

# The Law on Public Enterprises in the Federation of Bosnia and Herzegovina

(Official Gazette of FBiH 8/05, 81/08 and 22/09)

*The translation of BiH legislation has no legal force and should be used solely for informational purposes. Only legislation published in the Official Gazettes in BiH is legally binding.*

## 1. Subject matter and definitions

### Article 1

This Law shall regulate specific matters concerning the management and operation of public enterprises.

### Article 2

A public enterprise, within the meaning of this Law, shall have legal personality and shall be entered in the Court Register as a business company, which performs public interest activities (in the field of energy, communications, utilities, management of public resources and other public interest activities) or a legal person defined as a public enterprise by a separate regulation.

Public interest activities shall be defined by the municipality, canton and the Federation of Bosnia and Herzegovina within the scope of their respective competences.

### Article 3

Public enterprises referred to in Article 2 of this Law may be organized in the form of a joint-stock company or a limited liability company.

### Article 4

For the purposes of this Law, the following definitions shall apply:

“trade secrets” - includes all information concerning the operations of a public enterprise that might be of use to competitors, such as, for example, manufacturing processes, engineering

and technical plans and drawings, product specifications, client lists, business strategies/plans, and financial, sales and marketing information;

“internal control” – shall mean the organisation of policies and procedures that are used to help ensure that the programmes of a public enterprise in the Federation of Bosnia and Herzegovina achieve their targeted results, that the resources for those programmes are used in consistence with the stated aims of the organization and that the programmes are safeguarded from fraud, non-dedicated spending and mismanagement, and that received information is reliable, obtained in a timely manner, maintained and used for reporting and taking decisions on the programmes;

“procurement procedure” – shall mean the appropriate procedure for awarding contracts to suppliers in accordance with the Public Procurement Law of Bosnia and Herzegovina (Official Gazette of BiH 49/04, 19/05, 52/05, 94/05, 8/06, 24/06 and 70/06);

“connected person” – shall mean all of the employees of a public enterprise, including individuals and representatives appointed by the public enterprise to perform specific activities, all members of the Supervisory Board and the Audit Committee, all public enterprises or individuals that directly or indirectly hold at least 10% of the total vote in the public enterprise;

“responsible person” – shall mean any person entrusted by law or the statute of a public enterprise with the responsibility for a specific activity or task, or any person in relation to whom it may be reasonably said that such responsibilities fall within the scope of the provisions of his/her contract of employment or within the scope of his/her duties in a public enterprise;

“revising” – shall mean the analysing of reports or situations and submitting proposals to the management, within a time limit of 15 days, on relevant written corrective strategies for the purpose of eliminating possible and actual irregularities in violation of the law, and causes of inefficiency, losses and expenses;

“supervising or supervision” – shall mean the detailed and systematic supervising of the performance of any task or duty of a responsible person, or other activities of a public enterprise. The aim of supervision is to identify and report to the competent bodies any possible fraud or other illegal activities, and initiate disciplinary proceedings for sanctioning and dismissing responsible persons that committed an offence in relation to such duties and tasks;

"legal reserves" – shall mean the reserves formed on the basis of shareholder premium (difference between the nominal value and the price of the shares), repurchase of capital (exchanging ordinary shares for priority shares), profit and other sources, the value of which may not be less than 25% of the subscribed capital and the distribution of which is prohibited to the public enterprise the Law on Business Companies (Official Gazette of the Federation of BiH 23/99, 45/00, 2/02, 6/02, 29/03, 68/05 and 91/07);

"statutory reserves" - shall mean the reserves stipulated by the statute on the basis of which the purpose and manner of using reserves in the operations of a limited liability company are established.

## **12. The Management**

### **Article 5**

A public enterprise shall have the following bodies:

- General Meeting of Shareholders,
- Supervisory Board,
- Management Board, as the management bodies of the enterprise, and
- Audit Committee.

