

## Sao Tome and Principe

### São Tomé and Príncipe Investment Code (approved by Decree-Law No. 19/2016 of 17 November 2016) (2016)

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# **São Tomé and Príncipe Investment Code (approved by Decree-Law No. 19/2016 of 17 November 2016)**

GOVERNMENT Decree-Law No. 19/2016

The Government, within the scope of the legislative authorisation granted by the National Assembly through Law No. 5/2006 and in the exercise of the powers conferred by Article 111(d) of the Constitution of the Republic, hereby decrees the following:

Investment Code

# **Title I General Provisions**

## **Chapter I Object, Scope and Definitions**

### **Article 1 Object**

The purpose of the Investment Code is to define the terms, conditions, modalities, guarantees and incentives applicable to investments made in the Democratic Republic of São Tomé and Príncipe.

### **Article 2 Scope**

This law creates the regime applicable to all investments made in the Democratic Republic of São Tomé and Príncipe, whose total amount corresponds to or equal to 50,000 (fifty thousand EUROS), eligible for the tax incentives contained in the Tax Benefits Code.

### **Article 3 Definitions**

For the purposes of this Code, the following shall be considered:

- a) Economic Activity - the production and marketing of goods or the provision of services of any nature, carried out by natural or legal persons in any sector of national activity;
- b) Capital - contribution subject to pecuniary valuation, expressed in national or foreign currency, which may also be considered movable, immovable, incorporated or to be incorporated in the project;
- c) Investor – any natural or legal person, of any nationality, who carries out or has carried out investment operations under the terms of the Laws in force in the country;
- d) Investment - any mobilization of financial, human and technological resources aimed at creating or expanding productive activities or the provision of services;
- e) Foreign Direct Investment - any form of capital contribution subject to pecuniary valuation, which constitutes the investor's own resource or at the investor's own account and risk, originating from abroad and intended for incorporation into the investment for the execution of an economic activity project through a commercial company registered in São Tomé and Príncipe and operating from the national territory.
- f) Reinvestment - application, total or partial, of the net profits resulting from the operation, after taxes and other mandatory contributions, in the expansion, diversification or modernization of the installed capacity;
- g) Exportable Profits - the part of the profits resulting from the activity of the project that involves foreign direct investment eligible for the export of profits in accordance with the Foreign Exchange Law in force, the remittance of which the investor may make abroad on his own initiative, once the payment of taxes and other legal obligations and other legal deductions related to the constitution or replenishment of reserve funds has been arranged.

# Chapter II Principles and Objectives of Private Investment

## Article 4 General Principles

The policy of private investment and the allocation of incentives and facilities shall be governed by the following general principles:

- (a) respect for private property;
- b) Respect for the rules of the free market and healthy competition between economic agents;
- c) Respect for free enterprise, except for areas defined by law as being reserved by the State;
- d) Ensuring security and protection of the investment;
- e) Ensuring equal treatment between nationals and foreigners;
- f) Ensuring the promotion of the free movement of goods and capital, under the terms and limits of the law;
- g) Respect for and full compliance with international agreements and treaties;

## Article 5 Principle of Investment Promotion

1. It is the responsibility of the Government to define and promote private investment policies in areas that contribute to the sustainable development and economic, social and cultural well-being of the population.
2. Within the scope of the powers conferred on it, the Government may also give priority to types of investment, depending on sectors or areas of development.
3. The Government guarantees to investments that meet the eligibility requirements a tax incentive regime, in the form of exemptions, rate reductions, deductions from the taxable amount and collection, accelerated amortizations and reintegrations or tax credit for investment, in accordance with the provisions of the Tax Benefits Code.

## Article 6 (Investment Objectives)

Under the terms of this law, investments are considered to be economic activities carried out by companies incorporated under São Tomé and Príncipe or registered in São Tomé and Príncipe, which contribute to achieving the following economic and social objectives:

- (a) Encourage the growth of the economy and the sustainable development of São Tomé and Príncipe;
- (b) to promote the economic, social and cultural well-being of the population, in particular youth, the elderly, women and children;
- c) To promote the development of the most disadvantaged regions, especially in the rural areas of the country;
- d) To increase the national productive capacity, based on the incorporation of local raw materials and to increase the added value of the goods produced in the country;

- e) To provide partnerships between national and foreign entities;
- f) To induce the creation of new jobs for national workers and to raise the qualification of the São Tomé workforce;
- g) To obtain the transfer of technology and increase production efficiency;
- (h) increase exports and reduce imports;
- i) To increase foreign exchange availability and the balance of payments balance;
- (j) to provide an efficient supply to the internal market;
- (k) Promote technological development, business efficiency and the quality of locally produced products;
- (l) rehabilitate, expand or modernise infrastructure intended for economic activity.

