Rwanda

Law Relating to Investment Promotion And Facilitation (2015)

Contents

Law Relating to Investment Promotion And Facilitation

N° 06/2015

We, KAGAME Paul,

President of the Republic;

THE PARLIAMENT HAS ADOPTED AND WE SANCTION, PROMULGATE THE FOLLOWING LAW AND ORDER IT BE PUBLISHED IN THE OFFICIAL GAZETTE OF THE REPUBLIC OF RWANDA.

THE PARLIAMENT:

The Chamber of Deputies, in its session of 11 February 2015;

Pursuant to the Constitution of the Republic of Rwanda of 04 June 2003 as amended to date, especially in articles 29, 62, 66, 67, 90, 92, 93, 108 and 201;

Pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States adopted in Washington on 18 March 1965 as ratified by Law n° 01/82 of 26 January 1982;

Pursuant to the Treaty Establishing the Common Market for Eastern and Southern Africa (COMESA) adopted in Kampala, Uganda on 5 November 1993 as ratified by the Presidential Order n° 004/94 of 1/12/1994;

Pursuant to the Treaty of Accession of the Republic of Rwanda to the East African Community, signed in Kampala, Uganda on 18 June 2007 as ratified by the Presidential Order n° 24/01 of 28/06/2007;

Having reviewed Law n° 26/2005 of 17/12/2005 relating to investment and export promotion and facilitation;

ADOPTS:

Chapter I. General provisions

Article 1. Purpose of this law

The purpose of this Law is to promote and facilitate investment in Rwanda.

Article 2: Definitions of terms

As used in this law, the following terms shall have the meanings ascribed to them below:

1. export processing zone (EPZ): a protected area used for processing goods that are subject to control for export purposes;

2. business process outsourcing: an agreement by which a foreign company outsources the implementation of some of its business functions to an enterprise in Rwanda;

3. global business activities: management of transactions across borders for foreign-based clients;

4. investment certificate: a document that the Board issues to an investor who fulfils the requirements set out in this law. The document clearly describes the facilitations the investor is entitled to depending on the investment made;

5. regional office: a place in Rwanda where an international company has relocated its regional general management and the coordination of its main operational activities in the region;

6. headquarters: a place in Rwanda where an international company has relocated its general management and the coordination of its main operational activities ;

7. incentive: any tax or non-tax inducement extended to an investor to facilitate and support investment;

8. capital: any wealth in the form of tangible or intangible assets used for investment purposes;

9. mutual fund: a professionally managed fund which pools money collected from many investors for the purpose of purchasing securities;

10. investment enterprise: an enterprise using tangible or intangible assets for profit-making purposes in accordance with the provisions of this law;

11. private equity: funds invested in a private company by an investor approved by the competent authority in order to acquire controlling rights and receive dividends as a shareholder;

12. fund management: a service provided by a financial professional authorized by the competent authority in order to attain goals set by the clients by optimizing the profitability of their funds;

13. wealth management: investment and advisory services provided by investment professionals to high-net-worth individuals with the aim of maximizing returns;

14. asset-backed securities: financial securities whose accessories derived from assets are used for payment;

15. value addition: product processing which increases its value by at least thirty-five per cent (35%) as defined by the rules of origin in terms of manufacturing;

16. investment: use of tangible or intangible assets for profit-making purposes with the exception of all retail and wholesale trade;

17. collective investment scheme: an arrangement in which several investors form a group and work together for the purpose of improving their common interest and reducing risk;

18. venture capital: money provided by an investor in the launch of a start-up company, a company in its infancy stage or one which is expanding into a new field of business activities with perceived long- term growth potential;

19. international company : a business company that owns or controls production or service facilities in one or more countries besides the home country ;

20. export: selling goods and services outside member countries of the East African Community;

21. captive insurance scheme: insurance taken out by a business company in Rwanda that is restricted exclusively to risks emanating from outside Rwanda in connection with a company to which a company in Rwanda is affiliated;

22. investor: natural or legal person that invests in an investment enterprise in Rwanda;

