

Gambia

Investment and Export Promotion Agency Act (2010)

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The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

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Investment and Export Promotion Agency Act

Law No. 3 of 2010

Official Gazette No. 9 of 28 May 2010 (Supplement C)

[Preamble]

AN ACT to establish The Gambia Investment and Export Promotion Agency, create export processing zones and to create a conducive environment for investments and enterprise development in The Gambia and for connected matters.

26th May, 2010

ENACTED by The President and the National Assembly.

Part I. Preliminary

Article 1. Short title and commencement

This Act may be cited as The Gambia Investment and Export Promotion Agency Act, 2010 and shall come into force on the day the Minister appoints by Order published in the Gazette.

Article 2. Interpretation

In this Act, unless the context otherwise requires:

“Agency” means The Gambia Investment and Export Promotion Agency;

“Board” Means the Board of the Agency;

“Chief Executive” means the Chief Executive of the Agency;

“customs territory” means the territory outside the export processing zones where the customs laws of The Gambia are applicable in full;

“domestic investor” means:

- a. An investor who is a citizen of The Gambia;
- b. A partnership in which the controlling interest is owned by a Gambian citizen; or
- c. A body corporate in which the majority of the shares are held by a Gambian citizen;

“foreign investment” includes foreign direct investment, franchises, turnkey contracts and portfolio investments;

“foreign investor” means:

- a. An investor, who is not a citizen of The Gambia;
- b. A partnership in which the controlling interest is owned by non Gambians;

c. A body corporate incorporated in The Gambia in which more than twenty five percent of its voting rights are held by non Gambians.

d. a body corporate incorporated outside the Gambia in which the majority of the shares are held by non Gambians;

“export Processing zone” means a designated part of customs territory where goods introduced are generally regarded as being outside the customs territory as far as import duties and taxes are concerned, but are restricted by controlled access;

“Government” means the Government of the Republic of The Gambia;

“investment” means the creation or acquisition of new business assets and includes the expansion, restructuring or rehabilitation of an existing business enterprise;

“investment enterprise” means an enterprise owned by an investor or a group of investors;

“Minister” means the Minister responsible for matters relating to Industry and “Ministry” shall be construed accordingly;

“portfolio investor” means an investor who owns five percent or less of the equity or stock of an investment enterprise without having day- to-day management supervision;

“President” means the President of the Republic of The Gambia;

“special investment certificate” means a special investment certificate issued under Part VII;

“Strategic industry” means an investment enterprise operating in mining, and petroleum exploration and under refinery activities: and

Article 3. Administration of the Act

This Act is administered by The Gambia Investment and Export Promotion Agency established under section 4.

Part II. Establishment of the gambia investment and export promotion agency

Article 4. Establishment of The Gambia Investment and Export Promotion Agency

- 1) There is established by this Act The Gambia Investment and Export Promotion Agency.
- 2) The Agency is a body corporate with perpetual succession and a common seal.
- 3) The Agency may:
 - a. sue and be sued in its corporate name;
 - b. enter into contracts and acquire, hold and dispose of property; and

c. so far as it is possible for a body corporate to do so, exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity.

4) The application of the common seal of the Agency shall be authenticated by the signature of the Chief Executive or his or her designated representative.

5) A document bearing the imprint of the seal of the Agency is presumed to be properly sealed unless the contrary is proved.

Article 5. Functions of the Agency

The functions of the Agency are to:

- a. promote investments in The Gambia by projecting its image as an investor friendly country;
- b. conduct investment missions to attract investors to The Gambia;
- c. facilitate the securing of investment incentives by investors;
- d. provide investors with the necessary information to apply for incentives;
- e. undertake the analysis of applications for incentives, for location in an export processing zone or to become an export processing zone operator;
- f. collect data on investment, particularly investments that have received incentives;
- g. monitor the performance of investors in respect of their obligations as set out in their investment proposals, or special investment certificate and take appropriate action in the event of a violation;
- h. formulate and implement investment, export and enterprise development guidelines and investment promotion strategies;
- i. promote and facilitate the development of micro, small and medium enterprises;
- j. register and keep a record of all investment enterprises;
- k. undertake trade and sector studies, including market surveys, with a view to identifying investment opportunities;
- l. advise Government on investment, export and industrial policy and related matters; and
- m. do any other act which may be incidental or conducive to the attainment of the objectives of the Agency or the exercise of its powers under this Act.

