GIDE
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newsletter

A 2016 RETROSPECTIVE OF LEGAL NEWS

1. REFORM OF THE LEGAL FRAMEWORK APPLICABLE TO INVESTMENTS

The adoption of Law No. 16-09 on the promotion of investment dated 3 August 2016 (hereinafter the "Law 16-09") is part of an approach to improve the business climate in Algeria, initiated by the government in 2016.

1.1 A two-phased reform

The reform of the legal framework of investments initiated in 2016 was carried out in two phases:

- **At the beginning of the year**, the Finance Law for 2016 (the "2016 FL") reproduces, as such, some provisions of Ordinance No. 01-03 regarding the development of investment dated 20 August 2001 (the "Ordinance 01-03"), such as the "49/51" rule, and modified some existing rules (such as the softening of the law concerning the obligation to resort to local financing);
- **Then during the summer**, the Law 16-09 merely repealed Ordinance 01-03, except for certain provisions. Thus, some obligations (which were not applied in practice) disappeared, such as the obligation for foreign investments to generate a foreign currency surplus to the benefit of Algeria during the entire duration of the project, or the annual information obligation regarding the shareholding of foreign legal entities owning shares in Algerian companies.

Today, the new legal framework applicable to investments includes three components: Law 16-09, 2016 FL and some remaining provisions from Ordinance 01-03 related to the National Agency of Investment Development ("*Agence nationale pour le développement de l'investissement*", ANDI) and to the National Investment Council ("*Conseil National de l'Investissement*", CNI).

1.2 Main contributions of 2016 FL and Law 16-09

The contributions of the new framework applicable to investments can be summarised as follows:

- Move of the following rules to the 2016 FL only, which may suggest an easier change in the future:
  - **the "49/51" rule**, and the obligation for companies majority-owned by foreign investors to comply with such rule, are now governed by Article 66 of 2016 FL;
  - a softer version of the **obligation to resort to local financing** for investments is set out in Article 55 of 2016 FL;

  - **privatisation through opening up of share capital** of state-owned companies, formerly governed by Article 4 quater of Ordinance 01-03, is now governed by Article 62 of 2016 FL.

- Modification of existing principles whose scope is sometimes difficult to assess given the non-publication of implementing texts:

  - **the obligation to resort to local financing for investments (except for the constitution of the share capital for companies)** has been softened. Article 55 of 2016 FL allows external financing necessary for the realisation of strategic investments by Algerian companies, provided subject to a case-by-case authorisation given by the government. In the absence of an implementing text, this measure is not applicable as is;

  - **the invested capital and investment proceeds transfer guarantee has been modified**: its 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. The reinvestment in capital of transferable profits and dividends are considered as external contribution that benefit from the transfer guarantee, and contributions in kind are eligible to the transfer guarantee under certain conditions;

  - **the State pre-emption right has been maintained**: Article 30 of Law 16-09 restates the principle that any sale of shares by or to foreign investors is subject to the State pre-emption right. Law 16-09 refers to regulations on implementing provisions. Since the former Article 4 quinquies of Ordinance 01-03, which set out the implementing provisions of this right, was repealed, it seems difficult to apply the State pre-emption right as such unless reference is made to past practice;

  - **the State's right to repurchase has been clarified**: 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;

  - **the competence of the Algerian jurisdictions has been affirmed** 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 01-03 referred to “competent jurisdictions”).

- Improvement of the investment incentive regimes:

  - **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, subject to the derogation regime of the investment agreement; and (iii) activities with their own regime of advantages (such as the hydrocarbons sector);

  - **the share of profits to be reinvested**, which corresponds to tax exemptions or rebates obtained in the context of investment incentive mechanisms offered by the ANDI, is reduced from 100% to 30% (Articles 2 and 51 of 2016 FL); a ministerial order dated 28 November 2016 lays down the procedures for its application and will be detailed in our next newsletter on the 2017 Finance Law;

- **the offer of land to economic operators is increased by Article 58 of 2016 FL**, 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 2016 FL).

  An executive decree No. 16-196 dated 4 July 2016 specifies the level, terms and conditions to grant the interest rate subsidies of investment loans. This decree provides in particular that the rates and the interest rate subsidies period, whose maximum levels are set respectively to 3% and 5 years including the deferred period, are granted depending on the classification of eligible activities and the nature of the loan granted.

In addition to the reform of the applicable framework to investments, the other key measures of the 2016 year concerned import restrictions (**§ 2**).

2. ADOPTION OF AN IMPORT RESTRICTION POLICY

Faced with falling oil revenues, in 2016 the Algerian government implemented an import restriction policy on vehicles, cement and concrete reinforcing bars. According to the Algerian Press Agency, these restrictions have saved approximately USD 6 billion.

More specifically, this import restriction policy is materialised by the introduction of a specific regime of import licences (quotas and contingents).

The import licences regime and the volumes quota regime, as provided for by Law No. 15-15 dated 15 July 2015 and Executive Decree No. 15-306 dated 6 December 2015, saw their first practical application with a list, published on 5 January 2016 by the Algerian Ministry of Commerce, of food and agricultural products from the EU subject to the licences regime.

The first application of the quotas regime concerned the vehicles, cement and concrete reinforcing bars.

Lastly the 2016 year was marked by the adoption of legislation to soften control regulations (**§ 3**), to promote digital means (**§ 4**) and to regulate more strictly the opening of liaison offices by foreign investors (**§ 5**).

3. A SOFTENING REGARDING THE EXCHANGE CONTROL REGULATION

A regulation of the Bank of Algeria No. 16-04 dated 17 November 2016 amending and supplementing the Regulation No. 07-01 dated 3 February 2007 relating to the rules applicable to external current transactions and foreign currency accounts, extends from 180 to **360 days** the period granted to the exporter for the repatriation of its export revenues.

4. ON THE PROMOTION OF DIGITAL MEANS

The publication of the Decree No.16-142 of 5 May 2016 fixing the conservation conditions for documents signed electronically, made under Law No. 15-04 of 1 February 2015 laying down general rules for signature and electronic certification, is a part of the framework relating to the recent implementation of a signing and electronic certification device for purposes such as promoting e-commerce in Algeria.

This measure allows any natural or legal person, party to an electronically signed document, to ensure its conservation. The conservation of an electronically signed document must refer to the electronic document and its relevant electronic signature attached or linked logically. The electronically signed document is then stored on a storage medium designed to receive, conserve and restore the electronically signed document. The electronically signed document is kept for as long as the document is useful.

5. THE NEW REGIME FOR LIAISON OFFICES

The publication of the Ministerial Order dated 9 November 2015 defining the new regime applicable to the liaison offices of foreign companies in Algeria has clarified the conditions under which liaison offices can open and operate in Algeria.

The Order confirms the temporary and the non-commercial nature of these representation structures of foreign companies, which are prohibited from performing any economic activities.

The opening of a liaison office remains subject to approval of the Ministry of Commerce, and the conditions of its granting have been strengthened. Approval is granted by the Ministry of Commerce for a renewable period of two years.

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