

ACT 478
GHANA INVESTMENT PROMOTION CENTRE ACT, 1994

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ACT 478

GHANA INVESTMENT PROMOTION CENTRE ACT, 1994(1)

AN ACT to re-establish the Ghana Investment Centre as an agency of the Government for the encouragement and promotion of investments, to revise the laws relating to investments and to provide for related matters.

Establishment of Investment Promotion Centre

1. Establishment of the Centre

- (1) There is hereby established a body corporate to be known as the Investment Promotion Centre.
- (2) The Centre has perpetual succession and shall have a common seal and may sue and be sued in its corporate name.
- (3) For the performance of its functions, the Centre may acquire and hold movable and immovable property, dispose of property and enter into a contract or any other transaction.

2. Object of the Centre

- (1) The object of the Centre is to encourage and promote investment in the economy.
- (2) The Centre is the agency of Government to co-ordinate and monitor the investment activities to which this Act applies.

3. Functions of the Centre

For the purpose of section 2, the Centre may

- (a) initiate and support measures that will enhance the investment climate for both Ghanaian and non-Ghanaian companies;
- (b) promote investments in and outside the Republic through effective promotional means;
- (c) collect, collate, analyse and disseminate information about investment opportunities and sources of investment capital, and advise on request on the availability, choice or suitability of partners in joint-venture projects;
- (d) register and keep records of the enterprises to which this Act applies;
- (e) identify specific projects and invite interested investors for participation in those projects;
- (f) initiate, organise and participate in promotional activities in the nature of exhibitions, conferences and seminars for the stimulation of investments;
- (g) maintain liaison between investors and Ministries, government departments and agencies, institutional lenders and any other authorities concerned with investments;
- (h) provide and disseminate up-to-date information on incentives available to investors;
- (i) assist incoming and existing investors by providing support services including assistance to procure authorities or permits required for the establishment and operation of enterprises;
- (j) evaluate the impact of the Centre on investments in the country and recommend appropriate changes where necessary;
- (k) register and keep records of the technology transfer agreements relating to investments under this Act; and
- (l) perform any other functions that are incidental to the attainment of the object of this Act.

Administration

4. The Board of the Centre

- (1) The governing body of the Centre is a Board consisting of
 - (a) the chairman,
 - (b) the vice-chairman,
 - (c) the chief executive of the Centre, and
 - (d) five other members at least three of whom are persons selected from outside the Public Services.
- (2) The members of the Board shall be appointed by the President in accordance with article 70 of the Constitution.
- (3) The President shall, in making the appointments under subsection (2), consider the expertise, knowledge and experience of that person in matters relating to investments in the Republic.
- (4) The vice-chairman shall be elected by the members from among their number; and where the

chairman is a person appointed from the Public Services, the vice-chairman shall be elected from the members appointed from outside the Public Services.

(5) A member, other than the chief executive, shall hold office for a term of four years and is eligible for re-appointment.

(6) A member may resign from office in writing addressed to the President or may be removed from office by the President in consultation with the Council of State for stated reasons.

(7) A member shall be paid the allowances determined by the Minister responsible for Finance.

5. Meetings of the Board

(1) The chairman shall preside at the meetings of the Board and in the absence of the chairman, the vice-chairman shall preside; and in the absence of both the chairman and the vice-chairman, the members present shall elect one of their number to preside.

(2) The quorum for a meeting of the Board is four including the chief executive.

(3) The Board may co-opt a person to act as an adviser at a meeting of the Board, but a person co-opted does not have the right to vote on a matter before the Board for decision.

(4) The validity of the proceedings of the Board shall not be affected by a vacancy among its members or by a defect in the appointment or qualification of a member.

(5) Except as otherwise expressly provided for under this Act, the Board shall determine the procedure for its meetings.

6. Committees of the Board

(1) The Board may, for the performance of its functions, appoint committees comprising members of the Board, or non-members or both and may assign to a committee a function that the Board may determine.

(2) A committee composed entirely of non-members may only advise the Board.

7. Chief executive of the Centre

(1) The Centre shall have a chief executive who shall be appointed by the President in accordance with article 195 of the Constitution.

(2) The chief executive shall hold office on the terms and conditions determined by the President on the advice of the Board.

(3) Subject to the general directions that the Board may give, the chief executive is responsible for the day-to-day administration of the affairs of the Centre and the implementation of the decisions of the Board.

