



DIRECT INVESTMENT: DRAFT LAW
COMMENTS ON THE DRAFT LAW REGARDING THE PROMOTION OF
DIRECT INVESTMENT WITH A SIGNIFICANT IMPACT ON THE ECONOMY

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Abstract

The draft law regulates the legal regime of direct investment with a significant impact in economy, and, at the same time establishes the fiscal incentives applicable to the said investment, and as well the authorised institutions able to ensure the applicability of the measures for encouraging and promotion of such investment.

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1 Legal regime

According to this draft law, the direct investment with a significant impact on the economy mean those new investment of Romanian natural persons or legal entities of private law, consisting exclusively by in-cash capital in ROL or free convertible currency, which exceed the equivalent of 1 000 000 US-\$, carried out in different ways and terms, which contribute to the development and modernisation of the Romanian economic infrastructure, which will have a positive effect over the economy and also create new jobs.

Such an investment has to comply with the following conditions:

1. it has to be a new investment, meaning to be carried out after the approving and the entering into force of the law (it is debatable here if the law concerns only investment into newly-set up companies or includes investment undertaken also into already existing companies - having in mind the past legislation on such subject matter, it appears both such types of investment should benefit from this law);
2. shall be set up by Romanian natural persons and/or legal entities of private law;
3. to consist exclusively by a participation with in-cash capital in ROL or in a free convertible foreign currency;
4. to have a value which exceed the equivalent of 1 000 000 US-\$ (to be paid in within a maximum of 30 months);
5. to be carried out in any field of activity, excepting financial sector, banking, insurance-reinsurance, and any other specific fields regulated by special laws, by observing the following conditions:
 - not to infringe the environmental protection legislation ;
 - not to jeopardize the national security and defense interests of Romania;
 - not to violate the public order, health and decency.
6. to contribute to the development and modernisation of the economical infrastructure of Romania (this condition intends to envisage the regulator's intentions, especially the Romanian Government's aim to encourage the promotion of the long-term investment on the Romanian market);
7. to have positive effects on the economy;
8. to create new jobs.

The fulfillment of the above-mentioned conditions entitles the respective investor to benefit of a special treatment, consisting in specific fiscal incentives and legal guarantees.

2 Guarantees.

The guarantees refer, on one hand, to the direct investment regulated by this enactment, and on the other hand, to the foreign investors.

In relation to the direct investment, fulfilling the above-mentioned conditions, the regulator guarantees that:

1. these investment cannot be expropriated, save for public utility purpose (this is, however, regulated already be the Constitution of Romania);
2. the special legal regime regulated by this enactment shall be applicable to these investment during the entire period of their duration.

The foreign investors carrying out direct investment under the provisions of the draft law, are guaranteed to have the following rights:

1. the right to transfer abroad their profits, after paying all taxes and contributions provided for by the Romanian Law, in accordance with the Romanian hard currency regime regulations;
2. the right to transfer abroad the amounts resulting from sale of shares and other corporate securities or from liquidation of their investment, in accordance with the Romanian hard currency regime regulations;
3. the right to transfer abroad the amounts representing compensations paid upon expropriation for public utility purpose (nationalisation), in accordance with the Romanian hard currency regime regulations;
4. the right to benefit from any and all the rights provided by the bilateral agreements for mutual promotion and guaranteeing of investment executed by Romania with the investors' states of origin.

3 Fiscal Incentives.

The applicability of the fiscal incentives regime stipulated by this enactment determines the lawful waiver of any other incentives of which the investors are benefiting pursuant similar past legislation or are going to benefit. In other words, if the conditions for the application of the special incentive regime provide by this enactment are fulfilled, the potential beneficiary shall make its choice between this regime and any other incentives regime applicable.

The fiscal incentives stipulated by this enactment shall be applicable to the direct investment that fulfil the above-mentioned conditions (see point 1), and meet two supplementary conditions:

1. are effectively implemented in maximum 30 months from the date of their statistic registration with the Ministry of Developments and Evaluation (no other provisions on such registration are provided by the draft law; it is not even provided that methodological norms will be enacted in enforcement of this law; however, such norms could still be further on enacted);
2. the investor has explicitly made its choice for the application of the fiscal incentives regime regulated by this draft law.

In the above-mentioned terms, the investors will benefit from the following incentives:

1. Custom duties relief for imports of new installations, equipment, software products, manufactured with no more than 1 year before importing date, that were not used until that moment, if they are necessary for the carrying out of the investment;
2. VAT deferral for the new goods imported or purchased in Romania, until the starting of their operation;
3. 20% deduction of the carried out investment, calculated in the month when the respective investment has been effected;
4. Fiscal losses recovery from the taxable profit in the next 5 years;
5. The possibility of using the accelerated amortisation of assets.

The application of this special incentive regime is considered null and void if:

1. the companies benefiting of it are voluntarily liquidated in a period less than 10 years;
2. the goods acquired, for which the incentive regime has been applied, are sold to third parties in a period less than 2 years from their importing or acquisition.

If the application of the special incentive regime has been cancelled, then all the benefits and amounts that must have been paid if no incentive would have been applied, shall become due and must be reimbursed together with delay penalties, in accordance with the provisions of this draft law.