C/M/S/ Bureau Francis Lefebvre

Newsletter on North Africa

Contents

Twin Towers, Casablanca. Morocco's economic capital, "Casa" is the registered office of one of CMS Bureau Francis Lefebvre's two subsidiaries in North Africa.

Editorial

Why have we brought out a Newsletter on North Africa?

CMS Bureau Francis Lefebvre has been based in the region for over 50 years and provides its technical and cultural expertise on North Africa for your projects.

You already have operations in a country in North Africa or you plan to develop operations in this region, alone or in partnership with local companies or authorities. You need assistance from lawyers who are familiar with both the technical and cultural aspects of the world of business.
CMS Bureau Francis Lefebvre was the pioneer in this area – we already had offices in the 1950s – and is probably the firm that currently has the longest experience in this region.

We have two subsidiaries, one in Casablanca in Morocco and the other in Algiers in Algeria, as we have faith in this region's potential. We also cover Tunisia, Libya and Mauritania through our correspondent lawyers.
For all of these reasons, we thought that it would be useful to share our experience with you on a regular and more direct basis via this quarterly newsletter. We hope that this newsletter provides you with useful information for your projects and that you enjoy reading it!

السلام عليكم

ALSALAM ALEKUM

The use of this expression, which is of religious origin, has become the most frequent form of greeting used in the world of business and in everyday life.

The correct translation is "May peace be with you". The reply is: "OuaAlkum Alsalam", "May peace be with you too".

News on Morocco

Investment Incentives

Simplified procedures

For a decade, the Kingdom of Morocco has been looking to intensify its entrepreneurial marketplace by boosting its offer to foreign investors in its country. In addition to various tax or financial incentives, administrative procedures have been simplified to enable investors to qualify easily for these benefits.

A call centre in Morocco.
An increasing number of foreign companies are setting up their call centres in Morocco.

Morocco has been seeking for a long time to offer foreign investors the guarantees they are looking for. In this respect, from 1973 to 1995, several Investment Codes were published aimed at encouraging development in some industry sectors (exports, mining, real estate, etc.). These texts were repealed by the **Investment Charter**, which was published by the Moroccan Royal Decree No. 1-95-213 of 8 November 1995 and continues to represent the reference text with regard to investment incentives in Morocco.

ECONOMIC STATISTICS

DHS 30 billion

This is the record level of foreign direct investment in Morocco in 2006. Morocco has become a platform for
foreign direct investment with DHS 21 billion on average each year during the period 2000 – 2005 compared to DHS 5 billion
during the 1990s.
DHS 575.2 billion (GDP in 2006)
DHS 605.7 billion (Forecast for 2007)

Sources: Direction des investissements, www.invest.gov.ma; Banque Al Maghrib (Banque centrale), www.bankalmaghrib.ma; Haut commissariat au Plan, www.hcp.ma

The Charter, as opposed to the Investment Codes, **grants the same benefits and guarantees to all investors regardless of their industry sector** (with the exception of the farming industry). Morocco decided two years ago to focus on **high added-value industrial operations** and launched a development plan. One of the main linchpins of this plan involves the development of offshoring operations. The Moroccan government introduced a specific measure known as the **"Moroccan offshoring offer"**, which provided for benefits. The requirements and procedures to qualify for these benefits are set forth in a circular issued by the Prime Minister **(Circular No. 9/2007 of 7 May 2007)**.

Investment Charter
The purpose of the Investment Charter, which was adopted in 1996, is to:
- simplify and streamline administrative procedures,
- guarantee transfers of profits and proceeds from sales for foreign currency investments;
- and above all, reduce capital costs and the tax burden.

The tax measures introduced by the Charter – the majority of which have since been integrated into tax law – basically relate to the preferential system for export companies (exemption from corporate income tax for five years, then entitlement to a reduced rate of 17.5% and VAT exemption), exemption from patent tax (a form of business deduction) for the first five years of operations for all new companies, exemption from town tax for new buildings for five years, introduction of provisions relating to investments (tax-related provisions) and VAT exemption on purchases of fixed assets (applicable only during the first 24 months of the company's operations as from 1 January 2007).

KEY POINTS

Investment Charter

Incentives subject to signature with the Moroccan state

- Exemption from customs tariffs and duties and VAT on capital goods, equipment and tools required to carry out a project amounting to DHS 200 or more and carried out within 36 months;
- State subsidies for land purchases and refund of training costs, up to a limit of 20% of these costs and 5% of the total investment;

Legal incentives

- Various tax exemptions: corporate income tax, then the rate of 17.5% for export companies, VAT exemption for new companies for 24 months, exemption from town tax and patent tax for five years, etc.).

