

Burundi

Law No. 1/19 of 17 June 2021 Amending Law No. 1/24 of 10 September 2008 on the Investment Code of Burundi (2021)

Unofficial translation

Note

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Unofficial Translation

Republic of Burundi

Office of the President

Law No. 1/19 of 17 June 2021 Amending Law No. 1/24 of 10 September 2008 on the Investment Code of Burundi

THE PRESIDENT OF THE REPUBLIC,

Having regard to the Constitution of the Republic of Burundi;

Having regard to Law No. 1/010 of 30 June 2000 on the Environmental Code of the Republic of Burundi;

Having regard to Law No. 1/15 of 31 July 2001 amending Decree-Law No. 1/30 of 3 August 1992 establishing a Free Zone Regime in Burundi;

Having regard to Law No. 1/02 of 1 January 2007 establishing the Customs Code;

Having regard to Law No. 01/02 of 4 February 2008 on the Fight against Money Laundering and the Financing of Terrorism;

Having regard to Law No. 1/04 of 4 February 2008 on the Fight against Money Laundering and the Financing of Terrorism,

Having regard to Law No. 1/35 of 4 December 2008 on Public Finance, as amended to date;

Having regard to Law No. 1/10 of 30 June 2009 on the application of the Common External Tariff (CET) of the East African Community;

Having regard to Law No. 1/11 of 14 July 2009 on the Creation, Organization and Functioning of the Burundi Revenue Office;

Having regard to Law No. 01/09 of 30 May 2011 on the Code of Private Companies and Public Participation;

Having regard to Law No. 1/13 of 9 August 2011 on the revision of the Financial Code of Burundi;

Having regard to Law No. 1/02 of 26 March 2012 on the Water Code in Burundi;

Having regard to Law No. 1/21 of 15 October 2013 on the Mining Code of Burundi;

Having regard to Law No. 1/01 of 16 January 2015 on the Revision of Law No. 01/07 of 26 April 2010 on the Commercial Code;

Having regard to Law No. 1/12 of 28 June 2017 governing Cooperative Societies in Burundi;

Having regard to Law No. 1/27 of 29 December 2017 on the Revision of the Penal Code;

Having regard to Law No. 1/02 of 29 January 2018 amending Law No. 1/01 of 4 February 2008 on the Public Procurement Code;

Having regard to Law No. 1/09 of 1 May 2018 on Amendments to the Code of Criminal Procedure;

Having regard to Law No. 1/19 of 19 July 2019 amending Law No. 0 1/14 of 27 April 2015 on the General Regime for Public-Private Partnership Contracts;

Having regard to Law No. 1/06 of 17 July 2020 on the Revision of Law No. 0 1/02 of 7 January 2014 on the Insurance Code of Burundi;

Having regard to Law No. 110 1/10 of 16 November 2020 on the Revision of Law No. 0 1/12 of 29 July 2013 on the Introduction of Value Added Tax VAT";

Having regard to Law No. 0 1/12 of 25 November 2020 on the Revision of Law 11 0 1/18 of 6 September 2013 on Tax Procedures,

Having regard to Law No. 1/14 of 24 December 2020 amending Law No. 1/02 of 24 January 2013 on Income Taxes;

Reviewed Law No. 1/24 of 10 September 2008 on the Investment Code of Burundi;

Reviewed Law No. 1/23 of 24 September 2009 determining the Tax Advantages provided for by Law No. 01/24 of 10 September 2008 on the Investment Code of Burundi;

The Council of Ministers having deliberated;

The National Assembly and the Senate having adopted;

PROMULGATES:

CHAPTER 1: GENERAL PROVISIONS

Section 1: Purpose and Scope

Article 1:

The purpose of this Act is to promote and facilitate investment and exports in Burundi.

Article 2:

The provisions of this law apply to investments and exports, to the management of investment facilitation structures including Special Economic Zones, to investments within the framework of concessions for public services or goods, and to the coordination of other state structures for the promotion of investment in priority sectors.

Article 3.

