

# **INVESTMENT LAW**

March 2017

### **CONTENT**

### 1. GENERAL BACKGROUND

- 2. Presentation of the Investment Law
- 3. Provisions of the Investment Law and Implementation Decrees



#### 1. GENERAL BACKGROUND:

STRUCTURAL, ECONOMIC AND SOCIAL REFORMS

2016 - 2020 New Economic Development Vision

 The GoT has prepared a guidance document for the 2016-2020 strategic vision in conjunction with the discussion of the new law, ensuring consistency between the economic vision and investment law

The GoT priorities: Improving Business Climate and Achieving Economic Recovery

 The GoT has given priority to reforming the Investment Law



New Tunisia's offer :

More attractive

And more competitive

- This new offer will be promoted at international economic conferences & events.
- It has already been presented at the International Investment Conference organized in Tunis late November 2016
  - The new offer of the Tunisian destination is based on a highly attractive business environment: political stability and security, infrastructure projects, structural and economic reforms ...

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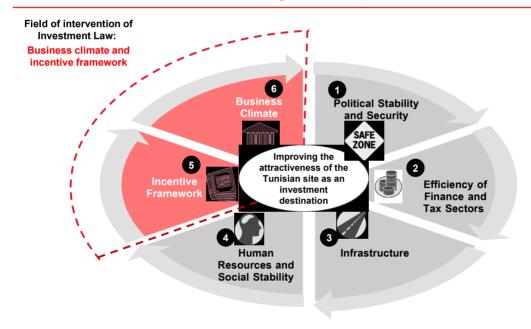
Objectives of the Investment incentive Code Review

- Meet the current development requirements of the country
- Communicate positive messages to investors
- Have an inclusive approach dealing with investment in all its dimensions
- Simplify administrative procedures and reduce deadlines
- Create new mechanisms for investment governance



### 1. GENERAL BACKGROUND:

Investment law is one factor among others to improve investment attractiveness





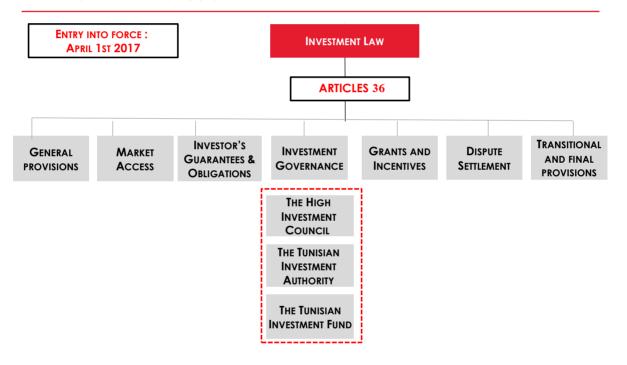
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## 2. Presentation of the Investment Law

3. Provisions of the Investment Law and Implementation Decrees

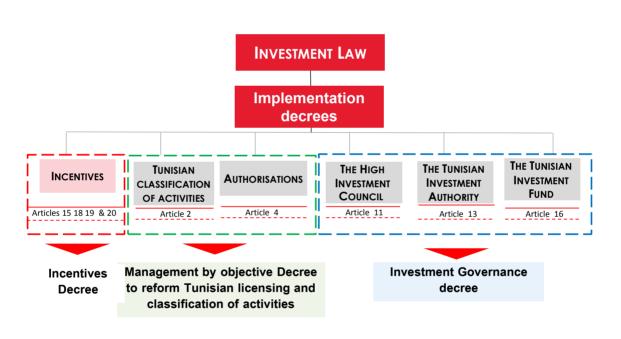
# 2. INTRODUCTION OF THE INVESTMENT LAW

INVESTMENT LAW STRUCTURE





#### IMPLEMENTATION DECREES: 3 DECREES INSTEAD OF 33 DECREES IN THE PREVIOUS CODE



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#### 2. INTRODUCTION OF THE INVESTMENT LAW

