

The Brief

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North Africa

Morocco: three financing alternatives to be marketed shortly

On 23 March 2007, after repeated refusals to allow Islamic banks to establish branches in Morocco, the Governor of Bank Al-Maghrib (Moroccan Central Bank), Adellatif Jouahri, announced plans to issue a recommendation on alternative forms of financing in the near future for them to be marketed by credit institutions.

Although still in the draft stage, the recommendation is due to be approved by the Governor of Bank Al-Maghrib, pursuant to Article 19 of the new Banking Act¹, in consultation with Moroccan Banks Professional Group and after favorable opinion issued by the Banking and Finance Committee.

The recommendation is targeted at credit institutions. Its purpose is to define a legal framework for the alternative forms of financing to be offered to the public. The three alternative financial services will be: *Ijara*, *Mourabaha* and *Moucharaka*.

Motivation for the recommendation

The recommendation is a response to strong demand from a section of Moroccan society wishing to obey Shari'ah rules² law that prohibit "*riba*" (interest or usury) in all financial transactions and dictate that entitlement to income implies liability to share losses.

¹ Act No. 34-03 relative to credit institutions and promulgated by dahir dated 14 February 2006.

² *Shari'ah rules* (i.e. Islamic law) mean all the rules derived from *Coran*, Mohamed traditions and Muslim experts' opinions.



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It will also contribute to greater banking service penetration in the Moroccan economy by incorporating non-interest loans and other forms of financing into the official financial system. These services were only previously offered by fundamentalist movements with the risk that they might contribute to money laundering and other criminal or terrorist activities.

Institutions entitled to offer financing alternatives

Banks (credit institutions licensed to carry on all forms of banking transactions) will be at liberty to offer all of these alternative forms of financing. Finance companies (credit institutions licensed only to carry on certain types of banking transactions) will only be able to offer customers the forms of financing approved under their individual licences.

Outline of the three new financial products

The three new authorised forms of financing are loan and not deposit based. *Ijara* and *Mourabaha* will assist customers in real estate transactions. *Moucharaka* is aimed at business.

Ijara

Ijara is a contract whereby a bank leases specific, identified, tangible real or personal property (intangible personal property and natural resource exploitation rights are expressly excluded) owned by the bank to a customer for a use authorised by law.

The product may be considered as a type of quasi debt instrument.

Ijara can be structured in two ways:

- ***Ijara Tachghilia***: a simple lease;
- ***Ijara Wa Iqtina***: a lease combined with a firm lessee undertaking to purchase the asset at the end of an agreed period. This second option resembles a credit lease agreement.

The property owner (the bank) retains full liability for all risks associated with the property.

An *Ijara* contract must contain the precise terms and conditions governing the bank/customer relationship and the rights and duties of each party. It must also contain certain key clauses, particularly: the transaction nature; the rent amount; the rent payment terms and instalment dates; the term of the lease; maintenance expenses and upkeep costs ("administrative costs"³); the insurance costs to be borne by the lessee; the conditions for termination or renewal.

Mourabaha (contract of sale with a compensation)

Mourabaha may be classed as debt instruments.

It is a purchase and resale agreement. The bank purchases real or personal property from a supplier for its customer. The resale price is based on cost plus an agreed compensation⁴ which the bank is not afterwards entitled to revise upwards. The customer will pay for the asset in one or more instalments over a period not exceeding forty eight months. The contract resembles a deferred payment sale.

Mourabaha is a tripartite agreement: the parties are the customer, the bank and the seller.

This type of contract may not be used to acquire assets not yet in existence.

³ Administrative costs differ from the interest as they correspond to effective costs related to the asset and borne by the credit institution whereas the interest is the consideration paid for use of borrowed funds.

⁴ The compensation differs from an interest as it relates to the asset itself whereas the interest relates solely to the cost of money.

A *Mourabaha* contract must contain the precise terms and conditions governing the bank/customer relationship and the rights and duties of each party. It must also contain certain key clauses, particularly: a definition of the purchase price; the costs and taxes incurred by the bank in purchasing the *Mourabaha* asset and the costs to be borne by the customer; the bank's compensation; the payment terms; the security provided by the customer and the amount of the down payment made by the customer, if there is one.

