

## Benin (2020)

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# **Benin Investment Code**

## **Law n°2020-02 of 20 March 2020**

### **[NB - Law n°2020-02 of 20 March 2020 on the Investment Code in the Republic of Benin]**

#### **Title 1 - General Provisions**

##### **Chapter 1 - Definitions**

Art.1 - For the purposes of this law, the following definitions apply

- agricultural activity: any activity related to agriculture, livestock, fishing, fish farming and forestry;
- tourist activity: any provision of services, sales, travel or use of tourist facilities provided for consideration with or without accommodation;
- National agency in charge of investment promotion: structure or institution mandated by the State to ensure the promotion of investments in Benin;
- approval: any agreement that must be obtained by a company so that the investment can be carried out while benefiting from a preferential customs and tax regime;
- tourism development: all the work involved in the creation of basic infrastructures in areas and tracts of land intended for tourism investments. It is materialized by studies which fix the nature of the installations and the typology of the activities of the infrastructures;
- duration of approval: duration during which the company benefits from the advantages of the Investment Code, installation period and exploitation period;
- company: any unit of production, transformation or distribution of goods or services of a commercial nature, constituted by a natural or legal person legally established in the Republic of Benin;
- secure company: company that has taken all the necessary insurance and measures to ensure the security of its activity;
- economic area: zones or regions specifically and precisely planned by the State to accommodate the enterprises and industries eligible to the present Code;
- tourist and/or hotel enterprise: any commercial tourist and/or hotel establishment offering accommodation to customers as well as ancillary services such as food, beverages, leisure activities, tourist transport and various services;

- extension: any increase in the production capacity of an existing enterprise;
- investor: any natural or legal person, whether Beninese or not, carrying out investment operations on Beninese territory under the conditions defined in this Code;
- investment: any lasting commitment of capital of a profit-making nature made by any person or legal entity for the purpose of carrying out a project that contributes to the development of the Beninese economy while assuming the related risks;
- equipment and tools: objects and instruments used in the processing or shaping of raw materials. This includes industrial equipment and tools, agricultural equipment and tools, breeding, fishing and fish farming equipment and tools, handling equipment, packaging equipment, repair equipment and commercial vehicles used exclusively for production;
- raw materials: objects and supplies intended to be incorporated in the manufacture or processing of a product;
- modernisation or renovation: acquisition and installation of more efficient equipment and materials and/or restoration of infrastructure to improve the quality and quantity of production;
- products: physical objects obtained after an agricultural, industrial or service activity;
- value added: difference between turnover excluding tax and intermediate consumption excluding tax.

## Chapter 2 - Objectives and Scope of the Act

Art.2 - This law on the Investment Code sets the conditions, advantages and general rules applicable to direct national and foreign investments in Benin. Its purpose is to promote, facilitate and protect sustainable and responsible investment in the Republic of Benin in order to accelerate economic growth and reduce poverty. As such, it aims to encourage the creation and development of activities aimed at :

- promote the creation of sustainable and decent jobs, the training of national cadres and the emergence of a skilled national workforce;
- promote the creation of high value-added activities;
- encourage the use and development of natural resources and local raw materials as a priority;
- to promote the restructuring, competitiveness, integration and growth of enterprises ;
- promote green industry and environmental protection;
- encourage the decentralization of economic activities ;
- develop industrialization and exports ;
- promote certain major works ;

- encourage the transfer of skills and technologies ;
- developing sectors such as tourism, agriculture, certain infrastructures for industry or commerce, the digital economy, energy, the living environment, drinking water, and any educational project geared towards vocational training, applied research and innovation;
- develop any other sectors or activities deemed to be priorities by decree of the Council of Ministers.

