

Doing business in Morocco: overview

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Status: Law stated as at 01-Feb-2019 | Jurisdiction: Morocco

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A Q&A guide to doing business in Morocco.

This Q&A gives an overview of key recent developments affecting doing business in Morocco as well as an introduction to the legal system; foreign investment, including restrictions, currency regulations and incentives; and business vehicles and their relevant restrictions and liabilities. The article also summarises the laws regulating employment relationships, including redundancies and mass layoffs, and provides short overviews on competition law; data protection; and product liability and safety. In addition, there are comprehensive summaries on taxation and tax residency; and intellectual property rights over patents, trade marks, registered and unregistered designs.

To compare answers across multiple jurisdictions, visit the Doing business in... Country Q&A Tool.

This article is part of the global guide to doing business worldwide. For a full list of contents, please visit www.practicallaw.com/dbi-guide.

Overview

1. What are the key recent developments affecting doing business in your jurisdiction?

Morocco enjoys a stable economic and political climate.

The key recent developments affecting doing business in Morocco are:

- A reform of the provisions of the Moroccan Commercial Code on the proceedings of insolvency and bankruptcy (Law n° 73-17 amending the Commercial Code, which was promulgated and published in the Official Gazette of 23 April 2018).
- A reform of the commercial leases (*baux commerciaux*) by Law n° 49-16, which was promulgated and published in the Official Gazette of 16 August 2016.
- A reform of Law n° 17-95 on joint stock companies (*sociétés anonymes*), by Law n° 78-12, which was promulgated and published in the Official Gazette of 21 January 2016.
- Law n° 70-14 on real estate investment schemes (*Organismes de Placement Collectif Immobilier*), which was promulgated and published in the Official Gazette of 19 September 2016, with implementing decrees adopted in December 2016 and April 2018.

A new General Instruction on Exchange Operations was published by the Foreign Exchange Office on 31 December 2018 and was entered in force on 14 January 2019. In addition, the following developments apply to taxation in Morocco:

- The tax administration has progressively implemented a digitisation of the declaration procedures and payments (in particular for corporate taxes, income taxes and VAT) and is now implementing a digitisation of the request and issuance of tax certificates and receipts.
- Following the introduction of the Finance Law 2015 on the possibility for taxpayers to enter into transfer pricing agreements with the tax authorities, the 2019 Finance Law created the first transfer pricing documentation requirement for tax audits of companies that dependant on other companies located outside Morocco (the content of the documentation will be detailed in an implementing decree, which has not yet been published).

Legal system

2. What is the legal system based on (for example, civil law, common law or a mixture of both)?

Morocco is a civil law country comprising an administrative and a judicial system. The administrative judiciary has jurisdiction over matters in which the administration is involved. The judicial system handles criminal matters, and civil and commercial matters between private parties.

Foreign investment

3. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

There are generally no limitations on foreign investment, irrespective of the type of company, except in some specific business sectors such as agriculture, fishery, audiovisual, banking and insurance activities.

There is no distinction between national and foreign investments, except for foreign exchange regulations that regulate the ability for foreign investors to repatriate their investment capital and proceeds deriving from capital and dividends. Investment loans to a Moroccan corporate entity are also subject to foreign exchange regulations.

Foreign investment is governed by the provisions of:

- The Investment Charter (Law n° 18-95 dated 3 October 1995), which simplifies and harmonises the incentives for investments.
- Decree n° 2-00-895 of 31 January 2001 and Decree n° 2-04-847 of 22 October 2004 (issued for the application of Articles 17 and 19 of the Investment Charter).
- Finance Laws.
- The General Instruction and circulars of the Foreign Exchange Office.

4. Are there any restrictions on doing business with certain countries or jurisdictions?

There are no general restrictions on commercial relations with any other country or jurisdiction. However, some Moroccan administrations prohibit commercial relations with Israel (both imports and exports). This prohibition results from the recommendations of the Arabian League and the Organisation of Islamic Cooperation (OIC).

5. Are there any exchange control or currency regulations?

Exchange control and currency regulations are governed by the provisions of the General Instruction and various circulars and notes of both the Foreign Exchange Office and Moroccan Central Bank.

6. What grants or incentives are available to investors?

Foreign investors can benefit from incentive programmes (such as loans and financing guarantees, subsidies, and special tax treatment) provided by the state authorities depending, among other factors, on the:

- Project planned.
- Location of the project.
- Amount of the investment.
- Line of business.
- Technology transfer.
- Number of jobs created.

