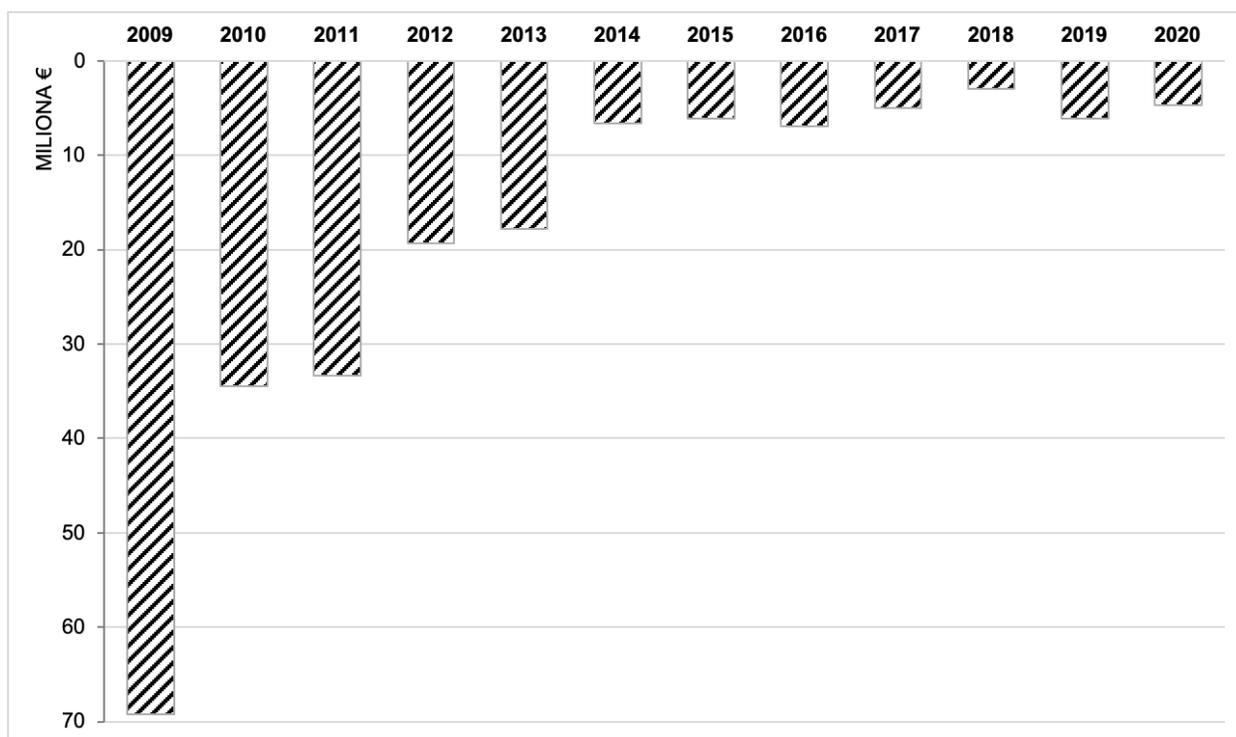


Figure 1.1. Annual government expenditures for direct subsidies to POEs (excluding capital investments and subsidies for Trepca JSC), 2009-2020 (in millions of €). Source: Public Enterprise Monitoring Unit, Ministry of Economy.

The lack of mechanisms for drafting and following a long-term strategy by the Government for the activity of POEs has also been noted. The lack of Government strategy and monitoring capacities in the form of effective exercise of shareholder rights is seen as partly responsible for the problems of POEs, such as mismanagement and commercial and financial misconduct. In the meantime, it has been noticed that, both in terms of strategic position in the market, as well as in terms of natural and human potentials of the country, POEs have great development potential with benefits not only for the enterprises in question but in the overall economic development of country.

Parallel to dissolution of a part of former SOEs and their transformation to POE according to the above measures, PAK has continued the process of restructuring and privatization of the remaining former SOEs. By July 2021, PAK has privatized 2,263 assets of former SOEs, with a total amount of EUR 772,336,863. These assets include 953 agricultural lands with an area of 23,777 hectares, sold for EUR 159,958,943. Despite the large amount of privatized assets, 592 former SOEs still remain under PAK administration. The PAK has commercialized some of these assets, mainly real estate, in the form of lease. Leasing of assets by PAK until July 2021 has generated revenues of EUR 45,500,155.

Despite some “success stories” in the privatization process, a large part of the privatizations has ended with the liquidation of former SOEs and the sale of their remaining assets (buildings, real estate, land) as “scrap”. This was the fate of most of the assets of SOEs (1,159 of them), which have undergone liquidation, compared to 768 assets that have ended in spin-off (and a part of them liquidated after privatization). Also, the privatization process in a number of cases was accompanied by criticisms for the low value of the sale of assets and for non-compliance by buyers of spin-off contracts, such as investment commitments, maintaining the level of employment and the field of activity of the enterprise. On the other hand, the neglect of SOEs by the state and their treatment by the previous politics not as assets with development potential has significantly affected the non-vitalization and destruction of large industrial assets and production chains of the country, with significant impacts on the level of employment, creating the great dependence of the country on imports and with a direct impact on deepening the negative trade balance of the country in relation to developed economies and those of the region. Also, after almost two decades of privatization policies, a kind of natural culmination of the process has been observed, considering that the remaining assets are ever less attractive to investors, while the changing economic circumstances in the region and in the world after the COVID-19 crisis has created new opportunities for economic development.

According to goals set out in the Program of the Government of the Republic of Kosovo 2021-25, with Government Decision No. 06/36, dated 22.09.2021, the Government has established the Executive Commission for the Establishment of the Sovereign Fund. The Commission in question, with the Decision dated 01.10.2021, has established the Working Group with the mandate to ascertain and review the existing institutional state and evaluate and propose to the Commission the steps to be taken in relation to the changes and the strategy to be followed for the establishment of the Sovereign Fund of the Republic of Kosovo (SFRK). According to the assessment of the Working Group, the establishment of the SFRK can substantially address the problems outlined above, thus substantially reforming the legal and institutional framework within which POEs operate and a certain segment of the assets of former SOEs. According to the assessments of the Working Group, the SFRK should directly address the following issues:

- 1) Determining the long-term strategy of the POE sector, based on the competitive commercial activities of enterprises and financial rationality, which aims to increase profitability, reinvest and increase the long-term value of assets in ownership.
- 2) Orientation of POEs towards supporting long-term development goals for Kosovo's economy, such as employment growth, increased efficiency and productivity, decarbonisation, equitable social development, and the advancement of skills and technology in relation to global trends.
- 3) Building an effective mechanism for the Republic of Kosovo in the exercise of shareholder rights and representation of financial interest in relation to enterprises and sector investments.
- 4) Expanding POEs access to sources of capital, including those of domestic and foreign investors and international financial markets.
- 5) Overall increase of POEs competitiveness as the largest commercial economic sector in Kosovo in terms of asset value.

According to the Working Group assessments, in achieving these objectives, the Commission is proposed to draft a new legal framework that creates the institutional framework for the establishment of the SFRK, transforming the current approach of the Government to the POE sector and creating conditions for avoiding the problems described above.

Although the Executive Commission has set the establishment of the SFRK as a goal, neither it nor the Government Program have fixed a specific model for the design of the Fund, its organization and its functions. The Working Group has undertaken to study the comparative models to build a special concept for the SFRK. This concept is built on the basis of successful international cases of state and sovereign funds, in line with the specific needs of the country for strategic orientation of the economy and effective governance towards achieving development objectives, as well as based on legal and institutional practices of Kosovo.

This document presents below the models of state and sovereign investment funds, the definition of their forms, purposes and structure, legal framework and legal implications, the implementation methodology and options together with the recommendations of the Working Group.

For the drafting of this document, the Working Group has consulted the stakeholders and shareholders in the process: relevant officials of the Ministry of Economy, relevant officials of the Ministry of Finance, relevant officials of the Office of the Prime Minister, the Board and PAK officials, representatives of international financial and development institutions (including World Bank, International Monetary Fund, EBRD, KfW,

Norwegian Embassy, Swedish Embassy, Friedrich Ebert Stiftung, etc.), members and former members of the board of POEs, representatives of business associations, independent economic experts in the country and others.

CHAPTER 2. DESCRIPTION OF THE SOVEREIGN FUNDS AND COMPARISON OF SOME RELEVANT MODELS

2.1. DEFINITION

Throughout the history of countries, one can encounter various policies, instruments, and institutions that have been used for the purpose of economic growth and development. One of instruments used is the Sovereign Wealth Fund (SWF). Although there is no agreement on the definition, they are generally characterized as state-owned investment mechanisms, used by states to invest in various assets in the world.¹ The International Sovereign Wealth Fund (ISWF), which operates internationally, defines SWF as “state-owned investment funds or entities usually established from balance of payments (surpluses), operations in official foreign currencies, privatization proceeds, government transfers, fiscal surpluses, and/or payments coming from the export of resources”.²

Certainly, all of these do not have to be the sources of the SWF, but they are a set of resources that characterize the different SWFs, established in different contexts and for different purposes. Therefore, given Kosovo’s context, a rough and general definition to the nature of the Sovereign Fund we propose for Kosovo is that of Wignall, Hu, and Yermo (2008), which consider SWFs as “cluster of assets in ownership and direct or indirect management of governments to achieve national objectives” (p. 4)³.

2.2. GENERAL OVERVIEW

2.2.1. Brief background of the establishment

The year 2021 marks the 68th anniversary from the establishment of the first SWF, called *the Kuwait Investment Authority (KIA)*, established by the Kuwait government. This fund was established in 1953 from surplus revenues of oil exports, to reduce dependence on this source that would not last indefinitely.⁴ Three years after KIA was founded by Kuwait in 1956, Kiribati establishes the second SWF in the world, known as the *Revenue*

¹ See Alhashel B. (2015), Sovereign Wealth Funds: A literature review, *Journal of Economics and Business* 78 (2015) 1-13.

² See Sovereign Wealth Fund Institute Website: <https://www.swfinstitute.org/research/sovereign-wealth-fund>

³ Blundell-Wignall, A., Hu Y. and Yermo Y. (2008), *Sovereign wealth and Pension Fund Issues*, OECD Working Papers on Insurance and Private Pensions, No. 14, OECD Publishing. doi:10.1787/243287223503.

⁴ See Kuwait Investment Authority Website: <https://kia.gov.kw/about-kia/#maindate>

Equalization Reserve Fund of Kiribati.⁵ This fund was established from the revenues that came from the extraction of phosphate. Two years later, in 1958, the US New Mexico State Investment Council was established in the United States of America (USA). Thus the trend continued with the establishment of *Temasek Holdings* by Singapore and *Permanent Wyoming Mineral Trust Fund* by Wyoming (USA) in 1974; *Abu Dhabi Investment Authority* by the United Arab Emirates, *Alaska Permanent Fund* by Alaska (USA), and *Alberta Heritage Fund* by Canada in 1976; *State General Reserve Fund* by Oman in 1980; *Government of Singapore Investment Corporation* by Singapore in 1981; *Brunei Investment Agency* by Brunei in 1983; *Government Pension Fund Global* by Norway in 1990; and dozens more were established in the decades that followed.⁶

2.2.2. Number, distribution and value of assets under management

The number of SWF, portfolio size and asset value have increased significantly over the years. Within ISWF, there are currently 134 SWF worldwide, out of which 23 are in Africa, 24 in Asia, 9 in Australia and the Pacific, 20 in Europe, 14 in Latin America, 25 in the Middle East, and 18 in North America.⁷ 13 of the top-100 SWF, based on the total value of assets under management, are located on the continent of Europe, including SWF from: Norway, Russia, Germany, Austria, Ireland, Finland, Spain, Belgium, Greece, Malta, and Luxembourg. While SWFs that have lower values (i.e., not in the top-100) but found in Europe include those from: France, Sweden, Monaco and Poland. Although not listed by ISWF, another SWF from Europe that has comparative relevance to Kosovo is *Slovenian Sovereign Holding*, founded in 1993 in Slovenia.

The total value of assets under the management of the top-100 SWFs, a list estimated by the *Norway Government Pension Fund Global*, is currently around US \$ 9.2 trillion or about € 7.9 trillion.⁸ Despite the large number of SWFs on the list, the largest asset value is concentrated in the 10% of the richest SWFs. Top-10 SWFs manage assets worth around \$ 6.8 billion or about 73% of the total value of the 100 richest SWFs in the world.

2.3. TYPES AND KEY FEATURES

If we try to group the main types and features of SWFs in the world, then the assessments can be made based on four main pillars: *objective of the establishment, source of funding,*

⁵ Buteică, A. C.; Huidumac Petrescu, C. E. (2017), *The Rise of Sovereign Wealth Funds: An Overview of the Challenges and Opportunities Ahead*, Hyperion International Journal of Econophysics & New Economy, (2017), Vol. 10 Issue 1, p147-158. 12p.

⁶ Ibid.

⁷ See Sovereign Wealth Fund Institute Website:

<https://www.swfinstitute.org/profiles/sovereign-Wealth-fund>

⁸ Ibid.

structure and the way of governing. Often SWFs have more than one objective or source of investment, and both in many cases are interrelated. Also, all these pillars are dynamic and may change during SWF development.

