

# Act on incentives for initial investments in Iceland

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## CHAPTER I

### Article 1

#### *Purpose*

The purpose of this act is to promote initial investment in commercial operations, the competitiveness of Iceland and regional development by specifying what incentives are permitted in respect of initial investments in Iceland and how they should be used.

### Article 2

#### *Scope and authorization*

This Act covers defined incentives provided for in this Act relating to initial investments in Iceland, subject to the conditions laid down in Article 5.

On the basis of this Act, the Minister is authorized to enter into contracts, as provided in Article 14, on behalf of the Government relating to involvement by the State and, as applicable, Municipalities in initial investments in Iceland.

This Act does not apply to investments in companies which provide service on the basis of legislation on financial institutions, insurance operations or securities. This Act does not apply to incentives for airports or to projects in the field of energy production.

### Article 3

#### *Definitions*

For the purpose of this Act, the following definitions shall apply:

1. *Regional aid*: State aid provided as authorized in Article 61(3)(c) of the Agreement on the European Economic Area to promote regional development and economic activity in a specific region in accordance with an approved regional aid map;
2. *Regional aid map*: A map of Iceland approved by the EFTA Surveillance Authority (ESA) for a certain time period, showing in which areas of Iceland regional aid may be granted and to what extent;
3. *Investment project*: A project involving initial investment;
4. *Investment cost*: Cost of tangible and intangible assets incurred in connection with an investment project in Iceland or labor cost. A more detailed definition on what is considered to be investment cost will be laid down by the Minister according to the provision. A committee, pursuant to Article 11, shall provide further information on the basis and calculation of investment cost;
5. *Incentive*: Defined State aid pursuant to this Act which is a condition for a specific investment project to materialize in Iceland;
6. *Small enterprise*: An enterprise which employs fewer than 50 persons and whose annual turnover does not exceed EUR 2 million and/or annual balance sheet total does not exceed EUR 10 million, pursuant to guidelines from EFTA Surveillance Authority (ESA) on aid to micro-, small- and medium-sized enterprises.
7. *Medium-sized enterprise*: An enterprise which employs 50–250 persons and which has an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million, pursuant to guidelines from EFTA Surveillance Authority (ESA) on aid to micro-, small- and medium-sized enterprises.
8. *Large enterprise*: An enterprise that does not come under the definition of a small- or medium-sized enterprise as defined in subparagraphs 6 and 7 of this Article;
9. *Initial investment*: An investment which consists in setting up a new project or new commercial activity in Iceland or which constitutes an independent addition to an earlier project. An investment which replaces an earlier investment does not constitute a initial investment in the understanding of this Act;

## CHAPTER II

### Article 4

#### *Application for incentive*

Application for an incentive in respect of a initial investment in Iceland shall be submitted to the Ministry responsible for incentives for initial investment in Iceland. A committee of three members shall examine applications and submit recommendations on passage to the Minister in accordance with Article 11.

Applications for incentives, with attached documents, must be received before work begins on a prospective investment project in Iceland.

Application for incentives shall be submitted on a special form published, by the committee referred to in paragraph 1, on the Ministry's home page, together with the required information in accordance with this Act.

Processing of applications for an incentive is in accordance with provisions of Chapter V.

### Article 5

#### *Conditions for the granting of incentives*

For the purposes of assessing whether an incentive should be granted in respect of a initial investment under this Act, the following conditions must be met:

