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Kosovo

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REGULATION NO. 2002/13

ON THE ESTABLISHMENT OF A SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON KOSOVO TRUST AGENCY RELATED MATTERS

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 and section 8.1(u) of UNMIK Regulation No. 2001/9 on a Constitutional Framework for Provisional Self-Government in Kosovo,

For the purpose of creating a Special Chamber of the Supreme Court of Kosovo to adjudicate claims relating to the decisions or actions of the Kosovo Trust Agency pursuant to UNMIK Regulation No. 2002/12 of 13 June 2002 on the Establishment of the Kosovo Trust Agency and such other matters as may be referred to it by law,

Hereby promulgates the following:

Section 1

Establishment of a Special Chamber

1.1 A Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (hereafter "Special Chamber") is hereby established.

1.2 The seat of the Special Chamber shall be in Pristina unless the Special Chamber decides to sit elsewhere to hear a particular case.

Section 2
Definitions

For the purposes of the present Regulation:

(a) “Agency” shall mean the Kosovo Trust Agency:

(b) “Applicable Law” shall mean the law applicable in Kosovo pursuant to UNMIK Regulation No. 1999/24 of 2 December 1999, as amended, on the Law Applicable in Kosovo;

(c) “Corporation” shall have the meaning set out in Regulation No. 2002/12;

(d) “Enterprise” shall have the meaning set out in Regulation No. 2002/12;
and

(e) “Regulation No. 2002/12” shall mean UNMIK Regulation No. 2002/12 of 13 June 2002 on the Establishment of the Kosovo Trust Agency.

Words of any gender used in the present regulation shall include any other gender and words in singular number shall be held to include the plural and the plural to include the singular.

Section 3
Composition

3.1 The Special Chamber shall be composed of a panel of five judges of which three shall be international judges and two shall be judges who are residents of Kosovo. Assignment of judges to serve on the Special Chamber shall be made by the Special Representative of the Secretary-General after consultation with the President of the Supreme Court.

3.2 The Special Representative of the Secretary-General shall assign one of the international judges as presiding judge of the Special Chamber.

3.3 In making the assignment of judges who are residents of Kosovo as set out in section 3.1, special account shall be taken of the use of community languages.

3.4 If a judge is unable to discharge his duties, a substitute judge shall be assigned by the Special Representative of the Secretary-General after consultation with the President of the Supreme Court.

Section 4
Jurisdiction

4.1 The Special Chamber shall have primary jurisdiction for claims or counterclaims in relation to the following:

(a) Challenges to decisions or other actions of the Agency undertaken pursuant to Regulation No. 2002/12, including the imposition of fines as provided for in section 27 of Regulation No. 2002/12;

(b) Claims against the Agency for financial losses resulting from decisions or actions undertaken pursuant to its role as an administrator of an Enterprise or Corporation;

(c) Claims, including creditor or ownership claims, brought against an Enterprise or Corporation currently or formerly under the administrative authority of the Agency, where such claims arose during or prior to the time that such Enterprise or Corporation is or was subject to the administrative authority of the Agency;

(d) Claims involving recognition of a right, title or interest in property in the possession or control of an Enterprise or Corporation currently or formerly under the administrative authority of the Agency, where such claims arose during or prior to the time that such Enterprise or Corporation is or was subject to the administrative authority of the Agency;

(e) Enforcement, upon application of the Agency, of the powers of the Agency exercised pursuant to Regulation No. 2002/12;

(f) Claims for rescission of transactions of a Socially-owned Enterprise undergoing a liquidation proceeding, as provided for in section 9.4 of Regulation No. 2002/12; and

(g) Such other matters as may be assigned by law.

4.2 Notwithstanding section 4.1, the Special Chamber may refer specific claims, categories of claims, or parts thereof, to any court having the required subject matter jurisdiction under applicable law. No court in Kosovo shall exercise jurisdiction over a claim involving the subject matter described in section 4.1 unless such claim has been referred to it in accordance with this section.

4.3 A decision of a court to which a matter has been referred by the Special Chamber pursuant to section 4.2 may be appealed only to the Special Chamber, unless

the Special Chamber decides otherwise in accordance with the procedural rules to be promulgated under section 7.

4.4 Nothing in this section shall prejudice the rights of claimants to pursue outside the Special Chamber claims which do not involve the subject matter described in section 4.1.

4.5 Upon application by the Agency, at any time subsequent to the commencement of its administration of an Enterprise or Corporation, the Special Chamber may effect the removal of any action pending in any court in Kosovo to which such Enterprise or Corporation is a party.

Section 5 Claimants and Respondents

5.1 Claimants in proceedings before the Special Chamber shall be limited to:

- (a) Persons who claim ownership or other property rights, creditors and other persons who claim a direct financial interest in the subject matter of the claim;
- (b) The Agency;
- (c) Enterprises or Corporations under the administrative authority of the Agency; and
- (d) Other persons that the Special Chamber deems necessary for the full and complete adjudication of the case before it.

5.2 Respondents in proceedings before the Special Chamber shall be limited to:

- (a) The Agency, in its own behalf, with respect to a claim described in sections 4.1(a) and (b);
- (b) An Enterprise or Corporation, currently or formerly under the administrative authority of the Agency, with respect to a claim described in sections 4.1(c) and (d);
- (c) Persons subject to a claim by the Agency described in sections 4.1(e) and (f); and
- (d) Other persons the Special Chamber deems necessary for the full and complete adjudication of the case before it.

