



# Investment Law **2016**

Law n° 71-2016 dated 30<sup>th</sup> September 2016

INVEST IN **TUNISIA**

Non-official translation to English

# Investment Law

## Chapter I

### General Provisions

#### Article 1:

The present Law aims to promote investment and encourages the creation of enterprises and their development in accordance with economic national priorities, in particular through:

- the increase of the added value, competitiveness and the technological aspect of the national economy in the regional and international levels and develop priority sectors,
- the job creation and the raise of human resources competences,
- the achievement of an integrated and an equal regional development,
- The achievement of a sustainable development.

#### Article 2:

The present Law sets out the legal statutory regime of investment made by individuals or legal persons, Tunisians or foreigners, residents or non residents in all economic activities.

The economic activities are classified in conformity with the «Tunisian classification of activities", uniquely adopted by all the public services involved with the investment.

The Tunisian classification of activities is fixed by a governmental decree.

#### Article 3:

The terms used in this Law shall have the following meanings:

**Investment:** any assets made by investor in the long term to realize a project in Tunisia that contributes to the Tunisian economic development taking its risks through direct investment operations or participations.

- 1. Direct Investment Operation:** any creation of a new independent project for the purpose of producing goods or providing services or any extension or renewing operations made by an active company as part of that same project seeking for the raise of its production capacity.
- 2. Investment by Contribution Operation:** The financial participation or contribution in kind in the capital of a Tunisian companies, either at their

constitution, or in occasion of a capital increase or an acquisition of a capital participation.

- ❖ **Investor:** Any individual or legal person, Tunisian or foreigner, resident or non resident who makes investment.
- ❖ **Enterprise:** Any entity aiming to produce goods or providing services that take the form of company or individual enterprise in accordance with Tunisian legislation.
- ❖ **Regional Development Index:** an Index calculated in accordance with economic, social and demographic criterion to classify the territory regions according to their development's degrees
- ❖ **The council:** the Higher Council for Investment
- ❖ **The Authority:** Tunisian Investment Authority
- ❖ **The Fund:** the Tunisian Investment Fund.

## Chapter II

### Access to the Market

#### Article 4:

The investment is free.

Investment operations shall respect exercising economic activities legislation.

A governmental decree fixes within one year after the adoption of the present Law the list of activities subject to authorization, the list of administrative authorizations to realize the project and time periods, procedures and conditions of its issue in particularly with regard to national security and defence, rationalization of compensation, natural resources and cultural heritage, preservation and environment and health protection.

Any authorization refusal decision should report, within the legal terms, the reasons of that refusal and should be notified to the investor in writing or through any other means that provides a paper record.

Upon the expiry of the limit mentioned in the third paragraph of the present Article, the silence is considered as an approval if the application fulfils all the conditions required. In this case, the authority shall deliver the authorization to the applicant after checking the fulfil of the conditions and the deadlines in case of silence after the expiry of these deadlines.

Investments in some activities may be excluded from the provisions of the last paragraph in accordance with a governmental decree.

#### **Article 5:**

The investor is free to own, rent and exploit non-agriculture properties for the purpose of achieving direct investments operations or their extensions with respect to the land management and urbanism Code and the land use plans.

#### **Article 6:**

Any enterprise is allowed to recruit foreign management up to 30% of the total number of the management staff till the end of the third year following the legal constitution of the enterprise, or starting from the date of its entry into effective production according to the enterprise's choice. This limit is obligatory reduced to 10 % starting from the fourth year from that date. In all cases, the enterprise is allowed to recruit up to four foreign management staff.

Beyond the percentage or the limit mentioned in the previous paragraph, the recruitment of foreign management is subject to Ministry in charge of employment approval in accordance with the labour Code.

The recruitment of foreign management staff procedures are subject to labour Code provisions, except paragraphs 2, 3, 4, 5 of Article 258-2 of the said Code.