Parts of the incentive programmes are governed by the Investment Charter. Moroccan domestic law also provides for general incentives, which apply regardless of the nationality (such as, free export zones, export transactions and financial activities).

In addition, Moroccan law provides for the following derogatory regimes:

- Offshore Financial Centre created by Law n° 58-90 for banking and holding activities, with foreign exchange derogations. This led to the creation of a financial centre in Tangiers. This law is in the process of being reformed. In addition, the 2019 Finance Law suppressed all the tax advantages resulting from the offshore financial regime.
- Casablanca Finance City, governed by Law n° 44-10 and its implementing decree n° 2-11-323, open to financial or non-financial companies operating regionally or internationally (such as, credit institutions, insurance or reinsurance companies, brokerage firms, financial institutions operating in the asset management sector and investment service providers, companies providing professional services, regional and international headquarters and holding companies). This provides for tax and foreign exchange derogations.

Business vehicles

7. What are the most common forms of business vehicle used in your jurisdiction?

The most common form of business vehicles used by foreign companies are:

- The joint stock company (*société anonyme*) (SA).
- The limited liability company (*société à responsabilité limitée*) (SARL), which may be incorporated with a sole shareholder.

8. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, what are the main registration and reporting requirements?

Registration and formation

The company must be registered with the Trade Registrar (*Registre du commerce*). Registration documents include (Articles 45 to 49, Law n° 15-95 establishing the Moroccan Commercial Code (*Code de Commerce et des Sociétés*); Article 17 et seq, Law 17-95 relating to Joint Stock Companies as amended by Law 78-12; Article 50 et seq, Law 5-96 relating to limited liability companies):

- Proof of address of the company's registered office.
- Information relating to the management members.
- Share capital.
- Legal form of the company.
- Company purpose.
- Copies of the signed and certified bye-laws.
- A copy of the document appointing the company's first administration/direction members (if indicated on a separate act).
- A list of the shareholders, including the number of shares held, and the amount invested by each shareholder.

The company must also be registered with the tax authorities and the social security administration. In addition, the incorporation of a company (and the corresponding foreign investment) must be reported to the foreign exchange office.

Reporting requirements

The annual accounts and management report must be filed with the clerk of the Commercial Court within six months of the end of the fiscal year and within 30 days of the ordinary shareholders meeting for a limited liability company and 60 days for a joint stock company (if the annual accounts have not been approved, a copy of the minutes of the meeting must be filed).

There are several reporting requirements to the Trade Registrar, such as filing:

- Approval of the annual accounts.
- Financial statements.
- Management reports.
- Auditors' reports on the financial statements.

The financial statements must also be filed with the tax authorities no later than three months after the financial year closing date.

Share capital

For joint stock companies, the minimum share capital required is MAD300,000 (MAD3,000,000 for joint stock companies that are listed). There is no maximum share capital.

There is no minimum share capital for limited liability companies.

Non-cash consideration

Shares can be issued for non-cash considerations (*apports en nature*) but the value must be assessed by an auditor and requires a specific procedure.

Rights attaching to shares

Restrictions on rights attaching to shares. Restrictions on rights attaching to shares can be imposed by the:

- Laws governing each type of company.
- Company's bye-laws.
- Shareholder's agreement.

Automatic rights attaching to shares. These are set out in the Law 17-95 relating to joint stock companies and in the bye-laws. Automatic rights include, for example, voting rights and dividend rights.

9. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, outline the management structure and key liability issues.

Management structure

For joint stock companies, there are two types of management structure:

- Joint stock company with a board of directors (*conseil d'administration*), which has the following characteristics:
 - a minimum of three and maximum of 12 board members appointed by the ordinary shareholders' meeting;
 - directors must be shareholders (in practice, nominees holding a single share);
 - the board appoints either the Chairman of the board of directors as Chief Executive Officer

(*Président Directeur Général*) (CEO), or an individual as General Manager (*Directeur Général*) (GM). The GM does not have to be a shareholder or a member of the board. The CEO must be a shareholder (holding at least one share); and

- the board can also appoint one or several individuals as Vice General Managers (*Directeurs Généraux Délégués*) (VGM).
- Joint stock company with a management board (*directoire*) and supervisory board (*conseil de surveillance*), which has the following characteristics:
 - the management board consists of a maximum of five members (individuals) appointed by the supervisory board. The management board can be composed of a single person if the share capital is less than MAD1.5 million;
 - the members of the management board do not have to be shareholders and can be employees of the company;
 - the supervisory board consists of a minimum of three and maximum of 12 members appointed and removed by the ordinary shareholders' meeting. The members of the supervisory board must be shareholders (in practice, nominees holding a single share); and
 - the supervisory board appoints within its members a Chairman and a Vice Chairman who must be individuals.

