Republic of Guinea

Work – Justice - Solidarity

THE NATIONAL ASSEMBLY

L/2015/------008-------/AN

INVESTMENTS CODE LAW IN THE REPUBLIC OF GUINEA

The National Assembly

Having regard to the Constitution and its Article 72

After deliberation, adopted the law

The President of the Republic is promulgating the following law:

PART I
GENERAL PROVISIONS

CHAPTER I: SCOPE AND DEFINITIONS

Article 1: Purpose

This Code sets the legal and institutional framework for private, domestic and foreign investment executed in the Republic of Guinea, in order to promote:

a) The creation, expansion, diversification, business and /or infrastructure modernization, services delivery and crafts;
b) The creation of decent and sustainable jobs, the training of national staff and the emergence of a skilled national workforce;
c) The inflow of foreign capital and the mobilization of national savings;
d) The processing and valorization of local raw materials as a priority;
e) Investments in export industries and economic sectors that value natural resources, local products, and labor intensive activities;
f) The creation and development of new businesses, particularly Small and Medium Size Enterprises;
g) The reorganization, competitiveness, integration and growth of companies ;
h) The transfer of technologies adapted to the country's development needs;
i) Investments in rural areas and in all regions of the country to improve the living conditions of local populations;
j) The rehabilitation or expansion of businesses by new investors;
k) Public-private partnerships and an efficient and complementary economic fabric;
l) The use of local technologies and research and development;
m) Green industry and the diversification of export products;
n) The protection of the environment, regional and subregional economic integration.

Article 2: Definitions

For the purposes of this Code, the following terms shall mean:

"Code" means this investment code.

"**Creating and operating a business"** means any activity consisting of gathering various factors of production, producing goods and/or services for sale, distributing income in return for the use of production factors and holding regular accountancy.

"Business" means a production, processing or distribution unit of goods or services for profit, regardless of their legal form, whether a natural or a legal person which mobilizes and consumes material, human, financial, informational and immaterial resources, having complied with the provisions of Guinean laws and regulations, including those fixing business tax and accounting rules.

"**New Business**": any newly created economic entity and in the implementation phase of an eligible investment program for the start of its operations.

"State": all national and local public institutions provided by the Constitution of the Republic of Guinea.

"**Equipment, materials and tools**": objects and instruments used to process or shape materials, including equipment and industrial machinery, equipment and agricultural machinery, handling equipment, packaging material, namely undelivered packages to customers, recovered and recycled packaging, repair materials such as keys and other tools.

"Extension" means any project or investment program initiated by an existing company in order to increase its production capacity, and improve or diversify production.

"**Investment**": capital employed by any natural person or legal entity for the acquisition of movable property, tangible and intangible, and to ensure the financing of start-up expenses and working capital requirements, indispensable to the creation or the expansion of businesses.

"Raw materials or inputs": goods used directly in the manufacturing of finished products after undergoing substantial transformation deemed sufficient, with an added value of at least 30%.

"Restructuring" operation designed to ensure the viability of the business in order to recover the financial and structural balance as well as to meet the criteria for eligibility for an upgrade.

"Private sector": all the companies belonging to natural or legal persons of private law that have as essential roles, the production of goods and services or the creation of wealth, to increase national income.

CHAPTER II: SCOPE OF APPLICATION

Article 3: Sectors and activities covered

This Code applies to all investors, natural or legal persons who operate in the following business sectors:

a) Agriculture, fisheries, livestock, forestry, and activities of storage of plant products, animal or fish;

b) Manufacturing production or processing;

c) Tourism, accommodations and tourism industries, other hotel businesses;

d) Information and Communications Technology;

e) Social housing;

f) Activities and clean-up operations, roads, treatment of municipal and industrial waste;

g) Cultural industries: books, records, films, documentation centers, and audio-visual production centers;

h) Services held in the following subsectors:

- Health;
- Education and training;
- Installation and maintenance of industrial equipment;
- Teleservices,
- Road, air and water transport.

i) Road, port, air and rail infrastructures

j) Realization of commercial complexes, industrial parks, cyber villages and craft centers.

