

Le Moniteur

OFFICIAL JOURNAL OF THE REPUBLIC OF HAITI

Published on Mondays and Thursdays

General Director – Emile Jean-Baptiste

157th Year – Special Issue 4

Port-au-Prince

Tuesday November 26, 2002

SPECIAL ISSUE

LAW ON THE INVESTMENT CODE MODIFYING THE OCTOBER 30, 1989 DECREE ON THE INVESTMENT CODE

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SUMMARY

LAW ON THE INVESTMENT CODE
MODIFYING
THE OCTOBER 30, 1989 DECREE
ON THE INVESTMENT CODE

SPECIAL ISSUE

LIBERTY

**EQUALITY
REPUBLIC OF HAITI**

FRATERNITY

LEGISLATIVE BODY

LAW ON THE INVESTMENT CODE MODIFYING THE OCTOBER 30, 1989 ORDER ON THE INVESTMENT CODE

Given Articles 36, 36.1, 36.3, 36.4, 38, 53, 54, 55.2, 55.3, 55.4 66, 74, 111, 111.1, 111.2, 119, 121, 125, 126, 136, 144, 145, 159, 200, 200.4, 218, 219, 245, 246, 247, 250, 252, 253, and 254 of the 1987 Constitution;

Given Articles 96, 97, 502, 955 et seq. of the Code of Civil Procedure ;

Given the June 11, 1935 Law on Commercial Arbitration;

Given the September 22, 1964 Decree on tenure on State private domain properties;

Given the July 18, 1974 Law instituting industrial parks;

Given the March 12, 1975 Decree regulating the operation of tourism-related businesses;

Given the September 20, 1979 Law modifying the June 16, 1975 Law on the exercise of the right to real estate property granted to foreigners;

Given the September 28, 1977 Decree on cadastral registration and conservation;

Given the January 13, 1978 Decree on inland revenue;

Given the March 29, 1979 Decree creating a foreign trade zone in the Port-au-Prince area;

Given the April 5, 1979 Decree on the built-up property land tax, such as amended by that of December 23, 1981;

Given the September 19, 1982 Law on sales taxes, such as amended by the October 10, 1984, March 26, 1985, August 31, 1989, September 28 1990 Decrees and the February 5, 1995 and June 11, 1996 Laws;

Given the April 6, 1983 Decree on immigration and emigration;

Given the March 30, 1983 Decree sanctioning the Paris Agreement on the protection of industrial property;

Given the March 30, 1983 Decree sanctioning the agreement for the recognition and the application of foreign arbitration sentences;

Given the October 18, 1983 Law which organizes the Ministry of Agriculture;

Given the February 24, 1984 Decree on the Labor Code;

Given the August 28, 1985 Decree sanctioning the Agreement on the resolution of investment-related conflicts between States and nationals from other States signed by Haiti in Washington on January 30, 1985;

Given the September 29, 1986 Decree on income taxes, such as amended by that of September 27, 1988;

Given the February 24 1987 Decree on municipal trade taxes;

Given the March 30, 1987 Decree on the Customs Code;

Given the March 13, 1987 Decree reorganizing the Ministry of Commerce and Industry;

Given the March 13, 1987 Decree reorganizing the Finance and Economy Ministry;

Given the August 28, 1987 Law organizing the Social services Ministry;

Given the October 12, 1987 Decree modifying that of January 13, 1978 on foreign license;

Given the October 14, 1988 wage tax Decree;

Given the October 30, 1989 Decree modifying the Investment Code;

Given the October 9, 1993 Decree sanctioning the Berne Agreement on copyrights;

Given the September 26, 1996 Law on modernization of public enterprises;

Given the August 2, 2002 Law on Foreign Trade Zones;

Whereas, in order to stimulate the national economy, it is necessary to take all useful measures to speed up the rate of directly productive investments;

Whereas private investments, both national and international, are the determining factor in economic growth and development;

Whereas it is necessary to create a favorable investment climate in Haiti through the granting of legal guarantees and through the implementation of simple and efficient regulations;

Whereas in the context of its program to combat poverty, the government aims to facilitate economic growth, technology transfer and the integration of national production by giving priority to the Tourism, Agriculture, and Handicrafts sectors, as well as the development of Small and Medium Enterprises and Foreign Trade Zones;

Whereas, to guarantee sustainable development in Haiti, it is appropriate to cause productive activity to be more environmentally safe;

Whereas, for all these reasons, it is appropriate to modify the Investment Code so that it takes into account all the various goals mentioned above;

On the report of the Ministers of Commerce and Industry, of the Economy and Finances, and after deliberation at the Ministers Council;

The executive power has proposed and the legislative body has passed the following law:

PART I INTRODUCTORY PROVISIONS

CHAPTER I PURPOSE OF THE CODE

Article 1.- The purpose of this Investment Code is to promote economic growth and development in Haiti by facilitating, liberalizing, stimulating and guaranteeing private investments within the confines of the laws, the Constitution, Treaties, Agreements and Concords to which the Republic of Haiti is a party.

Article 2.- The State grants general guarantees to all investors. In the context of this Code, it defines the general conditions and types of incentives granted in Haiti, to certain kinds of investments likely to increase competitiveness in sectors which are considered priorities or strategically important and because of their respective contributions to added value, to the creation of sustainable employment, to the renewal of national production equipment; to economic growth; to the reduction of balance of payments deficit and to the creation of a national labor force.

