

Guyana

Investment Act 2004 (2004)

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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 Act 2004

Act No. 1 of 2004

[Preamble]

AN ACT to provide for the rendering into law of the principles and practices that inform our present approach to investment.

WHEREAS article 16 of the Constitution mandates that the state shall foster development of such relevant forms of co-operation and of business entitles as are seen to be supportive of the goals of economic development as stated in articles 14 and 15 of the Constitution;

AND WHEREAS the Government acknowledges the benefits to be derived for Guyana and its people by establishing by law a favourable regime of incentives for investors in Guyana.

Be it therefore enacted by the Parliament of Guyana:

Part I. General provisions

Section 1. Short title

This Act may be cited as the Investment Act 2004.

Section 2. Interpretation

"domestic investor" means:

- i. a citizen of Guyana;
- ii. a body corporate established in Guyana in conformity with the laws thereof and which is substantially owned and controlled by citizens of Guyana;
- iii. a citizen of any other member State of the Caribbean Community established under the Treaty done at Chaguaramas on 4th July, 1973;

"foreign investor" means an investor, not being a domestic investor;

"investment enterprise" means an enterprise owned by an investor or investors;

"investor" means a natural or juridical person investing capital in Guyana on the basis of mutual benefit and observance of the laws of Guyana;

"Minister" means the Minister responsible for Finance.

Section 3. Objectives

The objectives of this Act are to stimulate the socioeconomic development of Guyana, and to attract and facilitate investment by:

- a. providing legal protection for investment;
- b. increasing the predictability, stability and transparency of the legal regime for investment;
- c. promoting the development of international best practices regarding investment;
- d. streamlining the existing procedures for investment;
- e. establishing the structure, role and responsibilities of the Investment Promotion Council established pursuant to section 40.

Section 4. Government encouragement of investment

1) The Government encourages and seeks to facilitate persons, either individuals or legal entities, to invest capital in Guyana on the basis of mutual benefit and observance of the laws of Guyana and international treaties or agreements to which the State or Government is a party.

2) There shall be no discrimination between foreign and domestic investors nor among foreign investors from different countries.

Section 5. Fields of activity open to investors

1) Investors may invest in and operate enterprises in all fields of lawful economic activity including in particular, but not limited to agriculture, fisheries and forestry, manufacturing, energy, mineral extraction, handicrafts, communications and transport, construction, tourism, trade, and professional

services, except for sectors which may be determined by the Minister, which shall be subject to affirmative resolution of the National Assembly.

2) Notification of the approval of the National Assembly pursuant to subsection (1) shall be published as soon as practicable in the Gazette.

Section 6. Fields of activity closed to investors

Investors shall not invest in or operate investment enterprises which are prejudicial to national security, or detrimental to the natural environment, or public health, or which contravene the laws of Guyana.

Section 7. Forms of investment

Investors may invest equity in an investment enterprise in either of the following two forms:

- a. a joint venture enterprise involving two or more domestic investors; or two or more foreign investors; or involving one or more foreign investors and one or more domestic investors; or
- b. a wholly-owned enterprise whether it is owned by foreign investors or domestic investors.

Section 8. Joint ventures

The organization, management and activities of a joint venture and the relationship of its parties shall be governed by the contract entered into by the parties thereto and the Articles of Association, of the joint venture, in accordance with the laws of Guyana.

Section 9. Contribution of capital to foreign joint ventures

Investors investing in a joint venture may contribute any portion of the total equity investment in that venture. If a joint venture has a foreign investor or investors, for the purposes of establishing value, the contribution of the venture's foreign investor or investors shall be converted in accordance with the laws of Guyana into Guyana Dollars at the exchange buying rate then prevailing on the date of the equity payment or payments, as quoted by the Bank of Guyana.

Section 10. Incorporation registration or establishment

The incorporation, registration, or establishment of an investment enterprise shall be in accordance with the Companies Act 1991, the Partnership Act, the Business Names (Registration) Act, or the Cooperative Societies Act

Section 11. Legal forms of an investment enterprise

Investors shall establish an investment enterprise in any of the following forms:

- a. a Registered Business Name Enterprise;
- b. a partnership under the Partnership Act;
- c. a company incorporated under the Companies Act;
- d. a cooperative society registered under the Cooperative Societies Act.

Section 12. Ownership regulations

An investment enterprise may be wholly owned by either foreign or domestic investors, but there is no requirement that a domestic investor shall own any shares in any investment enterprise.

Part II. Rights, guarantees and obligations of investors

Section 13. Government protection of investment

The Government shall protect investments and the property of investors in accordance with the laws of Guyana.

