

Seychelles

Seychelles Investment Act, 2010 (2010)

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Seychelles Investment Act, 2010

Act No. 31 of 2010

[Preamble]

AN ACT to provide for a legal environment that is conducive to a greater flow of investments into the Republic and the protection of the rights of investors, to establish a Seychelles Investment Board, to repeal the Investment Code of Seychelles Act, 2005 and to provide for connected matters.

ENACTED by the President and the National Assembly.

Part I. Preliminary

Section 1. Short title and commencement

This Act may be cited as the SeyChelles Investment Act, 2010 and shall come into operation on such date as the Minister may, by Notice in the Official Gazette, appoint.

Section 2. Interpretation

In this Act—

"Chairperson" means the chairperson of the Investment Appeal Panel appointed under section 12 or the Chairperson of the Board of Directors appointed under section 18, as the case may be;

"Chief Executive Officer" means the chief executive officer of the Investment Board of Seychelles appointed under section 23;

"investment" means any contribution made by a person to start or expand any economic activity including, though not limited to, any—

- a. real or immovable, personal or movable property and any other rights such as mortgages, liens or pledges, and similar rights;
 - b. shares, stock, securities and debentures in a company or other entity, or any other form of participation in a company or other entity;
 - c. claims to money or other things having an economic value directly related to an investment;
 - d. intellectual property rights, including copyrights and rights relating to trade marks, geographical indications, drawings, models and industrial designs, patents, layout-designs, distinctive signs and knowhow;
 - e. rights conferred by law or under contract to undertake any economic and commercial activity, including any rights to search for, cultivate, extract or exploit natural resources;
 - f. a loan to a company or other entity where the company or other entity is an affiliate of the investors;
 - g. an interest in an entity that entitles the owner to share in—
 - i. the income or profits of the entity;
 - ii. the assets of that entity on dissolution, other than a debt instrument or a loan; and
- interests arising from the commitment of capital or other resources to the development of economic activity in Seychelles, such as under—
- i. contracts involving the presence of an investor's property in Seychelles including licences or permits or construction turnkey contracts;
 - ii. contracts where remuneration depends substantially on the production, revenue or profits of a company or other entity;

iii. licences or permits conferred by law or under contract including any licences -or permits to search for and extract oil or other minerals;

"investor" —

a. means any person carrying on or who intends to carry on any investment; and

b. includes

i. a person who is not a citizen of Seychelles; or

ii. a body of persons, whether corporate or unincorporate, the control or management of which is vested in persons who are not citizens of Seychelles, and registered as an investor under this Act;

"Minister" means the Minister responsible for Investment;

"Planning Authority" has the same meaning as in the Town and Country Planning Act;

"prescribes" means prescribed by regulations;

"public sector agency" includes any Ministry, Government Department or statutory body;

"relevant permit" includes any licence, approval or other authorisation required from a public sector agency under any enactment in respect of any activity.

Section 3. Application of the Act

1) The provisions of this Act—

a. shall not affect in any manner any guarantees, advantages or obligations provided for in any international agreement or treaty to which the Government has become a party before the commencement of this Act; and

b. shall not be construed as limiting the scope of any future international agreement or treaty.

2) In the event of any inconsistency between this Act and. any international agreement or treaty to which the Government is a party, the international agreement or treaty shall prevail.

3) For the avoidance of doubt, the term "international agreement" includes bilateral agreements entered into by the Government.

Part II. Investment protection

Section 4. Fair and equitable treatment

Every investor shall be accorded fair and equitable treatment with respect to investments made after the commencement of this Act.

Section 5. Protection of property

1) Any Investments in Seychelles shall not be nationalised, expropriated or subjected to any indirect measures having an equivalent effect, except by provision of a law, in the public interest, for a public purpose, on a non-discriminatory basis and accompanied by prompt and full compensation.

2) The compensation referred to in subsection (1) shall—

- a. amount to the market value of the expropriated investment immediately before the expropriation or the proposed expropriation becoming public knowledge;
 - b. include interest from the date of dispossession of the expropriated property until the date of payment;
 - c. be paid without delay in convertible currency, where applicable, and
 - d. be effectively realisable and freely transferable.
- 3) An investor aggrieved by any nationalisation or expropriation may seek constitutional or other remedies under the laws of Seychelles, or resort to other methods of resolution of disputes provided for in any agreement between the investor and the Government.

Section 6. Transfer of profits etc.

