

REPUBLIC OF NIGER



Brotherhood Labour Progress

MINISTRY IN CHARGE OF COMMERCE AND INDUSTRY

CODE OF INVESTMENTS IN THE REPUBLIC OF NIGER

*Edited in July 2014 by the Chamber of Commerce, Industry
and Handicraft of Niger*

CODE OF INVESTMENTS

LAW N°2014-09

dated April 2014

relating to the Code of Investments in
the Republic of Niger
In view of the Constitution dated November
25th, 2010,

**The Cabinet Meeting heard, The National Assembly deliberated and agreed
The President of the Republic promulgates the Law which
reads as follows:**

TITLE I: GENERAL PROVISIONS AND DEFINITIONS

Chapter One: Object

Article 1: The object of this Law is to favour the development of the social and economic activities by stimulating investment in the Republic of Niger. It defines the different systems allowing the implementation of investments, determines guaranties, advantages as well as duties attached thereto.

Chapter II: Definitions

Article 2: In the context of this Law, the following terms mean:

1. **Investments Code:** all the guarantees, benefits, obligations and the texts aimed to implement them.
2. **Investor:** any natural person or legal entity, of Niger nationality or not, realizing under the conditions defined in the context of this Code, investment operations in the territory of Niger.
3. **Investment:** capital employed by any natural person or legal entity to acquire furniture, real estate, tangible and intangible, and to ensure the financing of preliminary settlement and working capital expenses necessary during the creation of new companies or modernizing operations.
4. **Capital investment from abroad:** capital inputs, goods or services from abroad and giving entitlement to share capital in any company based in Niger provided that such contributions are not portfolio investments.
Corporate profits reinvestments that should have been exported.
5. **Productive investment:** any investment that allows to perform an activity, be it related to:
 - production;
 - conservation;
 - raw material processing, object of work or semi - finished to finished products; - services.

6. **Company:** any unit of production, processing and / or distribution of goods or services, for profit, of whatever legal form, be it a natural or legal person.
7. **New Company:** any newly created economic entity and at the point to implement an eligible investment program. The projected investment should allow the creation of a new activity and does not result from changes or different legal entity with specific assets already operating with targeted activity.
8. **Working capital:** part of the investment needed to finance current expenditure of the company.
9. **Tax Expenditures:** the amount of income, including losses on royalties attributable to tax or similar provisions, whether by tax laws or any other law, administrative notes or circulars, agreements or conventions (whichever be the name) providing a special exclusion, exemption, a tax cut or trim royalties, a special tax credit, preferential rates of taxes or royalties, a tax deferral or charge royalties as such.
10. **Plant and equipment:** objects and instruments used for processing or shaping of materials including equipment and industrial machinery, equipment and agricultural machinery, handling equipment, packaging materials like packaging not delivered to customers, recovered and recycled packaging, repair equipment such as keys and other tools.
11. **Duty Free Zones:** "Duty Free Zones" means a part of the territory delimited in which the raw materials and goods that are introduced are generally regarded as being not on the customs territory regarding importation and tax duties provided that the raw materials and goods are intended whole or partial production of goods for export.
12. **Duty Free Place:** free zone reduced to a geographical area that merges with a company's settlement area.
13. **Extension:** any investment program initiated by an approved existing business that generates an increase of at least 30% of the production capacity or the acquisition value of fixed assets.
14. **Diversification:** acquisition of materials and equipment for the manufacture of new product brands.
15. **Modernization:** investment to replace existing production equipment by other with better quality provided that the cost of new equipment is at least 30% of the initial value of fixed assets.

TITLE II: IMPLEMENTATION AND SCOPE OF APPLICATION OF THE INVESTMENT CODE

CHAPTER ONE: IMPLEMENTATION

Article 3: the implementation of the Investment Code is carried out by a one stop desk created for that purpose at the office of the Minister in charge of Industry, in accordance with the regulation in force.

The act of creating of the one stop desk specifies its functions, organization and method of operation.

CHAPTER TWO: SCOPE OF APPLICATION

Article 4: this Law is applicable to natural persons or legal entities exercising or desiring to exercise an activity in the following sectors, whatever their nationality:

- a) Agro-pastoral activities
 - Industrial agriculture (vegetable or animal speculation);
 - Related transformation activities of vegetable or animal origin products;
 - Production and/or packaging of agriculture, rearing, fishing or forestry products;
- b) Manufacturing activities of production or transformation;
- c) Power generation from new or renewable energy;
- d) Extraction and transformation of quarry products or of mineral substances to the exclusion of the extraction and transformation activities of mineral substances susceptible of concession that remains governed by the mining law and the oil code;
- e) Gas drumming activities for domestic, industrial and / or medical use;
- f) Chemical, para-chemical and pharmaceutical industries;
- g) Crafts of production;
- h) Equipment of audiovisual production and sports centers;
- i) Construction and equipment of health care and control laboratories and medical analysis centers;
- j) Acquisition of new public transport of passengers means, at least (10) buses for public transport of passengers, as well as spare parts in a proportion of 10% of the value of each bus;
- k) Acquisition of new goods transport means, at least (05) trucks for goods transport, as well as spare parts in a proportion of 20% of the value of each truck;
- l) Building and equipment of primary, secondary and high level schools and technical and vocational schools;
- m) Equipment of Industrial maintenance companies;
- n) Air and river transportation;
- o) Hotels and tourism facilities building and equipment;

- p) Printing and publishing companies building and equipment;
- q) Social housing building program implementation or warehouse complying to international standards for sale or lease;
- r) Building and equipment of environment and soil analysis laboratories;

When a company approved for a privileged treatment for a given activity, performs another non-relevant activity rightfully under this scheme, it cannot in any way benefit from this scheme for this other activity.

