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INVESTMENT PROVISIONS IN IVORY COAST

I. INTRODUCTION

In an effort to stimulate investment operations on Ivorian territory, the Ivorian authorities issued in 2018 a new regime of investment promotion which provide tax and custom incentives as well as simplified process for the start of business and warranties to the investors.

This regime rests on the provisions of the Presidential Order No 2018-646 dated August 1st, 2018 creating the Investments Code and the Decree No 2018-647 fixing the application rules of said Presidential Order. They replace the provisions of the 2012 Investment Code.

II. INVESTORS TARGETED BY THE INVESTMENTS CODE

Investors in the meaning of the Investments Code are any individual or legal entity with Ivorian nationality or not, completing investment transactions on Ivorian territory **within the conditions defined in the frame of the Code**. Legal entities must be subject to taxation and comply with accounting, tax and environmental obligations.

Investments are broadly defined as capital used to acquire movable, tangible and intangible assets and to ensure the financing of initial equipment needed to set up or expand a business. Investments already benefiting from specific aid schemes are excluded[1].

III. TWO PROCESSES FOR THE OBTAINING OF THE INVESTMENT INCENTIVES

The obtaining of the various investment incentives is subject to the compliance with one of the two following schemes:

- The declaration scheme (*régime de déclaration*) is defined as a tax incentive scheme applicable to an investment project thanks to a simple declaration of the investment.
- The authorization scheme (*régime d'agrément*) is defined as a scheme of tax and tariff incentives applicable only after the investment project has been approved And providing that the investment costs (VAT excluded) exceed various thresholds such as XOF 200 millions (EUR 305,000) for investors qualified as large companies (annual turnover exceeding EUR 1,600,000) or XOF 50 millions (EUR 76,300) for investors qualified as small and medium sized enterprises (employing less than 200 people and with an annual turnover of less than EUR 1,600,000)[2].

[1] Ref Sect. 1 and 4 of the Investments Code
[2] Ref Sect. 13 of the Investments Code

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In the case of structural projects meaning important infrastructural project in line with the development strategy in Ivory Coast, investors could benefit from additional incentives subject to the signing with the Ivorian State of a State agreement[3].

IV. INCENTIVES AND WARRANTIES PROVIDED BY THE INVESTMENTS CODE

The Investments Code provide on the one hand incentives and on the other hand warranties.

IV.1 INCENTIVES IN THE FORM OF TAX AND TARIFF CONCESSIONS

There are two categories of activity sectors benefitting from tax incentives:

Category 1 includes agriculture and agro-industry as well as the health and hotel sectors.

Category 2 includes those sectors, which do not belong to category 1 or to the sectors excluded in art. 6 in connection with a list established by decree in accordance with art. 7 (commercial sector, banking and financial sector, construction sector of non-industrial buildings and the liberal professions). These excluded sectors do not benefit from the fiscal incentives set up by the Investment Code.

In addition, three national investment zones A, B and C are differentiated by decree.

IV.1.1. Declaration scheme

Investments under the declaration scheme are eligible for tax incentives, which vary according to category and zone. Said specific tax regime is only applicable during the operation stage of the investment.

a) Category 1 (tax exemptions)

Category 1 investments in Zone A, which includes Abidjan, benefit from a 5-year 50% tax or contribution exemption on e.g. income and property tax.

In zone B, which includes Bouaké and San-Pédro, a 5-year total and then 5-year 50% tax or contribution exemption applies to five explicitly mentioned tax or contribution liabilities.

b) Category 2 (tax credits)

Category 2 investments benefit from a tax credit, which percentage depends on the zone (tax credit of 25% in zone A, 35% in zone B and 50% in zone C). These tax credits apply to the 5 different taxes, including income tax, property tax and VAT.

