

BILL No. 17 of 2003

Wednesday 30th July, 2003

PARLIAMENT OFFICE,
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Guyana.

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The following Bill which will be introduced in the National Assembly is published for general information.

S. E. Isaacs,
Clerk of the National Assembly



GUYANA

BILL No. 17 of 2003

**INVESTMENT BILL
ARRANGEMENT OF SECTION**

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A BILL
Intituled

AN ACT to provide for the rendering into law of the principles and practices that inform our present approach to investment.

WHEREAS article 16 of the Constitution mandates that the state shall foster development of such relevant forms of co-operation and of business entities as are seen to be supportive of the goals of economic development as stated in articles 14 and 15 of the Constitution;

AND WHEREAS the Government acknowledges the benefits to be derived for Guyana and its people by establishing by law a favourable regime of incentives for investors in Guyana.

A. P. 2003 Be it therefore enacted by the Parliament of Guyana:-

- Short title. 1. This Act may be cited as the Investment Act 2003.
- Interpretation. 2. In this Act -
- "domestic investor" means -
- (i) a citizen of Guyana;
- (ii) a body corporate established in Guyana in conformity with the laws thereof and which is substantially owned and controlled by citizens of Guyana;

- (iii) a citizen of any other member State of the Caribbean Community established under the Treaty done at Chaguaramas on 4th July, 1973;

"foreign investor" means an investor, not being a domestic investor;

"Investment enterprise" means an enterprise owned by an investor or investors.

"investor" means a natural or juridical person investing capital in Guyana on the basis of mutual benefit and observance of the laws of Guyana.

"Minister" means the Minister responsible for Finance.

Objectives.

3. The objectives of this Act are to stimulate the socio-economic development of Guyana, and to attract and facilitate investment, by -
- (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;
 - (d) providing a framework for fiscal incentives for investors and direct investment;
 - (e) streamlining the existing procedures for investment;
 - (f) establishing the structure, role and responsibilities of the Investment Promotion Council established pursuant to section 40.

Government
encourage-
ment of
investment.

4. 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.

5.(1) 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, except for sectors which may be determined by the Minister, which shall be subject to affirmative resolution of the National Assembly.

(2) Notification of the approval of the National Assembly pursuant to subsection (1) shall be published as soon as practicable in the Gazette.

Fields of activity
closed to
investors.

6. 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.

7. Investors may invest equity in an investment enterprise in either of the following two forms -

- (a) a joint venture enterprise involving two or more domestic investors; or two or more foreign investors; or involving one or more foreign investors and one or more domestic investors; or

- (b) a wholly-owned enterprise, whether it is owned by foreign investors or domestic investors.

Joint
Ventures.

8. The organization, management and activities of a joint venture and the relationship of its parties shall be governed by the contract entered into by the parties thereto and the Articles of Association of the joint venture, in accordance with the laws of Guyana.

Contribution
of capital to
Foreign Joint
Ventures.

9. Investors investing 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 Guyana Dollars at the exchange buying rate then prevailing on the date of the equity payment or payments, as quoted by the Bank of Guyana.

Incorporation,
registration or
establishment.

No. 29 of 1991
Cap. 89:02
Cap. 90:05
Cap. 88:01

10. The incorporation, registration, or establishment of an investment enterprise shall be in accordance with the Companies Act 1991, the Partnership Act, the Business Names (Registration) Act, or the Cooperative Societies Act.

Legal forms of
an investment
enterprise.

Cap. 90:05

Cap. 89:02

No. 29 of 1991

Cap. 88:01

11. Investors shall establish an investment enterprise in any of the following forms -

- (a) a Registered Business Name Enterprise;
- (b) a partnership under the Partnership Act;
- (c) a company incorporated under the Companies Act;
- (d) a cooperative society registered under the Cooperative Societies Act.

Ownership
regulations

12. (1) An investment enterprise may be wholly owned by either foreign or domestic investors, but 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 operating in industries as may be determined by the Minister, which shall be subject to affirmative resolution of the National Assembly or in accordance with the terms of the relevant investment agreement concluded with the Government with respect to any such investment enterprise.

