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BILLS SUPPLEMENT No. 5 28th April, 2017.

BILLS SUPPLEMENT

to the Uganda Gazette No. 24, Volume CX, dated 28th April, 2017.

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Bill No. 9 *Investment Code Bill* **2017**

THE INVESTMENT CODE BILL, 2017

MEMORANDUM

1. POLICY AND PRINCIPLES

The object of this Bill is to revise, modernize and replace the Investment Code Act and *inter alia* to make it conform with the Constitution; to continue in existence the Uganda Investment Authority established under that Act; to spell out the objects of the Authority; to redefine the functions of the Authority; to modify the composition of the Board; to provide for the registration of investors and issuing to the investors of investment certificates; to make the Authority a one stop centre for coordination, promotion, facilitation and monitoring of investment and investors; to incorporate provisions relating to finance, accounting and auditing; to provide for the submission of annual reports by the Authority and to provide for other related matters.

2. DEFECTS IN THE EXISTING LAW

The current law on Investment in Uganda is the Investment Code Act Cap. 92, which commenced on 25th January 1991. Due to the passage of time, some aspects of the Investment Code Act have become outdated, especially in the light of the present-day Government policies, emerging international best practices and the legal environment.

In its current form, the Investment Code Act impedes investment as a result of the inadequate protection and facilitation that investors are given. There is, therefore, the need for radical changes in the law to bring it in line with current Government policy.

3. The Board

The governing Board has been found to be unwieldy and it is felt that serious advantages can be derived from the re-composition of the Board as a trim and effective Board to undertake the revised functions of the Authority.

4. Financial provisions

Currently, the Uganda Investment Authority is a statutory body. However, it is not self-accounting and does not run its own vote. This is a major constraint to its operations. Similar statutory bodies are self-accounting and run their own vote. The Uganda Investment Authority only operates as a department under the Ministry responsible for finance.

Furthermore, the Investment Code Act, Cap 92 does not contain any financial provisions.

5. REMEDIES PROPOSED TO DEAL WITH DEFECTS IN THE EXISTING LAW.

It is, therefore, proposed to radically reform the Investment Code Act, Cap 92 and to revise the provisions relating to the Authority's objects and the functions of the Board of the Authority. It is intended to limit the functions of the Authority to coordination, promotion, facilitation, registration and monitoring of investment and investors both foreign and domestic.

6. It is the intention of Government that the tax incentives in respect of investors should not be in the Investment Code Act itself but should remain in the respective tax legislation. It is also proposed that the membership of the Board should be reduced from the present thirteen members to nine members.

7. It is proposed that the Code should be amended to include financial provisions for the Authority. The funds of the Authority will include money appropriated by Parliament; fees and charges levied for the supply of services offered by the Authority; and any other monies received by the Authority.

However, current Government policy is focused on economic liberalization and provision of an enabling environment for private sector investment and growth. It is therefore imperative that this change of direction from control and regulation to promotion and facilitation be reflected in the investment law.

8. Over the years various amendments have been made to the Investment Code Act, but there have been no serious attempt to reform the law to be compatible with emerging international best practices. Despite the amendments referred to above there are provisions of the Investment Code Act which have either been difficult to implement, are discriminatory or are inconsistent with other laws, current Government policies and international commitments.

9. The following are some of the issues addressed in the Bill—

(a) consolidation of all the amendments to the Investment Code Act;

(b) repeal of some sections of the Investment Code Act are redundant, difficult to implement or have been overtaken by other legislation;

(c) harmonisation of some sections of the Investment Code Act that contradict the Constitution and other legislation;

(d) re-orientation of the investment law and practices from being regulatory and control based to promotion and facilitation;

(e) incorporation of new policies on the promotion of investment such as regional integration issues, and similar matters;

(f) repeal of discriminatory provisions between domestic and foreign investors;

(g) incorporation of 'best practice' measures adopted at the regional and international levels.

Therefore, in view of the above issues identified, the Bill seeks to amend the law on investment and harmonize it with the commitments at regional and international level. These issues, if addressed and incorporated in the new investment law will empower Uganda Investment Authority to use the law as a promotional tool and to help it to effectively implement its mandate.

10. PROVISIONS OF THE BILL

PART I – INTERPRETATION

Part I of the Bill provides for definition and interpretation of words and phrases used in the Bill.

PART II – UGANDA INVESTMENT AUTHORITY

Part II of the Bill in clauses 2 and 3 provide for continuation of the existing Investment Authority. Clause 3 deals with the objects of the Authority and provides inter alia that the Authority shall be the primary agency of Government responsible for coordinating, promoting, registering, facilitating and monitoring of investment in Uganda and advising Government on investment policy and related matters. The Bill is aimed at promoting both foreign and domestic investors.