Article 5: Are excluded from the benefit of this Code

- Purely commercial activities (purchase and sale of products);
- Research activities and mining operations; - Research activities and petrol operations.

These activities are governed respectively by the harmonized business law of OHADA, the Mining Code, the Petroleum Code and its implementing legislation.

TITLE III: GENERAL WARRANTIES, RIGHTS, FREEDOMS AND DUTIES

CHAPTER ONE: General guarantees, rights and freedoms

Article 6: As provided by the Constitution, laws and regulations in force, private ownership of any property, furniture and real estate, material or immaterial, is protected in all its legal and commercial aspects, its elements and its branches, its transmission and contracts which it is subject to.

The company has a guarantee for any nationalization, expropriation or requisition measure throughout the national territory, except for public use. If necessary, the company will benefit from a fair and prior compensation.

Article 7: To obtain necessary currency needed for businesses activities is not limited in the Republic of Niger. The company, therefore, has a guarantee that no restriction may be made for its currency needs, particularly:

- to ensure its normal and current payments;
- to finance goods bought and various services, such as those made with natural persons or legal entities outside the Republic of Niger.

However, payments and transfer operations are subject to the exchange regulations in force in Niger.

Article 8: The State guarantees the company the freedom to transfer income or goods of any nature resulting from its operation, any transfer of assets or its liquidation in accordance with the laws in force.

The same guarantee applies to investors, contractors, partners, to natural persons or legal entities, not nationals of Niger, regarding their shares of profits, the proceeds from the sale of their partnership rights, the recovery of contributions in kind, their share of the bonus after liquidation.

Article 9: The State guarantees the freedom to transfer all or part of his remuneration, irrespective of the legal nature and the amount in local or foreign currency, to any member of staff of a company, a national of third country who may justify, if necessary, the regularity of his stay in Niger and subject to reciprocity.

Article 10: The State of Niger guarantees the company the freedom of access to raw or semi-processed materials produced over the entire territory of the Republic of Niger. The agreements or practices that distort competition are punished in accordance with laws in force.

Article 11: Any investor may, subject to compliance with laws and regulations in force, acquire all rights of any kind in property, concession, administrative authorization and participation in tender to public contracts.

Article 12: whatever their nationality, investors receive the same treatment regarding the rights and obligations under the Nigerien law and related to the exercise of their activities.

As such, foreign natural persons or legal entities are treated equally with resident natural persons or legal entities, subject to reciprocity and without prejudice to measures that concern all foreign nationals or result from the provisions of treaties and agreements which is part of the Republic of Niger.

Article 13: Foreign natural persons and legal entities receive the same treatment under the provisions of treaties and agreements concluded by the Republic of Niger with other Countries.

Article 14: With respect of the obligations mentioned in Article 15 below, the company has full economic and contract bidding freedom.

For this purpose, the company is notably free to:

- acquire properties, rights and concessions of any kind, for its activity, such as land, furniture, real estates, commercial, industrial and forestry properties;
- have rights and own property;
- to belong to any professional organization of its choice;
- be able to choose its own technical, industrial, commercial, legal, social and financial management methods;
- be able to choose its suppliers, service providers and partners;

- participate to public contracts bid throughout the country;
- Select its Human Resources Management's Strategy and to freely conduct the recruitment of management personnel, and in accordance with the legislation.

The company benefits from the guarantees provided by the regulations and directives of the West African Economic and Monetary Union (WAEMU) and the Economic Community of West African States (ECOWAS) as well as those offered to investors by the Multilateral Investment Guarantee Agency (MIGA).

CHAPTER II: Obligations

Article 15: Any investor should accept the following general obligations:

- implement the approved investment program as described in the Code System with respect to the duration of the agreement;
- Provide all information in order to control that the agreement and the duration are fully respected;
- Submit on time to the competent authority, a copy of relevant statistical information required to companies to the national statistical services;
- Inform the competent authority the level of project implementation in compliance with the duration of the approved agreement;
- Declare to the competent authority the beginning of the activity for which the program was approved and submit the summary of the investments realized;
- Comply with the laws of Niger, notably as regard to rules and regulations governing doing business, to respect public order, to protect consumers and the environment;
- Declare the number and quality of jobs to be created to the employment office;
- Respect the laws in force related to labor, employment and social security procedures, including the priority given to national skills available in the labor market and training;
- Respect employment regulations in force, prior employment of residents when qualified equally;
- Provide all information deemed necessary for a control of its obligations under this Code;
- Has an accounting SYSCOA system (West Africa Accounting System) which is based on the Uniform Accountant Act of OHADA Treaty,

- Comply with all obligations of declarations related to tax regulation and social security;
- Using French as working language;
- Specify the amount of investments to be made each year during the agreement, in local currency or the equivalent in US dollars;
- specify the location of the investment or investments;
- Specify the number of jobs to be created and the location.

TITLE IV: PREFERENTIAL SYSTEMS

CHAPTER ONE: Common Provisions

Article 16: this investment code establishes three (03) distinct privileged systems:

- a promotional system;
- a conventional system;
- a Free Zones and duty Free Place system.

Articles 17: may benefit from a privileged system, any natural person or legal entity exercising one of the activities referred to in the above Article 4, presenting a project giving the financial, technical and economic profitability guarantees.

