Key Legal Framework for Investors in Yemen

(Investment Law # 22 of 2002: effective until August 23, 2010 ONLY)

The following parts in relation to FDI emphasizing positive aspects for investors:

a) Section II, Articles: 4 – 15
b) Section III, Articles: 20 & 26
c) Section V, Article: 38
d) Section VI, Article: 47
e) Section VII, Articles: 58, 59, 60, 61, & 63

Section II.

Guarantees and Benefits Accorded to Projects

Article 4

The State shall guarantee Yemen, Arab and foreign investor’s freedom to invest in investment projects in accordance with the provisions of this Law.

Article 5

Arab and foreign capital and Arab and foreign investors shall be on a par with Yemeni capital and Yemeni investors without discrimination with respect to the rights, obligations, rules and procedures set forth in this Law and the decrees and regulations enacted in the execution thereof.

Article 6

Projects registered in accordance with the provisions of this Law, whatever their legal status, shall be deemed to be private sector projects whatever the legal nature of the contributed capitals may be.
Article 7

Investment projects and companies and Arab and foreign investors shall be entitled to purchase or lease land and buildings owned by the private sector or the State to be used for the purposes for which the project is registered under this Law; all rights and dispositions devolving on lands and buildings shall be recorded in accordance with the rules indicated by the executive regulations of this Law.

Article 8

Industrial and agricultural projects may open commercial stores, either solely or in collaboration with other projects, from which to sell their products, subject to the business of such stores being restricted to marketing such products regardless of the nationality of those participating in the capital or management of such projects.

Article 9

When making procurement for government or public establishments, a (15%) fifteen percent maximum preference in the price of the production of local agricultural and industrial projects shall be accorded over comparable imports, subject to quality being consistent with that of imported products.

Article 10

Investors shall be entitled to manage their projects in the light of their appraisal of economic conditions and the status of their businesses.

Article 11

No additional financial or other burdens or obligations shall be imposed resulting in violation of the principal of parity amongst private, public, cooperative and mixed sector projects carrying out the same type of activity which are established under this Law or any other Law.

Article 12:

All project products shall be exempted from compulsory price regulation and profit limiting, provided project not creating or indulging in monopolistic practices or trying to fix prices in overt or implicit agreement with other producers or vendors of similar products and services.
Article 13

a. Projects may not be nationalized or seized.

b. Funds may not be blocked, frozen, or sequestered by other decision than the courts of Law.

c.  
1- All or part of project real estate may not be expropriated save for the public interest according to the Law and a final court judgment and against fair compensation on the basis of such market price on the issuance date of court judgment.

2- Compensation shall be paid not later than three months from the date of the court final decision.

3- In the event of a delay in payment beyond this period, the investor is entitled to request the revaluation of the compensation on the basis of the then prevailing price of that time and place.

4- The juridical verdict execution shall be concurrent with payment of the compensation defined in the juridical verdict.

5- In cases where the invested funds, subject of such action mentioned in the pervious paragraphs are foreign funds, such compensations may be freely transferred abroad and all the procedures and restrictions concerning the regulating and banning of funds transfers outside Yemen shall not be applied.

d. Consistent with the provisions of article (71) of this Law, project registration, and any right or exemption issued and accorded under this Law may not be nullified or withdrawn except upon a final juridical verdict.

Article 14

Without prejudice to the project’s rights to benefit from any monetary facilities being made available by the competent authorities in this regards, the government is under no obligation to provide any foreign currencies needed to carry out the project or to cover its authorized foreign currencies transactions or fund its foreign currencies bank accounts the project shall be entitled to obtain the foreign currencies it requires at any time from its foreign currencies accounts.
Article 15

1- An investor shall be entitled to transfer abroad his foreign currency funds and net profit earned by investment or any of its accrued returns to any transferable currency.

2- The foreign investors shall have the right to retransfer abroad their invested capital upon liquidation or disposal, and not in contradiction with the procedures provided for in Article (19) of this Law, and in case of assignment the new owner shall replace the former owner in the rights and claims and in accordance with provisions of this Law.

Section III.

Customs Duty and Tax exemptions accorded to projects, Promoting of local production and Increasing exports.

Article 20

Without prejudice to any more advantageous tax exemption granted, or to be granted, under any other Law, all projects shall enjoy exemption from taxes in the following manner:

1- Projects shall be exempted from profit tax for (7) seven years and the investment projects extensions issued by the Authority shall be exempted from profit tax for seven years pursuant to this law. Starting from the date on which they commence production or activity, as the case may be. The Authority shall be the body responsible for determining the date of commencement of production or activity. The Council of Ministers, upon a recommendation by the Authority’s Board of Directors, may specify certain projects or fields of activity that shall be entitled to benefit from the exemption provided for above for periods ranging from (7) seven to (10) ten years as the Council may deem fit in accordance with the exigencies of the public interest. To this end, the Authority shall issue periodic lists of projects subject to the provisions of this paragraph.

2- Projects shall be exempted from the real estate tax.
3- Contracts establishing projects, and all project related contracts until implementation is complete, shall be exempted from the notarization fees, the Authority determining which of such contracts are project related as well as the date of completing the implementation.

