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Thursday, March 06, 2003

Decisions in the Economic Field

Law on Gifts by Publicly Owned or Controlled Enterprises in the Federation of Bosnia and Herzegovina

Article 1

Objective and Scope of the Law

This Law sets out the limits and procedures for a publicly owned or controlled enterprise (as is defined hereinafter) to make gifts.

Article 2

Definitions

For the purposes of this Law, a publicly owned or controlled enterprise shall mean an enterprise in which the Federation government, governmental bodies, cantons, cities or municipalities either (a) wholly own the enterprise; or (b) own more than fifty (50) percent of the shares or share capital of the enterprise; or (c) have less than 50% of the shares or share capital but control the management and/or supervision of the enterprise (hereinafter referred to as "Public Enterprise").

For the purposes of this Law, a transaction at an undervalue is one in which the Public Enterprise, makes a disposition (including a disposition by the sale of goods or services) on terms (i) where the sale price is below market value and the terms of such sale are intended to favour the recipient of the disposition or other third party and cannot objectively be said to be for the benefit or in the interests of the Public Enterprise; or (ii) where a Public Enterprise makes a payment which is not for goods or services provided to it by the recipient of the payment.

Article 3

Limits for making gifts

1. A Public Enterprise may only make gifts out of profits and such gifts may only be made for the purposes of sports, culture, social welfare and humanitarian purposes.
2. A transaction at an undervalue made by a Public Enterprise shall be considered a gift.
3. A gift by a Public Enterprise shall only be considered validly made where the provisions of this Law are fully satisfied.

Article 4

Annual Allocation for gifts

1. In each financial year, the Management Board of the Public

Enterprise based on the profits disclosed in its audited financial statement prepared in accordance with the applicable laws, shall decide on the amount (if any) to be allocated in its budget for gifts in that financial year. In deciding on the amount to allocate for gifts, the Management Board shall have due regard to the overall financial commitments of the Public Enterprise in the financial year in which the allocation is made including (i) amounts required by the Public Enterprise in that financial year for fulfilling any business plan of the Public Enterprise; and (ii) the capital and other investments required for the proper maintenance and/or growth of the Public Enterprise.

2. Upon the Management Board of the Public Enterprise deciding on the amount to be allocated for gifts in a financial year, the Ministry or other government/public body under whose portfolio the Public Enterprise falls, shall be required to approve the annual allocation for gifts in the budget of the Public Enterprise.

3. Where the Public Enterprise proposes to increase the annual allocation referred to in paragraph 1 of this Article, for such increase to be valid, it must have the unanimous approval of the members of the Management Board and based on that decision, the Ministry or other government/public body under whose portfolio the Public Enterprise falls shall make a determination whether such increase in allocation is justified (in light of the financial standing of the Public Enterprise) and thereafter, where it deems fit, may give its consent to the proposal.

Article 5

Procedures for making gifts

1. The Statute of the Public Enterprise must expressly permit gifts to be made.

2. The beneficiary of such gifts must be a lawfully constituted body with legal personality recognised under the laws of BiH and such gifts must not be for political party financing or political end.

3. The Public Enterprise must be solvent at the time of making the gift. This must be certified by an independent auditor or an auditor authorized under the Law on Auditing the Budget of the Federation of Bosnia and Herzegovina (Official Gazette of the FBH, 48/99). The auditors shall issue a Certificate of Solvency for these purposes and shall make a declaration therein as to whether or not, in the financial year concerned, the proposed gift is within the annual allocation provided for under Article 4 hereof.

4. For a gift to be validly made, it must have the unanimous approval of the Management Board of the Public Enterprise. This approval must be evidenced by a written decision of the said Management Board and clearly identify the proposed beneficiary, the amount of the gift and the justification for making the gift.

5. No member of the Management Board shall participate in a decision to make a gift where s/he has a personal interest in the matter.

6. Where the Public Enterprise is not privatized and transformed into another type of enterprise under the applicable laws, the Ministry or other government/public body under whose portfolio the Public Enterprise falls, shall be required to approve the decision of the Management Board to make such a gift.

7. The Ministry or other government/public body referred to in the preceding paragraph may only approve the gift where (i) it is presented with a Certificate of Solvency; and (ii) it is presented with the written unanimous decision of the Management Board; and (iii) it is satisfied that the gift is to a lawfully constituted body and for lawful purposes and based on the financial standing of the Public Enterprise, commercially justified.

8. After the Public Enterprise is privatized and transformed pursuant to the applicable laws, the Ministry or other government/public body referred to in paragraph 6 of this Article, shall not be required to approve the gift but the Management Board shall put the decision on any gifts to the General Assembly of Shareholders for approval. The Decision so put shall be considered adopted by the General Assembly of Shareholders where seventy-five (75) percent of those present and voting approve the decision.

9. Before the transfer of any gift to the beneficiary identified in the decision on the gift, the Decision on the proposal to make a gift shall be published in the Official Gazette of the Federation. A period of one month shall have elapsed between the publication in the Official Gazette and the transfer of the gift to the beneficiary.

10. At the end of each financial year, the Enterprise shall disclose to the public in at least one newspaper widely distributed in the Federation of Bosnia and Herzegovina, full details of all gifts made by the enterprise including the total amount made in that financial year and the beneficiary/ beneficiaries of same with a statement of compliance with the annual allocation provided for in Article 4 hereof.

Article 6

Individual Responsibility for breach of the provisions of this Law

The members of the Management Board shall have joint and several liability, for any breach of the provisions of this Law. In the event that a Public Enterprise makes a disposition by way of gift, contrary to the provisions of this Law, and without prejudice to any other measures prescribed under the applicable laws, each member of the Management Board shall be responsible for reimbursing all amounts unlawfully disposed of by the Public Enterprise by way of gift.

Article 7

Entry into force and Publication

This Law shall enter into force immediately.

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