

Liberia

Investment Act of 2010 (2010)

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Repealing and replacing the investment incentives act of 1973

Preamble

Whereas: a vibrant private sector supported by direct foreign investment is critical to the rapid economic recovery, reconstruction and development of Liberia;

Recognizing: that the economic and social development objectives of the people of Liberia shall be achieved by a favorable investment environment that will guarantee security and protection of lives and property and will manifest the Government of Liberia's commitment to policies and regulatory mechanisms necessary for promoting good governance, transparency, accountability and respect for the sanctity of contractual obligations;

Being cognizant: that the Investment Incentive Act of 1966 which was amended in 1973 has been a valuable instrument in stimulating economic development but realizing the need to expand trade relations and broaden Liberia's international economic cooperation; and

Further: realizing the urgent need to revise the Investment Incentives Act of 1973 to ensure consistency with international best practice as a necessary tool for attracting sustainable domestic and foreign investment, for reconstructing and enhancing the economy of Liberia and for creating a viable market-based economy to encourage private enterprise through a transparent, equitable and non-discriminatory legal framework for investment;

NOW THEREFORE, it is hereby enacted by the Senate and House of Representatives of the Republic of Liberia, in legislature assembled:

Part I. Preliminary provisions

Section 1. Short Title

This Act shall be known as the Investment Act of 2010

Section 2. Definitions

In this Act unless the context otherwise requires:

1. "Business organization" means any organization established and / or registered under the law applicable in Liberia for the purpose of carrying on a lawful business;
2. "Capital" means all cash contributions, plant, machinery, rental and or lease expenses, equipment, buildings, spare parts, raw materials and other business assets;
3. "Commission" means the National Investment Commission (NIC);
4. "Direct Investment" means investment made to acquire a lasting interest in an enterprise operating in the economy of Liberia and intended to give the investor effective control in the management of; the enterprise;
5. "Domestic business organization" means a business organization in which the majority of the shares are held by a person who is, or persons who are citizens of Liberia or a partnership in which the partnership controlling interest is owned by a person who is or persons who are citizens of Liberia;
6. "Domestic Investor" means a natural person who is a citizen of Liberia; a Company Incorporated under laws of Liberia in which the majority of the shares are held by a person who is, or persons who are citizens of Liberia or a partnership in which the partnership controlling interest is owned by a person which is or persons who are citizens of Liberia;
7. "Enterprise" means any corporation, company, partnership, association, foundation, trust or other organization or entity, for profit or not for profit, organized and subsisting under the laws of any jurisdiction;
8. "Equity" refers to an interest (including a beneficial interest) in an enterprise entitling the holder thereof to participate in the income and profits of such enterprise;

9. "Expropriation" means the nationalization, condemnation, requisition, excessive or repetitive tax, or regulatory measures which have a confiscatory effect, either alone or in the aggregate, of a condemnation or requisition of an investment by the Government;
10. "Foreign Investor" includes any natural person who is a citizen of a foreign State and/or any legal entity that was founded and registered under the law of a foreign State or was founded under the law applicable in Liberia with a legal address or principal place of business in a foreign State;
11. "Foreign Loan" means a loan obtained from outside Liberia and denominated in any currency other than the Liberia dollar;
12. "Freely Convertible Currency" means any currency designated as such by the International Monetary Funds;
13. "Government" means the Government of the Republic of Liberia;
14. "Incentives" include fiscal benefits, facilities, entitlements and exemptions conferred on an enterprise to which this Act applies for the purpose of promoting the economic growth and development of Liberia;
15. "Indirect Investment" means any act or contract whereby an investor makes a contribution, whether tangible or intangible, to an enterprise in Liberia without obtaining an equity interest in the enterprise but is entitled to returns based on profits generated by the enterprise;
16. "Investment" includes direct and indirect investment and portfolio investments;
17. "Liberian" means any citizen of Liberia or any company, partnership or association or body (whether corporate or non-corporate) the majority capital or financial interest in which is owned by citizens of Liberia and includes the State and a statutory corporation;
18. "National treatment" means that with respect to all laws, regulations, instructions and other acts having the force of law in Liberia, foreign investments in Liberia shall be treated not less favorably than similar domestic business organization;
19. "Own" in relation to an enterprise, includes the holding of any proprietary interest in the enterprise;
20. "Person" means a natural person or a juridical person;
21. "Portfolio Investment" means an investment in shares, bonds or other securities in Liberia; and;
22. "State" means the Republic of Liberia.

Section 3. Application of act

This Act shall apply to all enterprises.

Part II. Framework for private investment and investment guarantees

Section 4. Establishment of enterprises

A person who intends to establish an enterprise shall incorporate and/or register a business organization in accordance with the Associations Law or such other laws as are relevant to the establishment of the enterprise.

