



INVESTMENT PROMOTION IN THE DEMOCRATIC REPUBLIC OF CONGO

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1.1 Institutions

The National Agency for Promotion of Investment (ANAPI) has been set up by the *Investment Code, Law no. 004/2002 from February 21, 2002*. ANAPI is a public technical institution with legal status that is placed under the provision of the Ministries of Planning and Portfolio. The official statutes, functions and organisational settings are defined in *Decree no. 065/2002 from June, 5, 2002*. ANAPI is set up as a One-Stop-Shop for public, private and semi-public investments in DRC.

The aims of ANAPI are: a) to receive investment projects for approval within the framework of the Investment Code and investment projects governed by laws according to the Investment Code, or to provide technical advice in regard to the other laws; and b) to ensure the promotion of investments in DRC within the country as well as abroad.

According to *Decree no. 065/2002, Article 3*, the functions of ANAPI include:

- Popularise the laws and regulations which grant tax and special tax incentives as regards investments;
- Make use of means which should eradicate barriers or red tape to operations of setting up, extending and modernising enterprises;
- Receive, analyse, and evaluate, in due approval period, applications for eligible investment projects to the advantages of the Investment Code and submitting to the Ministers the Plan, Finances and Budget of these projects for approval or rejection, with advices/notices conform to the eligibility conditions and advantages of the Investment Code;
- Receive and review the documentation files of Investment projects which should be realised in sectors governed by particular Laws and giving technical advice on the said investment projects on behalf of the Government;
- Search and promote domestic or foreign Investments, public, private or semi-public ones in accordance with the *Law no 004/2002 of February 21, 2002*, the *Investment Code*, and particular laws applicable to some business sectors;
- Carry out surveys and making useful suggestions either for a better application of the Investment Code, or for the incentives entitled to promote public, private or semi-public investments, or for improving the settlement/welcoming conditions for domestic, foreign, public, private or semi-public investments in various economic regions of the country;
- Constitute a data bank on the potentials and investment opportunities existing in the different

- economic regions of the country;
- Carry out all operations linked directly or indirectly to its mission.

ANAPI is responsible for promotional activities and approval of applications in all sectors of economic activity, except to some sectors in which ANAPI only intervenes through providing its opinion for respective projects as required. Accordingly, the Investment Code is not applicable to the following sectors as they are handled by separate laws:

- Mining and hydrocarbons (see Mining Code, Law no. 007/2002 from July 11, 2002);
- Banking;
- Insurances;
- Production of munitions and activities related to the military;
- Production of explosives;
- Assembly of military equipment and paramilitary security services;
- Production of munitions, military and paramilitary activities or security services;
- Commercial activities.
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1.2 Investment and Export Incentives

General Incentives

Investments accepted to qualify for the Investment Code shall benefit from advantages referred to below for a period of:

- Three (3) years in economic Region A
- Four (4) years if in economic Region B
- Five (5) years if in economic Region C

The Government grants various customs and tax advantages when investment projects are approved to qualify according to the Investment Code.

Customs Incentives

Customs advantages are stated in Articles 10-12 of the Investment Code:

- With the exception of the administrative tax (5 %), a full exemption from duties and taxes on import for machinery, new tools and equipment, new spare parts not exceeding 10 % of CIF value of the said equipment for public utility investments ;

- Exoneration from duties and taxes on export for all or part of finished products, carved or semi-carved in good conditions for the balance of payment
- Second hand heavy engines, ships and aircraft are allowed a total exemption.

Exemption from fees and taxes at importation can only be granted if one of the following conditions is fulfilled:

- The concerned goods are not manufactured in the DRC.
- The price before tax of the local product is 10% higher than the price of the same imported product.

Approved investments, which envisage the exportation of all or part of their finished products, processed or semi processed goods under conditions that are favourable for the balance of payment shall benefit from exemption from fees and tax at exportations. This exemption applies from the first exportation with exportation documents proving so. (Article 12)

Summary of Customs regime on imports

	Common Law	Investment Code
Equipment, machinery, plant, tools, heavy vehicles	8%	Exemption (5% administrative charge not exempted)
Agricultural and breeding inputs	5%	5%
Raw Materials	5%	5%
Pharmaceutical inputs	5%	5%
Spare parts	10%	Exempted
Other inputs and intermediate products	10%	10%

Restrictions

According to *Article 32 of the Investment Code*, any material, equipment, goods and tools imported under the benefits of the Investment Code are not allowed to be transferred, leased or used for other purposes other than the initial purpose within a period of 5 years. However, an exception can be granted by the Ministry of Planning and after notification by ANAPI. A reason for granting such exception could be that lease, transfer or envisaged use could improve the development of a disadvantaged region.

