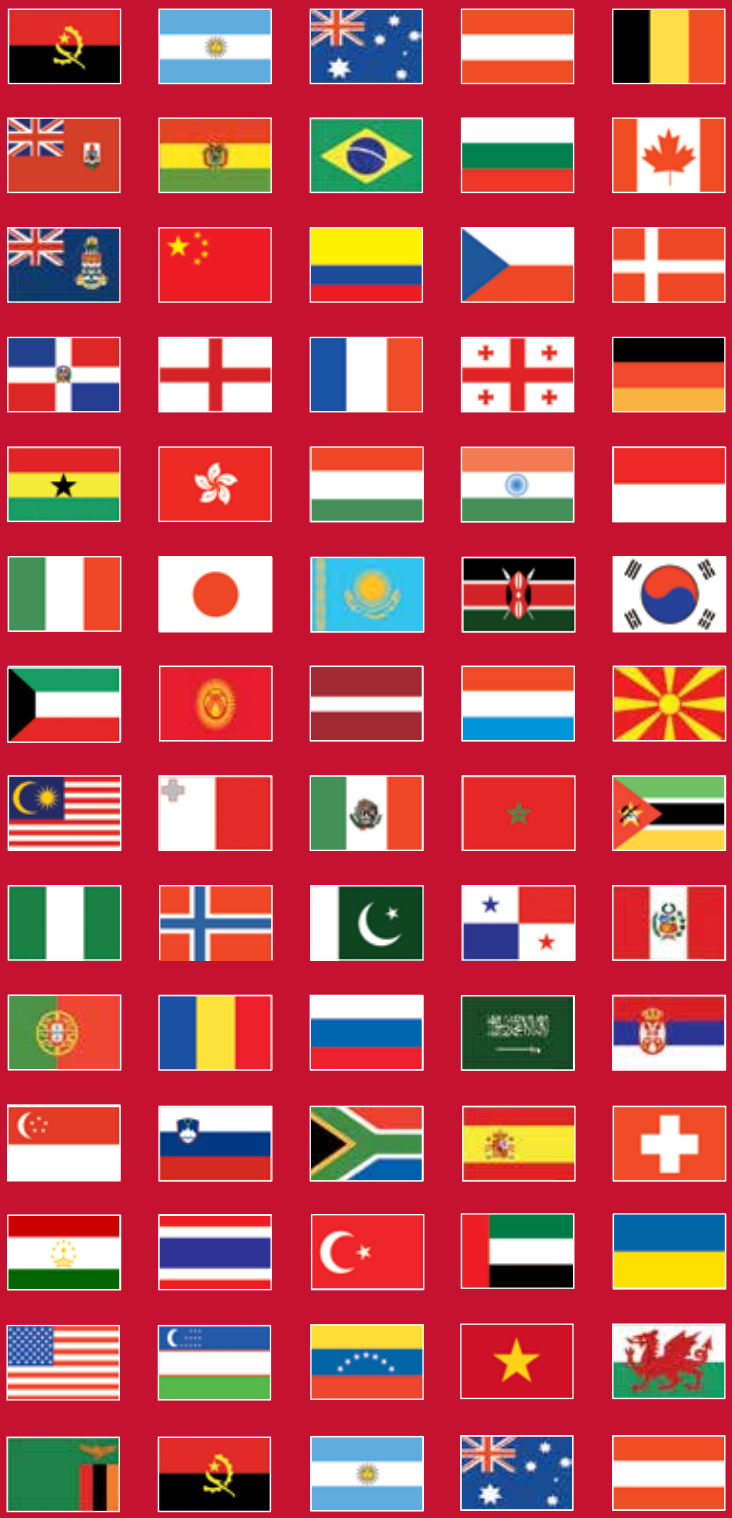
GETTING THE DEAL THROUGH

Mergers & Acquisitions

in 66 jurisdictions worldwide

2014

Contributing editor: Alan M Klein



Published by
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Mergers & Acquisitions 2014

Contributing editor: Alan M Klein Simpson Thacher & Bartlett LLP

Getting the Deal Through is delighted to publish the fully revised and updated fifteenth edition of *Mergers & Acquisitions*, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Mergers & Acquisitions 2014 examines the law and regulation of business combinations and addresses the most important issues for international deals.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 66 jurisdictions featured. New jurisdictions this year include Angola, Mozambique, Panama, Portugal and Spain. Global and EU overviews are also provided.

