The New Rwanda's Investment Law in a Nutshell

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It is almost a year since the entry into force of Rwanda's new investment law.[1] This new law repeals the law Nº 26/2005 of 17/12/2005 that has been governing investment and export promotion in Rwanda for the previous 10 years.[2]

This paper aims to highlight the main features of the new law especially in relation to the admission, treatment and protection of foreign investments in Rwanda. On occasion, comparisons will be drawn with the old law to contrast some changes introduced by the new legal regime. It is hoped that this paper will help in informing researchers, current and prospective investors, policy-makers and implementers about this new legal framework.

1. General overview

Upon attentive reading of the 2015 Investment Law, the first impression is that the new law is better structured than the old as its articles are comprehensively grouped and titled, which increases the accessibility of this legislation. According to its article 1, the purpose of the new investment law, is 'to promote and facilitate investment in Rwanda'. It appears from this provision that this law specifically focuses on the promotion and the facilitation of investment, both foreign and local. Export facilitation is just marginally addressed.[3] In fact, although investment promotion and export promotion can be considered as the two sides of the same coin, they are actually different.[4]

A consequence of narrowing down the purpose of the investment law could be that, for instance, if a department within Rwanda Development Board (RDB)[5] was at the same time in charge of both investment and export promotion, with the new law that department would also be discharged from that responsibility. It is usually argued that the effectiveness of an investment promotion authority (IPA) depends to some extent on the number of its mandates.[6] The combination of two mandates, promotion of

[1] Law No. 06/2015 of 28/03/2015 relating to investment promotion and facilitation, *Official Gazette*, No. Special of 27/05/2015 (Hereinafter the 2015 Investment Law).

[2] Hereinafter the 2005 Investment Law.

[3] See article 1 of the 2005 Investment Law that reads "This law aims at investment and export promotion and facilitation". Unlike the previous legislation, export facilitation has been removed from the purpose of the investment law in Rwanda.

[4] J. Morrisset and K. Andrews-Johnson, *The Effectiveness of Promotion Agencies at Attracting Foreign Direct Investment*, FIAS, Occasional paper 16, 2004, p. 50.

[5] Rwanda Development Board (RDB) is the investment promotion authority in Rwanda according to art. 4(2) of the Organic Law N° 46/2013 of 16/06/2013 establishing Rwanda Development Board (RDB) and determining its responsibilities, organization and functioning, in the *Official Gazette of the Republic of Rwanda*, No. Special of 16/03/2013 (hereinafter RDB Law).

[6] J. Morrisset and K. Andrews-Johnson, *op. cit.*, p. 50.

investment and promotion of export, could be burdensome when it is entrusted to the same IPA. However, despite this removal, export facilitation remains preponderant in the undertone of the new investment law, especially in its regime of fiscal incentives.[7]

Another noticeable change in the new law is the disappearance of the repressive tone against the investor who was exposed to, according to article 35 of the old law, between three and six months of imprisonment and a fine between one thousand and two thousand American dollars in case they would (1) deliberately provide inaccurate of false information to the IPA, (2) refuse or neglect to provide explanation requested from them by the IPA, (3) refuse to allow employees of the IPA on official duty to enter or to conduct inspection in the buildings in which the investment operates, or (4) do not respect any of the conditions related to certificate of registration. The latter included, for instance, any failure by the investor to properly keep financial and accounting records or to respond to 'any questions' from the IPA in a period of five days.[8]

2) **Admission of foreign investments**

2.1. Conditions to qualify as a foreign investor

The new investment law has revisited the definition of foreign investor in two respects. The first concerns the removal of the minimum capital required to qualify as foreign investor. Under the old legal regime, it was a requirement for a foreign investor to invest a minimum financial capital equivalent to 250,000 US$ in foreign capital.[9] This meant that not only foreign investors had to have that amount money available before applying for an investment certificate, but also that money ought to originate from a country other than Rwanda. In removing the minimum capital requirement, the new investment law has followed Uganda and Tanzania's footsteps where this requirement has disappeared since 1991 and 1997, respectively.[10]

The second element is that the fact that a business company or partnership is incorporated in Rwanda, in any of East African Community (EAC) Partner States, or in any member state of Common Market of Eastern and Southern Africa (COMESA) does not automatically confer to such a company a domestic status. Indeed, beyond the symbolical fact that the new law embodies in its provisions the EAC and COMESA regional integration considerations,[11] it is important to highlight that in addition to the nationality of the country where a company is incorporated, the nationality of individual shareholders also matters in deciding about the nationality of the company.

[7] See for instance points related to 'special incentives for registered investors' II(1), III(6), V, VII(a) where export related projects are among those eligible for various fiscal incentives.

