

Q U I D J U R I S ?

THE PERIODICAL INFORMATION LETTER OF HAJJI & ASSOCIES LAW FIRM

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GENERAL LEGAL INFORMATIONS.

YEAR 2003 FINANCE ACT

The designated government by end year 2002 could not devote necessary time to implement the expected reforms especially the ones aiming to encourage new investments. Therefore, year 2003 finance act provides for few relevant measures which however may not contribute to a real economy boost.

The most significant economic provisions of Finance Act 2003 are the following :

- A free tax system is applicable from 1st January 2003 to the Tangier-Mediterranean Special Agency with an encouraging tax system (especially a company tax rate of 8,75% instead of 35%) is applicable to the companies involved in the realization, construction, operation and maintenance of Tangier-Mediterranean Special Development Zone subject they are settled in the related export free zone; and
- The Agency for Economic Development of South Provinces of the Kingdom which is a sovereign body, is also tax exempted from 1st January 2003, especially its services which are exempted of VAT.

It should be also noted that from 1st January 2003, penalties rates applicable to delayed tax return are harmonized. A single penalty rates of 10% increased by 5% for the first month delay and a 0,5% per additional delayed month is applicable should the delayed tax return concerns company's tax, income tax, VAT stamps or local taxes (patente and urban tax).

PUBLIC COMPANIES AGENDA

Public companies which have closed their fiscal year by 31st December 2002 are subject to the following agenda so as to comply with corporate legal requirements (dead lines outlined below take into consideration that the general ordinary meeting approving the accounts will be convened for 30th June 2003, which is the legal deadline if fiscal year is closed as at 31st December 2002).

March 31st 2003 at the latest: filing of the company tax return with o tax administration.

April 1st 2003 at the latest: sending a letter to the chartered accountant (auditor) as to convene him to the board meeting which is legally entitled to settle the accounts closed as at 31st December 2002.

April 14th 2003 at the latest:

- Board meeting for settling the annual accounts and establishing the annual management report. Term delays stipulated in by-laws should be considered. Some companies provides for the validity of videoconference calls in spite the lack of provisions on this matter under Moroccan law.
- Sending to the chartered accountant (auditor) the management report and the annual accounts.

June 14th 2003 at the latest:

- Sending letters convening shareholders and chartered accountant to the general assembly that will have to approve the annual accounts.

June 30th 2003 at the latest: Meeting of the ordinary general assembly for the approval of the annual accounts.

July 30th 2003 at the latest: filing before the Commercial Court trade registry of one copy of the balance sheet accounts and the auditor's legal report.

A penalty of 40 000 Dirham (around EURO 4000) up to 400 000 Dirham (around EURO 40.000) is applicable to the legal management in case of delay or default in filing such accounts and auditor's report. The company should not pay the cost of such penalties and should it pay such amount the management would commit a fraudulent conversion of company's assets which is criminal under Moroccan law.

In the case it would not be possible for the management of a public company to have the annual meeting held within the legal time-limit, it is necessary to file a petition before the President of the Commercial Court who may authorize the convening of the general meeting within an extended delay. Failing to such formalities will conduct the management to pay a 60 000 Dirham penalty (around EURO 6000) up to 600 000 Dirham (around EURO 60.000).

However, it should be outlined that such sanctions are not yet implemented mainly because the recent computerisation process of Moroccan commercial courts and trade registry which does not allow presently the control of the application of such legal requirements.

JUDICIARY COSTS.

Moroccan Finance Act dated 27th April 1984 provides for usual courts-costs applicable by Moroccan courts. Legal charges are applicable to judiciary procedures before Moroccan courts and also for inscriptions with trade registries.

The main legal charges are described as follows.

Court-costs applicable to first step petition

Following a general tariff, court-costs are set to 1% rate of the claim exceeding 20.000,00 Dirham (around Euro 2.000,00) which is the maximum threshold.

In case of an appeal upon a final first degree jurisdiction decision, court-costs are set to 1% of the claim increased with 10% of the amount judged by the first degree jurisdiction.

Court-costs are not applicable to legal interests. However, they are applicable to conventional interests. It should be outlined that courts may reduce the amount awarded on the basis of any contractual interests and they may even align them with legal interests. This should be taken in consideration as to limit the court-costs assessment amount.