## **Chapter III**

### **Investor's guarantees and obligations**

#### **Article 7:**

Foreign investor must not be treated less favorably than Tunisian investor in like circumstances with regard to his rights and obligations mentioned in this Law.

#### **Article 8:**

Investor's funds and possessions and its intellectual rights are guaranteed in conformity with the legislation in force.

Investor's funds shall not be expropriated, except for public interest, without any discrimination regarding nationality and upon fair and equitable compensation in accordance with due process of Law.

The provisions of this Article do not prevent the implementation of courts judgments or arbitral decisions.

**Article 9:**

Foreign investors can freely transfer abroad his funds in foreign currency in accordance with applicable change legislation.

In cases the transfer to abroad requires an authorization from the Tunisian Central Bank, provisions of Article 4 of that Law shall apply.

**Article 10:**

Investor shall respect the applicable legislation in particular, with regard to competition, transparency, health, employment and social security, environment protection and natural resources protection, taxation, land management and urbanism and shall provide all required information in application of the present Law and shall guarantee the correctness, precision and completeness of the information provided.

## **Chapter IV**

### **Investment Governance**

#### **Section I**

#### **The Higher Council for the Investment**

**Article 11:**

It is set up in the Presidency of the Government a "Higher Council for the Investment" chaired by the President of the Government and consisting of Ministers in charge of sectors related to investment. The Ministers in charge of Investment, Finances and Employment shall attend to its deliberations.

The Council composition and its organization is fixed by a governmental Decree.

**Article 12:**

The Council sets the policy and strategy of the State with regard to investment and it is assigned in particular to:

- take the necessary decisions to promote investment and to improve the business environment and investment,
- evaluate the policy of the State in the field of investment in an annual published report,

- approve strategies and action plans and annual budgets of the Authority and the Fund,
- approve the annual distribution of public financial resources allocated to the Fund in accordance with the objectives of State policy regarding investment in the framework of the preparation of the budget Laws,
- take charge of the authority and Fund actions, their control and evaluation,
- decide on the incentives for the benefit of the projects of national importance mentioned in article 20 of this Law.
- The Authority ensures the permanent secretary of the Council, which meets regularly at least once every three months.

## Section II

### The Tunisian Investment Authority

#### Article 13:

It is created a public independent authority called "the Tunisian Investment Authority» endowed with the legal entity and the administrative and financial autonomy, under the supervision of the Ministry in charge of Investment.

The Authority's headquarters is situated in Tunis, and it could have regional representations and abroad.

The Authority is submitted to the commercial legislation when it is not contrary to the provisions of the present Law.

The Authority is not subjected to the Law n° 89-9 dated 1 February 1989, relating to the participations, of public enterprises and establishments.

The Authority Staff is submitted to a special staff statute that takes into account the fundamental rights and guarantees provided by Law n° 85-78 dated 5 August 1985, relating to the general status of the officials of offices, public establishments of industrial and commercial nature and companies whose capital belongs directly and wholly to the state or to the public local collectivities.

The financial resources of the Authority consist of:

- funds imputed from the State budget,
- the donations and legacies. received from Tunisia or from abroad,

- all other resources.

The administrative and financial organization as well as the staff statute of the Authority shall be fixed by decree.

**Article 14:**

The Authority proposes to the Council the policies and reforms related to Investment after consultations with the bodies representing the private sector.

It is also assigned with follow-up of their execution and collecting data related investment as well as their publishing and prepare the evaluating reports on the investment policy.

The Authority examines the requests of encouragements benefits and decide on their allocation on the bases of a technical report prepared by the structure in charge for following-up of the realization of the investment.

The relationship between the Authority and the structures in charge of investment are fixed in the framework of agreements to be approved by the Council.

**Article 15:**

It is created within the Authority " the investor's unique interlocutor" having , in particular the following charges:

- welcoming, guiding and informing investor with coordination with the different concerned structures,
- accomplishing, on behalf of investor, the administrative procedures regarding the legal constitution of the enterprise, the extension, or obtaining the approvals needed during the investment steps,
- dealing with investor's complaints and endeavour to resolve the case in coordination with different concerned structures and compile a database on received complaints for examination, suggestions of adequate solutions, publishing the breaches and corrective actions in their evaluating reports.

