

MALAWI GOVERNMENT

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Act

No. 11 of 2012

I assent

MRS. JOYCE BANDA

PRESIDENT

10th July, 2012

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An Act to make provision for the promotion of investment and exports, to provide a framework for the Malawi Investment and Trade Centre, and to provide for matters connected therewith or incidental thereto

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

Short title and
commence-
ment

1. This Act may be cited as the Investment and Export Promotion Act, 2012, and shall come into force on such date as the Minister may appoint by notice published in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires—

“Board” means the Board of Directors of the Company;

“Business Guide” means the publication prepared as a supplement to the Statement of Investment and Export Policies and as revised from time to time;

“Chief Executive Officer” means the Chief Executive Officer of the Company;

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“Company” means the Malawi Investment and Trade Centre Limited incorporated under the Companies Act on 2nd December, 2010;

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

“indirect investment” means any act or contract whereby an investor makes a contribution, whether tangible or intangible, to an enterprise in Malawi 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;

“investor” includes an existing or potential investor;

"National Export Policy" means the policy of the Government, as from time to time revised, containing the principles of the Government aimed at promoting and assisting export in Malawi;

"National Investment Policy" means the policy of the Government, as from time to time revised, containing the principles of the Government aimed at promoting and assisting investment and export in Malawi;

"Policies" means the National Investment Policy and the National Export Policy; and

"Portfolio investment" means an investment in shares or other securities traded on the Malawi Stock Exchange.

PART II—THE BUSINESS GUIDE AND NATIONAL POLICIES

3. Every public officer and any authority in Malawi exercising or performing powers, duties or functions in connection with, or concerning, the commitment of the Government in promoting and assisting investment in Malawi as declared in the Policies and in the Business Guide shall, in the exercise of his or its powers or the performance of his or its duties or functions, consider and treat the Policies and the Business Guide as ranking paramount in the business of the Government and shall further consider it to be his or its paramount duty to act with all due diligence and dispatch in taking such action as is required or necessary to give effect to the Policies and the Business Guide.

Policies and
Business
Guide to rank
paramount

4.—(1) The Policies and the Business Guide shall be published, respectively, by the Minister and the Company for general distribution and copies of the publications and revision thereof shall be made available without a charge to investors in and outside Malawi.

Publication
and revision
of the Policies
and the
Business
Guide

(2) Following any change in the Policies, or following any legislative or statutory action or other action having similar effect taken by the Government in pursuance or in the implementation of the Policies, the Minister shall, by order published in the *Gazette*, revise the Policies accordingly.

PART III—INVESTMENT AREAS AND INVESTMENT CERTIFICATES AND PERMITS

5. For purposes of this Act, the Company shall accord priority to investment and export promotion in the following sectors—

Priority areas
for investment

(a) agriculture;

(b) agro-processing;

(c) fisheries;

- (d) forestry;
- (e) manufacturing;
- (f) mining;
- (g) tourism; and
- (h) such other productive sectors as the Company may, from time to time, determine with the approval of the Minister.

Application
for investment
certificate

6.—(1) Where a person intends to invest in a qualifying activity and is applying for any investment incentive, he shall apply for an investment certificate.

(2) Every application for an investment certificate under subsection (1) shall be made to the Chief Executive Officer.

(3) An application for an investment certificate shall be in such form and in such a manner as may be prescribed and shall contain such particulars as may be prescribed, including—

- (a) the full names and address of the applicant;
- (b) the nature of the business, its capital structure, employment levels and structure, a feasibility study report, project proposal and business plan, as the case may be;
- (c) the particulars of any investment incentive; and
- (d) such other information, documents or particulars, as may be specified in the form of application.

(4) Where the Chief Executive Officer receives an application under subsection (2), he shall promptly—

- (a) inform the Board about the application with his observations and recommendations on the application; and
- (b) forward a copy of the application to the relevant Ministry and keep the Ministry informed of any matter concerning the consideration and outcome of the application.

Consideration
of investment
certificate by
the Board

7. The Board may, in relation to an application for an investment certificate—

- (a) approve or reject the application;
- (b) refer the application for consideration by a technical committee before taking a decision; or
- (c) require the applicant to give such further information as may be necessary for the determination of the application.

Issuance of
investment
certificate

8.—(1) Where the Board—

- (a) approves an application, it shall issue to the applicant an investment certificate on such terms and conditions as it thinks fit;

(b) rejects an application, it shall, in writing, inform the applicant of the reasons for the rejection.

(2) Subject to the other provisions of this section, an investment certificate issued under subsection (1) (a)—

(a) shall be valid for such period as may be specified in the certificate; and

(b) shall include—

(i) the name and address of the applicant;

(ii) the nature of the business activities;

(iii) the terms and conditions attached to the certificate; and

(c) may specify any investment incentive.

(3) The investment certificate shall be in such form, and shall be issued in such manner, and upon payment of such fees, as may be prescribed.

(4) Where a person to whom an investment certificate has been issued—

(a) changes his name or changes the address specified in his certificate; or

(b) intends to change the nature of the business activities specified in his certificate,

he shall immediately make written application to the Company for an amendment of his certificate, specifying the reasons for the change and giving such further information or particulars as may be required by the Company.

