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Act No 34/1991 on Investment by Non-residents in Business Enterprises

[Translated from the Icelandic Government Gazette, A]

Act
on Investment by Non-residents in Business Enterprises
No. 34 of 25 March 1991
as amended by Act No. 121 of 27 December 1993
and
Act No. 46 of 22 May 1996

Article 1

This Act applies to any kind of investment by a non-resident in a business enterprise in Iceland unless overridden by other acts or regulations issued under such acts.

Article 2

For the purposes of this Act the terms below shall have the following meaning:

Non-resident: An individual residing abroad irrespective of nationality, a company, institution, fund or other legal person domiciled abroad, a foreign state or state enterprise, as well as a business enterprise under foreign control. An individual is deemed resident abroad if he has legal domicile abroad or domicile there as defined in the Act on Legal Domicile. A legal person is regarded as being domiciled abroad if registered as domiciled abroad or if the legal person's articles of association state its residence abroad.

Icelandic business enterprise: An enterprise which operates in this country and which is domiciled in this country, irrespective of the form of legal identity or ownership of the enterprise. An enterprise is regarded as being domiciled in Iceland if it is registered in this country, if its articles of association state its residence in this country, or if the effective management board is in this country.

Foreign controlled enterprise: An Icelandic business enterprise in which one or more non-residents have majority holdings either in shares or initial capital, or hold a majority of votes, or in any other way have effective control over the enterprise in question.

Investment: Financial or other contribution to the equity capital of an enterprise, or the purchase of shares in the enterprise.

Foreign investment: Investment in enterprises in Iceland by a non-resident irrespective of whether this involves new equity capital or reinvestment of dividends distributed or shares or proceeds from sale of previous investment in this country.

Article 3

Non-residents shall be permitted to invest in business enterprises in Iceland within the limitations stipulated by this Act or in special legislation and upon the fulfilment of other conditions and the acquisition of licences required by law.

Article 4

Investment by non-residents in Iceland is subject to the following restrictions:

1. Only the following may conduct fishing operations within the Icelandic fisheries jurisdiction according to existing laws on Fishing Rights within the Icelandic Territorial Waters or own or run enterprises engaged in fish processing:

a. Icelandic citizens and other Icelandic persons.

b. Icelandic legal persons which are wholly owned by Icelandic persons or Icelandic legal persons which:

i. are controlled by Icelandic entities; ii. are not under more than 25% ownership of foreign residents calculated on the basis of share capital or initial capital. However, if the share of an Icelandic legal person in a legal person conducting fishing operations in the Icelandic fisheries jurisdiction or fish processing in Iceland is not above 5%, the share of the foreign resident may be up to 33%; iii. are in other respects under the ownership of Icelandic citizens or Icelandic legal persons controlled by Icelandic persons.

Fish processing under this paragraph 1 means freezing, salting, drying or any other processing which protects fish and other marine products from decay, including the production of fish-oil and fish-meal. However, processing in this context does not include smoking, pickling, canning and retail packaging or further processing designed to render products more suitable for distribution, consumption, or cooking.

2. Only Icelandic citizens and other Icelandic persons are permitted to own energy exploitation rights as regards waterfalls and geothermal energy for other than domestic use. The same applies to enterprises which produce or distribute energy. Individuals domiciled in another member state of the European Economic Area and legal persons which are domiciled in another EEA member state shall have the same right. Investment agreements between Iceland and non-member states of the EEA may stipulate that residents of such state or legal persons domiciled in such states shall also have the same right provided that such agreements are submitted to the Althingi for ratification by resolution.

A non-resident who obtains ownership or utilization rights over real estate in accordance with the provisions of law on ownership and utilization rights of real estate may utilize geothermal energy for direct use in his enterprise within the limits set by The Energy Act.

3. The combined share of non-residents in Icelandic airline companies may not at any time exceed 49%. Individuals domiciled in another member state of the European Economic Area and legal persons there domiciled are exempted from the provisions of this subparagraph.

4. Investment in Icelandic enterprises by foreign states, local authorities or other foreign authority involved in enterprises is prohibited except with a special permission from the Minister of Commerce.

5. Non-residents may acquire title to real estate in Iceland for direct use in his enterprise in

accordance with the provisions of the Act governing the ownership and utilization rights of real estate.

Icelandic person in this Article means the State Treasury and local governments as well as institutions, enterprises and funds in Iceland which are wholly under their ownership, Icelandic citizens resident in Iceland and legal persons domiciled in Iceland which are wholly owned by Icelandic public institutions, Icelandic citizens resident in Iceland or other legal persons domiciled in Iceland and which are wholly owned by Icelandic citizens resident in Iceland. Icelandic legal person in this Article means a legal person domiciled in Iceland irrespective of the form of legal identity or ownership of the enterprise. A legal person is regarded as being domiciled in Iceland if it is registered as domiciled in this country, if its articles of association state its domicile in this country or if its effective management board is in Iceland. Icelandic legal person controlled by an Icelandic person or persons in this Article means an Icelandic legal person which is under the majority ownership of an Icelandic person, as through majority of share capital or majority of initial capital, which holds the majority vote or has effective control of the said legal person.