23. registered investor: an investor who holds an investment certificate;

24. foreign investor:

a. a natural person who is not a citizen of Rwanda or of a member State of the East African Community (EAC) or the Common Market for Eastern and Southern Africa (COMESA);

b. a business company or a partnership not registered in Rwanda, a member state of the East African Community (EAC) or Common Market for Eastern and Southern Africa (COMESA);

c. a business company or a partnership registered in Rwanda whose foreign capital from countries other than East African Community (EAC) or Common Market for Eastern and Southern Africa (COMESA) member States is at least fifty-one percent (51%) of the invested capital;

25. Board: organ in charge of investment promotion in Rwanda;

26. competent authority: any competent public organ.

Chapter II. Guarantees to the investor

Article 3. Openness to investment

All business sectors shall be open to private investment regardless of the origin of the investor.

However, an investor shall be encouraged to invest in priority economic sectors.

Such sectors are the following:

1. export;
2. industrial manufacturing;
3. investment in the sector of energy, transport, information and communication technologies, financial services and construction of low-cost housing.

An Order of the Minister in charge of finance may establish other priority sectors, if deemed necessary.

Article 4. Investor rights

Without prejudice to the provisions of other laws, an investor shall have the following rights:

1. to engage in economic activities of his/her choice;
2. to recruit or dismiss employees;
3. to market goods and services;
4. to freely establish business management
5. to freely choose sources of supplies;
6. to freely use property.

A registered investor meeting required conditions shall also be entitled to special incentives as provided for in the annex to this Law.

Article 5. Foreign investor treatment

A foreign investor may invest and purchase shares in an investment enterprise in Rwanda and shall be given equal treatment with Rwandan investors with regard to incentives and investment facilitation.

Article 6. Protection of the investor's capital and assets

An investor shall have the right to own private property, whether individually or in association with others. Private property, whether individually or collectively owned, shall be inviolable.

No investment, interest in or right over any property forming part of such investment shall be seized or confiscated except where provided under relevant laws.

No action to expropriate an investor's property in public interest shall be taken, unless the investor is given fair compensation in accordance with relevant laws.

Article 7. Protection of intellectual property rights in relation to investment

The investor's intellectual property rights and legitimate rights related to technology transfer shall be guaranteed in accordance with relevant laws.

Article 8. Repatriation of capital and assets

Upon fulfilling all tax obligations in Rwanda, an investor shall be allowed to repatriate the following:

1. capital;
2. profits derived from business activities; 3.debt and interest on foreign loans;
3. proceeds from the liquidation of investment;
4. any other assets of an investor.

Article 9. Dispute settlement

Any dispute arising between a foreign investor and one or more public organs in connection with a registered investment enterprise shall be amicably settled.

When an amicable settlement cannot be reached, parties shall refer the dispute to an arbitration agency as agreed upon in a written agreement between both parties.

Where no arbitration procedure is provided under a written agreement, both parties shall refer the matter to the competent court.

Chapter III. Investment registration

Article 10. Registration procedure

For an investor to be issued an investment certificate determined by the Board in order to qualify for the incentives provided for by this Law, he/she shall fill out an appropriate form indicating his/her identity and any other necessary details.

The applicant shall pay a non-refundable registration fee determined by the regulations of the head of the Board.

Article 11. Investment registration requirements

The application for investment registration must be accompanied by the following:

1. certificate of legal personality of the business company;

2. a business plan which must include at least the following:

a. name of the project and detailed information on the project in which investment is or will be made;

b. action plan;

c. the date of commencement of operations;

d. detailed information on any raw materials sourced in the country or in the locality where the investment is operating;

e. detailed information on any financing and assets to be sourced from outside Rwanda, including the timeframe in which these finance and assets shall be invested;

f. a market survey;

g. details of the projected technology and knowledge transfer;

h. a table indicating five-year income projections for the investment project;

3. the project environmental impact assessment certificate issued in accordance with relevant laws;

4. projected number of employees and categories of employments;

5. proof of payment of registration fee;

6. license granted by the business sector in which he/she intends to operate.