8. The secretary and other staff of the Centre

(1) The Board shall have an officer to be designated the secretary who shall perform the functions of keeping accurate records of proceedings and decisions of the Board and any other functions directed by the chief executive.

(2) The President may, in accordance with article 195 of the Constitution, appoint for the Centre the secretary and any other officers and employees who the Centre may require for the effective performance

of its functions.

(3) *Omitted.2(2)*

(4) The Board may engage consultants and advisers whom the Centre may require for the proper and efficient performance of the functions of the Centre.

9. Departments of the Centre

The Board may, on the recommendations of the chief executive, create the departments in the Centre that the Board considers necessary for the efficient performance of the functions of the Centre.

10. Responsibility for the Centre

The Centre is responsible to the President.

Finance

11. Expenses and funds of the Centre

(1) The Government shall provide to the Centre out of moneys approved by Parliament the sums of money that are necessary for the efficient performance of the functions of the Centre.

(2) The Centre may levy fees and charges for its services as determined by the Board.

(3) The sums of money received on account of the Centre shall be paid into the bank accounts determined by the Board.

(4) The Board may invest moneys of the Centre not required for immediate use.

12. Accounts and audit of the Centre

(1) The Board shall keep proper books of accounts and proper records in relation to the accounts of the Centre in the form approved by the Auditor-General, and shall prepare at the end of each financial year within six months after the end of the financial year, a statement of the accounts of the Centre in the form directed by the Auditor-General.

(2) The books of accounts of the Centre shall each year be audited by the Auditor-General and a report on the audit shall be submitted to the Board.

13. Financial year of the Centre

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

14. Annual report

(1) The Board shall submit to the President within two months after the receipt of the auditor's report, a report on the activities and operations of the Centre during the preceding year.

(2) The annual report of the Centre shall include

(a) a copy of the audited accounts of the Centre together with the Auditor-General's report on it, and

(b) any other information that the President may request.

(3) The President shall through a Minister designated by the President present to Parliament a report on the activities and operations of the Centre.

15. Relationship with other public authorities

Government departments, Government agencies and any other public authorities shall co-operate fully with the Centre in the performance of its functions under this Act.

16. Stationing of public officers at the Centre

Despite section 15, the President may, on the advice of the Board, in writing request the Registrar-General, the Director of Immigration and the head of a Government department to station at the offices of the Centre a specified number of public officers and the request shall be complied with.

Investments

17. Application of the Act

This Act does not apply to mining and petroleum enterprises.

18. Enterprises reserved for citizens

The enterprises specified in the Schedule are reserved for citizens and shall not be undertaken by a person who is not a citizen.

19. Eligibility for foreign participation and capital requirements

(1) Except as provided in sections 17 and 18, and subject to the Act and any other law, a person who is not a citizen may invest and participate in the operation of an enterprise.

(2) An enterprise in which foreign participation is permitted under subsection (1) shall not be established or operated by a person who is not a citizen unless

- (a) in the case of a joint enterprise with a citizen partner, there is investment by the other person of foreign capital of not less than US \$10,000.00 or its equivalent worth in capital goods by way of equity participation, or
- (b) where the enterprise is wholly owned by that person there is an investment of foreign capital of not less than US \$50,000.00 or its equivalent worth in capital goods by way of equity capital.

(3) Despite subsection (1), in the case of a trading enterprise involving only the purchasing and selling of goods which is wholly or partly owned by a person who is not a citizen, there shall be an investment of foreign capital or its equivalent in goods worth at least US \$300,000.00 by way of equity capital and the enterprise shall employ at least ten citizens.

20. Export trading enterprises exempted

(1) The minimum capital requirement specified in section 19 does not apply to

- (a) portfolio investments, or
- (b) an enterprise set up solely for export trading.

(2) For the purposes of subsection (1), “**export trading**” includes export of goods or produce that originate from the Republic.

21. Establishment of enterprises

(1) Subject to this Act, a person who intends to establish an enterprise to which this Act applies, shall incorporate or register the enterprise in accordance with the Companies Act, 1963 (Act 179) or any other laws that are relevant to the establishment of the enterprise.

(2) On the submission of an application for the incorporation of an enterprise under subsection (1), the officers responsible for the incorporation or registration shall, where the documents of the applicant are in order, complete the processing of the application and issue the requisite certificate to the applicant within a period not exceeding five working days from the date of the submission of the application.

