ACCESS TO CREDIT - PHASE 1
NOVEMBER 2006 to APRIL 2007

KOSOVO CLUSTER AND BUSINESS SUPPORT PROJECT

June 1, 2007

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THIS REPORT SUMMARIZES ACTIVITIES TO ADDRESS CRITICAL FINANCING NEEDS IDENTIFIED DURING THE FIRST TWO YEARS OF THE KCBS PROGRAM. FOREMOST AMONG THESE IS THE CHALLENGE FOR SMALL AND MEDIUM SIZED ENTERPRISES IN KOSOVO TO ACCESS ADEQUATE CAPITAL TO FINANCE INVESTMENTS, FILL ORDERS AND COMPLETE SALES. THE REPORT DESCRIBES A PROGRAM TO INTRODUCE NEW FINANCIAL PRODUCTS ON THE MARKET SUCH AS LEASING AND PURCHASE ORDER FINANCE.

Kosovo Cluster and Business Support project – “Access to Credit – Phase 1”

Contract No. AFP-I-00-03-00030-00, TO #800

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CONTENTS

PURPOSE OF ASSIGNMENT... 1

BACKGROUND 1

EXECUTIVE SUMMARY 2

PRODUCT DEVELOPMENT: POF.................................... 3

PRODUCT DEVELOPMENT: LEASING 4

LEGAL AND REGULATORY ISSUES................................ 7

FINANCE FAIR 10

RECOMMENDED Steps for Phase 2 11

ANNEXES.. 13

PURPOSE OF ASSIGNMENT

The purpose of the assignment was to provide technical assistance and support to financial institutions in Kosovo in introducing new financial products. Three banks and two microfinance institutions were targeted for the first six months of the project. The scope of the assignment included review of relevant laws from the BPK; review of policies and procedures for each institution; drafting of new policies and procedures for each institution as appropriate; drafting of marketing plans; review of financial information; development of new products; preparation of training materials; and delivery of training to staff at all levels of the institutions.

BACKGROUND

During the first two years of the KCBS program critical financing needs had been identified. Foremost among these was the challenge for small and medium sized enterprises in Kosovo to access adequate capital to finance investments, and working capital to fill orders and complete sales. The financial institutions had a limited array of financing products to offer their customers, and there was a need to introduce new products on the market. KCBS proposed two new products, purchase order finance and leasing.

Interviews with banks and microfinance institutions in Kosovo in 2006 had revealed a strong interest in developing and introducing purchase order finance and leasing in Kosovo. Accordingly, activities were planned to target appropriate financial institutions to take part in this program based on an analysis of interest, market innovation, and commitment of funds to new lending programs. The activities planned included:

- Product development for banks and microfinance institutions (MFIs) - analyzing the needs of partner financial institutions to develop new products and building a training and technical assistance plan that matches the need of each bank or MFI and begin development of collateral instruments and possible guarantee mechanisms with the BPK

- Product development for leasing - develop new leasing products for equipment and buildings in Kosovo.

There was also was strong interest from both lenders and borrowers to hold another Finance Fair to increase exposure of the financial sector in Kosovo and increase lending opportunities. The project planned to provide targeted assistance and guidance for preparation of the Finance Fair to be held in early April 2007.

EXECUTIVE SUMMARY

During the first five months of 2007, KCBS implemented a multi-faceted program to help develop the financial sector in Kosovo. This included working with five financial institutions to introduce leasing to the Kosovo market and helping three financial institutions complete necessary steps to introduce purchase order financing. A major event, the Second Kosovo Finance Fair, was also implemented during this time, which helped link financial institutions with new borrowers. During the Finance Fair, KCBS held workshops on Leasing and Purchase Order Finance to advise potential clients of the benefits of both products.

Purchase Order Finance (POF) is a transaction specific form of pre-shipment working capital finance that Crimson Capital, a partnering subcontractor on the KCBS team, has successfully introduced in several other emerging markets. Memoranda of Understanding (MOU) were signed with Kasa Bank, New Bank of Kosovo and KEP MFI to help these institutions introduce this product to the Kosovo market. Extensive training and technical assistance was provided to each of these institutions to develop appropriate policies and procedures and to educate management and loan officers on utilization of this new product. However, during the implementation period, the two partner banks entered into buyout talks with Nova Ljubljanska Banka (NLB) and accordingly requested a delay in final implementation until after the new owners were in place. Both banks signed the buyout agreements in May 2007 with NLB and are in the process of restructuring the executive management. They have stated that they want to resume implementation of POF in June/July 2007.

