

Comoros

LAW N°07-0010 /AU Containing the Investment Code (2007)

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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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UNION OF THE COMOROS

Unity – Solidarity – Development

ASSEMBLY OF THE UNION

LAW N°07-0010 /AU Containing the Investment Code

In accordance with the provisions of Article 19 of the Constitution of the Union of the Comoros of 23 December 2001, the Assembly deliberated and adopted the following law:

TITLE 1 DEFINITIONS , SCOPE AND OBJECTIVES

Article 1: Definitions

For the purposes of this Code, the following definitions apply:

1) Company : any unit engaged in the production, processing and/or distribution of goods or services, regardless of its legal form, whether it is a natural or legal person;

2) New business: any economic entity that has been newly created and is in the process of implementing an eligible investment programme, with a view to starting its activities.

3) Foreign companies: Companies whose capital comes from countries other than the Union of the Comoros as well as branches of companies from these countries.

4) Extension: any approved investment programme, initiated by an existing company that results in an increase of at least 35% in the production capacity or acquisition value of fixed assets;

5) Working capital requirement: part of the investment required to finance the company's current expenses;

6) Investment: Investment in this Code means:

a. acquisitions of assets in the context of the creation of new activities, expansion of production capacity, rehabilitation or restructuring;

b. participation in the capital of a company in the form of a contribution in cash or in kind;

c. Takeovers of activities in the context of partial or total privatization. These investments must be made by or on behalf of the company.

7) Investor: any natural or legal person of Comorian nationality with the justified means, carrying out investment operations in the territory of the Union of the Comoros under the conditions defined within the framework of this Code;

8) Foreign worker: any natural person, a national of a State other than the Union of the Comoros, carrying out an activity on behalf of the approved company.

Article 2. - Priority objectives

The priority objectives of this Investment Code are:

- a) the creation of new businesses;
- b) job creation;
- c) the establishment of companies in the interior regions;
- d) innovation and development of existing businesses.
- e) encouraging and facilitating the freedom to conduct a business.

Article 3: Eligible sectors of activity

In order to improve an environment conducive to the development of the private sector and to attract private productive investment, which creates jobs and income, the Union of the Comoros provides them with an incentive-based legal framework.

As such, companies carrying out or wishing to carry out an activity in one of the following sectors are eligible:

- a) Agricultural, livestock, fishing and forestry activities and related activities of processing, storage, packaging or preservation of products of plant, animal or fishery origin;
- b) Manufacturing activities of production or processing;
- c) Research, extraction or transformation of mineral or natural substances;
- d) Implementation of economic and social housing programmes;
- e) Construction or operation of tourism and hotel infrastructure;
- f) Applied research laboratories or technological research;
- g) New Information and Communication Technologies, NICTs;
- h) Banks and decentralized financial institutions;
- i) Sea, air and land transport;
- j) Services performed in the following sub-sectors:
 - health;
 - education and vocational training;
 - assembly and maintenance of equipment;
 - port, airport and land infrastructure;
 - banks, insurance companies and microcredit institutions and guarantee funds, notwithstanding the specific regulations related to these activities
- k) Handicraft.

The list of activities eligible for the benefits and guarantees of the Investment Code established by this article may be modified on the proposal of the Minister of Finance, Budget, Economy, Planning, in charge of the Promotion of Employment on the advice of the National Investment Commission.

Trading activities, defined as the resale of products purchased outside the company, are expressly excluded from the scope of this Code.

Activities eligible for specific codes or the status of the enterprise established in an export processing zone are also excluded from the scope of this Code.

TITLE 2 GUARANTEES, RIGHTS, FREEDOMS AND OBLIGATIONS OF THE COMPANY

Article 4:

Private investments shall be freely made in the Union of the Comoros, subject to specific provisions aimed in particular at ensuring the protection of public health and health, social protection or economic public order.

