



INVESTING IN MOROCCO

Over recent years, Kingdom of Morocco has created a legal and regulatory framework very attractive for foreign investors. In addition to its political stable environment, a recent series of tax treaties with numerous countries and reforms in almost all of its sectors of activities, in conjunction with its creation of successful free trade zones such as Tanger Free Trade Zone and Casablanca Finance City, have allowed it to decidedly become a gateway for Africa. This client briefing gives a brief overview of certain key legal issues to be considered when contemplating investing in Morocco.

INVESTMENT REGULATORY FRAMEWORK

- Investing in a Moroccan commercial company does not require for a foreign investor to partner with a local shareholder. There are no restrictions in the percentage of share capital it can hold. A local wholly-owned subsidiary of a foreign investor is a possible structuring option (see section below of the main corporate forms of local investment vehicles).
- Whereas in specific activities (such as phosphate), a partial or full state ownership may however be maintained, a clear trend towards a liberalized economy can be observed over the recent years (healthcare centers, renewable energy). If the contemplated investment falls within the scope of a regulated activity (e.g. bank, insurance), its completion will be conditional upon the authorization of the relevant regulator (e.g. Bank Al Maghrib for banking and financial activities). Prior authorization of the ministry of economy may also be required when the seller is a state-owned entity.
- Any foreign investment project is likely to be notified to the Competition Council prior to its completion when one of the three following conditions is fulfilled:
 - (i) the total global turnover (exclusive of taxes) of all the companies or groups of legal entities that are party to the contemplated transaction is in excess of MAD 750 million;
 - (ii) the total global turnover (exclusive of taxes) generated in Morocco by at least 2 of the companies or groups of legal entities concerned is in excess of MAD 250 million;
 - (iii) the companies who are involved in the contemplated transaction are generating together more than 40% of a given market or a substantial part of it.
- Acquisition of a stake in a listed company is subject to specific takeover regulations. In particular, if an investor acquires, alone or in concert, directly or indirectly, over 40% of an issuer's voting rights, a public takeover bid on all the share capital and voting rights of the target company may be triggered. A reform is expected which should allow the direct listing of foreign entities on the Casablanca stock exchange.

- As long as the contemplated investment qualifies as a “foreign investment” within the meaning of the circular of the foreign exchange regulator, no prior authorization of this regulator is required (see our comments below).

REPATRIATION OF FUNDS

The following main forms of repatriation of funds for the benefit of foreign investors are not subject to the prior authorization of the foreign exchange regulator:

- dividends;
- profits made by Moroccan branches of foreign companies;
- rental incomes;
- interests on shareholders' loans; and
- proceeds resulting from sale of shares and assets or liquidation of a Moroccan company.

Their repatriation is uncapped and is not subject to any time limit provided that:

- the revenues to be upstreamed derived from an initial investment financed in foreign currency;
- this initial investment falls within the list of allowed “foreign investments” set out in the circular of the foreign exchange office which includes in particular the creation of a company or branch or representative office in Morocco, the subscription to a share capital increase of a Moroccan company (whether already incorporated or under incorporation process), the purchase of Moroccan securities, the shareholders' account contribution in cash or in receivables, the acquisition of real estate properties or of their right of use;
- the related payable taxes have been duly and timely paid (including any applicable withholding taxes);
- the required file of documents and information has been provided in a timely manner and required form to the relevant local bank (which is accredited to represent the foreign exchange regulator) by the foreign investor and/or, as the case may be, the concerned Moroccan company (such file includes in particular the copy of the initial sale and purchase agreement and a statement of the bank on the initial financing in foreign currency).

As an exception, payment of management fees and research and development costs to a foreign company requires the prior approval of the foreign exchange office (unless the Moroccan entity is located in a free tax zone which may offer further flexibility in terms of repatriation of funds).

Non-compliance with the foregoing rules can lead to the concerned sums being frozen for several years. Therefore, the structuring of the financing of the payment of the purchase price as well as the contemplated forms of future cash up stream shall be carefully reviewed.

