

LAW 85-108 OF DECEMBER 6, 1985

Promoting Financial Institutions and Banks Working Primarily with Nonresidents

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CHAPTER I

OPERATING REQUIREMENTS

ARTICLE 1. Legal entities established in the form of business corporations under Tunisian law as well as Tunisian branches of legal entities having their registered offices abroad may be authorized to engage in various financial and banking activities under the conditions laid down in this law.

ARTICLE 2. Legal entities having Tunisian legal status and Tunisian branches of foreign legal entities qualifying under these regulations shall be regarded as nonresidents for purposes of Tunisian exchange laws. They shall hereinafter be referred to as “nonresident institutions.”

ARTICLE 3. Nonresident institutions shall be licensed by the Minister of Finance; such licenses shall be issued after consultation with the National Credit Council pursuant to a report by the Central Bank of Tunisia, which is further responsible for notifying the interested party of the decision adopted in this regard.

The opening or closing of branches in Tunisia, or transfer of branches to Tunisia, by nonresident institutions shall require the joint authorization of the Ministry of Finance and Central Bank of Tunisia.

ARTICLE 4. Withdrawal of the license referred to in Article 3 of this law shall be pronounced by the Minister of Finance after consultation with the National Credit Council:

- Either pursuant to a request by the institution in question, to be submitted by the Central Bank of Tunisia;
- Or pursuant to a report from the Central Bank of Tunisia, when the institution in question no longer meets the criteria that were in effect at the time the license was granted, or if the institution is found to have committed a serious breach of the laws or regulations in force.

If the license is withdrawn, the nonresident institution in question shall cease its operations in the year following the date on which the decision was made to revoke the license. During that period, the institution shall confine its activities to those operations necessary to ensure its liquidation. A liquidation report shall be prepared by an accounting expert registered with the association of accounts and auditors of Tunisian companies and submitted for evaluation by the Ministry of Finance and the Central Bank of Tunisia. The report will indicate inter alia

whether the institution has settled its obligations, and whether, in the event of any outstanding liabilities, it has made due provision for the own resources necessary to ensure full repayment of its debts.

CHAPTER II

USE OF RESOURCES

Section 1 – Operations with nonresidents

ARTICLE 5. Nonresident institutions shall be free to:

- Collect all forms of resources belong to nonresidents;
- Extend all types of credit to nonresidents, particularly by acquiring equity holdings in nonresident enterprises and subscribing to bonds issued by such enterprises;
- Issue all kinds of guarantees, including bid bonds, surety bonds, and performance bonds to nonresident foreign firms that have been awarded public-sector or private-sector contracts in Tunisia;
- Transfer all foreign exchange funds, whether belonging to themselves or belonging to nonresidents.

In the conduct of these operations, nonresident institutions shall endeavor to preserve the creditworthiness of the Tunisian market, and more generally, to abide by international rules and practices.

ARTICLE 6. Under conditions specified by the Central Bank of Tunisia, nonresident institutions may engage in over-the-counter exchange operations in favor of their nonresident customers, and for this purpose such institutions may maintain dinar and foreign exchange cash balances that may be funded by debiting their external convertible dinar accounts opened on the books of local banks.

Section 2 – Operations with residents

ARTICLE 7. In accordance with regulations issued by the Central Bank of Tunisia, nonresident institutions shall be authorized to receive funds belonging to residents, irrespective of the type or maturity thereof, although the funds thus collected may not exceed:

- 1 - For each individual nonresident institution, the subscribed amount of its participating interests acquired in accordance with Article 8 below;

2 - For all nonresident institutions taken together, a ceiling of 1.5 percent of the deposits of deposit money banks.

In computing adherence to these limits, account shall also be taken of funds originating from:

- The proceeds of subscriptions in the capital of companies;
- Early payments made in anticipation of the settlement of maturities on loans contracted vis-à-vis the institutions referred to above;
- Early payments made in anticipation of the unwinding of foreign trade operations carried out in accordance with Article 9 of this law.