2.3.1. Objectives

Based on their objectives, the IMF (2008) has classified SWFs into five main types including Funds⁹:

- a) *Stabilizers* – aimed at regulating the budget and stabilizing the economy which is needed due to price fluctuations that commodities, such as oil, gas, etc., may have.
- b) *Savings* – aimed at increasing savings, through portfolio diversification, and mitigating the damage inherited by future generations from the use of non-renewable resources;
- c) *For investing reserves* – aimed at increasing the return on accumulated assets (reserves) such as trade surplus or funds raised from the privatization process;
- d) *Developmental* – aimed at supporting development projects that increase socio-economic wellbeing or help build industrial policies that increase production;
- e) *For contingency of pension reserves* – aimed at covering the contingency of pension liabilities in the balance sheet of the Government.

2.3.2. Main sources of funding

The two main sources of funding that characterize the origin and mode of funding of SWFs are as follows: a) raw materials such as natural resources like oil and gas (*i.e., commodity*) and, b) forms that are not based on raw materials (*i.e., non-commodity*) such as fiscal waste of Governments, funds raised by privatizations, etc.

2.3.3. Structure

The organizational structure of SWFs is built based on a series of factors. In a publication by the Peterson Institute for International Economics (PIIE) in February 2021, 64 SWFs in the world were assessed, whereby components derived from the Santiago Principles are rated.¹⁰ Regarding the structure, the following have been assessed: stated objective, declared legal basis, declared procedures for changing the fund's structure, declared investment strategy, declaration of investment source, declaration of use of invested funds, integration of SWF activities in government policies, and allocation of the SWF

⁹ International Monetary Fund (IMF), (2008), Sovereign Wealth Funds – A Work Agenda, Policy Papers, Vol. 2008 Issue 008. doi: <https://doi.org/10.5089/9781498334907.007>

¹⁰ Maire, J., Mazarei, A., Truman, E.M., (2021), Sovereign Wealth Funds Are Growing More Slowly, and Governance Issues Remain, Policy Brief, Peterson Institute for International Economics, February 2021.

resources from international reserves. All of these are components that must be considered when thinking about creating the fund structure.

2.3.4. Governance

Increasing SWFs and overcoming challenges along the way requires good corporate governance. For that reason, it is important to take into account a number of factors, which are also listed in the evaluation once in the publication of the PIIE, including: clear definition of the role of government, clear definition of the role of the governing body (of the fund), clear definition of the role of managers, decision-making by managers, specifying ethical standards within the fund, setting guidelines for corporate responsibility, and setting guidelines for investment ethics.¹¹

In order to increase international cooperation and improve governance, in 2009 the International Forum of Sovereign Wealth Funds (IFSWF) was established¹². Membership to the forum is voluntary. The IFSWF currently has over 30 SWF members. All SWFs of the forum have adopted the Generally Accepted Principles and Practices known as the Santiago Principles.¹³ These 24 principles include practical guidelines on good governance, transparency, accountability, investment promotion, financial system stability, and international cooperation.¹⁴

2.4. COMPARATIVE MODELS

Although SWPS lists 134 SWFs in the world, due to the above characteristics, SWFs have significant differences. Therefore, to build a SWF model for Kosovo, one must consider a set of parameters based on which comparative models are found. Although not all models need to meet all the parameters, it is important that some of them match the cases being compared.

- **Objectives:** Based on the above classifications, the main objectives of the SWF in Kosovo would characterize the fund as an investment (since Kosovo has public enterprises and assets that will be transferred from PAK), and developmental fund (socio-economic wellbeing should be increased by supporting re-industrialization as an opportunity to increase employment).

¹¹ Ibid.

¹² See International Forum of Sovereign Wealth Funds Website: <https://www.ifswf.org/>

¹³ Ibid.

¹⁴ Ibid.

- **Main sources of funding:** Since Kosovo is not an oil or gas producer, then the SWF in Kosovo would have other sources of investment (i.e., non-commodity) as a source.
- **Context comparability:** Although the SWF model for Kosovo should have unique aspects, it is important that the models taken for comparison are developed in contexts similar to Kosovo in one or more aspects, such as: history of political, economic and social development; region and population.

Taking into account these three parameters - i.e., objectives, funding sources, and context comparability - some models that can be used as basis include: *Temasek* in Singapore, *Slovenian Sovereign Holding* in Slovenia, *Turkey Wealth Fund* in Turkey, and *Ireland Strategic Investment Fund* in Ireland.¹⁵ Find below certain aspects of these funds.

2.4.1. Temasek in Singapore

Temasek is a global investment firm, founded in 1974 in Singapore, nine years after Singapore's independence from the United Kingdom. At the time of its establishment, in 1974, Singapore's population was about 2.2 million, Gross Domestic Product (GDP) (at current prices) was about US \$ 5.2 billion, while its per capita income was about US \$ 2,342.¹⁶ These economic and population indicators are comparable to the current situation in Kosovo.

As of March 31, 2021, *Temasek* owns a portfolio of approximately \$ 283 billion.¹⁷ 10 of the 35 start-up companies still remain part of the *Temasek* portfolio.¹⁸ Its main objective remains to increase the value of assets through long-term sustainable returns, while funding sources are non-commodity assets (since Singapore is not a country with great natural resources). *Temasek* portfolio consists of companies in the sector of financial services, telecommunications, transport, real estate, food products from agriculture, etc.

To ensure that the Government of Singapore remained responsible for policy-making at national level but not for the management of these assets, *Temasek* had initially taken over 35 companies, valued at around 354 million Singapore \$ (or about \$ 144 million US\$)

¹⁵ These models should be seen as comparative examples from which one can learn to create a unique model in Kosovo, and not as models to be replicated because there are many differences to consider.

¹⁶ See World Bank Database: <https://data.worldbank.org/>

¹⁷ Ibid.

¹⁸ See Temasek Review Website: <https://www.temasekreview.com.sg/overview/temasek-portfolio-at-inception.html>

which had been transferred to him by the Ministry of Finance.¹⁹ Thus, the role of the Government as a regulator and policy maker was divided with its role as a shareholder.

There is still a clear division between the roles of the Government, *Temasek*, and the companies it manages. The government does not interfere in investment decisions, unless it concerns preservation of *Temasek* reserves.²⁰ While *Temasek* does not make decisions about operation of the companies in its portfolio as this is the role of the boards and managements of these companies themselves.²¹

The Singapore government, i.e., the Ministry of Finances, remains the sole shareholder of *Temasek*; however, the role of *Temasek* is not that of managing Government funds.²² This is because *Temasek*, as a commercial investment company, owns its own assets, which is regulated by the Singapore Companies Decree.²³ *Temasek*'s status is also defined by the Constitution. The division of roles with the Government has led *Temasek* to be led by an independent board (consisting of three committees: executive, audit, and leadership development and compensation), most of which are non-executive and composed of businessmen recognized by the private sector.²⁴ Thus, while maintaining reserves and increasing the value of the portfolio where the Government is the sole shareholder, remain the task of *Temasek*, it is guided by the principles of good corporate governance and the discipline of a commercial company.

2.4.2. Slovenian Sovereign Holding in Slovenia

Another comparative model is the *Slovenian Sovereign Holding (SSH)*, which began in 1993, about 2 years after the declaration of Slovenia's independence and its secession from the former Yugoslavia. At that time, the population of Slovenia was about 2 million and the GDP per capita was € 5,100 €. ²⁵ ²⁶ The historical context and economic parameters make this model comparable to the current context of Kosovo.

¹⁹ See Temasek Website: <https://www.temasek.com.sg/en/index>

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ See World Bank Database: <https://data.worldbank.org/>

²⁶ See Republic of Slovenia Statistical Office Website:

<https://www.stat.si/statweb/en/News/Index/7496#:~:text=Gross%20domestic%20product%20per%20capita,and%20in%201992%20by%205.5%25>.

Based on the balance sheet as at 31 December 2020, the total value of assets in the SSH portfolio was around € 9.9 billion.²⁷ Even in the case of SSH, funding sources are non-commodity assets. The top-10 assets that make up about 79% of all value come from the transportation industry, the energy sector, the financial sector, and tourism.²⁸

The beginnings of the SSH were in 1993, with what became known as the Compensation Fund, which was a financial organization that dealt with the obligations arising from decrees governing the process of denationalization of property.²⁹ To fulfil its obligations, the Fund issued bonds and insurances and managed the insurances and assets that were defined by law. The first batch of these bonds (in the form of securities) had started to be issued in 1995.³⁰ Over the years, the form of bond issuance and the name of the Fund have changed. In 2010, the Agency for Capital Asset Management of the Republic of Slovenia was established, which would autonomously, independently and professionally manage assets owned by the Republic.³¹ This agency was abolished 2 years later and, then in 2014, SSH was established, i.e., the fund with the name it still bears today.³²

As a primary objective, SSH has increased the value of the portfolio consisting of state-owned enterprises. The four primary areas in which SSH deals include: management of capital assets (which are owned by the Republic of Slovenia), privatization of companies, denationalization (i.e., participation in issues related to compensation for confiscation of property and liabilities of SSH), and settlement of liability disputes on behalf of the Republic of Slovenia.³³

The corporate system of SSH consists of the Management Board, which deals with the management of SSH, and the Supervisory Board that handles the controlling and supervising the work of the Management Board.³⁴ Another important body is that of the General Meeting of the Company, which also consists of the Government of Slovenia, as the sole shareholder of SSH. Unlike *Temasek*, the role of the Government in the structure of SSH is greater.

2.4.3. Turkey Wealth Fund in Turkey

²⁷ Ibid.

²⁸ See Slovenian Sovereign Holding Website: <https://www.sdh.si/en-gb/>

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

Turkey Wealth Fund (TWF) is another model of SWF established in 2016 in Turkey. Unlike *Temasek* and SSH, at the time of its establishment the population and size of economies were more similar to that of Kosovo, today the population and economy of Turkey in 2016 are significantly larger than those of Kosovo. However, TWF is a good comparative example because of its objectives, but not a good comparative example because of its structure and governance.

TWF's asset portfolio consists of 23 companies, two licenses, and real estate in eight sectors. The portfolio composition is 35% in the financial services sector, 27% in energy, 13% in transport and logistics, 9% in mining, 8% in gambling and 4% in technology and telecom, 2% in agriculture and food, and 2% in real estate. Even in the case of TWF, funding sources are non-commodity assets.

TWF differs from *Temasek* and SSH in terms of the relation of the fund with the Government. While *Temasek's* duties are clearly separated from the Government, and in SSH the Government has greater influence, the TWF Board of Directors is led by the President of Turkey himself. In addition to him, this Board also has a Deputy Chairperson, four members, and the Chief Executive Officer of the fund. The Board Committees, which are composed of Board members, are: The Executive and Human Resources Committee, the Corporate Governance Committee, the Early Risk Detection Committee, and the Audit Committee. Therefore, unlike the two earlier models that maintain the commercial autonomy of funds, this model is much more centralized and directly related to the executive.

The overall objective of the TWF is to support Turkey's economic development. Its mandate has 4 main pillars, which include the following: increasing the value of assets in the fund, financing of strategic investments in Turkey, supporting Turkey's international economic objectives, and pushing for the improvement and deepening of financial markets.

While the objectives and funding sources of the TWF are similar to the model that Kosovo should have, the structure and governance of the fund do not seem to be good examples due to the great influence of the Government.

2.4.4. Ireland Strategic Investment Fund in Ireland

Ireland Strategic Investment Fund (ISIF) is a sovereign development fund, established in 2016 in Ireland, under the management of the National Treasury Management Agency (AMTK), which serves as a type of development agency and reports to the Ministry of Finance.³⁵ While the population, especially the GDP, of Ireland in 2016 was many times

³⁵ See Ireland Strategic Investment Fund (ISIF) Website: <https://isif.ie/>

larger than that of Kosovo, ISIF can serve as another example from a European Union country, but with some differences from SSH in Slovenia.

At the end of 2020, ISIF's global portfolio was EUR 5.4 billion. Even in the case of ISIF, funding sources are non-commodity assets.³⁶

The ISIF's overall objective is to support economic activity and employment in Ireland. ISIF is comprised of two portfolios: Discretionary and Directed.³⁷ The first one is mandated for commercial investments, but always aiming to support economic activity and employment. The second one has to do with investments on the implementation of public policies and, although it is part of ISIF, it is under the direction of the Minister of Finance. ISIF's five priority themes for investment are: regional development, housing, indigenous businesses, climate change and Brexit.³⁸

The main difference between ISIF and *Temasek* in Singapore, SSH in Slovenia, and TWF in Turkey is in the structure. Unlike the three previous examples, this fund is part of a development agency such as AMTK. And, although it has more independence in governance than the TWF in Turkey, the link between ISIF and the Irish Ministry of Finance is more apparent than, for example, in the case of *Temasek*. ISIF serves as an example for the functioning of the SWF within a development agency.

2.5. CONCLUSION

As this brief overview of SWF shows, there are different models of financing, organizing and mandating SWF in the world. Since Kosovo does not generate surplus rent from natural resources, the main examples are cases where funding sources are not related to a non-commodity. Meanwhile, the models testify to successful cases of SWF in pursuing the economic goals of the country, through funds operating on a commercial basis and as investment entities owned by the state. On the other hand, the overview shows that there are different models of SWF relations with the Government, some of which are more centralized than others. Taking into account the principles of democratic governance in a republican state, the Working Group has aimed at a model where the executive and representative instances of the Republic of Kosovo are enabled to effectively monitor and exercise the role of shareholder, but on the other hand maintain the organizational and managerial autonomy of the Fund and its owned enterprises.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

CHAPTER 3. LEGAL FRAMEWORK AND LEGAL IMPLICATION

3.1. INTRODUCTION

The establishment of the SFRK requires changes in the institutional overview of the Republic of Kosovo, including the legal framework. For this reason, the assessment of the legal impact is inevitable. Currently, the legal ground for the establishment of the SFRK does not exist; therefore, amendments through the drafting of a new legal framework, which would be suitable to the establishment SFRK, are necessary.

