

INVESTMENT CODE

FIRST CHAPTER : DEFINITIONS AND AREA OF APPLICATION

Article 1 : Definitions

For the purposes of the present Code, the meaning of the following terms is as given below:

- 1. Enterprise:** Any unity of production, of transformation and/or distribution of goods or services, for gain, whatever legal form it may have, and whether an individual or a company (a physical or moral person) is involved.
- 2. A new enterprise:** Any newly created economic entity that is in process of carrying out an eligible investment programme, for the purpose of launching its activities.
- 3. Extension :** Any approved investment programme, initiated by an existing enterprise, which gives rise to:
 - an increase of at least 25% in productive capacity or in the value of fixed assets acquired
 - or an investment in materials of production of at least FCFA 100 million
- 4. Investment:** Capital employed by any individual or company (physical or moral person), in order to acquire assets, whether fixed or movable, and whether material or immaterial, and to provide for the cost of financing an initial setting up, as well as funds for running costs necessary for the setting up or the extension of an enterprise.
- 5. Requirement for funds for running costs:** That part of the investment that is needed to provide finance for the running costs of the enterprise.
- 6. Investor:** Any individual or company (physical or moral person), whether of Senegalese or other nationality, who meets the conditions stipulated in the framework of the present Code for carrying out investment activities on Senegalese territory.

Article 2: Eligible Sectors of Activity

The present Code applies to any enterprise that carries out its activities in any of the following sectors:

- agriculture, fisheries, stock-raising and activities for stocking vegetable, animal or fisheries products ;

- manufacturing activities for production or transformation ;
- extraction or transformation of mineral substances ;
- tourism, tourist development and industries, other hotel activities
- cultural industries (publishing, recording and film industries, documentation centres, audio-visual production, etc.)
- services carried out in the following sub-sectors :
 1. health
 2. education and training
 3. erection and maintenance of industrial equipment,
 4. tele-services,
 5. air and sea transport,
- harbour, airport and railway infrastructure,
- the creation of commercial complexes, industrial parks, tourist zones, cyber-villages and handicraft centres.

Trading activities, defined as activities of resale in their existing state of products bought from outside the enterprise, are specifically excluded from the area of application of the present Code.

Activities eligible under specific Codes or under the statute of free export enterprise are also excluded from the area of application of the present Code

Materials benefiting from specific regimes are also excluded from investment programmes approved under the Investment Code.

In addition, locally acquired second hand materials cannot be taken into account in estimating the amount of the tax credit agreed by the Investment Code.

Article 3 : Treaties and other agreements concluded with other states

The provisions of this present Code do not derogate from any more extensive advantages and guarantees that may be provided in treaties or agreements that have been concluded or may be concluded between the Republic of Senegal and other states.

SECOND CHAPTER: GUARANTEES, RIGHTS, LIBERTIES AND OBLIGATIONS OF ENTERPRISES

Article 4: Guarantees and protection of property rights

In the conditions provided for in the laws and regulations in force, the right of private ownership of all assets, whether fixed or movable, and whether material or immaterial, is protected in all legal and commercial aspects, in all its constituent parts, however divided, its transfer and any contracts of which it forms the object.

The enterprise is guaranteed in particular against any measure of nationalisation, expropriation or requisition, throughout the whole extent of the national territory, except for reasons of public utility, as provided for under the law. In case of this, the enterprise will benefit from a just indemnity that will be paid in advance.

Article 5 : Guarantee of the provision of foreign exchange

The obtaining of foreign currency that is needed for the activities of enterprises is not limited in Senegal. As a consequence of this, the enterprise has the guarantee that no restrictions will be imposed on it over its requirements of foreign currency, notably for:

- assuring its normal, current payments;
- paying for its supplies and for the provision of various services, notably those that are provided by individuals or companies (physical or moral persons) outside Senegal.

These payments and transfer operations, which are the object of Articles 7 and 8 below, remain, however, subject to the justification required by the exchange controls in force in Senegal.

Article 6: Guarantee of transfers of capital

The freedom for the enterprise to transfer revenue or any products of any nature whatsoever that may result from its operations, to cede any part of its assets or to go into liquidation is guaranteed, according to the laws currently in force

The same guarantee is extended to investors, entrepreneurs or associates, whether individuals or companies (physical or moral persons), who are not citizens of Senegal, for any parts they may have of any benefits or the product of any sale of their rights as associates, or the receipt of any benefits in kind, or any part of their share of a division of the bonus after any liquidation.

Article 7: Guarantee of the transfer of earnings

The freedom to transfer all or part of any remuneration, whatever its legal nature and amount, whether expressed in local currency or in foreign currency, is similarly guaranteed to every member of an enterprise, who is a national of a third country and who can, if necessary, justify the legality of his stay in Senegal.

