

Burundi

Investment Code (2008)

Unofficial translation

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Investment Code

Law No. 1/24

Official Gazette

[Preamble]

THE PRESIDENT OF THE REPUBLIC

Given the Constitution of the Republic of Burundi;

Given Law No. 1/005 of 14 January 1987 on the revision of the Investment Code of Burundi, as amended to date;

Given Law No. 1/015 of 31 July 2001 on the revision of the Decree-Law No. 1/3 of 31 August 1992 on the creation of a free zone regime in Burundi;

Given Law No. 1/01 of 4 February 2008 establishing the Public Procurement Code of Burundi;

Given the necessity for the Government of Burundi to promote investments, particularly by bringing the investment code in line with current international standards;

The Council of Ministers having deliberated;

The National Assembly and the Senate having adopted;

PROMULGATES:

Title I. Definitions and preliminary provisions

Article 1

For the purpose of this code, the following words shall mean:

1. Institutional Arbitration, arbitration proceedings of which the parties have entrusted the conduct to a permanent arbitration institution, judging according to its proper rules.
2. Enterprise, any entity of production, transformation and/or distribution of goods or services, transforming and/or distributing goods or services, profit-motivated, notwithstanding its legal form, being an individual or legal entity.
3. Investment, capitals employed by any person, being an individual or legal entity, for the acquisition of moveable assets, tangible and intangible, for ensuring the financing of installation costs, as well as funds covering operating costs, essential to the creation or the expansion of enterprises.
4. Investor, any individual or legal entity, of Burundian nationality or not, carrying out investment operations on the Burundian territory, under the conditions defined in the framework of this code.
5. Free trade zone regime, specific legal status granted to certain enterprises established in Burundi under the conditions provided by this law and the ministerial decrees, on the basis of which they automatically benefit from a set of tax and customs exemptions as well as certain incentives related to labor, exchange control and immigration legislation.

Article 2

The purpose of this code is to encourage direct investments in Burundi.

Article 3

The establishment, by any individual or legal entity, of any new enterprise, the expansion, the reorientation, or the rehabilitation of an existing enterprise, is subject to no other formality than those resulting from general law provisions.

Article 4

The Republic of Burundi provides to investments made on its territory for the creation, the expansion, the reorientation or the rehabilitation of an enterprise, guarantees and inducements of the general regime as well as guarantees and inducements of the free trade zone regime.

Article 5

The provisions of this code do not prohibit larger guarantees and inducements which could be provided for by agreements or treaties between the Republic of Burundi and other states.

Article 6

The enterprise can have:

1. Local capital, if the invested capital comes from resources obtained in Burundi; such resources may be owned by either Burundian or foreign nationals;
2. Foreign capital, if the resources used have been obtained abroad of carrying out an identified project in Burundi;
3. Mixed capital, if the capital consists of a pooling of local and foreign capital. The foreign investment share enjoys the same advantages as enterprises with foreign capital on a prorata basis.

Title II. Guarantees and inducements of the general regime

Article 7

The Republic of Burundi guarantees, to any individual or legal entity wishing to establish an enterprise on its territory, the freedom of establishment and of capital investment.

The production of weapons and ammunition, as well as other investments of military and paramilitary nature are authorized through specific legislation.

Article 8

The Republic of Burundi guarantees to expatriates the granting of visas and the freedom to settle and to move residence as required by the investments made, in accordance with the laws and regulations on immigration.

Article 9

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

Article 10

The Republic of Burundi forbids any discrimination based on nationality with respect to real property acquisition or real property lease.

Enterprises can request the benefit of expropriation procedures for public use in view of their establishment requirements.

They can benefit from the sale, the lease or contribution in kind of land or constructions belonging to the State.

The State, the local collectivities, public or semi-public entities can, where necessary, undertake zone or industrial land settlement in the benefit of such enterprises.

Article 11

The Republic of Burundi guarantees the free transfer of foreign capital and income generated by foreign capital, after discharge of duties and taxes due, to the country of choice of the investor.

Article 12

In accordance with the regulations on foreign exchange control, the Republic of Burundi guarantees to the enterprises the following principles:

1. the transfer of surplus professional income of foreign employees of every investment;
2. for foreign and mixed capital companies, the transfer of the remuneration of capital invested in the form of dividends, in full for foreign capital companies and on a prorata basis for mixed capital companies;

Article 13

The Republic of Burundi forbids any nationalization and expropriation of investments made on its territory, as well as any equivalent measure.

In the exceptional case of expropriation for a cause of public interest, the Republic of Burundi guarantees to the investors a proper legal procedure, providing preliminary and fair compensation, leaving open judicial and arbitration recourse, in accordance with article 17.

Article 14

The investments made by new enterprises entitle them to a tax credit, of which the modalities, such as the rate, the duration, the nature of the eligible investments and the justifications to be handed over to the tax authorities, are defined by the tax legislation. The entitlement to a tax credit is not subject to preliminary approval.

Article 15

When an enterprise is the beneficiary of one of the regimes cited in article 4 for the expansion or the rehabilitation of an existing activity only, the inducements and advantages are only granted for such expansion or rehabilitation and this on the condition that the elements thereof are well determined. The modalities of application of the present article are defined by the tax legislation in respect of the tax credit described in article 14.

Title III. Guarantees and inducements of the free trade zone regime

Article 16

The provisions of the Law No. 1/015 of 31 July 2001 on the revision of the decree-law No. 1/3 of 31 August 1992 on the creation of a free zone regime in Burundi form an integral part of the present investment code.

Title IV. Settlement of disputes

Article 17

Disputes resulting from the application of the present investment code between the Government and the investor, which are not settled amicably, shall be settled in accordance with the laws and regulations in force in Burundi. Disputes can be settled, according to the choice of the investor, by internal institutional arbitration or international arbitration.

When the investor takes recourse to international arbitration, he will do so in accordance with arbitration rules of the International Centre for the Settlement of Investment Disputes as applicable at the time of execution of the investment which gave rise to the dispute.

Title V. Investment promotion agency

Article 18

An agency, of which the mission, the organization and the functioning will be determined by decree, is entrusted with the promotion of investments.

Title VI. Transitional and final provisions

Article 19

Benefits acquired by enterprises under the provisions of the previous investment Code will continue to exist during the duration until the expiry date of the advantages which have been granted to them.

Pending applications, which have not been finalized at the time of the promulgation of this law, will be reviewed in the framework of this law.

Article 20

The Law No. 1/005 of 14 January 1987 on the revision of the Investment Code of Burundi is abrogated.

Article 21

This law comes into force on 1 January 2009.

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