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Mali Investment Act

February 26, 1991

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Presentation of Investment Law and Procedures of Approval

1. Presentation of the Investment Law

Law N° 91- 048/AN-RM dated , and Decree N° 91-079 P-RM dated March 4, 1991 has instituted the investment law that is presently in force in Mali. It shall abrogate and replace law N° 86-39/AN- RM dated March 8, 1986.

The Investment Law shall institute a preferential tax system with a view to promote national as well as foreign private capital investment in the activities of production and service fees, and shall offer the necessary guarantees for giving security to investments realized.

The Systems of approval

Three systems of approval shall be provided for in the present Investment Law, that is:

A System called system of small and medium-sized firms. It shall apply to investments whose amount is inferior to 100 million CFA Francs (1 million French Francs).

B System, called system of large which shall apply to investments superior or equal to 100 million CFA Francs.

The system called system of Free Zones, which shall apply to new firms dealing mainly with exports which can sell off up to 20% of their production on the national market.

Advantages Granted Firms, which are accepted by the Investment Law, shall enjoy the following tax shelters:

Exemption from taxes on industrial and Commercial profits (tax on Bic) and license fees. The duration of this exemption shall be 5 years as far as A System is concerned and 8 years as far as B System in concerned.

Exemption from tax on land income and tax on "**Les biens de main morte" concerning new constructions. The duration of this exemption shall be 5 years for A and B Systems. The duration shall be 10 years concerning property development project firms.

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The spreading out over 3 years of registration fees on articles of incorporation or companies and exemption from these fees in case of the increase of capital.

Accepted firms in the system called system of free zones, shall enjoy total and permanent exemption from fee and taxes relative to the practice of their activities. However, they shall be authorized to sell 20% of their production on the national market by paying off duties and taxes normally owed.

Take-overs so as to discharge public firms by new promoters within the framework of the privatization program of public firms, can, according to the amount of investment, enjoy the advantages of A System or B System.

The setting up of industries in the regions shall be encouraged through the extension of the tax exemption period on industrial and commercial profits and license fees. The Decree of implementation of the law shall specify three geographical zones of which Bamako District constitutes Zone I. Concerning Zone III (Koulikoro Sikasso and Segou Region), the period of exemption from taxes on industrial and commercial profits and license fees shall be extended to two years. (Mopti Toumbouctou, Gao and Kidal Region) this extension shall be four years.

Guarantees

Foreign investment shall enjoy the same preferential rights as national investors.

The right to capital transfer and its income shall be guaranteed to individual or legal entities that make in Mali an investment funded by a contribution of foreign exchange. In other words, foreign persons who proceed to investment or who hold a job in a Malian firm, shall have the right, subject to compliance with regulating on matters of exchange, to transfer, in the foreign exchange sold at the time of the constitution, of the said investments, the dividends, products of any nature of invested capital, products of liquidation or of the realization of their assets and salaries.

Disputes, which could arise between foreign investors and the government, shall be settled first through an amicable procedure, or within the framework of bilateral agreements for protecting foreign investments.

In case of failure, the parties shall have recourse to the arbitration procedure which shall be the one provided for by the March 18, 1965 Agreement creating the International center for settling disputes relative to investment among states and nationals from other States (CIRDI), established under the aegis of the World Bank and ratified by Mali on January 3, 1978.

Approval by Investment Law is equally worth the investment approval for granting any guarantee in the spirit of article 15 from the Treaty instituting the Multilateral Agency for Guaranteeing Investments (AMGI), signed by Mali in October 1990.

Appraisal criteria of projects at approval

The rate of added value, which has to be equal of superior to 35%, shall be the only fundamental element for appraising projects. No minimum level of investment is required for a project to be eligible

to the law.

Field of implementation of the Investment Law

The only firm excluded from approval by the investment Law, shall be the ones that are exclusively commercial, firms for research and development of petroleum and mining.

Commercial Law, Petroleum Law, and Mining Law governs these activities.

The period granted for the realization of projects shall be set to five (5) years with a possibility of extending it to six (6) years after a start of realization.