Article 6. Board of the Agency

1) The Agency is administered by a Board consisting of:

- a. a Chairperson;
- b. the Chief Executive;
- c. the Permanent Secretary of the Ministry or his or her designated representative;

- d. the Permanent Secretary of the Ministry of Finance or his or her designated representative;
- e. the Permanent Secretary of the Ministry responsible for Works, Construction and Infrastructure or his or her designated representative; and
- f. four representatives from the Private sector, who have experience and expertise in manufacturing, export, commercial or financial matters, one of whom shall also be the chairperson to the Board.

2) The members shall elect one of their number to be the Vice Chairman of the Board.

3) The Board members shall be appointed by the President on the recommendation of the Minister.

Article 7. Term of office of board members

1) Except for ex officio members, members of the board shall hold office for a renewable term of three years.

2) A member of the Board may resign from office by giving one month's written notice of his or her resignation to the President.

Article 8. Functions of the board

The functions of the Board are to:

a. develop and review the list of investment priority sectors and areas under this Act in consultation with the Ministry;

b. modify and update the priority categories under this Act with the approval of the Minister;

c. establish an investment monitoring committee consisting of representatives from the Ministry, the Ministry responsible for finance, the Gambia Revenue Authority and the Agency to monitor and evaluate the performance of investors that have received incentives;

d. recommend to the Minister the revocation of a special investment certificate for an investor who has not adhered to his or her investment proposal; and

e. establish such other committees as it deems necessary.

Article 9. Meetings of the board

1) The Board shall meet at least four times during the year at such place and time as the Chairperson, or in his or her absence the Vice Chairperson may determine.

2) At a meeting of the Board:

a. the Chairperson shall preside and in his or her absence, the Vice Chairperson shall preside, and in the absence of both, members shall appoint one of their number to preside;

b. a majority of the Board members shall form a quorum; and

- c. subject to sub-section (4), each Board member shall have one vote on a matter brought up for deliberation.
- 3) If there is an equality of votes, the Chairperson of the meeting shall have a casting vote.
- 4) The Board may co-opt a person to act as an adviser at its meeting but he or she shall not vote at the meeting.
- 5) Subject to the provision of this Act, the Board and any of its committees may regulate its own procedure.

Article 10. Disclosure of interest by Board members

- 1) If a member of the Board has a direct or indirect personal interest in the outcome of the deliberations of the Board in relation to a matter considered at a meeting:
- a. the member shall disclose the nature of the interest at the meeting and the disclosure shall be recorded in the minutes of the meeting; and
- b. the member shall withdraw from the deliberations of the Board in respect of that matter and not vote on it.
- 2) A Board member who contravenes sub-section (1) may be removed from office by the President on the recommendation of the Minister.

Article 11. Transaction of business without meeting

A resolution is a valid resolution of the Board even though it was not passed at a meeting of the Board if:

- a. it is signed or assented to by a simple majority of the members; and
- b. notice of the proposed resolution was given to each member and the Chief Executive.

Article 12. Allowances to members

A member of the Board and a person co-opted shall be paid such allowances as the Minister may approve.

Part III. Management and administration of the agency

Article 13. Control of general policy

The formulation of the general policy of the Agency is, subject to this Act, vested in the Board.

Article 14. Directives of the Minister

Notwithstanding section 13, the Minister may give general directives in writing to the Board on matters of policy and the Board shall comply with such directions.

Article 15. Chief Executive of the Agency

- 1) The Agency is headed by a Chief Executive officer who shall be appointed by the President after consultation with the Public Service Commission.
- 2) The Board may delegate to the Chief Executive such of its functions, as are necessary to enable him or her transact the day-to-day business of the Agency efficiently.

Article 16. Secretary and other staff

- 1) The Board shall appoint an officer from amongst the Employees of the Agency to be the Secretary to the Board.
- 2) The Secretary shall:
 - a. keep the books and records and conduct the correspondence of the Board;
 - b. prepare the agenda for Board meetings after Consultation with the Chief Executive officer and the Chairperson;
 - c. record the minutes of meetings of the Board; and
 - d. perform such other functions as the Board or Chief Executive may assign him or her.
- 3) The Board shall appoint for the Agency, such professional and support staff as may be required for the purposes of the efficient discharge of the functions of the Agency.
- 4) The remuneration and conditions of service of the staff of the Agency shall be determined by the Board.
- 5) The Board is responsible for the discipline and removal of employees of the Agency.
- 6) The Board shall make regulations to establish schemes for pension, gratuity and other retirement benefits for employee of the Agency.