[8] See art. 9 of the 2005 Investment Law. It should be reminded that similar provisions are still present in investment codes of other EAC Partner States. See for instance art. 35 of Uganda Investment Code [Cap. 92], art. 28 and 29 of Kenya's Investment Promotion Act (2004), and 27(3) of the Tanzania Investment Act (1997).

[9] See art. 2(5) of the 2005 Investment Law.

[10] It should also be reiterated that in Tanzania and Uganda, foreign investors were allowed to obtain loans from local banks in order to start their business.

[11] In fact, according to article 2(24)(a) nationals of EAC Partner states or COMESA member states are considered as local investors on the same footing with Rwandans.

In fact, as soon as at least 51% of the invested capital are held by foreigners, the concerned company or partnership remains foreign even though it has been incorporated in Rwanda or in any other EAC or COMESA Member State.[12]

Furthermore, the new law opens all business sectors of Rwanda to investors regardless of their origin. Openness to investment is clearly provided as a guarantee to the investor,[13] and it is even highlighted in article 4(1°) that provides for the investor's rights "to engage in economic activities of his/her choice". [14]

Another thing noteworthy as far as the admission of investment is concerned is the substantial reduction of the timeframe for the issuance of investment certificate to only two days from the date of receipt of the application.[15]

2.2. Issuance and cancellation of an investment certificate

Article 11 exhaustively lists what investors have to attach to their application for investment registration. These are the certificate of legal personality of business company, a detailed business plan, a table indicating five-year income projections for the investment project, the project environmental impact assessment certificates issued in accordance with relevant laws, projected number of employees and categories of employments, license granted by the business sector in which he/she intends to operate, and the proof of payment of registration fee. It is important to note that in order to gather the element listed above, the investor is entitled to receive adequate support from RDB, which has the duty to give to investors any "appropriate investment-related support that may be required".[16]

However, the investment certificate can be cancelled if, after its issuance, it is found that the declaration on the basis of which it was issued was false or fraudulent, if in investment operations there occurred material changes detrimental to investments, or if the investor fails to fulfill his/her obligations which include, according to article 13, the implementation of their proposals in accordance with the submitted business plan in application for an investment certificate, a proper keeping of financial and accounting records of the investment enterprise and submission of a copy of a certified financial report to the RDB within 3 months following the preceding financial year, keeping data relating to operations of the investment enterprise for a period of five years, facilitation of the RDB's employees in the performance of their monitoring duties, responding in a prescribed period[17] to any query from the RDB in connection

[12] See art. 2(24)(c) of the 2015 Investment Law

[13] Article 3 para 1 of the 2015 Investment Law.

[14] The 2005 Investment Law did not impose any restriction, either. But the new law has the merit of clearly guaranteeing the openness to investment in its article 3. As a comparison, in Uganda, for instance, foreign investors are not allowed to carry on business of crop production, animal production or acquire or be granted or lease land for the purpose of crop production or animal production. See Sect. 10(2) of Uganda Investment Code [Cap. 92].

[15] Art. 12 of 2015 Investment Law 2015. This is a tremendous progress compared to 10 days under the ancient law.

[16] Art 14 of 2015 Investment Law. This should be contrasted with art. 4 of the old law that provided for such a support from the IPA only "if considered necessary".

[17] In this regard, the new law is more flexible than the old one that provided for a flat 5-day period to respond to any query from the investment authority [see art. 9(6) of 2005 Investment Law].

with operations of investment enterprise, and the registration with tax administration and timely filing of tax returns even in case of entitlement to tax exemption.[18]

In relation to the cancellation of the investment certificate, two improvements need to be acknowledged in the new law. One is that the validity of the certificate does not depend on the investor's personal criminal record in that, unlike in the old law where an investment certificate could be revoked following an imprisonment sentence of the investor to at least six months, the new law has simply discarded this option. But, in case the investment certificate is cancelled due to false or fraudulent declarations made by an investor, the latter is liable to refund an amount of money equivalent to the incentives they received in their capacity as registered investors.[19]

Nevertheless, the cancellation of the investment certificate is not at the discretion of the investment authority. Whatever may be the reason leading to the cancellation of an investment certificate, the investment authority has to issue a written notice to the investor with the details of the reasons why he believes the certificate should be cancelled. The investor has up to 10 days to provide explanations in writing. It is only when the investment authority is not satisfied with the provided explanations or when the investor does not respond within that given timeframe that RDB can proceed with the cancellation of the investment certificate.[20]

The second improvement concerns the appeal against a decision cancelling an investment certificate. In case an investor is not satisfied with the decision cancelling its investment certificate, they have the right to lodge an appeal to the head of the RDB within 10 working days from the day they are notified about that decision. The latter also has 10 days to make a final decision.

