

Cameroon

Law N° 2013/004 of 18 April 2013 to lay down private investment incentives in the Republic of Cameroon (2013)

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Contents

PART I
GENERAL PROVISIONS
PART II
COMMON INCENTIVES

CHAPTER 1 - TAX AND CUSTOMS INCENTIVES
CHAPTER II - FINANCIAL AND ADMINISTRATIVE INCENTIVES
PART III
SPECIFIC INCENTIVES
CHAPTER 1 - PRIORITY SECTORS
CHAPTER II - DEVELOPMENT OF EXISTING ENTERPRISES
PART IV
GRANTING OF APPROVAL MONITORING CONTROL, PENALTIES AND SETTLEMENT OF DISPUTES
CHAPTER 1 - APPROVAL
CHAPTER II - MONITORING AND CONTROL
CHAPTER III - DISPUTE SETTLEMENT AND PENALTIES
PART V
MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS SECTION

Law N° 2013/004 of 18 April 2013 to lay down private investment incentives in the Republic of Cameroon

The National Assembly deliberated and adopted, the President of the Republic hereby enacts the law set out below:

PART I

GENERAL PROVISIONS

SECTION 1.-

(1) This Law lays down private investment incentives in the Republic of Cameroon, applicable to Cameroonian or foreign natural or legal persons, whether or not established in Cameroon, conducting business therein or holding shares in Cameroonian companies, with a view to encouraging private investment and boosting national production.

(2) This law seeks to facilitate, promote and attract productive investment in order to develop activities geared towards strong, sustainable and shared economic growth as well as job creation.

SECTION 2.-

(1) This Law shall apply to investment operations relating to the creation, extension, renewal, asset re-structuring and/or conversion of businesses;

(2) Any investor seeking to obtain the incentives provided for under this Law be bound to comply with all applicable laws and regulations.

(3) This Law not be applicable to investments in sectors governed by special instruments, in particular the upstream oil, mining and gas sectors, as well as those under the general partnership contracts regime.

SECTION 3.-

For the purposes of this Law and regulatory instruments arising there from, the following definitions shall apply:

- “Force majeure”: any external, unpredictable event that is beyond the control of the parties, whose occurrence makes it impossible for the party under an obligation to fulfill such obligation;
- “Economic difficulties”: unpredictable circumstances which, while not rendering the implementation of the project impossible, significantly affects it;
- “Export”: transaction consisting in selling or dispatching products, goods and services outside the national economic area;
- “Incentives”: special benefits granted resident or non-resident natural or legal person, to promote and/or develop a given activity;
- “Input”: item used in producing a semi-finished or finished product (raw material, labour etc.)
- “Investment”: asset held and/or acquired by an investor (company, shares, equity, bonds, monetary claims, intellectual property rights, contractual rights, rights conferred by laws and regulations, any other tangible or intangible movable or immovable property, all related ownership rights);

- “Investor”: resident or non-resident Cameroonian or foreign natural or legal person that acquires assets in the conduct of business for profit;
 - “Establishment phase”: period not exceeding 5 (five) years during with the infrastructure and facilities essential for setting up a production unit are built;
 - “Operation phase”: period during which production activities are effectively carried out, which starts to run;
- (a) For new investors, automatically, upon or before the end of the establishment phase, once marketing or sale of products begins, as ascertained by a joint Order of the ministers in charge of private investment, finance and trade; for enterprises already established in Cameroon and caring out new investments, once the said investments become operational as ascertained by a joint Order of the ministers in charge of private investment, finance and trade;
- (b) For enterprises already established in Cameroon and caring out new investments, once the said investments become operational as ascertained by a joint order of the ministers in charge of private investment, finance and trade;
- (c) “Value added”: creation or increase in value of goods and services from other sources by an enterprise in carrying out day-to-day professional activities. It is calculated as the difference between the production of the period plus the gross profit on goods, and the consumption of goods and services supplied by others for such production.

