

Guinea-Bissau

REPUBLIC OF GUINEA-BISSAU (2011)

Unofficial translation

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REPUBLIC OF GUINEA-BISSAU

INVESTMENT CODE

Law no. 3/2011

6 July 2011

PREAMBLE

The political and economic changes that occurred in Guinea-Bissau in the last two decades, among which we can highlight the rapid implementation of a market economy, open to the outside world, the constitutional and institutional consecration of a democratic multiparty, enhanced participation in the Economic Community of West African States (ECOWAS), as well as the country's accession to the West African Monetary Union (WAMU) and the West Africa Economic and Monetary Union (WAEMU), demanded the revision of the Investment Code approved by Decree Law 4/91 of 14 October. The Investment Code currently in force, approved by Decree-Law No. 03/2009 of 31 December, sought to outline a model that reflects the principles guiding a market economy, make more transparent the incentive- allocation process and limit the scope of the contractual regime, a source of uncertainty and arbitrariness, discouraging investment.

While it has created a secure legal framework for investment, which makes no distinction between domestic and foreign investors, and has simplified bureaucratic procedures necessary for conducting investment operations and consecrated transparent rules for granting tax benefits, the current code has not succeeded in attracting foreign investment. Rather it was deemed, on different occasions, as an inhibiting factor working against investment. In fact, in the light of recent experience, the only proposed incentive - tax credit - was unable to attract investors, because it has proved less generous than those offered by all other member countries of WAEMU and also relative to those provided either in previous versions of the Investment Code or in the current version of the draft community Investment Code under discussion within WAEMU.

The Investment Code approved by this law, besides dealing with this issue, seeks to harmonize the rules in force in the Republic of Guinea-Bissau with the current version of the draft Community Code with a view to ensuring a smooth transition, with little changes, for an eventual alignment of legislation in this area in the framework of our sub-regional economic integration.

The Government thus submits to the National Assembly, in accordance with subparagraph c) of paragraph 1 of Article 85 of the Constitution, the following bill:

ARTICLE 1

Approval

The new Investment Code is hereby approved and is attached to this bill, of which it is an integral part.

ARTICLE 2

Revocation

1. All laws contrary to this Code, including the Investment Code approved by Decree-Law no. 03/2009 of 31 December, and all laws dealing with tax incentives, with the exception of the diplomas referred in paragraph 2 of Article 2 of this Code are hereby revoked.

2. Tax benefits granted under the repealed provisions of the preceding paragraph are safeguarded.

ARTICLE 3

Entry into force

This Law shall enter into force thirty days after its publication.

Approved by the Council of Ministers of 29 April 2011, pursuant to paragraph 2 of Article 100 of the Rules of Procedure of the National Assembly.

The Prime Minister,

Carlos Gomes Júnior,

The Minister of Economy, Planning and Regional Integration,

Helena Nosolini Embaló

The Minister of Finance,

José Mário Vaz

CODE OF INVESTMENT

CHAPTER I

GENERAL PROVISIONS

ARTICLE 1

(Definitions)

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

Economic activity: the production and/or marketing of goods and/or services, whatever their nature, carried out by a natural or legal person, in any sector of the economy.

BCEAO: Central Bank of West African States.

ECOWAS: Economic Community of West African States.

WAEMU: West African Economic and Monetary African.

Company: any unit of production, processing, marketing and/or distribution of goods or services, geared for profit, whatever their legal form.

State: Republic of Guinea-Bissau, represented as required by its Constitution.

Investor: any natural or legal person, of any nationality, who conducts or has conducted in the past operations of investment funds and/or materials in economic activities in the territory of Guinea-Bissau.

Investment: the set of capitals, tangible or intangible assets, or credits, used by investors in the creation, modernization or expansion of economic activities.

Foreign investment: every investment made by an investor, whose resources do not originate in the country.

Reinvestment: application in the same or another company of all or part of profits generated by virtue of an investment. Under the application of this Code, reinvestment transactions are treated as investment.

Investment Convention or Agreement: the agreement whereby the Government and investors assume their obligations under an investment project.