The new investment legal regime makes two changes regarding the appeal against the cancellation of an investment certificate. First of all, the appeal is lodged to the head of RDB instead of being lodged to the minister having investment under his jurisdiction.[21] Allowing investors to appeal to the head of RDB is a positive change as it makes it easy and fast. The investor does not need to deal with a different institution, which would make him gain time. However, the appeal to the head of RDB appear somehow redundant since RDB statutorily acts through its head, the Chief Executive Officer (CEO).[22] Vis-à-vis external stakeholders, any decision taken by heads of departments within RDB are deemed to emanate from RDB as a whole, represented by its CEO. From this perspective, it sounds illogical to consider the act of contesting before the CEO of RDB a decision made by the "Board" as an appeal. Administratively speaking, it is less an appeal to a higher authority than a *recours gracieux*, an application to the same administrative authority to reconsider its decision. For the sake of enhancing legal predictability, transparency, and accountability, it would be advisable to have details about RDB's decision-making procedure and various actors involved in the cancellation

[18] Art. 13 of 2015 Investment Law.

[19] Art. 19 of 2015 Investment Law.

[20] Art. 20 of 2015 Investment Law

[21] Under the old regime, appeal against the revocation of an investment certificate was lodged to the Minister having investment promotion in his/her attributions. Art. 11 *in fine* of the law of 2005.

[22] See art. 23 of the RDB Law.

of an investment certificate. Second of all, the timeframe given to the appeal authority to make a final decision is just 10 days, contrarily to the old law that did not specify any deadline for the minister's decision, which could lead to a lengthy appeal.

3. Treatment and protection of investments

The new investment law has introduced some features worth mentioning such as attractive incentives for investments made in identified priority sectors and some improvement regarding investment protection mechanisms. Fiscal and non-fiscal incentives are provided for investors who fulfill the conditions set forth in the annex to the law.

3.1. Fiscal incentives

Fiscal incentives include, among other things, a preferential corporate income tax rate of 0% for an international company which has its headquarters or regional office in Rwanda; a preferential corporate income tax rate of 15% for a registered investor in export-oriented business, energy generation, transport of goods, mass transportation of passengers, ICT, financial services, low-cost housing, or in any other priority economic sector determined as such by the Minister in charge of finance; a corporate income tax holiday of up to seven years; an exemption of customs tax for products used in export processing zones; an exemption of capital gains tax; a value added tax refund; and an accelerated depreciation of 50% for the first year for new or used asset.[23]

These incentives are basically available for investors who engage to do business in identified priority sectors that are, pursuant to article 3, export, industrial manufacturing, energy, transport, ICT, financial services, and construction of low-cost housing, provided that they fulfill ad hoc conditions. A careful reading of the annex to the law suggests that the list of investment priority sectors in Rwanda provided in article 3 is indicative and could be extended to the sectors of tourism and health, as well. However, in comparison with the old law, it appears that research, mining, water resources and waste recycling are no longer investment priority sectors in Rwanda.

3.2. Non-fiscal incentives

As far as non-fiscal incentives are concerned, the new investment law provides for some immigration incentives.[24] Any foreign investor and their dependents are entitled to "be issued with residence permit in accordance with relevant laws".[25] But, foreign investors whose investment amounts to at least 250,000$ have the right to recruit three foreign employees without any obligation whatsoever to demonstrate that the skills of these employees are lacking or insufficient on the labor market in Rwanda.

Nevertheless, it is noteworthy that in relation to non-fiscal incentives the new law seems retrograde in two respects. One is the increasing of the amount (from 100,000$ to 250,000$) to be invested for a foreign investor to enjoy the right to recruit

[23] For more details, see the Annex to the 2015 Investment Law.

[24] See paragraph IX of the Annex to the law of 2015.

[25] *Ibidem*

expatriate staff.[26] Two is the removal of free initial work permit and residence visa for foreign investors and their expatriate staff. In fact, according to article 21 of the old law, foreign investors and their expatriate staff were entitled to free initial work permit and a free residence visa valid for a period of one year, which could be renewed upon payment of ordinary fee. In addition, under the old law, an investor who could deposit an amount equivalent to 500,000$ on an account in any of commercial banks in Rwanda for a period of 6 months at least was entitled to the right of acquiring the status of permanent residence in Rwanda. This is no longer the case under the regime of the new law.