- a. a separate company must be established in Iceland for the investment project; an Icelandic branch or agency of a company registered in another Member State of the European Economic Area shall be considered a specific company;
- b. detailed information must be available on the investment project in question, the parties behind it, the extent of the project in accordance with subparagraph 6-8, Article 3, and information on the expected arrangement of financing;
- c. the prospective investment project must not have been initiated before signing of an agreement of incentives in accordance with Article 14;
- d. it must be demonstrated that the granting of the incentive is a condition for the investment project to materialize in Iceland;
- e. a minimum of 75% of the investment cost must be financed without state aid and a minimum of 20% of that proportion must be financed with the own equity of the party applying for the incentive;
- f. the annual turnover of the prospective investment project must be a minimum of ISK 300 million, or the initial investment must create a minimum of 20 man-years of employment with the applicant in the operation of the investment project in its first two years;
- g. a feasibility analysis shall be available pursuant to Article 12;
- h. the prospective investment must be pursuant to Article 1, in terms of job creation, regional development, exports, tax revenues, innovation and increased technology and knowledge;
- i. the investment shall be initial investment and the equipment procured for the investment shall be new or almost new and be in compliance with legislation on health and pollution protection;
- j. the investment shall be in operation in Iceland for at least 10 years in the area in question;
- k. information shall be available as to whether the investment project is subject to environmental impact assessment in accordance with Act No. 106/2000;
- l. the operation of the company benefitting from an incentive shall fully comply with Icelandic law and official edict and be regarded as proper;
- m. the company in question, or its owners, must not be in default of any taxes or charges payable to the State or any Municipality in Iceland, nor shall they be subject to any recovery claims pursuant to paragraph 3, Article 31 of the Competition Act No. 44/2005, nor shall the company in question be in any financial difficulties or undergoing financial restructuring in the understanding of the EFTA Surveillance Authority State Aid Guidelines on Rescue and Restructuring Aid;
- n. the owners of active shares and executive director of the company shall be statutory, have an unblemished reputation which corresponds to rules on normal and healthy trade practices. They shall not have been declared bankrupt in the last five years. They shall not, in connection with commercial activity, have received a sentence in the last five years for punishable actions according to the general penal code, Competition Act, Act on limited liability companies, Act on private limited liability companies, Act on accounting, Act on annual accounts, Act on bankruptcy etc., and Act on direct payment of official duties.

## CHAPTER III

### Article 6

#### *Regional aid*

This chapter provides for the incentives that Government authorities are permitted to grant in the form of regional aid relating to investment projects in Iceland.

The authorization of the Government to grant incentives in the form of regional aid are restricted by the obligations of the Government of Iceland under Articles 61-64 of the Agreement on the European Economic Area, as ratified by Act No. 2/1993 on the European Economic Area. These obligation and authorizations are further detailed in the EFTA Surveillance Authority (ESA) Decisions on the maps of assisted areas and level of aid. Such decisions are published in the EEA Supplement to the Official Journal of the European Union for each time, showing in which areas in Iceland regional aid may be granted.

### Article 7

#### *Maximum level of regional aid*

With reference to paragraph 2 of Article 6, an incentive in the form of regional aid cannot exceed 15% of the defined investment cost of the investment project for which an application is made. For a medium-sized enterprise, the maximum incentive is 25% of the investment cost, and for a small enterprise the maximum incentive is 35% of the investment cost.

In the case of an investment by large enterprises pursuant to subparagraph 8 of Article 3 it shall be demonstrated that the level of incentives is either limited by the decision of investment or the decision of location. Either of the following criteria shall therefore be satisfied:

- a. The incentives shall not exceed the necessary amount for the investment project to be sufficiently profitable.
- b. The incentives shall not exceed the excessive amount caused by the location of the investment project in comparison with other regions.

In cases where the investment cost of an investment project exceeds EUR 50 million, the proportion of maximum permitted aid will be reduced to the levels provided for in paragraph 1, in accordance with the total investment cost pursuant to paragraph 4.

The Minister shall, by means of a Government regulation, provide further for the calculation of the permitted proportion of State aid pursuant to this Article in compliance with the EFTA Surveillance Authority Regional State aid Guidelines on regional aids for the years 2014–2020.

The contract stipulated in Article 14 between the Government and the party granted an incentive shall provide further for the arrangements of regional aid.

### Article 8

#### *Incentives relating to taxes and public levies*

Under this Act, regional aid can take the form of derogations from taxes or public levies relating to the investment project in question.

A company which is established for an initial investment project and fulfils all the conditions of this Act for the granting of incentives shall enjoy the following tax derogations:

1. The rate of income tax for the company shall, for the time stipulated in paragraph 3, be 15%. Should the general income tax rate become lower than the above-mentioned during the period, then such lower income tax rate shall apply to the company.
2. In the year when new assets are taken into operation, the company can elect to depreciate those assets with a proportional factor of the annual depreciation instead of full year's depreciation as stipulated in Article 34 of Act No. 90/2003, on income tax. Notwithstanding provisions in Article 42 of Act No. 90/2003, on income tax, the company shall have authorization to depreciate it's assets down to no residual value.
3. The tax rate of property tax for the company shall be 50% lower than the stipulated maximum rate, plus surtax, according to Chapter II of the Act No 4/1995, on Municipalities' revenue basis.
4. The general social security charge for the company shall be 50% lower than stipulated in paragraph 3, Article 2 of Act No. 113/1990, on social security charge.
5. Importation and purchases by the company, or any party acting for the company in Iceland, of building materials, machinery and equipment and other capital goods shall be exempt from customs duties pursuant to the Customs Act No. 88/2005.

