

# Puntland Investment Law

This Law amends Puntland Investment Law of 1999

## **Part One**

### **General Provisions**

#### **Article 1**

##### **Purpose of this Law**

The purpose of this Law is to promote and Facilitate investment in Puntland.

#### **Article 2**

##### **Definition of Terms**

Under this law the following terms shall be defined as:

1. A “Foreign Investor” is any foreign juridical or physical person whom makes an investment in the territory of Puntland in accordance with Puntland law.
2. The “Foreign Investment Board”, hereafter referred to as “The Board”, is the entity having the supreme decision-making authority overall matters concerning foreign investment in Puntland.
3. The “Foreign Investment Promotion Office”, hereafter referred to as “The Office”, shall refer to the administrative and promotional office responsible for assisting The Board in the performance of its functions.
4. An “Approved Investment” is a foreign investment that has been approved by the Foreign Investment Board in conformance with this Law.
5. “Profit” is “net income” less applicable income taxes payable, in accordance with the prevailing legislation.
6. A “Duly Registered Foreign Investment” is the original Approved Investment plus profit reinvested in accordance with this law.

### **Article 3**

#### **Adherence of the state to Foreign investment Rules and Policies**

1. The State shall adhere to the basic state policy of opening-up and encourage foreign investors to make investments within the region of Puntland.
2. The State shall implement policies on high-level investment liberalization and convenience, establish and improve the mechanism to promote foreign investment, and create a stable, transparent, foreseeable and level-playing market environment.

### **Article 4**

#### **Adherence of Law by Foreign Investors**

Foreign investors and foreign-funded enterprises carrying out investment activities within the territory of Puntland shall observe the Puntland Laws and Regulations, and shall not impair Puntland's security or damage any public interest.

### **Article 5:**

#### **Forms of Foreign Investment**

1. Foreign investment can be made in any of the following forms:
  - a. Convertible currency specified by the State bank of Puntland and duly transferred to Somalia;
  - b. Machinery, equipment, spare parts, installations and current production inputs, whose importation is permitted under the prevailing import legislation;
  - c. Intellectual property duly registered in Puntland, provided it is necessary for the activities to be pursued under the Approved Investment;
  - d. The amount of foreign currency spent on studies and technical documentation, prepared in connection with the foreign Approved Investment;
  - e. Profit reinvested, originating from foreign investment approved in accordance with this law.
2. Said investment shall be made for the purpose of the establishment or the expansion of an enterprise incorporated and registered in Puntland.

# Part Two

## Investment Authorities

### Article 6

#### The investment Board

1. The Board shall be established at the Ministry of Planning and International Cooperation where it shall convene at least twice a month.
2. The Board shall consist of:
  - a. The Minister/Director General of the Ministry of Planning and International Cooperation.
  - b. The Permanent Secretary of the Ministry of Foreign Affairs.
  - c. The Minister/Director General of the Ministry of Finance.
  - d. The Minister/Director General of the Ministry of Commerce and Industry.
  - e. The Minister/Director General of the Ministry of Labor and Social Affairs.
  - f. The Chairman/Director General of the State Bank.
  - g. The Chairman of the Chamber of Commerce
  - h. The Minister/Director of the Ministry under whose sectorial responsibility the respective foreign investment comes, with the exception of the Ministries mentioned above.
3. The Chairman of the Board shall be The Director General of the Ministry of Commerce and Industry.
4. the Board reports to the president.

### Article 7:

#### Functions of The Board

1. The functions of The Board shall be the following:
  - a. To approve proposed foreign investment in accordance with the policy guidelines laid down in Article 7 of this law;
  - b. To approve the registration of foreign investment;
  - c. To review the registration of foreign investment made under previous foreign investment legislation in order that such investment may benefit from the more favorable provisions, as per Article 20 of this law;

- d. To determine the value of foreign investment made as per Article 2, paragraphs (b), (c) and (d) of this law;
  - e. To ensure compliance with the provisions of Article 16 concerning the contracting of debt from domestic sources;
  - f. To facilitate the granting of visas to foreign personnel to be employed by enterprises registered under this law; this law will require that all firms who invest in Somalia provide for employment and training of local Somalia staff, employment for the citizens of Somalia including 50% of all staff, contractors and consultants must be residents of Somalia.
  - g. To perform any other function concerning foreign investment in conformity with this law.
2. Board approval pursuant to paragraph 1 of this Article shall be effectuated through the procedures identified in Article 9.

