

Djibouti

Investment Code (1984)

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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[Preamble]

LAW N°58/AN/94/3-rd L AMENDING THE LAW N°88/ AN/1e L OF FEBRUARY 13, 1984
CONCERNING THE INVESTMENT CODE

The National Assembly adopted;

The President of the Republic promulgates

The law of which contents are presented as follows:

SEEN: Considering the Constitution of SEPTEMBER 04, 1992

SEEN: Considering the Decree N 93-001 of February 04, 1993 concerning the appointment of the members of the Government and fixing their attributions

SEEN: Considering the deliberation N°494 / 6th L of May 24, 1968 and the deliberation N°117/8-th L May 27, 1975 concerning the elaboration of an Investment Code

SEEN: Concerning the law N°88 ó/AN/1e AN Legislature of February 13, 1984 concerning the Investment Code

Title I. Fundamental guarantees

Article 1

The Present " Investment Code " defines the guarantees and fiscal advantages the government grants to private companies, which invest in the territory of the Republic of Djibouti and the conditions necessary to the grant these advantages.

The Investment Code isn't applicable to public legal persons.

Article 1 bis

Any person is free to invest or to exert an economic activity in the territory of the Republic of Djibouti in accordance with laws and regulations.

Article 1 end

Unless the same laws and regulations, any company regularly established in the country is free:

- To import all capital goods, materials and equipments, materials raw or consumable, finished or semi-finished products and more generally all goods necessary to its activity;
- To expose its products and its services;
- To determine and to lead its policy of production and marketing;
- To determine its policy of recruiting and dismissal of the staff;
- To choose its customers and suppliers and to fix its prices.

Article 2

Persons or entities specified in the article above, and whatever the legal form of these one, are indicated in the code by the term "company".

Article 3

The term "Investment" in the code means for a company, the acquisition of holding in a company, the construction of buildings, the acquisition of materials having the character of buildings per destination or other or pieces of furniture, including the vehicles, the ships and aircrafts.

These investments must be carried out by the company or for the account of this one; whatever the origin of its financing.

Investments opening right to the advantages stipulated by this code are limitedly fixed by this one.

Article 4

The investments are obligatorily carried out inside the borders of the Republic of Djibouti, included free zone.

The vehicles and aircrafts must be registered in the Republic of Djibouti as well as the ships which must preserve their home port at it.

Article 5

The terms “permanent jobs” means in the code a job effectively occupied by an employee during a period which can not be lower than the duration stipulated in the article 112 of the Labor Code.

The number of permanent jobs heated is testified by the supervisor of Labor and Social Laws at the latest at the end of the year which follows the year of the introduction of the investment.

Article 6

The fiscal tax advantages envisaged by this code include:

1. General exemptions
2. Particular exemptions, which are respectively the subject of titles II and III hereafter.

Article 7

The granting of these advantages is subjected to an administrative approval concerning the envisaged investments, which must be requested before any implementation.

The approval is proposed by the National Committee for Investment, it is approved and notified under the conditions stipulated in the title IV hereafter.

Title II. General regime of tax exemptions

Regime A

Section I. Field of application

Article 8

In order to promote the economic and social development of the Republic of Djibouti and the creation of new jobs, the companies of which the reation has an objective of those objectives specified in the article nine (9) hereafter, are entitled to exemptions and tax relief stipulated in the articles 11, 12, 13 and 14 of the present title, named “Regime A”.

Article 9

An entitled to advantages of the “Regime A”, investments and companies of which the objectives are as follows:

- Exploitation, preparation or transformation of products of vegetable or animal origin, whatever is the origin;
- Fishing in high-sea and deep-sea; preparation, freezing, Transformation or storage of

the products of the sea;

- The mining development, the industry of treatment or formation of the mining products or metals, that they are or not extracted from the ground of the territory;
- Research, exploitation or storage of any source of energy as well as refining of hydrocarbons;
- Creation, exploitation of establishments aiming at the development of the tourism and the craft;
- Creation and electric, electronic, and chemical exploitation and ship-buildings industries;
- Land, sea or air transports;
- Harbor and airport activities;
- Construction, repair and maintenance the ships for Sea transports or of fishing;
- Manufacturing or conditioning on the spot of the products or goods for great consumption;
- Banking or credits activities to be promoted new investments as well as the activities of warranting (credit, storage);
- Concealing services, engineering, computer data processing, telematic center server of data bases.

