

# **Decision imposing the Draft Law on the Policy of Foreign Direct Investment in BiH**

House of Representatives  
Mr. Slobodan Bijelic, Chair

House of Peoples  
Mr. Avdo Campara, Chair

Dear Sirs,

On 12 February, 1998, I forwarded to you the "Draft Law on the Policy of Foreign Direct Investment in Bosnia and Herzegovina" (the Draft Law) for consideration and approval by both Houses of the BiH Parliamentary Assembly. I took this course after the Council of Ministers had repeatedly failed to consider the Draft Law because of disagreements about procedural issues between its members. Individually, however, both co-chairs and the vice-chair had encouraged me to forward the Draft Law to the BiH Parliamentary Assembly.

Regrettably, the House of Representatives in today's session removed the Draft Law from the proposed agenda. This action is against the best interest of Bosnia and Herzegovina. More than two years after the signing of the Dayton Peace Agreement, the International Community cannot tolerate that the arrival of foreign investment, which is so necessary for sustained economic recovery, continues to be impeded by the lack of a legal framework.

I have decided to put into force the Law on the Policy of Foreign Direct Investment in Bosnia and Herzegovina in the wording of the Draft Law forwarded to you on 12 February, 1998, which you will find attached. This Decision will take effect on the day of publication in the BiH Official Gazette.

I urge the BiH Parliamentary Assembly to adopt the Draft Law as soon as possible.

Yours sincerely,

Carlos Westendorp  
High Representative

Copy:

- Council of Ministers  
Bosnia and Herzegovina
- Dr. Haris Silajdzic, Co-Chair
- Mr. Boro Botic, Co-Chair
- Mr. Neven Tomic, Vice-Chair

## **DRAFT LAW ON THE POLICY OF FOREIGN DIRECT INVESTMENT IN BOSNIA AND HERZEGOVINA**

In accordance with Article 3 of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly adopts  
LAW ON THE POLICY OF FOREIGN DIRECT INVESTMENT IN BOSNIA AND HERZEGOVINA.

### **PREAMBLE**

Whereas, Bosnia and Herzegovina has entered a new era of peace and stability;

Whereas, Bosnia and Herzegovina has adopted an open, free market-led economic policy;

Whereas, Bosnia and Herzegovina is determined to promote, facilitate and safeguard private sector investments;

Whereas, investments should be encouraged by a conducive investment environment;

Whereas, the Constitutions of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska create conditions to encourage foreign investment;

Whereas, Bosnia and Herzegovina is a member of the Multilateral Investment Guarantee Agency and is party to the International Convention for the Settlement of Investment Disputes;

Now, therefore, the Council of Ministers of Bosnia and Herzegovina deems it necessary and appropriate to establish a clear, transparent, predictable and stable policy and legal framework to secure rights and benefits of and protection for foreign investors.

## 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;

*"Foreign direct investment" or "Foreign investment"*: means acquisition, creation or extension of any business enterprise, or any other activity which, alone or with others, concurrently or consequently, has the effect of permitting one or several foreign natural or legal persons to acquire or increase control over a company carrying out industrial, agricultural, commercial, financial, real estate, service or other activity, or to ensure expansion of such company already under their control. Such investments may include any tangible or intangible property including, but not necessarily limited to, freely convertible currency or local currency, loans, advances, receivables, licenses, leases and conventional rights, including concessions, machinery, equipment, spare parts, raw materials, industrial or intellectual property rights or any financial facilities granted by a foreign natural or legal person under foreign control, except between parent companies and their subsidiaries if this not result in increase of the foreign control over the domestic enterprises;

*"Foreign control"*: means any participation with more than 10% of the capital and/or the voting rights held directly by foreign investors or by a domestic legal entity under such control;

*"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 center of economic interest in Bosnia and Herzegovina, or a legal person constituted under the laws of Bosnia and Herzegovina or the Entities 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 Republika Srpska; and

*"Public Information"*: means information contained in radio, television (excluding cable), electronic media (excluding the Internet), newspapers and other publications produced primarily for the local market.

