

Act on incentives for initial investments in Iceland

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 new investments in Iceland and how they should be used.

Article 2

Scope and authorisation

This Act covers defined incentives provided for in Chapters III and IV of the Act relating to new investments in Iceland, subject to the conditions laid down in Article 5.

On the basis of this Act, the Minister of Industry is authorised to enter into contracts, as provided in Article 21, on behalf of the Government relating to involvement by the State and, as applicable, municipalities in new investments in Iceland.

This Act does not apply to investments in companies which provide services on the basis of legislation on financial undertakings, insurance operation or securities.

Article 3

Definitions

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

1. *Regional aid*: State aid provided as authorised 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) in Decision No. 378/06/COL for the years 2007–2013, showing in which areas of Iceland regional aid may be granted and to what extent;
3. *Investment project*: A project involving new investment;
4. *Investment cost*: Cost of tangible assets (e.g. land, buildings, machinery and equipment) incurred in connection with an investment project in Iceland. Cost of intangible assets (e.g. software rights and licences) can also be considered as investment cost provided conditions, laid down in a regulation issued by the Minister of Industry, are fulfilled. Only cost which is incurred after the entry into force of this Act can be regarded as investment cost.
5. *Incentive*: Defined state aid pursuant to Chapters III and IV, which is a condition for a specific investment project to materialise in Iceland;
6. *Small enterprise*: An enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million, as provided in Annex 1 to Commission Regulation (EC) No. 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 61 and 62 of

the Agreement on the European Economic Area. Commission Regulation (EC) No. 800/2008 is attached to this Act as an Annex, see Article 27;

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., as provided in Annex 1 of Commission Regulation (EC) No. 800/2008;

8. *New 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 new investment in the understanding of this Act;

9. *Large enterprise*: An enterprise which employs more than 250 persons, as provided in Annex 1 to Commission Regulation (EC) No. 800/2008.

CHAPTER II

Article 4

Application for incentive

Applications for an incentive in respect of a new investment in Iceland shall be submitted to the Ministry of Industry. A committee of three members shall examine applications and submit recommendations to the Minister of Industry in accordance with Article 17.

Applications for incentives, with attached documents, must be received before work begins on a prospective investment project in Iceland. Applications shall be accompanied by all documents and information required by this Act.

Processing of applications is subject to the provisions of Chapter V of this Act.

Article 5

Conditions for the granting of incentives

For the purposes of assessing whether an incentive should be granted in respect of a new 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 and the arrangements of financing;
- c. the prospective investment project must not have been initiated before signing of an agreement in accordance with Article 21, and it must be shown that the granting of the incentive is a necessary condition for the investment project to materialise in Iceland;
- d. a minimum of 65% 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;
- e. the annual turnover of the prospective investment project must be a minimum of ISK 300 million, or the new 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;
- f. a feasibility analysis shall be available pursuant to Article 18, showing that the new investment is nationally beneficial for the Icelandic economy and community, e.g. in terms of job creation, regional development, exports, tax revenues, innovation and increased knowledge;

- g. 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,;
- h. the investment shall be in operation in Iceland for at least 10 years in the area in question;
- i. the economic activity of the company benefiting from an incentive shall comply with all Icelandic law, including legislation on health and environment, and be regarded as proper;
- j. 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 the third paragraph of Article 31 of the Competition Act, 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;
- k. the owners and executive director of the company shall be statutory, have a 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 business 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 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 authorisation of the government to grant incentives in the form of regional aid are restricted by the obligations of the government of Iceland under Articles 16–64 of the Agreement on the Economic Area, as ratified by Act No. 2/1003 on the European Economic Area. These obligation and authorisations are further detailed in the EFTA Surveillance Authority (ESA) Decision of 6 December No. 378/06/COL on the maps of assisted areas and levels of aid (Iceland), published on 28 February in the EEA Supplement to the Official Journal of the European Union No. 11, p. 28, showing in which areas in Iceland regional aid may be granted in the years 2007 to 2013, meaning Suðurlkjördæmi, Norðvesturkjördæmi and Norðausturkjördæmi, and to what extent.