The Constitution of the Republic of Kosovo explicitly recognizes the category of public assets owned by the state and provides opportunities for the establishment of institutions through which their management and transaction takes place.

Considering that the SFRK would include the management and ownership of public enterprises, the legal background referring to the management of public assets should be taken into account herein. For this reason, we should also refer to the legal aspects that are not currently applicable, due to their legal force, based on Article 160 of the Constitution, which has explicitly emphasized that: *“The Republic of Kosovo shall own all enterprises in the Republic of Kosovo that are Publicly Owned Enterprises. All obligations related to such ownership rights shall be the obligations of the Republic of Kosovo. The Government of Kosovo may privatize, concession or lease a Publicly Owned Enterprise as provided by law”*. This means that the property rights of publicly owned enterprises are exercised by the Government of the Republic of Kosovo. If they were applied currently, it would mean that, as long as they are part of the SFRK which exercises property rights on behalf of the Republic of Kosovo, there would be no constitutional implications. So, even currently, such an article, applicable until 2012, would not be an obstacle to the establishment of the SFRK.

Given the above, the only thing that should be clear in continuation is the retention of ownership and the exercise of property rights as far as publicly owned enterprises by the Government of the Republic of Kosovo are concerned. This provision enables proceeding with the amendment of the legal framework in order to establish the SFRK.

3.2. TRANSFER OF PAK ASSETS - IMPLICATIONS

Given that the SFRK is foreseen and recommended to take ownership of some of the properties that are currently under the management of the PAK, the modalities and legal implications that need to be amended, so as to enable the transfer state assets currently under PAK management to SFRK, should be foreseen.

To act on the basis of the previous paragraph, it should be taken into account that based on Law No. 04/L-034 on the Privatization Agency of Kosovo (hereinafter referred to as: Law on the Privatization Agency of Kosovo), the latter has the exclusive competence to

administer: 1.1. *socially-owned Enterprises, regardless of whether they underwent a Transformation; 1.2. any assets located in the territory of Kosovo, whether organized into an entity or not, which comprised socially-owned property on or after 22 March 1989, except as provided in paragraph 2 of this article; and 1.3. all shares in Corporations and subsidiary Corporations established pursuant to the present Law; and all State Owned Interests in an Enterprise or other legal entity, regardless as to whether the Enterprise or legal entity underwent a Transformation.*

Taking into account the above, based on the current legislation in force, the PAK manages all the assets listed in the previous paragraph and has exclusive competencies over their management. Consequently, in order to enable the transfer of these assets to the ownership of the Sovereign Fund, the Law on the Privatization Agency of Kosovo should be amended in order to enable the transfer of assets.

If we continue with the procedure provided above, the need to supplement/amend the Law on the Privatization Agency of Kosovo should be taken into consideration, which would foresee the functioning of the PAK in certain segments parallel to the entry into force of the Law on Sovereign Fund and the establishment of its organizational structure. Liabilities to the PAK parties would be managed by the same even after the entry into force of the Law on the Sovereign Fund. The Working Group, however, sees PAK reform as a separate process from the establishment of the SFRK. Only the regulation of the transfer procedure of assets designated by PAK to the SFRK is relevant for the SFRK.

Naturally, this section discusses PAK assets that are still under management by the latter and have not been subject to the privatization procedure. One of the methods considered by the Working Group, in terms of submission of assets set by the SFRK, on property rights is expropriation. Consequently, this section will analyse such a possibility in more detail.

Law No. 03/L-139 on Expropriation of Immovable Property (hereinafter referred to as the Law on Expropriation) sets out the conditions under which the Government may make expropriation. This Law on Expropriation must be seen in the light of the European Convention for the Protection of Human Rights (which is directly applicable in the Republic of Kosovo pursuant to Article 22 of the Constitution), and the case law of the European Court of Human Rights (related to Article 22 based on Article 53 of the Constitution), which has supremacy over domestic laws and dictates rules even in the process of expropriation, based on Article 1 Protocol No. 1 of the European Convention for the Protection of Human Rights (hereinafter referred to as: ECHR).

Considering that the expropriation in order to gain management of funds from the SFRK would be done in the public interest, it should start from the definition of the latter by the European Court of Human Rights (hereinafter referred to as: ECHR). The meaning of the terms “public interest” and “general interest” is discussed in the case of *James and others vs. the United Kingdom*, where it is emphasized that: “acquisition of property for the

purpose of social, economic or other policies may be considered to be in the public interest, even when the wider community does not directly use or benefit from the property acquired. This implies that the concept of public interest according to the ECHR is broad.

Article 1 of Protocol No. 1 states that deprivation of property must be “subject to the conditions provided by law” and such control must be based on “such laws that the state sees as necessary.” This requirement of legality is defined as security against arbitrary methods. Reference here is made to national legal acts that may be written (laws, decrees, regulations), precedents or rules adopted through their use in practice. Furthermore, the ECHR stipulates that, regardless of the form in which these rules are found, they must be sufficiently precise and accessible (*James and others vs. United Kingdom*).

Definitions of public and general interest depend on the state and are largely subject to the margin appreciation. Consequently, and in light of what is presented above, it can be concluded that:

1. *Expropriation of real estate is provided by law;*
2. *Expropriation of real estate is regulated in accordance with the case law of the ECHR and as such provides for public interest;*
3. *Expropriation of assets managed by the PAK could be done by the Government in accordance with the Law on Expropriation, in order to transfer such assets to the SFRK.*

3.3. MANAGEMENT OF PUBLICLY OWNED ENTERPRISES - IMPLICATIONS

The Law on Publicly Owned Enterprises of the Republic of Kosovo provides the basic framework for the institutional organization and the basic principles of the functioning of Publicly Owned Enterprises in the Republic of Kosovo.

The working group has concluded that the ownership of certain publicly owned enterprises should be transferred to the ownership of the SFRK, for the reasons given at the beginning of this Concept Document. However, to do such a thing must be taken into account:

1. Legal implications in terms of the transfer of assets;
2. Responsibility for the obligations of publicly owned enterprises and
3. Determining the management of existing enterprises by SFRK.

Given that the Law on Publicly Owned Enterprises clearly defines the organization, functioning and management of publicly owned enterprises, we cannot talk about the

change in management structure without: 1) supplementing/amending the Law on Publicly Owned Enterprises and 2) Drafting a special law on SFRK.

Since the concept of the SFRK does not imply the transfer of the entire management structure to SFRK from the publicly owned enterprises however foresees the continuation of the functioning of supervisory boards of publicly owned enterprises with narrowed powers in relation to those provided by the Law on Public Enterprises, the latter should not be repealed but amendment should be initiated to: 1) define the structure of the remaining publicly owned enterprises; 2) define the management of publicly owned enterprises; 3) define the competencies of the supervisory boards and 4) define responsibility in relation to the creditors.

What should be kept in mind is that the transfer of assets under other ownership cannot mean, in any form, disregard of liabilities in relation to debts and creditors; therefore, the asset must always be considered together with the liabilities to third parties. In order to position the SFRK as favourably as possible, the prior empowerment of publicly owned enterprises and the repayment of existing debts should be taken into account.

3.4. LAW ON SOVEREIGN FUND

SFRK should be established on the basis of a special law that would result in the supplementing/amendment of other laws provided above, including eventually the Law No. 06/-016 on Business Organizations (hereinafter referred to as: Law on Business Organizations). This is because the SFRK will be given the form of a joint stock company which must operate on the basis of its Statute.

The establishment, status and governance of the SFRK will be regulated by two documents: the Law on SFRK and the Statute of SFRK. The Law on SFRK will pave the legal way and authorize the implementation of the procedural initiative by the Ministry of Finance or another executive agency of the Government for the establishment of the SFRK as an independent commercial entity owned by the Republic of Kosovo. In addition, the Law should:

1. Decide on the establishment of the SFRK with the legal status of a joint stock company and define the ownership of the SFRK with the Republic of Kosovo as the owner of one hundred (100) percent of the shares.
2. Designate liquid capital and non-liquid start-up assets which become the property of the SFRK.

3. Authorize the Ministry of Finance to take action and establish instruments for the implementation of the SFRK liquid start-up capital financing model (according to the models recommended in section 4.3.4 of the Concept Document).
4. Regulate the role of the Assembly as supervisor of the SFRK and define procedures for the appointment and replacement of members of the SFRK Supervisory Board.
5. Define the role of the Assembly in the procedure for amending the Statute of the SFRK.
6. Define the Reserved Assets List and the procedure for its amendment.
7. Define the procedures for the transfer of ownership/shares of public enterprises from the Republic of Kosovo to the SFRK and the fundamental criteria of the scope of activity, financial and organizational condition of enterprises before the transfer, and authorize the Ministry of Economy to take action for the legal execution of the transfer of ownership of assets under the management of the Ministry to the SFRK, in the process of establishing the SFRK and further. This includes recognizing the SFRK's right to decide, through the Supervisory Board, on the refusal to accept (through pardon or purchase) of certain assets.
8. Define the procedures for the transfer of ownership of assets under the management of the PAK to the SFRK or business entities owned by the SFRK, as well as the recognition of the intermediary entity (Ministry of Finance) that executes the transfer of ownership of assets from AKP to SFRK. This includes recognizing the right of the SFRK through the Supervisory Board to decide on the refusal to accept (through pardon or purchase) of certain assets.
9. Define the procedures for the transfer and/or sale of assets owned by the SFRK of the Republic of Kosovo or its agencies. It is proposed that any takeover of SFRK assets by the Government, partly or fully, should be allowed only with the authorization of the Assembly and with adequate compensation of the value of the asset.
10. Determine the status of the Reserve Fund managed by the SFRK and the terms and forms of the transfer of money from the Reserve Fund and the payment of dividends from the SFRK to the Ministry of Finance.
11. Guarantee the organizational and managerial autonomy of the SFRK from direct governmental, political and stakeholder influences and pressures, including the disciplinary, punitive and criminal measures exercised in cases of such interference.

Meanwhile, the Statute of the SFRK should:

1. Determine the internal organizational structure of the SFRK, including the role and mandates of the Supervisory Board, Executive Board and company officers in accordance with the provisions for joint stock companies in the Law on Business Organizations.
2. Define the form of organization of the SFRK as a corporation, including departments and other internal governing and executive bodies, with sufficient

flexibility for operational changes according to the decisions of the Supervisory Board.

3. Define the obligations of the Supervisory Board to the shareholder (Republic of Kosovo, represented by the Assembly) and the SFRK in general to the special legal provisions set out in the Law on Sovereign Fund.
4. Define the procedures for the appointment of supervisory and/or management boards of enterprises owned by the SFRK.
5. Define other relevant organizational and strategic elements of the SFRK, outlined in the Annex to this Concept Document (“Basic Principles”) and according to the advice of relevant specialists and consultants.

For details on the above functions, see the Annex to this Concept Document (“Basic Principles”).

Due to the complexities of the structure and legal hierarchy, it is recommended that the Law on the SFRK and its Statute be drafted by a specialized legal team, specially engaged by the Government Commission for this purpose. Meanwhile, it is recommended that the Statute of the SFRK, the approach to internal governance, management and organizational structure, drafting investment strategy and recruiting managerial and professional staff, should be developed in cooperation with one or more specialized business consulting companies, in particular those with international experience in asset management and financial investments of sovereign funds in particular.

3.5. LAW ON NATIONAL CHAMPIONS

In order to create the opportunity for internal investments of the SFRK outside the sphere of publicly owned enterprises, it will be necessary to regulate the status of non-state-owned joint stock companies which can benefit from the investments of the SFRK. For the role and strategy of these investments, see the Annex (“Basic Principles”). The Law on National Champions must include the following elements:

1. Establish the status of “National Champion.”
2. Establish and finance, within the Ministry of Economy or Trade and Industry, the Coordination Office for the certification of National Champions, which will process the applications and keep records of the companies that enjoy the active status of “National Champion”, as well as to revoke this status.
3. Define the criteria for application and certification of companies with the status of “National Champion” including:
 - a) That the enterprise is formed as a joint stock company, which permanently employs at least 50 people and demonstrates the best practices of corporate governance, including gender balance in the

board and management and involvement of employees in governance processes.

- b) That the enterprise is registered as J.S.C in Kosovo, and retains most of the capital in Kosovo and conducts its main commercial and/or manufacturing and service activity in Kosovo.
 - c) That export of goods and services abroad, in which the enterprise proves a significant advantage over competitors (if any) are among main activities of the enterprise.
 - d) That in its activity, the enterprise follows a strong policy of decarbonisation and environmental maintenance.
 - e) Others as defined by law.
1. Determine the procedures for the appointment of the independent commission that evaluates the applications for the status and gives the recommendation for its recognition by the Ministry.
 2. Determine the conditions and procedures for revocation of the status.
 3. Determine the benefits that the company receives from the status of “National Champion,” such as the investment participation from the SFRK and others that will be decided.

The drafting and adoption of this Law is not necessary for the establishment and initial activity of the SFRK, but affects an aspect of its planned activities. Therefore, it is recommended that the drafting of this Law begin after the adoption of the Law on the Sovereign Fund.