Article 3.- Similar guarantees are granted to all physical persons or corporate bodies who are active in the production of goods or in the supply of services in the sense defined by this Code, whatever their nationality, provided that they are legitimately established on the territory of the Republic.

The guarantees, which are applicable to any investment whatsoever, constitute standard procedure. Exemptions from duty and from taxes as well as other special benefits are part of the incentive programs.

Article 4.- The benefits guaranteed and other privileges granted by virtue of this Code may not be limited or removed for the duration of the period for which they are granted.

However, the provisions of the preceding clause are not to be applied in cases of infringement of the law, of failure of the beneficiary to comply with the obligations resting upon him/her, of abuse of the privileges received or of breach of commitments in consideration for which these privileges had been granted.

The investments made under the auspices of this code may however take advantage of any new legislation which benefits them.

CHAPTER II DEFINITIONS

Article 5.- In the sense of this Code, the following is understood:

a) Incentive privileges:

Any favorable legal provision, granting an exemption from standard procedure, from which specific economic agents benefit in order to stimulate their sector;

b) Foreign trade Enterprise:

Any resident or non-resident physical person or corporate body within a foreign trade zone involved in a production activity or in the sale of goods or of services exclusively oriented towards exportation.

c) Foreign trade Commercial enterprise:

Any foreign trade enterprise for the processing or wholesale trade of export goods and services.

d) Foreign trade Industrial enterprise:

Any enterprise involved in the production of goods, the supply of services or the assembly of products to be exported.

e) Duty and tax exemption:

The exoneration of all customs duties and any other duty, tax and charge whatsoever except user fees for the use of public services.

f) Investment:

The assignment of assets, of production activities, of goods or of services in such a way that they are no longer immediately available for consumer needs.

g) Priority investment:

Any investment eligible for incentive benefits within the terms of this Code.

h) Preferred investment

Any investment made under the auspices of this Code in an area which is considered to be of particular interest for the ordered development of a sector provided for by the Code.

i) Investor:

Any physical person or corporate body who assigns resources to the production of goods and services such as indicated in point (f).

j) Enterprise:

An economic and technological commercial entity which is financially independent and is working towards essentially producing or supplying certain goods or services.

k) Preferred product:

The good belonging to one of the sectors defined as preferred for production and for which an enterprise benefits from certain fiscal and customs exemptions.

l) Revenue:

The consideration of what an investment earns such as profit, fees or interest (direct or indirect remuneration), as well as all proceeds from the transfer of assets.

m) Preferred revenue:

Revenue attributable to a preferred investment or to a preferred product.

n) Suspension arrangements comparable to the foreign trade zone:

Customs warehouses, international transit, drawback and temporary entry system for active development and for re-export in the state or any other system combining several of these features among them.

o) Inter-Departmental ? Commission on Investments:

A public cross-sectoral organism the purpose of which is to decide on the opportunity to grant the benefits prescribed by this Investment Code.

CHAPTER III SCOPE

Article 6.- This Code is applied to all private investments both national and foreign. The benefits of this Code cover enterprises working towards improving the environment. The Ministry of the Environment and/or any other organism working in its stead, can through reasoned opinion recommend the annulment of benefits granted in the context of this

Code if the processes of manufacture generate negative externalities exceeding generally accepted levels.

TITLE II GENERAL GUARANTEES

CHAPTER I ON FREEDOM OF ENTERPRISE

Article 7.- The investor enjoys the freedom to make any investment or take any Trade action authorized by the laws and the Constitution, notably the right to:

- a) engage in the economic activity of his/her choice;
- b) employ or terminate personnel in accordance with the provisions of the Labor Code;
- c) market his/her production of goods and services;
- d) freely establish management methods in his/her business;
- e) choose his/her sources of supplies;
- f) be a member of any association operating in the same field.

Article 8.- The State will refrain from any interference in the activities of the private enterprise except to ensure that the laws and regulations in effect are respected.

The rejection of a request for entry into one of the exemption arrangements does not imply any limit on freedom of enterprise but rather signifies that the investment concerned is covered by standard procedure.

CHAPTER II ON THE PRINCIPLE OF NON-DISCRIMINATION

Article 9. - Subject to constitutional provisions, no monopoly can exist in favor of an enterprise, whether public or private.

Article 10. - When a State enterprise or an enterprise controlled by the State and a Haitian or foreign private enterprise are engaged in competing economic activities, the they are subject to the same laws.

Article 11.- Haitian investors and foreign investors enjoy the same rights and privileges. However, foreign investors residing in Haiti must obtain permission to reside. No other authorization, license or permit which is not required of Haitian investors is applicable to foreign investors. Foreign investors pay taxes, duties and levies according to the schedules and regulations which are applicable to Haitian investors.

The right to real estate property is guaranteed to foreign investors for the needs of their enterprise. Investors have the same rights and prerogatives as Haitian investors in fulfilling the main purpose of their enterprise.

CHAPTER III ON THE MOVEMENT OF CAPITAL

Article 12.- The reimbursement of debts incurred abroad for an investment made in Haiti is not subject to any constraint or taxation.

