

LAW N° 2019 - 005
RELATING TO THE INVESTMENT CODE
OF THE TOGOLESE REPUBLIC

The National Assembly deliberated and adopted;
The President of the Republic enacts the law set out below:

CHAPTER ONE: GENERAL PROVISIONS

Section 1: Objective of the law

Article 1: The objective of this Investment Code law is to promote, facilitate and protect sustainable and responsible investment in Togo with the aim to:

- a. support the employment policy and income-generating activities for the population in general and, in particular, among the youth, women and people with disabilities;
- b. promote the creation of sustainable and skilled jobs;
- c. promote activities with high value addition;
- d. promote the use and harnessing of natural resources and local raw materials;
- e. promote the transfer of expertise and the use of new technologies;
- f. develop exports;
- g. promote the decentralization of economic activities;
- h. promote and undertake specific major projects;
- i. foster technological innovation.

This code lays down the benefits and incentives granted to investing companies, as well as their corresponding obligations.

Section 2 - Definitions

Article 2: For the purposes of this code,

- **IP-FZA** shall mean Investment and Free Zone Promotion Agency, referred to as "the Agency";
- **Operational Centre** shall mean centre where the operations of a holding company or an international company are centrally managed;
- **Employment** shall mean the position held by a Togolese wage-earner, under an employment contract, whose monthly remuneration is equal to or higher than the guaranteed inter-professional minimum wage (*SMIG*);

Company shall mean any outfit which produces, processes and/or distributes goods or services for profit and which is legally constituted as a sole proprietorship or as a corporate body recognized in Togo;

- **New company** shall mean any newly established company as defined above, in the process of creating a new stream of activity, not as a result of one or several legal changes to a business line that already used the specific assets of the targeted activity;
- **Expansion of an existing company** shall mean any investment program initiated by an existing and operational company as defined above with the aim of acquiring additional equipment, excluding renewal, and which leads to an increase of at least 25% in its production capacity in volume terms over a five (5) year period or less;
- **A Holding Company** shall mean any company that owns shares or assets of other national and/or international companies operating in several sectors with a view to overseeing their management decisions;
- **Investment** shall mean raising of capital to acquire movable, immovable, tangible and intangible assets deemed necessary for the establishment of a new company or the expansion of an existing company;
- **Investor** shall mean any natural or legal Togolese or foreign individual, who invests in Togo under the conditions laid down in this code;
- **Incentive** shall mean any customs, tax or non-tax benefit reserved for a company to facilitate or support its investment;

- **Regional Office** shall mean a regional grouping of companies operating in different countries and which oversees the management decisions of the grouping;
 - **Industrial Free Zone Status** shall mean the set of specific rights and obligations of companies approved under law n° 2011-018 of 24 June 2011, relating to the Industrial Free Zone Status;
- Industrial Free Zone** shall mean developed and closed area housing approved industrial free zone companies;

CHAPTER II - INVESTMENT GUARANTEES AND DISPUTE SETTLEMENT

Section 1- Principles of equal treatment and non-discrimination

Article 3: Except for an international tax treaty on double taxation or non-taxation, any company legally established in the Togolese Republic, which submits an investment project to the Agency shall automatically be subject to the provisions of this code without any discrimination.

Section 2 - Guaranteeto transfer capital and remunerations

Article 4: Foreign investors investing in the Togolese Republic under the conditions laid down by this law, shall be subject to the regulations of the West African Central Bank (BCEAO) in particular with regard to foreign exchange, the transfer of currencies, dividends, all kinds of proceeds from their investment, proceeds from liquidation or sale of their assets, possible compensations, restitutions or redress as well as salaries.

Section 3 - Freedom to manage

Article 5: Any company legally established in the Togolese Republic shall freely outline its production and marketing policy in accordance with the laws and regulations in force in the Togolese Republic.

It shall comply with all management procedures in accordance with the rules and regulations in force.

Section 4 - Investments under State protection

Article 6: The protection for private ownership of property is guaranteed by the laws and regulations in force in the Togolese Republic.

This protection extends to all legal and commercial aspects of the property, its sum and substance, transfer and contracts they are subject to. Movable or immovable assets held in the Togolese Republic by the investor may be subject to expropriation or nationalization measures only in strict compliance with applicable laws in the Togolese Republic.

