

# Legal Framework

Incentives on offer at Casablanca Finance City

Reforming local foreign exchange regulations

Free zones with benefits aimed at foreign investors

Legal changes to modernise the financial markets





Kettani Law Firm (hereafter 'KLF') is a major Moroccan business law firm founded in 1971 by Professor Azzedine Kettani who was admitted to practice as a lawyer in 1968 and is approved by the High Court of Justice of the Kingdom of Morocco. He was joined in 1992 – after internships in France and the United States – by Nadia Kettani, who is the Head of the International Consulting Department while supervising some areas of the Litigation Department; and Rita Kettani in 1993, who is the Head of the Commercial Department, the Litigation Department and the Labour Law Department. The firm acts for banks and other financial institutions, international businesses, major public and private companies and government departments.

KLF covers the whole spectrum of financial and business activities, and is an acknowledged leader in the fields of corporate finance, banking, project finance, corporate and commercial law. Areas of particular expertise include stock exchange law, aviation law, telecommunications regulations, energy, tourism, labour law, intellectual property, audits and IPOs. Additionally, the firm has a great deal of experience in arbitration and litigation as well as handling all forms of commercial disputes.

International experience: KLF has handled a number of high profile projects for clients around the world. These include advising France Télécom as a potential buyer of Maroc Télécom, the national telecommunications operator, for US\$2.3 billion; and Telefónica's bid of US\$1.1 billion for the acquisition of the second GSM line. The firm has also developed expertise in the energy industry field, including project finance of US\$1.6 billion for Jorf Lasfar, and of US\$500 million for a wind farm. The firm recently acted as adviser in the following cases: a major British company in the acquisition of the Moroccan state-owned tobacco company Régie des Tabacs for approximately EUR1.3 billion; the merger between two major American computer companies; and the merger between two international confectionary companies.

KLF were the advisors to the international managers to the Morocco Government for its non-guaranteed sovereign Eurobond issue for EUR400 million. KLF has handled a significant number of major M&A projects some of which include the restructuring of HP, the acquisition by Coca-Cola of Moroccan companies. The substantial merger of the Moroccan refinery Samir with SCP was also handled by the firm. KLF has also advised international bidders during the numerous privatisation bids in Morocco in different areas. KLF advised local banks for the financing of the acquisition by Altadis of 80 per cent of Régie des Tabacs for EUR300 million. KLF has also advised Lydec (a subsidiary of Suez) for the outsourcing of its pension scheme for EUR250 million, EUR100 million of which was through a limited recourse bond issue. KLF advised local banks for the financing of the acquisition by SPT (a subsidiary of Vivendi) of 16 per cent of Maroc Telecom for EUR500 million. KLF has advised Roche SA locally for the sale of its over-the-counter pharmaceutical business to Bayer. Transaction values worldwide are in the region of EUR2.4 billion. KLF has advised in 2010 large pharmaceutical companies including Novartis Pharma and GSK regarding the reorganization of their business in Morocco. In 2012, KLF advised Sika and Solware for their mergers.

KLF has also advised on the IPO of Maroc Telecom on the Casablanca stock exchange and the Paris stock exchange (Euronext) as counsel to Merrill Lynch and BNP Paribas (EUR800 million), the upgrade of the Samir refinery as counsel to the banks (about US\$700 million) and refinancing of Méditel's international debt as counsel to the banks (about EUR600,000). Also, KLF advised local banks for the investment of Four Seasons in Morocco (EUR100 million) and is currently advising developers on large tourist projects in Morocco bringing important added value to the luxury hospitality business in Morocco.

KLF has also advised IFC in some of their recent investments in Morocco.



## MAIN INTERNATIONAL AREAS OF PRACTICE

### Energy and Renewable Energy

The Firm has been present in the energy sector advising blue chip clients with regards to exploration of oil and gas and exploitation of hydrocarbon permits.

The firm has also assisted in the following large energy projects: Ain Beni Mathar (Thermal-solar energy plant) (MAD 4.7 billion), Jorf Lasfar (coal-fired plant) (US 1.6 billion), Koudia Al Beida (wind farm – Northern Morocco) (Eur 500 million) and is continuing to do so in 2012 for the following projects: Tarfaya (wind farm) acting for the sponsors, Safi (coal-fired plant) acting for the sponsors, Ouarzazate solar power plant acting on behalf of sponsors and as advisors to lenders and ECAs within the extension of the Jorf Lasfar Project.

KLF has also advised in 2010 Masen (the Moroccan Agency for Solar Energy) regarding the solar power projects in Morocco.

In 2011 and 2012, KLF continued assisting for the finance of the extension of the Jorf Lasfar Project, Tarfaya's wind farm and Safi's coal-fired plant.