3.6. OTHER LAWS

Similarly, after the adoption of the Law on Sovereign Fund, the Government should consider the relevant areas that will be affected by the activities of the SFRK, including those of the financial system and corporate governance standards in general. In particular, it is necessary to consider the following areas:

1. Creating the legal basis for the issuance of bonds and securities by joint stock companies and other commercial entities in Kosovo.
2. Creating the legal basis for the organization of the capital market (stock exchange) and for the trading of securities, bonds and other financial instruments at primary and secondary level.
3. Eventual corrections that need to be made in the Law on Business Organizations in particular, to set and strengthen the conditions and framework of corporate governance for joint stock companies.

Addressing the shortcomings in the Law on Labour, including the conditions and requirements for the organization and participation of trade unions and/or Workers'

Councils within medium and large joint stock companies and their representation in corporate governance within joint stock companies (taking into account in particular the models of co-determination of Germany and Denmark that govern participation and representation of employees in the management of joint stock companies).

CHAPTER 4. IMPLEMENTATION METHODOLOGY

4.1. INTRODUCTION

This chapter describes the methodology of implementing the strategy for the establishment of the Sovereign Fund of the Republic of Kosovo. According to the assessment of the Working Group, the strategy should include these elements:

- 1) Drafting the legal framework for the establishment and operation of the SFRK (described in Chapter 3).
- 2) Establishment and organization of the SFRK as an institution.
- 3) Models of financing the start-up liquid capital of the SFRK.
- 4) Determining the assets (non-liquid capital) of the Republic of Kosovo transferred to the SFRK and preliminary steps in the transitional process.

4.2. DRAFTING THE LEGAL FRAMEWORK

As stated in Chapter 3, for the purpose of drafting the legal framework of the SFRK, the Government Commission will have to establish a specialized legal team, with expertise in the operation of publicly owned enterprises, asset management, asset confiscation, and general operation of joint stock companies.

During Working Group contacts with external donors, some of them expressed interest to support the work of the Commission in the part of drafting the legal framework for the SFRK. The Working Group has welcomed this support, but in terms of drafting the legal framework recommends that the Government sets the terms of reference for external lawyers engaged, with possible funding from donors. The Working Group recommends that the drafting of the law and other legal documents adhere maximally to the concept of SFRK defined in this Concept Document.

For the drafting of the Statute of SFRK, it is recommended that in addition to a legal team, this document should be drafted in cooperation with one or more business consulting companies, with international experience in asset management and financial strategies. The elaborated concept of internal organization of SFRK is recommended to be done in cooperation with the expertise of one or more such companies, on the premises set out in this Concept Document.

4.3. ESTABLISHMENT AND ORGANIZATION OF SFRK

After drafting and approving the Law on the Sovereign Fund and other elements of the legal framework, the next step will be the organization of the SFRK as an institution. This process includes not only legal formalities (e.g., registration of the SFRK as a J.S.C in the Kosovo business register), but also the following processes:

- 1) Drafting of the Statute (Business Card) of the SFRK, where, in accordance with Law on the Sovereign Fund, the goals, form of government and organizational structure of the SFRK are described.
- 2) Appointment of an initial Supervisory Board with a temporary mandate.
- 3) Recruitment of the Chief Executive Officer and other SFRK officers.
- 4) Immediate start of recruitment and employment of SFRK staff.
- 5) Drafting of Investment Strategy by SFRK.
- 6) Transfer of liquid capital (according to financing models) and other non-liquid assets (according to the strategy proposed in this document) by the Government of the SFRK.

4.3.1. Drafting the Statute of SFRK

The SFRK Statute will be the basic governing instrument of the SFRK. An effective strategy would be the initiation of the drafting of the SFRK Statute in parallel with the drafting of the Law on the Sovereign Fund. This is because these two documents will be hierarchically interdependent. The Law on the Sovereign Fund, in addition to constituting the legal act directing the Government to initiate procedures for the establishment of the SFRK and determining the start-up capital of the SFRK, shall define goals and mandates of the SFRK, as well as regulate its relations with the institutions of the Republic of Kosovo as the main and sole shareholder of SFRK. Meanwhile, the Statute will be based partly on the provisions of the Law on Sovereign Fund, but will include elements such as: internal governance of the SFRK, organizational structure and other operational aspects of the SFRK. The basic elements of the organizational structure are described in the Annex of this document.

The Working Group recommends that the Government drafts the Statute and the initial strategy of the SFRK with the assistance of one or more international consultants, with international experience in the field of investment funds and investment strategies.

4.3.2. Appointment of the Initial Supervisory Board

The Supervisory Board will be the highest governing body of the SFRK (see Annex). The founding act of the SFRK should be accompanied by a list of members of the Founding Supervisory Board of SFRK.

The Law on the Sovereign Fund will determine the qualifications for members of the Supervisory Board, the selection procedures and their mandate. Meanwhile, the Statute will define the governing roles of the Supervisory Board within the SFRK.

For the SFRK Founding Board, the Working Group recommends that the Government appoints an interim Board, with an initial mandate to establish the SFRK. This mandate, lasting up to two years, must be followed by selection of regular members of the Board according to the normal procedure set out in the Law on the Sovereign Fund. The appointment of an initial Board with an interim mandate would significantly accelerate the process of establishing the SFRK and launching its work, given that normal procedures for selecting Board members take time. However, in selecting temporary Board members, the Government must take into account the qualifying criteria set out in the Law on the Sovereign Fund.

4.3.3. Recruitment of the Chief Executive Officer

The Chief Executive Officer will be the Senior Executive Officer of the SFRK (see Annex). Immediately after the establishment of the SFRK, the Board will start the procedures for the employment of the Chief Executive, with the announcement of an international vacancy. It is recommended that the Chief Executive Officer be recruited with the assistance of an international consulting firm. The person recruited as Chief Executive Officer must be a professional figure, with many years of international experience in investment funds, asset management and execution of investment strategies. Other parameters of the Chief Executive's educational and professional profile will be determined by the Board in cooperation with the Government and the international consultant.

After the appointment, the Chief Executive Officer will lead the process of completing the senior SFRK officials (see Annex) and then start recruiting the rest of the staff through competitive vacancies.

4.3.4. Financing models of the Fund's liquid start-up capital

Along with the non-liquid assets to be inherited by the Fund from the Government (POEs, PAK assets and others), the SFRK will need an initial liquid capital as the basis for the initial operational costs of the SFRK, but also for the establishment of an investment fund that SFRK will have at its disposal from the first day. In order to avoid budgetary

implications to the Government for the financing of this capital and so that this capital does not derive from the Government's operating budget or from budget reallocations within the expenditure framework, the Working Group has considered several different options for securing this funding.

The Working Group envisages three possibilities that, either separately or in combination, may provide funding for the SFRK liquid start-up capital. The first option envisages the Government issuing an external loan on the basis of trust funds held by the PAK. The second option envisages the Government selling treasury bills dedicated specifically to the financing of the SFRK. The third option envisages that the Government, respectively the Ministry of Finance, create a financial instrument known as “Guaranteed Investment Capital” with a nominal annual return of 0.001%. The Government would sell this instrument to the Kosovo Pension Savings Trust, using the amount received as a basis for financing the Fund. Details for the three options are given below.

4.3.4.1. Loans on the basis of trust funds of the PAK

Under this option, the Government would request a competitive interest loan from one or more international commercial banks. The trust funds kept by the PAK would be used as collateral for this loan. The current amount of this fund (November 2021) is € 182.6 million.

Reasoning:

The PAK retains revenues from the sale of assets (privatization) in its trust fund. According to the Law on PAK, the Government has no right to these funds as long as the right to appeal by the creditors through the Special Chamber of the Supreme Court is consumed. Only after the submissions have been reviewed and adjudicated and after creditors have been compensated from this fund, the rest goes to the Government.

This situation makes this fund inviolable until the review of all complaints by the Special Chamber for each privatized enterprise has been completed. However, given that in the short or medium term these funds, or the vast majority of them, will pass to the Government, the Government can use them as the basis for a mortgage credit, taking loans worth about 50% (more or less) of the amount available in the trust fund. This would be a competitive loan taken from one or more international commercial banks, for a minimum period of ten years. The credited amount would be dedicated exclusively to the financing of SFRK start-up capital, whereby the Ministry of Finance could be authorized for such a special transaction by the Law on Sovereign Fund.

4.3.4.2. Treasury bonds

The government may auction off a certain amount of bonds dedicated specifically to funding the SFRK. These bonds would be made with long-term maturity (5 or 10 years) at a competitive interest rate. For the sale of these bonds, the Government could enter into a memorandum of understanding with the country's commercial banks.

Reasoning:

Selling of bonds can be low risky and with more favourable terms than getting a foreign loan. However, since the Government's capacity to withdraw funds through bonds depends on the availability of investors to purchase them, the amount withdrawn may be lower than that of a loan taken based on trust funds of PAK. On the other hand, this form would be a way to stimulate domestic capital, particularly that held by commercial banks, to invest for economic development purposes. This would be implemented particularly if before the issuance of this series of bonds at auction, the Government concludes a memorandum of cooperation with commercial banks in Kosovo with the commitment that the funds raised are dedicated to the SFRK and that their investment in Kosovo will be in the interest of expanding banking market (especially the commercial one) in Kosovo. The Memorandum may also include an agreement between the Government and banks to use Kosovo's commercial banks from the SFRK for its own deposits, payment services and other banking services.

4.3.4.3. *Guaranteed Investment Capital and Kosovo Pension Savings Trust*

For the financing of SFRK, the Government may by law create a new financial instrument called "Guaranteed Investment Capital" which will be deposited in the Central Bank of Kosovo. This instrument can be created by the Law on the Sovereign Fund, whereby the Government can orient the Kosovo Pension Savings Trust to invest a part of its reserve fund (un-invested part) in this instrument, with an interest rate of 0.001%.

Reasoning:

Creating such a financial instrument makes it possible for the Government to mobilize, through a government guarantee (i.e., with minimal risk for the depositors of the Trust), the reserve funds of the Kosovo Pension Savings Trust, for the establishment of the Sovereign Fund. With this action the Government would also start to orient the Trust funds to investments within the country and in function of economic development, which has not happened so far (since the vast majority of Trust funds are invested in foreign markets).

This method would ensure that the Government raises the initial capital for the Fund on very favourable terms, as the cost of the "Guaranteed Investment Capital" instrument to the Government is very low and less than any rate that the Government would issue on the open loan market.

To lift any worries about the risk of money invested by the Trust, the Ministry of Finance may use (through a memorandum with the Trust) the money in the PAK trust fund as a guarantee to cover the amount of this investment, together with the guaranteed interest rate. This method would constitute another combination of the first financing option, but the Government investor would not be a foreign commercial bank but the Trust through another relevant mechanism.

4.3.4.4. *Combination of methods*

The Working Group recommends that the Government consider and leave open all of the above options for the funding of the SFRK. In short, the Working Group recommends that the Law on the Sovereign Fund provide all of the above funding options as options that may be pursued by the Government, but also other methods not included above, regardless of the method or combination of methods used in conclusion. The latter will be determined by the financing conditions offered by each option. The Ministry of Finance should strive to find and implement the most affordable possible forms of financing in terms of total cost (principal plus interest cost and other financing costs) in order to minimize the budgetary consequences for the Government during the establishment of the Fund.

4.3.5. Recommendation for the amount of initial capital

The Working Group does not have a certain amount for the start-up liquid capital of the Fund, but recommends that for the establishment of the Fund on a solid ground from day one, this amount should not be less than € 20 million and possibly higher. This amount provides a minimum of € 10 million for the start-up operational costs for the first two years and the costs to be transferred by the Government for contracted services that are directly related to the process of establishing the SFRK (including those of legal and business consulting, etc.) any amount above this minimum would be dedicated to the start-up investment fund and the rest to the PAK expropriation fund (see section 4.3.6.2 below).

SFRK's founding strategy should also include a financially based projection for the pre-calculated rate of return in the short-term plan (1 year), medium-term (5 years) and long-term (10 years), based on different scenarios of investment, so that the Government and the Assembly as shareholders consider the future value of the investment, they make in SFRK.

4.3.6. Determining non-liquid assets of the Republic of Kosovo that are transferred to SFRK

4.3.6.1 *Qualification criteria for POEs transferred to the SFRK*

The process of selecting and organizing the transfer of non-liquid assets held by the Government and the PAK in the SFRK requires a coordinated and multi-step process. According to the assessments of the Working Group, the POEs that are considered for transfer to ownership of the SFRK must minimally meet the following criteria:

- 1) The scope of activity of the POE must be mainly of a commercial nature. This means that in principle products and services of the company are offered within a competitive market. For example, POEs operating primarily as public utilities do not qualify. This criterion automatically excludes regional water companies, district heating companies and similar POEs.
- 2) According to the assessment of SFRK, the company has a professionally selected board and effective management.
- 3) The enterprise has built its two-year commercial strategy, which identifies the company's business strengths, market forecasts and investment plans (possibly with the help of specialized online consulting).
- 4) The enterprise has undergone an external audit, which has ascertained the condition of its financial books, financial state of play and financial overview for the last three years.
- 5) The financial condition of the company is stable. This means that, even if the financial turnover of the company is currently negative, the management has built and started to implement the cost control strategy which returns the enterprise within profitability within a period of three to six months, without damaging the commercial viability of the company (in terms of market participation, quality of products and services, etc.). This includes bringing the enterprise debt to a manageable level in relation to current revenues.

