

Niger

Code of Investments (1989)

Unofficial translation

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The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

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Code of Investments

Ordinance N° 89-19 dated December 1989, relating to the, modified by the Ordinance N° 97-09 dated February 1997, the Ordinance N° 99-69 dated December 20th, 1999 and the Law N° 2001-20 dated July 12th, 2001.

The President of the Higher Council for National Orientation, Head of State

In view of the National Charter,

In view of the Constitution dated September 24th, 1989,

The Council of Ministers agreed,

Orders:

Title I. Preliminary provisions

Article 1

The object of this Ordinance is to favour the development of the economic activity by stimulating investment in the Republic of Niger. It defines the different systems allowing the implementation of investments, determines guaranties, advantages as well as duties attached thereto. The whole of these provisions constitutes the "Code of Investments".

Title II. General guaranties

Article 2

The Republic of Niger ensures a constant protection, in both legal and judicial points of view, for all private investments contributing in the realisation of these economic and social development programs.

Article 3

Natural persons or legal entities, performing an activity in any of the sectors mentioned in the article 9, whatever their nationality, receive the same treatment, in accordance with the provisions of treaties and agreements signed by the Republic of Niger and other states.

Article 4

Natural persons or legal entities mentioned in the above article 3 may, in the framework of the laws in force, acquire and exercise all rights of any nature concerning the property of concession and administrative authorisations, as well as tender to public contracts.

Article 5

Natural persons or legal entities non-resident in terms of the exchanges regulation, who realise an investment in Niger financed in convertible foreign currencies, may obtain, according to this regulation, some transfers of revenues of any kind, issuing from the invested assets and the product of the investment's settlement. May also be operated any transfers to natural persons or legal entities, non-resident corresponding to normal and current payments for the effective supplies and deliveries.

Article 6

The settlement of disputes related to the validity, interpretation or the application of the deed of agreement and the possible determination of compensation due to the ignorance or violation of the commitments will be subject to one of the arbitration procedures hereinafter to be determined in the

deed of agreement.

1) The constitution of an arbitration board by:

In case that one of the parties would not have appointed an arbitrator in the sixty (60) days of notification by the other party of his appointed arbitrator, and in case that the two first arbitrators could not come to an agreement on the choice of the third arbitrator in the thirty (30) days of the designation of the second arbitrator, the designation of the second or the third referee, as may be the case, will be done by the President of the Supreme Court on the initiative of the more diligent party.

The arbitrators will fairly give a verdict.

The sentence given by the majority of arbitrators will be final and binding.

2) The possibility for the non-national to remedy to International Centre for the Settlement of Disputes Related to Investments (ICSID) created by the convention dated March 18th, 1965 of the International Bank for Reconstruction and Development (IBRD).

Article 7

Except in case of public utility provided by the law, Niger Republic shall guarantee to enterprises established or to be established that no measure of expropriation or nationalisation of investments will be taken.

The eventual measures of expropriation or of nationalisation give right to a just and equitable compensation.

Title III. Scope of application

Article 8

For the application of this ordinance, are considered:

Article 9

This code is applicable to natural persons or legal entities exercising or desiring to exercise an activity in the following sectors, whatever their nationality:

a. Agro-pastoral activities

b. Manufacturing activities of production or transformation;

c. Power generation;

d. Extraction and transformation of quarry products or of mineral substances to the exclusion of the extraction and transformation activities of mineral substances susceptible of concession that remain governed by the mining law and the oil code;

e. Implementation of a social housing construction program for sale or renting;

f. Industrial equipment maintenance activities;

g. Air transport;

h. Hotels construction and equipment;

i. Telecommunications (telephone and Internet);

j. Setting-up of semi-finished products assembling units.

the aforementioned natural persons or legal entities are assured, pertaining to such activities, of general guarantees stipulated in title II of the ordinance n° 89-19 dated December 8th, 1989 on the investments Code in Niger Republic and subject to their eligibility for the benefit of one of the systems provided in title IV, of special advantages attached thereto.

Article 10

Without any prejudice of the provisions provided in the above article 9, the special advantages may be granted to natural persons or legal entities whatever their nationality exercising or desiring to exercise specific activities restrictively listed:

Article 11

Are considered in the terms of articles 2 and 5 of this ordinance as investments:

Title IV. Preferential systems

Chapter I. Common provisions

Article 12

The investments code is composed of three privileged systems:

Article 13

May benefit from a privileged system, any natural person or legal entity referred to in the above article 9 presenting a project giving the financial, technical and satisfactory economic profit guarantees and undertaking to:

Article 14

Natural persons or legal entities applying for the profit of a privileged system mentioned in article 12 shall undertake to:

Article 15

The profit of investments code is granted:

1. By joint order of the Minister in charge of industry and the Minister in charge of finance, for:
2. By joint order of the Minister in charge of industry and the Minister in charge of finance, after the advice of investments commission for system B when the total amount of investment is superior to one hundred (100) mil-lions CFA francs and inferior or equal to five hundred (500) millions CFA francs, free from taxes and working capital.
3. By decree taken in Council of Ministers after advice of Investments Commission

Article 16

The attributions and the composition of investments commission referred to in article 15 shall be determined by decree taken in Council of Ministers.