CHAPTER IV ON THE GUARANTEE OF THE RIGHT TO PROPERTY

Article 13.- The right to property is guaranteed and protected by the State. Expropriation is allowed only when for the common public interest after payment of just and previous compensation equivalent to the market value of the property, as determined by expert appraisals. The State cannot demolish, or take possession of the property before compensation has been effectively paid.

Article 14.- Intellectual property is guaranteed and protected by law. Any person found guilty of counterfeiting will be submitted to the penalty provided for by the law.

CHAPTER V ON LEGAL PROTECTION

Article 15.- Foreign and Haitian investors enjoy equal protection under the Law.

Court decisions and arbitration sentences passed abroad are enforceable in Haiti, subject to the formalities provided by the Code of Civil Procedure and in the international agreements to which the Republic of Haiti is a party.

Article 16.- Foreign investors who are plaintiffs in Haiti are exempted from the “judicatum solvi” bond in any civil case involving an investment in Haiti.

TITLE III STANDARD PROCEDURE

Article 17.- Subject to restrictions involving national interest and sanctioned by the Constitution and by the law, physical persons and corporate bodies regardless of nationality are guaranteed:

- The right to freely dispose of their properties and to organize according to their wishes their production and trade activities;
- Freedom to recruit and employ;
- Protection of trademarks, patents and labels as well as other forms of industrial protection;
- The transfer of dividends and other revenues, such as described under title I Chapter II article 5 (l) and article 5 (m).

Article 18.- In addition to general rights and guarantees mentioned above, certain types of investments, which are considered likely to make a particular contribution to the socio-economic development of the country, can benefit from incentives defined and regulated by this Code.

TITLE IV INCENTIVES

CHAPTER I ON ELIGIBLE INVESTMENTS

Article 19.- The investments that benefit from incentives in the context of this Code are constituted especially by those:

- a) which are exclusively oriented towards export and re-export;
- b) made in the field of Agriculture;
- c) made in the field of Handicrafts;
- d) made in national industry;
- e) made in Tourism and related services;
- f) made in foreign trade zones;
- g) made in other special sectors and arrangements.

CHAPTER II ON GENERAL PROVISIONS

Article 20.- Any enterprise wishing to establish itself in a location where the infrastructures are insufficient or inexistent is authorized to build them and to exploit them in exchange for a program to be submitted when it presents its request. Infrastructures include the constructions, facilities and equipment that are generally necessary for its operations.

Article 21.- The owners or shareholders of companies benefiting from incentives are subject to pay personal income taxes on revenue they earn from the enterprise, except as otherwise provided by this Code.

Article 22.- Any sale, assignment or transfer, merger, partial management buyout or other form of partnership of a company benefiting from the provisions of this Code requires authorization by the Inter-Departmental Commission on Investments.

In the event of the sale of a preferred enterprise's shares to another entity, the latter enjoys continued benefits provided for by the Code if and only if it proves that the assets acquired serve the same purposes of production of goods and services which had initially justified the grant of these benefits. The acquiring enterprise is simply subrogate to the initial beneficiary and the period for the enjoyment of benefits is limited to the remaining number of years.

Article 23.- Foreign employees working in a company benefiting from incentives and whose contract period is longer than three (3) months is exempt from foreigners business license taxes, but they must previously obtain a work permit and the company may obtain a permit to employ without paying related duties.

Article 24.- The provisions of the law on health cards are not applicable to companies benefiting from incentives whenever these companies have an adequate health service duly authorized by the Minister of Public Health and Population.

Article 25.- Any payment made abroad for the purchase of technology (license, franchise, etc.) by a company operating in Haiti under the auspices of this Code is considered as an operating expense for the duration of use, on the proof that this operation responds to real need on the part of the company. The same is applicable to salaries paid to foreign technicians traveling to Haiti whose stays do not exceed six (6) weeks to install new equipment or to train personnel.

Article 26.- Any enterprise benefiting from exemption from paying income taxes and whose operations have been suspended because of fortuitous events can, after approval by the Inter-Departmental Commission on Investments, benefit from extension of an exemption proportional to the suspension period.

Article 27.- Companies involved in activities provided for by Article 19 and approved by the Inter-Departmental Commission benefit, in addition to privileges provided for by this Code and the legislation in effect, from the following fiscal breaks:

- 1) Total exoneration from income taxes for a period which shall not exceed fifteen (15) consecutive years.

After the total exoneration period, partial taxation will be applied as follows:

- a) at the end of the first year, fifteen percent (15%) of income will be taxable;
- b) at the end of the second year, thirty percent (30%) of income will be taxable;
- c) at the end of the third year, forty-five percent (45%) of income will be taxable;
- d) at the end of the fourth year, sixty percent (60%) of income will be taxable;
- e) at the end of the fifth year, eighty percent (80%) of income will be taxable;
- f) at the end of the sixth year, the totality of the enterprise's income will be taxed according to the income tax law. The enterprise will not benefit from renewal or extension of the exemption except in cases of fortuitous events, according to article 26 of this Code.

- 2) Accelerated depreciation:

a) Built-up properties	10% per year
b) Heavy equipment: motors, heavy machinery, tools, stationary equipment	25%
c) Operating furnishings	20%
d) Light equipment: tools and instruments, air conditioners, computer equipment	50%
e) Rolling stock	50%
f) Software	100%
g) Naval and air equipment	50%
h) Office equipment	33%
i) Dishes, drinking glasses, kitchen utensils, silverware (hotel industry)	100%
j) Linen (hotel industry)	100%
k) Start-up costs	50%
l) Fixtures, furnishings and installations	20%
m) Development costs	33%
n) Survey and research costs	100%
o) Tractors	25%

- 3) Exoneration from local taxes except the fixed professional tax for a period which shall not exceed fifteen (15) years.