#### **Article 8:**

##### **Meetings, Quorum and vote of the Board**

1. The board shall meet once a month.
2. Seven members of The Board, including the Chairman, shall constitute a quorum. Board decisions shall be made by simple majority vote.

#### **Article 9**

##### **Investment promotion office**

The duties of the Office shall be the following:

1. To implement the decisions taken by the Board;
2. To propose the administrative and regulatory procedures required for the implementation of this law;
3. To provide information and advice to the foreign investor on foreign matters such as: application and registration procedures under this law; taxation; foreign exchange regime; economic legislation; foreign trade regime; investment opportunities; institutional framework; local sources of debt financing; partner search;
4. To assist the foreign investor in meeting the application requirements related to foreign investment; including the requirements of domestic labor.
5. To assist foreign Approved Investments, at the incorporation and development stages, with guidance and advice concerning official institutions and channels and related administrative procedures;
6. To formulate proposals concerning foreign investment policy and the improvement of investment conditions;

7. To promote and attract new foreign investment in collaboration with other institutions involved in this field;
8. To perform any other duty related to foreign investment, assigned to it by The Board.

## **Part Three**

# **Investment Promotion**

### **Articles 10**

#### **Openness to Investment**

1. All business sectors shall be open to private investment regardless of the origin of the investor. However, an investor shall be encouraged to invest in priority economic sectors:
2. Priority shall be given to foreign investment in those areas where it:
  - a. Puts Puntland's human and natural resources to productive use;
  - b. Introduces innovative technology suited to the country's conditions;
  - c. Generates new earnings or savings of foreign exchange through exports, resource-based import substitution or service activities;
  - d. Contributes to responsible, sustainable development and regionally balanced socio-economic development.
3. This refers particularly to foreign investment in or closely related to:
  - a. Agriculture;
  - b. Livestock;
  - c. Fishing;
  - d. Natural resources;
  - e. Industrial activities using significant amounts of inputs produced by the aforementioned sectors;
  - f. Tourism, provided the investment harmonizes with the prevailing social, economic and infrastructural conditions;
  - g. Any other investment in production. Technology, manufacturing and service activities appropriate to support and stimulate, to a significant degree, the development of the afore-mentioned sectors.
  - h. Recommend the grant of land concession for the youth of public private partnership (PPP).
3. Nothing in this article creates an exception to Article 39.

## **Article 11**

### **Investor Rights**

Without prejudice to the provisions of other Laws, an investor shall have the following rights:

- a. to freely establish business management methods
- b. to freely choose sources of supplies
- c. to freely use property

## **Article 12**

### **Foreign investor treatment**

A foreign investor may invest and purchase shares in an investment enterprise in Puntland and shall be given equal treatment with Somali investors with regard to incentives and investment facilitation.

## **Article 13**

### **Establishment of Special Economic Area**

1. The State may, as needed, establish special economic area or carry out pilot polices and measures on foreign investment in specific areas, so as to promote foreign investment and expanding opening-up.
2. The State may, according to the requirements of national economy and social development, encourage and guide foreign investors to invest in specific industries, fields and areas.

## **Article 14**

### **Consultation with Foreign investors on policy and Legal Formulation**

1. The State shall establish and perfect the service system for foreign investment, and provide foreign investors with consultation and services in respect of laws and regulations, policies and measures, investment project information and other aspects
2. Comments and suggestions from foreign investors shall be sought in a proper manner when formulating laws, regulations and rules relating to foreign investment.

## **Article 15**

### **Foreign Investors Participation in Government Procurement**

The State shall guarantee that foreign Investors can participate in government procurement activities through fair competition. Products produced and services

provided by foreign Investors within Puntland shall be treated equally in a government procurement.