Article 7

Maximum level of regional aid

With reference to the second paragraph of Article 6, an incentive in the form of regional aid pursuant to Articles 8–12 will normally not 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 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 the first paragraph, in line with the total investment cost, cf. the third paragraph below.

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 Aid Guidelines for the years 2007–2013, cf. the Decision of the EFTA Surveillance Authority No. 85/06/COL of 6 April 2008, published on 28 February 2008 in the EEA Supplement to the Official Journal of the European Union No. 11, p. 1.

The contract stipulated in Article 21 between the government and the party granted an incentive shall provide further for the arrangements of regional aid.

Article 8

Incentives in the form of direct cash grants

Regional aid under this Act may take the form of a direct public cash grant for the investment project in question to the company that has been formed for the new investment and which will construct and operate the investment project. This shall constitute an initial cash grant, which accrues at the start of the project.

As regards the maximum incentive pursuant to the first paragraph, reference is made to Article 7, cf. Article 21.

The contract stipulated in Article 21 between the government and the party granted an incentive shall provide further for the arrangements of the direct cash grant.

Article 9

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. Rate of income tax for the company shall, for the time stipulated in paragraph 3, never be higher than the rate of income tax which is in place when an agreement according to Article 21 is made with 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 years depreciation. Authorisation to depreciate the company's assets down to no residual value.
3. Exemption from Industrial charge according to Act No 134/1992 and Market charge according to Act No 160/2002, as amended.
4. Stamp duties, according to Act No 36/1978, shall be 0,15% on all stamp duty incurring documents issued or entered into by the company in connection with the construction of the investment project.
5. Exemption from charges referred to in Article 14(1)(1,4 and 5) of Act No 146/1996, on the safety of electrical installations, consumer utilities and electrical equipment.
6. The tax rate of property tax for the company shall be 30% lower than the stipulated maximum rate according to Chapter II of the Act No 4/1995.
7. The general social security charge for the company in question shall be 20% lower than what is stipulated in Article 2(3) of Act No 113/1990, on social security charge.

8. Exemption from customs duties pursuant to Act no. 88/2005 on Customs and excise duties pursuant to Act no. 97/1987 on Excise Duties, on importation or domestic purchase by or on behalf of the Company of construction materials, machinery and equipment and other capital goods and spare parts for the building of the investment project and the operation thereof,

The derogations from normal rules on taxation and charges, stipulated in paragraph 2, shall apply for 10 years from the day the relevant taxable obligation or charge obligation is activated by the company enjoying the incentive, however never more than 13 years from date of signature of agreement according to Article 21.

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, in force at each time, concerning tax return, collection, revision, payment and other procedural issues, shall apply to the company in question.

As regards the maximum incentive pursuant to the second paragraph, reference is made to Article 7, cf. Article 20.

Article 10

Incentives relating to land or sites for new 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 new investment and constructs and operates the investment project at a price under the normal market price.

As regards the maximum incentive pursuant to the first paragraph, reference is made to Article 7, cf. Article 20.

The contract stipulated in Article 21 between the government and the party granted an incentive shall provide further for the arrangements of incentives relating to the sale or lease of land or a site.

CHAPTER IV

Article 11

General incentives

This chapter provides for the incentives that government authorities are permitted to grant for new investments in Iceland, irrespective of the location of the investment project.

The authorisation of the government to grant non-regional incentives are restricted by the obligations of the government of Iceland under Articles 16–64 of the Agreement on the Economic Area, as ratified by Act No. 2/1003 on the European Economic Area. This authorisation is further detailed in Commission Regulation (EC) No. 800/2008 of 6 August 2008, declaring certain categories of aid compatible with the common market in application of Articles 61 and 62 of the Agreement on the European Economic Area (General block exemption Regulation) as incorporated into the Agreement on the European Economic Area by EEA Joint Committee Decision No. 120/2008, published on 18 December 2009 in the

EEA Supplement to the Official Journal of the European Union No. 79. Commission Regulation (EC) No. 800/2008 is attached to this Act as an Annex, see Article 27.