The list of the sectors of activities aforementioned may be amended by Presidential decree adopted by the Council of Ministers based on the proposal of the Minister in charge of Private Sector Promotion, which shall prior to the proposal solicit the opinion of the Technical Investment Monitoring Committee.

Article 4: Sector of activity excluded

Trading activities defined as resale activity in the same condition of products purchased outside of the business are expressly excluded from the scope of application of this Code.

Eligible activities in the Mining Code and the Petroleum Code are also excluded from the scope of application of this Code, as well as investments benefiting from specific aid schemes determined by the tax laws or specific laws.

Article 5: Sectors subject to technical regulations

Natural or legal persons of private law, regardless of their nationality, cannot undertake without authorization on Guinean territory activities in the following sectors:

- Production and distribution of electricity, except for the satisfaction of their personal needs;
- Piped water distribution, except for the satisfaction of their personal needs;
- Banking and insurance;
- Post and telecommunications;
- The manufacture, purchase and sale of explosives, arms and ammunition;
- Health, education and training;
- The manufacture, import or distribution of drugs, or other toxic and dangerous products.

Article 6: Sectors of activities reserved

Natural or legal persons of foreign nationality may not hold, directly or through Guinean law firms, over 40% of shares of companies engaged in Guinea in the following activities:

- The publication of newspapers or periodicals of general or political information;
- The broadcasting of television or radio programs.

Effective management of the aforementioned businesses must be held by private persons of Guinean nationalities residing in Guinea.

Article 7: Investors regularly established in the Republic of Guinea, irrespective of their nationality, who exert or wish to exert an activity falling within the scope defined in Articles 3, 5 and 6 above, are, each as regards to the matters that concern them, entitled to the general guarantees and benefits set forth in this Code and the tax and customs legislation.

Article 8: Subject to the provisions of Article 6 above, foreign private investors can freely own up to 100% of the equity or company shares they intend to create in Guinea.

Investment made in each of the sectors covered by the provisions of this Code are made freely.

Article 9: The investor regularly established in the Republic of Guinea has full economic and competitive freedom.

The investor is notably free to:

- Acquire the assets, rights and concessions of any kind necessary for its activities, such as land, property, commercial, industrial and forestry;
- Enjoy goods and rights acquired;
- Be part of any professional organization;
- Choose technical, industrial, commercial, legal, social and financial modes, in accordance with laws and regulations;
- Choose suppliers and service providers and partners;
- Participate in public tenders throughout the national territory;
- Choose human resources management policy and freely perform the recruitment of staff, in strict compliance with regulations and agreements in force.

Article 10: Foreign investors receive in Guinea the same treatment as domestic investors.

However, national measures aimed at promoting national entrepreneurship, can wave this principle without prejudice to the international commitments of the Republic of Guinea concerning the principle of equal treatment of investors.

Article 11: The investor, regardless of nationality, is protected from any measures of nationalization, expropriation or requisitioning of business, except for a duly established public interest and with fair compensation paid in advance.

Article 12: The State will work actively for the establishment of a favorable environment for investors whose projects are eligible under this Code.

Article 13: Investors enjoying the benefits provided by this Code and the tax and customs legislation, shall on request, benefit from any new and more advantageous legislative or regulatory measures that may be adopted after the publication of the present Code.

Article 14: Without prejudice to Articles 31, 37, 38 and 43 below, the advantages granted to investors under the provisions of this Code and the tax and customs legislation are guaranteed. Investors will continue to benefit from them notwithstanding any new less favorable measure that would be adopted at a later date subsequent to the publication of the Code.

Article 15: Investors have free access to raw or semi-processed raw materials produced throughout the national territory.

Agreements and practices distorting competition are prohibited and punishable under Guinean law.

Article 16: Natural or legal persons of foreign nationality have access to land under the conditions defined by the laws and regulations in force in the Republic of Guinea.

