

ALGERIA'S MOVE TOWARD RELAXING CERTAIN FOREIGN INVESTMENTS RESTRICTIONS

In a response to the need to boost foreign investments in Algeria, the Supplemental Finance Law for 2020 (the "**Supplemental 2020 Finance Law**"), promulgated on 4 June 2020, brings significant changes to the rules applying to foreign investments in Algeria by relaxing two major restrictions: (1) the 49/51 rule and (2) the State's pre-emption right for transfer of shares by or to foreign investors. Additionally, the Supplemental 2020 Finance Law introduces the right to use international financing.

RELAXING OF THE 49/51 RULE

Since 2009, foreign investments could only be made within the framework of a partnership in which one or more national shareholders that are resident in Algeria hold a minimum of 51% of the share capital of the investment vehicle or company which had to be incorporated in Algeria (the "**49/51 Rule**"). The 49/51 Rule was perceived as a way to limit the repatriation of profits and transfer of monies outside Algeria in the context of the international economic and financial crisis of 2008.

A decade later, in the face of the significant curtailment of foreign investments, the Algerian authorities have decided to remove the 49/51 Rule for foreign investments in non-strategic sectors.

The Supplemental 2020 Finance Law¹ provides that the 49/51 Rule shall now apply only (i) to activities relating to the purchase and resale of products and (ii) to certain strategic sectors as follows:

- the exploitation of the national mining domain and any underground or surface resources relating to extraction activities, except non-mineral quarries;
- the upstream energy sector and any activity governed by the law on hydrocarbons, and the exploitation of the transport and distribution networks of electricity via cable and gas or liquid hydrocarbons via overhead or underground pipelines;

Key issues

- The 49/51 rule only applies to strategic industries
- List of strategic industries unveiled
- The Government's pre-emption right is replaced by a prior Government approval for transfers of shares in Algerian companies operating in the above-listed strategic sectors only
- Lifting of certain restrictions on offshore financing of foreign investments

¹ A first step towards the easing of the 49/51 Rule was made by the 2020 Finance Law. The Supplemental 2020 Finance Law replaces the provisions initially contained in the 2020 Finance Law, which were awaiting implementing regulations.

- any industries in relation to or tied to military industries under the authority of the Ministry of National Defence;
- railroad lines, ports and airports; and
- the pharmaceutical industries, except for investments related to the manufacturing of innovative essential products, with strong value-added, requiring complex and protected technology and which are destined for the local market and the export.

Importantly, the Supplemental 2020 Finance Law explicitly states that all other sectors are open to foreign investments without any obligation to partner with a national shareholder.

Further implementing regulations are expected to clarify the precise scope of the strategic sectors listed above.

REMOVAL OF THE STATE PRE-EMPTION RIGHT

Since 2009, the State and State-owned enterprises (*entreprises publiques économiques*) benefited from a pre-emption right with respect to all transfers of shares made by and/or to foreign shareholders. A decree was expected to implement this provision. However, such decree was never published, leaving an uncertain framework governing exit strategies, which discouraged many foreign investors from entering the Algerian market.

The Supplemental 2020 Finance Law replaces such pre-emption right by a prior approval from the Algerian Government on any transfer, by foreign entities to other foreign entities, of shares of an Algerian company if such Algerian company is operating in a strategic sector listed above. Implementing regulations are awaited to set out the modalities of this prior approval.

As a result of these measures, foreign investors are now free to transfer their shares in Algerian companies that do not operate in a strategic sector.²

OPENING OF FOREIGN FINANCINGS

Until the Supplemental 2020 Finance Law, only domestic financing was permitted, except in some particular cases. As a result of such requirement and given liquidity shortages on the local market, structuring financings for projects and other types of investments in Algeria was difficult.

The 2020 Finance Law, adopted on 11 December 2020, authorises the financing by international development finance institutions of strategic projects deemed to be key to the national economy, subject to a prior review by the relevant authorities. The modalities of this provision are to be further detailed in implementing regulations.

Additionally, the Supplemental 2020 Finance Law has also introduced the right for foreign investors to finance their investments in Algeria with facilities provided by foreign lenders.

² Foreign exchange control rules shall however continue to apply.

GOING FORWARD

Overall, the 2020 Finance Law and the Supplemental 2020 Finance Law make significant headway toward encouraging foreign investment in Algeria. Boosting foreign investments, particularly in the current uncertain economic environment, is a major concern for Algeria.

It is however essential that the Government effectively implement this new foreign investment regime by swiftly publishing all necessary implementing regulations so as to ensure that the provisions of the 2020 Finance Law and the Supplemental 2020 Finance Law become fully effective.

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