

**THE FOREIGN INVESTMENTS PROTECTION
ACT, 1964**

No. 35 of 1964

Date of Assent: 11th December 1964

Date of Commencement: 15th December 1964

**An Act of Parliament to give protection to certain approved
foreign investments and for matters incidental thereto**

ENACTED by the Parliament of Kenya, as follows:—

1. This Act may be cited as the Foreign Investments Protection Act, 1964. Short title.

2. (1) In this Act, unless the context otherwise requires— Interpretation.

“approved” in relation to any enterprise, foreign currency, period or proportion, means any enterprise, currency, period or proportion specified in the relevant certificate issued under section 3 of this Act;

“foreign assets” includes foreign currency, credits, rights, benefits or property, any currency, credits, rights, benefits or property obtained by the expenditure of foreign currency, the provision of foreign credit, or the use or exploitation of foreign rights, benefits or property, and any profits from an investment in an approved enterprise by the holder of a certificate issued under section 3 of this Act in relation to that enterprise;

“foreign national” means a person who is not a citizen of Kenya, and includes a body corporate not being a body incorporated in Kenya;

“the Minister” means the Minister for the time being responsible for finance.

(2) For the avoidance of doubt it is hereby declared that assets shall not cease to be foreign assets by reason of their being assets in some other part of the Commonwealth, and that currency shall not cease to be foreign currency by reason of it being in Kenya as well as in some place outside Kenya:

Provided that in the case of currency, the relevant sum originates from outside Kenya.

Foreign investors may apply for and be granted certificates.

3. (1) A foreign national who proposes to invest foreign assets in Kenya may apply to the Minister for a certificate that the enterprise in which the assets are proposed to be invested is an approved enterprise for the purposes of this Act.

(2) The Minister shall consider every application made under subsection (1) of this section and in any case in which he is satisfied that the enterprise would further the economic development of, or would be of benefit to, Kenya, he may in his discretion issue a certificate to the applicant.

(3) Foreign nationals who have already invested foreign assets in Kenya shall be entitled to the grant of a certificate on application provided that a certificate may be withheld if the Minister is not satisfied that the enterprise is of benefit to Kenya.

(4) Every certificate shall state—

(a) the name of the holder;

(b) the name and a description of the enterprise;

(c) the proportion of the foreign assets invested or to be invested by the holder to the total assets of the enterprise, and where the investment consists of the acquisition of shares or stock in a body corporate, the number or amount and description thereof;

(d) the relevant foreign currency;

(e) if the assets have not yet been invested, the value thereof and the period within which they shall be invested;

(f) such other matters as may be necessary or desirable for the purposes of this Act.

4. The Minister may in his discretion amend a certificate granted under section 3 of this Act—

(a) in any case in which he is satisfied that some other foreign national has succeeded to the interest in the enterprise of the holder of the certificate, by substituting for the name of the holder the name of his successor:

Provided that the Minister shall not substitute the name of any person who has acquired the interest of the holder by the expenditure, directly or indirectly, of assets other than foreign assets;

(b) in any case where an interest in the enterprise passes to any other person on the death of the holder;

Amendment of certificate.

- (c) in any case where the name of the enterprise is altered, by substituting the name as so altered;
- (d) in any case in which new foreign assets are invested or are to be invested in the enterprise by the holder, or the holder has withdrawn or been paid, in accordance with this Act, any part of his investment by varying the approved proportion in accordance therewith;
- (e) in any case where the investment consists of the acquisition of shares or stock of a body corporate, and new shares or stock are acquired otherwise than by the investment of assets which are not foreign assets, by amending the number or amount and the description thereof;
- (f) with the written consent of the holder of the certificate, by varying the approved foreign currency;
- (g) by extending the period during which foreign assets are to be invested; and
- (h) subject to these foregoing provisions and to the written consent of the holder, in such other manner as may be necessary or desirable.