Nonresident institutions shall at all times have access to foreign exchange resources sufficient to meet demand for withdrawals of funds on the part of their depositors. Under no circumstances may they have recourse to refinancing or other facilities of the Central Bank of Tunisia, which may take any action necessary to safeguard the interests of depositors.

ARTICLE 8. Nonresident institutions are permitted to engage in the following operations:

- They may use their own foreign exchange funds to invest in resident firms whose financing plan allows for foreign investment. The financing plan must be approved by the Investment Promotion Agency [*Agence de Promotion des Investissements*], the Agricultural Investment Promotion Agency [*Agence de Promotion des Investissements Agricoles*], and the subcommittee on tourism licensing or any other public entity authorized for this purpose.
- They may use foreign exchange resources to grant the medium-term or long-term financing envisaged in the financing plan approved by the Investment Promotion Agency, the Agricultural Investment Promotion Agency, and the subcommittee on tourism licensing or any other public entity authorized for this purpose.
- They may use foreign exchange resources to finance import or export operations initiated by residents.
- They may use the dinar resources referred to in Article 7 to finance productive operations conducted in Tunisia by resident firms in the sectors of agriculture, industry, crafts, tourism, or exports.

The terms of the financing arrangements mentioned in this article must be in compliance with pertinent instructions issued by the Central Bank of Tunisia.

ARTICLE 9. On behalf of the customers they finance, nonresident institutions may engage in related foreign trade operations, inter alia including the domiciliation of foreign trade instruments and the opening of documentary credits.

ARTICLE 10. By way of derogation from exchange laws and regulations, residents shall be authorized to engage in the operations envisaged in Articles 7, 8, and 9 of this law.

CHAPTER III

EXCHANGE ARRANGEMENTS

ARTICLE 11. Nonresident institutions are not subject to any obligation to repatriate their foreign earnings or income, and they shall enjoy full discretion with respect to their exchange operations with nonresidents.

ARTICLE 12. Income earned by nonresident institutions from operations engaged in with residents and financed against said institutions' dinar resources may be transferred following authorization by the Central Bank of Tunisia.

ARTICLE 13. Nonresident institutions must use foreign convertible dinar accounts to effect all their payments, such as payments for the acquisition of goods and services in Tunisia, taxes and duties, and dividends distributed to resident shareholders.

To meet their current administration and management costs in Tunisia, nonresident institutions are authorized to maintain dinar cash balances, which must be funded by debiting their external convertible dinar accounts; however, these institutions may make such payments by means of their dinar earnings in proportion to the turnover recorded with residents.

ARTICLE 14. Nonresident institutions shall have the status of authorized intermediaries for purposes of the foreign exchange and foreign trade operations that they engage in with residents under Article 9 of this law, and in that connection they shall be subject to the same obligations as resident authorized intermediaries.

CHAPTER IV

TAX REGIME

ARTICLE 15. Nonresident institutions shall qualify for the fixed-rate registration of their instrument of incorporation or of instruments implementing or recording increases in their authorized capital, any changes in their charter, mergers, or contributions.

Section 1 – Operations with residents

ARTICLE 16. Operations engaged in with residents, as well as the income and profit which they generate, are subject to the tax regime governed by ordinary law.

To determine the profits liable for the profits tax, charges shall be allocated in proportion to the turnover recorded with residents and in proportion to the turnover recorded with nonresidents.

Section 2 - Operations with nonresidents

ARTICLE 17. Nonresident institutions shall be exempt from profits tax and from any other equivalent tax or duty.

