INVESTMENT OPPORTUNITIES IN TUNISIA

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Boussayene Knani is one of the leading business law firms in Tunisia. The firm stands out locally by virtue of its size, structure and commitment to international professional standards. Its international client base constitutes the major part of its activities. As a multidisciplinary law firm, Boussayene Knani offers its clients a comprehensive legal service in all areas of business law. Each partner has built a solid reputation in his field of expertise. Boussayene Knani works in close collaboration with leading business law firms in Europe, Africa, USA and the Middle East.

Country Information

Tunisia has a prime geo-strategic position. It is a Maghreb country, located on the Mediterranean coast of North Africa with a total land area of 163 610 square kilometres. Its population is about 11 million and the vast majority of Tunisia's population is Muslim.

Arabic is the official language and French is widely used in education, the press and in business. English is becoming more widespread especially in business. Tunisia's currency is the Tunisian Dinar (TND). Investment areas include the manufacture of food products, textiles and clothing, construction materials, ceramics and glass, metals and other manufactured products.

Political system

Tunisia is a representative democracy and a republic with a president serving as head of state, prime minister as head of government, a unicameral parliament, and a civil law court system. The Constitution of Tunisia was adopted 26 January 2014.

In October 2014 Tunisia held its first elections under the new constitution.

Latest GDP Figures

In 2017, Tunisia had a gross domestic product (GDP) of about $40.289 billion (using official exchange rates). It has one of Africa and the Middle East's highest per-capita GDPs (PPP) of about $136.797 billion. The agricultural sector accounts for 11.6% of the GDP, industry 25.7% and services 62.8%.

Investment Climate

The Government actively encourages and places a priority on attracting foreign direct investment (FDI) in key industry sectors such as electronics manufacturing, aerospace and aeronautics, automotive parts, call centers, and textile.

Foreign investment in Tunisia is regulated by the Investment Code (Law n° 1993-120) which was last amended on January 26, 2009 then repealed after the entry of the investment Law into force since January 1st of 2017. It covers investments in all major sectors of economic activity except mining, energy, the financial sector and domestic trade. The Investment law divides potential investments into two categories: Offshore, in which foreign capital accounts for at least 66% of the equity and onshore, in which foreign shareholding is limited to 49% in most non-industrial projects. Onshore industrial investments can have up to a 100% foreign shareholding. The legislation contains two major hurdles for potential FDI as foreign investors are denied the same treatment as nationals in the agriculture sector and foreign ownership of agricultural land is prohibited (although land can be secured through long-term (up to 40 years) leases. However, the Government actively promotes foreign investment in agricultural export projects.

In the context of the ongoing reform of the Tunisian Investment Law, the Investment Code had been repealed after the promulgation of the investment Law on the 17th of September 2016 and its entry into force on January 1st of 2017. These reforms included the liberalisation of the onshore sector and relaxed requirements for foreign investors. Thereby, any authorization refusal decision should report, within the legal terms, the reasons of that refusal and should be notified to the investor in writing or through any other means that provides a paper record.

Moreover, upon the expiry of the legal terms, the silence is considered as an approval if the application fulfils all the conditions required. In this case, the authority shall deliver the authorization to the applicant after checking the fulfilment of the conditions and the deadlines in case of silence after the expiry of these deadlines (article 4 of the investment law).

While investments in manufacturing industries, agriculture, agribusiness and certain services only require a simple declaration of intent, other sectors are covered by further Government authorisations.

One of the most notorious changes introduced by the new investment law of 2017 resides in the fact that any company is allowed to recruit foreign employees up to 30% of the total number of the management staff till the end of the third year following the legal constitution of the company, or starting from the date of its entry into effective production according the enterprise's choice. This limit is reduced to 10 % starting from the fourth year from that date. In all cases, the enterprise is allowed to recruit up to four foreign management staff. Beyond this percentage, the recruitment of foreign management staff is subject to employment Ministry approval in accordance with the labour Code.

Besides, the Government allows foreign participation in its privatisation programs and a significant share of Tunisia's FDI in recent years has come from the privatisation of state-owned or statecontrolled enterprises. For instance, privatisation has occurred in telecommunications, banking, insurance, and manufacturing among other sectors.

In August 2009, the Tunisian Government adopted a new law to regulate domestic trade (Law n° 2009-69), which included a new legislative framework for franchising. Until recently, franchise status was only granted to businesses on a case-by-case basis. A July 2010 implementation decree (Decree n°2010-1501) outlined a list of sectors in which franchises would need no prior authorisation to operate. Sectors not on the list, such as food franchises, still need approval to operate. However, as a result of this new law, many franchises now have the ability to establish themselves like any other business. In general, the law is intended to encourage investment, create additional jobs, and boost transfer of technology.