An incentive under Articles 12–15 of this Act may take the form of a direct cash grant, derogation from certain taxes and charges pursuant to Article 9 or other form of permitted state aid in compliance with Commission Regulation (EC) No. 800/2008.

Article 12

Incentive in respect of the training cost of a new investment

A general incentive in respect of a new investment under this Act may take the form of training aid to meet the incurred cost of training personnel in connection with a new investment.

The maximum training cost aid is EUR 2 million for each investment project.

As regards the further conditions for granting training aid, reference is made to Articles 38 and 39 of Commission Regulation (EC) No. 800/2008, included in an Annex to this Act.

The contract stipulated in Article 21 between the government and the party granted an incentive shall provide further for the arrangements of incentives in respect of training aid.

Article 13

Incentives in respect of new investments of small and medium-sized enterprises

A general incentive in respect of an investment project under this Act may take the form of an incentive in respect of new investments of small and medium-sized enterprises as a percentage of the investment or payroll cost of the investment project in question.

An incentive pursuant to the first paragraph may amount to a maximum of 10% of the defined investment cost of a medium-sized enterprise and 20% in the case of small enterprises, up to a maximum of EUR 7.5 million for each investment project.

As regards the further conditions for granting incentives to small and medium-sized enterprises, reference is made to Article 14 of Commission Regulation (EC) No. 800/2008, included in an Annex to this Act.

The contract stipulated in Article 21 between the government and the party granted an incentive shall provide further for the arrangements of incentives relating to new investments of small and medium-sized enterprises.

Article 14

Incentives in respect of research and development projects

A general incentive in respect of an investment project under this Act may take the form of an incentive in respect of new investments in research and development projects as a percentage of the investment cost of the investment project in question.

As regards the further conditions for granting incentives in respect of new investments in research and development projects, reference is made to Articles 30–37 of Commission Regulation (EC) No. 800/2008, included in an Annex to this Act.

The contract stipulated in Article 21 between the government and the party granted an incentive of this kind shall provide further for the arrangements of incentives relating to new investments in research and development projects.

Article 15

Incentive in respect of environment-related projects

A general incentive in respect of an investment project under this Act may take the form of an incentive to enterprises in respect of environment-related new investments which contain improvement or innovation in environmental protection, i.a. reduced use of energy or reduced emissions of greenhouse gasses.

As regards the further conditions for granting incentives pursuant to this Act, reference is made to Articles 17–25 of Commission Regulation (EC) No. 800/2008, included in an Annex to this Act.

The contract stipulated in Article 21 between the government and the party granted an incentive shall provide further for the arrangements of incentives in respect of environment-related new investments.

Article 16

General derogations from certain specified provisions of law

A contract pursuant to Article 21 may provide that the company in question, which is formed for the purpose of a new investment and constructs and operates the investment project, should be exempted from the following provisions of law:

1. the provisions of subparagraph 4 of the first 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. the provisions of the second paragraph of Article 42 of Act No. 138/1994 on private limited 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 17

Committee on new investment incentive

A committee of three members appointed by the Minister of Industry shall examine applications for incentives and submit recommendations to the Minister of Industry in accordance with Article 4. The Minister of Industry shall appoint the Committee, with the Minister of Finance and Minister of Business Affairs each nominating one member, while the third shall be appointed without nomination and serve as chairman. Alternates shall be appointed in the same manner.

The committee shall evaluate applications and call for any necessary documents.

The committee shall consult with municipal governments 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, e.g. as regards assessment of economic and social benefits.

The work of the committee is subject to the Administrative Procedure Act No. 37/1993. The Minister of Industry may issue a regulation providing in further detail for the work of the committee.

Article 18

Cost/benefit analysis

Before the committee appointed under Article 17 submits a recommendation to the Minister of Industry regarding an incentive application, the Invest in Iceland Agency shall undertake calculations for the committee of the profitability and benefits of the proposed investment project and process any data which may be required before a position is taken regarding the application.

The party applying for an incentive shall submit an operating budget and business plan for the investment project in question on which cost/benefit calculations can be based in order to assess the value-added which will remain in Iceland as a result of the project in question. If adequate data are not available to conduct a cost/benefit analysis, the Invest in Iceland Agency shall request such data.

