



INVESTMENT CODE OF SEYCHELLES ACT, 2005

(Act 13 of 2005)



I assent

A handwritten signature in cursive script, appearing to read "Michel".

J. A. Michel
President

20th December, 2005

AN ACT to provide for a legal environment that is conducive to a greater flow of investment into the Republic and for the protection of the rights of investors

ENACTED by the President and the National Assembly.

1. This Act may be cited as the Investment Code of Seychelles Act, 2005 and shall come into operation on such date as the Minister may, by notice in the Official Gazette, appoint.

Short title and
commencement

Interpretation

2. In this Act —

“Competent Authority” means a person or a body corporate appointed as such for the purposes of this Act by the Minister by notice published in the Official Gazette;

“company” means a company registered under the Companies Act, 1972;

“cottage industry” means an activity in which a product or service is generated for commercial purposes by not more than five individuals within the premises occupied by one or more of them;

“demersal fishing” means fishing for or catching fish or other aquatic organisms found on or near the sea bed;

“direct investment” means an investment by an investor or a group of investors with a participation of or more than 10 per centum of the capital of any business;

“domestic investor” means —

- (a) a citizen of Seychelles; or
- (b) a body corporate in which more than 50 per centum of the capital is held by citizens of Seychelles as beneficial owners,

who or which makes a direct investment;

“financial institution” means a financial institution licensed under the Financial Institutions Act, 2004;

“foreign investor” means —

- (a) an individual who is not a citizen of Seychelles, or
- (b) a body corporate which is incorporated or registered under the laws of Seychelles and in which 50 per centum or more of the capital is held by non-citizens as beneficial owners,

who or which makes a direct investment in Seychelles;

“investment” means any contribution to establish, or expand a business of, a company or other entity including though not limited to any—

- (i) movable or immovable property as well as any other property rights such as mortgages, usufructs and similar rights;
- (ii) stocks, shares and other forms of equity participation and bonds, debentures and other forms of debt interest in a company;
- (iii) intellectual property rights including copyrights, trademarks, patents, industrial designs, technical processes, knowhow, juridical rights and goodwill;
- (iv) goods or services under a contract having economic value;
- (v) business concessions conferred by law or under contract and any licences and permits granted pursuant to law, including concessions to search for and extract oil or other minerals;

“Minister” means the Minister responsible for Investment;

“restricted area” means the area of investment reserved for domestic investors;

“small business” means a business carried on by the owner by himself or in partnership and the number of persons engaged in the business activity including the owner or owners does not exceed five;

“strategic area” means the area of investment in which foreign or domestic investors may be permitted by the Government to invest subject to conditions designed to protect the public interest.

Scope

3.(1) This Act applies to all foreign direct investments and domestic direct investments.

(2) Persons may invest in all economic activities subject to the limitations applicable to the restricted area and the strategic area set out in Schedule 1.

(3) Investments relating to International Trade Zones shall continue to be governed by the Seychelles International Trade Zone Act, 1995 and regulations made thereunder.

International
agreements

4. The provisions of this Act -

- (a) shall not affect in any manner any guarantees, advantages or obligations provided for in international agreements or treaties to which the Republic of Seychelles had become a party before the commencement of this Act;
- (b) shall not be construed as limiting the scope of any future international agreement or treaty.

Freedom to
manage one's
business affairs

5. Every investor has the freedom to manage the investor's business affairs in accordance with the laws of Seychelles.

Equal treatment
of investors

6.(1) Subject to this Act and other laws, foreign investors shall enjoy the same rights and shall be subject to the same duties and obligations as domestic investors.

(2) Subject to the Constitution, this Act and the international obligations of the Republic, the Government shall not discriminate between investors or against foreign investors on any ground including, but not limited to, their citizenship, residence, religion or the State of origin of the investment.

7.(1) Investors are guaranteed protection against any measure of nationalisation or expropriation of their property except for reasons of public interest, in accordance with the law, on a non-discriminatory basis and subject to the grant of prompt and full compensation.

Protection of
property

(2) An investor aggrieved by any nationalisation or expropriation may seek constitutional remedies or other remedies under the written law or resort to other methods of resolution of disputes provided for in any agreement between the investor and the Republic.

8. Where provision is made by or under any written law for the grant of incentives for a specified economic activity during a specified period, such incentives shall not be adversely affected in any manner during the specified period.

Protection of
incentives

9. Investors shall have the right to convert all payments in Seychelles rupees relating to their investments in Seychelles received by them into any other readily convertible currency through financial institutions in accordance with the applicable written law of Seychelles.