Art.3 - The present Code applies to all investments made in the Republic of Benin by a legal entity, with the exception of investments made within the framework of public-private partnerships, and investments benefiting from specific aid schemes determined by the law establishing the regime of Special Economic Zones, or particular laws governing specific activities such as research, exploration and mining and oil exploitation

Also excluded from the benefit of this Code are activities consisting of purchase for resale in the same state, activities of repackaging, cutting, twisting or packaging of finished or semi-finished products and all other activities not involving working or processing within the meaning of the customs nomenclature.

Art.4 - Investments in the Republic of Benin are subject to a common law regime and may benefit from one of the privileged regimes of the present Code.

The privileged schemes comprise three basic privileged schemes and two special schemes.

The basic privileged regimes offer customs and tax advantages to national and foreign companies under Beninese law. These are the following regimes:

- regime A, which applies to companies whose investment amount before tax is greater than or equal to 50,000,000 and less than or equal to 1,000,000,000 FCFA
- regime B which applies to companies whose investment amount, excluding taxes, is higher than 1,000,000,000 and lower than 50,000,000,000 FCFA;
- regime C, which applies to companies whose investment amount, excluding tax, is greater than or equal to CFAF 50,000,000,000.

The special schemes are :

- the sectoral incentive scheme which aims to encourage investment in activities or economic sectors deemed strategic for companies eligible under schemes A and B in accordance with a decree issued by the Council of Ministers;
- the regime of specific investments which aims at facilitating the realization of infrastructure projects and equipment for cultural, sports, health and educational tourism. It also aims at facilitating the realization of certain infrastructures for industry and trade intended in particular for the storage of products such as gas, hydrocarbons, chemical products.

Art.5 - On the occasion of an extension of their activities, the advantages of the privileged regimes provided for the installation phase can only be granted to existing enterprises if the extension does not concern an activity which had previously benefited from an approval to the Investment Code.

Art. 6 - When activities benefiting from a privileged regime coexist within a company and others subject to common law, the former must be subject to separate accounting that clearly isolates their results from those of the whole company.

## Chapter 3 - Institutional Framework

Art.7 - The State institutions in charge of the promotion of investments include :

- the National Agency for Investment Promotion ;
- the Investment Control Commission ;
- the Inter-ministerial Committee for Investment Promotion.

Art.8 - The National Agency in charge of the promotion of investments is the technical body of the State which exercises the functions of a unique counter in order to facilitate the administrative formalities relating to the approval of projects attached to the present Code. It also ensures the follow-up of the specifications of the companies in accordance with the present Code.

The National Agency for Investment Promotion has a right of communication.

The powers, organization and operation of the Agency shall be specified by decree of the Council of Ministers.

Art.9 - The Investment Control Commission is responsible for verifying the conformity of investments, the respect of the investor's commitments and for certifying the end of the investor's installation period.

For this purpose and for all other verifications, it may call upon the expertise of proven consultants.

The powers, organization and functioning of the said Commission shall be specified by a decree issued by the Council of Ministers.

Art.10 - The Interministerial Committee of Investment Promotion (CIPI) is the body in charge of the follow-up and the evaluation of all the investments having benefited from the advantages provided for by the present Code.

The Interministerial Committee for Investment Promotion, through its support unit, supervises the activities of the National Agency in charge of investment promotion.

and those of the Investment Control Commission.

The powers, organization and operation of the said Committee shall be specified by a decree issued by the Council of Ministers.

## Title 2 - Common provisions

# Chapter 1 - Guarantees to investors

Art.11 - Investments covered by the provisions of this Code are freely made in compliance with the laws and regulations in force in the Republic of Benin.

Without prejudice to the policy of promoting national entrepreneurship, legal persons of foreign nationality shall not receive less favourable treatment than that accorded to legal persons of Beninese nationality.

Art.13 - Access to foreign currency is not limited.

Provided they comply with foreign exchange regulations, investors have free access to foreign exchange, in particular to :

- provide current payments ;
- to finance their supplies and various services provided to foreign natural or legal persons.

Art. 14 - In accordance with the international agreements and treaties to which it is a party, the State shall protect intellectual property rights, particularly patents, trademarks and trade names.