It has been simplified with the institution of the Sole Counter at the level of the National Department of Industries. All the applications for approval by the Investment Law, or the applications for prior authorization for the creation of firms are centralized at the level of the Sole Counter. Any application file for approval by the Investment Law, shall consist of the following documents:

An application on which stamp duty has been paid and addressed to the Minister responsible for industries a feasibility study in five (5) copies prepared in accordance with the presentation model of project

A copy of authorization to exercise if the case arises. Application forms for approvals, as well the presentation model of projects, are available at the level of the Sole Counter.

The approval period of a project by the Investment Law, shall imperatively be set to thirty (30) clear days from the date of receipt of the application. Only when there is non-compliance with a legislative or statutory provision in force, shall the non-approval be delivered. The approval shall be granted through a decree issued by the ministry responsible for industries.

The authorization period for the setting up of industries without advantages from the Investment Law shall be set to fifteen (15) working days from the delivery date of the file, and the authorization granted through a decision issued by the Ministry Responsible for Industries.

Law N 91-048/an-rm

Dated February 26, 1991 bearing on Investment Law

The National Assembly deliberated and adopted during its February 2, 1991 Session the following:

The President of Republic promulgated the terms are as follows:

Heading I

Article 1: This law aims at encouraging investment in Mali with a view to:

- a. Mobilizing National savings as well as well as the contribution of capital coming from abroad

- b. Creating National jobs, training managers and skilled national labor
- c. Creating, extending and modernizing the industrial and farm producing - forestry - pastoral infrastructures;
- d. Encouraging investment in the exporting and in the economic sectors using raw material and other products;
- e. Creating small and medium - size firms, developing ping micro-firms
- f. Transferring necessary and appropriate technologies
- g. Realizing investments in the least developed regions of the country
- h. Encouraging and promoting a complementary economic fabric
- i. Favoring recovery so as to discharge public firms by new promoters within the framework of the privatization program of public firms.

Heading II

Definition and field of implementation

Article 1: Is regarded as investment, in the spirit of this law, the funding of assets and of the initial working capital within the framework of a development project.

Article 2: The individual or legal entities, whatever their nationalities, regularly settled in Mali in accordance with the Malian legislation, fulfilling or wishing to fulfil an activity which falls into the field of implementation such as defined in the below-mentioned

Article 3: shall be assured of general guarantees and advantages set out in this law, subject to their projects being eligible according to the defined criteria through a Decree issued by the Council of Ministers.

Article 4: The following shall be excluded from enjoying the advantages of this law: Firms having an exclusive commercial character, research and mining development firms, research and petroleum development firms. These activities shall be governed by commercial law, Mining law, petroleum law and their texts of implementation.

Article 5: Firms, which fall into the field of implementation of this law, shall be granted the benefit of one of the following systems.

The system of small and medium-size firms called "A System

The system of large firms called "B System'

The system of free zones.

Article 6: direct added values shall be the fundamental elements for appraising projects. Their minimum rate, as well as the elements making it up, shall be set through a decree issued by the Council of Ministers.

Article 7: The approval procedure, as well as the appraisal elements other than the added value shall be determined through a Decree issued by the Council of Ministers.

Article 8: Industrial investments seeking no advantage from this law, shall nevertheless be subject to prior permission from the Minister responsible for industries.

Heading III

About general guarantee

Article 9: The individual or legal entities concerned by article 2 from this law shall receive the same treatment in the same conditions of eligibility.

Article 10: The right to the transfer of capital and its income, shall be guaranteed to foreign individual or legal entities, who makes in Mali an investment funded by a contribution of foreign exchange.

Foreign persons who have investments, hold jobs in a Malian firm, shall have the right, subject to exchange control, to transfer in the disposed of foreign exchange during the making of the said investments, dividends, and products of any capital, products of liquidation or of the realization of their assets and salaries.