Many legal disciplines come into play in large M&A deals. In particular, advisers must take account of competition regulation. This volume contains an appendix covering merger control rules across the world. For a more detailed analysis please refer to another volume of the *Getting the Deal Through* series: *Merger Control*.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at www.GettingtheDealThrough.com.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise in this field. We would like to thank Casey Cogut of Simpson Thacher & Bartlett LLP for his stewardship of the title over the last fifteen years. We would especially like to thank and acknowledge Alan M Klein as contributing editor of this and future editions.

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London
May 2014

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Gideon Roberton
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Law Business Research

THE QUEEN'S AWARDS FOR ENTERPRISE: 2012

Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910

First published 1999
Fifteenth edition
ISSN 1471-1230

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

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1 Types of transaction

How may businesses combine?

There are numerous ways for businesses to combine, but the following share and asset deals are typical:

- a private purchase of shares of the target company;
- a private purchase of some or all of the target's assets (spin-off);
- entering into a joint venture including the incorporation of a new company;
- a public takeover of shares in the target company; and
- a merger of two entities either into an existing or a new company.

Businesses may also combine under an insolvency proceeding. In this case, the court adopts a plan for the assignment of the company when the latter can no longer pay its creditors.

Transactions may at all times be executed on cash, as well as on a non-cash basis or a combination of these. Regardless of the actual form of investment, the foreign investor investing in a Moroccan entity must file a report with the Moroccan Office of Foreign Exchange within six months from the date the investment is completed.

2 Statutes and regulations

What are the main laws and regulations governing business combinations?

The legal basis for business combinations in Morocco is provided by the following legislation:

- the Code of Obligations and Contracts of 1913 (the DOC);
- Dahir No. 1-96-83 of 1 August 1996 promulgating the Law No. 15-95 establishing the Commercial Code (the Commercial Code); and
- Dahir No. 1-96-124 dated 30 August 1996 promulgating Law No. 17-95 relating to joint-stock companies as modified by Law No. 20–05 (the Joint Stock Companies Act). The provisions of the latter also apply to other forms of companies according to Law No. 05-96 on partnerships, limited partnerships, partnerships limited by shares and limited liability companies (the Companies Act).

Dahir No. 1-04-21 dated 21 April 2004 promulgating Law No. 26-03 relating to public offerings on the stock market, as modified by Law No. 46-06, aims at defining specific conditions under which a public offer for securities listed on the stock exchange must be carried out.

Dahir No. 1-93-211 dated 21 September 1993 relating to the stock exchange, as modified by Law No. 43-09, regulates all operations and transactions in securities listed on the stock exchange. Also, Dahir No. 1-93-212 dated 21 September 1993 relates to the Securities Exchange Council (CDVM) and governs disclosures required from corporations making a public offering. The CDVM is responsible for overseeing savings invested in securities.

Dahir No. 1-00-225 of 5 June 2000 promulgating Law No. 06-99 on price liberalisation and competition establishes a review process relating to economic concentration.

Finally, government authorities, such as the Foreign Exchange Office, the Bank al-Maghrib, etc usually set out mandatory regulations for certain aspects of commercial transactions in various industry sectors.

Other legal and regulatory provisions may apply in certain specific industry sectors.

3 Governing law

What law typically governs the transaction agreements?

