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Tunisia – New Investment Law

November 2016

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Prior to the "Tunisia 2020" conference on development and investment which will take place in Tunis at the end of this month, the Tunisian legislature adopted law n°71-2016 dated 30 September 2016, ("*Loi sur l'Investissement 2016"* – the "**Investment Law**"), aiming to promote investments and business in Tunisia.

The Investment Law will enter into force on 1 January 2017 and will repeal and replace the current Tunisian investment incentive code ("*Code d'Incitations aux Investissements*" – the "**Former Investment Code**") enacted by law n°93-120 dated 27 December 1993.

This legislative reform aims to promote investments in Tunisia, especially foreign investments, by enhancing both freedom to invest and investors' protections. The Investment Law reorganises the governance of investments by establishing new institutions and incentive bonuses.

The text that sets out this new legal framework is relatively short and shall be completed by way of decree.

Liberalisation of the legal framework

Principle of freedom to invest

The Investment Law reiterates the principle of freedom to invest in Tunisia. This principle, which had already been laid down by the Former Investment Code, will now be combined with a guarantee of non-discrimination: under comparable conditions, a foreign investor will not be treated less favourably than a Tunisian investor. Therefore, the scheme of prior approval, which was only applicable to some foreign investors under the Former Investment Code, has now disappeared under the Investment Law.

As an example, the Investment Law sets out the principles of free acquisition, rental and exploitation of non-agricultural lands by investors.

However, the statement that "*investment is free*", included in Article 4 of the Investment Law, does not mean that all legal and administrative barriers have been removed from Tunisian legislation. It is worth noting that a decree will be adopted by no later than 1 January 2018 to establish an exhaustive list of all activities that will require prior approval. This list should provide some clarity on the different administrative authorisations, procedures, delays and conditions required for the realisation of an investment in Tunisia. Besides equal treatment, the Tunisian legislature wants to guarantee equal access to information for both domestic and foreign investors.

Guarantees granted to investors

The Investment Law sets out that both Tunisian and foreign investors will benefit from the same protection as far as possessory and intellectual property rights are concerned. It prohibits expropriation of an investor, unless it is in the public interest and subject to fair and equitable compensation (although the text remains silent on the preliminary nature of this compensation).

Foreign investors will have a greater interest in some guarantees, such as the free transfer of funds abroad or the possibility to recruit foreign management. The Former Investment Code had already granted the possibility to recruit four foreign managers for each business. The Investment Law extends this provision by allowing any business to have 30% of its management staff composed of foreign managers during the first three years of its incorporation or effective entry into operation, and 10% from the fourth year onwards, under certain conditions.

Finally, the Investment Law contains guarantees regarding the relationship between investors and the Tunisian administrative authorities. Decisions relating to administrative authorisations for investments will have to be reasoned and explained in writing.

The will to improve Tunisia's attractiveness

The new governance of investments in Tunisia

The Investment Law reorganises the governance of investments in Tunisia, which, until now, has been assumed by the higher commission for investment (*Commission Supérieure d'Investissement)*.

The Investment Law institutes the higher council for investment (*Conseil Supérieur de l'Investissement* – the "**Council**"), which, composed of ministers connected to the field of investments and presided over by the Tunisian Prime Minister, will determine the State policy for investments and be responsible for the promotion of investments and the improvement of the business environment in Tunisia. The Council will award incentive bonuses related to projects of national interest.

The Tunisian instance for investment (*Instance Tunisienne de l'Investissement* – the "**Instance**") is also to be introduced and placed under the authority of the minister in charge of investment and the Council. It will analyse the applications for bonuses and make the grant decisions. A unique position within the Instance has been created for someone to liaise with, orientate and inform investors, providing them with assistance on how to obtain the required authorisations.

Finally, the Investment Law establishes a Tunisian fund for investment (*Fonds Tunisien de l'Investissement* – the "**Fund**") that will pay the bonuses mentioned below and be entitled to make subscriptions, directly or indirectly, in risk mutual funds, venture capital funds and seed funds. A decree will specify the rates, ceilings and conditions concerning the benefit of participations in the capital.

Bonuses and other incentives to invest

The Investment Law provides for many bonuses to be granted under certain conditions to be determined by decree.

These bonuses will be granted in respect of direct investments made in Tunisia. Such investments are defined as any creation of a new independent project for the purpose of producing goods or providing services or any extension or renewal operations made by an active company as part of that same project seeking to increase its production capacity.

There is a range of different bonuses on offer: the payment of one or many sums of money, the assumption by the Tunisian State of part of the salaries and / or employer's contributions, *etc*. The investments with national interest, which will be determined by way of decree, may grant investors a reduction of the tax rate for a maximum period of ten years, the payment of a bonus and the assumption of infrastructure expenses by the Tunisian State.

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