

04 Annex - Free movement of capital

20. LAW ON FOREIGN INVESTMENTS

LAW ON FOREIGN INVESTMENTS

(Official Gazette of the Republic of Montenegro 52/00 of 3 November 2000, 36/07 of 15 June 2007)

I BASIC PROVISIONS

Foreign Investments

Article 1

Foreign investors may, in order to conduct a business activity in the Republic of Montenegro (hereinafter referred to as: the Republic), invest in business organizations and other organizational forms for performing business activities or providing services (hereinafter referred to as: business organizations), establish business organizations and make other investments, in accordance with this and other laws.

Foreign Investor

Article 2

Foreign investor, under this Law, shall mean:

- 1) Foreign legal entity having registered office abroad;
- 2) Foreign natural person;
- 3) Yugoslav citizen with habitual or temporary residence abroad for a period longer than one year;
- 4) Business organization with more than 25% of foreign capital; and
- 5) Business organization established by a foreign person in the Republic.

Contribution of a Foreign Investor and Domestic Person

Article 3

Contribution of a foreign investor may be in cash, things, services, property rights, and securities.

Contribution of a domestic person, on the occasion of foreign investments, may be in cash, things, services, property rights, and securities.

The things, services, and rights referred to in paragraphs 1 and 2 of this Article must be stated in cash.

Amount of Foreign Contribution

Article 4

Amount of foreign contribution shall be determined by a contract on investment or a contract, or decision on establishment or another act, in accordance with law.

II FORMS OF FOREIGN INVESTMENTS

Corporate Investment

Article 5

Foreign investor may do the following in the Republic:

- 1) establish a business organization (alone or with other investors);
- 2) invest in a business organizations;
- 3) purchase a business organization or its part, in accordance with law.

A foreign investor may establish a foreign company branch.

National Treatment

Article 6

Foreign investor may, at the territory of the Republic, establish a business organization and invest in a business organization, in the manner and under conditions under which domestic persons may establish business organizations or invest funds in business organizations, unless otherwise determined by this Law.

Foreign Investment only with a Domestic Person

Article 7

Foreign investor may invest the funds in a domestic business organization or establish a business organization for production and trade in arms and military equipment in the Republic only with a domestic legal entity or natural person.

Foreign investor cannot have a share exceeding 49% of share capital or ownership rights or voting rights in the business organization referred to in paragraph 1 of this Article.

Article 8

Deleted. (Official Gazette of the Republic of Montenegro, No 36/07).

Article 9

Foreign investor shall be obliged to obtain an approval of the competent ministry to participate in establishing the business organization, investing in the business organization, or increasing the contribution in the business organization referred to in Article 7 of this Law.

In the procedure of deciding on the approval, the Ministry referred to in paragraph 1 of this Article shall especially evaluate the quality, type, and scale of foreign investment.

The Ministry referred to in paragraph 1 of this Article shall be obliged to decide on the request within 30 days from the day of receiving the request.

If a decision on the request is not made within the deadline referred to in paragraph 3 of this Article, it shall be considered as the requirements referred to in paragraph 1 of this Article are met.

Article 10

Business organization producing weapons and military equipment cannot negotiate about concluding a contract on investment prior to receiving an approval of the competent ministry.

Prior to receiving the approval referred to in paragraph 1 of this Article, a business organization cannot give to a foreign investor any data on production of weapons and military equipment or allow filming of structures.

Establishment, Investment in other Organizations

Article 11

Establishing of and investing in insurance companies, banks, and other financial institutions and free zones shall be performed in accordance with a law regulating their establishment or legal status.

Contract-Based Investments and Purchase of Immovable Property

Article 12

Investment of a foreign investor can also be made through a leasing contract, franchising contract, management contract, and contract on purchase of immovable property, in accordance with law.

B.O.T. – System and Concessions

Article 13

Foreign investor may build, operate, and transfer (B.O.T.) a certain structures, plant, or facility or infrastructure and communication structures, in accordance with law.

Foreign investor may be awarded a concession in accordance with law.