Article 17

The order or the decree granting the profit of investments code shall fix notably:

Article 18

In the event of failure to fulfil the agreed commitments:

1. The agreement may be suspended if three months after a written notice, nothing has been done by the registered company to regularise its situation.
2. The agreement may be cancelled:
 - a. If in a time limit of six (6) months from the date of suspension of the agreement, the company has not regularised its situation;
 - b. If the company has not realised its investment program in the time limit of twelve (12) months from the expiration date of the period of equipments installation;
 - c. On proposal of investments commission, in case of fraud, serious or deliberate breach by the company in its obligations certified by the arbitration board. In this case, the cancellation entails the repayment to the Treasury, of customs and taxation advantages of the total amount obtained during the elapsed period.
3. The suspension or the cancellation of the agreement is pronounced in the same conditions than those applicable for its granting.

Article 19

The partial or total assignment of the registered company shall first be notified to the Minister in charge of industry and to the Minister in charge of finance. The advantages related to the initial system could be replanned in increasing or in decreasing according to assignment impacts on the criteria that motivated the granting of the privileged system.

Article 20

In case of exceptional turndown of the registered company activities, the company may ask for the suspension of the privileged system for a period that will not be inferior to one (1) year and superior to two (2) years.

The expiration date of the agreement system is modified consequently.

Chapter II. System A

Article 21

The system A may be granted to any natural person or legal entity fulfilling the conditions of articles 8, 9 and 13 of this ordinance.

Article 22

The duration of the system is fixed to five (5) years for the system A.

Article 23

The system A shall grant to companies the following advantages:

1. In investments realization phase, total exemption:
duties and Taxes collected by the government in the exclusion of the statical tax but including the Value Added Tax (VAT) on materials, tools and equipments of production and directly converging to the realization of the registered program.
However, in case of availability of equivalent local products, the importation of materials, tools, and equipments shall not give right to exemption.
2. In operation phase, total exemption for the total duration of the system.

Article 24

[Repealed]

Chapter III. System B

Article 25

May benefit from the advantages of system B, the new following companies:

- a. The Small-scale companies creating at least five (5) permanent employment for Niger citizens and realising at least fifty (50) millions CFA francs of investments free from taxes and working capital.
- b. The medium-scale companies creating at least ten (10) permanent employment for Niger citizens and realising at least two hundred fifty (250) millions CFA francs of investments free from taxes and working capital.
- c. The large-scale companies realising investment program on:

The large-scale or medium-scale companies whose investment and employment creation remains below the fixed threshold are respectively considered, as may be the case, small or medium companies in the terms of this article. So, they benefit from the system B in condition to satisfy the conditions concerning the lower category.

Article 26

The registered companies of system B benefit from the following advantages:

1. In investments implementation phase:

Total exemption of duties and taxes collected by the government including the Value Added Tax (VAT) on services supply, working and services directly converging to the realisation of the registered investment program.

Total exemption of duties and taxes collected by government in exclusion of the statical annual fee by including the value added tax (VAT), on materials, tools and equipments of production and directly converging to the realisation of the registered program of investment.

However, in case of availability of equivalent local products, the importation of materials, tools and equipments shall not give right to exemption.

2. In operation phase, total exemption throughout the period of the system:

However, the exemption of the above-mentioned duties and taxes is not applicable on raw materials, consumable materials, packaging of sectors mentioned in points e), f), g), h), and j) of article 9 (New).

Article 27

In addition to advantages mentioned in article 26, the registered companies entitled to benefit from system B are exempted from duties and taxes when exporting their products.

Article 28

The period of system B is fixed to five (5) years whatever the size of the company (small, medium or large scale).

Article 29

The investments entitled to system A or B of this Code, may be promoted to a more advantageous system if before the end of the system in place, the concerned promoters bring the proof that the investments total amount reaches the required level to benefit from this system.

Chapter IV. System C

Article 30

The System C is granted to major enterprises presenting an exceptional importance for the execution of national programs of economic and social development and answering to one of the two (2) following criteria:

It is granted on request of the enterprise for a period fixed to five (5) years.

Article 31

The System C is granted by a convention passed between the State and the beneficiary enterprise.

Article 32

The convention is approved in Council of Ministers after advice of the commission of investments. It comes into force on the date of its signature that intervenes after the publication of the decree referred to in article 15.

Article 33

In addition to the advantages provided in articles 26 and 27, the enterprises admitted for the benefit of System C may be entitled to:

Article 34

The convention shall guarantee to the beneficiary enterprise that any modification shall not be made to

the basis rules and collection of all taxes and duties as well as to tariffs provided in favour of the enterprise if it resulted in an aggravation of its burden. Similarly, the taxes and duties of fiscal nature to be afterwards decided shall not be applicable thereon.