Since 2007, there have been numerous announcements of significant Arabian Gulf investments in the real estate sector but due to the international economic crisis, some investments have been postponed and possibly cancelled. Sama Dubai, which was set to build the Mediterranean Gate mega-construction project, halted its operations in 2009. Investment has however not come to a complete standstill. Another investment, the Bukhatir Group's Sport Cities-Tunis, a sports and recreational complex, as well as Gulf Finance House's Tunis Financial Harbour, are moving forward, albeit slower than planned and with new delays arising from Tunisia's political transition. FDI in certain state monopoly activities (electricity, water, postal services) can be carried out under concession agreements.

With few exceptions, domestic trade can only be carried out by a company incorporated under Tunisian law, in which the majority of the share capital is held by Tunisian nationals and the management is Tunisian.

The EU is providing significant funding to Tunisia for major investment projects but clauses in the agreement prohibit non EU member countries from participation in many EU-funded projects. A tariff dismantling program launched in 1996 led to the establishment of a Free-Trade zone with the EU in 2008. While the Government has adopted policies designed to promote foreign investment, it continues to enact legislation and implement protectionist measures to safeguard local industry. Some aspects of existing tax and labour laws remain impediments to efficient business operations. The 2012 World Bank "Doing Business" report published in October 2011, ranked Tunisia 46, down six places compared to the previous year, in view of its on-going political transition. Despite the down ranking, Tunisia remained the highest-ranked country in North Africa. Some bureaucratic procedures, while slowly improving in some areas, remain cumbersome and time-consuming. Foreign employee work permits, commercial operating license renewals, infrastructure-related services and customs clearance for imported goods are usually cited as the lengthiest and most complicated procedures in the local business environment. Investors have commented on inconsistencies in the application of regulations. These heavy procedures are not limited to foreign investment but also affect the domestic business sector.

Investment Incentives

The investment law promulgated on the 17th of September 2016 grants foreign investors a certain number of benefits:

The investor is free to own, rent and exploit non-agriculture properties for the purpose of achieving direct investment operations or their extension.

Foreign investor must not be treated less favorably than Tunisian investor in like circumstances with regard to his rights and obligations.

Investor's funds, possessions and intellectual rights are guaranteed in conformity with the legislation in force.

Investors' properties shall not be expropriated, except for public interest without any discrimination regarding nationality and upon fair and equitable compensation in accordance with due process of Law.

Foreign investors can freely transfer abroad funds in foreign currency in accordance with applicable change legislation.

Dispute Settlement: Where a dispute arises between the Tunisian State and the investor, parties are freely allowed to agree on the mediation's procedures and rules, Otherwise, Conciliation Rules of the United Nations Commission on International Trade Law shall apply.

If a dispute between the Tunisian State and a foreign investor is not settled through conciliation, it may be submitted to arbitration under an agreement between the parties. In such case, the arbitration procedures are subject to the arbitration Code provisions. Otherwise, the Tunisian courts are exclusively entitled to examine the dispute.

Financial benefits

Under the national modernisation program, several incentives are granted for the modernisation of industrial enterprises and business services enterprises and for priority technological investments. The incentives are financed through the Industrial competitiveness development fund (FODEC). The Bureau for the national modernisation program for industry (BMN) implements, follows-up and evaluates the granted benefits

Exemption from customs duty for Tunisians resident abroad

Under article 115 of the finance law governing the 1993 budget, exemption from customs duty on imported equipment and rolling stock is available to Tunisians who have lived abroad on a continual basis for more than two years and who have invested in one of the activities listed in the investment incentives code upon their definitive or provisional return to Tunisia.

Forms of Business

The main business entities in Tunisia are partnerships (limited or one man limited companies) and joint-stock corporations (a limited liability Company (SA).

Formation of a Company

The formation of companies in Tunisia is subject to quick and simplified procedures. The investor's unique interlocutor created within the Tunisian Investment Authority established by the investment law is authorised to perform all administrative and legal procedures necessary for the formation of companies by residents and non-residents, welcoming, guiding and informing investor with coordination with the different concerned structures, but also dealing with investor's complaints and endeavour to resolve problems in coordination with different concerned structures.

Furthermore, the direct investment declaration and the legal constitution of enterprises is made under the single administrative document which model, annexed documents list and its procedures are fixed by a governmental Decree.