In 2012, KLF assisted the closing of the Tarfaya wind farm (MAD 4 billion)

In 2012, KLF advised asian investors for mining activities in Morocco.

In 2013, KLF advised up to the successful closing of the finance of the Jorf Lasfar extension Project (US1.4 billion).

### Corporate law

KLF advises foreign investors on the structure of investment in Morocco, sets up commercial companies, drafts all types of commercial contracts needed and accompanies foreign companies during the entire investment process, including telephone assistance whenever and as often as needed. Mergers and acquisitions The firm advises on all operations relating to the financial strategy of both Moroccan and foreign companies, including restructuring and regrouping (mergers and similar operations, joint ventures), acquisitions, takeover bids, public offers of exchange, stock exchange listings and other equity transactions. The firm also handles complex law or stock exchange problems which may be encountered by either public or private companies, including during privatisation processes.

### Banking and finance

KLF has experience and expertise in all types of financing transactions. The firm provides legal advice in relation to the full spectrum of financial products including lending and acquisition finance, derivative products, project finance, financial regulation and structured finance. KLF has recently advised in major joint ventures of two international telecommunications companies and the joint venture between American and Moroccan food companies. KLF has advised in financing and project financing such as France Telecom Orange in the 40% purchase of Mediatecom, Morocco's second largest telecommunications operator (Eur 640 million).

In 2010, KLF has advised lenders in the financing of a large cement company (MAD 3 billion).

In 2011 KLF advised Shell for its activities carve out in Morocco.

In 2011 KLF advised Cimaf for its bond issue (MAD 3 billion).

In 2012 KLF advised BMCE and Alliance Group in their bond issues.

In 2012 KLF has also assisted ONCF (railway state office) for its finance projects.

In 2012 KLF has been the joint advisor of ImmoHeld Hospitality SA and BCP for the financing of its large project in Rabat (over MAD 600 million).

In 2012 KLF has advised the banks for the Kingdom of Morocco US 1.5 billion Notes Offering.

### Aviation

KLF is a leader in the transportation field. It is one of the pre-eminent local law firms in the aviation sector. The firm's experience covers aviation finance and leasing, aviation insurance, aviation dispute resolution and aviation corporate finance. It has advised in the past leasing companies such as GECAS, ILFC. In 2011 and 2012, KLF has advised Air Arabia regarding the financing of its aircrafts in Morocco.

### Telecommunications

KLF has substantial experience in dealing with, and advising on, all aspects of telecommunications.

In 2011, KLF advised France Telecom for the acquisition of 40% of Mediatecom

In 2012-2013, KLF is advising Vivendi for the sale of its participation in Maroc Telecom.

### Intellectual property

KLF has longstanding experience in IP practice. It acts in all areas of intellectual property law including counterfeiting, patents, trademarks, designs and models, and copyright. The firm also provides assistance in competition law.

### Negotiation of delegated services

KLF served as counsel to the delegate in the implementation of the water and electricity company Lydec, a subsidiary of Suez. The firm also provided counsel to the delegate in the implementation of the SITA El Beida sanitation service (also a subsidiary of Suez). During the implementation of an urban transport service KLF served as counsel to the municipality. KLF is currently advising the Government in the renegotiation of delegated services in various cities in Morocco. KLF has also participated in the Agadir's water plant.

### Initial public offerings (IPOs)

KLF assisted with the IPOs of Lydec, Maroc Telecom and Adoha (US\$270 Million).

### Tourism

KLF has advised large international operators as well as important local groups including in 2010-2011 in the structuring and implementation of their investment in the tourism sector.

In 2012, KLF advised Hilton for its implementation in Tangier.

In 2012, KLF advised ImmoHeld Hospitality SA in the implementation of its large project in Rabat.

### Litigation and arbitration

KLF has considerable experience in proceedings before national and international courts acting as both attorney and arbitrator. The litigation department assists, advises and represents companies both before and during litigation.

The firm advises on all operations relating to the financial strategy of both Moroccan and foreign companies, including restructuring and regrouping (mergers and similar operations, joint ventures), acquisitions, takeover bids, public offers of exchange, stock exchange listings and other equity transactions.

Pr. Azzedine Kettani, the managing partner is regularly appointed as arbitrator or president of arbitration tribunals under several arbitration institutions such as ICSID, ICC or DIAC.

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Casablanca Finance City status offers companies tax incentives

# Global standards

## Modernising the legal system to attract foreign investors

The year 2013 is set to see several important steps in the legislative trend towards the modernisation of the Moroccan economy. The term "modernisation" in this context suggests that new laws will be implemented to bring the economy in line with global standards and offer investors new financial products, thus creating new potential and capital injections for the country.