### **2.1. General Meeting of Shareholders**

#### **Article 6**

(1) Apart from the decisions specified in the Law on Business Companies (Official Gazette of the Federation of BiH 23/99, 45/00, 2/02, 6/02 and 29/03), the General Meeting shall also take decisions on the following:

- a) the Rules of Procedure or rule books, at the proposal of the Supervisory Board,
- b) the Code of Ethics, at the proposal of the Supervisory Board,
- c) the business plan and the revised business plan in accordance with Article 23 of this Law.

(2) The Shareholders' Meeting shall submit reports on the activities and operations of the public enterprise to the municipal council, cantonal assembly, and the Parliament of the Federation of Bosnia and Herzegovina at least once a year.

### **2.2. Supervisory Board**

#### **Article 7**

Shall be deleted (Official Gazette of the Federation of BiH 81/08)

## **Article 8**

In addition to its competences set forth in the Law on Business Companies, the Supervisory Board shall also be responsible for:

- a) deleted (Official Gazette of the Federation of BiH 81/08);
- b) preparing and submitting proposals of rules of procedure to the General Meeting;
- c) preparing and submitting a proposal of a Code of Ethics to the General Meeting;
- d) selecting candidates for the Audit Committee and putting forward proposals for their appointment to the General Meeting;
- e) reviews the implementing rules on procurement procedures and supervises their application;
- f) provides an opinion to the General Meeting on the Management Board's proposal on profit distribution;
- g) deleted (Official Gazette of the Federation of BiH 81/08);
- h) granting authorisation for the performance of activities that are restricted on the basis of the provisions of this Law;
- i) provides the Managing Director with instructions for implementing recommendations on identified irregularities.

## **Article 9**

(1) The Supervisory Board shall be composed of at least three members.

(2) One position in the Supervisory Board shall belong to the candidate that receives the most votes at the General Meeting, and who was nominated by shareholders that hold at least 5% of shares with a right of vote.

## **Article 10**

(1) The performance of direct supervision over the implementation of certain provisions of Article 19 of this Law may be delegated by the Chairman of the Supervisory Board to one of the members of that body.

(2) In the case referred to in paragraph 1 of this Article, the Chairman of the Supervisory Board shall be jointly responsible for the performance of such a task with the member of the Supervisory Board that was entrusted with that task.

Apart from its competences as set forth in the Law on Business Companies, the Management Board shall also be responsible for:

- a) reporting to the Supervisory Board at the request of the Supervisory Board;
- b) implementing the Code of Ethics;
- c) drafting and supervising the implementation of the business plans;
- d) drafting the implementing rules on procurement procedures and the implementation of the Law on Public Procurement of Bosnia and Herzegovina (Official Gazette of BiH 49/04, 19/05, 52/05, 94/05, 8/06, 24/06 and 70/06);
- e) preparing proposals on the distribution of profits;
- f) hiring and discharging employees in accordance with the procedures set forth in the Rules of Procedure or rule books, and the applicable laws.

### **2.3. The Management**

#### **Article 11**

Apart from its competences as set forth in the Law on Business Companies, the Management Board shall also be responsible for:

- a) reporting to the Supervisory Board at the request of the Supervisory Board;
- b) implementing the Code of Ethics;
- c) drafting and supervising the implementation of the business plans;
- d) drafting the implementing rules on procurement procedures and the implementation of the Law on Public Procurement of Bosnia and Herzegovina (Official Gazette of BiH 49/04, 19/05, 52/05, 94/05, 8/06, 24/06 and 70/06);
- e) preparing proposals on the distribution of profits;
- f) hiring and discharging employees in accordance with the procedures set forth in the Rules of Procedure or rule books, and the applicable laws.

## **Article 12**

The Management Board shall be elected, appointed and discharged in accordance with the procedure set forth in the statute of the public enterprise, on the basis of an open competition, and from among candidates that in view of their managerial skills and experience are best suited to fulfil the operational and business needs of the public enterprise. A person holding office in a political party may not be appointed as a member of the Management Board.

## **Article 13**

(1) The Managing Director and executive directors of a public enterprise shall be subject to the duties, responsibilities and restrictions set forth in this Law and other applicable rules and regulations.