Investors' files must be examined expeditiously and competent judicial authorities shall process their investment requests in accordance with the laid down procedures in force in the Togolese Republic.

Any non-discriminatory regulatory measure taken by the Government, which is intended to legitimately protect or promote public welfare, such as public health, security and environmental safety, shall not constitute an indirect nationalization or expropriation under this code.

Appropriate compensation shall be normally assessed based on the fair market value of the investment. Where appropriate, determination of any such fair and appropriate compensation shall result from a fair balance between the public interest and the interest of the investor, with all relevant considerations coming to play.

Section 5 – Dispute settlement

Article 7: Any dispute between the company or the investor and the State arising from the interpretation or the implementation of this code shall be settled amicably between the parties.

Should the parties fail to reach an out-of-court settlement after a maximum period of six (6) months, the matter shall be settled by a competent Togolese or regional court in accordance with the laws and regulations in force.

The parties may agree to submit the dispute to arbitration.

Recourse to arbitration shall comply with one of the following procedures:

- a. Arbitration procedure provided for by the Togolese Court of Arbitration (CATO) ;
- b. Arbitration procedure provided for by the arbitration regulation of the Community Court of Justice and Arbitration of the Organisation for the Harmonisation of Business Law in Africa (CCJA of OHADA) ;
- c. Arbitration procedure provided for by the Uniform Act on the Arbitration Law of OHADA ;
- d. Arbitration procedure laid down by the International Centre for the Settlement of Investment Disputes (ICSID) ;

- e. any other arbitration procedure of their choice or which is expressly provided for either in a contract as laid down in an arbitration clause or an arbitration agreement, or provided for by agreements and treaties relating to the protection of investments concluded between the Togolese Republic and the country of the foreign natural or legal entity that controls the Togolese-registered company.

Article 8: Foreign individuals or legal entities holding shares in or involved in the management of a company incorporated under Togolese laws may refer their disputes to the Arbitration Centre of the OHADA Common Court of Justice and Arbitration as provided for in subparagraph l of Article 7.

CHAPTER III –THE AGENCY RESPONSIBLE FOR THE ADMINISTRATION OF THE INVESTMENT CODE AND THE INDUSTRIAL FREE ZONE

Section 1 - The Investment and Industrial Free Zone Promotion Agency

Article 9: The Investment and Industrial Free Zone Promotion Agency (API-ZF) has been established to administer the Investment Code and the Free Zone Status.

The said Agency is a public administrative establishment with legal personality and financial autonomy.

Article 10: The Agency shall act as a one-stop shop for all administrative formalities relating to the establishment and operation of companies located on Togolese territory and eligible under the Investment Code.

The agency shall facilitate the steps taken by investors to carry out an environmental impact study and obtain the corresponding certificate. The Agency shall also provide any other appropriate assistance to potential and actual investors.

The Agency may propose measures or programs to promote investment. Its organisation, mandate, and functioning are laid down by decree passed by the Council of Ministers.

Section 2 - Administration of the Industrial Free Zone

Article 11: The administration of the Industrial Free Zone Status and of any other special economic regime shall be entrusted to the Agency.

To this end, the Agency shall perform the functions assigned to the Industrial Free Zone Authority (SAZOF) by law n° 2011-018 of 24 July 2011 relating to the Industrial Free Zone Status.

The terms and conditions under which the Agency is subrogated to the rights of SAZOF are laid down in a decree passed by the Council of Ministers.

Section 3 - The Agency's resources

Article 12: The Agency's resources consist of:

- a. state allocations;
- b. royalties for services provided within the scope of its mandate;
- c. revenues from real estate transactions;
- d. proceeds from sales and rentals;
- e. borrowings;
- f. donations and bequests;
- g. any other legitimate resources.