## **Title II Investment**

### **Chapter I Investment Operations**

#### **Article 7 Investment Operations**

Under the terms and for the purposes of this law, the following acts and contracts are, among others:

- a) Use of national currency or other freely convertible currency domiciled in national territory, technology and know-how, provided that they represent an added value to the undertaking and are susceptible to pecuniary valuation, as well as machinery, equipment and other fixed tangible means;
- b) Acquisition of technology and know-how;
- c) Acquisition of machinery and equipment;
- d) Conversion of claims arising from any type of contract;
- e) Shareholdings in companies and companies governed by São Tomé law, domiciled in national territory;
- f) Application of financial resources resulting from loans, including those obtained abroad, which must be previously licensed, under the terms of the foreign exchange legislation in force;
- g) Creation of new companies exclusively owned by the private investor;
- h) Expansion of enterprises or other forms of social representation; (i) the acquisition of all or part of existing undertakings or groups of undertakings; j) Participation or acquisition of a holding in the capital of new or existing undertakings or groups of undertakings, in whatever form;
- k) Entering into and amending consortium agreements, partnership agreements, joint ventures, association of third parties with shares or quotas of capital and any other form of association agreement permitted, even if not provided for in the commercial legislation in force;

- l) Obtaining, in whole or in part, commercial and industrial establishments, by acquisition of assets or through contracts for the assignment of exploitation;
  - m) Total or partial acquisition of agricultural enterprises, by means of lease agreements or any other agreements involving the exercise of rights of possession, use, exploitation and exploitation of the land by the investor;
  - n) Operation of real estate complexes, tourist or not, regardless of their legal nature;
  - o) Provision of additional capital contributions, advances from shareholders and, in general, profit-sharing loans;
  - p) Acquisition of immovable property located in national territory, when such acquisition is part of private investment projects;
  - q) Assignment, in specific cases and under the terms agreed and sanctioned by the competent authorities, of the rights to use land, patented technologies and registered trademarks, the remuneration of which is limited to the distribution of profits resulting from the activities in which such technologies or trademarks have been applied;
  - r) Assignment of concession rights and licenses and rights of an economic, commercial or technological nature.
  - s) Operation of real estate complexes, tourist or not, regardless of their legal nature;
  - t) Provision of additional capital contributions, advances to shareholders and, in general, loans linked to profit sharing;
  - u) Acquisition of immovable property located in national territory, when such acquisition is part of private investment projects.
  - v) Acquisition, in whole or in part, of agricultural enterprises, by means of lease agreements or any agreements involving the exercise of ownership and exploitation by the investor;
  - x) Obtaining, in whole or in part, commercial or industrial establishments, by acquisition of assets or by means of contracts for the transfer of exploitation;
2. Operations consisting of the temporary chartering of cars, vessels, aircraft and other means susceptible to rental, leasing or any other form of temporary use in the national territory against payment are not considered foreign investment.
3. For the purpose of repatriation of profits, all investment operations carried out with resources from external financing are considered foreign investments.

#### **Article 8 Ways of Making the Investment**

1. Foreign investment acts may be carried out, individually or cumulatively, in the following ways:
- a) Transfer of resources from abroad or allocation of own funds;
  - b) Investment of cash in foreign currency in bank accounts established in São Tomé and Príncipe, susceptible to re-export, under the terms of the applicable foreign exchange legislation;
  - c) Application, in the national territory, of funds within the scope of external reinvestment;
  - d) Importation of machinery, equipment, accessories and other fixed tangible means;

- e) Incorporation of credits and other assets of the private investor, which may be applied in projects;
- f) Incorporation of technologies and know-how, provided that they represent an added value to the enterprise and are susceptible to pecuniary evaluation.

