

**CONSOLIDATED AMENDMENTS TO THE INVESTMENT CODE BILL, 2017
(Main report and Addendum)**

1. Long title (*Main Report*)

- i) Substitute for the word “investment certificate” the word “investment licence” wherever it appears in the bill.

Justification

For consistency

- ii) Insert the word “evaluation” immediately after the word “facilitation” in the eighth line.

Justification

The Authority should be mandated to make evaluations of the investments that are carried out in the country and for consistency.

2. Clause 1 (*Main report*)

Clause 1 is amended-

- (i) In the definition of the word “Authority” by deleting the words “continued in existence under section 2”

Justification

The words are redundant because the Authority is established under the Act notwithstanding the fact that it has been in existence.

- (ii) In the word “foreign capital”; by inserting the word “initial” between the words ‘no’ and ‘disbursement’ and by inserting the words “to which this Act is applicable”. |

Justification

To make the provision more specific.

- (iii) In the definition of the word “foreign investor” by inserting the words and holding an investment licence issued in accordance with this Act immediately following paragraph (d).

Justification

To make the provision specific to investors to which this Act shall be applicable.

- (iv) In the definition of the word “investment” ; by deleting the words “and may be categorized as follows” appearing at the end of the phrase and in paragraphs (a), (b), (c), (d) ”.

Justification

1. To make the provision consistent with clause 12; which provides for the minimum investment capital requirements for investment registration.
2. The provision is redundant as the Act does not apply to the categories enumerated;in consideration of clause 12 of the bill.

- (v) In the definition of the word “domestic investor” by inserting the words “and holding an investment licence issued in accordance with this Act” immediately after paragraph (c).

Justification

To make the provision more specific to the Act.

- (vi) In the definition of the word “Minister”, by deleting the words “planning and economic development.

Justification

The reference should be to the Ministry as a docket and not the name of the Ministry.

(vii) In the definition of the word, “one stop centre”, by inserting the word “evaluation” immediately after the word “facilitation”.

Justification

To ensure that the “one stop Centre” is mandated to make evaluations of the investments existing in the country.

(Viii) In the definition of the word “secondary permit” by deleting the entire provision and substituting it with the following;

“any other approval required for carrying out business in Uganda except an investment licence.”

Justification

To make the provision more encompassing by including all kinds of approval required under the laws of Uganda.

3. Clause 3 (Main Report)

Clause 3 is amended-

- (a) In sub clause (1), by deleting the words “the primary agency of Government for the purpose of” and substituting the words “responsible for”.
- (b) in sub clause (2) (a) by- (***Addendum***)
 - (i) deleting the word “and” in the first line; and

- (ii) inserting the words “ and evaluate” immediately after the word “monitor”

Justification

The words “responsible for” are better suited to be used in the clause

To provide for evaluation as one of the objects of the Authority

(c) Immediately after sub clause (2) (c), insert the following sub clauses and the bill be renumbered: (***main report***)

“to publish and avail periodical reports on the state of investment in the country;”

“to assess for matters of incentives, the investments’ utilization of local resources and services”

Justification

To empower the Authority to publish the periodic reports on the state of investment in the country and to assess for matters of incentives and investment.

4. Clause 4 (*main report*)

Clause (4) is amended-

- (i) in sub clause (4) by adding the words “for one further term” at the end of the clause.

Justification

To provide for clarity on the number of times a member of the board is eligible for re-appointment.

- (ii) by deleting paragraphs (3d) and (3e).

Justification

To ensure efficiency by reducing the number of board members.

- (iii) by deleting sub clause (5).

Justification

It is proper that the clause should be housed in a different clause for better drafting, arrangement and flow of the bill.

5. Insertion of a new clause (*main report*)

Insert a new clause immediately after clause 4 to read as follows-

Removal of a member of the board

- (1) A member of the board may, in writing addressed to the Minister, resign his or her office.
- (2) A member of the board may be removed by the Minister where -
 - (a) the member is absent without reasonable excuse from three consecutive meetings of the board of which he has had notice;
 - (b) the member is adjudged bankrupt by a Court of Law;
 - (c) the member fails, omits or neglects to carry out his or her responsibilities as a Board member;

(d) the member is convicted of an offence involving dishonesty, fraud or moral turpitude;

(e) the member is incapacitated by reason of prolonged physical or mental illness from performing his or her duties as a member; or

(f) the member is otherwise unable or unfit to discharge the functions of his or her office.

(3) Where a member of the Board resigns, dies, is removed from office, ceases to be a member of the institution or body which he or she represents on the Board, the chairperson shall notify the Minister of the vacancy and the Minister shall appoint another person to hold the office within a period not exceeding 30 days.

(4) A member of the Board appointed under subsection (3) shall hold office for not more than three years and shall be eligible for re-appointment for one further term.

Justification

To provide for a provision that enables a member to resign his or her office, the grounds for which the Minister may terminate a member from holding office and for a situation where the term of office of board members do not expire at the same time plus timelines.

6. Clause 6 (*main report*)

Clause 6 is amended in sub clause (4) by inserting the word “only” immediately after the word “for” in the second line of the clause.