According to a preliminary assessment, the Working Group has identified these POEs as potential *candidates* for transfer to SFRK:

- 1) Kosovo Energy Corporation (KEK)
- 2) Kosovo Telecom (KT)
- 3) Post of Kosovo
- 4) Trepca
- 5) Trainkos
- 6) Infrakos

The above list is not final or necessarily exhausted. The companies proposed as candidates should however be subject to the qualification process described above and it is not said that they must be transferred to the SFRK. Their transfer can occur even after a transition process that includes the restructuring and rehabilitation of the company towards the realization of qualification standards, which can be a process of one or more years. The Law on the Sovereign Fund will provide for the asset transfer process, which

in addition to the Government's assessment will also be subject to evaluation by the SFRK for the suitability and financial viability of the asset before transferring ownership of the fund (see Annex).

4.3.6.2 Restructuring of enterprises before transfer

Prior to identifying potential POEs for transfer to the SFRK, the Government is recommended to begin the process of restructuring the enterprises in order to control costs. This should be done through the selection of new boards (process already started in many cases), the recruitment of senior professional and quality management staff and the drafting of financial plans and commercial strategies for the following period.

In this process, the Government is recommended to rely on the support of international donors who have an interest in supporting the process of enterprise restructuring through financial support of consulting, organizational restructuring and financing of capital investments.

The restructuring strategy will be specific for each individual enterprise, so the Working Group does not have specific recommendations regarding approach to particular enterprises, as long as the restructuring achieves objectives described above. Concrete plans for enterprise restructuring should be made in cooperation with all stakeholders, including the Government (respectively the Ministry of Economy and the Ministry of Finance), enterprise boards and managements, trade unions, the SFRK and eventual donors.

The government is also recommended to prepare a support program for the current employees of POEs, whose jobs can be eliminated due to restructuring, through compensation and/or retraining program. Cooperation with trade unions is essential for the development of such a program.

4.3.6.3 Transfer of assets from PAK

PAK currently manages the assets of approximately 592 former SOEs. In cooperation with the PAK, the Working Group has identified a number of PAK assets with special development potential which can be transferred to the SFRK (in Annex 2). It should be noted that the transfer of assets from PAK to SFRK is not direct, but must contain some criteria and follow some steps.

There are two options for the transfer of assets from the PAK to the SFRK. The first is the transfer of the SOE through a "spin-off" or similar process, where the SFRK takes ownership of a new enterprise created from the assets of the former SOE. The second is the direct transfer of physical assets (facilities, land, technology, etc.), which the SFRK

organizes within one or more new enterprises. In any case, the Government must ensure that assets issued by the PAK are processed in accordance with the Law on PAK. Following the procedure set forth in this Law guarantees that former employees of the SOE are compensated twenty (20) percent of the sale value guaranteed by the Law on PAK, and that all other liabilities of the former SOEs to creditors follow the regular procedure established in the Law on PAK through the Special Chamber of the Supreme Court proceedings and trust funds of PAK. In no case can the liabilities of the former SOE be inherited by the new enterprise created with assets of the former SOE, nor SFRK.

According to the assessments of the Working Group and PAK, the most effective procedure for taking possession of certain PAK assets by the Government is that of expropriation. Paragraph 3 of Article 44 of Law No. 03/L-205 ("ON AMENDING AND SUPPLEMENTING LAW NO. 03/L-139 ON EXPROPRITATION OF IMMOVABLE PROPERTY") gives the Government the authority to expropriate the immovable property that until March 22, 1989 have been socially owned properties, including those properties under the administration of the PAK. Article 6A of the Law No. 06/L-23 ("ON AMENDING AND SUPPLEMENTING THE LAW No. 04/L-034 ON PRIVATIZATION AGENCY OF KOSOVO, AMENDED AND SUPPLEMENTED BY THE LAW No. 04/L-115 AND THE LAW No. 05/L-080") clarifies the conditions and procedure for the expropriation of former SOEs and obligations of the Government towards the PAK, former employees and other creditors in such cases. The application of this procedure ensures that the Government compensates the guaranteed part for the employees of the former SOEs, as well as provides compensation for other potential creditors that will be kept in the PAK's trust fund. The Law on Sovereign Fund should provide for all forms of legal transfer of assets from the PAK to the enterprises owned by the SFRK. Given that the transfer of assets by the PAK implies a financial cost to the Government, it is recommended to provide for a compensation fund for the assets that the Government will appropriate from the PAK as part of the start-up capital of the SFRK, so that this process has no other budgetary implications.

According to the type and condition of assets in PAK, the Working Group has estimated that the most effective strategy in the short term would be for the Government to focus initially on the assets of the PAK in the immovable property category, including buildings, commercial land and agricultural land, prioritizing those that are currently leased to third parties by the PAK. All these assets would be consolidated within a new enterprise, the Immovable Property Management Enterprise (IPME), which would be incorporated under the ownership of the SFRK.

4.3.7. Role of international financial institutions, external development agencies and other donors

During its work, the Working Group has contacted with international financial and development institutions active in Kosovo, the partial list of which is given below. These international institutions have expressed interest to support the process of establishing the SFRK, as well as in other aspects of legal reform and sectoral restructuring in order to create conditions for the successful launch of the SFRK. The support provided is technical, financial but also of other forms. This is done within the existing programs that these institutions have in Kosovo or new programs that will be organized specifically to support the process of establishing SFRK.

International Finance Corporation (IFC) / Investment Climate Project II

The IFC can support the establishment of the SFRK through direct technical assistance or through the “Investment Climate II” project funded by the Swiss Government. The purpose of the “Investment Climate II” project is to increase Kosovo's competitiveness by helping the Government implement investment climate reforms. The project assists the Ministry of Industry, Entrepreneurship and Trade - MIET and its respective agencies by simplifying administrative policies and procedures in attracting and retaining FDI and other Strategic Investment Projects in Kosovo. During the meeting with the project manager, Eugeniu Osmochescu, and the project consultant, Besim Zeqiri, the possibility of providing technical (legal) assistance from this project to the Working Group was discussed, but for this the project needs donor approval (Swiss Government). Furthermore, the possibility of financing a new project by the Swiss Development Cooperation (SDC) intended to support the establishment of the SFRK was mentioned.

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European Bank for Reconstruction and Development (EBRD)

The EBRD is assisting the Government (Ministry of Economy) in drafting the State Ownership Policy.

The EBRD can be involved with one of the public enterprises (Telecom, for example) where they can help in the restructuring of the enterprise, strategy, corporate governance plan and can provide technical assistance in establishing the Fund, its operationalization, drafting procedures for monitoring enterprises owned by the Fund, identifying key performance indicators which will then be monitored. The Ministry of Economy has also been notified about this possibility.

The EBRD has provided technical assistance to the *Slovenian Sovereign Holding* to monitor the companies under its control as well as with guidelines for the strategies of these companies. The EBRD has also organized a meeting for the Working Group with representatives of Slovenian Sovereign Holding for consultations and exchange of experiences.

Furthermore, the EBRD's representatives expressed their readiness to also provide technical assistance to the Working Group, if necessary, but their procurement procedures take at least 2 months, and due to time limits, it was agreed that technical assistance be provided in the subsequent stages of the establishment of the SFRK.

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KfW Development Bank

KfW Development Bank is helping Kosovo develop an efficient and sustainable energy supply, support sustainable urban development and promote small enterprises, so that they become an engine for the Kosovar economy and help create jobs.

The KfW associates funding/grants with technical assistance as per the needs of the beneficiaries and usually does not only provide technical assistance. During the meeting, they were open to funding the project, but first need to see the concept document in English. The KfW expressed readiness to review the document (after completion by the Working Group) by their internal experts (even if not officially) given that they, as a development bank, have experience in holding state assets.

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World Bank

The World Bank can support the establishment of the SFRK through technical assistance focused on corporate governance. During discussion with representatives of the World Bank, it was requested the definition of the technical assistance needs and continue discussions. It should be noted that during the discussion, the possibility of supporting the project for the establishment of the Development Bank was also mentioned.

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Norwegian Embassy in Kosovo

Norway supports a series of initiatives in Kosovo and the region to foster closer regional co-operation, implementation of transitional justice, socio-economic development

through economic growth and competitiveness, capacity building in the field of environment/climate/energy, and increasing social and economic inclusion of marginalized groups as well as good governance through support for the development of the rule of law, defence sector reform, civil society and the media, minorities and the fight against organized crime and corruption.

During discussions on the establishment of the SFRK, representatives of the Embassy expressed their readiness to support this initiative.

At the moment, the technical assistance for the needs of the establishment of the SFRK certain areas related to EU acquis and public administration reforms may be sought from their project KOS-18/0005 which supports Kosovo public institutions managing the implementation of the SAA in nine chapters: 4, 9, 10, 15, 18, 19, 27, 28 and 32. The main purpose is to increase public administration's human capacities and expertise for implementation of the national legislation harmonized with acquis in the target areas and to support approximation of national legislation with EU acquis in the target areas. At the same time, the project KSV/019 - Technical Assistance for European Integration, supported by the Government of Luxembourg, intends to contribute to Kosovo's efforts to meet the requirements of the SAA with the EU and other obligations arising from the need of being in line with EU acquis in Chapters 1, 3, 5, 6, 7, 8, 12, 23, 24 as well as the reform of the Public Administration and can be used for the needs of the establishment of the SFRK for certain areas related to the reforms of EU acquis and public administration.

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Embassy of Sweden in Kosovo

The Swedish government is supporting the Republic of Kosovo through projects on human rights, democratization and sustainable development, in order to create conditions for strengthening relations with European Union. The Swedish Embassy is in the process of preparing for new project planning in Kosovo. Discussions with potential

beneficiaries commenced in January 2022. During the discussions on the establishment of the Sovereign Fund, representatives of the Embassy expressed readiness to support the decision to establish the Sovereign Fund, either financially or through the establishment of a special project for the SFRK.

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Friedrich Ebert Stiftung (FES)

FES has several years of activity in Kosovo and has provided its technical support for the work of the Working Group. FES has also offered to organize a consultation with international experts, recruited through the FES's international network, regarding the concept of SFRK and implementation policies. FES has provided technical support in other aspects of policy development around the public sector and the governance of the SFRK.

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4.3.7.1. Recommendations for the next steps:

Regarding the role of donors, the Working Group recommends the following:

1. Continuation of communication with the EBRD on the possibility of technical and financial support for the restructuring of POEs, especially Telecom.
2. Continuation of communication with IFC on the possibility of using the project "Investment Climate II" for technical assistance and the possibility of financing a new project by SDC or providing technical assistance funded by another donor.
3. Identify the needs of the Commission for technical assistance, draft the terms of reference and contacting donors. In this aspect, the key will be the financial

support for the legal team which will draft the Law and other legal instruments for the establishment of the SFRK.

4. Identification of needs for technical/financial assistance to implement the first steps for the establishment of the SFRK and contacting donors.

4.3.8. The role of consultants and other specialized companies

During its work, the Working Group has established contacts with international business audit and consulting companies to explore the possibilities of support that these companies can provide in the form of consulting, audit, construction of strategic plans, etc., throughout the process of establishing and organizing the SFRK, parallel processes such as the restructuring of POEs, and the development of short-term and long-term strategic plans of the SFRK. The Working Group has held prior contacts with several internationally renowned companies, some of which already are present in Kosovo.

The Working Group recommends that the role of consultants will be required in the following areas:

- 1) Restructuring of POEs and drafting new business plans. For this the Government must make agreements with companies on an individual basis according to specialization or even on blocks.
- 2) The audit and evaluation of POEs, whereby determining the "fair value" of enterprises before the transfer to SFRK, and recognition of actual financial situation of the POEs.
- 3) Drafting the Statute of the SFRK, building the organizational structure and elaborating the technical aspects of the work in the human and technological point of view.
- 4) Recruitment of senior executive staff of SFRK.
- 5) Drafting of strategic investment of SFRK for the first period.

It should be noted that some of these activities are parallel processes and can be done with a consultant, according to the terms of reference to be drafted by the Government.

The Working Group considers that the presence of international consultants helps not only in the effective structuring of SFRK and the enterprises it will take under management, but also in the establishment of SFRK as a financial stakeholder in the international aspect, making SFRK, its assets and Kosovo in general as an attractive place for foreign investment.

4.3.9. Remaining public enterprises

It should be noted that the establishment of the SFRK does not eliminate the entire sector of POEs in Kosovo. After a transition period, it is anticipated that all enterprises of commercial character (as described above) will be transferred to the ownership of the SFRK. However, as a result, an entire segment of central, regional and municipal POEs engaged in public services, will continue its activity under the current government format. Although consideration of this segment of enterprises is outside the scope and mandate of the Working Group, the Group recommends that the Government pursues corporate governance reforms in these POEs, including the drafting of the State Ownership Policy in cooperation with the EBRD and eventual changes in the Law on Public Enterprises.

This also means that the Law on the Sovereign Fund will not replace, in part or in full, the Law no. 03/L-087 on Publicly Owned Enterprises which will remain in force (the existing or amended version).

4.4.0. The future of PAK

The Working Group also did not have the review of issues related to the PAK and its future in its mandate. It should be noted that according to the assessments of the Working Group, the SFRK can in no way take over, neither in direct nor modified form, the role and functions of PAK, which are completely different from those of the SFRK. Therefore, the Law on the Sovereign Fund will not be a substitute for the Law no. 04/L-034 on the Privatization Agency of Kosovo. Given that the privatization process in Kosovo has been followed with great legal complexity, the Government is recommended to study in detail the steps to be followed regarding the future of the PAK, the transformation of its mandate from that of privatization to the management of the process of settlement of potential liabilities accumulated so far or the transfer of its current competencies (especially those related to the management of funds in good faith and in the process of creditors' compensation) in a new agency, after the transfer of its relevant assets to the SFRK and/or its sub-companies according to the procedures proposed in this document. It should be noted that the PAK has already approved the Final Strategy 2022-24, which should serve as the basis for coordination of activities, such as the handling and transfer of the remaining assets of the PAK, in cooperation with the Ministry of Finance, the coordinator for the establishment of SFRK and/or (as relevant) SFRK's future management.