22. Registration of enterprises with the Centre

(1) An enterprise in which foreign participation is permitted under section 19 shall after its incorporation or registration be registered with the Centre.

(2) The Centre shall, within five working days from the date of receipt of the completed registration forms, register the enterprise where it is satisfied that

- (a) the relevant documents for registration are in order, and
- (b) the minimum foreign equity capital requirement has been complied with.

23. Benefits and incentives

An enterprise is entitled to the benefits and incentives that are applicable to that enterprise under the Internal Revenue Act, 2000 (Act 592) and under Chapters 82, 85 and 98 of the Customs Harmonised Commodity and Tariff Code scheduled to the Customs, Excise and Preventive Service Act, 19933(3) and any other law.

24. Exemption of non-zero-rated items

An enterprise which desires to avail itself of the incentives provided under section 23 but whose plant, machinery, equipment or parts of the plant machinery or equipment are not zero-rated under the Customs Harmonised Commodity and Tariff Code scheduled to the Customs, Excise and Preventive Service Act, 19934(4) may submit an application for exemption of import duties, sales tax or excise duties on the plant, machinery, equipment or those parts to the Centre.

25. Incentives for special investments

For the purposes of promoting identified strategic or major investments, the Board may, in consultation with the appropriate state agencies determined by the Board and with the approval of the President, negotiate specific incentive packages in addition to the incentives provided under section 23 for the period specified by the Board.

26. Priority areas

(1) The Board may, with the approval of the President, by legislative instrument, specify priority areas of investment and prescribe applicable incentives and benefits.

(2) An Instrument issued under subsection (1) shall be signed personally by the chairman of the Board or in the absence of the chairman by the vice-chairman.

27. Investment guarantees, transfer of capital, profits and dividends

Subject to this section, an enterprise to which this Act applies shall be guaranteed unconditional transferability through an authorised dealer bank in freely convertible currency of

- (a) dividends or net profits attributable to the investment,
- (b) payments in respect of loan servicing where foreign loan has been obtained,
- (c) fees and charges in respect of a technology transfer agreement registered under this Act, and
- (d) the remittance of proceeds, net of the taxes and any other obligations, in the event of sale or liquidation of the enterprise or an interest attributable to the investment.

28. Guarantee against expropriation

(1) Subject to subsections (2) and (3),

- (a) an enterprise shall not be nationalised or expropriated by the Government, and
- (b) a person who owns, whether wholly or in part, the capital of an enterprise shall not be compelled by law to cede that interest in the capital to any other person.

(2) An enterprise to which this Act applies shall not be acquired by the Republic unless the acquisition is in the national interest or for a public purpose and under a law which makes provision for

- (a) payment of fair and adequate compensation, and
- (b) a right of access to the High Court for the determination of the investor's interest or right and the amount of compensation to which the investor is entitled.

(3) The compensation payable by virtue of subsection (2) shall be paid without undue delay and authorisation for its repatriation in convertible currency, where applicable, shall be issued.

29. Dispute settlement procedures

(1) Where a dispute arises between an investor and the Government in respect of an enterprise, efforts shall be made through mutual discussion to reach an amicable settlement.

(2) A dispute between an investor and the Government in respect of an enterprise to which this Act applies which is not amicably settled through mutual discussions may be submitted at the option of the aggrieved party to arbitration

- (a) in accordance with the rules of procedure for arbitration of the United Nations Commission of International Trade Law, or
- (b) in the case of a foreign investor, within the framework of a bilateral or multilateral agreement on investment protection to which the Government and the country of which the investor is a national are parties, or
- (c) in accordance with any other national or international machinery for the settlement of investment dispute agreed to by the parties.

(3) Where in respect of a dispute, there is disagreement between the investor and the Government as to the method of dispute settlement to be adopted, the choice of the investor shall prevail.

30. Immigrant quota

(1) An enterprise with a paid-up capital of US \$10,000.00 but less than US \$100,000.00 or its equivalent in cedis is entitled to an initial automatic maximum immigrant quota of one person.

(2) An enterprise with a paid-up capital of US \$100,000.00 but less than US \$500,000.00 or its equivalent in cedis is entitled to an initial automatic maximum immigrant quota of two persons.

(3) An enterprise with a paid-up capital of US \$500,000.00 or more or its equivalent in cedis is entitled to an initial automatic maximum immigrant quota of four persons.

