

NATIONAL ASSEMBLY



BURKINA FASO  
Unity - Progress - Justice



# INVESTMENTS CODE OF BURKINA FASO

MINISTER OF COMMERCE,  
INDUSTRY AND HANDICRAFTS





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BURKINA FASO

UNITY - PROGRESS - JUSTICE

**Decree No. 2018-1084/ PRES**

**Promulgating Act No. 038-2018/  
AN of October 30, 2018, defining an  
Investments code in Burkina Faso**

**THE PRESIDENT OF FASO,  
PRESIDENT OF THE CABINET MEETING,**

Considering the constitution,

Considering Letter N° 2018-115/PRES/SG/DGAJP/DSC dated November 14, 2018 of the Speaker of the National Assembly sending Act n° 038-2018/AN of October 30, 2018 defining an Investment Code in Burkina Faso

**E N A C T S A S F O L L O W S**

**Article 1:** Act No 038-2018/AN of October 30, 2018 defining an Investment Code in Burkina Faso is promulgated.

**Article 2:** This Decree shall be published in the official Gazette of Burkina Faso.

Done in Ouagadougou on December 3, 2018

The signature of Roch Marc Christian Kaboré is written in black ink over a circular official seal. The seal contains the text 'BURKINA FASO' at the top and 'LE PRESIDENT' at the bottom, surrounding a central emblem.

Roch Marc Christian KABORE



**BURKINA FASO**  
**UNITY - PROGRESS - JUSTICE**

**NATIONAL ASSEMBLY**

**IV REPUBLIC**  
**SEVENTH LEGISLATURE**

**ACT N° 038-2018/AN**

**DEFINING AN INVESTMENT CODE  
IN BURKINA FASO**



## **THE NATIONAL ASSEMBLY**

Considering the Constitution

CONSIDERING Resolution N° 001 – 2015/AN December 30, 2015  
validating the mandate of the members of Parliament;

Has deliberated at its October 30, 2018 Session

And adopted the Act reading as follows:



**TITLE I**  
**GENERAL PROVISIONS**

# CHAPTER I: DEFINITIONS

## **Article 1:**

Within the meaning of this law, the following mean:

- capital: all property and/or possessions constructed, acquired or accumulated, whether tangible or intangible, that are used for income generation;
- conservation: act of preserving an item in a constant state;
- company: any production, processing and/or distribution of goods or services unit for profit, with the legal status of a legal person;
- agro-silvo-pastoral, fish and wildlife company: a private law legal entity, governed by commercial law, carrying out an agro-silvo-pastoral, fish and wildlife activity, aimed at economic profitability and which contributes to an increase in production and added value of agro-sylvo-pastoral, fish and wildlife production, job creation and/or rural income improvement and natural resources sustainable management;
- environmental protection company: a private law legal entity, governed by commercial law, which carries out an eligible activity within the meaning of this law, which contributes to environmental protection and natural resource sustainable management, within the meaning of the laws and regulations pertaining to the environmental code;
- new company: any economic entity as defined above, newly created and in the process of implementing an eligible investment program. The planned investment is expected to create a new activity and not result from one or several legal modifications of an entity that has already operated specific assets for the targeted activity;
- extension or diversification: any approved investment program undertaken by an existing company and which results in:

- an increase in the production capacity by at least 30%, before renewal, or initial investments;
  - or an investment of at least one hundred million CFA francs in non-renewal production equipment;
  - or the manufacture of new products involving the acquisition of new materials;
- investment: capital used by any legal entity, for the acquisition of movable, real, tangible and intangible property, the financing of start-up costs as well as the need for working capital, made necessary as a result of the creation of new companies, the modernization, extension, diversification of existing businesses or the renewal of the company's capital goods;
  - productive investment: any investment meant for the carrying out of an activity, be it for:
    - production;
    - conservation;
    - processing of raw materials or semi-finished products into finished products;
    - provision of services;
    - technical and vocational training;
    - promotion of renewable energies;
    - environmental protection;
  - investment of foreign capitals:
    - contributions in capital, goods or services from abroad, which confer entitlement to shares in any company established in Burkina Faso, provided that such contributions are not portfolio investments;
    - reinvestments of the company's profits that could have been exported;

- foreign direct investment: international capital flows to create, develop or maintain a subsidiary abroad, or to control or significantly influence the management of a foreign company;
- portfolio investment: acquisition of a company's bonds or shares for a financial reason, with no desire to control it;
- investor: any legal person making an investment in Burkina Faso, regardless of their nationality;
- growth poles: special economic zones sharing a common Business Lines, which refers to a motor activity which has a spill-over effect on subordinate units in the locality where they are established and on other geographical areas;
- production: a socially organized activity, conducted by an institutional unit which combines production factors, notably the labour factor and capital factor, in order to transform intermediate consumption into goods or services traded on the market, or obtained from other production factors that are traded on the market;
- service provision: any professional activity undertaken by a legal person governed by private law, or even by a public body, with a view to providing services for a fee;
- Special economic zones: defined geographical areas dedicated to one or more Business Lines to promote exports.

## **Article 2:**

This law relates to investments code in Burkina Faso.

Its purpose is to promote productive investments in support of the economic and social development of Burkina Faso.

## **Article 3:**

This law aims at creating and developing activities geared towards:

- promoting employment and training for a national qualified workforce;
- upgrading local raw materials;

- promoting export;
- producing goods and services for domestic market;
- using appropriate technologies, modernizing local techniques and research - development;
- mobilizing national savings and providing foreign investment;
- making investments in the areas located at least fifty kilometres away from Ouagadougou;
- rehabilitating and extending companies;
- promoting handicraft;
- promoting renewable energies;
- environmental protection;
- promoting scientific, technologic research, and innovation;
- Any activities deemed as such by public authorities.

**Article 4:**

Any company that carries out the following activities are excluded from this law:

- exclusively commercial and trading activities;
- research or mining activities, which are covered by the Mining Code;
- agro-silvo-pastoral, fish and wildlife activities, covered by the code of investments on agro-silvo-pastoral, fish and wildlife activities;
- banking and financial services;
- telecommunications activities other than those conducted by authorized telephone companies or internet access providers;
- exclusively portfolio investment activities.

Equipment and material older than five years are excluded from advantages provided by this Investment Code.