Clauses 4, 5 and 6 further provide for the institutional framework of the Authority, which includes the Board, committees and a Secretariat of the Authority. The Secretariat shall be under the supervision of the Board and the staff of the Authority shall be public officers.

Clause 8 provides for functions and powers of the Authority for the attainment of the objects of the Authority. The main functions of the Authority are coordination, promotion, facilitation, registration and monitoring of investment and investors.

Clause 9 provides for cooperation with other agencies. There are government ministries, departments and agencies that are responsible for granting approvals to investors, therefore it is important that they cooperate with the Authority to enable it to achieve its mandate.

Clause 10 reflects the new Government policy that the incentives to investors such as exemption from taxes etc are not to be in the Investment Code itself but are to be contained in the respective tax legislation. Clause 11 provides for the meetings of the Board.

PART III – PROCEDURE FOR INVESTMENT

Part III provides for the procedures for investments.

Clause 12 provides for minimum investment capital requirements for investment registration. Clause 13 provides for investment registration by Uganda Investment Authority for the purpose of being facilitated and promoted under the Act.

Clause 14 provides a foreign investor with the opportunities of investing and participation in the operation of a business enterprise in Uganda after registration with the Authority.

Clause 15 provides for investment in scarce resources, which may be permitted in accordance with the relevant laws of Uganda.

Clauses 16, 17 and 18 provides for applications, issue and revocation of investment certificates, respectively.

PART IV – PROTECTION OF INVESTMENTS

Part IV of the Bill in clauses 19 and 20 provides for the protection of investments such as protection in case of compulsory acquisition of a business enterprise. The Part also provides for the settlement of investment disputes.

PART V – FINANCE

Part V comprising clauses 21 – 29 provides for financial matters relating to the Authority including funds, accounting, audit, bank accounts, borrowing powers and financial year.

PART VI – MISCELLANEOUS

Part VI comprising clauses 30 – 36 deals with miscellaneous matters such as disclosure of information (clause 30), annual report (clause 31), service of documents (clause 32), regulations (clause 33), offences and penalties (clause 34), power of Minister to amend Schedule 1 (clause 35) and repeal, savings and transitional provisions (clause 36). Under clause 36 investment licences issued under the existing Investment Code Act, Cap 92 will continue as if they were investment certificates issued under the new Act with necessary modifications to give effect to the new Act.

11. REPEAL OF REDUNDANT PROVISIONS

Having regard to the reform of the role of the Investment Code Act and the functions of the Authority under it, it has become necessary to repeal various sections of Cap 92 relating to the former mode of operation of the Authority under the Code. The provisions which have thus been omitted from the revised Bill are—

(a) priority areas (section13);

(b) exemption of investors from import duties and sales tax (section 21);

(c) enterprises which quality for incentives (section 22);

(d) certificates of incentives (section 23);

(e) first arrival privileges (section 24);

(f) additional incentives for certain exporters (section 25);

(g) obtaining credit from domestic sources by foreign investors (section 26);

(h) registration of agreements for the transfer of technology or expertise (section 29);

(i) conditions in agreements for the transfer of foreign technology or expertise (section 30);

(j) externalisation of approval to externalise funds (section 31);

(k) effect of certificate of approval to externalise funds (section 32).

DAVID BAHATI,
Minister of State for Finance, Planning and Economic Development (Planning) also, holding the portfolio for the Minister of Finance, Planning and Economic Development.

THE INVESTMENT CODE BILL, 2017

ARRANGEMENT OF CLAUSES

Clause

PART I—INTERPRETATION.

1. Interpretation.

PART II—UGANDA INVESTMENT AUTHORITY

2. Continuation of Uganda Investment Authority.
3. Objects of the Authority.
4. The Board.
5. Committees of the Board.
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8. Functions and powers of the Authority.
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16. Application for investment certificate.
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PART IV—PROTECTION OF INVESTMENTS.

19. Protection in case of compulsory acquisition.

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PART V—FINANCES

21. Funds and expenses of the Authority.
22. Annual budget of the Authority.
23. Investment of surplus funds.
24. Financial year of the Authority.
25. Accounts and audits of the Authority.
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28. Duty to operate on sound financial principles.
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PART VI—MISCELLANEOUS.

30. Disclosure of information.
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32. Service of documents.
33. Regulations.
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35. Power of Minister to amend Schedule 1.
36. Repeal, savings and transitional provisions.

