UNITED NATIONS
United Nations Interim
Administration Mission
in Kosovo

UNMIK

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Mission d'Administration
Intérimaire des Nations Unies
au Kosovo

UNMIK/REG/2003/13
09 May 2003

REGULATION NO. 2003/13

ON THE TRANSFORMATION OF THE RIGHT OF USE TO SOCIALLY-OWNED IMMOVABLE PROPERTY

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,

Taking into account UNMIK Regulation No. 2001/9 of 15 May 2001 on a Constitutional Framework for Provisional Self-Government in Kosovo, in particular section 8.1 (q) in conjunction with subsection (r) thereof, and UNMIK Regulation No. 2002/12 of 13 June 2002 on the Establishment of the Kosovo Trust Agency,

Having consulted the Provisional institutions of Self-Government in Kosovo,

Hereby promulgates the following:

Section 1
Definitions

"Agency" means the Kosovo Trust Agency.

"Encumbrance(s)" means any mortgage, charge, pledge, lien, lease, easement, right of acquisition or pre-emption, or any other restriction.

"Holder of a Right" means any legal or natural person or entity properly registered in cadastral records or other court-authenticated title documents as a holder of a right of use with respect to Property or as a possessor of Property.

"Leasehold(s)" means any and all of the rights with respect to Property set out in section 2 below.

"Property" means land, including any structures thereon, and parts thereof, classified as immovable socially-owned property in accordance with the applicable law.

"Regulation No. 2002/12" means UNMIK Regulation No. 2002/12 of 13 June 2002, On the Establishment of the Kosovo Trust Agency.

"Regulation No. 2002/13" means UNMIK Regulation No. 2002/13 of 13 June 2002, On the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters.

"Socially-owned Enterprise" means an enterprise defined as a Socially-Owned Enterprise in Regulation No. 2002/12.

"Term" means a period of ninety-nine years from the date of the present Regulation coming into force.

"Transfer(s)" means sale, donation, bequest or other disposal of the Leasehold.

Section 2
Leasehold

2.1 Subject to the limitations and restrictions set out in the present Regulation, any right of use to Property registered in the name of a Socially-owned Enterprise, which is transferred to a subsidiary corporation of the Socially-owned Enterprise in accordance with section 8 of Regulation No. 2002/12, shall be transformed into a Leasehold. Such Leasehold shall include the right:

(a) to possess and to use the Property subject to the Leasehold for any purpose not prohibited by the applicable law;

(b) to freely effect Transfers of the Property subject to the Leasehold to third parties; and

(c) to establish Encumbrances on the Property subject to the Leasehold to the benefit of third parties.

2.2 An Encumbrance upon a Leasehold shall be enforceable in the same manner as Encumbrances upon ownership rights under the applicable law.

2.3 A Leasehold held by a natural person may be transferred by inheritance, and a Leasehold held by a legal person may be transferred through merger or other succession, by contract or by operation of law.

Section 3
Term and Formalities

3.1 The Leasehold may be exercised for the duration of the Term. A Transfer of or Encumbrance on a Leasehold shall not extend or in any other way affect the duration of the Term.

3.2 Any Transfer of or establishment of an Encumbrance upon a Leasehold must be in writing and must satisfy the registration and procedural requirements for the Transfer of or Encumbrance upon ownership of real property under the applicable law.

Section 4
Illegal Possession

The Holder of a Right shall have right to have any illegal possessors removed from the Property to which it holds a Leasehold and to be compensated for damages caused by an illegal possessor, in accordance with the applicable law protecting owners of real property.

Section 5
Limitations, Restrictions and Fees

5.1 The exercise of any right pursuant to section 2 above shall be subject to the limitations and restrictions set out in the applicable law with respect to the exercise of ownership rights related to real property.

5.2 Municipalities and other governmental organs may levy fees on a Holder of a Right in the same manner and extent as if the holder was the owner of the Property.

Section 6
Registration

A right transformed into a Leasehold pursuant to section 2 as well as Transfers of and Encumbrances on Leaseholds shall be duly registered.

Section 7
Physical Changes

7.1 Physical changes of the Property subject to a Leasehold, including any construction thereon, shall not affect the scope and the conditions of the Leasehold under the present Regulation.

7.2 A Leasehold shall not be affected by physical changes to any building or structure erected on the Property associated with such Leasehold.

Section 8
Underlying Ownership

A Leasehold shall not be affected by any change to the underlying ownership of the Property subject to the Leasehold.

Section 9
Expropriation

A Leasehold or the Property subject to a Leasehold shall not be expropriated except under the same conditions and procedures provided under the applicable law for expropriation of ownership of real property.

