

FOREIGN INVESTMENT LAW

I Basic provisions

FOREIGN INVESTMENT

Article 1

Foreign investors can, in order to conduct economic activities in the Republic of Montenegro (in text: Republic), invest in companies and other organizations conducting economic activities or services (in text: companies), establishing/fund companies and conduct other investments, in accordance with this and other laws.

FOREIGN INVESTOR

Article 2

Foreign investor, in the word of this law, is a:

- foreign legal entity which headquarters is abroad;
- foreign citizen;
- Yugoslav citizen whose residence or stay abroad is longer than one year;
- company with over 25% of foreign capital and
- company established/founded by a foreigner in the Republic.

JOINT FOREIGN AND DOMESTIC INVESTMENTS

Article 3

Investment of a foreign investor can be in the form of currency, objects, services, property rights and securities.

Investment of a local national in a foreign investment can be in the form of currency, objects, services, property rights and securities. Objects, services and rights as in provisions 1 and 2 of this article, have to be presented in financial (monetary) form.

THE LEVEL OF FOREIGN INVESTMENT

Article 4

The level of foreign investment is set by contract on investment or contract or decision on funding/establishing or some other act, in accordance with law.

II Forms of foreign investment

CORPORATIVE INVESTMENT

Article 5

Foreign investor can independently or with another foreign investor, or local nationals:

1. establish/fund a company or
2. invest assets in a company.

Foreign legal entity can establish a division of his/her company (affiliate) in the Republic, which is legal entity and acts in accordance with law. Foreign investor can purchase a company, or its part or its shares, in accordance with law.

NATIONAL TREATMENT

Article 6

Foreign investor can, at the territory of the Republic, establish a company and invest in a company, under procedures and conditions under which local nationals can establish companies, or invest assets in companies, if it is not regulated otherwise in this law.

FOREIGN INVESTMENT WHICH AS PRECONDITION INCLUDES DOMESTIC INVESTMENT

Article 7

Foreign investor can not independently or with other foreign investor, establish a company in the Republic, in the following sectors:

- production of (fire)arms and arms trade;
- areas which are defined by law as forbidden zones (national parks and border areas etc.).

Article 8

In sectors from article 7 of this law, foreign investor can establish company with a local national, or invest assets in a company.

In case as in provision 1 of this article, foreign investor can have a maximum of 49% of shares or property rights of that company.

Article 9

Foreign investor is obliged to provide permission of the relevant ministry for participation in establishing/funding of a company in sectors from Article 7 of this law and for investing in a company, or return of the investment in a company in these sectors.

During the procedure or application, ministry as in provision 1 of this article especially value quality, sort/kind and scope of the foreign investment.

A ministry as in provision 1 of this article is obliged to, within 30 days from the day when the application was received, issue a decision.

If decision is not issued within the period of time as in provision 3 of this article, it is considered as if conditions as in provision 1 of this article are met.

Article 10

Company producing arms and military equipment cannot negotiate on concluding a contract on investment before it receives permission from the relevant ministry.

Before receiving permission as in provision 1 of this article, company can not provide foreign investors with any data on production of arms and military equipment, nor allow filming of objects/premises.

THE FOUNDING OF AND INVESTMENTS IN OTHER ORGANIZATIONS

Article 11

Establishing and investing in insurance companies, banks and other financial institutions and free zones, is conducted in accordance with law which regulates their founding/establishing and legal status.

INVESTMENTS THROUGH OTHER CONTRACTS AND THE PURCHASE OF REAL ESTATES

Article 12

Investment of a foreign investor can also be conducted through a contract on leasing, contract on franchising, contract on management and contract on real estate sale, in accordance with law.

B.O.T. - SYSTEM AND CONCESSIONS

Article 13

Foreign investor can build, operate and transfer (B.O.T.) certain object, plant or a production line or infrastructure objects/facilities and communications in accordance with law.

Foreign investor can be granted concessions in accordance with law.