Circular relating to Offshoring in Morocco:

- Upper limit on income tax on a pro rata basis of the turnover generated from exports, set at 20% of the total payroll, i.e., contribution = (income tax paid – 20% of the total payroll) x (turnover from exports/total turnover);

-- Subsidy granted for training for each person with Moroccan nationality varying, depending on the profits, between DHS 12,000 to DHS 65,000.

These systems can be combined.

For additional information

Offshoring has an economic potential estimated at generating DHS 25–30 billion additional GDP and creating approximately 100,000 jobs between now and 2013.
Source: Direction des Investissements,
www.invest.gov.ma

Circular relating to Offshoring in Morocco

The purpose of Circular No. 9/2007 issued by the Prime Minister is to:

- delimit the scope of the offer (operations, zones and enterprises concerned);
- form the supervisory administrative authority;
- and above all, set forth the incentives of the offer.

The incentives provided for by the circular, which are not provided for by ordinary law, consist of, first, a contribution from Anapec (the national agency for promoting employment and skills) for training costs and, second, a contribution from the State with regard to income tax. The contribution with regard to income tax is only granted to companies based in specific areas (Casanearshore and Rabat Technopolis), while the contribution for training is also granted, upon request, to companies carrying on operations connected to offshoring outside of the specific areas. The tax measures include refunding the eligible company the amount of income tax paid for a year exceeding the amount calculated by applying the rate of 20% to the total payroll and the pro rata of the turnover generated by exports. As from the third year of operations, this contribution from the State will only be granted to the company if at least 70% of its turnover is generated from exports. Moreover, no information has been provided to date regarding corporate income tax. As regards training, Anapec will pay a subsidy to eligible companies over a period of three years for each new employee with Moroccan nationality, varying between DHS 12,000 (baccalaureat level and over) to DHS 65,000, i.e., approximately EUR 6,000, for an engineer, depending on the profiles. Finally, the benefits offered by the Investment Charter and the Offshoring Offer can be combined.

Investment Incentives

A developing framework

The legal framework for foreign investment in Algeria is laid down by Order No. 01-03 of 20 August 2001, as supplemented and modified by Order No. 06-08 of15 July 2006, referred to below for convenience as the “Investment Code”.

1. General provisions of the Investment
Code The Investment Code applies to investors of all nationalities and lays down the principle of non-discrimination between national investors and foreign investors.

By virtue of this principle, the capital of an Algerian company[1] may be 100% held by foreign investors and its general management may be performed by foreign citizens, without any administrative permission being required[2] (subject to obtaining a professional card for non-Algerian directors and corporate officers). In order to benefit from the provisions relating to investment protection and guarantees provided for by the Investment Code, the following conditions must be met – except in specific cases (privatisation, concessions, etc.):

– the investment must relate to manufacturing goods or providing services;

– the investment must involve the creation, increase in capacity, recovery or restructuring of a company. Some purchases for resale as is (trading) and purchases of shares or corporate interests in existing companies that do not fall in the scope of privatisation operations are excluded from the provisions of the Investment Code.

2. Formalities with the National Agency for Investment Development Investments must be declared to the National Agency for Investment Development (Agence nationale de développement des investissements) before they are made. The declaration mainly includes a detailed description, supporting documents relating to the project, planned jobs, financing and goods required for the investment, which must be attached to the application for tax benefits. The National Agency for Investment Development is generally scrupulous regarding the type of goods required for investment and may exclude some goods from tax benefits on a discretionary basis. Although the Investment Code specifies that the National Agency for Investment Development must give its decision relating to granting benefits in the realisation stage within 72 hours, it appears that the process takes longer in practice. At the end of the realisation stage, the investor must inform the tax authorities [during/at the start of] the “operating” stage. Once this filing has been submitted to the National Agency for Investment Development, it has ten days to grant the benefits provided for the operating stage.

KEY POINTS

The investment must relate to manufacturing goods or providing services or involve the creation, increase in capacity, recovery or restructuring of a company.

Depending on the project, the investor may benefit either from the **general regime** (which is the simplest to obtain) or one of the two **special regimes**.

The general regime provides for exemption from customs tariffs and duties and VAT exemption on imports or purchases of capital goods forming part of the company’s investment programme, exemption from registration taxes on real estate purchases falling in the scope of the investment programme, then the exemption from corporate income tax and business tax for three years.

Investments in the country’s interest may benefit from the same benefits with an exemption from corporate income tax and business tax for ten years.

The Investment Code provides for **guarantees for the invested** capital, dividends and proceeds from the assignment or liquidation of the investment.