A leasing expert, Frank Lever, provided technical assistance and training to five financial institutions during Phase 1. Each institution received tailor made training sessions to help them develop the in-house skills to roll out a leasing product. Bank for Business is the farthest along of these five, actively looking for leasing opportunities and having committed 200,000 Euros to their pilot lease program. Two MFIs, KEP and Atlantic Capital Partners, are ready to begin leasing in the market pending signature by UNMIK of the new MFI regulation from the Central Banking Authority of Kosovo (CBAK). This was expected by the end of May, but was not realized. The other two institutions, New Bank of Kosovo and Kasa Bank are ready to implement leasing in June/July, as stated above, after the buyout by NLB is complete.

Much of the challenge related to developing these products in Kosovo has had to do with lack of clarity on legal and regulatory issues related to product development. There is no clear legislation on issues related to alternative collateral instruments commonly used for purchase order finance transactions such as bills of exchange. To begin to address this issue, a KCBS legal expert prepared a draft regulation on negotiable instruments. Additional legal and regulatory issues addressed included International Accounting Standards (IAS) – 17 which covers lease accounting, and how VAT should be handled in leasing transactions.

The Second Finance Fair held on April 11 and 12 was considered very successful. More than 1800 individuals attended the fair and the event received extremely positive feedback from both exhibitors and attendees. Partner financial institutions such as Kasa Bank actively promoted their new POF and leasing products through banners and brochures. One hundred percent of vendors surveyed stated that the Finance Fair was either “good” or “excellent”. Importantly, due to the strong sponsorship of the event raised by KCBS, the event more than covered its operating costs and created a reserve for future fairs.

The final section of this report proposes the next steps to complete the introduction to the Kosovo market of both the leasing and POF programs in Phase 2.

PRODUCT DEVELOPMENT: POF

Through KCBS intervention, CBAK approved POF in principle as a new loan product. During Phase 1, KCBS worked with each partner financial institution and the CBAK to develop appropriate POF credit policies and procedures and loan agreements at the partner financial institutions for proper risk management of any new/enhanced products.

The KCBS team first requested all three partner institutions to provide copies of their current credit policies and procedures for review prior to the drafting of new POF policies and procedures:

- ***New Bank of Kosovo:*** New Bank of Kosovo was the first bank that promptly provided a copy of its credit policies and procedures, which were available only in Albanian. KCBS reviewed and translated the relevant sections in mid-March.

- ***Kasa Bank:*** Kasa Bank delayed providing copies of their policies and procedures, citing reasons of confidentiality. Eventually, Kasa Bank sent the relevant sections of their procedures manual for review in mid-March.

- ***KEP:*** KEP finally provided copies of their credit policies and procedures, which were in English, in late March.

Given these delays, the KCBS team decided to draft standardized POF policies and procedures both in English and Albanian and forward these to the three financial institutions for their review and approval the week of March 19.

In addition, POF loan agreements, including assignments and guarantee forms were adapted and contextualized for the Kosovo environment and translated into Albanian, and then both English and Albanian drafts were forwarded to the legal staff at all three financial institutions for their review and comments.

Nova Ljubljanska Banka (NLB) has bought the majority interest in Kasa Bank and the majority interest in New Bank of Kosovo as of May 2007. As a result, the POF working groups at both banks have indicated that their banks will postpone the final review, approval and implementation of the draft POF policies and procedures during this “transition” period, until June/July.

New Bank has requested postponing approval of the policies and procedures until then, since they are not willing to make important decisions independently of the new owners during this transition period. KasaBank is going to approve the policies and procedures after the new executive management is on board, which is expected to happen by the end of May, after which the introduction of POF will be renewed.

KEP have planned to extend the first POF loans in June, after they have first introduced leasing. KEP is in the process of introducing some other loan products as well. They are in process of restructuring and expanding the senior staff, which has contributed to the delay in the review and the approval of the policies and procedures. It is planned that KCBS will resume work on advancing the POF activities with the three institutions in early June.

PRODUCT DEVELOPMENT: LEASING

Three banks and two MFIs signed MOUs to introduce commercial leasing in Kosovo (New Bank of Kosovo, Kasa Bank, Bank for Business, KEP and Atlantic Capital Partners). Each of the partner banks and MFIs designated staff to coordinate their activity with the team. The initial groundwork was completed with discussions with CBAK confirming that leasing could proceed even though there is no separate lease legislation (it is currently covered by the banking law).

Both financial and operational leasing products are being developed with partner institutions. A standardized lease procedure and leasing contract was developed and provided to each partner bank to be included in their bank procedures. The standardized leasing contract was approved by the CBAK. After the initial training in the lease product the partner banks requested that the training be expanded to include transaction flow, cash flow analysis and an example of a lease transaction that included both historical and projected balance sheet, income statement, cash flow and a lease transaction. After meeting with the bank's staff it was identified that they were reactive to their customers and did not proactively solicit business. A sales training module was developed and delivered "The Art of Selling". All procedures and training materials are available in both English and Albanian.