**Article 5:**

Some Business Lines may be subject to restrictions on foreign direct investment.

In this case, foreign companies wishing to invest in those sectors may be subject to procedures which are specified by the regulations.

**Article 6:**

Legal persons, regardless of their nationality, who are regularly settled in Burkina Faso, are entitled to the general guarantees that constitute the common law of this code. They may benefit from special guarantees and preferential schemes, provided that they meet the conditions for being granted such schemes.

The privileged schemes are granted by a joint order issued by the ministers in charge of industry and finance.



**TITLE II**  
**COMMON LAW SCHEME**

## **Article 7:**

Productive investments are freely undertaken in Burkina Faso subject to the specific provisions aimed at complying with the State economic, social and energy policies, particularly the protection of public health and sanitation, social and environmental protection.

However, investors must obtain prior authorization from the Minister in charge of industry. In this regard, they are required to file with the Minister an application for a site, which includes:

- the promoter's identity;
- the purpose of the project;
- the location as well as the ground plans;
- the amount of the share capital and its distribution;
- the list of equipment;
- the amount of the investments and their financing schemes;
- the expected production capacity;
- the number of jobs to be created;
- the impact of the unit on the environment and the safeguarding measures.

The application for settlement processing time is three months. After the expiry of this time without any notification, the promoter acquires the authorization for settlement by right. In this case, the administration is required to issue the authorization for settlement to him/her.

## **Article 8:**

Legal entities regularly established in Burkina Faso are entitled to any rights relevant for carrying out their activities, in particular:

- real estate, land, forestry and industrial rights;
- concessions;
- administrative authorizations and permits;
- participation in public orders.

They shall not be subjected to any legal or factual discriminatory measures as regards the legislation and regulations applicable to them, whatever their nationality.

They shall also be entitled to the guarantee against any direct or indirect expropriation measure, except for the purpose of a public utility. Should the case occur, they shall benefit from a fair and prior compensation, in accordance with the regulations in force. However, the general legislative or regulatory measures designed or implemented to protect public interest such as public health, safety or environment shall not constitute indirect expropriation measures.

All acquired rights are guaranteed to them.

### **Article 9:**

While carrying out their professional activities, foreign employers and workers are subject to the Burkinabe laws and regulations.

They may join professional organizations which defend collective interests under the laws and regulations of Burkina Faso.

For all matters relating to the treatment of investments, foreign companies and their managers enjoy the same treatment as that applicable to Burkinabe companies and their managers, subject to reciprocity from their country of origin.

### **Article 10:**

Foreign employers and workers are subject to personal rights, contributions and taxes in accordance with the legislation in force.

### **Article 11:**

Under international agreements, Burkina Faso laws and regulations, the following is guaranteed to regularly settled persons and companies, in particular:

- the right to freely dispose of their property and organize their companies at their discretion;
- freedom of recruitment, freedom of employment and dismissal;
- free choice of suppliers and service providers;
- commercial freedom;

- free access to raw material sources;
- free movement, within Burkina Faso, of raw materials, consumables, finished and semi-finished products as well as spare parts.

### **Article 12:**

Foreign companies are entitled to the same protection as Burkinabe companies, in terms of commercial properties and intellectual property.

They enjoy fair and equitable treatment, security and constant protection, which exclude any unjustified or discriminatory measures that may impede, in law or in fact, the management, maintenance, use, enjoyment or liquidation of their investments.

### **Article 13:**

The right to a transfer of capital and their income is guaranteed to foreign legal persons who make an investment in Burkina Faso financed by a provision of foreign currency.

Foreigners who have made investments have the right, subject to the exchange regulations, to transfer as soon as possible, in the currency transferred at the time of the constitution of the said investments, dividends, proceeds of all kinds of the capital invested, the proceeds of the liquidation or the realization of their assets, the royalties to be paid under license agreements, compensation funds.

### **Article 14:**

Natural persons who are not Burkina Faso nationals and who are employed by a local company have the right, in accordance with the current exchange and tax regulations, to transfer their salaries.

### **Article 15:**

Any company falling within the scope of the provisions of Articles 2 and 3 of the present Act may benefit from a bonded warehouse in accordance with the Customs Code.

### **Article 16:**

Raw materials for industrial units settled in Burkina Faso are part of category 1 of the customs tariffs.

**TITLE III**  
**PRIVILEGED SCHEMES**

# CHAPTER 1: COMMON PROVISIONS

## Article 17:

There are five privileged schemes, defined as follows:

- “Scheme A” applies to companies whose investment ranges from one hundred million (100,000,000) CFA francs to five hundred million (500,000,000) CFA francs, excluding taxes and working capital, leading to the creation of at least twenty permanent jobs;
- “Scheme B” applies to companies whose investment is higher than or equal to five hundred million (500,000,000) CFA francs and less than two billion (2, 000,000,000) CFA francs, excluding taxes and working capital, and leading to the creation of at least 30 permanent jobs;
- “Scheme C” applies to companies whose investment is greater than or equal to two billion (2,000,000,000) CFA francs and less than twenty-five billion (25,000,000,000) CFA francs excluding taxes and excluding turnover, and leading to the creation of at least 40 permanent jobs;
- “Scheme D” applies companies whose investment is greater than or equal to one billion (1,000,000,000) CFA francs excluding taxes and working capital, leading to the creation of at least thirty permanent jobs and whose production meant for export is above 80 per cent;
- “Scheme E” applies to companies whose investment is higher than or equal to twenty-five billion (25,000,000,000) CFA francs excluding taxes and working capital and leading to the creation of at least one hundred permanent jobs.

However, for companies operating in sectors relating to processing of raw material from agro-silvo-pastoral, fish and wildlife sectors, companies operating in sectors relating to renewable energies, environmental protection and handicrafts, the investment threshold and job creation criteria are reduced to quarter.

### **Article 18:**

Any company wishing to benefit from a privileged scheme must file with the Ministry in charge of industry, an application for approval and components of such application are specified by Decree taken by the cabinet meeting.

A National Investment Commission is responsible for examining the application for approval. The processing time of such application for approval is three months. After the expiry of this time without any notification, the promoter acquires the authorization on a de jure basis. In this case, the administration is required to issue the requested authorisation.

