

Article 37: This law, which comes into effect at the date of promulgation will shall be approved and published in the Official Journal of the Union of the Comoros and executed as a law of the State.

Deliberated and adopted in plenary session
On August 31st, 2007

The Secretaries,

The Chairman of the Assembly
of the Union

Bacar HOUMADI

Abdouroihamane IBRAHIM

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UNION OF THE COMOROS

Unity - Solidarity - Development

ASSEMBLY OF THE UNION

LAW N°07-__0010____/UA On the Investments Code

In accordance with the provisions of article 19 of the Constitution of the Union of the Comoros of December 23rd, 2001, the Assembly deliberated and adopted the law, the content of which is as follows:

TITLE 1

DEFINITIONS, FIELD OF APPLICATION AND *OBJECTIVES*

Article 1: Definitions

For the purposes of this Code, it is meant by:

- 1) **Enterprise:** every unit of production, processing and/or distribution of goods or services, whatever its judicial form, whether an individual or a legal entity.
- 2) **New Enterprise:** any newly created economic entity, which is about to complete an eligible investment programme, in view of launching its activities.
- 3) **Foreign enterprises:** enterprises, the assets of which come from countries other than the Union of the Comoros as well as the branches of enterprises belonging to these countries.
- 4) **Extension:** any accepted investment program, initiated by an existing Enterprise which generates an increase of at least 35% of the capacity of production or of the value of acquisition of the immovable assets;
- 5) **Need in working capital:** part of the investment required to ensure the funding of the current expenditures of the Enterprise.
- 6) **Investment:** In this Code the word investment refers to:

Article 32: If the withdrawal of the agrément is detrimental to the recipient Enterprise, the latter can claim damage before the competent jurisdictions.

Article 33: The procedure of the application of the sanctions and the modalities of appeals shall be set by the decree of application of this law.

TITLE 9 FINAL PROVISIONS

Article 34: The enterprises, which have benefited from the advantages provided for in the previous Investments Code established by the law 95-015/AF and the subsequent texts, remain governed by this Code until the effect of these advantages expires.

The enterprises, which operate in accordance with the provisions of the previous Investments Code established by the law 95-015/AF and the subsequent texts can, on the date of the publication of this law, request to benefit from the envisaged advantages for the rest of the duration of the system, if they meet the prescribed conditions.

Article 35: All the previous and conflicting provisions to the present law are revoked.

Article 36: The modalities of application of this law shall be defined by a decree of the President of the Union of the Comoros.

TITLE 8 BREACHES, RECORDINGS AND SANCTIONS

Article 28: The advantage of a system involves commitments and obligations vis-à-vis the State and the recipient of the agrément. They are provided for in the agrément act and the convention of establishment.

Article 29: It is considered a breach, the non-respect of one of the commitments and conditions which were decisive in the granting of the agrément.

Article 30: The breaches by the approved enterprises to a privileged system shall be established and recorded in accordance with the provisions provided for in this law.

Article 31: The approved enterprises, which do not honour the commitments or obligations, provided for in the act of agreement and the convention of establishment, are liable to sanctions, which can lead to the withdrawal of the agrément.

This withdrawal of the agreement can be preceded by days of grace of 90 days maximum, during which the investor is invited to regularise his situation.

The withdrawal of the agreement, once declared, makes immediately payable all the privileges and taxes exempted thanks to the agrément, without being detrimental to possible legal prosecutions and the liable sanctions, in accordance with the provisions of the Customs and Tax office.

- a. The acquisitions of assets as part of the creation of new activities, the extension of production, rehabilitation and reorganisation capacities;
- b. The participation of a Enterprise in the capital in cash contribution or in kind form;
- c. The resumption of the activities in the form of a partial or total privatisation. These investments must be realised by or for the Enterprise.

7) Investor: any individual or legal entity, holder of the Comorian citizenship or not, having justified means at their disposal, and carrying out investments operations on the territory of the Union of the Comoros, under the conditions defined, as part of this Code.

8) Foreign employee: any individual, national of a country other than the Union of the Comoros, working on behalf of the approved Enterprise.

Article 2. - Priority objectives

The priority objectives of this Investments Code are:

- a) The creation of new enterprises;
- b) Job creation;
- c) The establishment of Enterprises in the inland areas;
- d) The innovation and development of the existing enterprises.
- e) Encouraging and facilitating the freedom of undertaking.