## **Chapter II From the Investment Regime**

### **Article 9 General Considerations.**

In order to frame the tax benefits for investments made under this Code, the following investment regimes are created:

- a) Simplified regime;
- b) General Regime;
- c) Special regime;

### **Article 10 Simplified Regime**

The simplified regime includes the investment defined under the terms of article 3, whose total value is between 50,000 Euros (fifty thousand euros) and 249,999 Euros (two hundred and forty-nine thousand nine hundred and ninety-nine Euros).

### **Article 11 General Regime**

The general regime includes the investment defined under the terms of article 3 of this code, whose total amount is between the values equivalent to 250,000.00 Euros (Two Hundred and Fifty Thousand Euro) and 4,999,999 Euro (Four Million, Nine Hundred and Ninety-Nine Thousand, Nine Hundred and Ninety-Nine Euros).

### **Article 12 Special Regime**

The special regime includes the investment defined under the terms of article 3 of this code, whose total amount is equal to or greater than the equivalent value of 5,000,000 Euros (Five Million Euros).

### **Article 13 Admission Requirements**

1. Investment projects whose promoters meet the following requirements may benefit from the incentives provided for in the Tax Benefits Code:
  - a) Have at least twenty percent (20%) of available capital;
  - b) Demonstrate that they have a stable economic and financial situation to carry out the project;
  - c) Present a clearance certificate of debts with the State and Social Security.
  - d) Present the feasibility study of the project acceptable to the State, which demonstrates the creation of permanent jobs and directed to the occupation of national labor and contributes within the scope of social responsibility
  - e) Present the analysis report and demonstration of the economic impact of the investment for the country.

## **Chapter III Guarantees**

#### **Article 14 Equal Treatment**

In accordance with the Constitution and the principles that shape the legal, political and economic order of the country, the State of São Tomé ensures, regardless of the origin of the capital, fair, non-arbitrarily discriminatory and equitable treatment of incorporated companies and companies and patrimonial assets, guaranteeing them protection, security, access to judicial means and bodies and not hindering their management. maintenance and operation.

#### **Article 15 Common Warranties**

1. The São Tomé State guarantees all investors access to the São Tomé courts for the defense of their rights, and they are guaranteed due process of law.
2. In the event that the assets which are the subject of the investment project are expropriated or requisitioned on the basis of weighty and duly justified reasons of public interest, in accordance with the law, the State shall ensure the payment of fair, prior and effective compensation, the amount of which shall be determined in accordance with the applicable rules of law.
3. The State shall guarantee to companies and companies incorporated for the purpose of private investment protection and respect for professional, banking and commercial secrecy, in accordance with the law.
4. The rights granted to private investments under this law shall be without prejudice to others resulting from agreements and conventions to which the Sao Tome State is an integral party.
5. The right to directly import goods from abroad and the autonomous export of products produced by investors are guaranteed, without prejudice to the application of the applicable customs and internal market protection rules.

#### **Article 16 Other Warranties**

1. The right to industrial property and to all intellectual creation is guaranteed, in accordance with the legislation in force.
2. The rights that may be acquired over the possession, use and titled enjoyment of the land, as well as over other domain resources, are guaranteed, under the terms of the legislation in force.
3. Public non-interference in the management of private enterprises is guaranteed, except in cases expressly provided for by law.
4. The State guarantees the non-cancellation of licenses without the respective judicial or administrative process. Article 17 Conventional Warranties

The provisions of this Code do not restrict any guarantees and advantages contemplated in international agreements or treaties to which the Democratic Republic of São Tomé and Príncipe is a signatory or has acceded to.

## **Chapter IV Capital Transfers and Access to Other Facilities**

#### **Article 18 Transfer of Profits and Dividends**



1. Once the investment project has been implemented and provided that it has been carried out, in accordance with the rules laid down in this law and in the terms and conditions set out in the respective authorisation, the right to transfer abroad shall be guaranteed, in accordance with the applicable foreign exchange legislation:

(a). after duly verified and certified the respective proof of payment of the taxes due, taking into account the amount of capital invested and its correspondence with the respective shares in the equity of the company or enterprise;

(b) the proceeds of the liquidation of its investments, including capital gains, after the taxes due have been paid;

c) Any sums due to him, with deduction of the respective taxes, provided for in acts or contracts which, under the terms of this law, constitute private investment;

d) Royalties or other income from remuneration of indirect investments, associated with the transfer of technology.

