

NEW HEBRIDES CONDOMINIUM

JOINT REGULATION

No. 2 of 1975

TO ESTABLISH an Investment Code.

MADE by the Resident Commissioners under the provisions of Articles 2:2 and 7 of the Anglo-French Protocol of 1914.

PART I - GENERAL PROVISIONS

Investment Code, Purposes

1. For the purpose of encouraging economic development, social progress and the creation of new employment in the New Hebrides Condominium, all business undertakings the establishment or enlargement or the investment programmes of which are and will be consistent with the aims of modernisation and joint development planning, may benefit by the system of tax exemption and relief prescribed by this Investment Code.

2. The provisions of this Code are applicable upon the request of the undertaking and with the joint approval of the Resident Commissioners -

(i) to any new undertaking established between the 1st day of January, 1975 and the 1st day of January, 1980;

(ii) to any existing undertaking the investment programme of which is presented for approval during the period aforesaid:

Provided that, in order to benefit from the provisions of this Code, the undertaking concerned must come within one of the following categories -

(a) fishing (sea or river) companies constituting an investment of not less than 5,000,000 FNH or the equivalent thereof in Australian dollars at the official rate of exchange;

(b) undertakings of which the object is the preparation and processing of vegetable, animal or fish (sea or river) products and -

on the island of Efate, constituting an investment of not less than 15,000,000 FNH or the equivalent thereof in Australian dollars at the official rate of exchange and providing new employment for not fewer than ten local workers;

on the island of Espiritu Santo, constituting an investment of not less than 10,000,000 FNH or the equivalent thereof in Australian dollars at the official rate of exchange and providing new employment for not fewer than ten local workers;

on all other islands, constituting an investment of not less than 5,000,000 FNH or the equivalent thereof in Australian dollars at the official rate of exchange and providing new employment for not fewer than five local workers;

(c) hotel establishments the creation of which has been authorised by the Resident Commissioners; subject to any special exemption, such establishments shall employ local staff in the proportions specified in the authorisation given by the Resident Commissioners;

(d) establishments the principal activity of which is the supplying of services to tourists;

(e) undertakings the purpose of which is the transport of passenger or goods between the islands of the Condominium, constituting an investment of not less than 5,000,000 FNH or the equivalent thereof in Australian dollars at the official rate of exchange;

(f) until the 1st day of January, 1977, public passenger transport undertakings using vehicles with more than 18 seats in the urban and peri-urban areas of Vila and Luganville;

(g) industrial undertakings -

on the islands of Efate and Santo, constituting an investment of not less than 15,000,000 FNH or the equivalent thereof in Australian dollars at the official rate of exchange and providing new employment for not fewer than ten local workers;

on other islands, constituting an investment of not less than 10,000,000 FNH or the equivalent thereof in Australian dollars at the official rate of exchange and providing new employment for not fewer than five local workers:

Provided that in exceptional cases the Resident Commissioners may reduce the minimum level of investment required by any of the foregoing provisions of this section.

Approval of  
Resident  
Commissioners  
required

3. The application of the provisions of this Code for the benefit of undertakings requesting the same, shall be subject to approval by the Resident Commissioners -

(i) with respect to new undertakings, before they are established, of the purpose and importance thereof, the investment programme proposed, the siting of installations, the amount and nature of employment available to inhabitants of the Condominium, the profitability of the business and generally, to the significance it may have in the development of the local economy;

(ii) with respect to undertakings already carrying on business in the territory, of the purpose and importance thereof, the programme of new investment proposed, and, before this is put into effect, the siting of new installations, the amount and nature of new employment which may be available to inhabitants of the Condominium, the profitability of the new investment and its significance in the development of the local economy.

Meaning of investment

4. For the purposes of this Code, investment includes expenditure on immovable property (land and buildings), expenditure on infrastructure, equipment, furniture, materials or tools necessary for carrying on business and miscellaneous costs (architects' fees, survey costs, legal documents) and shall exclude all other expenditure.

Meaning of new employment

5. For the purpose of this Code, new employment must comprise permanent, fulltime wage-earning posts.

Effect of contravention of certain laws

6. Any contravention of the laws and regulations in force in the Condominium concerning internal trade and prices shall result in the withdrawal of approval under this Code in accordance with the provisions of section 14.