***Moucharaka* (active partnership or joint venture)**

Moucharaka resembles private equity financing. It is a contract to acquire an equity stake (only in "joint stock companies") so that the credit institution and the customer both contribute to the financing of a project.

Under the contract, the capital owner and entrepreneur both contribute to the company's capital and take part in project management. They will share profits according to pre-defined ratios. They will be liable for losses according to their initial capital contribution. Accordingly, *Moucharaka* provides for the sharing of profits and losses.

Moucharaka can be structured in two ways:

- *Moucharaka Tabita* (fixed): the credit institution and its customer remain corporate partners until the expiry of their agreement;
- *Moucharaka Moutanakissa* (decreasing): the credit institution withdraws progressively from the company's capital according to the terms of the contract.

A *Moucharaka* contract must contain the precise terms and conditions governing the bank/customer relationship and the rights and duties of each party. It must also contain certain key clauses, particularly: the transaction nature and purpose; the amount of capital and percentage owned by each party; the duration of the arrangement; the security offered to the credit institution by a customer managing the company alone to insulate against losses due to its negligence or other such acts or omissions; the terms for dissolution of the *Moucharaka* and for the division of the assets; how and on what time-scale credit institution will withdraw progressively from the company's capital in the case of a *Moucharaka Moutanakissa*; changes in the company's articles of association so that they comply with the *Moucharaka* contract.

One essential feature of this type of contract as provided for in the draft recommendation taken by the Governor of Bank Al-Maghrib is that it must not contain any provision attempting to guarantee the equity stake of either of the parties without reference to the company's results.

Conclusion

Although many criticisms have been made of the financing alternatives described above, there is lively competition between Moroccan banks and credit institutions to capture a share of the market. This business could prove very profitable because customers will undoubtedly be charged more for these services than classic forms of financing.

For now, the names given to these financing alternatives in the draft recommendation are only suggestions. Each credit institution will choose its own names that it will promote in marketing campaigns to be organised in the future. These names should, under no circumstances, contain any religious references or connotations.

Finally, it is intended that these alternative financial products should be provided in Morocco according to agreed standard form contracts drafted according to the rules of "The Accounting and Auditing Organisation for Islamic Financial Institutions", based in Bahrain. This institution is responsible for defining standards for Islamic financial products and institutions that conform to the precepts of Shari'ah rules.

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BANKING LAW: new rules

The recent introduced Regulation, No. 06-02, of 24 September 2006, published in the Official Journal on 2 December 2006, defining the requirements for creating banks or financial institutions and for setting up branches of banks or financial institutions ("**Regulation 06-02**"), introduces new provisions and repeals old rules, namely Regulation No. 93-01 of 3 January 1993, as amended and supplemented ("**Regulation 93-01**").

Despite the repeal of Regulation 93-01, all other relevant legal instruments remain in full force and effect, i.e.

- Regulation No. 92-05 of 22 March 1992 on the requirements to be satisfied by the founders, directors and representatives of banks and other financial institutions;
- Instruction No. 06-96 of 22 October 1996 laying down the requirements for creating banks and financial institutions and setting up branches of foreign banks or financial institutions;
- Instruction No. 04-2000 defining the information to be included in an application for a banking licence (to the Governor of the Bank of Algeria);
- Instruction No. 05-2000 defining the requirements to act as an executive of a bank or financial institution or of a representative office or branch of a foreign bank or financial institution; and
- Regulation No. 04-01 of 4 March 2004 relating to the minimum capital for banks and financial institutions conducting business in Algeria.

The procedure for incorporating a bank or financial institution has not been changed.

Ordinance No. 03-11 of 26 August 2003 on currency and credit (the "**Banking Law**"), the foundation legislation in this area, was not amended by Regulation 06-02.

However, Regulation 06-02 does make significant changes at the stage of applying for approval to open a bank or financial institution, and a banking licence.

Approval to open a bank

The main changes introduced by Regulation 06-02 relate to the information to be included in the application to the Currency and Credit Council (the "CCC").

Article 3 of Regulation 06-02 provides that the approval application should now contain more in-depth appraisal information and new information not required before.

These changes clearly prove the Algerian authorities' commitment to ensuring the quality and reliability of future banks and financial institutions.