CHAPTER IV - ELIGIBILITY CONDITIONS FOR INVESTMENT DEVELOPMENT INCENTIVES

Section 1 - Eligible sectors of activity

Article 13: The incentives referred to in chapter VI of this code shall be granted to all businesses that are lawfully established in the Togolese customs territory and are authorised to undertake agricultural, industrial, commercial, and craft activities or provide services in accordance with the laws and regulations in force, with the exception of:

- 1) businesses whose activities are prohibited by law in the interest of the general public;
- 2) businesses operating in one of the following regulated sectors:
 - a. mining, oil and gas, with the exception of tank farm operations for domestic, industrial or medical use;
 - b. arms production and related military activities;
- 3) businesses running the following activities:

- a. distribution or trading activities (purchase and resale of products in the same condition as purchased), with the exception of services to ships, whether at berth or in anchorage, which are still eligible for the incentives;
- b. brokerage activity,
- c. storage of products other than plant, animal, and fishery products mainly intended to be sold in Togo;
- d. shopping mall management, with the exception of real estate development for shopping centres;
- e. acquisition of real property.

Section 2- Eligibility criteria

Article 14: The benefits and incentives set out in this code shall be enjoyed by businesses which run or intend to run activities whose scope is referred to in Article 13, provided that the amount to be invested is greater or equal to:

- a. fifty million (50,000,000) CFA francs for a new company;
- b. fifty million (50,000,000) CFA francs invested in materials or equipment for purposes of growing an existing business as defined above.

Article 15: The benefits and incentives granted by this code cannot be cumulated with those provided for by any other specific derogatory regime or the General Tax Code in force.

Article 16: The benefits referred to in this code may be granted to the same company for several successive investment programs, with the benefits and incentives applying specifically to the investment under consideration, provided that the company has analytical accounting system in place that allows the government to monitor and that the company demonstrates that it cannot set up a company for each investment package.

CHAPTER V - APPROVAL TO INVEST

Article 17: The benefits and incentives provided for in Chapter VI of this code are granted subject to approval under the conditions laid down in this chapter and to the investing company's ability to comply with the provisions laid down in this code.

A company shall not pass on the benefits and incentives set out in this code to subcontracting companies.

Compliance with these provisions shall be monitored by the Agency and the relevant administrative authorities.

Article 18: The examination of the request for approval shall be entrusted to a committee, hereinafter referred to as the Approval Committee, whose establishment, remit, organisation and functioning are laid down by a decree passed by the Council of Ministers.

The Accreditation Committee assesses the economic and social relevance and fairness of the approval requested as a basis for its decision.

Article 19: Any eligible company applying for an approval to invest in accordance with Articles 13 and 14 of this code shall submit its application to the Agency against a receipt.

Article 20: The application to seek investment approval shall be accompanied by a complete file containing all the information relating to the investment program. These shall include, amongst other information:

- a. contact details of the investor or of the existing company;
- b. the nature and location of the proposed activities;
- c. the proposed investment amount;
- d. a business plan to appraise the technical, commercial and financial capacities of the company as well as its projected profitability;
- e. the method of financing;
- f. the full contact details of the shareholders and their beneficial owners, if any;
- g. the proposed date for commencement of business;
- h. the expected number of employees and job categories to be created;
- i. the company's preferred option from among the two forms of non-refundable tax credit carry-forwards related to the investment referred to in Article 29; failing this, the option presumed to be the most favourable for the company on the basis of the business plan shall be chosen by the Approval Committee.
- j. the nature and type of assistance and facilitation the company wishes to obtain from the Agency, including amongst other things: access to industrial and agricultural land, public infrastructure, work permits, visas and any other possible assistance. The Approval Committee, on the Agency's recommendation, shall examine these requests for assistance and decide whether to respond favourably or not;

- k. the preferred method of dispute settlement and the reasons for its applicability;
- l. the list of materials and equipment that are the subject-matter of the investment;
- m. where appropriate, an application for Holding company status, for a regional headquarters or for the operational centre of an international company established in Togo;
- n. an environmental impact assessment certificate, without which an approval may be granted on a temporary basis; such a temporary approval shall be made permanent once the environmental impact assessment certificate is obtained;
- o. a tax clearance certificate for companies seeking to expand their business and which were operational for at least one or several financial years;
- p. any additional information deemed necessary by the Agency to grant the approval and monitor it, and, where appropriate, on the recommendation of the Approval Committee.

Article 21: The approval application shall be submitted to the Agency, which forwards the complete file, within two (2) working days, to the Approval Committee for consideration.

The Approval Committee shall give its opinion in writing within thirty (30) working days from the date the Agency submitted the complete application file.