- 1) Subject to subsection (2), an investor shall be allowed all transfers relating to the investment (including but not limited to profits, dividends, interest, capital gains, royalties, management fees, proceeds from sale, expropriation compensation, and earnings of workers) in freely convertible currency at the exchange rate applicable on the date of the transfer, without delay and on a non-discriminatory basis.
- 2) Notwithstanding subsection (1), the Government may—
- a. in circumstances of exceptional or serious balance of payments difficulties, limit transfers temporarily on a fair and non-discriminatory basis;
 - b. prevent a transfer through the equitable and non-discriminatory application of its laws in relation to—
 - i. bankruptcy, insolvency or the protection of the rights of creditors;
 - ii. criminal offences;
 - iii. ensuring the satisfaction of judgments and awards in adjudicatory proceedings.

Section 7. Transparency

- 1) All laws and regulations that affect or pertain to investments or investors shall be made publicly available.
- 2) Policies that affect investments or pertain to investors which are not expressed in laws and regulations shall be made publicly available in a timely manner.
- 3) To the extent practicable, a reasonable period of time shall be allowed between the making of laws, including rules and regulations, and their coming into operation.
- 4) Notwithstanding subsections (1), (2) and (3), this section does not require disclosure of any confidential or proprietary information, including information concerning particular investors or investments, or investment disputes, the disclosure of which would
- a. impede law enforcement or national security;
 - b. be contrary to laws protecting confidentiality or to the public interest; or
 - c. prejudice the legitimate- commercial interests of a particular public or private entity.

Section 8. Exclusion of prior claims

The provisions of this Act shall apply to all Exclusion of investments made in Seychelles prior to or after the prior claims commencement of this Act, except that the Act shall not apply to a claim arising out of any decision taken by a public sector agency prior to that date.

Section 9. Continuation of certain activities

Nothing in this Act. shall constrain any person from continuing to carry on any economic activity in a strategic or restricted sphere of . investment which was in existence immediately before the commencement ofth is Act.

Part III. Business facilitation and public-private partnership

Section 10. Assistance of the Seychelles Investment Board

- 1) An investor may request the Seychelles Investment Board for its assistance to obtain the support and cooperation of public sector agencies to facilitate and implement the investments.
- 2) The provisions of this Act shall apply to all Exclusion of investments made in Seychelles prior to or after the prior claims commencement of this Act, except that the Act shall not apply to a claim arising out of any decision taken by a public sector agency prior to that date.

Section 11. Public-private partnership

The Seychelles Investment Board may act as a coordinator and facilitator between the public sector and the private sector in the assessment of any public-private partnership project, its implementation, development and monitoring.

Part IV. Investment appeal panel

Section 12. Investment appeal panel

- 1) There shall be established an Investment Appeal Panel.
- 2) The Investment Appeal Panel shall consist of the following members who shall be appointed by the President—
 - a. a Chairperson;
 - b. a representative ofthe Attorney General;
 - c. a representative of the private sector; and
 - d. a representative of a non-government consumer welfare organisation.
- 3) A member of the Investment Appeal Panel shall be appointed on such terms and conditions as the President may determine.
- 4) The Chairperson and the other members of the Investment Appeal Panel shall hold office for three years and be eligible for re-appointment.
- 5) The President shall at any time terminate the appointment of a member who has been found guilty of—
 - a. any misconduct, default or breach of trust in the discharge ofthat member's duties; or

b. an offence of such nature as renders it desirable that the member's appointment be terminated.

6) The Investment Appeal Panel shall endeavour to avoid formality in its proceedings and may conduct the proceedings in such manner as it thinks fit.

7) The Investment Appeal Panel may appoint as advisor for a specific appeal a person whose specialised knowledge or experience is such that the person will be able to assist the Investment Appeal Panel in its deliberations.

Section 13. Right of appeal

1) An aggrieved investor shall be entitled to apply to the Investment Appeal Panel for—

a. a review of a decision made by a public sector agency with regard to that investor's investment or proposed investment where the investor is not satisfied with the decision of the public sector agency; or

b. an order where the public sector agency does not issue a decision within the required time limit.

2) An application for review under subsection (1) shall—

a. be in writing;

b. specify the reasons for making the application; and

c. be made within such time as may be prescribed.

3) An applicant for a review under subsection (1) shall make a deposit of such sum as shall be prescribed, which may be forfeited by the Investment Appeal Panel if it determines that the application was frivolous.

4) Where an application for review is made in accordance with this section, the decision of the public sector agency shall be suspended until the appeal is heard and determined by the Investment Appeal Panel.

5) The Investment Appeal Panel shall make a decision under this section within thirty days of the date of submission of an application for review under subsection (2).