The investor's unique interlocutor shall deliver to the investor an Investment declaration acknowledgment and the investment creation or enterprise extension documents within a working day from the date in which the declaration, with all requested documents are submitted.

Exchange Controls

Foreign capital transactions in Tunisia are governed by the Law n°76-18 dated January 21st, 1976 (which revised legislation and codified foreign exchange and foreign trade arrangements between Tunisia and other countries) and by the exchange regulations of the Central Bank of Tunisia. Generally, there are no restrictions on the repatriation of capital, profits, dividends, interest and rental income by foreign investors.

Intellectual Property

Intellectual property protection covers patents, trademarks, industrial designs, copyright (literary and artistic property). Since 28 November 1975, Tunisia is a member of the Convention constituting the World Intellectual Property Organisation (WIPO). The country is a signatory to a number of international as well as regional conventions on Intellectual Property such as the:

- Berne Convention for Protection of Literary and Artistic Works
- UNESCO Convention for copyright
- Paris Convention for the Protection of Industrial Property
- Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods
- Geneva Universal Copyright Convention
- Arab Convention on the protection of intellectual property rights

Association Agreement between Tunisia and the EU

Tunisian intellectual property laws are consistent with international standards and are intended to provide adequate protection for both local and foreign investors.

Imports and exports

In 2008, merchandise exports exceeded US$19.3 billion while merchandise imports rose to over US$24.6 billion. In 2008, commercial services exports amounted to more than US$5.5 billion while commercial services imports totalled over US$3 billion. In 2014, Tunisian exports exceeded US $16.75 billion (down from US$19.22 billion in 2008) and US $24.83 billion for imports. Tunisia's primary export commodities include clothing, semifinished goods, textiles, agricultural products, mechanical goods, phosphates, chemicals, hydrocarbons and electrical equipment. Its export partners include France (29.7%), Italy (17.1%), Germany (11.5%), Libya (5.4%) and Spain (5%). Tunisia's primary import commodities include textiles, machinery and equipment, hydrocarbons, chemicals and food from, amongst others, France (19.9%), Italy (19.5%), Germany (7.6%), China (5.5%) ,Turkey (4.1%) and Spain (5.4%).

Legal System

Tunisia has a bicameral legislature and a court system influenced by French law. Civil disputes are heard by First Instance Courts and may be appealed to the Courts of Appeal or brought to ”cassation” at the Court of Cassation (the supreme court). It is important to note that cassation is not a third level of litigation. Employment disputes are heard by the Labour Tribunal. Arbitration is available under the Arbitration Code and is either institutional or ad-hoc.

Membership of International and Regional Organisations

Tunisia is a member of the World Trade Organisation (WTO), the United Nations (UN), the United Nations Conference on Trade and Development (UNCTAD), the World Intellectual Property Organisation (WIPO), the African Union (AU), the International Monetary Fund (IMF), the European Bank for Reconstruction and Development (EBRD) and other international and regional organisations.

Labour Relations

Labour relations in Tunisia are governed by the Labour Code of 1956. Labour contracts may be for a definite or an indefinite period of time. A definite period contract may specify that it is valid for either a limited period of time or for a specific task. If the parties continue such a contract after the agreed expiration date, then it becomes a contract for an indefinite period. A labour contract may be terminated by agreement between the contracting parties or as a result of the resignation or dismissal of the employee. In the latter case, the employee is entitled to severance pay (which is generally not high when compared with other countries). The Labour Code sets standards regarding other employment conditions, such as the minimum age of labour, the maximum number of work hours per week, the minimum wage level (fixed by decree), the overtime work rate and annual leave. Regional labour inspectors are responsible for the enforcement of these regulations. Worker health and safety standards are regulated and enforced by the Social Affairs Ministry.

Foreign employees

The law providing incentives to foreign investors includes provisions permitting recruitment of expatriate personnel. For example, foreign managers acting in their capacity as employers are not required to hold a work contract and their company or enterprise may, with a simple declaration to the appropriate authorities, hire up to four expatriate technicians who may choose either a foreign social security system or the Tunisian system.

Trade Unions

The right of workers to form unions is secured in the Tunisian Constitution and the Labour Code. The right of unions to strike is subject to the fulfilment of certain conditions, such as giving ten days advance notice and receiving the support of the Central Labour Union.

Tunisian law protects the right to organise and to bargain collectively. Working conditions (such as wages) are fixed through the negotiation of approximately forty-five collective bargaining agreements which determine standards applicable to most economic sectors. The Government confirms the collective bargaining agreements and cannot modify them. After Government confirmation, the agreements are published in the official gazette (this is a mandatory condition for the legal validity of the agreements).

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