Real estate foreign investments in Morocco

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Par: Christophe Bachelet | Gaëtan Rogeau | Myriam Mejdoubi

Morocco is increasingly becoming a strategic target for international investors seeking to diversify real estate investment opportunities.

This is the result of many interacting factors, particularly the fact that it is by far the most politically stable country in the region, with constant economic growth, strong positioning as a gateway to Africa with several successful free trade zones, an excellent geographical position between Europe and Africa, a legal framework based on the European civil legal framework and foreign investor-friendly foreign exchange regulations.

The real estate sector still represents more than 50 percent of Foreign Direct Investment (FDI) in Morocco in recent years according to the United Nations Conference on Trade and Development. The main foreign investors are Chinese, North American, Emiratis, French, Spanish and German.

The main areas of real estate foreign investments in Morocco are the following:

- **Healthcare**: Since the 2015 healthcare liberalization law, many foreign investments have been made in this sector. Most of them relate to the creation and development of significant new city projects, such as the Marrakech healthcare city and the Saudi German Hospital medical facility for the new eco-city of Zenata.
- **Hospitality**: Hospitality has long been associated with Morocco and is driven by the major tourist destinations of Marrakech and Agadir. Investors have continually invested in this area and keep doing so. Many projects have been launched in the last year, in particular in Tangier, Marrakech, Rabat, Casablanca and Agadir. Almost all major operators have a presence in the country (Hyatt, Radisson, Four Seasons, Fairmont, etc.) and others, such as Hilton or Marriott, are planning a return to Morocco with expansionist strategies.
- **Industrial (plants and logistics units)**: Many European companies are seeking to develop their capacity in Morocco in order to boost their sales through Africa. Industrial projects are mainly located in the Kénitra and Tangier tax-free zones. Morocco is also part of the Chinese government project, “One Road One Belt,” and the north of Morocco will host a new city project dedicated to this project, for which 400 international investors are expected to apply.

This article briefly answers the questions most commonly raised by those with an interest in foreign investments in Morocco.

What type of special purpose vehicle or holding company?

The real estate sector still represents more than 50 percent of FDI in Morocco in recent years.

First, Morocco does not generally require investors to partner with local shareholders and any foreign company is free to incorporate a company in Morocco without restrictions on the percentage of share capital to be held (except for certain regulated activities). A prior anti-trust merger clearance process is usually required for any joint venture projects since the notification materiality thresholds are very low.

Limited liability companies are commonly used because shareholders' liability exposure is capped to the amount of their contribution to the share capital.

Two main legal entities are used:

- SARL company: in terms of share capital requirements, there is no minimum share capital requirement, and therefore the share capital can theoretically be MAD1. Generally shares of companies amount individually to at least MAD100. A SARL company may be formed by only one shareholder provided that its shareholder is not itself a sole shareholding entity.
- SA company: a joint-stock company must have at least five shareholders, who can either be corporate entities or individuals. It must have a minimum fixed share capital of MAD300,000 (MAD3 million to proceed with public offering).

Many projects are made through investment agreements which provide a detailed outline of the project and which also include a shareholder agreement. This SA corporate form must be privileged for lodging any shareholders' agreement.

Additionally, it is essential while structuring a joint ventured project to ensure that public authorizations (eg, construction permits) are made in the name of the project companies and that they own the real estate asset or the going concern to secure the financing.

What type of registered office?

A registered office may be obtained through one of the following:

- The purchase of owned property: it is possible for foreigners to acquire land or buildings (except those in the agricultural sector). Land ownership regimes are very specific in Morocco and it is important to obtain professional advice prior to any acquisition, particularly for properties that are not registered in the land registry. Acquisition of shares is to be preferred to asset deals since the former is generally subject to a more beneficial tax regime. The split of real estate ownership and operation of the underlying activity may also have tax implications, which should be considered. In terms of projects on greenfield sites, various legal constraints may apply which can significantly affect the transaction structure or may delay the signing of the contractual documentation (guarantee of a promoter to be obtained, certain initial work to be carried out on the plots of land).
- Lease agreement: leases can either be civil, professional or commercial. Rents and charges are freely negotiated between the parties. Commercial leases offers security of tenure since the tenant has a right of renewal of the lease upon expiration. In practice, rents may be subject to a 10 percent increase every three years. A 2016 law has made significant changes in the Moroccan commercial lease regime in order to balance the relationship between the landlord and the tenant. Long-term leases may give rise to tax constraints, to be assessed on a case-by-case basis.
- Domiciliation agreement: this temporary agreement is often used to incorporate a company and start operations while looking for suitable premises. For tax reasons, however, it must remain temporary. Reform regarding where companies may be domiciled is pending.

