



Ghana Investment Act

SCHEDULE

(Section 18)

ENTERPRISES WHOLLY RESERVED FOR GHANAIS

1. The sale of anything whatsoever in a market, petty trading, hawking or selling from a kiosk at any place.
2. Operation of taxi service and car hire service. (A non-Ghanaian may undertake this service provided he has a minimum fleet of ten new vehicles).
3. All aspects of pool betting business and lotteries, except football pools.
4. Operation of beauty saloons and barber shops.

ESTABLISHMENT OF GHANA **INVESTMENT PROMOTION** **CENTRE AND RELATED** **PROVISIONS**

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PART I - ESTABLISHMENT OF GHANA INVESTMENT PROMOTION CENTRE AND RELATED PROVISIONS

Establishment of Centre

1. (1) There is established by this Act a body corporate to be known as the Ghana Investment Promotion Centre, referred to in this Act as the "Centre".
- (2) The Centre shall have perpetual succession and a common seal and may sue and be sued in its corporate name.
 1. The Centre shall have power for the discharge of any of its functions, to acquire and to hold movable and immovable property, to dispose of property and to enter into any contract or other transaction.

Object of Centre

2. (1) The object of the Centre is to encourage and promote investment in the Ghanaian economy.

(2) The Centre shall be the agency of government to co-ordinate and monitor all investment activities to which this Act applies.

Function of the Centre

3. For the purpose of section 2, the Centre shall have the following functions -

- (a) initiate and support measures that will enhance the investment climate in the country for both Ghanaian and non-Ghanaian companies;
- (b) promote investments in and outside Ghana through effective promotional means;
- (c) collect, collate, analyse and disseminate information about investment opportunities and sources of investment capital, and advise upon request on the availability, choice or suitability of partners in joint-venture projects;
- (d) register and keep records of all enterprises to which this Act is applicable;
- (e) identify specific projects and invite interested investors for participation in those projects;
- (f) initiate, organize and participate in promotional activities such as exhibitions, conferences and seminars for the stimulation of investments;
- (g) maintain liaison between investors and Ministries, Government departments and agencies, institutional lenders and other authorities concerned with investments;
- (h) provide and disseminate up-to-date information on incentives available to investors;
- (i) assist incoming and existing investors by providing support services including assistance to procure authorities and permits required for the establishment and operation of enterprises;
- (j) evaluate the impact of the Centre on investments in the country and recommend appropriate changes where necessary;
- (k) register and keep records of all technology transfer agreements relating to investments under this Act; and
- (l) perform such other functions as are incidental to the attainment of the object of this Act.

The Board of the Centre

4. (1) The governing body of the Centre shall be a Board which shall be responsible for the discharge of the functions of the Centre.

(2) The Board shall consist of -

- (a) a Chairman;
 - (b) a Vice-Chairman;
 - (c) the Chief Executive of the Centre; and
 - (d) five other members at least three of whom shall be persons selected from outside the public services.
- (3) The members of the Board shall be appointed by the President in consultation with the Council of State.
- (4) The President shall in making the appointments under this section have regard to the expertise, knowledge and experience of the persons in matters relating to investments in Ghana.
- (5) The Vice-Chairman shall be elected by the members from among their number; and where the Chairman is a person appointed from the public services, the Vice-Chairman shall be elected from the members appointed from outside the public services.
- (6) A member of the Board other than the Chief Executive shall hold office for a term of four years and is eligible for re-appointment.
- (7) A member of the Board may at any time resign his office in writing addressed to the President or may be removed from office by the President in consultation with the Council of State for stated reasons.
- (8) Members of the Board shall be paid such allowances as the Minister responsible for Finance shall determine.

Meetings of the Board

- 5.** (1) The Chairman shall preside at all meetings of the Board and in his absence the Vice-Chairman shall preside and in the absence of both the Chairman and Vice-Chairman, the members present shall elect one of their number to preside.
- (2) The quorum for a meeting of the Board shall be four including the Chief Executive.
- (3) The Board may co-opt any person to act as adviser at a meeting of the Board, except that a person co-opted does not have the right to vote on any matter before the Board for decision.
- (4) The validity of the proceedings of the Board shall not be affected by a vacancy among its members or by a defect in the appointment or qualification of a member.
- (5) Except as otherwise expressly provided for under this Act, the Board shall determine the procedure for its meetings.