The investment sectors governed by this Act include:

1. agriculture, fishing, animal husbandry, storage activities of plant, animal or fishery products;
2. manufacturing activities of production or processing;
3. extraction, research or processing of mineral substances;
4. tourism, tourism facilities and industries, other hotel activities;
5. cultural industries;
6. Sports, energy, port, airport and rail infrastructure
7. construction of commercial complexes, industrial parks, cybervillages and craft centres;

8. services provided in the following sub-sectors: Health, Information and Communication Technology (ICT), Transport, Education and Training;
9. assembly and maintenance of industrial equipment;
10. production of packaging.

The details of the investment sectors are specified in the implementing legislation.


Section 2: Definitions


Article 4:


For the purposes of this Law, the following definitions apply:

1. Agency: Burundi Development Agency;
2. institutional arbitration: arbitration which the parties have entrusted to a permanent arbitral institution, and which adjudicates in accordance with its own rules;
3. Capital goods: any goods, finished or semi-finished products as well as industrial inputs that can be used in the construction, equipment, processing or manufacture of new products and/or the provision of services;
4. Certificate of eligibility: document signed by the head of the Agency and the investor and which certifies that a project is entitled to the tax and customs benefits provided for by this law;
5. Permanent employment: any employment paid at least at the level of the minimum taxable threshold by the law in force and whose period of execution is at least two years. Permanent employment is evidenced by a written contract subject to labour legislation;
6. enterprise. any unit engaged in the production, processing and/or marketing of goods or services, for profit, regardless of its legal form.

The company can be .

 with local capital, if the capital invested is made up of resources mobilized in Burundi, these resources may belong to Burundians, nationals of the East African Community or foreigners;

 foreign-owned, if the resources implemented are mobilized outside the country with a view to carrying out an identified project in Burundi;

 mixed capital, if the capital is formed by pooling local and foreign capital or formed within the framework of public-private partnerships in accordance with the regulations in force.

7. export: the act of selling goods or services produced in the national territory abroad;
8. Eligible investment: any activity falling within the scope of this Law, envisaged by a natural or legal person and aimed at establishing new capacity or increasing the capacity to produce goods or services, to expand the range of products manufactured or services rendered, to increase the productivity of the enterprise or to improve the quality of goods or services;
9. Foreign Direct Investment (FDI): any investment in which the foreign participation in the share capital of a company is at least equal to 10% of the investment made;

10. investor: any natural or legal person under Burundian law, carrying out investment operations on the territory of Burundi under the conditions defined under this law;
11. Certified investor: an investor with a certificate of eligibility;
12. Tangible fixed asset: physical asset held either to be used in the production or supply of goods or services, or to be leased to third parties, or for internal management purposes and which the company expects to be used beyond the current financial year;
13. Raw material: a good or product intended to be processed through the manufacturing process in order to result in products that are processed, finished and deliverable to customers;
14. Special Economic Zone (SEZ) in the acronym for geographically delimited area and benefiting from a special customs and tax regime that makes it more attractive for national and foreign investment,
15. First year of operation: the first year of commercial activity.

CHAPTER 11: GUARANTEES AND INVESTOR PROTECTION

Section 1: Guarantees and the General Plan

Article 5:

The creation, by any natural or legal person, of any new enterprise, the extension, modernization or rehabilitation of an existing enterprise, shall not be subject to any formality other than that resulting from the requirements of ordinary law.

Article 6:

The Republic of Burundi guarantees, for investments made in its territory with a view to the creation, extension, modernization or rehabilitation of an enterprise, the advantages of the general regime as well as the advantages of this law.

Article 7:

The Republic of Burundi guarantees to any natural or legal person wishing to invest in its territory the freedom of establishment and investment of capital.

However, the production of weapons and ammunition and investment in other sensitive areas, such as pharmacology and the radioactive industry, are subject to special regulations.

Article 8:

In compliance with immigration laws and regulations, the Republic of Burundi guarantees the granting of entry and residence visas as well as freedom of establishment on its territory to any natural person who is a national of the East African Community or of foreign nationality.

The costs relating to the benefits provided for in the preceding paragraph shall be exempt for permanent staff who are nationals of the East African Community or foreigners of the certified investor.

