



DOING BUSINESS IN MOROCCO

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MOROCCO

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Morocco is a country located in the northwest of North Africa with a population of nearly 33 million inhabitants. Morocco is a constitutional monarchy, in which the sovereign is King Mohammed VI. The Moroccan legal system is based on civil law. While some sections of Moroccan law, family law in particular, are inspired by Islam, commercial law is completely disassociated from it.

Morocco has a strategic geographical location. It is located at the Mediterranean border, at the junction between Africa and Europe. Thanks to the various free trade agreements signed with multiple geographical areas (Arab countries in 1998, the European Union in 2000, Arab Mediterranean countries in 2004, and the USA in 2004), Morocco offers to all its commercial partners and investors access to a market of more than a billion consumers in 55 countries that represent approximately 60% of the global GDP.

Political and economic stability, proactive reforms (administrative, customs, banking, etc.), cost competitiveness, clear and targeted sectoral strategies, massive investments in robust infrastructures, a favorable business environment, strong and stable economic fundamentals: these are factors that allow Morocco to offer a compelling value proposition to its commercial partners and investors and that have allowed Morocco to rise to the rank of one of the most attractive countries in terms of FDI in the African continent. In 2017 Morocco ranked first in Africa in terms of foreign investment¹.

Going forward, Morocco wishes to take advantage of its privileged geographical location and its relationship with its European, American, Middle-Eastern and Mediterranean commercial partners to position itself as an economic and financial hub towards the African continent. An example of this, is the recent creation of the financial platform, Casablanca Finance City Authority (CFCA), which aims to attract foreign investors and provide them with an infrastructure and favorable conditions that will allow them to optimize their return on investment in projects in North Africa, West Africa, and Central Africa.

¹ *Africa Attractiveness Survey 2017, Ernst & Young*

THE REGULATORY FRAMEWORK OF INVESTMENTS IN MOROCCO

The regulation

Investments in Morocco are mainly governed by:

- (i) Framework law n°18-95, creating an investment charter that establishes fiscal, financial, property and administrative incentives;
- (ii) Law n°44-10, creating the status of “Casablanca Finance City”, together with decree n°2-11-323 adopted for the application of law n°44-10 allowing certain financial firms that have activities abroad or certain multinationals wishing to locate their regional or international headquarters in Morocco to benefit from attractive advantages;
- (iii) The general instruction on foreign exchange transactions of December 31st, 2013;
- (iv) The general tax code;
- (v) Various laws governing commercial law: law n°17-95 relating to public limited companies, law n°6-96 relating to limited liability companies, law n°15-95 creating the commercial code, law n°65-99 creating the labor code, decree n°2-13-349 on public procurements, etc.

Competent authorities

Depending on the type of investment, the competent authority may differentiate between:

- **Regional Investment Center (CRI):** the CRI’s main mission is to simplify procedures, especially for the company creation, for the proximity and unicity of partners, and for the development and promotion of investment.
- **Moroccan Agency of Investments Development (AMDI):** the AMDI accompanies and monitors the investors and provides them technical assistance in their investment process in Morocco.
- **Interdepartmental Investment Commission:** presided by the prime minister, this commission is responsible for approving beforehand all contracts between a public entity and a foreign company that result in an investment agreement.
- **Foreign Exchange Office:** the Foreign Exchange Office enacts the measures relating to foreign exchange regulations and controls the foreign exchange operations delegated to the banks. The foreign exchange operations that are not explicitly authorized by the regulation require a special authorization from the Foreign Exchange Office.
- **The Moroccan Capital Markets Authority (AMMC):** the AMMC is the capital markets regulator. The AMMC enacts the rules of professional practice, ethical rules and the technical or practical

details of application of laws and regulations. It also examines application files of brokerage companies and Management Company of OPCVM, OPCR and FPCT. The AMMC endorses the information notes of issuers during public offering operations, public offers and buyback programs. The AMMC controls the financial information of the issuers, receives the complaints of the investors about the securities transactions operations and ensures the compliance of securities transactions in order to ensure its integrity.

