



QUID JURIS?

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GENERAL INFORMATIONS

EXCHANGE REGULATIONS

Moroccan foreign exchange regulations aim to be liberal by the implementation of a convertibility system allowing free investment in foreign currency and also commercial and financial operations undertaken abroad.

In practice, the above operations are subject to mandatory disclosure to the ("Office des Changes": "ODC") which rules provide for severe criminal sanctions.

What about investment operations ?

Whatever the prospected activity and the investment form, no prior authorization is required when investing in Morocco.

However, "ODC" does effectively control all the investment operations and it requires banks to provide statistic reports relating to operations realized by their clients on the basis of any documents which evidence the execution of the related investment operations (such as balance sheets, general assembly minutes approving annual accounts, list of shareholders and members of the Board, etc.).

This control is engaged when the investment benefits or investment liquidation are transferred, but subject the related applicable taxes have been preliminary paid, as for example the 10% withholding tax on benefits distributed to foreign shareholders. In reality, investment benefits transfers are possible subject the investor's f banks approve them as they are empowered by "ODC" for such a control power.

In addition, transfers between foreign investors can be freely made but the purchaser should have to report with the "ODC" as to validly transfer its investment benefits. Accordingly, no formal procedures are required for the shares acquisition entered into between foreign shareholders, however, the new shareholder shall have to forward his bank with the documents evidencing the operations which shall be disclosed to the "ODC".

What about commercial and financial operations ?

The so called "régime de convertibilité" allows the Moroccan companies to buy foreign currencies for the settlement of theirs foreign transactions without authorization. It is applicable to financial and commercial operations which are called "ordinary operations" such as importation and exportation of goods and services, insurance and re insurance, technical assistance, foreign financing, international transportation, films license, etc.

As a rule, such above operations are not subject to the preliminary approval of the "ODC" and as described above, it exerts control on investors via mandatory banks reports. This concern notably the

"technical assistance operations" which include a wide group of inter companies commercial and financial agreements generally used to.

Therefore, excepted importations where agreements are not required, any Moroccan company willing to settle abroad a trademark licence is subject to the presentation of the related agreement establishing the concerned remuneration which have to correspond to the "normal and actual cost" of the services. Similarly, an reinsurance agreement entered into between a Moroccan insurance company and a foreign one for the subject to reinsure the risks of the Moroccan clients should be examined by "ODC" as to authorise the payment.

The regulation of the foreign financing operations liberalization illustrates the limits of such a regime. It is generally admitted that no preliminary authorization is required as to enter into a financing agreement with a foreign company. However, the administration exerts a control on the terms of such a financing, and it especially controls among others the applicable interest rate, the reimbursement period and generally that first such above terms do comply with usual conditions on foreign markets and second that related taxes had been paid.

The limit of such liberal regime is also illustrated by the obligation to stipulate Moroccan or foreign negotiated currencies in any financial or commercial agreement which therefore prohibits set off payments.

CORPORATE REGULATIONS

Interest rates applicable to shareholder's loan accounts

2,85% is the maximum deductible interest rate applicable to shareholder's loan account since January 2003 (Ministerial decree n° 600-03 dated 24th March 2003, "Bulletin Officiel" n°5100 of 17th April 2003).

Regulated Agreements

Public company's regulations provides that any agreement entered into between - a member of the board or Chairman or CEO - and the company which would relate to non usual operation added with special conditions should be authorized by the Board of directors and then approved by the ordinary assembly.

Such an authorization is required for agreement entered into between such company's managers and any company in which they directly or indirectly have interests.

The purpose of the Moroccan law is to detect any privileged commercial or financial inter companies relationships. Accordingly, a strict formalism is required for such agreements.

In addition, the company's auditor have to specifically report to the ordinary assembly such regulated agreements.

PUBLIC COMPANIES CORPORATE OBLIGATIONS AGENDA

Public companies which have closed their fiscal year by 31st January 2003 are subject to the following agenda so as to comply with corporate legal requirements (for companies having closed their fiscal year on 31st December 2002, please see Quid Juris n° 2).