(2) Notification of the approval of the National Assembly pursuant to subsection (1) shall be published as soon as practicable in the Gazette.

PART II - RIGHTS, GUARANTEES AND OBLIGATIONS OF INVESTORS

Government
protection of
investment.

13. The Government shall protect investments and the property of investors in accordance with the laws of Guyana.

Compulsory
acquisition by
Government.

14. 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 compensation together with interest calculated from the date of acquisition or taking

possession of the investment enterprise or asset to the date of payment at the commercial bank rate on loans to the corporate sector; 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.

Leasing and
owning land.

15. Subject to the laws for the time being in force, investors may purchase or lease land in Guyana and dispose of or transfer their interests in or rights over the land.

Non-
intervention by
Government.
Cap. 91:01

16. Notwithstanding the provisions of the Trade Act, the Government shall not intervene in the management of investment enterprises; nor shall the Government impose conditions on the sale, pricing, or distribution of the products of those enterprises, except in the pricing of services provided by utilities.

Free export and
import.
Cap. 91:01

17. (1) Notwithstanding the provisions of the Trade Act, the Government shall guarantee the rights of investors and investment enterprises to import or export all or any products free from restriction or limitation, except for products the ownership or possession of which is prohibited by law, or products which may be determined by the Minister and which shall be subject to affirmative resolution of the National Assembly.

(2) Notification of the approval of the National Assembly pursuant to subsection (1) shall be published as soon as practicable in the Gazette.

Right to profit
distribution

18. The Government hereby guarantees the right of investors and investment enterprises, irrespective of their 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.

Employment of
foreign
personnel

Cap 14:02

Cap 98:01

19. (1) Investors shall give priority to citizens of Guyana in recruiting and hiring their employees, but 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 in compliance with the Immigration Act and the Labour Act.

(2) Investors have an obligation to upgrade the skills of their employees through such techniques as training within Guyana or elsewhere.

Entry and
exit

Cap 14:02

20. The Government shall facilitate the entry into, stay in, and departure from Guyana of investors, their foreign personnel, and their immediate family members in accordance with the Immigration Act, but such persons are subject to and must comply with the laws of Guyana while they are in Guyana.

Work permits

Cap. 14:02

21. The Government shall facilitate foreign investors and foreign personnel of investors in obtaining work permits in compliance with the Immigration Act.

Tax
obligations

22. Foreign personnel employed in investment enterprises and their families shall pay all taxes, duties or other imposts for which they are liable pursuant to the laws of Guyana.

Bank accounts

23. Investors may open accounts in the currency of Guyana and in foreign convertible currency with any corporate body licensed to carry on banking business in Guyana under the Banking Act.

Cap 85:01

Transfer of funds abroad

24. Subject to the liability for the payment of all applicable taxes due, investors may freely 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 other countries through a corporate body licensed to carry on banking business in Guyana under the Banking Act.

Cap 85:01

Limitations on the right to transfer funds abroad

25. Notwithstanding the guarantees specified in section 24, the Government may prevent a transfer of funds through the equitable, non-discriminatory and good faith application of Acts in the following circumstances -

- (a) bankruptcy, insolvency, or for the protection of the rights of stockholders or creditors;
- (b) if criminal proceedings against the investor or investment enterprise are pending before the courts; or

- (c) to ensure compliance with orders or judgments of courts or tribunals.

Right of
personnel and
dependants to
transfer funds
abroad .

26. Foreign personnel employed in investment enterprises and their families may also repatriate their earnings, after payment of personal income taxes imposed by law in Guyana and all other taxes due, except when any of the conditions under section 25 exist.

Intellectual
property
rights.

27. The intellectual property rights of investors and investment enterprises are guaranteed under the applicable laws of Guyana.

Dispute
resolution .

28. In the event of disputes among foreign investors within an investment enterprise, or among foreign investors and domestic investors, or among Guyanese investors, or between the investors and the Government with respect to an investment enterprise, the parties to the dispute shall first seek to settle their disputes through consultation or mediation in order to reach an amicable settlement.