The land and buildings belonging to the state or its Agencies' private domain may be subject to sale, lease or contribution in capital in a company.

Article 17: Subject to tax regularization operation, asset transfers relating to investments are free.

Foreign investors have the right to transfer abroad without prior authorization and in the currency of their choice, the funds relating to current payments, after-tax profits, shares of liquidation surpluses, savings of expatriate employees, earned income and compensation of expatriate employees.

Investors are also granted the right to freely dispose of their shares, business capital or assets, liquidating dividend shares and expropriation indemnities subject to prior declaration to the Ministry in charge of Finance.

Investors, provided they respect foreign exchange regulations, have free and unlimited access to foreign exchange.

Article 18: In accordance with current legislation in the Republic of Guinea, any investor is free to hire and dismiss a specialized expatriate as necessary to serve the interest of the business entity.

Employment contracts of expatriate employees may validly derogate from certain provisions of the labor code and social regulation regarding:

- Membership in an authorized social security organization in Guinea;
- Affiliation to an intercompany medical service;
- The duration and reasons for use of a fixed-term contract;
- The relevant rules in the hiring policies.

The derogations provided above may not have the effect of undermining the rights of employees, as recognized by international conventions and agreements ratified by the Republic of Guinea.

Practical arrangements of the derogations mentioned above shall be determined by regulation.

The State guarantees to expatriate employees who meet the criteria issuance of professional resident visa and work permit for the duration of their contract.

Article 19: The provisions of this Code shall not prevent more extensive guarantees and benefits that would be provided by special laws and treaties or agreements that have either been concluded or in the process of negotiation between the Republic of Guinea and other states.

CHAPTER II: OBLIGATIONS OF INVESTORS

Article 20: Investors must comply with the laws and regulations in force in the Republic of Guinea.

Article 21: Investors must comply with international standards for their products, services, and work environment, in that they can supplement national legislation.

Article 22: Investors must apply the principles of international labor and human rights, including those from the ISO 26000 standard.

Article 23: Investors must contribute to the qualification of national staff and promotes technology transfer. Investors will primarily use national suppliers and subcontractors and contractors.

Article 24: Investors must contribute to improving the living conditions of the communities where business is conducted, and the professional qualification of local employees.

Article 25: For work not requiring a specific qualification, the investor will exclusively recruit a local workforce.

For jobs requiring a qualification, investors will primarily recruit a domestic workforce when equally competent.

Article 26: Investors must refrain from any act of corruption, unfair competition, and any other similar acts during or after the establishment of a business.

PART III

INSTITUTIONAL FRAMEWORK

CHAPTER I: THE PRIVATE INVESTMENT PROMOTION AGENCY

Article 27: The Private Investment Promotion Agency of (APIP)'s mission is to support investment and to implement the Government's policy in terms of promotion and development of domestic and foreign private investment.

Article 28: As part of the assistance and the provision of services to investors, APIP, will work with the relevant public department to facilitate administrative procedures.

Article 29: APIP's mandate, composition, organization and operations are set by Decree.

CHAPTER II: INVESTMENT MONITORING TECHNICAL COMMITTEE

Article 30: An Investment Monitoring Technical Committee (CTSI) is been established under the authority of the Minister in charge of Private Sector Promotion.

Article 31: As part of the implementation of this Code, the CTSI is responsible for ensuring the correct application of procedures and rules for granting tax and customs benefits, and to monitor compliance by investors of their obligations and commitments. As such, the CTSI annually compiles a report on the companies receiving such benefits and, if necessary, take all appropriate measures, including sanctions, for the proper application of the provisions of this Code.

The Investment Monitoring Technical Committee consists of representatives of the Administration among which: the Ministries of Economy, Finance, Planning, Private Sector Promotion, Employment and the Central Bank of the Republic of Guinea. The composition must be extended to the sectoral Ministry that covers the area of the concerned investment.

The CTSI's secretariat is provided by APIP.

The technical aspects linked to the organization and operation of the CTSI are set by regulation.