The KCBS team worked with each of these partners to develop institutional capability and training materials for leasing as described below:

Kasa Bank: Lease procedures were provided to the bank but due to NLB buying a majority interest no action or approval of the procedure will be taken until June, when the new executive management is expected to be on board. In the meantime, training continued in expanding the lease product and was followed with a full day's training on lease procedures. This included covering an approved lease contract, lease transaction flow, cash flow analysis, the art of selling and an example of a lease transaction with historical and projected balance sheet, income statement, cash flow and a lease transaction. The bank has all these materials in both English and Albanian and is prepared to launch the lease product upon board approval.

New Bank: The lease procedures were provided to the bank but due to NLB buying a majority interest approval was postponed until June.

Bank for Business: The lease procedures were approved by the board and an initial amount of 200,000 Euros was committed for the lease product. The bank requested KCBS's help in identifying sectors to develop the lease product. A meeting with KCBS's milk and dairy cluster identified the opportunities in the milk production sector that included lactofreezers and closed milking systems. A list of potential clients in KCBS's dairy and fruit and vegetable clusters was provided. The bank will also be advised on opportunities in the construction cluster as well.

KCBS provided training in lease procedures, transaction flow and an example of a lease transaction for bank staff. The bank has developed lease rates and terms that are competitive and lower than the rates offered on agricultural loans from ProCredit Bank. The bank is also considering lowering its underlying interest rate on leases for agricultural equipment. The bank is prepared to begin leasing.

They are in the process of reviewing a lease application from an existing client who is interested to lease a tractor. The team and KCBS's dairy specialist organized a meeting between three potential clients interested on leasing dairy equipment and the officials of the bank. The clients were informed closely about the bank's terms and conditions and they will review and decide for the further steps.

Atlantic Capital Partners: The lease procedures have been approved. ACP has an agreement with a farm equipment supplier who will provide a buy back on leased equipment. In view of this agreement, ACP was to begin operating leasing in April. However, CBAK advised that they were in the process of revising the MFI regulations and until the new regulations were signed by UNMIK, ACP was not to do leasing. The new MFI procedures were still not signed by the end of May. When the procedures are approved, ACP will begin their leasing activity.

KEP: KEP had decided to use May as their pilot lease training period. They will be delayed in actual leasing until the new MFI regulations are approved and signed. The procedures provided will be modified to meet their policies. In consultation it was advised that the lease product needed to be differentiated from their loan product as in the lease product they owned the equipment and did not need additional collateral. The procedures are in a draft status but KEP will take into consideration the unique collateral position provided by leasing. KEP is working with the KCBS dairy cluster on leasing lactofreezers and has visited equipment suppliers. KEP is prepared to begin leasing after the CBAK MFI regulations are approved and signed by UNMIK.

Progress to date with each institution:

- **Bank for Business** has approved the lease procedures and rates and terms and is ready to begin leasing. They have requested that KCBS review lease transactions and provide training assistance. They are in the process of reviewing a lease application.

- **KEP** is undertaking their pilot training period in May. They are developing their lease procedures and rates and terms. KCBS reviewed their initial draft and made recommendations to differentiate leasing from a loan. KEP has requested further help in developing their procedures. They will require additional training in cash flow analysis and review of a lease example.

- **ACP** is prepared to offer operating leasing as soon as the CBAK approves the new regulations.

- The **Kasa Bank** board of shareholders is expected to meet in the second half of May to elect the new executive management, which is going to review and approve the lease product and procedures. Training has been completed and the bank should launch the lease product after the approval of the procedures.

- Training at **New Bank** will start when the agreement with NLB is approved. Approval is anticipated in late May.

Related Activities

Leasing was also introduced to the MFI Association, AMIK. Due to a time constraint the presentation included only the main features of the leasing product. After the presentation a lively question and answer period followed. All of the MFIs requested that a lease workshop be scheduled. Three of the MFIs have requested that they be included in the next phase of the lease technical assistance, FINCA, Beselidhja and Start.

KCBS organized a meeting with the officers of the Associations working with KCBS to introduce the Lease product. Follow up meetings will be scheduled with the individual associations to illustrate how leasing can improve “Access to Credit”.

KCBS contacted the clusters to identify potential lease prospects. Follow up meetings will be scheduled and potential clients introduced to the partner banks as they roll out their leasing product.