2. The effective transfer of profits and dividends depends, *mutatis mutandis*, on the provisions of the Tax Benefits Code.

## **Chapter V Duties of the Investor**

### **Article 19 General Duties of the Investor**

Investors are obliged to comply with this law and other applicable laws and regulations in force in the Democratic Republic of São Tomé and Príncipe, as well as the contractual commitments, and are also subject to the penalties defined therein.

### **Article 20 Specific Duties of the Investor**

The investor is obliged to:

a) Respect the deadlines set for the importation of capital and for the implementation of the investment project, in accordance with the commitments made;

b) Promote the training and training of the São Tomé workforce, respecting the fair criterion of salary distribution, and specific conditions for workers, and should avoid differentiation between the national worker and the expatriate with the same level and academic degree;

c) Respect the principles of equality and non-discrimination, avoiding the practice of acts or actions that constitute racial, gender or physical disability discrimination;

d) Comply with the payment of taxes and all other contributions, fees that are due by law, without prejudice to any tax benefits to which it is entitled;

e) To apply the chart of accounts and accounting rules established by law;

f) Comply with the rules relating to the protection of the environment in force;

(g) to comply with the rules relating to the hygiene, protection and safety of workers against occupational diseases and accidents in accordance with the legislation in force and other contingencies provided for in the social security legislation;

h) To draw up and keep up to date insurance against accidents and occupational diseases of workers, as well as insurance against civil liability for damage to third parties or to the environment.

# Chapter VI Incentives

## Article 21 Incentives & Benefits

Investment projects carried out under this Code benefit from the investment tax incentives provided for in the Tax Benefits Code of São Tomé and Príncipe.

## Article 22 Irrevocability and Accumulation of Incentives

1. The right to enjoy the incentives granted in the Tax Benefits Code of São Tomé and Príncipe is irrevocable for the duration of the incentives, except in cases where the offences provided for in the light of the Tax Benefits Code have been committed.
2. The incentives provided for in this diploma are cumulative with any other incentives of a financial nature or others that may be created in special legislation.

# Title III Investment Admissibility Process

## Chapter I Application Process

### Article 23 Scope of the Procedural Regime

All private investment projects are subject to the execution of an Administrative Investment Agreement, as a single procedural regime.

### Article 24 Nature and Structure of the Investment Contract

1. The investment contract shall be of an administrative nature, with the State, represented by the Asset Department, and the Investor as signatories;
2. The investor must fill in the technical form that will be used to prepare the Administrative Investment Agreement, which must contain the following elements:
  - a) Identification of the parties;
  - (b) the administrative nature and subject-matter of the contracts;
  - c) Term of validity of the contract;
  - d) Definition and quantification of the objectives to be achieved by the private investor within the contractual term;
  - e) Definition of the conditions for the operation, management, association and terms of the projects that are the object of the private investment contract;
  - f) Definition and quantification of the facilities, tax benefits and other incentives to be granted and ensured by the State to the private investor, in return for the exact and punctual fulfilment of the objectives set;
  - g) Location of the investment and legal regime of the investor's assets;
  - h) Form of dispute resolution, with a detailed provision of the forum and procedures of arbitration, if this extrajudicial route is chosen; (i) a general but reasoned definition in the annex of the economic, social and environmental impact of the envisaged project, where applicable.

3. The investment contract is awarded in a private document, in the number of copies according to the contracting parties, and a copy of the contract must be sent to the Agency responsible for the investments.

## **Chapter VIII Stages of the Process**

### **Article 25 Presentation of the Proposal**

1. All private investment proposals shall be submitted to the Investment Agency as fully as possible, allowing for a thorough analysis resulting in effective decision-making on the investment project.
2. Proposals must contain all the necessary documents that allow the identification, legal, economic, financial and technical characterization of the investor and the planned investment, which also allow for an assessment of the relevance of the request for access to facilities, incentives and benefits requested by the investor, as well as a schedule for implementation and a study to assess the environmental impact of the investment project. where applicable.
3. The approving body may request the Investment Agency to attach other documents to the investment dossier.
4. The Investment Agency may adopt electronic, IT and web-based virtual interface mechanisms for the reception of investment proposals, data collection and processing, as well as for subsequent communication with the investor and monitoring of the investment.

