

# Supervisory Order On The Use Of Vouchers And Certificates In The Brcko District Privatization Process And The Establishment Of A Brcko District Minority Share Fund

*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 Framework Law on Privatization of Enterprises and Banks in Bosnia and Herzegovina (Official Gazette of BiH 14/98) gives the privatizing territory the right to establish the criteria by which BiH natural persons are entitled to Citizens Claims (including vouchers and certificates);

*Recalling also that* by the terms of the Supervisory Order dated September 19, 2001, up to 67% of the entire capital of Brcko District enterprises may be privatized and the remainder capital of such enterprises, after the Markovic Shares are excluded, remain the property of the Brcko District until agreement is reached on the use of vouchers and certificates in the privatization process in the Brcko District;

*Mindful that* the Supervisory Order dated September 19, 2001, envisaged the agreement of the Republic of Srpska and Federation of BiH (the "Entities") on the use of vouchers and

certificates in the privatization process in the Brcko District or the enactment of a Brcko District Law on this;

**Mindful also that** (i) the Brcko District is at an advanced stage of its privatization process; and (ii) that to dated discussions with the Entities have not resulted into any agreement on the use of such vouchers and certificates; and (iii) that legal mechanisms are urgently required to deal with, inter alia, the capital of privatized enterprises reserved for the satisfaction of vouchers and certificate claims;

**Aiming at** (i) complying with the provisions of the Framework Law on Privatization of Enterprises and Banks in Bosnia and Herzegovina with regard to the satisfaction of Citizens Claims and (ii) managing and controlling the remaining share capital in privatized enterprises reserved for the satisfaction of vouchers and certificates claims until final settlement of such claims and (iii) regulating the use of vouchers and certificates in the Brcko District;

I hereby Order that:

## **Article 1**

### ***Creation of Minority Share Fund***

1. A Brcko District Minority Share Fund (the "Fund") is hereby established to manage and control shares or share capital reserved for the satisfaction of vouchers and certificates claims in Brcko District privatized enterprises ("Citizens Claims").

2. The shares or share capital so managed and controlled shall be referred to herein as the Minority Shareholding.

3. The Fund shall not manage and control the Markovic Shares acquired on the basis of the Law on Social Capital (Official Gazette of SFRY 84/89 and 46/90) and the Law on

Personal Income (Official Gazette of SFRY 37.90 and 84/90). Markovic shares are the subject of a separate Order issued on this date.

## Article 2

### *Competencies and Powers of Fund*

1. The Fund shall have the following competencies and powers:

(a) management and control of the Minority Shareholding until such time as the voucher and certificate claims are settled within the meaning of Article 3 herein;

(b) Calling in Vouchers and Certificates within the meaning of Article 8 herein;

(c) Vetting vouchers and certificates called in to determine their eligibility for use in the Brcko District privatization of enterprises process;

(d) Late filing of registration of vouchers and certificates for the class of persons qualifying under Article 9 herein;

(e) issuing Certificates of Recognised Claims to claimants in accordance with the provisions herein;

(f) Conversion (at the appropriate time) of the Citizens Claims by allocating shares (or share capital) or their equivalent in lieu of Citizens Claims;

(g) Settlement of Citizens Claims at the date notified by the Supervisor (or any successor body).

2. Until Settlement of Citizens Claims, the Fund shall exercise all rights and powers pertaining to Minority Shareholding. The exercise of such rights shall be in good faith and exercised for the exclusive benefit of the Brcko District and/or those persons with Certificate of Recognised

Claims. The Fund shall have all ancillary powers that are reasonably necessary to achieve the objectives of this Supervisory Order.

### **Article 3**

#### ***Settlement of Citizens Claims***

1. Citizens Claims shall be considered satisfied and settled when the vouchers and certificates have been converted and a share certificate or its equivalent has been allocated and issued in lieu of the certificate and voucher registered pursuant to the provisions herein ("Settlement of Citizens Claims").

### **Article 4**

#### ***Transfer of Shares or their equivalent to the Fund***

1. No later than 45 days after privatization of an enterprise, the Brcko District Privatization Office shall ensure that all legal steps prescribed by the applicable laws (including the Law on Enterprises (Official Gazette of the Brcko District of Bosnia and Herzegovina 11/01) are taken to:

(a) transfer the Minority Shareholding (by way of shares or share capital) of the privatized enterprise to the Fund and provide the Fund with the relevant share certificates or their equivalent; and

(b) ensure that the records (of the privatized enterprise and the public) show the Fund as the shareholder of the Minority Shareholding.

