Pursuant to Amendment XL, point 2 of the Constitution of the Republic of Srpska (Official Gazette of the Republic of Srpska no. 28/94), I hereby pass the

DECREE
PROMULGATING THE LAW ON CONCESSIONS

I promulgate the Law on Concessions, which was adopted by the National Assembly of the Republic of Srpska at the twenty-eighth session held on 27 June 2013, and for which the Council of Peoples confirmed on 8 July 2013 that the adopted Law on Concessions does not jeopardize the vital national interests of any of the constituent peoples in the Republic of Srpska.

Number: 01-020-2187/13
9 July 2013
Banja Luka
President of the RS
Milorad Dodik

LAW ON CONCESSIONS
I - GENERAL PROVISIONS

Article 1
This Law governs the subject-matter of and competence for granting of concessions, policy of concession granting, manner and procedure of concession granting in the Republic of Srpska, elements of concession contract and termination of concession contract, rights and obligations of the concessionaire and the concession grantor, appointment and competence of the Commission for Concessions of the Republic of Srpska, and other issues relevant to the exploitation of concessions.

Article 2
For the purpose of this Law, a concession shall mean the right to perform economic activities using public assets, natural resources and other goods of general interest, as well as the right to perform the activities of general interest, in accordance with this Law, where such right shall be granted to a concessionaire for a determined period, against payment of a concession fee, under the conditions set forth by this Law.

Article 3
The purpose of this Law is to contribute to the economic development of the Republic of Srpska (hereinafter: the RS) by creating a stimulating legal framework for attracting foreign and domestic investments, while improving the transparency of the procedure of concession granting and upgrading the efficiency and long-term sustainability of concession projects, as well as responsible management of natural resources and public assets.

Article 4
Implementation of the concession granting procedure in the RS shall be based on the principles of transparency, non-discrimination, market competition, equal treatment, free movement of goods and services, protection of public interest, efficiency, economics, proportionality, environmental protection, autonomy of will, and equality of the contracting parties.

Article 5
The terms used in this Law shall have the following meanings:
a) concession grantor shall mean the Government of the Republic of Srpska (hereinafter: the Government) on behalf of the RS, or assembly of a local self-government unit on behalf of the local self-government unit,
b) concessionaire shall mean a company established pursuant to the regulations of the RS, with whom the concession grantor concluded a concession contract,
v) competent authority shall mean the ministry competent for the concerned field which covers the subject-matter of concession to be granted by the Government, or the mayor or head of a municipality, for the subject-matter of concession within the competence of local self-government units, in accordance with this Law,
g) tenderer shall mean any local or foreign, legal or natural person, consortium of two or more legal persons connected by a contract, which submits a tender in the procedure of concession granting,
d) concession granting feasibility study shall mean a document on the analysis of technical, financial, economic, environmental and legal feasibility of concession granting (hereinafter: the study),
d) concession fee shall mean a fee paid by the concessionaire pursuant to the contract governing the concession, and

e) concession contract shall mean a contract concluded in writing between the concession grantor on the one side and the concessionaire, as the selected successful tenderer, on the other, which contains stipulations regulating mutual rights and obligations of the contracting parties.

II - SUBJECT-MATTER OF CONCESSION

Article 6
(1) Within the context of this Law, the subject-matter of concession may be any of the following:
a) building, operation and maintenance of the following:
1) roads and associated infrastructure facilities,
2) railways, navigable channels and ports,
3) airports;
b) exploitation of the following public water assets:
1) water for technological process included in performance of economic activity,
2) water and water area for exploitation of water accumulations, bathing spots, fish ponds,
3) water area for performance of economic activity or performance of other subject-matter of concession in accordance with this Law,
4) for extraction of material from watercourses (gravel, sand, stone) pursuant to a watercourse regulation program,
v) building and operation of power plants of installed power of more than 250 kW, excluding power plants powered by biomass or biogas and solar plants with photovoltaic cells on the plants, regardless of the installed power;
g) building or reconstruction and operation of oil pipelines, gas pipelines and facilities for oil and gas storage, transport and distribution;
d) exploration and exploitation of mineral raw materials;
d) planned game hunting including performance of hunting activity and fishing;
e) games of chance;
2) postal and telecommunication services, excluding the reserved postal services and common and international communications;
z) passenger and freight transportation by railway;
i) public transportation by road;
j) areas and buildings of natural, built and cultural and historical heritage;
k) utility services, excluding water supply of population and building, maintenance and operation or reconstruction and modernization of utility facilities;
l) waste management and treatment in accordance with special regulations, excluding waste covered by utility services;
lj) building or reconstruction and modernization of spa facilities and operation thereof;
m) building of facilities of tourism infrastructure and suprastructure;
n) activities in the field of hospitality industry;
nj) agricultural land; and
o) building, operation and maintenance of sports facilities.
(2) In addition to the concessions mentioned in paragraph 1 of this Article, a subject-matter of concession may also be the exploitation of other goods of general interest and provision of public services, in accordance with the regulations governing the concerned economic or other field.
(3) The concessions mentioned in paragraphs 1 and 2 of this Article may not be granted in any manner or under any procedure other than in compliance with this Law.

Article 7
(1) The concessions providing for building or reconstruction of facilities, plants or installations may be exploited under the BOT (Build-Operate-Transfer) model, which means building or reconstruction and financing of the entire facility, plant or installations, its operation and transfer to the concession grantor by the agreed deadline, as well as under other models.
(2) Other models of concession exploitation may be contracted subject to the Concession Granting Policy Document and concession subject-matter.

Article 8
(1) Granting of concessions mentioned in Article 6 of this Law shall be the competence of the Government, save for the concessions mentioned in point k) which shall be the competence of the assemblies of local self-government units.
(2) Notwithstanding paragraph 1 of this Article, the Government may authorize a local self-government unit to grant also a concession mentioned in Article 6 paragraph 1, points j), lj), m) and n) of this Law.