**ORIENTATIONS OF THE NEW LAW** — ALIGNMENT OF THE INVESTMENT LAW WITH THE OBJECTIVES OF THE NATIONAL ECONOMY: FROM A LOW COST ECONOMY TO AN INTERNATIONAL ECONOMIC HUB

A more
diversified
economic
fabric with a
strong
potential for
Job Creation

- Regional Development
- 2. Support job creation and improve employability
- 3. Promote innovation and creativity
- Integrated, comprehensive and sustainable economic systems
- 5. Productivity, a source of sectors' competitiveness
- 6. Position in the global value chain, promote promising sectors and enhance export

Objectives of the law: promote investment and encourage enterprise creation and development specifically through:

- 1. Increasing the value added, competitiveness and export capabilities, as well as the technological content of the national economy at the regional and international levels and developing priority sectors.
- 2. Creating **jobs** and enhancing the human resources **skills**
- Achieving an integrated and balanced regional development
- 4. Achieving sustainable development.



- 1. GENERAL BACKGROUND
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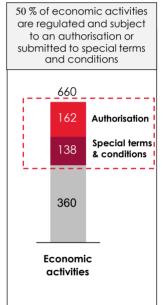


# 3- PROVISIONS OF THE INVESTMENT LAW AND IMPLEMENTATION DECREES MARKET ACCESS: REVIEW OF AUTORISATIONS RELATING TO ECONOMIC ACTIVITIES



#### Procedures included in the law and in the government order

- Issuing a government order within one year to set a negative list of administrative and sector specific authorisations
- Reducing the number of authorisations and reviewing special terms and conditions
   A 3 year Government program
- Implementing an objectives based management unit for the implementation of the program
- Removing the authorisation requirement to be issued by the High Investment Commission for the service activities that are not fully exporting and which are subject to an authorisation for foreigners (49 activities) unless provided for under sector related laws
- Exempting foreign acquisitions of Tunisian securities granting the right to vote or of shareholders' shares in companies operating in Tunisia from authorisation requirement
- Setting the deadlines of authorisation agreements
- Requirement to justify the refusal to issue an authorisation
- Where the administrative authority fails to reply after the expiry of the deadlines, the authorisation is considered as granted
- Authorisations to be granted by the Investment Authority if the administrative authority fails to reply within the deadlines



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Tunisian Republic
Ministry of Development, Investment and International Cooperation



3- PROVISIONS OF THE INVESTMENT LAW AND IMPLEMENTATION DECREES

MARKET ACCESS: PROPERTY OWNERSHIP, SUPPORTING REAL ESTATE ROLE IN INVESTMENT



To...

FROM

#### **INVESTMENT INCENTIVE CODE 93**

- Ownership of real estate for foreign investors is limited to tourist areas, managed industrial zones and industrial facilities

#### **KEY DRIVERS**

 Obstacles met by foreign investors in the acquisition of non-agricultural properties compared to competing countries

# INVESTMENT LAW

Simplifying the procedures for foreign investors in purchasing the real estate as part of an investment project

 Granting foreign investors the right to purchase nonagricultural properties as part of investment projects

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Republic of Tunisia

# 3- PROVISIONS OF THE INVESTMENT LAW AND IMPLEMENTATION DECREES MARKET ACCESS: HIRING FOREIGN MANAGERIAL STAFF.



POSSIBILITY TO HIRE FOREIGN MANAGERIAL STAFF WITHIN A LIMIT OF 30 % OF TOTAL MANAGERIAL STAFF S FOR EVERY ENTERPRISE

FROM

To...

#### **INVESTMENT INCENTIVE CODE 93**

- The possibility to hire a maximum number of 4 foreign managerial staff granted to totally exporting firms, with the possibility of hiring more than 4 by adopting a program to gradually integrate Tunisian

#### **KEY DRIVERS**

- Low rate in terms of expertise and technology transfers especially in high technological content activities,
- Investors expressed their urgent need to employ foreign highly-qualified human resources, especially during the start-up phase of their projects.

