

Legal Notice No. of 2019

ST HELENA



CUSTOMS AND EXCISE ORDINANCE, 1999

CUSTOMS AND EXCISE (APPROVED INVESTORS) REGULATIONS, 2019

In exercise of the powers conferred by section 5 and 41(k) of the Customs and Excise Ordinance, 1999, the Governor in Council makes the following Regulations:

**PART 1
PRELIMINARY**

Citation and commencement

1. These Regulations may be cited as the Customs and Excise (Approved Investors) Regulations, 2019, and come into force on 1 April 2019.

Interpretation

2. In these Regulations, unless the context indicates otherwise—
“capital goods” means any capital assets which are to be used in the business of the Approved Investor;
“certificate” means the certificate granted in respect of an Approved Investment under regulation 6;
“Committee” means the Investment Enabling Group referred to in regulation 3;
“concession period” means a period of 5 years commencing on the date the certificate is granted.

**PART 2
ESTABLISHMENT OF COMMITTEE AND FUNCTIONS**

Committee

3. (1) There is established a Committee, to be known as the Investment Enabling Group, to administer the Approved Investment Scheme under these Regulations.

(2) The members of the Committee must be appointed by the Governor and the Chair of the Board is the member of the Board so nominated by the Governor.

(3) The members of the Committee must include—
(a) the Chief Secretary, who will also serve as the Chair of the Committee;
(b) the Financial Secretary;

- (c) the Government Economist;
- (d) a representative from Enterprise St Helena;
- (e) such other members as the Governor may deem appropriate.

Functions of Committee

- 4.** The Committee—
 - (a) is responsible for administering the provisions of these regulations; and
 - (b) must monitor progress on active investments of Approved Investments.

PART 4 APPROVED INVESTMENT STATUS

Application for approval as Approved Investment

5. (1) A person who wishes to conduct or expand an enterprise which complies with the requirements in regulation 6 may apply to the Committee for approval of the enterprise as an Approved Investment.

- (2)** The applicant must submit an application in the form set out in Schedule 1 and provide particulars as to—
- (a) the nature of the enterprise, the land or premises where it will be conducted, managed and otherwise operated, and the contribution which it is expected to make to the economy of St. Helena;
 - (b) itemised information on what the enterprise intends to import during the concession period;
 - (c) the numbers of persons to be employed in the enterprise during the concession period, broken down (as appropriate) according to trade, profession or job description;
 - (d) the date on or before which, having regard to the nature of the enterprise, it is anticipated that the applicant will begin producing or supplying goods or services arising from the conduct of the enterprise;
 - (e) satisfactory evidence that the enterprise will be adequately financed and managed; and
 - (f) such other information as the Committee may require in any particular case.

Approved Investment certificates

- 6. (1)** The Committee or Governor in Council, as the case may be, may approve an enterprise as an Approved Investment having regard to whether that enterprise—
- (a) is or will be economically, environmentally and socially sustainable;
 - (b) will increase and retain money on St Helena by reducing the dependence on imported goods or increasing exports;
 - (c) will be employing people on St Helena, where appropriately skilled staff are available;
 - (d) will add to the range of products and services available to residents and visitors;
 - (e) will provide overall economic value compared to the cost to the Government of the concession provided to the enterprise under these Regulations.

(2) A certificate of Approved Investment Status in respect of an application approved under sub-regulation (1) must be issued by—

- (a) the Governor in Council in respect of investments of £1 million and over;
- (b) the Committee in respect of investments under £1 million.

(3) In determining whether an enterprise will fulfil the requirements under sub-regulation (1), the Committee or Governor in Council, as the case may be, must take into account the factors set out in Schedule 2.

(4) The Committee or Governor in Council may, for the purpose of assisting in making a decision upon any application for Approved Investment Status, seek the advice of such persons or bodies of persons (if any) as the Committee or Governor in Council considers are likely to be able to provide relevant expert, specialist, or professional advice or assistance in connection with the subject-matter of the application.

