30 Annex - External relations

245. DECREE PROMULGATING THE LAW ON RATIFICATION OF THE AGREEMENT BETWEEN SERBIA AND MONTENEGRO AND THE SWISS CONFEDERATION IN RELATION TO STIMULATION AND MUTUAL PROTECTION OF INVESTMENTS

15.

Pursuant to Article 26, item 7 of the Constitutional Charter of The state union of Serbia and Montenegro, I hereby issue the

DECREE

PROMULGATING THE LAW ON RATIFICATION OF THE AGREEMENT BETWEEN SERBIA AND MONTENEGRO AND THE SWISS CONFEDERATION IN RELATION TO STIMULATION AND MUTUAL PROTECTION OF INVESTMENTS

I hereby promulgate the Law on ratification of the Agreement between Serbia and Montenegro and the Swiss Confederation in relation to stimulation and mutual protection of investments, adopted by the Assembly of Serbia and Montenegro, in the session of 11 May 2006.

245. DECREE PROMULGATING THE LAW ON RATIFICATION OF THE AGREEMENT BETWEEN SERBIA AND MONTENEGRO AND THE SWISS CONFEDERATION IN RELATION TO STIMULATION AND MUTUAL PROTECTION OF INVESTMENTS

No 280
11 May 2006
Belgrade

President
Of Serbia and Montenegro
Svetozar Marovic, m. p.

LAW

ON RATIFICATION OF THE AGREEMENT BETWEEN SERBIA AND MONTENEGRO AND THE SWISS CONFEDERATION IN RELATION TO STIMULATION AND MUTUAL PROTECTION OF INVESTMENTS

Article 1

I hereby ratify the Agreement between Serbia and Montenegro and the Swiss Confederation in relation to stimulation and mutual protection of investments, signed on 7 December 2005 in Belgrade, in the original in Serbian, French and English.

Article 2

The Agreement text in the original in Serbian reads as follows:

AGREEMENT

BETWEEN SERBIA AND MONTENEGRO AND THE SWISS CONFEDERATION IN RELATION TO STIMULATION AND MUTUAL PROTECTION OF INVESTMENTS

PREAMBLE

Serbia and Montenegro on the one hand, and the Swiss Confederation on the other (hereinafter referred to as: Parties to the Agreement),

Anxious to intensify economic cooperation to the mutual benefit of the Parties to the Agreement,

Desirous of creating and maintaining favourable conditions for the investments of the investors of one Party to the Agreement in the territory of the other Party to the Agreement,

Recognizing the need to stimulate and protect foreign investments in order to stimulate the flow of capital and technology and contribute to economic prosperity of both Parties to the Agreement,

Convinced that these objectives can be reached with no disturbance of general health, safety and environmental standards,

Have agreed as follows:

Article 1

Definitions

For the purpose of this Agreement:

1. The expression „investments“ shall stand for each type of funds invested in the territory of one of the Parties to the Agreement by the investors of the other Party to the Agreement, in conformity with laws and regulations of the other Party to the Agreement and comprises especially but not exclusively:

(a) movable and real estate property and all other rights, such as the official qualities, mortgage, pledge, guarantee and usufruct;

(b) shares, bonds, as well as other forms of a share in companies and all rights resulting from them;

(c) financial claims and other claims under the agreement having economic value;

(d) copyrights, intellectual property rights such as patents, licences, industrial design and models, trademarks or service marks, commercial marks and marks of origin, technical processes, know-how and good-will;

(e) concessions in conformity with law, including concessions for researches, mine-working and exploitation of natural resources, as well as other rights pursuant to the law, agreement or decision of a competent body in conformity with law.

Any change of form in which the funds are invested shall not have the influence on their character as investments.