A meeting was held to explore the possibility of recommending a software package to the partner institutions. The software provider is located in Skopje; it provides financial lease programs and is expanding to operating leasing with two lease companies. The company has provided a loan software package to a Kosovo financial institution. A possible discount could be obtained if three of the institutions agree to use the software provider. It was agreed that there would be a follow up once all the partner banks will have approved to provide the lease product.

LEGAL AND REGULATORY ISSUES

A KCBS legal advisor, Alan Rosenberg, held meetings with the Supervision Department and the Credit Registry of the CBAK to review current Kosovar legislation regarding collateral instruments for trade finance and other short-term working capital loans. CBAK gave its tacit approval to KCBS to develop “new” collateral instruments and to also draft corresponding regulations governing such instruments for POF loans.

The KCBS legal advisor focused on working with CBAK, local financial institutions partnering with KCBS, and its expatriate consultants, to develop a plan to make necessary changes to banking rules and regulations to clarify and increase the utilization of various forms of “soft asset” collateral in lending and leasing.

Leasing

There is currently no lease law in Kosovo and the general law on contracts and obligations apply to leasing. Meetings with CBAK reaffirmed that leasing in Kosovo does not require a separate law. Because there is no specific law it is important that a lease agreement was developed to protect the rights of the lease parties. In discussions with the partner institutions it was agreed that one standardized contract would be developed for all the institutions that conformed to Western best practices but also to Kosovo law. Then in the event of future legal action, the lease companies would only need to defend one generic legal document that had already been extensively vetted by all of their lawyers as well as the CBAK.

The consultant drafted a Model Equipment Lease and circulated it in Albanian to each of the partner financial institutions with which KCBS is working. Comments were then requested from partner institutions. Atlantic Capital Partners’ lawyer proposed an article be included that allowed the lessor, as the owner of the equipment, to repossess the equipment in the event of default without going through the courts. This would be done quickly, in eight days, with an expedited legal proceeding. This is an important inclusion as the equipment is the collateral for the lease. This article was added to the draft contract. The agreed, standardized lease contract was developed in English and translated into Albanian.

The partner banks agreed that each would assign their legal council to review the proposed lease contract and meet to develop a lease contract that would be used by all of the partner banks. After three meetings a lease contract was developed using the sample document that was provided. All five partner banks agreed that they would use the document. The lease contract was reviewed by CBAK’s lawyer and there were only two extremely minor changes requested and both have been included in the final lease contract. All of the partner banks now have a final lease contract that will be used in all lease transactions. As there is no specific lease law in Kosovo it was necessary that a lease contract be developed that protected the rights of all parties to the lease, the lessor and the lessee. The partner banks were provided, in the lease procedures, with a sample “Certificate of Acceptance” and a “Lease Term Sheet”.

The CBAK is in the process of reclassifying the MFI and Non-Banking Financial Institution (NBFI) regulations as they felt that the regulations were insufficiently drafted in 2000; needed changes surfaced in practice over period of 2000 - 2007. The new regulation is approved by the CBAK and was expected to be signed by UNMIK by the end of May. However, this was not realized and until approval is received, ACP and KEP will be advised by the CBAK to postpone leasing. It is expected that the MFIs will be able to begin leasing in June/July.

Another issue addressed is that the Society of Certified Accountants and Auditors of Kosovo (SCAAK) stated that although Kosovo does not strictly adhere to International Accounting Standards (IAS) for leasing, they do follow IAS – 17, which is the recognized procedure for lease accounting. The EU Customs and Fiscal Assistance Office to UNMIK (EU CAFO-UNMIK) was contacted to determine appropriate tax regulations and VAT treatment that would affect any leasing product developed. Questions were submitted and a detailed explanation was included in the presentation to the banks and MFIs. For tax and VAT purposes, leasing is considered as a "supply of goods" while a loan is considered a "financial product."

The effect is that the lease payments attract VAT, but the VAT can be offset by the lessee against VAT collected. Agriculture equipment is zero-rated and therefore neither the equipment nor the lease payment attract VAT. An outstanding issue was depreciation and who can take the depreciation for tax purposes. EU CAFO-UNMIK clarified this issue in that the lessor, as the owner of the equipment, can for tax purposes claim the depreciation. In many cases, the lessee does not have the tax base to utilize the depreciation while the lessor does. As the lease product becomes more developed, the lessor will factor the depreciation into the lease payments, which should lower the lease payments for the lessee.

Purchase Order Finance: Utilization of Soft Asset Collateral

KCBS's legal advisor also met with relevant players to address legal and collateral issues related to POF loans. The legal advisor identified the following legal issues and concerns, which are mentioned below along with recommendations for further follow up and clarification.