Article 18: natural persons or legal entities applying for a privileged system quoted in Article 16 above, should commit to:

- employ primarily national expertise available in the labour market and introduce a charge notebook on the steps taken to prepare for the next generation a Nigerien worker at the end of the term of the visa fixed by regulation; - use in priority materials, commodities, home services of Niger;
- Conform to national or international quality standards applicable in Niger, to products or services resulting from their activity or used as part of their business; - Provide information allowing to control the observance of agreement modalities; - Pay the outstanding duties and taxes as defined by the Code of Customs, facilities, equipment, materials and tools acquired on exemption basis in case of sale or transfer of such equipment.

The partial or total sale of the assets of the authorized company must first be approved by the Minister in charge of Industry and the Minister in charge of Finance.

Article 19: The Decision to approve the agreement must be taken and communicated to the investor within a period not exceeding thirty (30) working days

from the date the demand is received at the Investment Code desk office. If after this period, no response is given, the approval is deemed granted. In this case, the competent authorities are required to notify the approval within seven (7) days with regard to the deposit receipt.

The decision on authorization shall be subject to publication in the Official Journal of the Republic of Niger. The published notice shall include the following information:

- The amount of investments to be made each year during the term of the authorization, in local currency or its equivalent in US dollar or in euro;
- The location of the investment or investments;
- The number of jobs to be created and their place of establishment;
- The estimated tax benefits for each of the tax incentives granted in local currency or its equivalent in US dollars over the next five years.

The Decision to approve the agreement becomes effective from the date of publication in the Official Journal of the Republic of Niger.

Article 20: the profit of Investments Code is granted:

1°. By decree taken in Cabinet Meeting on the joint report of the Minister in charge of Industry and Finance for the conventional system and Duty Free Zones and Duty Free Places system.

2°. By joint order of the Minister in charge of Industry and the Minister in charge of Finance, for the promotional system.

The draft decree and order are prepared by the Investments Code desk office.

Article 21: The decree or the order granting the profit of investments code fixes notably:

- The purpose, scope, location and the duration of the investment program implementation;
- The advantages granted to the beneficiaries and their duration; - The obligations that the company shall have to conform.

Article 22: In the event of failure to fulfil the agreed commitments, the following measures will apply:

1. The agreement may be suspended if three months after a written notice, nothing has been done by the registered company to regularise its situation.
2. The agreement may be cancelled:
 - a) If in a time limit of six (6) months from the date of suspension of the agreement, the company has not regularized its situation;

- b) If the company has not realized its investment program in the time limit of thirty-six (36) months for the promotional system and in the time limit of thirty-six (36) months for the conventional system;
- c) On proposal of the Investment Code Desk Office, in case of fraud, serious or deliberate breach by the company in its obligations, certified by the Investment Code Desk Office or by authorized services . In this case, the cancellation entails the repayment to the Treasury, of the customs and taxation advantages of the total amount obtained during the elapsed period in accordance with the Customs Code and Taxation Code in force.

The suspension or the cancellation of the agreement is pronounced in the same conditions than those applicable for its granting.

Article 23: The partial or total assignment of the registered company shall first be notified to the Minister in charge of industry and to the Minister in charge of finance.

Article 24: In case of exceptional turndown of the registered company activities, the company may ask for the suspension of the privileged system for a period that will be determined with the consent of the Minister in charge of industry.

The expiration date of the approval procedure is amended accordingly.

Article 25: When a registered company for a given activity, in the privileged system of this investment code, ceases operating after the expiry of the term of its agreement, its promoters cannot, either individually or collectively entitled to the benefits of similar amenities on other new projects having the same object and addressing essentially the same customers.

Article 26: any registered company that ceases activities after a privileged system agreement will be required to repay the taxes exempted, if the discontinuance of business is on a fraudulent basis.

CHAPTER II: Promotional System

Article 27: the promotional system is granted to any natural person or legal entity meeting the conditions of Articles 4 and 17 of this Law, where the amount of investment is equal to or greater than twenty-five (25) million FCFA and less than two (02) billion CFA francs, free from taxes and working capital, resulting in the creation of at least:

- Five (5) permanent national jobs when the amount of investment is less than or equal to one hundred (100) million CFA francs, free from taxes and working capital;
- Ten (10) permanent national jobs when the investment amount exceeds one hundred (100) million francs, free from taxes and working capital.

Article 28: the duration of the promotional system is six (6) years including the implementation phase of investment set at thirty-six (36) months.

CHAPTER III: The conventional system

Article 29: the conventional system is granted to any natural person or legal entity meeting the conditions of Articles 4 and 17 of this Law, when the total amount of investment is superior or equal to two (2) billion CFA francs, free from taxes and working capital, resulting in the creation of at least twenty (20) permanent jobs.

Article 30: The duration of the conventional system is seven (07) years including the investment step which will not exceed three (03) years.

CHAPTER IV: Duty Free Zones and Duty Free Place systems

Article 31: Companies that mainly deal with exportation are classified in Duty Free Zones and Duty Free place systems.

The modalities of creation, settlement, operation and customs and taxation regulations of Duty Free zones and Duty Free Places are determined by Decree taken in Cabinet Meeting, upon proposal of the Minister in charge of Industry and the Minister in charge of Finance.

TITLE V: ADVANTAGES

CHAPTER ONE: Tax and customs advantages during the implementation phase of investment

Article 32: any company granted this system will benefit from:

- Full exemption of duties and taxes including the value added tax on services, works and services directly contributing to the achievement of the approved investment program;
- Full exemption of customs duties and taxes, including value added tax, excluding the Statistics Tax (ST), the Community Tax (CT), the Community Solidarity Tax (PCS) on equipment, material, imported equipment and tools which directly contribute to the achievement of the approved investment program.

