

# **LAW ESTABLISHING THE COMPANY FOR THE TRANSMISSION OF ELECTRIC POWER IN BOSNIA AND HERZEGOVINA**

## **GENERAL PROVISIONS**

### **Article 1 Objectives**

This Law establishes a joint stock company for the transmission of electric energy, “Elektroprenos Bosne i Hercegovine” (“Company”), and defines its functions, powers, governance, and ownership. The Company shall perform its activities on the entire territory of Bosnia and Herzegovina.

The objective of the Law is to establish a single transmission company and to ensure a continuous supply of electricity at defined quality standards for the enjoyment of the citizens of Bosnia and Herzegovina. The Law is intended to facilitate the creation of an electric energy market in Bosnia and Herzegovina and its integration into regional energy markets and regional energy development activities. The Law is based on existing international practices and applicable Directives of the European Union (and their implementation in European Union Member States.)

### **Article 2 Purpose and Exclusive Authority**

The Company shall perform activities related to the operation of the electric power transmission system in accordance with the provisions of this Law. Its activities shall include the transmission of electric power and transmission related activities as specified in Article 7 (Transmission Company Regulation and Interface) of this Law. Upon the establishment of the Company, no other electric or other company shall have authority to engage in such transmission of electric power or transmission related activities.

The Company may engage in transmission and transmission related activities in neighboring power systems, provided that such business activities are directly related to improving the performance of the Company’s transmission and transmission related activities in Bosnia and Herzegovina and in neighboring power systems. The Company shall keep separate accounts for any such business outside of Bosnia and Herzegovina.

Except upon prior approval of SERC, the Company shall not engage in any activity that involves the following activities in any way: generation, supply, trading, or distribution of electric power, or any other business activity outside of the field of transmission or transmission related activities. This prohibition applies to both the Company and any subsidiaries.

The following criteria shall control any decision to authorize such non-transmission or transmission related business activity:

1. The Company shall not conduct a business activity involving the generation, trading or distribution of electric power unless there is compelling evidence that the business activity is in the interests of the Company's users and shareholders and the benefits to the Company's users and shareholders outweigh the risk of non-competitive impact on the market;
2. The Company may conduct any business activity involving any other non-transmission or transmission related business activity if there is evidence that the business activity is in the interests of the Company's users and shareholders.
3. The following criteria shall control these decisions:
  - (i) The ability of the Company to maintain its creditworthiness and secure capital investment on reasonable terms shall not be adversely affected;
  - (ii) The ability of the Company to provide safe and adequate service shall not be adversely affected; and
  - (iii) The total level of investment in non-transmission or transmission related business lines is cost effective in light of the Company core business of transmission.

In exercising its authority under this provision, SERC shall have all reasonable powers to access and investigate all information and all transactions relating to the Company and the proposed business activity and to impose conditions upon or require remedial measures concerning non-transmission or transmission related businesses.

The Company shall keep separate accounts for any such SERC-approved business lines.

### **Article 3 Definitions**

In this Law the following definitions shall apply:

1. "Assets" shall mean all of those properties and rights that are properly entered into the accounts and balance sheets of companies in terms of a monetary value, in accordance with good accounting practices.
2. "Authorized shares" shall mean the shares of all classes, which the Company is authorized to issue.
3. "Company" shall mean Elektroprenos Bosne i Hercegovine.
4. "Council of Ministers" means the Council of Ministers of Bosnia and Herzegovina.
5. "Books of Rules" shall be as defined in Article 12 (The Books of Rules and Code of Ethics) of this Law.

6. "Distribution" of electricity shall mean the transport of electricity on medium-voltage and low-voltage distribution systems for delivery to end-users.
7. "Entity" in the singular shall mean the Federation of Bosnia and Herzegovina or Republika Srpska. Collectively, these shall be referred to as "Entities."
8. "General Meeting of Shareholders" shall mean the body of the Company composed of all shareholders of the Company
9. "Generation" shall mean the production of electricity.
10. "Generation Substation" shall mean the facility which increases and regulates the level of electricity after generation in order to enable efficient transmission of electricity, and it is comprised of a step-up transformer, ancillary transformer and their associated switchgear and control/protection equipment.
11. "Good accounting practices" shall mean the accounting principles and practices established by the International Code of Accounting Principles and the International Accounting Standards adopted and published by the International Institute for Accounting and Auditing.
12. "Good faith" shall mean honesty in fact in the conduct or transaction concerned; in case of a Company Director or Management Board Member, good faith requires the exercise of reasonable business judgment after reasonable inquiry of the facts.
13. "Independent Member" shall be as defined in Articles 29 (Management Board Appointment), Article 49 (Company Registration and Initial Operations), 51 (Extraordinary Formation Powers of Independent Member) of this Law.
14. "ISO" shall mean the Independent System Operator as described in the *Act on Transmission of Electric Power, Regulator, and System Operator of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina No. 7/02)* ("Act on Transmission").
15. "Liabilities" shall mean all those debts which are known to impose a fixed obligation of payment or, if contingent, have sufficient possibility of becoming fixed as to require an estimate of their probable amount, and which should be entered in the accounts and balance sheets of companies in terms of monetary value under good accounting practices. Liabilities shall be determined in accordance with good accounting practices.
16. "Net Income" shall mean the sum remaining from the Company's revenues once operating expenses (including depreciation), financial expenses and taxes are subtracted. Net income shall be determined in accordance with good accounting practices.

17. "SERC" shall mean the State Electricity Regulatory Commission as described the *Act on Transmission*.
18. "*Statut*" shall mean the Company document, proposed by the Management Board and approved by the General Meeting of Shareholders, that governs the Company, and to which all other Company documents are subject.
19. "Shareholder" shall mean one who is holder of shares in a company.
20. "Shares" shall mean the units into which the proprietary interests are divided.
21. "Transmission" shall mean the transport of electricity on the high-voltage interconnected system for delivery to end-users, distributors and neighboring power systems.
22. "Transmission related activities" shall include those activities related to the operation, maintenance, construction or expansion of the transmission system.
23. "Vote" shall mean, without limitation, votes, waivers, releases, consents, writings signed by shareholders in lieu of taking action at a meeting of shareholders, and objections or dissents to the foregoing.