Section 6

Period of Time to File a Claim Challenging Decisions or Actions of the Agency

6.1 A claimant may only submit a claim challenging a decision or action of the Agency within nine (9) months from the later of: (a) the date that such claimant knew or with reasonable diligence should have known of the decision or action of the Agency, or (b) the date on which the Special Chamber gives public notice that it is able to accept claims

6.2 The provisions set out in section 6.1 shall be subject to the claimant having previously given to the agency the notice required pursuant to section 30.2 of UNMIK Regulation No. 2002/12.

6.3 A person sued by the Agency or an Enterprise or Corporation may bring a counterclaim against the Agency or Enterprise or Corporation within the time limits established by Applicable Law. Section 30.2 of Regulation No. 2002/12 shall not apply to such counterclaim.

Section 7

Rules of Procedure before the Special Chamber

The Special Representative of the Secretary-General shall promulgate rules for the conduct of proceedings before the Special Chamber through the issuance of an administrative direction. Such rules shall provide a party with a meaningful opportunity to have his claim adjudicated in an impartial and transparent manner within a reasonable period of time and in accordance with norms established under the European Convention on Human Rights and having regard to generally accepted international standards.

Section 8

Production of Evidence and Conduct of Hearings

8.1. The Special Chamber may order any person in Kosovo to submit documents, give testimony, or otherwise provide relevant information necessary for the adjudication of a case, in accordance with the procedural rules to be promulgated under section 7.

8.2 The Special Chamber may delegate the collection of evidence and/or the conduct of hearings to a panel consisting of no fewer than two of its members, one of whom shall be an international judge. In matters where the amount in controversy does not exceed ten thousand euro (€ 10,000), the Special Chamber may make such

delegation to a single judge. Evidence taken before a panel or a single judge under this paragraph shall be deemed submitted to the Special Chamber.

Section 9
Decisions of the Special Chamber

9.1 The Special Chamber shall render decisions within two months of completion of the proceedings. The deliberations of the Special Chamber shall be private.

9.2 Decisions of the Special Chamber adjudicating a claim under section 4.1, deciding an appeal pursuant to section 4.3 or making a determination under section 4.5 shall require the supporting vote of at least three (3) judges.

9.3 Decisions under section 9.2 shall be in writing and shall

(a) Summarize the factual and procedural background of the proceedings;

(b) indicate the Special Chamber's findings of fact and the reasons in law for its decision; and

(c) state the factual and legal basis of the compensation, if any, to which a prevailing party is entitled in accordance with the provisions in section 10.

9.4 The Special Chamber may issue a decision under section 9.2 without undertaking a hearing to receive testimony and other evidence:

(a) if the claimant has submitted a claim on which no relief can be awarded as a matter of law, assuming the truth of the allegations in the submission of the claimant; or

(b) if, after providing the parties reasonably sufficient time to submit documentary evidence, the Special Chamber determines that no genuine disputes of material fact necessary to decide the case remain.

9.5 A decision under section 9.2 shall be communicated to the parties within thirty (30) days of adoption.

9.6 Decisions under section 9.2 shall be made available to the public.

9.7 A decision adjudicating a claim under section 4.1 or deciding an appeal pursuant to section 4.3 is final and binding on the parties and shall be executed by the appropriate executive authorities in accordance with Applicable Law.

Section 10
Remedies

10.1 The Special Chamber's power to award relief shall be subject to the limitations set out in this section.

10.2 Awards against an Enterprise or Corporation shall be executed only with respect to property owned by the Enterprise or Corporation concerned, including any property of such Enterprise or Corporation that is held in trust by the Agency.

10.3 Awards recognizing a right, title, or interest with respect to particular assets in the ownership, possession, or control of an Enterprise or Corporation shall be executed against such assets only if the Enterprise or Corporation has maintained the right, title, or interest in the assets as of the date the decision awarding the relief was issued. Where such right, title or interest has been transferred pursuant to a decision by the Agency under sections 8 and 9 of Regulation No. 2002/12, the prevailing party shall be entitled to payment of monetary compensation equivalent to the value of the asset, which shall be calculated in accordance with procedural rules of the Special Chamber. A judgment awarding such compensation shall enjoy priority status over unsecured claims against such Enterprise or Corporation.

10.4 Awards against the Agency in its own capacity shall be subject to the provisions of section 18 of Regulation No. 2002/12.

10.5 No party shall be entitled to a remedy that would require the rescission of a transaction or the nullification of a contract entered into by the Agency pursuant to its authority under UNMIK Regulation No.2002/12.

10.6 The Special Chamber may order provisional remedies, in accordance with the procedural rules to be promulgated under section 7.

Section 11
Costs

The Special Chamber shall decide on the allocation of costs of the proceedings, including reasonable attorneys' fees and compensation therefor, incurred in pursuing the claim, in accordance with the procedural rules to be promulgated under section 7.

Section 12
Applicable Law

The present Regulation shall supersede any provision in the Applicable Law that is inconsistent with it.

Section 13
Implementation

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

Section 14
Entry into Force

The present Regulation shall enter into force on 13 June 2002.

Michael Steiner
Special Representative of the Secretary-General