Section 14. Compulsory acquisition by Government

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

- a. for a purpose which is in accordance with the law of Guyana;
- b. on a non-discriminatory basis;
- c. in accordance with the procedures provided by law;
- d. there is prompt payment of adequate compensation together with interest calculated from the date of acquisition or taking possession of the investment enterprise or asset to the date of payment at the commercial bank rate on loans to the corporate sector; and
- e. there is a right of access to the High Court by any person claiming such compensation for the determination of any interest in or right over the investment enterprise or assets thereof and the amount of compensation.

Section 15. Leasing and owning land

Subject to the laws for the time being in force, investors may purchase or lease land in Guyana and dispose of or transfer their interests in or rights over the land.

Section 16. Non-intervention by Government

Notwithstanding the provisions of the Trade Act, the Government shall not intervene in the management of investment enterprises; nor shall the Government impose conditions on the sale, pricing, or distribution of the products of those enterprise, except in the pricing of services provided by utilities

Section 17. Free export and import.

1) Notwithstanding the provisions of the Trade Act, the Government shall guarantee the rights of investors and investment enterprises to import or export all or any products free from restriction or limitation, except for products the ownership or possession of which is prohibited by law, or products which may be determined by the Minister and which shall be subject to affirmative resolution of the National Assembly.

2) Notification of the approval of the National Assembly pursuant to subsection (1) shall be published as soon as practicable in the Gazette.

Section 18. Right to profit distribution.

The Government hereby guarantees the right of investors and investment enterprises, irrespective of their form, to freely determine the distribution of all profits or dividends, and the right of investors to receive their total share in such profits or dividends providing the corresponding tax obligations of the investors and investment enterprise are satisfied.

Section 19. Employment of foreign personnel

Investment enterprises have the right to employ skilled and expert foreign, personnel when necessary and with the approval of the competent authority of the Government in compliance with the Immigration Act and the Labour Act.

Section 20. Entry and exit

The Government shall facilitate the entry into, stay in and departure from Guyana of investors, their foreign personnel, and their immediate family members in accordance with the Immigration Act, but such persons are subject to and must comply with the laws of Guyana while they are in Guyana.

Section 21. Work permits

The Government shall facilitate foreign investors and foreign personnel of investors in obtaining work permits in compliance with the Immigration Act.

Section 22. Tax obligations

Foreign personnel employed in investment enterprises and their families shall pay taxes, duties or other imposts for which they are liable pursuant to the laws of Guyana.

Section 23. Bank accounts

Investors may open accounts in the currency of Guyana and in foreign convertible currency with any corporate body licensed to carry on banking business in Guyana under the Banking Act.

Section 24. Transfer of funds abroad

Subject to the liability for the payment of all applicable taxes due, investors may freely and without hindrance:

- a. repatriate dividends, earnings and capital from their investment enterprises;
- b. remit the proceeds in the event of sale or liquidation of an enterprise or the interest attributable to an investment;
- c. pay interest on international loans;
- d. pay for imports;
- e. pay fees for trademarks, royalties and management and other fees; and
- f. pay licensing fees for franchising agreements, to their own home countries or to other countries through a corporate body licensed to carry on banking business in Guyana under the Banking Act.

Section 25. Limitations on the right to transfer funds abroad

Notwithstanding the guarantees specified in section 24, the Government may prevent a transfer of funds through the equitable, non-discriminatory and good faith application of Acts in the following circumstances:

- a. bankruptcy, insolvency, or for the protection of the rights of stockholders or creditors;
- b. if criminal proceedings against the investor or investment enterprise are pending before the funds; or
- c. to ensure compliance with orders or judgments of courts or tribunals.

Section 26. Right of personnel and dependants to transfer funds abroad

Foreign personnel employed in investment enterprises and their families may also repatriate their earnings, after payment of personal income taxes imposed by law in Guyana and all other taxes due, except when any of the conditions under section 25 exists.

Section 27. Intellectual property rights

The intellectual property rights of investors and investment enterprises are guaranteed under the applicable laws of Guyana.

Section 28. Dispute resolution

1) In the event of disputes among foreign investors within an investment enterprise, or among foreign investors and domestic investors, or among Guyanese investors, or between the investors and the Government with respect to an investment enterprise, the parties to the dispute shall first seek to settle their disputes through consultation or mediation in order to reach an amicable settlement.

2) If parties to the dispute fail to resolve the matter, they may;

- a. submit their dispute to arbitration under the Arbitration Act;
- b. invoke the jurisdiction of the competent courts in Guyana;
- c. adopt such other procedure provided for in the articles of association or other constituent document of the investment enterprise; or
- d. submit their dispute to the International Centre for the Settlement of Investment Disputes (ICSID) of which Guyana is a member.