III Rights and obligations of foreign investors and protection of their rights

RIGHTS OF FOREIGN INVESTOIR

Article 14

Foreign investor, on the basis of his/her investment, has a right to:

- 1) manage, or participate in management of the company;
- 2) transfer rights and obligations resulting from the contract on investment or contract, or decision on establishing a company, to other foreign investors or local nationals;
- 3) return of certain invested objects, in accordance with the contract on investment or contract, or decision on establishing/founding;

- 4) return of investment, or rest of funds which are invested in a company, in case of the break of contract, or end of contract on investment or contract, or decision on establishing or end of operations of that company;
- 5) part of net-assets and return of a part, or property, after an end of operations of that company, if these assets were invested when establishing that company;
- 6) other rights set in this and other laws.

A foreign investor has a right to access business books and daily operations of the company in which he/she invested assets, as well as a right to independently, or through an authorized representative, conduct auditing on periodical or annual basis.

PARTICIPATION IN PROFIT, THE TRANSFER OF AND REINVESTMENT OF PROFIT AND THE EXCHANGE OF CURRENCY

Article 15

A foreign investor has a right to participate in profit on the basis of his investment and to freely transfer and reinvest profit, including the exchange of currency;

TAX AND OTHER INCENTIVES

Article 16

Foreign investments shall be taxed no less favorably than domestic business organizations.

FREE PAYMENTS

Article 17

Company in which foreign investor invested conducts payments in its operations with abroad freely, in accordance with law.

Article 18

Company, in which foreign investor invested, money assets which was brought in as a founding capital or which resulted from its operations with the abroad, can put at the account with the authorized bank, freely dispose with these assets and convert them into other currencies.

TRANSFER OF ASSETS

Article 19

Transfer of funds to a foreign investor abroad, after settling all dues to the Republic, in accordance with law, is free on the basis of:

- 1) return of the investment, repatriation of a part in net assets of the company after it was sold or it ended its operations;
- 2) earned profit in accordance with a contract or establishing/founding act.

INTERNATIONAL ACCOUNTING STANDARDS

Article 20

Foreign investor keeps business books, accounts and documentation in accordance with the international accounting norms and standards.

INTELECTUAL PROPERTY RIGHTS

Article 21

Foreign investor has a right to protect his patents, trademarks, models, samples and copyrights in accordance with law.

ENVIRONMENT PROTECTION

Article 22

Foreign investor when conducting economic activities is obliged to act in accordance with regulation of protection of the environment.

INVESTMENT INSURANCE

Article 23

Foreign investors are obliged to insure their investment in accordance with regulations on insurance.

EMPLOYMENT AND ENGAGEMENT OF DOMESTI AND FOREIGN PERSONS

Article 24

For the purposes of conducting economic activities foreign investors can employ local nationals and foreign individuals as well as engage individuals and legal entities in accordance with law.

Article 25

Employees of a foreign investor have rights and obligations set by law, collective agreement (explanation – agreement concluded between the labor and employers' unions) and conventions of the International Labor Organization (ILO) and other international standards.

EMPLOYMENT BY LABOUR CONTRACTS

Article 26

The mutual rights and obligations of an employee and a foreign investor are set in labor contract in accordance with the acts referred to in Article 25 of this law.

In case that labor contract envisages less rights and less favorable conditions of work than rights and conditions set by law, provisions of the law and the collective agreement are applied.

STABILITY CLAUSE (LEGAL SECURITY)

Article 27

If after foreign investment contract was concluded, or founding decision was made, the law was changed then the law on which basis that contract was concluded or decision reached as well as conditions set by that contract or decision are applied, if that is in favor of the investor or if investors do not regulate certain issues through an agreement, in accordance with changed provisions of the law.

Article 28

In 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 basis, it has no greater rights than other parties to the contract.

THE PROTECTION OF THE PROPERTY OF FOREIGN INVESTOR

Article 29

The property of foreign investor cannot be expropriated, except when the public interest has been established by the law or in accordance with the law and with a compensation that cannot be less than the market value, in accordance with the law.

In addition to the compensation referred to in paragraph 1 of this article the foreign investor has the right to receive interest, calculated for the period of time between the expropriation and the payment, based at the one-year LIBOR rate.

INDEMNIFICATION

Article 30

Foreign investor national who suffers loss resulting from war or state of emergency has a right to be indemnified, which could not be less than those granted to local nationals in accordance with law.

Foreign investor has a right to be indemnified for damages caused by illegal or irregular conduct of the Government officials or agencies, in accordance with law.