UNMIK Regulation 2001/5 "On Pledges" is applicable to all non-real estate secured loans. By its terms the regulation covers both tangible and intangible property,[1] and any "Moveable Property" may serve as collateral.[2] This regulation's wording indicates that it is mostly tangible goods that were contemplated when it was drafted. This regulation should be amended to specifically enumerate and provide for the types of intangible property that the banks would accept as collateral. This regulation falls under UNMIK's "Reserved Powers" and can be approved directly by UNMIK without submission to the Kosovo Parliament. This will give support and comfort both to the banks and to the Pledge Filing Office.

In addition, UNMIK Regulation 2001/32 establishes the Pledge Filing Office and Administrative Decision 2001/20 implements Regulation 2001/32. These directives require that all filings are public documents. In practice, only banks that are authorized users of the system may access the information in the system. Those institutions which are authorized users can inquire of the system whether a potential borrower has any recorded pledges of assets.

There appears to be no Kosovo equivalent of the Uniform Commercial Code (UCC) which governs negotiable instruments. It would be desirable to draft selected portions of this law so that the rights, priorities and obligations of lenders are spelled out in a comprehensible manner. This will assist the banks in entering into new types of lending operations. Specifically, relevant portions of Article 3 (Negotiable Instruments) and Article 9 (Secured Transactions) should be adapted for Kosovo.[3]

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[1] "Moveable Property" means any property, tangible or intangible, excluding immovable property. (Section 2, Definitions)

[2] Any movable property that may legally be transferred pursuant to the applicable law may serve as collateral. (Section 3.1, Collateral)

[3] In addition, portions of Article 7 (Documents of Title) may be helpful in the future. This Article deals with such matters as Bills of Lading and Warehouse Receipts.

Regulations on Bills of Exchange were drafted and have now been circulated for review and comment to the CBAK. It is expected that Bills of Exchange will be introduced as a recognized form of collateral in Kosovo based on KCBS's work. Bills of Exchange make all forms of cash flow lending more accessible and less risky, and are excellent collateral instruments for POF and other forms of trade finance.

Following CBAK's review of the draft Regulation on Bills of Exchange and select components of the UCC for use in Kosovo, the KCBS team will determine the next steps for implementation. Annex I includes a regulation on Negotiable Instruments completed by the legal advisor following his visit.

FINANCE FAIR

KCBS supported the second Finance Fair organized by the Kosovo Bankers' Association (KBA) and the Association of Microfinance Institutions of Kosovo (AMIK) and managed by MDA (Management and Development Associates). KCBS undertook efforts to secure sponsorship, and to improve the communication and cooperation among the partners to enable the team to successfully plan and implement the Fair. KCBS assisted KBA and AMIK to attract and secure exhibitors for the fair.

The Fair was held at the Red Hall of the Youth Center and lasted for two days: April 11 and 12. KCBS raised 100% of the sponsorship for the Fair, with the total amount raised sufficient to more than cover the costs of planning and holding the Fair at the Youth Center for both days. Based on the success of the sponsorships, a financial reserve was created for future fairs.

Overall, the Finance Fair was a great success. It gathered 39 exhibitors, including banks, microfinance institutions, business service providers, insurance companies, etc. According to the official records there were 1,598 registered attendees, while there were a significant number of unregistered attendees as well, so according to the latest appraisals of the organizers there were well over 1,800 visitors to the Fair during the two days.

Surveyed exhibitors and guests also rated the event very high. More than 88% of guests surveyed said they would come again the following year. Of the exhibitors surveyed, 100% rated the Finance Fair as “good” or “excellent”.

The Fair attracted considerable attention by the media as well. It was covered by the three national televisions (RTK, KTV and RTV21), VOA, several major radio stations and at least three leading local newspapers.

At the opening ceremony there were speeches by Mr. Bujar Dugolli – the Minister of Trade and Industry; Mr. Gani Gerguri – the Deputy General Manager at Central Banking Authority of Kosovo (CBAK) and Mr. Michael Farbman – Mission Director of USAID Kosovo. Mr. Dugolli promised that a part of the KTA privatization fund will soon be delivered to the banks in order to improve lending for Kosovars. Mr. Gerguri stated that CBAK is going to give full support to the introduction of the new financial products and services in Kosovo. Mr. Farbman mentioned that USAID is going to further support the economic growth of Kosovo and improve access to finance, and is pleased with the introduction of leasing and purchase order finance by KCBS.

There were five workshops during the first day of the Fair. KCBS presented two workshops for the new financial products that are going to be introduced by the partner financial institutions. These workshops were about Leasing and POF loans and they were mainly focused on the benefits to the clients as they were the audience of the presentations. The audience showed great interest in the new products and raised many excellent questions, especially for leasing and legislative issues.

