Decision Enacting the Law on Amendments and Supplements to the Law on the Register of Enterprises and Entrepreneurs of the Brcko District of Bosnia and Herzegovina

In the exercise of the powers vested in the High Representative by Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina, according to which the High Representative is the final authority in theatre regarding interpretation of the said Agreement on the Civilian Implementation of the Peace Settlement; and considering in particular Article II.1. (d) of the last said Agreement, according to the terms of which the High Representative shall "Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation";

Recalling paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the High Representative's intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid "by making binding decisions, as he judges necessary" on certain issues including (under sub-paragraph (c) thereof) measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities";

Bearingin mind the many statements and declarations of the Peace Implementation Council on the importance of creating the

conditions for the rule of law to prevail in Bosnia and Herzegovina;

Bearingin mind also thatthe international community has identified the widespread and endemic problem of fictitious and fraudulent companies operating throughout BiH and which are being systematically used for unlawful purposes including organized crime, money laundering and tax evasion;

Bearing in mind further that there is cogent evidence that significant public revenues, through tax evasion, are being lost through the systematic and widespread use of these fictitious and fraudulent companies;

Consideringthatin the Agenda for Reform Agreed between the Government of Bosnia and Herzegovina and the International Community, one of the key objectives identified is "…to make government more efficient, secure government revenues and cut government waste by fighting tax and customs fraud and evasion…".

Considering alsomind that at Madrid on 16 December 1998 the Peace Implementation Council set out its concerns as follows: "[t]he Council expresses deep concern about continuing corruption. It welcomes the High Representative's development of a comprehensive anti-corruption strategy … The High Representative will take the lead in co-ordinating International Community efforts aimed at eliminating opportunities for corruption, tax evasion …."

Recognising that unless measures are taken to enable such fictitious and fraudulent companies to be struck-off the court register, such companies (and persons hiding behind the veil of such companies) will continue unabated in undermining the rule of law and consequently giving rise to organized crime, money laundering and tax evasion causing significant loss of revenues to the budget of the Brcko District of Bosnia and Herzegovina;

Having considered and borne in mind the totality of the matters aforesaid, the High Representative hereby issues the following

DECISION

Enacting the Law on Amendments and Supplements to the Law on the Register of Enterprises and Entrepreneurs of the Brcko District of Bosnia and Herzegovina

The said Law shall enter into force as a law of the Brcko District of Bosnia and Herzegovina, with effect from the date provided for in Article 2 thereof, on an interim basis, until such time as the Assembly of the Brcko District of Bosnia and Herzegovina adopts this Law in due form, without amendment and with no conditions attached.

This Decision shall come into force forthwith and shall be published without delay in the Official Gazette of the Brcko District of Bosnia and Herzegovina.

Sarajevo, 6 March 2003

Paddy Ashdown
High Representative

Law on Amendments and Supplements to the Law on Register of Enterprises and Entrepreneurs of the Brcko District

Article 1

In the Law on the Register of Enterprises and Entrepreneurs of the Brcko District of Bosnia and Herzegovina (“Official Gazette of the Brcko District, 9/01 and 10/02) the new Articles 38(a) through to 38(d) shall be inserted after Article 38 and shall read as follows:

"Striking-Off of Subjects of Registration by Special Category of Applicants

Article 38 (a)

1. The provisions of this sub-section shall provide a special procedure for the Striking-Off of subjects of registration from the Court Register for which the grounds set out in Paragraph 3 of this Article apply.

2. This special procedure shall only be available for use by the Special Category of Applicants.

3. Any person falling within the Special Category of Applicants may initiate proceedings for the Striking-Off of a subject of registration from the Court Register ("Striking-Off" Application) on the following grounds:

(a) false documents or false information had been used to secure the Court registration; or

(b) false documents or false information had been used to secure the continued Court registration; or

(c) the subject of registration is being or has been used for organized crime

4. For these purposes, the Special Category of Applicants shall comprise BD Police, BD Customs and Tax Administration.

Article 38(b)

1. Upon receipt of the Striking-Off Application, the Court of Registration shall within 7 days notify the person registered as authorized to represent the subject of registration ("Respondent") of the Striking-Off Application and provide him/her with a copy of the Striking-Off Application and the date of the hearing for the Striking-Off Application.

2. The notice shall be sent to the subject of registration at the address indicated on the Court Register for service of such documents.

3. The Respondent shall file a written answer with the Court of Registration within 7 days of the notice being served.

4. The Striking-Off Application must be heard by the Court of Registration within 4 weeks of the application being formally filed.

5. The Notice served by the Court of Registration shall indicate in a prominent place that the failure to answer and/or attend the hearing of the Striking-Off Application will result in the application be heard and a final decision being issued.

Article 38(c)

1. If within the time limit provided for under the previous Article the Respondent fails to file his answer, the Court of Registration shall within two days of expiry of the set time limit, publish in the Official Gazette of the Brcko District and on the notice board of the Court of Registration the notice and the date scheduled for the hearing of the Striking-Off Application. The Court of Registration shall at the same time by way of public notice in the Official Gazette invite objections by interested parties to the proposed Striking Off.

2. Objections by interested parties provided for in the preceding paragraphs, must be in writing and sent to the Court of Registration with any supporting evidence. For these purposes interested parties shall be (a) creditors; (b) members of the subject of registration; or (c) any directors of the subject of registration.

3. If the required notice has been duly served at the

address recorded for service and published and the Respondent fails to make an appearance at the scheduled hearing, the Court of Registration shall be entitled, in his/her absence, to hear the Striking-Off Application *ex parte* and make a final decision on deletion of the subject of registration from the Court Register. If the objections filed show that the person making the objection has legal cause to oppose the Striking-Off Application the court shall invite such person to participate in the hearing.

4. Where the court has granted the application for the Striking-Off of the subject of registration from the Court register pursuant to Article 38(a) herein, it shall publish or cause to be published in the Official Gazette of the Brcko District and on the notice board of the Court of Registration the Decision of the Striking-Off of the subject of registration from the Court register. The subject of registration will be dissolved when the Registrar publishes a notice to that effect in the Official Gazette (Notice of Dissolution).

Article 38 (d)

1. All other procedures (with the exception of those dealing with appeal including the provisions set out in Chapter III of this Law) that specifically apply to the Striking-Off of subjects of registration from the Court Register on the grounds or circumstances set out in this sub-section shall be null and void and deemed to be without legal effect.

2. The Striking-Off of subjects of registration on the grounds set out in Article 38 (a) – (c) shall neither affect the applicability of other legislation including the Law on Bankruptcy and Liquidation nor adversely affect the rights of third parties against the subjects of registration, founders and/or other responsible persons. The Notice of Dissolution shall only be published (3) months after the grant of the

Striking-Off Application.”

Article 2

These amendments shall be published in the Official Gazette of the Brcko District and shall take effect within eight (8) days of their publication.”