Article 5: - Rights and freedoms of the company

Subject to compliance by the undertaking with its obligations as provided for in Article 12, acquired rights of all kinds shall be guaranteed to it and the undertaking shall enjoy full and complete economic and competitive freedom. In particular, it is free to:

- to acquire the property, rights and concessions of any kind necessary for its activity, such as land, movable, immovable, commercial, industrial or forestry property;
- to dispose of these acquired rights and assets;
- be part of any organization; professional of their choice;
- to choose its technical, industrial, commercial, legal, social and financial management methods;
- to choose its suppliers and service providers as well as its partners;
- to participate in calls for tenders for public contracts throughout the country;
- to choose its human resources management policy and to recruit its staff freely.

Article 6: Capital Transfer Guarantee

Within the framework of foreign exchange regulations, the State guarantees the right to transfer capital and income without any restrictions in the currency and to the country freely chosen by the investor.

These include:

- regularly recognised profits;
- funds from divestitures or liquidations.

Article 7: Guarantee of transfer of remuneration

The freedom to transfer all or part of his remuneration, whatever its legal nature and the amount expressed in local currency or foreign currency, is also guaranteed, to any member of the staff of an undertaking who is a national of a third country and who can prove, if necessary, the lawfulness of his stay in the Comoros.

Article 8: Foreign Investment Guarantee

The approval granted under this Code shall be deemed to constitute approval of the investment for the granting of any guarantee, within the meaning of Article 15 of the Treaty establishing the Multilateral Investment Guarantee Agency.

Article 9: Treaties and agreements concluded with other States

The provisions of this Code shall not preclude the more extensive benefits and guarantees which may be provided for by treaties or agreements concluded or to be concluded between the Union of the Comoros and other States and organizations.

TITLE 3 EQUAL TREATMENT

Article 10:

Foreign companies or their managers shall be represented under the same conditions as Comorian companies or nationals in consular assemblies and in bodies representing professional and economic interests.

Article 11:

In the exercise of their professional activities, foreign employers and workers shall be treated in the same way as nationals. They benefit from labour and social legislation under the same conditions as nationals. They can participate in trade union activities and be part of professional defence organizations.

Article 12: Obligations of the company

All undertakings are required, throughout the territory of the Union of the Comoros, to comply with the following general obligations, namely:

- comply with the legislation of the Union of the Comoros, in particular with regard to the texts and regulations governing the creation and operation of companies, respect for public order, consumer protection and the environment;
- Have an accounting organization that allows it to comply with legal and regulatory provisions as well as existing practices in this area. However, small companies can outsource their accounting obligations to firms or licensed professionals;
- provide any information deemed necessary for a review of its obligations under this Code.

Article 13: Dispute Settlement

All disputes resulting from the interpretation or application of this Code that have not been resolved amicably or by a mediator shall be settled by the competent Comorian courts in accordance with the laws and regulations of OHADA.

Disputes between foreign companies and the Union of the Comoros relating to the application of this Code shall be settled in accordance with the conciliation and arbitration procedure arising from:

- either by mutual agreement between the two parties;
- agreements and treaties relating to the protection of investments concluded between the Union of the Comoros and the State of which the investor is a national;
- or a settlement procedure by the jurisdiction of the OHADA or COMESA of which the Union of the Comoros is a member;
- Settlement proceedings by an international court

TITLE 4 PREFERENTIAL SCHEMES

Article 14: Incentive for decentralization

For the purpose of granting advantages according to the region in which the approved enterprise is located, the territory of the Union of the Comoros is divided into two zones, a rural area and an urban area.

ILE AUTONOME DE NGAZIDJA

Zone I. Agglomeration of Moroni (from Voidjou to Séléa) and Regions of Bambao and Itsandra; hereinafter referred to as urban area.

Zone II. Mboudé-Mitsamiouli, Washili-Dimani, Hambou, Hamanvou, Mboinkou-Hamahamet and Badjini-Domba regions; referred to as a rural area.

ILE AUTONOME DE NDZUWANI

Zone I. Agglomeration of Mutsamudu: from Pasty to Bandrani, hereinafter referred to as the urban area.
Zone II. The rest of the island, referred to as the rural area.

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Zone I. Agglomeration of Djoiézi in Fomboni, hereinafter referred to as the urban area.

Zone II. The rest of the island, referred to as the rural area.

The distribution of the regions in the two zones defined above may be modified on the proposal of the Minister in charge of investments after consultation with the authorities of the Autonomous Islands.