Article 12. Timeframe for issuance of investment certificate

The applicant for investment certificate who fulfils registration requirements referred to in Articles 10 and 11 of this Law and approved by the business sector in which he/she intends to operate, shall be issued with an investment certificate within two (2) working days from the date of receipt of the application by the Board.

When the application is rejected, the Board shall notify the applicant in writing of the reasons for rejecting his/her application within the same timeframe as that provided under paragraph one of this Article.

Chapter IV. Obligations of a registered investor

Article 13. Obligations of a registered investor

A registered investor shall have the following obligations:

- to implement his/her proposal in accordance with his/her business plan submitted in the application for an investment certificate;
- to properly keep financial and accounting records of the investment enterprise and submit a copy of a certified financial report to the Board within three (3) months following the preceding financial year;
- to keep data relating to operations of the investment enterprise for a period of five (5) years;
- to facilitate employees of the Board in the performance of their monitoring duties;
- to respond in a period prescribed by written notice to any query from the Board in connection with operations of the investment enterprise;
- to register with the tax administration and file timely tax returns even in case of entitlement.

Chapter V. Role of the board in investment promotion and facilitation

Article 14. Duties of the Board

In a bid to promote and facilitate investment, the Board must:

1. facilitate investors in the following:

a. acquiring visas and work permits;

b. water and electricity connection;

c. being granted a licence by the business sector in which he/she intends to operate, where applicable;

d. getting environmental impact assessment certificate;

e. any other appropriate investment-related support that may be required;

2. provide investment incentives;

3. ensure day-to-day facilitation to an investor in the implementation of his/her project;

4. ensure daily monitoring of registered investor's operations;

5. keep all records related to investment certificates, work permits, visas and any other documents pertaining to the registered investment enterprise;

6. carry out monitoring of investment projects in order to ensure that investment incentives are directed to the projects which adhere to the requirements and the investor's submitted business plan;

7. facilitate amicable settlement of disputes that may arise between an investor and one or more public organs;

8. represent the Government in negotiating investment agreements;

9. not to disclose confidential information provided by an investor.

Chapter VI. Change, suspension or termination of investment operations

Article 15. Notification to the Board of change and termination of investment operations

A registered investor shall, within a period not exceeding thirty (30) days, inform the Board in writing before :

1. changing the nature of investment operations;
2. suspending investment operations. In this case, the investor shall also indicate the duration of the suspension;
3. terminating investment operations.

Article 16. Notification to the Board by a third party

Any interested person other than the registered investor, who is affected by the suspension or termination of investment operations, may inform the Board.

Article 17. Measures taken by the Board after notification of change of investment operations

Where notification of changes is made in accordance with the provisions of this Law, and such changes materially alter the investment in accordance with Article 11 of this Law but are not detrimental to the investment and criteria for investment incentives qualification, the Board shall amend the investment certificate to reflect such notified changes.

Where changes in the nature of operations do not materially alter the commitments made by an investor, they shall only be recorded in the investor's file.

Chapter VII. Cancellation of an investment certificate

Article 18. Grounds for cancellation of an investment certificate

An investment certificate may be cancelled on the following grounds:

1. it was issued on the basis of false or fraudulent declarations of an investor;
2. material changes detrimental to investment occurred in investment operations;
3. the investor fails to fulfil obligations under this Law.

Article 19. Effects of revocation of investment certificate

Where an investment certificate is cancelled because it was issued on the basis referred to in Article 18, Sub Paragraph 1°, the investor shall be liable to refund an amount equivalent to the incentives he/she was given in his/her capacity as a registered investor.

Article 20. Procedures of cancelling the investment certificate

Prior to cancelling the investment certificate, the Board shall issue a written notice to the investor providing details of grounds for the proposed cancellation and requesting the investor to provide appropriate explanations on these grounds.

The registered investor shall provide written explanations to the Board within ten (10) working days from the date of receipt of the request from the Board.

Where the investor fails to provide explanations within due time or the Board is not satisfied with the explanations provided, the Board shall cancel the investment certificate.