If the application is incomplete, or if additional explanations are needed, the Agency shall inform the applicant within ten (10) working days from the date the acknowledgment of receipt is issued, as provided for in Article 19, and shall invite the applicant to provide the required additional documents.

In this case, the thirty (30) working day deadline shall be interrupted and a new deadline of thirty (30) working days shall begin to run from the date on which the applicant submits the required additional documents or information.

As soon as the Approval Committee has sent its assent to the Agency, the Agency shall have a maximum period of thirty (30) working days, after which the approval shall be deemed to be approved. In this case, the receipt of submission of the application shall be authentic and shall serve as proof of approval. The agency is then required to issue the approval.

Article 22: The Approval Committee may request the opinion of any other ministry concerned on an application for approval, in particular on the

relevance of requesting additional information or documents pursuant to Article 20 and on the analysis of the documents provided, where appropriate.

In this case, the thirty (30) day deadline referred to in Article 21 shall be suspended and shall only start to run again from the date of receipt of the opinion requested by the Approval Committee. The opinion of a ministry a case is referred to must be issued within a period not exceeding 15 days from the date of receipt of the request for opinion.

The Agency is required to inform the applicant that the deadline was suspended. The Agency shall notify the applicant, where appropriate, of the rerun of the thirty (30) working day deadline.

The Approval Committee may wish to interview an applicant to obtain few information or clarification. In this case, the Approval Committee will inform the applicant and ask him or her to lend himself or herself to such an interview.

In this case, the thirty (30) day-deadline referred to in Article 21 shall be suspended and a new thirty (30) day-deadline shall start to run from the date of the interview, which the Approval Committee would have requested in writing.

At the end of the examination of the application for approval, the Approval Committee shall give its assent to the Agency.

Article 23: The approval, which is granted and notified by the Agency, shall include a list of the incentives and benefits that go with it. The approval is not an authorisation to start and operate the business. Other obligations shall still be honoured such as the need to seek specific authorisation or pay specific fees in accordance with any other provision governing the business line concerned.

Any refusal to grant an approval shall equally be notified in writing by the Agency to the applicant. Reasons for any such refusal shall be included in the notification. The following reasons, amongst others, may lead to such a refusal:

- a. insufficient job creation or economic and social contribution with regard to the incentives that would be granted by the State under this code and any other regime applicable to the company;
- b. inconsistency of the investment plan with national development priorities or with national interest;
- c. serious prediction or risk of negative impacts on the environment, public health or national security, including the refusal to grant an environmental impact assessment certificate;

- d. inconsistencies or serious doubt about the practicability of the proposed business plan;
- e. inconsistencies or serious doubts about the professional qualifications or financial and technical capacities of the investor;
- f. insufficiencies or serious doubts about the good repute or integrity of the company's managers and shareholders.

In the event of a challenge to the decision rejecting the approval, the applicant may validly exercise the remedies provided for by law.

Article 24: Each request for approval shall give rise to an assessment by the Approval Committee of the average annual amount over ten (10) years of non-refundable tax credits carried forward and their corresponding exemptions, an indicative assessment of which shall be computed by the Approval Committee on the basis of a business plan submitted by the company.

This amount corresponds to the annual average, calculated over ten (10) periods of twelve (12) months from the estimated date of issue of the approval, of all non-refundable tax credits carried forward and exemptions granted in comparison with ordinary law on the basis of a business plan mentioned in Article 20.

An annual threshold of non-refundable tax credits carried forward and new exemptions provided for in the Finance Act shall determine the indicative amount of non-refundable tax credits carried forward and average annual exemptions corresponding to the new approvals expected during the corresponding calendar year. The Approval Committee and the Agency shall present in their annual report an analysis of the amount actually granted in comparison with the target.

CHAPTER VI - NATURE AND DURATION OF BENEFITS GRANTED

Section 1 - Exemptions from duties, taxes and indirect taxes or, in the case of imports, other taxes levied at the customs barriers

Article 25: All approved companies shall benefit, in respect of the tax year during which the approval was issued to the said companies and for a period equal to five (5) periods of twelve (12) months from the date of issue of the approval, on the one hand, from exemption from port duties (customs duties and statistical fees) and, on the other hand, from exemption from Community levies, and on the other hand, an exemption from payment of value added tax (VAT) at the customs barrier and from the levy under the *IS-IRPP* advance payments category of industrial and commercial profits

(BIC), on the materials and equipment necessary to carry out the investment programme and declared in the application for approval.