**Article 16:**  
**Investment Incentives**

Foreign investment shall be eligible for incentives and facilities, incentives shall include:

- a. the ability to have long term leases for up to 99 years for substantial investment in accordance with the applicable legislation governing such incentives and facilities.
- b. Foreign Investment is exempted from payment of tax on profit for a period of three years from commencing operations. In addition, after the expiry of the initial tax holiday period, foreign investors shall be entitled to a 50% reduction of the tax due for the profit reinvested.

**Article 17:**  
**Facilities for Foreign Personnel**

1. The Board shall ensure that the immigration authorities facilitate the granting of the entry permits and residence visas to foreign personnel employed by an enterprise registered under this Law, and to their families.
2. The Board shall also ensure that such personnel and their families be granted access, for reasons of work, to any part of Puntland.
3. Any enterprise registered under this law shall employ qualified Somali nationals whenever they are available. Foreign investment shall seek to make a significant contribution toward the transfer of technology and managerial know-how, and the upgrading of professional skills available in Somalia. Foreign investors will employ at least 50% of staff from local resident citizens of Somalia.

**Article 18:**  
**Guarantees for Foreign Investment**

1. All enterprises that are the object of foreign investment shall receive treatment as favorable as that accorded to domestic enterprises.
2. The property of foreign investment, duly registered under this law, shall not be subject to expropriation measures, except in the case where public interest cannot be satisfied by other government measures.
3. In the case of such expropriation, prompt and adequate compensation shall be paid. Said compensation shall reflect the fair market value of the assets and shall be freely transferable.

#### **Article 19:**

##### **Benefits to Existing Foreign Investment**

1. Existing foreign investment in Puntland, duly registered under previous Laws concerning foreign investment, shall continue to enjoy the rights and obligations conferred to it by said laws.
2. Such foreign investment shall be entitled to benefit, at the Foreign Investor's option, from the provisions of this new Law, provided the registration requirements and other Provisions of the previous laws have been complied with, and satisfactory documentary Evidence is produced to this effect by the Foreign Investor. In such case, the Foreign Investor may apply to the Board for registration under this law within one hundred eighty (180) days as of the date of its promulgation.

## **Part Four**

### **Investment Protection**

#### **Article 20**

##### **Protection of Investment Capital and assets**

1. An investor shall have the right to own private property, whether individually or in association with others. Private property, whether individually or collectively owned, shall be inviolable.
2. No investment, interest in or right over any property forming part of such investment shall be seized or confiscated except where provided under relevant laws.
3. No action to expropriate an investor's property in public interest shall be taken, unless the investor is given fair compensation in accordance with relevant laws.

#### **Article 21**

##### **Protection of Intellectual property rights in relation to investment**

1. The investor's intellectual property rights and legitimate rights related to technology transfer shall be guaranteed in accordance with relevant Laws.
2. The state shall protect the legitimate rights and interests of holders of intellectual property rights and relevant right holders; in case of any infringement of intellectual property right, legal liability shall be investigated strictly in accordance with the law.

## **Article 22**

### **Repatriation of Foreign Investment**

1. after five years from the date of the registration of the original Approved Investment, as specified in the "Certificate of Foreign Investment Registered and Upon fulfilling all tax obligations in Puntland, an investor shall be allowed to repatriate the following:
  - a. Capital
  - b. Profits derived from the business activity
  - c. Proceeds from the liquidation of investment
  - d. Any other assets of an investor
2. The Board may reduce the said period, taking into consideration the priorities under the policy guidelines as per Article 10 of this law.
3. The transfer abroad shall be effected in the original currency specified in the "Certificate of Foreign Investment Registered". The funds destined for transfer shall originate from the liquidation of assets or the transfer of capital stock of the enterprise that is the object of the foreign investment, to other juridical or physical persons. The Foreign Investor is free to transfer abroad the physical assets that were the object of the investment in the event this alternative is opted for.
4. In cases where the amount realized from the liquidation or sale of capital stock exceeds the amount of the original investment plus registered reinvested Profit, the Foreign Investor shall be free to transfer abroad the difference, in accordance with the prevailing tax legislation and foreign exchange regulations.

