

THE INVESTMENTS PROTECTION (AMENDMENT)  
ACT, 1989.

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ARRANGEMENT OF SECTIONS

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ACT NO.1 OF 1989

I ASSENT

*Idris Abdul Wakil*

IDRIS ABDUL WAKIL  
PRESIDENT OF ZANZIBAR  
AND  
CHAIRMAN OF THE REVOLUTIONARY  
COUNCIL.

*12<sup>th</sup> July* ..... 1989.

AN ACT TO AMEND THE INVESTMENTS PROTECTION  
ACT, 1989.

ENACTED BY THE HOUSE OF REPRESENTATIVES  
OF ZANZIBAR.

Short title  
and  
construction.

1. This Act may be cited as the Investments Protection (Amendment) Act, 1989 and shall be read as one with the Investments Protection Act, 1986 (hereinafter referred to as "the principal Act").

Amendment  
of section 2.

2. Section 2 of the principal Act is amended by -

- (a) inserting the word "enterprise" before the word "investment" which occurs in the first line and inserting the word "investment" after the word "enterprise" which occurs in the second line of the definition of "approved";
- (b) inserting immediately after the definition of "foreign national" and before the definition of the "Minister" the following definition :-

" "investor" means a foreign national, a Zanzibari or a Tanzanian other than Zanzibari who has invested assets in Zanzibar."

(c) inserting immediately after the definition of the "Minister" the following definitions :-

" "Parastatal" means a statutory corporation owned by the Government or a company in which more than fifty per centum of the issued share capital is beneficially owned by the Government of Zanzibar;

"Zanzibari" means -

- (a) any person who is a citizen of Tanzania in accordance with the laws relating to citizenship, and that he has been residing in Zanzibar before and upto 12th January, 1964 shall be a Zanzibari;
- (b) any person who, as from the 26th day of April, 1964 is a citizen of Tanzania and that he was born in Zanzibar shall be a Zanzibari if both of his parents or his father or his mother is a Zanzibari in accordance with the Zanzibari Act, 1985;
- (c) any person who is a citizen, and that before the 26th day of April, 1964 was a Zanzibari shall be a Zanzibari if he has not lost his Tanzanian citizenship;
- (d) any person who is a citizen of Tanzania and that both of his parents or his father or his mother is a Zanzibari in accordance with paragraphs (a), (b) and (c) above shall be a Zanzibari;
- (e) any person naturalized under the Zanzibari Act, 1985,

Act No.5  
of 1985.

and includes a company incorporated in Zanzibar in respect of which the Minister is satisfied that the majority of the issued share capital is beneficially owned by a Zanzibari."

Amendment  
to heading  
of Part II.

3. Part II of the principal Act is amended by deleting the heading thereto and substituting therefor the following heading :-

"PROVISIONS RELATING TO ISSUANCE OF  
CERTIFICATE TO INVESTORS".

Section 3  
amended.

4. Section 3 of the principal Act is hereby amended by -

- (a) deleting subsection (1) therefor and substituting for it the following subsections :-

"Investors  
may apply  
for and be  
granted a  
certificate.

3.(1) A foreign national who proposes to invest in Zanzibar may apply to the Minister for a certificate that the enterprise in which the assets are proposed to be invested is approved and such enterprise in respect of which a certificate is issued is hereafter referred to as an approved enterprise for the purpose of this Act.

3.(1)A. A Zanzibari or Tanzanian other than a Zanzibari who proposes to invest in Zanzibar may apply to the Minister for a certificate that the enterprise in which he proposes to invest is approved and such enterprise in respect of which a certificate is issued is hereafter referred to as an approved domestic enterprise for the purpose of this Act."

- (b) deleting the word and figure "subsection (1)" which occur in subsection (2) and substituting therefor the words and figures "subsection (1) and (1)A.";
- (c) repealing the proviso which occurs in subsection (3).

New section 3A added to principal Act. 5. The principal Act is hereby amended by adding immediately after section 3 the following new section :-

"Cancellation and suspension of certificate. 3A.(1) The Minister may cancel a certificate issued by him pursuant to section 3 if the said certificate was obtained by fraud, or by deliberate or negligent submission of false or misleading facts or statements.

(2) Where an approved enterprise or approved domestic enterprise :-

- (i) applies any benefit conferred by or under this Act for purposes other than those for which the benefit was conferred; or
- (ii) fails without reasonable cause to commence operations within the time stipulated in the certificate; or
- (iii) fails to comply with any of the obligations imposed under Part V of the Act and section 10 of Part III of the Act the Minister may:
  - (a) cancel the Certificate;
  - (b) suspend the certificate for such period as he may determine; or
  - (c) decide that all fees, taxes, duties and other charges which would have been paid or payable by the approved enterprise or approved domestic enterprise had it not been certified as an approved enterprise or approved domestic enterprises under this Act shall be paid within such time as he may determine.