(2) If parties to the dispute fail to resolve the matter, they may -

Cap. 7:03

- (a) submit their dispute to arbitration under the Arbitration Act;
- (b) invoke the jurisdiction of the competent courts of Guyana;
- (c) adopt such other procedure provided for in the articles of association or other constituent document of the investment enterprise; or
- (d) submit their dispute to the International Centre for the Settlement of Investment Disputes (ICSID), of which Guyana is a member.

Obligations of
investors to
adhere to
environmental,
health and
safety laws.

29. Investors shall conduct their operations in accordance with the laws of Guyana and in particular, take all measures necessary and appropriate to

ensure that the facilities, factories, products and activities of their investment enterprises protect -

- (a) the natural environment as mandated by the Environmental Protection Act; and
- (b) the health and safety of workers and the general public under the applicable laws of Guyana.

No. 1 of 1996

Obligation of investors to adhere to the National Standards of Guyana.

- No. 11 of 1984 30. In accordance with the Guyana National Bureau of Standards Act, investors shall comply with the standards of the Guyana National Bureau of Standards regarding the importation of products and investment equipment and in their outputs.

Union representation, 1997 social insurance, and welfare.

- No. 33 of 31. In accordance with the Trade Union Recognition Act 1997, investors shall grant union recognition at any site of operations if the majority of their employees indicate the desire for union representation. Investment enterprises shall contribute to the social insurance and welfare programme for their workers in accordance with the National Insurance Act.

Cap. 36:01

Accounting standards and audit.

32. Investors shall comply with the international accounting principles and standards acceptable in Guyana.

Taxation.

33. Investors shall pay all relevant taxes, except as otherwise specifically agreed between the Government and the investor.

Sovereign immunity.

- No. 20 of 1984 34. 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.

Regulations

35. The Minister may make regulations for better implementation of this Act.

PART III - FISCAL INCENTIVES

Investment
priority
categories

36. (1) The Minister, after consultation with the Investment Promotion Council, shall establish three investment priority categories detailed in Priority Lists as specified hereunder -

- (a) priority Industries or sectors being a list of specific industries or sectors that the Government considers may make a substantial contribution to the socio-economic development of Guyana;
- (b) priority Areas being a list of specific geographical areas of Guyana that the Government considers are in urgent need of additional investment for development; and
- (c) priority Projects being a list of specific, objectively measurable investment project characteristics, such as export-orientation, labour absorption, new and advanced product or process technology, that the Government considers will make a significant contribution to national socio-economic development,

and the Priority Lists so established and any alterations made thereto pursuant to subsection (2) shall be published in the Gazette.

(2) The Minister, after consultation with the Investment Promotion Council, may by regulations, which shall be subject to affirmative resolution of the National Assembly, alter or amend the provisions of subsection (1) or substitute a new subsection therefor.

Publication of
incentives
granted.

37. The Government shall publish in the Gazette information regarding all fiscal incentives granted pursuant to this Act.

Audit.

38. (1) The Auditor General, or any suitably qualified person designated by him for the purpose, shall annually carry out a procedural or process audit of incentives granted under this or any other enactment, to an investor or an investment enterprise.

(2) The report of the audit carried out pursuant to subsection (1) shall be laid in the National Assembly within six months after the end of each financial year.

PART IV: ADMINISTRATIVE STRUCTURES AND PROCEDURES

Role of Go-Invest.
No. 21 of 1988

39. The Guyana Office for Investment (Go-Invest), established under the Public Corporations Act 1988, shall be the corporation responsible for facilitating and promoting investment in Guyana. It shall also have the responsibility for administering the fiscal incentives investment system. Go-Invest shall provide investors with all forms necessary to apply for incentives and assist investors in completing forms accurately.

The Investment
Promotion
Council.

40. (1) There is hereby established the Investment Promotion Council (hereafter in this section referred to as "the Council") consisting of the following members -

- (a) one person each from four private business organisations designated by the Minister, one of whom shall represent primarily constituents from outside of Georgetown;
- (b) one member each from the following government ministries and agencies -

- (i) the ministry responsible for finance;
- (ii) the ministry responsible for industry;
- (iii) the ministry responsible for foreign trade;
- (iv) the Guyana Office for Investment.