Nonresident institutions are further eligible for:

- 1 - The fixed-rate registration of any legal instruments needed to carry out their operations with nonresidents, except in respect of title deeds on real estate purchases in Tunisia.
- 2 - Exemption from any tax on investment income in respect of profits generated by the entire range of such institutions' activities, when such income is distributed to the nonresident holders of partnership shares or registered shares.
- 3 - Exemption from any tax or duty levied on interest earned on any foreign exchange deposit made on their books by individuals or legal entities, or any foreign exchange borrowing which they may make.
- 4 - [Identical with 2 above].
- 5- Exemption from any tax or duty levied on the remuneration, attendance fees, or directors' fees paid to nonresident board members.
- 6 - Exemption from all local taxes and duties.
- 7 - Exemption from the special solidarity tax.

However, nonresident institutions are liable for a standard tax assessment determined as follows:

- D 15,000 per year in favor of the general state budget;
- D 10,000 per year in favor of the budget of the local government of the location where the institution has its registered office;
- D 5,000 per year for each branch, bureau, or representative office, in favor of the budget of the local government of the location where that office is located.

These amounts shall be revised every three years on the basis of changes in the wholesale price index published by the National Statistical Institute.

Nonresident institutions in operation on the date of promulgation of this law shall not be liable for the above-mentioned standard tax for a period of 10 years reckoned as from the date on which they obtained their license.

CHAPTER V

CUSTOMS REGIME

ARTICLE 18. For purposes of acquiring the goods needed for their operations, including company cars, nonresident institutions shall be eligible for the following tax advantages:

- Conditional relief [*suspension*] from import duties and taxes, including the minimum legal tax when the minimum tariff is applicable, and except for the customs procedures tax, subject to customs declaration requirements;
- Conditional relief from turnover taxes when the goods are purchased locally from producers;
- Refund of customs duties and turnover taxes with respect to goods purchased locally from nonproducers.

The sale within Tunisia of goods that were purchased on a basis of conditional relief from duties and taxes shall be subject to foreign trade formalities as well as to payment of import duties and taxes in effect on the date of sale, calculated on the basis of their value on that date.

The sale within Tunisia of goods purchased locally from producers on a basis of conditional relief from turnover taxes shall be subject to said taxes, calculated on the basis of the price at which such goods are sold.

CHAPTER VI

REGIME GOVERNING FOREIGN PERSONNEL

ARTICLE 19. Nonresident institutions are free to hire management level staff members who are foreign nationals; however, the Ministry of Labor and the Central Bank of Tunisia must be informed of such recruitment.

ARTICLE 20. Prior to their recruitment, foreign nationals may opt for a social security regime other than the Tunisian regime; in such cases, the employee and employer shall not be liable to pay social security contributions in Tunisia.

ARTICLE 21. The tax and customs regulations governing the personnel referred to in Article 19 above shall be established as follows:

(a) Such personnel shall be eligible for exemption from taxes on wages and salaries, the personal state tax [*contribution personnelle de l'Etat*], and the special solidarity tax payable on wages and salaries paid to them by the nonresident institution with which they are associated, irrespective of the location where the payment is made.

However, such personnel shall be liable for a standard tax set at 20 percent of the total amount of their gross remuneration.

(b) Such personnel are allowed duty-free imports of their personal effects as well as one passenger car for each employee. The sale to a resident of the imported property or vehicle shall be subject to foreign trade formalities and shall require payment of the taxes and duties in effect on the date of sale, calculated on the basis of the value of the vehicle or items of property on that date.

CHAPTER VII

AUDITING

ARTICLE 22. Nonresident institutions may be audited by the Central Bank of Tunisia. This is designed to ensure that such institutions' activities are in conformity with the laws and regulations in force. To facilitate such auditing, nonresident institutions shall separately identify in their accounts the operations carried out with residents.

In addition, with respect to their operations involving residents, nonresident institutions shall comply with prevailing foreign trade and foreign exchange laws and regulations and shall also abide by Central Bank of Tunisia regulations governing the minimum and maximum ratios between particular types of assets, liabilities, and off-balance-sheet obligations, and more generally, they shall adhere to the rules establishing the requirements for engaging in banking.