With this in mind, the CCC published an official communiqué on 24 September 2006 in which it stated that Regulation 06-02, *in the spirit of the 25 Basel Committee's core principles, broadens the spectrum of control at the licensing phase, placing emphasis on the standing of the shareholders, their financial capacity, their professionalism and the quality of management.*"

The business appraisal period is extended to five years (previously only three years). The new information required for the approval application includes:

- the network development strategy and the resources to be applied to this process;
- the financial standing of each shareholder and guarantor;
- the key shareholders or "core" capital owners, regarding their financial capacity, their experience and know-how in banking and finance and their commitment to provide support formally evidenced in a shareholders' agreement;
- the status of the institution acting as reference shareholder, especially in its country of origin and information proving that it is financially sound;
- a list of the main directors within the meaning of Article 90 of the Banking Law, at least two of which must be Algerian residents; and
- the internal organisation, i.e. an organisational chart, providing information about intended staffing levels and the specialist activities to be entrusted to each of the structures.

The key innovations of Regulation 06-02 are the requirement for a shareholders' agreement and the requirement for at least two of the bank's executives to be resident in Algeria.

Another notable change is the abolition of the two month deadline for the CCC to issue its approval decision (required by Regulation 93-01, when in actual fact the time taken by the CCC was frequently in excess of six months).

Article 5 of Regulation 06-02 does not provide for a specific reflection period. Therefore, the new rules seem to have abolished all deadlines in the approval process.

Bank and financial institution licensing

Article 4 of Regulation 93-01 prohibits any advertising encouraging a belief that a plan to create a bank or financial institution has been approved by the CCC or that a licence has been issued by the Governor of the Bank of Algeria. This prohibition is reiterated in Article 4 of Regulation 06-02.

The twelve month deadline for applying for a licence still stands, according to Article 8 (2) of Regulation 06-02.

Article 9 of Regulation 06-02 clarifies the situation regarding the status of *licensed intermediaries* and engaging in foreign exchange and international trade transactions.

Unlike Article 9 of Regulation 93-01, the decision to grant a licence no longer automatically grants its beneficiary the status of a *licensed intermediary*. According to Regulation 06-02, the licence may be limited to specific banking transactions.

Article 9 (3) of Regulation 06-02 provides that where a licence includes a foreign exchange regulation delegation of powers, it grants its beneficiary the status of a *licensed intermediary* with the right to engage in foreign exchange and international trade transactions.

Nevertheless, to do so, the beneficiary of the delegation of powers must still apply to register each branch conducting such business with the Bank of Algeria according to the applicable regulations.

Other safeguards included in Regulation 06-02

Regulation 06-02 expressly reiterates the obligation defined in the Banking Law in relation to the sale of shares, by specifying the procedure to be followed in such an eventuality.

It states that any sale of shares in a bank or financial institution requires an approval application to the chairman of the CCC, stating the reasons for the transaction and any other information that might be usefully considered.

Where the effect of the sale is to change shareholder structure, the application is subject to the same conditions as those stated in Articles 2 and 3 of Regulation 06-02. These articles govern approval applications to create a bank or financial institution.

Finally, banks and financial institutions are also required annually to update the financial information concerning shareholders owning at least 5% of their share capital.

INVESTMENT INCENTIVES: new implementing decrees

Although the investment incentives introduced under the Investment Promotion Ordinance, No. 01-03, of 20 August 2001, as amended by Ordinance No. 06-08 of 15 July 2006 (the "**Amended Ordinance**") has been in force since 2001, there is still some need for more detailed provisions to implement the general principles (The Brief "*North Africa*" No. 3, November 2006).

The recent issue of implementing decrees will now allow the new investment framework to be applied fully. The new authorities created by the Amended Ordinance will now be operational.

Among the relevant decrees, we would cite:

- Executive Decree No. 06-355 of 9 October 2006 on the powers, composition, organisation and operation of the National Investment Council;
- Executive Decree No. 06-356 of 9 October 2006 on the powers, organisation and operation of the National Agency for Investment Development;
- Executive Decree No. 06-357 of 9 October 2006 on the composition, organisation and operation of the investment appeals commission.

Decree No. 07-08, published on 11 January 2007, on areas of investment and establishing the list of businesses, goods and services ineligible for the incentives defined in the Amended Ordinance ("**Decree 07-08**") has made it possible:

- (i) to remove uncertainties as to the eligibility of certain investments for the incentives defined in the Amended Ordinance; and

- (ii) to clarify the procedure applicable to the sale or assignment of investments that have benefited from the incentives defined in the Amended Ordinance.