Committee of the Board

6. The Board may for the discharge of the functions of the Centre appoint committees of the Board comprising members of the Board or non-members or both and may assign to them such function as the Board may determine except that a committee composed entirely of non-members may only advise the Board.

Chief Executive of the Centre

7. (1) The Centre shall have a Chief Executive who shall be appointed by the President acting in accordance with the advice of the Board given in consultation with the Public Services Commission.

(2) The Chief Executive shall hold office on such terms and conditions as the President may on the advice of the Board determine.

(3) Subject to such general directions as the Board may give, the Chief Executive shall be responsible for the day-to-day administration of the Centre and the implementation of the decisions of the Board.

The Secretary and other staff of Centre

8. (1) The Board shall have an officer to be designated the Secretary who shall perform the functions of keeping accurate records of proceedings and decisions of the Board and such other functions as the Chief Executive may direct.

(2) The President may acting in accordance with the advice of the Board given in consultation with the Public Service Commission, appoint for the Centre the Secretary and such other officers and employees as it may require for the effective implementation of its functions.

(3) The President may in writing delegate to the Board the power of appointment vested in him under subsection (2) of this section.

(4) The Board may engage such consultants and advisers as it may require for the proper and efficient discharge of the functions of the Centre.

Departments of the Centre

9. The Board may, on the recommendations of the Chief Executive, create such departments in the Centre as it may consider necessary for the efficient discharge of the functions of the Centre.

Responsibility for the Centre

10. The Centre shall be responsible to the President.

Expenses and Funds of Centre

11. (1) The Government shall provide to the Centre out of monies approved by Parliament such sums as may be necessary for the efficient discharge of the functions under this Act.

(2) The Centre may levy such fees and charges for its services as may be determined by the Board.

(3) All sums of money received on account of the Centre shall be paid into such bank accounts as may be determined by the Board.

(4) The Centre may with the approval of the Board invest as it considers fit any monies not required for immediate use.

Accounts and Audit of the Centre

12. (1) The Centre shall keep proper books of accounts and proper records in relations to the accounts and shall prepare at the end of each financial year within a period of six months after the end of the financial year, a statement of its accounts in such form as the Auditor-General may direct.

(2) The books of accounts of the Centre shall each year be audited by the Auditor-General or an auditor approved by him and a report on the audit shall be submitted to the Board.

Financial year of Centre

13. The financial year of the Centre shall be the same as the financial year of the Government.

Annual Report

14. (1) The Board shall submit to the President within two months after the receipt of the auditor's report, a report on the activities and operations of the Centre during the preceding year.

(2) The annual report of the Centre shall include -

- (a) a copy of the audited accounts of the Centre together with the Auditor-General's report on it; and
 - (b) such other information as the President may request.
- (3) The President shall through a Minister designated by him present to Parliament a report on the activities and operations of the Centre.

Relationship with other public authorities

15. All government departments, government agencies and other public authorities shall co-operate fully with the Centre in the performance of its functions under this Act.

Stationing of public officers at the Centre

16. Notwithstanding section 15 of this Act, the President may on the advice of the Board in writing request the Registrar-General, the Director of Immigration and the head of any government Department to station at the offices of the Centre such public officers as may be specified therein and the request shall be complied with

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PART II - PROVISIONS RELATING TO INVESTMENT

Application of Act

17. This Act does not apply to mining and petroleum enterprises.

Enterprises reserved for Ghanaians

18. The enterprises specified in the Schedule to this Act are reserved for Ghanaians and may not be undertaken by a non-Ghanaian.

Enterprises eligible for foreign participation and minimum foreign capital requirement.

19. (1) Except as provided in sections 17 and 18 and subject to this Act and any other law, a non-Ghanaian may invest and participate in the operation of any enterprise in Ghana.

(2) An enterprise in which foreign participation is permitted under subsection (1) of this section shall not be established or operated by a non-Ghanaian unless

(a) in the case of a joint enterprise with a Ghanaian partner, there is investment by the non-Ghanaian of foreign capital of not less than US\$10,000.00 or its equivalent worth in capital goods by way of equity participation; or

(b) where the enterprise is wholly owned by a non-Ghanaian there is an investment of foreign capital of not less than US\$50,000.00 or its equivalent worth in capital goods by way of equity capital.

(3) Notwithstanding subsection (1) of this section, in the case of a trading enterprise involving only the purchasing and selling of goods which is either wholly or partly owned by a non-Ghanaian, there shall be an investment of foreign capital or its equivalent in goods worth at least US\$300,000.00 by way of equity capital and the enterprise shall employ at least 10 Ghanaians.