Section 5. Benefits and incentives

An enterprise shall be entitled to such fiscal incentives as are applicable under the Revenue Code of Liberia of 2000 or amendments thereto and such no-fiscal incentives as are applicable in relevant legislation.

Section 6. Prohibition against discrimination

- 1) Subject to the labor law and laws governing immigration, foreign investors, employers and workers shall enjoy the same rights and be subjected to the same duties and obligations as are applicable to citizens of Liberia.
- 2) Unless otherwise provided by this Act, foreign investors shall abide by the same laws that apply to domestic business organizations. In particular, and without limitation:
 - a. Any licenses or other permits for conducting specific business activities that are required of domestic business organizations shall be similarly required of foreign investors;
 - b. Foreign investors must maintain business books and records in accordance with the same accounting standards that apply to similar domestic business organizations;
 - c. Foreign investors are subject to the same insurance requirement that apply to similar domestic business organizations; and
 - d. Subject to Revenue Code of Liberia, foreign investors shall be taxed in the same manner as similar domestic business organizations.
- 3) Subject to the qualifications set out in the Scheduled hereto, foreign investors may wholly own, or in partnership with Liberians, control business organizations in any sector of the economy of Liberia.
- 4) Bona fide compliance by the Government with the procurement requirements established under the Act of September 8, 2005 establishing the Public Procurement and Concession Commission or any successor legislation establishing comprehensive rules for procurement of goods and services by the Government (including and domestic preference rules set forth therein) shall not be considered a branch of this Section.

Section 7. Guarantee against expropriation

- 1) Subject to subsections (2) and (3) of this section:
 - a. No enterprise shall be nationalized or expropriated by Government; and
 - b. No person who owns, whether wholly or in part, the capital of or equity in any enterprise shall be compelled by law to cede his interest in the capital or equity to any other person.
- 2) There shall not be any expropriation of an enterprise to which this Act applies by the State unless the expropriation is in the national interest for a public purpose, is the least burdensome available means to satisfy that overriding public purpose, is made on a non-discriminatory basis, in accordance with due process of law, and is under a law which makes provision for:
 - a. Payment of fair and adequate compensation; and
 - b. A right of access to the Civil Law Court or any court of competent jurisdiction for the determination of the investor's interest or right and the amount of compensation to which he is entitled, which compensation shall be fair market value.

3) Any compensation payable under this section shall be paid without undue delay and, in the event of any currency exchange controls, authorization for its repatriation in freely convertible currency, where applicable, shall be issued.

4) Compensation payable for any expropriation shall be equal to the fair market value of the property that is the subject of such action, taken as a whole. Fair market value shall be determined:

a. Without regard to the proposed action on the value of the property that is the subject of such action, and

b. Just prior to the time that the proposed action was announced or became generally anticipated in the marketplace, whichever is earlier.

5) The Government and the person whose property is lawfully designated for expropriation may determine fair market value of the expropriated property by other agreed means.

Section 8. Protection from intellectual property abuses

The Government shall enforce trademark, copyright and patent laws, and any applicable related international and regional intellectual property conventions ratified by the legislature.

Section 9. Access to public information

Investors shall have direct and open access to all laws and decisions of courts or other adjudicative bodies and to any other public information, which has a rational relationship to their investment interests.

Section 10. Protection against the Retroactive Application of Adverse Laws

No adverse law, regulation, institution or other Act having the force of law shall be applied retroactively.

Section 11. Repatriation of Capital, Profits and Dividends

1) Investors shall have the unrestricted right to use their investment and any incomes lawfully received therefrom for any lawful purposes. All lawful proceeds of the operations of an enterprise may, subject to tax and any other legal obligations, be retained by the enterprise, or disposed of in any lawful manner.

2) Foreign investors shall have the same rights as similar domestic business organizations to open bank accounts.

3) Subject to tax and other legal obligations, an enterprise to which this Act applies shall be guaranteed unconditional transferability into and out of Liberia through any authorized dealer bank in freely convertible currency of:

a. Capital for investment

b. Payments in respect of loan servicing where foreign loans have been obtained; and,

c. The remittance of proceeds (net of all taxes and other obligations) in the event of sale or liquidation of the enterprise or any interest attributable to the investment.

4) Non-discriminatory measures taken by the Government to void or abate a balance of payments emergency that limit the rights of investors or investment enterprises under section 11.3, including non-discriminatory limitations on the convertibility of currencies shall not be considered a violation of this Act. This Section excuses such measures only for such length of time as is reasonably necessary to address an emergency situation.

Section 12. Dispute settlement Procedures

1) The courts of Liberia shall have jurisdiction over the resolution of business disputes. Parties to an investment dispute may however specify any arbitration or other dispute resolution procedure upon which they may agree.

