

Bosnia and Herzegovina

Law on the Policy of Foreign Direct Investment (1998)

Unofficial translation

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Law on the Policy of Foreign Direct Investment in Bosnia and Herzegovina

Official Gazette No. 17/98

Pursuant to Article IV (4) (a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, at the session of the House of Representatives held on 18 May 1998 and at the session of the House of Peoples held on 18 May 1998 adopted Law on the Policy of Foreign Direct Investment in Bosnia and Herzegovina.

I. Basic provisions

Article 1

The Law on the Policy of Foreign Direct Investment (hereinafter referred to as the Law) shall regulate the basic policies and principles of the participation of foreign investors in the economy of Bosnia and Herzegovina.

Article 2

For the purposes of this Law, the following terms shall have the following meanings:

"Foreign investor": means a natural person, who is not resident of Bosnia and Herzegovina and does not have his or her principal place of business in Bosnia and Herzegovina or legal persons formed in accordance with a foreign law and having their registered office, central administration or principal place of business in a foreign country;

"Direct foreign investment" means investment in the newly established company or investment in existing domestic company, as well as investment in newly established institution or an existing institution, which may be in cash, goods and rights.

"Foreign Control" means any investment in the amount of founding share envisaged for the establishment of the company or institution in Bosnia and Herzegovina

"Resident of Bosnia and Herzegovina": means a natural person who has a home or principal abode, carry out employment or independent service or has his or her centre of economic interest in Bosnia and Herzegovina, or a legal person constituted under the laws of Bosnia and Herzegovina or the Entities or Brcko District of Bosnia and Herzegovina and having its registered office, central administration or principal place of business in Bosnia and Herzegovina;

"Equity": means the ownership interest held by an investor in an enterprise;

"Freely convertible currency": means any currency determined as such by the International Monetary Fund;

"Entities": means Federation of Bosnia and Herzegovina and the Republic of Srpska

"Media" means radio broadcasting and television broadcasting activities via terrestrial radiodiffusion.

"Business entity" is any domestic company or institution in which the foreign investor has made foreign direct investment, including the expansion of a part or entire domestic company or institution. "

II. FDI Entry process

Article 3

Subject to the provisions of this Law, foreign investors shall be entitled to invest, and to reinvest profits of such investments into any and all sectors of the economy of Bosnia and Herzegovina, and in the same form and under the same conditions as defined for the residents of Bosnia and Herzegovina under the applicable laws and regulations of Bosnia and Herzegovina and the Entities and Brcko district of Bosnia and Herzegovina.

Article 4

- a) Notwithstanding the policy of free admission of foreign direct investment into Bosnia and Herzegovina set forth in Article 3 of this Law, foreign equity ownership of business entity engaged in the production and sale of arms, ammunition, explosives for the military use, military equipment and media shall not exceed 49% of the equity in that business entity.
- b) In case of investments in sectors subject to the restrictions referred to in paragraph (a) of this Article, foreign investors must receive prior approval from the competent body of the respective Entity.
- c) Within 30 days from the date of submission of the request for approval referred to in (b) of this Article, the competent body of the respective Entity shall inform the applicant on its decision. If the decision is not made within the mentioned deadline, the foreign direct investment shall be considered approved, unless such a body has advised the applicant in writing of its decision to postpone the decision beyond the 30 day deadline.
- d) If the competent authority in the entity does not make a decision within 30 days following the date of submission of the proper request for approval of foreign investment, it shall notify the applicant of the request in the next 30 days. The decision with an explanation on foreign investment shall be adopted by the competent authority and submitted to the party no later than 60 days from the date of submission of the proper request. If such decision is not made nor within 60 days, the direct foreign investment shall be considered approved.
- e) The foreign direct investment approval referred to in this Article shall be valid without limitation as to duration.
- f) The Entity Government may decide, if it deems justified, that the share of foreign entity for certain business companies referred to in paragraph (a) of this Article, is not subject to restrictions set forth in paragraph (a) of this Article and in accordance with the regulations governing this area.

Article 5

- a) The procedure for registration of foreign investments shall be made in accordance with the procedure of registration of a business entity in Bosnia and Herzegovina, its entities and Brcko District.
- b) The competent registration courts are obliged, ex officio, to submit to the Ministry of Foreign Trade and Economic Relations BiH information on registered companies with an element of foreign investment in electronic form.
- c) The competent courts shall submit a notice on registration in the Register of the competent court, showing the name of the foreign investor, the country of the founders, activity and the amount of the contracted (registered) initial capital.
- d) Ministry of Foreign Trade and Economic Relations will provide the technical prerequisites for the submission of data by the competent courts.
- e) Bosnia and Herzegovina, the Entities and Brcko District may publish general information on foreign investment, in which they will respect the legitimate interests of entities concerned and ensure that their business secrets are not disclosed.

Article 6

- a) To promote and facilitate foreign direct investment into Bosnia and Herzegovina, the Council of Ministers of Bosnia and Herzegovina shall establish an institution for such purposes.

b) Entities may also establish such promotional and facilitation institutions in their respective territories.

Article 7

If established, the institutions referred to in Article 6 of this Law shall cooperate and exchange any necessary information to achieve the objectives of promoting foreign direct investment in Bosnia and Herzegovina and to ensure fulfilment of the objectives of this Law.