The direct investment declaration and the legal constitution of enterprises is made under the single administrative document which model and annexed documents list and its procedures are fixed by a governmental Decree.

The investor's unique interlocutor shall deliver to the investor an Investment declaration acknowledgment and the investment creation or enterprise extension documents within a working day from the date in which the declaration, with all requested documents are submitted.

## Section III

### The Tunisian Investment Fund

#### Article 16 :

It is created a public independent body called "the Tunisian Investment Fund" endowed with the legal entity and the administrative and financial autonomy.

The Fund is submitted to the commercial legislation and the prudent risk management rules, when it is not contrary to the provisions of the present Law.

The Fund undertakes its missions under the supervision of a supervisory body chaired by the Minister in charge of investment, having in charge, in particular:

- the planning the strategy of the development of the fund's activity and its public policy interventions,
- the planning the annual investments programme of the Fund and its participations,
- the approving the financial statements and the Fund annual report,
- the preparation of the estimated budget and the follow-up of its accomplishment,
- the preparation of the programmes conventions and the follow-up of its accomplishment,
- the approving the Fund services organization and the staff statute and the employee remuneration regime,
- the designation of the accounts auditors in accordance to applicable legislation.

The Fund is not subjected to the Law n° 89-9 dated 1 February 1989, relating to the participations, of public enterprises and establishments.

The Fund Staff is submitted to a special staff statute that takes into account the fundamental rights and guarantees provided by Law n° 85-78 dated 5 August 1985, relating to the general status of the officials of offices, public establishments of industrial and commercial nature and companies whose capital belongs directly and wholly to the state or to the public local collectivities.

The administrative and financial organization as well as the staff statute of the Fund, as well as prudent risk management rules shall be fixed by Decree.

**Article 17:**

The resources of the Fund consist of:

- funds imputed from the State budget,
- loans and donations. received from Tunisia or from abroad,
- all other resources placed at its disposal.

**Article 18:**

The Fund manages its financial funds in accordance with the programmes set on the bases of the development priorities in the field of investment. Its interventions include:

- disbursement of the premiums mentioned in Chapter V of the present Law,
- subscription in the common funds having a risk investment, risk investment finds, start-up funds directly or indirectly.

The rates, ceilings and conditions concerning the benefit of participations in the capital are fixed by a governmental Decree.

## Chapter V

### Premiums and Encouragements

**Article 19:**

Premiums allowed due to direct investment operations are granted as follows:

**1. Premium for the improvement of added value and competitiveness:**

- for the direct investment operation projects in:

- \* Priority Sectors,
- \* economic systems.

- for the economic efficiency in the field of:

- \* physical investments to control the modern technologies and improve productivity,
- \* intangible investments,
- \* research and development,
- \* staff training, leading to skills certification .

## **2. Development of the operational capacity grant for the Stats bearing for :**

- \* the employer's contribution to the legal system of social security for the salaries paid to Tunisian officers for a period that does not exceed 10 years starting from the date of entry into the actual activity,
- \* a part of salaries paid to Tunisian officers according to the supervision level.

## **3. Regional development Grant based on the regional development index in some of the activities, for:**

- \* achievement direct investment operations,
- \* expenses resulting from the infrastructure works.

## **4. Sustainable development grant for the investments in the pollution fighting and environment protection.**

Grants provided for in the present Law or under other legal texts could be combined. However, the total amount of the grants shall not to exceed the in all cases one third of the investment cost without consideration to the State contribution to infrastructure expenses and operational capacity development grant.

The rates, ceilings and conditions concerning the allocation of these grants and concerned activities are fixed by a governmental Decree.

