

## Somalia

### The Foreign Investment Law (1987)

*Official translation*

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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.

# Contents

# The Foreign Investment Law

Law No. 19 of 1987

HAVING SEEN: THE APPROVAL OF THE STANDING COMMITTEE OF THE PEOPLE'S ASSEMBLY HEREBY PROMULGATES THE FOLLOWING LAW.

## **Article 1. Foreign investor**

Under this law a foreign investor is any foreign juridical or physical person.

## **Article 2. Forms of foreign investment**

Foreign investment can be made in any of the following forms:

1. Convertible currency specified by the Central Bank of Somalia and duly trans-ferred to Somalia;
2. Machinery, equipment, spare parts, installations and current production inputs, whose importation is permitted under the prevailing import legislation;
3. Patent rights, trademarks and licences duly registered in Somalia, provided they are necessary for the activities to be pursued under the approved investment;
4. The amount of foreign currency spent on studies and technical documentation, prepared in connection with the approved investment;
5. Profit reinvested, originating from foreign investment approved in accordance with this law.
6. Said investment shall be made for the purpose of the establishment or the expansion of an enterprise incorporated and registered in Somalia.

## **Article 3. The Foreign Investment Board**

1) The Foreign Investment Board, hereafter referred to as "The Board", shall have the supreme decision making authority over all matters concerning foreign investment in Somalia. It shall be established at the Ministry of National Planning where it shall convene at least twice a month.

2) The Board shall consist of:

1. The Permanent Secretary of the Ministry of National Planning.
2. The Permanent Secretary of the Ministry of Foreign Affairs.
3. The Permanent Secretary of the Ministry of Finance.
4. The Permanent Secretary of the Ministry of Industry.
5. The Permanent Secretary of the Ministry of Commerce.
6. The Permanent Secretary of the Ministry of Revenue.
7. The Permanent Secretary of the Ministry of Labour and Sports.

8. The Permanent Secretary of the Ministry under whose sectoral responsibility the respective foreign investment comes, with the exception of the Ministries mentioned above.
9. The Director General of the Central Bank.
10. The Chairman of the Chamber of Commerce, Industry and Agriculture. The Chairman of the Board shall be the Permanent Secretary of the Ministry of National Planning.

#### **Article 4. Functions of the board**

The functions of The Board shall be the following:

1. To approve proposed foreign investment in accordance with the policy guidelines laid down in Article 7 of this law;
2. To approve the registration of foreign investment;
3. To review the registration of foreign investment made under previous foreign investment legislation in order that such investment may benefit from the more favourable provisions, as per Article 20 of this law;
4. To determine the value of foreign investment made as per Article 2, paragraphs 2, 3 and 4 of this law;
5. To ensure compliance with the provisions of Article 16 concerning the contracting of debt from domestic sources;
6. To facilitate the granting of visas to foreign personnel to be employed by enterprises registered under this law;
7. To perform any other function concerning foreign investment in conformity with this law.

#### **Article 5. The Board: Quorum and Vote**

Seven members of The Board, including the Chairman, shall constitute a quorum. Decisions shall be made by simple majority vote.

#### **Article 6. The foreign investment promotion office**

The Foreign Investment Promotion Office, hereafter referred to as "The Office", shall be the administrative and promotional office responsible for assisting The Board in the performance of its functions. The duties of The Office shall be the following:

1. To implement the decisions taken by The Board;
2. To propose the administrative and regulatory procedures required for the implementation of this law;
3. To provide information and advice to the foreign investor on matters such as: application and registration procedures under this law, taxation; foreign exchange regime; economic legislation; foreign trade regime; investment opportunities; institutional framework; local sources of debt financing; partner search;

4. To assist the foreign investor in meeting the application requirements related to foreign investment;
5. To assist approved foreign investment, at the incorporation and development stages, with guidance and advice concerning official institutions and channels and related administrative procedures;
6. To formulate proposals concerning foreign investment policy and the improvement of investment conditions;
7. To promote and attract new foreign investment in collaboration with other institutions involved in this field;
8. To perform any other duty related to foreign investment, assigned to it by The Board.