Algeria is in the process of modernisation and is gradually establishing a regulatory framework for foreign investors.

For additional information

The National Agency for Investment Development's website www.andi.dz has put a practical guide online for investors providing details of the administrative formalities to be taken when launching an investment in Algeria.

A private website also exists **www.droit-algerie.com** on business law and corporate taxation in Algeria.

3. Tax benefits

Insofar as the investor carries on activities other than excluded activities3 or activities qualifying for other preferential measures, the investor may benefit, depending on the project, from the general regime (which is the simplest to obtain) or one of the following two special regimes:

a. general regime

During the realisation stage, the general regimes provides for:

- exemption from customs tariffs and duties and VAT exemption on imports4 or purchases of capital goods forming part of the company's investment programme;
- exemption from registration taxes on real estate purchases falling in the scope of the investment programme. During the operating stage, the investor benefits from exemption from corporate income tax (the standard rate of corporate income tax is 25%) and business tax (the standard rate is 2% of the turnover excluding VAT, which is paid to local authorities like the business tax in France) for three years.

b. special regime relating to investments in development areas

The development areas are supposed to be defined by a decree, which has not been published to date. To the best of our knowledge, this regime has not entered into force.

c. special regime relating to investments in the national economy's interest

The criteria for granting this second special regime have not been defined. The National Council for Investment (Conseil national de l'investissement) is responsible for taking decisions and studies each programme on a case-by-case basis. If the programme is accepted, an agreement is entered into with the National Agency for Investment Development to define the benefits, which may mainly include:

- during the realisation stage (limited to five years):
- exemption from customs tariffs and duties and VAT exemption on imports or purchases of capital goods forming part of the company's investment programme; - exemption from registration taxes on real estate purchases, etc.
- in the operating stage: exemption from corporate income tax and business tax for ten years.

4. Guaranteed transfer of the invested capital

The Investment Code guarantees the transfer of the invested capital, dividends deriving therefrom and proceeds from the assignment or liquidation paid to foreign shareholders of the given company, insofar as the investment is not excluded from the guarantee and the shareholders' interests were subscribed for in Algeria using funds imported in freely convertible foreign currencies, duly recorded by the Bank of Algeria. Applications for the corresponding transfers must be made by a primary bank or a financial institution. In practice, the transfers take a relatively long period of time.

1 The Investment Code does not prohibit the investment from being capitalised by a branch but in practice the National Agency for Investment Development has not approved this to date, mainly due to problems relating to foreign exchange regulations.
2 Upon tax registration, it is not unusual that a residence permit is required for non-Algerian corporate officers.
3 List appended to Executive Decree No. 07-08 of 11 January 2007.
4 The list of these goods must be attached to the application for benefits. The goods included on a "negative list" appended to Executive Decree No. 07-08 of 11 January 2007 are excluded from the VAT exemption.

ECONOMIC STATISTICS

8 **billion**

According to the National Agency for Investment Development, this is the amount of foreign investment, which should be made in Algeria in 2007. The amount of foreign direct investment has increased from USD 1.5 billion in 1990 to USD 3.5 billion in 2002 and USD 8.2 billion in 2005. Algeria has become the most attractive African country after South Africa for foreign direct investment.

Sources: ANDI ; CNUCED (world investment report 2006), www.unctad.org

News from Libya

Investment Incentives

A more open framework

Act No. 5/1426 of 1997 (as duly amended by Act No. 7/1371 of 2003) and its implementing regulations aim to encourage foreign capital investment in Libya.

The act introduced a system of incentives to enable foreign investors to benefit mainly from exemptions from customs tariffs and duties, tax and special tax; benefits relating to foreign exchange regulations and simplified procedures for setting up business.

Investment sectors
Foreign capital may be invested in industry, healthcare, tourism, all forms of services and farming.

Investment conditions
The minimum total value of an investment project is fixed at LYD 5,000,000, i.e., approximately EUR 3,000,000. If Libyan capital is contributed to the investment project representing 50% or more of the project's value, the minimum value of the project is reduced to LYD 2,000,000, i.e., approximately EUR 1,200,000. Foreign investments must be made in foreign currency duly transferred to Libya through the Libyan banking network. It may be partially comprised of contributions in kind required to carry out the project (equipment, materials and raw materials) or intellectual property rights (patents, trademarks, etc.). The investment project must notably fulfil one or all of the following objectives to qualify:
- manufacturing in Libya of goods intended for export and/or limiting imports onto the local market;
- creating Libyan jobs and contributing to employee training;
- using modern manufacturing techniques and technology;
- developing landlocked and/or economically under-developed areas. The investment project must first be approved by the Minister for the Economy and, subsequently, authorised by the LFIB (Libyan Foreign Investment Board), the public body that is responsible for promoting foreign investments in Libya.