PART II - PROCEDURE

Procedure for applications

7. (1) Applications for approval shall be made in the form prescribed in the Schedule and such forms shall be available to interested persons at the offices of the Investment Commission.

(2) In support of an application, the applicant shall supply full information concerning the purpose and activities of the undertaking, the nature, amount and programme of the investment scheme, the amount of employment created and the qualifications necessary, together with particulars of such employment to be available to inhabitants of the New Hebrides Condominium.

(3) In the case of undertakings already existing in the Condominium the application must be accompanied by a certificate from the relevant immigration authority establishing that the residential status of the applicant is in order.

(4) Applications for approval shall be filed at the offices of the Investment Commission which shall acknowledge receipt thereof and ensure that the application is transmitted to the Resident Commissioners and the Head of the Condominium Department responsible for the sphere of business activity affected.

Reference of applications to Commission

8. Applications for approval shall be brought before the Commission by the head of the department responsible for the sphere of business activity affected or by the co-Chairman of the nationality of the applicant in the absence of such head of department.

Time for filing applications

9. Applications for fiscal exemption shall be filed prior to the incorporation of the new company or, in the case of an undertaking already carrying on business in the territory, prior to any increase of capital, the initiation of any new activity or the extension of any existing activity.

Examination of applications by Commission

10. (1) The Commission shall examine the application for approval according to the conditions laid down by this Code and shall recommend full or partial approval or rejection thereof to the Resident Commissioners.

(2) When the opinion of the Commission is favourable, it shall recommend the tax advantages appropriate to the activity of the company and the nature and extent of the investment programme presented and shall if necessary propose any special conditions to be imposed thereon.

Decision of Resident Commissioners upon applications

11. (1) Within one clear week following the meeting at which the Commission shall decide upon its recommendations, the office of the Commission shall transmit the complete file on the application to the Resident Commissioners who shall decide upon the ruling to be given on the application for approval and the recommendations of the Commission.

(2) The Resident Commissioners shall make their decision within one month from the date upon which they receive the file on the application.

(3) The Resident Commissioners shall jointly communicate their decision in writing to the undertaking concerned. A copy thereof shall be sent to the Condominium Treasurer.

Commission to verify investments, activities, etc.

12 (1) Throughout the period of any fiscal exemption granted the Commission shall ensure that the investments described in the approved programme are effected and that the activities of the undertakings benefiting thereby conform with the purpose which has been approved.

(2) For the purpose of subsection (1), the Commission may cause such inspections to be made of the benefiting companies and undertakings by the heads of financial and technical departments or by any qualified expert, as it may consider necessary.

(3) In the course of any such verification, any documents of an accounting or other nature must be produced at the request of such official.

(4) Refusal to submit to an inspection or to produce any document as aforesaid, when officially reported, may result in the withdrawal of approval. The undertaking concerned shall be requested to state the reasons for such failure.

Commission may recommend withdrawal of approval, etc.

13. The Commission may recommend the withdrawal of approval or the revision of the conditions of approval in any case of failure to carry out, whether wholly or partially, the investment programme or any obligation undertaken or of alteration of the purpose of the undertaking or company benefiting by the approval. The undertaking concerned shall be requested to state the reasons for such failure.

Effect of withdrawal of approval

14. The withdrawal of approval in whole or in part shall render the undertaking immediately liable to pay the duties and taxes from which it was exempted (or to forfeit the right of reimbursement of duties and taxes paid, as the case may be) without prejudice to the penalties provided under the appropriate regulations in force.

Constitution  
of Investment  
Commission

15. The Investment Commission responsible for the examination of applications for approval shall consist of the following -

(i) voting members

- a representative officer of each Residency (co-Chairmen);
- four members of Advisory Council, appointed by the Advisory Council (appointed members);
- the Condominium Treasurer;
- The Registrar of Land Titles;
- the President of the Chamber of Commerce.

(ii) advisory members

the head or heads of department responsible for the sphere of activity affected, who may attend only when a question within such sphere is on the agenda.