On the second day of the Fair, many visitors and potential clients were interested in additional materials about these products. KCBS provided them with additional information and advised them to contact the institutions that are going to offer these products. Kasabank had prepared banners to promote the new financial products (POF and Leasing) and they had printed brochures with additional information about these products.

A list of the exhibitors is appended in Annex II.

RECOMMENDED STEPS FOR PHASE 2

Below, we lay out the recommended steps to advance both leasing and purchase order finance in Kosovo in Phase 2 of the program. These activities would form the basis of the Phase 2 SOW for technical assistance and training to partner financial institutions. It should be noted that the timelines are dependent on a speedy resolution of the issues that have already delayed the completion of Phase 1.

Leasing:

- Expand the lease product to additional MFIs. Three - FINCA, Start and Beselidhja - have requested that they be included in the next technical assistance phase. Develop MOUs with one or more of these MFIs and proceed with the introduction of leasing. Timeline: June - September.
- Work with KEP on their lease product launch and to finalize their lease procedures and terms. Timeline: June - July.
- Work with ACP on their operating lease product with an agricultural equipment supplier. Introduce KCBS clients. ACP is prepared to begin leasing when the new MFI regulations are approved. Timeline: June - July
- Work with Kasa Bank as they approve and launch their lease product. Review lease transactions as they develop. Timeline: June - July
- Continue training with New Bank after the approval of the agreement with NLB. When the agreement with NLB is finalized there will be additional lease training. Timeline: June - July
- Work with Bank for Business to develop and expand their lease portfolio. Agreed to review actual lease transactions with their credit department. Timeline: June - July
- Provide technical assistance to other banks, as requested. Timeline: June - September.
- Work with the KCBS associations to explain how the lease product can help them “Access Credit”. Timeline: June - July
- Work with the KCBS clusters to help their clients obtain equipment and to develop potential clients for the lease companies. Timeline: June – September

Purchase Order Finance and Legal/Regulatory Issues:

- Meet with working groups at both Kasa Bank and New Bank of Kosovo to assess current status of the Nova Ljubljanska Banka buyout and determine a timeline for further implementation of the pilot POF program, including additional POF training and the introduction of pilot POF loans. Timeline: June - July.
- Finalize draft POF credit polices and procedures at the three partner financial institutions: Kasa Bank, New Bank and KEP. Timeline: June - July
- Finalize POF loan agreements at the three partner financial institutions Timeline: June - July.
- Continue POF training and initiate pilot POF loans at KEP. Timeline: June - July

- Obtain CBAK comments and recommendations to the draft Regulations on Bills of Exchange. Timeline: June - July
- Work with CBAK on other necessary regulations and procedures such as UCC provisions. Timeline: June - September
- Meet with Finca, START and Beselidhja to introduce POF along with the leasing program for implementation during the third quarter. Timeline: June – September.

ANNEXES

Annex I: Draft Regulation on Negotiable Instruments

Annex II: Exhibitors at the Finance Fair

ANNEX I: DRAFT REGULATION ON NEGOTIABLE INSTRUMENTS

REGULATION NO. 200_/_

UNMIK/REG/200_/_

_ _______200_

The Special Representative of the Secretary-General,

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

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

For the purpose of enhancing the economic development of Kosovo and the development of a market-based economy in Kosovo by accommodating commercial transactions,

Recognizing that negotiable instruments should play a vital role in economic development and commercial transactions,

Hereby promulgates the following:

Article 1. Subject Matter

1.1 The purpose of the present regulation is to provide a simple, uniform, and exclusive structure for negotiable instruments in Kosovo.

1.2 The present regulation provides the exclusive means in Kosovo by which negotiable instruments are to be created, defining negotiable instruments, the types of negotiable instruments as well as the related transactions when dealing with negotiable instruments.

1.3 This regulation does not apply to money.

Article 2. Definitions

For the purpose of the present regulation:

Acceptor is a drawee that has accepted a draft.

Drawee is a person ordered in a draft to make payment.

Drawer is a person who signs or is identified in a draft as a person ordering payment.

Instrument is a negotiable instrument.

Maker is a person who signs or is identified in a note as a person undertaking to pay.

Order is a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

Ordinary care in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this Article.

Party is a party to an instrument.

Promise means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

Prove with respect to a fact means to meet the burden of establishing that fact.

Remitter is a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

Article 3. Negotiable Instruments

3.1 Except as provided in subsections 3.3 and 3.4 "negotiable instrument" is an unconditional promise or order to pay a fixed amount of money with or without interest or other charges described in the promise or order, if it:

a. Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
b. Is payable on demand or at a definite time; and
c. Does not state any other undertaking or instructions by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

3.2 An order that meets all of the requirements of section 3.1 except paragraph a and otherwise falls within the definition of a check in subsection e is a negotiable instrument and a check.