ARTICLE 2

(Purpose and Scope)

1. This Code aims to encourage and guarantee investments in the Republic of Guinea-Bissau and applies indiscriminately to investments, irrespective of the sector of operation of business, the nationality of the investor and the legal form of the company, or any other distinction nature, except as provided in this Code.
2. Exceptions to this Code relate to investments in the areas of mining, oil and forestry, as well as those in free zones and duty free shops, which are governed under the legislation itself or investment contracts.

CHAPTER II

RIGHTS AND GUARANTEES

ARTICLE 3

(Free Initiative)

The State guarantees to all investors the right to freedom of initiative and exercise of economic activity, in accordance with current legislation and regulatory provisions in each sector.

ARTICLE 4

(Guarantees and Property Protection)

1. The State guarantees, under the law, the protection of private ownership of all property, movable and immovable, tangible and intangible, its elements and integrating parts and transmission, in all its legal and commercial aspects, as well as compliance with contracts entered in accordance with the legislation in force.
2. The state guarantees to investors that no measure of nationalization, expropriation or requisition shall be taken except on grounds of public interest or utility, determined by means of non-discriminatory criteria and through due process. In this case, the State has to effect immediate payment of fair compensation.

3. The value of the compensation referred to above is obtained based on the outcome of the evaluation of the investment in accordance with market values, which are not, under any circumstances, below the book value of assets subject to nationalization, expropriation or requisition.

ARTICLE 5

(General Obligations)

Investment operations should be subordinated to the national law and rules arising from international treaties to which Guinea-Bissau is bound, in particular those relating to the protection of public health and hygiene, consumer protection, competition, environment protection, fight against desertification, product standardization and quality, payment of taxes and the adoption and maintenance of a proper and fully organized accounting, in accordance with the West African Accounting System (SYSCOA) and/or the Accounting System of the Organization for the Harmonization of Business Law in Africa (SYSCOHADA).

ARTICLE 6

(Equal Treatment)

In accordance with this Code and other laws, foreign and domestic investors enjoy equal treatment before the State and all its institutions.

ARTICLE 7

(Guarantee of transfer of foreign currency)

1. The State guarantees natural and legal persons the right to convert foreign currency into CFA francs and CFA francs into foreign currency and the remittance abroad of amounts due in respect of profits, dividends or repatriation of capital, as well as the payment of borrowed capital, interest, goods and services purchased or contracted with individuals or companies not resident in the national territory, according to the legislation in force.
2. The State guarantees the transfer abroad through the banking system, of dividends and profits, minus amortization and taxes due, and the repatriation of capital, taking into account the shares corresponding to foreign investment in the equity of their company.
3. Operations relating to the transfer, sale or liquidation of investments between residents and foreign investors are free and the export of the proceeds from the transfer, sale or liquidation of foreign investments is guaranteed, after deduction of the respective taxes and fees.
4. All staff employed by a foreign company and who are legally entitled to live and work in the country, have the right to transfer abroad all or part of the remuneration obtained in this company, subject to the fulfillment of tax obligations under the banking legislation in force.

ARTICLE 8

(Multilateral Guarantee)

The State may obtain from the Multilateral Investment Guarantee Agency (MIGA), the Investment Guarantee Fund (FAGACE) and other similar multilateral or bilateral agencies, the additional guarantees that may be necessary or that help promote investments in the country, being the government authorized to do so subject to the relevant rules.

ARTICLE 9

(Economic Freedom and Competition)

1. The State undertakes to combat practices that hinder free competition and restrict access to raw materials or semi-processed goods necessary to the operations of companies in normal market conditions.

2. Subject to the fulfillment of its obligations as provided in Article 5 of this Code, companies enjoy full freedom to carry out their economic activities, including to:

a) Acquire assets, rights and concessions of any kind required for their activities, such as land assets, securities, real estate, commercial, forestry, industrial goods or others;

b) Dispose of the rights and property acquired;

c) Be part of any professional organization;

d) Choose its suppliers and service providers and partners;

e) Participate in public procurement;

f) Choose their human resource management policy, ensuring, however, in situations of equal skills, employment of nationals of Member States of ECOWAS and WAEMU and the organization of training for such workers;

g) Choose its methods of technical, industrial, commercial, legal, social and financial management.

