

## Somalia

### Foreign Investment Law of 2015 (2015)

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Federal Republic of Somalia

# **Foreign Investment Law of 2015**

Foreign Investment Law no: \_\_\_\_\_ Of the \_\_\_\_\_

## **Article 1: Definitions**

Under this law the following terms shall be defined as:

1. A “Foreign Investor” is any foreign juridical or physical person whom makes an investment in the territory of Somalia in accordance with Somali law.
2. The “Foreign Investment Board”, hereafter referred to as “The Board”, is the entity having the supreme decision-making authority overall matters concerning foreign investment in Somalia.
3. The “Foreign Investment Promotion Office”, hereafter referred to as “The Office”, shall refer to the administrative and promotional office responsible for assisting The Board in the performance of its functions.
4. An “Approved Investment” is a foreign investment that has been approved by the Foreign Investment Board in conformance with this law.
5. “Profit” is “net income” less applicable income taxes payable, in accordance with the prevailing legislation.
6. A “Duly Registered Foreign Investment” is the original Approved Investment plus profit reinvested in accordance with this law.

## **Article 2: Forms of Foreign Investment**

1. Foreign investment can be made in any of the following forms:
  - a. Convertible currency specified by the Central Bank of Somalia and duly transferred to Somalia;
  - b. Machinery, equipment, spare parts, installations and current production inputs, whose importation is permitted under the prevailing import legislation;
  - c. Intellectual property duly registered in Somalia, provided it is necessary for the activities to be pursued under the Approved Investment;
  - d. The amount of foreign currency spent on studies and technical documentation, prepared in connection with the foreign Approved Investment;
  - e. Profit reinvested, originating from foreign investment approved in accordance with this law.
2. Said investment shall be made for the purpose of the establishment or the expansion of an enterprise incorporated and registered in Somalia.

## **Article 3: The Foreign Investment Board**

1. The Board shall be established at the Ministry of Planning and International Cooperation where it shall convene at least twice a month.
2. The Board shall consist of:
  - a. The Permanent Secretary of the Ministry of Planning and International Cooperation.
  - b. The Permanent Secretary of the Ministry of Foreign Affairs.
  - c. The Director General of the Ministry of Finance.
  - d. The Director General of the Ministry of Commerce and Industry.
  - e. The Director General of the Ministry of Labor and Social Affairs.

f. The Director General of the Central Bank.

g. The Chairman of the Chamber of Commerce h. The Permanent Secretary of the Ministry under whose sectorial responsibility the respective foreign investment comes, with the exception of the Ministries mentioned above.

3. The Chairman of the Board shall be The Director General of the Ministry of Commerce and Industry.

#### **Article 4: Functions of The Board**

1. The functions of The Board shall be the following:

a. To approve proposed foreign investment in accordance with the policy guidelines laid down in Article 7 of this law;

b. To approve the registration of foreign investment;

c. To review the registration of foreign investment made under previous foreign investment legislation in order that such investment may benefit from the more favorable provisions, as per Article 20 of this law;

d. To determine the value of foreign investment made as per Article 2, paragraphs (b), (c) and (d) of this law;

e. To ensure compliance with the provisions of Article 16 concerning the contracting of debt from domestic sources;

f. To facilitate the granting of visas to foreign personnel to be employed by enterprises registered under this law; this law will require that all firms who invest in Somalia provide for employment and training of local Somalia staff, employment for the citizens of Somalia including 50% of all staff, contractors and consultants must be residents of Somalia. g. To perform any other function concerning foreign investment in conformity with this law.

2. Board approval pursuant to paragraph 1 of this Article shall be effectuated through the procedures identified in Article 9.

#### **Article 5: The Board, Quorum and Vote**

Seven members of The Board, including the Chairman, shall constitute a quorum. Board decisions shall be made by simple majority vote.

#### **Article 6: The Foreign Investment Promotion Office**

The duties of the Office shall be the following:

1. To implement the decisions taken by the Board;

2. To propose the administrative and regulatory procedures required for the implementation of this law;

3. To provide information and advice to the foreign investor on foreign matters such as: application and registration procedures under this law; taxation; foreign exchange regime; economic legislation; foreign trade regime; investment opportunities; institutional framework; local sources of debt financing; partner search;

4. To assist the foreign investor in meeting the application requirements related to foreign investment; including the requirements of domestic labor.