Article 21. Appeal for reconsideration of the decision of cancelling an investment certificate

Where the investor is not satisfied with the decision taken, he/she may appeal against such a decision to the head of the Board within ten (10) working days as of the date of notification of the decision.

The head of the Board shall decide on the appeal within ten (10) working days of the date of appeal.

Chapter VIII. Transitional and final provisions

Article 22. Transitional period

An investor who benefits from the incentives provided under Law nº 26/2005 of 17/12/2005 relating to investment and export promotion and facilitation, which are not provided for under this Law, shall continue to benefit from these incentives for a twelve (12) months period from the date of the publication of this Law in the Official Gazette of the Republic of Rwanda.

However, the transitional period referred to under Paragraph One of this Article shall not be applicable to:

a. incentives on corporate income tax discounts based on the number of Rwandans employed and export which shall be terminated on the date of the publication of this Law in the Official Gazette of the Republic of Rwanda;

b. investor benefiting from additional time-bound tax-related incentives for which the government of Rwanda has signed an undertaking before the publication of this law in the Official Gazette of the Republic of Rwanda who continue to benefit from these incentives until the end of the period specified in the undertaking.

Companies that carry out microfinance activities benefiting from the investment incentive of paying a profit tax equivalent to zero per cent (0%) during a five (5) years period in accordance with Law n.26/2005 of 17/12/2005 relating to investment and export promotion and facilitation, will continue to benefit from this incentive until the end of that period.

Article 23. Drafting, consideration and adoption of this Law

This Law was drafted in English, considered and adopted in Kinyarwanda.

Article 24. Repealing of a Law and inconsistent provisions

The Law n.26/2005 of 17/12/2005 relating to investment and export promotion and facilitation and all prior legal provisions contrary to this Law are hereby repealed.

Article 25. Commencement

This Law shall come into force on the date of its publication in the Official Gazette of the Republic of Rwanda.

Annex

Special incentives for registered investors

I. Preferential corporate income tax rate of zero per cent (0%)

An international company which has its headquarters or regional office in Rwanda will be entitled to a preferential corporate income tax rate of zero per cent (0%) if it fulfils the following requirements:

1. to invest the equivalent of at least ten million United States Dollars (USD 10,000,000), in both tangible or intangible assets, in Rwanda;

2. to provide employment and training to Rwandans;

3. to conduct international financial transactions equivalent to at least five million United States Dollars (USD 5,000,000) a year for commercial operations through a licensed commercial bank in Rwanda;

4. to be well established in the sector within which it operates;

5. to use the equivalent of at least two million United States Dollars (USD 2,000,000) per year in Rwanda;

6. to set up actual and effective administration and coordination of operations in Rwanda and perform at least three (3) of the following services in Rwanda:

a. procurement of raw materials, components or finished products;

b. market control and sales promotion planning;

c. information and data management services;

d. treasury management services;

e. research and development work;

f. training and personnel management.

II. Preferential corporate income tax rate of fifteen percent (15%)

A preferential corporate income tax rate of fifteen percent (15%) shall be accorded to:

1. A registered investor, exporting at least fifty percent (50%) of turnover of goods and services produced in Rwanda, including business processing outsourcing. This incentive excludes unprocessed minerals, tea and coffee without value addition according to the provisions of this Law.
2. A registered investor undertaking one of the following operations: energy generation, transmission and distribution from peat, solar, geothermal, hydro, biomass, methane and wind. This incentive excludes an investor having an engineering procurement contract executed on behalf of the Government of Rwanda;
3. A registered investor in the sector of transport of goods and related activities whose business is operating a fleet of at least five (5) trucks registered in the investor's name, each with a capacity of at least twenty (20) tons.
4. A registered investor operating in mass transportation of passengers and goods with a fleet of at least ten (10) buses registered in the investor's name, each with a capacity of at least twenty five (25) seats;
5. A registered investor in the Information and Communication Technology (ICT) Sector with an investment involving one of the following activities: service, manufacturing or assembly. This incentive excludes ICT retail and wholesale trade as well as ICT repair industries and telecommunications;

6. A registered investor operating in the following financial services: global business activities, private equity funds, fund management, wealth management; mutual funds, collective investment schemes, captive insurance schemes, venture capital, and asset backed securities. This incentive excludes locally oriented fund and wealth management, retail banking and insurance activities.
7. A investor registered in building low-cost housing and upon fulfilling the criteria provided under the instructions of the Minister in charge of housing.
8. An investor registered in any another priority economic sector as may be determined by an Order of the Minister in charge of finance.