One key element of this reform trend is the implementation of the derivatives exchange market. A draft law has been finalised and is currently under discussion in parliament. It is expected to be voted on in the course of 2013, with the derivatives exchange becoming operational later in the year.

**GREATER SCOPE:** Market participants will be able to trade derivatives on foreign exchange rates, commodities or interest rates. Furthermore, the authorities will consider other types of derivatives products for approval. Foreign exchange rules already allow the execution of derivatives products based on underlying assets such as exchange rates, commodities or interest rates. However, the current scope of permitted derivatives transactions is limited to those authorised by the foreign exchange rules. With the new law, other types of sophisticated products may well be structured and authorised by the incoming Derivatives Management Company, which will be in charge of structuring and approving all exchanged derivatives products.

In addition to creating the Moroccan derivatives exchange, the legislature will also implement a new type of financial transaction; namely, securities lending, also referred to as stock lending. This financial product is widely used in today's global economy, and it has been revealed in a survey that approximately €1.37bn of stocks were lent in 2007. This market continues to grow globally and many foreign banks and investors are willing to offer stock-lending opportunities to local market participants. The Moroccan lawmakers had to react and therefore drafted a bill that is currently being voted on by parliament. The law on stock lending is expected to be enacted sometime during the course of 2013.

**UPGRADED STATUS:** Concomitant with the implementation of the derivatives exchange and securities lending, Morocco created a new legal status in December 2010 for financial companies and large industries willing to set up a local presence at low costs through the award of tax incentives. Termed Casablanca Finance City (CFC) status, it will be granted to companies that go through a specific application process. Once status is granted, participating companies will thereafter be able to benefit from the tax incentives. Through the creation of this new status and the greater incentives available to successful applicants, the Moroccan government appears to be taking concrete steps in establishing a financial centre in North Africa.

The geographical area of CFC has not yet been determined by the legislature, but the Moroccan Financial Board has already disclosed that CFC will be located in downtown Casablanca. While the site has not yet been built, companies can already buy a plot of land and begin construction. They will also be able to buy or rent platforms starting from 2014/15. Further, companies have already started to apply for CFC status and are looking to benefit from the tax incentives available.

**REGULATOR:** The last step of reforms to the financial market will be through the enactment of the Draft Law 54-08 to create a new regulator called the Moroccan Authority of Capital Markets (Autorité Marocaine des Marchés de Capitaux, AMMC). The role of the AMMC will differ from the current Financial Markets Authority in that it will not be limited to organising and monitoring securities transactions, but will extend to the capital market in general, thus including the monitoring of derivatives and securities lending transactions.

In addition to attracting foreign investors and encouraging new capital injections in the kingdom, specifically through the implementation of new and improved financial products and tax incentives, the Moroccan government is also aiming to entice foreign industry groups to set up their business activities in the country through the creation of new offshore zones (see analysis).





The Draft Law divides derivatives into futures, options and swaps

## Modernising financial laws

### Tracking efforts to raise standards in the derivatives market

The modernisation of financial trading has necessitated the enactment of new legislation. While only in draft format, these laws indicate a drive to upgrade the legal environment for domestic and global trading.

The Draft Law 42-12 (April 19, 2012) on derivatives exchange, stipulates the rules to organise the derivatives market and to ensure regulation by Bank Al Maghrib and the Financial Markets Authority (Conseil Déontologique des Valeurs Mobilières, CDVM) over derivatives transactions and actors within the market.

**STRUCTURE:** The Draft Law divides derivatives in three categories: futures, options and swaps. Among its more significant provisions, the law states that (i) in order to carry out derivatives transactions, banks and financial companies must obtain a prior approval from the Ministry of Finance; (ii) the authorisation of the issuer of the underlying assets is required before launching the derivatives product; (iii) a prospectus must be issued ahead of the launch of a contemplated derivative; (iv) standard agreements drafted by the newly-created derivatives clearing house must be used by the counterparties; (v) guarantee deposits must be paid by the counterparties to the clearing house, which maintains a guarantee fund to cover the risks associated with the derivatives market; and (vi) the derivatives products will be structured and approved by the newly created Derivatives Management Company.

Given the primary role of over-the-counter (OTC) derivatives and derivatives traded on organised exchanges (notional amounts outstanding worldwide of derivatives on organised exchanges totalled €19.41trn at the end of September 2012), as well as securities lending transactions (average of €18bn of securities lent everyday through Euroclear Bank), Morocco is showing intent to harmonise its legal system with global standards to attract foreign investments in the region and become a leading marketplace in Africa.