III - CONCESSION GRANTING POLICY

Article 9
The Concession Granting Policy, within the context of this Law, shall include measures and activities aimed at the establishment and maintenance of an efficient concession granting system, by means of protection and sustainable exploitation of public assets, natural resources and other goods of general interest, improvement of the activities which are subject-matter of concession, and achievement of most favorable financial and economic effects to meet the parameters of sustainable development and to achieve direct and indirect benefits for the RS.

Article 10
(2) The Policy Document shall include a description of economic and other fields in which concessions may be granted, objectives and priorities, types of BOT and other models of concession granting, elements for study preparation, as well as measures and activities undertaken for the purpose of fulfillment of long-term objectives in the field of concessions as set forth by the strategic and other planning documents.
(3) The Policy Document shall be prepared by the Commission for Concessions in cooperation with the competent authorities.
(5) The Policy Document shall be adopted by the National Assembly of the Republic of Srpska (hereinafter: the National Assembly), upon proposal of the Commission for Concessions.
(7) The Commission for Concessions shall monitor the execution of the Policy Document and, if need be, propose its adjustment to the strategic and planning documents related to the economic development of the RS and local self-government units.
(8) The Policy Document must be adjusted each three years.

IV - MANNER AND PROCEDURE OF CONCESSION GRANTING

Article 11

The procedure for concession granting may be initiated based on the following:

a) initiative of the competent authority,

b) initiative of the interested person, or

c) bid in a negotiation procedure.

1. Procedure Initiation by Competent Authority

Article 12

(1) In compliance with the Policy Document and other strategic and development documents for individual economic fields, the competent authority shall propose passing of a decision to initiate the concession granting procedure.

(2) If the concession subject-matter is within the competence of two or more bodies, the proposal decision shall be submitted by the body with the prevailing competence for the concession subject-matter, after previous obtaining of approval from the other body.

(3) The proposal decision mentioned in paragraph 1 of this Article shall be accompanied by an excerpt from the spatial planning documents, minutes of the visit to the site of potential concession activity, and evidence of situation in the public records of the real estate proposed to accommodate the performance of the concession activity.

(4) Prior to proposing the decision mentioned in paragraph 1 of this Article, the competent authorities shall hold consultations and obtain opinions of the authorities, state-owned companies and other institutions competent for the issuance of approvals, permits and authorizations required for the implementation of the subject-matter of concession, and in case of a concession to be granted by the Government also an opinion of the local self-government unit the territory of which shall accommodate the performance of the concession activity.

(5) If the real estate to accommodate the performance of the economic activity which is the subject-matter of concession granting is the ownership of the RS or a local self-government unit, an opinion of the Republic of Srpska Attorney-General’s Office shall also be obtained.

(6) The decision mentioned in paragraph 1 of this Article shall be made by the Government or the assembly of a local self-government unit (hereinafter: the concession grantor), and it shall be published in the Official Gazette of the Republic of Srpska.

Article 13

(1) The competent authority may:

a) prepare the study, or

b) request the tenderer to prepare the study by the public invitation.

(2) The study must include the elements set forth by the Policy Document.

(3) For the preparation of the study mentioned in paragraph 1, point a) of this Article, the competent authority may recruit reference, local or foreign companies or other legal persons.

(4) The companies or other legal persons preparing the studies, mentioned in paragraph 3 of this Article, shall fulfill the requirements for the preparation of project or technical documents in the field which is the subject-matter of concession, in accordance with special regulations.

(5) The companies or other legal persons mentioned in paragraph 3 of this Article shall be responsible for data accuracy, technical solutions and quality of the prepared study.

(6) The study shall be submitted to the Commission for Concessions, which shall pass the decision on approval granting within 30 days from the date of receipt of the application.

(7) In considering the study, the Commission for Concessions may propose amendments or supplements to the study to make it acceptable.

Article 14

(1) The competent authority shall prepare tender documents.

(2) The tender documents shall include a public invitation to tender, description of concession subject-matter, study if prepared, as well as instructions to tenderers for tender preparation, criteria for tender assessment and evaluation, draft concession contract, and other requirements a tenderer must meet depending on the concession subject-matter.

Article 15

(1) The competent authority shall submit a request for approval of tender documents to the Commission for Concessions, which shall issue a decision on approval of tender documents within 30 days from the date of receipt of a complete request.

(2) In considering the tender documents, the Commission for Concessions shall examine all relevant elements, including:

a) whether the evaluation criteria, the procedure and the selection of the successful tender are satisfactorily based on clear, transparent and non-discriminatory principles accessible to all, and

b) whether the tender documents deviate substantially from the study, if prepared, and the decision to initiate the concession granting procedure.

Article 16

(1) Depending on the subject-matter of concession, the public invitation shall include:

a) concession subject-matter and location,
b) brief project description,
v) maximum duration of concession,
g) data regarding the amount and form of guarantee to secure the tender, and relevant period it should cover,
d) requirements, term and manner of return of guarantee,
d) minimum amount of one-off concession fee,
e) minimum amount of concession fee for exploitation,
2) potential change of concession fee level,
z) manner of resolution of property legal relations on the site intended for the performance of concession activity,
i) right to take part in the public invitation,
j) evidence required for participation in the public invitation, as set forth by the competent authority,
k) deadline for submission of tenders and address,
l) manner of submission of tenders,
lj) possibility to visit the site planned to accommodate future performance of concession activity,
m) period during which tenders submitted in response to the public invitation may be withdrawn,
n) notification of the date, time and place of opening of tenders received in response to the public invitation,
nj) potential annulment of the concession granting procedure,
o) time and manner to take the tender documents, including price of the documents,
p) name of person responsible for provision of information during the public invitation procedure, and
r) other elements depending on the concession subject-matter.
(2) The deadline mentioned in paragraph 1, point k) of this Article shall be set based on the period necessary for tender preparation and may not be shorter than 30 days or longer than 180 days, and shall start from the date of publication of the public invitation in the Official Gazette of the Republic of Srpska.
(3) The costs of publication of the public invitation shall be borne by the competent authority issuing the invitation.
(4) The public invitation shall be published in the Official Gazette of the Republic of Srpska, one newspaper with circulation in the entire RS territory, and on the internet site of the competent authority and Commission for Concessions.