#### **Article 7. Investment Priorities and Sectors**

Priority shall be given to foreign investment in those areas where it:

- a. puts Somalia's human and natural resources to productive use;
- b. introduces innovative technology suited to the country's conditions;
- c. generates new earnings or savings of foreign exchange through exports, resource-based import substitution or service activities;
- d. contributes to regionally balanced socio-economic development; This refers particularly to foreign investment in or closely related to:
  - i. agriculture;
  - ii. livestock;
  - iii. fishing;
  - iv. mineral resources;
  - v. industrial activities using significant amounts of inputs produced by the afore-mentioned sectors;
  - vi. tourism provided the investment harmonises with the prevailing social, economic and infrastructural conditions;
  - vii. any other investment in production and service activities appropriate to support and stimulate, to a significant degree, the development of the afore-mentioned sectors.

#### **Article 8. Procedures for application**

- 1) The application by the foreign investor shall be made by completing the form "Application Form for Approval and Registration", available at The Office located in the Ministry of National Planning, and mailing it by registered letter to "The Foreign Investment Board do Ministry of National Planning, Mogadishu, Somalia".
- 2) Alternatively, the foreign investor may deliver the application directly to The Office which will issue a delivery receipt.

3) The Office shall review the application, at the applicant's request, for complete-ness and certify its satisfaction in respect of this requirement.

#### **Article 9. Conditions and procedures of approval**

1) Within sixty (60) days from the date of the receipt of a duly completed invest-ment application, The Board shall notify the applicant by registered mail of its decision. At the applicant's option this notification may be collected by his rep-resentative directly from The Office against issue of a delivery receipt.

2) In case a modification of an application is required, The Board shall notify the applicant to this effect by registered letter. At the applicant's option, this notifi-cation may be collected by his representative directly from The Office, against issue of a delivery receipt.

3) The Board shall notify, through The Office, the approval of a foreign investment by issuing a "Certificate of Foreign Investment in an Approved Enterprise". Such approval shall be construed by the foreign investor as conferring eligibility for registration under this law.

4) The "Certificate of Foreign Investment in an Approved Enterprise" shall be valid for the period of eighteen (18) months of the date of issue. During said period, the applicant shall effect the transfer of assets to Somalia listed in Article 2, paragraphs 1,2,3 and 4. In case this period is exceeded, The Board may grant, at the applicant's request, an additional period or ask for a new application.

5) Additional investment to be made as per Article 2, paragraphs 1,2,3 and 4 in an enterprise that is the object of a foreign investment already duly registered, shall require application and approval as per Article 8 and paragraphs 1,2,3 and 4 of this Article.

#### **Article 10. Procedures for registration**

1) The Board shall proceed with the registration of an approved investment as soon as the foreign investor has effected the transfer of assets to Somalia listed in Article 2 paragraphs 1,2,3 and 4, in accordance with the terms and conditions contained in the "Certificate of Foreign Investment in an Approved Enterprise". To this effect The Board shall issue to the foreign investor a "Certificate of Foreign Investment Registered".

2) In the case of a transfer of assets listed under paragraphs 2, 3 and 4 of Article 2, The Board shall proceed with said registration as soon as it is satisfied that the value assigned by the foreign investor to the assets transferred, represents fair market value. The Board may ask the foreign investor to produce sufficient documentary evidence to demonstrate the fair market value of the assets transferred. In case of a transfer of assets as per paragraph 2 of Article 2 this value shall be determined in accordance with the prevailing import legislation.

3) The foreign investment shall be registered in convertible currency, as specified by the Central Bank of Somalia.

#### **Article 11. Reinvestment of profit**

1) "Profit" shall be understood as "net income" less income taxes payable, as applicable, in accordance with the prevailing legislation.