The import value of the spare parts of these materials and equipment necessary to carry out the investment programme and declared in the application for approval, shall also be entitled to exemptions, as provided for in the first subparagraph above, within the limit of fifteen percent (15%) of the cost, insurance and freight (CIF) value of the materials and equipment to which these spare parts relate.

Article 26: The acquisition of capital goods necessary to carry out the investment program, whose list shall be attached to the application for approval, are exempted from customs duties referred to in Article 25, where the chargeable event occurs in respect of the tax year during which the approval was issued to the company or in respect of a tax year within a period equal to five (5) periods of twelve (12) months from the date of issue of the approval.

Exemptions shall only be granted based on the list of the capital goods, equipment and other materials annexed to the application and approved by the Ministry of Finance. In the event that second-hand machinery and equipment are necessary to carry out the investment programme, the exemption shall be subject to the assessment of their market value as determined by an expert.

Article 27: Except for sectoral derogations expressly provided for by this code or by law, the following are excluded from the port charge exemption regime (customs duties and statistical fees), payment of value added tax (VAT) at the customs barrier and from the levy under the IS-IRPP advance payments category of industrial and commercial profits (BIC):

- a. building materials, details of which are specified by an order, except for those used for the construction of industrial buildings;
- b. office supplies, equipment and furniture;
- c. non-professional household appliances and equipment;
- d. automation transportation vehicles, with the exception of those allocated exclusively to the corporate purpose of the investment;
- e. petroleum products;
- f. air conditioning equipment, except for refrigeration unit equipment.

The list of other materials and equipment and spare parts that are not eligible for the exemptions provided for in this code is set by decree passed by the Council of Ministers.

Article 28: Materials and equipment that have benefited from the advantages of the present code may not be sold, transferred or used for purposes other than those for which they were imported, except with the authorisation of the Minister in charge of Finance, after advice from the Agency, or for the benefit of leasing companies when the investment is made by this method of financing, in accordance with the conditions that are determined by decree.

The transfer of materials and equipment, if authorised, shall be subject to the payment of duties and taxes in force at the date of transfer.

Section 2 - Non-refundable tax credit carried forward on direct taxes

Article 29: Any approved company shall benefit from a non-refundable tax credit carried forward corresponding to the investment programme that has been approved, taking, at the company's discretion, one of the following two forms:

- a. non-refundable tax credit proportional to the amount of the investment. The amount of the credit granted in a given year shall be calculated by applying the proportional rate adopted in Article 30 of this Code to the amount of the investment actually committed and paid during the year within the framework of the investment programme that has been approved.
- b. non-refundable tax credit carried forward proportional to the number of jobs created within the framework of the investment programme that has been approved. The amount of credit granted in a given year shall be computed by applying a lump-sum amount as provided for in Article 30. This amount shall apply per full-time equivalent job over twelve (12) months, actually allocated to the implementation and the use of the approved investment. This credit shall apply only to each of the five (5) years following the granting of the approval.

This credit may be used as from the fiscal year in which the approval was issued to the company. The said credit shall be charged in the form of a non-refundable tax credit that can be carried forward, subject to the priority allocation rules laid down in Article 30, firstly to the sums owed by the company in respect of the licence and then, in the event of an excess, to the sums owed by the company in respect of its corporate income tax (corporate income tax, *BIC*, *BNC*, and *BA*). The excess amount shall be deducted, where applicable, from the sums owed by the company in respect of its flat-rate minimum tax.

The credit shall be cleared annually within the limit of the total amount due under the licence and the corporate income tax (corporate income tax, *BIC*,

BNC, and BA) or the flat-rate minimum tax. The excess credit that could not be allocated for a fiscal year shall be carried forward until it is exhausted to the following fiscal year(s) and used in the form of a non-refundable tax credit that can be carried forward under the above-mentioned conditions:

Article 30: Within the framework of the present code, five (5) business location zones are created on the Togolese territory. They are defined as follows:

- a. Zone 1: The Maritime Region (in and around Lomé), the Gulf Prefecture, and the *Agoè-Nyivé* Prefecture;
- b. Zone 2: The Plateau Region and the other prefectures of the Maritime Region that are not part of Zone 1
- c. Zone 3: The Central Region
- d. Zone 4: The Kara Region
- e. Zone 5: The Savannah Region

Approved companies with at least 80% of their staff working in an area under the investment programme shall be considered to be located in an area.

