

INVESTMENT CODE

Preamble to the Investment Code

Guyana has diversified natural resources, developed human resources and its strategic location providing access to the Caribbean and the Americas holds enormous potential for investors, both domestic and foreign. The Government welcomes investors. Since 1989, Guyana has implemented wide-ranging reforms to improve the business and economic environment for private sector investment. In particular, the Government has maintained a sound macroeconomic framework which, has resulted in price and exchange rate stability, lower fiscal deficit and sustainable balance of payments. Further, the Government has introduced far-reaching regulatory reforms and will be completing its privatisation program in 2002.

The Government has also introduced generous fiscal incentives and strengthened the institutional framework of the financial sector. The Government is also implementing far-reaching reforms to improve land administration and judicial system. A stock exchange will become fully operational in 2001 and a comprehensive Information Communication Technology (ICT) strategy with immense potential for job creation and productivity gains will be implemented in 2002.

To provide a level of comfort to investors, the Government has prepared this Investment Code which, in addition, to the existing Investment Guide brings together the incentives, the regulations, the facilitation and the protection of private capital, both domestic and foreign in Guyana.

Objectives: The objectives of this Code are to further the socio-economic development of Guyana by attracting and facilitating investment through:

- a) providing legal protection for investment;
- b) increasing the predictability, stability and transparency of the legal regime for investment;
- c) promoting the development of international best practices regarding investment; and
- d) providing a framework for fiscal incentives for investors.

Encouragement to investment: The Government encourages and seeks to facilitate persons, either individuals or legal entities, to invest capital in Guyana on the basis of mutual benefit and observance of the laws of Guyana and international treaties or agreements to which the State or Government is a party.

Fields of activity open to investors: Investors may invest in and operate enterprises in all fields of lawful economic activity including in particular, but not limited, to agriculture, fisheries and forestry, manufacturing, energy, mineral extraction, handicrafts, communications and transport, construction, tourism, trade, and professional services.

Fields of activity closed to investors: Investors shall not invest in or operate Investment Enterprises, which are prejudicial to national security, or detrimental to the natural environment, public health or the national culture, or which contravene the laws of Guyana.

Forms of investment: Investors may invest equity in an Investment Enterprise in either of the two forms listed hereunder¹:

1. a Joint Venture Enterprise between two or more domestic Guyanese Investors; between two or more Foreign Investors; or between one or more Foreign Investors and one or more Domestic Investors; or
2. a Wholly-Owned Enterprise, whether foreign owned or owned by citizens of Guyana.

Joint Ventures The organization, management and activities of a Joint Venture and the relationship between its parties shall be governed by the contract between its parties and the Joint Venture's Articles of Association, in accordance with the laws of Guyana.

Contribution of capital to Foreign Joint Ventures Investors who invest in a Joint Venture may contribute any portion of the total equity investment in that Venture. If a Joint Venture has a Foreign Investor or Investors, for the purposes of establishing value, the contribution of the Venture's Foreign Investor or Investors shall be converted in accordance with the laws of Guyana into Guyanese currency at the exchange buying rate then prevailing on the date of the equity payment(s), as quoted by the Bank of Guyana.

Incorporation, registration or establishment The incorporation, registration, or establishment of an Investment Enterprise shall be in accordance with the Companies Act 1991, or the Partnership Act, or the Business Names (Registration) Act, or the Friendly Societies Act of Guyana.

Legal forms of Investment enterprise Investors shall establish any Investment Enterprise in one of the following forms:

- a) the Registered Office of an Investor;
- b) a Registered Business Name Enterprise;
- c) a partnership;
- d) a private or public company with limited liability for the shareholders under the Companies Act.

¹ The rights of portfolio investors are contained in the Securities Act.

Ownership regulations: An Investment Enterprise may be wholly owned by either Foreign or Domestic Investors. There is no requirement that a Domestic Investor shall own any shares in any Investment Enterprise. Notwithstanding the foregoing, the Government may reserve the right to own some or all of the shares in an Investment Enterprise as agreed under the terms of the relevant Investment Agreement concluded with the Government in relation to such Investment Enterprise.

Government protection of investment: The Government shall protect investments and the property of Investors in accordance with the laws of Guyana.

Compulsory acquisition by Government: The Government shall not compulsorily acquire or take possession of any Investment Enterprise, or any asset of an Investor except:

- a) for a purpose which is in accordance with the Laws of Guyana;
- b) on a non-discriminatory basis;
- c) in accordance with the procedures provided by law;
- d) there is prompt payment of adequate and effective compensation; and
- e) there is a right of access to the High Court by any person claiming such compensation for the determination of any interest in or right over the Investment Enterprise or assets thereof and the amount of compensation in accordance with the constitution of Guyana.

Leasing and owning land: Investors may purchase or lease privately owned land and dispose of or transfer their interests in the land; Investors may also hold State lands by grant, lease or license from the State under the State Lands Act.