Export trading enterprises exempted

20. (1) The minimum capital requirement specified in section 19 shall not apply to -

(a) portfolio investments; or

(b) an enterprise set up solely for export trading.

(2) For the purpose of this section, "export trading" includes export of goods or produce that originate from Ghana.

Establishment of enterprises

21. (1) Subject to this Act, a person who intends to establish an enterprise to which this Act applies shall incorporate or register the enterprise in accordance with the Companies Code, 1963 (Act 179) or such other laws as are relevant to the establishment of the enterprise.

(2) On the submission of an application for the incorporation of an enterprise under subsection (1) of this section, the officers responsible for the incorporation and registration shall, where the documents of the applicant are in order, complete the processing of the application and issue the requisite certificate to the applicant within a period not exceeding five working days from the date of the submission of the application.

Registration of enterprises with the Centre

22. (1) An enterprise in which foreign participation is permitted under section 19 of this Act shall after its incorporation or registration be registered with the Centre.

(2) The Centre, shall, within five working days from the date of receipt of completed registration forms of the Centre register the enterprise where it is satisfied that -

- (a) all relevant documents for registration are in order; and
- (b) the minimum foreign equity capital requirement has been complied with.

Benefits and incentives

23. An enterprise shall be entitled to such benefits and incentive as are applicable to such enterprise under the Income Tax Decree 1975 (S.M.C.D. 5) and under Chapters 82, 84, 85 and 98 of the Customs Harmonised Commodity and Tariff Code scheduled to the Customs, Excise and Preventive Service Law, 1993 (P.N.D.C.L. 330) and any other law for the time being in force.

Exemption of non-zero

24. Any enterprise which desires to avail itself of the incentives provided under section 23 of this Act but whose plant, machinery, equipment or parts thereof are not zero-rated under the Customs Harmonised Commodity and Tariff Code scheduled to the Customs Excise and Preventive Service Law, 1993 (P.N.D.C.L. 330) may submit an application for exemption of import duties, sales tax or excise duties on the plant, machinery, equipment or parts thereof to the Centre.

Incentives for special investment

25. For the purpose of promoting identified strategic or major investments, the Board may in consultation with such appropriate state agencies as the Board may determine and with the approval of the President, negotiate specific incentive packages in addition to the incentive provided under section 23 of this Act for such period as the Board may specify.

Priority areas

26. (1) The Board may, with the approval of the President, by legislative instrument, specify priority areas of investment and prescribe applicable incentives and benefits.

(2) Instruments issued under subsection (1) shall be signified under the hand of the Chairman of the Board or in his absence the Vice-Chairman.

Investment guarantees, transfer of capital, profits and dividends

27. Subject to this section an enterprise to which this Act applies shall be guaranteed unconditional transferability through any authorised dealer bank in freely convertible currency of -

- (a) dividends or net profits attributable to the investment;

- (b) payments in respect of loan servicing where foreign loan has been obtained;
- (c) fees and charges in respect of any technology transfer agreement registered under this Act; and
- (d) the remittance of proceeds (net of all taxes and other obligations in the event of sale or liquidation of the enterprise or any interest attributable to the investment).

Guarantee against expropriation

28. (1) Subject to subsections (2) and (3) of this section

- (a) no enterprise shall be nationalized or expropriated by Government ; and
 - (b) no person who owns, whether wholly or in part, the capital of any enterprise shall be compelled by law to cede his interest in the capital to any other person.
- (2) There shall not be any acquisition of an enterprise to which this Act applies by the State unless the acquisition is in the national interest for a public purpose and under a law which makes provision for -
- (a) payment of fair and adequate compensation; and
 - (b) a right of access to the High Court for the determination of the investor's interest or right and the amount of compensation to which he is entitled.
- (3) Any compensation payable under this section shall be paid without undue delay and authorization for its repatriation in convertible currency, where applicable, shall be issued.

Dispute settlement procedures

29. (1) Where a dispute arises between an investor and Government in respect of an enterprise, all efforts shall be made through mutual discussion to reach an amicable settlement.

(2) Any dispute between an investor and Government in respect of an enterprise to which this Act applies which is not amicably settled through mutual discussions may be submitted at the option of the aggrieved party to arbitration as follows: -

- (a) in accordance with the rules of procedure for arbitration of the United Nation Commission of International Trade Law; or
- (b) in the case of a foreign investor, within the framework of any bilateral or multilateral agreement on investment protection to which the Government and the country of which the investor is a national are parties; or

(c) in accordance with any other national or international machinery for the settlement of investment dispute agreed to by the parties.