Private, individual or collective property shall be protected in all its aspects, its elements and dismemberments, its transmission and the contracts to which it is subject, in accordance with the regulatory provisions in force.

Art.15 - The State guarantees to any beneficiary of the Code the freedom to appoint the members of the Board of Directors, the General Manager or the Manager, as the case may be.

Art.16 - The protection of private property is guaranteed by the laws and regulations in force in the Republic of Benin.

This protection extends to all legal and commercial aspects of property, to its elements and dismemberments, to its transmission and to the contracts to which they relate.

Movable or immovable assets held in the Republic of Benin by the investor may be expropriated or nationalized only in strict compliance with the legislation in force in the Republic of Benin.

Art.17 - The repatriation of any asset of the investor is guaranteed subject to its fiscal and legal regularity, and under the conditions fixed by the exchange regulations.

Art.18 - Any expatriate, member of the personnel of a company benefiting from the provisions of the present Code, is authorized to freely transfer, in accordance with the provisions of the foreign exchange regulations, all or part of his remuneration, whatever the legal nature and the amount expressed in local or foreign currency.

Art.19 - The State facilitates the access of investors to developed industrial zones, agricultural lands, zones of tourist interest or any other zones developed for investments according to the regulations in force. It contributes to the security and protection of the enterprises established in these zones without this constituting an obligation of result.

## Chapter 2 - Investors' obligations

Art.20 - The investor is obliged to respect the laws and regulations of the State.

Art.21 - The investor contributes to the reinforcement of the know-how of the local personnel in particular by training and technology transfer.

Art.22 - The investor benefiting from the advantages provided for by this Code is required to comply with the technical, social, sanitary and environmental standards, national or, failing that, international, applicable to his products, services and working environment. He must also comply with the standards relating to quality management systems.

Art.23 - Any enterprise which applies for one of the privileged regimes referred to in article 4 of the present law undertakes to contribute to increasing the qualification of its local collaborators, notably through continuous training, the development of their skills and the transfer of technologies.

Art. 24 - The company benefiting from a privileged regime shall be obliged :

- to comply strictly with the approved investment and business plan, with any substantial change to the plan requiring prior approval under the same conditions as the original plan;
- to submit to the various controls carried out by the administrative services in accordance with the regulations in force.

Art.25 - The investor shall refrain from any act of corruption and any act of related offences before, during or after his establishment.

Acts of corruption in the field of investment shall be punished in accordance with the legislation in force and shall entail, as of right, the forfeiture of the advantages granted.

The funds used to make investments in the territory of the Republic of Benin may not originate from illicit activities and in particular from money laundering and terrorism operations.

## Chapter 3 - Duration of approval

Art.26 - The duration of the approval covers :

- an installation period during which the investment programme must be carried out ;
- and an operating period that corresponds to the production or operation phase.

The duration of the approval is set out in the approval certificate.

Art.27 - The installation period starts from the effective date of the approval and extends over the period indicated on the approval certificate.

The end of the installation period is recorded by the Investment Control Commission. To this end, the promoter submits a detailed list of the investments made. The Commission issues a certificate of completion of installation to the investor after checking the effectiveness of the investments.

Art.28 - The period of approved exploitation takes effect from the date of issuance of the certificate establishing the end of the realization of the investment program.

In any case, fifteen working days after the notification of the completion of the investment program by the approved company, and in case of silence of the Investment Control Commission, the exploitation of the unit under privileged regime is authorized provisionally while waiting for the completion of the investment control and the issuance of the said certificate.

Art.29 - The period of exploitation approved under the privileged regime is fixed according to the area where the project is located as follows:

- for the privileged regime A: five years for investments made throughout the national territory;
- for the privileged regime B :
  - eight years for investments made in zone 1;
  - ten years for investments made in zone 2 and ;
  - twelve years for investments made in zone 3.
- for plan C :
  - 15 years for investments made in zone 1;
  - 16 years for investments made in zone 2;
  - 17 years for investments made in zone 3.

