

Tunisia

Law n° 2016-71 dated 30th of September 2016 promulgating the Investment Law (2016)

Unofficial translation

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Contents

Chapter I General Provisions

Section III Investor's guarantees and obligations

Chapter IV Investment Governance

Section I: The Higher Council for the Investment

Section II The Tunisian Investment Authority
Section III The Tunisian Investment Fund
Chapter V Premiums and Encouragements
Chapter VI Dispute Settlement
Chapter VII Transitional and final provisions

Law n° 2016-71 dated 30th of September 2016 promulgating the Investment Law

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In the name of the People,

The People's Representatives Assembly having adopted,

The President of the Republic enacts the following law:

Chapter I General Provisions

Article 1

This Law aims to promote investment and encourages the creation of enterprises and their development in accordance with economic national priorities, in particular through:

- the increase of the added value, the competitiveness and the technological aspect of the national economy in the regional and international levels and the development of priority sectors,
- the creation of jobs and the increase of human resources competences,
- the achievement of an integrated and equal regional development,
- The achievement of sustainable development.

Article 2

This Law sets out the legal statutory regime of investments made by individuals or legal persons, Tunisians or foreigners, residents or non-residents in all economic activities.

The economic activities are classified in conformity with the "Tunisian classification of activities", uniformly adopted by all the public services involved with the investment.

The Tunisian classification of activities is determined by a governmental decree.

Article 3

The terms used in this Law shall have the following meanings:

1. Direct Investment Operation: any creation of a new independent project for the purpose of producing goods or providing services or any extension or renewing operations made by an active company as part of that same project seeking to raise the production capacity.
2. Investment by Contribution Operation: The financial participation or contribution in kind in the capital of Tunisian companies, either at their constitution or on the occasion of a capital increase, or any acquisition of a capital participation.
 - Investor: Any individual or legal person, Tunisian or foreigner, resident or non-resident who makes investment

Enterprise: Any entity aiming to produce goods or to provide services that takes the form of a company or an individual enterprise in accordance with the Tunisian legislation.

Regional Development Index: An Index calculated in accordance with economic, social and demographic criteria to classify the territorial regions of the country according to their development degrees.

The Council: The Higher Council for Investment.

The Authority: The Tunisian Investment Authority.

The Fund: The Tunisian Investment Fund.

Section II Access to the Market

Article 4

Investment is free.

Investment operations shall respect the legislation regarding exercising economic activities.

A Governmental Decree shall determine, within one year after the adoption of this Law, the list of activities subject to authorization, the list of administrative authorizations necessary to realize the project and the time periods, procedures and conditions of its issuing, particularly with regard to national security and defense, rationalization of compensation, natural resources and cultural heritage conservation and preservation of the environment and health protection.

Any decision refusing the authorization shall report, within the legal terms, the reasons of the refusal and shall be notified to the investor in writing or through any other means that provides a writing record.

Upon the expiry of the time limit mentioned in the third paragraph of this Article, silence is considered as an approval, if the application fulfils all the required conditions. In this case, the Authority shall deliver the authorization to the applicant after checking the fulfilment of the conditions and the applicable deadlines in case of silence after the expiry of these deadlines.

Some activities may be excluded from the provisions of the last paragraph in accordance with a governmental decree.

Article 5

The investor is free to own, rent and exploit non-agricultural properties for the purpose of achieving direct investment operations or their extensions with respect to the Land Management and Urbanism Code and the zoning plans.

Article 6

Each enterprise is allowed to recruit foreign management up to 30% of the total number of the management staff till, at the choice of the enterprise, the end of the third year following the legal constitution of the enterprise or the date of its entry into effective production. This limit is reduced to 10 % starting from the fourth year from that date. In all cases, the enterprise is allowed to recruit up to four foreign management staff.

Beyond the percentage or the limit mentioned in the previous paragraph, the recruitment of foreign management is subject to the approval by the Ministry in charge of employment approval in accordance with the Labour Code.