Article 9:

In compliance with the legislation in force on exchange controls, price transfer and the fight against money-laundering and the financing of terrorism, the Republic of Burundi guarantees the free transfer of profits, after payment of taxes due, in foreign currency and to the investor's country of choice.

Article 10.

In accordance with the regulations on exchange control, the Republic of Burundi guarantees the permanent staff of the investor's East African Community or foreigner nationals, the free transfer of unused professional income, after payment of the taxes and duties due.

Section 2: Investor Protection

Article 11:

The Republic of Burundi recognizes and guarantees the right of property to any natural or legal person without any discrimination.

Article 12:

The Republic of Burundi shall refrain from any form of discrimination in the areas of ownership, concessions, administrative authorization, participation in public contracts, acquisition or rental of real estate.

Land or buildings belonging to the State may be sold, leased or contributed to a company for the benefit of investors under the conditions determined by law. The State, local authorities and public or semi-public bodies may, where appropriate, develop Special Economic Zones or industrial land for the benefit of these companies.

Article 13:

The Republic of Burundi shall refrain from any nationalization or expropriation of investments made on its territory. In exceptional cases of expropriation in the public interest, the Republic of Burundi guarantees investors fair and prior compensation in accordance with the law.

However, in the event of non-payment of the taxes due, the provisions of this Law are without prejudice to the seizure of movable and immovable property, including the investor's accounts, in accordance with the tax laws in force.

CHAPTER III: BENEFITS

Section 1: Eligibility requirements

Article 14:

To be eligible for the benefits of this law, any investment project must meet the following conditions:

1. be on the list of priority sectors;
2. be a new investment project, extension, rehabilitation or modernisation project of an existing project;
3. be an investment project of at least USD 500,000 for foreign investors and the equivalent in Burundian francs for Burundian investors in Bujumbura City Hall and half of this investment in other localities;

4. comply with the laws and regulations in force in Burundi, in particular those relating to environmental and labour protection as well as insurance.

Priority sectors are determined by Order-in-Council.

Section 2: Benefits for Investors

Article 15:

The benefits of this law shall be granted in the following phases: acquisition of land, construction, equipment and operation.

Article 16:

For any certified project, the period of validity of the benefits may not exceed five years, except for specific sectors for which the duration may be up to ten years.

The specific sectors referred to in this section shall be determined by decree.

Where that period expires before the investment activities are yet completed, the Agency may extend the period of investment activities not exceeding two years, provided that the request is made no later than thirty days before the expiry of that period.

Article 17:

During the period of validity of the certificate of eligibility, an investor who meets the conditions of this law shall enjoy the following benefits:

1. exemption from transfer tax in the event of the acquisition of land or a building;
2. exemption from Value Added Tax (VAT) and/or customs duties on imports of construction materials, equipment and production inputs;
3. Reduction of the corporate tax rate by 5% for the first year, 10% for the second year, 15% for the third year, 20 0/0 for the fourth year and 25% for the fifth year.

The tax rate during the additional period is 30 0/0 for all projects. In any case, the tax rate reduction is applicable as soon as the project starts to make a profit.

Article 18:

An investor who is subject to VAT and who imports capital goods shall, exceptionally, benefit from the advantages conferred by Article 17 of this Law. However, VAT must be collected and remitted to the tax authorities in accordance with the VAT Act.

Article 19:

Capital goods eligible for the advantages provided for in Article 17, point 2 of this Law are those that cannot, in quantity and/or quality, be acquired locally.

Article 20:

Investment projects eligible for the provisions of this law shall benefit from advantages on local purchases of capital goods during the period of validity of the certificate of eligibility. The list containing the quantity and price of eligible goods is validated by the Agency.

Article 21:

By way of derogation from the provisions of Article 14, the benefits provided for in Article 17 may apply to other categories of potential investors, including youth, women and a member of the diaspora.

The qualification of young person, woman or member of the diaspora as a potential investor, as well as the conditions of eligibility and the terms and conditions for granting these benefits, are defined by decree.

Article 22:

In order to promote exports, a Special Fund for the Promotion of Exports shall be established, the missions, organization and operation of which shall be governed by decree.

