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Casablanca Finance City – Africa's new financial hub

Morocco's decision to create Casablanca Finance City, a financial gateway for investors looking to access the fast-growing markets of Africa, is set to play a pivotal role in the country's ambitious programme of economic development. Clifford Chance partner Mustapha Mourahib and capital markets associate Ouns Lemseffer describe the key components of the regulatory and legal framework underpinning the region's newest financial centre

Morocco has made great strides in opening up new avenues for economic growth. Over the past decade, it has become a strategic hub for international businesses looking for opportunities in the African continent.

Morocco's ambitious plans for growth are also set to be complemented over the coming years with the expected economic development for North, West and Central Africa. The region is set to benefit from a rapid expansion of trade, population growth and a variety of vast infrastructure projects.

However, such an influx of investment highlights a growing requirement for a financial centre to serve the rapidly expanding needs of institutions and governments in this region as well as provide a platform for Western and emerging market investors (especially China and India) to support their activities in Africa.

The gateway to regional investment

Morocco is strategically well placed to provide such a platform for investors. Its decision to create Casablanca Finance City (CFC) as a regional financial hub will help to position Casablanca as a stepping stone for North, West and Central Africa. It will also reinforce Morocco's role as a destination of choice for foreign investment. One of CFC's main aims is to make Casablanca a significant financial hub in Africa with a certain credibility to become the financial heart of the African continent.

An opportunity for sustainable economic growth in Africa

Over the past decade, Morocco has pursued a policy to use foreign investment as a strategic support for economic and social growth and to consolidate the attractiveness of the Kingdom to foreign investors.

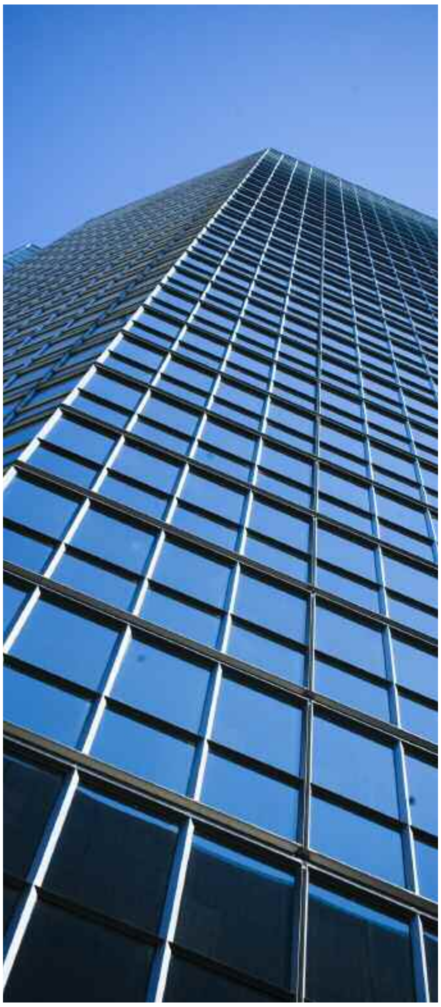
This policy has been bolstered by Morocco's diversified economy. Large international companies consider Morocco to be a suitable platform for their investments in North, West and Central Africa because of its cost competitiveness, strong and stable macroeconomic performances, free trade access to a market of 55 countries representing more than one billion consumers and 60% of the world's GDP, world class infrastructure, qualified labour force and a steadily improving business climate.

An initiative at the top of Morocco's development agenda

CFC is a large-scale, strategic project to create a financial centre with strong value for foreign investors that will also confirm

Morocco's position as an international financial hub for accessing North, West and Central Africa.

The Moroccan Financial Board (MFBoard), a public-private initiative established in 2010, is the company overseeing the development, promotion and overall management of CFC.



The Moroccan government intends to use CFC to align the country's business and finance capabilities (including capital markets) with global standards, improving the regulatory, tax and legal framework for doing business in Morocco and establishing a regional business hub at the heart of Casablanca.

