

LEGAL OPINION

Issues:

- 1) **Is it permissible under the applicable law in Kosovo for KEP Non Executive Directors to be paid a Directors Fee, in addition to expenses for their services as Members of the Board of Directors of KEP.**
- 2) **May a Non Executive Director of KEP transact with KEP at fair market value or terms more favourable to KEP.**

- 1) Regarding the issue whether is it permissible under the applicable law in Kosovo for KEP Non Executive Directors to be paid a Directors Fee, in addition to expenses for their services as Members of the Board of Directors of KEP, the Board of Directors (BoD) as a governing body must not decide about any benefit or personal interest for its members, as that is not permitted by applicable law in Kosovo, except for the reasonable stated salary or compensation that shall be included in the Statutes as a Founding Enactment.

“UNMIK Regulation 1999/21 on the Registration and Operation of Non-governmental organizations in Kosovo, 15 November 1999” in pertinent part reads:

[...]
Any member of a governing body shall recuse himself from the consideration or decision of any matter in which he has a personal or economic interest (Article 7.4)
[...]

The current Statutes of KEP provides a related definition on this issue:

Section 5 of the KEP present KEP's Statutes¹ provides:

[...]
“...The assets, earnings and profits of the organisation shall be used to support its purpose and shall not be used to provide benefits, directly or indirectly, to any founder, director, officer, member, agent, employee or donor....”
[...]

¹ The new Statute is not in force yet, so I provided the opinion based on old KEP's Statutes

Another impediment is concerned with the conflict of interest, which is clearly defined in by-laws and the Statutes:

Conflict of interest

[...]

A potential conflict of interest arises when a director of KEP's board ...receives, compensation from KEP in the form of loan, salary, benefits, fees, stipend, and other payments (except expense reimbursement)....(section 15 of the Statutes)

[...]

As a conclusion:

A BoD member may not receive any economic or other benefit while he/she is a part of that decision taken by the BoD itself.

2. And for the second issue-may a Non Executive Director of KEP transact with KEP at fair market value or terms more favourable to KEP the Regulation 1999/21 reads in pertinent part that:

[...]

"...any transaction between the organization and its members, officers, members of the Board or employees must be concluded at fair market value or on terms more favorable to the organization (Article 7.4) "

[...]

That means that it is consistent with Section 5 of the KEP Charter which provides the same.

[...]

Any transaction between the organization and its members, officers, members of the Board or employees must be concluded at fair market value or on terms more favorable to the organization.

[...]

Before any transaction in such conditions, preliminarily must be assured that conflict of interest is avoided, pursuant to section 15 of the Statutes and as a conclusion:

Any transaction concluded in these terms is permitted.

Agron Kelmendi
Legal Officer
Pristina, on June 18, 2008