Article 8 : Guarantee of Access to Raw Materials

Freedom of access to raw materials produced anywhere on the national territory is guaranteed, whether in their original state or partly transformed. Agreements or practices that infringe the free play of competition are forbidden by the law.

Article 9 : Equality of treatment

Individuals or companies (physical or moral persons), covered by the Article 1 of the present Code, may, within the framework of the laws in force, acquire any rights of whatever nature in property, concessions or administrative authorisations and may participate in public tenders.

Article 10: Whatever their nationality, the individuals and companies (physical and moral persons) covered by Article 1 of the present Code, will, subject to the reservations in the Third Chapter, receive the same treatment regarding the rights and obligations deriving from Senegalese legislation and relating to the exercise of the activities defined in Article 2 above.

In this connection, foreign individuals or companies (physical or moral persons) will receive the same treatment as those individuals or companies (physical or moral persons) of Senegalese nationality, with the reservation of reciprocity and without prejudice to any measures that may concern all foreign nationals or may result from the dispositions of treaties or agreements to which the Republic of Senegal is party.

Article 11: Foreign individuals or companies (physical or moral persons) will receive the same treatment, with a reservation concerning the dispositions of treaties and agreements concluded with other states by the Republic of Senegal.

Article 12: Settlement of Disputes

Any disputes resulting from an interpretation of or the application of the present Code, which cannot be settled through friendly discussion, will be settled by the competent Senegalese courts in conformity with the laws and regulations of the Republic.

Disputes between foreign individuals or companies (physical or moral persons) and the Republic of Senegal, relating to the application of the present Code, will be settled in conformity with the conciliation and arbitration procedure that derives from:

- either a common agreement between the two parties ; or
- agreements and treaties concerning investment protection that have been concluded between the Republic of Senegal and the state of which the foreign investor is a national.

Article 13: Rights and freedoms of the enterprise

With the reservation that it must respect its obligations, as provided for in the following Article, the enterprise will enjoy complete and entire economic and competitive freedom. It will in particular be free:

- to acquire goods, rights and concessions of any nature, which are necessary for its activities, such as landed property, movable and immovable property, and commercial, industrial or forest property;
- to dispose of these rights and goods that it has acquired ;
- to join any professional organisation of its choice ;

- to select its own methods of technical, industrial, commercial, legal, social and financial management ;
- to select its suppliers and providers of services, as well as its partners ;
- to participate in public tenders throughout the whole territory
- To select its policy for human resources management and to recruit its directing staff freely.

Article 14: Obligations of the enterprise

All enterprises will be held to the following general obligations, throughout the whole extent of Senegalese territory:

- to act in conformity with the legislation of Senegal, particularly as regards the legal texts and regulations concerning the establishment and the running of enterprises, and concerning respect for public order and the protection of consumers and of the environment.
- to respect the regulations and standards already required of products in their countries of origin, in that these should complement the aforementioned national regulations;
- To provide any information deemed necessary for verifying the implementation of its obligations deriving from the present Code.

THIRD CHAPTER: PRIVILEGED REGIMES

Article 15 : Priority Objectives

The priority objectives are :

- a) the creation of new enterprises
- b) the creation of jobs
- c) the implantation of enterprises in the regions of the interior
- d) the development of existing enterprises

Article 16: Nature of the particular benefits to be agreed within the framework of the present code

Only the customs, tax and social benefits, laid down in Articles 18 and 19 below, can be granted to an enterprise during the period of investment and of its operation.

Article 17: Conditions of eligibility for particular benefits

Any investor can request the particular benefits provided within the framework of the present Code, subject to the following conditions:

1. the cost of the proposed investment, as it is understood in the present Code, is equal to or higher than one hundred million (100,000,000) Francs CFA, for activities of production of eligible goods and services, with the exception of those for which a specific minimum level has been fixed by Decree.
2. Concerning the regime for new enterprises, the proposed investment must provide for the creation of a new activity and not result from one or several legal modifications of an entity that has already exploited the assets concerned with the activity in question and whose acquisition is provided for in the framework of the programme that is the object of the request for approval.

Article 18: Particular benefits given to the investor during the phase of realising his investment. These benefits cover a period of three (3) years and are defined as follows:

- exoneration from customs duties imposed at the moment of importation of materials that are not produced or manufactured in Senegal and which are specifically intended to serve in production or in operations within the framework of the approved programme

The details of exoneration for spare parts, tourist vehicles, when they are specified in the agreed programme, and for utility vehicles will be determined by Decree;

- suspension of Value Added Tax, payable on entry, for materials that are not produced or manufactured in Senegal and which are specifically intended to serve in production or in operations within the framework of the approved programme, according to methods that will be defined by Decree;
- suspension of Value Added Tax included in bills by local providers of goods, services and works, which are necessary for the realisation of the approved programme, according to methods which will be defined by Decree

Article 19: Benefits granted during the phase of operation

i. Tax Benefits

The benefits will be divided among the following different tax regimes:

- The regime for new enterprises:

- Exoneration from the Employer's Fixed Contribution (CFCE) during five (5) years

If the number of jobs created within the framework of the approved programme of investment is superior to two hundred (200), or if at least 90% of the jobs

created are based outside the Dakar Region, this exoneration can be extended up to eight (8) years

- Particular benefits concerning the Profits Tax

- In the area of Profits Tax, the new approved enterprises are authorised to deduct from the amount of taxable profit a part of its investment, whose nature will be defined by Decree

For new enterprises, the amount of authorised deductions is fixed at 40% of the amount of retained investment. For each fiscal year, the amount of deductions cannot exceed 50% of taxable profit.

These deductions can extend over five (5) successive fiscal years, at the end of which, the remainder of the tax credit that has been authorised but not used, is neither taxable nor reimbursable

- The regime for projects of extensions:

- Exoneration from the Employer's Fixed Contribution (CFCE) during five (5) years. If the number of jobs created within the framework of the agreed programme of investment is superior to one hundred (100), or if at least 90% of the jobs created are based outside the Dakar Region, this exoneration can be extended up to eight (8) years

In the area of Profits Tax, the approved projects for extension are authorised to deduct from the amount of taxable profit a part of its investment, whose nature will be defined by Decree

For the approved projects for extension, the amount of authorised deductions is fixed at 40% of the amount of retained investment.

- For each fiscal year, the amount of deductions cannot exceed 25% of taxable profits

These deductions can extend over five (5) successive fiscal years, at the end of which, the remainder of the tax credit that has been authorised but not used, is neither taxable nor reimbursable

Concerning individuals (physical persons), the reduction provided for in the present Article is not additional to the regime for the reduction of taxes on the re-investment of profits, provided for in the General Tax Code.

ii. Other Benefits

Both for new enterprises and for projects for extension, the workers recruited, from the effective date of the benefits of operation, following the notification by the investor that he has begun his activities, will be regarded, for the purposes of labour legislation, as workers taken on as additional to the labour force to undertake work that is due to an increase in activity

As a consequence of this, enterprises may make agreements with the workers so recruited, from the date of the approval, for fixed term labour contracts for a period not exceeding five (5) years

FOURTH CHAPTER: METHODS OF PROVIDING BENEFITS AND PROCEDURES FOR APPLICATION

Article 20 : Dossier requesting approval

Any investor who wishes to benefit from any of the advantages provided in the present Code must submit a dossier applying for approval to the National Agency for Investment Promotion and Major Projects (*l'Agence nationale chargée de la Promotion de l'Investissement et des Grands Travaux*) (APIX) or to the competent authority designated as such.

The dossier must contain precise information about the investors, information about their programmes, notably its nature and its amount, as well as any other information relevant for the issue of an authorisation and for its follow up.

In addition to this dossier, in cases of extension, the enterprise must deposit a fiscal discharge (a certificate that all fiscal obligations have been met).

Article 21: Consideration and issue of an approval

The request for approval is considered and a written reply sent to the investor within a period that shall not exceed ten (10) working days, from the date when the request is presented to APIX or to the competent authority.

If after this period, no reply has been given, the request is considered as approved. In this case, the document of receipt of the request is regarded as sufficient evidence and takes the place of an approval. The competent authority is then obliged to deliver the approval.

The approval should be a written document, with the relevant name, dated and signed by the competent authority concerned in the matter. It should also be detailed, complete and precise and should above all list the particular benefits that have been agreed

The approval is given in two stages:

- a. approval describing the benefits to be given during the realisation phase,
- b. approval describing the benefits to be given during the operation phase.

The notification given by APIX or by the competent authority to the investor should recall all the benefits that will be given both during the realisation phase and the operation phase.

A refusal to give approval should be issued in written form and should give reasons. It should expressly show the non-conformity of the request with the conditions required for eligibility for the particular benefits provided for in the present Code.

Article 22: Obligations of an investor who benefits from an approval

In addition to the general obligations provided for in Article 14 above, any investor who benefits from an approval should satisfy the following obligations:

- at the end of every year, he should inform APIX or the competent authority of the extent to which the project has been carried out;
- he should declare to APIX or to the competent authority the date when the activity, for which his project has been given approval, actually started, and should submit a recapitulation of the investments carried out ;
- he should allow the competent Authority to conduct an inspection to confirm that the activity is in conformity with what has been approved;
- he should provide APIX or the competent authority with a copy of the information in statistical form which any enterprise is legally obliged to provide for the National Statistical Services.
- he should conduct the accounting of the enterprise in conformity with the accounting system adopted within the framework of the West African Accounting System (SYSCOA).

Article 23: Period of expiry of and the conditions for withdrawing an approval

The approval and the particular benefits it provides shall expire, in the terms provided for in Articles 18 and 19 of the present Code. The failure by the investor to fulfil all or a part of the obligations imposed on him may lead to the withdrawal of the approval. This withdrawal may be preceded by a grace period of up to a maximum of ninety (90) days, during which time the investor is invited to regularise his position.

The withdrawal of the approval, once it has been pronounced, makes immediately payable all the customs duties, other duties and taxes, from which the investor, in view of the approval, has been granted exception, without prejudice to any possible judicial proceedings and any penalties incurred.

Article 24: Sanctions for non-respect of the approval

The non-respect of any one of the conditions for the provision of a privileged regime involves the suspension of the corresponding fiscal benefits for the tax year in course, when the condition was not fulfilled.

If the non-respect of the conditions for admission concerns the character of a new enterprise, the procedure for the withdrawal of the approval, according to the procedures described below, will be set in motion.

Article 25: Obligations of approved enterprises

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Independently of the respect of legal and regulatory dispositions concerning their activities and the conditions and obligations provided for in the letter of approval, the approved enterprises should, throughout the period of application of the regime under which they are placed:

- a. observe strictly the programmes of investment and the activities that have been approved; any significant modification to the aforementioned programmes must receive the previous authorisation of the structure concerned with granting the approval;
- c. should conform to the standards of national and international quality applicable to the goods and services that are the object of their activity;
- d. should conform to the national environmental standards applicable to their activities ;
- e. should inform the Single Information Collecting Centre (CUCI) of their financial accounts at the end of each accounting year
- f. should give priority to employing Senegalese nationals of equal competence and organise the training and promotion of Senegalese nationals within the enterprise.

FIFTH CHAPTER: METHODS OF PROVIDING BENEFITS AND PROCEDURES FOR APPLICATION, FINAL DISPOSITIONS

Article 26: Non extension of benefits

No enterprise can claim to enjoy the benefits deriving from one or several privileged regimes, if it has not received the approval provided in the present Code, nor claim the application of these benefits, if it has not effectively fulfilled the conditions of approval.

The period for which the benefits accorded to an approved enterprise concerning one or several privileged regimes cannot be extended, either at the time of the approval or at the end of the period during which the enterprise has enjoyed the aforementioned benefits.

Article 27: Period of expiry and the conditions for a withdrawal of approval

The approval and the particular benefits which it has provided expire at the end of the period provided for in Article 23 of the present Code. The failure by the investor to fulfil all or a part of the obligations imposed on him may lead to the withdrawal of the approval. This withdrawal may be preceded by a grace period of up to a maximum of ninety (90) days, during which time the investor is invited to regularise his position.

The withdrawal of the approval, once it has been pronounced, makes immediately payable all the customs duties, other duties and taxes, from which the investor has been granted exception, in view of the approval, without prejudice to any possible judicial proceedings and any penalties incurred.

The authority concerned with granting the approval is responsible for giving notice to the enterprise to take the measures necessary to bring to an end the situation created by its failures

In the absence of sufficient results within a period of ninety (90) days, dating from the date on which such notice was given, the competent authority shall decide, after conducting an enquiry, whose conclusions shall be communicated to the enterprise, concerning the total or partial withdrawal of the approval.

The decision to withdraw the approval shall be given in writing, and shall include the date appointed for the withdrawal to take effect.

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Article 28: Any recourse against a decision to withdraw approval will not suspend the effects of the withdrawal, unless such recourse has been introduced before the competent Senegalese jurisdiction within sixty (60) days from the date of the notification of withdrawal.

Article 29: Modification of the Code

The procedure for modifying the present Code is the same as that which governed its adoption.

Article 30: Temporary Provisions

The Law No 87.25 of 18 April 1987 concerning the Investment Code, and the texts of application, as well as all the dispositions previous to the present Code, are abolished.

Nevertheless, approvals given before the entry into force of the present Code will remain in force for the period provided for in their application. They can be admitted, after the submission of a request, to the benefits of the present Code. Such a request must be made within six months from the entry into force of the present Code.

Article 31: Decrees and Circulars will provide any necessary clarifications for the application of the present Law, which will be applied as a State Law and will be published in the Official Journal.

Done in Dakar on 6 February 2004

By the President of the Republic

The Prime Minister

Abdoulaye WADE

Macky SALL