**AVOIDING SPECULATION:** The modernisation of the Casablanca exchange, however, may not result in allowing highly speculative products. In Morocco, there is a

general inclination against purely speculative products. The legislature tends to prevent the introduction of highly speculative products, either by (i) entailing them in specific set of rules such as Law 10-98 relating to mortgage collateralisation, or (ii) simply by prohibiting them, such as article 161 of the November 16, 2012 Circular of the Moroccan Office of Exchange, which forbids purely speculative derivatives on commodities.

The Draft Law mandates that the issuer of the underlying asset authorise the derivatives transaction, thus showing greater willingness from the legislature to prevent the potential negative impact of highly speculative products. By creating the Casablanca derivative exchange, the Moroccan legislature is also favouring regulated derivatives products over unregulated OTC transactions, which suffer from a lack of transparency given the high volume of unregulated OTC transactions worldwide. In fact, total notional amounts outstanding of OTC transactions were €497trn as of late June 2012.

**SECURITIES LENDING:** The modernisation trend of the Casablanca exchange will continue to develop though the introduction of securities lending transactions in the legal system. Currently, market participants in Morocco may not execute securities lending due to the absence of any environment regulating this type of transaction. Given the importance of securities lending in major financial markets, the Moroccan legislature implemented the Draft Law 45-12 (April 12, 2012) on securities lending, which provides a list of entities authorised to carry out securities-lending transactions. The parties will have to formalise their agreement though the execution of a mandatory standard-form securities agreement established by the CDVM. The Draft Law should be passed during the course of 2013.

The last step of the reforms is through the enactment of Draft Law 54-08, which creates a new market regulator called the Moroccan Authority of Capital Markets, whose role will differ from the CDVM since it will extend to capital markets to cover both monitoring derivatives as well as securities-lending transactions.



العملة	UNITÉ	البيع	الشراء
MONNAIES		ACHAT	VENTE
الدينار المغربي	MAD	1	1
اليورو	EUR	110.44	114.72
الدولار الأمريكي	USD	78.74	81.79
الدولار الكندي	CAD	80.55	89.03
الغنيه الاسترليني	GBP	126.13	131.01
جنيه جبل طارق	GIP	119.34	132.12
كرونة الدنمارك	DKK	14.30	15.06
الكرونة النرويجية	NOK	13.41	14.17

The MOE Circular codifies 815 articles regulating foreign exchange

## Moving money

### Steps to codify the regulation of foreign exchange

With the modernisation of financial laws, it has also been necessary to reform and adapt Moroccan foreign exchange regulation. On November 16, 2011, the legislator enacted the Moroccan Office of Exchange (MOE) Circular, in the process compiling and codifying 815 articles for all regulation applicable to foreign exchange.

**ACCOUNTS & CURRENCY:** The Circular permits local banks to open accounts in dirham and foreign currency for corporate and individual clients. Local banks can also open bank accounts abroad on behalf of their own clients for the purpose of the clients' transactions.

Moroccan or foreign non-residents may import foreign currencies or negotiable instruments in Morocco up to a maximum value of Dh100,000 (€8890), provided these are declared at Customs when entering the country. In addition, foreign or Moroccan citizens that are resident within the kingdom may also import foreign currencies or negotiable instruments up to a value of Dh100,000 (€8890), provided these are declared when entering the territory and the currency is exchanged into dirham within 30 days.

**IMPORTS & EXPORTS:** The Circular regulates the importation of goods into Morocco, stipulating that locally established entities may import goods without prior authorisation from the MOE provided that an import licence has been issued by Customs. The payment of imported goods may occur in any currency listed on the Moroccan currency exchange. The Circular also regulates the import of services. The general spirit is to allow cross-border payments by local entities to foreign service-providers subject to the local bank of the importer being provided with sufficient evidence (e.g., contract, invoices) that the services were effectively performed. Other rules and formalities apply depending on the types of imported goods and services.

The export of goods is also regulated by the Circular. Prior authorisation from the MOE is not required if an export licence is obtained from the Customs authorities by the exporter. The latter can be paid in any currency listed on the Moroccan currency exchange. If

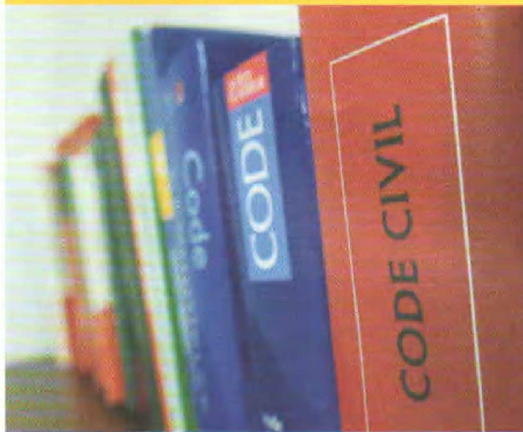
the goods exported were sold in a currency other than Moroccan dirham, the exporter must convert the sale price into Moroccan dirham within 180 days from the Customs clearance. Other rules and formalities apply depending on the types of exported goods. As regards the export of services by locally based entities, the Circular states that these entities must exchange the currencies they received in consideration of the services rendered to the out-of-state client/contractor, within 30 days following the payment.