The procedures of recruitment of foreign management staff are subject to the provisions of the Labour Code, except paragraphs 2, 3, 4, 5 of Article 258-2 of the said Code.

Section III Investor's guarantees and obligations

Article 7

A foreign Investor must not be treated less favorably than a Tunisian Investor in like circumstances, with regard to his rights and obligations mentioned in this Law.

Article 8

The Investor's funds, possessions and intellectual rights are guaranteed in conformity with the legislation in force.

The Investor's funds shall not be expropriated, except for public interest, without any discrimination regarding nationality, upon fair and equitable compensation, and in due process of law.

The provisions of this Article do not prevent the implementation of court judgments or arbitral decisions.

Article 9

Foreign investors can freely transfer abroad funds in foreign currency in accordance with applicable foreign exchange legislation.

If the transfer to abroad requires an authorization from the Tunisian Central Bank, the provisions of Article 4 of the present Law shall apply.

Article 10

The Investor shall respect the applicable legislation, in particular with regard to competition, transparency, health, employment and social security, environment protection and natural resources protection, taxation, land management and urbanism, and shall provide all required information in application of this Law, and shall guarantee the correctness, precision and completeness of the provided information.

Chapter IV Investment Governance

Section I: The Higher Council for the Investment

Article 11

It is set up in the Presidency of the Government a " Higher Council for the Investment" chaired by the President of the Government and consisting of Ministers in charge of sectors related to investment. The Ministers in charge of Investment, Finances and Employment shall attend to its deliberations.

The Council composition and its organization shall be determined by a Governmental Decree.

Article 12

The Council sets the policy and strategy of the State with regard to investment, and the following tasks in particular shall be assigned to it:

- taking the necessary decisions to promote investment and to improve the business environment and investment,
- evaluating the policy of the State in the field of investment in an annual publicized report,
- approving strategies and action plans and annual budgets of the Authority and the Fund,
- approving the annual distribution of public financial resources allocated to the Fund in accordance with the objectives of the State policy regarding investment in the framework of the preparation of the budget laws,
- taking charge of the Authority and Fund actions, their control and their evaluation,

- deciding on the incentives for the benefit of the projects of national interest mentioned in article 20 of this Law.

The Authority ensures the permanent secretary of the Council, which meets regularly at least once every three months.

Section II The Tunisian Investment Authority

Article 13

A public authority called "the Tunisian Investment Authority " is created as a legal entity and endowed with administrative and financial autonomy under the supervision of the Ministry in charge of Investment.

The Authority's headquarters is situated in Tunis; it may have representations in the regions and abroad.

The Authority is submitted to the commercial legislation subject to the provisions of this Law.

The Authority shall not be subjected to the Law n° 89-9 dated on 1st February 1989, relating to participations, public enterprises and establishments.

The staff of the Authority is submitted to a special staff statute that takes into account the fundamental rights and guarantees provided by Law n° 85-78 dated 5 August 1985, relating to the general status of the officials of offices, public establishments of industrial and commercial nature, and companies whose capital belongs directly and wholly to the state or public local collectivities.

The financial resources of the Authority consist of:

- funds imputed from the State budget,
- donations and legacies. received from Tunisia or from abroad,
- any other resources.

The administrative and financial organization as well as the staff statute of the Authority shall be determined by ministerial decree.

Article 14

The Authority proposes to the Council the policies and reforms related to Investment after consultations with the bodies representing the private sector. It is tasked to monitor the Investments and to collect and to publish data related to the Investments and to prepare the evaluating reports on the investment policy.

The Authority examines the requests for encouragement benefits and decides on the allocation of such benefits on the basis of a technical report prepared by the structure in charge of monitoring the realization of the Investment.

The relationship between the Authority and the structures in charge of Investments shall be determined in the framework of agreements to be approved by the Council.

Article 15

Shall be created within the Authority, "the investor's unique interlocutor" tasked in particular with the following:

- welcome, guide and inform the Investor in coordination with the different concerned entities,
- accomplish, on behalf of the Investor, the administrative procedures regarding the legal constitution of the enterprise or its extension, and obtain the approvals needed during the investment steps,
- deal with Investor's complaints, endeavor to resolve the case in coordination with the different concerned entities, compile a database on complaints received for examination and suggestions of adequate solutions, and publish any violations and corrective actions in the evaluating reports.

