

ORDINANCE N° 2019-1088 OF 18TH DECEMBER 2019 AMENDING
ORDINANCE N°2018-646 OF 1ST AUGUST 2018 ON THE
INVESTMENT CODE

THE PRESIDENT OF THE REPUBLIC,

Based on the joint report of the Deputy Minister to the Prime Minister responsible for the Promotion of Private Investment, the Minister of Economy and Finance, the Minister of Trade and Industry and the Deputy Minister to the Prime Minister responsible for the Budget and the State Portfolio,

Having regard to the Constitution ;

Having regard to Law n° 2018-984 of 28th December 2018 on the State Budget for the year 2019, in particular Article 12 ;

Having regard to Ordinance n° 2018-646 of 1st August 2018 on the Investment Code as ratified by Law n° 2019-874 of 14th October 2019;

THE COUNCIL OF MINISTERS HAVING CONSIDERED THE MATTER,

HEREBY ORDERS:

Article 1: The term, structuring project defined in paragraph u of Article 1 of the aforementioned Ordinance n°2018-646 of 1st August 2018 is newly defined as follows:

u. **Structuring Project:** Any investment programme that is important because of its amount, the number of stable jobs to be created, the effects induced on the economy as a whole, the region in which it is to be carried out, the technology it transfers or its contribution to environmental protection.

The structuring project mainly concerns industrial projects, notably automobile assembly, the production of machine tools for the local agricultural product processing industry, the assembly of household appliances and ICT products, or any other sector deemed highly strategic by the Government.

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I, KOUAKOU Koffi Mamadou; PhD. sworn translator at the Court of Appeal in Abidjan, Côte d'Ivoire, do hereby certify that I am competent to translate from French to English and that the above is a true and accurate translation of the original document in French. In witness whereof, I have hereunto signed and affixed my stamp.

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Article 2: The information set out in Section II, before sub-section I, of Chapter II, of TITLE II is replaced by the following:

Enterprises approved for creating activities benefit from advantages in the setting up phase and operational phase for implementing their investment programme.
The enterprises approved in the framework of development of activities benefit exclusively from advantages in the setting up phase.

Article 3: Articles 5, 13, 14, 15, 21, 23, 25, 41, 42, 44, 45, 50 of the aforementioned Ordinance n°2018-646 of 1st August 2018 are amended as follows:

Article 5 (new):

The sectors of activity eligible for the benefits of this code are classified into two categories : category 1 and category 2.

Category 1 includes agriculture, agro-industry, health and hotels.

The hotel sector is eligible for category 1 when the planned investments are of an amount equal to or greater than :

- five billion, in zone A ;
- two billion, in zones B and C.

Category 2 includes :

- sectors of activity not covered by category 1 ;
- sectors of activity that are not expressly excluded by Article 6 of the Ordinance;
- the hotel sector for investments below the thresholds set for category 1.

Any enterprise eligible for category 1 may irrevocably opt for the benefit of category 2 at the time of submitting its application for approval. The company must explicitly state its request in the application file for the benefit of this code. It must fill in and sign the form provided for this purpose, which is an element of the approval file

Article 13 (new):

The approval scheme is applicable to investments made for creating or developing activities. The procedures applicable to this scheme are defined by decree.

The minimum investment thresholds are set as follows:

For large enterprises: two hundred million CFA francs, excluding VAT and working capital;

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For SMEs : fifty million CFA francs, excluding VAT and working capital;

For large shopping centers: ten billion CFA francs for zone A and five billion CFA francs for zones B and C.

For category 1 hotel activities :

- zone A: greater than or equal to five billion;
- zones B and C: greater than or equal to two billion.

For category 2 hotel activities :

- zone A: less than five billion;
- zones B and C: less than two billion.

The minimum amount required for category 1 hotel activity includes both the amounts to be invested by the real estate and operating companies.

For structuring projects :

- Zone A: one hundred billion CFA francs of investment;
- Zone B: fifty billion CFA francs of investment
- Zone C: fifteen billion CFA francs of investment.

Article 14 (new) :

The advantages granted in the establishment phase are the following:

- exemption from customs duties, with the exception of the statistical fee and community and continental levies;
- temporary suspension of value added tax on the acquisition of goods, services and works, for activities subject to VAT;
- exemption from value added tax on the acquisition of goods, services and works for activities subject to VAT;
- exemption from customs duties, the temporary suspension or the exemption from value added tax applies to equipment and capital goods and the first batch of spare parts acquired locally or imported, as well as services and works on Ivorian territory or abroad.

The value of spare parts for the first batch must represent a maximum in proportion to the acquisition value of the materials and equipment goods:

- ten percent in zone A ;
- twenty percent in zone B ;
- thirty percent in zone C.

The practical arrangements for implementing the temporary suspension or exemption from VAT are defined by decree.

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Article 15 (new):

The benefit of fiscal advantages during the implementation and operational phase is subject to presentation by the investor to the competent public services, of a certificate of investment approval, issued by the agency in charge of investment promotion and signed by the Director General of the agency in charge of investment promotion, President of the investment approval committee, and the Minister in charge of the Budget or his representatives.

a) In the event of failure to comply with the maximum time limit for file examination by the investment promotion agency, the operator refers the matter to the Prime Minister who has ten working days to take a decision in favour or against the investor.

b) In the event of an unfavourable decision on an application for the benefit of the investment code, the Managing Director of the investment promotion agency send the company concerned a letter stating the reasons for the refusal decision within five working days

c) when the file is judged admissible, the benefit of the advantages in establishment phase is subject to the presentation of a certificate of investment approval to the competent public services, delivered by the agency in charge of investment promotion.