2. The expression „investor“, in regard to both Parties to the Agreement, shall stand for:

(a) natural person having citizenship of one of the Parties to the Agreement in conformity with its law;

(b) legal entity including companies, corporations, business associations and other organizations established, founded or in any other way legitimately organized in conformity with the applicable law of that Party to the Agreement, having a head office, along with actual economic activities, in the territory of that Party to the Agreement.

3. The expression „returns“ shall stand for the amounts brought by an investment and comprise, especially, profit, interests, capital gain, dividends, right compensations, and compensations.

4. The expression „territory“, in regard to each Party to the Agreement, shall stand for a country, territorial waters as well as, when applicable, the sea, seabed and its underground out of territorial waters being under sovereign rights or jurisdiction of a Party to the Agreement, in conformity with the international law.

Article 2

Application of the Agreement

This Agreement shall refer to the investments in the territory of one Party to the Agreement being in property or under control, direct or indirect, of the investors of the other Party to the Agreement. It shall apply to such investments regardless if they have been made prior to or upon its entry into force, but it shall not refer to the disputes arisen before its entry into force.

Article 3

Stimulation, approval

1. Each Party to the Agreement shall stimulate in its territory the investments of the investors of the other Party to the Agreement, including also through information exchange between the Parties about investments possibilities, and approve such investments in conformity with its laws and regulations.

2. When the Party to the Agreement approves such an investment in its territory, it shall provide, in conformity with its laws and regulations all necessary licences and approvals in relation to such an investment, including approvals resulting from the licence agreements or contracts on technical, commercial or administrative support, as well as approvals required for the activities of managerial and technical staff according to the investor's choice.

3. Each Party to the Agreement shall print or in any other way make available, with no delay, its laws, procedures and administrative decisions of general type, as well as international agreements that may influence the investments of the investors of the other Party to the Agreement.

Article 4

Protection and general treatment

Each Party to the Agreement shall in its own territory provide the investments of the other Party to the Agreement fair and equitable treatment as well as full and permanent protection and safety. No Party shall take, in any case, groundless or discriminatory measures in relation to business activities, management, maintenance, exploitation, enjoyment, enlargement or disposal over such an investment.

Article 5

National treatment and the most favoured nation treatment

1. Each Party to the Agreement shall in its territory provide the investments of the investors of the other Party to the Agreement a treatment no less favourable than the one provided to the investments of its own investors or to the investments of any third country's investors, depending on which one is more favourable for the mentioned investor.

2. Each Party to the Agreement shall provide the investors of the other Party to the Agreement, with regard to business activities, management, maintenance, exploitation, enjoyment or disposal over their investments, a treatment no less favourable than the one provided to its own investors or the investors of any third country, depending on which one is more favourable for the mentioned investor.

3. If the Party to the Agreement has approved or is approving the investor of any third country special privileges according to an agreement on establishing free trade zone, customs union or common market or in accordance to an agreement on avoiding double taxation, it shall not be obliged to approve the investor of the other Party to the Agreement such privileges.

Article 6

Expropriation

1. No Party shall take the measures of expropriation, nationalization or any other measures by nature or by effect equal to nationalization or expropriation (hereinafter referred to as: expropriation), directly or indirectly, towards the investments of the investors of the other Party to the Agreement, except taken in public interest, on non-discriminatory basis, with necessary enforcement of law and under condition to provide provisions ensuring prompt, effective and adequate compensation. Such compensation shall be corresponding to the market value of the expropriated investment immediately prior to expropriation or before the decision about expropriation becomes widely known fact, depending on what happens first. The amount of compensation shall be defined in convertible currency and paid with no delay to the respective investor.

2. The investor having suffered expropriation shall be entitled, in conformity with the law of the Party to the Agreement performing expropriation, to require an urgent review from a judicial or any other independent body of that Party to the Agreement, of his/her case and evaluation of his/her investments in accordance with principles defined in this Article.

3. When the Party to the Agreement expropriates the funds of a company registered or founded according to applicable laws in any part of its territory, and among which the investors of the other Party to the Agreement have shares, it shall make the compensation, according to paragraph 1 of this Article, available to those investors, to the necessary extent and in conformity with law.