Article 10

The beneficiary companies of the advantages of the “Regime A” must:

1. To realize an investment of a minimum amount of five million Djibouti Francs (5.000.000 DJF);
2. To create a minimum number of permanent jobs.

A decree order by the Council of the Ministers will define the conditions for application of the 2°point of this article.

Section II. Exemptions

A. Direct taxation — A1: License

Article 11

The beneficiary companies of the “Regime A” are exempted from the “Taxation of the license” during the year during which installations of activity put into operation and in the next five years.

Article 12

The companies indicated in the previous article remain liable for the “license of importer”. However, the imports necessary to investments and exempted from putting into operation are excluded from the field of application of this license.

B. Indirect taxation — B1: Home tax of consumption

Article 13

The beneficiary companies of the “Regime A” are exempted from the Home Tax of Consumption and Import Taxes for the materials necessary to the realization of its investments programs and appearing in one the quantitative and qualitative list annexed to the decree of approval.

The raw materials imported and used effectively during the first five fiscal years by the beneficiary companies of the “Regime A” for the manufacture of the imported products are exempted from the Home Tax of Consumption.

A decree order by the Council of Ministers will define the conditions for application of the subparagraph 2 of this article.

Article 14

The materials and materials benefiting from the exemptions granted by this code can be, before a period of five years, neither yielded, neither sold, neither lent, or assigned to other uses than those one envisaged, under penalty of resumption of the taxes pursuant to the penalties envisaged by the General Tax Code.

Regime B

Section I. Field of application

Article 15

The investments and the companies presenting a particular economic or social interest are entitled to exemptions and tax relief of the “Regime B”.

Are regarded as investments or companies presenting a particular economic or social interest under the article 9, under subjected to fill one or the other following conditions:

1. To realize an investment of a minimum amount of fifty millions of Djibouti Francs (50.000.000 DJF);
2. To create a minimum number of permanent jobs.

A decree ordered by the Council Ministers will define the conditions of application of the 2° paragraphs of this article

Article 15 bis

Under to satisfy the conditions of the article 10 of this law, the investments and the companies of which the objectives are presented below, are entitled to advantages of the “Regime B”:

1. The construction of buildings of exclusively industrial, commercial or tourist use;
2. The construction of the social housing;
3. Construction, creation and exploitation of educational and training schools.

Section II. Exemptions—direct taxations

A1: licenses

Article 16

The beneficiary companies of the “Regime B” are entitled to tax license during the year which the installation are put into operation or the activity is initiated and the ten next following years.

These companies remain subjected to importer tax in conditions stipulated in the article 12.

A2. Land taxation on buildings

Article 17

Constructions of buildings approved within the framework of the title can be exempted from land taxation on the buildings during a period minimum of ten years as from the year following the year of the completion of works.

For this purpose, the useful justifications attesting the date of completion of works are presented at the Department of the Direct taxes.

A3. Tax on industrial and commercial incomes of natural persons

Article 18

The approved companies pursuant to the provisions of this title can be exempted from tax on industrial and commercial incomes of natural persons resulting from approved activities, within the limit of a maximum of ten years as from the date of the exploitation.

A4. income tax of entities

Article 19

The approved companies pursuant to the provisions of this title can be exempted from tax on industrial and commercial incomes of the entities resulting from the activities approved within the limits of a maximum of ten years as from the date of the exploitation.