Section 10
Entitlement of Employees

10.1 Because of the special status of employees in Socially-owned Enterprises in relation to these Enterprises and the impact that the privatisation will have on this status, such employees shall be entitled to a share of the proceeds from the privatisation on a priority basis. This share shall be 20 per cent of the proceeds from the sale of shares of a subsidiary corporation of a Socially-owned Enterprise that is privatised pursuant to section 8 of Regulation No. 2002/12. The amount shall be distributed for the benefit of eligible employees in accordance with this section.

10.2 The representative body of employees in the Socially-owned Enterprise concerned, in cooperation with the Federation of Independent Trade Unions of Kosovo, shall establish on a non-discriminatory basis and submit to the Agency a list of eligible employees entitled to receive payments pursuant to subsection 10.1. The Agency shall review the list and make such adjustments as it deems necessary to ensure equitable access by all eligible employees to the funds to be distributed.

10.3 The official list of eligible employees issued by the Agency shall be published, together with a notice of the right of complaint pursuant to 10.6, on two consecutive workdays and the following weekend in major Albanian language publications of general circulation in Kosovo and major Serbian language publications.

10.4 For the purpose of this section an employee shall be considered as eligible, if such employee is registered as an employee with the Socially-owned Enterprise at the time of privatisation and is established to have been on the payroll of the enterprise for not less than three years. This requirement shall not preclude employees, who claim that they

would have been so registered and employed, had they not been subjected to discrimination, from submitting a complaint to the Special Chamber pursuant to subsection 10.6.

10.5 The Agency shall place the amount reserved in accordance with subsection 10.1 in a special escrow account for distribution by the Federation of Independent Trade Unions of Kosovo to eligible employees as follows:

(a) 75 per cent of the amount shall be distributed in equal amounts to each eligible employee.

(b) The remaining 25 per cent of the amount shall be distributed to eligible employees in amounts proportionate to the number of months each eligible employee served with the Socially-owned Enterprise.

10.6 Upon application by an aggrieved individual or aggrieved individuals, a complaint regarding the list of eligible employees as determined by the Agency and the distribution of funds from the escrow account provided for in subsection 10.5 shall be subject to review by the Special Chamber, pursuant to section 4.1 (g) of Regulation 2002/13.

(a) The complaint must be filed with the Special Chamber within 20 days after the final publication in the media pursuant to subsection 10.3 of the list of eligible employees by the Agency. The Special Chamber shall consider any complaints on a priority basis and decide on such complaints within 40 days of the date of their submission.

(b) Any complaint filed with the Special Chamber on the grounds of discrimination as reason for being excluded from the list of eligible employees has to be accompanied by documentary evidence of the alleged discrimination.

(c) The full amount of the funds from the escrow account shall in any event be released by the Agency for distribution not later than 60 days after the date of the final publication of the list of eligible employees.

Section 11
Extension of the Term

The Term may be extended by an amendment to the present Regulation.

Section 12
Amendment of Regulation

The present Regulation may be amended, in particular to provide for the transformation of any right of use to Property outside the scope of section 2.1, and to regulate ancillary matters.

Section 13
Applicable Law

The present Regulation shall supersede any provision in the applicable law, which is inconsistent with it, including but not limited to the following:

(a) Law on Basic Property Relations (Official Gazette of SFRY, No.6/80);

(b) Law on Transfer of Real Property (Official Gazette of SAP Kosovo, Nos. 45/81 and 29/86);

(c) Law on Registration of Real Properties in Social Ownership (Official Gazette of SAP Kosovo, Nos. 21/78 and 46/86);

(d) Law on Land for Construction (Official Gazette of SAP Kosovo, Nos. 14/80 and 42/86);

(e) Law on Construction of Facilities for Investment /Commercial Purposes (Official Gazette of SAP of Kosovo, No. 5/86);

(f) Law on Forests (Official Gazette of SAP Kosovo, No. 10/87);

(g) Law on Measurement and Land Cadastre (Official Gazette SAP Kosovo, No. 12/80);

(h) Law on Housing Relations (Official Gazette of SAP Kosovo, Nos.11/83, 29/83, and 42/86);

(i) Law on Co- Ownership of an Apartment (Official Gazette of SAP Kosovo, Nos.43/80 and 22/87);

(j) Law on Construction of Annexes to Buildings and Conversion of Common Premises into Apartments (Official Gazette of SAP Kosovo, No.14/88); and

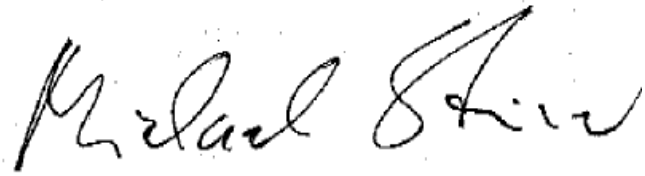
(k) Law on Expropriation (Official Gazette of SAP Kosovo, No.21/78).

Section 14
Implementation

The Special Representative of the Secretary-General may issue administrative directions for the implementation of the present Regulation.

Section 15
Entry into Force

The present Regulation shall enter into force on 09 May 2003.



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