CHAPTER III

TAX INCENTIVES

ARTICLE 10

(Types of Incentives)

1. Tax incentives offered by the Republic of Guinea-Bissau are exclusively set forth in this Chapter and those contained in the diplomas mentioned in paragraph 2 of Article 2 of this Code.

2. The incentives that may be granted are of four types:

a) Investment incentives granted in the phase of realization of investments;

b) Incentives for consolidation of business and employment, granted in the initial years of the operation phase of new businesses;

c) Incentive to the professional training of workers, and

d) Incentive to investment in economic or social infrastructure for public use.

3. Investment projects that are considered of great economic importance to the country, valued at an amount equal to or higher than eighty (80) millions of U.S. dollars, will be eligible for other incentives offered by the Council of Ministers, through the Investment Contract Agreement, upon proposal by members of government organizations, among which the body in charge of the economy.

4. The incentives granted under contractual arrangements defined in the preceding paragraph will focus on the business tax, the property tax and any other taxes on income, as well as on land and other fee payable under the land grant.
5. Investment contracts will be published in the Official Journal and the benefits awarded will be recorded as expenses of the state.

ARTICLE 11

(Conditions to Be Met Before Applying for Incentives)

The investor will be able to obtain the incentives granted under this Code, provided the following cumulative conditions are met:

- a) The amount of the planned investment is equal or higher than thirty four (34) thousand U.S. dollars, and
- b) The proposed investment aims at the creation of a new business or activity, expansion, modernization or diversification of existing activities or new equipment.

ARTICLE 12

(Application for tax incentives)

1. The investor shall submit to the Minister responsible for the sector of the economy the documentation of the incentive request, which include the investment project and other required information.
2. The model incentive documentation, the minimum contents of the investment project and the procedures for their analysis will be regulated through an ordinance issued by the member of the government in charge of the economy.
3. The deadline for the taking of a decision of the incentive documentation cannot exceed fifteen days from the date of receipt of the documentation. After this time the documentation is deemed as approved, for all legal purposes, all incentives requested being considered as approved.
4. The government department in charge of finance, after receiving the investment documentation approved by the government department in charge of the economy, has five working days for assessment and registration, as well as to refer to the Directorate General of Customs and others under its responsibility, for implementation purposes.
5. Government departments responsible for implementing decisions on application documentation have a deadline of forty eight hours for its implementation otherwise their staff will incur disciplinary action for gross negligence in the fulfillment of their obligations.
6. The deadlines referred to in the preceding paragraphs may be amended by a joint decision of the Ministers of Economy and Finance.

ARTICLE 13

(Tax Incentives in Investment Stage)

1. Tax incentives in the investment stage are as follows:
 - a) Exemptions on customs duties (Common External Tariff) for imports of capital equipment for the implementation of the proposed investment and for acquisition of spare parts whose value does not exceed fifteen percent (15%) of the value of goods for which the parts are purchased;

b) Exemptions Tax on the General Sales Tax (IGV) concerning the purchase, in the country or abroad of capital equipment for the implementation of the proposed investment and acquisition of spare parts whose value does not exceed fifteen percent (15%) of the value of goods equipment for which parts are purchased.

2. The exemptions provided for in subparagraph a) of paragraph 1 of the present article, shall not include the community solidarity fee and statistical fee, both from WAEMU and the ECOWAS fee and any other fees that may be created for the benefit international organizations.

3. Tax incentives are granted under the common regime during the investment stage, for a maximum time period of three years.

4. If the non implementation of the investment programme within the proposed investor is attributable to the administration, or is determined by reasons of force majeure, the investor will be entitled to an extension up to the length of the delay.

ARTICLE 14

(Tax Incentives in the Operation Stage)

1. Tax incentives in the operation stage consist of gradual reductions of income tax for a maximum period of seven years.

2. Tax incentives in the operation stage will be granted only to newly-created businesses, producing goods or services, with the exception of banks and other institutions in the financial sector.