The management of this Fund is entrusted to the Ministry responsible for trade.

CHAPTER IV: THE INVESTOR'S OBLIGATIONS

Article 23:

An investor who applies for the benefits provided for in this Act must submit to the Agency a file containing the following documents:

1. a copy of the Trade and Companies Register, a copy of the tax identification number and a copy of the company's articles of association;
2. a business plan that must include at least the following elements:
 - a) the name of the project and its location;
 - b) the amount of investment with the proportions relating to equity and borrowings;
 - c) details of the financing or assets to be invested that must be sourced from abroad and the timeframes within which such financing and assets are to be invested;
 - d) market research;
 - e) a business case;
 - f) a table showing the revenue forecasts for at least five years relating to the completion of the investment project;
 - g) an investment plan and a schedule for the execution of the work.
3. a certificate of environmental compliance according to the type of project, issued in accordance with the relevant regulations;
4. an operating license depending on the type of project;
5. the number of planned employees, job categories, payroll and a recruitment plan;
6. architectural plans, cost estimates and building permits issued by the authorised authorities;
7. Proof of payment of the non-refundable application fee.

Article 24:

A certified investor must:

1. carry out the project in accordance with the business plan presented when applying for the certificate of eligibility and according to the rules of the art;
2. submit a summary of the investments made at the end of each year;
3. keep the financial and accounting records in accordance with the national chart of accounts in force and submit a certified copy to the Agency within three months of the previous tax year;
4. enable the Agency to carry out compliance checks on the activity;
5. respond within the prescribed time limits and in written notice to any request for information from the Agency in relation to the company's activities,
6. register with the tax authorities and file tax returns within the prescribed deadlines, even if you are entitled to tax exemption.

Article 25:

The certified investor undertakes to make at least 20% of its projected investment during the first year from the date of notification of its eligibility and 10 0/0 in specific sectors.

Article 26:

An asset that has been the subject of the benefits of this Code must be used for the purpose for which it was granted for a period of at least five years from the date of its acquisition.

Where an investor disposes of such assets before the expiry of this period and after notifying the Agency, the investor must repay all duties and taxes obtained.

CHAPTER V: THE INSTITUTIONAL FRAMEWORK FOR INVESTMENT PROMOTION AND FACILITATION

Article 27:

The Burundi Development Agency (ADB) is hereby created to replace the Investment Promotion Agency.

The staff and assets of the Investment Promotion Agency are automatically transferred to the Burundi Development Agency (ADB).

Article 28:

The ADB is the gateway and the only interlocutor for all investors looking for business opportunities in Burundi. Its overall mission is to promote and facilitate local and foreign investment and exports, and to improve the business climate in order to attract more investors to Burundi.

Its specific missions are to:

1. Promote investment and exports;
- 2 conduct studies, prospecting and research to identify investment opportunities;

3. carry out studies of investment projects to be sold to investors;
4. design reforms of policies, legal and institutional frameworks to improve the business climate, promote investment and exports;
5. register any natural person with the status of trader, any commercial company, any cooperative society under Burundian law as well as any branch of a foreign company and ensure their follow-up;
6. ensure the coordination of investment facilitation mechanisms;
7. develop the professional and entrepreneurial capacities of Burundians in general and women and youth in particular to increase their competitiveness in the global economy;
8. Participate in the negotiations of bilateral, regional and multilateral agreements on the promotion and protection of investments and investors led by the Ministry of Foreign Affairs.

The organisation and operating procedures of the Agency shall be laid down by decree.

Section 29:

The Agency is responsible for monitoring the use of exempt property under this Act. To this end, an annual report on the benefits granted and their use must be drawn up and submitted to the supervisory authority for assessment, with a copy to the tax authorities.

The follow-up provided for in the preceding paragraph shall be without prejudice to that which may be carried out by other competent bodies.