(2) The performance of direct supervision over the implementation of certain provisions of Article 19 of this Law may be delegated by the Managing Director to the Executive Director.

(3) In the case referred to in paragraph 2 of this Article, the Managing Director is jointly responsible with the Executive Director for the performance of such a task.

### **2.4. General duties**

## **Article 14**

### **Conflict of Interest**

(1) Connected persons shall be obliged to avoid actual or apparent conflict of interest with a public enterprise in personal or professional relations.

(2) Conflict of interest arises when the personal or professional interests of a connected person prevent or possibly may prevent either the interests or the operation of a public enterprise or the ability of the connected person to fulfil his/her duties and responsibilities.

(3) A connected person shall be obliged to allow the Management Board or the Supervisory Board or some other supervisory body insight into all of the transactions or relations that the connected person reasonably expects could lead to actual or apparent conflict of interest with the public enterprise.

(4) A public enterprise, in conducting its operations, must not offer connected persons more favourable terms and conditions than those that it offers to other persons that are not connected to the public enterprise. Within the meaning of the provisions of this paragraph, the following persons shall be deemed connected persons:

- a) members of the close family of connected persons up to the third-degree blood relatives or relatives-in-law, or persons living in the same household as a connected person;
- b) legal persons that have the right of vote in a public enterprise;
- c) legal persons in which a public enterprise holds a share of at least 10% of the total vote;
- d) legal persons in which a public enterprise holds at least 10% of the shares with voting power;
- e) legal persons in which connected persons or members of their close family are members of the Supervisory Board or the Management Board.

(5) The prohibition specified in paragraph (4) of this Article shall not apply to business conducted between a public enterprise and companies with which the public enterprise, on the basis of a signed agreement on conducting business, has consolidated business operations.

(6) If any connected person has knowledge, or should have knowledge that another connected person has acted in violation of the provisions of this Article, he/she must report the matter to the management and the Supervisory Board or some other supervisory body, as well as the other competent bodies.

(7) A connected person is prohibited from disclosing the trade secrets of a public enterprise.

## **Article 15**

### **Professional abilities and conscientious conduct**

The connected persons of a public enterprise shall be obliged to perform their functions, fulfil their responsibilities with due attention, and in a professional and conscientious manner.

## **Article 16**

### **Safeguarding the property of the public enterprise**

In performing their responsibilities and duties, the Supervisory Board and the Management Board shall be obliged to encourage responsible use and control of the property and resources of the public enterprise.

## **Article 17**

### **Acting in accordance with the laws, regulations and guidelines**

(1) In performing their responsibilities and duties, the Supervisory Board and the Management Board shall be obliged to actively take part in monitoring the implementation of applicable laws, rule books and other regulations in the public enterprise.

(2) The Supervisory Board and the Management Board shall have the duty to take action within the public enterprise to promote ethical conduct and encourage employees to report the illegal or unethical conduct of individuals employed in the enterprise.

## **Article 18**

### **Reporting illegal conduct**

If any connected person discovers any information that it considers evidence of a material violation of the laws, rule books, guidelines or regulations applicable to the public enterprise, he/she shall be obliged to pass on such information to the Supervisory Board, the General Meeting, the Managing Director and other competent bodies.

### **3. Procedures (internal control)**

## **Article 19**

(1) The Supervisory Board shall have the duty and responsibility to ensure:

a) the adoption of one or more rules of procedure establishing the operational and functional aspects of the work of the Supervisory Board and the Management Board in accordance with the Law on Business Companies and this Law, the Statute and the Code of Ethics;

b) that the rules of procedure are reviewed before adoption and that the legality of the Rules of Procedure is assessed by qualified legal professionals;

c) that the official documents of the public enterprise contain detailed provisions on disciplinary proceedings and fair procedures for the dismissal of responsible persons;

d) that the official documents of the public enterprise contain provisions on complete expulsion from employment in the public enterprise for a minimum period of two years for persons dismissed from employment in the manner provided in this Law, including the duty of the Management Board to keep adequate staff records for such purpose;

e) establishing incentive measures for the purposes of improvement and evaluation within the public enterprise.