PART II

COMMON INCENTIVES

SECTION 4.-

Any investor whose activities are in compliance with the laws and regulations in force and who meets one of the criteria below may enjoy the benefits provided for by this law:

- Employ, during the operational phase and according to the size of the enterprise and sector, at least a Cameroonian by tranche ranging between 5 000 000 (five million) CFA francs and 25 000 000 (twenty-five million) CFA francs of planned investments, as applicable;
- Annual exports of 10% of turnover, net of taxes; use local natural resources of 10% to 25% of the value of inputs; contribution to value added of 10% to 30% of turnover, net of taxes.

CHAPTER 1 - TAX AND CUSTOMS INCENTIVES

SECTION 5.-

Incentives shall be granted to investors during the establishment and operation phases.

SECTION 6.-

The investor shall enjoy the following benefits during establishment phase, which may not exceed 5 (five) years, with effect from the date of issuance of the approval:

- Exemption from stamp duty on establishment or capital increase;

- Exemption from stamp duty on the lease of immovable property used exclusively for professional purposes that form an integral part of the investment programme;
- Exemption from transfer taxes on the acquisition of immovable property, land and buildings essential for the implementation of the investment programme;
- Exemption from stamp duty on contracts for the supply of equipment and construction of buildings and installations essential for the implementation of their investment programme;
- Full deduction of technical assistance fees in proportion to the amount of the investment made, calculated on the basis of the total amount of the investment;
- Exemption from VAT on the provision of services related to the execution of the project and obtained from abroad,
- Exemption from stamp duty on concession contracts;
- Exemption from business license tax;
- Exemption from taxes and duties on all equipment and materials related to the investment programme;
- Exemption from VAT on the importation of equipment and materials;
- Immediate removal of equipment and material related investment programme during clearance operations.

SECTION 7.-

(1) The investor may, during the operation phase, which may not exceed 10 (ten) years, according to the scale of investment and expected economic returns, as applicable, enjoy exemptions from or reductions of payment of the following taxes, duties and other fees:

- Minimum Fee;
- Corporate tax;
- Tax on profit;
- Stamp duty on loans, borrowings, overdrafts, guarantees: increase, reduction, corporate capital repayment and liquidation, or any transfer of activities, real profit Ownership or usufruct, leases or shares;
- Tax on income from movable assets during the distribution of income in the form of dividends or other from to be specified in the agreement;
- Special income tax (SIT) on sums paid to foreign companies for services rendered or used in Cameroon during the project design and execution phases, provided that they are billed at cost price;
- Taxes, registration and stamp duties on the transportation of processed products;
- Customs duties as well as all other fees and service taxes on the importation of all types

of equipment, building materials, tools, spare parts, intermediate products, supplies and consumables which do not have locally manufactured equivalents, save for duties, taxes and other non-tax fees deemed to be a service fee;

- Duties on the exportation of construction and processing plant equipment;
- Any tax, duty or charge of any kind that is calculated on the basis of the turnover realized by the processing company;
- Any tax on the transfer, purchase or sale of Foreign currency and any indirect consumer tax, including the special tax on petroleum products.

(2) The investor may also enjoy the following benefits:

- deferral of deficits after five years, with effect from that of their occurrence;
- exemption from duties, taxes, fees and fees on the importation of capital goods intended and used for the investment programme.

(3) After the expiry of the period referred to in Section 7 (1) above, the investor shall automatically be subject to ordinary law.

SECTION 8.-

(1) Any investor may benefit from a tax credit provided he or she meets one of the following criteria employs at least 5 (five) graduates each year;

- combats pollution;
- develops public interest activities in rural areas.

SECTION 9.-

Notwithstanding the benefits provided for in Section 7 above, the investor shall be subject to the payment of fees, taxes, duties and any other fees for service rendered. Such service charges shall be generally applicable and proportional to the cost of the service rendered.

SECTION 10.-

The rules for the assessment and collection of company tax shall be those provided for, with regard to company tax, by the accounting and tax legislation in force in the Republic of Cameroon, subject to contractual provisions that may contain special depreciation provisions rules.

