



FBME Limited

Public Notice on the Request for Arbitration against the Republic of Cyprus to the International Court of Arbitration of the International Chamber of Commerce (ICC) in Paris

NICOSIA, 28th November 2014 – On 28th October 2014, the shareholders of FBME Ltd, Messrs. Ayoub-Farid Michel Saab and Fadi Michel Saab (the Claimants), filed at the International Chamber of Commerce (ICC) in Paris a Request for Arbitration against the Republic of Cyprus (the Respondent). The arbitration is pursuant to the Agreement on the Reciprocal Protection of Investments between the Republic of Lebanon and the Republic of Cyprus of 9th April 2001, which entered into force on 19th March 2003 (the Treaty).

The Claimants firmly assert that as a consequence of the actions by the Central Bank of Cyprus (CBC), what is in progress is no less than an illicit expropriation of their assets in Cyprus and, therefore, they request an immediate appointment of an Arbitral Tribunal to settle the dispute in a prompt and efficient manner before further irretrievable damage is caused. The Claimants are acting as responsible owners and managers and are taking the Republic of Cyprus to International Arbitration to protect first and foremost the interests of the bank's employees and families, their numerous depositors across the world, but also the Cypriot taxpayers who would ultimately have to foot the bill for the damages awarded to the shareholders following the irresponsible and illegal actions by the CBC.

The Shareholders of FBME Limited have previously exercised every effort to reach an amicable settlement with the CBC prior to filing the Request for Arbitration.

The actions by the CBC and by the Special Administrator that the CBC has appointed to force a fire sale of the Cyprus Branch of FBME Bank are progressively and rapidly destroying the value of the Bank and the Claimants are seeking to mitigate the effect of this illegal action.

Chronology of the illegal takeover of the Cyprus branch of FBME Bank

On Friday 18th July, the Financial Crime Enforcement Network of the US Department of Treasury (FinCEN) issued a Notice naming FBME Bank as a "foreign banking institution of primary money laundering concern" and later a Notice of Proposed Rulemaking (FinCEN Notices). The FinCEN Notice of Proposed Rulemaking has not been finalized by the US authorities, and FBME Bank is working with FinCEN to address its concerns so that the Notices can be withdrawn. The Bank has hired the US law firm Hogan Lovells to represent it in the FinCEN proceedings. The Bank also is working with Ernst & Young and continues to cooperate with FinCEN with the aim of having the notices withdrawn.



FBME Limited

Most importantly, the FinCEN Notice did not require action by the CBC to sell the bank nor did it provide the CBC with any legal basis to act against FBME's branch in Cyprus.

The FinCEN Notice had the effect of causing some correspondent banks to freeze US dollar accounts of FBME for payments in US dollars. Therefore, the FinCEN Notice is merely a pretext for the Republic of Cyprus to take control and sell the Branch. Should the Central Bank of Cyprus achieve its goal and sell the Branch, the Claimants' investment would be irreparably destroyed for no valid reason.

Nevertheless, the CBC seized the opportunity of a money laundering proceeding against FBME Bank by FinCEN to take control of FBME in Cyprus over just two working days with the intent to force its sale without either explaining why this was required or by consulting the owners.

On the very same day FinCEN issued its notice, Friday, 18th July, the CBC issued a Supervisory Measure under the provisions of the Business of Credit Institutions Laws of 1997 to (Nr.3) 2013, to immediately assume control of the FBME branch in Nicosia for as long as it is necessary. That Friday, a Senior Director at CBC, and his team entered the premises of the branch tasked with supervising the IT system and monitoring the operations of the Branch and especially payments that at this point required approval by the CBC. They were met with the full cooperation of FBME's shareholders and staff. Indeed, on the very same day, at the express request of the Senior Director of CBC, the Branch ordered a transfer of EURO 100 million from one of its main correspondent banks to CBC so that the central bank could act as a correspondent bank for FBME in Cyprus and so reassure the Bank's clients and creditors. However, the CBC did not use these funds when they were transferred for the intended purposes.

Had it been properly implemented and with the full support offered by the FBME shareholders, the monitoring of the operations of the Branch put in place that Friday would have been sufficient to allow the Branch to operate in all non US dollar currencies and without any disruption or concern for its clients and creditors. Instead, over that weekend the CBC changed its position by 180 degrees and by Monday, 21st July revealed its true intentions, namely to force a fire-sale of the Branch. That evening, taking everyone by surprise and giving no explanation, the CBC informed Mr. Ayoub-Farid Michel Saab by e-mail sent at 22:51 pm that it had issued a Resolution to sell the Branch (Decree 356/2014). The legal basis that the CBC used for issuing this Decree is the law on the Resolution of Credit and other Institutions Law of 2013 and 2014 (the Law), in other words a law that is meant to apply to illiquid, failed, credit institutions and that certainly cannot be applied to a highly liquid and solvent bank. The CBC's decision to seek to sell the Branch on the basis of this Law therefore constitutes a flagrant abuse of the law. On the following morning, 22nd July, approximately 12 hours after the shareholders were notified of the Resolution Decree, the



FBME Limited

appointed Special Administrator, Mr. Dinos Christofides, took over the Branch to seek to sell it.

The CBC therefore completely changed both its position and the legal basis of its actions between Friday 18th July and Monday 21st July 2014. The reason for this change was that the initial measures adopted and the appointment of a Senior Director of CBC and his team to monitor and control the activities of the Branch did not enable the CBC to take the assets of the Branch.