Article 17. Disclosure of pecuniary interests of employees in a contract

The Chief Executive and an employee of the Agency shall not:

- a. hold any other office of employment outside the Agency during his or her tenure; or
- b. have a direct or indirect pecuniary interest in any contract entered or to be entered into by the Agency without first disclosing that interest to the Board.

Article 18. Disclosure of information

An employee of the Agency shall not disclose to a person or use a return or information acquired from an investor under this Act, unless:

- a. authorised by the Chief Executive for the sole purpose of achieving the objectives of the Agency;
- b. authorised by the investor concerned; or
- c. where required to do so by a court of law.

Part IV. Financial provisions

Article 19. Funds of the Agency

The Agency shall maintain a fund into which shall be paid:

- a. moneys received by the Agency from the Government;
- b. grants, gifts and donations, provided the terms and conditions attached are not inconsistent with the functions of the Agency;
- c. fees charged by the Agency for services it renders; and
- d. such other funds as may accrue to the Agency from any other source.

Article 20. Expenses of the Agency

The following expenses may be defrayed from the moneys Received by the Agency under section 19:

- a. the cost of administration of the Agency;
- b. the reimbursement to members of the Board or a committee appointed by the Board for such expenses as may be authorised by the Board, in accordance with the rates approved by the Minister;
- c. the payments of allowances and other amounts payable to Board members, employees of the Agency, and experts, professionals or agents appointed by the Agency; and
- d. meeting such other expenses as may be approved by the Board for the purposes of this Act.

Article 21. Estimates, Accounts and Audit

- 1) The Agency shall, not later than three months before the end of each financial year, make and submit to the Minister for approval, estimates of the income and expenditure of the Agency for the ensuing year.
- 2) the agency shall keep proper records and accounts of its income and expenditure and prepare a statement of accounts for each financial year.
- 3) The Agency shall, within two months of the end of its financial year, submit its statement of accounts to the Auditor General for audit.
- 4) The audited accounts of the Agency and the Auditor General's report of those accounts shall form part of the Auditor General's overall annual report to the National Assembly.

Article 22. Annual report

- 1) The Agency shall, not later than three months after the end of each financial year, submit to the Minister, in respect of the financial year, an annual report on the financial position and performance of the Agency.
- 2) The report under sub-section (1) shall include:
 - a. a statement on the income, source of income and applications of the moneys of the Agency;

- b. information with regards to the operation and performance of the Agency; and
 - c. such other information as the Minister may require.
- 3) The Minister shall, not later than four months after the end of the financial year, cause the report to be laid before the national Assembly.
- 4) The Chief Executive shall, from time to time, provide the Minister with such information relating to the affairs of the Agency as he or she may request.

Part V. Legal proceedings

Article 23. Notice of legal action

- 1) An action shall not be brought against the Agency unless at least one month's written notice of the intention to bring the action has been served on the Agency by the intending plaintiff or his or her agent.
- 2) The notice shall state the cause of action, name and place of abode of the intending plaintiff and the relief which he or she claims.

Article 24. Representation

In a suit against the Agency, it may be represented in court at any stage of the proceedings by an officer or any other employee of the Agency duly authorised by the Board in that behalf.

Article 25. Indemnity

An officer of the Agency or a person acting on the direction of the Agency shall not be personally liable in respect of any matter or thing done by him or her in good faith for the purposes of this Act.

Part VI. Forms of investment

Article 26. Government encouragement of investment

The Government shall encourage and facilitate to invest capital in The Gambia on the basis of mutual benefit and observance of the laws of The Gambia and international treaties to which The Gambia is a party.

Article 27. Fields of activity open to investors

- 1) subject to sub-section (2), a person may invest in and operate an enterprise in all fields of lawful economic activity in The Gambia.
- 2) The Minister may, by regulations compile a list of Investment areas closed to foreign investors in The Gambia.

Article 28. Fields of activity closed to investors

Notwithstanding section 27 (1), a person shall not invest in or operate an investment enterprise which is prejudicial to national security, detrimental to the natural environment, public health, or public morality, or which contravenes the laws of The Gambia.

Article 29. Forms of investment

A person may invest equity in an investment enterprise through:

- a. a joint venture enterprise between:
 - i) two or more Gambian investors;
 - ii) two or more foreign investors;
 - iii) a foreign investor and a Gambian investor; or
- b. an enterprise wholly owned by a Gambian or foreign citizen.

Article 30. Contribution of Capital to foreign joint ventures

- 1) An investor who invests in a joint venture enterprise may contribute any portion of the total equity investment in that venture.
- 2) For the purpose of establishing value, the contribution of a foreign investor shall be converted into domestic currency at the foreign exchange rate determined by the Central Bank of The Gambia on the date of the equity payment.