(3) Where the Minister cancels a certificate issued by him pursuant to section 3, the holder of the certificate and the enterprises in respect of which the certificate is granted shall cease to be entitled to the benefits and incentives under this Act.

(4) Where the Minister suspends a certificate issued by him pursuant to section 3, the holder of the certificate and the enterprise in respect of which the certificate is granted shall during the period of suspension cease to be entitled to the benefits and incentives under this Act."

Amendment  
of section 4.

6. Section 4 of the principal Act is amended by:-

(a) re-numbering section 4 as section 4(1);

(b) changing the opening sentence to read:-

"4.(1) Every certificate issued in respect of an application made under subsection (1) of section 3 of this Act shall contain";

(c) repealing paragraphs (e) and (g) and replacing thereof the following paragraphs :-

"(e) a statement of the period within which the foreign assets are to be invested;

(g) the expected duration of the enterprise and a statement showing the date of issue and expiry of the certificate.";

(d) inserting a new subsection 4(2) immediately after subsection 4(1)

"4.(2) Every certificate issued in respect of an application made under subsection 3(1)A of this Act shall contain:

6/....

- (a) the name of the holder;
- (b) the name and description of the enterprise;
- (c) the amount invested or to be invested by the holder of the certificate in the enterprise, with separate indication of:
  - (i) the equity capital of the holder in the enterprise which shall be expressed in Tanzanian shillings; and
  - (ii) any loan which shall be expressed in Tanzanian shillings;
- (d) a statement of the period within which the applicant's investment in the approved domestic enterprise is to be made;
- (e) the expected project life of the approved domestic enterprise and a statement showing the date of issue and expiry of the certificate; and
- (f) such other matters as may be necessary or desirable for the purpose of this Act".

Section 5 amended.

7. Section 5 of the principal Act is hereby amended by :-

- (a) repealing the provision of section 5 of paragraph (a) and replacing it by the following proviso:-

"Provided that the Minister shall not substitute the name of any person who has acquired the interest of the holder by the expenditure directly or indirectly of assets other than foreign assets".

7/....

(b) adding immediately after paragraph (a) the following new paragraph :-

"(a)(a) in any case in which he is satisfied that some other Zanzibari or Tanzanian other than Zanzibari has succeeded to the interest of the holder of a certificate relating to an approved domestic enterprise by substituting for the name of the holder, the name of his successor;"

(c) repealing paragraph (d) and substituting therefor the following :-

"(d) in any case in which, in relation to an approved investment by a foreign national new foreign assets are invested or are to be invested in the enterprise by the holder or in any case in which, in relation to an approved domestic enterprise, new investment in the said enterprise is made or is to be made by the holder, or the holder has withdrawn or has been paid, in accordance with this Act, any part of his investment, by varying the approved amount in accordance therewith;"

(d) repealing paragraph (f) and substituting therefor the following :-

"(f) with the written consent of the holder of the certificate by varying approved foreign currency, where the approved investment is by a foreign national;"

(e) repealing paragraph (g) and substituting therefor the following :-

"(g) by extending the period during which foreign or other assets are to be invested."



Section 6  
repealed.

8. Section 6 of the principal Act is hereby amended by -

- (a) renumbering section 6 as section 6(1); and
- (b) adding immediately after subsection (1) the following new subsection :-

"(2) Where a certificate is issued in respect of an approved domestic enterprise, the approved investment shall be made within the approved period and if not so invested within that period the certificate shall be deemed to have been revoked."

Section 7  
repealed and  
replaced.

9. Section 7 of the principal Act is repealed and replaced by the following section :-

"Land use  
by  
investor.

7.(1) Where an investor is granted a certificate by the Minister under section 3 of this Act, the Minister responsible for land shall grant him on such terms and conditions a lease of appropriate land for a term suited to the requirement of his enterprise:

Provided that such term shall not exceed ninety-nine years in duration.

(2) Notwithstanding the provisions of subsection (1) of this section, prior to the expiry of a lease granted pursuant to subsection (1) of this section the investor may apply for an extension of his lease and the Minister responsible for land may grant him an extension for such period as he deems fit:

Provided that no such extension shall exceed a period of ninety-nine years."

Sections  
8 and 9  
repealed and  
replaced.

10. Sections 8 and 9 of the principal Act are hereby repealed and replaced by the following section :-

"Preferential  
treatment  
and  
payment of  
rent to  
leased land.

8.(1) Where land is allocated to an investor he shall pay rent annually in accordance with the terms of his lease from the date when he first produces goods for sale or first provides services from the said enterprise or project.