TITLE IV

PRIVILEGED REGIME

Article 32: Nature of special benefits

As part of this Code, the investors that undertake projects or business expansion, enjoy tax and customs benefits determined by the tax and customs legislation in force in the Republic of Guinea.

Article 33: **Conditions of Eligibility**

Without prejudice to Articles 3, 20 and 26 of this Code, any company can benefit from the privileged regime of the Investment Code provided they meet the following conditions:

- Be registered in the Trade and Personal Property Credit Register (RCCM)
- Be up-to-date with tax obligations;

- For a new business, the investor must invest cumulatively an amount equal to or greater than 200 000 000 GNF, and create a minimum of five permanent national jobs;
- With regard to the extension of an existing business, the investment program must either increase production of goods or services or the number of Guinean workers by at least 35%.

Major investments may be subject to an establishment agreement, in which case special treatment could be made on taxation in favor of the beneficiary investor for a negotiated period. The tax regime stability is guaranteed over the amortization period of the investment negotiated.

Article 34: Economic Zones

For the determination of the duration and modalities of application of the tax system exemption, the country is divided into two Zones A and B defined as follows:

Zone A: The Region of Conakry and the prefectures of Coyah, Forécariah, Dubréka, Boffa, Fria, Boké and Kindia;

Zone B: The rest of the national territory.

Article 35: The limits and the number of Zones can be modified by a decree adopted by the Council of Ministers on proposal of the Minister in charge of Private Sector Promotion based on the advice of CTSI.

TITLE V

OBLIGATIONS RELATED TO THE REQUEST AND BENEFIT OF TAX INCENTIVE EXEMPTION SCHEME OF INVESTMENT CODE

CHAPTER I: OBLIGATIONS RELATED TO THE REQUEST AND BENEFIT OF TAX INCENTIVES EXEMPTION SCHEMES

Article 36: Natural or legal persons who wish to benefit from the Investment Code's tax incentives are obliged to:

- Primarily employ national skills available in the labor market;
- Use in priority materials, raw materials, goods and services of Guinean origin;
- Comply with national or international quality standards applicable in Guinea to products or services resulting from their activity or part of their activity;
- Provide all information that should allow control of the compliance with the conditions of granting the benefits of the privileged regime;
- Pay, as defined by the Customs Code, taxes and custom duties on the residual value , facilities, equipment, materials and tooling acquired free of taxes and custom duties in case of sale or transfer thereof,
- Pay the application fees whose amount and payment terms will be set by joint order issued by the Ministers responsible for Economy and Finance and Private Sector Promotion.

CHAPTER II: OBLIGATIONS RELATED TO THE BENEFIT OF TAX INCENTIVES SCHEMES

Article 37: **Obligations of the investor benefiting from tax and customs advantages**

In addition to the general obligations established in the preceding articles of this Code, any investor benefiting from tax and customs advantages provided by this Code shall meet the following requirements:

- At the latest at the end of each fiscal year, inform the Investment Monitoring Technical Committee of the Project implementation level;
- No later than December 31 of each year, submit to CTSI a report which should include all the information that would allow the CTSI to check whether the company has met its commitments and obligations during the year. Companies licensed for less than three months as of December 31 are not subject to this requirement;
- Comply with the monitoring of its activities by the Investment Monitoring Technical Committee;
- Provide to the Investment Monitoring Technical Committee, a copy of statistical data that any company is legally required to share with the national statistical services;
- Maintain accounting standards in accordance with standards in force in the Republic of Guinea.

Article 38: Any company that received a derogation, and ceases to operate during or at the end of the period of tax and customs exemptions, will be required to repay the amounts of exempt custom duties and taxes if the cessation of activities is due to fraud, without prejudice to any legal action incurred.

Article 39: The partial or total divestment of the company receiving the benefits linked to the Investment Code must be notified to the Minister in charge of Private Sector Promotion and the Minister in charge of Finance, otherwise penalties provided for by current legislation would apply. However, the benefits gained are not transferable.