1.3 EPZs, Freeports and other Special Economic Zones

The previous *Law no. 86-028 of April, 5 1986* on Investments and the *Regulatory Law No 81-010 of 2 April 1981* instituting the system of the Free Industrial Zones has been abrogated by the new Investment Code. The new Investment Code does not state any details on Free Industrial Zones which means they do not apply anymore. Advantages and guarantees acquired by the previous laws remain however valid.

1.4 Tax Incentives

Tax incentives provided under the Investment Code are the following:

- The benefits realised by new approved investments are completely exempted from professional contributions on revenue preempted in Title IV of regulatory law No 69009 of 10 February 1969, as modified to date;
- Investments in socioeconomic infrastructure such as schools, hospitals, sporting facilities and roads realised under approved projects are redeemable according to the regulations on degressive repayments (sliding scale of charges);
- Full exemption from professional tax on income for profits made by approved investments ;
- Exemption from land tax (on land concessions and developed properties) ;
- During their constitution or the increase of their share capital, approved limited liability companies are exempted from proportional rights/fees preempted in article 13 of the decree of 27 February 1887 on commercial companies, as modified to date. Approved companies, other than those mentioned above, are exempted from fixed rights/fees preempted in article 13 of the Decree quoted during their constitution;
- Exemption from ad valorem duty on the constitution or increase of the share capital of Limited Liability Companies (SARL);
- Approved enterprises that buy equipment/material from local producers and industrial inputs

manufactured in the DRC or solicit the services of workers on immoveable property, are exempted from paying tax on the turnover on these products and services. (Article 17);

- Benefits for SMEs / SMLs are furthermore :
- Full exemption from duties and taxes on import of machinery and equipment, event second hand tools (besides the administrative tax);
- Possibility of calculating the depreciation according to a degressive mode ;
- Deduction of expenses made for the training or improvement of the staff, protection and conservation of the environment from the taxable income ;
- Exemption from duties on charters and registration fees in the new trade register.

Depending on the economic region where the investment will take place, the above stated advantages are granted for a period between 3 and 5 years which starts as soon as the goods and services produced by the approved company are on the market.

1.5 International Trade & Export Promotion

DRC is eligible under the African Growth and Opportunity Act (AGOA) as well as the Everything But Arms (EBA) initiative as LDC country.

Laws and regulations covering trade are Law No. 73/009 of 5th January 1973 and its three departmental Acts (No. 015/CAB/004/73 of 7th September 1973, No.015/CAB/006/73 of 39th November 1973, No. 015/CAB/008/73 of 10th December 1973) and Law No. 74-014 of 10th July 1974 which is amending and completing the special law on trade. Accordingly, import, local manufacture of fabric, household products and certain food items, electrical appliances and household appliances are reserved to Zairians (Congolese) natural persons or legal entities (with Congolese controlling the major capital share). If products are acquired for investment purposes, or as raw materials and/or for production, they are not affected by this restriction. However, the legal situation is not clear;

Within the overall review of national legislation and administrative processes, a review of trade laws and regulations has been initiated replacing the outdated laws. Reform of existing cumbersome areas are, for example, the period for trade registry which is aimed to be shortened from 15 days to a maximum of 5 days, the abandonment of compulsory trade licenses and a review of existing export/ import procedures.

1.6 Promotion of Local and Regional Entrepreneurs

The Investment Code (Law no. 004/2002) has provisions for the promotion of Small & Medium Scale Enterprises (PME) and Small & Medium Scale Industries (PMI).

They are economic entities constituted either in the form of an individual enterprise or in form of a shareholding company. In an individual company, priority is given to a natural person as head of the enterprise which ensures financial and administrative managerial functions. A shareholding company is a company that employs at least five workers. The condition of acceptance onto the PME and PMI in the general system is fixed at a minimum of the equivalent of US\$10.000 and at a maximum of an equivalent of US\$200.000.

Special advantages and exemptions granted to SMEs and SMLs are specified in the Investment Code (Article 19 – 22) and are:

“Article 20: With the exception of administrative tax, PME and PMI which realise a programme of investment under the conditions stated in article 2, paragraph “h” above, benefit from total exemption from fees/rights and taxes at importation, for machinery and material, even second hand tools, spare parts not exceeding 10% of the CIF value of the said equipment, as well as for industrial inputs necessary for the realisation of the approved investment.

Article 21: The PME and PMI admitted into the general system of the code are authorised on the one hand to deduct from their profit amounts spent on the training and upgrading of the enterprise manager and his personnel, on protection and conservation of nature and on the other hand to calculate their repayments on a sliding scale of charges.

Article 22: PME and PMI also benefit from exemptions on fees on constitution act for companies or cooperatives and on registration fees into the New Commerce register.”