5. To assist foreign Approved Investments, at the incorporation and development stages, with guidance and advice concerning official institutions and channels and related administrative procedures;
6. To formulate proposals concerning foreign investment policy and the improvement of investment conditions;
7. To promote and attract new foreign investment in collaboration with other institutions involved in this field;
8. To perform any other duty related to foreign investment, assigned to it by The Board.

**Article 7: Investment Priorities And Sectors**

1. Priority shall be given to foreign investment in those areas where it:
  - a. Puts Somalia's human and natural resources to productive use;
  - b. Introduces innovative technology suited to the country's conditions;
  - c. Generates new earnings or savings of foreign exchange through exports, resource-based import substitution or service activities;
  - d. Contributes to responsible, sustainable development and regionally balanced socio-economic development.
2. This refers particularly to foreign investment in or closely related to:
  - a. Agriculture;
  - b. Livestock;
  - c. Fishing;
  - d. Natural resources;
  - e. Industrial activities using significant amounts of inputs produced by the afore-mentioned sectors;
  - f. Tourism, provided the investment harmonizes with the prevailing social, economic and infrastructural conditions;
  - g. Any other investment in production. Technology, manufacturing and service activities appropriate to support and stimulate, to a significant degree, the development of the afore-mentioned sectors.
  - h. Recommend the grant of land concession for the youth of public private partnership (PPP).
3. Nothing in this article creates an exception to Article 21.

**Article 8: Procedures for Application**

1. The application by the Foreign Investor shall be made by completing the form "Application Form for Approval and Registration", available at the Office located in the Ministry of Planning and International Cooperation, and mailing it by registered mail or express service with delivery receipt to "The Foreign Investment Board c/o Ministry of Planning and International Cooperation, Mogadishu, Somalia".

2. Alternatively, the Foreign Investor may deliver the application directly to The Office, which will issue a delivery receipt. Applications can be emailed to the Ministry of Planning and International Cooperation and at -----with a receipt required.

3. The Office shall review the application, at the applicant's request, for completeness and certify its satisfaction in respect of this requirement.

#### **Article 9: Conditions and Procedures of Approval**

1. Within Sixty (60) days from the date of the receipt of a duly completed investment application, The Board shall notify the applicant by registered mail of its decision. At the applicant's option this notification may be collected by his representative directly from The Office against issue of a delivery receipt.

2. In case a modification of an application is required, The Board shall notify the applicant to this effect by registered mail. At the applicant's option, this notification may be collected by his representative directly from the Office, against issue of a delivery receipt.

3. The Board shall notify, through the Office, the approval of a foreign investment by issuing a "Certificate of Foreign Investment in an Approved Enterprise". Such approval shall be construed by the Foreign Investor as conferring eligibility for registration under this law.

4. The "Certificate of Foreign Investment in an Approved Enterprise" shall be valid for the period of twenty four (24) months from the date of issue. During said period, the applicant shall effect the transfer of assets to Somalia listed in Article 2, paragraphs 1, 2, 3, and 4. In case this period is exceeded, The Board may grant, at the applicant's request, an additional period or ask for a new application.

5. Additional investment to be made as per Article 2. (1), paragraphs (a), (b), (c), and (d) in an enterprise that is the object of a foreign investment already duly registered, shall require application and approval as per Article 8 and paragraphs 1, 2, 3, and 4 of this Article.

#### **Article 10: Procedures for Registration**

1. The Board shall proceed with the registration of an Approved Investment as soon as the Foreign Investor has effected the transfer of assets to Somalia listed in Article 2(1), paragraphs (a), (b), (c), and (d), in accordance with the terms and conditions contained in the "Certificate of Foreign Investment in an Approved Enterprise". To this effect The Board shall issue to the Foreign Investor a "Certificate of Foreign Investment Registered".

2. In the case of a transfer of assets listed under Article 2(1), paragraphs b, c and d, The Board shall proceed with said registration as soon as it is satisfied that the value assigned by the Foreign Investor to the assets transferred represents fair market value. The Board may ask the Foreign Investor to produce sufficient documentary evidence to demonstrate the fair market value of the assets transferred. In case of a transfer of assets as per Article 2.1. b, this value shall be determined in accordance with the prevailing import legislation.