(2) The Council shall meet at least once in every year and at such other times as may be necessary or expedient for the transaction of business and the Chairperson of the Council may at any time convene a special meeting of the Council.

(3) The Council shall elect the Chairperson and the Deputy Chairperson of the Council from among its members.

(4) In the absence of the Chairperson of the Council the functions of the Chairperson shall be performed by the Deputy Chairperson and in the absence of both of them the members present shall elect one of their members to preside at the meeting.

(5) Go-Invest shall carry out the functions of the Secretariat of the Council and an official of Go-Invest designated in writing by Go-Invest shall perform the functions of Secretary of the Council.

(6) Minutes in proper form of each meeting of the Council shall be kept by the Secretary and shall be confirmed by the Chairperson or the Deputy Chairperson or other person elected to preside at the meeting, as the case may be, as soon as practicable thereafter at a subsequent meeting.

(7) The Council may co-opt any one or more persons to attend any particular meeting of the Council at which the Council is dealing with a particular matter, for the purpose of assisting or advising the Council but no such person shall be entitled to vote at the meeting.

(8) Subject to this section, the Council shall regulate its proceedings.

Functions of the Council.

41. (1) The Council shall

- (a) as circumstances require, but at least once annually, review and recommend to the Government alterations to the Priority Lists as specified in section 38 (1);
- (b) annually recommend to the Government alterations to the regime of fiscal incentives established for investment including incentives relating to tariffs and taxes, import duties and to export-oriented enterprises;
- (c) In circumstances which merit special consideration by the Government in the national interest, recommend incentives to be granted to investors or to investment enterprises that are not included in any priority list.

(2) In circumstances which the Government considers merit special consideration, the Government, after consultation with the Council, may grant to investors or investment enterprises incentives more favourable than those normally granted.

The Bill provides for the establishment of three investment priority categories, namely the Priority Industries or sectors being industries or sectors that the Government considers may make a substantial contribution to the socio-economic development of Guyana, the Priority Areas, being a list of specific geographical areas of Guyana that the Government considers are in urgent need of additional investment for development and the Priority Projects being a list of projects that the Government considers will make a significant contribution to socio-economic

development

EXPLANATORY MEMORANDUM

This Bill seeks to stimulate the socio-economic development of Guyana, and to attract and facilitate investment. The Bill makes provision for domestic investors, such as a citizen of Guyana, a body corporate and a citizen of any other member State of Caricom and also for foreign investors, to invest capital in Guyana on the basis of mutual benefit.

The Bill lays down a favourable regime of incentives for investors. Under this regime investors have certain rights, guarantees and obligations. The Government guarantees the rights of investors and investment enterprises to import and export any product not prohibited by law free from restriction or limitation.

Investors and investment enterprises can freely determine the distribution of their profits, their rights to receive their total share in such profits providing they satisfy their tax obligations. Foreign investors and their foreign personnel can obtain work permits. Investors are free to open Bank accounts in Guyana currency or foreign currency in Guyana.

The Bill provides for legal protection for investments and the property of investors.

The Bill provides for the establishment of three investment priority categories, namely, the Priority Industries or sectors being industries or sectors that the Government considers may make a substantial contribution to the socio-economic development of Guyana, the Priority Areas, being a list of specific geographical areas of Guyana that the Government considers are in urgent need of additional investment for development and the Priority Projects being a list of projects that the Government considers will make a significant contribution to socio-economic development.

The Bill provides for the Investment Promotion Council which has the responsibilities to review and recommend to the Government alterations to the Priority Lists, alterations to the regime of fiscal incentives established for investment including incentives relating to tariffs and taxes, import duties and to export-oriented enterprises, and in circumstances which merit special consideration by the Government recommend incentives to be granted to investors or to investment enterprises that are not included in any priority list.

The Bill provides for the Guyana Office for Investment (Go-Invest) to be the corporation responsible for facilitating and promoting investment in Guyana and also for administering the fiscal incentives investment system.

Minister of Tourism, Industry and Commerce.