2) Where a dispute arises between an investor and Government in respect of an enterprise, all efforts shall be made through mutual discussion to reach an amicable settlement.

3) Any dispute between an investor and Government in respect of an enterprise to which this Act applies which is not amicably settled through mutual discussions may be submitted at the option of the aggrieved party to arbitration as follows:

a. in accordance with any national or international machinery for the settlement of Investment dispute agreed to by the parties.

b. in the case of a foreign investor:

(i). in accordance with the rules and procedures for arbitration by the United Nations Commission on International Trade Law; or

(ii). within the framework of any bilateral or multilateral agreement on investment protection to which the Government and the country of which the investor is a national are parties;

Section 13. Labor and environment

1) Subject to the labor law and laws governing immigration, foreigners of any nationality may be employed in Liberia.

2) Employee of enterprise owned by foreign investors in Liberia, regardless of nationality, shall be subject to the laws applicable in Liberia.

3) Labor relations between enterprises owned by foreign investors and their employees shall be regulated by their labor agreements, which agreements may not establish standards lower than the mandatory requirements of Liberia.

4) Investors shall have the right to employ any persons, including foreign nationals, in accordance with domestic labor law in order to conduct their investment and business activities.

5) Enterprises owned by foreign investors may not establish environmental agreements or standards lower than the mandatory requirements found in applicable environmental regulations and legislation of Liberia.

Part III. Repeals, transitional provisions and entry into force

Section 14. Repeal and amendments

1) Subject to section 14, the following enactments are repealed or amended as the may be:

- a. Investment Incentives Act of 1973
- b. 1998 Act to amend chapter 12 of General Business Law of 1975

2) Subject to part III of this Act, all provisions of existing legislation in Liberia, which are governed by this Investment Act are hereby repealed; provided that, all proceedings, orders and regulations taken or made there under, except to the extent they are cancelled by or are otherwise in consistent with the provisions of this Act, shall remain in force or effect until they are repealed or amended in accordance with its provision.

Section 15. Transitional Provisions

1) Notwithstanding the repeal of the Investment Incentives Act of 1973, any incentives agreement executed under it shall remain in force subject to the transitional rules enacted by the Liberia Revenue code of 2000 as amended.

2) Any application pending before the National Investment commission upon the entry into effect of this Act shall be deemed to be pending under this Act and shall, if eligible, receive incentives available under the Liberia Revenue code of 2000 as amended or any other applicable law.

3) Where an enterprise in existence immediately before the commencement of this Act has duly complied with the Investment Incentive Act of 1973 and other applicable legislation, the enterprise shall be deemed lawful notwithstanding any provision of this Act to the contrary. Any transfer of ownership or ownership rights must conform to this Act.

4) In the event of any provision of this Investment Act contradicting a provision from any other existing laws related to domestic or foreign private investment, the provisions of this Investment Law shall prevail,

5) The mention of particular matters in this section shall be without prejudice to the general application of the provisions of laws governing the interpretation of statutes, which relate to the effect of repeals.

Section 16. Entry into force

This Act shall come into force upon its passage by the House of Representatives and the senate and immediately upon its publication in handbills.

Any law to the contrary notwithstanding

Schedule: Limited restrictions to foreign ownership of enterprises

1) Ownership of the following business activities shall be reserved exclusively for Liberians:

- a. Supply of sand;
- b. Block making;
- c. Peddling;

- d. Travel Agencies;
- e. Retail sale of rice and cement;
- f. Ice making and sale of ice;
- g. Tire repair shops;
- h. Auto repair shops with investments of less than US 50,000 (i) shoe repair shops;
- j. Retail sale of timber and planks;
- k. Operation of gas stations;
- l. Video clubs;
- m. Operation of taxis;
- n. Importation or sale of second-hand or used clothing;
- o. Distribution in Liberia of locally manufacture products;
- p. Importation and sale of used cars (except authorized dealerships which may deal in certified used vehicles of their make);

2) Foreign investors may invest in the following business activities provided that where such of the listed enterprises is owned exclusively by non-Liberians the total capital invested shall not be less than US\$300,000; and, where such of the listed enterprises is owned by non-Liberian in partnership with Liberians and the aggregate shareholding of the Liberian is at least 25%, the total capital invested shall not be less than US\$300,000;

- a. Production and supply of stone and granite;
- b. Ice cream manufacturing;
- c. Commercial printing;
- d. Advertising agencies, graphics and commercial artists;
- e. Cinemas;
- f. Production of poultry and poultry products;
- g. Operation of water purification or bottling plant (exclusively the production and sale of water in sachets);
- h. Entertainment centers not connected with a hotel establishment;
- i. Sale of animal and poultry feed;
- j. Operation of heavy duty trucks;
- k. Bakeries;
- l. Sale of pharmaceuticals.