The National Investment Commission is responsible for monitoring and controlling the commitments to be made by approved companies, provided in Article 20 below.

### **Article 19:**

For each company benefiting from a privileged scheme, the approval order shall:

- indicate the type of privileged scheme granted as well as the benefits;
- specify the conditions according to the type of project;
- list the activities for which the approval is granted;
- specify the commitments made by the company;
- determine the penalties applicable to the company in the event of default.

### **Article 20:**

Companies benefiting from a privileged scheme are required to:

- purchase high-performance equipment, use the most appropriate technical processes and maintain operation under optimal conditions of productivity;
- provide the relevant authorities with the information they deem useful;

- keep their accounts in Burkina Faso in accordance with the accounting plan in force, unless specific derogations are granted by regulations in force;
- comply with their tax obligations;
- hire nationals as a matter of priority and enforce the same treatment for equal skills;
- conduct vocational training at all levels;
- use in priority, the services of delivery companies regularly established in Burkina Faso, at equal quality and prices;
- protect environment by using technical processes and devices deemed adequate by the relevant services and comply with environmental regulations in force;
- comply with the hygiene and safety rules as well as the standards set forth by regulations in force;
- pay a fee, as of the exploitation phase, for the financing of activities promoting industrialization. The method to determine such fee is set by regulations.

### **Article 21:**

The deadline for companies approved under this code to realize the investments is three years from the signing date of the approval Order.

However, a promoter who has started realizing his/her project, may be granted a single one-year extension as of the expiry date of the realization period.

### **Article 22:**

The promoter whose project has not started being implemented within the three-year period provided in Article 21 above automatically loses the benefits set forth by the order of approval; he shall be notified by an order of the Minister in charge of industry.



### **Article 23:**

Termination of business during the approval period does not automatically confer the right to an extension of the period of approval.

The possible extension of the approval period is granted only after the submission of a file presenting the reasons for such interruption, filed with the secretariat of the National Investment Commission. The issuance of the order extending the duration of the approval shall be made under the same conditions as the decree granting the approval.

### **Article 24:**

The National Investment Commission is responsible for checking the compliance of the State with its commitments and the obligations of the company benefiting from a privileged scheme.

Companies benefiting from a privileged scheme are subject to two types of control:

- an upstream control, made after the completion of the investment project
- an annual control, covering the investment et operating phases.

### **Article 25**

In case of a breach of the obligations set forth by the relevant control services, the ministers in charge of industry and finance, after seeking the opinion of the National Investment Commission, may take the following sanctions against the defaulting company:

- partial removal of benefits in the event of non-compliance with the obligations set forth in Articles 20 and 21 above;
- the final withdrawal of the approval in the event of the following:
  - non-completion of the activity within the legal deadlines granted;
  - termination of business during the approval period for more than eighteen months without a proven prospect of resumption.

The company can be penalized only after having been requested by the Commission to present its means of defence.

Without prejudice to the penalties listed above, the defaulting company may face sanctions including withdrawal of rights relating to benefits, reimbursements of the subsidies granted and related penalties.

**Article 26:**

The decision by the Commission for partial withdrawal of benefits and the decision to withdraw the approval shall be the subject of a joint order issued by the ministers in charge of industry and finance.

# CHAPTER 2: APPROVAL SCHEMES

## Article 27

The following benefits shall be granted to the companies benefiting from one of the five privileged schemes, specified in Article 17 of this law.

### 1. Scheme A

#### *a) Investment phase*

#### ❖ **Regarding customs duties and taxes:**

- payment of customs duty corresponding to category of the customs tariff, at the rate of 5% on the operating equipment and the first batch of related spare parts. This advantage applies in case of extension of activities.

#### ❖ **Regarding the Value Added Tax (VAT):**

- for new companies, the exemption of the Value Added Tax (VAT) payable on operating equipment together with the first batch of spare parts;
- in case of extension, the reimbursement of the credit on the Value Added Tax (VAT) available to the company at the end of a reporting period within the limit of the VAT paid on the operating equipment and the first batch of spare parts;
- for new companies, exemption from Value Added Tax (VAT) on locally manufactured equipment;
- as part of a financial lease agreement and a transfer of the tax benefits mentioned in article 33 of this law, the rents of the aforementioned goods are exempt from VAT.

#### ❖ **In respect of direct taxes**

Exemption from the following taxes for new companies:

- corporate tax (IS);
- contribution of business licencing tax (Licencing Tax);
- company property tax;
- employer and apprenticeship tax (TPA);
- debt-claim Income Tax (TRC).

### ***b) Operating phase***

#### **❖ Regarding corporate tax:**

- total exemption for the first two years
- reduction by 50% of the corporate tax from the third year to the 5<sup>th</sup> year;
- from the 6<sup>th</sup> year, total payment of the corporate tax (IS)

#### **❖ As regards the business licencing tax:**

- exemption of the proportional fees for five years

#### **❖ Regarding company land tax:**

- total exemption for five years

#### **❖ For employer and learning tax (TPA):**

- total exoneration for five years

## **2. Scheme B**

### ***a) Investment phase***

#### **❖ As regards customs duties and taxes:**

- payment of customs duties corresponding to category 1 of the customs tariffs, at the rate of 5% on the operation equipment and the batch of spare parts. This advantage applies in case of extension.

### ❖ **As regards value added tax (VAT)**

- exemption of value added tax (VAT) payable for said operating equipment and the first batch of spare parts accompanying them for new companies;
- exemption of value added tax (VAT) on operation equipment locally manufactures;
- in case of extension, reimbursement of the credit on the value added tax (VAT) available to the company after a period of declaration within the limit of the VAT paid on the operation equipment and the first batch of spare parts accompanying them;

As part of a leasing contract combined with a transfer of the advantages provided in article 33 of this law, the rents of the aforementioned goods are exempted from VAT.

### ❖ **Regarding direct taxes**

Exemption of the following taxes for new companies:

- corporate taxes (IS)
- business licencing taxes (licensing taxes)
- company property tax;
- employer and apprenticeship tax (TPA);
- income from debt-claim Tax (IRC).