Right to profit distribution: The Government hereby guarantees the right of Investors and Investment Enterprises, regardless of form, to freely determine the distribution of all profits or dividends, and the right of Investors to receive their total share in such profits or dividends providing the corresponding tax obligations of the Investors and Investment Enterprise are satisfied.

Transfer of funds abroad: Subject to the liability for the payment of all applicable taxes due, Investors may freely, unconditionally and without hindrance:

- a) repatriate dividends, earnings and capital from their Investment Enterprises;
- b) remit the proceeds in the event of sale or liquidation of an Enterprise or the interest attributable to an investment;
- c) pay interest on international loans;
- d) pay for imports;

- e) pay fees for trademarks, royalties, and management and other fees; and
- f) pay licensing fees for franchising agreements

to their own home countries or to third countries through a corporate body licensed to carry on banking business in Guyana under the Banking Act.

Limitations on the right to transfer funds abroad: Notwithstanding the guarantees on transfer of funds, the Government may prevent a transfer of funds through the equitable, non-discriminatory and good faith application of Acts relating to:

- a) bankruptcy, insolvency, or protection of the rights of stockholders or creditors;
- b) if criminal or penal offences against the Investor or Investment Enterprise are outstanding before the courts; or
- c) to ensure compliance with orders or judgements in legal proceedings

Employment of foreign personnel: Investors shall give priority to citizens of Guyana in recruiting and hiring their employees. However, investment enterprises have the right to employ skilled and expert foreign personnel when necessary and with the approval of the competent authority of the Government of Guyana in compliance with the Immigration and Labour Acts of Guyana. Investors have an obligation to upgrade the skills of their Guyanese employees through such techniques as training within Guyana or elsewhere.

Entry and exit: The Government shall facilitate the entry into, stay in, and exit from Guyana of Investors, their foreign personnel, and their immediate family members in accordance with the Immigration Act. All such persons are subject to and must obey the laws of Guyana while they are in Guyana.

Work permits: The Government shall facilitate Foreign Investors and foreign personnel of Investors in obtaining work permits in accordance with the Immigration Act.

Right of personnel and dependants to transfer funds abroad: Foreign personnel of Investment Enterprises and their families may also repatriate their earnings, after payment of Guyanese personal income taxes and all other taxes due.

Dispute resolution: In the event of disputes between foreign parties within an investment, or between Foreign Investors and Guyanese parties, or between Guyanese partners, or between the Investors and the Government with respect to an investment enterprise, the parties to the dispute shall first seek to settle their differences through consultation or mediation to reach an amicable settlement.

In the event that the disputants fail to resolve the matter, they may then:

- a) submit their dispute to arbitration under the Arbitration Act of Guyana; or
- b) invoke the jurisdiction of the courts of Guyana; or
- c) adopt such other procedure provided for in the Articles of Association of the Investment Enterprise.

Obligations of investors to adhere to environmental, health, and safety laws: Investors shall at all times conduct their operations in accordance with the laws of Guyana. In particular, Investors shall take all measures necessary and appropriate to ensure that the facilities, factories, products and activities of their Investment Enterprises protect:

- a) the natural environment under the Environmental Protection Act; and
- b) the health and safety of the workers and the general public under the Factories Act, Occupational Safety and Health Act 1997, the Accidents and Occupational Diseases Notification Act, and the Steam Boiler Regulations Act.

Obligation of investors to adhere to the National Standards of Guyana: In accordance with the Guyana National Bureau of Standards Act, Investors shall comply with the standards of the Guyana National Bureau of Standards in their importation of products and investment equipment and in their outputs.

Union representation, social insurance, and welfare: In accordance with the Trade Union Recognition Act of 1997, Investors shall grant union representation at any site of employment if the majority of their employees indicate the desire for union representation. Investment Enterprises shall contribute to the social insurance and welfare programs for their workers in accordance with the National Insurance Act.

Accounting standards and audit: In the management of their investment enterprises, Investors shall utilize the national system of financial accounting of Guyana. Their accounts shall be subject to periodic audit consistent with international practices and in accordance with the applicable accounting regulations in operation in Guyana.

Taxation: Investors shall pay applicable taxes, except as otherwise specifically agreed to between the Government and the Investor

Sovereign immunity: In accordance with the provisions of the State Liability and Proceedings Act, the Government shall not assert or claim any right of sovereign immunity in relation to its activities as a Domestic Investor, or its commercial activities in respect of an Investment Enterprise, or in relation to any investment or commercial dispute.

Publication of incentives granted: The Government shall publish an investment guide with full information on fiscal incentives granted to specific sectors.

Agency responsible for Investment: The Guyana Office of Investment or any other agency so designated by the Government shall have the responsibility of administering the investment regime and facilitate investors.