Justification

To provide for certainty on the number of times one may be appointed a Director General.

7. Insertion of a new clause (*main report*)

Insert a new clause immediately after clause 6 to read as follows-

Removal or suspension of Director General from office

(1) The Minister shall on recommendation of the Board, suspend the Director General from office, pending the determination of any enquiry as to the existence of any of the grounds in subsection (2).

(2) The Minister shall on recommendation of the Board; remove the Director General from office for;

- (a) misconduct;
- (b) incapacity or;
- (c) incompetence.

Justification

To provide for the procedure and the grounds for removal of a Director General

8. Clause 8 (*addendum*)

Clause 8 is amended;

- (i) in sub clause (1) (a) by-
 - (a) deleting the word “and” appearing in the first line; and
 - (b) inserting the words “ and evaluate” immediately after the word “monitor”
- (ii) by inserting new paragraph (i) and (j) immediately after paragraph (h) to read as follows and the paragraphs be renumbered:
 - “(i) to undertake annual evaluations of the progress and state of investment in the country;
 - (j) to maintain a register of all investment licences issued under the Act;
 - (k) to establish and maintain investments incentives inventory which shall be accessible to the public upon payment of a fee prescribed by the Minister by Statutory Instrument; and”
- (iii) In sub clause (3) by substituting for the word “service”, the word “sector”, the word “shall” for the word “may” and the words “the shortest time possible” the words “reasonable time but in any case within a period not exceeding 14 days from the time of receipt of the application”. (**main report**)
- (iv) By inserting a new sub clause (4)to read as follows;

“Where a secondary licence, permit or approval is denied, the public sector Agency shall give reasons to the investor.”

Justification

- (i) To give the Authority the mandate to undertake annual evaluations of the investment in the country and to maintain an inventory of all the licences issued under the Act.
- (ii) The proper word to use is “public sector agency” as defined in the interpretation clause and not public service agency and to provide a time line within which the Agency should act.

- (iii) To allow for an opportunity for the Public Sector Agency to offer reasons for denial of a secondary licence, permit or approval.

9. Clause 10 (Addendum)

Clause 10 should be deleted and substituted with the following:

“10. Qualification for incentives

An investor who, in addition to the qualifications for incentives set out in any other law, meets the following qualifications for incentives and commences operations after the commencement of this Act, qualifies for incentives:-

- (a) meets the minimum investment capital for the investment as required in the relevant Acts of Parliament;
- (b) engages in any of the priority areas specified in Schedule 3 to this Act;
- (c) exports a minimum of 70% of the goods produced;
- (d) provides for substitution of thirty percent of the value of imported products;
- (e) seventy percent of the raw materials used are sourced locally, subject to their availability;
- (f) directly employs a minimum of 60 percent of citizens; or
- (g) introduces advanced technology or upgrading of indigenous technology.

Justification

To provide for criteria for qualification for incentives

10. Insertion of a new clause 11 immediately after clause 10 (addendum)

Immediately after clause 10, insert the following new clause

“11. Certificate for incentives

- (1) An investor who has been given an incentive shall receive a certificate of incentives issued by the Authority.
- (2) The certificate shall-

- (a) state under what law the investor has been given the incentive;
and
- (b) give detailed particulars of the incentives being given”

Justification

- 1. to provide for the parameters that qualify an investor to obtain incentives;
- 2. to mandate the Authority to issue a certificate of incentives; and
- 3. to require the public sector agency to notify the Authority of the incentives that have been given so that the Authority establishes and maintains an inventory of the incentives given.

11. Clause 12 (*main report*)

Clause 12 be deleted and substituted with the following-

“12. Minimum investment capital requirements for investment registration.

- (1) The Minister shall by statutory instrument state the minimum investment capital proposed for a domestic and a foreign investor to qualify for registration and issuance of an investment licence by the Authority under this Act.
- (2) Notwithstanding sub section (1), the minimum threshold for portfolio investment for domestic and foreign investors shall be governed by the laws of Uganda.”

Justification

(a) The details of the capital requirements should be details that are to be spelt out by statutory instruments and not in the principal law. Because our economy keeps fluctuating, there will always be need to amend the act to take care of those changes in the requirements of the minimum investment capital requirements.

(b) Sub clause (4) is deleted for the reason that a provision in a principal law cannot be amended by a statutory instrument.

12. Insertion of new clause immediately after clause 13 (addendum)

Immediately after clause 13, insert the following new clause

“Investment registration requirements

An application for investment registration shall be accompanied by the following:

(1) certificate of registration of the business company;

(2) business plan which shall include-

- (a) name of the investment and detailed information on the type of investment;
- (b) action plan;
- (c) the date of commencement of operations;
- (d) detailed information on raw materials sourced in the country or in the locality where the investment is to operate;
- (e) detailed information on any financing and assets to be sourced from outside Uganda, including the timeframe in which these finance and assets shall be invested;
- (f) land requirement for the investment;
- (g) location of the investment;
- (h) utilities required for the investment;
- (i) a market survey;
- (j) details of the projected technology; and
- (k) knowledge transfer.