SCHEDULES

SCHEDULE 1 CURRENCY POINT

SCHEDULE 2 MEETINGS OF THE BOARD

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A Bill for an Act

ENTITLED

THE INVESTMENT CODE ACT, 2017

An Act to revise, modernise and replace the Investment Code Act to make it conform with the Constitution; to continue in existence the Uganda Investment Authority established under that Act; to set out the objects of the Authority; to redefine the functions of the Authority; to modify the composition of the Board; to provide for the registration of investors and investment certificates; to make the Authority a one stop centre for coordination, promotion, facilitation and monitoring of investment and investors;; to provide for finances, accounting and auditing; to provide for the submission of annual reports by the Authority and for other related matters.

BE IT ENACTED by Parliament as follows:

PART I—INTERPRETATION

1. Interpretation.

In this Code, unless the context otherwise requires—

"Authority" means the Uganda Investment Authority continued in existence under section 2;

"Board" means the Board of the Authority established under section 4;

"business enterprise" includes a manufacturing enterprise, a tourist enterprise, a commercial or agricultural venture and a service enterprise;

"currency point" has the value assigned to it in Schedule 1;

"Director General" means the Director General appointed under section 6;

"facilitation" means rendering support services and approval necessary for the establishment of a business enterprise;

"foreign capital" means convertible currency, plant, machinery, equipment, spare parts, intellectual property and other business assets, other than goodwill, that enter Uganda with no disbursement of Uganda's foreign capital intended for the production of goods and services related to a business enterprise;

"foreign investor" means—

(a) a natural person, who is not a citizen of an East African Community Partner State;

(b) a company incorporated under the laws of any country other than that of an East African Community Partner State;

(c) 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

(d) a partnership in which the controlling interest is owned by a person who is not a citizen of an East African Community Partner State;

"investment" means the creation or acquisition of business assets and services with a view to generate future higher value and includes the expansion, restructuring or rehabilitation of an existing business enterprise; and may be categorized as follows—

(a) micro enterprise; where an enterprise employs up to four people, with annual sales turnover or total assets not exceeding twelve million shillings;

(b) small enterprise; where an enterprise employs five to fifty people, with annual sales turnover or total assets not exceeding three hundred and sixty million shillings;

(c) medium enterprise; where an enterprise employs fifty one to one hundred people, with annual sales turnover or total assets of over three hundred and sixty million shillings and not exceeding thirty billion shillings;

(d) large enterprise; where an enterprise employs over one hundred people, with annual sales turnover or total assets exceeding thirty billion shillings;

"investor" includes a foreign investor and a domestic investor;

"domestic" means a citizen of the East African Community Partner State;

"domestic investor" means—

(a) a natural person, who is a citizen of an East African Community Partner State;

(b) a company incorporated under the laws of an East African Community Partner State in which the majority of the shares are held by a person who is a citizen of an East African Community Partner State; or

(c) a partnership in which the controlling interest is owned by a person who is a citizen of an East African Community Partner State;

"manufacture" means the transforming on a commercial scale of input materials into finished or semi-finished products, and includes the assembling of inputs into finished or semi-finished products;

"member" means a member of the Board;

"Minister" means the Minister responsible for finance, planning and economic development;

"one stop centre" means a physical place or electronic platform for purposes of coordination, promotion, facilitation and monitoring of investments;

"portfolio investment" means acquisition of an equity participation in a business enterprise traded on a recognised stock exchange;

"public sector agency" includes a ministry or government department, local authority or statutory body;

"registered business enterprise" means a business enterprise in respect of which an investment certificate has been issued under section 13;

"scarce resources" means non-renewable resources or resources renewable over a long time and whose utilisation is restricted or controlled; and includes investments in mining, petroleum exploration and production, fishing, forestry and tourism such as wildlife and concessions in national parks;

"secondary permit" includes a licence, entry permit, approval or other authorisation required from a public sector agency under any law in respect of any business activity.

PART II—UGANDA INVESTMENT AUTHORITY

2. Continuation of Uganda Investment Authority.

(1) The body known as the Uganda Investment Authority and existing immediately before the commencement of this Act under the Investment Code Act shall continue in existence by the same name and shall be subject to the provisions of this Act.

(2) The Authority shall be an agency of the Government and shall be under the general supervision of the Minister.

(3) The Authority shall be a body corporate with perpetual succession and a common seal and, in its own name, capable of—

(a) acquiring and holding property;

(b) suing and being sued; and

(c) doing and suffering all acts and things as bodies corporate may lawfully do or suffer.