### **Article 20:**

Projects having a National importance benefit of the following encouragements:

- deduction of the benefits from the taxation basis in the limit of ten years,
- an investment grant in the limit of the third of the investment costs including the resulting internal infrastructure expenditure .
- state participation in infrastructure expenditure.

The documents of the projects having a national importance must be transmitted to the Authority for their study and evaluation and presentation to the Council.

A Governmental decree fixes :

- the projects having a National importance with regard to the size of the investment or operational capacity and their responsiveness to at least one of the objectives set out in Article 1 of the present Law,
- the ceiling of the investment grant mentioned by the first paragraph of this Article.

Encouragements mentioned in the first paragraph of this Article are granted by a government decree to any project of a National importance after notification from the Council.

#### **Article 21:**

Enterprises benefiting from the incentives mentioned in the present Law are submitted to a follow-up and control of the competent administrative services.

The investment declaration is considered as obsolete in case of not starting the realization of the project within a year from the date of the declaration of the investment.

The beneficiaries of the incentives are will lose their entitlement to them in the following cases:

- they do not respect the provisions of the present Law or its applied texts,
- they do not realize the investment programme within four years from the date of the investment declaration, exceptionally once extendable for a two years period by a motivated decision from the Authority,
- the illegal alteration of the initial object of the project.

#### **Article 22:**

Amounts that have to be paid in accordance with the provisions of Article 21 of the present Law shall bear the delay penalties at the rate of 0.75% for each month or part of the month from the date of the benefit of incentives.

The Authority shall hear the case straight from the beneficiaries of the financial premiums or following concerned services proposal and shall give its opinion on the withdrawal and retrieval of incentives. The Benefits are withdrawn and grants repaid through a justified decision by the Minister in charge of Finances in accordance with the procedures mentioned in the Public Accounting Code.

The withdraw and repayment do not include the benefits allocated for operation during the period in which the effective operation was in conformity with the purpose on the bases of assigned benefits.

Enterprises are authorised to move from an encouragement system to another system mentioned in the present **Law**, provided they present a declaration in accordance with Article 15 of this Law and precede with the formalities necessary for that purpose and pay the difference between the total value of the benefits granted according those two systems plus the delay penalties.

The amounts to be paid for this difference and the delay penalties are calculated in accordance to the provisions of this Article.

## **Chapter VI**

### **Dispute Settlement**

#### **Article 23:**

Where a dispute arises between the Tunisian State and the investor and the in respect of the interpretation or application of the provisions of the present law, all efforts shall be made to settle the dispute through mediation unless one party, through a notice, abandons its rights to that mediation.

Parties are freely allowed to agree on the mediation's procedures and rules, Otherwise, Conciliation Rules of the United Nations Commission on International Trade Law shall apply.

If the parties conclude a mutually conciliation agreement, this agreement shall be considered as a law between both parties, that should be duly respected at the earliest dates.

#### **Article 24:**

Where a dispute between the Tunisian State and a foreign investor is not settled through conciliation, it may be submitted to arbitration in accordance with a mutual agreement between the parties.

Where a dispute between the Tunisian State and a Tunisian investor with an international issue, is not settled through conciliation, it may be submitted to arbitration under an arbitration agreement. In such case, the arbitration procedures are subject to the arbitration Code provisions.

Otherwise, the Tunisian courts are exclusively entitled to examine the dispute.

#### **Article 25:**

Recourse to arbitration or judicial bodies is considered as a final abandon of any later recourse to any other arbitral or judicial body.

## Chapter VII

### Transitional and final provisions

#### Article 26:

The provisions of this law shall enter into force from January 1<sup>st</sup> of 2017.

#### Article 27:

With respect to the provisions of articles 28 to 32 of this Law, the Investment Incentives Code promulgated by the law n 93-120 of the 27<sup>th</sup> of December 1993, except its articles 14 and 36, is repealed after the entry of the investment Law into force.