(2) The Management Board and the Supervisory Board shall have the duty and responsibility to strictly adhere to the Rules of Procedure and other official documents and consistently apply the law.

## **Article 20**

### **Code of Ethics**

(1) The Supervisory Board shall have the duty and responsibility to, in cooperation with the Audit Committee, draft the Code of Ethics.

(2) The Code of Ethics shall contain, as the necessary minimum, the following compulsory provisions:

a) prohibitions regarding conflict of interest, pursuant to Article 14 of this Law;

b) prohibitions on disclosure of trade secrets, pursuant to paragraph 4 of Article 14 of this Law;

c) prohibitions regarding competition, pursuant to Articles 34 and 35 of the Law on Business Companies;

d) prohibitions regarding credits, pursuant to Article 41 of this Law;

e) a statement stipulating the duties set out in Articles 15, 16, 17 and 18 of this Law.

(3) The Supervisory Board may not transfer its competence, referred to in paragraph 2 of this Article, to some other body.

## **Article 21**

(1) The Management Board shall have the duty and responsibility for:

a) the consistent implementation of the Code of Ethics within the public enterprise;

b) ensuring that all responsible persons act in accordance with the Code of Ethics, and it shall do so by conducting disciplinary proceedings against persons that violate the Code.

(2) The Management Board may delegate any of the above referred to duties to one or more of its members, with the unanimous written consent of the Supervisory Board, however the Management Board shall remain responsible for the performance of each and every of the delegated duties.

## **Article 22**

### **Business Plan**

Using the International Accounting Standards, which govern these issues, the Management Board of the public enterprise shall develop and monitor the realisation of the three-year business plan of the public enterprise. After the public enterprise adopts a Business Plan, the Head of the Internal Audit Department shall submit the Plan to the Auditor-General, while the Managing Director of the public enterprise shall present the Plan to the ministry competent for public enterprises, and the competent municipal administrative body.

## **Article 23**

The Business Plan provided for in Article 22 of this Law shall contain all of the elements that ordinarily form a part of such plans, and in particular the following:

- a) expected revenue and expenditure;
- b) capital expenditures proposed for the period covered by the Business Plan;
- c) proposed sources of funding for the above referred to capital expenditures, and other business targets;
- d) all loans planned to be taken out during the period covered by the Business Plan;
- e) proposal of guarantees that should be issued as insurance for such credits;
- f) proposals for the establishing or purchase of new enterprises or businesses (either in part or whole) or the sale of any subsidiaries of the public enterprise, and the employment of new staff, as well as the expenditure required for such activities;
- g) proposals for the use and distribution of profits in the period covered by the Business Plan;

h) the revenue and expenditure plan must reflect the planned activities of the public enterprise.

#### **Article 24**

(1) During the period it covers, the Business Plan shall serve as the basis for all of the business activities of the public enterprise in respect of the elements it contains.

(2) Notwithstanding the provisions of paragraph 1 of this Article, the Management Board shall review the Business Plan on an annual basis, and if required, and in compliance with the aims of the Business Plan, it shall revise and harmonise the Business Plan in order to adapt it to the commercial market movements.

#### **Article 25**

##### **International Accounting Standards – International Standards on Auditing**

(1) The Supervisory Board shall be responsible for organising the making of accurate and reliable accounting records and financial reports, drafted in accordance with the Law on Accounting and Auditing in the Federation of Bosnia and Herzegovina, which indicate the financial position of the public enterprise, and to which access shall be provided for all persons with a legitimate interest regarding the operations of the public enterprise.

(2) The obligation set forth in paragraph 1 of this Article may not be delegated by the Supervisory Board to some other body.

