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São Tomé e Príncipe: New investment regulations

The government of São Tomé e Príncipe ("STP") recently adopted two regulations that are intended to improve the conditions for investment in STP. These are:

- Decree-law No 19/2016, including the investment code for private investment (the "Investment Code"); and
- Decree-law No 15/2016, including the tax benefits code (the "Tax Benefits Code").

The new rules intend to make STP more attractive to foreign investors and create a regime that takes account of the needs of STP as well as an investor that wishes to invest in STP. The Tax Benefits Code for example promotes private investment in public infrastructure through tax reductions. Equally, investments in key sectors for the economy of STP (such as agriculture, tourism and international commerce) as well as investments in lesser developed parts of the country are incentivised. The new rules are already in force. This memorandum describes the main features of the two codes.

Investment Code

Pursuant to the Investment Code, the government of STP must define and promote private investment policies for the sustainable development of STP and the economic, social and cultural well-being of STP's population.

The Investment Code applies to all investments in STP with a value of EUR 50,000 or more. Such investments will then also be eligible to incentives under the Tax Benefits Code.

The types of investment that are subject to the Investment Code are broadly defined. They should relate to economic activities that are developed by companies that are organised under the laws of STP or that are registered in STP. It applies to investment by domestic as well as foreign investors and provides for the usual guarantees for the protection of private investment.

The Investment Code provides that investment can be effected in one or more of the following ways:

- transfer of financial resources from abroad or the application of own funds
- the application of foreign currency kept in bank accounts in STP
- application in STP of funds (with originally foreign origin) by way of reinvestments
- import of machinery, equipment, accessories and other physical assets
- application of credit and other funds of private investors that are

intended to be applied in entrepreneurial activities
- application of technology and knowhow

The Investment Code provides for three investment regimes: a simplified regime, a general regime and a special regime. The simplified regime applies to investments with a value between EUR 50,000 and EUR 249,999, the general regime for investments with a value between EUR 250,000 and EUR 4,999,999 and the special regime to investments of EUR 5,000,000 or more. The distinction can be relevant for the application and approval procedures in connection with the investment as well as the incentives that are available under the Tax Benefits Code.

The Investment Code provides that investments can benefit from the tax incentives set out in the Tax Benefits Code if the following conditions are met:

- the investor has at least 20% of the proposed investment amounts at its disposal
- the investor can demonstrate that it has a stable economic and financial situation for the realisation of the project
- the investor should not owe money to the STP government or the STP social security institutions
- the investor presents a feasibility study of the project, which is acceptable to the STP government, and which should demonstrate that the investment project creates permanent jobs, is directed towards the engagement of local staff and contributes to social responsibility
- the investor presents a report that analyses and demonstrates the economic impact of the investment on the country

The government can grant privileged treatment to certain types of investments, based on the economic sectors in which such investments are made, and to investments in so-called development zones. This privileged treatment is addressed in the Tax Benefits Code.

The Investment Code stresses that the investor must comply with applicable laws and regulations of STP and to observe the time limits that have been set for the import of capital and the implementation of the project.

An investor will have the right to expatriate the proceeds of its investments including dividends, profits, royalties and liquidation proceeds), subject to compliance with applicable tax and foreign exchange obligations.

The Investment Code provides that all private investment projects are subject to an investment agreement that is subject to administrative law. The Investment Code sets out the process for the conclusion of such an agreement and the information that needs to be provided by the investor. This process is managed by a specialised government agency. This agency will also monitor compliance by the investor with the applicable investment conditions, and can take enforcement action in case of a breach.

In terms of dispute resolution, the Investment Code provides that disputes in relation to the Investment Code and its secondary regulations must be submitted to the courts of STP (unless international treaties that are binding on STP provide otherwise). Disputes in relation to investments of foreign investors shall, unless otherwise agreed, be submitted to arbitration, with the following alternatives:

- STP arbitration law
- the rules of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965
- the arbitration rules of the International Chamber of Commerce in Paris

Tax Benefits Code

The incentives provided for in the Tax Benefits Code apply to investments that have been authorised in accordance with the Investment Code. Certain incentives are granted automatically while others require further action by the relevant investor and the authorities.

The Tax Benefits Code makes a distinction between general and special benefits. General incentives are:

- exemption from import duties of goods and equipment used for new activities or the expansion of existing activities (provided that the relevant goods and equipment cannot be sourced in STP)
- a corporate income tax rate of 10% for investment projects intended to develop new activities
- accelerated depreciation and amortisation for investments in the tourism, education, health, new technologies and export sectors.
- tax deductions for investment in specialised equipment for the development of activities that are authorised under the Investment

Code during the first five years of activity

- tax deductions for training costs of STP staff
- tax deductions during the first five years of activity, of costs relating to the construction and restoration of roads, water supply, electricity, energy, schools, hospitals and other public works for:
  - 150% if these activities are conducted in the districts of Cantagalo, Lembá, Lobata, Caué or in Príncipe; and
  - 100% if these activities are conducted in the other districts.

Special tax incentives apply for investments in the agriculture, agro-constructional, cattle raising and fisheries sectors. These include a 50% reduction of the corporate income tax rate for the first seven years of the project's implementation, a reduced stamp duty tax on banking operations in connection with the import of foreign capital and an exemption on income tax on the application of capital.

The tourism and hotel sector can also benefit from special incentives. These focus on the restoration, construction, expansion or modernisation of hotels and related establishments and the development of rural and eco-tourism.

The Tax Benefits Code further provides that investments in enterprises that are active in local and international trading are exempt from import duties or goods and equipment if they cannot be sourced in STP. The enterprises that are active in local trading can benefit during the first five years of their activities from a 50% reduction on the corporate or personal income tax rate. Enterprises involved in international trading are subject to a flat income tax rate of 5%.

The Tax Benefits Code provides that investments that are subject to the simplified regime receive 50% of the incentives described in the Tax Benefits Code. Additional incentives are available for projects that are of great dimension (more than USD 10,000,000) and those that are located in the districts of Cantagalo, Lembá, Lobata, Caué or in Príncipe (and other zones designated by the government for this purpose).

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