Morocco's business law is based on the civil law system and acquisitions are governed by the general principles of Moroccan civil law applicable to contracts and by the relevant provisions of company and securities law. If all parties involved in a transaction are Moroccan, it is obligatory for the documents to be governed by Moroccan law. If there is one non-Moroccan party, it is also possible for the agreement to be governed by a different law chosen by the parties (eg, English law). Nonetheless, certain aspects of the transactions must at all times be governed by Moroccan law, such as transfer of title to shares and land, creating securities over local assets and insolvency rules relating to a Moroccan entity.

4 Filings and fees

Which government or stock exchange filings are necessary in connection with a business combination? Are there stamp taxes or other government fees in connection with completing a business combination?

Generally, transactions involving foreign investors, such as a business combination, must be reported to the Moroccan Foreign Exchange Office including all the details and supporting documents of the transaction (investor's identity, business sector, amount, bank certificates, etc).

Moroccan merger control authorities also have general powers to examine whether or not the planned concentration is likely to infringe competition, particularly by creating or strengthening a dominant position. Competition authorities in Morocco are the prime minister (who has decision-making powers) and the Competition Council (which has a consultative role).

In addition, specialised government authorities may have consultative roles in a business combination from a merger clearance or licensing perspective. These authorities are, among others, the National Telecommunications Regulatory Authority (ANRT) for the telecommunications sector; the High Authority for Audio-visual Communication (HACA) for the audio-visual market; the Bank Al Maghrib (BAM) for banks; the Insurance and Social Security Directorate for insurance; and the National Ports Agency (ANP) for ports.

Legal documents are generally subject to stamp duty at a rate of up to 1,000 dirhams.

Special filings may be necessary in the following situations.

Share transfer

Private share deals must be recorded in the public company registry led by the competent local court. A share transfer of unlisted companies is subject to a duty of 3 per cent of the trade value, net of payments remaining to be made on securities that are subscribed but not fully paid.

Public share deals must involve the CDVM. In the case of a public takeover bid, the bidder must file the offer terms with the CDVM. Compulsory offer terms must, among others, include the following proposals and information:

- the objectives and intentions of the bidder;
- the number and type of securities of the target company already held by the bidder, or may have on its own initiative, and the date and terms on which their purchase has been or may be made;
- the price or exchange ratio, by which the bidder offers to acquire or dispose of securities, the terms selected for determining payment, delivery or exchange conditions;
- the number of securities included in the public offering; and
- possibly, a statement on maintaining the right of withdrawal if the bidder cannot acquire the relevant percentage.

Mergers and demergers

Article 216 et seq of the Joint Stock Companies Act regulate mergers, demergers and spin-offs. In case of a merger or a demerger, the transaction is documented in a merger or demerger agreement. All companies involved in the transaction must sign a draft of the merger or demerger agreement. This draft is filed with the court where the head office of each company is located, and the proposed transaction must be published by each company in a newspaper authorised to publish legal announcements. If at least one of these companies is making a public offering, a notice must also be placed in the Official Bulletin of the Kingdom.

The agreement must be approved by the board of directors. The manager of each company must participate in the proposed transaction. The underlying agreement should contain at least the following:

- the legal form, name or trade name and registered offices of all the participating companies;
- the purpose, goals and conditions of the merger or demerger or spin-off;
- the identification and evaluation of assets and liabilities of the target(s);
- the terms of share allocation and the legal and economic effective date of the transaction;
- the dates of financial statements providing grounds for company valuation;
- the exchange ratio of capital rights and, as the case may be, the countervalue;
- the amount of the merger or demerger premium; and
- the rights conferred to shareholders with special rights entitlements and to holders of securities other than shares and, as the case may be, any special benefits.

Asset deals

Asset deals between Moroccan entities would be governed by provisions of the DOC and the Commercial Code. Such transactions are normally not subject to any additional filing requirements, unless otherwise defined by general rules regarding foreign investors or sector-specific requirements imposed by the competent authorities.

Joint venture

The incorporation of a joint venture is carried out in accordance with the contractual arrangements and company by-laws and may take the form of any company form recognised by Moroccan law, such as a limited liability company, joint-stock company, simplified joint-stock company or economic interest group.