#### **Article 26**

##### **The Audit Committee**

(1) The Supervisory Board shall be responsible for:

- proposing the composition of the Audit Committee to the General Meeting, upon selecting candidates by majority vote, on the basis of an open competition, and therewith selecting the candidates most qualified for the position;

- supervising the management in the application of the recommendations made by the Audit Committee and external auditor within the set time limits.

(2) The obligation set out in paragraph 1 of this Article may not be delegated by the Supervisory Board to some other body.

## **Article 27**

(1) Pursuant to the Law on Ministerial, Government and other Appointments the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of BiH 12/03 and 34/03) the Auditor-General shall have the right to appoint a person to the position of Head of the Internal Audit Department, who shall also be a member of the Audit Committee, but shall not have the right of vote in this body.

(2) An Internal Audit Department shall be established in public enterprises that employ over 100 employees, while in enterprises with less than 100 employees an Audit Committee shall be established and the services of an independent auditor shall be engaged, who shall post the annual audit report on the public enterprise on the web site of the public enterprise or that of its majority owner.

(3) The public enterprise shall bear the costs of appointing the Head of the Internal Audit Department.

(4) The Head of the Internal Audit Department appointed by the Auditor-General may not be removed from office by the bodies of a public enterprise without obtaining beforehand the written permission of the Auditor-General.

(5) Following the dismissal of the Head of the Internal Audit Department, the Auditor-General shall have the right to appoint a new Head of the Internal Audit Department pursuant to paragraph 1 of this Article.

(6) The Audit Committee shall have the duty to notify the Auditor-General, within 30 days, of the resignation or dismissal of a Head of the Internal Audit Department appointed by the Auditor-General.

## **Article 28**

The Audit Committee shall be obliged to:

- a) appoint an external auditor;
- b) appoint the Head of the Internal Audit Department through an open competition for the selection of the technically best qualified candidate, provided that within 30 days from the day the Auditor-General received notification in accordance with paragraph 5 of Article 27 of this Law, the Audit Office for the Institutions of the Federation of Bosnia and Herzegovina does not inform the public enterprise of its intention to conduct such an appointment;
- c) review the annual risk management strategy and the audit plan, which shall contain particulars concerning the areas of risk and planned audits, and ensure that any reported issues are promptly and appropriately resolved;
- d) review the previously referred to annual risk management strategy and the audit plan, and reach an agreement with the Auditor-General on the issue of processing, only in cases when the Auditor-General appointed the Head of the Internal Audit Department of the public enterprise;
- e) ensure that the Internal Audit Department performs its tasks in accordance with the audit plan;
- f) ensure that the internal controls in place in the public enterprise are adequate and function as planned;
- g) submit monthly summary reports on its meetings to the Supervisory Board each month;
- h) consult with the Auditor-General on matters regarding the independent auditing organization or professional expert group that performs the internal professional skills-assessment of the Internal Audit Department every two-three years;
- i) ensure that the Internal Audit Department fulfils its obligations pursuant to the international standards on auditing.

## **Article 29**

The Management Board shall have the duty and responsibility to apply the recommendations of the Audit Committee within the time limits set for their implementation by the Audit Committee. The Management Board may delegate that duty to one of its members, but shall remain responsible for its fulfilment.

## **Article 30**

### **Internal Audit Department**

In accordance with the provisions of this Law, the Head of the Internal Audit Department shall have the responsibility and duty to establish an Internal Audit Department of an adequate size, as necessary for it to adequately perform its duties set out in Article 32 of this Law, and shall be solely responsible for appointing and managing the persons employed in that Department.

## **Article 31**

(1) The Management Board shall have the duty and responsibility to:

- a) provide adequate premises, with the aim of enabling the Internal Audit Department to function and perform its tasks unhindered;
- b) ensure, without exceptions, that the Internal Audit Department has full and complete insight into all of the records of the public enterprise necessary for it to perform its tasks.

(2) The Management Board may delegate this duty to one of its members; however it shall remain responsible for its fulfilment.