(3) Where in respect of any dispute, there is disagreement between the investor and the Government as to the method of dispute settlement to be adopted, the choice of the investor shall prevail.

Immigration quota

30. (1) Every enterprise with a paid-up capital of US\$ 10,000.00 but less than US. \$100,000 or its equivalent in cedis, shall be entitled to an initial automatic maximum immigrant quota of one person.

(2) Every enterprise with a paid-up capital of US \$100,000 but less than US \$500,000.00 or its equivalent in cedis shall be entitled to an initial automatic maximum immigrant quota of two persons.

(3) Every enterprise with a paid-up capital of US \$500,000.00 or more or its equivalent in cedis shall be entitled to an initial automatic maximum immigrant quota of four persons.

(4) Except as provided in subsections (1), (2), and (3) of this section, all applications for immigrant quota with respect to an investment in Ghana shall be submitted to the Centre.

(5) An application submitted under this section shall be dealt with by the Immigration Service in consultation with the Centre.

Assistance to enterprise

31. The Centre shall provide to an enterprise such assistance and guidance as the enterprise may require and shall act as liaison between the enterprise and the relevant government departments, agencies and other public authorities.

Personal remittances

32. There shall be provided to expatriate personnel employed or engaged in an enterprise to which this Act is applicable, banking facilities through authorised dealer banks for making remittances abroad except that such remittances shall not exceed the total official wage of the expatriate personnel.

Technology transfer agreement

33. (1) A person who establishes an enterprise may enter into such technology transfer agreement as he considers appropriate for his enterprise.

(2) All technology transfer agreements entered into under subsection (1) shall be registered with the Centre.

(3) All technology transfer agreements shall be governed by any regulations for the time being in force relating to such agreements.

GENERAL PROVISION

- Official secrecy and duty of public officers.
- Offences and penalty.
- Repeal and Savings.
- Transitional provisions.
- Transfer of assets, liabilities and staff.
- Regulations.
- Interpretation.

PART III - GENERAL PROVISIONS

Official secrecy and duty of public officers

34. (1) A person who in the course of his official duties in the administration of this Act has possession of or control over any document or information obtained under this Act and who communicates such document or information or any part of it to any other person to whom he is not authorised to communicate it by any enactment or by the Board commits an offence and is liable on summary conviction to a fine not exceeding ø500,000 or to imprisonment for a term not exceeding one year or to both.

(2) A public officer who has a duty to perform under this Act and fails to perform that duty or performs the duty recklessly shall be liable to such disciplinary action as the Board or the appropriate disciplinary authority may determine.

Offences and penalty

35. (1) Every enterprise to which this Act applies shall permit an officer or a designated agent of the Centre to enter its premises at any reasonable time in pursuit of the monitoring function of the Centre.

(2) A person who without lawful excuse refuses to admit an officer or designated agent of the Centre on to the business premises of the enterprise or otherwise obstructs an officer or a designated agent of the Centre acting under subsection (1) of

this section commits an offence and is liable on summary conviction to a fine not exceeding ₵2 million.

Repeal and Savings

36. The following enactments are repealed or revoked as the case may be -

Investment Code, 1985 (P.N.D.C.L. 116);

Investment Code (Amendment) Law, 1992 (P.N.D.C.L. 292);

Investment Code (Area of Special Priority) Instrument, 1991 (L.I. 1519);

Investment Code (Immigrant Quota) Regulations, 1992 (L.I. 1543);

Selective Alien Employment Tax Decree, 1973 (N.R.C.D. 201);

Selective Alien Employment Tax (Amendment) Decree, 1974 (N.R.C.D. 248);

Selective Alien Employment Tax (Amendment) (No. 2) Decree, 1974 (N.R.C.D. 268);

Selective Alien Employment Tax (Amendment) Law, 1988 (P.N.D.C.L. 196);

The Import and Export Trade and Industry (Specification of minimum foreign capital investment by non-Ghanaian citizens) Act, 1980 (Act 402)

Transitional Provisions

37. (1) Notwithstanding the repeal of the Investment Code, 1985 (P.N.D.C.L. 116) any agreement executed under it and in force immediately before the commencement of this Act shall continue in force as if made under this Act.