Insolvency situation

A business combination under an insolvency proceeding is decided upon by the insolvency judge of the competent court. After having consulted with the controllers representing the creditors, the insolvency judge establishes the price and essential conditions of sale and determines the modalities for publicity. The insolvency judge determines and approves all of the conditions of the transfer.

5 Information to be disclosed

What information needs to be made public in a business combination? Does this depend on what type of structure is used?

In a Moroccan business combination, information disclosure requirements apply in different situations and the scope of disclosure depends partly on the type of the transaction.

A transfer of shares in private companies must be registered with public the company registry of the competent court.

Companies initiating a public offering must establish a notice which must be:

- published in a newspaper authorised to publish legal announcements;
- delivered or sent to any person or legal entity who will make a mandatory offer; and
- made available to the public at the offices of the issuing entity, in all subscription agencies, etc and at the stock exchange.

Upon the filing of the proposed offer, the CDVM publishes notice of the filing in a newspaper describing the main legal provisions of the draft. This publication is the beginning of the offer period. Strict confidentiality requirements apply to the offerree and the offeror during the public offer period. Any publicly available information in their respect must be limited to, and be aligned with, the contents of the information notice. In addition, any information relating to the offer, issued by the target company or the offeror shall be forwarded to the CDVM before publication or broadcast. The CDVM may request any documents or any explanation or evidence regarding the contents of the information notice. The CDVM may demand the issuer to change the contents of the information notice. If the issuer does not meet the demands of the CDVM, the approval can be refused. The CDVM has two months from the receipt of completed application to approve or to refuse the terms of the public offering. Any such refusal must be justified.

In the case of a merger or a demerger, the draft of the agreement must be filed with the court where the registered office of the company is located. Furthermore, the terms of the agreement must be published in a newspaper authorised to publish legal announcements by each participating company. If at least one of these companies makes a public offer, a notice must also be placed in the Official Bulletin of the Kingdom.

The draft agreement must be filed with the competent court at least 30 days before the date of the first extraordinary general meeting (EGM) is convened to approve the transaction.

At least 30 days prior to the date of the EGM, any company involved in a merger or demerger shall make the following documents available to shareholders at the company headquarters:

- the draft merger or demerger agreement;
- the board of directors' report containing the transaction details;
- the approved financial statements and management reports for the preceding three years of the companies involved in the transaction; and

- an accounting statement (established using the same process and format as the prior year's statement) established less than three months prior to the project date, if the last financial statements relate to a fiscal year the end date of which is more than six months prior to the merger or demerger or spin-off project.

Any shareholder may obtain, upon request and without charge, a total or partial copy of the above documents for each company participating in the merger or demerger.

6 Disclosure of substantial shareholdings

What are the disclosure requirements for owners of large shareholdings in a company? Are the requirements affected if the company is a party to a business combination?

In the case of listed companies whose shares are publicly traded in Morocco, the shareholders of listed companies must inform the target company, the CDVM and the stock market about any new subscription to more than 5, 10, 20, 33, 50 or 66 per cent of the nominal capital value or voting rights in a target company. The information notice must be sent within five working days from the date of crossing these thresholds and must contain the total number of shares or other securities to which the nominal capital value and voting rights are attached. The CDVM must also be informed in detail about the subscriber's additional plans which may affect the business or the management and the shareholding structure or the company.

Special provisions apply to insurance companies, in relation to which any share transfer exceeding 10 per cent and any (direct or indirect) change of control exceeding 30 per cent shareholding in the relevant joint-stock company must be approved by the Ministry of Finance.

7 Duties of directors and controlling shareholders

What duties do the directors or managers of a company owe to the company's shareholders, creditors and other stakeholders in connection with a business combination? Do controlling shareholders have similar duties?