Article 40: In case of exceptional cessation of the activities of a company granted benefits under the Investment Code, for reasons of force majeure, the company may request the suspension of the preferential regime for a period not to exceed one (1) year. The expiry date of the derogation is amended accordingly.

TITLE VI

ACCESS TO TAX AND CUSTOMS BENEFITS AND OPERATIONAL PROCEDURES

Article 41: The procedures to access tax and customs benefits shall be determined by an implementing decree of this Code.

Article 42: Expiration date, withdrawal conditions of tax and customs benefits and penalties

The tax and customs benefits expire under the conditions set by the Finance Act. The partial or complete withdrawal of such advantages can occur before the deadline in case of failure, even partial, by the investor to meet obligations or commitments. The withdrawal is conditioned by sending a formal notice inviting the investor to rectify the situation. The investor then has a period of ninety (90) days maximum to rectify the situation from the receipt of the notice. After this period, the withdrawal may be given at any time.

The withdrawal for failure to fulfill obligations or commitments prompts the payment by the investor of customs duties and taxes which he was exempt, without prejudice to other legal or judicial actions.

TITLE VII

THE SETTLEMENT OF DISPUTES

Article 43: Any dispute or difference between foreign physical and legal entities and the Republic of Guinea, associated with the application of this Code, is settled amicably and, failing that, by the competent Guinean courts.

However, the parties may agree to submit the dispute or difference to an arbitral tribunal, in which case the recourse to arbitration shall be made following one of the procedures below:

- The conciliation and arbitration procedure arising out of either a joint agreement between the parties or of agreements and treaties protecting investments concluded between the Republic of Guinea and the State of which the individual concerned or foreign corporation is a national;
- The application of the Uniform Act of March 11, 1999 embodying arbitration rules of the Common Court of Justice and Arbitration of OHADA;
- The implementation of the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, established under the auspices of the International Bank for Reconstruction and Development and ratified by the Republic of Guinea November 4, 1966, or;
- If the person does not meet the nationality requirements stipulated in Article 25 of the aforementioned Convention, in conformity with the provisions of the Additional Facility Rules approved by the Board of Directors of the International Centre for Settlement of Investment Disputes (ICSID).

PART III

TRANSITIONAL AND FINAL PROVISION

Article 44: Investors who receive benefits under the Act L/95/029/CTRN of 30 June 1995 on the Investment Code and its implementing provisions continue to receive these benefits until the date of their expiry.

Companies that receive special tax regime aid for investment continue to receive these benefits until the date of their expiry.

Article 45: Companies that, on the date of publication of this Code, have not been authorized under the provisions of the Act L / 95/029 / CTRN of 30 June 1995 on the Investment Code or under the General Tax Code can enjoy the benefits provided by this Code and the tax and customs legislation to the extent that they qualify.

Article 46: Decrees and Orders will specify, as necessary, the procedure for implementing this Code.

Article 47: All previous provisions contrary to this Code are hereby abrogated.

Article 48: This law shall be published in the Official Journal of the Republic and executed as State law.

ANNEX

TAX INCENTIVES AND CUSTOMS

(Excerpts from the Act L / 2013 / CNT of 31 December 2013 bearing Finance Law for the year 2014)

<u>**Article 16**</u>: These provisions lay down the derogations from ordinary law in tax and customs domain that may encourage natural and legal persons to invest in Guinea

<u>**Article 17**</u>: The advantages provided by these provisions is granted to any investor whose activity complies with legal and regulatory provisions in force, and consolidated in the Investment Code.

I-1 Eligible sectors and activities

<u>**Article 18**</u>**: The eligible sectors, without being exhaustive are:**

a) Agriculture, livestock, fishing and related activities;
b) Manufacturing , processing and good producing industries;
c) Tourism industry and other hotel operations;
d) Real estate development with social function
e) Land, water and air transport activity;
f) Cultural industries: publishing, recording, film and video production.