For limited liability companies, the company is managed by one or more natural persons called managers (*gérant*), taking into account that:

- The manager is appointed by the shareholders.
- The manager is vested with the broadest powers to act in all circumstances on behalf of the company, subject to the powers that the law expressly confers on the partners. In other words, any limitation of his or her powers will have an internal effect on the company and will not be effective against third parties (except if they have knowledge of these limitations).

Management restrictions

There are no management restrictions on foreign persons, except in certain specific business sectors (for example, pharmaceuticals or insurance sector).

Directors' and officers' liability

Managers are civilly liable in the event of any:

- Infringement of legal and regulatory provisions relating to the joint stock companies.
- Violation of the bye-laws.
- Mismanagement (*faute de gestion*).

There can be criminal liability in certain circumstances (for example, the distribution of fictitious dividends by the managers).

Parent company liability

Parent companies and their subsidiaries are separate legal entities. Therefore, a parent company is only liable for damages caused by its subsidiary in exceptional circumstances (for example, in a situation of fraudulent collusion between a parent company and its subsidiary).

Employment

Laws, contracts and permits

10. What are the main laws regulating employment relationships?

The employment relationship is mainly governed by the Labour Code (*Law n° 65-99*) and industry-wide collective bargaining agreements (CBAs).

The Labour Code detailed provisions that were included in the code of obligations and contracts of 12 September 1913.

The main decrees and laws on labour law are the followings (non-exhaustive list):

- Dahir, dated 9 January 1946, relating to holidays (*Articles 41 to 46 and 47 to 49 only*).
- Dahir n° 1-60-223, dated 6 February 1963, relating to the compensation of work accidents and professional illnesses (as amended by Law n° 18-01 of 23 July 2002).
- Law n° 02-03 relating to the entry and sojourn of foreigners in the Kingdom of Morocco, and to illegal emigration and immigration (promulgated by Dahir n° 1-03-196 of 11 November 2003 (as completed by the provisions of Article 516 and 519 of the Labour Code).
- Decree n° 2-04-421 of 4 June 2004 on the increase of the minimum wage.

These provisions also apply to Moroccan citizens working abroad if the employment contract is subject to Moroccan law, except for the applicable mandatory regulations of the country where the contract is executed.

The employment contract of foreign employees working in Morocco must conform with a model contract prepared by the Ministry of Labour. Moroccan mandatory rules apply regardless of any choice of law clause and other contractual provisions.

11. Is a written contract of employment required? If so, what main terms must be included in it? Do any implied terms and/or collective agreements apply to the employment relationship?

A contract of employment can be verbal, but the employer must provide the employee with a job card (*Article 23, Labour Code*). The job card must mention, among others (*Decree n° 2-04-422 dated December 29, 2004*):

- The name of the employer.
- The name of the employee.
- The employee's function.
- The employee's social security number.

The signatures of the parties to the employment contract must be legalised by the relevant authorities (for example, a Moroccan township officer). Otherwise, the validity of the employment contract may be challenged.

The Labour Code does not provide for a sanction the parties' signatures are not legalised and as far as the authors are aware, there is no Moroccan case law clarifying this issue. Nevertheless, for the avoidance of any risk concerning the enforceability of the clauses of an employment contract, it is highly recommended to legalise the signatures of the parties to an employment contract.

12. Do foreign employees require work permits and/or residency permits?

The hiring of foreign employees is governed by Law n° 02-03 (relating to the entry and stay of foreigners in the Kingdom of Morocco, illegal emigration and immigration (promulgated by Dahir n° 1-03-196 of 11 November 2003)) as completed by the provisions of Articles 516 to 519 of the Labour Code.

Any employer wishing to hire a foreign employee must obtain an authorisation from the Ministry of Labour (*Article 516, Labour Code*). Authorisation is granted as a visa stamped on the employment contract. If authorisation is denied, the employer must bear the costs of sending the employee back to his or her country of origin or residence.