#### ***b) Operating phase***

### ❖ **Regarding corporate tax:**

- total exemption for the first three years
- reduction by 50% of the corporate tax from the 4<sup>th</sup> year to the 6<sup>th</sup> year;
- from the 7<sup>th</sup> year, total payment of the corporate tax (IS)

- ❖ **As regards the business licencing tax:**
  - exemption from the proportional fees for six years
- ❖ **Regarding company land tax:**
  - total exemption for six years
- ❖ **For employer and learning tax (TPA):**
  - total exemption for six years

### 3. Scheme C

#### *a) Investment phase*

- ❖ **As regards customs duties and taxes:**
  - payment of customs duties corresponding to category 1 of the customs tariffs at the rate of 5% on the operation equipment and the first batch of spare parts. This advantage applies in case of extension.
- ❖ **As regards value added tax (VAT):**
  - exemption of value added tax (VAT) payable for said operating equipment and the first batch of spare parts accompanying them for new companies;
  - exemption of value added tax (VAT) on locally manufactured operating equipment for new companies;
  - in case of extension, reimbursement of credit on value added tax (VAT) available to the company after a period of declaration within the limit of the VAT paid on the operating equipment and the first batch of spare parts accompanying them;

As part of a leasing contract combined with a transfer of the fiscal advantages provided in article 33 of this law, the rents of the aforementioned goods are exempted from VAT.

## ❖ **Regarding direct taxes**

Exemption for new companies, of the following taxes:

- corporate taxes (IS)
- business licencing taxes (licensing taxes)
- company property tax;
- employer and apprenticeship tax (TPA);
- debt-claim income Tax (TRC).

### ***b) Operating phase***

#### ❖ **Regarding corporate tax:**

- total exemption for the first four years
- reduction by 50% of the corporate tax from the 5<sup>th</sup> year to the 7<sup>th</sup> year;
- from the 8<sup>th</sup> year, total payment of the corporate tax (IS)

#### ❖ **As regards the business licencing tax:**

- exemption of the proportional fees for seven years

#### ❖ **Regarding company land tax:**

- total exemption for seven years

#### ❖ **For employer and learning tax (TPA):**

- total exemption for seven years

## 4. Scheme D

### *a) Investment phase*

#### ❖ **As regards customs duties and taxes:**

- payment of customs duties corresponding to category 1 of customs tariffs at the rate of 5% on the operating equipment and the first batch of spare parts accompanying them. This advantage applies in case of extension.

#### ❖ **As regards value added tax (VAT)**

- exemption of value added tax (VAT) payable for said operating equipment and the first batch of spare parts accompanying them for new companies;
- exemption of value added tax (VAT) on locally manufactured operating equipment;
- in case of extension, reimbursement of credit on value added tax (VAT) available to the company after a period of declaration within the limit of the VAT paid on the operating equipment and the first batch of spare parts accompanying them;

As part of a leasing contract combined with a transfer of the advantages provided in Article 33 of this law, the rents of the aforementioned goods are exempted from VAT.

#### ❖ **Regarding direct taxes**

Exemption for new companies, of the following taxes:

- corporate taxes (IS)
- business licencing taxes (licensing taxes)
- company property tax;
- employer and apprenticeship tax (TPA);
- debt-claim income Tax (TRC).



## ***b) Operating phase***

### **❖ Regarding corporate tax:**

- total exemption for the first four years
- reduction by 50% of the corporate tax from the 5<sup>th</sup> year to the 7<sup>th</sup> year;
- from the 8<sup>th</sup> year, total payment of the corporate tax (IS)

### **❖ As regards the business licencing tax:**

- exemption of the proportional fees for seven years

### **❖ Regarding company land tax:**

- total exemption for seven years

### **❖ For employer and learning tax (TPA):**

- total exoneration for seven years

## **5. Scheme E**

### ***a) Investment phase***

### **❖ As regards customs duties and taxes:**

- payment of customs duties corresponding to category 1 of the customs tariffs at the rate of 5% on the operating equipment and the first batch of spare parts accompanying them. This advantage applies in case of extension.

### **❖ As regards value added tax (VAT)**

- exemption of value added tax (VAT) payable for said operating equipment and the first batch of spare parts accompanying them for new companies;
- exemption of value added tax (VAT) on locally manufactured operating equipment;

- in case of extension, reimbursement of the credit of value added tax (VAT) available to the company after a period of declaration within the limit of the VAT paid on the operating equipment and the first batch of spare parts accompanying them.

## ***b) Operating phase***

### **❖ Regarding customs duties and tariffs**

- payment of the customs duties and tariffs at the cumulated rate of 7.3% on all imported goods and services, for seven years.
- total exemption of customs duties and tariffs on the exports of goods produced or processed as part of the project, except computer licence fee.

### **❖ Regarding corporate tax:**

- Total exemption for the first seven years of the:
  - corporate taxes (IS)
  - real estate income taxes (IRWM)
  - next instalment due;
  - enforcement of the corporate taxes (IS) at the rate of 15% on the taxable profits from the eighth year to the fifteenth year.

### **❖ As regards the business licencing tax:**

- exemption of the licencing tax (CP)

### **❖ Regarding company land tax:**

- total exemption for seven years

### **❖ For employer and learning tax (TPA):**

- total exemption for seven years

## **Article 28:**

The companies which enter into a sub-contracting agreement which exclusively work for companies approved to the various schemes are eligible,

during the investment phase, to benefit from the customs advantages and exemption on value added tax provided, as regards the said phase.

**Article 29:**

The advantages provided in Article 27 above do not apply to office supplies, computer equipment, air condition devices and fuel.

However, this exclusion does not apply to investment on air conditions equipment made by hotels and health facilities.

## CHAPTER 3: ENTRY INTO FORCE

### **Article 30:**

The operating benefits provided in Article 27 above run from the start date established by an order issued by the Minister in charge of industry.

The processing time of the start-up application is forty-five working days. After this period without any notification from the administration, the start-up order is acquired by the promoter, by right. In this case, the administration is required to issue the start-up order.

**TITLE IV**  
**SPECIFIC PROVISIONS**

# CHAPTER 1: ADVANTAGES RELATED TO DECENTRALIZATION

## **Article 31:**

Companies making investments in an area located at least fifty kilometres from Ouagadougou, benefit from a two-year extension of the operating benefits pertaining to their licensing system.

With respect to corporate tax, the two-year extension applies to the first instalment of the exemption.