Article 21 (new):

Large enterprises whose capital is majority owned by foreigners, eligible for the benefits of this code and belonging to categories 1 and 2 as defined in its Article 5, are entitled, in addition to these benefits, to tax credits provided that they apply a local content policy relating to job creation, the opening of the share capital to nationals and subcontracting.

Category 1 companies apply the tax credits from the end of the total exemption period.

These tax credits are:

With regard to local employment

An additional tax credit of two percent is granted to foreign investors whose executives and supervisory staff are of Ivorian nationality and represent eighty per cent of the total number of these two categories of employees.

With regard to subcontracting

An additional tax credit of two percent is granted to companies that subcontract to national companies, the execution of infrastructure work, software, the manufacture of spare parts or any other goods intended to be incorporated into a final product in Côte d'Ivoire or abroad. Subcontracting also covers services and must represent at least twenty-five percent of activities subcontracted by the company.

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With regard to the opening of share capital to citizens

A tax credit of two per cent is granted to investors operating in one of the sectors of activity listed in a decree issued by the Council of Ministers and who open up at least thirty-four per cent of their share capital to national investors. This aspect of the share capital dedicated to citizens may not be reduced for a minimum period of ten years.

Article 23 (new):

The company that builds the real estate infrastructure benefits from advantages in the establishment phase and only from the exemption of the tax on real estate assets during the operational phase.

The advantages in the establishment phase are applied to the operating company if it makes investments in materials, furniture and equipment.

The advantages in the operational phase, except for the tax exemptions on land property, are applied to the operating company.

Article 25 (new):

Without prejudice to the national policy of promoting domestic entrepreneurship, natural or legal persons of foreign nationality shall receive treatment identical to that accorded to natural or legal persons of Ivorian nationality.

The application of the principle of equal treatment shall be done in compliance with and within the limits of the provisions of the Treaties and Agreements concluded by the Republic of Côte d'Ivoire.

Article 41 (new):

The benefit of advantages granted in application of an investment incentive scheme may not be extended to a company which does not meet the conditions required to benefit from it.

The benefit of advantages granted in application of an investment incentive scheme is neither transmissible nor assignable to a third party without the written authorisation of the Approval Committee, which shall give the final ruling.

Article 42 (new):

The duration of the advantages granted during the operational phase to an enterprise benefiting from one of the incentive schemes may not be extended either at the time of approval or at the end of the period during which the enterprise benefited from the said advantages.

The benefits granted may not have retroactive effect.

Article 44 (new):

a) Initial duration:

The period for the realisation of investments by companies benefiting from the advantages provided for by this code is set at two years, starting from the date appearing on the certificate

given to the investor.

For investments with particular cycles and in particular in the agricultural sector, the applicable duration is that defined for each sector of activity concerned by the competent Ministries, in liaison with the agency in charge of investment promotion.

b) Extension of the duration

Where an investor has not been able to carry out his project in full at the end of the initial twenty-four month period for reasons beyond his control and for which he can provide evidence, he shall be granted, by decision of the Approval Committee, an additional period of not more than twenty-four months.

However, the approval committee could, in certain cases, decide to grant an exceptional period exceeding twenty-four months.

The extension mentioned above can only be granted if the investor has completed at least sixty-six percent of his project.

An investor who does not meet the above-mentioned completion rate may, however, submit a specially reasoned request to the Approval Committee for an exceptional extension.

Requests for extension must reach the investment promotion agency no later than three months before the expiry date of the current approval period.

Article 45 (new):

The investment report is carried out by the investment promotion agency in conjunction with the relevant government departments.

In this respect, the investor has a period of thirty days from the date of completion of the work to inform the investment promotion agency.

At the end of the assessment of the investment, when the investor fulfills the rate of completion as fixed by decree, a certificate of approval to operate is issued to him.

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In the absence of notification within the period provided for in paragraph 2, the duration of the advantages shall start from the fixed expiry date of the investment approval certificate.

Article 50 (new):

Any dispute between the State of Côte d'Ivoire and the investor arising from the application of the provisions of this code shall be settled in accordance with the following procedures:

The parties shall endeavour to resolve by amicable negotiation any differences of opinion or disputes which may arise between them in connection with the interpretation or implementation of this Code.

Where the parties conclude a settlement agreement, the said agreement shall take the place of law in their regard and they undertake to execute it in good faith and as soon as possible.

If an amicable settlement cannot be reached within a period which may not exceed twelve months, the parties may bring their dispute before the competent Ivorian courts. They may opt for arbitration of their dispute and refer the matter to the Court of Arbitration of Côte d'Ivoire in compliance with the State's international commitments in terms of investment protection.

When obtaining approval, the investor must submit to the investment promotion agency a letter of commitment concerning the methods of dispute settlement that he chooses. He chooses either recourse to national courts or recourse to a conciliation and arbitration center.

His commitment is equivalent to a waiver of recourse to any other arbitration centre for the settlement of the dispute between him and the State.

Article 4: This Ordinance shall be executed as a law of the State and published in the official newspaper of the Republic of Côte d'Ivoire.

Done at Yamoussoukro, 18th December 2019

Alassane Ouattara

Certified true copy of the original
General Secretary of the Government

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