#### **INVESTMENT LAW**

- Hiring foreign managerial staff within a limit of 30 % of the total number of managerial staff til the end of the third year from the date of the legal incorporation of the company or from the start date of its actual operation depending on the company's choice. This proportion is reduced to 10 % in the fourth year as from this date.
- In all cases, the company can hire four managerial staff of foreign nationality
- Beyond this number, a formal authorisation is required

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staff



**INVESTOR'S GUARANTEES AND OBLIGATIONS:** THE NEW LAW INCORPORATES THE PRINCIPLE OF FAIR TREATMENT AND PROTECTION OF PROPERTY AGAINST NON-COMMERCIAL RISKS

#### FROM

#### **INVESTMENT INCENTIVE CODE 93**

- The present Code does not contain sections that provide for the investor's guarantees and obligations
- There are 54 bilateral agreements providing for the protection of investors (that supercede implemented laws)
- The present Code does not explicitly provide for the rights and privileges that are granted notwithstanding any change in the laws and regulations in force

#### **KEY DRIVERS**

- Best practices clearly define fair and equitable treatment and protection of ownership against noncommercial risks.
- The need to compile the rules and regulations that enshrine fair treatment and include them in the code in order to grant investors a clear vision and reassurance
- Best practices provide a clear stipulation on ensuring acquired rights.

# INVESTMENT LAW

Ensuring equal treatment to foreign and Tunisian investors in terms of rights and obligations when they

are in similar legal

positions.

- Protecting investors from non-commercial risks by restricting the State's right to seizure, which can be enforced only for the public interest and without discrimination on the basis of nationality and against a fair compensation.
- Ensuring the respect for industrial and intellectual property







**INVESTOR'S GUARANTEES AND OBLIGATIONS:** REDUCING PROCEDURE BARRIERS FACED BY FOREIGN INVESTORS RELATING TO INTERNATIONAL CURRENCY TRANSFERS

#### FROM

# To...

#### **CURRENT EXCHANGE CODE**

- The present Exchange Code includes two types of transfers: current transfers and non-current transfers
- Current transfers are regulated by the Central Bank of Tunisia
- Current transfers are carried out without authorisation from the Central Bank and are under the responsibility of commercial banks
- The Central Bank is responsible for authorising non-current transfers

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#### **KEY DRIVERS**

- Several investors complained about the length of time taken to respond to authorisation requests for non-current transfers and about the absence of justification for the refusal decisions.
- A number of investment protection agreements concluded by Tunisia with several countries which have a stronger legal force than the Exchange Code include the free transfer of funds abroad without restrictions.
- The list of current operations is not defined and does not, for example, include the possibility of paying a first instalment before delivery of goods.
- Some transfers are referred to the Central Bank, although this is not a legal obligation.
- The documents required for the transfer operations are not clearly defined (No standardisation), or request of documents that are difficult to provide in some cases.

- **INVESTMENT LAW**
- **Enabling foreign investors** to transfer their profits and assets abroad in foreign currency in full freedom in compliance with the **Exchange Code by** simplifying the procedures and reducina the deadlines.
- Foreign investor must be informed of the reasons for being denied the authorisation for the transfer of funds abroad.

Republic of Tunisia





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**INVESTOR'S GUARANTEES AND OBLIGATIONS:** BEST PRACTICES FOR INVESTOR'S OBLIGATIONS ARE PROVIDED FOR IN INVESTMENT LAWS

#### FROM

### INVESTMENT INCENTIVE CODE 93

# - The investor's obligations

are not explicitly stated

#### **KEY DRIVERS**

- Comparative experiences show that best practices include explicit stipulations within the investment laws on investors' obligations
- Need for Responsible Investors

#### INVESTMENT LAW

To...

- Respect for the legislation in force in Tunisia and more specifically the legislation relating to employment, social security, health, competition, consumer protection and environmental protection.
- Providing all required information within the framework of the application of the provisions of this law and its implementing decrees.
- Ensuring the accuracy, precision and comprehensiveness of all information provided within the framework of the investment.