III RIGHTS AND OBLIGATIONS OF FOREIGN INVESTORS AND THEIR PROTECTION

Rights of a Foreign Investor

Article 14

Foreign investor, on the basis of its investment, shall be entitled to:

- 1) manage or participate in management of a business organization;
- 2) transfer rights and obligations arising from the contract on investment, or the contract or decision on establishment, to other foreign investors or domestic persons;
- 3) return of certain invested things, in accordance with the contract on investment, or the contract or decision on establishment;
- 4) return of contribution, or rest of funds invested in a business organization, in case of cancellation of the contract, or expiration of the contract on investment, or the contract or decision on establishment, or termination of operations of such business organization;
- 5) a share in net assets and return of a part or assets, upon termination of operations of a business organization, if funds were invested in establishment of such business organization;
- 6) other rights envisaged by this and other law.

A foreign investor shall be entitled to access business books and current operations of the business organization wherein invested the funds, as well as the right to independently, or through an authorized representative, conduct an audit of periodical and annual financial statements.

Transfer and Reinvestment of Profit

Article 15

A foreign investor, on the basis of investments, shall be entitled to have a share in the profit and to freely transfer and reinvest the profit, including the exchange of currency.

Tax and other Benefits

Article 16

Foreign investors shall not be taxed in a less favorable manner than domestic legal entities.

Free Payments

Article 17

Business organization, with a contribution of a foreign investor, shall make payments, in the course of its foreign operations, in a free manner, in accordance with law.

Article 18

Business organization, with a contribution of a foreign investor, may hold the money, invested as initial capital or generated from foreign operations, in the account with the authorized bank, and freely use it and convert it thereof.

Transfer of Funds

Article 19

Transfer of funds to a foreign investor abroad, upon satisfying all due obligations in the Republic, in accordance with law, shall be free, on the basis of:

- 1) return of contribution, repatriation of a share in net assets of the business organization after it terminated its operations or sale;
- 2) profit in accordance with the contract or articles of incorporation.

Standards

Article 20

Foreign investor shall keep business books, accounting, and documentation in accordance with the international accounting principles and standards.

Intellectual Property Rights

Article 21

Foreign investor shall be entitled to protect a patent, trademark, design, integrated circuits topography, geographical indication of origin, copyrights, and related rights, in accordance with law.

The Environmental Protection

Article 22

Foreign investor when performing its business activity shall be obliged to act in accordance with regulations on the environmental protection.

Investment Insurance

Article 23

Foreign investor shall be obliged to insure its investments in accordance with the regulations on insurance.

Employment

Article 24

For the purposes of performing its business activity, a foreign investor may employ domestic and foreign natural persons and engage natural persons and legal entities, in accordance with law.

Article 25

Employees of a foreign investor shall be entitled to rights and obligations determined by law, collective bargaining agreement, and conventions of the International Labor Organization (ILO) and other international standards.

Contract-Based Employment

Article 26

Mutual rights and obligations of an employee and a foreign investor shall be determined by the contract of employment, in accordance with the acts referred to in Article 25 of this Law.

In case that the contract of employment determines lesser rights and less favorable working conditions than the rights and conditions determined by law, the provisions of law and the collective bargaining agreement shall apply.

Legal Certainty

Article 27

If a law, on the basis of which the contract on foreign investment is concluded or the decision is made, is amended, the provisions of the contract, decision, or charter and law applicable on the day the contract was concluded or decision adopted shall apply to the relations determined by such contract or the decision, if it is more favourable for the investor or if the investors fails regulate certain issues by a mutual agreement in accordance with the amended provisions of such law.

Article 28

In the cases when the Government of the Republic of Montenegro is a party to the contract on foreign investment or is a partial owner of the investment on some other ground, it shall not be entitled to greater rights than the rights of other parties to the contract.

Protection of Property of a Foreign Investor

Article 29

Property of a foreign investor cannot be subject to expropriation, except when the public interest has been determined by law or based on law, with a compensation that cannot be lower than the market value, in accordance with law.

In addition to the compensation referred to in paragraph 1 of this Article, the foreign investor shall also be entitled to interest for the period starting from the day of taking away the property to the day of paying the compensation, calculated on the basis of one-year LIBOR rate.

Damage Compensation

Article 30

Foreign investor who suffers damage due to war or state of emergency shall be entitled to damage compensation that cannot be lower than the compensation that a domestic person is entitled to, in accordance with law.

Foreign investor shall be entitled to compensation of damage incurred to him, through illegal or irregular conduct, by an official or state authority, in accordance with law.

