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Law on the Encouragement of Investment in Palestine No. (28) of 1998

Palestine

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**LAW ON THE ENCOURAGEMENT OF INVESTMENT IN
PALESTINE
NO. (28) OF 1998***

The President of the Palestine Liberation Organization, and
The President of the Palestinian National Authority,
Reconsidering Law No. (6) of 1995 on the Encouragement of Investment;

Considering the Proposed Law submitted by the Council of Ministers;

and the adoption by the Palestinian Legislative Council,

We promulgate this Law.

**CHAPTER ONE
DEFINITIONS AND GENERAL PROVISIONS**

ARTICLE (1)

Unless the context otherwise requires, this Law on the Encouragement of Investment in Palestine defines these terms as follows:

“National Authority” shall be defined as the Palestinian National Authority.

“Council of Ministers” shall be defined as the Council of Ministers of the National Authority.

“Ministry” shall be defined as the Ministry of Economy and Trade.

“Minister” shall be defined as the Minister of Economy and Trade

“Agency” shall be defined as the Palestinian Investment Promotion Agency.

“Board of Directors” shall be defined the Agency’s Board of Directors.

“Director General” shall mean the Agency’s Director General.

“Confidential Information” shall be defined as all information, of whatever kind, received by the Agency from any Investor in connection with any interaction between the Investor and the Agency pursuant to the operation of the Investment Law, excluding information about the Inves-

* (Revised) Official English Translation. Translated by the Palestinian National Authority Ministry of Economy and Trade.

tor that the Investor has already publicly disclosed voluntarily, under the Investment Law, or under other Palestinian Laws.

“Enterprise” shall be defined as any entity constituted and properly registered under this Law for profit, including any company, branch, partnership, sole proprietorship, joint venture, or other association.

“Investment” shall be defined as actual monetary investment of capital (fixed capital assets) by an Investor in an Enterprise, whether a newly created or an existing Enterprise.

“Confirmation of Investment” shall be defined as the document issued by the Agency to an Investor in accordance with the provisions of this Law.

“Incentive” shall be defined as the exemptions and promotions granted in accordance with the provisions of this Law.

“Investment Law” shall mean the Law on the Encouragement of Investment in Palestine.

“Investor” shall be defined as any natural or legal person, domestic or foreign, who seeks to invest in Palestine or who has invested in Palestine under the Investment Law or prior applicable Laws.

“Registry of Investments” shall be defined as the public registry created and maintained by the Agency that lists the Investments confirmed by the Agency.

“Incentives Committee” shall be defined as the committee of the Board of Directors that reviews and evaluates Investor requests for Confirmation of Investment pursuant to this Law.

ARTICLE (2)

This Law shall be known as the Law on the Encouragement of Investment in Palestine.

ARTICLE (3)

The Investment Law aims to achieve the development objectives and priorities in Palestine by increasing Investment through the following means:

(A) Establish the Agency, an institution responsible for encouraging and promoting Investment in Palestine.

(B) Provide guarantees to all Investors and Investments operating in Palestine;

(C) Grant the Incentives to Investors.

(D) Provide the appropriate environment for encouraging Investment in Palestine.

ARTICLE (4)

Any Investor may invest in any sector of the Palestinian economy, provided, however, that the Investment is not prohibited by specific Laws.

ARTICLE (5)

Enterprises in all sectors shall enjoy the exemptions and Incentives provided for in this Law except Investment in the sectors and areas listed below, which must obtain pre-approval from the Council of Ministers before becoming eligible:

1. manufacturing and distribution of weapons, ammunition, or their parts;
2. aviation industries, including airports;
3. electrical power generation and distribution;
4. processing of petroleum and its derivatives;
5. reprocessing of refuse and solid waste;
6. communications and telecommunication services; and
7. radio and television.

ARTICLE (6)

All Investments in Palestine must be legally established and registered in accordance with the provisions of this Law.

**CHAPTER TWO
GENERAL GUARANTEES****ARTICLE (7)**

(A) No Investor will be discriminated against on any basis whatsoever in the application of the Incentives provided for under this Law.

(B) The National Authority may grant preferential treatment to Investors on the basis of nationality under bilateral or multilateral trade and/or Investment agreements with other states that the National Authority may enter into in the future.

ARTICLE (8)

The National Authority prohibits the nationalization of any Investment in Palestine and shall not expropriate any Investment except by operation of the Law.