However, the exemption on imported equipment, materials, tools and equipment will not apply in case of availability of equivalent products manufactured locally.

Article 33: Equipment, material, equipment and tools that have benefited from the advantages of this Code should not be transferred to or received by other destinations than those for which they were imported, unless in case of prior payment of duties and taxes, or had benefited other preferential customs regime.

CHAPTER II: Tax and customs advantages during the operational period.

Article 34: Companies approved to this Investment Code, will benefit from total exemption from customs duties and taxes, excluding the Statistics Tax (ST), the Community Tax (CT), the Community Solidarity Tax (CST) and value-added tax (VAT) on imported raw materials and packaging in case of unavailability of equivalent products manufactured locally.

Article 35: Companies approved to this Investment Code, benefit from total exemption of direct taxes below:

- The Tax on Minimum Estimated (TME);
- The Professional Tax (PT);
- The Estate Tax (ET)

Article 36: The duration of the tax exemption and tax granted in Article 35 shall not exceed operational stage period, in accordance to the provisions of Article 39 below.

Article 37: The beginning of operation is from the date the company makes first offer of goods or services on the market. That date should be announced to the tax office Investment Code Management Desk that issues a certificate thereof.

CHAPTER III: Particular advantages of privileged systems

Article 38: Extension programs, diversification and modernization will benefits from this investment Code in case of the implementation phase of their investments only.

Article 39: The duration of the advantages concerning the different systems is of three (03) years subsidy, during the operation phase for companies located at 50 km from Niamey.

The location means the place where the company equipments were set.

Article 40: Companies approved to this Investment Code, shall be exempt from duties and taxes on exports of their products.

Article 41: The existing companies that have never benefited from the advantages of the Investment Code before may benefit from the advantages of that code in case of new investment implementation phase.

Article 42: The natural persons or legal entities willing to benefit from the tax and customs incentives referred to in Title III above, should fulfill the following conditions:

- Be registered at the Trade Register and Property Credit and have a valid certificate of fiscal identification number;
- Keep separate financial statement required related to all their activities under tax incentives for private investment;
- Regularly make their monthly and annual reporting requirements.

TITLE VI: Special provisions

Article 43: Notwithstanding the provisions of Article 4; 17; 27; 28; 29; 30; 34; 35; 36; 38 and 39, the activities listed in points d, e, h, j, k, l, m, n, o, p, q, r of section 4 of this Act, can benefit from advantages, of this code in case of the investment implementation phase only.

Article 44: Notwithstanding the provisions of Articles 4, investment projects and programs identified as priorities by the Minister in charge of Industry can benefit directly from a privileged system upon promoter's request.

The advantages as well as the obligations of the investor will be defined by joint order of the Minister in charge of Industry and the Minister in charge of Finance or by decree taken in Cabinet Meeting.

TITLE VII: THE SETTLEMENT OF DISPUTES

Article 45: Disputes or litigation arising between an investor and the Republic of Niger, relating to the validity, interpretation, application or revision of one or more provisions of the agreement, will be first subject to an amicable arrangement between the parties.

Article 46: The party that takes the initiative of the amicable settlement of the matter will inform the other party by letter, or by any other means in writing, with acknowledgment of receipt.

Article 47: If the disagreement persists, the settlement of the dispute will be subject to arbitration under the conditions below:

1. to set an arbitration panel by:

- The appointment of an arbitrator by each party;
- The appointment of a third arbitrator by the two arbitrators.

In case one party fails to nominate an arbitrator within sixty (60) days of notification by the other Party of its appointed arbitrator and if the first two arbitrators would not agree on the choice of the third arbitrator thirty (30) days after the appointment of the second arbitrator, the appointment of the second or third as the case will be, is made by the national court jurisdiction at the initiative of the most diligent.

The verdict is pronounced fairly, by a majority of arbitrators. The sentence is final and binding.

2 ° the possibility for non-resident to go to the International Centre for Settlement of Investment Disputes (ICSID), unless there is a bilateral agreement on promotion and protection of investments with the investor's country and has a different procedure.

Article 48: The language of the arbitration is French and any sentence resulting shall be final and binding.

TITLE VIII: TRANSITIONAL AND FINAL PROVISIONS

Article 49: The companies benefiting from special measures of favor or investment agreements before this Law enters in force will continue to enjoy the benefits and guarantees granted to them until the expiry of the legal duration of those advantages and guarantees.

Article 50: The advantages of this Law cannot be added to those of the same nature or the same object, as granted under previously approved investments.

Article 51: the vested advantages of this investment code still accrue to the beneficiaries in case of business transfer in any form whatsoever, provided the activities are conform to those originally reported. No regulatory provision taking effect at a later date to the approval can eliminate or restrict the advantages the company is entitled to before.

Article 52: Any arrangement prior to the provisions of this Law is abrogated.

Article 53: This Law will be published in the Official Journal of the Republic of Niger and will be executed as a national Law.

