

# **Law on Public Enterprises of Brčko District of Bosnia and Herzegovina**

*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**

### **Article 1**

This Law shall regulate the operation and management of public enterprises, bodies of public enterprise, the rights, duties and responsibilities of the founders of public enterprises, sources and manner of funding, business plans of public enterprises, the termination of a public enterprise and other issues relevant to the work of public enterprises.

### **Article 2**

(1) A public enterprise, within the meaning of this Law, is an enterprise that performs common interest activities in the field of energy, utilities and other activities defined as such by the Assembly of the Brčko District of BiH.

(2) A public enterprise may perform other activities in the manner and under the conditions that apply to common interest activities.

### **Article 3**

#### **(Founder of public enterprises)**

(1) Public enterprises shall be established by the Brčko District of BiH.

(2) The rights of the Founder, referred to in paragraph 1 of this Article, shall be exercised by the Assembly of the Brčko District of BiH.

## **Article 4**

### **(Public enterprise name)**

(1) The name and abbreviated name of a public enterprise must include the designation «JP» (public enterprise).

(2) Provisions of the Law on Companies of Brčko District of BiH (Official Gazette of Brčko District of BiH 11/01, 10/02 1/03, 8/03 and 4/04) pertaining to the name of an enterprise shall also apply to public enterprises.

## **Article 5**

A public enterprise shall be organized in the form of a limited liability company.

## **Article 6**

### **(Entry into Court Register)**

Public enterprises shall be entered into the register of the competent court

## **Article 7**

### **(Founding Act)**

The Founding Act of the public enterprise shall contain:

- a) The name and the address of the registered head office of the Founder,
- b) The name and the address of the registered head office of the public enterprise and the activities it is registered to perform,
- c) the rights, obligations and responsibilities of the Founder,
- d) the rights, obligations and responsibilities of the public enterprise,
- e) provisions on the subscribed capital of the public enterprise,
- f) provisions on the sources and manner of funding of the public enterprise,

- g) provisions on the method of profit distribution and coverage of losses,
- h) other provisions relevant to the work of the public enterprise and the performance of common interest activities.

### **Article 8**

#### **(Accountability of the Founder and the public enterprise)**

(1) A public enterprise shall be accountable for its obligations with respect to all of its property

(2) The Founder shall be accountable for the obligations of the public enterprise, except for the amount of his/her shares.

### **Article 9**

#### **(Establishing other legal persons)**

A public enterprise may establish another legal person, with the consent of the Founder.

## **PART TWO**

### **CHAPTER I. THE BODIES OF A PUBLIC ENTERPRISE**

Section A. Board of Directors

Section B. Managing Director

## **Article 10**

### **(Administrative Body)**

- (1) The Board of Directors shall be the administrative body of a public enterprise
- (2) The Board of Directors shall regulate its work through its Rules of Procedure

## **Article 11**

### **(Composition and number of members of the Board of Directors)**

- (1) The composition of the Board of Directors shall be determined in the public enterprise's founding act.
- (2) The Board of Directors of a public enterprise shall have a total of five members.
- (3) Two of the members of the Board of Directors may be appointed from among civil servants that are employed in any of the administrative bodies of the District.

## **Article 12**

### **(Conditions of appointment for Board of Directors members)**

- (1) The following may not be a member of the Board of Directors:
  - a) The Managing Director of the public enterprise,
  - b) Persons that are members of the board of directors of other public enterprises,
  - c) The Managing Director of another company that was founded or is owned by a public enterprise,
  - d) Persons either convicted of or being prosecuted for a criminal offence, not including traffic offences.

### **Article 13**

#### **(Term of office of the Board of Directors)**

The Board of Directors shall be appointed to a four-year term, and shall be eligible for reappointment; however no person may be appointed as a member more than twice in succession.

### **Article 14**

1 ) In addition to its competences derived from other provisions of this Law, the Board of Directors of a public enterprise shall have the competence to, with the consent of the Founder, decide on the following:

- a) Adopt the Statute of the public enterprise,
- b) Adopt the Annual Business Plan,
- c) Adopt plans for the mid-term and long-term development of the public enterprise,
- d) Decide on changes to the status of the public enterprise (division, merger and acquisition),
- e) Decide on increasing or decreasing the capital of the public enterprise,
- f) Decide on the internal organizational structure of the public enterprise,
- g) Select and approve contracts signed with external auditors,
- h) Adopts the annual statement of accounts prepared by the Managing Director, and forwards it to the District Assembly for adoption

(2) The Board of Directors of a public enterprise also decides on other matters within its competence pursuant to the law, founding act and Statute of the public enterprise

(3) The Board of Directors submits proposals to the Founder concerning granting the consent referred to in paragraph 1 of this Article.