Article 28.- *In the case of renovations, reequipping, expansion, rehabilitation, modernization of companies benefiting from incentives or from benefits which are*

already approved by the Inter-Departmental Commission on Investments, these companies can only benefit from:

- a) fiscal and duties exoneration on the import of equipment goods and materials.*
- b) exemption from deposits and guarantees provided for by the Tariff Code for the same goods on temporary entry.*

CHAPTER III INVESTMENTS ORIENTED TOWARDS EXPORT AND RE-EXPORT

Article 29.- Any enterprise whose services or production are geared towards export or re-export is entitled to the following tariff and fiscal relief:

1.- Exemption from customs duty and from income taxes on the import of equipment goods and materials needed in installation, operations and production of the enterprise including among others:

- machines and devices intended for prospecting and research;
- conveyances exclusively intended for transportation of the enterprise's supply materials and manufactured products;
- buses solely assigned for the transportation of personnel, in conformance with the Labor Code;
- tools and spare parts needed in repairing machinery, equipment and materials;
- electrical and sanitary equipment needed in company installations;
- devices and equipment intended for company security and surveillance;
- products intended for production operations;
- consumable items (catalysts, chemical accelerators, etc.);

2.- Temporary entry for active development of raw materials and packaging materials;

3.- General exemption from bonds or security deposits in the temporary entry of raw materials and packaging materials;

4.- Exoneration from payroll taxes and other direct internal taxes; for a period which shall not exceed fifteen (15) years.

5.- Exemption from audit charges.

CHAPTER IV INVESTMENTS IN AGRICULTURE

Article 30.- Investments in the following are considered as investments in agriculture:

- 1) high sea fishery;
- 2) industrial aquaculture;
- 3) industrial stockbreeding;
- 4) organic or non-organic horticulture (fruits and vegetables, decorative and medicinal plants, flowers, teas, spices, etc.);
- 5) silviculture;

as well as all investments considered as such by the Inter-Departmental Commission on Investments.

Article 31.- Agricultural undertakings, companies for agricultural development, agricultural cooperatives involved in activities defined in the preceding clause are entitled, in addition to the benefits provided for by this Code and by laws on Agriculture, to the following benefits:

- 1.- customs duty and tax relief on import of equipment goods and materials necessary for the establishment and operations of the enterprise, including:
 - tractors, two-wheel tractors, fishing boats and outboard motors and any other equipment necessary for the enterprise's operations;
 - seed, fry, fertilizer, pesticides, plants, fungicides and all other agriculture, stockbreeding and fishing inputs;
 - nets, traps and other fishing equipment;
 - devices and equipment used in the construction of hothouses, incubators for the production of poultry;
 - spare parts and tools used in equipment maintenance;
 - post-harvest machines, tools and equipment such as gins, pulpers, grain threshing machines;
 - packaging, preserving and processing materials and all equipment deemed necessary in company production.
- 2.- Exemption from payroll taxes and all other direct internal taxes for a period which shall not exceed fifteen (15) years.
- 3.- Exemption from the security deposit provided for by the Customs Tariff Code for temporary entry imports.

CHAPTER V

INVESTMENTS IN THE PRODUCTION OF HANDICRAFTS

Article 32.- Investments in the following, among others, are considered as investments in handicrafts production:

- Sculpture;
- Painting;
- Iron work, metal cut outs;
- Woodwork;
- Basketwork;
- Pottery;
- Embroidery;
- Brickwork;
- Tanning and leatherwork;
- Spinning and weaving;
- Tapestry and printing on textiles;

As well as all other investments considered as such by the Inter-Departmental Commission on Investments.

Article 33.- Handicrafts companies and cooperatives involved in the activities defined by the previous clause or approved by the Inter-Departmental Commission are entitled, in addition to the benefits provided for by this Code and by handicrafts laws, to the following benefits:

- 1) Customs duty and tax relief on the import of equipment goods and materials needed in the establishment and operations of these companies, including:
 - Equipment, materials and supplies and accessories needed by the enterprise;
 - Packaging supplies and materials;
 - Spare parts and tools needed in repairing these materials and equipment.
- 2) Exemption from payroll taxes and other direct internal taxes for a period which shall not exceed fifteen (15) years.
- 3) Exemption from the security deposit provided for by the Tariff Code for temporary entry imports.

CHAPTER IV

INVESTMENTS IN NATIONAL INDUSTRY

Article 34.- All investments involving the processing of raw materials of local or foreign origin for the production of goods with an added value of at least 35% and intended for local consumption are considered as preferred investments.

Commercial activities are excluded, such as: conditioning and packaging of goods imported in bulk.