According to the Joint Stock Company Act, the board of directors determines the activity of the company and manages its day-to-day operations. The board appoints officers and general managers as well as deputy general managers. As a general duty, members of the management must consider any matter that may affect the functioning of the company as a going concern. Also, to ensure that they act in the best interest of their company, members of the board of directors must own at least one share in their respective companies. The company by-laws or articles of association may further define management duties in addition to the provisions of the Joint Stock Company Act or other parts of relevant laws.

Asset deals relating to the disposal of all or part of the company assets must be specifically authorised by the management of the company.

In the case of a merger, the board of directors or the management of the companies involved must prepare a written report that is made available to shareholders. This report explains and justifies the transaction in detail from a legal and economic perspective, especially regarding the exchange ratio of shares and the valuation methods used, which must be the same for the concerned companies and, as the case may be, the particular difficulties of valuation. It also makes specific mention of the existence and details, if any, of any relationships existing between one or more members of the board of directors and/or other companies involved in the merger.

In case of a demerger or spin-off, for companies benefiting from the transfer of assets, the management report also mentions the auditors' report on the valuation of contributions in kind and specific benefits and indicates that it will be filed at the trade office of the court where the companies' registered offices are located.

8 Approval and appraisal rights

What approval rights do shareholders have over business combinations? Do shareholders have appraisal or similar rights in business combinations?

In relation to share transfers, the Joint Stock Companies Act and the Companies Act set out certain minimum statutory approval rights. For example, Moroccan law provides a right of first refusal in favour of existing shareholders in relation to the transfer of participations in a limited liability company. In the case of a joint-stock company, certain classes of shares may provide for such approval rights. In addition, it is also common practice to specifically include additional, or exclude existing statutory, approval rights into the transaction documents, articles of association, shareholders' agreements or company by-laws.

In the case of a transformation of a corporate entity, the shareholders must determine the terms and conditions of transformation. Such terms must include, among others, terms and conditions of leaving the company for those shareholders who do not intend to participate in the transformation. Such shareholders have the right to receive compensation equivalent to their share of the company's assets. If the shareholders fail to agree on the amount of such compensation, the value of such assets will be determined by an independent expert designated by the president of the court. The right of withdrawal from any company may not be validly limited or excluded.

9 Hostile transactions

What are the special considerations for unsolicited transactions?

The initiators of unsolicited transactions must take into account a certain number of mandatory public offering provisions.

Public offers are intended to ensure market transparency by allowing adherence to principles of equality of shareholders, market integrity and fairness in transactions and competition. They cannot be designed to prevent, restrict or distort competition or affect national strategic economic interests. The CDVM ensures the orderly conduct of these public offers in the best interests of investors and the market.

A public offer must offer the same conditions of price and performance to all holders of securities of the class to which they relate. Any agreement that has the effect of creating a disparity among the holders of securities is void and makes the public offer null. Approval clauses relating to a target company's securities are not enforceable by shareholders of the company against the initiator of a public offer. Such agreements are void if they do not preserve the right to benefit from a competing public offer.

10 Break-up fees – frustration of additional bidders

Which types of break-up and reverse break-up fees are allowed? What are the limitations on a company's ability to protect deals from third-party bidders?

In Morocco, there is no specific regulation applicable to these types of fees in relation to an auction process. However, parties may freely agree on applying such fees in a contractual arrangement (such as a letter of intent or memorandum of understanding). Such an arrangement would be subject to provisions of the DOC and the Commercial Code which, among other things, requires that contracts must be made on a good faith basis and prohibit unequal or largely disproportionate contractual terms.

The agreement may also include a guarantee for liabilities that is called *garantie de passif*. This clause is very typical as it protects the acquirer from of a liability incurred by the target company that was not disclosed by the target company at the letter of intent stage.

11 Government influence

Other than through relevant competition regulations, or in specific industries in which business combinations are regulated, may government agencies influence or restrict the completion of business combinations, including for reasons of national security?

There is no provision that allows government agencies, other than through relevant competition regulations, or in specific industries in which business combinations are regulated, to restrict the completion of a business combination. The authorities that are entitled to restrict this kind of operation are defined by the law (such as the prime minister, the competition authority, etc).