**FOREIGN INVESTMENT:** The Circular defines foreign investment as any investment in Morocco in a currency other than Moroccan dirham carried out by foreign entities or Moroccan citizens residing out-of-state. Foreign investment may consist of (i) the acquisition of shares in Morocco, (ii) the creation of a Moroccan company, or (iii) the grant of a loan in a foreign currency. The general rule is that the foreign investor must notify the MOE of his investment within six months of the transaction. This will enable him to benefit from the repatriation of capital gains, benefits and the transfer of the proceeds of his investment in case of sale.

With respect to the cross-border transfer of investment proceeds to foreign investors, the rules vary depending on the type of investment. For instance, the Circular allows foreign investors to freely repatriate their assets listed on the Casablanca Stock Exchange, but more stringent rules may apply for other types of investment. For instance, the export of the proceeds of the enforcement of a security package such as a mortgage is submitted to the prior approval of the MOE.

The code also provides a set of rules regarding investment made by Moroccan entities in other countries. These may consist of acquiring shares in out-of-state companies or granting loans to entities abroad. Here again, various forms and documents must be submitted to the MOE to allow the cross-border investment payments to be made. The limit to investment funds sent abroad is Dh100m (€8.89m) for destinations in Africa and Dh50m (€4.45m) for investments elsewhere.





The minimum capital requirement for LLCs was abolished in 2011

## Cash flow and capital

### An overview of corporate law and recent reforms

While the law provides for a wide variety of corporate structures, most companies are joint stock companies, governed by Law 17-95, as amended, or limited liability companies (LLCs) governed by Law 5-95, as modified. Joint stock companies are required to have no less than five shareholders and a minimum capital of Dh300,000 (€26,670), or Dh3m (€266,700) if listed on the Casablanca Stock Exchange. The management of a joint stock company may take two forms.

**STRUCTURE:** The first form of joint stock companies consists of a single board of directors having between three and 12 directors (and up to 15 if the company is listed), which appoints a managing director to the company. The second company structure includes a board of no more than five directors (or seven if the company is listed on the Casablanca Stock Exchange) appointed and monitored by a supervisory board, which also appoints one director as managing director. LLCs are required to have between one and 50 shareholders, and until recently to have minimum capital of Dh10,000 (€890) placed in a blocked account. One or more individuals can be appointed to manage the company.

**CAPITAL REQUIREMENT:** On June 30, 2011, Law 24-10 abolished the Dh10,000 (€890) minimum capital requirement applicable to LLCs. This amendment may strongly encourage foreign investors and entrepreneurs to create companies, thus potentially bringing innovative products and services into Morocco.

This reform will indeed stimulate the creation of small and medium-sized enterprises and redress the anomaly whereby many small businesses are unable to become structured due either to an inability to raise the minimum capital of Dh10,000 (€890) or to run their business successfully where such a relatively large amount is required to be placed in a blocked account.

Further, Law 24-10 cancelled the obligation for LLCs to deposit the capital of the company in a blocked account during the creation of the company. At the time of writing, this obligation to deposit the capital in a blocked account only applied in instances where the

capital is higher than Dh100,000 (€8890). Regarding recent business law reforms, the main recent change was brought by Law 34-10 which mandates companies to settle invoices within (i) 60 days when no payment delay has been agreed upon between the seller and buyer, or (ii) no later than 90 days when the companies agreed on a period longer than 60 days.

This amendment will enable goods and services providers to secure payment in a prompt manner. It will also accelerate the finalisation of local transactions and thus improve the economy. By mandating the businesses to pay for purchased goods or services within a maximum 90-day timeframe, the legislature is strongly encouraging the innovation and development of new financial products by investors and especially by banks.

**CASH FLOW:** One key aspect of the business of large corporations today is the management of their cash flows as a means of obtaining alternative financing other than debt or equity financing. With shorter payment terms (as stated, a maximum of 90 days) applicable to companies, banks will indeed be more inclined to offer treasury solutions to large local companies, and especially factoring products.