Article 31. Incorporation, registration, establishment and management

The incorporation, registration, establishment and management of an investment enterprise shall be carried out in accordance with the relevant laws of the Gambia.

Article 32. Legal forms of Investment Enterprise

A person may establish an investment enterprise by means of:

- a. a sole proprietorship;
- b. a Partnership under the Partnership Act of The Gambia; or
- c. a limited liability company under the Companies Act of The Gambia.

Article 33. Ownership of investment enterprise

- 1) Subject to sub-section (2), an investment enterprise may be wholly owned by:
 - a. a domestic investor;
 - b. a foreign investor; or
 - c. the Government of The Gambia.
- 2) Notwithstanding sub-section (1), the Government may reserve the right to own some or all of the shares in an investment enterprise:
 - a. operating in a strategic industry; and
 - b. in accordance with the terms of the investment Agreement between the investor and the Government.

Part VII. Special investment certificate

Article 34. Application for a special investment certificate

- 1) A person who wishes to access the incentives under Part IX shall apply for a special investment certificate.
- 2) An application for a special investment certificate shall be made in writing to the Chief Executive and shall contain:
 - a. the business registration certificate of the investment enterprise; and
 - b. a business plan to be prepared in accordance with regulations; and
- 3) where an application under sub-section (1) does not provide all the relevant information or if clarifications are necessary, the applicant may be called upon to provide that information or clarification to complete the application.

Article 35. Priority sectors

- 1) An applicant for a special investment certificate who is engaged in an activity set out in Schedule 1 as priority sectors of investment shall be granted the incentives specified under this Act.
- 2) The Minister may, by Order published in the Gazette, amend Schedule 1.

Article 36. Issuance of special investment certificate

- 1) The Minister shall, on the recommendation of the Board, issue to the applicant, a special investment certificate which shall be in such form as specified in regulations.
- 2) The Chief Executive shall liaise with Government Departments, Local Government Authorities and other bodies as may be necessary in order to assist the holder of a special Investment certificate to comply with the formalities or requirements for obtaining a permission, authorization, license, and other things required for the purpose of the business enterprise.
- 3) A special investment certificate is not transferable.

Article 37. Implied terms and conditions of special investment certificate

A special investment certificate is deemed to contain an undertaking by the investor to maintain proper financial and accounting records, returns, samples and data relating to the operations of the business enterprise.

Article 38. Register of Special Investment Certificates

The Agency shall maintain a register of all special investment certificates issued under this Act in accordance with regulations.

Article 39. Suspension and revocation of Special Investment Certificates

- 1) A special investment certificate of special special investment shall not be suspended or revoked except as provided in this section.
- 2) where the Agency finds that a holder of a special investment certificate:
 - a. has failed to commence operation of the Business within six months from the date of issue of the certificate;

- b. has substantially ceased to operate the business for a period of six months;
 - c. made a materially false or fraudulent representation or supplied incorrect information for the purpose of obtaining the special investment certificate;
 - d. is in breach of a provision of this Act or the business plan,
- the agency may give written notice to the holder of the Certificate requiring him or her to show cause within five working days why the special investment certificate should not be suspended or revoked.
- 3) If the holder of a special investment certificate fails to comply with a notice given under sub-section (2) or the cause shown is deemed inadequate by the Agency, it may, With the approval of the minister , suspend or revoke the certificate immediately.
- 4) where a special investment certificate is suspended or revoked under this section, the holder shall forthwith surrender it to the Agency.

Article 40. Cessation of business

Where the holder of a special investment certificate, for any reason, ceases to operate the business enterprise to which the certificate relates, the holder shall notify the Agency in writing and shall be entitled to all rights and be liable for all obligations accrued under this Act up to the date of cessation of the enterprise and the certificate shall be deemed to have expired on that date.

Part VIII. Guarantees, rights and obligation of investors.

Article 41. Government protection of investment

- 1) The Government shall take all necessary measures to protect investments and the property of investors in accordance with the laws of The Gambia and the Bilateral investmentTreaties.
- 2) In accordance with the provisions of the state Proceedings Act, the Government shall not assert or claim any right of sovereign immunity in relation to its commercial activities in respect of an investment enterprise or in relation to any investment or commercial dispute.

Article 42. Compulsory acquisition by Government

The government shall not compulsorily acquire or take possession of an investment enterprise, or any asset of an investor except:

- a. for a public purpose which is in accordance with the Laws of the Gambia;
- b. on a non-discriminatory basis;
- c. in accordance with the procedures provided by law; and
- d. on the payment of adequate and just compensation.