(2) Rent for land shall vary in accordance with various factors including:-

- (a) the location of the land;
- (b) the nature of the enterprise or project established on the land;
- (c) the extent of development of the locality;
- (d) whether the enterprise or project established on it is export oriented or not;
- (e) the nature and extent of the technology involved in the enterprise on the land;
- (f) any other relevant factor;

(3) The Minister responsible for land may take any of the factors listed under subsection (2) of this section into account in deciding whether to give a preferential rate of rent to an investor under a lease granted pursuant to subsection (1) of section 7 of this Act.

(4) No rent for land shall be payable during construction period of any enterprise:

Provided that such construction shall not take more than thirty months from the commencement of construction, unless the Minister responsible for land agrees otherwise.

10/....

(5) The Minister responsible for land may apply a preferential rate of rent to land leased to any investor who uses local raw materials or who has co-operated with in locating his enterprise in a less developed or deprived area."

Section 10 amended.

11. Section 10 of the principal Act is amended by repealing subsection (1) and substituting the following subsection :-

"(1) An investor shall pay compensation to an occupier of land which is allocated to such investor pursuant to section 7 of this Act for any improvement made on or benefit arising from that land by such occupier."

Section 11 amended.

12. Section 11 of the principal Act is repealed and replaced by the following section :-

"Customs duties.

11.(1) During the construction phase of an approved enterprise, or approved domestic enterprise, the enterprise shall be exempt from customs and import duties and other similar taxes on machinery, equipment, spare parts, raw materials, fuel, vehicles and other goods necessary and exclusively required for the construction of this project.

(2) Raw materials for the trial operations of an approved enterprise or approved domestic enterprise shall be exempted from import duties:

Provided the quantity of such raw materials does not exceed eighteen months' supply for one shift production operation.

(3) Goods imported for the necessary use of the expatriate employees of an approved enterprise or approved domestic enterprise shall be exempt from import duties during a period of six months commencing from the date of their first arrival in Zanzibar.

11/....

For the purpose of this Act expatriate employee means any employee of an approved enterprise or approved domestic enterprise who is neither a citizen of Tanzania nor a permanent resident in Tanzania and whose employment contract provides for the payment of his passage to and from Zanzibar.

(4) Finished products of an approved enterprise or an approved domestic enterprise which are to be exported shall be exempted from export duties and other similar taxes."

Section 12  
repealed.

13. Section 12 of the principal Act is hereby repealed.

Section 13  
repealed  
and replaced.

14. Section 13 of the principal Act is hereby repealed and replaced by :-

"Tax  
exemption  
for  
re-  
investment.

13.(1) Where an investor makes a declaration of his intention to reinvest in Zanzibar the profit earned during a period of three years from his approved enterprise or approved domestic enterprise the amount of such profit actually reinvested in that or any other new approved enterprise or approved domestic enterprise shall be exempt from income tax.

(2) In establishing the taxable profit of an approved enterprise or an approved domestic enterprise in which an investor has re-invested in accordance with subsection (1) of this section, the investor shall in relation to the sum reinvested be entitled to the benefit of any investment allowances provided for under this Act or any other laws."

Section 14  
repealed and  
replaced.

15. Section 14 of the principal Act is hereby repealed and replaced by :-

"Transfer  
of funds  
outside  
Zanzibar.

14.(1) Notwithstanding the provisions of any other law for the time being in force, the holder of a certificate issued under section 3 shall ordinarily, in respect of the approved enterprises to which the certificate relates, be granted permission to transfer out of Zanzibar in the approved foreign currency at the prevailing official rate of exchange. -

- (a) the dividends after taxation, arising from or out of his investment of foreign assets:

Provided that any increase in the capital value of the investment arising out of the sale of the whole or any part of the capital assets of the enterprise shall not be deemed to be a profit arising from or out of the investment for the purpose of this Act;

- (b) the capital specified in the certificate as representing and being deemed to be the fixed amount of the equity of the holder of the certificate in the investment for the purpose of this Act:

Provided that -

- (i) where any amendment or variation is made in the amount of the capital under the provisions of section 5 of this Act, the amended or varied amount shall be substituted for the original amount; and
- (ii) no additional amount or sum shall be added to the capital specified in the capital value of the investment after the issue of the certificate or after the last amendment or variation the certificate made pursuant to section 5 of this Act;
- (c) the principal and interest of any loan specified in the certificate.

(2) Subject to complying with the relevant prevailing exchanging control procedures, an approved enterprise or approved domestic enterprise shall ordinarily be granted permission to transfer out of Zanzibar in the approved foreign currency and at the prevailing official rate of exchange.-

- (a) money for the purchase of raw materials and spare parts which are not available in Tanzania;
- (b) money for purchase of necessary consumables not available in Tanzania;
- (c) money for necessary management fees;
- (d) money for necessary business travel;
- (e) part of expatriates' salaries;
- (f) money for overseas training expenses of the local staff;
- (g) any other item of foreign expenditure that may be approved from time to time."