#### Article 28:

The benefit of the coverage by the State of the employer's contribution to the legal social security system mentioned in articles 25, 25 bis, 43 and 45 of the Investment Incentives Code, will still apply until the expiry of the period they are allowed to that benefit for:

- enterprises that have received the Investment declaration acknowledgment before the entry into force of the Investment law,
- enterprises that would receive the financial benefit approval and enters into effective activity within two years after the date of entry into force of the Investment Law.

#### Article 29 :

The benefit of the financial incentives mentioned in articles 24, 29, 31, 32, 33, 34, 35, 36, 42, 42 bis and 47 of the Investment Incentives Code, will still apply for enterprises fulfilling the following conditions:

#### Article 30 :

1. The provisions of articles 63, 64, and 65 of the Investment Incentives Code, shall remain applicable with regard to incentives benefited in accordance to that same Code.
2. The provisions of articles 3, 5, 6, 7, and 8 of the Law n 90-21 of the 19 March 1990 promulgating the Tourism Investment Code, shall remain applicable.

### **Article 31:**

The Tunisian Investment Authority's missions shall be exercised by the public structures in charge of investment, each within the limit of its own prerogatives until the Authority starts exercising its missions.

### **Article 32 :**

1. The Higher Commission for Investments mentioned in article 52 of the Investment Incentives Code shall continue to exercise its prerogatives in accordance with the applicable legislation until the Higher Investment Council starts exercising its missions, that would engender the commission dissolution.
2. The benefit of the incentives mentioned in articles 51 bis, 51 ter, 52, 52 bis, 52 ter and 52 sixthly of the Investment Incentives Code, will still apply for enterprises that have received the approval of the higher Commission for Investments prior to the date of the entry into force of the Investment law.
3. the expression "the Higher Commission for Investments" shall be changed by the expression "the Investment Higher Council" with respect to the variation of the expression.

### **Article 33:**

The provisions of the last paragraph of Article 2 (new) of Law n° 1991-37 dated 8 June 1991, establishing the industrial real estate agency, as amended and completed by subsequent texts, in particular law n° 91-37 dated 8 June 1991, are repealed on the date of the entry of the investment Law into force and replaced by the following:

" The local collectivities and the property developers benefitting from the same benefits granted by Article 19 of the investment Law to industrial promoters in the field of infrastructure works in the areas of regional development."

### **Article 34 :**

1. The provisions of Article 6 of the Investment Law is applicable to enterprises which have been created during the three previous years prior to the publication of the present Law, as if they were created on the date of the entry into force of this Law.
2. The provisions of Article 6 of the Investment Law are applicable to health establishments providing their whole services to non residents mentioned in

Law n°2001-94 dated 7 August 2001, relating to health establishments providing their whole services to non residents as well as the Economic Activities Parks as mentioned in Law N ° 92-81 dated 31 August 1992 creating the Economic Activities Parks as modified or completed by subsequent texts.

**Article 35:**

The manufacture of arms, munitions, explosives, their parts and spares is submitted to necessary authorisations issued by the competent administrative services in accordance with applicable legislation.

**Article 36:**

All previous provisions, which are contrary to the present law, are repealed on the date of the entry of the investment Law into force, in particular:

- Law n° 92-81 dated 31 August 1992 creating the Economic Activities Parks as modified or completed by subsequent texts,
- Article 16 of the orientation law n° 96- 6 dated 31 January 1996, relating to the scientific researches and technological development
- Article 26 of the Law n° 98-65 dated 20 July 1998 on professional law firms,
- article 11 of the Guiding law n° 2007-13 dated 19 February relating to the establishment of the digital economy,
- Article 5 of the Law n°2001-94 dated 7 August 2001, relating to health establishments providing their whole services to non residents,
- Law n° 2010-18 dated 20 April 2010, establishing the system of creativity and innovation incentives in the field of information and communication technologies.
- Decree n° 2000-2819 of 27 November 2000, concerning the creation of the Higher Council of the export and the investment and the fixation of its attributions, its composition and its functioning except the provisions of its Article 7.