SECTION 11.-

On account of the duly assessed importance of the project, the state may, as a special measure, extend the benefit of some tax and customs exemptions to shareholders, promoters and the investor's local co-contractors through contractual agreements.

CHAPTER II - FINANCIAL AND ADMINISTRATIVE INCENTIVES

SECTION 12.-

(1) The investor shall be subject to the exchange rate regime of the Republic of Cameroon.

(2) Subject to the fulfillment of the obligations incumbent on him, notably with respect to the exchange rate regime and the tax legislation, the investor may enjoy the following benefits:

- the right to open in Cameroon and abroad local and foreign currency accounts and to carry out transactions on such accounts;
- the right to freely receive and keep abroad funds acquired or borrowed abroad, and to freely use such;
- the right to freely cash keep abroad income their transaction dividends and proceeds of any kind from capital invested, as well as proceeds from the liquidation or sale of their assets;
- the right to directly pay abroad non-resident suppliers of goods and services essential for conduct of business;
- free transfer of dividends and proceeds from the sale of shares in case of disinvestment.

(3) With respect to foreign staff employed by the investor and resident in the Republic of Cameroon, they shall enjoy free conversion and free transfer to their country of origin of all or part of amounts due them, subject to prior payment of various taxes and social security contributions to which they are liable in compliance with the regulations in force.

SECTION 13.-

The Government shall institute facilities necessary for:

- the establishment of a specific visa and a reception counter at all airports throughout the national territory for investors, subject to their presentation of a formal invitation from the body in charge of investment promotion of Small and Medium sized Enterprise (SMEs);
- the issuance of the above-mentioned specific visa in all of Cameroon's diplomatic or consular representations;
- the issuance of residence and work permits to expatriate staff involved in any investment project and holding a contract of employment for a period exceeding two years;
- the issuance of environmental compliance certificates with respect to the investment projects concerned;
- the issuance of land titles and long-term leases.

PART III

SPECIFIC INCENTIVES

CHAPTER 1 - PRIORITY SECTORS

SECTION 14.-

In addition to the above-mentioned incentives, specific incentives may be provided to enterprises which carry out investments that contribute to the attainment of the following priority objectives;

- Development of agriculture, fisheries, livestock, and plant, animal or fishery product packaging activities;
- Development of tourism and leisure facilities, social economy and handicraft;
- Development of housing, including social housing;
- Promotion of agro-industry, manufacturing industries, industry, construction materials, iron and steel industry, construction, maritime and navigation activities;
- Development of energy and water supply; encouragement of regional development and decentralization;
- The fight against pollution and environmental protection;
- Promotion and transfer of innovative technologies and research and development;
- Promotion of exports;
- Promotion of employment and vocational training.

SECTION 15.-

Any enterprise intending to carry out investments that contribute to the achievement of the above mentioned priority objectives may, as appropriate, benefit from the following common incentives:

- Exemption from VAT on investment programme loans;
- Exemption from land tax on built-on and non-built-on estates on the site dedicated to the processing plant and of all immovable property extensions by use thereof;
- Direct goods clearance at the request of the investor; fixed registration fee;
- Special temporary admission of industrial equipment and materials likely to be reexported.

SECTION 16.-

Enterprises engaging in export operations shall, in the conduct of their business, benefit from:

- Exemption from export duties on locally manufactures products;
- The inward-processing regime provided for by the Customs Code.

CHAPTER II - DEVELOPMENT OF EXISTING ENTERPRISES

SECTION 17.-

Any existing and operating enterprise carrying out an investment programme aimed at production capacity extension, assets renewal or performance enhancement may, for a period not exceeding 5 (five) years, benefits from the common incentives referred to in Section 7 of this law, where such investment programme ensures increase in production of goods and services or in Cameroonian staff strength by at least 20%.

PART IV

GRANTING OF APPROVAL MONITORING CONTROL, PENALTIES AND SETTLEMNT OF DISPUTES

CHAPTER 1 - APPROVAL

SECTION 18.-

(1) Any investor seeking the incentives herein shall be subject to an approval regime, as defined by the Investment Charter.