### **Article 26 Prior Consultation**

1. Before the investment conditions provided for in this law have been verified, interested parties may request the Agency responsible for investments to pronounce on an investment pre-project that has not yet materialized.
2. The interested party shall be notified of the Opinion on the application made pursuant to the preceding paragraph,
3. The Opinion referred to in the preceding paragraphs must be delivered within a maximum period of 8 days from the date of submission of the file to the competent authority,
4. As soon as the investment project and the Contract Proposal are submitted, which has been preceded by a prior consultation process, it will be attached to the request of the interested party and considered valid as long as the hypothetical situation which is the subject of the prior consultation coincides with the factual situation described in the project submitted.

### **Article 27 Candidacy**

1. The application file shall be submitted in 1 (one) copy to the Secretariat of the Agency responsible for investments and digitally, and shall be accompanied by the following elements:
  - a) Project technical file;
  - (b) a general description of the project, including an indication of the economic activity, direct jobs to be created, planned location or alternative locations, technologies involved, products or services provided;
  - (c) investment and financing plans;
  - (d) the forms and maps set out in Annex I to this diploma;

- e) Economic and financial feasibility study, and others necessary to demonstrate the sustainability of the project;
  - f) Plan for the importation of goods to be allocated to the project;
  - g) Document proving the legitimacy of the promoter regarding the use of the property where the project in question is to be developed;
  - h) Environmental impact study, for projects likely to produce environmental risks in accordance with the law in force on the matter; (i) any other studies directly linked to the implementation of the project;
2. The entity referred to in the preceding paragraph may request additional clarifications from the promoters of the investment project, which shall be provided within a maximum period of fifteen days.
3. Failure to comply with the provisions of the previous paragraph implies the withdrawal of the application, unless duly justified and accepted by the competent authority.

#### **Article 28 Technical and Economic Assessment**

1. The investment project shall be subject to a technical and economic assessment, in particular in the following aspects:
- a) Analysis of the objectives and characteristics of the projects; Market research;
  - b) Analysis of the economic and financial feasibility of the project.
2. For the purposes of the analysis provided for in paragraph
- c) of the preceding paragraph, the following factors shall be taken into account, among others:
- a) Maintenance and/or creation of new jobs;
  - b) A positive balance, in foreign currency, which contributes to the balance of external payments;
  - c) Valorisation of national resources, namely through their transformation or incorporation into products;
  - d) Use of national goods and services;
  - e) Degree of increase in national added value and geographical-economic diversification;
  - (f) vocational training plans for national workers;
  - (g) Ecological impact.
3. In addition to the conditions set out in the previous paragraph, it is also required that the feasibility study of the project demonstrates that it contributes to its greater absorption of national human resources in the context of increasing the level of employment.

#### **Article 29 Assessment and Decision**

1. Upon receipt of the dossier, the Agency responsible for investments shall send complete copies electronically at the same time to the Directorate-General for Customs, the Directorate-General for Planning, the Directorate for Taxes and the other Directorates concerned, depending on the area of investment.

2. The services referred to in the preceding paragraph shall issue an opinion on the matters within their competence and send it to the Agency responsible for the investments, by electronic means, within a maximum period of 5 working days from the receipt of the copy of the project.
3. Once the opinions have been collected, the Agency responsible for investments submits, within 48 hours, the duly instructed file to the consideration and dispatch of the Minister responsible for Planning.
4. The approved projects are sent to the Minister of Finance, so that the competent services of the Treasury and Heritage can proceed with the preparation and negotiation of the contractual terms with the promoter.
5. Once the negotiations have been concluded, the Minister of Finance authorizes by Order the subsequent signing of the investment administrative contract and any concession contracts.

#### **Article 30 Authorization and Registration**

The authorisation of the investment project shall always be formally communicated to the project promoter by the Agency responsible for the investments; The Investment Agency shall organise the register of authorised projects according to the areas of investment. For projects carried out with foreign capital, a registration with the Central Bank of São Tomé and Príncipe will be drawn up, in order to control the exchange balance of the entity promoting the project.

