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FINANCE LAW FOR 2016

The Finance Law for 2016 (“**FL 2016**”) was published in the Official Journal of 31 December 2015 on Sunday 3 January 2016. This Newsletter will only review the measures relating to investment. Certain provisions of FL 2016 are of particular interest to foreign investors, such as:

- Article 66 of FL 2016, which retains the “49/51” rule and the compliance obligation for companies (set up prior to the entry into force of the 49/51 rule) majority-owned by foreign investors, resulting from Article 4 *bis* of order no. 01-03 of 20 August 2001, as amended, relating to the promotion of investment. One can question the full reproduction of the 49/51 rule by FL 2016 which could foreshadow easier modifications to this rule, and therefore its greater adaptability in the future;

- The obligation for foreign investors to generate a foreign currency surplus (not applied to date), which remains in place, so long as Article 4 *bis* of order no. 01-03 stays in force; it being specified however that the draft law on investment promotion adopted by the Council of Ministers on 6 October 2015 provided for its abrogation;

- The obligation to resort to local financing for investments (excl. constitution of social capital for companies), which is relaxed, since Article 55 of FL 2016 enables Algerian businesses to resort to outside financing essential to the completion of strategic investments, subject to case-by-case approval by the Government. In the absence of regulation implementing such measure, it cannot be applied as is.

Consequently, in terms of foreign investments, the FL 2016 that was adopted and promulgated is a step back from the relaxation measures announced in the draft laws of FL 2016 and investment promotion adopted by the Council of Ministers on 6 October 2015. Lastly, contrary to what may have been said during the debates prior to its adoption by the two Houses of Parliament, although the FL 2016 remains silent on the State’s pre-emption right, it nonetheless remains applicable for all share transfers to or by foreigners in the conditions amended by the complementary finance law for 2015.

Conversely, other provisions of FL 2016 are an improvement on investment (both local and foreign) incentives and encouragement mechanisms:

- the share of profits to be reinvested, which corresponds to tax exemptions or rebates obtained in the context of investment incentives mechanisms offered by the ANDI, is reduced from 100% to 30% (Articles 2 and 51 of FL 2016). The draft of FL 2016 submitted to the Assembly provided for the repeal of such reinvestment obligation;

- the offer of land to economic operators is increased by Article 58 of FL 2016, which allows all private natural and legal persons to create, fit out and manage industrial or activity parks on non-agricultural land that belongs to them, under conditions defined by a specifications document drafted by the ministry in charge of investment, in line with the national development plan. Such plots of land may be the subject of ownership transfers;

- to the exception of investments conducted in the high plateaux and the South of the country, and job creation assistance mechanisms that remain unchanged, the interest rate subsidies granted by the Treasury for loans granted by banks and financial institutions to finance investment projects are now limited to 3% of the interest rate (as opposed to 2% previously for certain types of investment), and their duration is limited to 5 years (Article 94 of FL 2016).

As regards privatisation through opening up of the share capital of state-owned companies, Article 62 of FL 2016, which sparked numerous debates, in the end simply repeats the provisions of Article 4 *quater* of the above-mentioned order no. 01-03, yet specifying that state-owned companies that already carry out partnership operations by opening up their social capital to national resident shareholders must retain at least 34% of all shares or membership shares.

Lastly, it should be noted that the FL 2016, as per the terms of Article 52, sanctions a measure to apply higher tax to imports of finished products that are similar to those manufactured in certain industrial sectors (in particular mechanic, automotive, food-related or pharmaceuticals), as well as to imported products that are concerned by the new licensing and quota systems.

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