



The Middle Eastern and African Arbitration Review

2023

Morocco

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The Middle Eastern and African Arbitration Review 2023 contains insight and thought leadership from 15 preeminent practitioners from the region. It provides an invaluable retrospective on what has been happening in some of Europe's more interesting seats.

This edition also contains think pieces on human rights in arbitration, the mechanism's growing use in technology disputes, damages in investment disputes and the use of statistical samples.

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Explore on **GAR** 

Morocco

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UGGC Africa

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In summary

Morocco is an arbitration-friendly jurisdiction with a brand-new arbitration legal framework, adopted in 2022 and up to international standards. Over the past decade, the development of various incentives towards the attraction of foreign investment has facilitated, along with a strong political push to promote Morocco as a gateway to Africa and a regional hub of investors, the creation of a positive environment for international investment projects and dispute settlement, where recourse to arbitration has become standard.

Discussion points

- Overview of the arbitration legal framework in Morocco
 - Recognition and enforcement of domestic, international and foreign arbitration awards, focusing on the legal framework applicable to foreign investment
-

Referenced in this article

- Code of Civil Procedure
 - Act No. 95-17 in relation to arbitration and the conventional mediation Code of Commerce
 - Instruction of the Moroccan Foreign Exchange Office Act No. 03-22 in relation to the investment charter
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Arbitration law

Arbitration is a well-accepted and frequent method of dispute resolution in Morocco. Since 2022, the legal provisions governing arbitration law in Morocco have been enclosed in two distinct statutes:

- the Code of Civil Procedure (CCP) enacted by the Dahir (Moroccan King's decree), related to Act No. 1-74-447 of 28 September 1974, which is the most ancient statute on arbitration in Morocco; and
- Act No. 95-17 in relation to arbitration and conventional mediation, published in the Official Gazette on 13 June 2022 (Act No. 95-17).

Since the passing of Act No. 95-17, all arbitration and mediation proceedings have been governed by that Act; however, the CCP governs any proceedings that existed and any arbitration agreements concluded prior to the enactment date of the Act.^[1] For the sake of clarity, the rest of the discussion in this article is limited to the provisions of the Act.

Pursuant to article 2 of Act No. 95-17, an arbitration agreement is a commitment from the parties to use arbitration in the resolution of a dispute (existing or pending) related to a given legal relationship, whether contractual or otherwise.

In law, as a summary of the existing legal framework:

- an arbitration agreement must be in written form^[2] and must define the nature of the dispute or disputes intended to be subject to arbitration;^[3]
- an arbitration clause in a contract is deemed to be a distinct agreement between the parties, hence the absence of effect on the arbitration clause in the case of nullity, caducity, termination or expiry of the main contract;^[4]
- arbitration may be ad hoc or institutional; and^[5]
- the arbitral tribunal follows the Kompetenz-Kompetenz principle, whereby it is empowered to examine the validity of the arbitration agreement and its own competence on the dispute at hand.^[6]

Act No. 95-17 further contains specific provisions on international arbitration, defined as arbitration where (1) the interest of international trade is at stake and (2) at least one party has its residence or registered address outside of Morocco.^[7]

Regarding the arbitrability of disputes

In general terms, any dispute in relation to a disposable right can be subject to arbitration.^[8] The following disputes are, however, precluded from being subject to arbitration:

- disputes in relation to personal rights (status and capacity of natural persons);^[9]
- disputes in relation to unilateral acts from the state, territorial collectivities or other legal entities endowed with public attributions (except for pecuniary disputes resulting from the act, excluding the application of tax laws);^[10] and
- disputes subject to special jurisdiction by law.^[11]

On the other hand, disputes arising from contracts entered into by the Moroccan state or by territorial collectivities may be subject to arbitration.^[12]

Government-owned companies subject to private-sector company law, as well as public establishments and institutions, can also enter into arbitration agreements.^[13]

Regarding labour aspects, since arbitrable matters include any disposable rights (whether civil or commercial in nature) and in the absence of any specific interdiction in Act No. 95-17, employment agreements can be subject to an arbitration clause.