Furthermore, in comparison with other EAC Partner States, like Uganda and Tanzania,[27] the new Rwandan investment law is unprogressive in relation to non-fiscal incentives by not allowing expressly foreign investors to obtain loans from Rwandan banks or financial institutions. As the growing trend in global investment attraction strategy is to prefer investment's input having long-lasting effects in the host country's economy such as technological transfer and innovation rather than a mere attraction of foreign fresh capital, it would be advisable to the Rwandan legislator to expressly allow and regulate how foreign investors should have access to local capital.

But, may be this gap is impliedly bridged by article 5 of the new investment law which provides for an equal treatment of foreign investors with Rwandan investors with regard to incentives and investment facilitation. This provision may be interpreted as giving a room to foreign investors to have access to loans from Rwandan banks as incentives and investment facilitation just like Rwandan investors would have.

Anyway, in the discussion about the impact of incentives on investment attraction, it should always be reminded that incentives are like dessert for foreign investors: 'it is good to have, but it does not help very much if the meal is not there'[28].

3.3. Protection of investments

In terms of investment protection, the most visible input of the new law is article 7 that provides for the protection of intellectual property rights in relation to investment. This article reads: "the investor's intellectual property rights and legitimate rights related to technology transfer shall be guaranteed in accordance with relevant laws". This provision is timely considering high probability of disputes between investors that could arise based on property rights violations, especially due to deep implementation of the freedom of establishment in the EAC, as was recently the case between two Tanzania-based companies established in Rwanda.[29]

[26] Under article 20 of the old law, such right was granted upon investment of an amount equivalent to at least 100,000$ and the foreign investor had the possibility of recruiting more than 3 expatriate staff upon motivated application to the investment authority. The latter option is simply not envisaged in the new law.

[27] See sect. 25 and 26 of Tanzania Investment Act and Uganda Investment Code, respectively.

[28] Y. Aharoni, *The Foreign Investment Process*, Harvard Business School, Boston, 1966 cited by M. Binda, *op. cit.*, p. 112.

[29] See R. Com 1256/14/TC/Nyge, *Mikoani Traders Ltd v. Bakhresa Grain Milling (Rwanda) Ltd*, Judgment on 19/02/2015.

For disputes between the investor and the government of Rwanda or its decentralized entities, article 6 of the new investment law affirms the inviolability of investors' private property, whether owned individually or collectively. The same article protects investors against seizure or confiscation of any "investment, interest in or right over any property forming part of such investment", except when that seizure or confiscation is done in compliance with laws. The investor is also protected against expropriation in public interest, which can be done only after the former has been given fair compensation in accordance with relevant laws.[30]

In addition, foreign investors are allowed to repatriate the capital, profits derived from business activities, debt and interest on foreign loans, proceeds from the liquidation of investment, or any other assets, provided that they fulfill their tax obligations beforehand.[31] Subjecting the repatriation of investors' asset to prior payment of taxes is another feature of the new law. In comparison with article 30 of the old law which provided that "… such amount is freely repatriated to a country of the investor's choice without being subject to any form of tax whatsoever", the new provision may be analyzed as hardening the situation of investors who would like to repatriate their assets.

Any dispute between investors and public organs in Rwanda in connection with an investment is supposed to be primarily settled amicably.[32] In case amicable settlement cannot be reached, arbitration can be sought if parties so agreed in writing.[33] Otherwise, the matter should be taken to competent court.[34] This means that unlike article 34 of the old law that erected Rwandan courts as default forum for investment related disputes which parties failed to solve through arbitration, the new law gives latitude to investors to confer competence to any other court in their investment certificate of registration. It is also important to note that the new law does not make reference to disputes settlement mechanisms that could be provided in bilateral or multilateral investment treaties signed between Rwanda and the investor's country of origin nor does it refer to other existing international mechanisms, such as the International Centre for the Settlement of Investment-related Disputes (ICSID), as possible ways of investment dispute settlement. However, this omission should not be construed as depriving investors of their right to suggest or to have recourse to such mechanisms, if need be.

All in all, this quick analysis of the new investment law of Rwanda gives a mixed observation. On the one hand, a number of provisions have been put in place to improve the overall situation of investors, especially in relation with investments admission and protection. On the other hand, some steps have been taken backwards mostly regarding the treatment of foreign investments. This is for instance the case of the threshold provided in order to enjoy fiscal and non-fiscal incentives.

[30] See art. 6(3) of investment law 2015. See also art. 3 of Law n°. 32/2015 of 11/06/2015 relating to expropriation in the public interest (Official Gazette n°. 35 of 31/08/2015.

[31] Art. 8 of 2015 Investment Law. Unlike art. 30 of the 2005 Investment Law.

[32] Art. 9 para 1 of 2015 Investment Law.

[33] Art. 9 para 2 of 2015 Investment Law.

[34] Art. 9 para 3 of 2015 Investment Law.