## **Article 32**

(1) The Internal Audit Department shall be responsible for:

- a) submitting an annual risk analysis and audit plan to the Audit Committee, containing a detailed presentation of the areas of risk and the planned audits;
- b) submitting a report on the performed audits and putting forward recommendations to the Audit Committee, by way of the Head of the Internal Audit Department;
- c) performing its duties in full accordance with the international standards on auditing.

(2) The Internal Audit Department may not delegate this duty to some other body.

### **Article 33**

(1) The entire staff of the Internal Audit Department shall be employees of the public enterprise.

(2) The Head of the Internal Audit Department may not be an employee of the public enterprise, however he/she shall be compensated accordingly by the public enterprise for the services he/she provides to the enterprise in accordance with the relevant rates, provided that such rates may be obtained from the Office of the Auditor-General or the ministry competent for the public enterprise.

### **Article 34**

#### **Procurement**

The suitable procurement procedures followed in the public enterprise shall be carried out with strict adherence to the provisions of the Law on Public Procurement of Bosnia and Herzegovina (Official Gazette of BiH 49/04, 19/05, 52/05, 94/05, 8/06, 24/06 and 70/06). The Management Board and the Supervisory Board of the public enterprise shall have the duty to implement the provisions of the applicable rules and regulations on procurement.

### **Article 35**

(1) The Management Board shall be responsible for:

- a) adopting an implementing regulation on procurement that shall govern the procurement procedure of the public enterprise in accordance with the applicable rules and regulations on procurement;
- b) supervising the employees of the public enterprise in implementing the applicable rules and regulations on procurement, and the provisions of the implementing regulation on procurement in the public enterprise;
- c) submitting reports on procurement to the Audit Committee no later than 15 days, and to the Supervisory Board no later than 30 days from the day the procurement contract is concluded.

(2) The Management Board may delegate any of the above-listed duties to one its members, with the unanimous written consent of the Supervisory Board, however the Management Board shall remain responsible for supervising each and every of those duties.

### **Article 36**

(1) Regarding the procurement procedure, the Supervisory Board shall be obliged to:

- a) review the implementing regulation on procurement procedures in terms of its compatibility with the applicable rules and regulations on procurement;
- b) supervise the work of the Management Board and employees of the public enterprise in respect of the application of the implementing regulation on procurement procedure and the applicable rules and regulations on procurement;
- c) review reports on procurement and report any possible fraud and misuses to the competent bodies.

(2) The Supervisory Board may not delegate any of its powers listed in this Article to a different body.

### **Article 37**

#### **Distribution of profits**

Each fiscal year, the Management Board of the public enterprise shall, on the basis of the amount of net profit, as determined and stated in its revised financial statement prepared in accordance with the Law on Accounting and Auditing in the Federation of Bosnia and Herzegovina, propose an amount, provided that the necessary conditions exist, that could be distributed as profits or interim dividends for the current fiscal year.

### **Article 38**

When deciding on the amount that may be distributed as profits, the Management Board shall take into account the recommendations made by the Audit Committee and the overall financial obligations of the public enterprise in the fiscal year that the distribution pertains to,

including the amount of net profit required by the public enterprise for that fiscal year for the realisation of any of the activities listed in the Business Plan of the public enterprise, as well as the amount of capital expenditures and other investments necessary for the proper maintenance and growth of the public enterprise.

### **Article 39**

The Management Board shall be prohibited from:

a) allocating to reserves any amounts greater than one-half of the net profit available for distribution,

### **Article 40**

Decisions on the distribution of profits/dividends shall be taken by the General Meeting at the reasoned proposal of the Management Board, taking into account the opinion of the Audit Committee i the Supervisory Board obtained beforehand.

