



QUID JURIS?

THE INFORMATION LETTER FROM HAJJI & ASSOCIÉS LAW FIRM

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GENERAL INFORMATIONS

LEGAL INFORMATION

PUBLIC PROCUREMENT CONTRACTS

An important legal development in Morocco relating to Public procurement contracts came out. Pursuant new decree N°2-03-703 dated November 13th, 2003, interest on overdue payment pursuing such contracts is applicable from now on.

Interest on overdue payment is still not applicable to other contracts than Public procurement contracts and especially public services concession agreements.

The new decree provides for money order delay together with term of payment that should not exceed a maximum delay period of ninety (90) days. However, there are no provisions as for the date stating the public procurement contracts performance which is essential to determine the day from which the above mentioned delay must be calculated to have the final date of payment. Accordingly, a particular attention must be given to the drafting in respect of the conditions establishing when such contracts are deemed to be performed.

The new regulation will come into force in 2006. In the meantime and during year 2004, interest on overdue payment is due after 120 days but only for contracts exceeding 2.000.000 DH (approximately 200.000 €). During year 2005, interest on overdue payment is payable after 105 days for contracts of more than 1.000.000 DH (approximately 100.000 €).

PRACTICE OF LAW

TRADEMARKS

Trademark is an essential element of business. Over time, a trademark develops "goodwill" of its own through licensing and royalties rates especially. Trademarks are thus valuable intangible asset for main businesses irrespective of whether it is products or services based.

The choice of a brand name is strategic. In Morocco, a trademark should be distinctive. Moroccan law does not allow to promote under generic names, geographic names and in a general way, common terms.

Once the trademark has been chosen, it is necessary to check that it is legally protected. A trademark search should be done in Moroccan Office of the Industrial Property and Commerce ("OMPIC") before marketing products or services in order to identify in the market place competitive products or services with confusingly similar brands.

The trademark registration is the best tool to prevent any competitor from using the same trademark or the similar trademark to identify products or identical services. It is important to note that incorporating company under a trade name is not effective in preventing others from selling goods or providing services under that name. A company name serves only to identify a legal entity and does not confer a proprietary right of property in that name. Only trademark registration creates a right of property which may be relied upon to prevent another party using a similar trade name registered as a trade mark.

Protecting trademarks cannot be achieved by reactive litigation alone. Preventive approach is required. The first step is applying for registration before "OMPIC". Morocco has an excellent law on trademark complying with international current standards.

FRANCHISING

Marketing goods or providing services through franchising is expanding in Morocco in all the sectors of the economy.

The franchising is a contractual operation created in the US aiming at standardizing processes of manufacturing or marketing of products or providing services under a single brand. The specificity of this contractual tool is that it is strictly regulated abroad and in particular at the European level. For example, in Europe, franchiser has to inform the candidate franchisee before entering into a franchising agreement.

On the contrary, Moroccan law does not provide for franchising and there is no preliminary information due to any potential franchisee. The contract franchises can be concluded in foreign language and be subject to foreign rules as well as it may provide for foreign forum. Moroccan Courts will enforce any judgment pronounced abroad subject it complies with Moroccan public order. However, issues could arise from franchising agreements providing for early termination in case the franchisee goes bankrupt. Such a provision conflicts with the Moroccan law that provides that contract cannot be terminated on the ground of the opening of insolvency procedures. Therefore, Moroccan jurisdictions could oppose to the enforcement of any opposite decision sentenced abroad.

Accordingly, it is advisable to pay attention to the viability of the business itself and the capacity and solvency of the franchisee candidate. If franchising is settled through a joint venture, corporate law mechanisms must also be taken into consideration to secure the prospected investment.

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