(5) The application under subsection (4) shall be processed in the same manner as is provided for under sections 8 and 9 and, upon its approval under this section, the person shall be issued with an amended certificate or a fresh certificate and the first one shall be revoked.

9.—(1) Where the Board is satisfied that a holder of an investment certificate—

(a) is acting or has acted in breach of any terms and conditions of the certificate;

(b) has acted in contravention of this Act or any regulations made hereunder;

(c) has contravened any written law under which a relevant permit has been issued; or

Revocation of
investment
certificate

(d) has acted in such a manner as to tarnish the good repute of Malawi as an attractive base for investments,

the Board may, by written notice, require the person to show cause, within thirty days of the date of service of the notice, why the investment certificate or other relevant permit should not be revoked.

(2) Without prejudice to subsection (1), where the Board is satisfied that, having regard to all the circumstances of the case, it is expedient to do so, it shall revoke the investment certificate and, notwithstanding any other written law, any relevant permit issued by a public sector agency shall lapse.

One-stop
service for
relevant
permits

10.—(1) Where a company or an investor—

(a) applies for an investment certificate; or

(b) intends to invest in a qualifying activity but is not applying for any investment incentive,
the company or investor may submit the application for any relevant permit to the Chief Executive Officer.

(2) Where an application for any relevant permit is submitted under subsection (1), the Company shall act as a one-stop service to ensure that the relevant permit is obtained expeditiously.

Processing
relevant
permits

11.—(1) Where an application for any relevant permit is received under section 10, the Chief Executive Officer shall, as soon as practicable, transmit the application to the public sector agency concerned.

(2) Notwithstanding any other written law, every public sector agency shall—

(a) attend promptly to any application for a relevant permit;

(b) process the application—

(i) where an Environmental Impact Assessment licence is required, within a period not exceeding eight weeks of the effective date of receipt of the application; or

(ii) in any other case, within a period not exceeding three weeks of the effective date of receipt of the application.

(3) For the purposes of subsection (2) (b), "effective date" means the date on which all the information, documents or particulars required in relation to an application for a relevant permit are received by the public sector agency.

(4) Where a public sector agency has reason to believe that an application for a permit cannot be processed within the time specified in subsection (2) (b), it shall as soon as reasonably

practicable but not later than one week before the expiry of the time specified in that subsection, submit a detailed report to the Company setting out the reasons for which the application cannot be processed within the specified time.

(5) Where an application for relevant permit is rejected by a public sector agency, it shall as soon as practicable notify in writing the Company, stating the reasons for the rejection.

(6) Where an application for any relevant permit has been transmitted by the Chief Executive Officer to a public sector agency, the public sector agency shall forward the relevant permit to the Chief Executive Officer for transmission to the applicant.

PART IV—GENERAL PROVISIONS

12. Nothing contained in this Act shall be construed as exempting any investor or exporter, any public officer, any authority or any other person from complying with the requirements of any written law.

Compliance with the requirements of written laws

13. The Minister may, on the advice of the Company, in writing, request the Registrar General, the Chief Immigration Officer, and the head of any Government Agency or Department to deploy and station at the offices of the Company such public officers as may be specified therein and the said heads of Government Agencies and Departments shall comply with the request.

Stationing of public officers at offices of the Company

14. The Minister may make regulations for the better carrying into effect the provisions of this Act.

Regulations

15.—(1) All property, funds and assets, except any such property, funds and assets as the Minister may determine by notice published in the *Gazette*, which, immediately before the commencement of this Act were vested in the Malawi Investment Promotion Agency established under the Investment Promotion Act repealed by section 17 (hereinafter referred to as the “Agency”), and the Export Promotion Council established under the Export Promotion Council Act repealed by section 17 (hereinafter referred to as “Council”), for the use of the Agency and the Council, respectively, shall, on the commencement of this Act, and without further assurance, be deemed to have vested in or to have been acquired by or on behalf of the Company, subject to all interests, liabilities, charges, obligations and trusts affecting such property, funds and assets.

Transfer of assets, liabilities, etc.

Cap. 39:05

Cap. 39:03

(2) Except as otherwise provided in subsection (1), in relation to property, funds and assets, all debts, obligations, liabilities, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on

behalf of the Agency and the Council shall, on the commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Company and shall become enforceable by or against the Company to the same extent as they were enforceable by or against the Agency and the Council.

Transfer of
employees

16. Unless the Board otherwise determines, all persons who, immediately before the commencement of this Act, were employed by the Agency and the Council, respectively, shall, on the commencement of this Act, be deemed to have been transferred to the employment of the Company on terms and conditions of service not less favourable than the terms and conditions of service with the Agency and the Council, respectively, and, for the purpose of determining their rights thereunder, their services shall be regarded as being continuous from the time they were appointed by the Agency and the Council, respectively.

Repeal and
savings

Cap. 39:03

Cap. 39:05

Cap. 39:03

Cap. 39:05

17.—(1) The Export Promotion Council Act and the Investment Promotion Act are repealed.

(2) Any subsidiary legislation made under the Export Promotion Council Act and Investment Promotion Act repealed by subsection (1), in force immediately before the commencement of this Act—

(a) shall remain in force unless in conflict with this Act and be deemed to be subsidiary legislation made under this Act; and

(b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

Passed in Parliament this thirty-first day of May, two thousand and twelve.

H. H. NJOLOMOLE

for: Clerk of Parliament