(c) The court register shall also note the limits on the powers of the Fund by cross-referring to this Supervisory Order.

### **Article 5**

## ***Use of Vouchers***

1. Vouchers issued by the Republic of Srpska in accordance with its applicable laws including the Law on Privatization of State Capital (RS Official Gazette 24/98) and Law on Citizenship of the Republic of Srpska (RS Official Gazette 35/99) and which claimants want to use for enterprises earmarked to be privatized in the Brcko District, shall only be eligible for acceptance and use in the enterprises listed in Annex 1 hereof ("Vouchers List").

2. A person wanting to use a voucher in the manner described in Paragraph 1 above, shall complete and submit to the Fund within the deadline provided for herein, the Application for Use of Voucher.

3. The Fund may reject an Application for Use of Voucher where the Citizens Claim does not qualify for acceptance under these provisions (including the circumstances where the Citizens Claim has not been properly substantiated).

## **Article 6**

### ***Use of Certificates***

1. Certificates issued by the Federation of BiH in accordance with its applicable laws, including Article 27 of Law on Privatization of Enterprises (Official Gazette of the Federation of BiH 27/97) and which claimants want to use for enterprises earmarked to be privatized in the Brcko District, shall only be eligible for acceptance and use in the enterprises listed in Annex 2 hereof ("Certificate List").

2. A person wanting to use a certificate in the manner described in Paragraph 1 above, shall complete within the deadline provided for herein, the Application for Use of Certificate.

3. The Fund may reject an Application for Use of

Certificate where the Citizens Claim does not qualify for acceptance under these provisions or has not been properly substantiated.

## **Article 7**

### ***Publication of Lists***

1. Within 60 days of this Supervisory Order coming into force, the Brcko District Privatization Office shall develop the Voucher and Certificate Lists provided in Articles 5 and 6.

2. The Privatization Office shall publish in the Official Gazette of the Brcko District and cause to be published in newspapers in the Entities and the Brcko District the Voucher and Certificate Lists. The Lists shall be displayed at the premises of the Brcko District Privatization Office at all times at a place accessible to the public.

3. Upon publication these Lists shall be deemed incorporated into this Supervisory Order and shall be known as Annex 1 and 2, respectively.

4. The Privatization Office may update and/or revise, at any time, any of the Lists so published, except that, any such update and/or revision shall be published in the same manner provided for herein and within 30 days of the decision to update and/or revise the Lists. The updated and/or revised list (excepting the Privatization Lists) shall be treated as a modification of this Supervisory Order.

## **Article 8**

### ***Calling in of Vouchers and Certificates***

1. For these purposes "Calling in of Vouchers and Certificates" shall mean the process by which the Fund invites persons with valid and recognised Citizens Claims to document with the Fund in the Brcko District, vouchers and certificates

registered with the Entities and recognised by the Fund as valid for use in the Brcko District Privatization of Enterprises process ("Documentation of Citizens Claims"). The invitations relating to the Documentation of Citizens Claims shall be extended to persons who were issued vouchers and/or certificates by either Entity in accordance with their respective legislation. Vouchers and certificates obtained from other sources shall not be eligible for registration with the Fund. Nothing in the foregoing shall prevent a person from transferring his rights once the claims have been registered with the Fund.

2. Within 60 days of this Supervisory Order coming into full force and effect, the Fund shall publish in the (i) Official Gazette of the Brcko District and (ii) newspapers in the Entities and the Brcko District, an invitation for persons to document their claims to use their vouchers and certificates in Brcko District enterprises earmarked to be privatized.