Article 35.- Companies engaged in the activities defined by the preceding clause and approved by the Inter-Departmental Commission on Investments are entitled, in addition to the benefits provided for by this Code, to the following benefits:

1.- Customs duty and tax relief on the import of equipment goods and materials needed in the establishment and operations of the enterprise, including:

- Machines and devices intended for prospecting and research;
- Conveyances exclusively intended for the transportation of company supplies and finished products;
- Buses exclusively assigned for transporting personnel, in conformance with the Labor Code;
- Tools and spare parts needed in repairing machines, equipment and materials;
- Electric and sanitary equipment needed in company installations;
- Devices and equipment used in company security and surveillance;
- Exemption, for a period which shall not exceed twenty (20) years, from customs duties on raw materials to be used in processing. If the enterprise in question has undergone modernization or rehabilitation, the period for this exemption shall not exceed five (5) years.

2.- Exoneration from payroll taxes and other direct internal taxes for a period which shall not exceed fifteen (15) years.

3.- Exemption from the security deposit provided for by the Tariff Code for temporary entry imports.

Article 36.- Industrial concerns which export a portion of their production or who sell it to a concern involved in export, are exempt from paying Sales Taxes (TCA) on these sales.

CHAPTER VII

INVESTMENTS IN TOURISM AND RELATED SERVICES

Article 37.- Investments in the following, among others, are considered as investments in tourism:

- Furnishing and commercial use of Tourist Zones;
- Tourist accommodations in both urban and rural areas (hotels, hotel-restaurants, hotel-residences, apartments, condominiums, time shares, motels, country restaurants, inns, etc.);
- Automobile, airplane, boat and pleasure helicopter rental services;

- Conveyance services used exclusively in the tourist industry;
- Private ports or marinas used in mooring pleasure boats;
- Furnishing and making commercial use of seaside resorts, beachside hotels and tourist compounds;
- Private airports and service providers directly linked with the tourism industry;
- Aerial cableway services for leisure or for mountain conveyance;
- Amusement parks, botanical gardens and zoos;
- Tourist activity services such as: convention centers, theaters, conference halls, exhibit galleries;
- Food service industry and commercial use of buildings, monuments and tourist sites;
- Healthcare centers (therapeutic care and spas);
- Training in tourism fields such as hotel and restaurant management training and youth hostels;

As well as all other investments in tourism approved by the Inter-Departmental Commission on Investments.

Article 38.- Companies engaged in tourism development, tourism service providers working in the fields defined in the preceding clause and/or located in Tourism Development Zones identified by the Government are entitled to, in addition to the benefits provided for by this Code and by Tourism laws, the following customs and tax benefits:

- 1) Customs duty and tax relief on import of equipment, goods and materials needed in prospecting, establishing, furnishing or refurnishing, when this material or this equipment cannot be found locally in the same quantities and according to the same quality and price standards; including:
 - Building materials;
 - Electrical equipment;
 - Electric energy production or compensation systems;
 - Security or surveillance systems or equipment;
 - Communications and telecommunications systems;
 - Refrigeration systems and equipment;
 - Household appliances, linen, cooking and serving utensils;
 - Water treatment systems and equipment;
 - Rare plant and animal species;
 - Longboats and tows;
 - Small aircraft, boats and pleasure helicopters;
 - Utility vehicles intended for commercial use;
 - Material and equipment needed in furnishing and operations of tourism activities;
 - Spare parts for material and equipment.

- 2) Exemption from the security deposit provided for by the Tariff Code in temporary entry imports;
- 3) Exemption from the Land Tax on Built-Up Properties for the first ten (10) years of restoration of buildings registered as part of the national heritage and open to the public;
- 4) Exemption from individual income taxes for revenue generated by the investment, in accordance with provisions of clauses 26 and 27 of this Code.

Article 39.- When a tourism-related enterprise must use property that is part of the private and/or public domain of the State in realizing its project, the Ministry in charge of Tourism, after approval of the case by the Inter-Departmental Commission on Investments and by the Municipality, will authorize the granting of a lease for a period that shall not exceed fifty (50) years.

CHAPTER VIII FOREIGN TRADE ZONES

Article 40.- Promoters, operators and users of foreign trade zones (physical persons or corporate bodies) shall be entitled, in addition to the benefits provided for by this Code, to fiscal and customs benefits mentioned in the law on foreign trade zones.

CHAPTER IX OTHER SECTORS AND SPECIAL ARRANGEMENTS

Article 41.- Physical persons or corporate bodies who submit qualifications as well as financial guarantees, may enter into such agreements with the State, according to the law, for the establish in Haiti of business concerns which are considered to be of particular interest for the collectivity due to their inherent characteristics, to the size of the investment they require, to the high priority attributed to their realization or to the strategic nature of the field of business. These agreements will specifically define the special status granted to the business concern, the related special benefits, as well as the obligations in exchange due from the beneficiary/beneficiaries.

TITLE V

PROCEDURES – ADMINISTRATIVE MECHANISMS – RESPONSIBILITIES MONITORING AND SANCTIONS

CHAPTER I

COMPETENT BODIES

Article 44.- For the purposes of application of clauses concerning incentives provided for by this Code, an Inter-Departmental Commission on Investments (ICI) is created.

Article 45.-

Article 45.1.- The Inter-Departmental Commission on Investments includes senior technical staff and is constituted as follows:

- Two (2) representatives from the Ministry responsible for the Economy and Finances;
- One (1) representative from the Ministry responsible for Commerce and Industry;
- One (1) representative from the Ministry responsible for Tourism;
- One (1) representative from the Ministry concerned, according to the sector and the investor targeted.

Article 45.2.- The decisions resulting from deliberations in the Inter-Departmental Commission on Investments shall pass by at least three votes.