- (3) The environmental impact assessment certificate issued in accordance with the relevant laws;
- (4) projected number of employees; and
- (5) license granted by the business sector in which he/she intends to operate”.

Justification

To provide for particulars that should accompany the application.

13. Clause 14 (addendum)

Clause 14 should be deleted and substituted with the following:

“14. Regulation of foreign investment.

- (1) A foreign investor shall not operate a business enterprise in Uganda otherwise than in accordance with an investment licence issued under this Code.
- (2) A foreign investor shall not carry on the business of crop production, animal production or acquire or be granted or lease land for the purpose of crop production or animal production; but a foreign investor may—
 - (a) provide material or other assistance to Ugandan farmers in crop production and animal production; or
 - (b) lease land for purposes of manufacturing or carrying out the activities set out in the Third Schedules to this Act.
- (3) This section shall not be construed so as to deprive a foreign investor of any land acquired by or granted to him or her or of any interest in land accrued to him or her before the commencement of this Act.
- (4) The Minister may, on the advice of the Authority and with the approval of Cabinet, by statutory instrument, exempt any business enterprise or class of business activities from the provisions of this section where, in the opinion of the Minister, it is necessary that for the purpose of ensuring a regular supply of raw materials the enterprise should lease land.

- (5) A foreign investor who is intending to engage in trade only shall not be required to comply with subsection (1) but shall—
- (a) incorporate a company with the Registrar General as is required by law;
 - (b) deposit a sum of money as may be prescribed by the Minister by regulations in Bank of Uganda, which shall be specifically used for importation or direct purchase of goods for the business.
- (6) Upon compliance with subsection (5), the Bank of Uganda shall issue a certificate of remittance to the foreign investor.
- (7) A foreign investor who obtains a certificate of remittance under subsection (6) shall lodge an application, in writing, to the immigration department which shall contain the certificate of remittance and other information that may be required by the department.
- (8) Subject to compliance with the provisions of this section and the immigration laws, the immigration department may issue an entry permit to the foreign investor.
- (9) A foreign investor who obtains an entry permit under subsection (8) shall lodge an application, in writing, to the local authority where the business will principally be carried out for a trade licence.

Justification

To restrict foreign investors from carrying on the business of crop production and animal production

14. Insertion of a new clause 15 to the Bill (*addendum*)

Immediately after clause 14, insert a new clause 15 to the bill and the bill be renumbered:

15. Obligations of a registered investor

A registered investor shall-

- (a) observe and adhere to the laws of Uganda;

- (b) implement his/her proposal in accordance with his/her business plan submitted in the application for an investment license;
- (c) properly keep financial and accounting records of the investment and submit a copy of a certified financial report to the Board within three (3) months following the preceding financial year;
- (d) keep data relating to operations of the investment enterprise for a period of seven years;
- (e) respond in a period prescribed by written notice to any query from the Board in connection with operations of the investment enterprise;
- (f) periodically avail his or her books of accounts to the body responsible for taxation;
- (g) register with the tax administration and file timely tax returns even in case of entitlement to tax exemption;
- (h) to permit the authority or its employees or agents reasonable access to monitor the operations of the business enterprise

Justification

To provide for the priority areas for investment and the obligations of a registered investor

15. Clause 17 (main report)

Clause 17 is amended in sub clause (1) by deleting the word “seven” appearing in the third line of the clause and substituting it for the word “five”

Justification

Seven days is a long time to process a license given the doing business competitive index in the word which recommends licenses to be issued within shorter periods.

16. Clause 19(main report)

Clause 19 is amended;

- i) In sub clause (2) by deleting the entire provision.

Justification

The provision is redundant in view of sub-clause (1) which provides that property belonging to an investor shall not be compulsorily taken possession of or acquired compulsorily except in accordance with the Constitution.

- ii) In sub-clause (3) by renumbering and deleting the words “under subsection(2)” and substituting with the words upon compulsory acquisition under subsection (1).”

Justification

Consequential amendment following the deletion of sub clause (2)

- iii) In sub-clause (4) by renumbering and deleting the words ”and (3)”

Justification

Consequential amendment.

17. Clause 21 (main report)

Clause 21 is amended-

- (i) by renumbering the current clause as 21(1); and
- (ii) by inserting a new sub clause (2) to read as follows-

“(2) The funds collected under sub section (1) shall be managed in accordance with the Public Finance Management Act, 2015.”

Justification

To conform to the Public Finance Management Act, 2015 that provides that the revenue collected or received by a vote, state enterprise or public corporation shall be paid into and shall form part of the Consolidated Fund or received into a public fund established for a specific purpose where this is authorised by an Act of Parliament.

18. Insertion of new Schedule 3 immediately after Schedule 2 to the Bill (*addendum*)

Immediately after Schedule 2 insert the following Schedule-

Schedule 3

Section 11

Priority areas

1. agro processing;
2. food processing;
3. medical appliances;
4. building materials;
5. light industry;
6. automobile manufacturing and assembly;
7. household appliances;
8. furniture;
9. logistics and ware-housing;
10. information technology; or
11. commercial farming.