## **Article 23:**

### **Alienation of Foreign Investment and Notification Requirements**

1. Alienation of foreign investment shall be effected either through the liquidation of assets, or through the transfer of capital stock of the enterprise that is the object of such investment, to juridical or physical persons.
2. In the event of alienation of a foreign investment to a resident Somali juridical or physical person, the transferee shall cease to enjoy the benefits derived from the status of a Foreign Investor.
3. Any alienation is subject to prior notification to the Board by both the transferor and the transferee. Such notification shall be accompanied by appropriate supporting documentation.
4. The alienation of a foreign investment to other Foreign Investors shall not require approval, as per Article 9 of this law, but only notification, as per paragraph 3 of this Article.

**Article 24:**  
**Reinvestment of Profit**

1. Profit originating from a Duly Registered Foreign Investment may be reinvested in the same enterprise that is the object of the investment, or in another enterprise in accordance with the provisions of this law.
2. When such Profit is to be reinvested, The Board shall be notified to this effect by registered mail or directly, against issue of a delivery receipt.
3. The Board shall proceed to register Profit reinvested in the convertible currency specified in the "Certificate of Foreign Investment Registered". The amount shall be determined in accordance with the prevailing laws and regulations governing foreign exchange.
4. To this effect, The Board shall issue a "Certificate of Reinvestment".
5. Subsequent rights to transfer Profit and repatriate investment, as well as other benefits under this law, shall be determined on the basis of the original registered investment plus Profit reinvested.
6. In the case of the reinvestment of Profit in an enterprise, other than the enterprise that is the object of a Duly Registered Foreign Investment, the provisions of Article 8 and 9 of this law shall apply.

**Article 25:**  
**Transfer of Profit**

1. Profit originating from a Duly Registered Foreign Investment may be freely transferred abroad in a freely convertible currency.
2. In the case that only part of such Profit is transferred abroad in one year, the Foreign Investor may transfer the remaining portion in any one of the following years.

**Article 26**

**Confidentiality of Trade secrets of foreign investors**

Administrative departments and their staff members shall keep confidential any trade secret of foreign investor or foreign-funded enterprise they are aware of during the performance of their duties, and shall not divulge or illegally provide to others the secret.

**Article 27**

**Keeping Policy commitments**

The government of Puntland at all levels and their relevant departments shall strictly keep their policy commitments made to foreign investors and foreign-funded enterprises and perform all contracts entered into in accordance with the law.

**Article 28:  
Settlement of Disputes**

1. Disputes in respect of the implementation of this law shall be settled:
  - a. In a manner agreed upon with the Foreign Investor, or in the absence of such agreement;
  - b. Within the framework of the agreements in force between the Somali Federal Republic and the Foreign Investor's home country, or, in the absence of (a) and (b);
  - c. Disputes may be submitted to arbitration under the International Centre for the Settlement of Investment Disputes (ICSID), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington 19 March 1965 (the "ICSID Convention"). Somalia confirms its consent to the submission of a dispute to ICSID as provided in this paragraph, subject to the provisions of the ICSID Convention.
2. In the absence of agreements or conventions as per paragraph 1 of this Article, disputes shall be settled through arbitration as follows: An Arbitration Panel shall be established, comprising one member on behalf of each disputing party and a third member acting as a chairman, to be jointly named by the said two members. In the case that the disputing parties fail to agree on the nomination of the chairman within 30 days of the date of the nomination of the second member, the chairman shall be appointed by the President of the Supreme Court of Somalia. The Arbitration Panel shall lay down its rules of procedure unrestricted by the rules contained in the civil and commercial codes of procedures save for the rules which relate to the basic and internationally customary guarantees and principles of litigation. The Board shall see to it that the disputes be expediently resolved. Awards shall be rendered by majority vote, and shall be final and binding on both parties and enforceable as any other final judgment. The Arbitration Panel shall decide who shall bear the arbitration costs.