They also benefit from a full exemption over five years, as far as transfer duties are concerned, for all real estate acquisitions in connection with the investment.

## CHAPTER 2: SECTORS-SPECIFIC BENEFITS

### **Article 32:**

Companies in the sectors of environmental protection, renewable energy production and craft industries benefit from a two-year extension of the operating benefits related to their schemes.

With respect to corporate tax, the two-year extension applies to the first part of the exemption.

They also benefit from a five-year exemption for transfer duties for a fee for all real estate acquisitions made in connection with the investment.

## CHAPTER 3: BENEFITS TRANSFER TO LEASING COMPANIES

### **Article 33:**

The benefits provided under this Act for the acquisition of approved equipment may be transferred to the leasing company if the transaction is carried out through a leasing.

The transfer relates to the exemption from value added tax and the payment of customs duty of category 1, on the customs tariff scale, at the rate of 5%.

To benefit from this measure the leasing company should:

- file with the Minister of Finance, an authorization application to transfer the benefit;
- state in the deed of sale that the acquisition is made for the purpose of carrying out a specific lease;
- justify that the lessee benefits from a privileged system granted by this code;
- see that the property under leasing exists on the list of approved equipment.

Should the tenant not purchase the property within the deadlines set out in the leasing contract, the parties must inform the director general of taxes within the month of the expiry of the said period.

The non-collected rights become due and shall be increased by a penalty of 25%, payable by the tenant.



**TITLE V**  
**THE SPECIFIC INVESTMENT SCHEME**

# CHAPTER 1: GROWTH POLES AND SPECIAL ECONOMIC ZONES

## **Article 34:**

There is a specific tax and customs regime applicable to Growth Poles and Special Economic Zones.

## **Article 35:**

Notwithstanding requirements pertaining to the amount of investments to be made, the projects duration and the number of jobs to be created, companies that make investments on growth poles sites and special economic zones enjoy the following advantages:

### **1. During the investment phase:**

- exemption from Value Added Tax (VAT), customs duties and other fees collected on goods importation and services strictly intended for the project implementation, excluding the statistical fees (SR), computer royalties (IR), community levy (PC) and community solidarity levy (PCS);
- exemption from value added tax on the acquisition of goods, services and works of any kind, intended exclusively for the investment projects implementation.

Companies holding subcontracting contracts and working exclusively for companies with investment projects on growth poles or special Economic zones are eligible for the benefits listed in paragraphs 1 and 2 above.

- Exemption from direct taxes:
  - corporate tax (IS);
  - business licensing tax (CP);
  - company property tax (TFS);
  - employer and apprenticeship tax (TPA);
  - claimed debt income tax (IRC).

The duration of this investment phase, which starts from the signing date of the investment agreement between the managing body and the investor, shall not exceed thirty-six months for private promoters.

The management structure of the growth pole or special economic zone benefits from a permanent exemption on structuring investments, notably the production basins development, transport infrastructures, energy supply infrastructures, storage, processing and marketing infrastructure and equipment.

## 2. Operating phase:

- payment of fees and customs duties at a cumulative rate of 7.30 % on all imported goods and services, over a period of ten years;
- export of goods and services produced or processed under the project with total relief from duties and customs duties, except computer fees;
- Full exemption from corporate tax (IS) for the first seven years and application of a 15% rate on taxable profit, from the 8<sup>th</sup> year to the 15<sup>th</sup> year.
- exemption during the first seven years:
  - instalments payment;
  - licensing fees;
  - company property tax;
  - employer and apprenticeship tax (TPA);
  - tax on income from securities.

The sales of goods and services made by managing structure are exempted from value added tax.

The purchases of goods and services exclusively meant for operating the managing body are exempted from value added taxes, excluding VAT from goods and services excluded from the right of deduction, pursuant to the tax legislation.

**Article 36:**

Requirements and enforcement of this preferential treatment are set forth by regulations.

**Article 37:**

The geographical delimitation of the growth poles and special economic zones is specified by Decree taken by the cabinet meeting.

**TITLE VI**  
**DISPUTES SETTLEMENT**

### **Article 38:**

The State of Burkina Faso guarantees to investors the right to a fair trial for any dispute arising from the application of the provisions of this code.

Any dispute between an investor and the State of Burkina Faso concerning the application of this Code, failing an amicable settlement, shall be settled by the national courts or be submitted to an arbitration procedure.

### **Article 39:**

Two arbitration procedures are provided for:

1) setting up an arbitration board as follows:

*a) appointment of an arbitrator by each party;*

*b) appointment of a third arbitrator by the first two arbitrators.*

The appointment of the second or the third arbitrator shall be made at the initiative of the most diligent party by the Council of State or the competent jurisdiction of Burkina Faso, in one of the following cases:

- one of the two parties would not have appointed its arbitrator within sixty days following notification by the other party informing that it has appointed its arbitrator;
- the two arbitrators would not have reached an agreement within thirty days after the appointment of the second arbitrator on the choice of the third arbitrator.

The arbitrators shall put in place their procedure, they shall decide *ex aequo et bono*, the arbitration sentence will be definitively enforceable with no *exequatur* procedure.

2) Where foreign interests are involved, there are two other remedies: appeal to the International Centre for the Settlement of Investment Disputes (ICSID) or, the Joint Court of Justice and Arbitration (CCJA) based in Abidjan.

The request for arbitration, initiated by either party, automatically suspends any litigation procedure that would have been previously started.

**Article 40:**

The arbitral tribunal shall sentence in accordance with national laws and regulations in force and provisions of the applicable international law; it is liable by the common interpretations provided by the parties to the dispute.





**TITLE VII  
TRANSITIONAL AND FINAL  
PROVISIONS**

### **Article 41:**

Companies benefiting from an exemption or a fiscal scheme granted by previous provisions shall continue to benefit from these preferential schemes until the expiry of the time limit set.

### **Article 42:**

Companies approved under one of the schemes of previous investment codes are liable to controls provided by this Act.

Any violation of this verification requirement shall be punished in accordance with provisions of Article 25 of this Act.

### **Article 43:**

A Decree issued by the cabinet meeting shall lay down the terms of application of this Act by specifying in particular:

- the members, powers and operating procedures of the National Investment Commission;
- the approval procedures for companies wishing to benefit from the advantages pertaining to this investment code;
- the areas of activity of service businesses that may benefit from the provisions of this Code.

### **Article 44:**

Upon a reasoned opinion of the national investment commission, admission to the benefit of a privileged scheme is decided by a joint decree issued by the ministers in charge of industry and finance.

### **Article 45:**

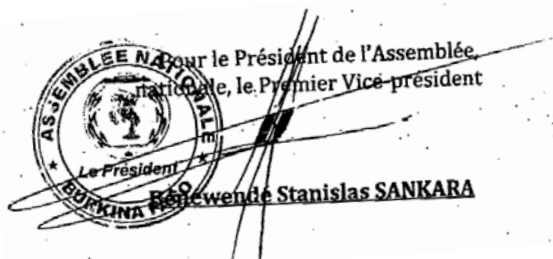
This Act repeals all previous contrary provisions, in particular the Act No 02-95 / ADP, of December 04, 1995, on the investments code, Act No 0007-2010 / AN of January 29, 2010 amending Act No. 002-95 / ADP of December 04, 1995, on investment code and article 32 of Act No. 0037 – 2013, of November 21, 2013, on the budget Act for the implementation the 2014 State budget.

**Article 46:**

This Act shall be enforced as a State Act.

Thus, done and deliberated in a public session  
in Ouagadougou, on October 30, 2018.

For the Speaker of the National Assembly



Stamp: ASSEMBLEE NATIONALE BURKINA FASO  
Le Président  
Pour le Président de l'Assemblée Nationale, le Premier Vice-président  
Signature: Renewende Stanislas SANKARA

First Vice President

The Secretary of Session

**Le Secrétaire de séance**



Dissan Boureima GNOUMOU



# DECREES

## THE PRESIDENT OF FASO, PRESIDENT OF THE CABINET MEETING

- CONSIDERING** the Constitution;
- CONSIDERING** Decree No. 2019-004/PRES of January 21, 2019 appointing the Prime Minister;
- CONSIDERING** Decree 2019-0042/PRES/PM of January 24, 2019 reshuffling the Government;
- CONSIDERING** Decree No. 2019-0139/PRES/PM/SGG-CM of February 18, 2019 assigning the members of Government;
- CONSIDERING** Act No. 038-2018/AN of October 30, 2018 on investment codes in Burkina Faso;
- CONSIDERING** Act No. 023-2013/AN of May 30, 2013 outlining investment Act in Burkina Faso;
- CONSIDERING** Act No. 015-2017/AN of April 27, 2017 outlining a small and medium-sized enterprises law in Burkina Faso;
- CONSIDERING** Act No. 016-2017/AN of April 27, 2017 organizing competition in Burkina Faso;
- CONSIDERING** Decree No. 2016-399/PRES/PM/MCIA of May 23, 2016 organizing the Ministry of Trade, Industry and Handicrafts;

Based on the report of the Minister of Trade, Industry and Handicrafts;  
After hearing the Cabinet Meeting at its session of February 27, 2019;

### **ENACTS AS FOLLOWS**

## CHAPTER I: GENERAL PROVISIONS

**Article 1** : The terms and conditions for the application of Act No. 038-2018/AN of October 30, 2018, on the Investment Code in Burkina Faso, shall be determined in accordance with the provisions of this Decree.

**Article 2** : Any company wishing to benefit from the advantages of a privileged regime under the Investment Code must submit an application for approval to the Ministry of Industry.

**Article 3** : Investors wishing to carry out an activity of production, conservation and processing of raw materials or semi-finished products, those wishing to carry out productive investments in growth poles and special economic zones as well as those wishing to carry out an activity of provision of services, must submit all the prior authorizations required for the execution of their activity, issued by the competent ministries and technical bodies.

**Article 4** : The documents to be submitted for approval under the Investment Code are specified in the appendix thereto attached.

The constituent elements, provided in the above paragraph, do not concern investors located in growth poles and special economic zones, as provided in Title V of the Investment Code.

**Article 5** : When the application for approval is submitted an acknowledgement of receipt shall be issued.

When the application is deemed inadmissible, a notice shall be sent to the applicant within two (02) working days following the date of submission.

**Article 6** : The admission to a privileged regime or the special regime of the Investment Code is pronounced by joint order of the ministers in charge of industry, economy and finance after consulting the National Investment Commission.

**Article 7** : Any company carrying the following activities is excluded from the benefits provided by **Article 27** of the Investment Code:

- exclusively commercial and trading activities; research or mining activities involving mining substances, covered by the Mining Code;

- agro-sylvo-pastoral, fisheries and wildlife activities, covered by the agro-sylvo-pastoral, fisheries and wildlife investment code;
- banking and financial services;
- telecommunication activities, other than those carried out by licensed telephone companies; tobacco production activities;
- real estate development and social housing activities;
- exclusive portfolio investment activities.

**Article 8** : Service companies, established as legal entities and regularly established in Burkina Faso, may benefit from the advantages of the Investment Code when they carry out their activities in one of the following areas:

- 1) Health: hospitals, clinics and polyclinics, laboratories medical examinations, veterinary clinics;
- 2) Technical education and vocational training;
- 3) Hotels, restaurants and tourism;
- 4) Buildings and public works;
- 5) Communication and cinema;
- 6) Sanitation;
- 7) Industrial maintenance;
- 8) Transport;
- 9) Studies and technical expertise services;
- 10) Promotion of renewable energies (solar, biomass);
- 11) Environmental protection;
- 12) Craftsmanship;
- 13) Promotion of scientific and technological research;
- 14) Agriculture, livestock, forestry and fish farming.



## CHAPTER II: APPROVAL PROCEDURE

**Article 9** : From the date of issue of the acknowledgement of receipt of the application package to the promoter, the National Investment Commission has a maximum period of thirty (30) working days to issue its opinion and send the application to the Minister in charge of industry.

**Article 10** : The decision of the Minister in charge of industry and the Minister of economy and finance shall be taken within a maximum period of fifteen (15) working days following the date of transmission of the draft joint order, accompanied by the minutes of the Commission's deliberations.

## CHAPTER III: EVALUATION COMPONENTS

**Article 11** : The National Investment Commission, in analysing the application for approval, shall take into account the following components:

- 1° The added value to the national economy, which is determined by:
  - personnel costs;
  - financial expenses;
  - taxes, duties and levies;
  - profits distributed;
  - depreciation charges.

The rate of value added over the first five (5) financial years must not be less than 25% of the turnover for the same period;

- 2° The use of local raw materials;
- 3° The impact of the investment on the trade balance;
- 4° The method of financing the project;
- 5° Impact on the environment;
- 6° The share of the contract likely to be covered by the project, if any;
- 7° The State's loss of revenue;
- 8° All other advantages that investment brings to the national economy.

## CHAPTER IV: SPECIFIC PROVISIONS

**Article 12** : Approved companies requesting an extension of the time limit for the completion of their investments must submit to the secretariat of the National Investment Commission an application requesting an extension containing, inter alia, the following information

- the details and amount of investments made;
- the details and amount of investments still to be made;
- the reasons for not carrying out the project on time;
- the status of the fund mobilization.

The extension is granted for a period of one year. It is only possible if at least 50% of the investments are made and the financing of non-working capital investments is fully implemented. The request must be made at least thirty (30) days before the expiry of the initial deadline.

**Article 13** : The exemptions provided in Articles 27 and 35 of the Investment Code do not exempt the parties from completing the registration formality within the time limits provided in texts. The registration formality is completed free of charge.

**Article 14** : To benefit from the exemptions provided in Articles 27 and 35 of the Investment Code, the investor must submit an application containing, in addition to the elements of a request for a transfer of property, the following documents:

- a request addressed to the Director General of Taxes;
- a copy of the decree approving the start-up of the activity
- a copy of the decree approving the Investment Code.

**Article 15**: The advantages granted by the Investment Code apply only to new companies and extension projects in line with the provisions of **Article 3** of the Investment Code.

In the event of a merger or takeover the benefit of the exemption from door tax, corporation tax (CIT), patent and employer and apprenticeship tax is reported;

In the event of a change in legal form, which does not entail a change in the objectives of the approved company, the preferential tax regime is maintained.

**Article 16** : The start-up of the activity of a company approved under the Investment Code is recorded by an order of the Minister in charge of Industry on the basis of minutes drawn up by an inter-ministerial committee whose numbers are determined by a joint order of the Ministers in charge of Industry and Finance.

The deadline for issuing the start-up order is set at thirty (30) working days from the date on which the start of activities is noted. The start-up report is made at the request of the approved company.

## CHAPTER V: SANCTIONS

**Article 17** : Stopping the activity during the period of accreditation does not automatically entitle the holder to an extension of the duration of the accreditation.

Any extension of the duration of the approval will only be granted on the basis of an application package presenting the reasons why the activity stopped, filed with the secretariat of the National Investment Commission.

**Article 18** : In the event of a breach of the obligations established by the competent control services, the Minister of industry, the Minister of economy and finance, after consulting the National Investment Commission, may impose the following sanctions on the defaulting company:

- the partial withdrawal of benefits, in the event of non-compliance with the obligations provided in Articles 20 and 21 of the Investment Code;
- the final withdrawal of the approval.

The company may only be sanctioned after it has been invited by the Commission to present its means of defence.

Without prejudice to the sanctions listed above, the defaulting company is liable to be reminded of the rights linked to the benefits and reimbursements of the subsidies granted and the related penalties.

**Article 19:** The final withdrawal of approval shall be pronounced in the following cases:

- failure to carry out the activity within the legal time limits granted, subject to the provisions of Article 12 of this Decree;
- stoppage of activities during the approval period of more than 18 months without any proven prospect of recovery.

**Article 20:** The Commission's decision to partially cancel benefits and to withdraw approval shall be made through a joint order of the Ministers responsible for industry and finance.

**Article 21:** For the settlement of disputes, the approved company may exercise a right of recourse, at its choice, before the competent administrative court of Burkina Faso, before the Ouagadougou Arbitration, Mediation and Conciliation Centre (CAMC-O), the Joint Court of Justice and Arbitration (CCJA) or before the International Centre for the Settlement of Investment Disputes (ICSID) in accordance with the provisions of Title VI of the Investment Code.

## **CHAPTER VI: FINAL PROVISIONS**

**Article 22:** The decree approving the Investment Code shall be published in the Official Gazette of Burkina Faso.

**Article 23:** This decree repeals all previous contrary provisions, in particular those of Decree No. 2010-524/PRES/PM/MCPEA/MEF of September 17, 2010, setting the conditions for the application of Act No. 62/95/ADP/ of December 14, 1995 on the Investment Code, as amended.

**Article 24:** The Minister of Commerce, Industry and Handicrafts and the Minister of Economy, Finance and Development shall each be responsible for the enforcement of this decree, which shall be published in the Official Gazette of Burkina Faso.

Ouagadougou, April 12, 2019



Roch Marc Christian KABORE

Prime Minister



Christophe Joseph Marie DABIRE

Minister of Commerce,  
Industry and Handicrafts



Harouna KABORE

Minister of Economy,  
Finance and Development



Hadizatou Rosine COULIBALY/SORY



# ANNEXES

## **A. APPLICATION PACKAGE FOR A, B, C, D, E SCHEMES SYSTEMS**

### **I. APPLICATION PACKAGE**

The application for license must include the following documents:

- an application form for license for one of the preferential regimes of the Investment Code duly completed and sent to the Minister in charge of Industry;
- the prior authorizations required for the investment issued by the technical ministries in accordance with regulations in force;
- the environmental feasibility notice;
- a project presentation package in twelve (12) copies.

### **II. COMPONENTS OF THE PROJECT PRESENTATION PACKAGE**

The project presentation file must include the following sub-folders:

- a legal sub-folder;
- a market study sub-folder;
- a technical sub-folder;
- a financial sub-folder;
- an economic and social sub-folder.

#### **A°. The legal sub-folder will include:**

- the legal nature and distribution of the capital;
- the composition of the Board of Directors;
- the unique financial identifier number;
- the capital payment certification;
- the authority of the license application signatory;
- the purpose of the planned activity and/or current activity;
- **information on possible company news in other countries, if applicable.**



**B°. The sub-folder “Market study” shall include general information on the national economy, the sector concerned and the target market.”**

**1°) Internal Market**

- Presentation of quantitative and qualitative data on the offer and demand of products to be manufactured;
- origin of imports of similar products;
- characteristics and quality of the planned production;
- structure of current production and product price trends (product price, price of substitute products, price of complementary products);
- analysis of consumer behavior (habits, preferences, propensity to buy...);
- analysis of existing distribution channels, commercial strategy planned;
- projection of demand over a period of five (5) years, determination of the expected market share.