Where a company chooses to enjoy a non-refundable tax credit carry forward in proportion to the amount invested, the proportional rate of the non-refundable tax credit carry forward shall be fifteen percent (15%) of the actual investment made under the said investment program for zone 1 companies. This rate shall be set at twenty-two point five percent (22.5%) for zone 2 or zone 3 companies, and at thirty percent (30.0%) for zone 4 or zone 5 companies.

Where the company has opted for the tax credit carry forward proportional to the number of jobs, the lump sum per job per full year for each of the five (5) years from the date of granting the approval of the non-refundable tax credit carry forward under said the investment shall be two hundred and forty thousand (240,000) CFA francs for zone 1 companies. This amount shall be increased to three hundred and sixty thousand (360,000) CFA francs for zone 2 or 3 companies and to four hundred and eighty thousand (480,000) CFA francs for zone 4 or 5 companies.

Article 31: All approved companies shall benefit from a non-refundable tax credit to be carried forward for training purposes up to ten per cent (10%) of the expenditure incurred, from the date of issue of the approval and for a period equal to five (5) periods of twelve (12) months from that date, in training activities for Togolese personnel. The nature of the training giving rise to the non-refundable tax credit and the expenses taken into account for

the calculation of this credit shall be fixed by decree passed by the Council of Ministers.

This non-refundable carry-over credit for training may be used in respect of the tax year in which the firm incurred eligible training expenditure that is deductible from its taxable profit. It shall be charged in priority to the non-refundable carry-over credit under the investment provided for in Article 29 of this code, first against the sums owed by the firm under the licence, and then, in the event of an excess, against the sums owed by the firm in respect of corporate income tax (corporate income tax, *BIC, BNC and BA*). The excess non-refundable carry-over credit for training shall be deducted, where appropriate, from the sums owed by the company in respect of the flat-rate minimum tax. The tax credit not charged in a fiscal year shall be carried over to the following fiscal year(s) and used under the above-mentioned conditions:

The non-refundable tax credit carry-over for training shall be increased to fifteen percent (15%) of the expenses incurred for training Togolese personnel for zone 2 or zone 3 companies and to twenty percent (20%) for zone 4 or 5 companies as defined in Article 30 of this code.

Article 32: Approved companies that have obtained the status of holding company, regional headquarters or operational centre of an international company established in Togo shall benefit from a non-refundable tax credit that can be carried forward in proportion to the number of jobs created within the framework of the investment programme that has been approved. The amount of the credit granted for a year shall be calculated by applying a lump-sum amount retained in Article 30 per job to the number of full-time jobs equivalent over twelve (12) months actually assigned to the operations of the Holding Company, the regional headquarters or the operational centre for that year. This non-refundable carry-over tax credit arising from the establishment of a Holding Company, a regional headquarters or the operational centre of an international company established in Togo shall apply for each year for which the status of Holding Company, regional headquarters or operational centre of an international company established in Togo is effective.

The non-refundable tax credit granted to a Holding company, a regional office or an operational centre for a Togolese-based international company shall be added, where applicable, to the non-refundable tax credit granted in connection with the investment.

In order to be eligible for the status of a Holding company, a regional office or an operational centre of a Togolese-based company, a company must:

1. carry out for the benefit of other companies whose head office is located outside Togo at least one of the services referred to below:
 - a. general administration;
 - b. planning and coordination;
 - c. financial management services ;
 - d. procurement of raw materials or components;
 - e. centralization of operations.
2. carry out international financial transactions of at least two billion five hundred million (2,500,000,000) CFA francs per year through a commercial bank licensed in Togo or to make expenditures of at least five hundred million (500,000,000) CFA francs per year in Togo.