ARTICLE (9)

There shall be no expropriation of an Investment or part thereof save and except in exceptional cases for a public purpose, with due process of Law accorded to the Investor subject to an expropriation, who shall be compensated the fair market value and for losses suffered because of such expropriation.

ARTICLE (10)

Notwithstanding the instances when the Agency may cancel the Confirmation of Investment in accordance with the provisions of this Law, no other administration may cancel the permits issued in relation to real property, as licensed, for the purposes of enjoying the benefits by the Enterprise in whole or in part unless the Agency is consulted. The Agency may give its opinion within seven days from the date of the request. The permits may not be canceled unless for legal reasons or public purpose on the basis of non-discrimination. The injured Investor shall, through the judicial system, have the right to request compensation for losses incurred as a result of the cancellation.

ARTICLE (11)

Without prejudice to Article (12) and in furtherance of free market principles, the National Authority shall guarantee to all Investors free transfer of all financial resources out of Palestine, including capital, profits, dividends, capital gains, wages and salaries, interest and principal payments on debts, royalty payments, management fees, technical assistance and other fees, compensation payments for expropriations or unilateral termination of contracts for non-commercial reasons, judicial and arbitral awards and judgments, and any other kind of financial payment or resource. Investors may freely transfer all financial resources out of Palestine at the applicable market currency exchange rates in effect at the time of transfer in a convertible currency acceptable to the Investor.

ARTICLE (12)

The National Authority may limit the transfer of financial resources by any Investor when any of the following apply to the Investor:

- (A) Palestinian bankruptcy, insolvency, and other Laws for the protection of the rights of creditors;
- (B) Palestinian Laws relating to issuing, trading, or dealing in securities;
- (C) Palestinian criminal or penal Laws;

- (D) Palestinian tax Laws;
- (E) Palestinian Laws relating to reports of transfers of currency or other monetary instruments; or
- (F) injunctive orders or final judgments rendered in Palestinian judicial or arbitral proceedings.

CHAPTER THREE THE AGENCY

ARTICLE (13)

The Palestinian Investment Promotion Agency ("Agency") shall be established under this Law. The Agency shall be an autonomous institution of the National Authority created by Law, competent in respect of any obligation, right, or legal act. The Agency's operations shall be governed by this Law.

ARTICLE (14)

The principle venue of the Agency shall be the city of Jerusalem. The National Authority shall specify any other temporary location.

ARTICLE (15)

The Agency's Board of Directors shall consist of thirteen (13) voting members, who shall be:

- (1) the Minister of Economy and Trade, who shall be Chairman of the Board of Directors;
- (2) a representative of the following ministries and authorities:
 - (a) Finance, who shall be the Deputy Chair of the Board of Directors;
 - (b) Industry;
 - (c) Agriculture;
 - (d) Tourism;
 - (e) Housing;
 - (f) Planning and International Cooperation;
 - (g) Monetary Authority; and
- (3)
 - (a) five representatives from the Palestinian private sector. These representatives in the exercise of their functions on the Board of Directors, shall act independently, without conflicts of interest, and within the objectives of this Law.

- (b) The Council of Ministers shall appoint the five private-sector representatives upon the recommendation of the Board of Directors.
- (c) The private-sector members of the Board of Directors shall serve terms as provided in the Regulations.

ARTICLE (16)

The functions of the Board of Directors shall be to:

- (1) Oversee and evaluate policies and Investments.
- (2) Submit recommendations to the Council of Ministers and propose needed changes in the criteria for granting the Incentives and exemptions.
- (3) Attract Investors to Palestine.
- (4) Advise the Minister of Economy and Trade and the Minister of Finance on Palestinian investment policies.
- (5) Issue Confirmations of Investment.
- (6) Create and maintain the Registry of Investments.
- (7) Supervise Enterprises benefiting from the Incentives.
- (8) Appoint independent auditors to audit the financial statements of the Agency.
- (9) Implement decisions of the Council of Ministers concerning changes in the criteria for granting the Incentives.
- (10) Monitor the implementation of the Investment Law and recommend changes to the Council of Ministers and the Palestinian Legislative Council.
- (11) Monitor any Palestinian Law or regulation that may restrict, limit, or prejudice any of rights and guarantees provided in the Investment Law, and propose changes to such Laws and regulations to the Council of Ministers for adoption.
- (12) Assist the National Authority in complying with any Investment agreement that the National Authority may enter into with another State or international organization.
- (13) Develop a close working relationship with the concerned Palestinian authorities to assure a unified national investment promotion strategy.
- (14) Monitor the performance of the Agency, which shall include preparing an annual report on the Agency's activities which shall include the Agency's audited financial statements.