(4) Except as provided in subsections (1), (2) and (3), applications for immigrant quota with respect to an investment in the Republic shall be submitted to the Centre.

(5) An application submitted under subsection (1) shall be dealt with by the Immigration Service in consultation with the Centre.

31. Assistance to enterprise

The Centre shall provide to an enterprise the assistance and guidance that the enterprise requires and shall act as liaison between the enterprise and relevant Government departments, agencies and any other public authorities.

32. Personal remittances

There shall be provided to expatriate personnel employed or engaged in an enterprise to which this Act applies, banking facilities through authorised dealer banks for making remittances abroad where the remittances do not exceed the total official wage of the expatriate personnel.

33. Technology transfer agreement

(1) A person who establishes an enterprise may enter into a technology transfer agreement which that person considers appropriate for the enterprise.

(2) Technology transfer agreements entered into under subsection (1) shall be registered with the Centre.

(3) Technology transfer agreements shall be governed by the Regulations relating to the agreements.

General Provisions

34. Official secrecy and duty of public officers

(1) A person who in the course of official duties in the administration of this Act has possession of or control over a document or an information obtained under this Act and who communicates that document or information or any part of it to any other person without authority to communicate it by an enactment or by the Board, commits an offence and is liable on summary conviction to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding one year or to both the fine and the imprisonment.

(2) A public officer who has a duty to perform under this Act and fails to perform that duty or performs the duty recklessly is liable to the disciplinary action determined by the Board or the appropriate disciplinary authority.

35. Offences and penalties

(1) An enterprise to which this Act applies shall permit an officer or a designated agent of the Centre to enter its premises at a reasonable time in pursuit of the monitoring functions of the Centre.

(2) A person who without lawful excuse refuses to admit an officer or designated agent of the Centre on to the business premises of the enterprise or otherwise obstructs an officer or a designated agent of the Centre acting under subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding five hundred penalty units.

36. Repeals and savings

Spent.5(5)

37. Transitional provisions

Spent.6(6)

38. Transfer of assets, liabilities and staff

Spent.7(7)

39. Regulations

(1) The Board may, by legislative instrument, make Regulations

- (a) providing for anything that is to be prescribed under this Act;
- (b) relating to technology transfer;
- (c) generally for carrying out the principles and object of this Act.

(2) An instrument issued under subsection (1) shall be signed personally by the chairman of the Board or by the vice-chairman in the absence of the chairman.

40. Interpretation

In this Act, unless the context otherwise requires,

“**Auditor-General**” includes an auditor appointed by the Auditor-General;

“**benefits**” includes facilities, entitlements and exemptions conferred on an enterprise to which this Act applies;

“**Board**” means the Board established under section 4;

“**capital**” means the cash contributions, plant, machinery, equipment, buildings, spare parts, raw materials and any other business assets other than goodwill;

“**Centre**” means the Investment Promotion Centre established by section 1;

“**citizen**” includes the Republic, a public corporation and a citizen of Ghana or a company, partnership or an association or body, whether corporate or unincorporated, the majority capital or financial interest in which is owned by citizens of Ghana;

“**direct investment**” means investment made to acquire a lasting interest in an enterprise operating

in the economy and intended to give the investor an effective control in the management of the enterprise;

“enterprise” includes an industry, a project, an undertaking or a business to which this Act applies or an expansion of that industry, undertaking, project or business, or a part of that industry, undertaking, project or business and an enterprise duly registered with the Centre where there is foreign participation;

“foreign capital” means convertible currency, plant, machinery, equipment, spare parts, raw materials and any other business assets, other than goodwill, which enter the Republic without an initial disbursement of Ghana’s foreign exchange and are intended for the production of goods and services related to an enterprise to which this Act applies;

“foreign loan” means a loan obtained from outside the Republic and denominated in a currency other than the currency of the Republic;

“indirect investment” means an act or a contract by which an investor makes a contribution, whether tangible or intangible, to an enterprise 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;

“market” means a public or open place established by local custom or by the appropriate local government authority for the purpose of buying and selling and any other public place used substantially for that purpose;

“member” means a member of the Board;

“mining” includes an operation for exploration, prospecting, winning or obtaining of minerals, precious metals or precious stones;

“own” in relation to an enterprise, includes the holding of a proprietary interest in the enterprise;