#### **Article 4 Name/Headquarters**

The title of the Company is: "Elektroprenos Bosne i Hercegovine" akcionarsko drustvo Banja Luka ("Transmission of Electricity of Bosnia and Herzegovina" Stock Company Banja Luka).

The headquarters of the Company shall be Banja Luka.

#### **Article 5 Forming of the Company**

Upon registration of the Company, and in accordance with provisions of this Law, all assets and liabilities necessary for transmission and transmission related activities conducted by the following companies shall be conveyed to and become the property of the Company:

1. Public Parent Enterprise Elektroprivreda of Republika Srpska, Trebinje, Luke Vukalovica St. no. 3;
2. Public Enterprise Elektroprivreda Bosne i Hercegovine, 71000 Sarajevo, Vilsonovo setaliste St. no. 15; and
3. Public Enterprise for Generation, Transmission and Distribution of the Electric Power, Elektroprivreda Hrvatske zajednice Herceg-Bosne, Mostar, Dr. Mile Budaka St. no. 106A.

This automatic conveyance shall include all assets, liabilities, and ownership rights over the property, including moveable, immovable, tangible and intangible property, financial assets, as well as any other right, title, or interest in or to property, that have been approved by the Management Boards of the three above-named Elektroprivrede with approval from the Entity Governments for transfer. In accordance with provisions of this Law, Elektroprivrede in BiH shall form commissions which will complete a proposal for division and separation of EP assets owned or operated by the three Elektroprivrede and ZDP of RS and submit that proposal to the Management Boards of the three Elektroprivrede. The Elektroprivrede Management Boards shall complete the entire asset allocation process within sixty (60) days of the effective date of this Law. In the event that the entire asset allocation approval process has not been completed within the sixty (60) day timeframe then the Independent Member shall assume exclusive jurisdiction for the asset allocation decision making process and shall complete said process within thirty (30) days after his or her appointment under Article 51 (Extraordinary Formation Powers of Independent Member), or after the expiration of sixty (60) day period.

Following transfer, the transferring Elektroprivrede, and their successors, shall remain jointly and severally liable with the Company for any liabilities arising from any loans or credits made by an international financial institution to such Elektroprivrede, directly or indirectly through the State or Entities, unless otherwise agreed to with each relevant international financial institution. Only for purposes of this transfer of the subject property, title shall be deemed good and merchantable.

Property and assets essential to fulfill distribution activities shall not be included in the assets transferred to the Company. The distribution assets excluded from conveyance shall include all of the low and medium voltage distribution systems with nominal voltages of 35 kV or lower up to, but not including the substations of 110/x kV, which shall be conveyed to the Company.

Property and assets essential to fulfill generation activities shall not be included in the assets transferred to the Company. The generation assets excluded from conveyance shall include all assets involved in electric power generation up to, but not including the transmission lines that connect the generation substation with the transmission system, which transmission lines will be conveyed to the Company.

Property and assets essential for the Independent System Operator (“ISO”) to fulfill the responsibilities under its jurisdiction shall not be included in the assets transferred to The Company.

The Independent Member may, in his discretion, authorize limited exceptions to the distribution, generation and ISO property and asset exclusions of this Article in order to assure maximum efficiency of the transmission power system. The Independent Member’s decision shall be final until the end of the Transition Period as defined in Article 50 (Duration of Transition Period). If any dispute arises out of the Independent Member’s decision concerning allocation of property and assets under this Article, then the arbitration procedure set forth in Article 49 (Company Registration and Initial Operations) may be followed.

On the effective date of conveyance of such assets and liabilities, transmission and transmission related activities shall become the sole authority and legal right of the Company. Public Enterprise Elektroprivreda Bosne i Hercegovine, Elektroprivreda Hrvatske zajednice Herceg-Bosne, and Public Parent State Enterprise Elektroprivreda of Republika Srpska shall cease to have authority or legal rights over transmission and transmission related activities.

The costs of forming the Company shall be borne by the three Bosnia and Herzegovina Elektroprivrede listed in this Article pursuant to the provisions of Article 46 (Company Formation Costs and Application for SERC Approval) and 51 (Extraordinary Formation Powers of Independent Member) of this Law.

The Company shall be owned in accordance with the provisions of this Law, with shares being issued to the Federation of Bosnia and Herzegovina and Republika Srpska in accordance with Article 13 (Capitalization) of this Law in return for the contribution of capital from the three Bosnia and Herzegovina Elektroprivrede.

#### **Article 6 Powers**

The Company shall, in accordance with this Law and the Company *Statut*, have all express, apparent and implied powers, rights and responsibilities generally recognized under effective law in Bosnia and Herzegovina.

#### **Article 7 Transmission Company Regulation and Interface**

The Company shall be subject to the regulation of SERC. SERC is entitled to inspect the books and records of the Company.

Except as otherwise noted in this paragraph, SERC, in accordance with its jurisdiction as defined in the Act on Transmission, shall have authority to resolve any disputes arising out of or concerning the implementation of this Law upon petition by any of the following: the State; an Entity; the ISO; the Company Management Board, an independent power producer, a power trader; a supplier, or any other person who is directly connected to or relies upon the transmission system. The SERC decision is subject to judicial review pursuant to Article 14 of the *Law on the Court of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina No. 29/00.)* The Public Parent State Enterprise Elektroprivreda of Republika Srpska, the Public Enterprise Elektroprivreda Bosne i Hercegovine, and the Elektroprivreda Hrvatske zajednice Herceg-Bosne Mostar, as well as their generation or distribution successors, may also petition SERC under this provision. SERC shall not have authority to resolve any dispute concerning the exercise of authorities granted in Article 5 (Forming of the Company) and Article 51 (Extraordinary Formation Powers of Independent Member) of this Law by the Independent Member.