12 Conditional offers

What conditions to a tender offer, exchange offer or other form of business combination are allowed? In a cash acquisition, may the financing be conditional?

The initiation of a public offer is subject to several conditions. These conditions are related to the information to be disclosed to the public and to the documents to be filed with the Moroccan authorities.

See also questions 3 and 5 relating to information to be disclosed and documents to be filed.

13 Financing

If a buyer needs to obtain financing for a transaction, how is this dealt with in the transaction documents? What are the typical obligations of the seller to assist in the buyer's financing?

The transaction documents may include cash and non-cash terms (such as providing in-kind contribution or securities) as well as any mix of them. This will have an impact on the guarantees obtained by the acquirer. Specifically, the guarantees do not cover the entire amount of the financing and, in particular, the portion that will be paid in cash. Generally, a creditors' agreement or a priority agreement is concluded between the creditors or the acquirers, but this does not affect transaction documents.

14 Minority squeeze-out

May minority stockholders be squeezed out? If so, what steps must be taken and what is the time frame for the process?

Minority squeeze-out situations are only regulated under Moroccan law with regard to listed companies. However, unlisted companies' by-laws or shareholders' agreements may also contain relevant provisions, as agreed upon by the shareholder parties.

In the case of listed companies, the filing of a public offer is mandatory if one or more natural or legal persons, shareholders of a company whose securities are listed on the stock exchange, hold, alone or in concert, directly or indirectly, a specified percentage of the voting rights of that company.

The percentage referred to above is determined by the board, on recommendation of the CDVM, but may not be less than 90 per cent.

A proposed buyout offer must be filed with the CDVM within three working days of exceeding the voting rights threshold. Otherwise, the voting rights, financial and other rights attached to as the shareholders will be lost.

Decision No. 1875-1804 dated 25 October 2004 of the minister of finance and privatisation, determines the percentage of voting rights that requires the holder to make a public offer of withdrawal, states that the holding by one or more natural or legal persons acting alone or in concert of the percentage of voting rights requiring the filing of a public offer for withdrawal is 95 per cent of the voting rights of a company whose equity securities are listed on the stock exchange.

Decision No. 1874-1804 of the 25 October 2004 of the minister of finance and privatisation, sets forth the percentage of voting rights that requires the holder to make a public offer for purchase, states that the percentage of voting rights whose possession by one or more natural or legal persons, acting alone or jointly, requires the filing of a takeover for purchase is set at 40 per cent of the voting rights of a company whose equity securities are listed on the stock exchange.

Decision No. 1873-1804 dated 25 October 2004 of the minister of finance and privatisation, sets forth the percentage of voting rights to be held by majority shareholders. This includes that a minority group can ask the CDVM imposing the filing of a public offer for withdrawal, states that the percentage of voting rights whose ownership by one or more natural or legal persons, acting alone or jointly, allows a minority group to ask the CDVM to impose securities to the majority group filing a public offer for withdrawal is fixed at 66 per cent of the voting rights of a company whose shares are registered capital on the stock exchange.

15 Cross-border transactions

How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?

From a legal point of view, cross-border transactions are structured in the same way as with national operations. There is no legal or regulatory provision that limits cross-border transactions but foreign investors must at all times file their reports with the Office of Foreign Exchange.

However, Moroccan merger clearance rules apply, and must be respected by the parties to the transaction, even in cross-border transactions.

Furthermore, foreign companies may be subject to Moroccan tax if their products, profits and income: (i) relate to their property located in, or activities and profits realised (on a regular or non-regular basis), in Morocco; and (ii) relating to the right to tax is given in Morocco under the conventions for the avoidance of double taxation with respect to income tax.

The tax administration may request disclosure of information from the tax authorities of countries that have concluded conventions with Morocco for the avoidance of double taxation with respect to income tax.

16 Waiting or notification periods

Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations?

Notification or publication requirements may set out relevant waiting or publication periods depending on the type of the transaction.