Regarding the arbitrators: appointment and rule of conduct

Rules of appointment

Arbitrators must be natural persons, with the required minimum scientific skills and experience to perform their work. They will not be allowed practise as arbitrators if a final decision has been rendered against them under the following circumstances:

- if they have committed acts contrary to honour, probity or morality;
- if a disciplinary action has led to their termination from an official charge;
- if a pecuniary sanction has been provided for in the Moroccan Code of Commerce,^[14] or
- if they have been deprived of commercial or civil rights.^[15]

In principle, natural persons who, on a regular basis or by trade, work as arbitrators, whether as an individual practice or as part of a legal entity (notably within an arbitration institution), must be listed on a register of arbitrators.^[16] The implementation and method of registration on the register are, however, yet to be determined by decree.

By exception, parties remain free to designate the arbitration tribunal outside of the registered arbitrators.^[17] The total number of arbitrators is not restricted by law, so the arbitration tribunal may be formed by one sole arbitrator or by an odd number of arbitrators, under the conditions set forth by the parties themselves, or using the arbitration rules of the institution to which the dispute is referred to.^[18]

When the parties have not provided for the numbers of arbitrators to be appointed, the arbitration tribunal shall be composed of three arbitrators.^[19]

Rule of conduct

Arbitrators must formally accept their mission and at the same time disclose any and all circumstances that may raise suspicions over their impartiality and independence.^[20] They are further bound by professional secrecy.^[21]

Arbitrators can be held liable if they desist from their mission without just cause.^[22]

Recusation

Act No. 95-17 provides for an exhaustive list of reasons under which the recusation of an arbitrator may be applied for, notably under the following circumstances:

- the arbitrator has been subject to a final decision rendered against them in the circumstances mentioned above;
- the arbitrator, their spouse, ascendants or descendants have a personal interest in the dispute, whether directly or indirectly;
- the arbitrator is debtor or creditor to one of the party or counsel; or
- there is a distinct friendship or enmity between the arbitrator and a party or its counsel.^[23]

However, the existing professional relationship with the representative of a party and the existing relationship between the arbitrators are specifically excluded from the admitted causes of recusation.^[24]

Domestic courts in support of the arbitration proceedings

Unless otherwise agreed by the parties, the existence of an arbitration agreement does not prevent parties from filing emergency proceedings before any judicial court to seek temporary or conservatory measures, either prior to or in the course of the arbitration proceedings.^[25]

This possibility of approaching the Moroccan courts to obtain interim relief is consistent with the rules of major arbitration institutions, such the International Chamber of Commerce (ICC) Rules.

As an example, under article 28(2) of the ICC Rules:

Before the file is transmitted to the arbitral tribunal, and in appropriate circumstances even thereafter, the parties may apply to any competent judicial authority for interim or conservatory measures. The application of a party to a judicial authority for such measures or for the implementation of any such measures ordered by an arbitral tribunal shall not be deemed to be an infringement or a waiver of the arbitration agreement and shall not affect the relevant powers reserved to the arbitral tribunal. Any such application and any measures taken by the judicial authority must be notified without delay to the Secretariat. The Secretariat shall inform the arbitral tribunal thereof.

Regarding the enforcement of domestic, international and foreign arbitral awards in Morocco

As Morocco is a signatory to the New York Convention, for domestic and international arbitration, arbitration awards are legally enforceable in Morocco after obtaining an exequatur decree from the president of the competent court.^[26]

The exequatur is automatically granted by the competent court (1) if the delay for an annulment of the award (see below) has lapsed; and (2) provided that the award does not contradict Moroccan or international public policy rules.^[27]

A request to be granted an exequatur on an arbitration award is made through emergency proceedings, on a contradictory basis, and takes on average three to four months;^[28] it is, however, to be anticipated that for foreign awards the arbitration agreement, the award itself and all supporting documents must be presented in certified Arabic versions.^[29]

In domestic arbitration, as well as international arbitration with a seat in Morocco, the exequatur decree in itself is not susceptible to appeal,^[30] while a decision of the court refusing exequatur can be appealed within 15 days of its notification to the parties.^[31]

In international arbitration with a seat outside of Morocco, an appeal against the decree granting recognition or enforcement (exequatur) of an award can be introduced on the following grounds:^[32]

- absence of arbitration agreement, or nullity of the arbitration agreement or award rendered after the expiration of the time frame provided for the arbitration;

- an irregularity in the composition of the arbitration tribunal;
- non-compliance of the arbitration tribunal with the mission entrusted to it;
- failure to respect the rights of the defence; or
- contradiction of the recognition or enforcement of the award with international or national public policy.