The Company shall conduct its transmission and transmission related activities in full compliance with ISO technical standards, operational planning, dispatch instructions,

maintenance schedules and system, expansion plans, as well as SERC regulation, as applicable. These activities shall not include those activities reserved exclusively to the ISO.

### **Article 8 Company Registration**

The Company shall be registered as a legal person of Bosnia and Herzegovina, in accordance with the *Law on Registration of Legal Persons Established by the Institutions of Bosnia and Herzegovina* (“*Law on Registration*”) (*Official Gazette of Bosnia and Herzegovina* No. 59/02). The *Company Statut* shall be published in the *Official Gazette of Bosnia and Herzegovina* upon initial adoption, or subsequent amendment.

### **Article 9 Inter-Entity and State Cooperation**

The Entity Governments and Council of Ministers of BiH shall cooperate to address and resolve issues of mutual interest related to the implementation of this Law and other matters related to effective operation and management of the Company.

### **Article 10 Owners**

The initial Owners of the Company are:

1. The Federation of Bosnia and Herzegovina; and
2. Republika Srpska.

### **Article 11 Statut**

The *Company Statut* shall set forth, *inter alia*, provisions to regulate Company activities, establish general procedures for the transaction of business by Company bodies, including provisions on authorities, meeting notice, organization, decision-making, record keeping and all other matters required for the exercise of their respective duties, as well as the inventory and valuation of Company assets net of liabilities, and Company capitalization.

### **Article 12 The Books of Rules and Code of Ethics**

The Books of Rules shall include, *inter alia*, detailed rules and regulations, other than the *Statut*, regarding employment, finance, accounting, internal organization and classification of positions, as well as detailed technical matters.

The Code of Ethics shall set forth the ethical obligations and duties of Management Board Members and Company staff.

### **Article 13 Capitalization**

The *Statut* shall define the amount of the Company's initial authorized capital, as well as the number of shares and nominal valuation of the shares.

The initial authorized capital of the Company shall consist of a single class of shares, all of which shall be issued to the Entities, as set forth in the *Statut*, consistent with Article 18 (Issuance and Registration of Shares) of this Law, and herein as set forth below:

- Shares to the Federation of Bosnia and Herzegovina, allocated in proportion to the relative value of the assets net of liabilities contributed by the Federation of Bosnia and Herzegovina; and
- Shares to Republika Srpska, allocated in proportion to the relative value of the assets net of liabilities contributed by Republika Srpska.

### **Article 14 Financing**

The Company shall collect revenues from transmission tariffs and other sources, such as connection fees, as proposed by the Management Board, and approved by SERC.

The Company may, enter into contracts and agreements to provide for its financing by any means, including, but not limited to, loans, issuance of notes or bonds bearing interest at such rate as it may fix, payable at such time and place and in such manner as it may determine, in any currency, or non-reimbursable grants from international organizations. The Company may acquire any property for this purpose, and may lease, convey or encumber any of its property. All financing decisions under this Article must be taken in conformity with the authorizations required under Article 27 (Authority of the Management Board) and related provisions of this Law, and are subject to the approval of SERC, as applicable.

### **Article 15 Finance and Accounting Records**

Financial activities of the Company shall be conducted in accordance with the Company's Books of Rules, which shall be in accordance with good accounting practices.

The Company shall have its annual financial statements audited by an independent accounting firm.

The Management Board shall assure that the annual financial statements of the Company are audited by an independent third party accountant or accounting firm within one hundred and twenty (120) days following the end of the Company's fiscal year.

**Article 16  
Reserves**

The Management Board may create reserves, in accordance with good accounting practices, the Statut, and any applicable SERC authorizations. The reserves may be used to avoid volatility in tariffs, to ensure that the Company will be able to meet its financial obligations, and to ensure the long-term financial stability and liquidity of the Company.

**Article 17  
Distributions and Use of Net Income**

Net income of the Company shall be determined by the audited financial statements for each business year.

The Company shall not make a distribution to shareholders, whether by dividend or otherwise, during the ten (10) year period following registration of the Company. All net income shall be allocated only for the purpose of reserves or repair, improvement, and expansion of the transmission system.

Ten (10) years after the registration of the Company, the Management Board may authorize distributions to shareholders, whether by dividend or otherwise, in such amounts and on such terms and conditions as are consistent with this Law, the *Statut* and prudent financial management of the Company.

**Article 18  
Issuance and Registration of Shares**

Shares shall be issued and registered in accordance with the *Statut*. The *Statut* shall, to the extent possible, be consistent with the following Federation and Republika Srpska laws: *Law on Securities*, *Law on Securities Registrar*, and *Law on Securities Commission* (*Official Gazette of Federation BiH* No. 39/98); *Law on Securities* (*Official Gazette of Republika Srpska*, No. 24/98 and 37/01); and *Law on the Central Registry of Securities* (*Official Gazette of Republika Srpska* No. 24/98). In the event of conflict of law, the *Statut* will designate the governing legal regime. Further, in the event of passage of laws governing issuance and registration of shares by the Parliamentary Assembly of Bosnia and Herzegovina, Article 42 (Relationship With Other Laws) shall apply.

Notwithstanding any other law or regulation, Company shares shall be registered and issued to the Entities in accordance with this Law.

**Article 19  
Stock Records**

The Company shall maintain records of the issued shares including information on the shareholder's name, type and class of the shares, share value, number of shares, date of the share transfer that are made out on name, and termination date of the shareholder's status.

The Company shall maintain detailed records on the registration of shares of stock and all changes to such registration, in accordance with the *Statut*. Shareholders and other parties shall have the right to inspect such records, in accordance with the *Statut*.

#### **Article 20 Company Bodies**

The governing bodies of the Company are:

1. General Meeting of Shareholders;
2. Management Board; and
3. Management.

#### **Article 21 General Meeting of Shareholders**

The *Statut* shall set forth the authorities of the General Meeting of Shareholders, and the notice requirements, location and mechanism of the annual and other meetings.