Are there controls for funds into and out of Morocco?

Inflow of funds into Morocco

The foreign exchange regulations in Morocco have been significantly relaxed over the last few years. Generally, there are no limitations on foreign investments, especially for inflow of funds into Morocco, irrespective of the type of company, except in some specific business sectors such as agriculture, fishery, insurance or audio-visual.

The Foreign Exchange Charter provides for regular reporting obligations from foreign investors and local companies with a foreign shareholding.

Outflow of funds from Morocco

In terms of upstream of funds, the following main forms of repatriation of funds for the benefit of foreign investors are not subject to prior authorization by the Foreign Exchange Office (FEO), provided that the revenues to be upstreamed derived from an initial investment financed in foreign currency and other formalities have been met (including the effective payment of any applicable taxes):

- rental incomes
- dividends
- profits made by Moroccan branches of foreign companies
- interests on shareholders' loans
- proceeds from sale of shares and assets or liquidation of a Moroccan company

These new real estate investment schemes are expected to boost the real estate sector further and to create significant portfolios in Morocco.

Where the form of repatriation is not expressly provided for in the FEO instruction, prior approval of the FEO is required.

Can foreign companies file for a building permit?

According to the 2019 'Doing Business' rating, Morocco scores very highly (no. 30 out of 160 countries) on its procedure, time and costs for obtaining a building permit.

As in many countries, a local architect must be appointed for the filing of the request.

Depending on the size of a project and its impact in terms of local jobs and key concerned sectors (such as energy, education or healthcare), a prior agreement may be made with the Kingdom of Morocco in order to speed up the process for obtaining town planning permits and to gain certain tax advantages. However, these are subject to compliance with a series of commitments (quota of local jobs to be met, related infrastructures to be financed and built, etc.).

For most construction projects, several contractors are involved and it is rare to have only one general contractor that takes full liability for the entire project.

Is there a status that gives tax advantages to foreign companies with subsidiaries in Morocco?

The Casablanca Finance City status (the CFC Status) offers various tax benefits. Similarly, Tangier and Kenitra may offer advantages worth considering, such as custom duties exemptions or payments in foreign currencies.

Development of real estate collective investment schemes (OPCI) as the next step for foreign investments

Based on the French model, real estate collective investment schemes (OPCI) were recently introduced in Morocco, subject to various laws and regulations.

The main purpose of these vehicles is the construction or acquisition of real estate assets with a view to leasing them to third parties.

The setting up of an OPCI is subject to prior agreement from the Moroccan Stock Exchange Authority (AMMC), and the OPCI has to be represented by a portfolio management company (*société de gestion*) also approved by the AMMC.

These new real estate investment schemes are expected to boost the real estate sector further and to create significant portfolios in Morocco, which may attract foreign investors in the coming years.

Although it is fair to say that more needs to be done before Moroccan REITs are fully effective, expectations are high and there has been significant lobbying for the 2018 finance law to offer a more attractive tax regime for investors.

Conclusion

Investing in Morocco is, for many real estate foreign investors, the first step in an expansionist strategy towards Africa. The country's legal framework is adapting fast in order to secure foreign investments and, where gaps do exist, it follows the example of civil law countries. The ongoing reforms in both the securities law and the criminal code look set to strengthen the enforceability of deeds of sale and title ownerships.

AUTHORS

Christophe Bachelet
Partner
Casablanca | T: +212 5 20 42 78 27
christophe.bachelet@dlapiper.com

Gaëtan Rogeau
Counsel
Paris | T: +33 1 40 15 24 00
gaetan.rogeau@dlapiper.com

Myriam Mejdoubi
Partner
Paris | T: +33 1 40 15 24 00
myriam.mejdoubi@dlapiper.com