To this end, the investor shall submit an application file to the One-Stop-Shop established within the body in charge of:

- Promoting SMEs, for local SMEs;
- Promoting investment, for other local and foreign investors.

(2) The composition of the file referred to in paragraph 1 above shall be determined by regulation.

(3) The one-stop-shop shall issue a receipt to the investor concerned. It shall have two days to review the file and forward same to the Minister of Finance

SECTION 19.-

(1) Investors shall be granted the approval by the Minister in charge of private investment, with the assent of the Minister of Finance duly attached to such approval.

(2) The Minister of Finance shall have 15 (fifteen) working days to give his assent.

(3) The Minister in charge of private investment shall have 3 (three) working day to issue the approval.

(4) Beyond such period, where there is no reasoned rejection, the authorization shall be deemed granted.

SECTION 20.-

(1) The approval shall take the form of an agreement signed between the investor and the Minister in charge of private investment.

(2) The approval instrument shall specify:

- the business name ;
- the business purpose, scope, location and the time limit for investment programme implementation and spin-offs;
- the date of entry into force and the duration of the regime granted, separating those relating to the establishment phase an the operation phase;
- the benefits granted to the investor;
- commitments to the State and, where applicable, other special obligations;

- the list of equipment, machinery and raw materials approved;
- the purpose of the investment project;
- the specific control terms and conditions to which the company shall be subject, including the investment programme, amount, staffing, wages, production, exports project timeline;
- penalties for failure to honour commitments.

(3) In case of refusal of approval or non-compliance with this law the investor may lodge an appeal with the Monitoring Committee referred to in Section 22 below, which shall decide within fifteen days of reception of the appeal.

CHAPTER II – MONITORING AND CONTROL

SECTION 21.-

(1) Any investor granted the incentives under this law must meet the criteria which determined its eligibility, within the following timeframes:

- for investors governed by the approvals regime in the establishment phase, no later than the establishment phase;
- for investors already established in the Republic of Cameroon, within 5 (five) years of commissioning of new investments.

(2) However, the authority having issued the approval may grant additional time in the event of duly establishes force majeure or economic difficulties or where the company has valid justifications. Such additional time may not exceed 2 –two) years.

SECTION 22.-

(1) A Monitoring Committee set up by decree of the President of the Republic shall, in conjunction with the services of the respective ministries in charge of finance, private investment and labour, monitor actual investment and consider investor's appeals.

(2) The Committee shall have a period of no more than 30 days to report the monitoring results, at each project phase.

(3) The monitoring committee referred to in Section 22 (1) above shall focus on:

- compliance of equipment with stated programme;
- Checking supporting documents for imports and local purchases made under conditions provided for in the approval instrument, depending on the investment programme presented by the company and state in the approval;
- Income returns filed by the company to obtain tax incentives included in the approval;
- Checking the jobs created.

SECTION 23.-

(1) Depending on the monitoring results which must be notified to the company, the latter shall be granted incentives corresponding to the operation phase, if this has already been attained or may reasonably be attained within the prescribed time-frame.

(2) The approval instrument shall be denounced and may entail withdrawal of the incentives provided therein where they are used for purposes other than those of the investment programme specified in the instrument. In such case the competent authorities shall recover the unpaid tax and attendant penalties.

SECTION 24.-

(1) Any enterprise granted the incentives provided herein must, within 6 (six) months of the start of the financial year, submit an annual report of the year ended to the body in charge of investments promotion or Small and Medium sized Enterprises (SMEs), on the implementation of the investment programme specifying the objectives implementation data used as eligibility criteria.

(2) The annual report give rise to control of eligibility criteria and use of the incentives granted in the approval instrument.

SECTION 25.-

During the operation phase, all import and local purchase requests must first obtain the visa of the body in charge of incentives promotion.

CHAPTER III – DISPUTE SETTLEMENT AND PENALTIES

SECTION 26.-

(1) Investors granted the incentives hereunder must first seize the Control Committee in case of dispute to seek amicable settlement.