The date of the visa is the date at which the employment contract takes effect. Any modification to the contract requires a new visa and authorisation can be withdrawn at any time by the Ministry of Labour. It is important to note that Moroccan case law considers employment contracts for foreigners as fixed-term agreements.

Termination and redundancy

13. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

The works council is the main employee representative body. All companies employing at least 50 people must have a works council, which must be informed and consulted on almost all major company decisions, such as:

- Structural and technological changes to the company.
- The company's production strategy and means to increase profitability.
- The development and execution of social projects of benefit to the employees.

For companies employing at least ten people, employee delegates must be elected. They are responsible for:

- Presenting any individual claims to the employer that have not been met and are directly related to working conditions (that is, arising from the application of labour law, the employment contract, the collective bargaining agreement (CBA) or the rules of procedure).
- Filing these claims with the work inspector, if the disagreement persists.

14. How is the termination of individual employment contracts regulated?

Early termination of a fixed-term employment contract can be justified if there is (*Article 33, Labour Code*):

- A serious breach of the contract.
- Disciplinary measures.
- A force majeure event.

The early termination of a fixed-term employment contract that is not justified by a serious breach of the contract, disciplinary measures or an event of force majeure, gives rise to the payment of damages equal to the wages otherwise payable for the remaining term of the contract (*Article 33, Labour Code*).

The early termination of an indefinite-term employment contract by the employer or the employee must, unless if caused by a serious breach of the contract, allow for a notice period, the duration of which is determined by regulations (generally one to three months for employment of less than five years) (*Article 34, Labour Code*). The notice period may be replaced by a compensation equal to the salary that would otherwise have been paid to the employee.

In addition to the notice period, the termination of an indefinite-term employment contract, unless it is caused by a serious breach of the contract by the employee, gives the employee a right to a legal indemnity equal to (*Article 53, Labour Code*):

- 96 hours of salary for the first five years of employment (or portion thereof).
- 144 hours of salary for the sixth to the tenth year of employment (or portion thereof).
- 192 hours of salary for the 11th to the 15th year of employment (or portion thereof).
- 240 hours of salary for each year of employment above 15 years (or portion thereof).

In addition, an employee who deems that the termination of his or her employment contract is abusive or unjustified may claim damages for abusive termination, by filing a claim with the Court of First Instance within 60 days of termination. Damages (if granted) are capped to one and a half months of salary for each year (or a portion thereof) of continuous employment, up to a 36-month limit (for employees that may justify employment for 24 years) (*Article 41, Labour Code*).

Below is an example of an indemnity calculation.

Basis of the indemnity. Taking into consideration the salary paid to Mr X during the 52 weeks preceding the termination of the employment contract assuming that such salary is the one stipulated in his employment contract and that he has received an incentive bonus in 2017 (all amounts in dirhams), the calculation would be as below.

Gross salary: 627,972MAD (T1)

Incentive bonus: $591,972 \times 17\% = 100,635.24$ MAD (T2)

Average amount: $(T1 + T2)/12 = 60,717.27$ MAD

Calculation of the notice period indemnity. Taking into account that Mr X was hired on 1 January 2017 and dismissed on 30 October 2018, the notice period indemnity is going to be two times the salary paid to Mr X for which the income tax and the social security contribution will be levied.

$60,717.27 \text{ MAD} \times 2 = 121,434.54 \text{ MAD}$

Calculation of the legal indemnities.

Number of hours of salary for the computation of this indemnity: $96 \times 2 = 192$ hours

Salary per hour: $60,717.27 / 190.7 = 318.39$ MAD

Legal severance indemnity: $192 = 61,130.88$ MAD

Damages for abusive dismissal. $60,717.27 \times (2 \times 1.5) = 182,151.81$ MAD

As such the gross amount of dismissal indemnities will be: $(1) + (2) + (3) = 364,717.23$ MAD

15. Are redundancies and mass layoffs regulated?

Companies with more than ten employees, which are contemplating collective redundancies for technological, structural or economical purposes, must (*Article 66, Labour Code*):

- Inform and consult the works council (*see* Question 13).
- Implement a collective and concerted redundancy plan including redeployment measures.

Collective redundancies are subject to an administrative authorisation issued by the province or *préfecture* governor.

Tax

Taxes on employment

16. In what circumstances is an employee taxed in your jurisdiction and what criteria are used?

The individual income tax is governed by the General Tax Code.