III. Corporate income tax holiday of up to seven (7) years

A registered investor investing an equivalent of at least fifty million United States Dollars (USD 50,000,000) and contributing at least thirty percent (30%) of this investment in form of equity in the sectors specified below will be entitled to a maximum of seven (7) year corporate income tax holiday:

1. energy projects producing at least twenty five megawatts (25 MW). This incentive exclude an investor having an engineering procurement contract executed on behalf of the Government of Rwanda and fuel produced energy;
2. manufacturing;
3. tourism;
4. health;
5. Information and Communication Technology (ICT) Sector with an investment involving manufacturing, assembly and service. This incentive excludes communication, ICT retail and wholesale trade as well as ICT repair companies or enterprises and Telecommunications;
6. export related investment projects;
7. an investor registered in another priority economic sector as may be determined by an Order of the Minister in charge of finance.

IV. Corporate income tax holiday of up to five (5) years

Microfinance institutions approved by competent authorities will be entitled to a tax holiday of a period of five years (5 years) from the time of their approval. However, this period may be renewed upon fulfilling conditions prescribed in the Order of the Minister in charge of finance.

V. Exemption of customs tax for products used in Export Processing Zones

A registered investor investing in products used in Export Processing Zones shall be exempted from customs taxes and duties according to the provisions of customs rules and regulations of the East African Community.

VI. Exemption of Capital Gains Tax

A registered investor shall not pay capital gains tax. However, income derived from the sale of a commercial immovable property shall be included in the taxable income of the investor.

VII. Value Added Tax refund

The refund of the Value Added Tax paid by investors shall be made within a period not exceeding fifteen (15) days upon receipt of the relevant documents by the tax administration authority.

VIII. Accelerated depreciation

A registered investor shall be entitled to a flat accelerated depreciation rate of fifty per cent (50%) for the first year for new or used assets if he/she meets the following criteria :

1.invest in business assets worth at least fifty thousand US dollars (USD 50,000) each;

2.operate in at least one of the sectors below and meet the requirements:

a. export projects;

b. manufacturing;

c. telecommunications;

d. agro processing;

e. education;

f. health;

g. transport excluding passenger vehicles with less than nine (9) people seating capacity;

h. tourism investments worth at least one million eight hundred thousand United States Dollars (USD 1, 800, 000);

i. construction projects worth at least one million eight hundred thousand United States dollars (USD 1,800,000);

j. any other sectors provided the investment is worth at least one hundred thousand United States dollars (USD 100,000);

k. any other priority sector as may be determined by an Order of the Minister in charge of finance;

3.meet the obligations defined below:

a. keep the assets for at least three (3) years after benefiting from the accelerated depreciation;

b. inform the Commissioner General of the Rwanda revenue authority of the disposal of the business assets in case such disposal is made before three (3) years. Where an investor makes the disposal of such assets before the expiration of three (3) years, he/she shall pay the difference from the reduction of corporate income tax caused by the accelerated depreciation as well as any applicable penalties and interests. However, the investor shall not be liable to pay any amount where it is determined that such disposal was the effect of natural calamities, hazards or any other involuntary reason.

IX. Immigration incentives

1) A registered investor and his/her dependants shall be issued with a residence permit in accordance with relevant laws.

2) A registered investor who invests an equivalent of at least two hundred fifty thousand United States Dollars (USD 250,000) may recruit three (3) foreign employees without necessarily demonstrating that their skills are lacking or insufficient on the labour market in Rwanda.

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