CHAPTER 5. CONCLUSIONS AND FUTURE STEPS

This Concept Document outlined the work and recommendations of the Working Group on the Sovereign Fund. The document described the nature of the problem that motivates the establishment of the SFRK, the solution and the impact offered by the establishment of the SFRK and the methodology for implementing the strategy for the establishment of the SFRK. According to the assessments of the Working Group, the Commission has these three options:

Option 1: Maintaining the status quo

According to the evaluation of the Working Group, maintaining the existing situation causes failure to resolve problems highlighted above in the sector of POEs and PAK assets. In the best-case scenario, through small interventions, the existing situation in the POE may change in marginal aspects, but will not have the necessary structural effect on substantial change in the governance and financing of POEs. Meanwhile, assets under PAK's management may move towards depreciation. Also, activities such as leasing do not constitute primary activities of PAK, which means that they are done in inefficient form and does not represent the maximum financial interest of the Republic of Kosovo. According to the assessment of the Working Group, the problems outlined above arise as a result of the inefficient model of economic governance, and not only certain legal or institutional defects. Maintaining the status quo affects the preservation of the current model and continuation of inherited problems in the sector of POEs and other assets of the country. This option has fewer budgetary implications in the short term, but in the long run continues to burden the budget with the financial problems of POEs.

Option 2: Implementation of an external model

Although the Working Group was based on external models of state and sovereign investment funds when preparing the concept of SFRK, it is possible that the Government will try to implement another country's model in Kosovo. This would facilitate the process of designing and implementing the fund, as the model would be "ready" from another country. Problems with the implementation of an external model without appropriate adaptations and substantive modifications proposed in this document result in an inefficient model for the needs of the country, or a model which is not built on the grounds of democratic governance of the fund and business autonomy of enterprises. For this reason, the Commission is recommended to rely on adaptations to the concept of state investment fund.

Option 3: Implementation of the proposed fund model in this document

The Working Group considered that the approach proposed in this document is the most optimal in terms of addressing the problems identified in the document but also in the organization and structuring of a state investment fund which fits the institutional and legal tradition of the country and fundamentally addresses the problems of the current model of governance of the public commercial sector. By providing different funding models, the Working Group has tried to make the SFRK project have as few budgetary implications for the country as possible, although an investment of at least € 20 million will be necessary to achieve the objective of establishing the SFRK.

For implementation of the process, since the project of establishing SFRK is a complex process that requires inter-ministerial and inter-agency coordination, and cooperation with third parties such as donors, consultants and other relevant actors, the Working Group recommends the appointment of a Plenipotentiary Coordinator at Government level, to whom the Commission will give full powers, including budgetary authorizations and support from necessary administrative staff for implementation and execution of the steps proposed in this Concept Document, along with other relevant measures adopted by the Commission during the process of reviewing the proposals of this Concept Document.

ANNEX 1: BASIC PRINCIPLES OF THE SOVEREIGN FUND

The Sovereign Fund of the Republic of Kosovo (“Fund”) shall be an independent financial-investment and asset-management company wholly owned by the Republic of Kosovo.

I. Purposes and mandates

1. The fund is established for the purpose of:

- a. By exercising the role of the shareholder, to perform financial management of strategic assets, including former public enterprises of the Republic of Kosovo, in order to increase value, increase performance and ensure a high rate of Return on Investment on an annual basis.
- b. *Stewardship* of strategic assets of the Republic of Kosovo through good governance, effective supervision and approval of long-term plans of enterprises owned by the Fund.
- c. Providing capital and strategic internal and external partnerships for the purpose of diversification, increasing regional and global competitiveness and advancing the working and technological skills of Kosovo's economy.
- d. Building a sustainable economy, based on social and gender equity and in accordance with national, European and international orientations of decarbonisation and environmental sustainability.
- e. Serve as a financial-investment component that represents the financial interest of the Republic of Kosovo and operates according to long-term development orientations defined by the Government of the Republic of Kosovo.

II. Function

1. The Fund acts as a financial investor, guided by the commercial principles and its corporate strategies, which are in accordance with the basic principles of the Fund formulated in its Statute/Business Charter, and the investment strategy and framework set by the Board of the Fund.
2. The fund will be *asset owner and manager*. As a legal entity, represented by its executive bodies and officers, the Fund will exercise all property rights recognized under the laws in force of the Republic of Kosovo, other jurisdictions where the Fund operates, and international conventions.
3. The Fund designs and executes strategies for participation in domestic and international financial markets by trading (as a direct party or through intermediaries) with: bonds, equities, foreign exchange and other financial instruments.
4. Although incited by the general development orientations of the Government, the Fund shall be free from the political influence of the Government, the Assembly or any political body, agency or official of the Republic of Kosovo in its investment and business decisions and daily operation.
5. The Fund's direct relations with the Government and the Assembly of the Republic of Kosovo will be determined by the Law on the Sovereign Fund. Meanwhile, the corporate governance of the Fund, mandates of the bodies and officers of the Fund, as well as the internal organizational structure will be determined by the Business Charter of the Fund.

III. Property structure and legal status

1. Republic of Kosovo will be the owner of one hundred (100) percent of the shares in the Fund.
2. The fund will be registered as a Joint Stock Company in the Kosovo Business Register. Organizationally, the Fund will act as a corporate and commercial entity independent of the Assembly and the Government.

3. The permanent owner and sole shareholder of the Fund will be the Republic of Kosovo. Under no circumstances will the Fund have the right to issue, sell or donate the Fund's shares to third parties.

IV. Organizational structure and corporate governance

1. The fund is organized on the basis of its Business Charter. The Charter defines the basic orientations and the organizational structure of the Fund. This structure will consist of the Supervisory (Non-Executive) Board and the Executive Board.
2. Supervisory (Non-Executive) Board
 - a. The Supervisory Board shall be the highest supervisory and governing body of the Fund.
 - b. The number of members of the Supervisory Board will be determined by the Business Charter. Minimally, the Board will consist of six (6) appointed members, plus the Chief Executive Officer (see below).
 - c. The Supervisory Board's members have a representative role of interests of the owner (Republic of Kosovo) as well as a role of steward of the Fund and assets under its ownership.
 - d. The Supervisory Board shall be chaired by the Chairperson elected by the Board. The board shall meet at least four times a year. The competencies of the Chairperson of the Supervisory Board shall be defined in the Business Charter. At a minimum, the Chairperson shall have a leading and coordinating role in the work of the Supervisory Board and a representative role of the Board to third parties. The Chief Executive Officer cannot be the Chairperson of the Board at the same time.
 - e. The Supervisory Board shall have full access to the financial statements of the Fund and assets under its ownership. The Board shall have the right to request and authorize the external audit of the Fund at any time.

- f. The Supervisory Board supervises the implementation of the governance strategy and overall functioning of the Fund. All duties, competencies and other authorizations of the supervisory board of the Sovereign Fund shall be subject to the provisions of its Business Charter.
- g. The Supervisory Board shall ensure that the Fund is governed according to international corporate governance standards and best practices. These standards include: Principles of Corporate Governance of the Organization for Economic Co-operation and Development (OECD), Santiago Principles of the International Forum of Sovereign Wealth Funds (IFSWS), OECD Guidelines on Corporate Governance of State-Owned Enterprises and other relevant standards.
- h. The Supervisory Board drafts and approves the Thematic Framework of the Fund. The Framework defines the main long-term strategic orientations of the Fund for a period of three years, with the possibility of change. The Framework is an orientation document for the investment strategies of the Fund and is built on the basis of development orientations set by the Government of the Republic of Kosovo.
- i. The members of the Supervisory Board are appointed by the Assembly of the Republic of Kosovo. Each member of the Board is elected for a term of three years, with the possibility of renewal. The procedure for appointing the members of the Supervisory Board shall be defined in the Law on the Sovereign Fund.
- j. The Assembly shall ensure that members of the Supervisory Board are individuals who act ethically and with high integrity, and proven activities in defending the public interest. At a minimum, the following will be excluded from the appointment to the Supervisory Board:
 - a. Persons who in the last seven (7) years have been convicted of a criminal offense with imprisonment of six months by a final decision of the Court.

- b. Persons who at any time have been convicted of corruption and/or abuse of official position.
 - c. Persons who at the same time serve as members of the Government, members of the Assembly, mayors, officials and other senior political and civil servants or officials of the governing bodies of political parties.
 - d. Persons who in their commercial or professional activities or financial interests have interest conflicting with those of the Fund, such as persons who alone or through family relatives receive benefits or have financial or commercial interests that are directly related to the activity and financial interests of the Fund and/or the entities under its ownership.
- k. Also, members of the Supervisory Board are dismissed from their position by default when:
- a. Proved they do not fulfil the conditions for appointment.
 - b. Absent in three consecutive meetings of the Board without justifiable reasoning.
 - c. In the meantime, assume functions incompatible with the function of a member of the Board, as described above, or are convicted of a criminal offense.
 - d. Due to health conditions or other disabilities, are unable to exercise their functions for more than six consecutive months.
 - e. The Law on the Sovereign Fund will set out the procedures for the replacement of a dismissed member, which will be identical to those for the appointment of a full member. The person appointed as a replacement will serve for the

remaining term of the dismissed member, but otherwise will act as a full member of the Board.

- l. The Assembly shall ensure that the persons appointed to the Board have adequate education and have at least seven (7) years of professional or academic experience, particularly relevant to the activities of the Fund.
- m. The composition of the Board shall not be subject to any set quota, but the Assembly shall ensure that participation in the Board reflects gender equality.
- n. The Supervisory Board evaluates and approves the Annual Investment Strategy of the Fund, drafted and proposed by the Executive Board.
- o. The Supervisory Board recruits, hires under a contract and negotiates the amounts and terms of compensation for the Chief Executive Officer, Chief Financial Officer and Chief Operating Officer of the Fund. The negotiation of contracts and compensation for these officers on behalf of the Board is done by the Chairperson of the Board.
- p. The Chief Executive Officer of the Fund shall automatically be a member of the Supervisory Board with the right to vote (see below for the role of Chief Executive Officer).
- q. Members of the Supervisory Board shall not be compensated with regular monthly or annual salary. However, the service of the members of the Board may be compensated in the form of daily allowance which is distributed as compensation for attending Board meetings and performing other activities on behalf of the Fund. The rate of this compensation is proposed and approved by the Board, but it will be reasonable and will take into account the levels of compensation of board members in institutions such as the Central Bank of Kosovo, in those of the private sector such as commercial banks, as well as the general labour market conditions in the country for high-profile professional employees. Board members shall be compensated from the financial

means of the Fund and only in cash. The board shall not have the right to compensate its members in the form of shares, equities, bonds or any other financial or non-financial instruments owned by the Fund or specially issued by the Fund.

- r. Regular decisions of the Supervisory Board are taken by a simple majority of votes.
 - s. The Supervisory Board may take the initiative to amend the Business Charter of the Fund, but the Board shall not have the right to make changes to the Business Charter without the consent of the Assembly. *The Law on the Sovereign Fund will determine the procedure for amending the Fund's Business Charter.*
 - t. *As above, the procedure for the appointment and replacement of the members of the Supervisory Board shall be determined by the Law on the Sovereign Fund. Meanwhile, the competencies of the Supervisory Board as the governing unit of the Fund shall be defined in the Business Charter of the Fund, which shall be in accordance with applicable laws regulating the governance of joint stock companies in the Republic of Kosovo and international corporate governance standards such as those outlined above.*
3. The Executive Board will be the highest management and executive body of the Fund.
- a. The Executive Board shall consist of the Chief Executive Officer, Chief Financial Officer and Chief Operating Officer. The persons employed and appointed to these positions by the Supervisory Board are for as long as they exercise these roles automatically part of the Executive Board.
 - b. Decisions of the Executive Board are taken by a simple majority of votes.
 - c. The Executive Board drafts and proposes the Fund's Annual Investment Strategy, which is sent to the Supervisory Board for approval. The drafting of the

strategy is under the scope of the Executive Board, but it shall take into account the Thematic Framework approved by the Supervisory Board and shall reflect the general development orientations set by the Government of the Republic of Kosovo.

- d. The Executive Board will have primary responsibility for the day-to-day management of the Fund and its activities.
- e. The Executive Board shall play the main role of the “Principal” as a representative of the interests of the Fund in relation to the entities wherein the Fund has financial interests and participates as a shareholder. In this regard, the Executive Board shall be the main body in charge of appointing the Fund's representative members within the corporate boards of the commercial entities/joint stock companies in which the Fund has ownership (competence detailed below). The supervisory powers of the Executive Board over corporate assets owned by the Fund shall be set out in the Business Charter.

4. Chief Executive Officer

- a. The Chief Executive Officer shall be the Senior Executive and Managerial Officer of the Fund and its highest official representative vis-a-vis third parties.
- b. The Chief Executive Officer is hired and appointed by the Supervisory Board, following an international competition, for a five-year term, with the possibility of renewal. The Chairperson of the Board, on behalf of the Board, enjoys the right to negotiate the contract of the Chief Executive Officer, which includes the compensation scheme. The contract, which includes the terms of employment, performance expectations and compensation scheme, or the change of any of these, is subject to and conditional on the approval of the Supervisory Board. The compensation scheme shall be entirely monetary and may be based partially on the Fund's annual financial performance.