However, this list of businesses, goods and services ineligible for the incentives is not all-inclusive because this list is to be revised periodically.

Definition of goods and services

Article 2 of Decree 07-08 defines goods and services directly involved in the investment as any real or personal property, whether tangible or intangible, purchased or created with a view to forming, expanding, reorganising or upgrading economic activities involving the manufacture of goods or the furnishing of services, intended to be used on a long-term basis in the same form, and any service connected with the acquisition of the goods so defined.

Ineligible businesses

A schedule to Decree 07-08 sets out the businesses ineligible to benefit from the incentives defined in the Amended Ordinance.

This schedule includes wholesale and retail trading, all import businesses, and other service businesses such as real estate agencies, foreign exchange bureaux, stockbrokers, insurance brokers or insurance brokerage firms.

Article 10 of Decree 07-08 provides that investment projects of particular interest to the national economy (the projects referred to in Article 10 of the Amended Ordinance) will not be affected by the exclusions defined in Decree 07-08.

However, Article 10 of the Amended Ordinance does not specify the investments which are of particular interest to the national economy. It merely states that such investments are those that use clean technologies to preserve the environment, protect natural resources, save energy and promote sustainable development.

It is intended that these investments be defined by the National Investment Council but no instrument has been issued to date to this effect.

Ineligible goods and services

Another schedule of Decree 07-08 sets out the goods and services ineligible to benefit from the incentives defined in the Amended Ordinance:

with the exception of land and buildings, used plant and equipment and any such assets taken from existing investment projects are ineligible to benefit from the incentives.

However, used plant and equipment, renovated and imported as part of a business delocalisation from abroad or a privatisation, are eligible to benefit from the incentives, provided they do not feature on the list of exclusions defined in Schedule 2 of Decree 07-08.

Investment sale or assignment procedures

Investments that have benefited from the incentives may only be sold or assigned if the transaction is declared to the National Agency for Investment Development ("ANDI"), supported by an commitment from the purchaser or assignee to accept full liability for the obligations incumbent on the initial investor.

This duty to declare the transaction to ANDI is no longer binding once all the assets subject to preferential tax rules have been fully depreciated according to the applicable regulations.

The incentives granted in relation to any assets acquired subject to preferential tax rules after the transaction declaration has been made will have to be refunded if such assets are sold in isolation apart from the rest of the business. The amount to be refunded is calculated pro rata to the asset's remaining depreciation period.

The incentives granted will also have to be refunded if they are sold without declaring the transaction to ANDI. There may also be other penalties provided for by law from time to time.

Investment projects of particular interest to the national economy (the projects referred to in Article 10 of the Amended Ordinance) are not affected by the exclusions provided for in Decree 07-08.

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REAL ESTATE LAW: "off-plan" property sales

An "off-plan" property sale is defined in Morocco as *"any agreement whereby the seller agrees to construct a building within a specific time and the purchaser agrees to pay the price of the building in instalments as the construction work progresses. The seller retains its rights and attributes as the owner of the building until the construction works have been completed"*.

Under Moroccan law, "off-plan" property sales ("OPS") are governed by Articles 618-1 to 618-20 of the Dahir on Obligations and Contracts of 13 August 1913 ("DOC").

Spirit of the law

The objective of the OPS legislation was to reconcile the interests of real estate promoters and purchasers by:

- allowing the promoter to proceed with the construction works using financial advances paid by the purchaser as the construction process progresses, which limits the need to seek outside funding;
- while at the same time protecting the interests of the purchaser (consumer) advancing the funds (for residential or other property) before completion of the construction works, by providing sufficient safeguards (conformity of the property with specifications, compliance with deadlines and, generally, the right to recover advances paid if the promoter defaults).