- ***Supervisory Authority for Insurance and Social Security (ACAPS):*** the ACAPS is responsible for the regulation and control of activities of insurance, reinsurance and capitalization bodies. The ACAPS grants insurance licenses. Furthermore, certain operations on insurance companies are subject to prior approval from the ACAPS (change of control, sale of more than 10% of shares, takeover of more than 30%, etc.).
- ***Bank Al Maghrib:*** This is the Moroccan central bank. The Bank ensures the good functioning of the banking system and ensures that the laws and regulations relating to the exercise and control of the activities of credit institutions and similar organizations are applied. Bank Al Maghrib grants approvals for credit activities. It is worth noting that changes affecting the nationality or management of a credit institution or the nature of the operations it usually conducts are subject to the granting of a new license.
- ***Casablanca Stock Exchange:*** This is a privately owned public limited company (owned in equal parts by the brokerage firms) whose mission is to ensure the functioning, development and promotion of the stock market.
- ***The Competition Council:*** the competition council monitors compliance with the free competition within the framework of the market economy in order to guarantee the competitiveness of the economic and national fabric. Any transaction that results in awarding to an operator a dominant position (i.e. more than 40% of market shares) will have to be submitted to the competition council's opinion.
- ***The Moroccan Office for Industrial and Commercial Property (OMPIC):*** the OMPIC is the body responsible for the protection of industrial property (trademarks, patents, and industrial designs) and the maintaining of the Moroccan central trade register.

INVEST IN MOROCCO

General principles

There is no obligation in Morocco, as part of a foreign investment, to make such investment with a Moroccan partner. Furthermore, there is no limitation in the percentage of participation that a foreign investor can hold in a Moroccan company.

Foreign investors wishing to establish their activity in Morocco can:

- Create a new company;
- Acquire or purchase securities through a capital increase in kind or in cash;
- Set up a representation office or a branch.

Types of companies

The different types of companies/entities in Morocco are primarily:

- Limited liability companies (joint-stock company, simplified joint-stock company, limited liability company);
- General partnerships;
- Branches.

It takes approximately ten days to create a company in Morocco (provided that the application file is complete).

Exchange regulations

Cross-border flows with Morocco must comply with the existing exchange regulations, whose essential principals are that (i) the Moroccan dirham is neither exportable nor freely convertible and (ii) all export of capitals abroad, subject to specific exemption schemes, is submitted to the prior approval of the Exchange Office.

However, Morocco has adopted a system of freely convertible currency for foreign investors that will allow them to freely convert the fruits of their investment (dividends, interests of their shareholders current accounts as shareholders, products resulting from an asset's liquidation, etc.) provided that it has been made in foreign currency in Morocco.

Taxation

The commercial companies in Morocco are mainly subjected, depending on their activities, to the following taxes:

<ul style="list-style-type: none"> ➤ Corporate tax (standard rate 30%) ➤ VAT (standard rate 20%) ➤ Business tax (between 10% and 20% - exoneration for 5 years) ➤ Income tax (proportional rate between 0% 	<ul style="list-style-type: none"> ➤ Land registry fees (1% for the registration of real estate and 1% for the registration of a mortgage) ➤ Local authority services taxes (10.5% of the rental value for properties located in the city and 6.5% of the rental value for
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<p>and 38%)</p> <ul style="list-style-type: none"> ➤ Registration fee (1% for the constitution and increase of capital / 4% for the acquisition of building land or a building / 4% for stock transfer / 6% for stock transfer of a real estate company) 	<p>properties located in the suburbs)</p> <ul style="list-style-type: none"> ➤ Stamp duty (20 dirhams) ➤ Customs duties (rate depending on the nature of the asset and the country of origin – the minimal rate is 2.5%)
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It is worth noting that the general tax code provides tax incentives and exemptions in some cases, such as the companies granted the Casablanca Finance City status and the companies established in a “free zone”. Moreover, Moroccan law provides tax benefits to companies that sign an investment agreement with the Moroccan state subject to meeting the required criteria. Finally, Morocco has signed double tax treaties with many foreign countries.

Special regimes: “Casablanca Finance City” Status

Casablanca Finance City (CFC) is a financial platform created for investors seeking to reach high-growth African markets. It aims to attract foreign investors and provide them with an infrastructure and favorable conditions that will allow them to optimize their return on investment in projects in Africa.

CFC status can only be granted to *financial institutions* (credit institutions, insurance companies, investment services providers...), *professional services providers* which carry out the activities of financial offshoring business, specialist financial services, audit and legal, tax, finance, actuary and human resource services and all other professional services activities in relation to the entities referred to above, *regional and international headquarters* and *holding of foreign companies*. All this companies must carry out a proportion of their activities with non-Moroccan companies.