TAX LEGAL FRAMEWORK

The Kingdom of Morocco has executed tax treaties with several countries providing for the absence of double taxation. Any foreign investment will trigger the payment of tax registration and stamp duties which amount depends on the nature of the purchased assets and their value. Any Moroccan company has to pay a yearly corporate income tax of 30% (specific rates apply for specific activities such as banking activities or small businesses). Most of internal day to day operations are subject to a value added tax of 20%. Investors shall absolutely conduct a preliminary deep tax review of their project and the contemplated target to assess their underlying tax cost. Tax framework is very sophisticated with various taxes levied at both national and communal levels. Tax audits and reassessments are regularly carried out by tax authorities post completion of an acquisition. Nevertheless, Morocco offers several free trade zones (such as Tanger Free Trade Zones and Casablanca Finance City) with a series of tax exemptions for the creation of a business which have to be considered. A 10% withholding tax generally applies on a wide range of cash up streams (subject to the terms of tax treaties). No tax consolidation exists in Morocco.

EMPLOYMENT LAW

Employment law is complex (mostly deriving from the French labor law code). The labor code governs the relationships between employees, their representative bodies and employers. Trade Unions are very active in Morocco. Termination of employment relationships must strictly comply with several conditions (form, timing, calculation of the termination indemnity, cause of the termination). The recruitment of foreign workers must seek the prior approval of the Employment Ministry, which is not generally withheld when there is no other similar profile in the local market. Salaries must be at least equal to a minimum legal hourly amount of MAD 13.46 per hour in the industry and services sectors and MAD 69.73 per day in the agricultural sector. The Labor Code provides for a 44-hour maximum workweek or an annual work period of 2,288 hours per year, with the daily work period not to exceed 10 hours unless otherwise authorized by virtue of law.

CREATION OF A LOCAL INVESTMENT VEHICLE

AVAILABLE FORMS

Limited liability companies which are commonly used by foreign investors for their investment projects are namely the *société anonyme* and the *société à responsabilité limitée*. The liability exposure of the shareholders is limited to the amount of their contribution to the share capital, unless they interfere in the management of the company and are deemed to be shadow managers. Unlimited liability companies, namely the *société en nom collectif*, may only be contemplated for tax optimization purposes. Legal representatives of Moroccan commercial companies can be foreign citizens.

- A *société anonyme* must have at least five shareholders, who can either be corporate entities or individuals, and a fixed share capital amounting to a minimum of MAD 300,000 (MAD 3,000,000 to proceed with public offering). A quarter of the capital must be paid up upon subscription. Contributions in kind must be fully received upon incorporation.
- A one-tier management structure is allowed in a *société anonyme* with a board of directors (*conseil d'administration*). A two-tier management structure involving a supervisory board (*conseil de surveillance*) and a management board (*directoire*) may also be contemplated depending on which kind of governance structure prevails within the group of the investor.
- A *société à responsabilité limitée* may be formed by only one shareholder provided that its shareholder is not itself a sole shareholding entity. No minimum

share capital is required. No obligation to pay up one quarter of the share capital provided that the share capital does not exceed MAD 100,000. The SARL is managed by one or several co-managers.

- Although a branch is not an independent legal entity, most of the creation formalities are similar to those applicable to commercial companies (including prior regulatory authorizations for branches carrying out regulated activities). The branch has to keep separate accounts and business records.

SETTING-UP

Several steps have to be followed when setting-up a company from the initial obtaining of a specific certificate (*certificat négatif*) which certifies that the contemplated corporate name is not used by another entity to the opening of a local bank account. Subject to the achievement of the KYC process of the bank (which may in particular require a physical meeting with the foreign legal representative), around 3 weeks are necessary to obtain the certificate of registration of the company. Regional Investment Centers ease the registration process. They act as "one stop shop administrations" in charge of collecting the required documents and data and doing all the registration towards tax and social authorities.

ARBITRATION

- Morocco is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
- Civil law allows international arbitration clauses and alternative dispute resolutions.