III. Rights, benefits and obligations of foreign investors

Article 8

a) Subject to the provisions of this Law, and subject to other laws and treaties of Bosnia and Herzegovina and the laws of entities and Brcko District of Bosnia and Herzegovina, foreign investors shall have the same rights and obligations as the residents of Bosnia and Herzegovina.

b) Bosnia and Herzegovina, entities and Brcko District of Bosnia and Herzegovina shall not discriminate with respect to foreign investors in any form, including but not limited to their citizenship, residency, religion, or the state of origin of investment.

Article 9

Taxation of business entities from this Law shall be carried out in accordance with the tax legislation of Bosnia and Herzegovina, entities and Brcko District of Bosnia and Herzegovina.

Article 10

Foreign direct investment shall be exempted from customs and customs duties, unless otherwise is prescribed by the provisions of the Law on Customs Policy of Bosnia and Herzegovina (Official Gazette of BiH no. 57/04, 51/06, 93/08, 54/10 and 76/11)

Article 11

a) Foreign investors shall have right, for the purposes of their investments, to open on the territory of Bosnia and Herzegovina accounts in any commercial bank denominated in the national or any freely convertible currency.

b) Foreign investors, with respect to all payments related to their investments in Bosnia and Herzegovina, shall have the right to freely convert the national currency of Bosnia and Herzegovina into any other freely convertible currency.

c) Foreign investors shall have the right to transfer abroad, freely and without delay, in freely convertible currency, proceeds resulting from their investment in Bosnia and Herzegovina, including, but not limited to:

i. income from investments received in the form of profit, dividends, interest, and other forms of profit;

ii. funds received by investors after partial or full liquidation of their investments in Bosnia and Herzegovina, or disposal of invested property or proprietary rights; and

iii. Compensation referred to in Article 16 of this Law.

d) The transactions referred to in paragraphs (a), (b) and (c) of this Article abroad shall be carried out through commercial banks upon fulfilment of all tax and other obligations imposed by law on the basis of public revenues in Bosnia and Herzegovina. "

Article 12

Foreign investors shall have the same property rights in respect to real estate as the citizens and legal entities of Bosnia and Herzegovina. Foreign investors, who are citizens of one of the successor states to the former Socialist Federal Republic of Yugoslavia, shall have such rights subject to investors of Bosnian and Herzegovinian citizenship and legal entity status having like rights in the respective successor state.

Article 13

Foreign investors shall maintain books and file reports in accordance with internationally accepted accounting and auditing standards and principles and the laws of the Entities.

Article 15

- a) Foreign investors shall observe the laws and regulations of Bosnia and Herzegovina and the Entities.
- b) Restrictions applicable to domestic investment on account of public policy (l'ordre public), public health and the protection of the environment shall equally apply to foreign investment.

Article 16

- a) Foreign investment shall not be subject to any act of nationalization, expropriation, requisition or measures which have similar effects, except in the public interest in accordance with applicable laws and regulations, without any type of discrimination and against the payment of appropriate compensation.
- b) Such compensation will be deemed appropriate if it is adequate, effective and prompt.
- c) The details of the standards for compensation in event of nationalization, expropriation, requisition or such similar acts referred to in paragraph (a) of this Article shall meet international standards and shall be spelled out in the implementing regulations referred to in Article 21 of this Law.

IV. Settlement of disputes

Article 17

Foreign investment disputes shall be settled by the relevant courts in Bosnia and Herzegovina, unless interested parties contract some other procedure for the settlement of disputes, including but not limited to domestic or international conciliation or arbitration.

V. Transitional and final provisions

Article 18

- a) This Law shall enter into force on the eighth day from the date of its publication in the Official Gazette of Bosnia and Herzegovina.
- b) The Official Gazettes of the Entities shall simultaneously publish the Law.

Article 19

a). On the date of entry into force of this Law, the provisions of laws and regulations concerning foreign investment in Bosnia and Herzegovina that are contrary to or inconsistent with this Law shall become null and void without the prejudice to the rights and benefits granted and the obligations imposed upon the existing foreign investors under the previous laws and regulations.

b) Notwithstanding this provision, an existing foreign investor may elect in writing to the competent body of the respective Entity within 120 days of the coming into force of this Law, to become subject to the terms of this Law.

Article 20

The rights and benefits of foreign investors granted and obligations imposed, by this Law cannot be terminated or eliminated by the subsequently passed laws and regulations. If such subsequently passed laws and regulations shall have been more favourable to foreign investors, they shall have the right to choose under which regime the respective foreign investment will be governed.

Article 21

Bosnia and Herzegovina and the Entities shall, in the areas of their respective competence, issue implementing regulations to this Law within 60 days from the day of the entry into force of this Law. Such regulations shall be published in the Official Gazette of Bosnia and Herzegovina and the Official Gazettes of the Entities, respectively, and shall enter into force on the eighth day from the date of their publication in such Gazettes.

Article 22

The Entities and Brcko District of Bosnia and Herzegovina shall be responsible in their respective territories for the implementation of this Law.

Article 23

Bosnia and Herzegovina, entities and Brcko District of Bosnia and Herzegovina shall cooperate fully to achieve the policy objectives set by this Law and shall take all steps to ensure fulfilment of the obligations arising out of the Law.

Article 24

In case of conflict, provisions of international agreements and treaties to which Bosnia and Herzegovina is a party shall prevail over the provisions of this Law.

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