

The new Cameroonian investment code

Cameroon was one of the first African countries to enact an investment code in 1990, confirming basic guarantees to investors such as free repatriation of capital and property ownership and providing various incentives such as tax reductions. However, this act was only good on paper: four years later the tax regime changed, superseding the tax advantages of the investment code. Also high bureaucracy and the arbitrary application of the code provisions often revoked the benefits of the investment law. This resulted in Cameroon ranking amongst the bottom 25 countries when it comes to ease of doing business and even bottom 10 in relation to paying taxes in a World Bank's survey. In order to attract foreign investors, revamping the 1990 investment code had become a priority for President Biya and so the new Cameroonian investment code became law on 18 April 2013.

Key improvements

This new law is very attractive and different to most African investment codes. Firstly, there is no discrimination between local and foreign investors. Secondly, no minimum investment is required (in Angola the investment incentives only kick in with US\$1m, in Rwanda with US\$250,000). The four criteria considered for the application of the code are (i) the number of local staff employed, (ii) the percentage of exports, (iii) the use of natural resources and (iv) the contribution to value added. Thirdly, there are numerous incentives. During the establishment phase (which cannot exceed five years), the new code provides for exemptions from VAT and duties on key services/assets (including an exemption from stamp duty on the lease of immovable property). During the operation phase (which cannot exceed 10 years), further exemptions from or reductions of other taxes (including corporate tax), duties (such as stamp duty on loans) and other fees are granted. However, unlike many other African investment codes, the new law provides for many additional, non-tax related benefits. Examples of these advantages include: the right to open local and foreign currency accounts locally or abroad, the right to freely cash in and keep abroad funds or income, the right to directly pay non-resident suppliers of goods and services abroad. Also facilities will be put in place to facilitate the issuance of visas and work permits, environmental compliance certificates and land titles and long term leases.

The remaining issue of bureaucracy

The new code has, however, not resolved the biggest bureaucracy issue of the previous law. For example, the process to qualify for the various benefits of the investment law still requires three different approvals: the one-stop shop body, the Minister of Finance and the Minister of private investment. Also, during the operation phase, the benefits are not automatic; all import and local purchase requests must obtain the visa of the body in charge of incentives promotion first. Finally, the new law provides for the setting-up of two other authorities: the Control Committee and a Joint Monitoring Committee.

For a sub-regional investment legal framework

Numbers of benefits granted by this law may raise a concern relating to their compatibility with the sub-regional community legislation.

In particular, it should be noted that Cameroon is a member state of the Economic and Monetary Community of Central Africa (EMCCA) and as such, is bound by the EMCCA regulation dated 29 April 2000 relating to the foreign exchange control ("EMCCA Regulation"). The EMCCA Regulation are supra national, i.e. in case of conflict with national laws (such as the new investment act) the EMCCA Regulation would prevail.



Key Contacts



Camille Astier

Co-ordinator of Africa Practice
Senior Associate, London
Hogan Lovells International LLP
camille.astier@hoganlovells.com
T +44 20 7296 2291



Alex Bebe Epale

Associate, Paris
Hogan Lovells International LLP
alex.bebeepale@hoganlovells.com
T +33 (1) 5367 3896

First published in This is Africa on 20 May 2013

This is a key issue as the EMCCA Regulation significantly restricts the impact of the innovative rights granted by the new investment code. Here are two illustrative examples: (1) the new law provides for the right for any investor to open in Cameroon and abroad, a local or foreign currency account and to carry out transactions on such account. However, according to EMCCA Regulation this is subject to the prior authorisation of the Minister of Finance on the basis of an approval issued by the Central Bank. (2) The new investment code also provides for the right for an investor to freely cash in and keep abroad funds acquired or borrowed abroad and freely use them, as well as incomes from its transactions. However, according to EMCCA Regulation, export activities shall be disclosed to the competent authority, and transactions whose value exceeds FCFA 5,000,000 shall be settled through an EMCCA bank.

As such, although the Cameroonian administration will be bound by this new law, in case of a dispute before a Cameroonian court, the EMCCA legislation would prevail. Accordingly, it is questionable whether the new improvements of the investment code can actually be used...

Conclusion

The new investment code of Cameroon is excellent and innovative on papers but it seems that its compatibility with the EMCCA Regulation has been overlooked. This issue reinforces the recent ebullition around regional integration. Although Cameroon's efforts to develop its investment laws are to be praised, the discussions and improvements should be agreed and harmonised at the EMCCA level.

www.hoganlovells.com

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses.

The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members.

For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com.

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney Advertising.

© Hogan Lovells 2013. All rights reserved.