3. The foreign investment shall be registered in convertible currency, as specified by the Central Bank of Somalia.

#### **Article 11: Reinvestment of Profit**

1. Profit originating from a Duly Registered Foreign Investment may be reinvested in the same enterprise that is the object of the investment, or in another enterprise in accordance with the provisions of this law.

2. When such Profit is to be reinvested, The Board shall be notified to this effect by registered mail or directly, against issue of a delivery receipt.
3. The Board shall proceed to register Profit reinvested in the convertible currency specified in the "Certificate of Foreign Investment Registered". The amount shall be determined in accordance with the prevailing laws and regulations governing foreign exchange.
4. To this effect, The Board shall issue a "Certificate of Reinvestment".
5. Subsequent rights to transfer Profit and repatriate investment, as well as other benefits under this law, shall be determined on the basis of the original registered investment plus Profit reinvested.
6. In the case of the reinvestment of Profit in an enterprise, other than the enterprise that is the object of a Duly Registered Foreign Investment, the provisions of Article 8 and 9 of this law shall apply.

**Article 12: Transfer of Profit**

1. Profit originating from a Duly Registered Foreign Investment may be freely transferred abroad in a freely convertible currency.
2. In the case that only part of such Profit is transferred abroad in one year, the Foreign Investor may transfer the remaining portion in any one of the following years.

**Article 13: Repatriation of Foreign Investment**

1. A Duly Registered Foreign Investment shall be freely transferable abroad after five years from the date of the registration of the original Approved Investment, as specified in the "Certificate of Foreign Investment Registered".
2. The Board may reduce the said period, taking into consideration the priorities under the policy guidelines as per Article 7 of this law.
3. The transfer abroad shall be effected in the original currency specified in the "Certificate of Foreign Investment Registered". The funds destined for transfer shall originate from the liquidation of assets or the transfer of capital stock of the enterprise that is the object of the foreign investment, to other juridical or physical persons. The Foreign Investor is free to transfer abroad the physical assets that were the object of the investment in the event this alternative is opted for.
4. In cases where the amount realized from the liquidation or sale of capital stock exceeds the amount of the original investment plus registered reinvested Profit, the Foreign Investor shall be free to transfer abroad the difference, in accordance with the prevailing tax legislation and foreign exchange regulations.

**Article 14: Alienation of Foreign Investment and Notification Requirements**

1. Alienation of foreign investment shall be effected either through the liquidation of assets, or through the transfer of capital stock of the enterprise that is the object of such investment, to juridical or physical persons.
2. In the event of alienation of a foreign investment to a resident Somali juridical or physical person, the transferee shall cease to enjoy the benefits derived from the status of a Foreign Investor.

3. Any alienation is subject to prior notification to the Board by both the transferor and the transferee. Such notification shall be accompanied by appropriate supporting documentation.
4. The alienation of a foreign investment to other Foreign Investors shall not require approval, as per Article 9 of this law, but only notification, as per paragraph 3 of this Article.

#### **Article 15: Investment Incentives**

Foreign investment shall be eligible for incentives and facilities, incentives shall include the ability to have long term leases for up to 99 years for substantial investment in accordance with the applicable legislation governing such incentives and facilities.

#### **Article 16: Limits to Contracting Debt from Domestic Sources**

1. Any enterprise that is the object of a Duly Registered Foreign Investment may contract debt from institutional domestic financial sources up to the limit established by the Central Bank of Somalia, in consultation with The Board.
2. The proceeds from such debt contracted from domestic sources shall be used strictly for the carrying out of the activities specified in the "Certificate of Foreign Investment Registered". The Board shall be authorized to verify the due application of the proceeds.

#### **Article 17: Facilities for Foreign Personnel**

1. The Board shall ensure that the immigration authorities facilitate the granting of the entry permits and residence visas to foreign personnel employed by an enterprise registered under this law, and to their families.
2. The Board shall also ensure that said personnel and their families be granted access, for reasons of work, to any part of Somalia.
3. Any enterprise registered under this law shall employ qualified Somali nationals whenever they are available. Foreign investment shall seek to make a significant contribution toward the transfer of technology and managerial know-how, and the upgrading of professional skills available in Somalia. Foreign investors will employ at least 50% of staff from local resident citizens of Somalia.

