

client alert

MEASURES RELATED TO INVESTMENT | ALGERIA |

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NEW INVESTMENT CODE IN ALGERIA

Following the adoption in June 2016 by the People's National Assembly ("*Assemblée Nationale Populaire*") and in July 2016 by the Council of the Nation ("*Conseil de la Nation*") of the bill relating to investment promotion, law No. 16-09 on the promotion of investment ("**Law 16-09**") was published in the Official Gazette of 3 August 2016. This Client Alert presents its main measures.

1. IMPLICATIONS OF THE REPEAL OF ORDINANCE NO. 01-03

With the exception of certain provisions concerning the National Agency of Investment Development ("*Agence nationale pour le développement de l'investissement*", ANDI) and the National Investment Council ("*Conseil National de l'Investissement*", CNI), Law 16-09 repeals the provisions of Ordinance No. 01-03 on the development of investment.

The legal framework currently applicable to investments is mainly composed of Law 16-09 and the Finance Law for 2016 (the "**2016 FL**"), in which a certain number of provisions of Ordinance No. 01-03 have already been reflected, including:

- the "49/51" rule and the obligation for companies majority-owned by foreign investors to comply with such rule, now governed by Article 66 of 2016 FL;
- the obligation to resort to local financing for investments, a softer version of which is currently set out in Article 55 of the 2016 FL;
- the privatisation through opening up of state-owned companies' share capital, formerly ruled by Article 4 *quater* of Ordinance No. 01-03, is now governed by Article 62 of the 2016 FL.

It should be noted that certain provisions of Ordinance No. 01-03 have merely been repealed, without being included in Law 16-09 or in the 2016 FL, such as:

- **the obligation** for foreign investors **to generate a foreign currency surplus** to the benefit of Algeria for the duration of the project;
- **the annual information obligation** regarding the shareholding of foreign legal entities owning shares in Algerian companies.

2. MAIN MEASURES CONCERNING FOREIGN INVESTMENTS

Law 16-09 clarifies and/or amends certain provisions of the former legislation, namely:

- **modification of the invested capital and investment proceeds transfer guarantee:** eligibility is now subject to a capital contribution in cash equal to or in excess of minimum thresholds defined according to the project's global cost. Terms and conditions will be set out by regulations. The reinvestment in capital of transferable profits and dividends are considered as external contributions that benefit from the transfer guarantee and contributions in kind are eligible to the transfer guarantee under certain conditions;
- **maintaining the Algerian State preemption right:** Article 30 of Law 16-09 restates the principle that any sale of shares by or to foreign investors is subject to the State preemption right. Law 16-09 refers to regulations on implementing provisions. Since former Article 4 *quinquies* of Ordinance No. 01-03, which set out a *minima* the implementing provisions of this right, was repealed, it seems difficult to apply the State preemption right as is unless reference is made to past practice;
- **clarification concerning the Algerian State's "right to repurchase":** any sale of 10% or more of shares of a foreign company owning an interest in an Algerian company that enjoyed advantages or benefits at the time of establishment, triggers prior information of the State Holding Council ("*Conseil des Participations de l'Etat*", CPE). Non-compliance with this obligation or the reasoned objection of the CPE, within one month of receipt of information, confers on the State a right to repurchase at most the interests in the Algerian company held by the sold foreign company. In the absence of specifications regarding its implementation conditions, the Algerian State's right to repurchase should not be applicable as is unless reference is made to past practice;
- **competence of the Algerian jurisdictions** in the event of disputes between foreign investors and the Algerian State, except where bilateral or multilateral conventions or an agreement including an arbitration clause are in place (Ordinance No. 01-03 related to "competent jurisdictions").

3. RECASTING THE INVESTMENT INCENTIVE REGIME

After slightly amending the definition of investment, Law 16-09 provides for a single and prior registration with the ANDI of investments in order to benefit from the advantages provided for by this law:

- **eligibility to the advantages:** investments registered with the ANDI and that are not included on the lists of activities excluded from all advantages ("negative lists"), automatically benefit from the advantages provided for by Law 16-09, except (i) investments whose amount is equal to or higher than five billion Algerian dinars (approximately EUR 45,000,000) and which are subject to prior CNI approval; (ii) investments with a specific interest in the national economy and that are subject to the derogation regime of the investment agreement; and (iii) activities with their own regime of advantages (such as the hydrocarbons sector);

- **three levels of advantages:** Law 16-09 makes a distinction between (i) the **advantages that are common** to all eligible investments; (ii) the **additional advantages** for privileged activities and/or employment-generating activities; and (iii) the **exceptional advantages** for projects presenting a special interest for the national economy;
- **nature of the advantages:** Law 16-09 grants advantages whose nature and duration vary according to the qualification of the investment and the implementation stages of the project (completion and operational stages).

4. TRANSITIONAL PROVISIONS

Even though Law 16-09 comes into force immediately, the rights acquired by investors under the former regulations are maintained and the texts implementing Ordinance No. 01-03 remain in force until the enactment of the regulations implementing Law 16-09.

ALSO IN THE NEWS...

- **Publication of Executive Decree No. 16-196 of 4 July 2016 laying down the level, conditions and methods for granting the interest rate subsidy of investment loans**

This decree provides in particular that the rates and duration of the interest rate subsidy, whose maximum levels are set respectively at 3% and 5 years (including the deferred period), are granted according to the classification of the eligible activities and the nature of the loan contracted.

- **Publication of Executive Decree No. 16-205 dated 25 July 2016 on the conditions for setting up, managing and exercising the activity of an investment funds management company**

The text provides in particular that the investment funds management company shall be incorporated in the form of a joint stock company and have a minimum share capital of 10,000,000 Algerian Dinars (approximately EUR 85,000), fully paid up at incorporation.

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