

# Addendum To The 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, and Paragraph 12 of the Annex to the Final Award dated August 18, 1999;

***In furtherance of*** the Supervisory Order on the Conduct of Privatization of the State Capital of Enterprises in the Brcko District of BiH dated September 19, 2001;

***Recalling that*** the Consolidating Supervisory Order on Privatization in the Brcko District of BiH dated August 28, 2001, declares that all actions by either of the Entities relating to the privatization of Brcko District state or socially owned enterprises or other such property located in the Brcko District are and shall remain without any legal effect unless approved by the Supervisor;

***Noting that*** (i) the BiH-wide practice in relation to mortgages or their like granted to secure pre-April 1992 Foreign Debts/Credits (within the meaning of the Law on External Debt of BiH (Official Gazette of BiH 1/97)) is not to pass these encumbrances on to investors during the course of privatization; and (ii) that these encumbrances could make the privatization of potentially viable enterprises in the Brcko District impossible thus causing the forced liquidation of such enterprises;

***Aiming at*** (i) harmonizing the Brcko District's approach with the BiH-wide practice in relation to mortgages granted to

secure pre-April 1992 Foreign Debts/Credits; and (ii) ensuring that potentially viable enterprises are not forced into liquidation because of the presence of these encumbrances on the public registers; and (iii) providing a mechanism for the utilization by the Brcko District Privatization Office of Opening Balance Sheets prepared and audited in accordance with Entity legislation; and (iv) overall to advance the privatization process in the Brcko District by providing the Privatization Office with the legal means required to perform its tasks;

I hereby Order that:

## **Article 1**

### ***Utilization of Entity Balance Sheets***

1. Subject to meeting the conditions set out at Article 2 hereof, the data provided in the Active sub-balances of Opening Balance sheets (within the meaning of the relevant Entity legislation) may, for the purpose of privatizing the enterprises, be used and treated by the Brcko District Privatization Office as relevant and applicable financial data pertaining to these enterprises (the "Data").

## **Article 2**

### ***Satisfying Conditions for using the Data***

2.1. The Data must have been prepared and approved in accordance with the applicable laws, rules, ordinances and regulations of either:

2.1.1. The Republic of Srpska (including its Law on Opening Balance Sheets (RS Official Gazette 24/98), or

2.1.2. The Federation of BiH including its Law on Opening Balance Sheets (Official Gazette of the Federation of BiH 27/97) and Ordinance on the Methodology for Preparation and Making Opening Balance Sheet of Enterprises for Privatization

(Official Gazette of the Federation of BiH 10/98 and 26/98).

2.2. The Brcko District Privatization Office may use the Data to the extent that there are no conflicts with the applicable laws, rules and regulations of the Brcko District.

2.3. The Brcko District Privatization Office, in using the Data, shall ensure that the Active sub-balances of the Opening Balance Sheets have been approved by the relevant authority of either Entity and carry any official stamp, seal or certification that may be required by the relevant Entity legislation.

2.4. The Brcko District Privatization Office shall, in using the Data in the Active sub-balances of the Opening Balance sheets, ensure that the Data do not include any assets (or related liabilities) that are not in the possession or physical control of the Brcko District. If the Data include any assets (or related liabilities) that are neither in the possession nor physical control of the Brcko District, the Brcko District Privatization Office shall ensure that the updated balance sheets (provided for in Article 3 hereof) are revised to exclude such non- Brcko District based assets (or related liabilities).

## **Article 3**

### ***Updated Balance sheet***

3. The Privatization Office of the Brcko District shall cause the Data provided for in the Active sub-balances of the Opening Balance sheets to be updated before the full and complete privatization of the enterprise to which it relates ("Revised Data"). The Revised Data shall reflect all changes in the enterprises' financial position including their assets and liabilities since the date of the approval by the relevant Entity of the Opening Balance Sheets utilized in accordance with Article 1 hereof. The Brcko District Privatization Office shall ensure that in preparing the

Revised Data proper and acceptable accounting principles and standards are applied.

## **Article 4**

### ***Items excluded from privatization***

4. The items in the neutral and passive sub-balances of the Opening Balance sheets of the enterprises shall not be subject to privatization, and in keeping with the provisions of the Law on External Debt of BiH (Official Gazette of BiH 1/97) and the implementing Entity legislation, the Privatization Office shall ensure that the liabilities for Foreign Debts/Credits incurred before March 31, 1992, and liabilities for guarantees given to foreign banks up to March 31, 1992, are passive sub-balances in the Opening Balance Sheets and are not the subject of privatization in the Brcko District.

## **Article 5**

### **Authorization to remove certain mortgages and other encumbrances**

5. All mortgages or their like that were granted to secure the pre-April 1992 Foreign Debts/Credits and which are currently registered against property of Brcko-based public enterprises or public property shall not be the subject of privatization. To facilitate the privatization process and program of these enterprises, these mortgages or their like shall be removed from the Brcko District land books in accordance with the procedures set out in Articles 6 – 9 hereof.

## **Article 6**

### ***Issuance of Direction by Brcko District Privatization Office***

6. If the Brcko District Privatization Office is satisfied that a mortgage or other form of encumbrance

registered against a Brcko-based enterprise which is the subject of privatization, is a mortgage or encumbrance that was granted to secure pre-April 1992 Foreign Debts/Credits, it shall issue to the enterprise to which it relates a Direction to Remove pre-April 1992 Foreign Debts/Credits related mortgage or encumbrance (the "Direction").

## **Article 7**

### ***Content of the Direction and supporting documentation***

7. The Direction shall:
  - 7.1. Cite the basis for issuing the Direction for the removal of the mortgage or encumbrance;
  - 7.2. Carry the official stamp or seal of the Brcko District Privatization Office;
  - 7.3. Be issued in three (3) originals of which the enterprise to which it relates shall be given two originals, and the Brcko District Privatization Office shall retain one original for its files;
  - 7.4. Be signed by the Director of the Privatization Office;
  - 7.5. Identify the mortgage or encumbrance to which it relates (and include details of the mortgage-holder or beneficiary of the mortgage).
  - 7.6. The Direction shall be accompanied by (i) certified extracts of the land register or other public record showing the mortgage; and (ii) the property to which it relates; and (iii) all decisions of the enterprise on the mortgage and the documents showing the amount of debts/credits secured by the mortgage.

## Article 8

### *Duty to ensure that mortgage falls within the scope of this Order*

8. The Brcko District Privatization Office in issuing the Direction shall have a duty to ensure that the mortgages or encumbrances which it directs the removal of (by virtue of this Order) are undisputedly and conclusively mortgages that had been granted to secure pre-April 1992 Foreign Debts/Credits.

## Article 9

### *Application to Court for Removal*

9. Upon issuance of the Direction the enterprise to which it relates shall make an application to the court for the removal of the mortgage or other related encumbrances. In making the application, the enterprise shall produce one original of the Direction to the court along with all other documents that are required by the applicable laws to remove such mortgage or encumbrance.

This Order shall have immediate effect and shall be published in the Brcko District Official Gazette.

*Henry L. Clarke*  
*Deputy High Representative*  
*Supervisor of Brcko*