[3] Ref Sect. 19 and 20 of the Investments Code

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IV.1.2. Authorization scheme

Investments subject to authorization are eligible for **tax and tariff concessions** for both the construction and operating phases.

a) Construction phase

The investor benefits from an exemption of custom duties and from a temporary suspension of VAT on the purchase of goods, services and works during the construction phase. Both subsidies apply to materials, capital goods and the first batch of imported or locally purchased replacement parts, as well as to services and works carried out locally or abroad.

b) Operation phase

In the operational phase, a distinction is made between large and small or medium-sized enterprises, as well as between categories 1 and 2 and zones A, B and C.

i) Large companies

Large companies, which belong to category 1, benefit from the same tax exemptions as category 1 business investments under the declaration scheme (art. 17) (see IV.1.1.a.). Category 2 investments benefit from the same tax credits as category 2 business investments under the declaration scheme (see IV.1.1.b.).

ii) Small and medium-sized enterprises

Small and medium-sized enterprises are eligible for a higher level of support. The tax exemption in category 1 is total for a first 5 year period and reaches 75% for a subsequent 5 year period in Zone B or reaches 75% for a 5 year period in Zone A and also covers the bank business tax (*taxe sur les opérations bancaires*). The tax credit in category 2 is equal to 1.5 times the tax credit rate retained for the declaration scheme.

IV.1.3. Additional tax credits for local content (contenu local)

Large foreign companies (limited scope) can benefit from additional tax credits through a policy of local content development in terms of job creation, distribution of the share capital to nationals or subcontracting, if and as long as the conditions are fulfilled[4].

IV.2 SPECIAL PROTECTION THROUGH GUARANTEES

Without regard to categories and zones, the investors benefit from governmental guarantees, which take the form of active and passive protection.

However, it seems debatable whether all investors benefit from these guarantees.

[4] Ref Sect. 21 and 22 of the Investments Code

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The arbitration tribunal in the case Société Resort Company Invest Abidjan considered that an investor can only benefit from the guarantees if he follows one of the two processes for investment incentives.[5]

There is however no allusion, neither in the definition of investor in the Code of 2012 nor in the one in the Code of 2018, that investor in the meaning of the Investments Code would be solely the one which would go through the declaration scheme or the agreement scheme.

However, in order to avoid any discussion, it is preferable to pass by one of the incitation schemes in order to benefit from the following guarantees:

IV.2.1. Active protection

Active protection includes Governmental simplification of the formalities, which have to be fulfilled in order to realize the investment program, and a Governmental strategy to improve the business environment and the institutional framework.

In this purpose, the Ivorian State authorizes the transfer of capital pertaining to the investment.

This is nonetheless not a warranty of the transferability of the capital to the investors' country. Said transfer could be hindered by local regulation restricting for example the currency transfers or because of the existence of a local or foreign enforceable judgment against the local project company bearing the investment[6].

IV.2.2. Passive protection

Foreign investors (in the form of natural or legal entities) are also guaranteed fair and equitable treatment in the context of the rights and obligations attached to their investment programs[7]. Furthermore, the investor can freely choose the way to manage its investment and has free access to raw or semi-finished materials from national territory.

IV.3 OBLIGATIONS TO WHICH THE INVESTOR IS SUBJECT

To benefit from the incentives or warranties, the Investments Code imposes various obligations on the investor *inter alia*

- the obligation to implement the investment within two years, unless prevented to do so because of external reasons beyond the will of the investor where a time extension could be granted up to 48 months providing that the investor has already implemented at least 66% of his investment project;
- the compliance with local laws and regulations, technical standards and social, health and environmental rules;

[5] Ref ICSID Case No ARB/16/11 "Société Resort Company Invest Abidjan v/ Republic of Côte d'Ivoire", August 1st, 2017.
[6] Ref Sect. 28 of the Investments Code
[7] Ref Sect. 25 of the Investments Code

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- Transmission to the CEPICI of the corporate accounts, business reports and reports on the social practices of the company.

Any violation of the provisions of the Investments Code is punishable with a fine, the suspension of the subsidies for a maximum of 6 months or the withdrawal of the authorization[8].

[8] Ref Sect. 48 of the Investments Code