- 2) Profit originating from a duly registered foreign investment may be reinvested in the same enterprise that is the object of the investment, or in another enterprise in accordance with the provisions of this law.
- 3) When such profit is to be reinvested, The Board shall be notified to this effect by registered mail or directly, against issue of a delivery receipt.
- 4) The Board shall proceed to register profit reinvested in the convertible currency specified in the "Certificate of Foreign Investment Registered". The amount shall be determined in accordance with the prevailing laws and regulations governing foreign exchange.
- 5) To this effect, The Board shall issue a "Certificate of Reinvestment".
- 6) Subsequent rights to transfer profit and repatriate investment, as well as other benefits under this law, shall be determined on the basis of the original registered investment plus profit reinvested.
- 7) In the case of the reinvestment of profit in an enterprise, other than the enterprise that is the object of a duly registered foreign investment, the provisions of Article 8 and 9 of this law shall apply.

#### **Article 12. Transfer of profit**

- 1) Profit originating from a duly registered foreign investment, as per paragraph 1 of Article 11, may be freely transferred abroad.
- 2) In the case that only part of such profit is transferred abroad in one year, the foreign investor may transfer the remaining portion in any one of the following years.

#### **Article 13. Repatriation of foreign investment**

- 1) Duly registered foreign investment, defined as the original investment plus profit reinvested, shall be freely transferable abroad after five years from the date of the registration of the original investment, as specified in the "Certificate of Foreign Investment Registered".
- 2) The Board may reduce the said period, taking into consideration the priorities under the policy guidelines as per Article 7 of this law.
- 3) The transfer abroad shall be effected in the original currency specified in the "Certificate of Foreign Investment Registered". The funds destined for transfer shall originate from the liquidation of assets or the transfer of capital stock of the enterprise that is the object of the foreign investment, to other juridical or physical persons. The foreign investor is free to transfer abroad the physical assets that were the object of the investment in the event this alternative is opted for.
- 4) In cases where the amount realised from the liquidation or sale of capital stock exceeds the amount of the original investment plus registered reinvested profit, the foreign investor shall be free to transfer abroad the difference, in accordance with the prevailing tax legislation and foreign exchange regulations.

#### **Article 14. Alienation of foreign investment and notification requirements**

- 1) Alienation of foreign investment shall be effected either through the liquidation of assets, or through the transfer of capital stock of the enterprise that is the object of such investment, to juridical or physical persons.
- 2) In the event of alienation of a foreign investment to a resident Somali juridical or physical person, the transferee shall cease to enjoy the benefits derived from the status of a foreign investor.
- 3) Any alienation is subject to prior notification to the Board by both the transferor and the transferee. Such notification shall be accompanied by appropriate supporting documentation.
- 4) The alienation of a foreign investment to other foreign investors shall not require approval, as per Article 9 of this law, but only notification, as per paragraph 3 of this Article.

#### **Article 15. Investment incentives**

Foreign investment shall be eligible for incentives and facilities, in accordance with the legislation in force governing such incentives and facilities.

#### **Article 16. Limits to contracting debt from domestic sources**

- 1) Any enterprise that is the object of a duly registered foreign investment may contract debt from institutional domestic financial sources up to the limit established by the Central Bank of Somalia, in consultation with The Board.
- 2) The proceeds from such debt contracted from domestic sources shall be used strictly for the carrying out of the activities specified in the "Certificate of Foreign Investment Registered". The Board shall be authorised to verify the due application of the proceeds.

#### **Article 17. Facilities for foreign personnel**

- 1) The Board shall ensure that the immigration authorities facilitate the granting of the entry permits and residence visas to foreign personnel employed by an enterprise registered under this law, and to their families.
- 2) The Board shall also ensure that said personnel and their families be granted access, for reasons of work, to any part of Somalia.
- 3) Said personnel may freely transfer abroad up to fifty per cent of their salaries, wages, gratuities and allowances paid in Somalia by the enterprise employing them.
- 4) Any enterprise registered under this law shall employ qualified Somali nationals whenever they are available. Foreign investment shall seek to make a significant contribution toward the transfer of technology and managerial know-how, and the upgrading of professional skills available in Somalia.