3.3 A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed to the effect that the promise or order is not negotiable or is not an instrument governed by this Regulation.

3.4 An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft" a person entitled to enforce the instrument may treat it as either.

3.5 "Check" means

a. a draft, other than a documentary draft, payable on demand and drawn on a bank or
b. a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term such as "money order."

3.6 "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

3.7 "Teller's check" means a draft drawn by a bank

a. on another bank, or
b. payable at or through a bank

3.8 "Traveler's check" means an instrument that

a. is payable on demand
b. drawn on or payable at or through a bank
c. is designated by the term "traveler's check" or by a substantially similar term, and
d. requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

3.9 “Certificate of Deposit” means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

3.10 “Issue” means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

Article 4. Issue of Instrument

4.1 An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

Article 5. Unconditional Promise or Order

5.1 Except as provided in this section, for the purposes of Section 3.1(a) a promise or order is unconditional unless it states

a. an express condition to payment,
b. that the promise or order is subject to or governed by another writing, or
c. that rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.

5.2 A promise or order is not made conditional

a. by a reference to another writing for a statement of rights with respect to collateral, prepayment or acceleration, or
b. because payment is limited to resort to a particular fund or source.

5.3` If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of Section 3.1(a). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign does not prevent a transferee of the instrument from becoming a holder of the instrument.

Article 6. Payable on Demand or at Definite Time

6.1 A promise or order is “payable on demand” if it

a. states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder; or
b. does not state any time of payment.

6.2 A promise or order is “payable at a definite time” if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of

a. prepayment,
b. acceleration,
c. extension at the option of the holder, or
d. extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

Article 7. Payable to Bearer or Order

7.1 A promise or order is payable to bearer if it

a. states that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment,
b. does not state a payee, or
c. states that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.

7.2` A promise or order that is not payable to bearer is payable to order if it is payable

a. to the order of an identified person, or
b. to an identified person or order. A promise or order that is payable to order is payable to the identified person.

7.2 An instrument payable to bearer may become payable to an identified person if it is specially indorsed. An instrument payable to an identified person may become payable to bearer if it is indorsed in blank.

Article 8. Identification of person to Whom Instrument is Payable

8.1 The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the name or on behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is that that of the intended person. If more than one person signs in the name or on behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.

8.2 If the signature of the issuer of an instrument is made by automated means, such as a computer or check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

8.3 A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office or account number. For the purpose of determining the holder of an instrument, the following rules apply:

a. If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.
b. A person described as agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative or a successor of the representative.
c. A fund or organization that is not a legal entity, the instrument is payable to a representative of the members or the fund or organization, or
d. An office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or to a successor to the incumbent.

8.4 If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged or enforced by any or all of t hem in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, it is payable to the persons alternatively.

Article 9. Interest

9.1 Unless otherwise provided in the instrument,

a. an instrument is not payable with interest, and
b. interest on an interest-bearing instrument is payable from the date of the instrument.

9.2 Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

Article 10. Date of Instrument

10.1 An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. An instrument payable on demand is not payable before the date of the instrument.

10.2 If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

Article 11. Contradictory Terms of Instrument

11.1 If an instrument contains contradictory terms, typewritten or computer generated terms prevail over printed terms, handwritten terms prevail over others, and words prevail over numbers.

Article 12. Incomplete Instrument

12.1 "Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

12.2 Subject to subsection 12.3, if an incomplete instrument is an instrument under Article 3, it may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under Article 3, but, after completion, the requirements of Article 3 are met, the instrument may be enforced according to its terms as augmented by completion.

12.3 The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

Article 13. Joint and Several Liability; Contribution

13.1 Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, or indorsers who indorse as joint payees are jointly and severally liable in the capacity in which they sign.

13.2 Except by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

13.3 Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection 13.2 of a party having the same joint and several liability to receive contribution from the party discharged.

Article 14. Limitation of Actions [Note! Hilited numbers to be defined by Govt.]

14.1 Except as provided in Subsection 14.5 a legal action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated date.

14.2 Except as provided in Subsection 14.4 or 14.5, if demand for payment is made to the maker of a note payable on demand, a legal action to enforce the obligation of a party to pay the note must be commenced within six years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of ten years.

14.3 Except as provided in Subsection 14.4, an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within three years after dishonor of the draft or ten years after the date of the draft, whichever period expires first.

14.4 An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within three years after demand for payment is made to the acceptor or issuer, as the case may be.

14.5 An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.

14.6 An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced

a. within six years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time, or

c. within six years after the date of the acceptance if the obligation of the acceptor is payable on demand.