Based on recent experiences with our clients, large businesses and banks are both willing to have recourse to factoring; i.e., a financial transaction whereby a company sells its accounts receivables (i.e., invoices) to a bank at a lower price than the original value of the said receivables. Also, besides the trade of account receivables, factoring may also be used as a credit tool for businesses. In such a scenario, the bank, instead of purchasing receivables to a creditor at a lower price as mentioned above, will advance the money owed by a client-debtor by paying the creditors of the bank's client directly and perceive interests. This sort of factoring allows businesses to face cash flow difficulties.

Thus, even though the importance of the legislative amendment on payment terms appears insignificant at first glance, the consequences of this change might in fact prove efficient for local business in the long run.





Free zones offer incentives such as reduced Customs duties

## New free zones

### The ins and outs of offshoring to encourage foreign investment

Part of Morocco's strategy to attract foreign investors is the creation of free zones. To date, six integrated industrial zones have been established, all within the region of Tangier, and with each one dedicated to a different sector of the economy, including car manufacturing, aeronautics and sports, among others. Prime Ministerial Circular No 9/2007 created nearshoring zones, dedicated to service industries, such as call centre outsourcing. Two nearshore zones now exist, with a further four planned for the future.

**A FAVOURABLE MODEL:** In wake of the creation of the Tangier Free Zone (TFZ), which continues to attract investors, Morocco has created two new free zones, namely (i) the Atlantic Free Zone in the region of Kenitra, and (ii) the Oujda Free Zone.

In general, the creation of free zones is a relatively new phenomenon. Affecting both Western and developing countries seeking to attract foreign investors as part of economic diversification, and creating more employment opportunities locally, free zones now exist in Europe, the US and India, among others. Free zones can be defined as geographic areas (ports or industrial zones) where companies benefit from a wide range of incentives such as (i) tax incentives, (ii) subsidies and (iii) reduced Customs duties and formalities.

In Morocco, free zones have proven successful, with the French car manufacturer Renault opening a new facility in the TFZ in 2012. While this operation was criticised in France on the basis that Renault deprived French workers of employment opportunities, the project moved forward and Renault eventually built its factory in TFZ to reduce its employment taxes and costs associated with social security tax.

Moroccan free zones are indeed very attractive for European companies looking to reduce their costs. The geographical factor is a key element in this current trend towards attracting European investors into Morocco. For instance, the TFZ prides itself on being only 15 km away from the European border. The proximity to Europe and the Moroccan policy objective to enhance

its economy through incentives offered to foreign companies indicates that free zones look set to continue to develop in the country.

**CURRENT TRENDS:** From a general point of view, offshoring worldwide is a trend set to continue. Most companies across the globe are in one way or another seeking to reduce their costs by outsourcing and establishing their businesses and factories in countries where the costs are lower than in their jurisdiction. This trend can be qualified as offshore shopping. In such an environment, the biggest corporations are offshoring their activities in countries that will offer them more incentives, such as low taxes, low manufacturing costs or low Customs duties. Morocco has understood the necessity to position itself favourably in this global development and, as such, is continuing to create offshore zones that offer the best incentives.

**BENEFITS:** The recent finalisation of the facility for French-Korean Renault-Nissan car manufacturer in the TFZ indicates that Moroccan offshoring policy is indeed attracting major global investors. And the reasons for this are simple. Companies establishing their activities in the TFZ will benefit from (i) exemption of taxes on dividends and partnership shares, (ii) 0% corporate tax during the first five years and then a reduced rate of 8.75% for the next 20 years; (iii) exemption of all registration taxes and stamp duties; (iv) exemption of value-added tax; and (v) tax-free repatriation of foreign earnings. Also, foreign companies may benefit from subsidies from the Moroccan government, which grants financial assistance for the acquisition of land and / or construction of production units.

The incentives applicable to free zones look set to continue to attract new foreign investors and enhance international transactions in North Africa. This is especially the case given that the incentives offered are concomitant with the creation of Casablanca Finance City (CFC), which will allow foreign finance companies to set up a presence in Morocco through the CFC status and benefit from other related business incentives.





Health coverage will now include several other medical services

## Increased commitment

### Standardising health care provision and labour policies

Decree 1-02-296 (October 3, 2002) promulgated Law 65-00 to form mandatory basic health coverage. In essence, this law demonstrates increased commitment from the state to ensure free medical services to the population, as well as the provision of quality medical services to all segments of the community.

