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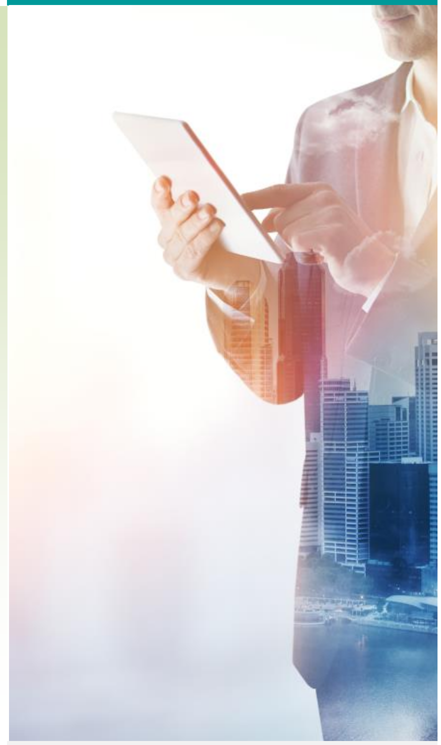

THE NEW GENERATION OF BUSINESS LAWS

TUNISIA, 2017

Tunisia has undertaken major legal reforms during 2016 and 2017 aiming to develop its business environment, improve its competitiveness, increase its export capacity, develop priority sectors and achieve sustainable development.

These Business Law reforms are an integral part of an on-going general reform process.

This reconstruction process of key business regulatory pillars aims to enhance the creation of wealth and generating new jobs in the long run. But the legal reform process also aims to ensure both: full guarantees of private property and transparent predictability for entrepreneurial activity, on the one hand, and efficiency as well as sufficiently reasonable legal control over economic processes, on the other hand.

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INVESTMENT LAW REFORM

INVESTMENT LAW,
2016-71 of September 30, 2016

After more than six years of extensive discussions, the modernization of the Tunisian investment legal framework has now been adopted.

The new Investment Law entered into force on April 1st, 2017, repealing and replacing the existing investment incentive code of 1993.

This new investment law provides for general provisions in respect of promotion of investment, especially foreign investment, and protection of investors and refers to several implementing decrees. Flexibility and legal certainty are the key drivers of the investment law reform.

This legislative reform aims to bring significant changes to the investment environment in Tunisia.

FOCUS POINTS:

OPENING UP MARKET ENTRY - FREEDOM OF INVESTMENT:

- **Equal treatment for foreign investors.** The Investment Law reiterates the principle of freedom to invest in Tunisia. Foreign investors have equal rights and obligations with local entrepreneurs. Under comparable conditions, a foreign investor will not be treated less favorably than a Tunisian investor.
- **Introduction of the "negative list for market access" approach.** Prior administrative approvals will no longer be required unless the activities fall under a negative list which is yet to be seen. The negative list system will be applied equally to foreign and domestic investors. Any refusal to issue an authorization should be justified and notified to the investor in writing and within the legal time limits (setting of deadlines). Otherwise, the administrative silence is to be construed as tacit approval, unless the application does not meet all the legal prerequisites.
- **Liberalization in favor of foreign real estate transactions.** Tunisian law follows the principle of freedom of the acquisition of real estate as part of investment project (except for real estate in the agricultural land).
- **International recruitment.** The need to employ foreign staff is a common occurrence in Tunisia as employers currently seek to bridge the skill shortage gap that exists in the labour market. The new Law has significantly improved access for any company to recruit foreign management: up to a maximum of 30% of the total number of managers to the end of the 3rd year of a company's incorporation and 10% from the 4th year onwards. In all cases, all companies (whether foreign or domestic) may hire four foreign managerial staff.

STRENGTHENING POST-ENTRY MARKET GUARANTEES:

- **Free transfer.** Freedom of capital repatriation and profits transfer abroad in foreign currency is guaranteed.
- **Protection of property and intellectual property rights.** Legal guarantee against expropriation under international minimum standard of treatment. Foreign property may not be subject to expropriation unless it is for a public purpose, non-discriminatory, is consistent with applicable laws and due process and is accompanied by full compensation.
- **Access to international arbitration.** Foreign investors are granted the right to choose any method ADR (including international arbitration) to resolve investment disputes.
- **Investment incentives.** Introduction of multiple tax, financial and regulatory incentives. These have a two-fold objective: providing liquidity by accelerating at the same time funding procedures and promoting transparency and supervision efficiency in the same procedures.