## **Article 9**

### ***Special Provisions for late Registration of Vouchers and Certificates***

**1.** Within 60 days of this Supervisory Order coming into force, the Fund shall publish in the (i) Official Gazette of the Brcko District; and (ii) the newspapers in the Entities and the Brcko District, an invitation requiring persons to whom these provisions apply, to register their vouchers and certificates for enterprises shown in the Voucher and Certificate Lists. This invitation shall stipulate the deadline for filing the late registration of the claims and shall be extended to persons who (i) had originally been issued vouchers or certificates by either of the Entities and (ii) who can demonstrate that (a) they were resident in the Brcko District (in accordance with Article 11 of the Statute of the Brcko District) at the date of the Supervisory Order dated September 19, 2001, came into full force and effect; and

(b) that in compliance with the terms of the said Supervisory Order, s/he did not register the voucher or certificates in accordance with the relevant Entity legislation.

## **Article 10**

### ***Reduction of Vouchers and Certificates***

1. Where the total vouchers and certificates Called in or Registered with the Fund pursuant to these provisions would represent more than the Minority Shareholding reserved to satisfy such claims, the Fund shall reduce each individual claim proportionately, so that the total vouchers and certificates to be used (by way of investment), in any privatized enterprise, represent no more than thirty-three percent (33%) of the entire capital of the enterprise. This proportion may be less if there are Markovic Shares, within the meaning of the Law on Social Capital (Official Gazette of SFRY 84/89 and 46/90) and the Law on Personal Income (Official Gazette of SFRY 37/90 and 84/90), allotted to those persons lawfully entitled.

## **Article 11**

### ***Procedure for Calling In and Late Registration***

1. Within 60 days of this Supervisory Order coming into full force and effect, the Fund shall open two documentation processes for dealing with the matters herein. The Fund shall (i) Call in the Vouchers and Certificates (within the meaning of Article 8 herein) and (ii) effect Late Registration claims qualifying under Article 9 herein (together "Applications to Use Vouchers and Certificates").

2. In the Applications to Use Vouchers and Certificates in the Brcko District, the Fund shall work with the relevant privatization authorities (including the Privatization Agencies) in the Entities to gather and verify the data relating to Citizens Claims to be documented in accordance



with these provisions.

3. The Fund shall issue to claimants wanting to use their vouchers or certificates for the purposes stated herein its standard forms for Application to Use Vouchers and Certificates.

4. Documentation of Citizens Claims and the filing of Late Registration under Article 9 shall be deemed to be closed 90 days from the date of the public announcement under Paragraph 1 hereof.

5. In the Documentation of Citizens Claims and the filing of Late Registration under Article 9, the Fund shall work with the privatization authorities (including the Privatization Agencies) in the Entities to determine the documents that are necessary in relation to the Documentation of Citizens Claims and the filing of Late Registration.

6. To constitute a valid Application to Use Voucher or Certificate, the claimant must present to the Fund, the documents notified along with appropriate identification. The Fund shall verify these documents with the relevant privatization authorities in the Entities.

7. If the Fund is satisfied that the conditions for accepting the Application for Use of Voucher or Certificate are fulfilled, it shall issue the claimant with a certificate ("Certificate of Recognised Claim").

8. As a minimum, the Certificate of Recognised Claim shall include the name and address of the claimant, the number of vouchers or certificates documented or registered with the Fund, the enterprises for which they are to be invested. The Certificate of Recognised Claim shall be signed by the Director of the Fund and shall bear the stamp and seal of the Fund.

9. The Certificate of Recognised Claim shall represent

the claimant's rights in or over the Fund until the Settlement of Citizens Claims.

10. Upon the Settlement of Citizens Claims all rights of the claimant over the Fund shall be deemed extinguished forthwith.

## **Article 12**

### ***Legal Status of the Fund***

1. The Fund shall be part of the Privatization Office of the Brcko District established in accordance with the Supervisory Order dated September 19, 2001.

2. The Fund shall have a stamp and seal. The stamp and seal shall bear the name "Brcko District Minority Share Fund".

3. The Fund shall be headed by a Director who shall be appointed by the Mayor of the Brcko District.

## **Article 13**

### ***Revocation***

Any provisions in an earlier Supervisory Order, law or other regulation of the Brcko District which are inconsistent with any of the provisions herein shall be deemed to be revoked and superseded by the provisions herein, including Paragraph 2(II), alinea 2, of the Supervisory Order of September 19, 2001, which provides that capital not privatized shall remain the property of the Brcko District "until such time as an agreement is reached between the Entities and Brcko District on the use of vouchers and certificates or a Brcko District Law regulating their use is enacted".

## **Article 14**

### ***Effective Date***

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*