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INVESTMENT REGIME IN SENEGAL

I. INTRODUCTION

The Senegalese authorities issued in 2004 a new regime of investment promotion through the Law No 2004-06 dated February 6th, 2004 creating the new Investments Code and the Decree No 2004-627 fixing the application rules of said Code.

II. INVESTORS TARGETED BY THE INVESTMENTS CODE

Investors in the meaning of the Investments Code are any individual or legal entity with Senegalese nationality or not, completing investment transactions on Senegalese territory within the conditions defined in the frame of the Code.[1]

Investments are broadly defined as capital used to acquire movable, tangible and intangible assets and to ensure the financing of initial set-up and working capital needed to set up or expand a business.[2]

The Investments Code applies to all companies, meaning every profit-making unit of production, transformation or distribution of goods or services whatever its legal form, whose activity covers one of the eight listed eligible sectors, such as mining, tourism, health, education and industrial production.[3] This includes new companies, defined as every newly created economic unit realizing an eligible investment program.

The entire Investments Code does not apply to trading activities, meaning the resale of purchased products and activities, which are eligible to specific Codes or the status of a free export company.[4] Materials admitted to specific regimes are excluded from the investment incentives granted by the Code.[5]

[1] Ref Sect. 1 of the Investments Code
[2] Ref Sect. 1 of the Investments Code
[3] Ref Sect. 1, 2 of the Investments Code
[4] Ref Sect. 2 of the Investments Code
[5] Ref Sect. 2 of the Investments Code

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III. WARRANTIES PROVIDED BY THE INVESTMENTS CODE

All companies benefit from explicitly listed warranties, inter alia:

- the comprehensive protection of private property;[6]
- the obtaining of foreign currency needed for the company's activities within the Senegalese exchange regulations;[7]
- the free capital transfer within Senegalese regulations;[8]
- the free salary transfer by every member of staff, national of a third country legally staying in Senegal;[9]
- the access to raw or semi-processed raw materials which have been produced on national territory;[10]
- an equal treatment of individual or legal entities subject to provisions of treaties and agreements concluded by the Republic of Senegal with other countries[11].

For disputes between a foreign investor and the Senegalese State arisen out of the application of the Investments Code, the latter refers to prospective BIT between the State of the nationality of the investor and Senegal.[12] For most of such a BIT, Senegalese Courts would have jurisdiction unless arbitration agreement between the two parties.

German investors on Senegalese territory are therefore referred to the arbitration clause in article 10 of the BIT signed by the Republic of Senegal and the Federal Republic of Germany on January 24th, 1964 and entered into force on January 16th, 1966. This article could not be used by a German investor since it provides arbitration proceeding only between States.

IV. INVESTMENT INCENTIVES PROVIDED BY PRIVILEGED REGIMES OF THE INVESTMENTS CODE

In an effort to create new companies and to stimulate the settlement of companies in inland regions as well as the development of existing companies,[13] the Investments Code provides investment incentives (*avantages particuliers*). In order to benefit from these incentives, the investor must meet two conditions of eligibility and pass through a process of approval of his investment program.

[6] Ref Sect. 4 of the Investments Code
[7] Ref Sect. 5 of the Investments Code
[8] Ref Sect. 6 of the Investments Code
[9] Ref Sect. 7 of the Investments Code
[10] Ref Sect. 8 of the Investments Code
[11] Ref Sect. 10, 11 of the Investments Code
[12] Ref Sect. 12 of the Investments Code
[13] Ref Sect. 15 of the Investments Code

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IV.1 CONDITIONS OF ELIGIBILITY

Every investor is eligible to special incentives, as long as he fulfils these two conditions:[14]

- The planned investment must amount to at least XOF 100 millions (EUR 152,500) for the production of eligible goods or services.
- The planned investment of a new company must create a new activity instead of carrying on the activity of an acquired, pre-existing entity.

IV.2 PROCESSES FOR THE OBTAINING OF THE INVESTMENT INCENTIVES

The obtaining of the investment incentives is subject to the compliance with the following process of approval:[15]

- Every investor must file an application for approval with the APIX (*Agence nationale chargée de la Promotion de l'investissement et des Grands Travaux*) or to any other competent and designated authority.[16]
- Administration must answer within 10 days. Failing to do so, the approval is deemed to have been granted.[17]

After having met these modalities of approval, the investor must effectively implement his investment program in the conditions fixed by the approval in order to benefit from the following incentives, whose duration is non-extendible[18].

IV.3 INCENTIVES PROVIDED DURING THE CONSTRUCTION PHASE[19]

The investor benefits during a three year period from an exemption of custom duties for foreign imports of materials and equipment used for performing to the approved investment program.

Additionally, he benefits from a suspension of VAT on said imported materials and equipment and of VAT invoiced by local suppliers of goods, services and works needed for the realisation of the approved investment program.

IV.4 INCENTIVES PROVIDED DURING THE OPERATION PHASE

In the operation phase, a distinction is made between the providing of fiscal and other incentives depending on whether the investment is made by a new company, as an expansion project or by any other company.

[14] Ref Sect. 17 of the Investments Code
[15] Ref Sect. 26 of the Investments Code
[16] Ref Sect. 20 of the Investments Code
[17] Ref Sect. 21 of the Investments Code
[18] Ref Sect. 26 of the Investments Code
[19] Ref Sect. 18 of the Investments Code

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IV.4.1. Fiscal incentives[20]

New companies and expansion projects, meaning any approved investment program of an existing company resulting either in an increase of at least 25% in production capacity or the value of acquisition of fixed assets or in an investment in production equipment of at least XOF 100 millions (EUR 152,500), benefit from the following fiscal incentives:

- An exemption of the lump-sum contribution at the employer's charge (CFCE) for a five year period.
- A subduction of 40% of the amount of investments from the taxable income without exceeding 50% of the annual taxable income for new companies and 25% for expansion projects.

V. OBLIGATIONS TO WHICH THE COMPANY IS SUBJECT

To benefit from the incentives or warranties, the Investments Code imposes general obligations as well as additional obligations on the investor benefiting from investment incentives and on the approved company.

Every investor benefiting from an approval of its investment program is subject to additional obligations towards the APIX or the competent authority, such as:[21]

- the obligation to give annual information on the level of implementation of the approved investment program;
- the obligation to declare the start-up date of the approved activity and to submit a summation of realized investment operations;
- the obligation to allow the control of the conformity of its activity;
- the obligation to send a copy of the statistical information which every company is legally obliged to send to the national statistical services;
- the obligations to maintain the company's accounts in compliance with the chart of accounts.

If the investor does not fulfil his obligations, his approval can be withdrawn so that customs and taxes, from which he had been exempted, become immediately due.[22] If he does not fulfil one of the conditions fixed in the approval, the investment incentives are suspended for the fiscal year, in which the condition is not met.[23]

[20] Ref Sect. 19 a) of the Investments Code
[21] Ref Sect. 22 of the Investments Code
[22] Ref Sect. 23, 27 of the Investments Code
[23] Ref Sect. 24 of the Investments Code

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In addition to legal or regulatory provisions governing their activities and to obligations set out in the letter of approval, every approved company is, for the duration of the regime under which it is placed, subject to additional obligations, such as:[24]

- the strict compliance with the approved activities as part of the investment program;
- the compliance with national environmental rules, national and international quality standards applicable to the goods and services of its activity;
- the communication of the financial status to the CUCI (*Centre Unique de Collecte de l'Information*) at the end of each exercise;
- priority employment of Senegalese nationals with equal competences and the organisation of their training and promotion within the company.

[24] Ref Sect. 25 of the Investments Code