Art.30 - In application of the provisions of article 29 of the present law, the Beninese territory is divided into three zones 1, 2 and 3 which are defined by decree taken in the Council of Ministers.

## **Chapter 4 - Procedure for granting privileged treatment**

Art.31 - Any enterprise requesting the granting of a privileged regime shall make the request to the National Agency in charge of the promotion of investments.

The National Agency in charge of the promotion of investments holds at the investors' disposal forms adapted to the various types of investments provided for by the present Code.

The submission of the complete file by the investor is recorded by the issuance of a certificate of eligibility issued by the National Agency for Investment Promotion.

Art.32 - The National Agency in charge of investment promotion examines the adequacy of the project to the objectives of this Code, on the basis of an investment plan submitted by the investor. Any application for approval deemed acceptable at the end of the technical studies gives rise to the issuance to the applicant of a certificate of technical acceptability by the National Agency in charge of investment promotion.

The final decision on approval for a privileged regime of the Investment Code is taken by the Council of Ministers and requires the subsequent adoption of an interministerial order. Applications for approval that have not received a certificate of technical acceptability are not submitted for decision to the Council of Ministers.

The National Agency for Investment Promotion has twenty working days from the date of submission of the file to formulate its technical decision.

Reasons shall be given in writing for any decision of the Agency.

A decree issued by the Council of Ministers shall specify the formalities to be carried out by investors and the modalities for the examination of applications for approval under this Code.

Art.33 - In case of non-respect of the deadline for the delivery of the technical approval certificate or any other failure duly noted, at the level of the National Agency in charge of investment promotion with regard to the processing of the approval applications, the investor refers to the Investment Control Commission which has seven working days to question the Agency and to make it take the appropriate measures in view of the issuance, within this deadline, of a reasoned decision. The structure in charge of the National Agency in charge of investment promotion receives an ampliation of the letter of interpellation as well as of the technical decision of the National Agency in charge of investment promotion.

Art.34 - The technical approval certificate and the interministerial decree establishing the final approval, each in its own right:

- set out the purpose and location of the project, the time limit for carrying out the investments and the period of operation under the preferential regime;
- list the activities for which the scheme is granted and the nature and quantity of the items to be exempted;
- confirm the nature and duration of the benefits granted ;
- define the obligations incumbent on the Company, particularly with regard to the implementation of its investment, production, employment and vocational training programmes and the pursuit of its economic, commercial and social objectives;
- shall provide for the specific modalities of dispute resolution within the limits of this Code.

# Title 3 - Different schemes and their benefits

## Chapter 1 - Exemption Measures

Art.35 - In order to guarantee a good administration of the approval regimes, the General Directorate of Customs and Indirect Duties creates for each investor a management and follow-up file of the imports of eligible goods.

The list of goods, materials and equipments benefiting from duty reductions is fixed by joint order of the Minister in charge of Industry, the Minister in charge of Economy and Finance and the Minister of the sector of activity concerned, on the proposal of the National Agency in charge of the promotion of investments.

## Chapter 2 - Regime "A"

Art. 36 - Approval to regime A includes the following advantages:

1) During the investment period :

- total exemption from import duties and taxes, with the exception of road tax, statistical tax, customs stamp, Community levy (CD), Community Solidarity Levy (CSL) and Solidarity Levy (SL) on :

- equipment, tools and commercial vehicles intended exclusively for production under the approved programme;

- specific spare parts for imported equipment up to an amount equal to 15 % of the CIF value of the equipment.

2) During the operating period :

- Exemption from corporate income tax (IS), from the advance payment of tax on profits (AIB) and from the flat-rate minimum tax;

- exemption from the contribution of patents and licences ;

- a 50% reduction in the amount of the employer's payment on wages.