Section 29. Obligations of investors to adhere to environmental health and safety laws

Investors shall conduct their operations in accordance with the laws of Guyana and in particular, take all measures necessary and appropriate to ensure that the facilities, factories, products and activities of their investment enterprises protect:

- a. the natural environment as mandated by the Environmental Protection Act; and
- b. the health and safety of workers and the general public under the applicable laws of Guyana

Section 30. Obligation of investors to adhere to the National Standards of Guyana

In accordance with the Guyana National Bureau of Standards Act, investors shall comply with the standards of the Guyana National Bureau of Standards regarding the importation of products and investment equipment and in their outputs.

Section 31. Union representation, social insurance and welfare

In accordance with the Trade Union Recognition Act 1997, investors shall grant union recognition at any site of operations if the majority of their employees indicate the desire for union representation.

Investment enterprises shall contribute to the social insurance and welfare programme for their workers in accordance with the National Insurance Act.

Section 32. Accounting standards and audit

Investors shall comply with the international accounting principles and standards acceptable in Guyana.

Section 33. Taxation

Investors shall pay all relevant taxes, except as exempted under any law.

Section 34. Sovereign immunity

In accordance with the provisions of the State Liability and Proceedings Act, the Government shall not assert or claim any right of sovereign immunity in relation to its activities as a domestic investor, or its commercial activities in respect of an investment enterprise, or in relation to any investment or commercial dispute.

Section 35. Regulations

The Minister may make regulation for better implementation of this Act.

Part III. Investment priorities

Section 36. Investment priority categories

Investment priority categories shall be detailed in Priority Lists as set out in section 2 of the Income Tax (In Aid of Industry) Act."

Section 37. Publication of incentives granted

The Government shall publish in the Gazette information regarding all fiscal incentives granted under section 2 of the Income Tax (In Aid of Industry) Act.

Section 38. Audit

- 1) The Auditor General, or any suitably qualified person designated by him for the purpose, shall annually carry out a procedural or process audit of incentives granted under section 2 of the Income Tax (In Aid of Industry) Act to an investor or an investment enterprise.
- 2) The report of the audit carried out pursuant to subsection (1) shall be laid in the National Assembly within six months after the end of each financial year.

Part IV. Administrative structures and procedures

Section 39. Go-Invest

The Guyana Office for Investment (Go-Invest), established under the Public Corporations Act 1988, shall be the corporation responsible for facilitating and promoting investment in Guyana. Go-Invest shall provide investors with all forms necessary to apply for incentives and assist investors in completing forms accurately.

Section 40. The investment promotion council

1) There is hereby established the Investment Promotion Council (hereafter in this section referred to as "the Council") consisting of the following members:

- a. one person nominated by and from each of four private business organisations designated by the Minister, one of whom shall represent primarily constituents from outside of Georgetown;
- b. one member each from the following government ministries and agencies:

i. the ministry responsible for finance;

- i. the ministry responsible for finance,
- ii. the ministry responsible for industry;
- iii. the ministry responsible for foreign trade;
- iv. the Guyana Office for Investment.

2) The Council shall meet at least once in every year and at such other times as maybe necessary or expedient for the transaction of business and the Chairperson of the Council may at any time convene a special meeting of the Council.

3) The Council shall elect the Chairperson and the Deputy Chairperson of the Council from among its members.

4) In the absence of the Chairperson of the Council the functions of the Chairperson shall be performed by the Deputy Chairperson and in the absence of both of them the members present shall elect one of their members to preside at the meeting.

5) Go-Invest shall carry out the functions of the Secretariat of the Council and an official of Go-Invest designated in writing by Go-Invest shall perform the functions of Secretary of the Council.

6) Minutes in proper form of each meeting of the Council shall be kept by the Secretary and shall be confirmed by the Chairperson or the Deputy Chairperson or other person elected to preside at the meeting, as the case may be as soon as practicable thereafter at a subsequent meeting.

7) The Council may co-opt any one or more persons to attend any particular meeting of the Council at which the Council is dealing with a particular matter for the purpose of assisting or advising the Council but no such person shall be entitled to vote at the meeting.

8) Subject to this section, the Council shall regulate its proceedings.

Section 41

The Council shall:

- a. as circumstances require, but at least once annually, review and recommend to the Government alterations to the Priority Lists as specified in section 36.
- b. annually recommend to the Government alterations to the regime of fiscal incentives established for investment including incentives relating to tariffs and taxes, import duties and to export-oriented enterprises