4- Projects shall be exempted for five years as of the date of commencement of production or activity, as the case may be, from all taxes and fees specified under the provisions of Article (64) of this Law on the proceeds from licensing the use of imported technology utilized in the project.

5- a. Interest on loans granted by local and foreign banks operating in Yemen to finance establishing or expanding or rehabilitating projects shall be exempted from (50%) fifty percent of taxes levied thereon.
b. Dividends distributed by projects established under this Law shall be exempted from income tax.
c. The taxation authorities concerned shall implement the foregoing exemptions promptly upon presentation of the project tax exemption certificate.

Article 26

Any existing project that exports all or part of its production abroad shall be entitled to the following:

1. Exemption from all fees or taxes of any kind levied on exports.
2. Exemption from production and consumption excise or any other taxes levied on goods and services exported abroad which are produced by projects registered under the Law.
3. Exemption of tax payable on profits earned from export revenues after termination of the exemption period accorded to the project, subject to such profit being transferred in foreign currency to the Republic through an authorized bank.
4. Recovery of all Customs fees and duties of whatever kind paid on imported inputs included in that portion of production exported. Should it not be possible to make the recovery in cash, the Authority shall issue to the project a Rebate Voucher to the extent of the amount due to it, which the project has the right to use to settle Customs fees and duty payable on future imports. Use of the Rebate Voucher in such case shall be deemed to be a cash payment. The executive regulations shall specify the procedures, timing and rules to be observed to recover customs fees and duty receivable, the issuing of Rebate Vouchers and their use pursuant to the provisions of this article.
5. Export on its own or through an intermediary without license or need for registration in the Exporters Registry.
Section IV.

Project Registration and Exemption Procedures

Article 38

a. No Investment project may be established, expanded or rehabilitated under the provisions of this Law only after registration at the Authority on the basis of an application submitted to it in writing on the form devised for that purpose at the authority.

The Authority shall decide acceptance or rejection of the application within (15) days following the date on which the application was presented complete with all documents and information required. The Authority may extend such period for not more than (10) additional days in the case of applications relating to the construction of large-scale projects.

b. Agencies concerned shall take their decisions approving, rejecting or requiring amendments within a period not exceeding (15) days following referral of the request to them by the Authority. The Authority may take a decision on an application for a registration without referring to the agency concerned and without requiring its approval in any of the cases indicated in the executive regulations.

c. Lack of a reply within the periods specified in the preceding paragraph (a) and (b) shall be considered approval. In case of rejection, the decision shall be substantiated. The party concerned may appeal the decision in accordance with the provisions of Section VII of this Law.

d. The executive regulations shall indicate the application form and papers and documents that must be presented for a decision to be taken in accordance with the provisions of this Article.
Section VI.

Investment Companies

Article 47

Capital of an investment company may be paid wholly in foreign, local currency or in both, as may be agreed upon by the investors. The company’s statutes, articles of incorporation, books and records shall show each investor’s subscription to company capital in the currency invested. A company may also issue shares, stock in either or both foreign and local currency.

Section VII.

Administrative appeals and settlement of Investment Disputes

Article 58

The Authority and all other parties concerned shall settle all problems or obstacles encountered by investors or investment projects and shall seek to solve them by all expeditious and appropriate means. The executive regulations of this Law shall indicate all rules and procedures regulating such action.

Article 59

Investors and projects may appeal decisions by the authorities concerned infringing on their interests in accordance with the provisions of this Law, by applying in writing to the decision making authority or to the President of the Authority within thirty days following notification of the decision. The party appealed to shall decide on the appeal within twenty days of its submission. Elapse of such time without reply shall be deemed an acceptance of the appeal and in such case the party appealed to should rectify its decision in consistency with the appeal submitted by the investor. If appeal was rejected, the appellant shall be entitled to submit his appeal to the Prime Minister who shall take a decision thereon in ten days or refer it to the Council of Ministers to take such decision as may be appropriate within no more than thirty days.
Article 60

An appeal regarding decision provided for in the preceding Article may be filed directly with the competent court after exhausting the appeal before the president of the authority or the prime minister, and may be referred to an arbitration tribunal to be agreed upon without the need for continuing with the administrative appeal.

Article 61

Without prejudice to the right to resort to Yemeni courts, investment disputes relating to the execution of the provisions of this Law arising between the Government and a project may be settled by arbitration resorting to any of the following procedures as may be selected by the investor or the project:

1. The Standardized Agreement for Arab Capital Investment in Arab Countries.
2. The International Convention for the Settlement of Investment Disputes between the State and the nationals of another State.
3. Any international or bilateral agreement to which the Republic is a party.
5. Rules and procedures of arbitration within the Republic of Yemen.

Article 63

Decisions reached by arbitrators issued in accordance with the rules set forth in this Section shall have the same power and effectiveness of the rulings of Yemeni courts and the courts of competence in the Republic shall order that they be enforced promptly upon receipt of a request in writing to this effect from the party concerned.

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