Article 15 Territorial Effect

15.1 The form in which the obligations under a negotiable instrument are to be undertaken shall be determined by the laws of the country on whose territory such obligations are to be performed.

15.2 An exception to the paragraph 1 exists if:

a. the obligations under a negotiable instrument are not valid under the laws of the country on whose territory obligations are undertaken, but are valid under the laws of the country where some other obligation is undertaken at a later point in time. In such case, the fact that earlier obligations are incorrect as regards to form shall not influence the validity of any such later obligation;
b. obligations under a negotiable instrument between citizens of Kosovo undertaken abroad, and in accordance with the provisions in this Regulation, are valid even if they are not in accordance with the laws of the country in which they are undertaken. In such case the obligations under the negotiable instrument are valid.

15.3 The form and deadline for protest of a negotiable instrument, as well as the form of all other acts required to the exercise or maintain the rights under a negotiable instrument shall be determined in the laws of the country in which the protest is to be raised or act to be performed.

15.4 The effect of the acceptant's obligation of a drawn negotiable instrument and of the issuer of an own negotiable instrument shall be determined by the laws applicable in the country where the negotiable instrument is payable.

15.5 The effect of the obligations of the other parties liable under a negotiable instrument shall be determined by the laws of the country on whose territory the signatures are placed to witness the acceptance of such obligations.

15.6 The deadlines for exercise of recourse rights with regard to all signatories of a negotiable instrument shall be determined by the laws applicable in the place of the issuance of the negotiable instrument.

15.7 Laws applicable in the place of issuance of the document shall be basis for determining whether a negotiable instrument holder will acquire the rights that were grounds for issuance of the document.

15.8 The laws of the country in which the negotiable instrument of exchange is payable shall apply in case of theft or loss of the negotiable instrument.

Article 16. Rules of Negotiable Instruments

16.1 Obligations under a negotiable instrument may be undertaken by any person able to undertake obligations under an agreement.

16.2 Illiterate persons or a person not able to write may undertake an obligation under a negotiable instrument by placing a hand mark on the negotiable instrument or the attachment to it. The hand mark shall be verified by a Notary public.

16.3 An obligation under a negotiable instrument may be undertaken on behalf of an illiterate person only on the bases of a proxy statement, issued by that person and verified by a Notary Public.

16.4 In the verification procedure, the following shall be recorded:

a. a statement that he/she personally or through witnesses summoned knows the person wishing to undertake an obligation under a negotiable instrument or to issue a proxy;
b. that such person was acquainted with the contents of the statement by which that person undertakes an obligation under a negotiable instrument or issues a proxy;
c. that the person stated in the line 1 of this paragraph confirms that the statement read corresponds to his free will.

16.5 The verification shall have an official reference number, seal and signature of the official.

16.6 The signature of a blind individual on a negotiable instrument shall be regarded valid only if verified by a Notary Public.

16.7 If a negotiable instrument matures on an official holiday, execution of the payment shall be requested on the next working day. All other acts related to a negotiable instrument must be performed on a working day.

16.8 Provided that any of the acts under the negotiable instrument have to be performed by a deadline, the last day of which falls on an official holiday, the deadline shall be extended until the first working day immediately after the expiration of the official holiday. Holidays and non working days falling within the deadline period shall be taken into account when calculating the deadline.

16.9 Days on which a deadline commences shall not be taken into consideration for determination of the legally prescribed deadlines nor for deadlines specified in a negotiable instrument.

Article 17. Criminal Acts

17.1 Any person as well as the accountable person within the legal entity who issues or trades a negotiable instrument with a false content, due to which a damage occurs for one or several debtors, shall be sentenced the imprisonment up to ______ years.

17.2 The circumstances under which the damage occurred and the amount of the damage shall have effect on the determination of the punishment.

Article 18. Final and Transitional Provisions

18.1 This Regulation comes into force on the _____ day from its publication in the "Official Gazette of Kosovo".

Annex II: EXHIBITORS AT THE FINANCE FAIR

Banks	**MFIs**	**Others**	**Stakeholders**
ProCredit Bank	ACP	CBAK	KBA
Raiffeissen Bank	KEP	Kosova Card	AMIK
KasaBank	Kosovo SME Fund	Kujtesa	USAID/KCBS
Economic Bank	Finca	Se-Co Systems	MDA
New Bank of Kosova	Kos-Invest	TNT	
Bank for Business	Start	ITC	
BKT (Albanian)	BZMF	AmCham KSV	
	AFK	Pronet	
	KRK	Expik	
	ASC Union (Alb)	Alfracom	
		FSKP	
		Cacttus	
		SigKos	
		KIPA	
		Ballkan Int.	
		BCC	
		SCAAK	
		BSC	