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A Legal Guide for Business Investment and Expansion

TUNISIA

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FIRM PROFILE: ZAANOUNI LAW FIRM

Established in 1970 by Taoufik Zaanouni, Zaanouni Law Firm (ZLF) has evolved to become one of the leading commercial law firms in Tunisia. This law firm has acted in many important commercial, property, touristic, industrial, financial and shipping transactions for over 30 years of its professional activity, establishing important international relations and acquiring an unparalleled investment expertise both in relation to Tunisian clients in the international market as well as to foreign clients in Tunisia.

The firm also represents many national and multinational corporations in business sectors such as tourism, manufacturing, shipping, air transportation and services. Each attorney in the firm is committed to continually developing a solid legal expertise, and together they constitute a law firm that has the ability to provide the highest quality representation in all legal areas.

Since its establishment, ZLF has demonstrated its ability and prestige through being recognised within and outside of the Tunisian borders as an official member of the International Organisation "MERITAS" (which has over 170 firms located in more than 60 countries and encompassing 5700 lawyers).

ZLF is a successful law firm that has grown and developed even further since 2010 when it joined the New York State Bar Association, "NYSBA", the oldest and largest voluntary state bar organisation in the U.S., as a Tunisian Chapter Chair.

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1. What role does the government of Tunisia play in approving and regulating foreign direct investment?

The Tunisian government places a priority on attracting foreign direct investment. The Tunisian government encourages export-oriented foreign direct investment in key industrial sectors such as electronics, aerospace, aeronautics, automotive parts and textile/apparel manufacturing. To minimize any possible negative impact on domestic competitors and employment, the Tunisian government screens foreign investment that targets the domestic market.

In the spring of 2015, the government of Tunisia began consultations with various regional and national stakeholders to establish an inclusive and sustainable economic and social development model: the 2016-2020 Development Plan is the outcome of this process. The Development Plan is based on five pillars:

- Good governance, public administration reforms and anti-corruption measures
- Transition from a low-cost country to an economic hub
- Human development and social inclusion
- Fulfilment of regional ambitions
- The Green Economy, a pillar of sustainable development

The 2016-2020 Development Plan launched in November 2016 has been designed to enable the country to achieve an annual growth rate of over 4% by 2020.

To achieve the objectives of the Development Plan, the government of Tunisia is implementing numerous structural reforms that will result in more efficiency and promote private investment.

2. Provide advice on best entry strategies to employ in Tunisia and common corporate structures used.

The current investment code divides potential investments into two categories:

- "Offshore" investment is defined as entities where foreign capital accounts for at least 66% of equity, and at least 70% of production is destined for the export market. Some exceptions to these percentages exist for the agriculture Sector.
- "Onshore" investment caps foreign equity participation at a maximum of 49% in most nonindustrial projects. In certain cases subject to government approval, "Onshore" industrial investment may attain 100% foreign equity.

For investments in manufacturing, agriculture, agribusiness, public sector infrastructure, and certain services, only a simple declaration of "intent to invest" may be required, depending on the project. Proposed investment in other sectors can necessitate various Tunisian government authorizations

3. How does the Tunisian government regulate commercial joint ventures between foreign investors and local firms?

Foreign investors can collaborate with Tunisian partners to conduct projects and business, by entering into partnership agreements which are regulated by Tunisian contract law and commercial corporate law. However, in some sectors, permission of the Higher Investment Commission is required when foreign investors are planning to exceed 50% of the voting rights in such companies.

4. How does the Tunisian government regulate proposed activities by foreign investors and are there any areas of the economy where they are prohibited (e.g., natural resources, energy, telecommunications or real estate)?

Foreign ownership of agricultural land would likely remain prohibited. Tunisian government authorization could remain difficult to obtain for "Onshore" companies outside the services and tourism sectors, especially if the foreign capital shares exceed 50%.

However, land can be secured through long-term (up to 40 year) leases, subject to renewal at any time. Some high priority projects may obtain long lease terms up to 99 years. Tunisian government investment promotion authorities have established regulations that are more favourable to foreign direct investment.

Foreign direct investment in state monopolies (power generation, water, postal services) can be carried out following completion of a concession agreement. With few exceptions, domestic trading is carried out only by a company set up under Tunisian law, where both the majority of share capital and management are Tunisian.