Article 46.- The Presidency and Secretariat of the Inter-Departmental Commission on Investments will be filled by the Economy and Finance Ministry. The Commission shall be headquartered at the Ministry responsible for Economy and Finance and will meet at least once per week. By-laws will define the Commission modalities of operation.

Article 47.- The mission of the Inter-Departmental Commission on Investments is:

- a) to receive and decide upon the conformity and eligibility of cases submitted, for benefits and privileges provided for by this Code;
- b) to implement, along with all promotion agencies and other competent administrative bodies, procedures for investment facilitation;
- c) to decide upon the possible withdrawal of benefits granted in the context of the Investment Code, in cases failure to comply with legal or administrative obligations by the beneficiary business concern.

CHAPTER II ON THE REQUEST FORM

Article 48.- Any investor wishing to benefit from incentives must produce a reasoned request to the Ministry or the institution concerned who, in accordance with the regulations and procedures in effect, shall forward the file to the Inter-Departmental Commission on Investments who shall decide on the eligibility for fiscal benefits.

The file is forwarded according to a form provided for this purpose. This form, duly filled out, must be included with the agreement or accord draft to which shall be annexed a schedule of activities and of imports. Forms of this kind for each type of investment will be available at the Secretariat of the Inter-Departmental Commission on Investments.

Article 49.- The granting of benefits and privileges provided for by this Code is possible through an agreement or accord between the Ministry concerned and the beneficiary after approval by the Inter-Departmental Commission on Investments. This agreement or accord shall mention, among other things:

- a.- the duration of the benefits granted;
- b.- the general conditions under which the commercial use shall take place, the types of equipment to be used, their installation and start-up schedule, the beneficiary's action and/or production program, the beneficiary's specific commitments in terms of professional training and employee benefits, the schedule for the implementation of the various programs agreed upon;
- c.- the means of control which shall be used to monitor and ensure the timely implementation of commitments by the beneficiary;
- d.- the different types of guarantees given by the State;
- e.- the obligations on the part of the beneficiary;
- f.- the fiscal and customs duty exemptions granted to the beneficiary;
- g.- the modalities for abrogation or cancellation of the agreement and likely reasons for such, as well as applicable sanctions in the event of non-compliance with the commitments entered into or the conditions provided for;
- h.- the types of resolutions for conflicts resulting from the application of the Agreement.

Article 50.- Any enterprise wishing to take advantage of the benefits provided for in article 19 et seq. of this Code should submit a request to the competent Ministry or institution. This file shall be submitted in due time for reasoned opinion to the other Ministries and/or institutions involved in the type of activity described.

Article 51.- Any Agreement entered into to grant fiscal benefits beyond those provided for by this Code or the legislations in effect and/or involving the disposal (sale) of property from the private domain of the State and/or granting a lease for a period exceeding fifty (50) years should be sanctioned by a law.

Article 52.- The Agricultural Development Zones and the Tourist Development Zones shall be determined by Executive Order.

This Order shall determine the specific management rules for these development zones and the control measures to avoid speculative maneuvers on these properties and attempts to create a monopoly.

CHAPTER III THE APPROVAL OR REJECTION FORM

Article 53.- The approval or rejection report form is identical for all types of investments proposed. This report should include the signature of all members of the Inter-Departmental Commission on Investments.

The Inter-Departmental Commission on Investments has up to ten (10) business days from the day the completed request file is received to notify of its decision.

Article 54.- Once the approval is signed, notification from the Secretariat of the Commission shall be published in a major daily newspaper in the Republic of Haiti, and charges for this publication shall be covered by the beneficiary.

The party concerned and the entities concerned shall be notified of the decision of the Inter-Departmental Commission on Investments by the competent Ministry.

Article 55.- In the event of a rejection, a reasoned report, bearing the signature of all members of the Inter-Departmental Commission on Investments shall be prepared.

The party concerned and the entities concerned shall be notified of the decision by the competent Ministry.

CHAPTER IV RIGHT OF REVIEW

Article 56.- The Inter-Departmental Commission on Investments is a deliberating body and its decisions can be questioned only through right of review under the conditions provided for by Article 59 of this Code.

Article 57.- Any party which is dissatisfied with Commission decisions shall submit, within fifteen (15) days following notification of the decision, an automatic right of review to this entity.

In the event that the original decision is upheld, a claim shall be submitted to an Appeals Committee which shall include the General Directors of the Ministries responsible for the Economy and Finance who shall preside the committee, of Tourism, and the General Director of the Ministry or the Institution concerned. A period of fifteen (15) days is also provided for this action to take place.

Article 58.- The claim is receivable only under the following circumstances:

- 1) When a company which is already established in Haiti considers that the benefits granted to a competing enterprise are detrimental to its interests and applies for the same benefits;
- 2) When one of the parties involved is not satisfied with the decision of the Inter-Departmental Commission on Investments in the event of a rejection or of a partial approval.

Article 59.- Within eight (8) business days following submittal of the claim, the Minister responsible for the Economy and Finance will call a meeting of the Appeals Committee. At this meeting, to which the investor may be invited, the president of the Inter-Departmental Commission on Investments shall present the case and shall support the Commissions arguments. The Committee has up to eight (8) days to decide on the case and shall submit a report to the Ministry in charge of the Economy and Finance. The decision shall be reasoned.