Done in Niamey, on April 16, 2014
Signed by: The President of Republic

ISSOUFOU MAHAMADOU

The Prime Minister

BRIGI RAFINI

The Minister of State, Minister of Mining
Minister of State,
and Industrial Development

The Minister Delegate to the
Minister of Mining and Industrial
Development in charge of
Industrial Development

OMAR HAMIDOU TCHIANA

Doctor KAFFA
RAKIATOU CHRISTELLE JACKOU

Duplicates to:

The Secretary General of Government

GANDOU ZAKARA

**Rules for implementing law no.2014-09 dated
April 16, 2014, relating to the Investments
Code.**

DECREE No. 2014-502/PRN/MMDI
Dated 31 July 31, 2014

REPUBLIC OF NIGER

Fraternity –Labour – Progress

**PRESIDENCY OF THE REPUBLIC
MINISTRY OF MINES AND
INDUSTRIAL DEVELOPMENT**

DECREE No. 2014-502/PRN/MMDI

dated 31 July 31, 2014

defining detailed rules for the application of law no.2014-09 dated April 16, 2014, relating to Investments Code in the Republic of Niger

THE PRESIDENT OF THE REPUBLIC

In view of the constitution of November 25, 2010;

In view of the law no. 2014-09 dated April 16, 2014, relating to Investments Code in the Republic of Niger;

In view of the decree no.2011-001/PRN dated April 07, 2011; relating to the nomination of the Prime Minister;

In view of the decree no.2013-327/PRN dated August 13, 2013, relating to the nomination of the members of Government, amended and supplemented by decree no.2013-355 dated August 26, 2013;

In view of the decree no.2013-424/PRN dated October 08, 2013, relating to organizing the Government and setting the assignments of State Ministers, Ministers and Ministers Delegates;

In view of the decree no.2013-427/PM dated October 09, 2013, specifying the assignments of the members of Government, amended and supplemented by decree no.2013-560/PM dated December 19, 2013;

In view of the decree no.2014-445/PRN/MM/DI dated July 04, 2014, relating to organizing the Ministry of Mines and Industrial Development;

Upon reports from the State Minister, Minister of Mines and Industrial Development;

The Cabinet Meeting heard;

ORDERS :

Chapter one: GENERAL PROVISIONS

Article 1 : This decree establishes detailed rules for implementing law no.2014-09 dated April 16, 2014, relating to the Investments Code in the Republic of Niger.

It specifies in particular the general and specific provisions for granting licenses as well as monitoring and control mechanisms.

Article 2 : The implementation of the Investment Code is ensured by a structure called the "One Stop Desk for the Implementation of the Investment Code."

Article 3 : Can be approved for one of the preferential systems of the Investments Code, natural persons or legal entities carrying on the following activities, whatever their nationalities :

- a) Agropastoral activities:
 - Industrial agriculture (vegetable or animal speculation) ;
 - Related transformation activities (of vegetable or animal origin) products ;
 - production and/or packaging of agricultural, rearing, fishing or forestry products;
- b) Manufacturing activities of production or transformation;
- c) Power generation from new or renewable energy;
- d) Extraction and transformation of quarry products or of mineral substances to the exclusion of the extraction and transformation activities of mineral substances open to concession and that remain governed by Mining Law and Oil Law;
- e) Gas drumming activities for domestic, industrial and/or medical use;
- f) chemical, para-chemical and pharmaceutical industries;
- g) Handcraft of production ;
- h) Equipment of audiovisual production and sports centers;
- i) Construction and equipments of health care and control laboratories and medical analysis centers;
- j) Purchase of brand new public transport of passengers means, at least ten (10) buses transport of passengers, as well as spare parts in a proportion of 10% of the value of each bus;
- k) Purchase of brand new goods transport means, at least five (5) trucks for goods transport, as well as spare parts in a proportion of 20% of the value of each truck;
- l) Construction and equipment of primary, secondary and high level schools as well as vocational and technical training schools;
- m) Equipment of industrial maintenance companies;
- n) Air and waterway transport;
- o) Hotels and tourism facilities building and equipment;
- p) Printing and publishing companies building and equipment;
- q) Social housing construction programmeme implementation or of warehouses complying to international standards meant for sale or lease;
- r) Construction and equipment of environment and soil analysis laboratories;

However, are excluded from the benefits of the Investment Code, purely commercial activities (buying and selling products) and mining and oil research as well as working activities;

Article 4: Notwithstanding the provisions of Article 3 above, investment projects and programmes identified as priorities by the Minister of Industry can directly benefit from a preferential treatment upon request of the promoter.

The benefits as well as the investor's obligations will be defined by decree of the Ministers of Industry and Finance or by decree of the Cabinet Meeting.

Article 5 : Any request file for approval including those referred to in Article 4 above shall include the following:

- a request in a stamped envelope bearing the address of the Minister in charge of Industry;
- five (5) copies of a feasibility study undertaken in accordance with the sample of projects presentation;
- a copy of the authorization to exercise in case of need;
- a copy of the certificate of Tax Identification Number (TIN);
- a copy of the Register of Trade and Real Estate Credit (RTREC)
- a copy of the certificate of affiliation to the National Social Security Fund (NSSF);
- a copy of the Certificate of Tax Regularities (CTR);
- a copy of the Certificate of Financial Capacity (CFC);
- a copy of the title of property of the land or valid lease agreement;
- copies of construction plans and specifications;
- a copy of equipment pro-forma invoices;
- a copy of the environmental impact study, in case of need.

Besides, legal entities must, in addition to items listed above, provide the following:

- a copy of the articles of incorporation duly registered;
- the deed of subscription and payment of capital.

Chapter II : GENERAL CONDITIONS FOR GRANTING APPROVALS

Article 6 : Natural persons or legal entities wishing to be engaged in one of the preferential systems under the Investment Code shall, subject to compliance with specific conditions for approval of each plan, submit an application with the One Stop Desk for implementation of the Investment Code.

The accreditation application forms and terms of presentation type projects are available from the One Stop Desk for the implementation of the Investment Code.

Article 7 : Promoters who have submitted files receive an official receipt upon recording the file to the One Stop Desk.

The receipt includes the name and address of the promoter, the nature of the activity, the preferred system requested and the date of submission.