Enterprises in which at least 80 per cent of the staff work in non-urban areas under the approved investment or development programme are considered to be located in a decentralization area.

Article 15: Any enterprise may be approved for the benefits provided for in this law if it submits a programme either for the creation of a new activity or the extension of an existing activity in the sectors referred to in article 3 above.

Article 16: Nature of the schemes granted under this Code

The provisions of this Code establish two distinct incentive schemes:

- a) scheme for small and medium-sized enterprises known as scheme A;
- b) regime for large companies known as regime B.

Article 17: Plan "A"

Scheme "A" is reserved for companies:

(a) with an investment programme of between CF 5 000 000 and 100,000,000 FC;

(b) presenting a significant job creation programme with a focus on the recruitment of nationals.

Article 18: Approval for scheme "A" includes the following rights and benefits:

- a) the application of a reduced maximum rate to the single administrative fee (RAU) on the import of equipment and materials that are specifically intended for production or exploitation under the approved programme for a period of 7 years.
- b) exemption from turnover tax on equipment and materials that are specifically intended for production or exploitation under the approved programme for a period of 7 years.
- c) For the purposes of income tax, approved companies are allowed to deduct 100% of the amount of the investments retained from the amount of taxable profit. These deductions may be spread over 5 successive tax years, at the end of which the remainder of the authorized and unused tax credit is neither chargeable nor refundable;
- d) exemption for an additional period of 2 years for companies located in rural areas.
- e) At the end of the period approved for the privileges, the application of a maximum rate reduced to half of the current minimum rate on the import of raw materials specifically intended for production.

Article 19: Plan "B"

Scheme "B" is reserved for companies:

a) with an investment programme of more than 100,000,000 FC;

b) presenting a more significant job creation programme with a focus on the recruitment of nationals;

Article 20: Approval for scheme "B" includes the following rights and benefits:

- a) the application of a reduced maximum rate to the single administrative fee (RAU) on the import of equipment and materials that are specifically intended for production or exploitation under the approved programme for a period of 10 years.
- b) exemption from turnover tax on equipment and materials that are specifically intended for production or exploitation under the approved programme for a period of 10 years.
- c) For the purposes of income tax, approved companies are allowed to deduct 100% of the amount of the investments retained from the amount of taxable profit. These deductions can be spread over 8 successive tax years, at the end of which the remainder of the authorized and unused tax credit is neither chargeable nor refundable;
- d) exemption for an additional period of 2 years for companies located in rural areas.
- e) At the end of the period approved for the privileges, the application of a maximum rate reduced to half of the current minimum rate on the import of raw materials specifically intended for production.

Article 21: Stabilization of the regime

No duty or tax existing on the date of grant of the authorisation, unless otherwise provided for in the said authorisation, or any legislative or regulatory text taking effect on a date subsequent to that of the approval of an undertaking, may have the effect of restricting, in respect of that undertaking, the various advantages obtained, in particular customs and tax advantages.

However, companies approved under the "A" and "B" schemes may apply for the benefit of any more favourable provisions which may be made in customs or tax legislation.

TITLE 5 PROCEDURE FOR GRANTING APPROVAL

Article 22: The granting of the advantages provided for under this Code is subject to approval given by the Minister in charge of Investments on the advice of the National Agency for the Promotion of Investments (ANPI).

The applicant must be notified of the refusal of approval.

Applications for approval are submitted to the competent department of the Single Window, which is responsible for centralising all the formalities for the creation of the company.

They are accompanied by a file, the form and content of which are set by the National Agency for the Promotion of Investments (ANPI). In the event of an extension of activities, the company must file a tax discharge in addition to the approval file.

During the examination of the file, the National Agency for the Promotion of Investments may consult the Ministry in charge of Finance and Budget, as well as any Ministry responsible for the sector concerned by the application.

Article 23: The text granting the benefit of the Investment Code sets out in particular:

- a) the purpose, scope, including the amount, location and duration of the implementation of the investment programme;
- b) the benefits granted to the approved company and their duration;
- c) a detailed list of the equipment, materials, services or works benefiting from the exemptions granted under the provisions of this law;
- d) the date of approval to be taken into account for the purposes of applying the benefits provided for in this Code.
- e) the arbitration procedure in the event of a dispute between the two parties.