Responsibility

Article 31

Civil servants acting contrary to the provisions of this Law and not complying with the Convention on Combating Bribery and Corruption of Foreign Public Officials in International Business Transactions shall be responsible in accordance with regulations.

Foreign investor who fails to act in accordance with the provisions of this Law and the Convention referred to in paragraph 1 of this Article may be prohibited from operating in the Republic.

IV CONTRACTS AND OTHER ACTS ON FOREIGN INVESTMENTS

Article 32

A contract on investment or contract on establishment, which is concluded in writing, or the decision on establishment shall regulate investments of foreign investors, if one foreign investor establishes a business organization.

Article 33

Contract on investment and contract on establishment may be concluded, and decisions on establishment adopted for defined period or open-ended period.

Contract on Investment

Article 34

Contract on investment shall contain the provisions on:

- 1) parties to the contract;
- 2) business organization in which it is invested and which conducts the operations for the account of parties to the contract;
- 3) objectives, precisely activities and business activity subject-matter of the contract;
- 4) type and amount of the contribution and other obligations of the parties to the contract regarding financing of joint operations;
- 5) operations management;
- 6) manner of distributing profit and covering losses;
- 7) responsibilities of the parties to the contract in joint operations;
- 8) duration of the contract on investment;
- 9) manner of returning the contribution;
- 10) conditions and manner for cancelling the contract;
- 11) dispute resolution;
- 12) other provisions agreed upon by investors, in accordance with law.

Contract and Decision on Establishing a Business Organization

Article 35

Contract or decision on establishing a business organization shall contain the provisions on:

- 1) the name and registered office of the business organization;
- 2) the name and address or registered office of the founder;
- 3) the business activity of the business organization;
- 4) initial capital;
- 5) rights, obligations and responsibilities of the founders towards the business organization and of the business organization towards the founder;
- 6) conditions and manner of profit distribution and risk bearing;
- 7) representative of the business organization;
- 8) protection of the environment;
- 9) duration of the contract or the decision on establishment.

The contract or decision on establishment, depending of the form of a business organization being established, shall also contain other provisions, in accordance with a law regulating the legal status of business organization, as well as other provisions as agreed by the founders.

V RECORD KEEPING AND PROMOTION OF FOREIGN INVESTMENTS

Record Keeping and Promotion

Article 36

Contract on investment, or contract or decision on establishment, shall be recorded with the agency in charge of foreign investments with its special organizational part (hereinafter referred to as: the Agency), for the purpose of promotion.

Article 37

Amendments to (profit reinvestment, additional investment of the foreign investor, buyback of shares, transfer of foreign contribution from one person to another, and other.) and termination of validity of the contract on investment, or the contract or decision on establishment shall be recorded with the Agency, for the purpose of promotion.

Article 38

Business organization established with the funds of a foreign investor shall be registered with the registry of the competent court, and the court shall inform thereon the Agency, for the purpose of promotion.

Business organization established in the areas referred to in Article 7 of this Law shall be registered with the registry of the competent court, upon obtaining the approval from the competent ministry.

The provision of paragraph 2 of this Article shall also relate to investments of foreign investor in the business organization under Article 9 of this Law.

VI DISPUTE RESOLUTION

Article 39

Disputes arising based on investments of foreign investors shall be resolved by the competent court in the Republic, unless the contract on investment or the decision on establishment envisages that such disputes are resolved by domestic or foreign arbitration in accordance with the international conventions.

If the Government of the Republic of Montenegro is a party to the contract, until signing of the Convention of the International Center for Settlement of Investment Dispute (ICSID Convention), domestic or foreign arbitration shall apply the Additional Facility Rules of ICSID Convention for the countries not signatories to the ICSID Convention to disputes arising on the basis of foreign investments.

If parties to the contract are domestic and foreign legal entities and natural persons, domestic and foreign arbitration shall apply the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) to disputes arising based on foreign investments.

The competent court shall implement an executive decision of the arbitration.

VII TRANSITIONAL AND FINAL PROVISION

Application of More Favourable Regulations

Article 40

More favorable solutions, established by the regulations of the Republic during the application of this Law, shall apply to foreign investments.

Entry into Force

Article 41

This Law shall enter into force on the eighth day following its publication in the Official Gazette of the Republic of Montenegro.