(15) Look into developing and modernizing Laws related to Investment and adopt policies and programs that contribute to providing an environment conducive to Investment.

(16) Issue an annual guide for investment opportunities in Palestine.

(17) Suspend the confirmation of exemptions and Incentives in the event the Investor is found in violation of this Law; the Investor has the right to appeal within thirty (30) days.

(18) Create a one-stop shop to facilitate all procedures for the Investor concerning the Investment including the issuance of permits to reduce routine administrative procedures at various official offices.

(19) Adopt the necessary procedures for the Agency staff in accordance with the Civil Servants Law.

(20) Appoint consultants and experts as deemed necessary by the Agency and in accordance with the conditions set by the Board of Directors.

ARTICLE (17)

(A) The Board of Directors shall convene a regular meeting at least once a month called for by the Chairman or, in his absence, the Deputy Chairman. Quorum of one-third is required.

(B) The Board of Directors may convene, within a five-day notice, at the written request of two-thirds of the members. If necessary, it may convene by shorter notice.

(C) Resolutions by the Board shall be made by majority vote. In the event of a tie, the Chairman's vote shall break the tie.

(D) The deliberations of the Board shall be closed, unless the members agree otherwise.

ARTICLE (18)

(A) The Agency shall have a Director General appointed by the Board of Directors.

(B) The Director General shall be a non-voting member of the Board.

(C) The Director General shall be the Chief Executive Officer and shall have the following responsibilities:

(1) Executing the policies of the Agency as determined by the Board of Directors.

(2) Organizing and overseeing the day-to-day operations of the Agency.

(3) Reporting to the Board of Directors regularly on the Agency's operations and performance.

(4) Participating in activities designed to promote domestic and foreign Investment in Palestine.

(D) The Board of Directors shall determine the compensation and terms of employment for the Director General.

(E) The Director General may not have any interest or be party, directly or indirectly, in an Investment.

ARTICLE (19)

The Agency shall be funded by:

(A) Revenues generated by the Agency's provision of services to Investors; all revenues generated by the Agency shall remain at the disposal of the Agency.

(B) Stamp duties paid in the investment process.

(C) Penalties collected pursuant to this Law.

(D) Grants from countries, international organizations, and domestic and foreign non-governmental organizations.

ARTICLE (20)

All income and revenue generated by the Agency shall be deposited in a special account at the Ministry of Finance constituting part of the treasury. The Agency shall have a regular appropriation under the National Authority's budget.

ARTICLE (21)

(A) The Agency shall have one or more independent auditor(s), appointed by the Board, who shall conduct audits of the Agency's income and expenditures.

(B) The independent auditor(s) shall have the right to examine all books, records, ledgers and request any necessary documentation in the conduct of the audit including the right to verify the Agency's assets.

(C) The independent auditor shall submit the annual financial report to the Board of Directors who shall submit it to the Council of Ministers.

ARTICLE (22)

(A) The Agency shall protect all Confidential Information, except for information made public in the Registry of Investments or that is made public through the registration of Enterprises pursuant to this Law.

(B) The Agency shall prohibit the disclosure of Confidential Information to any person or entity by any employee, officer, or member of the Board of Directors, or the Agency staff.

(C) The Agency shall not disclose Confidential Information to any governmental entity or official or any private entity or person without:

- (1) the Investor's informed, written consent; or
- (2) a court order from a Palestinian court of competent jurisdiction that compels the disclosure of Confidential Information.

CHAPTER FOUR INVESTMENT INCENTIVES

ARTICLE (23)

The fixed assets of the Enterprise shall be granted the following exemptions:

(A) The fixed assets of the Enterprise shall be exempt from customs duties provided that they are brought in or imported within the period set by the Agency in approving the list of the fixed assets of the Enterprise; the Agency may extend this period if the nature and size of the Investment so require.

(B) Spare parts imported by the Enterprise shall be exempt from customs duties provided that their value does not exceed 15% of the fixed assets and so long as they are brought in or used by the Enterprise within the period set by the Agency commencing from the date of production or Investment start-up and pursuant to a decision by the Agency approving the list and quantity of spare parts.

(C) The fixed assets of the Enterprise required for enlarging, developing, or upgrading the Investment shall be exempt from customs duties if the Agency determines that they increased the productive capacity of the Investment.