#### **Article 22 Decision-making of the General Meeting of Shareholders**

A simple majority of those shareholders present and voting at a General Meeting of Shareholders conducted in accordance with this Law shall constitute decisions and acts of the General Meeting of Shareholders, except where a unanimous vote is required by Law or *Statut*. In the case where a unanimous vote of the General Meeting of Shareholders is required, it must be a unanimous vote of all shareholders of authorized and issued shares in the Company. The authorities of the shareholders are set forth in Article 27 (Authority of the Management Board) of this Law.

#### **Article 23 Sale or Transfer of Shares**

For a period of ten (10) years following the effective date of the Law, the initial Entity owners shall not sell, convey, assign, mortgage, pledge, lease, securitize, exchange, transfer, or otherwise encumber or dispose of their respective shares to any other party. After ten years, a shareholder shall have the right to sell, convey, assign, mortgage, pledge, lease, securitize, exchange, transfer or otherwise encumber or dispose of its shares without unanimous vote of the shareholders, subject to approval of the Management Board in accordance with Article 28 (Decision-making of the Management Board) of this Law. Notwithstanding any other provision of law, ownership of Company shares may not transfer to a new shareholder by operation of law or by consensual agreement without such Management Board approval.

#### **Article 24 Shareholder Rights**

Subject to limitations set forth in provisions of this Law, shareholders shall have the right to:

- vote on matters within their authority;
- obtain information regarding relevant business events;
- participate in the net income of the Company subject to the limitations set forth in Article 17 (Distributions and Use of Net Income) of this Law;
- sell, convey, assign, mortgage, pledge, lease, securitize, exchange, transfer or otherwise encumber or dispose of shares, subject to the limitations set forth in Articles 23 (Sale or Transfer of Shares) and 28 (Decision-making of the Management Board) of this Law; and
- acquire shares, securities, options and rights to future share class, proportional to the percentage of shares of the first issue they possess, after approval of such issuance by the Management Board and the General Meeting of Shareholders.

#### **Article 25 Inspection of Company Records**

Shareholders of the Company are entitled to inspect the books and records of the Company, as are other parties in accordance with the *Statut*. The Management Board and directors of the Company shall assure that the Company's business dealings are transparent to the citizens of Bosnia and Herzegovina.

#### **Article 26 Management of the Company**

Subject to the provisions of this Law, the business and affairs of the Company shall be supervised by a Management Board and managed by Management in which there is an equal number of representatives of the constitutional peoples in Bosnia and Herzegovina. Responsibilities and **the manner of Management operation shall be defined** by the *Statut* and Rules **of Work**.

#### **Article 27 Authority of the Management Board**

The Management Board shall have the following authorities, subject to the unanimous approval of the General Meeting of Shareholders:

- Issuance of the *Statut* and changes to the *Statut*;
- Approval or rejection of annual financial statements;
- Decision-making on distributions;
- Decision-making on increase and decrease of initial capital;
- Appointment of the General Director, and on his proposal members of Management;

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- Decision-making on mergers, acquisitions, subsidiaries or other changes in status, type and termination of the Company;
- Issuance of additional share classes or series;
- Decision-making on increase or decrease of reserves; and
- Decision-making on investments in excess of 1,000,000 Euros, or any revised limit established under Article 28 (Decision-making of the Management Board) of this Law.

The Management Board shall have the following authorities, not subject to approval of the shareholders:

- All filings for Company registration under the *Law on Registration*, as well as all actions necessary for Company formation, as provided in this Law;
- Development of guidelines to the General Director regarding performance of business policy and duties;
- Decision-making regarding investments under or equal to 1,000,000 Euros, or any revised limit established under Article 28 (Decision-making of the Management Board) of this Law;
- Decision-making on the sale, conveyance, assignment, mortgage, pledge, lease, securitization, exchange, transfer or other encumbrance or disposal of shares, upon motion of the Owner;
- Approval or rejection of financial reports other than the annual report;
- Approval, issuance and implementation of annual plans;
- Decision-making on issues presented by the General Director and other high level Company directors;
- Proposals with regard to tariff filings with the SERC;
- Approval of the Company Book of Rules and Code of Ethics; and
- Other issues within its authorities in accordance with the *Statut*.

#### **Article 28** **Decision-making of the Management Board**

A simple majority vote of those Members of the Management Board present and voting at a Board meeting conducted in accordance with Article 33 (Management Board Meetings) of this Law shall constitute decisions and acts of the Management Board, with the exception of decisions on the sale, conveyance, assignment, mortgage, pledge, lease, securitization, exchange, transfer or other encumbrance or disposal of shares of any value, and on any capital expenditures in excess of 1,000,000 Euros.

Following the ten year period provided for in Article 23 of this Law, a unanimous vote of those Members of the Management Board present and voting at a meeting conducted in accordance with Article 33 (Management Board Meetings) of this Law is required in the case of decisions on the sale, conveyance, assignment, mortgage, pledge, lease, securitization, exchange, transfer or other encumbrance or disposal of shares of any value or decisions on capital expenditures in excess of 1,000,000 Euros.

At any time more than two (2) years after the registration of the Company, the Management Board may petition SERC for authorization to increase the 1,000,000 Euros limit on capital

investments without unanimous approval of the General Meeting of the Shareholders. SERC may establish a higher limit, so long as the new limit promotes the Company's efficiency and competent governance and ensures the long-term financial stability and liquidity of the Company.

## **Article 29**

### **Management Board Appointment**

The Management Board shall consist of seven (7) full voting Members and one (1) Independent Board Member with limited voting powers, with equal representation of the constitutional people in Bosnia and Herzegovina.

The one (1) Independent Member with voting powers as set forth in Article 28 (Decision-making of the Management Board) of this Law shall be nominated by the Entity Governments and appointed by the Council of Ministers. Article 52 (Independent Member Appointment and Status During Transition Period) shall control the appointment of the Independent Member. After the transition period, the Independent Member may be a citizen of any country. The Independent Member term shall be five years.

The seven (7) full voting Members shall be nominated by the Entities. Subject to the initial appointments set forth in this Article, the allocation of Management Board appointments between the Entities shall be proportional to the assets net of liability contributed by each Entity to the Company, as determined in the *Statut*.