(2) They may, where amicable settlement has not been obtained, refer the dispute to an arbitration body recognized by the State of Cameroon.

SECTION 27.-

(1) The investors granted the incentives hereunder shall be liable, where they fail to comply with the objectives relating to eligibility criteria, to administrative, tax and financial sanctions that may range from a fine to withdrawal of the approval.

(2) Any failure by the investors to honour their commitments under this law and its implementing instruments shall, under the terms and conditions laid down by regulation, and depending on the gravity, lead to:

- Formal notice;
- Warning letter;
- Fine
- Suspension from the incentives for a period exceeding 6 –six) months;
- Automatic withdrawal of the incentive to penalties and legal proceedings provided for by the regulations in office.

SECTION 28.-

(1) The sanctions provided for in Section 23 above may be applied only the formal notice remains unheeded for 30 (thirty) consecutive days.

(2) The formal notice provided for in Section 28 (1) above shall be issued following administrative channels or by a sheriff-bailiff.

SECTION 29.-

(1) The investors granted the incentives hereunder shall be liable to penalties where they fail to comply with the inspection and control conditions of their facilities by duly approved administrative officials or fail to forward the annual report mentioned in Section 24 above within 6 (six) months of the financial year.

(2) Penalties ranging from a fine to withdrawal of benefits in accordance with the laws and regulations in force, shall be applied in case of failure to fulfil the relevant conditionalities, misrepresentation of technical, economic or financial information or refusal to submit to monitoring and control terms and conditions.

PART V

MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS SECTION

SECTION 30.-

Any investor applying for the incentives provided by this law, shall be entitled to a simplified procedure for administrative approval concerning its activities throughout the validity period of the approval instrument. To that end, it shall be entitled to the services of the One-stop Shop of the body in charge of incentives management, notably for:

- Authorizations to do business;
- Access to administrative documents on importation and use of private warehouses;
- Visas required for the implementation of investment programmes, including the list of equipment and raw materials to import or buy locally;
- Obtaining visas for its domestic and foreign staff (entry or exit visa, residence permit, work permit);
- Obtaining the waivers provided for by the laws and regulations in force;
- Access to the facilities and public utilities necessary for the smooth implementation of the investment programme set forth in the approval instrument.

SECTION 31.-

(1) The State shall ensure that the incentives granted to investors are stable in accordance with this law, throughout the period provided for by the instrument or agreement granting such incentives.

(2) To that end, a Joint Monitoring Committee placed under the authority of the Prime Minister shall be responsible for the stability of the said incentives, in conjunction with the Regulation and Competitiveness Council.

SECTION 32.-

Any enterprise benefiting from an approval in accordance with this law, shall have the right to obtain the same incentives as those granted subsequently to any other investor operating in the same sector and engaged in the same type of business.

SECTION 33.-

(1) No investor may be denied approval in the context of competition with one or several other investors granted the incentives hereunder, so long as such investor fulfils the requisite terms and conditions.

SECTION 34.-

(1) The investors benefiting from a previous regime shall maintain their benefits until expiry of the validity of the said regime. However, they may apply for the incentives hereunder for the remainder of the initial regime, provided that they fulfill the requisite conditions without concurrent benefits.

(2) An approved investor shall be free to engage in a lease, management, merging or transfer, or partial assets contribution operation prior to and/or following is financial and technical restructuring.

(3) An approved investor may not change the nature of its business or place of establishment without prior authorization by the authority in charge of private investment.

(4) An approved investor shall be bound to pay an annual fee to the body in charge of incentives management. The amount, terms and conditions of collection shall be laid down by the said body and fixed by order of the Prime Minister.

SECTION 35.-

The conditions of implementation of this law shall be laid down by regulation.

SECTION 36.-

This law, which repeals all previous provisions repugnant hereto, save sector codes in force and general rules and regulations governing partnership contracts, shall be registered, published according to the procedure of urgency and inserted in the Official Gazette in English and French.

Yaounde, 18 April 2013

(s) Paul BIYA

President of the Republic

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