(2) Any application pending before the Ghana Investments Centre established under the Investment Code, 1985 (P.N.D.C.L. 116) shall confer benefits previously enjoyed under the agreement before the commencement of this Act be deemed to be pending before the Centre established under this Act.

(3) Any agreement continued in force by virtue of subsection (1) of this section shall confer benefits previously enjoyed under the agreement before the commencement of this Act and also such other benefits as may be applicable to the enterprise under this Act.

(4) Where an enterprise in existence immediately before the commencement of this Act has duly complied with the Investment Code, 1985 (P.N.D.C.L. 116) in relation

to any, minimum equity requirement or employed capital specified in that Code, the enterprise shall be deemed lawful notwithstanding any provision of this Act to the contrary.

(5) All immigrant quota in existence immediately before the coming into force of this Act in respect of an enterprise to which this Act is applicable shall continue in force until expiration or unless renewed under this Act.

(6) All technology transfer agreements registered with the Ghana Investment Centre shall be deemed to be registered with the Centre established under this Act.

Transfer of assets, liabilities and staff

38. (1) All assets, rights, obligations and liabilities of the Ghana Investments Centre established under the Investment Code, 1985 (P.N.D.C.L. 116) and in force immediately before the coming into force of this Act, are transferred to the Ghana Investment Promotion Centre established under this Act.

(2) All persons employed by the Ghana Investments Centre immediately before the coming into force of this Act shall, on the coming into force of this Act be deemed to have been duly appointed under this Act.

Regulations

39. (1) The Board may by legislative instrument make regulations -

- (a) providing for anything that is to be prescribed under this Act;
- (b) relating to technology transfer;
- (c) generally for carrying out the principles and object of this Act;

(2) Any instrument issued under subsection (1) shall be under the signature of the Chairman of the Board or in his absence that of the ViceChairman.

Interpretation

40. In this Act unless the context otherwise requires -

"benefits" includes facilities, entitlements and exemptions conferred on an enterprise to which this Act applies;

"capital" means all cash contributions, plant, machinery, equipment, buildings, spare parts, raw materials and other business assets other than goodwill;

"direct investment" means investment made to acquire a lasting interest in an enterprise operating in the economy of Ghana and intended to give the investor an effective control in the management of the enterprise;

"enterprise" means an industry, project, undertaking or business to

which this Act applies or an expansion of that industry, undertaking, project or business or any part of that industry, undertaking, project or business and where there is foreign participation means such an enterprise duly registered with the Centre;

"foreign capital" means convertible currency, plant, machine, equipment, spare parts, raw materials and other business assets other than goodwill that enter Ghana with no initial disbursement of Ghana's foreign exchange and are intended for the production of goods and services related to an enterprise to which this Act is applicable;

"foreign loan" means loan obtained from outside Ghana and denominated in any currency other than the currency of Ghana;

"Ghanaian" means any citizen of Ghana or any company, partnership or association or body (whether corporate or unincorporate) the majority capital or financial interest in which is owned by citizens of Ghana and includes the State and a statutory corporation;

"indirect investment" means any act or contract whereby an investor makes a contribution, whether tangible or intangible, to an enterprise in Ghana without obtaining an equity interest in the enterprise but is entitled to returns based on profits generated by the enterprise;

"investment" includes direct and indirect investments and portfolio investments;

"Government" means the Government of the Republic of Ghana;

"market" means a public or open place established by local custom or by the appropriate local government council for the purpose of buying and selling and any other public place used substantially for that purpose;

"mining" includes any operation for exploration, prospecting, winning or obtaining of minerals, precious metals or precious stones;

"own" in relation to an enterprise, includes the holding of any proprietary interest in the enterprise;

"Petroleum" means crude oil or natural gas or a combination of both;

"Portfolio investment" means an investment in shares or bonds which are mandatorily convertible into share or other securities traded on the Ghana Stock Exchange.

"Technology transfer agreement" means an agreement relating to an enterprise to which this Act applies that involves:

(i) the assignment, sale or use of foreign patents, trademarks or other industrial property rights.

(ii) the supply of foreign technical know-how or technological knowledge;

(iii) foreign technical assistance, design and engineering, consultancy or other technical services in whatever form they may be supplied.

(iv) foreign managerial, marketing or other services.

except that an agreement shall not be regarded as a technology transfer agreement for the purposes of this Act if its duration does not exceed a period of eighteen months.