The Government of the Federation of Bosnia and Herzegovina shall nominate the Management Board Members from the Federation of Bosnia and Herzegovina. The Government of Republika Srpska shall nominate the Management Board Members from Republika Srpska. The Council of Ministers shall vote to accept or reject the nominees. All initial Management Board Member appointments shall be completed consistent with Article 44 (Appointment and Initial Meeting of the Board).

The allocation of initial Management Board appointments and terms between the Entities shall be staggered as follows:

- Two Members, one nominated by the Government of the Federation of Bosnia and Herzegovina and one nominated by the Government of Republika Srpska, for five (5) years
- Two Members, one nominated by the Government of the Federation of Bosnia and Herzegovina and one nominated by the Government of Republika Srpska, for four (4) years
- Two Members, one nominated by the Government of the Federation of Bosnia and Herzegovina and one nominated by the Government of Republika Srpska, for three (3) years
- One Member nominated by the Government of the Federation of Bosnia and Herzegovina, for two (2) years

Subsequent to Company registration, this allocation may be revised in the event of a change in Entity ownership. In the event of a change in Entity share allocation due to share transfers, capital contributions or any other reason, the Company is authorized to amend the *Statut* to establish a new allocation of Management Board appointments and terms in order to assure Management Board representation proportional to ownership.

In the event of fractional Entity interests in a single Board Member appointment, that appointment shall be allocated to the Entity with the larger fractional share.

In the event of the sale or any other type of transfer or disposal of shares by an Entity shareholder to private shareholders in accordance with the requirement of this Law, the Company is authorized to amend the *Statut* to establish a new allocation of and schedule for Management Board Member positions. The reallocation shall provide for Entity shareholder appointments of Management Board Members, and private shareholder election of Management Board Members. In the event of fractional interests in a single Board Member appointment, that appointment shall be allocated to the Entity or private stockholder with the larger fractional share. Voting agreements shall be authorized in order to enable multiple fractional shares to be counted collectively for this apportionment calculation.

Successor Board Members shall be appointed promptly in the manner set forth in this Article.

To the extent such Act is applicable to the Transmission Company, the nominations and appointments shall be made in accordance with the applicable *Law on Ministerial and other Government appointments (Official Gazette of Bosnia and Herzegovina, 07/03, Official Gazette of the Federation of Bosnia and Herzegovina, 12/03, Official Gazette of Republika Srpska 25/03)*.

### **Article 30** **Terms of the Members of the Management Board**

The terms of the initial appointments of Members shall be staggered, as set forth in Article 29 (Management Board Appointment) of this Law.

Each Member of the Board shall hold office until the expiration of the term for which he is appointed and until the appointment of his or her successor, or until removal in accordance with Article 32 (Removal of Management Board members and General Director) of this Law.

After the initial term, Management Board appointments shall be for a term not longer than five (5) years and shall preserve the staggered terms. No Member of the Management Board shall serve for more than two (2) terms.

### **Article 31** **Qualifications of Members of the Management Board and General Director**

Members of the Management Board shall have a University Degree in technical, economic or legal fields or its equivalent, and shall have demonstrated significant experience and professional competence in the area of electrical transmission, electrical services, electric

sector legal restructuring, electric sector reform, privatization, finance, accounting, competition, markets, regulation, or the electrical services needs of the users of the electric transmission system.

A person shall not be qualified to serve as a Member of the Management Board or the General Director if he or she:

- has been convicted of criminal acts and offences incompatible with the duty of a Member of the Management Board or a General Director;
- is barred by law from performing other duties;
- is over sixty-five (65) years of age on the day of appointment or any renewal thereof; or
- has a conflict of interest as defined in Code of Ethics, or has violated the Code of Ethics.

Members of the professional management of the Company, including the General Director, may not serve simultaneously as Members of the Management Board of the Company.

### **Article 32 Removal of Management Board Members and General Director**

A Member of the Management Board, or the General Director, may be recalled or his or her resignation accepted by the appointing body before the term has expired in the following cases:

- Illness, death or incapacity rendering individual unable to perform his or her duties;
- Conviction of a crime;
- Conflict of interest, as defined in the Company Code of Ethics or *Law on Conflict of Interests in Governmental Institutions of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, 16/02)*, or other violation of the Company Code of Ethics; or
- Non-performance of duties, or illegal or grossly negligent behavior.

A Member of the Management Board may submit a voluntary resignation.

### **Article 33 Management Board Meetings**

The time, place and mechanism for holding meetings of the Management Board shall be fixed in accordance with the *Statut* and Books of Rules, but shall be held at least quarterly.

Meetings of the Management Board may be convened by the President of the Management Board, or by any two Members. A meeting must be attended by a quorum of four (4) Management Board Members, other than the Independent Member, at all times in order to transact business. Notice of the meeting shall be given at least three (3) business days before the meeting, unless a Member signs a waiver of notice before or during such meeting, in which case prior notice is not required.

However, a meeting must be attended by a quorum of five (5) Management Board Members, other than the Independent Member, at all times in order to make a decision on the sale, conveyance, assignment, mortgage, pledge, lease, securitization, exchange, transfer or other encumbrance or disposal of shares of any value or decisions on capital expenditures in excess of 1,000,000 Euros.

#### **Article 34** **Duty of Members of the Management Board**

The Members of the Management Board of the Company shall exercise their powers and discharge their duties in good faith with a view to the interest of the Company and of the shareholders and with that degree of diligence, care and skill which ordinarily prudent persons would exercise under similar circumstances in like positions. The Members of the Management Board have a fiduciary duty to the Company. In discharging their duties, the Board Members may in all cases rely upon financial statements of the Company certified in writing by an independent international third party accountant or accounting firm to reflect fairly the Company's financial condition, or reported to the Board by the General Director or Director for financial or administrative affairs.

Members of the Management Board shall notify the Management Board of their personal interests in any other institutions, whether by ownership or position, or any other personal interests, whether or not those interests would bring them into conflict with those of the Company. The non-disclosing Members of the Management Board shall determine if the interests require withdrawal of the disclosing Management Board Member from voting on any matter. An annual report on this matter shall be sent to the Prime Ministers of the Federation and Republika Srpska Governments, the Prime Minister of the Government of Bosnia and Herzegovina, and SERC.

The Members of the Management Board cannot be sued by reason of official acts done in good faith in the exercise of their functions. The Company shall indemnify, in accordance with the *Statut* and Books of Rules, a Member of the Management Board or qualifying director for any legal action arising out of such person's services executed in good faith as a Member or qualifying director, in accordance with the *Statut* and Books of Rules.

#### **Article 35** **Committees and Positions of Management Board Members**

The Management Board, by majority vote, may designate from among its Members an executive committee and other committees, each consisting of two or more Members. The Board may delegate to such committee or committees any part or all of the authority of the Management Board, except as otherwise provided by the *Statut*. The structure, make-up and duties of such committees or the functions of individual Management Board Members shall be set forth in the Books of Rules.

The President of the Management Board shall be elected by the Management Board Members, other than the Independent Member, by simple majority vote, and all other

positions on the Management Board shall be elected by vote of the Management Board Members, as set forth in the *Statut*.

### **Article 36 General Director Appointment Process**

The Management Board shall appoint a General Director of the Company on the basis of an open competition and transparent hiring process.

### **Article 37 Authority of the General Director**

The General Director is responsible for:

- Management of the Company's programs, services and staff.
- Organization and management of business activities;
- Issuance of business policies;
- Direction and supervision of legal work;
- Direction and implementation of business plans and development ;
- Development of and proposal to the Management Board of the Books of Rules and Code of Ethics;
- Implementation of Management Board decisions;
- Decision-making on organizational matters, including the appointment and release of directors of Company, in accordance with the *Statut* and Books of Rules;
- Preparation of the quarterly and annual report on business activities, for review by the Management Board;
- Issuance of the Books of Rules and other corporate acts and rules other than the *Statut* that are not under the authority of the Management Board;
- Representation of the Company in legal disputes; and
- Carrying out any other duties the Board considers appropriate and which are required for effective Company operations in accordance with this Law, the *Statut* and the Books of Rules.

The General Director shall appoint a professional management staff using an open hiring process designed to select the most qualified candidate, as authorized by the *Statut*. Such management staff shall report to the General Director.

The General Director shall exercise his or her powers and discharge his or her duties in good faith with a view to the interest of the Company and of the shareholders and with that degree of diligence, care and skill which ordinarily prudent persons would exercise under similar circumstances in like position.

The General Director shall notify the Management Board whenever his or her personal interests in another business, whether by ownership or position, or any other personal interest, conflict with that of the Company. The Management Board shall determine if the potential

conflict requires the General Director to delegate all decision-making responsibility for matters related to that potential conflict of interest to another director of the Company.

**Article 38**  
**Term of General Director**

The General Director shall serve for four (4) years, unless removed in accordance with Articles 39 (Removal) of this Law, and may be reappointed for one additional consecutive four (4) year term. No individual may serve more than eight (8) years as General Director.

**Article 39**  
**Removal**

The General Director may be removed from his or her position by the Management Board, in accordance with Article 32 (Removal of Management Board Members and General Director) of this Law.

**Article 40**  
**Right of Expropriation**

For the purpose of performing its activities pursuant to the Article 2 (Purpose and Exclusive Authority) of this Law, the Company may initiate a procedure for expropriation of the private property.

Any expropriation proceeding, including any judicial review thereof, shall be conducted in accordance with the law of the Entity in which the property is located and shall provide compensation to the owner of the private property expropriated.

**Article 41**  
**Dissolution**

The Council of Ministers of Bosnia and Herzegovina, the Government of Republika Srpska or the Government of the Federation may initiate dissolution of the Company. Thereafter, the General Meeting of Shareholders may vote to dissolve the Company, upon a finding that the existence of the Company is no longer required to fulfill the objectives and purposes set forth in Articles 1 (Objectives) and 2 (Purpose and Exclusive Authority) of this Law. The approval of SERC shall be required prior to commencement of the process to dissolve the Company.

Within three (3) days following a request for dissolution by the General Meeting of Shareholders and receipt of approval from SERC for such dissolution, a notice of the Company's intent to dissolve shall be filed in accordance with the *Law on Registration*.

Subsequent to filing the notice of intent to dissolve, the Company shall be dissolved in accordance with the procedures established by the Management Board and the applicable legislation governing the dissolution of companies registered under the *Law on Registration*.

## **TRANSITIONAL PROVISIONS**

### **Article 42**

#### **Relationship with other Laws**

This Law is based on provisions of the *Act on Transmission*. All provisions set forth in this Law supersede dates, schedules and requirements in the *Act on Transmission*, or any other laws or regulations existing prior to the coming into force of this Law, which may conflict directly with provisions herein.

Except as otherwise provided by this Law, until such time as the laws and regulations of Bosnia and Herzegovina on issuance and registration of shares, dissolution, and other legal issues necessary for the effective functioning of the Company are enacted, the laws and regulations of the Federation of Bosnia and Herzegovina and Republika Srpska shall apply, in accordance with the *Statut*. In the event of a conflict of law in matters arising from contract, the *Statut* will designate the governing legal regime. In the event of conflict of law in non-privy matters, *inter alia*, taxation and expropriation, the principle of territoriality will apply.

Upon the coming into force of the State law governing the issuance and registration of shares, Entity laws referenced in Article 18 of this Law (Issuance and Registration of Shares) shall no longer apply to the Company. However, this provision shall not affect the proportional ownership of shares of the Entities. Similarly, upon the coming into force of laws governing all other issues referenced in paragraph 2 of this Article, Entity laws and regulations shall cease to apply.

### **Article 43**

#### **Transition of Employment**

Effective upon the date of registration of the Company, all employees employed to perform transmission related activities for the Public State Enterprise Elektroprivreda of Republika Srpska, Public Enterprise Elektroprivreda Bosne i Hercegovine, and Public Enterprise for Generation, Transmission and Distribution of the Electric Power, Elektroprivreda Hrvatske zajednice Herceg-Bosne shall become employees of the Company.

Nothing in this Article shall limit the discretion of the Management Board or General Director to terminate or to modify job responsibilities, benefits and compensation for any Company employee, consistent with the provisions of this Law.

### **Article 44**

#### **Appointment and Initial Meeting of the Board**

Initial appointments to the Management Board shall be made no later than ninety (90) days after entry into force of this Law.

The Management Board shall meet within ten (10) days of its appointment.

The oldest Management Board Member shall serve as temporary President of the Board for the purpose of convening the initial meeting of the Management Board and serving until the Management Board elects a President. At the first meeting, the Management Board Members shall (i) take all necessary actions to finalize the inventory, employment and valuation decision, and (ii) set an initial budget for all costs that will be incurred by the Management Board in formation of the company prior to Registration and shall submit this budget to SERC for approval consistent with Article 46 (Company Formation Costs and Application for SERC Approval ) of this Law.

**Article 45**  
**Appointment of General Director**

The General Director shall be appointed by the Management Board no later than 45 days from the initial meeting of the Board. The General Director cannot be from the same group of constitutional people of Bosnia and Herzegovina as the president of the Management Board.

**Article 46**  
**Company Formation Costs and Application for SERC Approval**

No later than thirty (30) days following the initial meeting of the Management Board, the Management Board shall submit a Proposed Invoice for Costs of Company Formation, with a proposed formation budget, to the Public Enterprise Elektroprivreda of Republika Srpska, Public Enterprise Elektroprivreda Bosne i Hercegovine, and Public Enterprise for Generation, Transmission and Distribution of the Electric Power, Elektroprivreda Hrvatske Zajednice Herceg-Bosne. The Elektroprivrede shall be responsible for payment of the costs of Company formation, to be allocated in proportion to the relative value of the assets, net of liabilities, contributed by that Elektroprivreda to the Company. If the proportional contribution amounts are uncertain, the Proposed Invoice may be one-third share for each of the three Elektroprivrede, and the Elektroprivrede shall be responsible for an appropriate final adjustment of costs following completion of Company formation. The Management Board may submit a revised Invoice to the three Elektroprivrede for supplemental costs in order to address cost increases due to delay or any other reasonable cause.

If the three Elektroprivrede agree with the proposed budget, they shall promptly pay their respective shares of the formation costs.

If all three Elektroprivrede do not pay their proportional share of the Invoice for Costs presented by the Company Management Board within thirty (30) days of submittal, the dispute shall be referred promptly to the expedited arbitration procedure described in this Article. This arbitration procedure shall be the exclusive remedy for any dispute concerning formation costs under this Article.

To initiate expedited arbitration concerning formation costs, the Management Board or the Elektroprivrede shall submit the Invoice for Costs to the Minister of Energy, Industry and Mines of the Federation of Bosnia and Herzegovina and the Minister of Industry, Energy, and Development of Republika Srpska. The two Ministers shall select a mutually agreeable third arbitrator within a period of 30 days from the filing of the first application for arbitration

following the end of the Transition Period. If the two Ministers have not selected the third arbitrator in a timely manner, then the Council of Ministers of Bosnia and Herzegovina will have an additional 30 days to choose the third arbitrator. In the event that the Council of Ministers do not choose the third arbitrator in a timely manner, then the High Representative may decide to appoint the third arbitrator. The Management Board and the Elektroprivrede shall cooperate fully as a party in the arbitration proceedings. The arbitration shall be concluded on an expedited basis within 30 days of appointment of the third arbitrator. The arbitration decision shall be based upon a majority vote of the three arbitrators. The decision shall be final and binding on the Company and the Elektroprivrede and their generation or distribution successors, and there shall be no right of judicial appeal from the arbitration decision.

Within sixty (60) days of the initial meeting of the Management Board, the Board shall cause to be filed with SERC an Application for Approval of Initial Tariff. The SERC shall issue an order setting an interim tariff within sixty (60) days of filing of the Application, which order may include conditions for future adjustments of the tariff.

**Article 47**  
**Adoption of the *Statut***

Within forty-five (45) days of the issuance of the final SERC order with respect to the Application for Approval of Initial Tariff, the Management Board shall propose, and the General Meeting of the Shareholders shall approve, the Company *Statut*. The Company *Statut* shall be published in the *Official Gazette of Bosnia and Herzegovina* upon initial adoption, or subsequent amendment.

**Article 48**  
**Approval of the Books of Rules and Code of Ethics**

Within ninety (90) days of the appointment of the General Director, the General Director shall propose and the Management Board shall approve, the Books of Rules and the Company Code of Ethics to promote the effective functioning of the Company.

**Article 49**  
**Company Registration and Initial Operations**

Within thirty (30) days of General Meeting of Shareholders approval of the *Statut*, the Management Board shall file an application for registration of the Company. Such application shall comply with all requirements of the *Law on Registration*, and shall be based upon an inventory of assets and liabilities necessary for transmission and transmission related activities approved by the Independent Member as provided in Article 5 (Forming of the Company) of this Law.

The Management Board shall take all actions reasonably necessary to assure that Public Enterprise Elektroprivreda of Republika Srpska, Public Enterprise Elektroprivreda Bosne I Hercegovine, and Public Enterprise for Generation, Transmission and Distribution of the Electric Power, Elektroprivreda Hrvatske Zajednice Herceg-Bosne cease transmission and

transmission related activities after registration and commencement of operations of the Company. In addition, the Management Board shall take all actions reasonably necessary to assure that all assets, liabilities and employees necessary for Elektroprenos Bosne I Hercegovine to operate are transferred to the Company from Public Enterprise Elektroprivreda of Republika Srpska, Public Enterprise Elektroprivreda Bosne I Hercegovine, and Public Enterprise for Generation, Transmission and Distribution of the Electric Power, Elektroprivreda Hrvatske Zajednice Herceg-Bosne as intended by Article 5 (Forming of the Company) and 43 (Transition of Employment of this Law.)

If any dispute arises out of the Independent Member's decision concerning allocation of property and assets under Article 5 (Forming of the Company), the dispute shall be addressed by filing an application for arbitration under this Article after the Transition Period. This arbitration procedure shall be the exclusive, final, and binding remedy for any disputes arising out of the Independent Member's decision concerning allocation of assets under this Article, and there shall be no right of judicial appeal from the arbitration decision.

An aggrieved party shall file an application for arbitration within 120 days following the end of the Transition Period with the Minister of Energy, Industry and Mines of the Federation of Bosnia and Herzegovina and the Minister of Industry, Energy, and Development of Republika Srpska. The two Ministers shall select a third mutually agreeable arbitrator within a period of 30 days from the filing of the first application for arbitration following the end of the Transition Period. If the two Ministers have not selected the third arbitrator in a timely manner, then the Council of Ministers of Bosnia and Herzegovina will have an additional 30 days to choose the third arbitrator. In the event that the Council of Ministers does not choose the third arbitrator in a timely manner, then the High Representative may decide to appoint the third arbitrator. The Company and the Elektroprivreda shall cooperate fully with the arbitration proceedings. The arbitration decision shall be based upon a majority vote of the three arbitrators.

#### **Article 50** **Duration of Transition Period**

The transition period shall commence on the effective date of this Act and shall end when: (i) all transfers of assets, liabilities and employees necessary for the Company to operate contemplated by Articles 5 (Forming of the Company) and Article 43 (Transition of Employment) of this Law have been completed; (ii) the Company has been registered under Article 8 (Company Registration) of this Law; and (iii) five Management Board Members, in addition to the Independent Member, have been appointed pursuant to Article 29 (Management Board Appointment) of this Law. After that termination date, the Independent Member shall serve on the Management Board consistent with the authorities outlined in Articles 28 (Decision-making of the Management Board) and 29 (Management Board Appointment) of this Law.

When the requirements of this Article for termination of the Transition Period have been met, the Management Board shall formally declare the end of the Transition Period and shall publish public notice of the declaration in the *Official Gazette of Bosnia and Herzegovina*.

**Article 51**  
**Extraordinary Formation Powers of Independent Member**

In the event that any of the following actions are not completed within the timeframes stipulated below, the Independent Member shall assume exclusive jurisdiction for the formation of the Company under this Article, preempting any exercise of authority for the formation of the Company by the Management Board Members

- within a period of one hundred sixty (160) days after the entry into force of this Law: all appointments to the Management Board (Article 29); initial meeting of the Management Board (Article 44); appointment of General Director (Article 45); submission of invoice for Company formation costs and filing of application for SERC approval (Article 46);
- within the time period specified in Article 47: adoption of the Statut;
- within the time period specified in Article 48: approval of the Books of Rules and Code of Ethics; or
- within the time period specified in Article 49: application for registration of the Company.

Throughout the remainder of the transition period under Article 50 (Duration of Transition Period), the Independent Member shall exercise all Management Board authorities and powers for Company formation and operations. During this period, the Management Board Members shall continue to use their best efforts to assist the Independent Member in completion of the remaining tasks required for Company formation. The Independent Member shall use his best efforts to regularly convene and consult with the Management Board Members who have been appointed in order to develop consensus concerning Company formation implementation decisions.

Following the termination of the transition period under Article 50 (Duration of Transition Period), all powers shall revert to the Managing Board.

If the Independent Member assumes exclusive jurisdiction for the formation of the Company under this Article, then the Independent Member shall have all of the powers of the Management Board under this Law, as well as the following extraordinary power:

To the extent necessary to assure formation, the Independent Member shall exercise all authorities of the shareholders and the General Meeting of the Shareholders under Articles 22 (Decision-making of the General Meeting of Shareholders), 24 (Shareholder Rights) and 27 (Authority of the Management Board) of this Law until termination of the transition period. This exercise of shareholder authority by the Independent Member shall be exclusive, and shall preempt any exercise of authority by the shareholder, but the Independent Member shall provide reasonable information to the shareholders concerning actions taken pursuant to the powers of this Article.

During the transition period, the Independent Member shall not be held criminally or civilly liable for any act carried out within the scope of his/her duties pursuant to this Law.

**Article 52**  
**Independent Member**  
**Appointment and Status During Transition Period**

Notwithstanding the provisions of Article 29 (Management Board Appointment), during the transition period referenced in Article 50 (Duration of the Transition Period) the Independent Member shall be appointed in accordance with the applicable *Law on Ministerial and other Government Appointments (Official Gazette of Bosnia and Herzegovina, 07/03)* but in any event he shall be appointed no later than sixty (60) days after entry into force of this Law. The Independent Member shall be nominated by the Entity Prime Ministers and appointed by the Council of Ministers of Bosnia and Herzegovina only for the term of the transition period. In the event that the Independent Member is not appointed in a timely manner under this Article, the High Representative may decide to appoint the Independent Member. The Independent Member may be a citizen of a country other than Bosnia and Herzegovina.

During the transition period, the Independent Member and the Management Board shall provide monthly reports to the Prime Minister of Republika Srpska, Prime Minister of the Federation of Bosnia and Herzegovina, and the Chairman of the Council of Ministers of Bosnia and Herzegovina, with copies of such reports to the Minister of Foreign Trade and Economic Relations, the Minister of Energy, Industry and Mines of the Federation of Bosnia and Herzegovina and the Minister of Economy, Energy, and Development of Republika Srpska.

After the transitional period, the Entity Governments shall appoint the new Independent Member in accordance with the provisions of Article 29 (Management Board Appointment) of this Law.

**FINAL PROVISIONS**

**Article 53**  
**Effectiveness of the Law**

This Law may be referred to as the *Law Establishing the Company for the Transmission of Electric Power in Bosnia and Herzegovina*.

This Law shall become effective eight (8) days after publication of the *Official Gazette of Bosnia and Herzegovina* and shall be published in the Entity *Official Gazettes*.