### **Article 41**

#### **Prohibited activities**

A public enterprise shall be strictly prohibited from performing the following activities:

a) granting credits or loans to employees of a public enterprise or third persons, and providing guarantees or insurance for credit purposes, except during the restructuring process when a public enterprise may make an investment or grant a loan to a business company only on the basis of a decision of the General Meeting of the Shareholders of the public enterprise;

b) making donations contrary to the provisions of the applicable laws on the allocation of funds or donations;

c) payment of salaries to employees on any waiting lists;

d) payment of salaries to employees without paying contributions and taxes pursuant to the provisions of the applicable laws and regulations;

e) any persons that prepared a call for tenders may not participate in the procurement procedure in the capacity of a provider of goods or services;

f) making amendments to any procurement contracts that have already been signed, unless the amendments are made in accordance with the applicable procurement laws;

- g) accepting payments in money substitutes, in kind, or cash equivalents;
- h) investing using the short-term sources of funds of the public enterprise, except in the case of approved investments, pursuant to the definition provided in the applicable laws regulating that subject;
- i) concluding an agreement concerning the handling of funds in a total amount exceeding BAM 10 000.00, without the signatures of the Managing Director and responsible member of the Management Board;
- j) renewing or making substantive amendments to the existing loans granted to connected persons or third persons.

## **Article 42**

### **Restricted activities**

A public enterprise may undertake the following activities only with the written consent of the Supervisory Board:

- a) settling debts owed to a creditor of the public enterprise by paying a third person (assignment of debt agreement);
- b) settling debts owed to a party with the debts of that party, which as a result is then at the same time both the creditor and debtor of the public enterprise (ordinary compensation agreement);
- c) participate in an arrangement on the multiple settlement of debts between multiple parties, regardless of whether the arrangement is organised by the government or a different body (agreements on multilateral or multiparty compensation);
- d) settling debts owed to the public enterprise in the event the debtor is making payments to the creditor of the public enterprise;
- e) write-off debts;
- f) conclude an agreement on the settlement of debt owed to the public enterprise, under more favourable terms and conditions, which are set by the Government of the Federation of Bosnia and Herzegovina.

## **4. Penalties and sanctions**

### **Article 43**

#### **Lawsuits filed by shareholders and other persons**

A lawsuit, pursuant to Article 258 of the Law on Business Companies, may also be filed by the competent regulatory body.

### **Article 44**

(1) The reasons for dismissing a responsible person in a public enterprise by summary procedure, are as follows:

- a) failure to fulfil responsibilities in accordance with the applicable laws;
- b) award of a procurement contract in violation of the applicable law on procurement;
- c) involvement in conflict of interest;
- d) involvement in activities prohibited by this Law;
- e) failure to submit request for relevant approval of activities restricted by this Law;
- f) knowingly or unwittingly granting permission for the performance of a restricted activity as a result of which the enterprise incurred material damage;
- g) committing a criminal or other illegal act as a result of which the enterprise suffers material damage.

(2) In the event any of the members of the Supervisory Board carry out any of the activities referred to in paragraph 1 of this Article, a proposal for their dismissal shall be submitted to the General Meeting.

## **Article 45**

(1) The Management Board shall have the duty and responsibility to ensure that:

- a) a discharged employee shall be prevented from re-entering the official premises of the public enterprise following the date of termination of employment;
- b) the public enterprise is prohibited from rehiring any person dismissed for any reason for a period not less than two years following the dismissal;
- c) relevant records are kept on employees, including detailed information on the dismissal of the above referred to persons covering a two year period;
- d) as of the moment the above referred to dismissed persons committed a violation of their work duties, no payment of any compensation shall be made in cash, substitute money or in kind.

(2) The Management Board may delegate any of its duties, set out in this Article, to one of its members, but shall remain responsible for the performance of all of those duties.

## **Article 46**

An employee of a public enterprise may be dismissed only upon the conclusion of disciplinary proceedings, provided for in the relevant book of rules or rules of procedure, unless he/she is dismissed by summary procedure.