In a merger process, the board of directors or the management of each company participating in the merger must inform the auditors at least 45 days before the date the general meeting is convened to decide on the treaty draft. Furthermore, the publication of documents referred to in question 5 is required at least 30 days before the date of the EGM called to decide on the project.

17 Sector-specific rules

Are companies in specific industries subject to additional regulations and statutes?

Sector-specific requirements must be taken into consideration in sectors regulated by specific authorities, as referred to in question 4. Transactions in, for example, the financial services or the telecommunications sector are in most cases subject to an approval by the regulator.

The completion of the transaction may also be subject to compliance with competition requirements.

Update and trends

In recent years, the country has shown resilience in a difficult national and international context. It is gaining a reputation as a safe place for companies and, in the past couple of years, a number of multinationals have created their North Africa or Africa hubs in Casablanca, the business and financial centre of Morocco. Local markets are likely to continue to attract investments from foreign players. Due to Morocco's traditional neutrality, stability and European exposure, the country is now playing the role of one of the preferred bridges to Africa.

In the past year Morocco has seen several large M&A transactions demonstrating confidence in the country. France continues to be a key source of work for Morocco due to historical and cultural links but investors and multinational companies from other countries looking for new markets as a result of the financial crisis have also participated in Moroccan deals.

Morocco's business law is based on the civil law system. Government support of tax breaks and the priority given to structuring projects stimulate investment activities. Legislation is also used to enhance investment potential and create an investor-friendly climate. In general, investor rights are backed by an impartial procedure for dispute settlement that is transparent, but foreign companies continue to complain about the inefficiency and the lack of transparency in the judicial system.

On the other hand, arbitration in Morocco is often considered a safe and efficient way to solve trade and investment disputes. Foreign arbitration awards would be recognised by local courts as Morocco is party to the New York Convention of 10 June 1958 on the enforcement of foreign arbitral awards (but applies the convention only to recognition and enforcement of awards made in the territory of another contracting state to this convention). Due to the large number of FTAs and BITs with arbitration provisions, investment disputes relating to Morocco may be settled on the basis of the Washington Convention of 1965, to which Morocco is a party and which has created the International Centre for Settlement of Investment Disputes. Furthermore, local (domestic) arbitration proceedings would be governed by the provisions of Moroccan Code of Civil Procedure, Law No. 1-74-447, of 28 September 1947, as completed and modified by Law No. 08-05 of 30 November 2007, which largely reflects the UNCITRAL Model Law.

18 Tax issues

What are the basic tax issues involved in business combinations?

The taxes involved in a business combination depend on the type of companies and the value of the transaction.

The Moroccan tax code provides for reductions in the case of a merger or transformation of a company's legal form. In the case of a merger, demerger or transformation of legal form, the value added tax paid under operating assets is transferred to the new company, provided that the value is listed in the deed of assignment in its original amount.

Where a company is subject to corporate tax mergers through absorption, the merger premium realised by the acquiring company corresponding to the added value of the contribution in the acquired company is included in the taxable income of the company concerned.

In the event of a merger, demerger or transformation of legal form resulting in exclusion from the corporate tax regime or creating a new legal person, the acquiring company or companies created from the merger, demerger or transformation are required to pay all the duties owed by them under corporate income tax and penalties and surcharges thereon, as is the case with dissolved companies.

19 Labour and employee benefits

What is the basic regulatory framework governing labour and employee benefits in a business combination?

In the event of changes in the legal situation of the employer or the legal form of business, including by way of inheritance, sale, merger or privatisation, all current contracts on the day of the change remain between employees and the new employer. The new employer takes on the previous employer's obligations in relation to employees, particularly regarding the amount of wages, severance pay and paid leave.

A person employed under a contract of unlimited term within part of a group of companies retains the same rights and benefits from the employment contract regardless of the service, subsidiary or establishment in which he or she works, unless the parties have agreed on terms and conditions more favourable for the employee.