#### **Article 31 Investment Registration Certificate**

1. Once the investment project has been approved, the Investment Agency shall issue an Investment Registration Certificate (CRIP), which confers on the holder the right to invest under the terms referred to therein.
2. The CRIP must contain the full identification of the investor, the procedural regime, the amount and economic and financial characteristics of the investment, the breakdown and the manner in which the investment is to be carried out, the deadline for the implementation of the project itself, the location of the investment, duly initialled and authenticated by the head of the Agency responsible for the investments.
3. On the back of the CRIP must contain the duties and guarantees of the investor enshrined in this law and the signature of the private investor or his legal representative.
4. The deadline for issuing the CRIP is 3 days, counted from the approval of the investment project, unless there are reasons of force majeure.
5. The CRIPs are the document proving the acquisition of the rights and the assumption of the duties of a private investor enshrined in this law, and should serve as the basis for all investment operations, access to incentives and facilities, obtaining licenses and registrations, dispute resolution and other facts arising from the granting of facilities and incentives.

#### **Article 32 Project Execution**

1. The implementation of the investment project shall commence within the time limit set out in the investment contract for the investment.

2. In duly substantiated cases and at the request of the investor, the deadline referred to in the preceding paragraph may be extended by the Agency responsible for the investments, after authorisation by the competent body for the approval of the investment project.
3. The execution and management of the investment project must be carried out in strict accordance with the conditions of the authorisation and the applicable legislation, and contributions from abroad may not be used for purposes other than those for which they were authorised, nor deviate from the object for which they have been authorised.

#### **Article 33 Accompaniment**

1. In order to facilitate the monitoring of the implementation of authorised private investments, undertakings shall provide the Investment Agency with information on the implementation and development of the investment on the implementation and development of the investment on an annual basis, in accordance with the form sent to them for this purpose by the Investment Agency.
2. The Agency responsible for investments may seek the assistance of the competent supervisory bodies of the State Administration to ensure compliance with this normative provision.
3. On the basis of the information and data collected pursuant to the preceding paragraph and after processing them, the Agency responsible for investments shall submit annually to the supervisory authority a full narrative report on the situation of private investment in São Tomé and Príncipe.

#### **Article 34 Suspension of Proceedings and Withdrawal**

1. The investor shall be allowed to suspend the investment process with the Investment Agency before the date of notification of the approval of the project.
2. The resumption of the business as provided for in the previous paragraph may be triggered by request of the investor, and the Agency responsible for the investments has another 30 days to schedule the assessment of the corresponding investment project with the competent body for approval.
3. The investor's withdrawal from his investment project may occur at any time, provided that it is founded and prior to the granting of the investment contract, at which time the contractual responsibilities must be rigorously assumed.

## **Chapter II Transgressions and Sanctions**

#### **Article 35 Transgressions**

The following are considered transgressions:

- a) Failure to comply with the obligations and duties contained in the investment contract;
- b) Non-compliance with the rules of this code.
- c) Intentional or unsubstantiated withdrawal, assessed by APCI in a specific investigation;
- (d) failure to implement the projects within the deadlines set out in the authorisation or extension;

#### **Article 36 Sanctions**

1. Without prejudice to other penalties specifically provided for by law, the transgressions referred to in Article 38(a) and (b) shall be subject to the following sanctions:

a) Fine of 5,000.00 to 10. 000,00 Euros, to be paid in Dobras, with the minimum and maximum amount being increased to triple in case of recurrence;

b) Loss of exemptions, tax incentives and other facilities granted;

(c) withdrawal of the investment authorisation;

2. The transgression provided for in Article 38(c) implies the registration of the alleged investor in a database of the Agency responsible for investments for entities prohibited from using the private investment regime provided for by law and from taking advantage of the system of tax and customs incentives and benefits, for a period of 10 years.

3. The transgression provided for in Article 38(d) implies the application of the sanction provided for in Article 38(1)(b), plus the payment of a fine in the amount of up to 1/4 of the investment amount, unless the situation of force majeure is proven.