(D) A price increase in the value of fixed assets shall be exempt from customs duties if the increase in value resulted from a rise in prices at the country of origin or as a result of an increase in the cost of shipping or change in the price of transportation.

ARTICLE (24)

The Agency shall grant the Incentives provided in this Law to Enterprises in which Investors make Investments that meet the requirements of this Law as follows:

(A) Any Investment between One Hundred Thousand and One Million dollars shall entitle the Enterprise to an exemption from income taxation for a period of five (5) years as of the date of production or commencement of activity and the payment of income tax on net profit at the nominal rate of 10% for a period of eight (8) additional years.

(B) Any Investment between One Million dollars and Five Million dollars shall entitle the Enterprise to an exemption from income taxation for a period of five (5) years as of the date of production or commencement of activity and the payment of income tax on net profit at the nominal rate of 10% for a period of twelve (12) additional years.

(C) Any Investment exceeding Five Million dollars shall entitle the Enterprise to an exemption from income taxation for a period of five (5) years as of the date of production or the commencement of activity and the payment of income tax on net profit at the nominal rate of 10% for a period of sixteen (16) additional years.

(D) Any special Investment in type and capital may, as approved by the Council of Ministers, upon the recommendation of the Agency, entitle the Enterprise to an exemption from income taxation for a period of five (5) years as of the date of production or the commencement of activity and the payment of income tax on net profit at the nominal rate of 10% for a period of twenty (20) additional years.

ARTICLE (25)

(A) The Council of Ministers may decide, upon the recommendation of the Agency and for public purpose, to extend the exemption period(s) up to a maximum of five (5) additional years depending on the nature and location of the Enterprise, increase in exports, creation of job opportunities, and advancement of development.

(B) The investment period for Enterprises operating in the industrial zones, and areas that are remote or under the threat of settlement may be limited by the Council of Ministers who may decree new areas for industrial zones or areas that are remote or under threat of settlement.

(C) In all instances, the period of the exemption for Enterprises may be increased for two additional years if the local input in the equipment, machines, and fixtures exceeds 60%, excluded from this percentage is invested capital in land and construction. The Agency shall determine such percentages.

(D) The National Authority may grant preferential treatment or grant special guarantees or Incentives to the national Investor.

ARTICLE (26)

Upon submission by the Investor of the information provided by the Regulations, the Agency will review this information and if the Agency does not deny the Confirmation for the Incentive provided in this Law within thirty (30) days of submission of information, the Enterprise shall qualify for the Incentives on the basis submitted by the Investor.

ARTICLE (27)

The Regulations shall specify the methods by which it may be requested from the Agency's Incentive Committee to receive the Confirmation of approved Incentives.

ARTICLE (28)

A nominal 10% income tax rate shall be assessed on enlargements of existing Enterprises in accordance with capital Investments made within the ambit of Article (24) provided that the Board of Directors of the Enterprise approves the enlargements commencing either on the date of production or the commencement of activity. Enlargement shall mean the increase in the stated capital or capital injected to acquire fixed assets intended to increase the productive capacity of the Investment be it goods, services, or manufacturing and increase it from previous levels of imports or for the purposes of a new line of production or service or activity.

ARTICLE (29)

To be deleted.

ARTICLE (30)

(A) An Enterprise benefiting from the Incentives may be transferred freely to a new owner in its entirety; provided that the new owner continues to operate the Enterprise as a going concern.

(B) The new owner of a transferred Enterprise can benefit from the Incentives as long as the new owner continues to operate the Enterprise as a going concern.

ARTICLE (31)

Companies, merged entities, joint ventures, and companies that are split or whose legal structure is altered shall enjoy the exemptions

granted prior to the legal restructuring and such restructuring shall not result in any new exemptions from taxation.

ARTICLE (32)

The Agency may grant additional exemptions to Enterprises engaged in export provided that the percentage of products set for export is not less than 30% of the total value of its output. This additional exemption may not be granted from more than three years.

ARTICLE (33)

(A) The Agency may cancel a Confirmation of Investment in the event that the Agency finds, in the course of monitoring the Enterprises who are benefiting from the exemptions, the Investor supplied the Agency with information about the Investment that was not true at the time the Investor supplied it and that was material to the Agency's decision to grant the Confirmation, or withheld from the Agency information about the proposed Investment that was material to the Agency's decision to confirm the Investment as an Investment eligible for the Incentives. The Regulations shall specify the procedure of the cancellation.