## **Article 47**

### **Penalty provisions**

(1) A legal person shall be fined not less than BAM 5 000.00 nor more than BAM 15 000.00 for committing an economic offence in the event:

- a) of failure to adopt the Rules of Procedure, Statute and Code of Ethics of the enterprise within the set time limit, pursuant to the provisions of Article 19, paragraph 1(a) or Article 20, paragraph 1, or failure to adopt the rule books or failure to include the particulars set out in Article 20 paragraph 2 of this Law in the rule books;
- b) of failure to dismiss a person that should have been dismissed in accordance with Article 46;

c) the Code of Ethics has not been drafted and implemented in the manner set forth in Article 20;

d) a three-year business plan has not been adopted and submitted to the competent bodies in compliance with Article 22;

e) the business plan referred to in the previous item does not contain the elements specified in Article 23;

f) of failure to perform business activities in accordance with the provisions of Article 24;

g) the business plan is not considered on an annual basis nor revised in accordance with Article 24;

h) of failure to appoint members of the Audit Committee in compliance with Articles 26 and 27;

i) of failure to appoint the Head of the Internal Audit Department in compliance with Article 27.

(2) The responsible person in the legal person shall be fined in an amount not less than BAM 500.00 nor more than BAM 1 500.00 for the commission of an economic offence referred to in the previous paragraph.

## **Article 48**

(1) A legal person shall be fined not less than BAM 5 000.00 nor more than BAM 10 000.00 for committing an economic offence if:

a) the Supervisory Board fails to fulfil its duties and responsibilities in accordance with Article 25;

b) the Management Board fails to fulfil its duties and responsibilities in accordance with Article 35;

c) the Managing Director fails to fulfil his/her duties and responsibilities in accordance with Article 13.

(2) The responsible person in the legal person shall be fined in an amount no greater than BAM 1 000.00 for the commission of an economic offence referred to in the previous paragraph.

## **Article 49**

(1) A legal person shall be fined not less than BAM 13 000.00 nor more than BAM 17 000.00 for committing an offence in the event:

- a) the procurement procedure is not being carried out in accordance with the applicable procurement laws, as provided in Article 34;
- b) the Management Board is not fulfilling its duties pursuant to Article 31 or Article 35;
- c) the Audit Committee is not fulfilling its obligations pursuant to Article 30;
- d) the Management Board passes a decision on the distribution of dividends/profits in violation of Articles 37, 38 or 39;
- e) a connected person is offered favourable conditions in violation of Article 14;
- f) activities prohibited by Article 41 are performed;
- g) activities restricted pursuant to Article 42, are performed without adequate written permission.

(2) The responsible person in the legal person shall be fined in an amount no greater than BAM 1 700.00 for the commission of an offence referred to in the previous paragraph.

## **Article 50**

A responsible person shall be fined in an amount no greater than BAM 1 700.00 for an offence in the event:

- a) he/she enters into an actual or apparent conflict of interest with the public enterprise (Article 14, paragraph 1);
- b) a trade secret is disclosed to a third party, in violation of the provisions of Article 14, paragraph 6.;
- c) he/she fails to provide the Supervisory Board or other supervisory body with access to information, as provided for in Article 18.

## **5. Transitional and final provisions**

## **Article 51**

(1) The Law on Business Companies (Official Gazette of the Federation of BiH 23/99, 45/00, 2/02, 6/02 and 29/03) shall apply to matters not covered by this Law.

(2) In the event of a conflict between certain provisions of this Law and those of the Law on Business Companies and its Amendments, the provisions of this Law shall take precedence.

(3) On the date of entry into force of this Law, the Law on Public Enterprises (Official Gazette of BiH 4/92, 21/92 and 13/94) shall cease to apply.

## **Article 52**

(1) The Auditor-General shall, within a period of three months from the date of entry into force of this Law, notify the public enterprises in which he/she intends to appoint a Head of the Internal Audit Department.

(2) The Auditor-General shall carry out the above-mentioned appointments in accordance with paragraph 1 of this Article, and no later than four months from the date of entry into force of this Law.

(3) Should the Auditor-General fail to carry out the previously referred to appointments in accordance with paragraph 2 of this Article, the appointments shall be made by the Audit Committee, pursuant to Article 28(b).

## **Article 53**

The Model Code of Ethics and Model Statute for public enterprises shall be published simultaneously with the publication of this Law in the Official Gazette of the Federation of BiH.