A company seeking to enjoy the status of a holding company, regional headquarters or operational centre of an international company established in Togo shall apply to the Agency for approval. The status is effective as from the fiscal year for which compliance with the eligibility conditions is noted. The maintenance of this status for a fiscal year shall be subject to compliance with the eligibility conditions for the year taken into account for that fiscal year.

In addition, during the five (5) periods of twelve (12) months following the date of issuance of the approval, in order to retain the status of holding company, regional headquarters or operational centre of an international company established in Togo, a company must have a management committee made up of at least 30 % Togolese nationals at the end of the five (5) periods of twelve (12) months following the date of issuance of the approval.

Section 3: Property tax exemptions

Article 33: Approved companies established in zones 2 to 5 as defined in Article 30 shall be exempt from real estate tax on built-up and non-built-up properties for the fiscal year during which the approval was granted to the company and for a period equal to five (05) periods of twelve (12) months from the date on which the approval decision was made.

Section 4 - Derogations from this code

Article 34: The provisions of the law on the Industrial Free Zone Status, as modified by the provisions of this law on its mode of administration and delivery of provisional approvals and certificates to exporting firms shall form an integral part of this code.

Companies whose exports make up seventy-five percent (75%) of their turnover, may benefit from the free zone regime under the conditions referred to in the law establishing the Industrial Free Zone Statute.

Approved free zone companies cannot cumulate the tax benefits granted by this code and those granted by the law relating to the Industrial Free Zone Status, which is solely meant to be enforced.

Article 35: The Minister in charge of Finance may propose, on the advice of the Approval Committee, a derogatory approval granting to a firm additional tax and customs benefits or exemptions from those referred to under Chapter VI of this code as well as other additional accompanying measures.

Article 36: Derogatory approvals proposed in accordance with Article 35 may only be granted by law.

In keeping with business confidentiality requirements, the Agency shall prepare and publish a summary of the derogatory approvals granted pursuant to Article 35 of this code.

CHAPTER VII - OBLIGATIONS AND SANCTIONS OF UNDERTAKINGS

Section 1: Obligations

Article 37: Companies enjoying the benefit and incentives described in this code shall be subject to the control of the Agency and the public departments responsible for ensuring compliance with the conditions for enjoying the said benefits. They shall, in particular, be monitored and assisted by the Agency in carrying out the investment and throughout the duration of the benefits granted under this code.

Irrespective of them complying with the legal and regulatory provisions governing their activity and whilst enjoying the benefit and incentives referred to in Chapter VI of this code, all approved companies must:

- a. keep regular and complete accounts in the form prescribed by the legal provisions in force;
- b. accept any control and supervision by the competent authority and complete all questionnaires and statistical application forms within the prescribed time limits;
- c. provide the Agency with an annual report on progress towards the investment programme and provide it with all documents and information required;
- d. carry out and strictly comply with the investment programme for which the approval is sought, within the prescribed time limits;
- e. use, as a priority, under equal conditions of quality, price and availability, services and products of Togolese origin;
- f. employ majority of employees of Togolese nationality and reserve majority of the permanent employments for them, the criterion of majority being examined in each case with regard to the equivalent number of corresponding full-time jobs, except in cases where the expertise does not exist in Togo;
- g. organise the training and promotion of Togolese nationals within the company; send the Agency an annual training plan at the beginning of the financial year and detail the training measures carried out during the previous financial year in the annual report;
- h. file the financial statements annually with the tax authorities in accordance with the accounting and tax regulations in force, and inform the tax authorities in writing in the event of any significant change in the shareholding structure and its beneficial owners, where such changes exist;
- i. comply with national or international quality standards applicable to products, equipment, infrastructure or services directly resulting from its activity;
- j. comply with the provisions of the law relating to the framework law on the environment;
- k. respect the rights of workers in accordance with the Labour Code of the Togolese Republic, the inter-professional collective agreement and sectoral collective agreements, where applicable;
- l. comply with the trade provisions applicable in Togo;

- m. comply with the provisions of the law organising the scheme for the harmonisation of standardisation, approval, accreditation, certification, metrology, environmental and quality promotion activities in Togo.

Furthermore, in order for a company to enjoy the benefits and incentives referred to in Chapter VI of this code, payments for transactions carried out by the export company must be effected on the company's accounts opened with a bank in Togo.