Article 17
(1) The criteria based on which tenders shall be evaluated, depending on the concession subject-matter, may be as follows:
a) period for which the concession is sought,
b) offered amount of concession fee,
v) offered price or tariff for service providing,
g) service quality and measures to ensure their continuity,
d) level of exploitation of natural resource,
d) effects on employment, infrastructure and economic development,
e) environmental impact,
z) minimum requirements regarding quality or technical aspects,
z) deadlines for completion of works, and
i) other criteria set forth by the regulations governing the economic or other field.
(2) Criteria evaluation shall be expressed by the determined maximum number of points within the corresponding range.

Article 18
(1) After publication, the competent authority may amend the public invitation.
(2) The amended version of the public invitation shall be published in the same manner as the original text of the public invitation, and deadline for submission of tenders shall be extended by the time passed from the date of publication of the public invitation until the date of publication of the amendments thereto.

Article 19
(1) A tender in response to the public invitation for concession granting may not be filed by the following:
a) tenderer undergoing bankruptcy or liquidation proceedings,
b) tenderer or affiliates of the tenderer with whom the concession contract was terminated due to a fault on the part of the concessionaire,
v) tenderer convicted of a crime during the performance of registered activity,
g) tenderer with outstanding tax liabilities, as per relevant regulations, or
d) tenderer who assigned the concession to a third party or a financial organization.
(2) The tenderers shall substantiate the eligibility to take part in the public invitation for concession granting, in terms of absence of obstacles mentioned in paragraph 1 of this Article, by submitting evidence issued by competent authorities, not older than four months from the date of publication of the invitation.

Article 20
(1) The Commission for Concessions shall open and evaluate the tenders.
(2) Only tenders submitted in a timely manner and supported by the required documents shall be taken into consideration in the tender procedure.
(3) Untimely tenders shall not be taken into consideration and shall be returned unopened to the tenderers.
(4) During the public opening of tenders, the Commission for Concessions shall keep minutes, to be signed by the members of the Commission and the authorized representatives of the tenderers.
(5) Prior to the evaluation of tenders, the tenders shall be verified for the purpose of identification of potential
defects and deviations from the requirements set forth by
the public invitation and tender documents.

(6) A tender not supported by the relevant documents
required by the public invitation, shall not be taken into
consideration for the public competition.

(7) After completion of the public opening, the
Commission for Concessions shall proceed with the
evaluation of tenders, based on the criteria set forth by the
public invitation and tender documents, and prepare a
ranking list of tenderers.

Article 21

(1) Within 30 days from the date of opening of tenders, the
Commission for Concessions shall submit to the
concession grantor a report on the conducted procedure
including a reasoned ranking-list of tenderers, minutes of
the course of the procedure, which must include the data
regarding fulfillment of the set requirements for each
tenderer and basic elements of tenders according to the
structure of the criteria based on which tenders were
evaluated, as well as a proposal decision on selection of the
successful tenderer and concession granting.

(2) The Commission for Concessions shall submit the
documents mentioned in paragraph 1 of this Article also to
the competent authority.

(3) Notwithstanding paragraph 1 of this Article, and
depending on the complexity of the concession subject-
matter, the tender documents may set forth a longer
deadline, but not longer than 60 days.

Article 22

(1) The proposal decision on selection of the
successful tenderer and concession granting must include
the following:
   a) name of the concession grantor,
   b) name of the selected tenderer,
   v) subject-matter of concession,
   g) level of concession fee,
   d) term of concession,
   d) deadline for conclusion of the contract,
   e) authority to conclude the concession contract on
   behalf of the concession grantor, and
   2) other elements in compliance with the data from the
tender documents and accepted tender.

(2) The decision mentioned in paragraph 1 of this
Article is an administrative act issued by the concession
grantor, upon proposal of the Commission for Concessions
or competent authority, in accordance with the provisions
of this Law.

Article 23

(1) The concession grantor shall decide about the
selection of the successful tenderer and concession granting
within 30 days from the date of receipt of the proposal
decision mentioned in Article 21, paragraph 1 of this Law.

(2) Should concession complexity so require, the
concession grantor may extend the deadline mentioned in
paragraph 1 of this Article for not more than 30 days.

(3) The competent authority shall inform the tenderers
in writing about the outcomes of the public invitation
within eight days from the date of submission of the
decision on selection of the successful tenderer and
concession granting.

(4) The decision on selection of the successful tenderer
and concession granting shall be final and allow initiation
of administrative procedure, and it shall be published in the
Official Gazette of the Republic of Srpska and on the
internet site of the competent authority.

(5) Tenderer’s rescission of the conclusion of the
concession contract shall result in the loss of entitlement to
the return of guarantee securing the tender.

Article 24

(1) The concession grantor may annul the concession
granting procedure upon expiration of deadline for
submission of tenders in the following cases:
   a) if circumstances become known which, had they
been known prior to the initiation of the concession
granting procedure, would have resulted in the public
invitation not being published or its contents being
significantly different,
   b) if no tender is submitted by the deadline for
   submission of tenders,
   v) if, after exclusion of tenders from the procedure of
   concession granting, no acceptable tender remains, or
   g) if, based on the criteria for selection of the
   successful tender, the selection cannot be made.