5. How do labour statutes regulate the treatment of local employees and expatriate workers?

The main legislative text governing employment relationships in Tunisia is the Labour Code which was enacted in 1966 and has been amended on several occasions. The Labour Code applies to private, governmental, religious and non-religious employers in the industrial, trade and agricultural sectors. It also covers the liberal professions, handicraft enterprises, co-operatives, civil companies (companies that are considered to be non-commercial under Tunisian law, such as mutual funds), unions and associations. The contract of employment may be concluded for Fixed Term or Undetermined Term.

Foreigners wishing to work in Tunisia must sign a labour contract and also be in possession of a resident permit stating "autorisé à exercer un travail salarié en Tunisie".

Permanent residents who were born and who are living permanently in Tunisia are exempt from the labour contract requirement. However, they must be in possession of a resident permit stating " autorisé à occuper un emploi salarié en Tunisie".

Foreign employees are entitled to the same rights as locals. Therefore, they are compelled to abide by the same obligations as local employees.

6. Capital availability and access considerations in Tunisia – any major capital, infrastructure or labour constraints to be aware of and strategies to mitigate?

In January 2011, Tunisians took to the streets to protest the existing 23-year-old regime. Short-term risks have emerged since the revolution, primarily in the form of frequent strikes and social unrest due to the unresolved economic demands of the population, and elevated macroeconomic fragility. These risks could become binding constraints if they are not effectively addressed.

7. What types of taxes, duties, and levies should a foreign investment in Tanzania expect to encounter?

See chart on Page X for schedule of taxes, duties and levies as well as incentives[1].

8. What are the main IP law provisions likely to be most relevant to inbound investors and/or foreign imports and their distributors (e.g. trademark protection, licensing, other)?

Tunisia is a signatory of the Paris Convention for the Protection of Industrial Property and the Paris Convention Regarding Trademarks, as revised in The Hague, London and Stockholm. Tunisia is a member of the World Intellectual Property Organization and is a signatory of the UNCTAD agreement on the protection of patent and trademarks. Tunisia has withdrawn from the Madrid Agreement regarding trademarks.

Intellectual property is protected by the provision of domestic Tunisian laws.

Tunisian legislation covers all fields of intellectual property: industrial property (patents, trademarks, and service marks, industrial models and designs, layout designs of integrated circuits; new plant varieties; appellation of origin and geographic indications; literary and artistic property.

The fight against counterfeiting is governed by Tunisian legislation on intellectual property, specifically Law No. 2001-36 of 17 April 2001 on the protection of the trademarks amended by Law No.2007-50 of 23 July 2007.

The National Counterfeit Control Board was created by Decree No. 2009-418 of 16 February 2009. It may take civil, penal and administrative proceedings against any person who violates intellectual property rights. The owner of the intellectual property has a private monopoly over its exploitation and counterfeiting is punished.

The agency responsible for patents and trademarks is the National Institute for Standardization and Industrial Property (INNORPI-Institut National de la Normalisation et de la Propriété industrielle). Copyright protection is the responsibility of the Tunisian Copyright Intellectual Property (OTPDA Organisme Tunisien de Protection des Droit d'auteur)

9. If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign investors?

The local courts cannot offer foreign investors a more beneficial forum than international arbitration for dispute resolution.

The Tunisian People's Representatives Assembly (PRA) has adopted a new investment incentive law. This is aimed primarily at promoting investment in Tunisia, including foreign investment, by supporting the freedom to invest and by consolidating the protections offered to investors especially in the regulation of the commercial disputes.

Commercial disputes involving foreign companies rarely take place. In cases where disputes arise, foreign companies have generally been successful in seeking redress through the local judicial system. However, it is advised that all commercial contracts contain an arbitration clause or an arbitration agreement detailing the handling of disputes and the applicable jurisdictions.

Tunisia is a member of the International Centre for Settlement of Investment Disputes (ICSID) and is a signatory to the New York Convention 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.

10. What laws and business practices are peculiar to Tunisia? advancement of co-operatives.

The new Investment Law adopted on 30 September 2016 was entered into on 1January 2017, and it repealed and replaced the existing Tunisian investment incentive code ("Code d'Incitations aux Investissements" – the "Former Investment Code") enacted by law n°93-120 dated 27 December 1993. This text, long awaited by economic operators, has been aligned with the national objectives of the 2016/2020 five-year development plan, namely the transition from a low-cost economy to an economic hub, regional development, job creation and sustainable development.