TITLE 6 NATIONAL INVESTMENT PROMOTION AGENCY (ANPI)

Article 24:

Under the supervision of the Minister in charge of Investments, a National Investment Promotion Agency is created:

Its mission is to:

- promote the country as an attractive investment centre,
- serve as a one-stop shop for promoters and project leaders;
- make any proposals and recommendations relating to the application of the Investment Code to the Minister in charge;
- ensure that approved companies comply with the general and specific obligations arising from the Investment Code and their approval;
- make any recommendations relating to any sanctions that may be applicable;
- prepare an annual report to the responsible Minister.

A decree on the status, organisation and functioning of the Agency shall lay down the procedures for its operation.

TITLE 7 OF THE ESTABLISHMENT AGREEMENTS

Article 25:

Any enterprise approved or considered to be a priority within the framework of the economic and social development plan of the Union of the Comoros may enter into an establishment agreement with the Government granting it certain guarantees and imposing certain commitments as defined in the following articles of this title:

Article 26:

The establishment agreement may not include commitments on the part of the State which have the effect of relieving the company of losses, charges or loss of earnings due to technical developments or the economic situation or to factors specific to the company.

Article 27:

The establishment agreement shall define, in particular:

- The purpose and location of the business;
- The extent and duration of the investment programme and its induced effects;

- Other benefits granted by the State, the date of their entry into force and the duration of their application;
- The commitments made by the company;
- The conditions under which the agreement may be revised;
- The terms and conditions of specific control to which the company is subject;
- The penalties applicable in the event of non-compliance with the commitments made;
- The arbitration procedure in the event of a dispute between the two parties.

TITLE 8 INFRINGEMENTS, FINDINGS AND PENALTIES

Article 28:

The benefit of a scheme entails commitments and obligations vis-à-vis the State and the beneficiary of the authorisation. These are provided for in the act of approval and the establishment agreement.

Article 29:

Failure to comply with one of the commitments and conditions that were decisive for obtaining approval shall be considered an offence.

Article 30:

Infringements committed by companies approved under a preferential regime shall be established and prosecuted in accordance with the provisions of this law.

Article 31:

Approved companies that do not comply with the commitments or obligations provided for in the act of approval and the establishment agreement shall incur the penalties which may lead to the withdrawal of the authorisation. This withdrawal may be preceded by a grace period, of up to 90 days, during which the investor is invited to regularize his situation.

The withdrawal of the authorisation, once pronounced, shall render immediately payable the payment of all duties and taxes from which it has been exempted, as a result of the authorisation, without prejudice to any legal proceedings and penalties incurred in accordance with the provisions of the Customs and Tax Codes.

Article 32:

If the withdrawal of the authorisation is detrimental to the beneficiary company, it may claim damages before the competent courts.

Article 33:

The procedure for the application of sanctions and the procedures for exercising remedies shall be determined by decree implementing this law.

TITLE 9 FINAL PROVISIONS

Article 34:

Companies that have benefited from the advantages provided for by the previous Investment Code enshrined in Law 95-015/AF and subsequent texts remain governed by the said Code until the effect of the said advantages has expired.

Companies operating in accordance with the provisions of the previous Investment Code enshrined in Law 95-015/AF and subsequent texts may, on the date of publication of this law, apply for the remainder of the duration of the regime, to benefit from the benefits provided for, if they meet the conditions prescribed therein.

Article 35:

All previous provisions contrary to this Law are hereby repealed.

Article 36:

The modalities of application of this Law shall be defined by decree of the President of the Union of the Comoros.

Article 37:

This Law, which shall take effect from the date of promulgation, shall be registered and published in the Official Gazette of the Union of the Comoros and shall be executed as a State Law.

Deliberated and adopted in Plenary
of 31 August 2007

Secretaries, P/The President of the Assembly of the Union
p/o The Vice-President
Bacar HOUMADI Youssouf Said SOILIH
Abdouroihamane IBRAHIM