## **Article 15**

### **(Quorum at the sessions of the Board of Directors)**

The decisions of the Board of Directors shall be final and valid if more than half of the total number of members of the Board of Directors were present during the vote.

## **Article 16**

### **(Decision-making process of the Board of Directors)**

The Board of Directors shall adopt decisions by a majority vote of all of the members of the Board of Directors

## **Article 17**

### **(Dismissing the Board of Directors)**

(1) The Founder may dismiss the members of the Board of Directors before the expiry of the period to which they were appointed in the following cases:

- a) at the request of the member,
- b) if a member ceases to fulfil the requirements for being a member of the Board,
- c) if a member fails to perform his/her responsibilities and duties in accordance with the law, the Founding Act and Statute of the public enterprise, as well as other applicable rules and regulations.

## **Article 18**

### **(Accountability of the Board of Directors)**

The Board of Directors shall be accountable for its work to the Founder of the public enterprise.

**Section B.**  
**Managing Director**

**Article 19**

The Managing Director shall be the body responsible for organizing the work and managing the operations of a public enterprise

**Article 20**

**(Appointing a Managing Director)**

(1) The Managing Director shall be appointed by the Board of Directors, by way of an open competition, in accordance with the conditions provided by law, the Founding Act and the Statute of the public enterprise, and other official documents of the public enterprise.

(2) When conducting the procedure for the appointment of a Managing Director, the Board of Directors shall:

- a) announce an open competition and advertise a vacancy notice for the position of Managing Director,
- b) select candidates,
- c) schedule interviews i.e. written examinations,
- d) evaluate the professional abilities of the candidates through:
  1. interviews,
  2. written examinations or setting practical work prior to the interview on occasions when it assesses that it is necessary for the selected candidates to demonstrate their knowledge and skills.
- e) draw up a list ranking the interviewed candidates.

## **Article 21**

### **Conditions of appointment as Managing Director**

(1) A person that satisfies the following requirements may be appointed as a Managing Director:

- a) citizenship of BiH,
- b) no less than university-level education,
- c) at least five years of professional experience.

(2) Persons either convicted of or being prosecuted for a criminal offence, not including traffic offences, may not be appointed as Managing Director.

## **Article 22**

### **(Term of office of the Managing Director)**

The Managing Director shall be appointed by the Board of Directors to a term of office of four years, and shall be eligible for reappointment, however no person may be appointed to more than two successive terms of office.

## **Article 23**

### **(Competences and responsibilities of a Managing Director)**

(1) The Managing Director shall represent and act on behalf of the public enterprise.

(2) The Managing Director, in relation to the Board of Directors, shall prepare official documents that fall within the competence of the Board of Directors, implement the decisions of the Board of Directors and decide on matters in his/her competence pursuant to the law, Founding Act and Statute of the public enterprise, and other applicable laws and regulations.



## **Article 24**

### **(Dismissing a Managing Director)**

(1) The Board of Directors may remove a Managing Director from office prior to the expiry of the term of office he/she was appointed to, in the event of any of the following:

- a) at the request of the Managing Director,
- b) if the Managing Director ceases to fulfil the conditions of appointment,
- c) if other conditions provided by law, the Founding Act and Statute of the public enterprise, and other applicable rules and regulations are satisfied,
- d) if the Managing Director fails to perform his/her responsibilities and duties in accordance with the law, the Founding Act and Statute of the public enterprise, as well as other applicable rules and regulations.

## **Article 25**

### **(Accountability of a Managing Director)**

The Managing Director shall be accountable to the Board of Directors for the results of the operations and the legality of the work of the public enterprise.

## **Article 26**

### **(Acting Managing Director)**

(1) The Founder shall appoint a person as Acting Managing Director, who will represent the public enterprise when registering the public enterprise in the register of the competent court, and perform the other tasks and duties of a Managing Director in accordance with the act on the appointment of the Acting Managing Director of a public enterprise.

(2) The Board of Directors may appoint a person as Acting Managing Director until the appointment of a new Managing Director, and for a period not longer than six months, if a Managing Director resigns, dies or is removed from office before the expiry of the term of office to which he/she was appointed.

## **Article 27**

### **Conflict of Interest**

(1) The Managing Director and the members of the Board of Directors may not be the owners, legal representatives or employees of any other enterprise that performs the same or related activities, which could present competition to the public enterprise.