Article 43. Valuation

The value of the investment enterprise or asset acquired by the Government shall be determined by an independent valuer agreed to by the investor and the Government, based on the enterprise as an on-going entity, at the date prior to the announcement of the Government's intention to acquire the enterprise.

Article 44. Lease and ownership of land

Subject to the state lands Act, an investor may purchase or lease privately owned or state land and dispose of or transfer his or her interests in the land as he or she wishes.

Article 45. Non-intervention by Government

The Government shall not intervene in the business Management of an investment enterprise or in the sale, pricing, or distribution of its products, except:

- a. in the pricing of services under The Gambia Public Utilities Regulatory Authority Act;
- b. the price of petroleum products; and
- c. the regulation of anti-competitive practices under the Competition Act.

Article 46. Right to import and export

The Government shall guarantee the rights of investors and investment enterprises to import or export any product without restriction or limitation except for products, the ownership or possession of which is prohibited or restricted by the laws of The Gambia.

Article 47. Right to profit distribution

- 1) Subject to his or her tax obligations, an investor has the right to determine the distribution and retention of profit or dividend from his or her investment enterprise.
- 2) The tax authorities have the right to calculate a "deemed dividend" for an investment enterprise under the income and Sales Tax Act for tax purposes.

Article 48. Employment of foreign personnel

An investor shall employ foreign personnel in accordance with the laws of The Gambia.

Article 49. Entry and exit of foreign investors

Subject to the Immigration Act, the Government shall facilitate the entry, and exit of foreign investor, their foreign employees and immediate family members.

Article 50. Work permits

Subject to the Immigration and Labour Acts, the Government shall facilitate the issuing of work permits to foreign employees of investors.

Article 51. Personal Income tax

An investor, his or her foreign employees and their family members working in The Gambia shall pay personal income tax in accordance with the Income and Sales Tax Act on income earned in The Gambia and other tax laws in The Gambia

Article 52. Bank accounts

An investor may open an account and borrow from any corporate body licensed to carry on banking business or a financial service institution, both in foreign and domestic currency in accordance with the Banking Act.

Article 53. Transfer of funds abroad

Subject to his or her obligations under the Income and Sales Tax Act and the Banking Act, an investor and his or her foreign employees may transfer funds abroad:

- a. accruing from dividends and profits from an investment enterprise;
- b. accruing from their employment earnings;
- c. accruing from the proceeds of sale or liquidation of an enterprise or interest attributable to an investment;
- d. accruing from the compensation received for a compulsory acquisition;
- e. to pay interest on international loans;
- f. to pay for imports;
- e. to pay fees for trademarks, royalties, and management fees and other fees; and
- h. to pay licensing fees for franchising agreements, through a corporate body licensed to carry on banking business in The Gambia under the Banking Act.

Article 54. Limitations on the right to transfer funds abroad

Notwithstanding section 53, the Government may prevent a transfer of funds abroad:

- a. due to bankruptcy or insolvency proceedings or for the protection of the rights of share holders and creditors;
- b. if a criminal charge is pending against the investor or investment enterprise;
- c. to ensure compliance with an order or judgment in legal proceedings.

Article 55. Dispute resolution

1) Where a dispute arises between investors or between an investor and the Government, the parties to the dispute shall settle their difference amicably through conciliation or mediation.

2) Where the parties fail to resolve the matter through conciliation or mediation they may resort to:

- a. arbitration under the Alternative Dispute Resolution Act of The Gambia;
- b. the international Centre for the Settlements of Investment Disputes; or
- c. the provisions of any existing Bilateral Investment Treaty between The Gambia and the country the investor originates from.

Article 56. Environmental, health, and safety laws

An investor shall take all necessary and appropriate measures to ensure that the facilities, products and activities of his or her investment enterprise protect:

- a. the natural environment in accordance with the National Environmental Management Act and related environmental laws of The Gambia; and
- b. the health and safety of the workers and the general public in accordance with the Factories and Injuries Compensation Acts of The Gambia.

Article 57. National standards of The Gambia

An investor shall comply with National standards of The Gambia in the importation of products or equipment and in the products produced by him or her.

Article 58. Union representation, social insurance, and welfare

- 1) An investor shall grant Union representation in accordance with the Labour Act of The Gambia at any site of employment if the majority of employees indicate their desire for Union representation.
- 2) An investor shall contribute to the social insurance and welfare programs for his or her workers in accordance with the social security laws of The Gambia.