IMPLEMENTATION DECREES

These Decrees are about the investment governance framework (institutional provisions): besides to increasing liquidity and accelerating investment procedures, the Investment Law aims to ensure transparency:

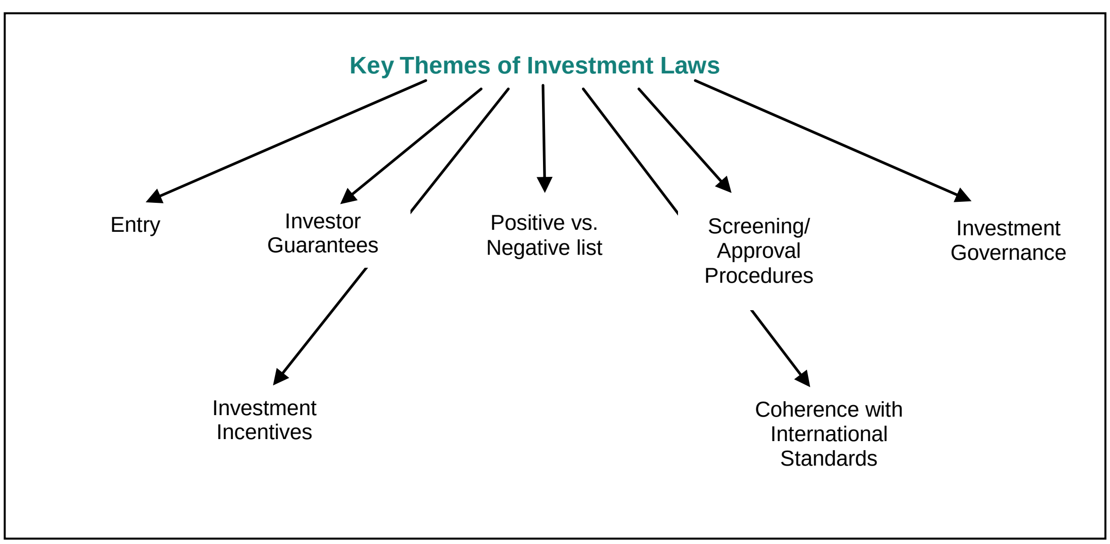
- **Government Decree No. 2017-388 of March 7, 2017**, about the High Investment Council, the Tunisian Investment Authority and the Tunisian Investment Fund:
  - *The High Investment Council* is composed of ministers connected to the field of investments and presided over by the Prime Minister and has for mission to determine the State policy for investments, is responsible for the promotion of investments and improvement of the business environment in Tunisia.
  - *The Tunisian Investment Authority* is under the authority of the minister in charge of investment and has for mission to orientate and inform investors, examine bonuses applications and make the grant decisions.
  - *The Tunisian Investment Fund* has for mission to allocate grants and contributions, etc.

- **Government Decree No. 2017-389 of March 7, 2017**, on financial incentives for investments under the Investment Law:
  - Investment grants (intended for priority sectors, regional development, etc.);
  - Economic performance grants (research and development expenses, employee training cost for the certification of competencies, etc.;
  - Grant based on job creation capacity;
  - Sustainable development grant (projects addressing environmental problems, for example aiming to reduce gas and toxic air pollution emissions, etc.);
  - Financial incentives for the agricultural sector (sea farming, fishing, etc.) as well as agricultural real estate loans.

  Pursuant to this Decree, the Tunisian Investment Fund is enabled to:
  - Contribute to the creation of investment funds to support the self-financing of investments in regional development and priority sectors;
  - Participate in the capital of companies within the limits stated by law (30 and 60% of the total capital in respect of projects with total cost investments within the limit of 15 MD).

  In respect of projects of national interest, the Decree provides for two majors incentives:
  - Deduction of profits from the corporate tax base within ten years,
  - Investment grant within 1/3 of the investment cost and with a ceiling of 30 million MD
  - State participation to the infrastructure works expenses.

- **Government Decree No. 2017-390 of March 9, 2017** about the creation of a management unit by objectives for the execution of the project of revising the activities authorizations and about establishing the Tunisian nomenclature of activities.



TAX INCENTIVES LAW
2017-8 of February 14, 2017

On 14 February 2017, Parliament passed the new fiscal incentives law, with the objectives of reform and simplifying the tax incentives system to promote regional development, exports, agriculture and fisheries, investment in priority sectors, such as information and communication technologies (ICT), automotive and aeronautical components industry and the pharmaceutical industries, etc.

FOCUS POINTS:

Regional Development

The new law includes measures to promote regional development: companies established in the regional development zones are allowed to totally deduct incomes and profits during the first 5 years of operation for the first priority group, and during the first 10 years for the second priority group.

In addition, after the end of the period of total deduction of income and profits, the new law includes (for companies operating in the regional development zones) deduction of 2/3 of incomes from any direct investments and exceptional profits, besides to a reduced tax rate (10%) on profits and exceptional profits (investments bonuses, etc.).

Agriculture and Fisheries

The new law includes measures to promote agricultural development: companies operating in agriculture and fisheries (including fish farming activities) are allowed total deduction of incomes and profits for a period of 10 years from the date of entry in effective operation.

In addition, after the end of the period of total deduction of incomes and profits, the new law includes deduction of 2/3 of incomes from any direct investments as well as exceptional profits, besides to a reduced tax rate (10%) on profits and exceptional profits.

Exportation

The new law includes deduction of 2/3 of any export incomes and exceptional profits besides to a reduced tax rate (10%) on profits.

Sustaining and anti-pollution activities

Companies operating in sustaining activities (professional training, culture, sanitary, etc.) and anti-pollution activities are entitled to deduce 2/3 of any their incomes and exceptional profits.

Projects of National Interest

Projects of national interest benefit of several financial and tax incentives, including:

- a total deduction of profits from the corporate tax base within the limit of 10 years;
- Investment grant within 1/3 of the investment cost and with a ceiling of 30 million MD;
- State participation to the infrastructure works expenses.

Newly created companies

To promote private initiative and start-ups operating in specific sectors of activities, the tax incentives law provides for the deduction of their profits and incomes in the first four years of activity by 100%, 75%, 50% and 25%.

Re-investment incentives

Exporting companies, companies established in the regional development zones and companies operating in agriculture and renewing industries, which are totally or partially reinvesting their profits and incomes, are entitled to the deduction of all the re-invested incomes or profits of the net incomes or profits subject to income tax.

PPP & PUBLIC CONTRACTS

The country's government set up a new PPP law, Law No. 2015-49 on November 27, 2015, implying that the government has PPPs on its political agenda, and sees PPPs as a tool to help mobilize funds for the implementation of major projects. In this regard, developing transparent public-private partnership (PPP) solutions to attract private sector participation is key.

Furthermore, Decree No. 2014-1039 covers both PPPs and concession contracts and the new PPP legislation coexists with the previous Concession Act of April 2008.

Tunisia has four organizations that facilitate the development of PPP projects: the Strategic Commission for PPP, the PPP Head Office at the Finance Ministry, the Directorate General of PPP (DGPPP) and the Concessions Follow-up Unit.

Tunisia has experience with user-based concession projects and private involvement in infrastructure financing, construction and management with electricity and transport having received significant PPP awards over the last decade. In the past, desalination plants have been constructed with private sector participation and, more recently, Tunisia's wastewater and water sector departments have both also considered private sector participation.

BANKING

Strengthening the rules of good governance in credit institutions is among the main novelties of the Banking Law No. 2016-48 of July 11, 2016 relating to banks and financial institutions and the Law No. 2016-35 dated April 25, 2016, determining the general status of the Central Bank of Tunisia, as well as the Decree No. 2016-1098 dated August 15, 2016, on the organization and operating procedures of the Tunisian Commission for Financial Analysis.

RENEWABLE ENERGY

Law n. 2015-12, dated May 11, 2015, related to the production of electrical power through renewable energy provides for provisions related to self-production and authorizes the creation of specialized companies in the production of power designed for local consumption (STEG) or for exports.

This Law completes the present legal framework with the existing National Fund for Energy Control (FNME) which constitutes the financial instrument supporting renewable energy promotion policies. It can be used to provide direct financial incentives granted in the framework of the energy law and related legal texts. Direct subsidies granted by FNME have been complemented by specific fiscal incentives assigned to the purchase of equipment and products used in renewable energy production: application of minimal customs fees and VAT exemption. These benefits come in addition to the investment law which also offers incentives and subsides related to investments.

COMPETITION LAW

On September 25th, 2015 a new reform of the Tunisian Competition Law has been adopted.

This reform has been carried out in order to strengthen fair competition in the domestic market, enhance the competitiveness of the national economy, meet the international standards in the field of competition and respond to the required economic challenges at both national and international level. The reform is also consistent with the proposals of the World Bank to focus on removing barriers to market entry and strengthening competition in Tunisia.

Basically, the new reform has covered four main axes: strengthening the competition authority’s prerogatives, consolidating some procedural aspects in the field of competition, including new measures for merger control, developing a new fining system, and enhancing the transparency of the bodies in charge of applying the competition law.

BANKRUPTCY LAW

By Law No. 2016-36 of 29 April 2016, about the “collective recovery proceedings”, the Tunisian legislator operated a large reorganization of the “collective recovery procedure law”: amicable and judicial reorganization, judicial liquidation due to economic difficulties, bankruptcy, and other related procedures (directors’ liability and bankruptcy extension).

The new Law has opted for the simplification of the legal framework of bankruptcy and has also strengthened the role of the debtor and the creditors in the bankruptcy proceedings. This new Law confirms the government’s principal interests in addressing a company in distress: preservation of jobs and sustaining the company business, not necessarily the liquidation of assets or protection of creditors.

THE LAW ON ANTI-CORRUPTION

Through enacting a law on the denunciation of corruption and the protection of whistleblowers (Law No. 2017-10 of March 7, 2017, on the denunciation of corruption), the Tunisian Law makers have shown significant awareness as regards to corruption’s impact on the investment climate which keeps impeding the country’s economic growth.

Adopting such law is deemed to be a warranty to a progressively predictable investment environment, through determining the modalities and procedures of reporting on corruption and whistleblowers protection mechanisms in a way that contributes to promoting transparency, integrity, accountability and good governance and to prevent and fight against corruption in the public and private sector.

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