Article 8 : The One Stop Desk shall within ten (10) days from the filing date, examine and transmit up to files to the Minister of Industry for the granting of approval or notify the applicant, where appropriate, about the non-compliance of the file.

Article 9 : Approval is granted within thirty (30) working days from the receipt of deposit date of the file.

The refusal to grant approval occurs only for non-compliance of the investment project with laws and regulations.

Article 10 : The decision granting the approval lists the benefits, duration, location and activities for which the company is authorized and establishes the obligations of the promoter.

Article 11 : Approved companies are required to notify by registered letter, the date of starting their activity to the One Stop Desk for the implementation of the Investment Code.

Chapter III : ELEMENTS OF PROJECT ASSESSMENT

Article 12 : The evidence of a project subject to approval under the Investment Code are:

- personnel costs;
- rates and taxes;
- endowment to amortization;
- financial expenses.

The sum of the factors listed above should be greater than or equal to 35% of the turnover taxes excluded.

Article 13 : In addition to the above factors, the creation of new permanent jobs, the impact on public finance, the impact on the environment and the internal rate of return (IRR) are also relevant factors of the project.

Chapter IV : CONDITIONS OF APPROVAL TO PREFERENTIAL REGULATIONS

Section 1 : Promotional System

Article 14 : The promotional system is granted by joint order of the Ministers of Industry and Finance to any natural person or legal entity exercising one of the activities listed in Article 3 of this decree and presenting a project providing financial guarantees, technical and economic viability, when the amount of investment is greater than or equal to twenty-five (25) million CFA francs and less than two (02) billion CFA francs, taxes and working capital excluded, resulting in the creation of at least:

- five (5) permanent jobs for Nigeriens when the amount of investment is less than or equal to one hundred (100) million CFA francs, taxes and working capital excluded;
- ten (10) permanent jobs for Nigeriens when the amount of investment is greater than or equal to hundred (100) million CFA francs, taxes and working capital excluded.

The duration of the promotional system is six (6) years including the investment phase, the duration of which may not exceed three (03) years.

Section 2 : The conventional system

Article 15 : The conventional system is granted to any natural person or legal entity exercising one of the activities listed in Article 3 of this decree and presenting a project providing financial guarantees, technical and economic viability, when the amount of investment is greater than or equal two (02) billion CFA francs, taxes and working capital excluded, resulting in the creation of at least twenty (20) permanent jobs for Nigeriens.

The duration of the conventional system is seven (07) years including the investment phase, the duration of which may not exceed three (03) years.

Article 16 : The conventional system is granted by decree during Cabinet Meeting approving the Convention on the project signed between the State and the applicant after consulting the One Stop Desk for the implementation of the Investment Code and upon the Joint Report of the Ministers of Industry and Finance.

Article 17 : The convention defines in particular:

- the object, extent, installation site and duration of the investment programme;
- the tax system granted to the company;
- the commitments that in return the benefiting company subscribes to:
 - the controls that the administration can make by the benefiting company and the conditions of such controls;
 - the conditions under which the agreement may be reviewed;
 - the arbitration that will be set out in the event of a dispute between the parties.

Article 18 : The Convention guarantees to the benefiting company that no changes will be made to the rules of assessment and collection of all taxes and the rates set for the company if it results in worsening its dependents.

Likewise cannot be applied to this company, the character of taxes whose creation would come to be decided.

The stability of tax charges does not apply to:

- The quasi-fiscal levies collected in a specific social interest;
- The taxes paid in withholding for the account of others.

Article 19 : The agreement may include commitment on the part of the State having the effect of relieving the company losses, expenses or loss of earnings due to changes in technology, economic conditions, to factors natural or inherent in the business, or restricting fair competition.

Article 20 : The agreement is signed by the Minister in charge of Industry and the applicant.

Article 21 : The Minister of Industry is empowered to:

- Sign agreements;
- Carry out inspection for a proper performance of contractual obligations;
- Carry out formal notices and injunctions prescribed by law;
- Grant deadlines adjustment and correction on grounded application of promoters;
- Submit for consideration by the One Stop Desk for the implementation of the Investments Code records relating to the forfeiture of failing companies;
- Suspend or withdraw approval after consulting the One Stop Desk;
- Extend after a grounded request of the promoter, the investment phase without this affecting the legal duration of the system;
- Take protective measures;
- Appoint the arbitrator representing the administration in the dispute settlement procedure concerning the implementation of the systems provided by the Investment Code of the Republic of Niger.

Section 3: Free zones and free points

- **Article 22:** The companies mainly oriented towards exports are classified under free zones or free points. The creation of the terms, installation, operation, and tax and customs relating to free zones and free points will be determined by decree taken during Cabinet Meeting upon a joint proposal of the Ministers of Industry and Finance.

Chapter V: LIST OF MATERIALS, TOOLS AND EQUIPMENT TO BE EXEMPTED

Article 23: The list of materials, equipment and tools necessary for the realization of the approved programme must necessarily be signed and attached to the texts granting the benefits of the Investment Code.

Article 24: For the whole duration of the system and at the beginning of each year, the company accepted to the benefit of the advantages of the Investment Code, shall send to the Ministry of Industry, the list of raw materials, consumables and packages related to its

annual production to the extent that it is exempted not including however activities planned at sections, e, h, i, j, k, l, m, n, o, p, q, r of Article 3 of this Decree.

The list duly initialed and signed by the Minister of Industry is transmitted to the Minister of Finance.

Chapter VI : MONITORING AND CONTROL

Article 25 : Monitoring and control of the company approved under the Investment Code and the commitments made by investors are provided by the One Stop Desk for the implementation of the Investment Code and the Directorate of Industry. They can, if necessary, appoint any technical service for obtaining its opinion on the area under its jurisdiction.