## Chapter 3 - Plan "B"

Art.37 - Approval to regime B includes the following advantages:

1) During the investment period :

- total exemption from import duties and taxes, with the exception of road tax, statistical tax, customs stamp, Community levy (CD), Community Solidarity Levy (CSL) and Solidarity Levy (SL) on :

- equipment, tools and commercial vehicles intended exclusively for production under the approved programme;

- specific spare parts for imported equipment up to an amount equal to 15% of the CIF value of the equipment;

2) During the operating period :

- Exemption from corporate income tax (IS), from the Acompte sur Impôt assis sur les Profits (AIB) and from the fixed minimum tax;
- exemption from the contribution of patents and licences ;
- 80 % reduction in the amount of the employer's payment on wages.

## Chapter 4 - Plan "C"

Art. 38 - Approval to regime C includes the following advantages:

1) During the investment period :

- total exemption from import duties and taxes, with the exception of the road tax, the statistical tax, the customs stamp, the Community Levy (CL), the Community Solidarity Levy (CS) and the Solidarity Levy (SL), on equipment and tools, commercial vehicles intended exclusively for production and spare parts, which are the subject of the approved project.

2) During the operating period :

- Exemption from corporate income tax (IS), from the Acompte sur Impôt assis sur les Profits (AIB) and from the fixed minimum tax;
- exemption from the contribution of patents and licences ;
- exemption from the employer's payment on wages ;
- exemption from registration fees in the event of a capital increase.

## Chapter 5 - Sectoral incentive scheme

Art.39 - The sectoral incentive scheme aims at granting additional advantages to investors eligible to the "A" or "B" schemes who invest in the sectors or activities defined by decree taken by the Council of Ministers.

The additional advantages granted to the investors eligible for the sectoral incentive regime cannot exceed the advantages provided for by the present law.

Investors eligible for the "A" scheme who invest in sectors or activities eligible for the sectoral incentive scheme may benefit from the advantages provided for under the "B" scheme.

Investors eligible for scheme "B" who invest in sectors or activities eligible for the sectoral incentive scheme may benefit from the advantages provided for by scheme "C".

## Chapter 6 - Specific investment scheme

Art.40 - The projects eligible to the regime of specific investments benefit from a total exemption of duties and entry taxes, except for the road tax, the statistical tax, the customs stamp, the Community Levy (CL), the Community Solidarity Levy (CSL) and the Solidarity Levy (SL) on all the approved investments.

The companies carrying out these projects are subject to the ordinary law during their operating phase.

## **Title 4 - Sanctions and Dispute Resolution**

### **Chapter 1 - Sanctions**

Art.41 - The diversion from its destination of any good imported under a privileged regime of this Code:

- constitutes a serious breach of the obligations of the approved company which will be sanctioned in accordance with the provisions of Articles 42, 43 and 44 below;
- constitutes a fiscal and customs offence which will be punished in accordance with the provisions of the Customs and Tax Codes;
- makes the payment of the amount resulting from the sanctions immediately payable to the Treasury, without prejudice to criminal sanctions.

Art.42 - In case of non-compliance with any of the obligations prescribed in articles 20 to 25 above, duly noted by the Investment Control Commission, the Company is liable to a fine, the amount of which is defined in a decree implementing this law.

Art.43 - In case of serious violation or recidivism or in case of non-fulfilment of the investment programme after the expiry of the installation period, or in case of non-respect by the investor of his obligations under the operating licence, the benefit of a regime of the present Code may be withdrawn from the approved enterprise. The decision to withdraw approval is taken by the Council of Ministers on the basis of a report drawn up by the National Agency for Investment Promotion or the Investment Control Commission.

Art.44 - In case of withdrawal of the benefit of a regime of the present Code, the company in question is obliged to reimburse to the Beninese State, the value or the equivalent in value of the induced advantages that it has obtained during the period of approval.