The following individuals are liable to income tax in Morocco (*Article 23, General Tax Code*):

- Residents of Morocco (on all their global income, whether received in Morocco or abroad).
- Non-residents of Morocco (on all their Morocco-source income).
- Residents and non-residents, on income or profits that are taxable under the provisions of a double taxation treaty (*see* Question 25).

Taxable employment income includes wages, salaries, indemnities, pensions, and other fringe benefits (in kind or in cash) paid to employees (*Article 56, General Tax Code*).

A person is tax resident in Morocco when either:

- He or she has his or her habitual residence in Morocco.
- The centre of his or her economic interests is in Morocco.
- The total duration of his or her stay in Morocco over any period of 365 days exceeds 183 days.

For foreign employees, tax residency is determined by the definition of tax residency in any applicable double tax treaty signed by Morocco and the foreign employees' country.

17. What income tax and social security contributions must be paid by the employee and the employer during the employment relationship?

Tax resident employees

Employment income is usually taxed at progressive rates, the maximum rate being 38%. The employee's share of social security contributions is 6.74% of the gross salary.

Non-tax resident employees

Non-tax resident employees can be subject to tax in the same conditions as residents (notably on their Morocco-source income) and depending on the provisions of any applicable double tax treaty.

Employers

The employer's share of social security contributions is 12.11% (uncapped) and 8.98% (computed on a gross salary capped to MAD 6,000/month) of the gross salary.

Business vehicles

18. When is a business vehicle subject to tax in your jurisdiction?

Tax resident business

Tax resident companies are those that are registered in Morocco or that are effectively managed and controlled in Morocco. Foreign companies with a permanent establishment in Morocco are also tax resident.

More generally, companies (whether incorporated in Morocco or not) are taxable in Morocco on the whole benefits and revenues derived from the goods they own, the activity they carry on and the lucrative operations they perform in Morocco, even occasionally (*Article 5, Moroccan Tax Code*).

Non-tax resident business

A non-tax resident company is subject to corporate income tax on Morocco-source income (*see Question 19, Corporate Income Tax*).

Transactions performed in Morocco for the benefit of non-tax resident companies may be subject to value added tax (VAT).

19. What are the main taxes that potentially apply to a business vehicle subject to tax in your jurisdiction (including tax rates)?

Corporate income tax

Corporate income tax (CIT) is governed by the provisions of the General Tax Code and applies as follows (progressive scale):

- 10% CIT for the company's net profits amounting to a maximum of MAD 300,000.
- 20% CIT for the company's net profits amounting to a minimum of MAD 300,001 and a maximum of MAD 1,000,000.
- 31% CIT for the company's net profits exceeding MAD 1,000,000.

Banks, financial institutions and insurance companies are subject to tax at a rate of 37%.

All companies must pay a minimum tax of either (whichever is the greatest):

- CIT computed based on the above progressive scale.
- 0.5% of the annual turnover (due even in case of tax losses, with a minimum of MAD 3,000).

All companies, whether resident in Morocco or not, are taxed on their benefits and revenues, which are (*Article 5, General Tax Code*):

- Derived from assets located in Morocco.
- Derived from activities and for-profit operations performed in Morocco, even occasionally.
- Taxable in Morocco under a double tax treaty (*see Question 25*).

A portion of profits corresponding to export turnover is exempted from corporate income for five years from the beginning of company activity and subject to 17.5% for the subsequent years.

Value added tax (VAT)

VAT applies to all industrial, commercial or handicraft operations, the exercise of a liberal profession, and imports (*Article 87, General Tax Code*). The amount of VAT paid to the tax authorities can be set off against VAT paid by the relevant business during the relevant period.

The common rate of VAT is 20% of the value of the goods sold or of the services performed. However, reduced rates (of 7%, 10% or 14%) apply to specific transactions.

Export of services and goods is VAT exempted.

Services used or exploited in Morocco invoiced by a Moroccan resident are not considered as an export of services and are subject to VAT at the rate of 20%.

Registration duties

Certain transactions involving assets in Morocco are subject to registration duties, which can be quite substantial (for example, 5% for a land purchase or 6% for a transfer of real estate property and goodwill).

The transfer of shares has been exempt from registration duties since 2018, as well as most capital increase operations.

Dividends, interest and IP royalties

20. How are the following taxed:

- Dividends paid to foreign corporate shareholders?
- Dividends received from foreign companies?
- Interest paid to foreign corporate shareholders?
- Intellectual property (IP) royalties paid to foreign corporate shareholders?