The direct investment declaration and the legal constitution of enterprises shall be made in a single administrative document; the model document and its list of annexed documents as well as its procedures shall be determined by a Governmental Decree

The investor's unique interlocutor shall deliver to the Investor the Investment Declaration Acknowledgment and the investment creation or enterprise extension documents within a working day from the date in which the Investment Application, with all requested documents, is submitted.

Article 15 (bis)

Attached to the Tunisian Investment Authority, a commission called Commission of Authorizations and Approvals shall be established. It shall be composed of representatives of the ministries and the public entities involved.

The Commission is in charge of facilitating the realization of Investments approved by the Tunisian Investment Authority in accordance with the applicable legislation, by:

1-deciding on all the authorizations and approvals requested to realize the investment.

2-decide on the requests for a change of the status of agricultural lands, notwithstanding the provisions of the Law 83-87 dated on the 11 November 1983, related to the agriculture lands protection.

The requests for authorizations, approvals, and change of status of agricultural lands related to projects approved by the Tunisian Investment Authority, shall be submitted to the Commission of Authorizations and Approvals excluding any other public entity.

The Commission of Authorizations and Approvals takes its decision and transfers it to the concerned Minister on the same date by any means of a written record.

The Minister can oppose the decision in a deadline not exceeding 15 days starting after its reception date.

The silence of the Minister, after the expiration of the above-mentioned deadline, shall be considered as an acceptance. The Commission decision shall be respected by all public and private entities.

In case of the Minister's opposition to the authorization, the Commission of Authorizations and Approvals shall seize the Higher Commission for Investment in a deadline not exceeding the 7 days starting from the opposition date.

The Commission of Authorizations and Approvals may seize the Higher Commission for Investment in case of obstruction of the decision-making process.

The composition, modalities, and working conditions of the Commission of Authorizations and Approvals, the authorization approval deadlines as well as the list of concerned activities shall be determined by a Ministerial Order by the Minister in charge with the Investment.

(Article added by article 11 of the Law 2019 - 47 dated on the 29th of May 2019 regarding the improvement of the business environment).

Section III The Tunisian Investment Fund

Article 16

It is created a public body called "the Tunisian Investment Fund" endowed with legal entity and administrative and financial autonomy.

Subject to the provisions of this Law, the Fund is submitted to the commercial legislation and the prudent risk management rules.

The Fund undertakes its missions under the supervision of a supervisory body chaired by the Minister in charge of Investment. The Supervisory Body shall have the following tasks in particular:

- the arrangement of the development strategy for the Fund's activity and its public policy interventions,
- the arrangement of the annual investments program of the Fund and its participations,
- the approval of the financial statements and the annual report of the Fund,
- the preparation of the estimated budget and the monitoring of its accomplishment,
- the preparation of the programs and the monitoring of their accomplishment,
- the approval of the Fund services organization, the staff statute, and the employee remuneration regime,
- the designation of the auditors in accordance to applicable legislation.

The Fund shall not be subject to the Law n° 89-9 dated on 1st February 1989, relating to the participations, public enterprises and establishments.

The Fund staff is submitted to a special staff statute that takes into account the fundamental rights and guarantees provided by Law n° 85-78 dated 5 August 1985, relating to the general status of the officials of offices, public establishments of industrial and commercial nature, and companies whose capital belongs directly and wholly to the state or to the public local collectivities.

The administrative and financial organization, the staff statute of the Fund, and the prudent risk management rules shall be determined by a Governmental Decree.

Article 17:

The resources of the Fund consist of:

- funds imputed from the State budget,
- loans and donations. received from Tunisia or abroad, - all other resources placed at its disposal.

Article 18:

The Fund manages its financial resources in accordance with the programs on the bases of the development priorities in the field of investment. Its interventions include:

- the disbursement of the premiums mentioned in Chapter V of this Law,
- the subscription in the common funds having subscription of a risk investment, risk investment funds, start-up funds directly or indirectly.