6) The Investment Appeal Panel may dismiss an application for review or may, if it determines that there is merit in it, order one or more of the following remedies—

a. recommend the annulment in whole or in part of any unauthorised act or decision, or remedying of any omission, of the public sector agency;

b. recommend a re-evaluation of an application, specifying the grounds for such recommendation.

7) A person aggrieved by a decision of the Investment Appeal Panel may appeal against the decision to the Supreme Court.

Part V. Seychelles investment board

Section 14. Establishment of the Seychelles Investment Board

1) There shall be a Seychelles Investment Board.

2) The Seychelles Investment Board shall be a body corporate.

Section 15. Objectives

The objectives of the Seychelles Investment Board shall be—

- a. to stimulate the development, expansion and growth of the economy by promoting Seychelles as an international investment, business and service centre;
- b. to promote and facilitate the development of investment and business activities;
- c. to formulate investment promotion policies, plans and marketing strategies and undertake promotional activities to attract foreign and local investments; and
- d. to advise the Government on strategies for investment policies, national investment marketing and investment after care and economic and industrial planning.

Section 16. Functions

1) The functions of the Seychelles Investment Board Functions are to ensure that necessary steps are taken to most effectively—

- a. improve investment and business environment and undertake such other activities as may be necessary to promote Seychelles as an attractive base for investments and as an international financial centre;
- b. prepare, fund, implement and monitor programmes relating to strategies for promoting investments in Seychelles;
- c. conduct research and studies for identifying investment opportunities;
- d. maximise opportunities and arrangements for the development of investments and business activities in Seychelles;
- e. highlight policy issues and make policy recommendations to the Government on increasing investments and attaining Government's economic objectives;
- f. co-ordinate investment-related promotional and marketing activities of Seychelles;
- g. provide support services to investors, including assistance to procure a relevant permit for establishing and operating enterprises and leasing or purchasing real estate for their activities;
- h. ensure co-ordination and cooperation between the public sector and the private sector on matters relating to investment and policy decisions impacting on investments;
- i. provide information to potential investors on matters relating to investments; and
- j. carry out periodic surveys to assess the socio-economic impact of investments and the general investment climate prevailing in Seychelles;
- k. act as the Government's representative in coordinating, facilitating and implementing public-private partnership projects;
- l. set up such technical committees as it deems fit to assist it in the discharge of its functions under this Act; and
- m. do all such other things as are incidental or conducive to the fulfilment of its objectives.

Section 17. Board of Directors

The affairs of the Seychelles Investment Board shall be administered by a Board of Directors.

Section 18. Composition of the Board of Directors

1) The Board of Directors shall consist of the following members appointed by the President—

- a. a Chairperson;
- b. four representatives from the public sector;
- c. five representatives from the private sector;
- d. the Chief Executive Officer of the Seychelles Investment Board who shall be the Secretary to the Board of Directors.

2) The Chairperson and the other members of the Board shall hold office for a period of 3 years on such terms and conditions as the President may determine and shall be eligible for reappointment.

3) The Chairperson and any member of the Board may resign from office at any time by giving not less than 30 days' notice in writing to the President.

4) Every member shall be remunerated in such manner as the Board of Directors may, with the approval of the President, determine.

Section 19. Removal of members

The President may remove a member from the Board of Directors upon being satisfied that the member—

- a. is incapable of performing the functions of a Director;
- b. has neglected the duty of a Director or has engaged in misconduct; or
- c. has been absent, without leave of the Board of Directors, from 3 consecutive meetings of the Board.

Section 20. Filling of vacancies

1) A member, other than a member who resigns or is removed from office, shall continue in office until a successor assumes office, notwithstanding that his or her term has expired.

2) Where a vacancy occurs on the Board of Directors, the President shall make an appointment having regard to the provisions of section 18.

3) A person appointed under subsection (2) shall hold office for the remainder of the term of the outgoing member.

Section 21. Meetings

1) The Board of Directors shall meet as often as is necessary but at least once in every three months, and at such time and place as the Chairperson may determine.

2) The quorum for a meeting of the Board of Directors shall be 6 members.

- 3) The Chairperson shall preside at all meetings of the Board of Directors and, if the Chairperson is absent from a meeting, the members present shall elect from among themselves a member to preside, and that member shall, with respect to that meeting or any business transacted, perform the functions and exercise the powers of the Chairperson.
- 4) Everything authorised or required to be done by the Board of Directors shall be decided by consensus of the members present.
- 5) The Board of Directors may co-opt such other persons as may be of assistance in relation to any matter coming up before the Board to participate in its deliberations but such person shall have no right to vote on any such matter.
- 6) Subject to the other provisions of this section, the Board of Directors shall regulate its meetings and proceedings in such manner as it thinks fit.