The MFBoard's role in helping the government to achieve its objectives includes:

- establishing a competitive offering for Morocco as a financial hub;
- including spearheading and managing the real-estate elements of the project; and
- promoting CFC to institutions and investors in the following three key areas: (i) Financial services: investment and corporate banking; asset management; private equity; private banking and insurance, (ii) Regional and international headquarters activities: co-ordination and control centres of multinational companies, (iii) Professional services (IT, law, audit, advisory, rating, research…)

In addition, Morocco's Ministry of Finance estimates that CFC will contribute around 2% of GDP and generate some 35,000 new jobs.

The creation of CFC status

The statute regulating the establishment of CFC was passed by parliament and published in the official bulletin in December 2010[1] (Law 44-10). CFC special status will be conferred to companies operating in financial and non-financial services at either a regional or an international level.

Clifford Chance's contribution

Clifford Chance provided support and assistance to the MFBoard in certain issues raised in relation to the conditions and procedures for the implementation of the Law 44-10.

Clifford Chance's office in Casablanca is one of the first institutions who formally started the application process for the CFC status.

Regulatory framework at CFC

CFC, unlike other financial places, such as those in Dubai, Qatar or Malaysia, will not have a dedicated regulatory framework. The MFBoard is in charge of the overall CFC project but it will have no regulatory or supervisory powers over CFC entities.

All financial businesses registered at CFC will be subject to the existing financial authorities, which include Bank *Al Maghrib* (the Central Bank); the *Conseil Déontologique des Valeurs Mobilières* (CDVM)[2] (capital markets regulator), the *Direction des Assurances et de la Prévoyance Sociale* (DAPS)[3] (insurance sector regulator) and the Ministry of Finance. The MFBoard already works closely with such authorities to ensure that CFC entities are properly regulated.

Categories of companies who may apply for CFC status

Pursuant to Law 44-10, CFC status will apply exclusively to the following financial and non-financial undertakings recognised in most international financial centres:

[1] Dahir n°1-10-196 dated 7 moharrem 1432 (December 13, 2010) promulgating the Law n° 44-10 relating to the Casablanca Finance City Status, Kingdom of Morocco's Official Gazette n° 5904 bis, dated December 30, 2010, p. 2233.

[2] A draft law plans to replace the CDVM by the *Autorité Marocaine du Marché des Capitaux* (AMMC) with more supervision powers that will extend to all types of capital markets and not only securities markets, under the control of a government commissioner.

[3] A draft law plans to replace the DAPS by the *Autorité de Contrôle des Assurances et de la Prévoyance Sociale* (ACAPS), a public entity having legal personality and financial autonomy.

- **Financial Institutions:**
  - **Credit institutions**
    Credit institutions are those which are duly licensed pursuant to the legislation in force and which carry out one or more of the following activities: (i) placing, subscribing, purchasing, managing and selling securities, transferable debt securities or any financial products, (ii) advising and assisting in connection with wealth management, (iii) advising and assisting in connection with financial management, (iv) financial engineering and (v) more generally, any services aimed to facilitate the creation and the development of businesses.
  - **Insurance undertakings and insurance brokers**
    Insurance undertakings and insurance brokers are those which are duly licensed pursuant to the legislation in force and which carry out one or more of the following activities: (i) insurance in favour of non-resident persons and (ii) insurance brokerage in favour of non-resident persons.
  - **Financial institutions operating in the asset management business**
    Financial institutions operating in the asset management business are those which are duly authorised pursuant to the legislation in force and which carry out one or more of the following activities: (i) management for third parties and (ii) venture capital.
- **Professional services providers**
  A professional services provider is any undertaking having legal personality which carries out one or more of the following activities: (i) financial offshoring business, (ii) specialist financial services, notably financial rating, financial research and financial information, (iii) audit and legal, tax, finance, actuary and human resource services and (iv) all other professional services activities in relation to the entities referred to above.
- **Regional or international headquarters**
  Regional or international headquarters are undertakings having legal personality which supervise and coordinate the activities carried out by companies in one or more foreign countries, including those institutions providing professional services on behalf of other entities pertaining to their group.

CFC status will be opened to the above mentioned financial and non-financial undertakings carrying out activities at a regional or international level, subject to the satisfaction of the conditions for eligibility.

