

Supervisory Order On The Conduct Of Privatization Of The State Capital Of Enterprises In The Brcko District Of BiH

In accordance with paragraphs 37 and 43 of the Final Arbitral Award dated March 5, 1999, providing respectively for the enhancement of the powers of the Supervisor established by the Award and the obligation of the Entities to implement "without delay" any Order issued by the Supervisor in the exercise of his powers;

In furtherance of paragraph 12 of the Annex to the Award dated August 18, 1999, providing for the right of the Brcko District to administer public property and privatize it with the approval of the Supervisor in accordance with the BiH Framework Law on Privatization;

Following the Supervisory Orders on Privatization dated December 4, 1997, and June 26, 1999, and the Consolidating Supervisory Order on Privatization of August 28, 2001, prohibiting privatization in the Brcko District unless authorized by the Supervisor;

Reiterating that as a result of the aforesaid Orders, the Entities' privatization laws and regulations have not applied and continue not to apply in the Brcko District;

Recalling that the Entities have not reached an agreement on the use of certificates and vouchers in the privatization process in the Brcko District and that this has led to deadlock in the Brcko District Assembly over the adoption of the Draft Law on Privatization of the Strategic Enterprises in the Brcko District of Bosnia and Herzegovina;

Considering that privatization is a critical step forward that is urgently needed for the economic development of the Brcko District and that it must be conducted in a way that is transparent and open to everyone to participate;

I hereby Order that:

1. A Privatization Office is established within the Brcko District Government to carry out privatization in the Brcko District. The Head of the Privatization Office shall be appointed by the Supervisor and report directly to the Mayor of the Brcko District. The Government of the Brcko District shall provide all necessary personnel and administrative support to the Privatization Office for the fulfillment of its role.
2. The Privatization Office shall, subject to my final approval, identify the enterprises whose state capital shall be privatized by the Brcko District and issue the rules for the tendering process in accordance with the following principles:
 - I. The value of apartments shall not be included in the capital of the enterprises under privatization by the Brcko District and shall be subject to a separate legal framework for privatization.
 - II. The capital of the enterprises under privatization acquired on the basis of the Law on Social Capital ("Official Gazette of SFRY" No 84/89 and 46/90 and RBiH No 2/92) and the Law on Personal Income ("Official Gazette of SFRY" No 37/90 and 84/90), the so-called Markovic Shares, shall not be subject to privatization.
 - III. Up to sixty seven percent (67 %) of the entire capital of the enterprises under privatization by the Brcko District shall be sold for cash through a tender process. After the capital acquired in paragraph (II) is excluded any remaining capital shall remain the property of the Brcko District until such time as an agreement is reached between the Entities and the Brcko District on the use of vouchers and certificates in the privatization process or a Brcko District Law regulating their use is enacted.

1. The Privatization Office shall adopt any rules and regulations necessary for the completion of the privatization process in accordance with this Order.
2. All directors, members of steering boards and employees of enterprises under privatization by the Brcko District are directed to fully cooperate and comply with all requests or instructions of the Privatization Office for the successful completion of the privatization process.
3. All enterprises under privatization by the Brcko District shall not enter into any agreement or transaction regarding sale, lease, rent, mortgage or purchase of property or equipment, loans, encumbrances, pledges, or similar matters without the explicit and previous authorization of the Privatization Office.
4. A Tender Commission is hereby established to evaluate the results of the tender process and shall be composed of the Head of the Privatization Office, a representative of Deutsche Gesellschaft fuer Technische Zusammenarbeit [GTZ], GmbH, to be appointed by the Supervisor, and the Head of the Department for Urbanism and Economic Development of the Brcko District Government.
5. The Mayor of the Brcko District shall enter into binding contracts for the sale of the capital of the enterprises under privatization on behalf of the Brcko District based on the decision of the Tender Commission. The Privatization Office shall monitor contract compliance.
6. Proceeds gained through privatization shall be used for covering the expenses of the Privatization Office. Remaining proceeds shall be used to finance economic development and employment in the District.
7. This Order shall have immediate effect and shall be published in the Official Gazette of the Brcko District.

Henry L. Clarke
Deputy High Representative
Supervisor of Brcko