## 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.

### 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 an enterprise engaged in the production and sale of arms, ammunition, explosives for the military use, military equipment and public information shall not exceed 49% of the equity of the enterprise.
- 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 body of the respective Entity has an intention to postpone making a decision on the request for a foreign investment beyond this time limit, it shall inform the applicant within the same deadline of 30 days. The final decision on foreign investment with an explanation shall be delivered to the applicant within 90 days from the date of receipt of the request. If such a decision is not made within the mentioned deadline, the foreign direct 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 conditions under which a foreign investor must submit its application for approval shall be defined in the implementing regulations referred to in Article 21 of this Law and published simultaneously in the Official Gazette of Bosnia and Herzegovina and the Official Gazettes of the Entities.

### Article 5

- a. Foreign investors in Bosnia and Herzegovina shall register their respective investment simultaneously with the competent body of the State and with the competent body of the respective Entity.
- b. To limit the burden on the foreign investor:
  - i. The State and the Entities shall ensure in their implementing regulations referred to in Article 21 of this Law that their registration formats are alike and conform to international standards. No additional information shall be required for the purpose of registration.
  - ii. The competent bodies of the State and the respective Entity shall confirm to foreign investors within 10 working days of their action according to paragraph (a) of this Article that their respective investment has been registered. If a registration format has not been fully complied with, the respective competent body shall advise foreign investors within 10 working days of their action according to paragraph (a) of this Article which specific item or items of the registration format have not been complied with.
  - iii. Registration by the competent body of the State or the respective Entity, ad the case may be, shall be deemed to have been confirmed if such competent body has failed to act

according to, and within the time limit set by, incision (ii) of this paragraph.

- c. Notwithstanding paragraphs (a) and (b) of this Article, the competent body of the respective Entity shall confirm registration of each investment requiring approval referred to in Article 4 of this Law only after such approval has been granted. The foreign investor shall submit the registration format according to item (i) of this paragraph together with a copy of the confirmation of registration by the competent body of the Entity to the competent body of the State within 10 working days of the receipt of such confirmation.
- d. Bosnia and Herzegovina and the Entities may publish foreign investment data of general nature. In so doing, they shall respect the legitimate interest of enterprises concerned and shall ensure that their business secrets are not revealed.
- e. The procedures for registration and publication of investment data set forth in this Article shall be stipulated in the implementing regulations referred to in Article 21 of this Law.

#### **Article 6**

- a. To promote and facilitate foreign 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 fulfillment 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 the other laws and treaties of Bosnia and Herzegovina and laws of the Entities, foreign investors shall have the same rights and obligations as the residents of Bosnia and Herzegovina.
- b. Bosnia and Herzegovina and the Entities 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**

- a. Taxation of foreign investors and foreign direct investment shall be carried out in accordance with the tax legislation of the Entities.
- b. To encourage foreign direct investment, the Entities shall ensure that tax legislation referred to in paragraph (a) of this Article contains attractive features and rates. The Entities shall jointly review, from time to time, such tax legislation to ensure that attractiveness has been maintained.
- c. The tax regimes in the two Entities shall be governed by the following principles:
  - i. corporate tax regimes should not discriminate between foreign and domestic investments; and
  - ii. the Entities recognise that competition in granting incentives is undesirable and that they are committed to avoiding such competition.

#### **Article 10**

Subject to the provisions of the Customs Policy Law, or any future Law replacing the Customs Policy Law, a foreign

investment shall be exempted from customs and customs duties, except for customs registration.

#### **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. All transactions will be carried out in accordance with the laws of Bosnia and Herzegovina and the Entities.

#### **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 14**

Subject to the labor and immigration laws in Bosnia and Herzegovina, foreign investors shall have the right to freely employ foreign employees.

#### **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. SETTLEMENTS OF DISPUTES

### Article 17

Foreign investment disputes shall be settled by the relevant courts in Bosnia and Herzegovina, unless the parties concerned agree on another 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. The 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 term 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 favorable 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 shall be responsible in their respective territories for the implementation of this Law.

### Article 23

Bosnia and Herzegovina and the Entities shall cooperate fully to achieve the policy objectives set by this Law and shall take all steps to ensure fulfillment 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.

# Office of the High Representative