Article 5

If the directors of an enterprise operating in Iceland with the right to conduct fisheries in the fisheries jurisdiction of Iceland, the directors of a fish processing enterprise or the directors of an Icelandic legal person which, directly or indirectly owns a share in such fisheries enterprise or fish processing enterprise suspect a violation of the provisions of Article 4, paragraph 1, sub-paragraph 1 on the maximum of foreign investment and domestic control of an Icelandic legal person which directly or indirectly owns a share in a fisheries enterprise or fish processing enterprise, the directors in question shall immediately notify the Ministry of Commerce thereof. The Ministry shall then gather information from the legal person in question regarding its owners, the voting shares of each owner, members of the board and other matters regarded as relevant to its effective control. The Minister may on his own initiative request such information if there is suspicion regarding violation of this provision. The Ministry shall be sent the information it requests within four weeks from the time of the delivery of the request. Following this period the Ministry shall send the documents it possesses on the legal person in question to the Committee on Foreign Investment, cf. Article 12, which shall decide whether there is a violation of the provisions of Article 4, paragraph 1, sub-paragraph 1. The Committee may on its own initiative gather further information to clarify the matter. The conclusion of the Committee shall be sent to the Minister of Commerce within four weeks from the time the matter was brought to the attention of the Committee.

Should the Committee on Foreign Investment conclude that an investment or its control is in violation of Article 4, paragraph 1, sub-paragraph 1, the Minister of Commerce shall order the legal person in question to sell the holding in the fisheries or fish-processing enterprise or, if such is the case, the share in the legal person which owns a share in the fisheries or fish processing enterprise which is not in conformity with the provisions of Article 4, paragraph 1, sub-paragraph 1. The obligation to sell under this paragraph is limited to the share or part of share which had the effect that the foreign investment exceeded the limits set in Article 4, paragraph 1, sub-paragraph 1. The remedy shall be based on the time that the notification of change of ownership was delivered to the legal person in question. If this obligation is not fulfilled within four weeks, paragraphs 4 and 5 shall apply to the share.

If a non-resident acquires a share in a fisheries enterprise, fish processing enterprise or fisheries

vessel through contracts for the discharge of collateralized debt, as a lien creditor through auction, through inheritance or by other means, he shall sell the share as soon as possible and no later than twelve months after he gained ownership of the share. If such sale has not taken place within 12 months, paragraphs 4 and 5 shall apply to the share.

If the sale of a share which must be sold under paragraph 2 has not taken place within four weeks or, under paragraph 3, within twelve months, the stock certificates or certificate of ownership shall be delivered to the Minister of Commerce along with a signed authorization to sell. The Minister shall then entrust an independent Icelandic brokerage, which would be permitted to own such a share under Article 4, paragraph 1, sub-paragraph 1(b), with the sale of the share in question to a person who may legally own such a share. The brokerage shall then sell the share and administer it until completion of the sale. The brokerage shall guard the interests of the owner regarding the sale in all respects, including the timing of the sale. If the brokerage sells the share the owner is bound by the sale. Remuneration for the administration and sale of the share shall be paid out of the price of the share or dividends in conformance with general practice on the stock market.

If the owner or the person in possession of the share does not deliver his share or certificate of ownership as stipulated in paragraph 4, all rights pertaining to the share shall lapse, including voting rights, subscription rights to new shares and rights to dividends, until such time as the share has been delivered.

If the sale under paragraph 3 has not taken place within six months from the time that the brokerage accepted the share for administration and sale, the Minister may, at the request of the brokerage or the owner of the share, grant an extension of six months if there is reason to believe that the share can be sold in that extension period. Otherwise, the Minister shall demand the enforced sale of the share without a court order, conciliation or attachment.

The provisions of paragraphs 1-6 apply correspondingly in the case of violation of the provisions of Article 4, paragraph 1, subparagraphs 2 and 3.

Article 6

In the event that a non-resident wishes to operate a business enterprise in Iceland in his own name, the following applies:

1. Individuals who are resident abroad are prohibited from being self-employed or from running their own business or from taking part in a business enterprise with unlimited liability in Iceland, except with permission from the Minister of Commerce, unless legal domicile in this country is a condition which, according to laws on the economic sector in question, cannot be waived or the granting of exemption from residence requirements falls within the competence of another authority. Citizens of member states of the European Economic Area are exempted from the provisions of this sub-paragraph.

2. The rights of limited-liability companies and private limited companies with legal domicile abroad to operate in Iceland are governed by the provisions of the Act on limited-liability and private limited liability companies.

3. The Minister of Commerce may grant other legal persons domiciled abroad a licence to operate in Iceland, provided that with regard to such legal persons and their business in Iceland the same conditions are fulfilled and the same main regulations are followed which

apply to foreign limited-liability companies, cf. subparagraph 2 above. A branch office of such a legal person shall be registered in the public register of firms at the legal venue of that branch office. Legal persons domiciled in member states of the European Economic Area do not require a licence from the Minister of Commerce to operate in Iceland.

