Legal Alert

The Investment Code Act, 2019

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This alert summarizes the provisions of the new Investment Code Act, 2019, which repealed the Investment Code Act, Cap 92.

Introduction

On 20 February 2019 the President assented to the Investment Code Act, 2019. The Act became operational on 29 March, 2019. The main objectives of the Act are to revise, modernize and replace the Investment Code Act, Cap 92, to align the new Act to the Constitution; to provide for the continuation of the Uganda Investment Authority established under the repealed Act and redefine its functions.

Other objectives of the Act include registration of investors and issuing of investment licenses and incentives; and to make the Authority a one stop Centre for coordination, promotion, facilitation, monitoring and evaluation of investment and investors, among others.

The new Act introduces preferential treatment of East African Partner States and citizens of East African Partner States. Section 12 of the Act sets out specific national content requirements for investors who wish to apply for incentives.

Definition of a foreign and domestic investor

- The Act defines a foreign investor as a natural person who is not a citizen of an East African Community Partner State; a company incorporated under the laws of any country other than that of an East African Community Partner State or a company incorporated under the laws of Uganda in which the majority of the shares are held by a person who is not a citizen of an East African Community Partner State; or a partnership in which the controlling interest is owned by a person who is not a citizen of an East African Community Partner State.
- A domestic investor is defined as a natural person who is a citizen of an East African Community Partner state; a company incorporated under the laws of an East African Community Partner State in which the majority of shares are held by a citizen of an East African Community Partner state; or a partnership in which the controlling interest is owned by a person who is a citizen of an East African Community Partner state.

To qualify as a domestic investor the person or entity must hold an investment licence issued under the Act. This provision is in line with the spirit of the East African Community Common Market Protocol.

Qualifications for incentives

The Act underscores the importance of the Government's national content policy and the Buy Uganda Build Uganda (BUBU) policy, which require foreign investors to use local services, raw materials and labour.

When assessing applications for incentives under the Act the Authority will take into consideration qualifications for getting incentives provided for in other laws of Uganda, in addition to the requirements under the Act. Section 12 of the Act requires an investor seeking to get incentives to meet the following requirements:

- minimum investment capital for the investment required in any other Acts of Parliament;
- engagement in any of the priority areas specified in Schedule 2 of the Act (which include agro and food

processing, commercial farming, tourism, auto mobile manufacturing and assembly, mining, building and construction, real estate development, telecommunication, information technology, etc);

- export of a minimum of 80% of the goods produced;
- substitution of 30% of the value of imported products;
- sourcing of 70% of the raw materials used locally;
- directly employing a minimum of 60% of citizens; or
- Introduction of advanced technology or upgrading of indigenous technology.

The above requirements will apply to investors who commence their operations after the commencement of the Act. The use of the word "or" in the list of requirements under the section implies that the investor is not required to meet all the listed requirements.

The Authority will issue to an investor who qualifies for an incentive a certificate of incentives stating the particulars of the incentive and the law under which the incentive has been given.

Powers of the Authority

The Authority has been granted powers to monitor the processing of investment approvals that are by law the mandate of other agencies. All Government agencies involved in the registration, licencing and approvals for establishing investments in Uganda are required to cooperate with the Authority.

Where an investor who holds an investment licence applies for a secondary permit from another agency, such agency will be required to issue the necessary licence, permit or approval within reasonable time and in any case not more than fourteen days from the date of receipt of the application."

Powers of the Minister to set the minimum investment capital

Section 15 of the Act gives the Minister of Finance powers to issue a statutory instrument to determine the minimum investment capital proposed for both domestic and foreign investors in order to qualify for issue of an investment license. This means that the Minister can vary the minimum investment capital for investors by issuing a statutory instrument.

Requirements for application of an investment licence

Section 17 provides for the requirements for application of an investment licence including local content requirements which must be met by every investor before an investment certificate can be issued. These are:

- A certificate of registration of the business;
- Business plan which must include: the name of the investment and detailed information on the type of investment; the action plan; the date of commencement of operations; detailed information on raw materials sourced in the country or in the locality where the investment is to operate; detailed information on any financing and assets to be sourced from outside Uganda, including the timeframe in which these finances and assets shall be invested; land requirement for the investment; the location of the investment; utilities required for the investment; a market survey; details of the projected technology and knowledge transfer;
- an environmental impact assessment certificate issued in accordance with the relevant laws;
- the projected number of employees; and
- a license granted by the business sector in which the investor intends to operate.

Penalties for operating without a licence

- Section 19 of the Act introduced a penalty for operating without a licence or before registration by the Authority. Operating without a licence is an offence punishable by a fine not exceeding Uganda Shillings twenty million or imprisonment not exceeding four years or both.
- Section 39 increased the penalty for giving false or misleading information and refusing to provide information as well as refusing entry by an officer or agent of the Authority from Uganda shillings three million and two years' imprisonment to Uganda shillings five million and five years' imprisonment or both.

Obligation to comply with other laws of Uganda

- The Act requires all registered investors to comply with other laws, including registration with the URA and filing timely tax returns, submitting copies of certified financial reports to the Uganda Investment Authority Board within three months following the preceding financial year, implementing proposals in accordance with the business plan submitted in the application for the investment license and keeping data relating to operations of the investment enterprise for a period of seven years.

Dispute resolution

The Act introduces an alternative dispute resolution method under section 25, which provides for settlement of disputes between investors and the Authority or the Government in accordance with the Arbitration and Conciliation Act, Cap 4 of Uganda.

This is in addition to international arbitration, relevant bilateral or multilateral agreement on investment protection; and any other international machinery for the settlement of investment disputes which were in the repealed Act.

Resolution of disputes using the laws of Uganda is good because it gives options to investors who are willing to submit to the jurisdiction of Ugandan legal system.

Protection of investors in case of compulsory acquisition

The new Act retained the provisions on protection of investors which were in the previous Investment Code Act. Section 24 of the Act provides for the protection of the rights or interests of a licensed business enterprise over property or undertaking from being compulsorily acquired except in accordance with the Constitution.

Where property is compulsorily acquired, prompt payment of fair and adequate compensation shall be made prior to the taking of possession of the property. The section further states that compensation will be freely transferable out of Uganda and shall not be subject to exchange control restrictions.

Conclusion

The Investment Code Act, 2019 has not only imposed stricter requirements for investors who would like to invest in Uganda but has also introduced and broadened the meaning of domestic investors to include citizens of the East African Community Partner states.

We will be glad to provide any further clarity on the Act and assistance in complying with provisions of the Act.