Thus, it took only two business days for the CBC to brutally take control of the Branch and set in motion the fire-sale of FBME Cyprus' assets without providing any explanation as to why it was necessary to dispose of the assets of the Branch. This is because there is no explanation. The sale of the Branch is not required under the FinCEN Notice or proceedings.

The Special Administrator himself has publicly stated that if the FinCEN Notice is withdrawn, it will be possible to cancel the Resolution Decree issued by the Central Bank. This is an absurd statement as the Branch may well be sold or destroyed by then, and would leave the CBC liable for damages that may be awarded to the ultimate beneficial owners of FBME Bank that will ultimately have to be borne by the Cypriot taxpayers. Those damages are currently estimated at half a billion US dollars, but may well exceed this sum by the time the arbitration is completed.

The Republic of Cyprus has breached the Agreement on the Reciprocal Protection of Investments with the Republic of Lebanon

The Agreement imposes a number of substantive obligations on the Republic of Cyprus for the protection of investments made in Cyprus by investors from the Republic of Lebanon. In particular, Article 4 of the Agreement provides that such investments shall at all times be accorded fair and equitable treatment, enjoy full protection and security, and that no Contracting Party shall in any way impair by unreasonable or discriminatory measures their management, use, enjoyment or disposal. Just as importantly, Article 6(1), states that investments may not be nationalized, expropriated or subjected to measures having equivalent effect to nationalization or expropriation, except for public interest established by law, on a non discriminatory basis and against the payment of prompt, adequate and effective compensation. The Claimants respectfully plead that the Republic of Cyprus has failed to respect any of those obligations through the actions of the CBC against FBME Bank.

The destruction of the value of the Bank by the CBoC and its Special Administrator

The taking control of the Branch and the following actions by the CBC and the Special Administrator are progressively and rapidly destroying the value of the Bank by preventing it to operate at all and causing enormous damage and hardship to its customers who rely on



FBME Limited

its functioning. The Claimants will not seek in this note to list or describe in a comprehensive manner the myriad of actions taken by the Special Administrator which are contrary to common sense and in violation of his duties, however, the Claimants would like to highlight the following three most egregious examples:

1. Less than a month after his appointment, the Special Administrator attempted to siphon the liquidities of the Branch to the benefit of the CBC. He instructed three correspondent banks, among the world's leading financial institutions, to transfer a total of 187,686,074.95 EURO to the CBC, in spite of the fact that there was no valid reason to transfer these funds and that 100 million EURO had already been voluntarily transferred by FBME to the CBC on 18th July 2014. Fortunately, these instructions by the Special Administrator were not executed;
2. The Special Administrator has refused to take any steps necessary to allow FBME Bank to resume certain activities in non-US\$ currencies. He has also actively sought to obstruct the ability of the Bank to do so itself. Further, the Special Administrator refused numerous requests by the Bank's lawyers, Hogan Lovells, and the international forensic accountants, Ernst and Young (USA), appointed by them to access the Branch premises and staff. It was only after being confronted with this issue during a hearing of the Supreme Court in Cyprus on 31st July 2014, that the CBC issued an official authorization and the Special Administrator reluctantly acceded to these requests;
3. The Special Administrator has also frozen, without giving any reason, the personal accounts of both Claimants, including the accounts of close members of their family, such as the trust account put in place to take care of various medical expenses necessary for the daughter of one of the Claimants.

The request for relief by the Claimants

For the reasons set out above, the Claimants respectfully request the Arbitral Tribunal to:

- Declare that the Republic of Cyprus has breached its obligations under the Agreement on the Reciprocal Protection of Investments between the Republic of Lebanon and the Republic of Cyprus of 9th April 2009;
- Order the Republic of Cyprus to withdraw immediately its Decree 356/2014 for the sale of FBME Cyprus;



FBME Limited

- Order the Republic of Cyprus to compensate in full the Claimants for the Respondent's breaches under the Treaty, which shall be qualified at a later stage but are estimated at least to US\$ 500 million;
- Order the Republic of Cyprus to pay the Claimants the full costs of the arbitration, including but not limited to compensation for all arbitrators' fees and costs, legal fees and expenses incurred by the Claimants in connection with the present take over and dispute; and
- Order the Republic of Cyprus to pay applicable interests to any amount awarded until the Republic of Cyprus complies with such award.

Background on FBME Bank in Cyprus

FBME Bank is a company incorporated under the laws of Tanzania. Its Head office is located in Dar es Salaam, Tanzania. The Bank conducts banking activities which include the provision of financing and other banking services to its clients, a large majority of which are international. The main branch of the Bank - FBME Cyprus – is located in Nicosia. The activities of the Branch represent approximately 90% of the global business of the Bank. Established in 1982, FBME Cyprus is the oldest offshore bank operating in Cyprus and has to a significant extent paved the way for other foreign investors of the banking industry to establish a banking presence on the island and shape it as a financial hub that it has eventually become, contributing considerably to the economy of the country. FBME Cyprus is today one of the largest foreign-owned banks operating in Cyprus and is highly liquid. It has strong solvency ratios, well above those required by applicable EU and Cypriot laws and regulations. Prior to the action by the CBC, and in stark contrast with certain local systemic banks in Cyprus, the Bank's Cypriot Branch enjoyed a very solid financial standing and was and still is very sound, with a short-term liquidity ratio which stood at 104% at the time of the action against it by the CBoC. It, therefore, had sufficient assets to meet the claims of its depositors fully, which totaled at the time approximately US\$ 1.7 billion.

In order to operate on a day to day basis, over the years, FBME Bank, including its Branch in Cyprus has developed a network of correspondent banks that act on its behalf, including some of the world's leading financial institutions.