The derogations from general rules on taxation and charges stipulated in paragraph 2 shall apply for 10 years from the time that a payment obligation in respect of a tax or charge is formed, or would have been formed, but never than 13 years from date of signature of agreement according to Article 14.

A company enjoying incentives according to this Article shall, apart from what is laid down in paragraph 2, pay taxes and charges which are generally levied in Iceland in accordance with the rules that apply at each time. General provisions of Icelandic legislation on income tax, VAT and charges imposed by Municipalities, as in force at each time, concerning tax return, period for the submission of tax returns, levies, auditing, collection, maturity date and payments, and other settlement regulations regarding income tax, VAT and charges imposed by the Municipalities, as well as related objections and disputes, shall apply to the company.

#### Article 9

##### *Incentives relating to land or sites for initial investment*

Regional aid under this Act may take the form of a sale or lease by the State or a Municipality of land or a site owned by the State or a Municipality for the investment project in question to the company which is formed for the purpose of the initial investment and constructs and operates the investment project at a price under the normal market price. Also, regional aid may take the form of a special reduction of the street connection fee as decided by the municipal government.

As regards the maximum incentive pursuant to paragraph 1, reference is made to Article 7. The contract stipulated in Article 14 between the Government and the party granted the incentive shall provide further for the arrangements of incentives relating to the sale or lease of land or a site.

### CHAPTER IV

#### Article 10

##### *General derogations from certain specified provisions of law*

A contract pursuant to Article 14 may provide that the company in question, which is formed for the purpose of an initial investment and constructs and operates the investment project, should be exempted from the following provisions of law:

1. provisions of subparagraph 4, paragraph 1 of Article 1 of Act No. 19/1966, on the right to ownership and use of real estate requiring that four-fifths of the share capital of a limited liability company should be owned by Icelandic citizens and that Icelandic citizens should control the majority of votes at shareholders' meetings and that all directors should be Icelandic citizens;
2. provisions of subparagraph 2 of Article 42 of Act No. 138/1994 on private limited liability companies requiring that the majority of board members and the managing director of a limited liability company shall have residence in Iceland, and any similar provisions subsequently adopted;
3. the provisions of Act No. 48/1994 on fire insurance, or subsequent provisions of law on joint compulsory insurance for buildings, provided that fire insurance is securely provided for in another manner;
4. the provisions of Act No. 55/1992 on catastrophe insurance in Iceland, provided that the company maintains adequate catastrophe insurance.

### CHAPTER V

#### Article 11

##### *Committee on initial investment incentive*

A committee of three members appointed by the Minister shall examine applications for incentives and submit recommendations to the Minister in accordance with Article 4.

The Minister shall appoint the Committee, with the Minister of Finance and Minister of Commerce each nominating one member, while the third shall be appointed without nomination and serve as chairman. Alternates shall be appointed in the same manner. Members of the committee shall be educated in law or economics and have special knowledge in the field of investments. The committee shall evaluate applications and request any necessary documents.

The committee shall consult with Municipalities with regard to their involvement in prospective investment projects located in their districts.

In evaluating applications for incentives the committee shall be permitted to obtain opinions from experts regarding the various aspects of an application.

The work of the committee is subject to Act No. 37/1993, on Administrative Procedure. The committee shall set its own procedures, approved by the Minister.

## Article 12

### *Cost/Benefit analysis*

A party applying for incentives for initial investment shall submit an operation- and a business plan and other data requested by the committee for evaluation of the application, pursuant to Article 11. Incentives shall only be extended to applicants if calculations clearly indicate that the proposed investment will have both long-term and short-term positive effect on population development.

Before the committee provided for in Article 11 submits a recommendation to the Minister regarding an application for incentives the committee shall assess the profitability of the investment project. The committee shall seek an assessment from the Regional Development Institute (*Byggðastofnun*) regarding regional development and economic impact. The committee may submit a request for an independent expert to assess an investment project, its profitability and impact and to process other information that needs to be available before a decision is made regarding an application.

In assessing the benefits of a prospective commercial activity account should be taken of the different compositions of incentives permitted pursuant to this Act.

## Article 13

### *Offers of incentives*

The committee appointed pursuant to Article 11 shall submit a proposal to the Minister to reject an application for incentives or to extend to the applicant an offer of incentives. If the committee proposes to extend an offer of incentives to the applicant, the committee shall demonstrate the reasons for the necessity and the intensity of the incentives proposed.

If the Minister extends an offer for incentive, the offer shall be grounded in the authorization provided for in this Act, and the offer may consist in more than one type of incentive, subject to the provisions of Article 7.