Article 7

Retrieval of losses

1. The investors of the Party to the Agreement whose investments have suffered losses in the territory of the other Party to the Agreement, as a consequence of war or any other armed conflict, revolution, state of emergency, rebellion, civil commotions or other similar events in the territory of the other Party to the Agreement, shall be provided by the other Party to the Agreement a treatment, pursuant to Article 5 of this Agreement, with regard to compensation, reimbursement, return or any other way of loss retrieval.

2. Without any damage to provisions of paragraph 1 of this Article, the investors, in any of the situations mentioned in that paragraph, suffering losses in the territory of the other Party to the Agreement as a consequence of:

(a) confiscation of their property or its part by the forces or authorities of the other Party to the Agreement, or

(b) destruction of their property or its part by the forces or authorities of the other Party to the Agreement, which did not arise in combats or were not necessary due to situation,

shall be approved the possibility of return of funds or compensation which shall be, regardless if it is a return or a compensation, prompt, adequate and effective.

Payments on the mentioned grounds shall be freely transferable and shall be made with no delay in freely convertible currency.

Article 8

Free transfer

1. 1. Each Party to the Agreement shall guarantee the investors of the other Party to the Agreement a transfer of amounts referring to their investments, with no restriction or delay, in freely convertible currency, and especially:

(a) returns;

(b) amounts for discharge of contractual obligations, including those according to loan agreement;

(c) salaries and other incomes of the employees engaged from abroad in relation to investments;

(d) initial capital and additional funds for maintenance or increase of investments;

(e) incomes from a whole or partial sale or liquidation of investments including possible increase of values;

(f) amounts paid for the purpose of Article 6, 7 and 12 of this Agreement.

2. Unless otherwise agreed with the investor, transfers shall be performed according to the official exchange rate applicable on the transfer day, in accordance with regulations for the exchange of currency applicable in the territory of the Party to the Agreement where the transfer is realized.

3. In order to avoid any suspicion, this is acknowledgement that the right of the investor to free payment transfer in relation to their investments shall not influence fiscal and other financial obligations the investor may have towards the host Party to the Agreement.

Article 9

Specific obligations

Each Party to the Agreement shall respect any obligation that may arise in relation to specific investment of the investor of the other Party to the Agreement, which the investor may rely on to be in good faith during establishment, purchase or enlargement of the investment.

Article 10

More favourable provisions

If any of provisions of legislations of any of the Parties to the Agreement or the rules of the international law referring to investments of the investors of the other Party to the Agreement, provide more favourable treatment than the one provided under this Agreement, those provisions or rules shall prevail over this Agreement to the extent they are more favourable in.

Article 11

The principle of subrogation

1. If a Party to the Agreement or its authorized agency makes payment in accordance with financial guarantee against non-commercial risks referring to investments of any of their investors in the territory of the other Party to the Agreement, the other Party to the Agreement shall recognize the former Party to the Agreement the access to the investor's rights, according to the principle of subrogation.

2. Rights or claims subrogated in that manner shall not exceed prime rights or claims of the investor.

Article 12

Settlement of disputes between a Party to the Agreement and an investor of the other Party to the Agreement

1. In order to settle disputes in relation to investments between one Party to the Agreement and an investor of the other Party to the Agreement, consultations between the parties mentioned shall be held.

2. If a dispute fails to be settled in those consultations within six months following the day of a written request for holding consultations, the investor shall be entitled to submit the dispute for settlement to competent or administrative courts of the Party to the Agreement in whose territory the investment has been made or to an international arbitration. In the latter case, the investor shall be entitled to choose between the following:

(a) International Centre for settlement of investment disputes (ICSID), established by the Convention on settlement of investment disputes between countries and other countries' citizens, opened for signing in Washington, on 18 March 1965 (hereinafter referred to as: Washington Convention);

(b) an ad hoc arbitration court established, unless otherwise agreed between the parties in dispute, in accordance with Arbitration rules of the UN Commission for International Trade Law (UNCITRAL).