Incentives shall only be offered to an applicant if a cost/benefit analysis clearly indicates that the incentive in respect of the investment project in question will lead to short-term and long-term economic and social benefits for Iceland.

In assessing the economic and social benefits of a prospective commercial activity account should be taken of the different compositions of incentives permitted pursuant to Chapters III and IV of this Act.

A regulation issued by the Minister shall provide in further detail for cost/benefit calculations, the conduct of such calculations and the data that needs to be available before the calculations are made.

Article 19

Offers of incentives

The committee appointed pursuant to Article 17 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 Minister extends an offer for incentive, the offer shall be grounded in the authorisation provided for in Chapters III and IV, and the offer may consist in more than one type of incentive, subject to the provisions of Article 20.

Article 20

Limitations on permitted incentives

The maximum incentive granted to an applicant in respect of an investment project may not exceed the limits permitted under the rules of regional aid provided for in Chapter III or the rules on general incentives provided for in Chapter IV. It is not permitted to utilise in full the incentives from both Chapters III and IV in respect of the same investment project so that the aggregate of the incentive exceeds the limits provided for in this Act, including other state aid which the same party may have enjoyed for the same investment project.

Article 21

Contracts on granting incentives

If an applicant accepts the offer of the Minister of Industry for an incentive, a contract shall be drawn up between the applicant and the Minister of Industry, acting for 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 person granted the incentive under the contract;
- c. what incentives are granted for the project;
- d. how the incentive is to be applied to the project and over what time frame;
- e. surveillance and recovery of the incentive if the contract terms are not met;

An agreement on the granting of incentives, ref. paragraph 1, shall be valid for a maximum of 13 years from date of signature of the agreement. An incentive granted under Article 9, ref. Article 9(3), shall be valid for 10 years from the day the relevant tax- or charge obligation, laid down in Article 9(2), 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 for Industry pursuant to this Act, shall be printed in Section B of the *Official Gazette*.

Article 22

Appropriation of funds

To the extent that direct payments from the State Treasury are involved, the granting of incentives pursuant to this Act is subject to appropriations from the Althing at any time under the Budget Act and, as appropriate, allocations of funds from municipalities.

Article 23

Demarcation of incentives

An incentive is granted only 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 permitted to use the incentive only for the defined investment project provided for in a contract pursuant to Article 21.

Article 24

Surveillance of the use of an incentive

To ensure the proper use of an incentive, as provided in Article 23, a beneficiary of the incentive shall send to the Ministry of Industry 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 of Industry 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 Industry of such events.

Article 25

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 a person has exceeded the levels permitted in this Act or the contract on the granting of the incentive, the excess amount shall be reclaimed from the person 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 government authorities shall, as provided in the third paragraph of Article 31 of the Competition Act No. 44/2005, take steps to recover the granted state aid from its recipient.

Article 26

Authorisation for the issue of regulations

The Minister of Industry is authorised to issue a regulation on the implementation of this Act.

CHAPTER VI

Article 27

Implementation of Commission Regulation (EC) No 800/2008

This Act implements Commission Regulation (EC) No. 800/2008 of 6 August 2008, declaring certain categories of aid compatible with the common market in application of Articles 61 and 62 of the Agreement on the European Economic Area (General block exemption Regulation) as incorporated into the Agreement on the European Economic Area by EEA Joint Committee Decision No. 120/2008, published on 18 December 2009 in the EEA Supplement to the Official Journal of the European Union No. 79.

Commission Regulation (EC) No. 800/2008 is attached to this Act as an Annex and shall have the force of law in Iceland.

Article 28

Entry into force

This Act is effective immediately. This Act shall expire on 31 December 2013. However, incentives granted before that time shall remain in effect for the term provided for in the applicable contract stipulated in Article 21 on the granting of the incentive.

Transitional provision

One year before this Act expires, the Minister of Industry shall appoint a committee to assess the success achieved in the implementation of the Act and submit a proposal on whether its term of effect shall be extended following a review of the provisions of the Act. The review shall be concluded at the latest on 31 December 2013.