#### **Article 37 Competence to impose penalties**

1. The penalties provided for in paragraph 1 (a), paragraph 2 and paragraph 3 of the preceding article shall be applied by the Agency responsible for the investments and that provided for in paragraph 1 (c) by the competent body which approved the private investment in accordance with this law.

2. The sanction provided for in paragraph 1(b) of the previous article shall be applied, in accordance with the specific legislation on the matter, by the body competent to approve private investment.

3. The revocation of the investment authorisation, under the terms of paragraph 1(b) of the previous article, always implies the loss of the exemptions, tax incentives and other facilities granted within the scope of the private investment project in question.

#### **Article 38 Procedure and Appeal Regarding Sanctions**

1. Before any sanctioning measure is imposed, the investor must be heard and has the right to be accompanied by a lawyer at the relevant hearing before the Agency responsible for the investments and to attach to the file the evidence available to him.

2. The notice of the hearing, pursuant to the preceding paragraph, must contain all the facts and incriminating elements and must be delivered at least 20 days in advance to the address of the investor or his representative.

3. In determining the penalty to be imposed, account must be taken of all the circumstances surrounding the commission of the offence, the degree of culpability, the benefits sought and obtained from the commission of the offence and the resulting damage.

4. The private investor may complain or appeal against the sanctioning decision, under the terms of the legislation in force.

## **CHAPTER III Conflict Resolution**

#### **Article 39 Conciliation and Arbitration**

1. Disputes between the State and any investor, concerning the interpretation and application of this Code, and the respective regulations, which cannot be resolved by amicable or negotiation, shall be submitted for resolution to the competent judicial authorities, in accordance with the legislation of São Tomé and Príncipe, if no other procedure is established in international agreements to which São Tomé and Príncipe is a party.

2. Disputes between São Tomé and Príncipe and foreign investors relating to investments authorised and made in the country, if no other means have been agreed, shall be resolved by arbitration, using the following alternatives:

a) Framework Law on national arbitration;

(b) the rules of the Washington Convention of 15 March 1965 on the Settlement of Investment Disputes between Nation States and States of Other States, as well as of its International Centre for the Settlement of Investment Disputes between Nation States and States of Other States;

(c) Arbitration Rules of the International Chamber of Commerce with its seat in Paris.

3. The provisions of the preceding paragraphs shall be without prejudice to the appeal to the competent courts of São Tomé and Príncipe, provided that both parties so wish and have agreed.

#### **Article 40 Repealing Rule**

1. Law No. 7/2008 of 27 August 2008 is hereby repealed.

2. Incentives granted and contracts entered into under the repealed Code shall remain valid until its termination, and the benefits already agreed under the repealed Code may not be combined with those of this Code.

3. Entities that benefit from the old regime of incentives to invest may opt for the application of the regime established in this Code, and for this purpose, they must submit the appropriate application under the terms of this Law.

#### **Article 41 Entry into force**

This Decree-Law shall enter into force on the day following its publication. Seen and approved by the Council of Ministers,

September 13th, 2016.

- The Prime Minister and Head of Government, Dr. Patrice Emery Trovoada; The Minister of the Presidency of the Council of Ministers and Parliamentary Affairs, Dr. Afonso da Graça Varela da Silva; The Minister of Foreign Affairs and Communities, Dr. Manuel Salvador dos Ramos; The Minister of Defense and the Sea, Dr. Carlos Olímpio Stock; The Minister of Internal Affairs, Mr. Arlindo Ramos; The Minister of Justice and Human Rights, Dr. Carlos Olímpio Stock; The Minister of Economy and International Cooperation, Dr. Agostinho Quaresma Fernandes; The Minister of Finance and Public Administration, Dr. Américo d'Oliveira dos Ramos; The Minister of Infrastructure, Natural Resources and Environment, Eng. Carlos Manuel Vila Nova; The Minister of Agriculture and Rural Development, Mr. Teodorico Campos; The Minister of Education, Culture and Science, Dr. Olinto da Silva e Sousa Daio; The Minister of Employment and Social Affairs, Dr. Carlos Alberto Pires Gomes; The Minister of Health, Dr. Maria de Jesus Trovoada dos Santos; The Minister of Youth and Sports, Dr. Marcelino Leal Sanches.



Promulgated on November 2, 2016. The President of the Republic, Evaristo do Espirito Santo Carvalho.

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