(2) In case of existence of reasons mentioned in
paragraph 1 of this Article, the concession grantor shall
issue a decision to annul the procedure of concession
granting.

(3) The competent authority shall notify the tenderers
in writing about the annulment of the procedure of
concession granting within eight days from the date of
issue of the decision to annul the procedure of concession
granting, and the notification of annulment shall be
published in the manner in which the public invitation is
published.

2. Unsolicited Proposal

Article 25

(1) An interested person may submit to the competent
authority an unsolicited proposal to initiate the procedure of
concession granting, provided that the initiative does not
relate to a concession for which the competent authority
has initiated the procedure of concession granting.

(2) The proposal mentioned in paragraph 1 of this
Article shall include preliminary data and information
required for the assessment of existence of public interest,
and must include in particular:
a) basic information about the proponent of the initiative,
b) description of concession subject-matter, location, economic feasibility of the investment, manner of provision of funds, scope of exploitation, description of services and works, and brief description of the preliminary design of the project,
v) excerpt from spatial planning documents and evidence of situation in the public records of real estate,
g) manner of resolution of property legal relations, and
d) other elements, depending on the subject-matter of concession.

(3) If necessary, the competent authority may invite the proponent of the initiative to specify the data presented in the proposal or to submit additional data and information necessary for the assessment of public interest.

(4) In the procedure on unsolicited proposal, the competent authority shall hold consultations and obtain opinions, in accordance with Article 12, paragraphs 4 and 5 of this Law, within a deadline which may not exceed 60 days from the date of receipt of the proposal.

(5) Should the competent authority deem that the public interest for concession granting exists, such authority shall propose passing of the decision to initiate the procedure of concession granting mentioned in Article 12, paragraph 1 of this Law, while in the opposite case, the proponent shall be notified that the proposal is not accepted.

(6) The procedure of granting of concession based on an unsolicited proposal by an interested person shall be conducted in accordance with Article 12, paragraphs 2, 3 and 5, and Articles 13 though 24 of this Law.

(7) The proponent of an unsolicited proposal for concession granting shall be invited in writing to take part in the procedure initiated in accordance with paragraph 6 of this Article.

(8) In evaluating tenders, the proponent of the unsolicited proposal mentioned in paragraph 1 of this Article shall be awarded a bonus for the proposed solution (technical and economic and financial aspect) amounting to 10% of the points won on all criteria for proposal evaluation, and the identity of the proponent, the existence and the amount of the bonus shall be stated in the public invitation.

(9) The Commission for Concessions shall issue an instruction for the assessment of public interest.

3. Negotiation Procedure

Article 26

(1) Exceptionally, a concession may be granted without conducting of the public invitation set forth by this Law, through a negotiation procedure, in the following cases:
a) proposal by a state-owned company performing an activity of general interest, the activity of which is a concession subject-matter within the meaning of Article 6 of this Law,
b) implementation of key agreements concluded by the Government or state-owned companies, which relate to the achievement of the concession subject-matter mentioned in Article 6 of this Law, or
v) extension of deadline for which the concession was granted.

(2) Concession granting mentioned in paragraph 1, point b) of this Article shall be within the exclusive competence of the Government.

Article 27

(1) In cases mentioned in Article 26 of this Law, the procedure of concession granting shall start by submission of a proposal for concession granting, including the study, by the interested proponent.

(2) The concession grantor shall set minimum technical, economic and financial, legal and other requirements by a decision which shall be mandatory for the competent authority taking part in the negotiation procedure, as well as a deadline for conducting of the negotiation procedure.

(3) The decision mentioned in paragraph 2 of this Article shall be made within 60 days from the date of receipt of the proposal.

(4) Upon conducting of the negotiation procedure, within 60 days, the competent authority shall submit to the concession grantor a report on the negotiation procedure, a proposal decision on concession granting and a proposal concession contract.

(5) The Commission for Concessions shall grant prior approval to the study and proposal concession contract.

V - CONCESSION TERM AND CONCESSION FEE

Article 28

(1) The concession contract shall be concluded for a period which may not be longer than 50 years.

(2) The term mentioned in paragraph 1 of this Article shall be set depending on the concession subject-matter, time required for return on investment, and generation of the planned profit from the concession activity.

(3) The term for which the concession is granted may be extended through a negotiation procedure, in the manner set forth by Article 26 of this Law, for a period not longer than the term set forth by paragraph 1 of this Article and under the terms and conditions of the concession contract.

Article 29

(1) The concessionaire shall be obliged to pay to the concession grantor a concession fee in the amount and in the manner set forth by the concession contract.

(2) The concession fee shall be an essential element of the concession contract.

(3) The concession fee shall be of monetary nature, and comprise the following:
a) fee for the assigned right, to be paid once upon conclusion of the concession contract, and
b) concession fee for exploitation.

(4) Depending on the concession subject-matter, the concession fee mentioned in paragraph 3, point b) of this Article shall be expressed as a percentage of the annual revenue generated by the performance of the concession activity or per unit of measurement.

(5) The concession contract may set forth a change in the fee mentioned in paragraph 3, point b) of this Article during a certain period, as well as conditions under which it is possible, during the term of the concession contract, to be stated in the tender documents.

Article 30
Upon conclusion of the concession contract, the concessionaire shall submit bank guarantees to the concession grantor, the type, amount and term of which shall be set forth by the concession contract (performance bond, maintenance warranty, etc.).

Article 31
(1) The level of concession fee, as well as the terms and manner of change of concession fee shall be set forth by a rulebook on criteria for setting of concession fee level, which, based on the relevant parameters (concession subject-matter, estimated value of investment, concession term, expected benefit and other technical, environmental and sociological parameters) for the concerned concession field, shall be adopted by the line ministries competent for the concerned concessions, upon previous obtaining of the opinion of the Commission for Concessions and approval of the Government.