Chapter VI : SANCTIONS

Article 26 : In case of non-compliance with commitments made by the company, the following measures may be taken against it:

- 1) suspension of registration if three (03) months after a written demand from the Minister in charge of Industry, no provision is made by the authorized company to rectify the situation.
- 2) withdrawal of accreditation:
 - a. if within a period of six (06) months from the date of suspension of the approval, the company does not comply;
 - b. if the company has not realized its investment programme within thirty-six (36) months be it in conventional or promotional system;
 - c. on proposal of the management of the One Stop Desk for the implementation of the Code of Investment, in case of fraud or serious/willful default of the company to fulfill its obligations found by the One Stop Desk for the implementation of the Investment Code or notified by competent services. In this case, the removal leads to the repayment to the Treasury, the caking of tax and customs benefits achieved during the period in accordance with Tax Code and Customs Code.

Suspension or withdrawal of approval is pronounced in the same way it was granted.

Article 27: Are repealed all previous provisions contrary to those of this Decree.

Article 28: The Minister of State, Minister of Mines and Industrial Development, the Minister of Finance, the Minister Delegate to the State Minister, Minister of Mines in charge of Industrial Development and the Minister Delegate to the Ministry of Finance, in

charge of the budget shall, each in respect of the application of this decree see that it is published in the Official Gazette of the Republic of Niger.

Done in Niamey, July 31, 2014

Signed : The President of the Republic

ISSOUFOU MAHAMADOU

The Prime Minister

BRIGI RAFINI

The Minister of State, Minister of Mines
And Industrial Development

OMAR HAMIDOU TCHIANA

The Minister of Finance

GILES BAILLET

The Minister Delegate to the Minister of
Finance, in charge of the Budget

The Minister Delegate to the
Minister of State, Minister of Mines
And Industrial Development, in charge
Of Industrial Development

MOUHAMED BOUCHA

**Dr. KAFFA RAKIATOU CHRISTELLE
JACKOU**

For duplicates

The Secretary General
Of the Government
GANDOU ZAKARA

One Stop Desk for the implementation of the Investment Code.

DECREE No. 2015-170/PRN/MM/DI

Dated April 10, 2015

REPUBLIC OF NIGER
Fraternity – Labour – Progress
PRESIDENCY OF THE REPUBLIC

**MINISTRY OF MINES AND
INDUSTRIAL DEVELOPMENT**

DECREE No. 2015-170/PRN/MM/DI

dated April 10, 2015

determining the responsibilities,
organizing and functioning of the
One Stop Desk for the implementation
of the Investment Code

THE PRESIDENT OF THE REPUBLIC,

Given the Constitution of November 23, 2010;

In view of the law no.2014-09 dated April 16, 2014, relating to Investment Code in the Republic of Niger;

In view of the ordinance no.2011-20 dated February 23, 2011, determining the General Organization of civil service and fixing its responsibilities;

In view of the decree no.2011-001/PRN dated April 07, 2011, appointing the Prime Minister;

In view of the decree no.2013-327/PRN dated August 13, 2013, appointing the members of the Government and amending texts thereto;

In view of the decree no.2013/424/PRN dated October 08, 2013, organizing the Government and determining the responsibilities of the State Ministers, Ministers and Ministers Delegates;

In view of the decree no.2013 -427/PM dated October 09, 2013, specifying the responsibilities of the Members of the Government, as amended and supplemented by decree no.2013 -560/PM dated December 19, 2013 ;

In view of the decree no. 2014-445/ PRN/MM/DI dated July 04, 2014, organizing the Ministry of Mines and Industrial Development, as amended by the decree no. 2014-723/PRN/MMDI dated November 26, 2014.

In view of the Decree No. 2014-502 / PRN dated July 31, 2014 laying down detailed rules for implementing Law No. 2014- 09 dated April 16, 2014 relating to the Investment Code in the Republic of Niger;

Upon report from the Minister of State, Minister of Mines and Industrial Development;

The Cabinet Meeting heard;

ORDERS :

CHAPTER I: GENERAL PROVISIONS

Article 1: This decree determines the responsibilities, organization and functioning of the One Stop Desk for the implementation of the Investment Code.

**CHAPTER II : RESPONSIBILITIES OF THE ONE STOP DESK
FOR THE IMPLEMENTATION OF THE INVESTMENT
CODE**

Article 2 : The One Stop Desk for the implementation of the Investment Code is responsible for receiving and processing applications for approval under the preferential systems of the Investment Code. It also provides, in relation to the structures concerned, monitoring and control of approved businesses and thus ensures compliance with the commitments subscribed by investors.

As such it is responsible under the provisions of the Investment Code and its implementing decree for:

- Receiving and examining approval application files for the benefit of preferential systems of the Investment Code;
- Preparing and submitting to the Minister in charge of Industry the minutes of its deliberations related to the request files received and the draft of orders or decrees of approval under the Investment Code;
- Deciding, if necessary, with the applicant and submitting to the Minister in charge of Industry, the list of equipment, materials, tools, raw materials and packaging necessary to carry out the investment programme;
- Ensuring, in relation to the structures concerned, monitoring and control of the implementation of conditions for approval to the preferential system of the Investment Code;
- Proposing, with grounded opinion, to the Minister for Industry, sanctions against the benefiting companies for violations of the Investment Code or non-compliance with it;
- Semi-annually submitting to the Minister in charge of Industry, a report of activities;

- Making recommendations towards the Minister in charge of Industry in order to improve the effectiveness of the implementation of the Investment Code.