Section 2 - Sanctions

Article 38: The Agency may withdraw an approval, on a proposal from the Approval Committee following an adversarial procedure, in the following cases:

- a. misrepresentation leading to approval;
- b. non-completion of the investment project, under the laid down conditions or time limits, except in cases of force majeure;
- c. failure to comply with the activity for which the approval was granted;
- d. failure to comply with one of the obligations provided for in Article 37 above, and failure to remedy the situation within forty-five (45) following a formal notice by the Agency.

In the event that the applicant wishes to challenge the decision to withdraw the approval, the latter may validly exercise the remedies provided for by law.

Article 39: Withdrawal of approval shall entail the forfeiture of the benefits granted to the company, which shall then be subject to ordinary law.

The benefits enjoyed by the company under Chapter VI of this code from the date of issue of the withdrawn approval shall also be retroactively revoked. Taxes and other levies for which the company was granted a non-refundable tax credit carried forward, or a total or partial exemption within the framework of the withdrawn approval, shall become immediately payable, without prejudice to penalties and interest for late payment provided for in particular by Articles 115 et seq. of the Book of Tax Procedures as from the date on which they should have been paid. By way of derogation from the limitation periods provided for from Articles 314 to 335 of the Book of Tax Procedures, the tax authorities may take back the tax and customs benefits enjoyed by the company from the date of issue of the withdrawn approval. Such action taken by the tax authorities are without prejudice to any legal proceedings and other sanctions that may be incurred.

CHAPTER VIII - TRANSITIONAL AND FINAL PROVISIONS

Article 40: Companies benefiting from special incentives or special investment agreements before the entry into force of this code shall continue to benefit from the tax and customs benefits granted to them until the expiry of the legal duration of the said benefits and guarantees.

In the event that companies benefiting from special incentives or special investment agreements before the entry into force of this code wish to benefit from the provisions of this code instead of those of the investment code previously in force or from special derogatory provisions, they may apply to the Agency for approval under this code, provided that they are eligible for this code and provided that the new regime is applicable in its entirety. The old and the new regimes shall not apply cumulatively.

The benefits and incentives enjoyed by any company in accordance with the provisions of this code shall be transferable only together with the activity for which the approval has been granted, by partial asset contribution, transfer of business or by transfer of a line of business or any other method legally authorised in the Togolese Republic.

The proposed transfer of activity for which the approval has been granted shall be notified to the Agency no later than two (2) months before the date of transfer. The Approval Committee shall have a period of fifteen (15) days to authorise or refuse the transfer to the transferee of the benefits and incentives previously granted. If the transferee is not notified of the proposed transfer within the aforementioned time limits, the transferee shall be automatically deprived of the approval(s) he or she was granted. In the absence of a response from the Agency within the fifteen (15) day-time limit, the authorisation shall be deemed to have been granted to the transferee. Refusal to transfer must be based on legitimate grounds and the transferee shall be heard.

Article 41: No legal or regulatory provision of a fiscal or customs nature, taking effect on a date later than that of the authorisation, may have the effect of abolishing or restricting the provisions of the privileged regime from which the company enjoys under this code.

The provisions subsequent to this code shall apply only to subsequent approvals without the possibility of cumulatively enjoying the benefits already granted.

Article 42: Law n° 2012-001 of 20 January 2012 establishing the investment code is hereby repealed.

The provisions of Law n° 2011-018 of June 24, 2011 on the Industrial Free Zone Status which are contrary to the provisions relating to the said status and which are included in this law shall also be repealed as soon as the Investment Promotion Agency is effectively set up in Togo.

Article 43: Decrees passed by the Council of Ministers shall lay down, wherever necessary, the detailed rules for the implementation of this code.

Article 44: This Law shall be implemented as a State law.

Done in Lomé, on 17 June 2019

Signed and stamped (illegible) by:

THE PRESIDENT OF THE TOGOLESE REPUBLIC
Faure Essozimna GNASSINGBE

Signed (illegible) by:

THE PRIME MINISTER
Selom Komi KLASSOU

WITH COPIES TO THE PERMANENT SECRETARY
AT THE PRESIDENCY OF THE TOGOLESE REPUBLIC

Signed and stamped (illegible) by:

Date Patrick TEVI-BENISSAN