How the OPS process operates

There are three stages to the OPS process, based on three separate documents:

- **building specifications:** a document defining the project content, its designation, the works, services and amenities to be provided by the promoter and when the building is to be delivered¹. In practice, the building specifications are signed by the parties before completion

of the foundations and are then deposited with the land registry, together with a certified, definitive architect's plan and the co-ownership regulations, in the case of multiple ownership. If the building is not registered, the building specifications are deposited at the registry of the Court of First Instance;

- **preliminary contract of sale:** a preliminary document setting out the agreement between the parties, which must specify: the identity of the parties, the property title to the building, the date and reference number of the building permit, the final purchase price and payment terms, the delivery date and reference of the bank guarantee (or other security, if appropriate) that the construction company is required to provide to the purchaser². The preliminary contract may only be signed once the foundations have been completed to ground floor level. The contract is drafted by a notary or lawyer;
- **final contract of sale:** the final contract between the parties, drafted along the same lines as the preliminary contract³. The final contract will be signed on completion of the building construction works⁴, no more than 30 days after notice to the purchaser⁵ that a permit to inhabit or certificate of conformity has been granted⁶ and after full payment of the purchase price⁷.

Title in the building is conveyed on signature of the final contract (or pursuant to a final decision of the court if the building is not registered or is undergoing registration) and once the contract (or final court decision) is registered with the land registry if the building is registered⁸.

Scope

The DOC legal framework is a matter of public policy. Its application is mandatory for all "off-plan" sales of buildings (whether apartments, houses, hotels, factories etc.) where the payment of the purchase price is related to progress in the construction works.

² Article 618-9 of the DOC.

³ Article 618-3 for the preliminary contract of sale.

⁴ The construction works are deemed completed when the promoter is granted a permit to inhabit or a certificate of conformity or, as the case may be, when the promoter produces a certificate, at the request of the purchaser, that the construction works conform to with the building specifications.

⁵ By recorded delivery mail with advice of receipt.

⁶ Article 618-19 of the DOC.

⁷ Article 618-16 of the DOC.

⁸ Article 618-20 of the DOC.

¹ Article 618-4 of the DOC.

It is not possible to derogate contractually from the framework established under this legislation.

Practical difficulties

– The first difficulty created by the Moroccan law provisions governing "off-plan" property transactions involves the payment of the price. The promoter is not entitled to require any payment until the foundations have been completed. The seller is committed, once the building specifications have been signed, to construct a building according to the plans without any firm commitment from the purchaser. To circumvent this difficulty, promoters often use reservation contracts. The reservation fee is paid into an escrow account. Some consider that placing funds in escrow is not incompatible with the mandatory provisions of the law. However, there is still some uncertainty given the very general wording of the prohibition against advancing funds before the foundations are completed because there is, as yet, no case law on this issue.

– Another important issue involves termination. Article 618-14 of the DOC provides that if one party terminates, the compensation payable by the other may not exceed 10% of the purchase price. Does this mean that this article allows for a right to terminate with applying to the court, regardless of the reason, and even if there is no express right of termination? According to the general law, termination is not possible unless such a right is expressly included in the contract. However, as there is no relevant case law on this issue, there is still some uncertainty as to how this difficulty would be resolved.

Furthermore, limiting compensation to 10% of the purchase price places the parties in a precarious position because both are subject to the uncertainties of the real estate market. For example, if there is a recession, the seller may well find itself faced with a desisting purchaser who is willing to pay 10% of the purchase price to withdraw from the transaction, leaving the seller with a buyerless real estate project on its hands. The loss suffered would differ depending on how far the construction works have progressed. The 10% limitation would be even more prejudicial to the victim of the withdrawal if the project is nearing completion. Once again, the lack of any relevant rulings by the courts makes it difficult to provide any clear responses to these issues.

– Finally, the Moroccan "off-plan" property sale rules may compromise the ability to finance the transaction. On the one hand, the seller must be able to provide the purchaser with financial security to a value of the purchase price, which may prove onerous and costly. On the other hand, a purchaser wishing to obtain a bank loan to finance his acquisition will not be able to offer the bank a mortgage or other real security before the off-plan" purchase is complete because title does not vest in stages as the construction works progress.

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BUSINESS FINANCING

To encourage businesses to consider methods of financing other than bank loans, the Tunisian legislature is attempting to promote injections of capital through investment in equity by venture capital companies or by listing companies on the stock exchange. Accordingly, it has (i) created start-up funds and venture capital mutual investment funds and (ii) encouraged groups of companies to reorganise with a view to listing. The *Conseil du Marché Financier* (the "CMF") is currently creating a new market to provide financing for growth and remedial financing.