16. (1) At all sessions of the investment Commission the chairman shall be the Residency representative officer of the nationality of the applicant. In the case of an equal division of votes, the chairman shall have a casting vote. The Commission may receive the advice of any expert or other person whose opinion it may consider useful.

(2) The Commission shall meet when convened by the co-Chairmen. It shall be deemed to be validly constituted when seven voting members are present.

(3) The Commission shall appoint a Secretary who will be responsible for the preparation of the agenda and the minutes of the Commission.

PART III. - TAX EXEMPTION AND RELIEF

Nature of  
exemptions

17. Every undertaking which has been approved by the Resident Commissioners in accordance with the provisions of section 3 of this Code, may benefit by the following exemptions -

(a) total or partial exemption from payment of import duties on materials and equipment, (but excluding the current customs duty known as customs service tax and the general surcharge of one per centum) or alternatively, the periodic reimbursement of all or part of such duties levied by the Condominium Treasurer;

(b) total or partial exemption from added value tax on subdivisions of land;

(c) total or partial exemption from export duties for the first five years of production.

Undertaking to  
prove compliance  
with conditions

18. Such undertaking must prove, within the prescribed period, that the terms and conditions of the administrative decision granting approval have been observed, in default whereof the fiscal benefits may be forfeited, without prejudice to the penalties hereinafter provided in section 19.

Effect of  
failing to  
satisfy conditions  
etc. of approval

19. Any undertaking which has been approved as aforesaid but which has not satisfied the prescribed conditions, methods and periods for execution of the enterprise the subject of approval shall not later than three months from the date of withdrawal of approval pay, or forfeit the right to reimbursement of, as the case may be, the duties and taxes from which it was exempted, and shall in addition pay a penalty not exceeding 100% of such duties and taxes, as may be decided by the Resident Commissioners.

Effect of  
subsequent  
failure to  
conform with  
conditions of  
approval

20. (1) In any case where the purpose of the undertaking or the execution of its programme of activities shall at a later stage no longer conform with the conditions of the approval, such approval may be withdrawn or the conditions thereof amended. A new decision thereon shall be taken in accordance with the provisions of section 11 and shall come into effect from a date specified, or, if no date is specified, from the commencement of the financial year following the year in which it is made.

(2) Every undertaking must comply with the obligation to make any declaration and to supply any information or documents required by the Joint Administration and, when the approved activity constitutes a part only of its whole activities, to include in its annual statement of affairs the particulars concerning the approved activity, in default whereof the exemption granted may be withdrawn.

PART IV - MISCELLANEOUS PROVISIONS

Joint rules

21. (1) Joint rules of the Resident Commissioners shall where appropriate specify the conditions of application of this Code.

(2) All decisions to allow undertakings to benefit from the provisions of this Code and all withdrawals of such approval shall be published in the Condominium Gazette.

Citation and  
commencement

22. This Regulation may be cited as the Joint Investment Code Regulation No. 2 of 1975 and shall come into operation on the date of its publication in the Condominium Gazette.

SCHEDULE

(section 7(1) )

APPLICATION FOR APPROVAL

(to be subscribed for the purpose of the application of the Joint Investment Code Regulation No. 2 of 1975)

1 Approval requested

nature of activity:

exact description of advantages required:

2 Information about the undertaking

(a) name or business name, legal form:

(b) number of employer:

(c) addresses of different establishments:  
activities of the undertaking:

3 Reasons for the proposed operation and expected results

(a) reasons for the operation:

(b) expectations concerning -  
growth of production or sales:  
reduction of cost prices:  
export possibilities, etc.:

4 Period of carrying out operation (if to be carried out in stages, indicate scope of each stage):

5 Increases in number of staff (in case of carrying out by stages, indicates scope of each stage)

(a) local personnel:

(b) personnel brought in from overseas -  
description of each post:

latest date by which the post will be localised:

6 Staff training

Training plans for staff, by each category of occupation -

within the undertaking:

outside the undertaking:

7 Information on assets to be acquired or created

(a) name or business name, domicile or registered office of present owner (in case of acquisition):

(b) description of assets to be acquired\* or to be created -

nature of assets (land, factory, workshop, warehouse, building, etc.):

island, district in which the land to be acquired is situated:

areas of land:

area to be built upon:

floor area:

size of installations and plant: