Executive summary


This Alert summarizes the key changes relating to investment incentives.

Detailed discussion

**Modified provisions**

Change of the agency in charge of ascertaining the start of the operating phase (Article 3)

The ascertainment of the start of the operating phase was previously done jointly by the ministers responsible for private investment (Minister of Industry and Mines), Finance and Trade.

As modified, the authority in charge will be the Investment Promotion Agency (IPA) or the Promotion Agency for Small and Medium Enterprises (PASME).

This change is expected to simplify the procedure.
Review and transfer of the proposed investment file to the MINFI (Article 18 (3))

Previously the time frame for review and transfer of the file to the Minister of Finance (MINFI) was two days. Now under the modified provision, the time limit is five days.

This extension of the time period is intended to grant a flexible period for examining the file. However, it does extend the duration of the procedure for obtaining the investment agreement.

Change of the agency authorizing the agreement (Article 19 (1))

Prior to the modifications, it was the Minister in charge of investments (after receiving the assent of the MINFI). Now, depending on the investors, IPA or PASME will authorize the agreement (after receiving the assent of the MINFI). This change is expected to accelerate the process.

Amendment of the scope of the MINFI’s assent (Article 19 (1))

Under the prior law, the MINFI had to approve the granting of the agreement. Now the MINFI’s response is considered an opinion subject to consideration by the IPA or the PASME, as compared to assent.

Furthermore, the MINFI should advise on his/her opinion within 15 days, otherwise the opinion is deemed to be favorable and the IPA or PASME shall subsequently authorize the agreement within 3 days.

This change raises the possibility of de facto opposition to the agreement (granted by the IPA or the PASME) by the MINFI’s services (General Directorate of Taxes and General Direction of Customs) in the case of an unfavorable opinion by the MINFI or in the case of silence of the latter, taking into consideration that the agreement principally grants tax and customs exemptions.

Requirement of IPA or PASME visa for local importations and purchases at all phases of installation or operating (Article 25)

In the past, the IPA or PASME visa was only required during the operating phases.

Going forward, the IPA or PASME visa must be mentioned prior to any request for local importations or purchases during both the installation and operating phases.

This change is expected to permit the administration to improve follow-up of the agreements already granted, notably concerning equipment and materials receiving the benefit of tax and customs exemptions.

New provisions

Regulatory act for the layout of tax credits (Article 8 (2))

This newly referenced article indicates that the process for the application of paragraph 1 (relating to tax credits) shall be set forth by a regulatory act. A Decree or the executive order on this issue will be forthcoming.

Regulatory act for the extension of tax exemptions (Article 11 (2))

This newly referenced article indicates that the process for the application of paragraph 1 (relating to the extension of exemptions granted to shareholders, promoters and local contractors of the investor) shall be set forth by a regulatory act. A Decree or the executive order on this issue will be forthcoming.

Time period to issue a decision on investment (Article 21 (3))

Introduction of a 15-day time limit allocated to the IPA or PASME from the date of receipt, to issue a decision on the request of an investor who wishes to extend the time limit granted to him to comply with the eligibility requirements.

The introduction of a time limit is an advantage for investors. However, the positive impact of this time limit is reduced by the fact that the law has not provided any provision if the IPA or the PASME do not meet this timeframe.

Endnote

1. The new law amends and supplements articles 3, 8, 11, 18, 19, 21, 25, 35 and 36 of Law No. 2013/004 of 18 April 2013.
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