This new law includes several incentives for Tunisian and foreign investors, including tax cuts and the implementation of infrastructure projects, to encourage foreign investment that has significantly decreased.

According to traders, the investment law is one of the determining factors in the investment decision together with political stability, security and efficiency of the administration.

11. What are the regulations, protocol, and practicalities around public procurements and financing in Tunisia?

Tunisia is engaged in extensive legal, institutional and organizational reform of its procurement framework to make the procurement system fit for purpose, transparent, accountable and less prone to corruption, fraud and mismanagement. Tunisia has become the latest country to join the Open Government Partnership.

Public procurement in Tunisia is governed by:

- Decree 2014-1039 of 13 March 2014 regulating public procurement.
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- Law no. 91-64 of 29 July 1991 on competition and prices as amended in 2003 and 2005.
- Government Decree No. 2016-676 of 13 June 2016 laying down the conditions and procedures for the award of contracts by direct negotiation with micro-enterprises for the performance of services and works under the national incentive programs for Higher Education.
- Circular N ° 16 for the year 2015 of 03 June 2015: Procedures for the application of penalties for delay in the field of public procurement, deadlines for their withdrawal and procedures for returning securities.

- Order of the Head of Government of 28 January 2015 concerning the arrangements for the information register.
- Order of the Minister of Economy and Finance of 1 August 2014 setting out the models of commitment of the personal and solidary guarantees required in the context of public procurement

12. What kind of actions should investors take to avoid corrupt practices in Tunisia?

Tunisian and foreign businesses with regional experience indicate that corruption exists in Tunisia but is not as pervasive as that found in neighboring countries. The fight against corruption remains a priority for the Tunisian government, which has already adopted several measures to increase transparency.

Tunisia's penal code devotes 11 articles to defining and classifying corruption and assigning corresponding penalties (including fines and imprisonment). Several other regulations also address broader concepts of corruption.

The Tunisian government decided on 14 November 2011 to establish a permanent anti-corruption body which it called the National Anti-Corruption Commission. Chapter 130 of the 2014 Tunisia Constitution mentioned the constitutionality of the commission and defined its functions as "monitoring cases of corruption within the public and private sectors. It carries out investigations into these cases and refers them to the competent authorities. … [It] contributes to policies of good governance, and preventing and fighting corruption. It is responsible for following up on the implementation and dissemination of these policies, … for the consolidation of principles of transparency, integrity and accountability."

In November 2016 the Tunisian Parliament adopted an organic law setting up the Economic and Financial Judiciary Unit (Pole). The establishment of the Unit is considered a major step in the fight against corruption and economic crime.

Below is the schedule of taxes, duties and levies as well as incentives[1]:

TAXES, DUTIES, AND LEVIES	PRIORITY REGIONAL DEVELOPMENT AREA	2ND GROUP REGIONAL DEVELOPMENT AREA	1ST GROUP DEVELOPMENT AREA
Deduction of business revenue or profit	100 % during the first 10 years and no more than 50 % over the course of the next 10 years	100 % during the first 10 years of activity	100 % during the first 5 years of activity
Contribution to the Fund for the Promotion of Social Housing (FOPROLOS)	Exemption for an unlimited period of time	Exemption for an unlimited period of time	No advantage
Professional Training Tax (TFP)	Exemption for an unlimited period of time	Exemption for an unlimited period of time	No advantage
Coverage of employer's contribution to social security legal scheme	100 % during the first 10 years of activity	100 % during 5 years and decreasing for the following 5 years (80 % - 65 % - 50 % - 35 % - 20 %)	100 % during 5 years
Financial benefits in the form of subsidies, including revolving capital capped at 10 % of project cost	25 % max 1.5 M TND	15 % max 1 M TND	8 % max 500 000 TND
Coverage of infrastructure costs	85 %	75 %	25 %

[1] Investors have also been provided by plenty of incentives to take their money to Tunisia.

Since 2008, there are three regional development areas for investment in industry, handicrafts and a number of service activities:

- First group regional development area,
- Second group regional development area
- Priority regional development area.

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