Article 3: Eligible sectors of activities

In order to create an environment conducive to the development of the private sector and attract private productive investments that will generate jobs and income, the Union of the Comoros places at their disposal, an incentive legal framework.

As such, the eligible enterprises are those which carry out or which are desirous to carry out an activity in one of following sectors:

- a) Agricultural, farming, fishing and forest exploitation activities, and the connected activities linked to processing, storage, conditioning or conservation of plant, animal or fishing products;
- b) Production or processing manufacturing activities;
- c) Research, mining or processing of mineral or natural substances;
- d) Realisation of housing programmes of economical and social nature;
- e) Realisation or running of tourist and hotel infrastructures;
- f) Laboratories of applied or technological researches;
- g) New Information and Communication Technologies, NICT;
- h) Banking and financial decentralized institutions;
- i) Sea, ground and air transports;
- j) Services in the following sub-sectors:
 - Health;
 - Education and vocational training;
 - Assembling and maintenance of equipments;
 - Ground, port and airport infrastructures;

TITLE 7 CONVENTIONS OF ESTABLISHMENT

Article 25: Any Enterprise approved or considered as a priority as part of the plan for social and economic development of the Union of the Comoros can conclude, with the Government, a convention of establishment granting some guaranties and imposing some obligations, as defined in the following articles of this title:

Article 26: The convention shall not involve liabilities for the State, having the effect of releasing the Enterprise from losses, fees, or loss of profits due to technical progress or the economic situation or the proper factors of the Enterprise.

Article 27: The convention of establishment defines particularly:

- The object and the place where the Enterprise shall be established
- The scope and the duration of the investment program and its resulting effects;
- The others advantages granted by the State, the date they came into force and the duration of their application;
- The commitments subscribed by the Enterprise
- The conditions by which the convention can be revised;
- The specific modalities and monitoring conditions to which the Enterprise are submitted;
- The applicable sanctions in case of non respect of the commitments
- The arbitration procedure in case of dispute between the two parties.

TITLE 6

NATIONAL AGENCY FOR THE PROMOTION OF INVESTMENTS

Article 24: Under the supervision of the Ministry in charge of Investments, its has been created a National Agency on the Promotion of Investments:

Its missions are:

- To promote the country as an attractive investments center,
- To serve as a one stop counter for promoters and bearers of investments projects,
- To make any proposal and recommendation related to the application of the Investments Code to the supervising Minister,
- To ensure that the approved enterprises abide by the general and special obligations resulting from the Investments Code and its agrément;
- Make any recommendation related to the possibly applicable sanctions;
- To work out an annual report for the supervising Ministry.

A decree on the statutes, organisation and functioning of the said Agency shall set its functioning modalities.

- Banks, insurance and micro credit institutions and guarantee notwithstanding the specific regulations related to these activities.

k) Handicraft.

The list of the activities eligible to the advantages and guarantees of the investments Code, made out in this article, can be modified upon proposal of the Minister of Finances, Budget, Economy and Planning, in charge of the Promotion of Employment, with the opinion of the National Investments Committee.

The trade activities, defined as the re-sale activities of the same products purchased outside of the Enterprise, are expressly excluded from the field of application of this Code.

The activities that are eligible to specific codes or to the statute of the Enterprise established in a free zone are also excluded from the field of application of this Code.

TITLE 2

GUARANTEES, RIGHTS, FREEDOMS AND OBLIGATIONS OF THE ENTERPRISE

Article 4: It is free to carry out private investments in the Union of the Comoros, subject to specific provisions aiming; particularly; at ensuring the protection of health and public hygiene, social protection or economic improvement.

Article 5: - Rights and freedoms of the Enterprise

Subject to the respect by the Enterprise of its obligations as provided for in article 12, the acquired rights, of any nature, are guaranteed to it and the Enterprise enjoys a full and total economic freedom of competition. It is particularly free to:

- Acquire properties, rights and concessions of any kind, required for its activities, such as land, real estate and commercial, immovable, industrial or forest properties;
- Enjoy the acquired rights and properties;
- Be party to any professional organisation of its choice;
- Choose its technical, industrial, trading, legal, social and financial administration forms;
- Choose its suppliers, service providers as well as partners;
- Take part in invitations to tender for procurement, on the entire territory;
- Choose its management policy of human resources and be free to carry out the recruiting of its personnel.