**AREAS COVERED:** Several decrees have been adopted to further implement provisions of the law, such as Decree 2-09-299 (December 11, 2009), which completed Decree 2-05-737 (July 18, 2005). This decree determines the rates of medical benefits covered by the National Social Security Fund (Caisse Nationale de la Sécurité Sociale, CNSS), within the basic health coverage regime. It also provides expands the scope of medical services covered by the CNSS. Health coverage will now include all medical services such as reconstructive surgery in cases of hospitalisation or outpatient care, general medical services, specialised medical and surgery services, medical biological analysis, x-rays, medical imaging, functional explorations, medicines, functional rehabilitation services, physical therapy, paramedical services, devices necessary for outpatient services, medical prostheses and eye care.

Two additional decrees were enacted to update and clarify financial terms relating to health care coverage and work-related accidents and illnesses. Decree 2-10-319 (November 10, 2010), provides rates for allowances paid to compensate labour accidents or illnesses or those resulting from a judicial decision to compensate other accidents. Decree 2-11-464 (September 6, 2011), which completes and modifies Decree 2-11-464 (September 6, 2011), as well as Decree 2-05-734 (July 18, 2005), determines the rate of contributions due to the CNSS within the scope of the health coverage regime.

**CONVENTIONS:** The adoption of global conventions demonstrates the intent to comply with international standards. Decree 1-02-47 (August 2, 2011) publishes Convention 154 on the promotion of collective negotiation (June 19, 1981) and Decree 1-02-46 (August 2, 2010) publishes Convention 150 (June 26, 1978) on

labour administration. Ratifying members of the convention have undertaken to establish a labour administration system with efficiently coordinated missions and responsibilities. Ratifying members will further ensure regular consultations, collaboration and negotiations between public authorities, employers and employee organisations. Such provisions must be implemented on national, regional and local levels. The labour administration is entrusted with control and assessment of national labour policies and legislation. Administration members must be qualified for their functions and be independent actors.

**BARGAINING:** Convention 154 (June 19, 1981) on the promotion of collective negotiation states that measures must be implemented to ensure participation of employee representatives. To promote collective negotiation, ratifying states must create provisions to:

- Extend collective negotiation to all employers and employees categories;
- Extend collective negotiation to all sectors covered by the convention;
- Encourage the development of procedural rules between employers and employees organisations;
- Prevent collective negotiation from weakening due to a lack of rules governing its process; and
- Enable entities dedicated to resolving disputes to contribute and promote collective negotiation.

Such measures will be submitted for public consultation and authorities should agree on them with employer and employee organisations. The Labour Code already covers collective negotiations and employee representation, but international conventions allow for further support of local legislation and also provide some additional structure to the maturing labour environment.

Recently modernised, arbitration proceedings are contained within Decree 1-59-266 (February 19, 1960) relating to the ratification of the New York Convention, and Articles 306 to 327-54 of the Moroccan Code of Civil Procedure, which governs foreign and domestic arbitration proceedings and awards enforcement.





The government aims to make Casablanca a regional financial centre

## Status report

### The advantages attached to gaining CFC status

Law 44-10 enacted in December 2010, created the first Moroccan financial centre. Since the kingdom represents Africa's second-largest market capitalisation, the common ambition of the Moroccan legislature and the Casablanca marketplace is to create a financial centre that will attract international and regional investments from the Maghreb and West Africa.

**GAINING STATUS:** Law 44-10 created Casablanca Finance City (CFC) status; which is granted to financial companies to exempt them (within the first five years following the grant of CFC status) from the payment of any taxes applicable to export revenues and profits made in connection with asset transfers originating from abroad (with the exception of real estate-related transactions). After the first five years the tax rate applicable to export revenues and profits made in connection with asset transfers originating from abroad is 8.75%. Other tax incentives may apply depending on the service performed and the type of firm.

To gain CFC status, financial companies must apply to the Moroccan Financial Board (MFB). Notably, in order to benefit from the abovementioned tax incentives, applicants must commit to generate (i) 20% of their revenues with foreign companies during the first year following the grant of the CFC status, (ii) 40% of their revenues with foreign companies during the second and third years following the grant of the status, and (iii) 60% of their revenues with foreign companies during the fourth year following the grant of the CFC status, as well as in subsequent years. The tax incentives and the obligation for CFC firms to generate their incomes through the execution of transactions with foreign companies is indication of the lawmakers' intent to encourage global investors to set up a branch or a subsidiary in Morocco and to invest in the region.

**EARLY ENTRANTS:** Two years after the creation of CFC, the CFC status has already proven successful. For example in mid-2012, CFC status was granted to three major players in the financial and consulting services, as well as the manufacturing industry, namely Invest AD, which

is part of the Abu Dhabi sovereign wealth fund; Boston Consulting Group and the German auto and truck parts manufacturer, Continental AG.