Article 59. Accounting standards and audit

- 1) In the management of his or her enterprise, an investor shall utilize the national audit system of financial accounting of The Gambia.
- 2) The accounts of an investment enterprise may be subjected to periodic audit for tax purposes by tax authorities in accordance with the applicable accounting regulations in The Gambia.

Article 60. Taxes

Subject to any investment incentive that may be granted to him or her, an investor shall pay any other taxes in accordance with the laws of The Gambia.

Part IX. Investment incentive

Article 61. Priority investment categories

- 1) there is established by this Act the following priority investment categories:
 - a. priority sectors, which consists of the list of sectors specified in schedule I and which meet the minimum employment criteria prescribed in regulations; and
 - b. priority areas, which consists of geographical areas specified in schedule II, which the Government consider to be in urgent need of development.
- 2) An existing investment enterprise within any priority investment category that embarks on an expansion project worth at least two hundred thousand dollars shall be granted a sales tax waiver for its imports for one year.

Article 62. Tax holidays

- 1) A newly established investment enterprise that falls within any priority investment category under section 61 shall be granted a tax holiday in respect of its corporate or turnover tax, depreciation allowances, withholding tax or dividend:

- a. in the case of priority sector, for a period of five years; and
 - b. in the case of a priority area, for a maximum period of eight years, from the date of commencement of operation.
- 2) The calculation of depreciation allowances shall be in accordance with the scheme outlined in regulations.

Article 63. Tariff and sales tax incentives

A newly established investment enterprise that falls within any priority investment category under section 61 shall be granted import sales tax waiver in respect of the importation of:

- a. its manufacturing plant, construction material ,and spare parts for a period of five years from the date of signing of the investment agreement; and
- b. raw and intermediate inputs, for a period of five years from the date of the commencement of operation; and
- c. the product listed in the third schedule to the Custom and Excise Acts.

Article 64. Criteria for accessing investment incentives

- 1) In order for an investor to access the incentive in a priority sector under sections 62 and 63, he or she shall invest at least two hundred and fifty thousand United States dollars (US \$250,000) in a priority sector.
- 2) In order for an investor to access the incentives in a priority area under section 62, he or she shall invest at least two hundred and fifty thousand United States dollars (US \$250,000) in a priority sector within a priority area.

Article 65. Publication of incentives granted

The Government shall publish in the Gazette, full information regarding all fiscal incentives granted to specific investors and investment enterprises.

Part X. Incentives for export promotion

Article 66. Incentives for export oriented enterprises

An investment enterprise located outside the export processing zone that exports at least thirty percent of its output is entitle to the following incentives and facilities provided by the Agency:

- a. a ten percent corporate or turnover tax concession for five years;
- b. financial planning services and advice;
- c. participation in training courses, symposia, seminars and workshops on export promotion;
- d. export market research;

- e. advertisement and publicity campaigns in foreign markets; and
- f. product design and consultancy.

Part XI. Export processing zones

Article 67. Establishment and objects of Export processing Zones

- 1) The minister may, on the recommendation of the Agency, by notice published in the Gazette, declare any place in the Gambia to be an export processing zone.
- 2) The declaration of an export processing zone under sub-section (1) shall define the limits of the zone and shall remain in force until revoked by the Minister by Notice published in the Gazette.
- 3) The aim of an export processing zone is to provide a conducive business environment for export oriented investment enterprises through:
 - a. the provision of additional investment incentives;
 - b. simplifying the import and export procedures; and
 - c. facilitating the acquisition of land, permits and licenses.
- 4) Notwithstanding sub section (1), the Commissioner General of The Gambia Revenue Authority may designate areas in export processing zones in which customs formalities shall be carried out.
- 5) The conditions laid down in Part X of the Customs and Eexcise Act shall in so far as applicable apply to this part.

Article 68. Types of Zones

There is established by this Act:

- a. an export processing zone for export oriented investment enterprises;
- b. a mixed export processing zone for export-oriented investor; and
- c. sole entity export processing zone for the investment and operation of a single investment enterprise.

Article 69. Zone operators

An export processing zone may be owned and operated by:

- a. the Agency; or
- b. a private zone investor or operator licensed by the Agency.

Article 70. Licensing of Zone operations

- 1) An investor may apply to the Agency for a license to operate an export processing zone.
- 2) The decision on a license application shall be made within thirty days of the submission of the application.

- 3) The Agency may grant a license to an investor to operate an export processing zone on such terms and conditions as it considers proper.