20 Restructuring, bankruptcy or receivership

What are the special considerations for business combinations involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?

The transfer in such a situation is intended to ensure the maintenance of activities of the company that is in bankruptcy and all or part of the jobs attached to them and to reduce liabilities.

The transfer can be total or partial. In the latter case, it should not diminish the value of unsold goods, but must cover all production elements that form one or several complete and independent branches of activity.

In the absence of a plan to continue the business, assets not included in the sale plan are sold and the rights and actions of the company are exercised by the receiver in the manner provided for in the liquidation.

Any offer must be communicated to the receiver within the time fixed by him and which he has brought to the attention of supervisors (creditors). Unless otherwise agreed between the head of the company, the receiver and the creditors, 15 days must elapse between the receipt of a bid by the receiver and the hearing at which the court considers the offer. Any offer must include the following information:

- forecasts of activity and funding;
- sale price and method of payment;
- date of completion of the sale;
- level and prospects of employment for the activity in question;
- guarantees obtained in order to ensure completion of the offer;
- forecast sales of assets during the two years following the transfer; and
- documents relating to the preceding three years when the person making the offer is required to supply them.

The receiver shall inform the creditors and staff representatives of the content of the offer. The receiver shall give the court any evidence to verify the seriousness of the offer. The judge may ask for a further explanation.

In implementing the plan adopted by the court, the receiver takes all steps necessary for the completion of the sale. Pending the completion of these steps, the receiver may, under its responsibility, entrust the management to the assignee of the divested business.

The receiver's involvement continues until close of proceedings. The court declares the closure of the proceedings upon payment of the purchase price and its distribution among creditors. If all the corporation's assets are sold, it is dissolved.

The court secures the offer containing the best conditions for ensuring sustainable use of all assigned goods and the payment of creditors.

As the transfer price is not fully paid, the assignee may not, with the exception of inventories, dispose of, pledge or lease the tangible or intangible goods that were acquired. Their total or partial alienation, assignment as security and their leasing may be authorised by the court after the receiver's report. The court must take into account the guarantees offered by the assignee.

The court may include in the sale plan a clause making inalienable for a determined term all or part of the assets transferred.

The transferee shall report to the receiver on the execution of the provisions of the transfer plan at the end of each financial year following the transfer. If the assignee fails to perform its obligations, the court may, ex officio, at the request of the receiver or a creditor, declare the termination of the plan. In this case, the goods are liquidated and prices applied in payment of creditors.

21 Anti-corruption and sanctions

What are the anti-corruption, anti-bribery and economic sanctions considerations in connection with business combinations?

The Penal Code states that the penalties for corruption are imprisonment of one to three years and a fine of 5,000 to 50,000 dirhams. It states that anyone employed or remunerated in any form may be guilty of corruption, if, directly or by proxy, they have, without the knowledge and consent of their superior, solicited or accepted offers or promises, solicited or received any donations, gifts, commissions, discounts or premiums to do or refrain from doing any act of their employment, or any act which, though outside of their personal responsibilities is or could be facilitated by its use.

In addition, if anyone has used violence or threats, promises, offers, gifts or presents, or other benefits, or solicited for purposes of corruption, for either the performance or failure to act, or favours or benefits, even if that person is not the initiator, the same penalties shall apply as those provided against the corrupt person, even if the coercion or corruption does not have any effect.

Also subject to penalties of imprisonment of two to five years and a fine of 5,000 to 100,000 dirhams is anyone guilty of influence-peddling, who solicits or accepts offers or promises, solicits or receives donations, gifts or other benefits, in order to obtain or attempt to obtain decorations, medals, honours and awards, places, positions or jobs or favours granted by any public authority, market, business or other profits arising from agreement with the public authority or an administration under public control or in general a favourable decision of such authority or administration, or abuses any real or supposed influence. If the guilty party is a magistrate, public official or appointed by election, the penalties are doubled.

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MERGERS & ACQUISITIONS 2014 ISSN 1471-1230