The companies which are eligible to apply for CFC status are financial companies that qualify as any of the following: (i) credit institutions, including activities such as financial engineering; (ii) insurance and insurance brokerage firms; (iii) financial institutions operating in the asset management sector; (iv) regional or international headquarters; and (v) financial services companies, such as rating agencies, legal advisors, auditors or companies carrying out financial offshoring.

**APPLYING:** In order to apply for CFC status, eligible companies must follow a five-step process. The first step consists in sending a letter of intent to the MFB. If accepted, the applicant must then apply with the appropriate authorities to obtain a licence if the contemplated activity is subject to a licence requirement, such as banking, private equity, and insurance or brokerage activities. If not already registered as a business in Morocco, the applicant will then have to set up a local presence by following the normal incorporation process of companies with the trade office. Once registered with the trade office, the applying entity will then submit its application to the MFB by completing a standard application form together with submitting a business plan. The MFB will then approve (or not) the application within 45 days from submission of the application. In addition to application fees ranging from €1555 to €3887, CFC companies must also pay an annual fee, which varies from €3110 to €9330.

Other reforms are also currently being discussed and implemented to modernise the financial market. A draft law on derivatives is expected to be passed in 2013, as well as a draft law to introduce securities-lending transactions. Additionally, the geographical area of the CFC had yet to be determined at the time of publication.

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Nadia Kettani

## Enhancing regulation

Nadia Kettani, Partner, Kettani Law Firm, on new banking legislation

Among the main legal reform projects for the upcoming year is the insertion by the legislator of new legal provisions applicable to the banking industry. A draft law has been established and should be enacted soon.

The Justice and Development Party elected in 2011 has decided to reshape Law 34-03, notably by bringing Islamic finance into the banking market. However, the underlying spirit of banking reform initiated by the new government is not limited to enabling Islamic financial products to enter the marketplace, but rather to enhance banking regulation by the authorities.

Banking reform is being undertaken via the creation of new provisions into Law 34-03. These are laid out in the draft law dated July 24, 2012 (the Draft Law) that should be enacted by the government in 2013.

The Draft Law will create new type of banks that are specialised in offering Islamic finance products. These new banks, called participative banks (*banques participatives*), will be supervised by the Sharia Financial Committee whose role will be to ensure that all the financial products offered to the public are sharia compliant. Sharia law can be referred to as the compilation of moral and religious rules defined by religious scriptures, scholars in Islamic law and religious leaders.

In the banking sector, the main rule stemming from sharia law is the prohibition for lenders to charge interest rates to the borrower. In light of this and other sharia law principles, the Islamic financial market developed a range of sharia-compliant products.

As for Morocco, the four following products will be introduced into the local system by the Draft Law: *mourabaha*, *ijara*, *moucharaka* and *moudaraba*.

*Mourabaha* is defined in the Draft Law as a contract entered into by a participative bank by which it purchases any asset in order to resell it to its client for an amount corresponding to the purchase price plus a profit agreed in advance. Whereas, *ijara* is a contract by which a participative bank rents to its client any asset that is owned by the bank. *Moucharaka* is a venture in which the participative bank engages in a project in order to

make profits and share the losses with the co-party, the sharing of losses and profits being determined in advance. Finally, *moudaraba* is quite similar to *moucharaka* except that in this case, only the participative bank carries the losses the project may incur.

These four financial products represent 90% of the products offered in the global Islamic finance industry, but participative banks may develop and offer other Islamic products, provided that these are previously approved by the Sharia Financial Committee. The Draft Law further provides that other credit institutions that do not qualify as participative banks may, under specific circumstances, offer Islamic finance products.

The introduction of Islamic finance into the Moroccan legal system can be considered as a step towards harmonising local laws with international practice given the importance of Islamic finance in the current global marketplace, whether in Western or Middle Eastern countries. It can thus be assumed that this reform will attract new investors both locally and internationally.

As stated earlier, the main intention of the legislator when preparing the Draft Law was to reinforce banking regulation by the Moroccan authorities. In the preamble of the legislation, the lawmakers state that their objective is to prevent future occurrence of a systemic risk that may result from other international financial crises. To achieve that, the Draft Law is adding a new chapter called "macro-prudential supervision" to the current banking Law 34-03, whereby a new governmental supervisory body is created.

This new body, called the Supervisory and Coordination Committee of Systemic Risks, will be in charge of analysing the risks on the stability of the financial market and will collaborate with similar foreign governmental bodies to prevent systemic risks. It will be composed of members of the central bank, the treasury, the insurance and reinsurance supervisory authorities, as well as the capital market authority. Additionally, to improve the sector's supervision, the Draft Law mandates credit institutions to appoint independent board members.