Article 71. Functions of Zone operators

The functions of an export processing zone operator are to:

- a. manage and administer an export processing zone;
- b. make provisions for the movement of persons, vehicles and goods entering and leaving the Zone;
- c. keep and maintain adequate and proper accounts and other records in relation to the businesses carried out in the zone; and
- d. prepare and submit to the Agency, an annual report of the activities and developments within the export zone.

Article 72. Licensing of Zone enterprises

- 1) An investor shall not carry on business or maintain facilities in an export processing Zone unless he or she applies and receives a license from the Agency.
- 2) A decision on an application for the grant of a license shall be made by the Agency within thirty days from the date of submission of the application.

Article 73. Register of licenses

- 1) The Agency shall maintain a register of licenses issued under this Act specifying in relation to each holder of a license:
 - a. the name of the licensee;
 - b. the address of the registered place of business;
 - c. the name under which the business is carried on, if different from the name of the actual licensee.
- 2) A license issued under this Act is not transferable to any other person.
- 3) A licensee shall, within fourteen days of its occurrence, provide the Agency with particulars of the change where:
 - a. a change occurs in the particulars of a license holder entered in the register of licenses; or
 - b. a licensee ceases to carry on the business to which the license relates.

Article 74. Duration of licence

The Agency may grant a license for a maximum period of ten years, on such terms and conditions as it considers proper.

Article 75. Suspension, amendment and revocation of licence

- 1) Where the Agency finds that the holder of a licence:

- a. has failed to carry on the activity authorized by the licence within six months of the issue of the licence;
 - b. has substantially ceased, for a period of six months to carry on any activity within the export processing Zone;
 - c. made a materially false or fraudulent representation or supplied incorrect information for the purpose of obtaining the licence; or
 - d. is in breach of a provision of this Act or a condition attached to the licence,
- it may give a written notice to the holder of the license requiring him or her to show cause why the licence should not be suspended or revoked.
- 2) If the holder of a license fails to comply with a notice given under sub-section (1) or the cause shown is deemed inadequate by the Agency, it may, with the approval of the Minister, suspend or revoke the licence.
- 3) Where the Agency suspends, amends or revokes a license under sub-section (2):
- a. it shall notify the licensee accordingly; and
 - b. the licensee shall cease to carry on any activity within the export processing Zone immediately after receiving notification of a suspension or revocation.

Article 76. Goods taken into and out of the zone

Subject to the provisions of this Act, goods which are taken out from:

- a. the customs territory and brought into an export processing zone are deemed to be exported from the Gambia;
- b. an export processing Zone and taken into the customs territory to be used there are deemed to be imported into The Gambia; and
- c. one export processing Zone to another are deemed to be an export.

Article 77. Goods manufactured in a zone

Goods manufactured in an export processing zone may not be taken out of the zone except for export:

- a. abroad or to another export processing Zone; or
- b. into the customs territory, subject to the normal customs procedures and payment of import duties.

Article 78. Removal of goods from a Zone

Goods may, with the prior written approval of the Agency and under the supervision of a customs officer, be taken out of an export processing Zone:

- a. into the customs territory or another export processing zone for repairs or maintenance; or
- b. for destruction.

Article 79. Restriction on goods and activities

1) The Agency may order the exclusion or removal of goods from an export processing Zone or the discontinuance of an activity which it considers dangerous or prejudicial to the public interest, health or safety.

2) The Agency shall give to the investor concerned an opportunity to be heard before issuing an order under sub-section (1).

Article 80. Incentives for Zone investors

1) An investor operating in an export processing Zone that exports at least eighty percent of its output is exempt from the payment of:

a. import or excise duty and sales tax on goods produced within or imported into an export processing Zone unless the goods are entered for consumption into the customs territory;

b. import duty on capital equipment;

c. corporate or turnover tax;

d. withholding tax on dividends;

e. municipal tax; and

f. depreciation allowance.

2) An investor shall be allowed to operate in an export processing zone for a maximum period of ten years.

Part XII. Support to micro, small and medium enterprises

Article 81. Support to micro, small and medium enterprises

1) A micro, small or medium enterprise is entitled to the following facilities provided by the Agency:

a. support for research and development;

b. income tax deposit waiver;

c. medium to long term loans with affordable interest rates;

d. matching grants; and

e. market survey and research support.

2) The Minister may by regulations provide the criteria for distinguishing between micro, small and medium enterprises.