(5) Every certificate must specify—

- (a) the nature of the enterprise in respect of which it is granted and the name of any Approved Investor in relation thereto;
- (b) the concessions provided in relation to the Approved Investment under regulation 7;
- (c) the date that the certificate is granted and the expiry date of the concession period;
- (d) an itemised list of the capital goods which the Approved Investor intends to import and to which the benefits apply.
- (e) such other conditions relating to the manner in which the affairs of the enterprise must be conducted, managed and operated as the Committee or Governor in Council may deem fit to impose, including a requirement that an Approved Investor must, during the concession period and as often as may be specified in the certificate, submit to the Committee or Governor in Council reports or accounts capital goods imported.

(6) The Committee must publish notice in the *Gazette* of every certificate issued under this Regulation.

PART 5 BENEFITS OF APPROVED INVESTMENT STATUS

Customs duty concessions for Approved Investments

7. (1) The concessions provided in this regulation apply in respect of any capital goods imported by an Approved Investor during the concession period for the purposes of an Approved Investment.

(2) Notwithstanding the tariffs prescribed in the Customs (Tariffs and Exemptions) Regulations, 2011, the rates of customs duty applicable to goods referred to in sub-regulation (1) are the following:

Approved Investor A	Exempt from duty
Approved Investor B	Duty payable to be 5% of Value
Approved Investor C	Rates of duty as prescribed under the Customs (Tariffs and Exemptions) Regulations, 2011

(3) An Approved Investor C is exempt from the prescribed period for payment under section 8(2) or 10(1)(b) of the Ordinance and must pay the duty within the period as set out in the certificate.

(4) The Committee or Governor in Council, as the case may be, may specify in the certificate issued under regulation 6(2), that the concession referred to in sub-regulation (3) applies to an Approved Investor B.

PART 6 REVOCATION OR AMENDMENT OF CERTIFICATE

Revocation of Certificates

8. (1) The Committee or Governor in Council, as the case may be, may revoke the certificate if—

- (a) the information furnished by the applicant in the application is false in any material particular;
- (b) an Approved Investor has failed to comply with any of the provisions of these Regulations or of any condition contained in the certificate; or
- (c) any material particular on which the approval was based has not materialised, and thereupon the provisions of regulation 7 cease to apply to the enterprise.

(2) The Committee or Governor in Council may not revoke a certificate without first informing every Approved Investor named therein of the circumstances leading to the revocation and allowing each such person an opportunity to make written representations in relation thereto.

(3) On the revocation of a certificate every Approved Investor named therein, and every person conducting the enterprise is jointly and severally liable to pay to the Collector of Customs any import duty which must be calculated as if the articles imported have been disposed of under regulation 10.

PART 7 REPORTING AND RECOVERY OF DUTY

Reporting

9. An Approved Investor must report to Enterprise St Helena within 28 days after importing each capital asset in respect of which these Regulations apply.

Recovery of duties

10. Where any capital goods have been imported which were exempt from import duty or were subject to reduced duty under these regulations and any such goods are sold or otherwise disposed of for value during the concession period, or such goods are used for any purpose other than the Approved Investment as contemplated in the certificate, the importer thereof is liable to pay the full amount of duty which would have been payable had the regulations not applied to such goods.

PART 8 OFFENCES

Offences

11. The provisions relating to offences under the Ordinance apply in respect of any person who—

- (a) knowingly makes, in connection with any application under regulation 5, or in relation to any claim for an exemption or benefit provided for in Part 5, any statement which he or she knows to be false or does not believe to be true; or
 - (b) having become liable to pay any import duty in accordance with regulation 10, knowingly fails to inform the Collector of Customs of the circumstances which have given rise to that liability within 14 days of the date on which he or she became so liable.

SCHEDULE 1

APPLICATION FOR APPROVED INVESTMENT STATUS

(Regulation 5)

Does the project provide a safer or healthier environment e.g. enhance social cohesion, improve quality and length of life, the community's fitness and mental health, provide care services for the elderly, or reduce harm caused by actions such as smoking, substance abuse or road traffic accidents?	
What additional infrastructure will be required to support the investment (e.g. roads, sewage) and who will pay for it?	
What percentage of profits is expected to be repatriated out of St Helena over the first 10 years? (%)	
Does another business currently operate in St Helena which provides a similar or identical good or service?	
Would the investment lead to the investor owning over a 50% share of any of the markets it would operate in?	