In this regard, the Supervisory Board may not offer as collateral or include in the contract any financial or non-financial assets of the Fund as part of the compensation scheme of the Chief Executive Officer.

- c. In its daily work, the Chief Executive Officer enjoys full operational and managerial autonomy from the Supervisory Board. This includes making and implementing investment decisions, concluding agreements, negotiating and executing the Fund's contracts, executing transactions, recruiting and hiring the Fund's staff, etc.
- d. During the meetings of the Board, the Chief Executive Officer is obliged to submit a report to the Board on the activities of the Fund in the last relevant period and submit the latest financial statements of the Fund. The statement and the annual financial report of the Fund are also submitted to the Minister of Finance.
- e. The Business Charter of the Fund shall specify the liquidity limit of the Fund that the Chief Executive Officer is authorized to dispose without prior consent of the Executive Board. The Executive Board has the full power of unlimited disbursements according to the Fund's Annual Investment Strategy. Supervisory Board nor any of its members has the authority to negotiate and enter into contracts on behalf of the Fund, or authorize any financial dispensation of the Fund (except in cases of external audit). These activities remain the exclusive competence of the Chief Executive and (according to the relevant provisions) of the Executive Board.
- f. The Chief Executive Officer serves at the will of the Supervisory Board and his/her performance shall be evaluated by the Supervisory Board on an annual basis. The Supervisory Board enjoys the right to dismiss the Chief Executive Officer in case of work or unsatisfactory results, for breach of contract, or for disloyal acts against the Fund and its interests.

compensation scheme approved by the Executive Board. Organizational structure together with the tasks of the departments and the competencies of the Directors shall be determined by the Business Card.

7. As an organization, the Fund, the Executive Board, and the Chief Executive Officer as the official and executive representative of the Fund, shall have full autonomy in making and implementing investment and other business decisions, in accordance with the purposes, strategies and frameworks set by the Supervisory Board, the Business Charter and the legislation in force.

V. Assets

1. The assets of the Fund are liquid and non-liquid valuable instruments, in the portfolio of the Fund. The portfolio of the Fund, as used in this document, includes all financial and non-financial assets owned by the Fund, such as: cash, real estate, shares, bonds, securities, international financial instruments, etc.
2. As the founder of the Fund, the Assembly of the Republic of Kosovo submits the initial liquid and non-liquid capital of the Fund. The Assembly decides on all other assets owned by the Republic of Kosovo (former public enterprises, real estate, agricultural land and other liquid and non-liquid assets) that are transferred under the ownership of the Fund.
3. The Law on the Sovereign Fund determines the initial amount of liquid capital that the Assembly allocates to the Fund, following the financial models of the Working Group for the establishment of the Sovereign Fund, or any other model.
4. The Law on the Sovereign Fund defines the procedures for the transfer of assets owned by the Republic of Kosovo to the Fund. Assets may be transferred from the Republic of Kosovo to the Fund by: donation to the Fund from the Republic of Kosovo, transaction of sale and purchase at

market value, or sale and purchase at a discounted market price.

5. Any transaction for the acceptance of the assets of the Republic of Kosovo by the Fund is executed with the approval of the Executive Board and the Supervisory Board.
6. The Executive Board has the right to reject the offer for purchase or acceptance of the asset from the Republic of Kosovo. These will be mainly assets that, in the opinion of the Executive Board, are commercially non-promising or non-viable, e.g., shares in enterprises with negative financial performance, in unstructured enterprises and/or without clear business plans, non-commercial or other assets that do not promise return within a reasonable period, and infrastructure assets or activities whose primary function is the public service.
7. The scope of activity of the Fund is exclusively that of the financial investor and the asset manager. The fund itself does not organize or deal with commercial activities, nor with the day-to-day asset management (asset handler). This restriction does not exclude the right of the Fund to establish, alone or in co-ownership, enterprises that aim to engage in certain commercial activities (detailed below).
8. As a financial investor, the Fund shall have the exclusive right to purchase, possess and sell commercial assets, at home and abroad. These assets include: shares in private enterprises within the country, treasury bonds issued by the Republic of Kosovo, shares in publicly traded domestic and foreign companies and bonds of other sovereign and corporate entities abroad. The form of investment is limited by the following asset category, as defined in the Law on the Sovereign Fund.
 - a. *Reserved assets* shall be assets that remain under the exclusive ownership of the Fund. The fund has no right to sell them in full or in part. This category includes industries of security, defence and other vital public and sovereign interests. Definition of an asset as a Reserved Category asset shall be made through the

List of Reserved Assets the designation of which shall be the exclusive competence of the Government and the Assembly. The procedure for approving and amending the Reserved List of Assets shall be determined by the Law on the Sovereign Fund.

- b. *Category S assets* are considered strategic assets of the Republic of Kosovo with special public interest. The ownership of the Fund in these assets must remain at the level of the controlling majority and can never exceed below the level of fifty-one (51) percent of the shares. The designation of an asset as a Category S asset shall be made through the List of Strategic Assets, the designation of which will be the responsibility of the Government and the Assembly. The procedure for approving and amending the List of Strategic Assets shall be determined by the Law on the Sovereign Fund.
- c. *Category L assets* are assets which the Fund may purchase, possess, sell, lease and perform other transactions freely. This category includes all assets such as real estate, private equity within the country and other financial instruments exchanged in foreign markets. Except for assets on the List of Reserved Assets and the List of Strategic Assets, any other assets owned by the Fund shall be automatically considered as Category L assets.
- d. Any transaction of the Fund, whereby the Reserved Assets or Strategic Assets are traded beyond the limits defined by the Law on the Sovereign Fund, shall be considered a criminal offense, while the respective contracts shall be considered cancelled and legally void.

VI. Basic principles of investment strategies

- 1. The position of the fund as an investor will be that of the long-term investor, based on the commercial value of the asset, commercial viability and long-term return potential. Under no circumstances will the Fund invest in short-term speculative assets. The fund will undertake investment

strategies that aim to increase the transfer of wealth and capital or by accumulating or transforming assets for the benefit of increasing the wealth of future generations. Stable and long-term capital accumulation and short-term non-profitability will be the guiding principles of the Fund's strategies.

2. The fund will have the right to invest in internal and external assets. In no case shall the Fund's exposure to external assets exceed one third of the total asset value. In no case will the Fund invest in external non-public assets (private investment - assets not exchanged in public financial markets). In the case of treasury bills or other instruments, the Fund is only allowed to invest in high rating treasury bills (low risk). In any case, the external portfolio of the Fund is governed by the principle of prudence and manageable risk. For external transactions, the Fund may engage an intermediary firm (broker, asset manager, etc.), which implements financial transactions on behalf of the Fund, for a more reasonable compensation and as per most favourable market conditions.
3. The Fund's investment strategy for internal assets will be equitable, sectorial and oriented towards implementation of the Fund's long-term goals and developmental goals of the Republic of Kosovo. The fund is based on the principles of nominal-minimum return through a responsible approach to the selection of investment instruments.
4. Regarding internal strategy:
 - a. The fund can take minor positions in private J.S.C registered in Kosovo, headquartered in Kosovo and with substantial portions of capital in Kosovo, having active existence and financial statements with external audit for at least the past three years.
 - b. The investment approach in this segment will be sectorial. The fund will not create favours in the market, by taking positions in individual firms (except in the case of "national champions" - see below). For this reason, the initial investment decision will be sectorial, where the Fund takes equal and proportionate

positions in at least two or more sector JSCs at the same time and for a comparable time range. This does not prevent the Fund from timely reducing or eliminating positions in certain firms with unsatisfactory financial performance.

- c. The decision for sector investment is based on the statements and financial performance of sector targeted firms, their long-term business plans and real perspective of growth and return on investment. In any case, the primary orientation of the firms should be the external market, in which the targeted firms should prove several years of prior success. For Category L assets, the Fund does not normally invest in firms oriented exclusively towards domestic market.
- d. The internal sectors selected for investments by the Fund are made based on the developmental orientations of the Government, the thematic priorities set by the Supervisory Board and the potential for return on investment according to the evaluation of the Executive Board.
- e. In any case of private JSCs, the Fund remains a minority investor, non-controlling, with the presence of not more than thirty (30) percent of the shares. The majority ownership in a certain private JSC is acquired by the Fund only in exceptional cases, according to the extraordinary procedure defined by the Law on the Sovereign Fund (similar to that of the establishment of a new enterprise by the Fund, as described below), and with the free decision of the owners.
- f. *National champions* constitute a special investment category, the L Category. These are companies based in Kosovo and with substantial part of the capital in Kosovo, which have *continuously proved business and financial success, with clear dominance in the market, which have built regional or international fame in their field, and their main activity is production and service to foreign markets.* The national champion is certified by the Ministry of Economy, according to the criteria set by the Law on National

Champions (which is drafted and approved separately from the Law on the Sovereign Fund). Certification by the Ministry of Economy is a prerequisite for the recognition of the status of national champion by the Fund. In such cases, the principle of investment is led by that of strengthening international comparative advantage of Kosovo and as such the Fund can exclusively be oriented towards investments in national champions, even to the detriment of potential competitors. The Fund may decide to withdraw or reallocate sector investments, if the designated firm loses its status of national champion.

5. Regarding interaction with foreign markets, the Fund will have the opportunity to focus on the following:
 - a. Equity Markets such as the purchase and exchange of shares in various portfolios in companies that are participants and important players in the global stock market.
 - b. Bond Markets.
 - c. Foreign Exchange Markets.
 - d. Complex Markets or Derivative Markets, which include: Currencies, Indices, Interest Rates, Equities, Conveniences and Credit Risk.
 - e. Insurance Markets or products that manage risk in the premium sector of insurance, contracts and hybrid products of over insured companies.
 - f. Retail/Commercial Banks or the potential exposure of the "Fund" to these institutions may take the form of the purchase of shares with value/solid medium-term returns, the purchase of insurance products or even transactional participation or borrowing.
 - g. Savings Institutions or potential exposure of the Fund to these institutions can take the form of purchase of valuable shares/solid medium-term returns, purchase

of insurance products or even transactional participation or borrowing.

- h. Peer-to-peer/Crowdfunding or potential exposure of the Fund to these institutions can take the form of purchase of shares with solid medium-term value/return, purchase of insurance products or even transactional share or borrowing.
- i. Investment Banks: The Fund can be advised, consulted and engage these institutions to further the interests of the Fund.
- j. Pension Funds or potential exposure of the Fund to these institutions can take the form of purchase of shares with solid medium-term value/return, purchase of insurance products or even transactional share or borrowing.
- k. Hedge Funds: The Fund participates in these markets only through intermediaries or with a minimum exposure with consistent monitoring by the Executive Board.

VII. Management of owned enterprises

1. In enterprises (JSC) where the Fund enjoys ownership, the latter shall exercise full shareholder rights, including representation in respective Boards. However, the Fund does not define their commercial policies and business strategies, nor does it deal with the management of their day-to-day activities or intervening in activities that are the responsibility of the respective managements.
2. In the framework of its supervisory role in the enterprises in which it enjoys ownership, in accordance with the OECD guidelines on corporate governance of state-owned enterprises, the Fund, through the Executive Board and its other agencies shall:

- a. Establish and implement procedures for selection, nomination and appointment of members of the Supervisory Boards of enterprises, in which it has full or majority ownership.
 - b. Establish and monitor the implementation of the mandates and objectives of enterprises, including financial objectives, capital structure objectives and risk tolerance levels.
 - c. Establish and monitors Key Performance Indicators (KPIs) for each enterprise.
 - d. Establish reporting systems that enable regular monitoring and control of enterprises, as well as performance appraisal and compliance with corporate governance standards.
 - e. Exercise other rights of a shareholder or member, such as submitting requests for special audits.
 - f. Hold regular meetings and discussions with enterprises regarding financial transactions, KPIs, and other strategic and problematic issues related to enterprises.
 - g. Establish a clear compensation policy for corporate boards that meet the Fund's interests in order to recruit and retain qualified professionals.
 - h. The fund will refrain from interfering in the management of enterprises and avoid redefining their objectives in a non-transparent manner.
 - i. The fund will allow corporate boards to exercise their responsibilities while respecting their independence.
3. In exceptional cases, such as the current or immanent situation of the enterprise insolvency, the initiation of the bankruptcy and/or liquidation process of the enterprise, the continuous negative financial performance, the actions of the representatives of the Fund or the management of the

enterprise in forms that cause substantial damage to the Fund's financial interests, or other extraordinary causes, the Executive Board may take over an enterprise owned by the Fund under direct administration. In such a case, the Executive Board of the fund exercises, directly and without intermediaries, all the functions and with all the authorizations the role of the Supervisory Board of the enterprise.

- a. For such an action, the Chief Executive Officer of the Fund shall submit a request to the Supervisory Board of the Fund, which may authorize or reject such a measure. In case of authorization of such a measure, the Executive Board dismisses all members of the board of the enterprise and its role is temporarily exercised by the Executive Board of the Fund.
 - b. The Fund taking over an enterprise under direct administration shall in no case mean that the Fund takes over the financial and contractual obligations of the enterprise, nor issuing a guarantee for those obligations.
 - c. Such a measure must have a fixed duration and, except in case of renewal of the direct management mandate by the Supervisory Board of the Fund, in the directly administered enterprise, the new board must be appointed after no more than six (6) months. The mandate may be renewed only for another six (6) months for no more than twelve (12) months in total, after which the new board shall be appointed to the enterprise, or the enterprise goes into liquidation.
4. Transitional aspects during the transfer of ownership of the current public enterprises of Kosovo from the Government to the Fund:
- a. The Government, namely the relevant Ministry, shall organize the audit, inspection and re-evaluation of all public enterprises that according to the Government's assessment should become an asset of the Fund.