Companies registered under “CFC status” would benefit from the following:

- tax exemptions or reductions of the corporate in-come tax from exports (ranging from total exemption during a certain period to 10% exemption as the case may be),
- all individuals working for a company benefiting from CFC status will be subject to a tax rate of 20% (vs. 38%) applicable for a maximum period of five years that will start from the beginning of their assignments.
- the CFC status offers foreign exchange facilitations such as the free management of foreign currencies and fluidity of intra-group cash flows

Social law

The labor code is characterized by its conformity to the basic principles set by international standards as laid down in the UN conventions and its specialized organizations in relation to labor matters.

The protected rights include:

- union freedom and the effective adoption of the right to organize and collective bargain
- the ban of all forms of work under duress
- the ban of child labor
- the ban of discrimination in terms of employment and occupation
- wage equality

The minimum wage in Morocco shall not be less than 2350 dirhams per month in the private sector on the basis of a statutory working time of 44 hours per week.

Any Moroccan employer wishing to hire a foreign employee must obtain an authorization from the government authority responsible for labor.

Foreign trade

Law n°13-89 on foreign trade recognizes the liberal nature of the national foreign trade policy. It retains as a fundamental principle the freedom of imports and exports of goods and services, except when it comes to safeguarding morality, security and public order, or the health of the people, or to protect wildlife or the national archeological and artistic heritage, or to preserve the external financial position of the country.

Law n°15-09 on trade defense measures sets the rules governing the application of trade defense measures. Trade defense mechanisms establish all the rules and procedures governing the application of the trade defense measures that take the form of:

- antidumping measures: in case of importing dumped products
- countervailing measures: in case of importing products that benefitted from government subsidies in the exporting countries
- Safeguard measures: in case of a massive increase in imports.

Morocco collects customs duties according to the imported goods and their place of origin.

Industrial property

In Morocco, industrial property is an exclusive right that gives its holder the right to enjoy the advantages of the use of the concerned asset. It concerns the following intangible assets:

- Technical creations: patents;
- Ornamental creations: industrial designs;

- Distinctive marks: brands, company names, trade names, designations of origin and geographical indications.

Law n°17-97, as completed and modified by law 23-13, on industrial property protection includes provisions relating to trademarks' opposition system, to the measures at borders in case of import and export of counterfeit products infringing on trademarks in Morocco, to the protection of audible signs and smell marks, as well as to the electronic filing of trademarks.

Membership to the main international treaties on industrial property offers Morocco many advantages, namely strengthening its legal framework for the protection of industrial property rights for domestic and foreign investors, and alignment with international standards.

Real Estate

Ownership rights are guaranteed by article 35 of the constitution. While the law can limit its extent and exercise if this is required for the economic and social development of the country, there can be no expropriation except by virtue of a decree justified by public interest and implemented according to strict conditions such as granting a just compensation.

There are in Morocco two real estate protection systems: registered real estate that provides a solid protection to the real estate owner, and unregistered real estate governed by customary law, which provides little protection to the owner.

Foreigners are authorized to own real estate in Morocco. However, there remains an exception when it comes to agricultural lands, which require an administrative authorization. This authorization is granted on a discretionary basis according to the nature and duration of the project built on said land.

Any transfer of real estate must be done before a notary.

JUDICIAL SYSTEM AND ARBITRATION

Judicial system

The Moroccan judicial system is based on the right to a second hearing (court of first instance, appeals court, Supreme Court). Considering the slowness and sometimes unpredictability of the decisions, it is most often recommended to foreign investors to include an arbitration clause in their contracts as method of conflict resolution.

Arbitration

Arbitration is a common practice in Morocco, and this occurs mainly:

- (i) Within the Moroccan Court of Arbitration created by the International Chamber of Commerce whose mission is to settle by one or three arbitrators any disputes not of an international character which may be submitted;
- (ii) Within the International Court of Arbitration of the International Chamber of Commerce Morocco whose mission is to settle by one or more arbitrators any disputes of an international character which may be submitted.

Morocco is a signatory of the New York Convention of 10 June 1958 on the recognition and enforcement of Foreign Arbitration Awards.

The enforcement of arbitration awards is subject to the exequatur, which sends it to the administrative court in whose jurisdiction the sentence will be executed or to the Rabat Administrative Court when the arbitration award involves the national territory in its entirety.

For more information, please contact:



Safia FASSI-FIHRI
Managing Partner of BFR & Associés | ALN
T : +212 (0)5 22 94 96 77
s.fassifihri@bfr-associés.com