Article 6: Guarantee on the transfer of Capital

As part of the exchange regulations, the State guarantees the right to transfer capital and income, without any money restriction, to the country that was freely chosen by the investor. It is especially a matter of:

- Regular accounted profits;
- Funds arising from transfers or liquidation.

The applications for an agrément are submitted to the competent services of the one stop counter in charge of centralising all the formalities related to the creation of a Enterprise.

They are supported by documents, the form and the content of which are set by the National Agency for the Promotion of Investment (ANPI). In case the activities are extended, the Enterprise must submit a fiscal receipt together with the documents for the agrément.

During the processing of the documents, the National Agency for the Promotion of Investments (ANPI) can consult le Ministry in charge of Finances and Budget, as well as any supervising Ministry of the sector related to the application.

Article 23: The text granting the advantages of the Investments Code sets particularly:

- a. The object, the extent including the account, the place of establishment and the duration of the realisation of the investment program;
- b. The accepted advantages to the approved enterprises and their duration;
- c. The detailed list of equipments, materials, services or works which benefit from the accepted exemptions by virtue of the provisions of this law;
- d. The date of the agrément to be taken into consideration for the application of the advantages provided for by this Code;
- e. The arbitration procedure in case of a dispute between the two parties.

- a) At the end of the accepted period for the benefits, the application of a maximum reduced rate on the half of the ongoing minimum rate for the import of raw materials destined, in a specific manner, to production.

Article 21: Stabilisation of the system

No duty or tax existing at the date of granting of the agreement, except for conflicting clauses provided for in the said agreement, no legislative or regulatory text which comes into effect at a date prior to that of the agreement of a Enterprise, can result in the restriction, towards the said agreement, of the different advantages obtained, particularly at the Customs and Tax office.

However, the enterprises which benefit from "A" and "B" systems can claim to benefit from any more favourable provision available at the Customs or the Tax office.

TITLE 5

PROCEDURE ON THE GRANTING OF THE AGREEMENT

Article 22: The granting of the advantages provided for in this Code is dependable on the agreement of the Minister in charge of Investments with the opinion of the National Agency for the Promotion of Investments.

The refusal of an agreement must be notified to the applicant.

Article 7: Guarantee on the transfer of remunerations

The freedom to transfer all or part of one's remunerations, whatever their judicial nature and the amount expressed in local money or in currencies, is also guaranteed, for any staff member of the Enterprise, national of a third state who can justify, if need be, his regular stay in the Comoros.

Article 8: Guarantee on Foreign Investments

The agreement granted as part of this Code is worth an investment agrément for the granting of any guarantee, under article 15 of the Treaty establishing the Multilateral Investment Guarantee Agency.

Article 9: Treaties and agreements concluded with others States

The provisions of this Code do not stand in the way of the biggest advantages and guarantees which could be provided for in the treaties or agreements or which could be concluded between the Union of the Comoros and others States and Organisations.

TITLE 3

EQUALITY OF TREATMENT

Article 10: The foreign enterprises or their managers enjoy the same conditions as the Comorian enterprises or nationals within

the consular assemblies and the bodies ensuring the representation of professional and economic interests.

Article 11: In the exercise of their professional activities, the foreign employers and workers are assimilated to Comorian nationals. They benefit from the labour legislation and social laws in the same conditions as the nationals. They can participate in the trade union activities and be member of professional defence organisations.

Article 12: Obligations of the Enterprise

Any Enterprise is bind to the general obligations, on the entire territory of the Union of the Comoros, namely:

- To abide by the legislation of the Union of the Comoros, particularly with regards to the texts and regulations governing the creation and functioning of enterprises, the respect of law and decree, the protection of the consumers and the environment;
- To have an accounting organisation that enables to abide by the legal and regulatory provisions as well as the existing uses in this matter. However the small size enterprises can have their accounting obligations subcontracted by approved consultancies or professionals;
- To provide any information that is deemed necessary for a control of its obligations resulting from this Code.

e) At the end of the period approved for the advantages, the application of a maximum reduced rate by half of the ongoing minimum rate on the import of raw materials destined, in a specific way, to production.