Article 60.- The Appeals Committee may sustain or reverse the Commission's decision. The Appeals Committee shall report to the Minister in charge of Economy and Finance who shall inform the investor and the commission of the final decision. If a decision by Commission to reject is sustained, then the request shall definitely be rejected.

In the event of a reversal of the original decision, the commission shall decide once again on the case, within the same time limits as provided for above.

CHAPTER V RESPONSIBILITIES

Article 61.- The companies benefiting from exemptions under the terms of this law remain subject, under pain of fines, to the formalities of submittal of financial statements and other fiscal responsibilities in the forms provided for by the law. However, the exonerated charges shall not be required during the exemption period.

Article 62.- The enterprise benefiting from incentives has the duty to comply with the activities and production program as well as the implementation schedule submitted with the admissions application, under pain of sanctions established by the preceding Clause.

However, this provision is not applicable to all companies having obtained authorization for modifications as provided for in Article 72 of this Code.

Article 63.- Any enterprise benefiting from incentives must maintain an accounting system in accordance with accounting standards in effect in Haiti. This accounting system should consider the benefits obtained as contributions and should clearly indicate the portion of revenue which is attributable to preferred activities or products in cases where only a portion of production is approved.

Article 64.- The price of goods and services produced by the enterprise accepted for preferred arrangements and working for the local market shall be forwarded every six (6) months, and in all cases previous to their entry into effect, to the Ministry of Commerce and Industry. The comments of the competent Ministry shall be forwarded to the party concerned within up to twenty (20) days.

Article 65.- Any enterprise benefiting from customs duty exemptions must be capable of justifying at any time the use it has made of these exemptions. To these ends, it must maintain a stock book to be quoted by the General Tax Service. This stock book shall list exclusively the merchandise ordered and received free of duties with all indications that might be useful in the course of an inspection.

However, any enterprise concerned by this Code and using a different accounting system must advise the competent institutions of such and bring to their attention the software used as well as the methods utilized in auditing the information. Failure to notify of such shall result in sanctions for non-maintenance of accounting books as required by the law.

Article 66.- Companies benefiting from incentives must keep the stock book mentioned in the preceding clause updated and present it on the request of the competent services following a duly prepared report. In addition, the enterprise must present, on the 10th of each month at the latest, a production report for the preceding month in conformance with a form delivered by the Ministry in charge of the Economy and Finance. This report, duly certified, shall be addressed to the competent Ministry and to the General Customs Administration.

Article 67.- Once its operations have been launched, any enterprise benefiting from customs duty and fiscal exemptions on imports, shall forward to the competent service of the competent Ministry its plan for the use of raw materials and all other items received duty free as well as its production schedule, for comments and audit.

Article 68.- Companies benefiting from customs duty and fiscal exemptions may not engage in the trade of merchandise imported duty free or of merchandise similar to that received duty free, barring exceptions provided for in Article 70 of this Code.

Article 69.- Any enterprise considering the sale, disposal, transfer or use for purposes other than those provided for, of the merchandise imported duty free must previously obtain authorization from the competent Ministry as well as that of the Economy and Finance Ministry. The sale and transfer to another enterprise benefiting from similar exemptions shall not incur the levying of any taxes. In cases where the same operations are implemented for the benefit of companies which are not concerned by this Code, the beneficiary may not take possession of the property concerned until appropriate customs duties and other taxes have been paid.

Article 70.- In both of the cases mentioned in the preceding clause, the operation implemented must be registered on the stock book accompanied by the date of authorization by the competent Ministry as well as the numbers and payment dates of the tax invoice payment for which a receipt has been given, as the case may be.

Article 71.- Companies enjoying the benefits provided for by this Code must submit to the competent Ministry once a year, in a time limit which shall not exceed three (3) months following the closing of their fiscal year, a report on its financial status, the progress of its installation process, its employment and professional training situation as well as any extension project under consideration for the following fiscal year.

Article 72.- Any enterprise enjoying incentive benefits that is considering modifying its investment, employment, orders for imported goods or production program which had been approved at the time of its application for admission into the arrangement, must as soon as possible advise the Ministry concerned of such for its information and for a sound evaluation of the justification for the changes to be implemented and of their possible consequences.

CHAPTER VI MONITORING

Article 73.- Companies enjoying the benefits provided for in this Code shall undergo regular audits intended to ensure that their operations are taking place according to the prescriptions of the law and to the commitments made. This audit shall be undertaken, on the one hand, by the respective Ministries concerned and on the other hand by the Economy and Finance Ministry.

For this purpose, the companies concerned must scrupulously maintain all books required in the prescribed form. They shall give duly mandated agents from the abovementioned institutions free access to their establishments and shall submit on request all books, documents and supporting documents or information necessary in efficiently accomplishing their task. The confidential nature of the information provided shall be strictly abided by and the auditors sworn in and legally beholden to professional confidentiality.

CHAPTER VII SANCTIONS

Article 74.- In the event of non-compliance with the responsibilities entered into by this Code, the enterprise proven to be at fault will undergo withdrawal of all incentive benefits. These measures shall be taken by the Inter-Departmental Commission on Investments on the request of the competent institutions from the Ministries concerned, and the enterprise shall not be entitled to claims for compensation and no restrictions shall be brought on possible penal sanctions.