3. Objects of the Authority.

(1) The Authority shall be the primary agency of Government for the purpose of coordinating, encouraging, promoting and facilitating investment in Uganda; and advising Government on investment policy and related matters.

(2) The objects of the Authority are—

(a) to promote, attract, advocate, facilitate, register and monitor the development of all forms of investment and business activities in Uganda;

(b) to promote and encourage investment in new technologies, skills upgrading, automation, training, research and product development;

(c) to establish and manage a one stop centre; and

(d) to do any other act conducive or incidental to the foregoing.

4. The Board.

(1) The governing body of the Authority shall be a Board.

(2) The Board shall be responsible for the attainment of the objects of the Authority and the discharge of the business and functions of the Authority.

(3) The Board shall consist of the following—

(a) five persons appointed by the Minister from the private sector with sound knowledge and practical experience in business or investment matters; one of whom shall be the chairperson;

(b) the Permanent Secretary of the Ministry responsible for finance or his or her nominee not below the rank of Commissioner;

(c) the Permanent Secretary of the Ministry responsible for trade, or his or her nominee, not below the rank of Commissioner;

(d) the Permanent Secretary of the Ministry responsible for lands, or his or her nominee, not below the rank of Commissioner; and

(e) the Permanent Secretary of the Ministry responsible for internal affairs, or his or her nominee, not below the rank of Commissioner.

(4) The members of the Board shall hold office for not more than three years and shall be eligible for re-appointment.

(5) A member appointed by the Minister may, in writing addressed to the Minister, resign his or her office or may be removed from office by the Minister for just cause.

(6) A member of the Board shall be paid such allowances, as the Minister shall determine.

5. Committees of the Board.

(1) The Board may, in the discharge of the objects and functions of the Authority, appoint committees of the Board comprising members and other competent persons and may assign to them such matters concerning the functions of the Board as it considers fit and with such restrictions as the Board may specify.

(2) The Board may dissolve any committee appointed under subsection (1).

(3) Subject to any direction given by the Board, a committee may regulate its own procedure.

6. Secretariat.

(1) The Authority shall have a Secretariat consisting of a Director General and other officers and staff of the Authority.

(2) There shall be appointed to the service of the Authority a Director General, other officers and staff as may be required for the performance of the functions of the Secretariat of the Authority, and all persons appointed under this section shall hold public office.

(3) The Director General shall be appointed by the Minister on the recommendation of the Board.

(4) The Director General shall hold office for five years and is eligible for reappointment for one further term.

(5) The Director General shall, subject to the directions of the Board on matters of policy, attend Board meetings and be responsible for the day to day carrying out of the decisions of the Board, the supervision of the Secretariat and for the control of the staff of the Authority.

(6) The Authority shall have a secretary to be appointed by the Board on such terms and conditions as may be specified in the instrument of appointment.

(7) The secretary shall—

(a) act as secretary to the Board and shall record the minutes of all proceedings of the Board;

(b) keep the minutes and other records of the Board;

(c) have custody of the seal of the Authority; and

(d) carry out such other functions as the Board or the Director General may assign to him or her.

(8) The secretary shall, in the performance of his or her duties, be responsible to the Director General.

(9) There shall be seconded to the Secretariat for servicing the Authority and the carrying out of the Authority's functions such officers of other agencies of the Government as are necessary for the efficient discharge of the functions of the Authority.

7. Remuneration of Director General and staff of the Authority.

The Director General, the officers and the other staff of the Authority shall be paid such remuneration or allowances as the Board may, with the approval of the Minister, determine.

8. Functions and powers of the Authority.

(1) For the attainment of the objects of the Authority, the Authority shall be a one stop centre with the following functions—

(a) to promote, attract, facilitate, register and monitor all forms of investments and business activities in Uganda;

(b) to receive all applications for investment certificates for investors intending to establish or set up business enterprises in Uganda under this Code;

(c) to facilitate investors to secure licences, authorisations, approvals and permits required to enable any certificates granted by the Authority to have full effect;

(d) to undertake research and report on investment activities in Uganda;

(e) to acquire, develop and manage serviced land for investment;

(f) to provide information on matters relating to investment activities in Uganda;

(g) to assist potential investors in identifying and establishing investment projects in Uganda;

(h) to propose and advocate policies and measures that will enhance investment in Uganda; and

(i) to do all other acts as are required or authorised to be done under this Code or are necessary, conducive or incidental to the performance of the functions of the Authority.

(2) The Authority shall have power to monitor the processing of investment approvals that are by law the mandate of other government agencies.