Recourse against arbitral awards

In domestic arbitration, three forms of legal recourse are available against an arbitral award:

- retraction application, notably in the case of misrepresentation, false evidence or key evidence withheld by a party, or contradictory provisions in the award;^[33]
- third-party opposition, introduced by a third party to the dispute if the award results in damage to its rights;^[34] and
- annulment, for causes exhaustively listed by Act No. 95-17, notably the following:
 - absence of arbitration agreement, of nullity of the arbitration agreement or award rendered after the expiration of the time frame provided for the arbitration;
 - irregularity in the composition of the arbitration tribunal;
 - non-compliance of the arbitration tribunal with the mission entrusted to it;
 - non-compliance of the award with the prescribed form applicable to it under Act No. 95-17;
 - failure to respect the rights of the defence;
 - contradiction of the recognition or enforcement of the award with international or national public policy; and
 - breach of the rules of procedure applicable to the arbitration.^[35]

For international arbitration, unless otherwise agreed by the parties, an arbitral award can be subject to annulment under the conditions mentioned above, in which case the exequatur decree is in itself not susceptible to appeal.^[36]

Arbitration institutions based in Morocco

Various arbitration institutions are based in Morocco. The two with the most international exposure are:

- the Moroccan International Chamber of Commerce, which has a dedicated arbitration institution through the Moroccan Court of Arbitration; and
- Casablanca Finance City, a financial and free trade zone created by an act of parliament, which also provides an arbitration institution through the International Centre for Mediation and Arbitration (CIMAC).

In focus: legal framework for investments in Morocco and arbitration

Morocco has enacted various provisions in support of foreign investments, with an increasing number of investor-friendly measures in the past 20 years. Foreign investors can thus avail themselves of various incentives and a clear legal framework, on top of a functioning arbitration system in the case of dispute.

Foreign exchange regulations

Morocco is subject to foreign exchange regulations, whereby the incoming and outgoing flux of currencies is regulated and monitored by the Foreign Exchange Office, in accordance with the Foreign Exchange Office Instruction (the Instruction).^[37]

Under the Instruction, in principle, foreign investment can be done freely in Morocco.

However, the Instruction enforces an investment scheme for non-resident persons or entities where:

- foreign investment brought into the country in capital or debt can only be made on a repatriable basis when made in foreign currency;
- the prior approval of the Foreign Exchange Office is required for certain transactions, in particular but not limited to:
 - any set-off of debts or receivables between a non-resident and a resident entity; and
 - any indemnity clause that may cause a resident entity to indemnify a non-resident entity.

In practical terms, this means that any foreign investment made in Morocco must be made in foreign currency so as to make use of the repatriation regime. Additionally, in the case of share transfer in a Moroccan entity by a foreign investor, the transferee inherits the foreign exchange status of the transferor, so that particular care should be given to pre-acquisition due diligence.

Investment Charter

In a national and international context affected by a global inflationary crisis, Morocco has taken the initiative by adopting a 'new competitive investment charter' (the Charter) (see Act No. 03-22 promulgated on 9 December 2022), in order to promote the country's economy. The new Charter replaces and supersedes Framework Act No. 18-95, the former investment charter.

The Charter was passed with a view towards developing the attractiveness of investments in Morocco and 'adapting it to the requirements of the new development model and to the profound institutional, economic, social, environmental and technological changes taking place on a national and international scale'.^[38]

The legal framework around the Charter was completed by Decree No. 2.231, relating to the implementation of the main support mechanisms for investment and the specific support mechanism applicable to strategic investment projects. The Decree was approved by the Government Council on 26 January 2023.^[39]

Main investment support mechanisms

Investment support mechanisms are available to foreign investments that fulfil the following alternative conditions in relation to the amount invested or the number of stable jobs created:

- a total investment amount higher than or equal to 50 million dirhams, which is intended to create a number of jobs within a threshold to be set later via a decision of the Head of Government, with a maximum of 149 jobs; or
- an investment that creates at least 150 stable jobs.