The rates, ceilings and conditions for the benefit of the capital's participations shall be determined by a Governmental Decree.

Chapter V Premiums and Encouragements

Article 19:

Premiums allowed for direct investment operations are granted as follows:

1. Premium for the improvement of added value and competitiveness:

- for direct investment operation projects in:

- * priority sectors,
- * economic systems.

- For economic efficiency by means of:

- * physical investments to control modern technologies and improve productivity,
- * intangible investments,
- * research and development,
- * staff training leading to skills certification.

2. Operational capacity development grant for:

- * the employer's contribution to the legal system of social security for the salaries paid to Tunisian employees for a period that does not exceed 10 years starting from the date of entry into the actual activity,
- * a part of salaries paid to Tunisian employees according to the managerial level.

3. Regional development grant, based on the regional development index in several activities, for:

- * achievement of direct investment operations,
- * expenses resulting from infrastructure works.

4. Sustainable development grant for anti-pollution and environmental protection investments:

Grants provided for in this Law or under other legal texts may be combined. However, the total amount of the grants shall not exceed in any case one third of the investment cost without consideration to the State contribution to infrastructure expenses and to grants guaranteed for the economic efficiency, for the operational capacity development and for sustainable development. The payment of the grants should not exceed the deadline of six months in all cases starting from the date of fulfilment of all the legal conditions required for the disbursement.

The rates, ceilings and conditions concerning the allocation of these grants and concerned activities shall be determined by Governmental Decree.

(Paragraph two new amended by the article 18 of the Law n°2019 - 47 dated on the 29 May 2019 regarding the improvement of the business environment).

Article 20:

Projects of national interest shall benefit from the following incentives:

- the deduction of the benefits from the corporation tax basis for ten years,
- an investment grant in the limit of the third of the investment costs including the resulting expenditure for internal infrastructure, - a state participation in infrastructure expenditure.
- the state assumption of the employer's contribution to the legal social security system regarding salaries paid to Tunisian agents for a period not exceeding the ten first years starting from the date of the effective entry into production,
- the allowance of state land, except agricultural lands, through a long-term lease or for the symbolic dinar. The Investor's rights on the land are seized and the land is retroceded to the State in case of a final shutting down of the activity.

Sub-Paragraphs four and five new added by the article 19 of the of Law 2019 - 47 dated on the 29th of May 2019 regarding the improvement of the business environment)

The documents of the projects of national interest shall be transmitted to the Authority for study, evaluation and presentation to the Council.

A Governmental Decree shall determine:

- the projects of national interest with regard to the size of the investment or employment capacity and their responsiveness to at least one of the objectives set out in Article 1 of this Law,
- the ceiling of the investment grant mentioned by the first paragraph of this Article.

Incentives mentioned in the first paragraph of this Article shall be granted to any project of national interest by Governmental Decree after consulting the Council.

Article 21:

Enterprises benefiting from the incentives mentioned in this Law are submitted to a monitoring and control by the competent administrative services.

The beneficiaries of the incentives will lose their entitlement to them in the following cases:

The investment declaration is considered to be obsolete if the realization of the project does not start within a year from the date of the declaration of Investment.

- they do not respect the provisions of this Law or its applied texts,
- they do not realize the investment program within four years from the date of the Declaration of Investment, such period to be extendable exceptionally once for a period of two years according to a reasoned decision by the Authority,
- the illegal alteration of the initial object of the project.

Article 22:

Amounts payable in accordance with the provisions of Article 21 of this Law shall bear a delay penalty at the rate of 0.75% for each month or part of the month starting from the date of the benefit of the incentives.

The Authority shall hear the case straight from the beneficiaries of the financial premiums or following concerned services proposal and shall give its opinion on the withdrawal and retrieval of incentives. The benefits are withdrawn and grants are refunded by a reasoned decision by the Minister in charge of Finances in accordance with the procedures mentioned in the Public Accounting Code.