(3) The public service agency to which an investor in possession of an investment certificate issued by the Authority applies for a secondary permit shall give priority to the application and shall issue the necessary licence, permit or approval within the shortest time possible.

9. Cooperation with other agencies.

(1) Government ministries, departments and agencies performing functions relating to registration, licensing and approval of establishing an investment in Uganda shall cooperate with the Authority.

(2) The government ministries, departments and agencies referred to under subsection (1) include-

(a) the Uganda Registration Services Bureau;

(b) the Uganda Revenue Authority;

(c) the National Environment Management Authority;

(d) the Uganda National Bureau of Standards;

(e) the Directorate of Citizenship and Immigration;

(f) the Directorate of Lands Registration;

(g) the Kampala Capital City Authority and local governments;

(h) the National Identification Registration Authority;

(i) the Uganda Free Zones Authority;

(j) the National Social Security Fund; and

(k) any other ministry, department or agency specified by the Minister by Notice in the Gazette.

(3) The government ministries, departments and agencies referred to in subsection (2) shall, for purposes of this section, sign agreements with the Authority that will define the service commitments and maximum delivery time lines for the services they offer to investors.

10. Incentives for investors.

For the avoidance of doubt any tax exemptions or other incentives or benefits to be granted to investors shall be as prescribed by or under the relevant Acts of Parliament.

11. Meetings of the Board.

(1) Schedule 2 shall have effect in relation to the meetings of the Board.

(2) The Minister may, by statutory instrument, amend Schedule 2.

PART III—PROCEDURE FOR INVESTMENT

12. Minimum investment capital requirements for investment registration.

(1) The minimum investment value proposed by a domestic investor to qualify for registration and issuance of an investment licence by the Authority, under this Act, shall be not less than fifty thousand United States Dollars or the equivalent in shillings.

(2) The minimum investment value proposed by a foreign investor to qualify for registration and issuance of an investment licence by the Authority, under this Act, shall be not less than two hundred and fifty thousand United States Dollars or the equivalent in shillings.

(3) Notwithstanding subsections (1) and (2), the minimum threshold for portfolio investment for domestic and foreign investors shall be governed by the relevant laws of Uganda.

(4) The Minister may, by statutory instrument, vary the minimum investment value in subsections (1) and (2).

13. Investment registration.

(1) An investor who satisfies the minimum investment capital, shall apply to the Authority for registration for the purposes of being facilitated and promoted under this Act.

(2) The Authority shall issue to an investor an investment certificate in respect of a registration made under subsection (1).

14. Foreign investment.

(1) A foreign investor shall not invest and participate in the operation of any investment activity in Uganda before registration with the Authority.

(2) The Minister may, by statutory instrument and with the approval of the Cabinet, specify an investment activity that may not be available for participation by foreign investors.

(3) A person who contravenes subsection (1), commits an offence and is liable, on conviction, to a fine not exceeding one thousand currency points or imprisonment not exceeding four years or both.

15. Investment in scarce resources.

(1) Investment in scarce resources may be permitted in accordance with the relevant laws of Uganda for the time being in force relating to such resources.

(2) Where only a limited number of investors can be allowed to exploit a scarce resource, the Authority shall work closely with the government line ministries and relevant organisations to ascertain—

(a) the location and nature of the opportunities;

(b) the number of business enterprises which can be registered to exploit the scarce resource in an optimal manner;

(c) the conditions to be imposed on an investor who is operating at a given location; including the protection of the environment; and

(d) the mechanisms to be used by the Authority in selecting the investor for each available opportunity.

16. Application for investment certificate.

(1) An application for an investment certificate under section 13 shall be made to the Secretariat.

(2) An application for an investment certificate shall be in a form prescribed by the Authority and shall include—

(a) the full name and address of the applicant;

(b) the shareholders and nationality of the business enterprise;

(c) the nature of the business, its capital structure, business plan and the amount to be invested; and

(d) such other information, documents or particulars as may be specified in the application form.

17. Issue of investment certificate.

(1) The Authority shall, if the application made under section 16 satisfies the requirements of this Code, issue an investment certificate within seven days after receipt of the application, on such terms and conditions as it deems fit.

(2) Where the Authority refuses to issue an investment certificate, the Authority shall notify the applicant in writing of the refusal and of the reasons for the refusal.

(3) Subject to this section, an investment certificate—

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

(b) shall include the following—

(i) name and address of the business enterprise;

(ii) shareholders and nationality of the business enterprise;

(iii) the nature of the business activity;

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

(v) the period within which the investment shall commence.