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**INVESTOR'S GUARANTEES AND OBLIGATIONS:** RESORT TO ARBITRATION IF A DISPUTE CANNOT BE SETTLED

THROUGH RECONCILIATION

- No reference in

dispute

settlement

procedures

#### FROM

#### **INVESTMENT INCENTIVE CODE 93**

#### **KEY DRIVERS**

#### **INVESTMENT LAW**

1- Amicable Settlement of Disputes

- The choice of reconciliation among alternative dispute resolution procedures
- Settlement of disputes arising from the application or interpretation of the Investment Law on Reconciliation
- Parties are free to agree on reconciliation procedures

to settle disputes and the present establish a system Code to

- Best practices

include explicit

based on the principle of reconciliation and guaranteeing the

stipulations on how

rights of the involved parties

2- Judicial settlement of disputes

i. Between the Tunisian State and the foreign investor

- Dispute settlement shall be subject to arbitration and arbitration may be sought under an agreement
- Free selection of one of the arbitration authorities (ICSID, other arbitral institutions or arbitral tribunals)
- Subject to the jurisdiction of Tunisian courts to consider the dispute in case of failure to conclude an arbitration agreement.
- ii. Between the Tunisian State and the Tunisian investor
- Principle: Subject to the jurisdiction of the Tunisian courts
- Exception: An arbitration agreement in case the dispute is economic, commercial or financial resulting from an international relationship pursuant to Chapter 7 of the Arbitration Code

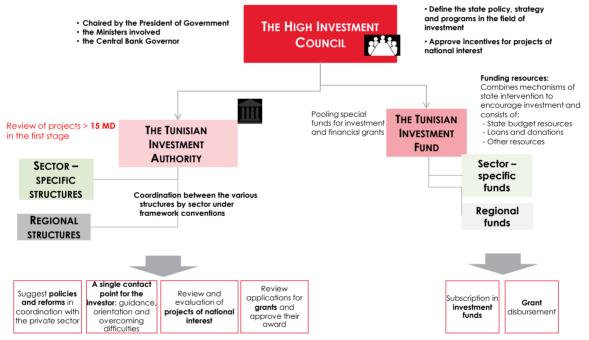
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# 3- PROVISIONS OF THE INVESTMENT LAW AND IMPLEMENTATION DECREES INVESTMENT GOVERNANCE: NEW MECHANISMS AND STRUCTURES TO PROMOTE INVESTMENT -



MORE HARMONIOUS ROLES WITHIN THE INSTITUTIONAL FRAMEWORK



Republic of Tunisia Ministry of Development, Investment and International Cooperation



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### 3- Provisions of the Investment Law and Implementation Decrees: Financial Incentives

Types of Grants		<u>Calculation</u>	<u>on method</u>	Maximum Ceiling		
	Regional Development	15 % to 30 %	% of investment cost	1.5 Md / 3 MD		
1. Investment	Priority Sectors	15 %	% of investment cost	1 MD		
Grants	Economic Regimes	15	% of investment cost	1 MD		
	Infrastructure expenditure under regional development	Component cost	65 % / 85 %	10 % of the project cost with a ceiling of 1 MD		
2. Economic	Material investments to master modern technologies and improve productivity	Component cost	50 %	500,000 TND		
performance grants	Intangible investments	Component cost	50 %	500,000 TND		
grams	Research & development expenses	Component cost	50 %	300,000 TND		
	Employee Training cost leading to certification of competencies	Component cost	70 %	20,0000 TND per Company		
3. Grant based on	Job Creation Capacity	- Three years - 5 and 10 ye				
4 . Sustainable Dev	velopment Grant	Component	50 %	300,000 TND		

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3- Provisions of the Investment Law and Implementation Decrees: Eligibility Conditions and Procedures for Financial Incentives

Committees in charge of granting advantages	<ul> <li>National Commission for structured projects under the supervision of the Tunisian Investment Authority: investment cost exceeding 15 MD</li> <li>National sectoral committees within relevant structures at the national level: investment cost between MD and 15MD</li> <li>Sectoral regional committees within relevant structures at the regional level: investment cost under 1 MD</li> </ul>	
Grant disbursement	<ul> <li>40 % upon completion of 40 % of the approved investment cost</li> <li>60 % upon entering the actual operation phase of the project</li> </ul>	