Article 30:

In the context of the promotion, support and assistance to investors, the Agency is required in particular to:

1. support and assist the investor in obtaining the following documents and facilities: entry and settlement visas, work permits, water and electricity connection, license issued by the sector of activity in which he wishes to operate, if applicable; environmental impact assessment certificate, any other appropriate assistance that may be required in relation to investment;
2. make it easier to obtain incentives;
3. assist and support the investor in the implementation of his project;
4. regularly monitor the activities of a certified investor;
5. maintain a database of all investors established in Burundi and make a map to support them;
6. Monitor investment projects to ensure that incentives are directed to eligible projects and the business plan submitted by the investor.
7. contribute to the amicable resolution of any disputes between an investor and one or more State bodies;
8. build the capacity of investors when needed;
9. not to disclose confidential information about an investor.

Article 31:

The Agency shall issue to the investor fulfilling the conditions a certificate of eligibility for the benefits of this Law within a period not exceeding twenty working days from the day of receipt of the application.

If the application is rejected, the Agency shall notify the applicant in writing of the reasons for the rejection within the same time limits as those laid down in the preceding subparagraph.

CHAPTER VI: BREACHES, PENALTIES AND REMEDIES

Section 1: Defaults

Article 32:

The following acts shall be considered as serious breaches on the part of the investor:

1. misrepresentations;
2. fraudulent claims;
3. failure to comply with the obligations set out in this law and the commitments made by the investor;
4. the change of activities programmed in the business plan without the prior agreement of the Agency;
5. the sale, transfer, transfer or conversion of the exempt property before the expiry of the five-year period from the date of acquisition of the property without notification to the Agency.

Section 2: Penalties

Article 33:

Prosecution by the investor for any of the breaches mentioned in the previous article shall lead to the cancellation of the certificate of eligibility.

Before cancelling the certificate of eligibility, the Authority must issue a written notice to the investor setting out details of the reasons for the cancellation and requesting an explanation of the reasons for the cancellation.

The certified investor is required to provide written explanations within ten working days from the date of receipt of the Agency's request.

If the investor fails to provide the explanations within the prescribed time frame or when the explanations are not convincing, the Agency shall cancel the certificate of eligibility.

Article 34:

When a certificate of eligibility is cancelled, in addition to the penalties provided for by the laws in force, the investor is required to repay the entire amount equivalent to the benefits he received as a certified investor.

Article 35:

The cancellation of the certificate of eligibility automatically removes the advantages granted to the company, which is now subject to ordinary law.

Without prejudice to the legal and regulatory provisions in force, the tax authorities are entitled to make adjustments in respect of the defaulting investor.

Section 3: Recourse

Article 36:

When the investor feels aggrieved by the sanction imposed on him, he may lodge an appeal with the supervisory authority within a period not exceeding thirty working days from the date of notification of such a decision.

The supervisory authority shall decide on the appeal within sixty working days from the date on which the appeal was lodged.

If the supervisory authority fails to react within the time limit, the appeal shall be deemed to be well founded.

Article 37:

Where recourse is had to international arbitration, it shall comply with the arbitration rules of the International Centre for Settlement of Investment Disputes in force at the time of the making of the investments to which the dispute relates.

CHAPTER VII: TRANSITIONAL, MISCELLANEOUS AND FINAL PROVISIONS

Section 1: Transitional Provisions

Article 38:

Pending the establishment and operationalization of the Burundi Development Agency, the Investment Promotion Agency continues to carry out investment promotion and facilitation missions.

Article 39:

Investors who have been admitted to the benefits of the Investment Code prior to the promulgation of this Law shall continue to benefit from them during the period of validity of their certificate in accordance with the principle of acquired rights.

However, in the event of a request for an extension of the duration of the certificate of eligibility, the investor shall be subject to the provisions of this Law.

Section 2: Miscellaneous Provisions

Article 40:

The provisions of this Act shall be without prejudice to the more extensive guarantees and benefits provided for by conventions, treaties or agreements concluded between the Republic of Burundi and other States.

Section 3: Final Provisions

Article 41:

All previous provisions contrary to this Act are hereby repealed. Article 42 : This Act shall enter into force on the day of its promulgation.

Done at Gitega, the June 2021

Evariste NDAYISHIMIYE.-

BY THE PRESIDENT OF THE REPUBLIC,

SEAL OF THE REPUBLIC,

* * *