A job is deemed stable if it continues for a minimum duration of 18 consecutive months, with Moroccan citizens duly enrolled in the national social security fund.

For eligible projects, three types of premiums are available to foreign investors: territorial, common and sectoral.^[40]

According to the Government Council, the cumulative total of premiums cannot exceed a ceiling of 30 per cent of the investment amount, and a ceiling of 30 million dirhams^[41] for renewable energy projects.^[42] Nevertheless, Act No. 03-22 provides that when an investment project is carried out in two or more sectors of activity, the investor concerned can only benefit once from the sectoral premium corresponding to the sector of activity in which the largest share of its total investment is made.^[43]

Territorial premiums can be granted to reduce disparities between provinces and administrative districts in Morocco in terms of foreign investment. Common premiums are granted according to criteria relating to the number of permanent jobs (with a bonus of 5 to 10 per cent of the amount of the investment); according to the percentage of women employed in the company (3 per cent of the amount of the investment); trades with a high technological content or upgrading projects (3 per cent of the amount of the investment); sustainable development (3 per cent of the amount of the investment); and local integration (3 per cent of the amount of the investment).^[44]

Finally, sectoral premiums can be granted up to 5 per cent of the amount of the investment, to 'develop investments in priority sectors'^[45] such as transportation, tourism and leisure, industries and renewable energy.

Specific mechanism for strategic investment projects

The second key mechanism introduced by the Charter is the specific support mechanism applicable to investment projects of a strategic nature, which can provide specific negotiated advantages.^[46]

Investment projects are deemed to be strategic if the total amount invested is greater than or equal to two billion dirhams^[47] and meets one of the following criteria:

- it provides effective contribution to water, energy, food or health security in Morocco;

- it provides a significant contribution to the development of technologies; and
- there is a significant creation of jobs.

The various incentives mentioned above under the Charter are steered by a ministerial commission chaired by the Head of Government, who is in charge of the approbation of any draft investment agreement drawn up within the framework of the main support mechanism, when its total amount is equal to or greater than 250 million dirhams, and of the determination of the strategic nature of any investment project.^[48]

Hassan II

The Hassan II Fund for economic and social development was created by Act No. 36-01 dated 29 January 2002 for participation in the financing of investment projects in specific private sectors listed by the government.

The Fund brings financial support to certain investment projects in Morocco that have an economic and social impact on the country.

Casablanca Finance City

Casablanca Finance City (CFC) is a government initiative enacted under Act No. 44-10 to promote and attract foreign investment in Africa, with Casablanca as a gateway to the continent.

Act No. 44-10, as amended, has created a CFC status under which an eligible export-oriented company (the main eligibility criterion is 50 per cent export-oriented production) can use various tax advantages, exchange control facilitation measures as well as other benefits for doing business. Companies with this status must have their registered address in the CFC real estate development compound.

Free economic zones

Free economic zones (FEZs) are determined geographic free-trade zones where the operations of a company are partially or totally exempted from the legal provisions related to customs and foreign trade.

The various FEZs are promulgated by decree:

- Decree 2-96-511 of 10 November 1997 on the creation of the Tangier export processing zone;
- Decree 2-02-642 of 30 October 2002 on the creation of the Tangier–Mediterranean special development zone and export processing zone;
- Decree 2-09-203 of 21 December 2009 on the creation of the Dakhla export processing zone;
- Decree 2-09-203 of 21 December 2009 on the creation of the Nador export processing zone;
- Decree 2-11-151 of 16 June 2011 on the creation of the Oujda export processing zone;

- Decree 2-09-204 of 21 December 2009 on the creation of the Laayoune export processing zone;
- Decree 2-09-442 of 21 December 2009 on the creation of the Kenitra export processing zone;
- Decree 2-09-684 of 17 March 2010 on the creation of the Betoja export processing zone;
- Decree 2-10-286 of 29 October 2010 on the creation of the Nouaceur export processing zone;
- Decree 2-10-337 of 20 April 2011 on the creation of the Tangier Automotive City export processing zone;
- Decree 2-11-524 of 19 December 2011 on the creation of the Fez Ras Al Ma export processing zone;
- Decree 2-12-01 of 15 May 2012 on the creation of the Technopolis (Salé) export processing zone; and
- Decree 2-19-345 of 24 May 2019 on the creation of the Tangier-Tech export processing zone.