Amendment  
of  
section 15.

16. Section 15 of the principal Act is amended by inserting a comma immediately after the words "approved enterprise" which occurs in the first line, and inserting the words " approved domestic enterprise" immediately after the said comma.

Section 25  
repealed.

17. Section 25 of the principal Act is hereby repealed.

Section 27  
repealed and  
replaced.

18. Section 27 of the principal Act is hereby repealed and replaced by the following section :-

"Investment  
allowance.

27.(1) For the purpose of determining the income of any approved enterprise, or any approved domestic enterprise upon which tax is chargeable under the Income Tax Act, there shall be deducted a special allowance to be known as an investment allowance:

Provided that the said special allowance shall be deducted only once.

(2) The investment allowance referred to in subsection (1) of this section shall be charged at the rate of twenty-five per centum (25 %) of accumulated expenditure of a capital nature incurred by the said enterprise up to and including the year of assessment, in which the investment allowance is claimed.

For the purpose of this Act -

"capital expenditure" means fixed capital which includes machinery, building, land royalties and the like.".....

Section 28  
repealed and  
replaced.

19. Section 28 of the principal Act is hereby repealed and replaced by the following section :-

"Taxation of  
Companies.

28. Tax upon the total income of any approved enterprise or approved domestic enterprise, where such enterprise is a body corporate, shall be charged under the Income Tax Act at the following rates :-

- (a) forty per centum for residents and forty-five per centum for non-residents for the first seven years after the date of first production of goods, or first provisions of the services which the approved enterprise or approved domestic enterprises was established to produce or provide;
- (b) forty-five per centum for residents and fifty per centum for non-residents after the period specified in paragraph (a) of this section."

Section 29  
repealed and  
replaced.

"Tax  
relief  
on  
export  
profits.

20. Section 29 of the principal Act is hereby repealed and replaced by the following section :-

29.(1) Notwithstanding the provisions of section 28, the profits earned from exports (hereinafter referred to as "export profits") of any approved enterprise or, where applicable under section 29(2)(c) any approved domestic enterprise, wholly or partially engaged in the export of goods or services shall be determined for each tax year and taxed separately. The proportion of the total profits of an approved enterprise or approved domestic enterprise that are deemed to be export profits shall be the proportion that the gross sales revenues earned from exports bears to the total gross sales revenue of the enterprise for the tax year in question.

(2) Export profits shall, during the ten years commencing from the date of the first export by an approved enterprise or, where applicable, an approved domestic enterprise, be taxed at the corporate income tax rates specified in section 28 as follows :-

- (a) if the proportion of foreign ownership in the enterprise is one hundred per centum (100%), then only fifty per centum (50%) of the export profits shall be subject to corporate Income Tax;
- (b) if the proportion of foreign ownership in the enterprise is fifty per centum (50%) or more but is not one hundred per centum (100%) then the proportion of the export profits subject to corporate income tax shall be the percentage numerically equivalent to half of the percentage of foreign ownership in the enterprise;



(c) if the proportion of foreign ownership in the enterprise is less than fifty per centum (50%) then all the export profits shall not be subject to corporate income tax.

(3) For the purposes of paragraphs (b) and (c) of subsection (2) of this section the joint venture arrangements with foreign nationals in an approved enterprise or an approved domestic enterprise may be with the Government of Zanzibar or any of its agencies or with Zanzibari.

(4) Any part of the profits of any approved enterprise or approved domestic enterprise that are not deemed to be export profits shall be subject in full to the corporate rates of income tax as specified in section 28 of this Act.

Section 30 repealed and replaced.

21. Section 30 of the principal Act is hereby repealed and replaced by the following section:-

"Charitable contribution by investors.

30.(1) Where an approved enterprise or approved domestic enterprise makes a contribution to an approved charitable institution engaged in social and economic activities in Zanzibar or to an approved trust fund engaged in social and economic development or to local projects which will contribute directly towards the economic and social welfare of Zanzibar, such contribution shall be deducted from the total gross sales of such enterprise as an allowable expenditure for the purpose of ascertaining the total income tax chargeable:

Provided that for tax purposes the deduction allowed in respect of such contributions shall not exceed fifty five per centum of the gross profits of the approved enterprise or approved domestic enterprise. .

17/....

(2) Contributions made under subsection (1) of this section shall be allowable as a deduction for income tax purposes only if made with the prior approval of the Minister.

(3) Approved charitable institutions and approved trust funds shall be those so approved by the Minister."

Passed in the House of Representatives  
on the 14th day of March, 1989.

*K. Chamde.*

KHAMIS JUMA CHANDE  
CLERK TO THE HOUSE OF REPRESENTATIVES  
OF ZANZIBAR.