**Part FIVE**

**Investment Registration**

**Article 29**

**Investment Registration process**

1. For an investor to be issued an investment certificate determined by the Board in order to qualify for the incentives provided for by this Law, he/she shall fill out an appropriate form indicating his/her identity and any other necessary details.

2. The application by the Foreign Investor shall be made by completing the form “Application Form for Approval and Registration”, available at the Office located in the Ministry of Commerce and Industry, and mailing it by registered mail or express service with delivery receipt to “The Foreign Investment Board c/o Ministry of Commerce and Industry in Garowe Puntland, Somalia”.
3. Alternatively, the Foreign Investor may deliver the application directly to The Office, which will issue a delivery receipt. Applications can be emailed to the Ministry of Commerce and Industry and at -----with a receipt required.
4. The applicant shall pay a non-refundable registration fee determined by the regulations of the head of the Board.
5. The Office shall review the application, at the applicant’s request, for completeness and certify its satisfaction in respect of this requirement.

### **Article 30**

#### **Investment Registration requirements**

The application for investment registration must be accompanied by the following:

1. certificate of legal personality of the business company;
2. a business plan which must include at least the following:
  - a. name of the project and detailed information on the project in which investment is or will be made;
  - b. action plan;
  - c. the date of commencement of operations;
  - d. detailed information on any raw materials sourced in the country or in the locality where the investment is operating;
  - e. detailed information on any financing and assets to be sourced from outside Puntland, including the timeframe in which these finance and assets shall be invested;
3. a market survey;
4. details of the projected technology and knowledge transfer;

### **Article 31**

#### **Timeframe for issuance of investment certificate**

1. Within Sixty (60) days from the date of the receipt of a duly completed investment application, The Board shall notify the applicant by registered mail of its decision. At the applicant's option this notification may be collected by his representative directly from The Office against issue of a delivery receipt.

2. In case a modification of an application is required, The Board shall notify the applicant to this effect by registered mail. At the applicant's option, this notification may be collected by his representative directly from the Office, against issue of a delivery receipt.
3. The Board shall notify, through the Office, the approval of a foreign investment by issuing a "Certificate of Foreign Investment in an Approved Enterprise". Such approval shall be construed by the Foreign Investor as conferring eligibility for registration under this law.
4. The "Certificate of Foreign Investment in an Approved Enterprise" shall be valid for the period of twenty-four (24) months from the date of issue. During said period, the applicant shall effect the transfer of assets to Puntland listed in Article 5, paragraphs 1(a, b, c and d). In case this period is exceeded, The Board may grant, at the applicant's request, an additional period or ask for a new application.
5. Additional investment to be made as per Article 5. (1), paragraphs (a), (b), (c), and (d) in an enterprise that is the object of a foreign investment already duly registered, shall require application and approval as per Article 29 and paragraphs 1, 2, 3, and 4 of this Article.

## **Part Six**

### **Change, suspension or termination of Investment Operation**

#### **Article 32**

##### **Notification of change and termination of investment operation to the Board**

A registered investor shall, within a period not exceeding thirty (30) days, inform the Board in writing before:

- a. changing the nature of investment operation.
- b. suspending investment operations. In this case, the investor shall also indicate the duration of the suspension;
- c. terminating investment operations

#### **Article 33**

##### **Notification to the Board by a third Party**

Any interested person other than the registered investor, who is affected by the suspension or termination of investment operations, may inform the Board.

## **Article 34:**

### **Measures taken by the Board after notification of change of investment operations**

1. Where notification of changes is made in accordance with the provisions of this Law, and such changes materially alter the investment in accordance with **Article 29** of this Law but are not detrimental to the investment and criteria for investment incentives qualification, the Board shall amend the investment certificate to reflect such notified changes.
2. Where changes in the nature of operations do not materially alter the commitments made by an investor, they shall only be recorded in the investor's file.

## **Part Seven**

### **Cancelation on Investment Certificate**

#### **Article 35**

##### **Grounds for Cancelation of an Investment Certificate**

An investment certificate may be cancelled on the following grounds:

1. it was issued on the basis of false or fraudulent declarations of an investor;
2. material changes detrimental to investment occurred in investment operations;
3. the investor fails to fulfil obligations under this Law.