## Article 14

### *Contract on granting incentives*

If an applicant accepts the offer of the Minister for an incentive, a contract shall be drawn up between the applicant and the Minister, acting on behalf of the Government, and, as applicable, for the Municipalities, on the granting of incentives in respect of the investment project in question.

A contract under the first paragraph shall provide for any obligations that may be regarded as necessary for the investment project in question and the effective term of the contract. The contract shall furthermore include provisions on the following:

- a. a definition and delimitation of the investment project in question
- b. a definition and delimitation of the legal entity granted the incentive under the contract;
- c. what incentives are granted for the project;
- d. the net present value of the incentives;
- e. how the incentive is to be applied to the project and over what time frame;
- f. surveillance and recovery of the incentive if the contract terms are not met;
- g. the maximum incentives granted for the project under the contract.

An Agreement on the granting of incentives, ref. paragraph 1, shall be valid for a maximum of 20 years from the date of signature, however with regard to paragraph 4.

Incentive granted under Article 8 shall, ref. paragraph 3 of Article 8, shall be valid for 10 years from the day the relevant tax- or charge obligation, laid down in paragraph 2 of Article 8, occurs, however never more than 13 years from the signing of the agreement on granting of incentives.

A contract on the granting of an incentive, signed by the Minister pursuant to this Act, shall be published in Section B of the Official Gazette.

## Article 15

### *Demarcation of incentives*

An incentive is only granted in respect of a specific investment project of an applicant and not for any other commercial activities of the applicant. A party granted an incentive under this Act is only permitted to use the incentive for the defined investment project provided for in a contract pursuant to Article 14.

## Article 16

### *Surveillance of the use of an incentive*

To ensure the proper use of an incentive, as provided in Article 15, a beneficiary of the incentive shall send to the Ministry an annual report on the progress of the investment project, the share of the incentive in its advancement, the total amount of state aid granted in the preceding year and specification of other commercial activities of the beneficiary, if any. The Ministry can request, that the information submitted to the Ministry by the company, to be certified by an Auditor.

Municipalities that grant incentives to investment projects that a contract has been concluded on, ref. Article 20, shall submit to the Ministry an annual report on the total amount of granted State aid for each project in the preceding year, and if more than one, each project shall be reported separately.

The Ministry shall inform the relevant Municipalities on events which might affect the validity of agreements entered into and the relevant Municipalities shall, to the same extent, inform the Ministry of such events.

## Article 17

### *Revocation and/or recovery of incentives*

An incentive shall be cancelled and granted incentives recovered if it is revealed that a beneficiary of the incentive has knowingly provided false information or concealed information which influenced the granting of the incentive.

An incentive shall be recovered if it has been used for any purposes other than the investment project in respect of which the incentive was granted.

If it is revealed that an incentive to an entity has exceeded the levels permitted under this Act or the contract on the granting of the incentive, the excess amount shall be reclaimed from the entity in question and further granting of incentives shall be discontinued.

If a decision on an incentive is withdrawn pursuant to this Article, or following a decision by the EFTA Surveillance Authority on illegal State aid, the Icelandic Authorities shall, as provided in the third paragraph of Article 31 of the Competition Act No. 44/2005, take measures to recover the granted State aid from its recipient.

If the investment project will not materialize or if it is considerably different from what the Agreement on the granting of incentives endeavored, within five years from its entry into force, the beneficiary shall reimburse all incentives that he has received on the basis of an agreement on the granting of incentives according to Article 14.

## Article 18

### *Deferred payment of value-added tax*

The beneficiary of an incentive under this Act and contractors who undertake the construction of the investment project in question shall be granted a grace period for payment of value-added tax on imported goods and equipment for the investment project until refunding for the settlement period pursuant to paragraph 4 of Article 25 of the Value-added Tax Act takes place.

## CHAPTER VI

### Article 19

#### *Authorization for the issue of regulations*

The Minister is authorized to issue a regulation on the execution of this Act.

### Article 20

#### *Entry into force*

This Act enters into force immediately. Investment agreements made on the basis of this Act shall not become effective until the EFTA Surveillance Authority has approved the state aid framework provided for in this Act, apart from investment agreements that fall within the scope of the Regulation of the Commission (EU) on block exemptions. This Act shall expire on 1 July 2020. Incentives granted before that time shall remain in effect for the term provided for in the applicable contract stipulated in Article 14 on the granting of the incentive.

### **Temporary provisions**

Only costs generated after the entry into force of this Act can be considered as investment costs in accordance with the Act.