<u>**Article 19**</u>**: The sectors subject to technical regulations**

a) Health, Education, Training;
b) Publication of newspapers and periodicals;
c) Broadcasting of radio and television programs;
d) Production of electricity or water for commercial purposes;
e) Post and telecommunications;
f) Drugs and poisonous substance production.

<u>**Article 20:**</u> **Activities excluded from tax and customs benefits**

a) Merchandise resale;
b) Companies in the oil and mining sectors;
c) Manufacture or sale of explosives, arms and ammunition;
d) Banking and finance.

I-2 Tax and customs arrangements

A <u>Installation Phase</u>

<u>**Article 21**</u>: During the installation phase which may not exceed three (3) years, from the date of first import of project equipment, any eligible company for special treatment of the Investment Code has

the following advantages:

a) For customs duties :

- Exemption from duties and taxes, including value added tax (VAT) on the import of equipment and materials, with the exception of motor vehicles designed for transport of people, with the exception of tax Registration (TE) at a rate of 0.5% and the fee for processing and liquidation (RTL) of 2% on the CIF value.

b) Under the domestic tax:

- Exemption from the commercial tax;
- Exemption from unique real estate property tax;
- Exemption from lump-sum payment ;
- Exemption from the apprenticeship tax, excluding the 1.5% contribution to the financing of vocational training.

These exemptions apply exclusively to the activities and salaries directly related to the development of the approved project.

B - Production phase

Article 22: Customs tax relief

a) Throughout the life cycle of the initiated Project, raw materials or imported inputs under the production cycle are subject to the 2% of RTL to a 6% tax law and an 18 % VAT.

b) However, the provisions of the Customs Tariff apply if they are more favorable to the investor.

Article 23: Under this Act, the term raw materials or inputs refers to: the products used directly in the manufacture of finished products.

Article 24: **Tax Breaks**

During the operation phase of the company, the investor benefits from a dispensational tax system consisting of tax cuts for a maximum period of 8 or 10 years depending on the location, from the starting date of production activities.

Article 25: For the purposes of the special tax regime, the national territory is divided into two zones A and B.

Article 26: Tax cuts and impost applicable in Zone A are as follows:

Annual Minimum Tax (IMF) - Industrial and Commercial Profit (BIC) - Corporate Tax (IS) - Contribution for Commercial and Unique Real Estate Property Tax (CFU)

- 100% discount for the 1st and 2nd year;
- 50% discount for the 3rd and 4th year;

- 25% discount for the 5th and 6th year;

Lump-sum Payment (VF) - Apprenticeship Tax (TA) - Registration Fee (DE);

- 100% discount for the 1st and 2nd year;
- 50% discount for the 3rd and 4th year;
- 25% discount for the 5th, 6th, 7th and 8th years.

Article 27: Tax cuts and taxes in Zone B are:

Annual Minimum Tax (IMF) - Industrial and Commercial Profit (BIC) - Corporate Tax (IS) - Contribution for Commercial and Unique Real Estate Property Tax (CFU)

- 100% discount for the 1st, 2nd and 3rd year;
- 50% discount for the 4th, 5th and 6th year;
- 25% discount for the 7th and 8th year.
- Lump-sum Payment (VF)- Apprenticeship Tax (TA)- Registration Fee (DE);
- 100% discount for the 1st and 2nd year;
- 50% discount for the 3rd and 4th year;
- 25% discount for the 5th, 6th, 7th and 8th years.

I-3 Specific measures

Article 28: The Government is authorized, for strategic reasons and depending on the direction of economic policy, to extend from 8 to 10 years, the duration of the dispensational tax system if the investment comes in one of the boxes below:

- High labor intensity (number of jobs created greater than 500);
- High capital intensity (volume of investment greater than USD 100 million);
- Activity specifically declared as strategic by the Government;
- Expressly declared priority sites or regions.

Article 29: Any existing company, engaged in an investment program that introduces innovative technologies, or provides for the expansion of its production capacities, renewal of its assets or increase of its performance can benefit from the incentives referred by these provisions, when its investment program ensures increased production of goods or services or the number of Guinean workers amounting to at least 35%.