#### **Article 18. Guarantees for foreign investment**

- 1) All enterprises that are the object of foreign investment shall receive treatment as favourable as that accorded to domestic enterprises.
- 2) The property of foreign investment, duly registered under this law, shall not be subject to expropriation measures, except in the case where public interest cannot be satisfied by measures other than expropriation.



3) In the case of such expropriation, prompt compensation shall be paid. Said compensation shall reflect the fair market value of the assets, as a going concern, and shall be freely transferable.

#### **Article 19. Settlement of disputes**

1) Disputes in respect of the implementation of this law shall be settled:

a. In a manner to be agreed upon with the investor, or in the absence of such agreement;

b. Within the framework of the agreements in force between the Somali Democratic Republic and the investor's home country, or, in the absence of (a) and (b);

c. Within the framework of the Convention for the Settlement of Investment Disputes between the State and the Nationals of Other Countries, to which Somalia has adhered by virtue of Law No. 11 of 1967, when such convention applies.

2) In the absence of agreements or convention as per paragraph 1 of this Article, disputes shall be settled through arbitration. An arbitration board shall be established, comprising one member on behalf of each disputing party and a third member acting as a chairman, to be jointly named by the said two members. In the case that the disputing parties fail to agree on the nomination of the chair-man within 30 days of the date of the nomination of the second member, the chairman shall be appointed by the President of the Supreme Court of Somalia. The Arbitration Board shall lay down its rules of procedure unrestricted by the rules contained in the civil and commercial code of procedures, save for the rules which relate to the basic guarantees and principles of litigation. The Board shall see to it that the disputes be expediently resolved. Awards shall be rendered by majority vote, and shall be final and binding on both parties and enforceable as any other final judgment. The Arbitration Board shall decide who shall bear the arbitration costs.

#### **Article 20. Benefits to existing foreign investment**

1) Existing foreign investment in Somalia, duly registered under previous laws concerning foreign investment, shall continue to enjoy the rights and obligations conferred to it by said laws.

2) Such foreign investment shall be entitled to benefit, at the foreign investor's option, from the provisions of this new law, provided the registration requirements and other provisions of the previous laws have been complied with, and satisfactory documentary evidence is produced to this effect by the foreign investor. In such case, the foreign investor may apply to The Board for registra-tion under this law within hundred eighty (180) days as of the date of its promul-gation.

#### **Article 21. Foreign investment not subject to this law**

The provisions of this law shall not apply to foreign investment in mineral research and mining activities, including those related to the petroleum industry and nuclear power. Such investment shall be subject to the Mining Code and the Mining Regula-tions, and to agreements reached, hereunder, between the Government of Somalia and the interested party.

#### **Article 22. Obligations to report transactions concerning foreign investment**

Banks, public notaries and entities involved with foreign investment shall notify The Board of the particulars of any important pertinent acts and transactions within thirty (30) days from the date of completion of such acts or transactions. This refers, inter alia, to acts or transactions concerning incorporation, contracting of debt from institutional domestic financial sources, transfer of profit and repatriation of investment.

**Article 23. Non-compliance with the provisions of this law**

Failure to comply with the provisions of this law, on the part of the foreign investor, shall result in the forfeiture of benefits provided hereunder.

**Article 24. Enjoyment of benefits under subsequent more favourable provisions**

No provisions of this law shall preclude the enjoyment by the foreign investor of benefits under more favourable provisions which might be subsequently promulgated.

**Article 25. Regulations**

The President of the Somali Democratic Republic, at the proposal of The Board, and having heard the Minister of National Planning and the Council of Ministers, may issue regulations for the proper implementation of this law.

**Article 26. Repeal**

Any law incompatible with the provisions of this law is hereby repealed.

**Article 27. Entry into force**

This law shall come into force as of the date of its publication in the Official Bulletin of the Somali Democratic Republic.

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