CLIENT ALERT
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Draft Supplementary Finance Law for 2020: A reopening of the country to FDIs

A few months after having hosted a national workshop organised by the OECD within the framework of the EU-OECD Programme to promote investment in the Mediterranean region[1], Algeria is moving into a phase of “vigilant reopening” of the country, according to the words of the Ministry of Industry and Mines at the time, to foreign investors.

Aware of the competition between Mediterranean countries, particularly within the Maghreb, to attract quality Foreign Direct Investments (FDIs), Algeria has initiated since 2016 a process of reforming its investment law.

As a reminder, Law No. 16-09 on the promotion of investment dated 3 August 2016 (“Law 16-09”) had repealed the former investment law and had already relaxed several rules which entered into force in 2009.

The 49% cap on the participation of any foreign investor in the capital of an Algerian company (“the so-called 51/49 rule”) as well as the obligation of local financing had already not been included in Law 16-09 and only appeared in the finance law for 2016, which suggested an easier amendment in the future.

On 11 December 2019, the finance law for 2020 limited the 51/49 rule only to production activities of goods and services of strategic interest for the national economy, and authorized the use of foreign financing for strategic activities from development financial institutions.

However, the 51/49 rule remained into force for all activities until the list of strategic sectors was set.

On 10 May 2020, in a context of health crisis and falling oil prices, the Council of Ministers approved the Draft Supplementary Finance Law for 2020, which should concretise the reopening of the country to FDIs by defining the strategic sectors in a relatively restricted manner and by repealing the Algerian State's right of pre-emption and right of repurchase.

Beyond the legal framework applicable to FDIs, the Algerian Government is making a major shift in its policy for the development of the automotive industry. The Draft Supplementary Finance Law for 2020 authorizes car dealers to import new vehicles without requiring the local set-up of vehicle assembly units in partnership with the global manufacturer.

In terms of timing, the Draft Supplementary Finance Law for 2020 has yet to be voted by Parliament, promulgated by the President of the Republic and then published in the Official Gazette. The publication of the Supplementary Finance Law generally takes place in July.

The main features of the Draft Supplementary Finance Law for 2020 are summarized below:

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[1] https://www.oecd.org/fr/sites/mena/competitivite/Climat-investissement-Algerie-et-reglement-des-différends-investisseurs-etat.pdf

1. The 51/49 rule becomes the exception

The 51/49 rule is repealed **except** for the **purchase and resale of goods** activities and **strategic activities** defined as follows:

- The exploitation of the **national mineral domain**, as well as any underground or surface resource resulting from surface or underground extractive activity, with the exception of quarries of non-mineral products;

- The **upstream of the energy sector** and any other activity governed by the law on hydrocarbons, as well as the operation of the distribution and transport network of electrical energy by cables and of gaseous or liquid hydrocarbons by pipelines;

- Industries initiated by or related to the **military industries** under the Ministry of National Defense;

- **Railways, ports and airports**;

- **Pharmaceutical industries**, with the exception of investments linked to the manufacture of essential innovative products with high added value, requiring complex and protected technology, intended for the local market and for export.

All other activities for the production of goods and services are open to foreign investment **without any obligation to enter into a partnership with a local party** except for the activities indicated above which remain subject to the 51/49 rule.

2. Removal of the Algerian State's right of pre-emption and right of repurchase

The Draft Supplementary Finance Law for 2020 removes two major restrictions on the liquidity of FDIs:

- **Removal of the Algerian State's right of pre-emption** which applied to all transfers of shares made by or for the benefit of foreigners.

- **Removal of the Algerian State's right to repurchase** which was triggered by any indirect transfer of the Algerian company, up to 10% or more, provided that the Algerian company had benefited from advantages or incentives.

Instead, any transfer in the share capital of the Algerian company by the foreign party to other foreign parties will be subject to authorisation.

This authorisation is limited to FDIs in the strategic activities mentioned above.

3. Opening to foreign financing

The Draft Supplementary Finance Law for 2020 **removes the obligation for local financing** already initiated in the finance law for 2020.

The explanatory notes view this measure as a prerequisite for opening up the country to serious foreign investments with their own capital.

4. Automotive industry

- Reinstatement of **import authorisation for new vehicles** by duly authorised car dealers.

- The license to operate as a car dealer is no longer subject on the completion of an industrial or semi-industrial project.

- Replacement of the former CKD/SKD preferential tax and customs scheme by new schemes subject to eligibility criteria to be defined in future specifications.

CONTACT :

Rym Loucif

PARTNER

LPA-CGR avocats

T : Alger / +213 (0)5 52 58 28 93

T : Paris / +33 (0)6 19 87 17 92

Mail : rloucif@lpalaw.com