(2) The Managing Director and the members of the Board of Directors shall be obliged to provide a statement on their material status pursuant to Article 22 of the Statute of BD  
BiH. Internal Control

## **Article 28**

### **(The Statute and other general legal acts)**

(1) The Statute of a public enterprise shall be adopted by the Board of Directors no later than 90 days following the day the public enterprise was entered into the registry of the competent court.

(2) The Statute of a public enterprise shall enter into force on the day the Founder approves the Statute.

(3) Amendments to the Statute of a public enterprise shall be made pursuant to the method provided for its adoption.

(4) A public enterprise shall also adopt other general legal acts in accordance with the law, the Founding Act and the Statute of the public enterprise, and other applicable rules and regulations.

## **Article 29**

### **Business Plan**

(1) A public enterprise shall for each calendar year adopt a Business Plan that shall serve as the basis for all of the public enterprise's business activities in the period covered by the Plan.

(2) The Business Plan shall, in particular, contain the planned amounts of revenue and expenditure of the public enterprise listed according to dedicated purpose, the number of employees and amount of funds necessary for employee salaries, the amount of funds required for the needs of the public enterprise, capital expenditures and sources of funding, information on planned credits and issuing of guarantees, in the period covered by the Business Plan.

(3) The Business Plan referred to in paragraphs (1) and (2) shall be subject to the approval of the Founder.

(4) Until the adoption of the Business Plan, pursuant to paragraph (3) of this Article, the Founder may determine the conditions and method for calculating the salaries of the employees of the public enterprise.

(5) Following its adoption, the Business Plan of a public enterprise shall be submitted to the body responsible for the budget and finances of the Brčko District Government.

## **Article 30**

### **(Capital of public enterprises)**

(1) The subscribed capital of a public enterprise may be made up of invested funds and shares in rights issue.

(2) The subscribed capital of a public enterprise shall be set out in the Founding Act of the public enterprise.

(3) On the basis of the shares invested by a Founder in the public enterprise, the Founder acquires the right of ownership of 100% of the shares in the capital of a public enterprise.

### **Article 31**

#### **(Sources of funding)**

(1) A public enterprise shall be funded from the following sources:

- a) income received from performing the registered activities of the public enterprise,
- b) the Budget of Brčko District of BiH,
- c) other sources.

(2) Funds from the Budget of Brčko District of BiH shall be provided in accordance with the adopted business plan of the public enterprise.

### **Article 32**

#### **(Rates for goods and services)**

At the proposal of the Board of Directors of the public enterprise, the Founder shall approve the price list of goods and services.

### **Article 33**

#### **(Infrastructure of common interest)**

(1) A public enterprise may not become the owner of property defined in the Founding Act of a public enterprise as infrastructure of common interest.

(2) The mutual rights and obligations of the Founder and the public enterprise concerning the management and use of the infrastructure of common interest shall be regulated by the Founding Act of the public enterprise.

#### **Article 34**

##### **(Disposing with movable and immovable property)**

(1) A public enterprise may dispose of movable property owned by the public enterprise

(2) A public enterprise may encumber, alienate, lease or in a different manner dispose with real estate owned by the public enterprise, only with the consent of the Founder, and in accordance with the law and other applicable rules and regulations.

#### **Article 35**

##### **(Prohibited business activities)**

A public enterprise may not conduct the following business activities:

(a) grant credits or loans to employees of the public enterprise or other persons, and providing guarantees for credit purposes.

(b) make payment of salaries contrary to the labour regulations or use credit funds in order to pay the salaries of the employees of the public enterprise.

#### **Article 36**

##### **(Disruption of operations)**

In the case of disruption of the operation of a public enterprise (insolvency, threat to lives and health of people or property), the Founder may take measures to ensure the unimpeded functioning and operation of the public enterprise, and in particular:

a) dismiss members of the Board of Directors,

b) amend the internal structure of public enterprise.

### **Article 37**

#### **(Reasons for termination)**

A public enterprise shall be terminated:

- a) By decision of the Founder
- b) In the event of other reasons for termination in accordance with the Law on Companies of the Brčko District of BiH

### **Article 38**

#### **(Activity Report)**

A public enterprise shall submit an Activity Report to the Assembly of Brčko District of BiH and the Mayor of Brčko District of BiH at least once a year.

### **Article 39**

#### **Public procurement**

A public enterprise shall implement procedures for the procurement of goods, services and the contracting of works in accordance with the law regulating that subject.

### **Article 40**

#### **Internal Control**

The internal control of revenue and expenditure transactions of a public enterprise shall be performed pursuant to the applicable rules and regulations.

## **Article 41**

### **Audit of financial operations**

The auditing of the financial operations of a public enterprise shall be carried out pursuant to the applicable rules and regulations.