**2°) External market**

- Information on production data for similar products in neighboring countries.

**C°. The technical sub-folder shall include:**

- 1) The description of the project site, justification for the choice, surface area of the land;
- 2) The indication of the production capacity and production program over a period of five (5) years;
- 3) The description of the manufacturing process;
- 4) The technology and equipment used: justification of the choice, type of acquisition (licenses, joint venture, etc.), nature, origin, characteristics and quantities. They will be grouped into production, office, transport, laboratory and other equipment;

- 5) Raw materials: nature, origin, basis or references for determining the quantities required to fulfill the production program;
- 6) Consumables: nature, origin and basis for determining consumption;
- 7) Buildings and civil engineering: detailed description of buildings (covered area, materials used), provision of floor plans;
- 8) The workforce: presentation of the personnel and qualification required for the project , presentation of the start-up organization chart; indication of the staff by activity center, technical assistance needed, training program (duration, country, period) and recruitment of personnel;
- 9) Security measures within the unit;
- 10) The project implementation program.

## **D°. The financial sub-folder shall contain:**

### **1°) Financial information on the existing activity, if any**

- Investments made;
- Financing: amount and origin (local or foreign) of capital and loans, leasing, if applicable;
- The characteristic management balances and balance sheets of the last three (3) financial years.

### **2°) Financial information on the proposed activity**

#### **2.1 Planned investments and their duration**

- First establishment costs: detailed cost;
- Land: acquisition cost or rent;
- Buildings: acquisition cost or rent;
- List of equipment and its value on site, along with pro-forma invoices;
- Determination of working capital requirements.

#### **2.2 Financing:**

- amount and origin (local or foreign) of capital and loans;
- financing plan;

- agreement in principle of the funding agency;
- borrowing table and amortization table for leasing.

### 2.3 Operating costs

Evaluation (and details of calculations) of costs by category:

- local raw materials;
- imported raw materials;
- financial expenses
- taxes, etc... (detailed calculation under common law and under the license system).

### 2.4 Provisional operating account and five-year provisional cash plan:

- under common law;
- under the license regime.

## **E°. The economic and social sub-folder shall include:**

### **1°) Economic impacts**

- The origin of the raw materials and products used by the company (local origin - import);
- The indication of the total added value of the first five (5) years of operation under the license system and under the common law system; The balance in foreign currency.

#### **Inflows:**

- foreign exchange earnings by substituting local products for imported ones;
- gains by exporting local products;
- others.

#### **Total currency inflows." Outflows:**

- depreciation in foreign currencies;
- imported raw materials and consumables;
- other transfers.

#### **Total currency outflows." Budgetary effects:**

- The State's revenue needed;
- State revenues.

## 2°) Social impacts

- Analysis of the wage bill, the quantity and quality of jobs to be created;

**F°. All sub-folders will be put together in a carefully bound file.**

# **B. APPLICATION PACKAGE FOR LICENSE FOR SPECIAL REGIME OF GROWTH POLES AND ZES**

## **I. APPLICATION PACKAGE**

- a duly completed application form for license under a special regime of the Investment Code sent to the Minister in charge of industry;
- the prior authorizations required for investment issued by the technical ministries in accordance with the regulations in force;
- an environmental feasibility notice;
- a copy of the investment agreement signed with the growth pole/special economic zone management structure specifying the amount of investments to be made, the duration of the projects and the number of jobs to be created;
- a project presentation package in twelve (12) copies.

## **II. PROJECT PRESENTATION PACKAGE**

The project presentation package must include the following sub-folder:

- a legal sub-folder;
- a market study sub-folder;
- a technical sub-folder;
- a socio-economic and financial sub-folder;

### **A°. The legal sub-folder shall include:**

- a copy of the trade registration;
- the legal nature and distribution of the capital;
- the composition of the Board of Directors;
- the certificate of unique financial identifier;
- the certification of payment of the capital;
- the license application signatory authority;
- the purpose of the planned activity and/or current activity;
- information on the company's possible activity in other countries, if applicable.

### **B°. The sub-folder "Market study" shall include general information on the national economy, the sector concerned and the target market."**

the presentation of quantitative and qualitative data on the offer and demand for the product to be manufactured;

- the origin of imports of similar products;
- the characteristics and quality of the planned production;
- the structure of current production and product price trends (product price, price of substitute products, price of complementary products);
- analysis of existing distribution channels, commercial strategy planned;
- projection of demand over a period of five (5) years, determination of the expected market share.

### **C°. The technical sub-folder shall include:**

- The description of the project site, justification for the choice, surface area of the land
- The indication of the production capacity and production program over a period of five (5) years;
- the indication of the technical references in the field concerned or in a similar field if necessary;

- the indication of the annual needs for raw materials and consumables: nature, origin, bases or reference of determination;
- The description of the manufacturing process;
- the list of equipment and their value rendered on site, accompanied by pro-forma invoices; They will be grouped together in production, office, transport, laboratory and other equipment.;
- the presentation of the necessary staff for the project and the qualifications;
- national and foreign technical partners, if applicable;
- the effects on the environment and protective measures;
- security measures within the unit;
- the program of realization of the project.
- Security measures within the unit;

**D°. The socio-economic and financial sub-folder will include:**

- the amount and origin (local or foreign) of the capital and loans;
- the financing plan;
- the agreement in principle of the funding agency;
- the borrowing table and amortization table for leasing;
- the forecast operating account and the 5-year cash flow forecast plan under common law and approval regime;
- an indication of the overall value added of the first five (5) years of operation under the system of approval and under common law;
- the budgetary effect: State shortfall (taxes and duties) and State revenue;
- the social impact: the analysis of the wage bill, the quantity and the quality of the jobs to be created.

**E°. All sub-folders will be put together in a carefully bound file.**













MINISTER OF COMMERCE,  
INDUSTRY AND HANDICRAFTS

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