5. If, at the time at which a certificate is issued under this Act, any foreign assets or part thereof to which such certificate relates have not been invested in the approved enterprise, they shall be so invested within the approved period, and, if not so invested within that period, the certificate shall be deemed to have been revoked.

Foreign assets to be brought in during approved period.

6. Nothing in this Act shall affect the obligation of an investor other than an investor from one of the scheduled territories to comply initially with the requirements of the Exchange Control Act.

Compliance with the Exchange Control Act, Cap. 113.

7. Notwithstanding the provisions of any other law for the time being in force, the holder of a certificate may, in respect of the approved enterprise to which such certificate relates, transfer out of Kenya in the approved foreign currency and at the prevailing official rate of exchange—

Transfer of profits, etc.

- (a) the profits, after taxation, of his investment of foreign assets;

- (b) the approved proportion of the net proceeds of sale of all or any part of the approved enterprise, either in liquidation or as a going concern; and
- (c) the principal and interest of any loan specified in the certificate.

Compulsory acquisition.

8. No approved enterprise or any property belonging thereto shall be compulsorily taken possession of, and no interest in or right over such enterprise or property shall be compulsorily acquired, except in accordance with the provisions concerning compulsory taking of possession and acquisition and the payment of full and prompt payment of compensation contained in section 19 of the Constitution of Kenya and reproduced in the Schedule to this Act.

Regulations and directions.

9. The Minister may make regulations or give directions generally for the better carrying out of the purposes of this Act and prescribing the manner in which applications shall be made for certificates under this Act, and the information which shall accompany such applications.

SCHEDULE

(s. 8)

THE CONSTITUTION OF KENYA

Protection from deprivation of property.

19. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—

- (a) the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property in such manner as to promote the public benefit; and
- (b) the necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and
- (c) provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.

(2) Every person having an interest or right in or over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the Supreme Court for—

- (a) the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled; and

(b) the purpose of obtaining prompt payment of that compensation:

Provided that if Parliament so provides in relation to any matter referred to in paragraph (a) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the right or interest in the property) from a tribunal or authority, other than the Supreme Court, having jurisdiction under any law to determine that matter.

(3) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court or any other tribunal or authority in relation to the jurisdiction conferred on the Supreme Court by subsection (2) of this section or exercisable by the other tribunal or authority for the purposes of that subsection (including rules with respect to the time within which applications or appeals to the Supreme Court or applications to the other tribunal or authority may be brought).

(4) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any payment of that compensation, the whole of that payment (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Kenya.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (4) of this section to the extent that the law in question authorizes—

(a) the attachment, by order of a court, of any payment or part of any payment of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party;
or

(b) the imposition of reasonable restrictions on the manner in which any payment of compensation is to be remitted.

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) or subsection (2) of this section—

(a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property—

(i) in satisfaction of any tax, duty, rate, cess or other impost;

(ii) by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence under the law of Kenya;

(iii) as an incident of a lease, tenancy, mortgage, charge bill of sale, pledge or contract;

(iv) in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;

- (v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or injurious to the health of human beings, animals or plants;
 - (vi) in consequence of any law with respect to the limitation of actions; or
 - (vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out),
and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or
- (b) to the extent that the law in question makes provision for the taking of possession or acquisition of—
- (i) enemy property;
 - (ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;
 - (iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or
 - (iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(7) Nothing contained in or done under the authority of any Act of Parliament shall be held to be inconsistent with or in contravention of this section to the extent that the Act in question makes provision for the compulsory taking possession of any property or the compulsory acquisition of any interest in or right over property where that property, interest or right is vested in a body corporate, established by law for public purposes, in which no moneys have been invested other than moneys provided by Parliament; and nothing contained in or done under the authority of any law made by a Regional Assembly shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for the compulsory taking possession of any property or the compulsory acquisition of any interest in or right over any property where the property, interest or right is vested in a body corporate, established by law for public purposes, in which no moneys have been invested other than moneys provided by that Regional Assembly.