SCHEDULE 2

FACTORS TO DETERMINE ELIGIBILITY AND APPROVAL STATUS

(Regulation 6)

1. In determining whether to approve an enterprise as an Approved Investment, the Committee or Governor in Council needs to take into account the following objectives based on the weighted score:

Objective	Group weight	Question
<i>Investments which are sustainable; economically, environmentally and socially</i>	Pass/ Fail	<p>Is the nature of the investment legally and ethically acceptable?</p> <p>Has the applicant passed or expected to pass a due diligence test by ESH/SHG?</p> <p>Has the applicant been subject to conviction for any of the following offences during the five years prior to application: Money laundering or equivalent offence Bribery and/or corruption or equivalent offence. Any criminal conviction which has not been spent under the Rehabilitation of Offenders Act 1974 (as amended up to 1st January 2006).</p>
	30%	<p>What is the annual average expected additional turnover generated for the business as a result of the investment over the first 10 years?</p> <p>Has the applicant already secured financing for the investment?</p> <p>When does the applicant plan to start business operations on St Helena?</p> <p>How many people (full time equivalents) will be employed in enterprise operations on average per annum?</p>

Objective	Group weight	Question
		<p>How many St Helenian people (full time equivalents) will be employed in enterprise operations on average per annum?</p> <p>Does the project generate renewable energy and include water capture and storage; and include water and energy saving fittings and fixtures?</p> <p>Does the project mitigate environmental damage and propose to enhance the environment?</p> <p>What are the land requirements? (to rent or buy)</p> <p>Does the project provide a safer or healthier environment e.g. enhance social cohesion, improve quality and length of life, the community's fitness and mental health, provide care services for the elderly, or reduce harm caused by actions such as smoking, substance abuse or road traffic accidents?</p> <p>What additional infrastructure will be required to support the investment (e.g. roads, sewage) and who will pay for it?</p>
<i>Investments which reduce the island's dependence on imported goods, increase exports, increases or retains money on St Helena</i>	30%	<p>Is the investment project contributing to an export or import substitution sector?</p> <p>What percentage of profits is expected to be repatriated out of St Helena?</p> <p>What proportion of the investment will be spent on goods and services produced locally?</p>
<i>Investments which add to the range of products and services on offer to residents and visitors</i>	10%	<p>Does another business currently operate in St Helena which provides a similar or identical good or service?</p> <p>Would the investment lead to the investor owning over a 50% share of any of the markets it would operate in?</p>
<i>Investments which provides value for money to SHG and ESH where grant funding and/or tax incentives are given</i>	30%	<p>Estimated average annual tax forecasted to be paid over 10 year period (after incentives).</p> <p>Estimated average annual additional benefits to economy over 10 year period</p>

2. In granting approval of an enterprise as an Approved Investment, the following scores apply for purposes of awarding the level of Approved Investment Status:

	Investment Matrix Score			
Magnitude of Investment	0-39%	40%-54%	55%-69%	70%-100%
>£1m	<i>Not Approved</i>	<i>Approved Investor B</i>	<i>Approved investor B</i>	<i>Approved investor A</i>
£25,000-£1m	<i>Not Approved</i>	<i>Approved Investor C</i>	<i>Approved Investor B</i>	<i>Approved investor A</i>
<£25,000	<i>Not Approved</i>	<i>Approved Investor C</i>	<i>Approved Investor C</i>	<i>Approved Investor B</i>

Made by the Governor in Council this day of 2019.

Anthea H. R. Moyce
Clerk of Councils

EXPLANATORY NOTE

(This note is not part of the Regulations)

The purpose of these Regulations is to make provision for Approved Investment Status of enterprises whose activities will increase and retain money on St Helena by reducing the dependence on imported goods or increasing exports or adding to the range of products and services available on St Helena. These Regulations provide for the exemption from customs duties or reduced customs duties and delayed payment of duties on certain capital assets imported by Approved Investments.