The stability of taxation shall not be applicable:

Article 35

The convention shall not include commitments from the State having for effect to discharge the enterprise from losses, charges or shortfall due to the technical evolution, economic situation, natural factors or inherent to the enterprise, or to limit the conditions of loyal competition.

Article 36

The convention defines notably:

- a. the object, the scope, the location and the duration of investment program;
- b. the fiscal System guaranteed to the enterprise;
- c. the commitments that the beneficiary enterprise subscribes in compensation;
- d. the controls that the administration may perform in the beneficiary enterprise and the conditions of these controls;
- e. the conditions in which the convention shall be amended;
- f. the procedure of arbitration that will be applied in case of dispute between the parties.

Chapter V. Program of Extension, Diversification, Renovation or Modernization of an Existing Enterprise

Article 36.1

The programs of extension, diversification, renovation or modernisation that fulfil the following conditions without being necessarily cumulative may benefit from the advantages of the Code of Investments:

The enterprises registered in the terms of an extension program, diversification, renovation or modernisation may only benefit from advantages provided in articles 23 and 26 for the phase of the realisation of investments.

Title V. Special provisions

Article 36.2

Investment programs related to the industrial projects and considered to have the priority by the Minister in charge of industry in these programs of action may directly benefit from a special System upon simple request by the promoters.

The advantages, as well as the obligations, of the investor will be jointly specified by order of the Minister in charge of industry and the finance Minister.

Article 36.3

Any natural person or legal entity who has benefited from the advantages of the investments' code, must require the opinion of the Minister in charge of industry, before any transfer of his/her plant out of the territory of the Republic of Niger.

Article 37

The duration of the advantages concerning the different systems is of a 3 years subsidy for the companies setting themselves in the departments of Agadez, Diffa, Tahoua or Zinder.

Article 38

in addition to the advantages provided in the different special systems, companies working on activities among the domains mentioned in article 9 a, are subsidized by a total exemption of the value added tax on the turnovers made during the System.

The exemption also concerns the VAT which has burdened all the acquisition of properties and services gained during the same period, and normally giving the right to the deduction in accordance to the provisions of the internal revenue code.

Article 39

[Repealed]

Article 40

Notwithstanding the provisions of the article 9 (New), 23 (New) and 26 (New) of the Ord. 97-09 dated

Notwithstanding the provisions of the article 9 (new), 20 (new) and 20 (new) of the Ord. 97-09 dated 27th/02/1997, projects for the creation of bakery or patisserie shall benefit only from the advantages related to the investments realisation.

Article 41

Any natural person or legal entity wishing to invest in film production may be exempted from duties and taxes, the VAT included, except the statistic tax on:

Article 42

a) Are considered for the enforcement of this code as exercising in a production craft activity, Individual entrepreneurs or craftsmen groups exercising in the following fields:

b) The entitlement to the special provisions of the investments code benefits only individual or associative companies which totally meet the following criteria:

c) Any natural person or legal entity wishing to invest in crafts of production in Niger, and meeting the criteria specified in b) above, may be exempted from the following duties for a period of five (5) years:

Article 43

Any physical person or legal entity wishing to invest a minimum of fifty (50) millions of CFA francs in school and health centres building may be exempted from the tax and duties in the implementation of their investment program, the VAT included, but excluding the statistical duties on the materials and tool equipments locally produced or imported in case of equivalent local products unavailability.

Article 43.1

a) According to the current code any company meeting at least one of the following conditions is considered to be a company developing the technological innovation:

b) Any company which develops the technological innovation is liable to a tax deduction on the 2/3 of the expenses engaged in the acquisition or the implementation of the aforementioned innovation, the taxable income on industrial and trading profits (BIS) of the current tax year during which the innovation has been introduced.

c) Companies which conclude training program contracts with Universities, Institutes, Specialized School, consulting firms, and engineering and design departments with a plan to employ young graduates shall be entitled to the incentive System of the technological innovation.

Article 43.2

a) By public or good transportations, allusions are made to any activity which is permanently done by a profit making legal entity which has the transportation of people or goods as its purpose.

b) Any natural person or legal entity wishing to invest a minimum of one hundred (100) millions FCFA in public or good transportations shall be exempt from tax and duties at the importation, statistical duties excluded, but the VAT on means of transportation bought is included.

However, the entrepreneurs will have to pay the tax and duties uncollected on these means of transportation in case of surrender before a minimum period of three (3) years.

Article 44

An advantages provided in articles 41, 42 and 43 are jointly granted by order of the Minister in charge of industry and the finance Minister.

Article 45

The order provided in the article 44 specifies in particular:

Title VI. Final provisions

Article 46

Unless or otherwise provided, prior assents given to companies before the current Ordinance come into effect remain in force till their time limit.

Article 47

Any prior provisions opposite to the current Ordinance are repealed, particularly the Law 68-24 dated July 31st , 1968 on the Investments Code in Niger, Laws N° 71-02 dated January 29th, 1971 and N° 74-19 dated March 11th, 1974 on the Investment Code in favour of Niger company.

Article 48

This Ordinance to be implemented as a State Law, shall be published in the Official Journal of the Republic of Niger.