

QUID JURIS

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In a context marked by a liberalization of the economy, business world anticipations about legislative initiatives are numerous. However, the Parliament will not have completely filled the economic operators expectations. The modification of the electoral process as well as the parliament members and the senate ones with the in-depth changing of the government on last 2002quarter, did not made possible the aforementioned elected persons to be fully devoted to the legislative exercise.

The 2002 highlighted legislations and regulations are briefly commented as follows :

Insurance

The insurances code came into force on November 7th, 2002 date of publication at the Official Gazette , dahir n°1-02-238 dated October 3rd ,2002 under law n°17-99.

The Moroccan insurance sector remains very protected in spite of the suppression of the nationality requirements. This regulation devotes the principle of authorization as regards acquisition of a holding, takeover or reorganization of capital share of insurance companies. Moreover, the supervision Authority has a discretionary capacity in prohibiting takeovers.

In the same way, the insurance intermediate companies as general agents or brokers, must have their capital share to be held at a fifty percent minimum rate with by natural Moroccan persons or legal Moroccan entities.

Such above provisions will have to be re-examined in the medium term taking into account Moroccan commitments to liberalize its services sector starting March 1st, 2005 under the provisions of the Euro Mediterranean treaty establishing an association between the EU and the Kingdom of Morocco and that entered into force on March 2000 as well as per Moroccan commitment under the WTO General Agreements on Trade & Services.

Stock Market

Some measures intended to fulfil in the legislation loopholes of the stock market sector were taken during 2002 :

- Decree n° 1960-01 and n° 1961-01 of October 30th, 2001 respectively approving the modification of the general settlement in the stock market and the modification of the same with the clearing house. These texts were taken at the time of the simultaneous implementation of the shares settlement- delivery, which was a mandatory measure to complete the stock exchange law reform started on 1993.
- Departmental order n° 284-02 of February 14th, 2002 providing for methods for sale in the stock market for shareholder's rights not registered in account, and decree n° 2-01-2737 of July 17th, 2002 relating to the destruction of the bearer materially represented stocks having been the subject of an inscription in account:

these two measurements follow upon the dematerialization of registered securities enacted by the limited companies law of August 30th , 1996.

This complementary regulation tardily supplements the normative construction of the stock exchange market rules started on 1993. Broker firms claim for a global and structuring reform in implementing a more favourable legal framework that will lead toward the revival of the financial market activity.

Cinematographic Industry

The restrictive conditions relating to the management of production companies and distribution of cinematographic films initially envisaged by the law n° 20-99 dated February 15th, 2001 were cancelled since November 7th, 2002 date of publication at the Official Gazette n° 5054 of the modifying law n°39-01.

Investment

- A new free export zone was created in Tétouan province specially in the Mediterranean-Tangier development zone (see decree n° 2-02- 642 dated October 30th, 2002)
- A serie of decrees of March 5th, 2002 devote the decentralization of the administrative decisions about investments pursuant to the Royals directives intervined at the beginning of the year, and they institute regional centres of investment that will provide two essential functions, assistance in the incorporation of companies and assistance in the investment.

To allow an acceleration in the investment files treatment, each regional centre is placed under the responsibility of the governor ("Wali") of the city.

From now, this centre is vested of additional capacities enabling him to conclude, in the name of the government, sale or hiring contracts concerning the buildings of the private land domain of the State; the acts of authorization of the public domain and the forest land occupation; the authorizations of installation or operation of industrial, agro-industrial and mining activities; the authorizations of openings and operating of tourist establishments; the classification and control of the aforesaid establishments; the delivery of the various licences or the particular authorizations necessary to the operation of these establishments. Other complementary measures were taken :

- Adoption of a single form of companies incorporation (see decree n° 2-02-350 of July 17th, 2002 approving the single form of companies creation).
- Decrees relating to the opening of 15 investment Regional Centres of in Morocco (15 decrees published on September 24th and 27th , 2002 and October 1st 2002).

Public bids

The decree n°2-01-2332 of June 4th, 2002 (Official Gazette dated June 6th, 2002) approving the general administrative clauses book applicable to service markets relating to state bids (CCAG – EMO) came into effect on December 6th, 2002.

This decree was awaited since the decree's publication of December 30th, 1998 relating to the State bids procedures and it specifies particularly the conditions under which such bids should be implemented. It should be noted that pursuant to this new regulation, Moroccan jurisdictions and administrative courts especially are the sole qualified jurisdiction in case of litigations relating to these bids. Any clause founding an invaluable arbitration for foreign operators is thus excluded.

Justice Reform

The law n°45-00 relating to legal experts came into effect with the publication at the Official Gazette n° 5030 dated August 15th, 2002 of its application decree n° 2-01-2824 of July 17th, 2002.

This regulation was necessary to the professionalism and moralization of this particular body of justice auxiliaries, which was put apart by the legislator since forty years. This reform is currently made within the general justice reform under development, having for objective the justice rehabilitation and the modernization.

It is important to indicate that the Moroccan State undertook a computerization action of commercial courts and trade registries which are currently about to be completed. It will moreover allow an acceleration of data processing by the trade register. This modernization initiative will be generalized with all the Kingdom courts, thanks to European and American financings support.

Privatization

▪ A modifying law was taken for the inscription of "Régie des Tabacs", limited company, on public companies programmed to be privatised (as per dahir n°1-02-03 dated January 29th 2002). This measurement is a necessary legal condition before any transfer of company participations to potential investors. It is linked within the tobacco' sector liberalization and in accordance with Moroccan commitment to abolish State monopolies at the latest of March 1st, 2005 as per the Moroccan - EU treaty.

▪ Another state monopoly of the commercial sector, the national office of tea and sugar, public establishment is officially transformed into a limited company since the publication at the Official Gazette n°5030 of August 15th, 2002 of dahir n°1-02-122 dated June 13th, 2002 forming law n°29-01. This measurement will permit to the aforementioned company to be registered on public companies with the transfer to the private sector in the event of partial or total transfer to third parties.

Intellectual Property

The industrial property regulation is reinforced with a renovated new law on the protection of breeder's rights since March 21th, 2002 (decree n°2-01-2324 of March 12th, 2002 published in the Official Gazette n° 4988 making applicable law 9-94 promulgated by dahir n° 1-96-255 dated January 21st, 1997).

This essential regulation for Moroccan seeds sector is from now on in conformity with the World Intellectual Property Organisation of December 2nd, 1961 and with the TRIP's Agreement, which is part of GATT's of April 15th, 1994.

A decree have to complete the above regulation to determine the competent jurisdiction as regards litigations relating to breeder's rights protection.

Tourism

A legal framework exists since November 7th, 2002 to provide a statute to all existing tourist establishments in Morocco.

Professionalism and transparency are the major axis of law relating to the statute of tourist establishments and its application decree (dahir n°1-02-176 of June 13th, 2002

Official Gazette of August 15th, 2002 and implementation decree n° 2-02-640 of October 9th, 2002 Official Gazette n°5054 dated November 7th, 2002).

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