Companies located in FEZs notably avail of the following tax incentives:

- exoneration of any taxes or levies on goods entering or leaving FEZs;
- no corporate tax in the first five years and reduced tax rate for the next 10 financial years at 8.75 per cent; and
- no tax deducted at source on dividends when paid to non-resident shareholders (when paid to resident shareholders, application of a reduced rate at 7.5 per cent).

The decrees setting up the FEZs contain eligibility criteria that mean each FEZ specialises in a particular sector, notably:

- Tangier: automotive;
- Nouaceur: aeronautics;
- Oudja: renewable energy and energy-efficiency industry; and
- Technopolis (Salé): electronics and microelectronics; nanotechnology; biotechnology and pharmacology; optics and optometry; chemistry and parachemistry; renewable energy and energy efficiency.

International conventions entered into by Morocco

Morocco has entered into 75 bilateral investment treaties with foreign countries.^[49]

It is also a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards, as well as the Washington Convention on the Settlement of Investment Disputes.

In a recent diplomatic development, following the normalisation of the diplomatic relationship between Morocco and Israel in December 2020, after the Abraham Accords,

the two countries entered into various cooperation agreements and, most notably, into a memorandum of understanding in November 2021 to promote cooperation in defence matters.^[50]

In focus: International Centre for Settlement of Investment Disputes arbitrations cases in Morocco

The International Centre for Settlement of Investment Disputes (ICSID) was created by the Washington Convention in 1965 to address investment-related disputes between member states and the citizens of other member states.

Morocco ratified the Washington Convention in 1967 and has since been a defendant to nine cases introduced by foreign investors,^[51] with six cases concluded and three cases pending.

As at the time of writing, the cases pending are:

- Comercializadora Mediterránea de Viviendas SL (Comervi): in 2022, this Spanish company introduced a claim for the payment of €407 million as alleged damages in the context of the construction of the new town of Tamesna, near Rabat. As per the claimant, the Moroccan state was supposed to provide all the equipment and infrastructure necessary to conduct the construction of the new town, including its connections by highway, train and other transportation means. The alleged inaction from the Moroccan state would have resulted in the project being entirely derelict and abandoned;^[52]
- Finetis: an undisclosed claim filed by the French telecommunication group Finetis,^[53] and
- Corral Morocco Holdings AB: the main shareholder of the Moroccan company SAMIR (an oil refinery), in the course of insolvency proceedings, alleges wrongdoing from the Moroccan state and has filed an ICSID claim for damages.^[54]

Footnotes

[\[1\]](#) Act No. 95-17, article 103.

[\[2\]](#) *ibid*, article 3.

[\[3\]](#) *ibid*, article 5.

[\[4\]](#) *ibid*, article 8.

[\[5\]](#) *ibid*, article 10.

[\[6\]](#) *ibid*, article 32.

[\[7\]](#) *ibid*, article 72.

[\[8\]](#) *ibid*, article 14.

[\[9\]](#) *ibid*, article 15.

[10] [ibid](#), article 16.

[11] [ibid](#), article 101.

[12] [ibid](#), article 16.

[13] [ibid](#), article 17.

[14] The concerned sanctions are those mentioned under Title VII, Book 5 of Act No. 15-95 relating to the Code of Commerce.

[15] [ibid](#), article 11.

[16] [ibid](#), article 12.

[17] [ibid](#), article 13.

[18] [ibid](#), article 20.

[19] [idem](#).

[20] [ibid](#), article 30.

[21] [ibid](#), article 31.

[22] [ibid](#), article 30.

[23] [ibid](#), article 24.

[24] [idem](#).

[25] [ibid](#), article 19.

[26] [ibid](#), articles 67 and 77.

[27] [ibid](#), articles 70 and 79.

[28] [ibid](#), article 67.

[29] [ibid](#), article 78.

[30] [ibid](#), article 69.