At the latest 30th April 2003 : filing for tax return with the direct and indirect tax administration.

At the latest 1st May 2003 : sending a registered letter convocation to the company's chartered accountant (auditor) for the board meeting which is legally entitled to approve the closed accounts at 31st January 2003.

At the latest 14th May 2003 :

- **Board meeting for settling the annual accounts and establishing the annual management report;** and
- **Sending to the chartered accountant (auditor) the management report and the annual summary accounts.**

At the latest 14th June 2003 :

- Inviting letters to shareholders and chartered accountant to the general assembly for the approval of the annual accounts.

At the latest 30th July 2003 : meeting of the ordinary general assembly for the approval of the annual accounts.

At the latest 30th August 2003 : filing before Commercial Court trade registry of one copy of the year 2003 accounts and of the auditor's legal report. Any failure to the aforementioned duty is subject to a penalty fee between 40.000,00 dirham (around Euro 4.000,00) and 400.000,00 dirham (around Euro 40.000,00) to be paid by the company's legal managers and not by the company's it self on pain of fraudulent dealing with company's assets.

Should the company's managers consider that it is not possible to convoke the ordinary general meeting under the legal deadline, they have to file a petition to the court requesting the authorisation to organising same OGM within a six months supplementary date.

Please See Quid Juris n°2 as for applicable penalties.

LAW PRACTICE

LABOUR LAW - Arbitration practice.

Arbitration is commonly used in labour matters as to amicably settle litigations between employees and a company. Foreign companies established in Morocco prefer such procedures as it entitles the company and the employee to be income tax exempted, unlike the legal transactional severance settlement which is subject to income tax.

It should be noted that such arbitration proceedings are like a simple formality as jurisdictions do not examine whether arbitration is based on an actual litigation. Therefore, the practice shows that arbitration in such matter has rather a fiscal target, and tax administration is therefore shortly coming into a control of same operations.

CORPORATE CRIMINAL LAW - Application of criminal provisions to a debit on shareholder's loan account in a non trading company.

First degree jurisdiction of the city of Berrechid n°306/02, dated 1st August 2002.
(flagrante delicto division).

- The facts : the claimant, a shareholder of a non trading company, filed a case against another shareholder arguing that the latter has debited part of his share from the shareholder 's loan account without his consent.

The Berrechid court pronounced against the "guilty shareholder" a six- months sentence with no remission on the basis of fraudulent evasion of funds.

Defendant appealed further before the Appeal Court of Settat. The case is still pending.

The claimant stated that the sued shareholder had committed a fraudulent evasion of funds whereas the defendant argued that such provision is not applicable as his share in shareholder's loan account is firstly his own property and secondly that the payment was not fraudulent especially that there was no damage for the company and that no agreement had been entered into with a bank to have a blocked shareholder 's loan account.

Comments :

Article 523 of Criminal Code provides clearly for a one month to one year prison sentence and a penalty ranging from 120.00 DH (around Euro 12) to 1,000.00 DH (around Euro 100.00) is applicable to any person who fraudulently takes away company's funds or assets.

It should be noted the severity of such above mentioned decision even though its absurdity when deciding imprisonment on such basis. The shareholder's loan account is made up of shares belonging to each of the shareholder and it is subject to withdrawal at any time unless otherwise provided. Unlike issued capital, the shareholder's loan account can be entitled to a remuneration that aims to encourage lenders who can have this amount transferred to they personal account. Accordingly, shareholder's loan account is not the company's assets despite it is used as to finance its requirements.

The coming Settat appeal Court decision should clarify Moroccan case law on such a common practice in corporate law.

Hajji & Associés
Association d'Avocats

31 Rue Ahmed TOUKI (ex. LABAS)
CASABLANCA 20 000 - MAROC

Phone: + 212 (0) 22 48 74 74
+ 212 (0) 22 48 62 61

Facsimile: + 212 (0) 22 48 74 75
+ 212 (0) 22 43 00 45

Email: partners@ahlo.ma
Site Web: www.ahlo.ma

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