#### **Article 36**

##### **Procedure for cancelation of an Investment Certificate**

1. Prior to cancelling the investment certificate, the Board shall issue a written notice to the investor providing details of grounds for the proposed cancellation and requesting the investor to provide appropriate explanations on these grounds.
2. The registered investor shall provide written explanations to the Board within ten (10) working days from the date of receipt of the request from the Board.
3. Where the investor fails to provide explanations within due time or the Board is not satisfied with the explanations provided, the Board shall cancel the investment certificate.

#### **Article 37**

##### **Effects of cancelation of an investment certificate**

Where an investment certificate is cancelled because it was issued on the basis referred to in Article 35 Sub Paragraph 1, the investor shall be liable to refund an amount equivalent to the incentives he/she was given in his/her capacity as a registered investor.

## **Article 38**

### **Appeal for cancelation of an Investment Certificate**

1. Where the investor is not satisfied with the decision taken, he/she may appeal against such a decision to the head of the Board within ten (10) working days as of the date of notification of the decision. The head of the Board shall decide on the appeal within ten (10) working days of the date of appeal.

# **Part Eight**

## **Legal Liability**

### **Article 39:**

#### **Foreign Investment Not Subject to this Law**

1. The provisions of this laws shall not apply to foreign investment in Mineral research and extractive activities, including those related to the petroleum industry, military manufacturing, storage, disposal and nuclear power.
2. Such investment shall be subject to the Mining Code and the Mining Regulations, and to agreements reached, hereunder, between the Government of Somalia and Puntland and the interested party.
3. Where a foreign investor invests in a field forbidden by the Law, relevant competent department shall order the said investor to stop its investment activity, dispose of the shares and assets thereof or take any other necessary measures within a prescribed time limit, and restore the state to what it was prior to the investment; if there is any illegal gain, such gain shall be confiscated.

### **Article 40:**

#### **Obligations to Report Transactions Concerning Foreign Investments**

1. Banks, public notaries and entities involved with foreign investment shall notify The Board of the particulars of any important pertinent acts and transactions within thirty (30) days from the date of completion of such acts or transactions. This refers, interalia, to act or transactions concerning incorporation, contracting of debt from institutional domestic financial sources, transfer of profit and repatriation of investment.
2. If such Institution fail to notify they will be liable for a fine not exceeding 10% of the amount of the Transaction concealed.

**Article 41:**  
**Limits to Contracting Debt from Domestic Sources**

1. Any enterprise that is the object of a Duly Registered Foreign Investment may contract debt from institutional domestic financial sources up to the limit established by the State Bank of Puntland, in consultation with The Board.
2. The proceeds from such debt contracted from domestic sources shall be used strictly for the carrying out of the activities specified in the "Certificate of Foreign Investment Registered". The Board shall be authorized to verify the due application of the proceeds.

**Article 42:**  
**Non-Compliance with the Provisions of Puntland Law**

Failure to comply with the provisions of Puntland law, on the part of the Foreign Investor, shall result in the forfeiture of benefits provided hereunder.

**Article 43**  
**Abuse of power or function by a staff member of an administrative department**

Where a staff member of an administrative department abuses his/her functions and powers, neglects his/her duties or engages in malpractice for personal gain during the work relating to promotion, protection and management of foreign investment, or divulge or illegally provide to others any trade secret he/she is aware of during the performance of duties, a penalty will be imposed upon him/her in accordance with the law; if a crime is constituted, he/she will be held criminally liable.

## **Part Nine**

### **Miscellaneous provisions**

**Article 43:**  
**Regulations**

The President of Puntland State of Somalia, at the proposal of The Board, and having heard the Minister of Commerce and industry and the Council of Ministers, may issue regulations for the proper implementation of this law.

**Article 44:  
Repeal**

Any Law incompatible with the provisions of this law is hereby repealed.

**Article 45:  
Commencement**

This law shall come into force as of the date of its publication in the Official Bulletin of the Government of Puntland.

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