(4) Where the investment to which an investment certificate relates is not commenced within the period specified under subsection (3)(b)(v), the investment certificate shall lapse.

(5) The investment certificate shall be in such form, and shall be issued in such manner, as may be prescribed by regulations.

(6) Where the investor to whom an investment certificate is issued—

(a) changes the name or the address;

(b) changes the nature of the business activity specified in the certificate; or

(c) changes the shareholding of the investment,

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

(7) The application for change shall be processed in the same manner as provided for under section 16.

18. Revocation of investment certificate.

(1) Where the Authority is satisfied that an investor to whom an investment certificate is issued—

(a) is acting or has acted in breach of any term or condition of the certificate;

(b) has acted in contravention of this Act or any regulation made under this Act;

(c) has contravened any law under which a relevant permit or licence is being issued; or

(d) has acted in such a way as to tarnish the good repute of Uganda as an attractive base for investment,

the Authority may, by written notice, require the person to show cause, within thirty days after the date of service of the notice, why the investment certificate should not be revoked.

(2) Where the Authority is satisfied that, having regard to all the circumstances of the case, it is expedient to do so, it shall revoke the investment certificate.

PART IV—PROTECTION OF INVESTMENTS

19. Protection in case of compulsory acquisition.

(1) The registered business enterprise of an investor or an interest or right over any property or undertaking forming part of that enterprise, shall not be compulsorily taken possession of or acquired except in accordance with the Constitution.

(2) Where a registered business enterprise of an investor or an interest or right over property forming part of that enterprise is compulsorily taken possession of or acquired, the following provisions shall apply—

(a) prompt payment of fair and adequate compensation, shall be done prior to the taking of possession of the property; and

(b) a person who has a right or interest over the property has a right of access to a court of law in respect of any matter arising out of the taking of possession of the property.

(3) Compensation paid out to the investor under subsection (2) shall be freely transferable out of Uganda and shall not be subject to exchange control restrictions under the Foreign Exchange Act, 2004.

(4) Subsections (2) and (3) shall not be taken to exempt an investor from the application of applicable laws, rules and policies governing investors necessary for the reasonable control of foreign investments.

20. Settlement of disputes.

(1) Where a dispute arises between an investor and the Authority or the Government in respect of a registered business enterprise, all efforts shall be made to settle the dispute through negotiations for an amicable settlement in accordance with the Arbitration and Conciliation Act.

(2) A dispute between an investor and the Authority or the Government in respect of a registered business enterprise which is not settled through negotiations may be submitted to arbitration in accordance with the following methods as may be mutually agreed by the parties—

(a) in accordance with the procedures for arbitration provided under the Arbitration and Conciliation Act;

(b) in accordance with the rules of procedure for arbitration of the International Centre for the Settlement of Investment Disputes; or

(c) 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.

(3) The investment certificate in respect of a registered business enterprise may specify the particular mode of arbitration to be resorted to in the case of a dispute relating to that enterprise, and that specification shall constitute the consent of the Government, the Authority or their respective agents and the investor to submit to that mode and forum of arbitration.

(4) Where the parties to a dispute do not agree on the mode or forum for arbitration, the party aggrieved by compulsory acquisition or possession or the amount of compensation payable, or in respect of any other matter relating to the business enterprise may apply to the High Court for the determination of any of the following—

(a) his or her interest or right;

(b) the legality of the taking of the possession or acquisition of the property, interest or right;

(c) the amount of compensation to which he or she is entitled and the prompt payment of that compensation;

(d) any other matter in dispute relating to the business enterprise.

PART V—FINANCES

21. Funds and expenses of the Authority.
The funds of the Authority shall consist of—

(a) monies appropriated by Parliament for the purposes of the Authority;

(b) monies accruing to the Authority including fees or charges received by the Authority in the carrying out of its functions;

(c) loans, grants, gifts or donations to the Authority with the approval of the Minister;

(d) any revenue derived from the sale of property, movable or immovable by or on behalf of the Authority;

(e) interest on earnings;

(f) money borrowed by the Authority with the approval of the Minister; and

(g) any other money or assets received by, or made available to the Authority for the purpose of performing its functions under this Act.

22. Annual budget of the Authority.

(1) The Authority shall, in accordance with the Public Finance Management Act, 2015, cause to be prepared and submitted to the Minister for approval, estimates of income and expenditure of the Authority and the operating plan for the next financial year.

(2) The Authority shall not incur any expenditure exceeding its budget without the written approval of the Minister.

23. Investment of surplus funds.

The Authority may, with the approval of the Minister, invest as it considers fit, any monies of the Authority not immediately required for use.