Legal form of the investment
The LFIB's authorisation of an investment project exempts foreign investors from the provisions of ordinary law relating to establishing partnerships with Libyan partners through the creation of a joint venture, of which at least 35% of the capital must be returned to Libyan legal entities or individuals (except in exceptional cases).
A duly authorised foreign investor may accordingly start doing business through a limited company (fully owned), a limited liability company (fully owned) or a branch of a foreign company.
The legal entity that is in charge of making and running an investment project must be registered in a specific register, known as the "investment register" kept by the LFIB. This registration triggers the same effects as registration in the trade register. Registration in this register replaces the legal entity's registration in the trade register, industrial registry and the register of importers and exporters.

INCENTIVES FOR FOREIGN CAPITAL INVESTMENT IN LIBYA

240 investment projects

On 31 March 2007, 240 investment projects were authorised by the Libyan Foreign Investment Board (LFIB) covering all of the investment sectors provided for by Act No. 5/146.

77 cancelled projects

77 projects were cancelled due to non-compliance by investors with their obligations and 163 investment projects were implemented, attracting total foreign investment of approximately LYD 11 billion (i.e., approximately USD 8.5 billion).

Source: Libyan Foreign Investment Board (LFIB), www.investinlibya.com

Newsletter on North Africa

KEY POINTS

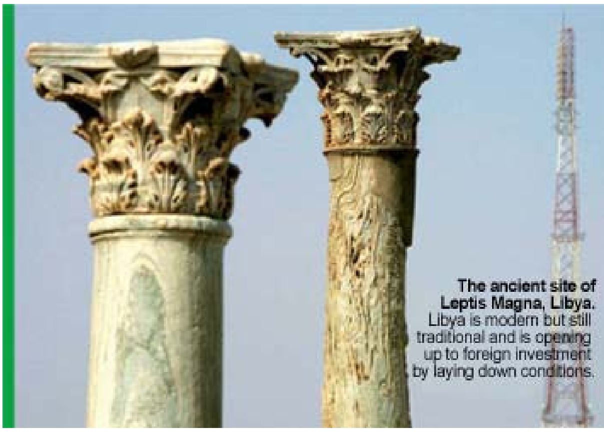
- **Minimum value of the investment project** approximately EUR 3,000,000. If Libyan capital is contributed representing at least 50% of the project: EUR 1,200,000.
- **Exception from the provisions of ordinary law** requiring the Libyan partner (joint venture, of which 35% of the capital must be returned to the Libyan partner). Possibility for the foreign investor to set up business through a company (fully owned) or a branch.
- **Temporary exemption from corporate income tax (five years)** Exemption from registration fees on agreements entered into by the foreign investor.
- **Temporary exemption from customs tariffs and duties (five years)** for imported materials and equipment.
- **Repatriation in foreign currency** of the products and revenues deriving from the investment.
- **Recruitment possibilities** of foreign manpower.
- **Possibility to purchase** or lease real estate
- **Protective investment measures.**

For additional information

For all additional information, please consult LIFB's official website: **www.investinlibya.com**

Benefits relating to tax and customs tariffs and duties
The investment project qualifies for the following benefits:
- Exemption from customs tariffs and duties and equivalent on imported equipment required to carry out the project;
- Exemption from corporate income tax – for five years with effect from the start date of operations (the marginal rate of corporate income tax is 40% in Libya). The five-year period may be extended for an additional three years at most further to a decision by the Prime Minister's department.
The profits generated upon expiry of the exemption period will continue to be exempt if they are reinvested.
- Exemption from registration fees and stamp duties applying to commercial agreements and other documents used (all agreements entered into with contracting parties under private law or public law are subject to a 2% registration fee and sub-contracting agreements are subject to a 1% registration fee);
- Exemption from manufacturing tax and operating tax on products intended for export. There is no VAT in Libya. It is possible that VAT will be introduced shortly.

Benefits in relation to foreign exchange regulations
- Possibility to repatriate the invested capital in the event where the investment is not made (in particular, due to problems preventing the investment);
- Possibility to repatriate the invested capital in the event of total or partial assignment of the investment, expiry of the investment term or liquidation of the investment;
- Annual transfer abroad of the distributed dividends or equivalent.



The ancient site of Leptis Magna, Libya. Libya is modern but still traditional and is opening up to foreign investment by laying down conditions.