B. Indirect taxes

Article 20

The imported materials and effectively used during the ten fiscal years by the beneficiary companies of the “Regime B” for the manufacturing of the imported products are exempted from the Home Tax of Consumption.

An decree ordered by Council of the Ministers will define the conditions for application of this article.

C. Fees registration, domanial royalties, tax of building licenses

Article 21

The acts noting the constitution of companies which have to realize investments approved in accordance with the regulations of the article 7 above, can be exempted in proportional right of recording provided that the authorized capital is equal or higher than thirty million Djibouti Francs (30.000.000 DJF).

The same exemption can be applicable to the increases in capital or higher in than ten million of Djibouti Francs and which intervenc less than five years after the approval of the company or a previous increase exempted for the same reason.

The same companies can also be given a partial exemption of the capital duties and release of mortgage.

Article 22

The fees of registration and land conservation can be reduced by half when they are established on the acquisitions land naked or covered with buildings intended to be demolished within three months for the realization of the investments having received the approval envisaged in the article 7 of this code.

Article 23

The authorizations of temporary occupation and the provisional concessions of the private field, granted according to the regulations in force and intended to receive the approval investments, can be granted on reduced prices.

Article 24

The investments approved pursuant to the provisions of this title can be exonerated from the tax on the building license.

Title III. Particular regime of exemptions financial investments

Section I. Field of application

Article 25

The incomes and benefits realized in the Republic of Djibouti by the persons and entities liable to the general tax of solidarity on the incomes and benefits can until December 31, 1989:

–To be freed of the aforementioned tax, if they are reinvested in the form of subscription of shares and social parts, in a company approved in the framework of the provisions of the title II of the regime 3 of this code.

Article 26

The order granting administrative approval to the issuing company:

- The quota of the authorized capital which can be subscribed of frankness from tax, within the framework of this title;
- The minimum and maximum of the financial investments to be realized by each subscriber to be allowed for the benefit of the provisions of this title.

Article 27

By way of additional incentive tax, a multiplying coefficient fixed by the decree granting the approval to the issuing company can be affected to the subscribers indicated in the article 25 above, for the determination of incomes or profits to be exonerated.

In any case, this coefficient can't be higher than three.

Section II. Exonerations

Article 28

The incomes or benefits exempted pursuant to the provisions of this title, are entitled franchised of tax, as the case may be:

- On monthly numerations liable to the tax on treatments and wages;
- On the annual benefit liable to the commercial income tax;
- On the annual benefit of the companies liable to the tax on the entities.

Article 29

A decree of approval fixes for each subscriber:

- The amount of incomes or benefits exempted resulting from
- The application of the coefficient defined in the article 27;
- The duration of charge of incomes or benefits exempted within the limits of three calendar years or accounting years;
- The deadline of the release of the approved subscriptions.

Title IV. National investment committee

Article 30

A National Investment Committee is created to be in charged of the application this law and, in particular to receive investment requests and to decide.

The composition and functioning of the National Committee of approval are fixed by a decree ordered by the Council of the Ministers

Article 30 – (A)

The investments and beneficiary companies of type “A” of this law are not subjected to the approval stipulated in the article 34.

They are the subjects to a declaration of investment with the Committee before the implementation of their projects.

The Committee has a maximum period of two months to request more information or to formulate the objections whit informant, counted starting from the date of filing of the declaration, or if necessary of deposit of the last element complementing the file.

After this period without having any response from the Committee, the investment is considered approved.

Article 31

Any declaration of investment or application of project of investment must be presented by the company according to a formula provided by the secretary of the Committee.

This formula summarizes the necessary information about the following elements:

- The legal form, the object and the activity of the company;
- Nature, cost and schedule of the Investments;
- The number, the qualifications and the schedule of permanent jobs to be created;
- The categories of fiscal measures of which the benefits are requested;

- A viability study of investments.

Article 32

The declaration of investment or application of approval must be deposited before, any implementation of investments, at the secretariat of the National Committee of approval, which acknowledges receipt of it.