(2) The rulebook mentioned in paragraph 1 of this Article shall set forth the type, level and manner of providing of guarantees mentioned in Article 30 of this Law.

Article 32
(1) The concession fee for the assigned right mentioned in Article 29, paragraph 3, point a) of this Law shall be revenue of the budget of the Republic of Srpska, or budget of the local self-government unit, depending on the competence for concession granting.

(2) The concession fee for exploitation mentioned in Article 29, paragraph 3, point b) of this Law, for concessions granted by the Government, shall be shared between the budget of the RS and that of the local self-government unit where the activity is performed, in the following proportion:

a) 30:70 for developed local self-government units,
b) 30:70 for medium developed local self-government units,
v) 20:80 for underdeveloped local self-government units, and
g) 10:90 for extremely underdeveloped local self-government units.
(3) The concession fee for exploitation mentioned in Article 29, paragraph 3, point b) of this Law, for concessions granted by a local self-government unit, shall be revenue of the budget of the local self-government unit.

(4) The concession fee funds which are revenue of the local self-government unit’s budget, directly or after sharing according to a proportion mentioned in paragraph 2 of this Article, shall be used in a planned manner in the investment development projects for the following:

a) construction and reconstruction of primary infrastructure facilities (water supply system, sewage system, heating pipeline, local road, etc.) and new economic capacities in the function of the economic development and employment, and
b) environmental protection (ecology).

(5) The special-purpose funds mentioned in paragraph 4 of this Article shall be used by the local self-government units in accordance with the annual plan of spending of concession fee funds, as adopted by the local self-government unit’s assembly for the next year.

VI - CONCESSION CONTRACT

Article 33
(1) The concession contract shall govern mutual rights and obligations of the concession grantor and the concessionaire regarding the subject-matter of the granted concession.

(2) The concession contract shall be concluded in accordance with the concession granting documents, submitted tender and decision on selection of the successful tenderer and concession granting.

(3) Depending on the concession subject-matter, the concession contract shall contain the following:

a) concession subject-matter, including nature and scope of works to be performed and services to be provided by the concessionaire, and location where the concession activity shall be carried out,
b) requirements and manner of exploitation of the concession subject-matter,
v) concession period,
g) start of performance of the concession activity,

(4) Ownership rights on the property related to the performance of the concession activity, including rights on land where the concession activity shall be performed, entering into possession of the concession subject-matter and determination of ownership relations upon expiration of the contract,
d) property provided by the concession grantor for use,
e) level, deadlines and manner of payment, and manner of change of concession fee for exploitation,

(5) manner and deadlines for provision of funds for financing of the concession activity and investment schedule,

(6) minimum standards of service quality, criteria and method for setting of price or tariff for end users of the service,
i) minimum technical standards to be applied and environmental protection,

j) rehabilitation and recultivation of areas degraded by performance of the concession activity,

k) right of supervision of the concession grantor,

l) scope and manner of reporting on fulfillment of contractual obligations,

lj) right of concession grantor to approve project documents and contracts concluded by the concessionaire, in particular with the owners of the concessionaire or other affiliates,

m) type, level and manner of providing of guarantee for the fulfillment of the concession contract, and insurance policy that the concessionaire must maintain throughout the concession term,

n) legal remedies in case of failure to fulfill obligations by any of the contracting parties,

nj) description of events considered changed circumstances and force majeure, as well as requirements to amend or terminate the concession in case of their occurrence,

o) rights and obligations of contracting parties regarding confidential information,

p) rights to assign the contract on concession or on change of ownership structure of the concessionaire,

i) manner to amend the concession contract,

s) requirements for termination of the concession contract,

t) manner of transfer of real estate, installations and plants to the concession grantor in a condition required for transfer upon expiration of the concession period,

ç) manner of regulation of mutual relations in case of termination of the concession contract, and

u) other elements relevant for the concession subject-matter.

(4) The concession contract shall be concluded in writing and signed by an authorized person of the concessionaire and an authorized person of the concessionaire.

(3) The registry of concession contracts shall contain the data about the name of the concessionaire, name of the concession grantor, concession subject-matter, concession fee level, date of conclusion of concession contract and period of concession duration.

(4) All changes related to the concluded concession contracts shall be entered into the registry of concession contracts in chronological order.

(5) The Commission for Concessions shall adopt a rulebook governing the contents and manner of keeping of the registry of concession contracts.

(6) Data entered into the registry of concession contracts shall be available on the internet site of the Commission for Concessions.

Article 36

In case of change of regulations after conclusion of the concession contract which aggravate the position of the concessionaire or the concession grantor, the contract may be amended to the extent necessary to bring the concessionaire or the concession grantor into a position they were in at the time of conclusion of the concession contract.

Article 37

Should the exploitation of concession require expropriation of real estate, the costs, manner and deadlines for payment of fee for real estate expropriation shall be established in accordance with the regulations governing this field.

Article 38

The right on real estate arising from the concession contract shall be entered into the public records of real estate, in accordance with the concession contract and regulations governing the keeping of the public records of real estate.

VII - RIGHTS AND OBLIGATIONS OF THE CONCESSIONAIRE

Article 39

(1) The concessionaire shall have the rights and obligations set forth by this Law and concession contract.

(2) The selected tenderer who has not established a legal entity with the head office in the RS shall establish a legal entity pursuant to the regulations of the RS prior to the conclusion of the concession contract.

(3) In case mentioned in paragraph 2 of this Article, the selected tenderer shall be jointly and severally responsible for the fulfillment of obligations arising from the concession contract.