#### **Article 18: Guarantees for Foreign Investment**

1. All enterprises that are the object of foreign investment shall receive treatment as favorable as that accorded to domestic enterprises.
2. The property of foreign investment, duly registered under this law, shall not be subject to expropriation measures, except in the case where public interest cannot be satisfied by other government measures.
3. In the case of such expropriation, prompt and adequate compensation shall be paid. Said compensation shall reflect the fair market value of the assets and shall be freely transferable.

#### **Article 19: Settlement of Disputes**

1. Disputes in respect of the implementation of this law shall be settled:
  - a. In a manner agreed upon with the Foreign Investor, or in the absence of such agreement;
  - b. Within the framework of the agreements in force between the Somali Federal Republic and the Foreign Investor's home country, or, in the absence of (a) and (b);

c. Disputes may be submitted to arbitration under the International Centre for the Settlement of Investment Disputes (ICSID), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington 19 March 1965 (the "ICSID Convention"). Somalia confirms its consent to the submission of a dispute to ICSID as provided in this paragraph, subject to the provisions of the ICSID Convention.

2. In the absence of agreements or conventions as per paragraph 1 of this Article, disputes shall be settled through arbitration as follows: An Arbitration Panel shall be established, comprising one member on behalf of each disputing party and a third member acting as a chairman, to be jointly named by the said two members. In the case that the disputing parties fail to agree on the nomination of the chairman within 30 days of the date of the nomination of the second member, the chairman shall be appointed by the President of the Supreme Court of Somalia. The Arbitration Panel shall lay down its rules of procedure unrestricted by the rules contained in the civil and commercial codes of procedures save for the rules which relate to the basic and internationally customary guarantees and principles of litigation. The Board shall see to it that the disputes be expediently resolved. Awards shall be rendered by majority vote, and shall be final and binding on both parties and enforceable as any other final judgment. The Arbitration Panel shall decide who shall bear the arbitration costs.

#### **Article 20: Benefits to Existing Foreign Investment**

1. Existing foreign investment in Somalia, duly registered under previous laws concerning foreign investment, shall continue to enjoy the rights and obligations conferred to it by said laws.

2. Such foreign investment shall be entitled to benefit, at the Foreign Investor's option, from the provisions of this new law, provided the registration requirements and other Provisions of the previous laws have been complied with, and satisfactory documentary Evidence is produced to this effect by the Foreign Investor. In such case, the Foreign Investor may apply to the Board for registration under this law within one hundred eighty (180) days as of the date of its promulgation.

#### **Article 21: Foreign Investment Not Subject to this Law**

The provisions of this laws shall not apply to foreign investment in mineral research and extractive activities, including those related to the petroleum industry, military manufacturing, storage, disposal and nuclear power. Such investment shall be subject to the Mining Code and the Mining Regulations, and to agreements reached, hereunder, between the Government of Somalia and the interested party.

#### **Article 22: Obligations to Report Transactions Concerning Foreign Investments**

Banks, public notaries and entities involved with foreign investment shall notify The Board of the particulars of any important pertinent acts and transactions within thirty (30) days from the date of completion of such acts or transactions. This refers, inter alia, to act or transactions concerning incorporation, contracting of debt from institutional domestic financial sources, transfer of profit and repatriation of investment

#### **Article 23: Non-Compliance with the Provisions of Somali Law**

Failure to comply with the provisions of Somali law, on the part of the Foreign Investor, shall result in the forfeiture of benefits provided hereunder.

#### **Article 24: Enjoyment of Benefits under Subsequent More Favorable Provisions**

No provisions of this law shall preclude the enjoyment by the Foreign Investor of benefits under more favorable provisions, which might be subsequently promulgated.

**Article 25: Regulations**

The President of the Federal Republic of Somalia, at the proposal of The Board, and having heard the Minister of National Planning and the Council of Ministers, may issue regulations for the proper implementation of this law.

**Article 26: Repeal**

Any law incompatible with the provisions of this law is hereby repealed.

**Article 27: Entry into Force**

This law shall come into force as of the date of its publication in the Official Bulletin of the Federal Government of Somalia.

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