Conditions for eligibility

General conditions

CFC status is granted, after a proposition of the MFBoard, by the CFC Commission set up by decree n°2-11-323[4] implementing Law 44-10 (Decree 2-11-323) to undertakings referred to above on condition that:

- they establish in CFC within a time period set out by the CFC Commission
- they comply with applicable legislation
- they carry out activities with non-resident undertakings having legal personality; and

[4] Decree n°2-11-323 dated 7 chaoual 1432 (September 6, 2011) implementing the law n°44-10 in relation the Casablanca Finance City status, Kingdom of Morocco's Official Gazette n° 5980, dated September 22th, 2011, p. 4696.

- they comply with legislation and regulations in relation to foreign trade and exchange controls.

Decree 2-11-323 provides for specific criteria applicable to credit institutions and financial institutions to assess whether they carry out activities with non-resident undertakings having legal personality.

In the meantime, Law 44-10 as well as Decree 2-11-323 remain very general when it comes to the conditions that have to be met to become eligible for CFC status. The rationale behind this approach is to provide the CFC Commission with some flexibility when an entity applies for CFC status.

Specific criteria for Credit Institutions and Financial Institutions

Decree 2-11-323 establishes the criteria that credit institutions and financial institutions have to meet to be considered as carrying out activities with non-resident undertakings having legal personality.

Pursuant to article 9 of Decree 2-11-323, credit institutions and financial institutions applying for CFC status shall undertake to carry out with non-resident undertakings having legal personality, more than:

- 20% of their turnover for the first financial year
- 40% of their turnover for the second and third financial years; and
- 60% of their turnover for the fourth and following financial years.

When it comes to insurance undertakings and insurance brokers, professional services providers and regional or international headquarters, Decree 2-11-323 does not specify the criteria for assessing the condition related to the carrying out of activities with non-resident undertakings having legal personality. Compliance with such condition will, therefore, remain subject to the CFC Commission's assessment.

To attract foreign investors, significant tax incentives have been set up for companies benefiting from CFC status.

Tax incentives

The Finance Act for the budgetary year 2011[5] implemented a favourable tax regime applicable to companies that export services and benefit from CFC status and the employees of such companies.

Implementation of a favourable corporate income tax regime

Companies registered under 'Casablanca Finance City' status, other than regional or international headquarters, would benefit from:

- a total exemption of the corporate income tax for a period of five consecutive years following the first year of grant of the status; and
- a reduced tax rate of 8.75% beyond this period for all export sales and all net capital gains on moveable assets derived from foreign sources and earned in a given fiscal year.

Regional and international headquarters which benefit from CFC status are subject to a 10% tax rate starting from

[5] Dahir n°1-10-200 dated 23 moharrem 1432 (December 29, 2010) promulgating the Finance Act n° 43-10 for the budgetary year 2011, Kingdom of Morocco's Official Gazette n° 5904 bis, dated December 30th, 2010, p. 2157.

the first year of grant of CFC status. This 10% tax rate shall apply to a taxable basis taking into account the profit or loss incurred. In both cases (ie profit or loss), the Finance Act provides for a minimum tax basis amounting to 5% of the headquarters' operating expenditures.

Implementation of a favourable personal income tax regime

All individuals, whether they are expatriates or local employees working for a company benefiting from 'Casablanca Finance City' status will be subject to a full tax rate of 20% applicable for a maximum period of five years that will start from the beginning of their assignments.

Co-operation between the MFBoard and foreign governmental agencies

The MFBoard entered into a Memorandum of Understanding with the Singapore Cooperation Enterprise (SCE)[6] for the offering of expertise and assistance in the strategic development and promotion of CFC.

Under the terms of this memorandum, the SCE will assist the MFBoard in various areas such as financial regulation, governance, and capital market development. The SCE will also assist the MFBoard in organising its capital markets regionalisation strategy by establishing a framework to attract foreign listings, issuers, and investors.

In addition, the MFBoard and the SCE intend to build a co-branding strategy to promote business links in the long term and to work towards an 'Africa-Asia gateway'.

[6] SCE was formed by the Ministry of Trade and Industry and the Ministry of Foreign Affairs in Singapore to advise countries and financial places by sharing its know-how and expertise in terms of the public sector development.

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