- b. The Government shall contract consulting companies to conduct general audit of the enterprises identified as potential asset-makers of the Fund.
- c. Within six (6) months, the Government shall issue a report on the general condition of the enterprises and submit it to the Supervisory Board and the Executive Board of the Fund.
- d. The Government, in coordination with the Fund, shall initiate the execution of the recommendations of the audit report by restructuring, simplifying and modelling the public enterprises, in order to start the transformation of these entities into the property assets of the Fund.
- e. The Government, in cooperation with the Fund, shall follow strict commercial principles when restructuring former public enterprises before, during and after the transfer of ownership of the Fund. These principles shall include:
 - i. Organizational and operational efficiency of the enterprise.
 - ii. Operating cost of the enterprise.
 - iii. Book value of the enterprise.
 - iv. Service needs of the enterprise.
 - v. Staff re-evaluation and identified needs for cost-effectiveness.
 - vi. Total re-evaluation of the enterprise's assets and structuring of such assets within the Fund.
 - vii. Stock financing and commercial product-for-product re-evaluation.

- viii. The fund builds an efficient, rigorous and dynamic metric of the situation and financial performance of enterprises.
 - ix. The fund creates the conditions for new leadership in the enterprise.
 - x. Enterprises are subject to the vertical model of being oriented with commercial, strategic and corporate directions, with an interdependence from the Executive Board of the Fund.
- f. The above principles shall generally apply to assets that the Republic of Kosovo transfers to the Fund from other sources, such as e.g., assets under the management of the Privatization Agency of Kosovo (PAK).

VIII. Establishment of new enterprises

1. The Fund shall have the right to establish, in Kosovo or abroad, with its own capital or as a co-investor, new enterprises. A new enterprise may and shall be established only as part of the Fund's Annual Investment Strategy approved by the Supervisory Board. The establishment of a new enterprise can also come as a request of the Government to the Fund, whereby the Government provides justification and the need for the new enterprise, together with the calculation of financial costs and sources of funding.
2. For the establishment of a new enterprise as a JSC, fully or partially owned by the Fund, the Fund shall send an information note to the Ministry of Finance and Economy, which includes the rationale of the enterprise, governance model, calculations of financial costs of the initiative and sources of funding. The information note will not be required in cases where the establishment of a new enterprise comes as a result of a request from the Government. In other cases, the Ministry of Finance or the Ministry of Economy, or both, may oppose the establishment of the proposed new enterprise. In such a case, the relevant Ministry sends its

rejection and justification to the Supervisory Board, which meets specifically to review the case. The Supervisory Board will assess the objections of the Ministry or Ministries and based on that decides whether to proceed with the establishment of the new enterprise and the respective investment strategy.

3. This procedure does not apply to temporary legal entities with limited mandate and duration, established by the Fund for the purpose of execution of transactions or other limited purposes, or entities established as investment instruments that do not carry out independent commercial activities.
4. This procedure also does not apply to investments in existing corporate equities.

IX. Dividends and Reserve Fund

1. The Fund's dividend is calculated on the basis of the annual return of assets, deducting operating expenses and compensations of the officers of the Fund.
2. Payment of the dividend and the percentage of return paid as dividends to the shareholder are made by decision of the Supervisory Board. The unpaid portion of the dividend may be deposited by the Board in the Reserve Fund.
3. The Supervisory Board, on the recommendation of the Executive Board, decides on the payment of dividend taking into account, above all, the long-term financial stability of the Fund and the maintenance of a solid financial strength of the Fund.
4. The paid dividend is transferred to the Government, respectively the Ministry of Finance.
5. Notwithstanding the payment of the dividend, at least ten (10) percent of the annual dividend shall be deposited in the Reserve Fund managed by the Fund. The Reserve Fund can take the form of cash deposited in banks or investments in international instruments with high liquidity and very low

risk (domestic and international bonds, money markets, etc.). The Reserve Fund serves as a platform for undertaking and planning new investments of the Fund. Active sales of the existing portfolio and revenues are deposited in the Operating Fund, part of which is the current accounts of the Fund.

6. At the request of the Ministry of Finance, the Government may request the transfer of the Reserve Fund from the Sovereign Fund to the accounts of the Government. Execution of this request requires approval by the Supervisory Board, which meets specifically for this issue, as well as adoption of the budget act by the Assembly of the Republic of Kosovo which includes funds from the Reserve Fund as a source, after which the Fund transfers assets from Reserve Fund in Government accounts.
7. The Government commits to use the funds of the Reserve Fund only in cases when there is a need for extraordinary financing of government expenditures, and not as a fiscal source for the regular annual expenditures of the Government. The Law on the Sovereign Fund will set the conditions when the government can execute the request for money transfer from the Reserve Fund and will include situations such as: deep economic recession lasting more than six months, unforeseen fiscal insolvency, insolvency within banking system at the level of systemic risk, financing of strategic infrastructure projects, financing of government actions during the state of emergency and other emergency situations.

X. Academy of the Sovereign Fund

1. Within the Fund, the establishment, as a separate unit, of the Academy of the Sovereign Fund will be planned as per budgetary possibilities. The aim of the Academy will be training the future staff of the Fund and cultivating relationships with educational institutions in Kosovo and abroad in order to recruit new talents and train candidates, especially in the deficit areas of the labour market in Kosovo. The Academy will include programs where distinguished Kosovar students in areas relevant to the Fund will be invited

for internships at the Fund, or at counterpart institutions abroad.

2. The Academy will also organize training activities for the Fund's staff, in order to advance professionally and obtain the latest knowledge in the field.
3. If possible, the Academy will manage a Professional Advancement Program, according to a special fund allocated by the Supervisory Board, which on a competitive basis will finance through scholarships higher studies in relevant fields of finance, management, and environmental sustainability. (Master level and above) in internationally renowned universities for candidates who after graduation will be obliged to contribute or be employed at the Fund or entities owned by the fund for a period not shorter than five years.
4. As a separate unit, the Academy will be led by a director with relevant experience.

XI. Other provisions

1. In no case, the Government, the Assembly and any other agency of the Republic of Kosovo, will have the right to offer or give the Fund's assets as mortgage for any financial agreement, loan, payment, debt settlement or other transaction, either with internal or external parties.
2. In no case will the Fund make transactions or sign contracts, for example, taking loans or providing financial guarantees, the condition of which is the provision of its assets as a lien or mortgage. Any third-party transaction made on financial guarantees can only be made on the basis of realized or potential value of the financial return on assets (e.g., the issuance of bonds).
3. As above, in no case can the Fund and any of its assets serve as a financial guarantor for any of the enterprise it owns. Enterprises owned by the Fund do not have the right to request from the Fund provision of financial guarantees for their obligations. This provision does not prevent the Fund-owned enterprises from relying on financial guarantees for

their liabilities from other parties, such as the Government, international financial institutions, or other institutions, as long as these actions are based on their corporate strategy.

4. In addition to the financial report, the Sovereign Fund is subject to periodic external audit. The audit report is sent to the Supervisory Board, the Prime Minister and the Minister of Finance.
 - a. The Fund maintains financial accounts and books in accordance with International Financial Reporting Standards (IFRS) to display its operations and financial position.
 - b. The financial statements of the Fund are audited and published no later than 30 June for the previous year.
 - c. The Fund's accounts, books and financial statements are audited by an external auditor independent of the approved list of statutory auditors and audit firms of the Kosovo Financial Reporting Council and appointed by the Supervisory Board. The same external auditor or audit firm may not be engaged for more than three (3) consecutive years.
 - d. The Fund, respectively the Chief Executive Officer, must submit the audited financial statements to the Supervisory Board for approval.
 - e. Following the approval by the Supervisory Board, the audit report is sent to the Minister of Finance and the relevant committee in the Assembly.
5. The Fund is not exempt from any of the tax obligations and legal rules to which business entities in the Republic of Kosovo are subjected, except in cases specified by law.
6. With the adoption of the Law on the Sovereign Fund, the Assembly will take the initiative to establish a Committee for the Sovereign Fund, which will recommend the appointments to the Supervisory Board of the Fund to be adopted by the Assembly and will monitor the work of the

Supervisory Board. In the event of non-establishment of such a Committee, this work shall be performed by the relevant existing Assembly Committee (e.g., the Economy Committee).

7. As a legal entity and free contracting party, the Fund will be free to contract, for its needs, on a temporary or permanent basis, in the country or abroad, the following services: banking, consulting, research, brokerage, auditing, asset management, information and technological development, training, physical and cyber security, accounting, marketing, professional staff recruitment, transportation and travel, advocacy and legal consulting services and others.
8. Every three months, the Fund, respectively the Executive Board shall implement and draft Impact Assessments, to assess the effectiveness of the institution, scope, challenges and results since its establishment. The detailed VI report is submitted to the Supervisory Board.
9. In all internal enterprises owned by the Fund, the functional existence of the Workers' Council and/or the relevant trade union organization, the collective contract according to the legislation in force, the balanced gender participation in boards and management, and implementation of standards of decarbonisation and environmental sustainability in business activity and planning will be required.

ANNEX 2: SUMMARY LIST OF ENTERPRISES AND SOCIAL ASSETS ADMINISTRATED BY PAK WITH POTENTIAL TRANSFER TO SOVEREIGN FUND

According to the data from the Privatization Agency of Kosovo (October 2021), there are 592 enterprises/working units which are under the administration of the Agency. Out of those:

- 515 are Socially Owned Enterprises and NewCos; and
- 77 are assets/working units in Kosovo, where the headquarters of SOEs are abroad.

The current status of all enterprises/working units under the administration of the Agency is as follows:

- 579 SOEs placed in liquidation;
- 544 SOEs still in liquidation process;
- 35 SOEs with a process concluded by decision of the Special Chamber;
- 15 SOEs in transition, which have not yet undergone the liquidation process;
- 11 SOEs not administered by the PAK, but their transfer process not yet been completed with other institutions (Kosovatrans and Forest economies).

2,364 is the total number of assets (of which 815 other assets and 1,549 lands) owned by SOEs and which have not yet undergone the process of ownership transformation (sale or expropriation) and are administered by the Agency.

Below we present a list of a number of these assets which have greater potential or value, divided according to regional offices of the Agency, respectively five (5) Regional Offices that themselves cover different municipal territories where these assets are located.

As stated in point 4.3.6.3 of the Concept Document, the transfer of any asset currently managed by the PAK requires (1) liquidation of existing enterprise that owns asset/s in question, in accordance with the Law on the PAK; (2) organization of the asset within a new specialized enterprise, under the ownership or co-ownership of the SFRK. As underlined in the Concept Document, the SFRK in no case takes direct ownership over the inherited physical assets of the former Socially Owned Enterprises (lands, real estate, machinery, etc.), it rather acts only as a shareholder and financial investor in the new enterprises that will have ownership over this kind of assets and will use them for commercial purposes.

No.	PAK Id.	Name of the SOE	Comment
1	GJ1059	Jugoterm	
2	GJ1064	FAM	
3	GJ1170	NewCo XIM Strezovci	
4	MIT023	Ivo Lola Ribar Leshak	
5	MIT024	Prva Petoletka in Leposaviq	
6	MIT028	Ivo Lolla Ribar Zubin Potok	
7	MIT036	Javor Zubin Potok	
8	MIT048	Simpo Zubin Potok	
9	MIT050	Zitoprodukt Leposavic	
10	MIT053	Kosvik in Zubin Potok	
11	MIT056	Vijak Zubin Potok	
12	MITIOI	Jugobanka in Mitrovica	
13	PEJ007	Ereniku Industria	
14	PEJ009	Ereniku-Virxhinia	
15	PEJ079	Metaliku	

			The SOE is not in liquidation. Preliminary injunction by the Special Chamber for statutory matters.
16	PEJ093	Boksitet	
17	PEJ116	Jatex	The SOE is not in liquidation. Preliminary injunction by the Special Chamber for statutory matters.
18	PEJ166	Pushimorja e fëmijëve	
19	PRN188	JEDINSTVO	
20	PRN030	Izolimi	
21	PRN093	GËRMIA	
22	PRN174	MIM Goleshi	
23	PRN180	DUNAV OSIGURANJE	
24	PRN103	URATA	
25	PRN136	JUGO AGRO BANK	
26	PRN006	SHPEZËTARIA E PESHKATARIA	
27	PRN054	KOMEL BATUSE	
28	PRN111	PËRPARIMI	
29	PRN100	RILINDJA LIBRARE TREGTARE	
30	PRN098	MEKANIZIMI	

31	PRN112	VIKTORIA	
32	PRN150	RTP	
33	PRN173	NEWCO GRAND HOTEL	
34	PRN066	ABC Genci	
35	PRN149	INA TRGOVINA ZAGREB	
36	PRN170	JUGOPETROL	
37	PRN125	BANKKOS	
38	GJ1063	LOLA Shtërpce	
39	GJ1092	Inex Sharr Planina Brezovica	The SOE is not in liquidation. Consultations with the Government are needed.
40	PRZ014	IGK Ballkan	
41	PRZ018	Unimont	
42	PRZ026	Farmakos	
43	GJ1093	Hotel Junior Brezovica	
44	GJ1094	Hotel Lahor Brezovica	