24. Financial year of the Authority.

The financial year of the Authority shall be the same as the financial year of the Government.

25. Accounts and audit of the Authority.

(1) The Board shall—

(a) keep proper books of accounts and all records relating to the transactions and affairs of the Authority;

(b) within three months after the end of the financial year, prepare annual financial statements for the preceding financial year;

(c) within three months after the end of each financial year, submit the annual accounts to the Auditor General.

(2) The accounts of the Authority shall, in respect of each financial year be audited by the Auditor General or by an auditor appointed by the Auditor General.

(3) Auditor General or an auditor appointed by the Auditor General shall have access to all books of accounts, vouchers and other financial records of the Authority and be entitled to have any information and explanation required by him or her in relation to them as he or she may think fit.

(4) The Auditor General or an auditor appointed by the Auditor General shall, within three months after receipt of the accounts referred to in subsection (2), submit to the Minister and to Parliament a report on the audited accounts of the Authority.

26. Power to operate bank accounts.

(1) The Board, with the authority of the Accountant General, may open and maintain such accounts as are necessary for the performance of the functions of the Authority.

(2) All money received on account of the Authority shall be deposited in a bank account under subsection (1) as soon as practicable after being received.

27. Borrowing.

Subject to Article 159 of the Constitution and the Public Finance Management Act, 2015, the Board may with the approval of Parliament borrow money as may be required for meeting its obligations or for the discharge of the functions of the Authority under this Act.

28. Duty to operate on sound financial principles.

The Authority shall, in the performance of its functions under this Act, have due regard to sound financial principles and shall conduct its business in such a manner that, taking one transaction with another, and taking one year with another—

(a) its revenue is sufficient for meeting all charges, including interest on capital and loans properly chargeable to revenue account;

(b) sufficient provision is made to provide for depreciation of assets; and

(c) where any loss or bad debt arises in respect of any transaction, provision is made in respect of other transactions, whether of similar nature or otherwise, to offset the amount of that loss or debt.

29. Compliance with Public Finance Management Act, 2015.
The Authority shall at all times comply with the Public Finance Management Act, 2015.

PART VII—MISCELLANEOUS

30. Disclosure of information.

(1) Except as otherwise provided by law, a person shall not disclose any information obtained by him or her—

(a) while performing duties as a member of the Board or of any committee of the Board or as a member of the staff of the Authority, or as advisor or consultant to the Authority; or

(b) as a member of any body consulted under this Act while performing duties relating to any such consultation.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred currency points or imprisonment not exceeding one year or both.

31. Annual report.

(1) The Authority shall, in each year, at such time as the Minister may direct, submit to the Minister, a statement of its activities in the preceding financial year, indicating any particular problems experienced by it in that year in carrying out its objects and functions and making recommendations for solving those problems and containing such other information as the Minister may request.

(2) The Authority shall submit to the Minister such other reports and information as the Minister may request.

(3) The Minister shall lay before Parliament all reports submitted to him or her under this section, not more than six months after submission.

32. Service of documents.

A document may be served on the Authority by delivering it to the offices of the Authority or by sending it by registered post to the Director General.

33. Regulations.

(1) The Minister may, on the advice of the Authority, by statutory instrument make regulations for giving effect to the provisions of this Code.

(2) Without prejudice to the general effect of subsection (1), regulations made under this Act may prescribe—

(a) the forms to be used for any purpose under this Code;

(b) fees or charges to be paid in respect of any service performed under this Code;

(c) a penalty in respect of any contravention of the regulations including—

(i) a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding five years or both;

(ii) a higher penalty for subsequent or repeated offences;

(iii) additional penalties for continuing offences;

(iv) directing the court convicting an offender to order the forfeiture of anything used in the commission of the offence.

34. Offences and penalties.

(1) A person who—

(a) knowingly or negligently gives false or misleading information to the Authority;

(b) refuses or neglects to provide information or a service which the Authority may reasonably require for the purposes of the enforcement of this Code;

(c) refuses, without lawful excuse, to admit an officer or an agent of the Authority into the premises of his or her business enterprise or otherwise obstructs any inspection by an officer or agent of the Authority,

commits an offence and is liable, on conviction to a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding five years, or both.

(2) Where an offence is committed by a body of persons, then—

(a) in the case of a body corporate other than a partnership, every director or officer of the body is deemed also to have committed that offence; and

(b) in the case of a partnership, every partner or officer of that body is deemed to have committed that offence.

35. Power of Minister to amend Schedule 1.

The Minister may, by statutory instrument and with the approval of Cabinet, amend Schedule 1.