“petroleum” means crude oil or natural gas or a combination of both;

“portfolio investment” means an investment in shares or bonds which are mandatorily convertible into shares or any other securities traded on the Ghana Stock Exchange;

“technology transfer agreement” means an agreement relating to an enterprise to which this Act applies that involves

- (a) the assignment, sale or use of foreign patents, trademarks or any other industrial property rights,
- (b) the supply of foreign technical know-how or technological knowledge,
- (c) foreign technical assistance, design and engineering, consultancy or any other technical services in whatever form they may be supplied, and
- (d) foreign managerial, marketing or other services,

except that an agreement shall not be regarded as a technology transfer agreement for the purposes of this Act if its duration does not exceed a period of eighteen months.

Schedule

ENTERPRISES WHOLLY RESERVED FOR CITIZENS

[Section 18]

1. The sale of anything whatsoever in a market, petty trading, hawking or selling from a kiosk.
 2. Operation of taxi service and car hire service. (A non-Ghanaian may undertake this service where there is a minimum fleet of ten new vehicles.)
 3. All aspects of pool betting business and lotteries, except football pools.
 4. Operation of beauty salons and barber shops.
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Endnotes

1 (Popup - Footnote)

1. The Act was assented to on 29th August, 1994 and notified in the *Gazette* on 2nd September, 1994.

2 (Popup - Footnote)

2. Incorporated in [subsection \(2\)](#). The section provided for delegation in accordance with [clause \(2\)](#) of [article 195](#) of [the Constitution](#).

3 (Popup - Footnote)

3. [P.N.D.C.L. 330](#).

4 (Popup - Footnote)

4. [P.N.D.C.L. 330](#).

5 (Popup - Footnote)

5. The section reads,
“The following enactments are repealed or revoked as the case may be,
the Investment Code, 1985 (P.N.D.C.L. 116);
the Investment Code (Amendment) Law, 1992 (P.N.D.C.L. 292);
the Investment Code (Area of Special Priority) Instrument, 1991 (L.I. 1519);
the Investment Code (Immigrant Quota) Regulations, 1992 (L.I. 1543);
the Selective Alien Employment Tax Decree, 1973 (N.R.C.D. 201);
the Selective Alien Employment Tax (Amendment) Decree, 1974 (N.R.C.D. 248);
the Selective Alien Employment Tax (Amendment) (No. 2) Decree, 1974 (N.R.C.D. 268);
the Selective Alien Employment Tax (Amendment) Law, 1988 (P.N.D.C.L. 196);
the Import and Export Trade and Industry (Specification of Minimum Foreign Capital Investment by non-Ghanaian Citizens) Act, 1980 (Act 402).”

6 (Popup - Footnote)

6. The section reads,
“(1) Notwithstanding the repeal of the Investment Code, 1985 (P.N.D.C.L. 116) any agreement executed under it and in force immediately before the commencement of this Act shall continue in force as if made under this Act.
(2) Any application pending before the Ghana Investments Centre established under the Investment Code, 1985 (P.N.D.C.L. 116) shall on the coming into force of this Act be deemed to be pending before the Centre established under this Act.
(3) Any agreement continued in force by virtue of subsection (1) of this section shall confer benefits previously enjoyed under the agreement before the commencement of this Act and also such other benefits as may be applicable to the enterprise under this Act.
(4) Where an enterprise in existence immediately before the commencement of this Act has duly complied with the Investment Code, 1985 (P.N.D.C.L. 116) in relation to any minimum equity requirement or employed capital specified in that Code, the enterprise shall be deemed lawful notwithstanding any provision of this Act to the contrary.
(5) All immigrant quota in existence immediately before the coming into force of this Act in respect of an enterprise to which this Act is applicable shall continue in force until expiration or unless renewed under this Act.
(6) All technology transfer agreements registered with the Ghana Investment Centre shall be deemed to be registered with the Centre established under this Act.”

7 (Popup - Footnote)

7. The section reads,
“(1) All assets rights, obligations and liabilities of the Ghana Investment Centre established under the Investment Code, 1985 (P.N.D.C.L. 116) and in force immediately before the coming into force of this Act, are transferred to the Ghana Investment Promotion Centre established under this Act.
(2) All persons employed by the Ghana Investments Centre immediately before the coming into force of this Act shall, on the coming into force of this Act be deemed to have been duly appointed under this Act.”