Heading IV

About advantages granted

Article 11: Firms whose level of investment is inferior to one hundred (100) million francs, shall be, accepted in "A System" and shall enjoy the following advantages:

Exemption from taxes on individual and commercial profits, as well as on licenses fees during the first five (5) financial year

Exemption from taxes on land income and tax on " *les biens de main morte" during five (5) years only for new buildings. The exemption period shall run from the completion date of the construction of the concerned buildings. The duration of the exemption from taxes on land income and from taxes on "*Les biens de main morte" shall be brought to ten (10) years for agencies promoting real estate.

The spreading out over three (3) years of the registration fees payment on the articles of incorporation of companies and exemption from fee in case of capital increase.

The first third of the fees shall be paid during the registration, and the two other thirds shall be paid annually

Article 12: Firms whose level of investment is equal or superior to one hundred (100) million francs shall be accepted in "System B" and enjoy the following advantages:

Exemption from taxes on industrial and commercial profits as well as on license fees during the first eight- (8) financial years.

Exemption from taxes on land income and on taxes on "*Les biens de main morte" The exemption period shall run from the completion date of the construction of the concerned buildings. The duration of the exemption from taxes on land income and from taxes on "*Les biens de main morte" shall be brought to ten (10) years for agencies promoting real estate.

The spreading out over three (3) years of the registration fees payment on the articles of incorporation of companies and exemption from these fees in case of capital increase.

The first third of the fees shall be paid during the registration, and the two other thirds shall be paid annually.

Article 13: Take-overs so as to discharge public firms by new promoters within the framework of the privatization of public firms, can, according to the investment amount, enjoy the advantages in A and B Systems.

Heading V

Article 14: The new firms which are dealing mainly 'with exports shall be classified under the system of free zones. These firms shall enjoy to this affect, the total and permanent exemption from any fees and taxes relative to the practice of their activities.

However, these firms, if they so wish, can sell off up to 20% of their production on the local market, which shall be subject to fees and taxes being imposed on similar imported products.

Heading VI

About particular provisions

Article 15: In addition to the advantages provided for in "A and B Systems. Firms which settle in the areas industrialized (Zone II and III), shall enjoy the exemption during two (2) financial years four (4) financial years in zone III, commercial profits (BIC) and from license fees. For the implementation of these provisions, the Malian territory is divided into zone I, zone II and zone III specified through a Decree issued by the Council of Ministers.

Heading VII

About special provisions

Article 16: For each of the advantages provided for by this law, the first financial year taken into account, unless otherwise stated, shall be the one during which the first delivery or putting up for sale of products, services, to the exclusion of trials, is recorded. The accepted firms shall notify through a registered letter, the starting date of their productions to the competent authorities specified through a Decree issued by the Council of Ministers.

Article 17: Firms governed by this law comply with the legislation and the regulation in force on matters of trade and legal statutes of companies, before their putting into service.

Article 18: Firms settled in Mali shall comply with the following obligations:

Keeping regular accounts according to the accounting plan accepted in accordance with the provisions of the Commercial Law favoring the recruiting of nationals through the running of vocational training sessions at all levels in the firm

Complying with legislation on environment

Providing accounting and financial documents, implementation reports on investment, employment, national and foreign funding, to the competent authorities in accordance with tax laws.

Article 19: Non compliance with signed commitments by accepted firms shall involve sanctions in accordance with the regulation in force.

Article 20: The realization period of firms accepted by this shall be set five (5) years. Promoters whose projects have not started to be realized (Civil engineering, acquisition of equipment material) within the prescribed time, shall automatically lose the benefit from advantages set by the text of approval. However, only one extension of time of one (1) year shall be granted, starting from the expired date of the approval time limit, to promoters who justify a start of their project realization.

Heading VIII

Article 21: Disputes bringing one or several investors into conflict with the government and relative to the validity, interpretation, implementation or revision of one or several clauses of the approval, shall be the subject of an amicable procedure between the parties. When investors are nationals from other States, the arbitration procedure is the one provided for by the March 18, 1965 Agreement creating the International Center for Settling Disputes relative to investment among States and Nationals from other States (CIRDI), established under the aegis of the World Bank and ratified by the Republic of Mali on January 3, 1978, unless investment protection bilateral agreements struck with government of which investors are nationals, exist. The consent is made up of this article, as far as the government is concerned; it expressly set out in the application for approval, as far as investors are concerned.