36. Repeals, savings and transitional provisions.

(1) The Investment Code Act, Cap. 92 is repealed.

(2) For the avoidance of doubt and notwithstanding the repeal of the Investment Code Act referred to in subsection (1)—

(a) all property, assets, rights and interests of the Authority under the repealed Act shall continue to be the property, assets, rights and interests of the Authority;

(b) all obligations and liabilities subsisting against the Authority under the repealed Act shall continue to subsist against the Authority;

(c) subject to this Act, any person holding any office in the Authority under the repealed Act shall continue to hold that office in the Authority;

(d) the terms and conditions, including the salary, on which a person referred to in paragraph (c) was employed immediately before the commencement of this Act, shall be no less favourable than those that applied to that person's office immediately before the commencement of this Act;

(e) there shall be no break or interruption in the employment of the person referred to in paragraph (c) because of this Act;

(f) any person holding office in the Authority under the repealed Act as Executive Director or Deputy Executive Director shall continue to hold that office subject to this Act but shall be redesignated as Director General or Deputy Director General;

(g) any investment licence issued under the repealed Act and in force at the commencement of this Act shall, with such modifications as may be necessary to give effect to this Act, continue in existence as an investment certificate issued under this Act.

(3) Subject to this Act, anything commenced under the repealed Act may be continued and completed under this Act.

SCHEDULE 1

Section 1,35

CURRENCY POINT

A currency point is equivalent to twenty thousand shillings.

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SCHEDULE 2

Section 10

MEETINGS OF THE BOARD

1. Meetings of the Board

(1) The Chairperson shall convene every meeting of the Board at times and places as the Board may determine, and the Board shall meet for the discharge of business at least once in every three months.

(2) The Chairperson may, at any time, convene a special meeting of the Board and shall also call a meeting within fourteen days, if requested to do so in writing by at least four members of the Board.

(3) Notice of a Board meeting shall be given in writing to each member at least seven working days before the day of the meeting.

(4) The Chairperson shall preside at every meeting of the Board and in the absence of the Chairperson; the members present shall appoint a member from among themselves to preside at that meeting.

2. Quorum

(1) The quorum for a meeting of the Board is 5 members.

(2) All decisions at a meeting of the Board shall be by a majority of the votes of the members present and voting and in case of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

3. Minutes of meetings.

(1) The Board shall cause to be recorded and kept, minutes of all meetings of the Board in a form approved by the Board.

(2) The minutes recorded under this paragraph shall be submitted to the Board for confirmation at its next meeting following that to which the minutes relate and when so confirmed, shall be signed by the Chairperson and the Secretary to the Board, in the presence of the members present at the latter meeting.

4. Decision by circulation of papers.

(1) Subject to subparagraph (2), decisions of the Board may be made by the circulation of the relevant papers among the members and the expression of their views in writing, but any member is entitled to request that any such decision shall be deferred until the subject matter has been considered at a meeting of the Board.

(2) A decision made by circulation of papers under this paragraph is not valid unless it is supported by not less than five members.

5. Power to co-opt.

(1) The Board may co-opt any person who, in the opinion of the Board, has expert knowledge concerning the functions of the Board, to attend and take part in the proceedings of the Board.

(2) A person co-opted under this section may take part in any discussion at the meeting of the Board on which his or her advice is required but shall not have any right to vote at that meeting.

6. Validity of proceedings not affected by vacancy

The validity of any proceedings of the Board shall not be affected by a vacancy in its membership or by any defect in the appointment or qualification of a member or by reason that a person not entitled, took part in its proceedings.

7. Disclosure of interest of members

(1) A member of the Board who is in any way directly or indirectly interested in a contract made or proposed to be made by the Board, or in any other matter which falls to be considered by the Board, shall disclose the nature of his or her interest at a meeting of the Board.

(2) A disclosure made under subparagraph (1) shall be recorded in the minutes of that meeting.

(3) A member who makes a disclosure under subparagraph (1) shall not—

(a) be present during any deliberation of the Board with respect to that matter; or

(b) take part in any decision of the Board with respect to that matter.

(4) For purposes of determining whether there is a quorum, a member withdrawing from a meeting or who is not taking part in a meeting under subparagraph (3) shall be treated as being present.

8. Board may regulate its procedure

Subject to this Act, the Board may regulate its own procedure or any other matter relating to its meetings.

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CROSS REFERENCES

The Constitution
Arbitration and Conciliation Act, Cap.4.
Foreign Exchange Act, 2004, Act 5 of 2004.
Public Finance Management Act, 2015, Act 3 of 2015

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