The withdrawal and the refund do not include the benefits allocated for operation during the period in which the effective operation was in conformity with the purpose of the granted benefit.

Enterprises are authorized to move from an encouragement system to another system mentioned in this Law, provided they present a declaration in accordance with Article 15 of this Law, proceed with the formalities necessary for that purpose, and pay the difference between the total value of the benefits granted under those two systems plus the delay penalties.

The amounts to be paid for this difference and the delay penalties shall be calculated in accordance to the provisions of this Article.

Chapter VI Dispute Settlement

Article 22 bis:

The function of the Investment Ombudsman shall be established with the Minister responsible for investment. The Investment Ombudsman is responsible for the mediation mission before the litigation phase between investors and public bodies with a view to solving the problems and conflicts that could arise between them.

The Investment Ombudsman performs these functions independently, transparently and impartially by all public bodies, and submits periodic reports on the balance sheets of his work to the Minister responsible for investment and the Investment Higher Council.

All public organizations are required to facilitate the mission of the investment Ombudsman by responding to his requests and summons and if necessary, by loading the control bodies in order to carry out within the limit of their competence, the investigations and surveys that he requests.

The powers of the Investment Ombudsman and the rules governing the performance of his duties shall be laid down by Decree.

(Article 22 bis added by the article 37 of the Decree-law 2022- 68 dated on the 19th of October 2022 enacting special measures to improve the efficiency of public and private projects implementation)

Article 23:

When a dispute arises between the Tunisian State and the Investor with respect to the interpretation or application of the provisions of this Law, all efforts shall be made to settle the dispute through mediation, unless one party, through notice, abandons its rights to that mediation.

Without restriction, parties are allowed to agree on the mediation procedures and rules. In the absence of an agreement, the Conciliation Rules of the United Nations Commission on International Trade Law shall apply.

If the parties conclude a conciliation agreement, this agreement shall be considered as a law between both parties, that should be duly respected at the earliest dates.

Article 24:

When a dispute between the Tunisian State and a foreign Investor is not settled in conciliation, it may be submitted to arbitration in accordance with an agreement between the parties.

When a dispute between the Tunisian State and a Tunisian Investor with an international issue is not settled in conciliation, it may be submitted to arbitration under an arbitration agreement. In such case, the arbitration procedures are subject to the provisions of the Arbitration Code.

In absence of an arbitration agreement, the Tunisian courts shall exclusively be entitled to examine the dispute.

Article 25:

Recourse to arbitration or judicial bodies is considered as a final abandon of any later recourse to any other arbitral or judicial body.

Chapter VII Transitional and final provisions

Article 26:

The provisions of this law shall enter into force on 1st April of 2017.

(Article amended by the article 4 of the of Law n° 2017 - 1 dated on the 3 of January 2017 relating to the complementary appropriations law for the year 2017).

Article 27:

With respect to the provisions of Articles 28 to 32 of this Law, the Investment Incentives Code promulgated by the Law n° 93-120 of the 27th of December 1993, except its Articles 14 and 36, is repealed with effect upon the entry into force of the Investment Law.

Article 28:

The benefit of the coverage by the State of the employer's contribution to the legal social security system mentioned in Articles 25, 25bis, 43 and 45 of the Investment Incentives Code, shall still apply until the expiry of the period of allowance of such benefits for:

- enterprises which have received the Investment Declaration Acknowledgment before the entry into force of the Law n° 2016 - 71 of 30th of September 2016 promulgating the Investment Law and have received by the deadline of the 31th of December 2020 the decision to grant that incentive and have entered into effective activity.

(Subparagraph one new amended by the article 38 of the of Law n° 2019- 47 dated on the 29 May 2019 regarding the improvement of the business environment).

- enterprises which have entered into effective activity before the entry into force of the Investment Law.