Benefits in relation to employing foreigners
If the foreign investor faces problems in employing Libyan manpower, the recruitment of qualified foreign staff is authorised.

Benefits relating to real estate
As an exception from ordinary law which limits foreigners' access to real estate, Subject to the LIFB's authorisation, a foreign investor may purchase real estate for the purpose of carrying out the investment project, build premises (and even lease them).

Investment protection
The investment project may only be nationalised, expropriated or seized by virtue of a legal provision or a court decision. In this case, the foreign investor is entitled to fair compensation immediately calculated based on the project's real value.

Newsletter on North Africa

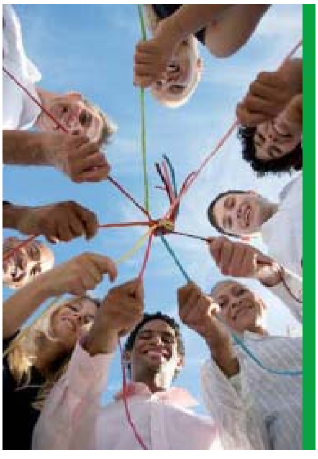
Business

North African Common Market

Building relationships through companies

18 years after the establishment of the Arab Maghreb Union, the economies of North African countries continue to turn their backs on each other. What is the solution? The establishment of the North African common market by companies and their co-operation.

In 1989, the North African "common market" was officially launched at the time of the establishment of the Arab Maghreb Union (Union du Maghreb arabe). Its objectives were to "allow the free circulation of persons, services, goods and capital". At present, even if trading between-North African countries is handicapped by political and structural factors, in particular, the poor transport network, this comment reveals the stark reality: each of the countries plays on its own partition faced with the challenges raised by globalisation. The statistics are unequivocal: 2% is the annual growth surplus which this economic union could have represented for each of the countries in North Africa, but it is also the ridiculously low percentage of trading between these countries…This rate can be compared with the trading rate between North Africa and the European Union (66%). The absence of integration of the North African economies results in a loss of earnings of more than EUR 7 billion according to the World Bank. The situation is all the more regrettable since North Africa is a coherent economic area with a future given its 85 million consumers, who are mainly young, with similar cultures and lifestyles, generating EUR 169 billion in GDP, extensive natural resources, successful services industries in NICT and finance. Moreover, the complementarity is obvious between the countries producing raw materials (Algeria, Libya) and the expanding service industry (Morocco, Tunisia). According to the IMF, only trading consolidation and the easing of trade restrictions between these countries would enable them to "face their main challenges", which are growth and employment. The private sector has decided to take the situation under control. The Maghreb Employers' Union (Union maghrébine des employeurs) was consequently established in February 2007. It is comprised of the Tunisian Union of Industry, Trade and Small Enterprises (Union tunisienne de l'industrie, du commerce et de l'artisanat), the Moroccan Employers' Confederation (Confédération générale des employeurs du Maroc), the Algerian Employers' Confereration (Confédération algérienne du patronat), the Libyan Council for Businessmen (Conseil des hommes d'affaires libyens) and the Mauritian Employers' Confederation (Confédération nationale du patronat



mauritanien). It is organising its first conference in Tunis on 28 and 29 November 2007 on the "role of the private sector in the economic integration of North Africa". The Maghreb Employers' Union aims to be the spearhead for the launch of a real North African common market, which should involve partnerships and co-operation by companies in the various countries rather than negative competition. This North African dimension is no longer a choice. It is an essential requirement given global competition, the planned opening of economic boundaries with the European Union and the Euromed free trade area in 2010.

Contact persons • In Paris: Frédéric Elbar, Partner, Tel.: +33 (0)1 47384351 – frederic.elbar@cms-bfl.com • In Algiers, Samir Sayah, Associate, Tel.: + 213 21370707 - samir.sayah@cms-bfl.com • In Casablanca Wilfried Le Bihan, Lawyer, Tel.: +21222481482 – wilfried.lebihan@cms-bfl.com

Newsletter on North Africa • Newsletter published by CMS Bureau Francis Lefebvre • 1-3, villa Émile-Bergerat, 92522 Neuilly-sur-Seine Cedex • Tel.: +33 (0)1 47 38 55 00 • www.cms-bfl.com • Editorial director: Florence Jouffroy • Editor-in-chief: Frédéric Elbar • Legal texts written by CMS Bureau Francis Lefebvre • Editorial design: entrecom • Tel.: +33 (0)1 42 04 43 29 • www.entrecom.com • Photos: AFP, Corbis, Eyedea, Getty, Réa • ISSN: 1770-0019.