Section 22. Powers of the Minister

- 1) The Minister may, in relation to the exercise by the Seychelles Investment Board of any of its powers under this Act, after consultation with the Board of Directors give such directions of a general character to the Seychelles Investment Board as the Minister considers necessary in the public interest, and the Seychelles Investment Board shall comply with those directions.
- 2) The Seychelles Investment Board shall furnish to the Minister such information with respect to its activities as the Minister may require.

Part VI. Staff and management

Section 23. The Chief Executive Officer

- 1) There shall be a Chief Executive Officer of the Seychelles Investment Board who shall be appointed by the President on such terms and conditions as the President thinks fit.
- 2) The Chief Executive Officer shall be responsible for the administration of the day to day affairs of the Seychelles Investment Board in accordance with the decisions of the Board of Directors.

Section 24. Appointment of personnel

- 1) The Seychelles Investment Board shall employ such officers and other staff as it considers necessary on such terms and conditions as it may determine for the proper discharge of its functions under the Act.
- 2) Every employee shall be under the administrative control of the Chief Executive Officer.

Section 25. Conditions of service of employees

The Seychelles Investment Board shall cause regulations to be made providing for the conditions of service of employees and, in particular relating to—

- a. the appointment, dismissal, discipline, pay and leave of, and the security to be given by, employees;
- b. appeals by employees against dismissal or other disciplinary measures; and
- c. the establishment and maintenance of provident and pension fund schemes and the contributions payable to and the benefits accruing from those schemes.

Section 26. Funds of the Seychelles Investment Board

1) The funds of the Seychelles Investment Board shall consist of—

a. moneys provided by the Appropriation Act or otherwise approved by the National Assembly; and

b. moneys received by way of loans, gifts or grants.

2) The funds of the Seychelles Investment Board shall be applied in the discharge of the expenses in carrying out its functions.

3) Funds of the Seychelles Investment Board not immediately required for the purposes of the Seychelles Investment Board may be invested in such manner as the Seychelles Investment Board thinks fit.

Section 27. Accounts and auditing

1) The financial year of the Seychelles Investment Board is the period of 12 months ending on the 31st December in each year:

Provided that the first financial year of the Seychelles Investment Board shall be the period between the commencement of this Act and the 31st December next following.

2) The Seychelles Investment Board shall keep proper accounts and records in relation to the accounts and shall prepare in respect of each financial year a statement of accounts.

3) Article 158 of the Constitution shall apply in respect of the auditing of the accounts of the Seychelles Investment Board.

Part VII. Miscellaneous

Section 28. Confidentiality

1) Subject to this section, every member of the Board of Directors and the technical committees, the Chief Executive Officer and employees of the Seychelles Investment Board shall maintain during and after their relationship with the Seychelles Investment Board, the confidentiality of any matter which comes to their knowledge in the performance of their functions under this Act.

2) Except for the purposes of administering this Act, no member or person referred to in subsection (1) shall communicate to any unauthorised person any such confidential matter.

3) Any person who, without lawful excuse, knowingly contravenes subsection (2) commits an offence and is, on conviction, liable to a fine not exceeding R50,000 or to imprisonment for a term not exceeding 2 years.

Section 29. Liability and protection

The members of the Board of Directors, the Chief Executive Officer and employees of the Seychelles Investment Board exercising their respective functions under this Act—

a. shall be deemed to be public officers for the purposes of the Public Officers (Protection) Act, and sections 91 to 96 of the Penal Code; and

b. shall incur no liability, civil or criminal, in respect of any act done or omitted to be done by them in the execution in good faith of their duties under this Act.

Section 30. Power to make regulations

1) The Minister may make regulations for carrying out Power-to the principles and provisions of this Act.

2) Any such regulation may provide for the levying of fees and imposition of charges.

Section 31. Investment promotion and protection agreements

1) The Seychelles Investment Board may, subject to the other provisions of this Act or any other enactment, enter into arrangements or agreements for the promotion and protection of investments made by citizens of Seychelles in other states and by investors of other states in Seychelles.

2) The Minister may make regulations to give effect to any arrangement or agreement entered into under subsection

Section 32. Repeal of Act 13 of 2005

The Investment Code of Seychelles Act, 2005 (Act 13 of 2005) is hereby repealed.

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