CHAPTER III : THE ORGANIZATION AND OPERATION OF THE ONE STOP DESK FOR THE IMPLEMENTATION OF THE INVESTMENT CODE

Article 3 : The One Stop Desk for the implementation of the Investment Code is managed by an Executive Secretary. It is organized in services run by department heads including:

- Department of administrative affairs and eligibility;
- Service in charge of Technical Studies and examinations;
- Legal, tax and economic/financial Service;
- Control, monitoring and evaluation Service.

Each head of service or department is assisted by a deputy.

The One Stop Desk for the implementation of the Investment Code has a back-up staff consisting of:

- A secretary attached to the Executive Secretariat;
- A driver
- A courier messenger;
- A labourer.

Article 4 : The Executive Secretary of the One Stop Desk for the implementation of the Investment Code is appointed by decree of the Cabinet Meeting upon proposal of the Minister in charge of Industry among the senior staff of category A1 of the Civil Service.

However, if a qualified senior staff civil servant is not available to fill the position of Executive Secretary, a contractual senior staff agent can be recruited in accordance with the General Regulations of the Civil Service.

Article 5 : The Heads of Services or Departments of the One Stop Desk for the implementation of the Investment Code are appointed by order of the Minister in charge of Industry among executives of category A of the Civil Service.

The Deputies of the heads of departments are appointed by decision of the Executive Secretary

Article 6 : The senior staffs, members of the One Stop Desk for the implementation of the Investment Code are selected from persons meeting the profiles below including financial analysts, lawyers, electromechanical engineers, food engineers, economists, civil engineers, environmentalist doctors. They are civil servants put at the disposal of the One Stop Desk or recruited under contracts in accordance with the General Regulations of the Civil Service.

Article 7 : The operating procedures of the Executive Secretariat of the One Stop Desk for the implementation of the Investment Code and of services as well as the duties of their leaders are set by order of the Minister in charge of industry.

An Inter-ministerial Monitoring Committee created for this purpose by order of the Minister in charge of Industry assists the One Stop Desk in monitoring and control of compliance by beneficiaries with the conditions for approval to the preferential system of the Investment Code. It comprises:

- A representative of the Ministry of Industry;
- Two representatives of the Ministry of Finance;
- A representative of the Ministry of Commerce;
- A representative of the Ministry of Employment and Labour;
- A representative of the Ministry of Tourism and Handicraft;
- A representative of the Ministry of Environment
- A representative of the Ministry of Housing and Urban Planning;
- A representative of the Ministry of Transportation.

Article 8 : The salary and other benefits of the employees of the One Stop Desk for the implementation of the Investment Code are determined by decree of the Cabinet Meeting upon proposal of the Minister of Industry, the Minister in charge of Civil Service, Administrative Reform and the Minister in charge of Finance.

Article 9 : Any person seeking the benefit of a preferential system of the Investment Code is liable to paying non-refundable fees for files processing the amount of which is set for each file and according to the system requested:

- Promotional System 500,000.00CFA francs;
- Conventional System 1 million CFA francs.

These fees are paid to the Executive Secretariat while submitting the file for a receipt.

Article 10 : Any person whose case requires further information or other relevant elements for the continuation of the investigation, receives within ten (10) working days following the date of submission of the file a notification requesting him to provide the required elements.

In the event a satisfactory response is given within this period of time, a new deposit receipt is issued to the applicant. The time limit for processing and granting of approval runs from the date of the new receipt.

If the applicant does not comply by providing a satisfactory response within a period of thirty (30) working days from the notification, his application for approval is then rejected.

Article 11 : Any person whose application for approval is rejected and who wants to reintroduce a new request whether or not on the same subject, is again liable to paying the costs provided for in Article 9 above.

Article 12 : the revenue collected in respect of Article 9 above is distributed as follows:

- State budget 90%;
- Return granted to the staff of the Ministry of Industry ... 10%

CHAPTER IV **RESOURCES OF THE ONE STOP DESK FOR THE IMPLEMENTATION OF THE INVESTMENT CODE**

Article 13 : The functioning of the One Stop Desk for the implementation of the Investment Code is supported by the state budget and any other resources authorized by law made available by any natural person or legal entity, public or private.

CHAPTER V : TRANSITIONAL AND FINAL PROVISIONS

Article 14 : the Persons who submitted application files for approval under the Investment Code prior to the effective date of this decree are not subject to any costs referred to in Article 9 above.

Article 15 : Pending the effective implementation of the One Stop Desk for the implementation of the Investment Code, the Directorate of Industrial Promotion is responsible for the processing of applications for approval. In this regard, it develops and submits drafts of decrees to the Cabinet Meeting and drafts of joint orders for signature to the Minister of Finance and the Minister of State, Minister of Mines and Industrial Development.

Article 16 : The Minister of State, Minister of Mines and Industrial Development, the Minister of Finance and the Minister Delegate to the Minister of State, Minister of Mines and Industrial Development are responsible, each in regard to the implementation of this decree, to ensure that this be published in the Official Gazette of the Republic of Niger.

Done in Niamey, April 10, 2015

Signed : The President of the Republic

ISSOUFOU MAHAMADOU

The Prime Minister

BRIGI RAFINI

The Minister of State, Minister of Mines
and Industrial Development

The Minister of Finance

OMAR HAMIDOU TCHIANA

GILES BAILLET

The Minister Delegate to the Minister of State,
Minister of Mines and Industrial Development,
In Charge of Industrial Development

Dr. KAFFA RAKIATOU CHRISTELLE JACKOU

For duplicates

The Secretary General
Of the Government

GANDOU ZAKARA