THE RESPONSIBILITY OF THE GOVERNMENT OFFICIALS AND FOREIGN INVESTORS

Article 31

State clerks/officials who act contradictory to provisions of this law and do not uphold the Convention on eradication of bribery and corruption of foreign state employees in international business transactions are responsible in accordance with regulations.

Foreign investor who does not act in accordance with provisions of this law and Convention as in provision 1 of this article can be banned from conducting economic activities in the Republic.

IV Contracts and other acts on foreign investment

Article 32

Investment of foreign investors is regulated through contract on investment or contract on establishing/founding, which is concluded in the written form, or decision on establishing/founding, if company is established by one foreign investor.

Article 33

Contract on investment or contract on establishing/founding can be concluded and decisions on establishing/founding reached on limited or unlimited period of time.

CONTRACT ON INVESTMENT

Article 34

Contract on investment includes provisions on:

- 1) parties to the contract
- 2) company in which it is invested and which conducts operations for parties to the contract;
- 3) goals, or activities and operations which are subjects to the contract;
- 4) sort and level of investment and other obligations of parties to the contract in respect of financing of joint operations;
- 5) management of operations;
- 6) distribution of profit and covering of losses;
- 7) responsibilities of parties to the contract in joint operations;
- 8) lasting of the contract on investment (period of time)
- 9) mode of return of the investment
- 10) conditions and procedure of breaking the contract
- 11) settling of disputes
- 12) and other terms which investors agree upon consistent with the law.

CONTRACT AND DECISION ON FOUNDING OF A COMPANY

Article 35

Contract, or a decision on establishing/founding of company, includes provisions on:

- 1) the name and headquarters of the company;
- 2) name, i.e. firm and address, or headquarters of the founder;
- 3) activities of the company;
- 4) founding capital ;
- 5) rights, obligations and responsibilities of the founder towards the company and those of the company towards the founder;
- 6) conditions and ways of distribution of profit and sharing of risks;

- 7) representative of the company;
- 8) protection of the environment;
- 9) lasting of contract, or the decision on establishing/founding;

Contract, or a decision on founding/establishing, depending of the sort of the company that is being established, includes other provisions in accordance with law which are regulating legal status of a company, as well as other provisions on which founders agree upon.

V Filing and promotion of foreign investments

FILING AND PROMOTION

Article 36

Contract on investment or contract or decision on establishing/founding, is filed with the Agency in charge of foreign investments with its special department (hereinafter referred to as: the Agency), for the purposes of their promotion.

Article 37

Changes and additions (reinvestment of profit, added investment of foreign investor, purchase of shares, transfer of foreign investment from one person to another etc.) and end of contract on investment or contract, or decision on establishing/founding are filed with the Agency for the purposes of their promotion.

Article 38

Company that is being founded with assets of a foreign investor is registered in the registry with the relevant court, of which fact the court shall inform the Agency for the promotion purposes.

Companies which are founded in sectors as in Article 7 of this law are registered in the registry with the relevant court, after these companies receive permits from the relevant ministry.

Provision 2 of this article relates also to investments of foreign investors in company in sense of Article 9 of this law.

VI Settlement of disputes

Article 39

Disputes which occur on the basis of investment of foreign investors are dealt with by the relevant court in the Republic, if by contract on investment or by decision on establishment/founding, is not provided that such disputes are settled through domestic or foreign arbitration in compliance with the international conventions.

If a contracting party is the Government of the Republic of Montenegro then until the Convention for the Settlement of Investment Disputes is signed, the disputes arising from

foreign investments shall be resolved in accordance with the ICSID Additional Facility through domestic or foreign arbitration.

If the contracting parties are domestic or foreign individuals or business organizations disputes arising from foreign investments shall be resolved through domestic or international arbitration using the UNCITRAL (United Nations Commission on International Trade Law) Rules.

Any damage awards arising from the settlement of foreign investment disputes shall be binding, final and enforceable in a tribunal possessing jurisdiction.

VII Transitional and Final Provision

THE IMPLEMENTATION OF MORE FAVOURABLE LAWS

Article 40

The more favorable laws shall be implemented on foreign investments if they will be enacted during the implementation of this law.

COMING INTO FORCE

Article 41

This law is effective on the eighth day from the day it is published in "The Official Gazette of the Republic of Montenegro".