Part XIII. Offences and penalties

Article 82. Offences and penalties

1) A person commits an offence if he or she, without lawful excuse:

- a. fails to comply with a business plan;
- b. refuses to furnish or furnishes information or produces any document which is false or misleading in a material particular;
- c. obstructs an officer of The Gambia Revenue Authority or any other public officer in the performance of his or her duties;
- d. refuses or neglects to provide information which the Agency may reasonably require for the purposes of this Act; or
- e. refuses to admit or obstructs an officer or agent of the Agency into the premises of his or her business enterprise to carry out an official function;
- f. fraudulently obtains or procures a special investment certificate under this Act;
- g. fraudulently makes or cause to be made a forged document;
- f. aids and abets the commission of an offence; or
- i. contravenes a provision of this Act or regulations made under it.

2) A person who commits an offence under sub-section (1) is liable on conviction:

- a. in the case of paragraph (a), (b), (c), (d), or (e) to a fine of not less than five thousand dalasis or to imprisonment for a term of not less than six months or to both the fine and imprisonment;
- b. in the case of paragraph (f), (g), (h) or (l), to a fine of not less than ten thousand dalasis or imprisonment for a term of not less than one year or to both the fine and imprisonment; and
- c. in the case of a body corporate to a fine of not less than thirty thousand dalasis.

3) if a body corporate commits an offence against this Act, every Director or other person concerned in the management of the body corporate commits the offence unless that person proves that:

- a. the offence was committed without his or her consent or connivance; and
- b. he or she exercised all such diligence to prevent the commission of the offence as ought to have been exercised by him or her having regard to the nature of his or her function in that capacity and to all the circumstances.

Part XIV. Miscellaneous

Article 83. Inconsistency among laws

In the case of inconsistency or conflict between this Act and any other Act, the provisions of the Act most favorable to the investor shall prevail.

Article 84. Regulations

The Minister may, on the advice of the Agency make regulations for the better implementation of this Act.

Article 85. Repeal

The Gambia Investment Promotion Act, 2001, and the Gambia Free Zones Act, 2001 are repealed.

Article 86. Savings and Transitions

As from the commencement of this Act:

- a. the rights, assets, funds and liabilities of the dissolved Agency, existing immediately before the commencement of this Act are transferred to the Agency established under this Act;
- b. an action, order, a proceeding, or judgment pending immediately before the commencement of this Act to which the former Agency was a party, may be continued and enforced by or against the Agency established under this Act;
- c. the purchases and acquisitions made under the repealed Acts are considered to have been made under this Act;
- d. a license, permit, certificate, or any other authorization issued under the repealed Acts is considered to be issued under this Act;
- e. the regulations, orders, by-laws or notices made or issued under the repealed Acts and the Schedule to those Acts in so far as they are not inconsistent with this Act, shall remain in force until they elapse or are revoked;
- f. an application made under the repealed Acts and wholly or partly heard by the dissolved Board when this Act comes into force is considered to have been made under this Act;
- g. where a period of time specified in the repealed Acts is current at this Act's commencement, the Act has effect as if the provision corresponding to that enactment had been in force when that period began to run.

Schedule I

Priority sectors (sections 61, 62, 63 and 64)

1. Agriculture

- All crops;
- dairy production, poultry and meat Processing;
- floriculture and horticulture;
- Agro- processing and agri-business (production and marketing of agricultural inputs)
- tannery;

2. Fisheries

- aquaculture: fish and shrimps farming;
- fishing and fish processing at industrial level.

3. Tourism

- Eco-tourism: national heritage;
- up-country tourism: motels, tourist camps, sport fishing, river sports or cruising;
- development of 4 and 5 star hotels, integrated resorts and marinas;

4. Forestry

- development of private or community forest parks or agro- forestry plantations;
- forestry production and transformation; wood, timber or logs and or non – wood, products (nuts, honey etc.) and wild fruits preservation;
- Briquetting (saw dust)

5. Manufacturing

- assembling and packaging;
- processing
- foundry and forging;
- light pharmaceuticals and cosmetics.

6. Energy

- electricity generation, transmission and distribution;
- renewable energy sources : solar, wind, hydro and biochemical energies;
- liquified Petroleum Gases.

7. Other Services

- health and veterinary clinics;
- river and air transportation and cargo services;
- information communication technology except GSMs.

8. Mineral exploration and exploitation

- petroleum exploration as defined in the and Exploitation petroleum Act;
- mining of precious stones and others as defined in the Mines and Quarries Act.

9. Financial services

- investment banks
- housing finance institutions

Schedule II

(Sections 61, 62, 63 and 64)

List of priority areas eligible for investment incentives

- Western Region (Foni, Kombo East and Kombo Central except the town of Brikama)
- Lower River Region
- North Bank Region
- Central River Region
- Upper River Region

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