New capital risk vehicles: start-up funds and venture capital mutual investment funds

New provisions were added in 1995 to the Investment Companies Act, No. 88-92, of 2 August 1988 (the "Act"). They provide a framework for the organisation of venture capital investment companies in order to structure the risk capital business in Tunisia. This legal framework for venture capital investment companies works hand in hand with preferential tax provisions.

In 2005, the legislature created two new risk capital investment vehicles to facilitate injections of equity capital: (i) start-up funds and (ii) venture capital mutual investment funds. The CMF has just amended its equity mutual investment orga-

nisation and management companies regulations¹ by adding new provisions for start-up funds and venture capital mutual investment funds².

Start-up funds

To provide support to entrepreneurs in innovative sectors and facilitate research financing, the legislature has just created the business set-up fund³.

Set-up funds are equity mutual investment funds. Their purpose is to provide equity capital for innovative projects before the actual business start-up phase. Start-up funds are essentially intended to help promoters:

- to exploit patents;
- to complete project technical and financial studies;
- to develop technological processes for products before the actual marketing stage;
- to supplement the financing scheme.

On 31 July 2006, the CMF created IKDAM-GESTION, the first start-up fund manager in Tunisia.

Venture capital mutual investment funds

Act No. 2005-105 of 19 December 2005 has been passed to supplement Act No. 2001-83 of 24 July 2001, which promulgated the Mutual Investment Organisation Code, by creating, alongside open-ended mutual funds and equity investment mutual funds ("FCPs"), a new category of FCP: the venture capital mutual investment fund ("FCPR").

FCPRs are FCPs having the principal objective of injecting equity capital, on behalf of unit holders and with a view to that capital interest being reassigned, into businesses involved in projects in sectors referred to in Article 21 of the Act⁴.

¹ Approved by order of the Finance Minister dated 21 January 2002.

² Additions approved by order of the Finance Minister dated 15 January 2007.

³ The Set-up Fund Act No. 2005-58 of 18 July 2005, supplemented by Decree No. 2005-2603 of 24 September 2005 implementing the provisions of Article 2 of the Act.

⁴ "(...) Businesses promoted by new promoters as defined by the Investment Incentives Code, businesses established in regional development areas, as defined by the said Code, businesses being upgraded or experiencing financial difficulties and benefiting from reorganisation in bankruptcy measures in accordance with the applicable legislation, businesses realising investments to promote technology and its application, and innovation in all sectors of the economy".

Stock exchange listing and corporate restructuring

The stock exchange listing of a group of companies may require prior reorganisation of the corporate structure involving a transfer of shares to the parent company. The tax cost in respect of the capital gain realised on such a transfer may be sufficient to discourage many company executives from listing their group on the stock exchange.

To overcome this handicap and increase the number of listings on the Tunis Stock Exchange (the "TSE"), the legislature⁵ decided to make the capital gain realised on contributing shares to the capital of the parent or holding company prior to listing deductible from the taxable income of the contributor⁶.

To be eligible for this tax exemption, the following conditions must be satisfied:

- the beneficiary of the capital contribution must agree to list its shares on the TSE no later than the end of the year following that in which the contribution capital gain was deducted from taxable income;
- the undertaking to list shares required by the CMF must be filed with the annual tax return for the year the capital gain is deducted from the contributor's taxable income.

If, within three months of the end of the year following the year of the deduction, a certificate proving that the parent or holding company benefiting from the capital contribution has been listed on the TSE has not been filed with the tax authorities, the companies deducting the capital gain from their income will be required to remit the unpaid tax on the capital gain, together with late payment penalties. Late payment penalties will not be due if a certificate issued by the CMF is filed proving that the failure to list the parent or holding company on the TSE was for reasons not attributable to it.

⁵ Article 31 of the Finance Act 2007, No. 2006-85, of 25 December 2006.

⁶ These new provisions need to be read with Article 11-I of the Personal and Corporate Income Tax Code, as amended by the Finance Act 2007, providing that a capital gain realised on a transfer of shares made as part of a listing on the TSE is not taxable income.

Plan to set up a new market

Noting that few SMEs and SMIs are eligible to list their shares on the stock exchange, the Tunisian authorities decided to create a new "alternative market", simplifying access to the stock exchange. This market to be is intended to assist promising businesses and large companies wishing to restructure or finance new projects⁷ to obtain financing.