Article 33

The Committee has all the power to examine the declaration of investment, in the case of the type "A", or to inform the request of the company, within the limit of the time fixed in the articles 30 (A) and 30 (B).

It has also all the power to ask within the same limits all useful justifications and to appreciate the object of the declaration of the application of approval.

The Committee proceeds to the register of the declaration, in the case of the type "A".

It proposes a total or partial approval of investments envisaged and granting of fiscal advantages corresponding to the activity of the company and the approved investments, in the case of the type "B" if necessary, it can suggest matching this measure of particular conditions.

The works of the National Investment Committee and the private documents which are presented to it, remain secret

Article 34

When the Committee will have definitively adopted its proposals, a decree of approval is transmitted to the Council Ministers, will the minute of works relating these proposals which can be approved in all or in part and which notification is made with the company.

Article 35

The committee takes care of the execution of investments and their correspondence with their conditions of statement and register, for the Regime "A", or their conditions of approval, for the Regime "B".

Has this end, she has to proceed, with the profitable companies, with the assistance of competent administrations or every expert qualified as the choice, in all the controls which she considers necessary.

In case of total or partial non-fulfillment of investments having been the object the statement or modifications of the activity foreseen by companies, within the framework of the Regime "A", it can propose extinction or suspension of advantages granted by present law.

If it is about the total or partial non-fulfillment of approved investments or modifications of the activity foreseen by companies, within the framework of the Regime "B", she can propose the retreat of approval or the revision of the conditions of this one.

Extinction or suspension of advantages, as well as retreat of approval or revision of the conditions are pronounced by order taken in Cabinet, notified to the company in cause.

Article 36

Except cases foreseen in articles 13 and 28 above, no decision coming into effect in a date posterior to that of the statement or the order of approval of an investment will be able to have the effect of restricting towards the beneficiary exemptions and advantages to which he has the right.

Title V. General legal guarantees

Article 37

The State recognizes the freedom of investment by every physical or legal person of Djiboutian nationality or foreign in the respect for legal and statutory capacities governing their activities.

Article 38

The freedom of traffic, communication and place of residence is recognized by the persons occupying an job necessary for the functioning of companies within the framework of the capacities of law and order governing in particular the police of the foreigners.

Equality in front of the law is recognized by any company pursuing an activity of production on the territory of the Republic.

Article 39

No partial or total, temporary or definitive expropriation, can take place without fair compensation of the undergone damage

Except the cases of emergency obvious or of grave danger, any expropriation will be preceded by a procedure of inquiry aiming to establish its correspondence to general interest and fair amount of the undergone damage.

Article 40

Is likened to an expropriation, any transfer of property or enjoyment, any influence actually either of right imposed by the public power or any community or body exercising privileges of public power.

Article 41

The State guarantees fair repair of damages caused by popular movements, provided that the company satisfied obligations resulting for her of the legislation of current safety and in the administrative orders which will have been also notified to him (her).

Article 42

Any servitude imposed by the public power on a particular company and for which it would result from it exceptional abnormal responsibilities will give place in fair one counterpart.

It (he) will there be the same, without prejudice of the appeal against his (her) author, when a damage will be caused with an assault of some agent of the public authority.

Article 43

Competent Courts of The Republic of Djibouti will know of any dispute arisen from the application of the present code, without prejudice however the application of agreements or the international agreements in which the State will have left.

Article 44

Any judgment will be preceded by a relevant, contradictory and written preparatory instruction.

Article 45

Considerations N°494 / 6e L and 117/8-th L May 24, 1968 and May 27, 1975 establishing the Investment Code are reported. However, advantages and exemptions already granted in application of these considerations to approved companies remain acquired in these.

Final and passing capacities

Article 46

Statutory texts fix, as of need, the modalities of application of the present law.

Article 47

Present Law will be registered and will be published in the Official Newspaper of the Republic of Djibouti, from the promulgation

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