Dividends paid

Dividends paid by a Moroccan company to a foreign corporate shareholder are subject to a 15% withholding tax, unless the provisions of a double tax treaty provide for a lower rate.

Dividends received

Dividends received by Moroccan corporate shareholders from foreign companies benefit from a 100% rebate, provided that the recipient company presents to the payer a certificate of ownership of the securities giving rise to the distribution.

Interest paid

Interest paid by a Moroccan company to a foreign corporate shareholder is subject to a 10% withholding tax on the gross amount, unless the provisions of a double tax treaty provide for a lower rate.

Interest paid regarding a loan denominated in a foreign currency and with a duration equal or exceeding ten years are exempted from the 10% withholding tax.

Interest paid are also subject to VAT at a rate of 10% (even to a non-Moroccan lender).

IP royalties paid

IP royalties paid by a Moroccan company to a foreign corporate shareholder are subject to a 10% withholding tax on the gross amount, unless the provisions of a double tax treaty signed between Morocco and the country of residence of the relevant foreign corporate shareholder provides for a lower rate.

Groups, affiliates and related parties

21. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)?

Interest on loans from shareholders is only deductible if the share capital of the borrowing company is fully paid up.

If this condition is satisfied, interest is tax deductible but subject to the following limitations:

- The amount of the loan cannot exceed the amount of the share capital of the borrowing entity (any interests related to the part which exceeds the amount of the share capital are not tax deductible for the subsidiary).
- The rate cannot exceed a rate set annually by the Ministry of Finance. The rate approved on December 2018 is 2.25%.

Interest paid to a non-Moroccan lender, which would not be a direct shareholder of the Moroccan entity shall be deductible for tax purposes without limitation.

22. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

Profits of a foreign subsidiary do not have to be imputed to a parent company that is tax resident in Morocco.

23. Are there any transfer pricing rules?

Moroccan tax authorities can investigate and make their own assessment of any transfer price that involves related parties. The Moroccan tax authorities are quite aggressive regarding transfer pricing regulation in the context of a tax audit.

Companies incorporated in Morocco can apply to the tax authorities for approval of their transfer pricing policy (advance pricing agreement procedure).

Customs duties

24. How are imports and exports taxed?

Imports are subject to the following three taxes:

- Importation rights (that is, customs duties).
- Value added tax (VAT) at the standard rate of 20% (reduced rates apply to specific products). It is enforced in Morocco by the customs authorities and paid on clearance of the goods.
- Parafiscal tax at a rate of 0.25%.

Morocco has free trade agreements with the EU, (2000), the United Arab Emirates (2003), the USA (2005), Turkey (2006), the Great Arab free trade area (2005) and the Mediterranean Arab countries (2006), which may reduce custom duties (or exempt them).

Double tax treaties

25. Is there a wide network of double tax treaties?

Morocco has entered into tax treaties with more than 50 countries, including the US and the majority of EU countries.

Morocco is currently negotiating more than 20 tax treaties with African countries.

Competition

26. Are restrictive agreements and practices regulated by competition law? Is unilateral (or single-firm) conduct regulated by competition law?

Competition authority

Under the Constitution, as amended in 2011, the Competition Council is an independent administrative authority responsible for controlling anti-competition practices and the prior control of concentrations in Morocco.

The Law n°20-13 adopted on 7 August 2014, implemented by Decree N° 2-15-109, outlines the consequences of the new constitutional provision and reforms the status and powers of the Competition Council. The Competition Council is now in charge of:

- Making decisions on anti-competition practices and controlling concentrations, with broad powers of investigation and sanction.

- Providing advice to official consultations by public authorities.
- Publishing reviews and general studies on the state of competition in specific sectors or at the national level.

Restrictive agreements and practices

The Law n°104-12 of 7 August 2014, implemented by a decree n°2-14-652, reformed competition law with effect from 5 December 2014. This law strictly regulates restrictive agreements and practices (including concerted practices). Agreements and practices whose object or effect is to prevent, restrict or distort competition are prohibited.

Any moral or physical person, whether or not their main office or establishment is in Morocco, is subject to the Competition Law when its operations or behaviour have an effect on the competition on the Moroccan market or on a substantial part of it, as well as all production, distribution and service activities. This includes those activities carried out by legal persons governed by public law, when acting as economic operators and not in the exercise of public authority prerogatives, or public service missions and export agreements insofar as their application has an impact on competition on the Moroccan domestic market.