The special feature of the alternative market is the assistance and support it offers companies to access financing through the capital markets, while ensuring the necessary degree of transparency. Listing companies are to be given help by a market professional, a "listing sponsor" (a profession as yet unknown in Tunisia) to draft a prospectus⁸, and throughout their stock exchange life.

In addition, market markers are to be used to ensure the market liquidity of the shares. They will display sale price/purchase price trading range at all times for a minimum quantity of shares listed on the alternative market.

To date, more than twenty SME applications have been selected as part of the company upgrade programme to begin studies with a view to their being listed on the alternative market.

THE DIGITAL ECONOMY

Tunisia has recently introduced new legislation to establish a basis for government policy to bridge the northern/southern country "digital divide" noted at the most recent international meetings (WSIS) on the subject.

Article 1 of the Outline Act to Establish a Digital Economy, No. 2007-13 of 19 February 2007 (the "Act") provides that "*establishing a digital economy is a national priority in view of what it may contribute to increasing the competitiveness of the national economy and its positive impact on various business activities*".

The Act defines the digital economy as comprising high value added businesses based on information and communication technologies. A decree (yet to be published) will define the business activities concerned.

The Act calls upon the State and local authorities to promote and increase the number of digital economy public-private partnerships. This role will involve (i) providing necessary infrastructure; (ii) offering training; (iii) encouraging scientific research and (iv) assisting Tunisian businesses operating in this area to improve their competitive positioning, with the key objective of attracting more foreign investment in this area.

As one of the policy promotion methods, the Act provides that public bodies will be entitled to engage private companies to handle all or part of their activities in this area or to take part in achieving major economic projects. Such partnerships will be based on agreements entered into following a competitive tendering process or by direct negotiation. Direct negotiation may only be used either "for projects that may only be undertaken or exploited by a specific service provider" or "large-scale national projects".

Finally, to emphasise that the digital economy expansion policy is a "national priority", the Act offers financial incentives to SMEs committing to such projects. For example, the government will pay part of the salaries of the higher education graduates of such companies for a specified period.

EXCHANGE CONTROL REGULATIONS

Tunisian exchange control regulations are defined in the Foreign Exchange and International Trade Code, promulgated by Act No. 76-18 of 21 January 1976 and Decree No. 77-608 of 27 July 1977.

Decree No. 2007-394 of 26 February 2007 has amended the Foreign Exchange Code Decree, allowing greater flexibility in transactions for the purchase of land or Tunisian company shares.

Tunisian Central Bank approval is no longer required for the acquisition, other than by inheritance, by importing foreign currency, or sale, by a non-resident, foreign private individual or corporate entity, of land and buildings in tourist areas for project use. Industrial and tourist areas are defined by Act No. 2005-40 of 11 May 2005, supplementing the Decree of 4 June 1957 on real estate transactions⁹.

⁷ This market to be is based on the UK Alternative Investment Market model and the French Alternext model (CMF Annual Report 2005).

⁸ The issue of shares to the public requires prior publication of a prospectus, providing relevant information to the public (Article 2 of Financial Market Reorganisation Act, No. 94-117, of 14 November 1994).

⁹ According to Article 7 of Act No. 2005-40 of 11 May 2005 supplementing the provisions of the Decree of 4 June 1957 relating to real estate transactions "*an industrial area or a tourist area is any area which has been designated as an industrial area or a tourist area by the applicable legislation governing the development of industrial areas and the development of tourist areas, and the applicable legislation relating to the protection of agricultural land and developments that have acquired industrial or tourist status pursuant to urban development plans*".

The 2007 Decree also abolished the need for prior Tunisian Central Bank approval for the acquisition, by subscription for shares on an increase in share capital within the limits of preferential subscription rights, by importing foreign currency, by a non-resident, foreign private individual or corporate entity, of Tunisian securities or the shares of Tunisian-based companies, within the scope of the governing laws.

Finally, Decree No. 2006-2321 of 28 August 2006 amending the 1977 Decree, abolished Investment Council approval for the acquisition of Tunisian voting securities or the shares of Tunisian-based SMEs, doing business in unregulated sectors, within the scope of the governing laws, by a resident or non-resident, foreign private individual or corporate entity.

SMEs are defined by Decree No. 2006-2321 as companies owning net tangible fixed assets with a value of MAD 4 million or less, employing no more than 300 employees.

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