The approval of Investment law shall also be worth the approval of investment for the granting of any guarantee in the spirit of article 15 from the treaty creating the Multilateral Agency for Investment Guarantee (AMGI), signed by the Republic of Mali in October 1990.

Heading IX

Final provisions

Article 22: The current approvals from the promulgation date of this law, granted under the system of law N° 62-5/AN-RM dated January 1962 from Order N° 62- 29/CMLN dated March 23, 1969, from Order N° 76- 31/CMLN dated March 30, 1976, from law N° 86- 39/AN-RM dated March 8, 1986, and which would not have been the subject of an express abrogation, shall remain in force in all their provisions subject to endorsement and later modifications.

Article 23: This law, which abrogates any contrary prior provisions, notably law N° 86-39/AN-RM dated March 1986, shall be recorded and published in the official magazine.

The Council of Ministers

Decrees

Article 1: The means of enforcing law No 91-048/AN- RM dated February 26, 1991 shall be laid down in accordance with the provisions of this decree.

Section I: About approval procedures

Article 2: Applications for approval files in relation to investment law shall be delivered at the level of the Sole Counter.

Article 3: Any application for approval file shall be made up of the following documents:

An application, on which stamp duty has been paid, addressed to the Minister Responsible for Industries.

A feasibility study in five (5) copies prepared in accordance with the project presentation model.

A copy of the authorization to practice if the case arises.

Article 4: Application forms for approval, as well as the project presentation model, are available at the level of Sole Counter.

Article 5: Promoters whose applications for approval files in relation to investment law, are deemed to comply with the provisions of the above-mentioned article 3 shall received a delivery acknowledgement of receipt within the following twenty four (24) working hours.

Such an acknowledgement of receipt shall mention among other things, -the names and addresses of promoters, the subject of the activity, the requested system of investment law, the delivery of files, and the legal date of approval granting.

Article 6: Application for approval files shall be submitted to a preliminary instruction which consists in checking the subject of the planned activity in relation to the field of implementation of Investment Law. Files whose results have not been conclusive shall be returned to their promoters within seven (7) working days after the receipt of projects.

Article 7: After receiving applications for approval files in relation to Investment Law, the Sole Counter shall prepare a data sheet and shall be able to appoint any individual or legal entities, or any other structures whose competence shall be deemed necessary for the examination of the said file.

Article 8: After favorable notifications from the Sole Counter, approvals shall be granted by a decree

issued by the Minister Responsible for Industries within a period of thirty (30) working days after the receipt date of the file. Only when there is non-compliance of investment projects with legislative or statutory provisions in force, shall refusal to grant approvals be pronounced.

Article 9: the approval decree shall enumerate the advantages granted to promoters, the activities for which firms are approved, and shall lay down the obligations which are incumbent upon promoters.

Article 10: Application files for authorizing the setting up of industries without advantages relating to Investment Law, addressed to the Minister Responsible for Industries, shall be delivery at the Sole Counter level.

They shall include the following documents:

An application on which stamp duty has been paid feasibility study in two (2) copies.

Authorization from the Minister Responsible for Industries shall be granted through a decision within a fifteen- (15) working days period, starting from the date of receipt of files.

Article 11: Approved firms shall have to notify through registered letters, the starting dates of their activities at the National Department of Industries and the National Department of Tax in accordance with the revisions of article 16 from Law N° 91-048/AN-RM dated February 26, 1991 relating to Investment Law.

Section II: About elements for appraising

Article 12: Direct - Added values shall be the fundamental elements for appraising projects which are submitted for approval in relation to Investment Law.

Direct added values of firms shall be defined as the sum of the following components of the trading accounts:

- a) Staff costs
- b) Taxes
- c) Endowments to redemption
- d) Financial costs
- e) Gross operating profits

Their accepted minimum rate shall be 35 % of turnovers.