ARTICLE 23. Any violation of the provisions of this law may entail the partial or total revocation of the license envisaged in Article 3 of this law, without prejudice to applicable penalties on grounds of violation of other legal provisions, specifically the provisions of foreign exchange laws.

CHAPTER VIII

GUARANTEES

ARTICLE 24. Nonresident institutions shall be covered by the arrangements for protecting and guaranteeing investments signed by the government of Tunisia:

- Bilateral agreements to protect investments entered into by the government of Tunisia and the government of the country of which the investor is a national;
- The convention pertaining to the establishment of an Arab investment guarantee agency, as ratified by Decree-Law 72-4 of October 17, 1972;
- The international convention on the settlement of investment disputes, between states and nationals of other states, as ratified by Law 66-33 of May 3, 1966;
- All such other international conventions as may come to be signed by the government of Tunisia.

CHAPTER IX

MISCELLANEOUS PROVISIONS

ARTICLE 25. Nonresident institutions may join the Professional Association of Banks of Tunisia.

ARTICLE 26. Nonresident institutions may not disclose secrets communicated to them by their customers or that have come to their attention specifically by virtue of their banking activities, except under the circumstances permitted by law and subject to the penalties provided by Article 254 of the Criminal Code.

ARTICLE 27. Nonresident institutions may, on a contractual basis, entrust any qualified person of their choice with the organization, verification, auditing, or review of their accounting records.

In the event that foreign national professionals are appointed for the purpose, said professionals shall not be subject to the provisions of Law 82-62 of June 30, 1982, setting forth regulations to govern the occupations of accounting expert and auditor, and establishing the association of corporate accountants and auditors of Tunisia.

The legal entities under Tunisian law referred to in Article 1 of this law shall be required to appoint one or several auditors.

In the event that just one auditor is appointed, said auditor shall be required to be a member, as auditor, of the association of corporate accountants and auditors of Tunisia.

In the event that a group of auditors is appointed, and by way of derogation from the provisions of Law 82-62 of June 30, 1982 referred to above and by way of derogation from the provisions of Articles 83 bis and 84 of the commercial code, such groups may include freely chosen members who are not Tunisian nationals. However, at least one member of this group must be member of the above-mentioned association as an auditor.

ARTICLE 28. Pursuant to a convention, the arrangements envisaged in this law may be applied in whole or in part to institutions licensed by the Minister of Finance in consultation with the Central Bank of Tunisia, and engaging in one of the activities indicated below:

- Providing insurance against risks other than those risks that are required to be covered in Tunisia under the terms of prevailing law, as well as reinsurance against those particular risks;
- Acquisition of investment holdings, and portfolio management;
- The representation in Tunisia of firms, chiefly financial firms, headquartered abroad on condition that the institution's status as representative earns it no remuneration, whether direct or indirect, and provided that the associated expenditures are paid for in full out of transfers of foreign exchange from foreign sources;
- Any other financial activity comparable to the activities of those institutions covered by this law, such as leasing, factoring, and the management of credit cards and traveler's checks.

However, for purposes of their operations with nonresidents, those firms engaged in representation, acquisition of investment holdings, or portfolio management shall not be liable for the standard tax assessment referred to in Article 17 of this law. Furthermore, pursuant to the procedure envisaged in the following paragraph, holding companies and portfolio management companies shall qualify for the advantages accorded by Law 59-29 of February 28, 1959 governing the establishment of investment companies.

The convention referred to in the first paragraph of this article shall be jointly signed by the Minister of Finance and the institution in question, and shall be approved by decree in consultation with the national investment commission referred to in Article 5 of Law 69-35 of June 26, 1969 establishing the investment code. This convention will inter alia determine the sphere of activity of this entity, as well as the terms and conditions for granting eligibility under the regime envisaged in this law.

ARTICLE 29. The provisions of Law 76-63 of July 12, 1976 to promote financial and banking institutions working primarily with nonresidents are hereby abolished.

This law shall be published in the *Journal Officiel* of the Republic of Tunisia, and shall be enforced as the law of the land.