(4) Failure by the selected tenderer to fulfill the obligation mentioned in paragraph 2 of this Article shall result in the tenderer’s loss of all rights arising from the procedure of concession granting.
(5) The concessionaire performing other activities in addition to the concession activity shall keep a separate account in the accounting records, as well as separate accounting records for the concession activity, and prepare a separate financial statement in accordance with this Law, the law governing the position of economic entities, and law governing accounting and audit.

Article 40

(1) The concession contract may be assigned to a third party or a financial organization with which the concessionaire concluded a financing agreement related to the concession, in case the concessionaire cannot, due to economic, organizational, financial or other justified reasons, fulfill their contractual obligations within the set deadlines and in the manner set forth by the concession contract, or in case the concessionaire cannot fulfill the obligations arising from the financing agreement.

(2) Assignment of the concession contract mentioned in paragraph 1 of this Article shall be approved by the concession grantor, upon prior approval of the Commission for Concessions.

(3) In considering the application for assignment of the concession contract, the Commission for Concessions shall examine the following:

a) level of fulfillment of the concession contract,

b) financial standing of the proposed new concessionaire,

d) expertise and capacity of the proposed new concessionaire to provide services and fulfill obligations arising from the concession contract, and

g) future impact of the granted concession on ownership concentration in the concerned activity sector.

(4) The new concessionaire shall undertake the rights and obligations of the previous concessionaire.

Article 41

In order to ensure fulfillment of contractual obligations, the concessionaire may change the ownership structure in a percentage above 50% or change the owner, upon prior approval of the Commission for Concessions and approval of the concession grantor.

Article 42

The Commission for Concessions shall adopt a rulebook governing the procedure of assignment of concession contract and procedure of change of ownership structure of the concessionaire mentioned in Articles 40 and 41.

Article 43

Upon prior approval of the Commission for Concessions and concession grantor, the property of the concessionaire directly in the function of performance of the concession activity may be subject to a lien only for the benefit of financial organizations, with a view to secure the claims of such organizations in accordance with the loan agreement concluded for the purpose of implementation of the concession contract.

Article 44

The concessionaire shall prepare contracts on provision of public services governing the commercial relations between the concessionaire and users of services, subject to approval of the Commission for Concessions, unless special regulations for individual activities place the competence for approval granting on another body.

VIII - TERMINATION OF CONCESSION CONTRACT

Article 45

(1) A concession contract shall terminate upon:

a) cessation of existence of the concession subject-matter,

b) expiration of the term for which it was concluded,

c) initiation of bankruptcy of liquidation proceedings of the concessionaire,

d) unilateral termination,

e) agreement between the concession grantor and the concessionaire,

f) date of finality of the decision of the Government on the assessment of general interest for facility construction or works performance on the concession asset in accordance with the regulations governing the field of expropriation,

g) finality of court decision whereby the concession contract is annulled or cancelled,

h) cancellation, annulment or avoidance of the decision on selection of the successful tenderer and concession granting, after conclusion of the concession contract,

i) fulfillment of requirements set forth by another law resulting in termination of the concession contract.

(2) If the decision mentioned in paragraph 1, point d) of this Article applies to a portion of the concession asset, the concession contract regarding such portion of the concession asset shall be terminated by force of law, unless it is contrary to the nature of the concession activity.

(3) In cases of concession contract termination mentioned in paragraph 1, point d) and paragraph 2 of this Article, the concessionaire may, during the period of six months:

a) keep the parts of equipment, buildings etc. built by them in accordance with the subject-matter of the concession contract which are used for the performance of the concession activity, or

b) request compensation of the actual value of the equipment, possible to be established for the equipment, installations, facilities etc. which cannot be excluded, if they are installed in accordance with the subject-matter of the concession contract and used for the performance of the concession activity.
Article 46

(1) The concession grantor may terminate the contract unilaterally in the following cases:

a) the concessionaire does not perform or fails to perform the necessary activities within the set deadline, or fails to start the performance of the concession activity by own fault within the set deadline,

b) the concessionaire does not perform the concession activity in accordance with the schedule or in the scope set forth by the concession contract, except in case of unforeseen circumstances or force majeure,

c) performance of the concession activity jeopardizes the environment and human health or public assets protected by law, above the allowed and set standards,

d) the concessionaire does not provide public services in accordance with the set quality standards,

e) the concessionaire fails to pay the concession fee three times consecutively or pays the concession fee in an irregular manner,

d) the concessionaire assigns the concession contract, changes ownership structure or uses property contrary to the provisions of this Law, and

e) in other cases pursuant to the provisions of the concession contract.

(2) The criteria based on which the concession grantor shall establish the existence of grounds for termination of the concession contract mentioned in paragraph 1 of this Article shall be set forth by the concession contract.

(3) Prior to the initiation of procedure of unilateral termination of the concession contract in cases mentioned in paragraph 1, points a), b), v), g) and d) of this Article, the concession grantor shall notify the concessionaire in writing and set an appropriate deadline for fulfillment of contractual obligations representing grounds for concession contract termination.

(4) If the concessionaire fails to remove the grounds for termination of the concession contract within the deadline mentioned in paragraph 3 of this Article, the concession grantor shall terminate the concession contract by a decision allowing initiation of administrative dispute.

(5) The concessionaire may terminate the concession contract unilaterally pursuant to the provisions of the concession contract and general rules of the law of obligations.

IX - COMMISSION FOR CONCESSIONS

Article 47

(1) The Commission for Concessions is a permanent and independent regulatory body, with the status of a legal person and rights and obligations set forth by this Law.

(2) Within its competences, the Commission for Concessions shall promote the economic and other investment opportunities through concessions, for the purpose of satisfaction of public needs and economic development, by involving the private sector in financing, design, construction or rehabilitation, maintenance or management of operation of infrastructure facilities and installations, by providing services and exploiting natural resources and facilities used for the exploitation thereof, taking care of protection of the economic and social interests, space, population and environment.

