

FBME takes Cyprus to ICC Arbitration

September 22, 2014

In August 2014, the shareholders of FBME Bank filed a request for international arbitration against the Republic of Cyprus at the International Chamber of Commerce (ICC). FBME Bank was established in Cyprus as a subsidiary of the Federal Bank of Lebanon in 1982. Thereafter, its parent company has been reincorporated in Tanzania, and FBME Bank's operations in Cyprus are now a branch of the Tanzanian entity.

The shareholders of FBME invoke the Agreement on the Reciprocal Promotion and Protection of Investments between the Lebanese Republic and the Republic of Cyprus, i.e., the Bilateral Investment Treaty (BIT) between Cyprus and Lebanon. The shareholders claim that the decision of the Central Bank of Cyprus to sell the Bank's Cypriot branch following an accusation by the US Treasury's Financial Crimes Enforcement Network (FinCEN) that FBME was facilitating money laundering and financing of terrorism and organised crime, is a hostile takeover and violates the said BIT (including its expropriation standard).

FBME denies any misconduct as alleged by the (FinCEN). According to the shareholders of FBME, the measures taken by the Central Bank of Cyprus were designed for insolvent banks or banks which are facing serious liquidity problems. Healthy financial institutions such as FBME Bank cannot come under the realm of such measures.

Pursuant to Article 1 of the Cyprus-Lebanon BIT, the term "investor" means with regard to either Contracting Party: "(a) natural persons having the citizenship of that Contracting Party in accordance with its law; (b) legal persons constituted or incorporated in compliance with the law of that Contracting Party and having their seat in the territory of the same Contracting Party; who, in compliance with this Agreement, are making investments in the territory of the other Contracting Party."

The definition of "investment" found in Article 2 of the BIT includes "every kind of asset and in particular, although not exclusively, the following: [...] (b) a company or business enterprise or shares in and stocks and debentures of a company or any other form of participation in a company or business enterprise; [...] Investments made in the territory of one Contracting Party by any legal entity of that same Contracting Party which is actually owned or controlled by investors of the other Contracting Party shall likewise be considered as investments of investors of the latter Contracting Party if they have been made in accordance with the laws and regulations of the former Contracting Party. Any change in the form in which assets are invested or reinvested does not affect their character as investments."

Article 6 of the Cyprus-Lebanon BIT prohibits any nationalisation or expropriation of the assets of the citizens of either country: "1. Investments of investors of either

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Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated or subjected to measures having equivalent effect to nationalization or expropriation (hereinafter referred to as “expropriation”) except for public interest as established by law, in accordance with due process of law, on a non discriminatory basis and against the payment of prompt, adequate and effective compensation. [...] 5. Where a Contracting 2 Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of this Article are applied so as to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.”

Further, Article 11 of the BIT requires a six month amicable consultation period prior to the submittal of a dispute to international arbitration.

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