Article 75.- In the event that sanctions be brought against a company, the various administrative agencies shall be notified of the decision to withdraw benefits by the Minister in charge of Economy and Finance. When the decision to withdraw results in partial suppression or in withdrawal of incentive benefits, invoices for customs duties and taxes shall be issued by fiscal authorities for the period in question.

Article 76.- Any failure to fulfill the duties provided for in Chapter II on responsibilities, in articles 61 et seq. of this Code will render the enterprise at fault and liable to a fine of fifteen thousand gourdes (Gdes. 15,000.00) to five-hundred thousand gourdes (Gdes. 500,000.00) collectible through administrative measures of constraint by the General Tax Service without restrictions on further sanctions provided for by the legislation in effect.

Article 77.- Any sale, disposal or transfer and any type of unforeseen use of the properties exempted which is effected contrary to the provisions of Article 70 shall be considered illegal and fraudulent. The properties so sold, transferred, disposed of or diverted from their destination shall be subject to twice the import duties provided for by the legislations in effect. Collection of these duties shall be effected through administrative measures of constraint in accordance with the laws and regulations in effect.

The offender shall be subject to a fine of 30% of the duties due to be imposed by the Correctional Court on the action and care of the Public Prosecutor, without restrictions on actions that might be brought against accomplices.

These fines shall be collected by the General Tax Service and payable to the Public Treasury. In the event of repeat offenses, the offender shall be sentenced to pay 100% of the duties due, over and above payment of doubled duties and the incentive benefits granted to the enterprise by virtue of this Code shall automatically be revoked.

Article 78.- Similarly, any action that may or that has resulted in undue exonerations such as false statements concerning for example the number, the characteristics, the cost and the destination of exonerated goods, falsifying supporting documents, illicit trade or diversion of materials, shall be subject to the same actions and sanctions as listed above. Accomplices shall be subject to the same sanctions as perpetrators.

TITLE VI TRANSITORY AND FINAL PROVISIONS

CHAPTER I TRANSITORY PROVISIONS

Article 79.- The Inter-Departmental Commission on Investments shall be instituted within thirty (30) days following the publication of this text in the official journal of the Republic of Haiti, on the care of the Minister of the Economy and Finance.

Article 80.- In order to ensure the implementation and application of the provisions of this Code, within fifteen (15) days following the publication of the Code, an Implementation Committee shall be created on the care of the Minister of the Economy and Finance.

Article 81.- The Implementation Committee shall be constituted as follows:

- One (1) representative of the Minister in charge of the Economy and Finance;
- One (1) representative of the Minister in charge of Commerce and Industry;
- One (1) representative of the Minister in charge of Tourism;
- One (1) representative of the Minister in charge of Agriculture, Natural Resources and Rural Development;
- One (1) representative of the Minister in charge of Social Services;
- One (1) representative of the Minister in charge of Planning and External Cooperation.

Article 82.- Active companies, which benefit from the preferred arrangements, shall remain as beneficiaries of the approved arrangements until expiry of the benefit period agreed upon.

CHAPTER II FINAL PROVISIONS

Article 83.- This Code repeals all laws or all provisions of laws, all executive order laws or provisions of executive order laws which conflict with it and shall be published and executed on the care of the Ministers of the Economy and Finance, of Commerce and Industry, of Agriculture, Natural Resources and Rural Development, of Social Services, of Tourism, respectively.

Passed in the Chamber of Deputies on September 9, 2002, 199th Year of Independence.

(S)	Dr. Rudy HERIVEAUX	President
	Berry JOSEPH	First Secretary
	André Jeune JOSEPH	Second Secretary

Passed in the Senate of the Republic on August 22, 2002, 199th Year of Independence

(S)	Dr. Jean Marie Fourel CELESTIN	President
	Dr. Louis Gérald GILLES	First Secretary
	Youseline A. BELL	Second Secretary

ON BEHALF OF THE REPUBLIC

Witnesseth,

THE PRESIDENT OF THE REPUBLIC ORDERS THAT THE ABOVE LAW OF THE LEGISLATIVE BODY BE SEALED WITH THE SEAL OF THE REPUBLIC, PRINTED, PUBLISHED AND EXECUTED.

Given at the National Palace, in Port-au-Prince, on October 9, 2002, 199th Year of Independence.

By the President:	Jean-Bertrand ARISTIDE
The Prime Minister:	Yvon NEPTUNE
The Minister of the Interior and Territorial Collectivities:	Jocelerme PRIVERT
The Minister of the Economy and Finance:	Faubert GUSTAVE
The Minister of Justice and Public Security:	Calixte DELATOUR
The Minister of Foreign and Religious Affairs	Joseph Philippe ANTONIO
The Minister of Public Works, Transportation and Communications	Harry CLINTON
The Minister of National Education, Youth and Sports	Myrto CELESTIN SAUREL
The Minister of Haitians Living Abroad	Leslie VOLTAIRE
The Minister of the Environment	Webster PIERRE
The Minister of Agriculture, Natural Resources and Rural Development	Sébastien HILAIRE
The Minister of Culture and Communications	Lilas DESQUIRON
The Minister of Women's Affairs and Women's Rights	Pr. Ginette RIVIERE LUBIN
The Minister of Tourism	Martine DEVERSON
The Minister of Social Services and Labor	Eudes ST. PREUX CRAAN
The Minister of Public Health and Population	Henry Claude VOLTAIRE

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