(3) The head office of the Commission for Concessions shall be in Banja Luka.

(4) The Commission for Concessions may hold sessions also outside the head office.

(5) The Commission for Concessions shall have a seal reading as follows: “Komisija za koncesije Republike Srpske, Banja Luka” (Commission for Concessions of the Republic of Srpska, Banja Luka).

Article 48

(1) Members of the Commission for Concessions shall be appointed by the National Assembly, upon proposal of the Government, after conducting of a public competition.

(2) The Commission for Concessions shall have five members, to be appointed from the ranks of eminent experts in the fields of law, economics, engineering and other relevant fields, who completed first-cycle undergraduate studies and obtained at least 240 ECTS points.

(3) The President and Deputy President shall be appointed from the ranks of the members of the Commission for Concessions by the National Assembly.

(4) Members of the Commission for Concessions may not:

a) be persons convicted of a crime against economy or payment operations or a breach of official duty, or undergoing criminal proceedings,

b) have direct or indirect personal or business interest which would lead to a conflict of interest with their duties at the Commission for Concessions,

c) perform any other duty, except scientific and lecturing activities,

d) be members of any body of legislative, executive or judicial power,

e) be related or married to each other, including spouse or cohabitee, lineal relative to the third degree, collateral relative to the second degree, and relative by marriage to the first degree.

Article 49

(1) The members of the Commission for Concessions shall be appointed for a period of five years and may be reappointed for another term.

(2) If a position of a member of the Commission for Concessions becomes vacant prior to the expiration of the term, the National Assembly of the Republic of Srpska shall appoint a new member for the remainder of the term, upon proposal of the Government.

(3) During their term, the members of the Commission for Concessions shall exercise their rights and obligations arising from employment in accordance with the
employment regulations and internal acts of the Commission for Concessions.

**Article 50**

Upon proposal of the Government, the National Assembly may dismiss the President or member of the Commission for Concessions prior to the expiration of term, if that person:

a) files own request for dismissal in writing,
b) is convicted of a crime by a final decision,
v) permanently loses its business ability,
g) fulfills the function in an unconscientious or unprofessional manner,
d) is elected for another position, or
d) fulfills the requirements for dismissal set forth by other laws.

**Article 51**

(1) The President of the Commission for Concessions shall manage and coordinate the operation of the Commission for Concessions as a collegiate body when the Commission is deciding about the issues within its competence, and be responsible for the work of the employees.

(2) Deputy President of the Commission for Concessions shall replace the President of the Commission for Concessions in case of President’s absence or inability to perform the tasks for another reason.

**Article 52**

(1) The Commission for Concessions shall have a Secretary and expert services.

(2) The workplaces of the Secretary and other personnel of the Commission for Concessions shall be filled in the way and under the conditions set forth by labor regulations and Rulebook on Internal Organization and Job Systematization of the Commission for Concessions.

(3) For performance of expert tasks, the Commission for Concessions may recruit expert legal or natural persons in accordance with the Rulebook on Internal Organization and Job Systematization of the Commission for Concessions.

(4) The criteria for setting the level of salaries and other remunerations shall be set forth by a special rulebook.

**Article 53**

The Commission for Concessions shall be responsible to:

a) prepare the Policy Document and propose its adoption to the National Assembly,
b) monitor the implementation of the Policy Document,
v) approve the feasibility study,
g) approve tender documents,
d) submit proposal decision on selection of the successful tenderer and concession granting,
d) open and evaluate the tenders received in response to the public invitation for concession granting,
e) approve the proposal concession contract and annex to the concession contract,
z) approve deadlines and terms and conditions of a standard contract on provision of public services to users,
zo) verify overall work of the concessionaires, in accordance with the concession contract, including in particular continued service provision to users, service quality, application of tariffs and other contract terms,
i) decide about complaints by service users regarding the level of fee and other requirements under which the concessionaire provides public services, unless placed within the competence of another body by a special law,
j) approve assignment of concession contract and change of ownership structure of the concessionaire,
k) provide prior approval for the establishment of a lien for the benefit of a financial organization,
l) keep the registry of concession contracts, and
lj) decide on other requests, in accordance with the competences set forth by this law.

**Article 54**

(1) The work of the Commission for Concessions shall be public.

(2) The Commission for Concessions may hold public hearings on any matter within its competence.

(3) The Commission for Concessions may prohibit or restrict publication of any information or document if the nature of that document so requires or in accordance with the regulations governing the field of access to information.

**Article 55**

(1) The Commission for Concessions may launch the initiative for adoption of new regulations or amendments to the existing regulations that affect the field of concessions.

(2) Should the contracting parties so agree, the Commission for Concessions may mediate in peaceful resolution of disputes arising from the concession contract.

**Article 56**

(1) Financing of the operation of the Commission for Concessions shall be provided in the budget of the RS.

(2) Use of funds by the Commission for Concessions shall be subject to audit by the service in charge of audit of the public sector of the RS.

**Article 57**

(1) In the performance of the tasks within its competence, the Commission for Concessions shall resolve the requests in compliance with the rules of the general administrative procedure.

(2) The decisions and other acts adopted by the Commission for Concessions shall be final in the administrative procedure and allow initiation of administrative dispute against them before the competent court.
Article 58
(1) The Commission for Concessions shall verify the work of the concessionaires, in accordance with the concession contract.
(2) The Commission for Concessions shall be authorized to inspect business records, reports and other documents related to concessions, and to request submitting of any data or documents supporting fulfillment of obligations arising from the concession contract.
(3) The Commission for Concessions shall prepare minutes on the undertaken activities mentioned in paragraph 2 of this Article, to be signed also by a representative of the concessionaire.
(4) The Commission for Concessions shall notify the concession grantor, upon request of the competent authority and if necessary, about the performed verification of the work of the concessionaire within 30 days from the date of completion of the verification.
(5) Should the Commission for Concessions establish that the concessionaire is not fulfilling the obligations arising from the concession contract, the Commission shall submit a proposal for termination of the concession contract to the concession grantor.

