ENSIGHT

ENSafrica ENSight
27 March 2019

Uganda passes new Investment Code

by Phillip Karugaba

Uganda has enacted the Investment Code Act, 2019 (the "**Code**"). The previous Code was enacted in 1991 and was long overdue for amendment given the changes in approach to attracting investment and the glaring weaknesses in the old Code.

The new Code strengthens the Uganda Investment Authority (the "**Authority**"), establishing it as a one-stop investment centre, and also provides for the financing and auditing of the Authority. The Code also aligns the provisions on protection from expropriation with the Constitution, providing for prior payment of compensation. The Code also expressly provides for the removal of the now titled Director General (previously the Executive Director), an area that saw some contention under the old Code. Interestingly, the provisions on immunity of officials of the Authority were not reenacted.

The new Code also does away with redundant provisions under the old Code, such as restrictions on foreign investment in animal and crop production, as well as monetary thresholds for an investor to qualify for incentives. The monetary thresholds, as well as proscribed areas to foreign investment, are yet to be detailed by the Minister of Finance. Similarly, the old investment incentives have been scraped and left to the Minister to prescribe.

Surprisingly, the priority areas for investment do not include energy generation and distribution, or hospital developments. Both of these are areas that have attracted a lot of investor interest.

It is now mandatory for foreign entities in Uganda to register with the Authority and failure to do so is punishable by a fine of UGX20-million or a term of imprisonment of four years, or both. The custodial sentence is most odd. This provision will apply even to foreign investors that were doing business before the new Code was passed.

The new Code lists criteria for qualification for investment incentives. The list includes a requirement to export 80% of goods produced, the use of 70% of locally sourced raw materials, among others. It is not clear whether this list is conjunctive, as not all elements would be applicable to all investment areas. For instance, the use of local raw materials is not relevant to investment in telecommunications.

Some language in the Code creates the impression that the Authority will select investors in areas of scarce resources (mining, oil exploration, fishing, forestry etc). This, however, is not consistent with the sectoral laws in the respective areas.

The new Code is expected to come into force shortly, upon publication in the Uganda Gazette. It may cause a slight climb in Uganda's rankings as an investment destination, however, the investment incentives will have to be published to create real investor interest.

Phillip Karugaba

head of ENSafrica Advocates | Uganda

cell: +256 772 785 332

info@ENSafrica.com
level 2 BBBEE rating (South Africa)