Article 29:

The benefit of the financial incentives mentioned in Articles 24, 29, 31, 32, 33, 34, 35, 36, 42, 42bis and 47 of the Investment Incentives Code, shall still apply for enterprises:

- having received the Investment Declaration Acknowledgment before the entry into force of the Investment Law,
- having received the Investment Declaration Acknowledgment before the entry into force of the Law n° 2016 - 71 of 30th of September 2016 promulgating the Investment Law and having received by the deadline of 31th of December 2020 the decision to grant that incentive and having entered into effective activity.

(Subparagraph two new amended by the article 38 of the of Law n° 2019 - 47 dated on the 29th of May 2019 regarding the improvement of the business environment).

Article 30:

1. The provisions of Articles 63, 64, and 65 of the Investment Incentives Code shall remain applicable with regard to incentives benefited in accordance to that Code.
2. The provisions of Articles 3, 5, 6, 7, and 8 of the Law n° 90-21 of the 19 March 1990 promulgating the Tourism Investment Code shall remain applicable.

Article 31:

The tasks of the Tunisian Investment Authority shall be exercised by the public structures in charge of investment, each within the limit of its own prerogatives, until the Authority starts exercising its tasks.

Article 32:

1. The Higher Commission for Investments mentioned in Article 52 of the Investment Incentives Code shall continue to exercise its prerogatives in accordance with the applicable legislation until the Higher Investment Council starts exercising its tasks, which event would engender the dissolution of the Higher Commission for Investments.
2. The benefit of the incentives mentioned in Articles 51bis, 51ter, 52, 52bis, 52ter and 52sixthly of the Investment Incentives Code shall still apply for enterprises having received the approval of the Higher Commission for Investments prior to the date of the entry into force of the Investment Law.
3. The designation "Higher Commission for Investments" shall be changed into the designation " the Higher Council for Investment " with respect to the variation of the designation.

Article 33:

The provisions of the last paragraph of Article 2 (new) of Law n° 1991-37 dated 8 June 1991, establishing the Industrial Real Estate Agency, as amended and completed by subsequent texts, in particular Law n° 91-37 dated 8 June 1991, are repealed on the date of the entry into force of the Investment Law and are replaced by the following:

" The local entities and the property developers shall benefit from the same benefits granted by Article 19 of the Investment Law to industrial promoters for infrastructure works in the areas of regional development."

Article 34:

1. The provisions of Article 6 of the Investment Law are applicable to enterprises which have been created during the three years prior to the publication of this Law, as if they were created on the date of the entry into force of this Law.

2. The provisions of Article 6 of the Investment Law are applicable to health establishments providing their whole services to non-residents mentioned in Law n°2001-94 dated 7 August 2001, relating to health establishments providing their whole services to non-residents as well as to the Economic Activities Parks as mentioned in Law n ° 92-81 dated 31 August 1992 creating the Economic Activities Parks, as modified or completed by subsequent texts.

Article 35:

The manufacture of arms, munitions, explosives, their parts and spares is subject to necessary authorizations issued by the competent administrative services in accordance with applicable legislation.

Article 36:

All previous provisions which are contrary to this Law are repealed on the date of the entry into force of the Investment Law, in particular:

- Law n° 92-81 dated 31 August 1992 creating the Economic Activities Parks, as modified or completed by subsequent texts,
- Article 16 of the Orientation Law n° 96- 6 dated 31 January 1996, relating to the scientific researches and technological development
- Article 26 of the Law n° 98-65 dated 20 July 1998, on professional law firms,
- Article 11 of the Guiding Law n° 2007-13 dated 19 February, relating to the establishment of the digital economy,
- Article 5 of the Law n°2001-94 dated 7 August 2001, relating to health establishments providing their whole services to non- residents,
- Law n° 2010-18 dated 20 April 2010, establishing the system of creativity and innovation incentives in the field of information and communication technologies,
- Decree n° 2000-2819 of 27 November 2000, concerning the creation of the Higher Council of Export and Investment and the determination of its attributions, composition and functioning, except the provisions of its Art.7.

The law herein shall be published in the Official Gazette of the Republic of Tunisia and implemented as law of the State.

Tunis, 30 September 2016

The President of the Republic

Mohamed Béji Caïd Essebsi

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