Article 19: «B» system

The "B" system is reserved for enterprises:

- a) With an investment program above 100, 000, 000 FC;
- b) With a significant job creation program which favours the recruitment of nationals.

Article 20: The approval of the "B" system involves the following rights and advantages:

- b) The application of a maximum reduced rate to the unique administrative royalty (RAU) on the import of equipments and materials destined, in a specific manner, to production or exploitation, as part of an approved program, for a ten years' period.
- c) Tax exemption on turnover for the equipments and materials destined, in a specific manner, to production or exploitation, as part of an approved program for a ten years' period.
- d) For the tax on the benefits, the approved enterprises are authorized to deduce from the amount of the taxable benefit, 100% of the amount of the investments. These deductions spread over 8 successive fiscal years at the end of which, the outstanding amount of the authorized but not used taxation credit, is neither rechargeable nor refundable;
- e) Exemption for a two years additional period, for the enterprises established in the rural zones.

Article 17: System «A»

The "A" system is destined to the enterprises:

- a) With an investment program ranging between 5, 000, 000 cf and 100, 000, 000 cf;
- b) With a significant job creation program which favours the recruitment of nationals.

Article 18: The approval of "A" system involves the following rights and advantages:

- a) The application of a maximally reduced rate to the unique administrative royalty (RAU) for the import of equipments and materials destined, in a specific way, to production or exploitation, as part of the approved program, for a seven years' period.
- a) Tax exemption on turnover for the equipments and materials destined, in a specific manner, to production and exploitation, as part of the approved program, for a seven years' period.
- b) For the tax on benefits, the approved enterprises are authorized to deduce from the amount of the taxable benefits, 100% of the amount of the accepted investments. These deductions spread over five successive fiscal years, at the end of which, the outstanding amount of the authorized but not used tax credit, is neither chargeable nor refundable;
- c) Exemption, for two additional years, for the enterprises established in rural areas.

Article 13: Settlements of Disputes

Any dispute resulting from the interpretation or the application of this Code and which has not been settled in an amicable way or by a mediator is settled by the competent Comorian jurisdiction, in accordance with OHADA laws and regulations.

The disputes opposing foreign enterprises and the Union of the Comoros and pertaining to the application of this Code are settled in accordance with the conciliation and arbitration procedures resulting from:

- Either a common agreement between both parties;
- Either, agreements and treaties pertaining to the protection of the concluded investments between the Union of the Comoros and the State, where the investor comes from;
- Either from a settlement procedure by the OHADA or COMESA jurisdiction to which the Union of the Comoros is a member;
- From a settlement procedure by an international jurisdiction.

TITLE 4 PRIVILEGED SYSTEMS

Article 14: Incentive to decentralization

For the purposes of granting privileges according to the area where the approved Enterprise is established, the territory of the Union of the Comoros is divided into two zones, a rural zone and an urban one.

AUTONOMOUS ISLAND OF NGAZIDZA

Zone I. Moroni agglomeration (from Voidjou to Séléa) and the regions of Bambao and Itsandra: referred hereunder as urban zone.

Zone II. Region of Mboudé-Mitsamiouli, Washili-Dimani, Hambou, Hamanvou, Mboinkou-Hamahamet and Badjini-Domba; referred hereunder as rural zone.

AUTONOMOUS ISLAND OF NDZUWANI

Zone I. Mutsamudu agglomeration: from Pasty to Bandrani, referred hereunder as urban zone.

Zone II. The rest of the island is referred to as rural zone.

AUTONOMOUS ISLAND OF MWALI

Zone I. Djoïèzi agglomeration, from Djoïézi to Fomboni hereunder referred to as urban zone.

Zone II. The rest of the island is referred to as rural zone.

The breakdown of the regions in the two zones defined above can be modified upon proposal by the Minister in charge of investments, following consultations with the authorities of the autonomous islands.

The enterprises, which at least 80% of the personnel work in areas other than the urban ones, as part of an approved investment or development programme, are considered as established in a decentralised zone.

Article 15: any Enterprise, which submits either a programme on the creation of a new activity or on the extension of an existing one, in the sectors aimed at in article 3 above, can enjoy the advantages provided for in this law.

Article 16: Nature of the systems approved, as part of this Code

The provisions of this Code institute two separate incentive systems:

- a) The system of the small and medium enterprises known as "A" system;
- b) The system of large enterprises known as "B" system.