Generally, Moroccan courts do not allow any reimbursement of paid up legal fees and expenses by the proceeding's winning party. Accordingly, those charges should not be included in the claim basis as to avoid additional judiciary costs.

As far as tenancy rents revision or lease renewals of are concerned, a legal tax of 1% of the annual rents is applicable.

Writ of summons are also subject to stamp duties in an amount ranging from 50,00 Dirham (around Euro 5,00) to 300,00 Dirham (Euro 30,00).

As far as an attachment is filed, court-costs are set at 1% of the claim if the claimant has not obtained a writ of execution.

A 10% tax on the assets sales and stamp tax of 2000,00 Dirham (around Euro 200) are applicable in case of a company's winding-up by court decision.

Expert appraisalment costs

Expert appraisalment fees and expenses are settled by court order. The amount is calculated taking into consideration the importance and difficulties of the appraisalment and the accomplished work. The common level of fees is an amount ranging from 2000,00 Dirham (around Euro 200,00) to 5.000,00 Dirham (around Euro 500,00).

Expert appraisalment costs are subject to a 20% VAT and they are not reimbursed by the losing party.

Legal charges relating to pledge registration.

A 0,5% tax is applicable to the pledge of business, equipment and tools and special goods that require mandatory registration before trade registry.

Pledge on shares or securities are not subject to any tax.

CASE LAW.

CORPORATE LAW

Criminal provisions applicable in a matter subject to special provisions relating to fraudulent conversion of a public company's assets.

Appeal Court Judgement of Casablanca n°3171/02, date 25th July 2002.

Facts: The claimant (a shareholder of a public limited company) argued that the chairman of the company cashed on personal account a cheque related to proceeds of the products sale of same company. Therefore, the Claimant filed a case against the sued person before the Criminal court of Casablanca, claiming its arrest

The prosecution ordered a preventive imprisonment of the defendant and the first degree jurisdiction court of Casablanca-Hay Mohammadi pronounced against the defendant eight-month sentence imprisonment with no remission

on the basis of fraudulent misuse of funds.

The appeal court of Casablanca confirmed partially such a decision and pronounced a six months suspended prison sentence on the same legal basis. The Defendant appealed further before the Supreme Court before which the procedure is still pending.

Before the Appeal Court, the claimant stated that the defendant had committed a fraudulent misuse of funds. On the opposite, the defendant evidenced that the amount of the cheque has only passed via another account before being cashed by the company a few days later.

Comments : Article 384 of Public Companies Act provide that is subject to a one month to six months prison sentence and a penalty ranging from 100.000,00 Dirham (around Euro 10.000,00) to 1.000.000,00 Dirham (around Euro 100.000,00) any manager who fraudulently convert public company's assets for personal interests. Article 376 of same law provides that specific sanctions of Public companies act are applicable subject concerned facts do not receive a more severe criminal characterisation under general criminal law.

First degree jurisdiction and appeal court decided to enforce article 547 provisions which relate to mala fide misuse of money or goods which were remitted after being used under special conditions. Article 547 provides for a three year imprisonment sentence and a penalty ranging from 120,00 Dirham (around Euro 12) to 2.000,00 Dirham (around Euro 200).

There is no doubt that the most severe financial sanction are provided by public companies act and the more severe criminal sanction are provided by criminal law. Therefore, the decision of Supreme Court is expected to state which type of law that had to be addressed.

Appointment procedure of curator.

A curator designation is a legal requirement when the place of residence of the defendant is unknown. The appointed curator by the judge is generally a court clerk in charge of transmitting the file to the court prosecution and other authorities having the duty to investigate about the defendant domicile. The result of the investigations is subject to the efficiency and diligence of the court prosecution department and police.

At the end of such a proceeding, the curator drafts a minute stating that investigation formalities are achieved and on the ground of this statement, the claimant will obtain a judgment by default.

The enforcement of such a judgement may be possible subject the defendant is located and that he have not already organized its insolvency.

Debt collection: Petition for debt collection in foreign currencies is subject to the delivery of a certificate from the central bank ("Bank al Maghrib") stating the official rate of concerned foreign currency at the invoice date.

This central bank statement refers to the applicable legal requirement to evidence a debt liquid.

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