Article 59
(1) Upon approval of the Government, the Commission for Concessions shall adopt the following:
   a) statute,
   b) rulebook on internal organization and job systematization,
   v) rulebook on salaries and remunerations of members and other employees,
   g) rulebook on procedure of assignment of concession contract and change of ownership structure of the concessionaire,
   h) rulebook on contents and manner of keeping of the registry of concession contracts, and
   d) instruction on assessment of public interest.
(2) Acts mentioned in paragraph 1 of this Article shall be published in the Official Gazette of the Republic of Srpska.

Article 60
The Commission for Concessions shall submit a report on its activities and a financial statement for the previous year to the National Assembly, not later than on 30 April of the current year.

X - SUPERVISION, MONITORING OF FULFILLMENT OF CONCESSION CONTRACTS AND DISPUTE RESOLUTION

Article 61
(1) Supervision of the enforcement of this Law shall be performed by the competent administrative bodies of the RS.
(2) Inspection of the application of the provisions of this Law and its supporting regulations shall be performed by the RS Administration for Inspection Activities and competent inspection bodies of local self-government units.

Article 62
(1) Pursuant to this Law, the competent authority shall monitor continually the work of the concessionaires regarding fulfillment of their obligations arising from the concession contract.
(2) The concessionaire shall submit to the competent authority a report on its work and exploitation of the concession and concluded legal transactions with the affiliates, in accordance with the provisions of the concession contract.
(3) Upon request of the competent authority, the concessionaire shall submit also other reports, data or documents related to the fulfillment of the concession contract, within 15 days from the date of receipt of the request from the concession grantor.
(4) The control of computation and payment of concession fee set forth by the concession contract shall be performed by the Tax Administration of the Republic of Srpska, in accordance with the provisions of the law governing tax procedure.
(5) If the concessionaire is not fulfilling the obligations arising from the concession contract or is performing the concession activity contrary to the relevant regulations, the competent authority must initiate the procedure of supervision over the work of the concessionaire, by means of either a competent inspection body or Tax Administration of the Republic of Srpska, subject to the scope of work of those bodies.

Article 63
(1) Disputes that arise based on the concession contract shall be resolved before the competent court of the RS.
(2) For the resolution of the disputes mentioned in paragraph 1 of this Article, the contracting parties may also agree on arbitration.
(3) The law governing the procedure mentioned in paragraph 2 of this Article shall be the law of the RS.

XI - PENAL PROVISIONS

Article 64
The concessionaire shall be fined an amount from BAM 5,000.00 to BAM 15,000.00 for violation in the following cases:
   a) failure to file the request for entry of the right arising from the concession contract into the public records of real estate (Article 38),
   b) entry of the right of lien on property from the concession contract contrary to the provisions of Article 43 of this Law,
v) denial of access to documents necessary to the Commission for Concessions for monitoring of the work of the concessionaire (Article 58, paragraph 2), or
g) failure to submit to the competent authority a report on its work and exploitation of concession within the deadline set by Article 62, paragraphs 2 and 3 of this Law.

Article 65
The responsible person of the concessionaire shall be also fined an amount from BAM 1,000.00 to BAM 3,000.00 for violations mentioned in Article 64.

XII - TRANSITIONAL AND FINAL PROVISIONS

Article 66
The members of the Commission for Concessions, as established by the Law on Concessions (Official Gazette of the Republic of Srpska no. 25/02, 91/06 and 92/09), shall proceed in accordance with this Law, until expiration of their term.

Article 67
(1) Companies using public goods, natural resources or other goods of general interest in the performance of their activities, and not having concluded a concession contract, must file a proposal for granting of concession to the competent authority within six months from the date of entry into force of this Law for the purpose of granting of concession, in accordance with Article 26 of this Law.

(2) The competent authority must finalize the procedure of concession granting within one year from the date of submission of the proposal mentioned in paragraph 1 of this Article.

(3) The procedure of concession granting initiated prior to the entry into force of this Law shall be finalized in accordance with the provisions of the Law on Concessions (Official Gazette of the Republic of Srpska no. 25/02, 91/06 and 92/09).

Article 68
(1) Within one year from the date of entry into force of this Law, the Commission for Concessions shall prepare the Concession Granting Policy Document (Article 10, paragraph 3).

(2) Within six months from the date of entry into force of this Law, the Commission for Concessions shall adopt:
   a) Instruction on public interest assessment (Article 25, paragraph 8),
   b) Rulebook on contents and manner of keeping of the registry of concession contracts (Article 35, paragraph 5), and
   v) Rulebook on procedure of assignment of concession contract and change of ownership structure of the concessionaire (Article 42).

(3) Within six months from the date of entry into force of this Law, the ministries competent for the concerned concessions shall adopt the rulebooks on criteria for setting of concession fee level and guarantee amount (Article 31).

(4) Pending adoption of the legal acts mentioned in paragraphs 1, 2 and 3 of this Article, bylaws valid on the date of entry into force of this Law shall apply unless they are contrary to this Law.

Article 69
Upon entry into force of this Law, the Law on Concessions (Official Gazette of the Republic of Srpska no. 25/02, 91/06 and 92/09) shall cease to have effect.

Article 70
This Law shall enter into force on the eighth day following the publication in the Official Gazette of the Republic of Srpska.

Number: 01-1516/13
27 June 2013
Banja Luka
Speaker of the National Assembly
Igor Radojicic MSc