In cases of breaches of Competition law, the Competition Council can:

- Order interim measures.
- Issue court orders under financial compulsion.
- Impose financial penalties of up to 10% of the global turnover. This maximum is doubled in the case of repeated offences within five years.

Unilateral conduct

Single firm conduct is regulated under competition law (*abus de position dominante*). Taking advantage of a market dominant position or of the economic dependence of another operator is prohibited when it aims at, or has the consequence of, preventing, restricting or distorting competition on a national market or a substantial part of it.

The offering on the market of products at an abusively low price in comparison to the production, transformation and commercialisation costs is also prohibited if the practice aims at, or may have the effect of, excluding an operator from the market or preventing a competitor from entering it.

27. Are mergers and acquisitions subject to merger control?

Any concentration that could prevent, restrict or distort competition, including but not limited to the creation or the reinforcement of a dominant position, requires prior approval from the Competition Council. Following the reform adopted on 7 August 2014 and effective since 5 December 2014, concentrations must be notified to the Competition Council where any of the following applies:

- The combined worldwide turnover (tax free) of the companies or groups involved in the transaction exceeds MAD750 million.
- The turnover (tax free) in Morocco of at least two companies or groups of natural or legal persons involved in the transaction exceeds MAD250 million.
- The parties to the transaction hold together a market share of 40% of a national market or of a substantial part of it.

The Competition has the power to:

- Issue court orders under financial compulsion.
- Impose financial penalties on legal entities of up to 5% of the turnover (tax free) achieved in Morocco in the previous year, increased, where applicable, by the turnover generated in Morocco during the same period by the merged company.

Intellectual property

28. Outline the main IP rights in your jurisdiction.

Patents

Definition and legal requirements. Law 17-97 (as amended by Law 23-13) relating to the protection of industrial property protects an invention if it:

- Is new.
- Involves an inventive activity.
- Is susceptible of industrial application.

Registration. Moroccan and Patent Co-operation Treaty (PCT) patent applications are respectively filed with the Industrial and Commercial Property Office and the World Intellectual Property Organisation (WIPO).

European patents can be validated in Morocco through a joint process before the Industrial and Commercial Property Office and WIPO.

Enforcement and remedies. The patent owner can bring actions before a commercial court (to seek damages and/or an injunction against the infringer) and before a criminal court. Infringement is punishable by two to six months of imprisonment or a fine ranging from

MAD50,000 to MAD500,000, or both. If the offence is repeated, the minima and maxima are doubled.

Length of protection. Protection lasts for 20 years from the date of filing the patent application.

Trade marks

Definition and legal requirements. Protection is granted to a sign that is:

- Distinctive.
- Not deceptive or prohibited.
- Available (that is, does not infringe prior third parties rights taking into account that such protection of prior rights requires proactivity and opposition by the right holder).

Protection. The protection requires the registration of a Moroccan trade mark with the Industrial and Commercial Property Office or of an international trade mark protecting Morocco based on Madrid Arrangement and Protocol. In addition, the protection of an unregistered trade mark could be considered if the trade mark is notorious.

Enforcement and remedies. The trade mark owner can bring actions before a commercial court (to seek damages and/or an injunction against the infringer) and before a criminal court. Infringement is punishable by two months to one year of imprisonment or fines ranging from MAD50,000 to MAD1,000,000 depending on the nature and characteristics of the infringement. If the offence is repeated, the minimum and maximum fines are doubled.

Length of protection and renewability. Protection lasts for ten years from the date of filing of the application and is renewable indefinitely. However, a trade mark can be revoked if its owner has, without good reason, not genuinely used it for an uninterrupted period of five years.

Registered designs

Definition. Protection is granted for a design if it is new and respectful of the law and order. The industrial property title may be granted on a design, a model, or a combination of both. A design can also be protected by copyright if it is original.

Registration. This is the same as for patents (*see above*, Patents).

Enforcement and remedies. This is the same as for patents (*see above*, Patents).

Length of protection and renewability. Protection gives the owner the exclusive right to exploit the design for five years. Protection can be renewed four times, meaning a maximum period of 25 years.

Unregistered designs

A design can be protected by copyright if it is original (see below, Copyright).

Copyright

Definition and legal requirements. Law n° 2-00 relating to copyright and related rights grants protection to literary, musical, dramatic and artistic works which are original. This also applies to computer software and databases. It confers both patrimonial and moral rights.