3. Each Party to the Agreement shall give with this an unconditional and irrevocable consent to submission of an investment dispute to an international arbitration.

4. The company registered or founded in conformity with the law applicable in the territory of one Party to the Agreement and which had been, before the dispute arose, under control of the investor of the other Party to the Agreement, shall be considered, pursuant to Article 25 (2) (b) of Washington Convention, a company of the other Party to the Agreement.

5. The Party to the Agreement being a party in dispute, shall not in any case, while the process is underway, emphasize as an objection, that the investor has received, on the grounds of an insurance agreement, a compensation for a part of or the entire damage suffered.

6. No Party shall institute, through diplomatic channels, a dispute already submitted for settlement to an international arbitration, unless the other Party to the Agreement does not accept or complain in relation to arbitration judgment.

7. Arbitration judgement shall be final and binding for both parties in dispute and shall be implemented with no delay in conformity with law of respective Party to the Agreement.

Article 13

Settlement of disputes between the Parties to the Agreement

1. Disputes between the Parties to the Agreement in relation to interpretation and application of this Agreement, shall be settled, if possible, through diplomatic channels.

2. If the two Parties to the Agreement fail to reach an agreement within six months following the start of dispute between them, it shall be, at the request of one of the Parties to the Agreement, submitted for settlement to an arbitration court consisting of three members. Each Party to the Agreement shall appoint one member, and those two arbiters shall appoint the president who shall be a citizen of a third country.

3. If any of the Parties fails to appoint its arbiter and does not accept the invitation of the other Party to the Agreement to appoint one within two months, the arbiter shall be appointed at the request of that Party to the Agreement by the president of the International Court of Justice.

4. Unless those two arbiters reach an agreement about the selection of president within two months following their appointment, he/she shall be appointed by the president of the International Court of Justice, at the request of any of the Parties to the Agreement.

5. If, in the cases stipulated under paragraphs 3 and 4 of this Article, the president of the International Court of Justice is unable to perform the mentioned function, or is a citizen of one or the other Party to the Agreement, the appointment shall be made by the vice president, and if he/she is also unable, or is a citizen of either of the Parties to the Agreement, the appointment shall be performed by the most senior judge of the Court, who is not a citizen of either of the Parties to the Agreement.

6. Pursuant to other provisions defined between the Parties to the Agreement, the arbitration court shall define its own procedure. Each Party to the Agreement shall bear costs for its representative and his/her participation in arbitration procedure. The costs of the president and other costs shall be equally at the expense of both Parties to the Agreement, unless otherwise decided by the arbitration court.

7. The decisions of the arbitration court shall be final and binding for both Parties to the Agreement.

Article 14

Final provisions

1. This Agreement shall enter into force on the day when both Governments inform each other about fulfilment of legal procedure for entry into force of the international agreements and shall stay in force within the period of ten years. The Agreement shall continue to be in force also during the next period of two years, and so on, unless one of the Parties informs in written the other one on its termination, six months prior to its expiration.

2. In case of an official note on expiration of the Agreement, provisions of Articles 1 to 13 shall continue to apply during the next period of ten years for the investments made prior to termination date.

As ratification of the abovementioned, the undersigned persons, properly empowered by their respective Governments, signed this Agreement.

Done in Belgrade, on the day of 7 December 2005, in two originals, in Serbian, French and English, and all texts shall be equally authentic. In case of any discrepancies, the text in English shall prevail.

For Serbia and Montenegro

Predrag Ivanovic, m. p.

For the Swiss Confederation

Wilhelm Meier, m. p.

Article 3

This law shall enter into force on the eighth day following that of its publication in the Official Gazette of Serbia and Montenegro – International Agreements.