(B) In the event this Law is violated or its conditions and requirements are violated, the Board of Directors shall have the right to take action equal to the violation committed and the damage caused to the national economy by either reducing the period for exemption or cancel the exemptions.

(C) An Investor may appeal the Agency's decision to cancel the Confirmation of Investment under the procedures specified in the Regulations.

ARTICLE (34)

In the event that the Incentives are modified, Enterprises benefiting from the Incentives prior to the date on which the modification became effective shall have a choice to opt for the relevant incentive provided in the modification or continue to benefit from the incentive in effect for that Enterprise prior to the effective date of the modification whichever is better.

ARTICLE (35)

If the Enterprise moves from one area to another during the period of the exemption, the Enterprise shall continue to receive the exemptions provided that the Agency is notified.

ARTICLE (36)

(A) The furniture imported for hotels shall be exempt from customs duties.

(B) The electrical appliances and electronics imported for tourism Enterprises shall be exempt from customs duties.

(C) The electrical appliances and electronics imported for hotel and hospital Enterprises shall be exempt from customs duties.

(D) Hotel and hospital Enterprises shall be granted additional exemptions from customs duties at least once every seven years for purchases of furniture and electrical appliances and electronics required for modernization and renovation, provided that they are brought into or imported into Palestine or used by the Enterprise within (2) years from the date the lists are approved.

ARTICLE (37)

If it becomes clear that the exempt fixed assets, in whole or in part, have been sold or used for an unauthorized purpose, the Enterprise shall pay all customs duties and taxes owed in accordance with the provisions of this Law.

ARTICLE (38)

(A) The Investor must inform the Agency in writing once the fixed assets have been installed and production has actually started.

(B) The Investor must submit any information or records related to the fixed assets of the Enterprise at the request of the Agency and permit Agency staff to enter the premises of the Enterprise.

ARTICLE (39)

(A) The Investor may sell the fixed assets that are exempt or assign them to another Investor enjoying the benefits of this Law provided that the approval of the Agency is obtained.

(B) The Investor may sell the fixed assets that are exempt to any person or any business concern that is not benefiting from the exemptions and Incentives of this Law provided that the Agency is notified and all due taxes and fees are paid.

CHAPTER FIVE DISPUTE SETTLEMENT

ARTICLE (40)

The provisions in this Chapter shall apply to disputes between Investors and the National Authority that relate to rights and obligations provided for in the Investment Law.

ARTICLE (41)

(A) When either an Investor or the National Authority believes that a dispute between them has arisen, it may request that good faith negotiations begin according to procedures established in the Regulations. Either party to a dispute must request good faith negotiations before it may have access to the dispute settlement procedures provided for in paragraph (B) of this Article.

(B) If good faith negotiations fail to resolve the dispute in the period of time specified in the Regulations, either party shall have the right to take the dispute to:

- (1) binding, independent arbitration as provided in the Regulations; or
- (2) Palestinian courts.

CHAPTER SIX FINAL PROVISIONS

ARTICLE (42)

The Agency may at any time if it finds that any, part, or all information provided by the Investor is false or fraudulent immediately terminate all approvals granted to the Enterprise.

ARTICLE (43)

Nothing in the Investment Law shall adversely affect the approvals and Incentives provided to Investors and Enterprises under all prior relevant Laws. Those approvals and Incentives shall remain valid and enforceable under the Investment Law until they terminate or expire under the terms of the Laws under which they were issued.

ARTICLE (44)

All Investment Enterprises shall enjoy the Incentives provided in this Law except: Commercial Enterprises, insurance, real property (except development enterprises), banks, money changers, and any financial institution (except housing mortgage companies only).

ARTICLE (45)

Unless otherwise provided for in another Law, every Investor who provides false information or records or it is proved that such information or records or accounts or other information that was relied on in granting the Incentives or benefits in accordance with this Law, shall be fined no less than two thousand (2000) Jordanian Dinars and all exemptions and Incentives shall be retroactively withdrawn.

ARTICLE (46)

Without prejudice to Article (43) of this Law, the Investment Law supersedes and replaces all prior Laws dealing with Investment in Palestine.

ARTICLE (47)

The Board of Directors shall issue the Regulations to implement this Law which shall be adopted by the Council of Ministers and published in the Official Gazette.

ARTICLE (48)

All concerned shall implement this Law which shall go into effect thirty days after its publication in the Official Gazette.

Promulgated in Gaza City on: 23/4/1998

Signed/Yasser Arafat

President of the Executive Committee of the Palestine Liberation Organization and President of the Palestinian National Authority