Protection. The benefit of copyright arises automatically on creation of an original creative work. No registration is required. However, the difficulty could consist in proving the nature of the work and the identity of the author. Therefore, it is crucial to secure any available evidence. Copyright includes patrimonial and extra-patrimonial rights.

Enforcement and remedies. The copyright owner can seek damages and injunctions against the infringer. An infringer also faces two to six months of imprisonment or a fine between MAD10,000 and MAD100,000, or both. If the offence is repeated, the sanctions are increased.

Length of protection and renewability. Patrimonial rights are protected from the creation of the work during the life of the author and for 70 years after his death. There is no time-limits for the enforcement of extra-patrimonial rights by the author or his successors. Generally, related rights are protected for 70 years from the date of first publication.

Marketing agreements

29. Are marketing agreements regulated?

Agency

Commercial agency contracts and relationships between commercial agents and their principals are governed by Article 393 to 404 of the Commercial Code.

Distribution

There is no specific law governing distribution agreements and they are, therefore, subject to contract law (*Dahir portant Code des Obligations et des Contrats*), the Commercial Code and competition law.

Franchising

There is no specific law governing franchising. However, franchise agreements must comply with the provisions of the contract law (contained in the

Civil Code (*Dahir des obligations et des contrats*)), Commercial Code, competition law, intellectual property law and foreign exchange regulations, if it involves a foreign franchisor.

E-commerce

30. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)?

Law n° 53-05 promulgated on 30 November 2007 and inserted in the Civil Code, governs the electronic exchange of legal data, such as:

- Electronic commerce.
- Electronic signatures.
- Protection of consumers in respect of distance contracts.

Advertising

31. Outline the regulation of advertising in your jurisdiction.

Dahir of 5 Safar 1357 (6 April 1938) regulates advertising using posters, billboards and signs. Posters are strictly prohibited in certain areas, including the medina (the old city), the public domain, religious places and monuments. A fine may apply for violating this prohibition.

Law 77-03 (as amended by Law 66-16) regulates audiovisual advertising. It contemplates several prohibitions (such as, on games, alcohol, restrictions on medicines and advertising). Audiovisual advertisement must be in Arabic, Amazigh or Moroccan dialect. An advertisement in a foreign language is allowed if either:

- It requires a specific wording that cannot be translated,
- The same message is already broadcasted in Arabic, Amazigh or Moroccan dialect.

The advertisement must be clearly identified and separated from other audiovisual programmes. It must:

- Respect human dignity.
- Not be provocative, immoral or discriminatory.
- Not be misleading.

Comparative advertising must not be deceptive or unfair towards competitors. Companies can sign sponsorship agreements with audiovisual programmes if their products are not subject to advertisement restrictions. However, advertisements are not allowed in programmes related to political rights.

Law 31-08 regarding consumer protection also sets out a general prohibition of false or misleading advertising.

Law n° 88-13 on written media and edition provides for several restrictions and rules on advertising (*Articles 62 et seq*).

Data protection

32. Are there specific statutory data protection laws? If not, are there laws providing equivalent protection?

Law N° 09-08 on the protection of individuals regarding the processing of personal data introduced a set of legal provisions aimed at protecting the identity, rights, individual and collective freedoms, and privacy against all attacks that may affect them through electronic means.

This law regulates, among other things, the rights to:

- Access databases containing personal data.
- Object to certain treatment.
- Request correction of erroneous data.
- Delete outdated information, or information whose purpose of treatment was performed.

In addition to strict rules on information and consent of the data owner, it provides for rules regarding:

- The implementation of safety and security measures, including when the data processing involves a subcontractor.
- The purposes of the data processing.
- The declaration or authorisation of the data processing with procedures to be followed with the Moroccan Data Protection Authority (CNDP), which has issued several decisions providing guidance on matters such as human resources, providers, customers, banks, CCTV, whistleblowing.

- The transfer of data abroad, with a level of caution which depends on the country of the recipient (if it considered as safe from a data protection perspective).

Product liability

33. How is product liability and product safety regulated?

Law N° 24-09 promulgated on 17 August 2011 related to the quality of the products and services, and inserted in the Civil Code, regulates product liability and product safety. The Law states explicitly that the manufacturer is liable for any damages caused to a third party due to a defective product. If the manufacturer cannot be identified, the distributor is considered liable for the damages caused.

Contributor profile

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