# 3- PROVISIONS OF THE INVESTMENT LAW AND IMPLEMENTATION DECREES: FINANCIAL INCENTIVES FOE THE AGRICULTURAL SECTOR

Categories	Соѕт	GRANT	GRANT FOR INVESTMENT  MASTERING TECHNOLOG  IMPROVING PRODUCTIVE			
Category A : Small Investments	- Agriculture below 200,000 TND - Fishing below 300,000 TND - Aquaculture below 500,000 TND	30 %	60 % cooperative companies	55 %		
Category B : Medium and large investments	Above the cost of category A	15 % with a ceiling at 1 MD	60 % cooperative companies	50 %		

#### **AGRICULTURAL REAL ESTATE LOANS**

Conditions	1993 CODE	INVESTMENT LAW		
Maximum ceiling	150,000 TND and when purchasing from ascendants 75,000 TND	250,000 TND and when purchasing from ascendants 125,000 TND		
Interest rate	5%	3 %		
Cooperative grace period	5 Years	7 Years		
Duration of payment	25 Years	25 Years		

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#### 3- PROVISIONS OF THE INVESTMENT LAW AND IMPLEMENTATION DECREES: PARTICIPATION IN CAPITAL

- Enabling the Tunisian Investment Fund to contribute to the creation of investment funds to support the self-financing of investments in regional development and priority sectors
- 2. Enabling the Tunisian Investment Fund to participate in the capital of enterprises (investment cost under 15 MD)

Project Cost	Own Contribution	TUNISIAN INVESTMENT FUND	GLOBAL CEILING OF THE FUND'S CONTRIBUTION			
Investment cost under 2 MD	10 % of the capital	60 %				
Investment cost between 15 MD and 2 MD	20 % of the capital	30 %	2 MD			



#### 3- PROVISIONS OF THE INVESTMENT LAW AND IMPLEMENTATION DECREES: PROJECTS OF NATIONAL INTEREST

1. **Definition of projects of national interest**: the investment cost is no less than 50 MD or the creation of 500 jobs within three years.

#### 2. Incentives

- Deduction of profits from the corporate tax base within ten years,
- Investment grant within one third of the investment cost and with a ceiling of 30 million MD
- Contribution of the State to the expenses resulting from infrastructure works
- 3. These incentives shall be granted by a governmental decree following the approval of the High Investment Council.



## SUMMARY OF INVESTMENT LAW PROVISIONS



#### I. MARKET ACCESS RULES

- 1. No reference to any authorisation in the new law and removing the authorisation of the **High Investment Commission**
- 2. Setting up a negative list of authorisations within a year
- 3. Setting the deadlines of, authorisation agreement, requirement to justify the refusal to grant an authorisation, and considering the non-response of administrative authorities beyond the deadlines as an implicit authorisation
- 4. Employing foreign managerial staff (30 % of all managerial staff in the first 3 years and 10 %thereafter, with 4 foreign managerial staff in all cases)
- 5. Enabling foreign investors to own non-agricultural properties



#### II. INVESTMENT PROMOTION **MECHANISMS** AND STRUCTURES



- Creating a Tunisian Investment Authority: a single contact for the investor and facilitating his procedures
- 7. The establishment of the Tunisian Investment Fund: allocating arants and contributions and combining mechanisms of state intervention to promote investment
- Creation of the High Investment Council: regulate the state's policy, strategy and programs in the field of investment
- Granting financial incentives and channeling them towards national priorities (Regional development, employment, increased value added and competitiveness, sustainable development)
- 10. Granting special privileges to projects of national interest (benchmarks according to national priorities)

#### III. INVESTOR'S SAFEGUARDS AND OBLIGATIONS

- 11. The principle of investors freedom to transfer funds in foreign currency abroad
- 12. Provisions granting fair and equitable treatment
- 13. Protecting ownership against non-commercial risks
- 14. Obligations of the responsible investor and respect for the legislation in force
- 15. Integrated system for the settlement of disputes

