

**THE FOREIGN INVESTMENTS PROTECTION
(AMENDMENT) ACT, 1988**

No. 7 of 1988

Date of Assent: 11th August, 1988

Date of Commencement: 19th August, 1988

An Act of Parliament to amend the Foreign Investments Protection Act

ENACTED by the Parliament of Kenya as follows:—

Short title.

1. This Act may be cited as the Foreign Investments Protection (Amendment) Act, 1988.

Application.

2. The provisions of this Act shall apply to investments in respect of which a certificate of approved enterprise is granted or amended by the Minister after the commencement of this Act.

Amendment of section 3 of Cap. 518.

3. Section 3 of the Foreign Investments Protection Act, in this Act referred to as the principal Act, is amended—

(a) by repealing subsection (3);

(b) in subsection (4)—

(i) by deleting paragraphs (c) and (d) and inserting the following new paragraphs—

(c) the amount of the foreign assets invested or to be invested by the holder of the certificate in the enterprise divided as between—

(i) capital, being deemed to be a fixed amount representing the equity of the holder in the enterprise for the purposes of this Act and which shall be expressed in the certificate in, and shall for the purposes of this Act be in, either Kenya currency or the relevant foreign currency; and

(ii) any loan, which may be expressed in, and may for the purposes of this Act be in, either Kenya currency or the relevant foreign currency;

(d) the foreign currency invested or to be invested;

(ii) by deleting paragraph (e);

(c) by inserting the following new subsection—

(5) If the foreign assets have not yet been invested a conditional certificate shall be issued stating, in addition to the details specified in subsection (3), the period in which they shall be invested.

4. Section 4 of the principal Act is amended by deleting paragraph (d) and inserting the following new paragraph—

Amendment of
section 4 of
Cap. 518.

(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case in which new foreign assets are invested or are to be invested in the enterprise by the holder, or the holder has withdrawn or been paid, in accordance with this Act, any part of his investment by varying the approved amount in either Kenya currency or the relevant foreign currency in accordance therewith.

5. Section 7 of the principal Act is amended by deleting paragraph (a) and inserting the following new paragraph—

Amendment of
section 7 of
Cap. 518.

(a) the profits, including retained profits which have not been capitalized, after taxation, arising from or out of his investment in foreign assets:

Provided that any increase in the capital value of the investment arising out of the sale of the whole or any part of the capital assets of the enterprise or revaluation of capital assets shall not be deemed to be profit arising from or out of the investment for the purposes of this Act.

6. The principal Act is amended by inserting the following new section immediately after section 8—

Insertion of
new section
8A in
Cap. 518.

Investment
of proceeds.

8A. Any proceeds realized from the sale of foreign assets which may not be transferred out of Kenya in the manner provided for under section 7 shall be invested in Government securities for a period of five years:

Provided that—

(i) the income from the Government securities in which the proceeds are invested

may be transferred out of Kenya under the same terms as interest under paragraph (c) of section 7; and

- (ii) the capital may be transferred out of Kenya at the end of five years on the same terms as other funds in the manner provided for under section 7.