3. The gradual reductions in the business tax shall be scheduled as appropriate, as follows:

a) One hundred percent (100%) in the initial fiscal year of the company's activities;

b) One hundred percent (100%) in the second year;

c) Ninety percent (90%) in the third year;

d) eighty percent (80%) in the fourth year;

e) Sixty percent (60%) in the fifth year;

f) forty percent (40%) in the sixth year, and

g) Twenty percent (20%) in the seventh year.

ARTICLE 15

(Incentives for Workers' Vocational Training)

1. Companies settled in the territory of Guinea-Bissau or that have any other form of permanent representation in the country, may deduct under the business tax, when calculating the taxable amount for the business tax, the double of training expenses incurred in specialized courses carried out in the country or abroad, in compliance with paragraph 2 of this Article and the provisions of Articles 11 and 12 shall not apply.

2. For the purposes of the preceding paragraph shall only training provided in training institutions accredited by competent authorities will be recognized. Accordingly, investors should submit the evidence of accreditation of the institution that provided training.

ARTICLE 16

(Incentives for Investment in Infrastructure)

Investors who are setting up business outside the autonomous sector of Bissau, may deduct from taxes payable in the year of its implementation and, if necessary, in the three following years, subject to deduction as expenses in determining taxable income, the total expenditure on construction for public use, roads, ports, airports and hospitals.

ARTICLE 17

(Supervising and Monitoring Board)

1. A Board for Supervision and Monitoring of tax incentives granted under this Code is hereby established, whose organization and functioning are defined through a Joint Ordinance by the ministers in charge of the sectors of economy and finance.
2. Representatives of the following entities make up the Supervising and Monitoring Board:
 - a) Directorate General for Promotion of Private Investment, Chair;
 - b) Directorate General of Economy and Development;
 - c) Directorate General of Customs;
 - d) Directorate General of Taxes;
 - e) Directorate General of Industry and;
 - f) Directorate General of Tourism.
3. The Supervision and Monitoring Board will have the exclusive competence for the enabling of decision-taking regarding decisions on application documentation, and the regular monitoring of compliance by the parties.

CHAPTER IV

CONFLICT RESOLUTION

ARTICLE 18

(Conciliation and Arbitration)

1. Conciliation or, if this is not possible, arbitration, will be given priority in the resolution of conflicts and disputes arising from investment operations.
2. Investors and Companies may, at their option, submit the resolution of conflicts with the state to the rules of conciliation, mediation and arbitration arising from the above;
 - a) Mediation and arbitration covenants or agreements concluded between parties, in accordance with arbitration rules chosen by parties;
 - b) Agreements or treaties relating to the protection of investments signed between the Republic of Guinea-Bissau and the State of the investor's nationality;
 - c) The convention of 18 March 1965 for Conflict Resolution Relating to Investments (CIRCI) between the State and Citizens of other States, established under the auspices of the International Bank for Reconstruction and Development - IBRD if the investor meets the conditions laid down by Article 25 of the said Convention;

d) Regulatory provisions of the additional mechanism approved on 27 September 1978 by the Board of Directors of the International Centre for Dispute Resolution Relating to Investments - CIRCI if the investor does not fulfill the conditions laid down in Article 25 of the Convention referred to in the previous paragraph.

3. The consent of the parties regarding the Convention referred to in c) and the regulations referred to in subparagraph d), both of the preceding paragraph, is a product of the present law for the Republic of Guinea-Bissau hereof.

ARTICLE 19

(Recourse to Courts)

In the absence of implementation of the provisions of the preceding Article, the parties may resort to the Courts of the Republic of Guinea-Bissau to resolve conflicts relating to investment operations.

CHAPTER V

FINAL PROVISIONS

ARTICLE 20

(Mandatory)

The rights enshrined under this Code are binding for all central and local public administration.

ARTICLE 21

(Regulatory)

The Government, upon proposal of the Minister responsible for finance in relation to Articles 13 to 16, and the member of the Government responsible for the economy in other cases, is authorized to set out rules for the implementation of this Code.

ARTICLE 22

(Stability)

The rights and guarantees of investors under this Code shall remain valid and will be respected in the event of transfer of the investment in any form, provided that the conditions set forth herein for obtaining and enjoyment are present and remain stable.

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