Right to convert
payments

10. Investors who or which generate foreign exchange income shall have the right, in accordance with the applicable written law of Seychelles, to remit their funds abroad from such income received in foreign exchange and available in Seychelles on a non-discriminatory basis. Such funds include—

Remittance of
investment and
returns

- (a) the capital and additional capital amounts used to maintain and increase investments;

- (b) net operating profits including dividends and interest in proportion to shareholdings;
- (c) repayment of any loan, including interest thereon, relating to investments;
- (d) royalties and services fees relating to investments;
- (e) proceeds from the sale of shares;
- (f) proceeds from the sale, partial sale or liquidation of the whole or any part of an investment;
- (g) earnings of non-nationals employed in the Republic in connection with investments;
- (h) compensation upon expropriation or compensation for losses.

Holding of
immovable
property (Cap
95)

11. Foreign and domestic investors may own and hold land for their investment projects subject to the provisions of the Immovable Property (Transfer Restriction) Act.

Investment
approval
(Cap 102A(1))

12.(1) Applications for the approval of investment projects, except those relating to the International Trade Zone Act and those under Schedule 2, shall be submitted to the Competent Authority.

(2) A project submitted for approval shall be assessed having regard to the requirements of the applicable written laws and the investment policies of the Government.

(3) If the project proposal is approved, the Competent Authority shall issue a letter of approval which enables the investor to obtain the necessary licences for implementing the project.

(4) The Competent Authority shall communicate the decision on any project proposal within 30 days from the date of receipt of the proposal together with reasons in the case of a refusal.

(5) The investor may appeal to the Minister if the application has been refused or if no decision has been communicated within the time limit stated in subsection (4).

(6) Subject to any order made in the exercise of the supervisory jurisdiction of the Supreme Court or appeal therefrom, the Minister's decision on an appeal under subsection (5) shall be final.

13.(1) Where a dispute arises directly in respect of an investment between the Republic of Seychelles and an investor, the parties shall endeavour to settle the dispute amicably by negotiation.

Resolution of
disputes between
an investor and
the Republic

(2) Disputes which cannot be resolved by the parties themselves may be settled —

- (a) by an arbitration procedure whether local or international that is based on a previous agreement between the parties; or
- (b) by legal proceedings in accordance with the laws of Seychelles.

14. The provisions of this Act shall apply to all investments made in Seychelles prior to or after the date of commencement of this Act except that the Act shall not apply to a claim arising out of any dispute which occurred prior to that date.

Exclusion of
prior claims

15. Nothing in this Act shall constrain any person from carrying on any business in a strategic area or restricted area of investment which was in existence immediately before the date of commencement of this Act.

Transitional

Regulations

16. The Minister may make regulations to give effect to the principles and provisions of this Act and may, by regulations, amend the Schedules.

SCHEDULE 1

Investment Areas

Section 3(2)

Strategic Area

1. Production and national distribution of electricity and water
2. Storage and distribution of petroleum
3. Airport and seaport infrastructure
4. Mining of natural resources
5. Manufacture and distribution of arms and ammunition
6. Airspace related activity
7. Genetic centres
9. Broadcasting and Telecommunication services (except for internet reseller)
10. Animal feed, hatchery, parent stock and abattoir
11. Production, storage and distribution of hazardous substances

Restricted Area

1.1 Tourism Sector

- 1.1.1 Accommodation upto 10 rooms (excluding luxury villas)
- 1.1.2 Boat charter (other than live aboard)
- 1.1.3 Live aboard upto 5 boats
- 1.1.4 Tourist guide
- 1.1.5 Taxi

- 1.1.6 Non-motorised watersports
- 1.1.7 Car hire
- 1.1.8 Tour operators
- 1.1.9 Diving centre
- 1.2 Agriculture and Fisheries**
 - 1.2.1 Production of fresh crops and flowers
 - 1.2.2 Production and processing of pig and poultry (livestock)
 - 1.2.3 Production of eggs
 - 1.2.4 Demersal fishing
- 1.3 Industrial sector**
 - 1.3.1 Cottage industry projects
 - 1.3.2 Small businesses
 - 1.3.3 Building contractor other than a Class 1 contractor
- 1.4 Telecommunication**
 - 1.4.1 Internet Reseller
 - 1.4.2 Hire of Films
 - 1.4.3 Public Exhibition of Films
- 1.5 Other areas**
 - 1.5.1 Employment agency
 - 1.5.2 Video shops
 - 1.5.3 Pre-School

SCHEDULE 2

**Projects not requiring submission of project memorandum to
Competent Authority**

1. Fisheries and Agriculture Sector

- 1.1 **Investment projects below SR150,000, except in the following cases:**
 - Proposed project introducing/venturing into a new produce never or not commonly done in the country;
 - Proposed project introducing new technology that has never been applied in the country;
 - All projects having foreign partnership
2. **Industrial Sector**
 - 1.1 Cottage industry
 - 1.2 Small businesses
3. Other activities for which licences or other authorizations are granted under the law.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 29th November, 2005.



Sheila Banks
Clerk to the National Assembly