### **Chapter 2 - Dispute Resolution**

Art.45 - The difficulties of interpretation of the provisions of this Code are settled by way of instructions or circulars of the Interministerial Committee for the Promotion of Investments on the proposal of the National Agency for the Promotion of Investments.

Any dispute relating to the interpretation and execution of this Code shall first be settled amicably between the parties.

Failing this, the dispute shall be settled by the competent Beninese courts in accordance with the laws and regulations in force, or by arbitration. Recourse to arbitration shall be made according to one of the following procedures:

1) Nationally:

- the Arbitration, Mediation and Conciliation Centre (CAMEC) procedure;

2) At the regional and international level :

- the procedure of the Uniform Act on Arbitration Law of the Organization for the Harmonization of Business Law in Africa (OHADA);

- the conciliation and arbitration procedure resulting either from a common agreement between the parties, or from bilateral agreements concluded between the Republic of Benin and the State of which the investor is a national, whatever the scope of the arbitration clause or the dispute settlement clause included in the said agreements, which shall be deemed to extend to any dispute between the parties relating to the interpretation and execution of this Code;

- the procedure for the agreement establishing the Multilateral Investment Guarantee Agency (MIGA);

- the procedures of the provisions of the Convention of 18 March 1965 creating the International Centre for Settlement of Investment Disputes between States and Nationals of other States (ICSID) established under the aegis of the World Bank and ratified by the Republic of Benin on 6 September 1966.

## **Title 5 - Miscellaneous provisions**

Art.46 - The following are excluded from the exemption regime for the application of the provisions of the present law: building and finishing materials, office equipment, household appliances and materials, private cars, air conditioning equipment, with the exception of central air conditioning equipment, petroleum products, with the exception of lubricants, fuel oil, gas oil, used as raw materials and bituminous products

However, this exclusion does not apply to tourism and/or hotel projects, university infrastructure projects aimed at vocational training, applied research and innovation, in particular as regards building and finishing materials, teaching equipment and materials, laboratory equipment and materials, office equipment, household appliances and materials, utility vehicles, and individual or central air-conditioning equipment, which are essential for their operation.

The instrument of approval shall specify the quantities to be exempted for these items.

Art.47 - Operations carried out by the approved company that do not expressly fall within the scope of the activities listed in the certificate of approval remain subject to the provisions of common law.

The transfer, if authorised, shall entail payment of the duties from which the goods had been exempted, calculated on their value determined in accordance with the customs regulations and the rates in force on the day on which the declaration was lodged.

Art. 48 - The benefit of a regime granted to a company in accordance with the provisions of this Code shall not be transferable.

Art. 49 - Approval to a scheme of this Code may not be renewed or extended. At the expiration of the approval period, the company loses the said regime and its activities are subject to the provisions of ordinary law.

Art.50 - No legislative or regulatory decision taking effect on a date subsequent to that of the approval may have the effect of abolishing or restricting with regard to the company the provisions of the system from which it benefits for the duration of the approval, except in the case of the sanctions provided for in Articles 41 to 44 above.

Art.51 - An approved company may request to benefit from any more favorable provision that may be included in the fiscal and customs legislation.

## **Title 6 - Transitional and final provisions**

Art.52 - Guarantees and advantages granted to certain companies within the framework of law n°90-002 of 9th May 1990 relating to the Investment Code, modified by law n°90-033 of 24th December 1990 and order n°2008-04 of 28th July 2008, modified by order n°2008-06 of 5th November 2008, remain acquired by them until the expiry of the time limits defined by their approval acts.

Art. 53 - Decrees issued by the Council of Ministers shall specify the modalities of application of the present law.

Art.54 - This law which abrogates all previous provisions to the contrary and in particular law n°90-002 of May 9, 1990 on the Investment Code, amended by law n°90-033 of December 24, 1990 and order n°2008-04 of July 28, 2008, amended by order n°2008-06 of November 5, 2008 and decree n°98-453 of October 8, 1998, shall be published in the Official Gazette and executed as a State law.

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