Article 13: Elements for appraising other than the one specified in the above mentioned

Article 12: and, which shall be used during the examination and evaluation of applications for approval, shall be the following:

- a. The advantage investments are likely to bring to the State, to national entrepreneurs and to

- consumers,
- b. Contribution of external funding,
- c. The setting up of head offices in Mali,
- d. The degree of integration of firms into the national economy,
- e. The effects of investments on trade balance,
- f. The effects on environment.

Section III: About distribution into Zones

Article 14: As implementation of the provisions of Article 15 from Law N° 91-048/AN-RM dated February 26, 1991, bearing on Investment Law, relating to decentralization, the Malian territory is divided up into zones as follows:

zone I : the District of Bamako

zone II : the Regions of Koulikoro, Sikasso and Segou

zone III: the Regions of Kayes, Mopti, Tombouctou, Gao and Kidal

Section IV: About the system of free zones

Article 15: Free enterprises shall be on the ones which are subject to the system of free zones as specified in article 14 from Law N°91-048/AN-RM dated February 26, 1991, relating to Investment Law.

This system shall apply to investments realized by promoters, whatever their nationalities, in activities mainly dealing with exports.

Article 16: Free enterprises, within the framework of their activities, shall be exempted from any taxes, and duties, of a fiscal, exceptional tax, and customs nature. However, these enterprises, shall remain subject to the system of Common Law concerning sales realized on national territory.

Article 17: Foreign Staff recruited by free enterprises shall be liable to a fixed system of gross income tax set at 15 % of the amount of their remuneration.

Article 18: Commercial relations between free enterprises and the enterprises set up on national territory, shall be governed by provisions relating to foreign trade.

Article 19: Free enterprises, during their running shall have to comply with the following obligations:

The keeping of a production sheet, The monthly declaration of stocks concerning raw material and consumable goods as well as finished products, The protection of the environment, Offer of products on the Malian Market in accordance with Malian Standards, in the case arises, with international standards.

The realization of infrastructures enabling the Administration to proceed to the control of import, stocking, processing of inputs operations, and export operations of finished products, Collection and

transfer of general income tax (I.G.R)

The keeping of a full, honest and convincing accounting, The keeping of a separate accounting for sales realized on the national market

Article 20: Files for approval of free enterprises shall be made up of the following documents:

An application on which stamp duty has been paid, addressed to the Minister Responsible for Industries and delivered at the sole Counter level

A feasibility study in seven (7) copies specifying the subject of the activity, the name and address of the promoter, the setting up site of the enterprise, market research, financial analysis, employment plan.

Article 21: Files of approval of free enterprises, after instruction, shall be examined by a commission made- up of the representative of the following services:

The National Department of Industries
The National Tax Department
The National Department of Economic Affairs
The National Department of Customs
The National Department of Health
The National Department of Employment Labor and Social security

The Commission shall appoint any competent structures according to the nature of projects on the agenda.

Secretariat shall be provided by the sole Counter.

Article 22: The approval period for free enterprises shall be set to thirty (30) working days, starting from the delivery date of files.

Approvals of free enterprises shall be granted by decree issued by the Minister Responsible for Industries.

Article 23: Free enterprises shall be registered in Mali at the level of the National Department for Industries.

Section V: About follow up and control

Article 24: Follow up of approved projects in relation to investment Law, and the control of commitments by investors, shall be ensured by the National Department of Industries which shall, if the case arises, appoint any technical service, to record its opinion on any area which may fall within its competence.

Article 25: Non compliance of subscribed commitments by promoters of approved projects in relation

to investment Law, except force major, shall lead to a partial or total withdrawal of granted advantages after a formal notice not followed by any effect. The withdrawal shall be issued by the minister responsible for industries through a decree.

Section VI: About final provisions

Article 26: This decree shall abrogate any contrary prior provisions, notably Decree N°91-079/P-RM dated March 4, 1991 bearing on the means of enforcing law N°91-048/AN-RM dated February 26, 1991 relating to Investment Law.

Article 27: The Minister responsible for Industries, handcraft and Tourism, and the Minister Responsible for the implementation of this decree which shall be recorded and published in the official magazine.

*This is tax imposed on: Religious Missions - Public companies - Limited Liability Companies
Semi-public companies - State-Owned Companies

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