Article 7

The Minister of Commerce must be notified of all foreign investment immediately when a contract or a decision regarding the investment is made. The obligation to notify applies both to investment by a non-resident in a business enterprise which he has not owned shares in before and additional investment in such an enterprise. The notification shall be accompanied by such duplicates or photocopies of documents or enclosures regarding the case as the Minister considers necessary. In case of foreign investment in an Icelandic business enterprise the obligation to notify rests with that business enterprise, whereas, if a planned business is to be in the name of a non-resident, the obligation to notify rests with that non-resident.

Article 8

Non-residents who invest in enterprises in Iceland shall be free to transfer foreign currency to Iceland for this purpose, provided that such currency transfers are duly notified in accordance with legislation and regulations governing foreign exchange. The surrender of such currency shall be in accordance with the foreign exchange regulations. In the case of currency for which the Central Bank of Iceland maintains a regular exchange rate, the non-resident shall have the right to convert such currency to Icelandic krónur.

Article 9

Non-residents who invest in Icelandic enterprises shall have the right to convert into any currency, for which the Central Bank of Iceland maintains a regular exchange rate any dividends received or other profits and proceeds from sales of investments.

Article 10

The managers and a majority of the members of the board of directors in Icelandic enterprises must be domiciled in Iceland regardless of the equity share, voting rights, or other control held by non-residents. However, this shall not apply to citizens of member states of the European Economic Area, provided that such citizens are residents of an EEA member state. The Minister of Commerce may grant citizens of other states exemption from this provision.

If special legislation providing for Icelandic citizenship or residence in Iceland by management, effective at the time this Act takes effect, applies to a specific investment in Iceland, the citizens of member states of the European Economic Area who are resident in an EEA state shall be regarded as conforming to the conditions of citizenship or residence provided for in such special legislation.

Article 11

The Minister of Commerce is empowered to grant licences under this Act and to control the implementation thereof, to the extent that such licensing and control is not granted to others.

The Minister of Commerce may prohibit a non-resident from investing in a business enterprise in Iceland if such non-resident has been barred from running a business by a court in another country.

Article 12

A special five-person committee, the Committee on Foreign Investment, shall monitor the enforcement of the provisions of Article 4 on restrictions on the investment of non-residents in enterprises in Iceland, cf. Article 5. The Committee shall furthermore advise the Minister of Commerce on the granting of licenses on the basis of Article 4., paragraph 1, sub-paragraph 3. The Committee shall be composed of five persons elected by the Althingi in proportion to seats held by each party following general parliamentary elections. An equal number of alternates shall be elected. The Minister of Commerce appoints the chairperson and vice-chairperson from among the committee members. The chairperson summons the Committee to meetings. The Minister of Commerce decides the remuneration of the Committee.

In the event that the Minister of Commerce considers that a particular foreign investment threatens national security, public order, public safety or public health or in the event of serious economic, social or environmental difficulties in particular economic sectors or particular areas which are likely to be of a lasting nature the Minister is empowered to stop the investment in question provided that he makes such a decision known within eight weeks from the time that he receives notification of the investment involved, cf. Article 7. Before taking such a decision, the Minister shall consult the Committee on Foreign Investment. In the case of the investment of a resident in a member state of the European Economic Area, the provisions of Articles 112 and 113 of the Agreement on the European Economic Area shall be observed, cf. Act No. 2/1993.

The Minister of Commerce shall submit a report to the Althingi during the first half of each year on the investment of non-residents in enterprises in Iceland. The report shall, inter alia, contain information on measures taken by the government to increase foreign investment in Iceland, on the investment of foreign persons and the total foreign investment by economic sector and on the enforcement of the precautionary provisions of paragraph 2 and recourses under paragraph 5.

Article 13

The Minister of Commerce may issue regulations establishing more detailed provisions for the implementation of this Act.

Article 14

Violations of the provisions of this Act or against regulations according to the Act are punishable by fines or prison sentences of up to two years.
Cases concerning violations of the Act shall be proceeded with as criminal cases.

Article 15

The Act enters into force immediately.

Interim Provisions

The limitations on investment in Iceland by non-residents established by this Act shall not apply to investments by non-residents occurring before the entry into force of this Act in conformity with previous legislation. Notice must be given of such investment to the Foreign Exchange Control Department of the Central Bank of Iceland, cf. Article 5, within three months from the entry into force of this Act.

If an Icelandic legal person owning a share in a legal person which conducts fisheries in the Icelandic fisheries jurisdiction or fish processing in Iceland was partly under foreign ownership on 31 December 1995, the restrictions of Article 4, paragraph 1, sub-paragraph 1(b) shall not apply to such legal person until 1 January 1998, provided that such foreign

ownership did not exceed 49%, the share of the legal person in individual fisheries or fish processing enterprises did not exceed 10% and the Central Bank of Iceland was notified of the investment prior to 31 December 1995