[31] [ibid](#), article 70.

[32] [ibid](#), article 80.

[33] CPC, article 402.

[34] [ibid](#), articles 303 and seq.

[35] Act No. 95-17, article 62.

[36] [ibid](#), article 80.

[37] The last version of the Instruction is dated 3 January 2022 and is available here: <https://www.oc.gov.ma/sites/default/files/reglementation/pdf/2022-01/IGOC%202022.pdf> (last visited on 13 February 2022).

[38] Act No. 03-22, preamble.

[39] [ibid](#), article 8.

[40] *idem*.

[41] US\$2,948,246.42.

[42] Act No. 03-22, article 16.

[43] *ibid*, article 14.

[44] *ibid*, article 13.

[45] *ibid*, article 14.

[46] *ibid*, article 7.

[47] US\$196,607,245.85.

[48] Act No. 03-22, article 34.

[49] <https://investmentpolicy.unctad.org/international-investment-agreements/countries/142/morocco> (last visited on 13 February 2023).

[50] <https://www.jeuneafrique.com/1409731/politique/la-cooperation-entre-le-maroc-et-israel-va-setendre-a-la-guerreelectronique/#:~:text=Le%20Maroc%20et%20Israël%2C%20qui,et%20la%20guerre%20électronique%20'%2C%20indique> (last visited on 13 February 2023).

[51] <https://icsid.worldbank.org/fr/affaires/base-de-donnees> (case list available by filter on the nationality of respondent; last visited on 13 February 2023).

[52] <https://medias24.com/2022/06/17/le-fiasco-de-tamesna-au-coeur-dun-litige-international/> (last visited on 13 February 2023).

[53] <https://medias24.com/2021/09/22/a-washington-le-maroc-implique-dans-un-nouvel-litige-cirdi/> (last visited on 13 February 2023).

[54] https://www.lopinion.ma/SAMIR-Dans-l-attente-de-la-sentence-decise-du-CIR-DI_a36057.html (last visited on 13 February 2023).

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This possibility of approaching the Moroccan courts to obtain interim relief is consistent with the rules of major arbitration institutions, such the International Chamber of Commerce (ICC) Rules.

As an example, under article 28(2) of the ICC Rules:

Before the file is transmitted to the arbitral tribunal, and in appropriate circumstances even thereafter, the parties may apply to any competent judicial authority for interim or conservatory measures. The application of a party to a judicial authority for such measures or for the implementation of any such measures ordered by an arbitral tribunal shall not be deemed to be an infringement or a waiver of the arbitration agreement and shall not affect the relevant powers reserved to the arbitral tribunal. Any such application and any measures taken by the judicial authority must be notified without delay to the Secretariat. The Secretariat shall inform the arbitral tribunal thereof.

REGARDING THE ENFORCEMENT OF DOMESTIC, INTERNATIONAL AND FOREIGN ARBITRAL AWARDS IN MOROCCO

As Morocco is a signatory to the New York Convention, for domestic and international arbitration, arbitration awards are legally enforceable in Morocco after obtaining an exequatur decree from the president of the competent court.^[26]

The exequatur is automatically granted by the competent court (1) if the delay for an annulment of the award (see below) has lapsed; and (2) provided that the award does not contradict Moroccan or international public policy rules.^[27]

A request to be granted an exequatur on an arbitration award is made through emergency proceedings, on a contradictory basis, and takes on average three to four months;^[28] it is, however, to be anticipated that for foreign awards the arbitration agreement, the award itself and all supporting documents must be presented in certified Arabic versions.^[29]

In domestic arbitration, as well as international arbitration with a seat in Morocco, the exequatur decree in itself is not susceptible to appeal,^[30] while a decision of the court refusing exequatur can be appealed within 15 days of its notification to the parties.^[31]

In international arbitration with a seat outside of Morocco, an appeal against the decree granting recognition or enforcement (exequatur) of an award can be introduced on the following grounds:^[32]

- absence of arbitration agreement, or nullity of the arbitration agreement or award rendered after the expiration of the time frame provided for the arbitration;
- an irregularity in the composition of the arbitration tribunal;
- non-compliance of the arbitration tribunal with the mission entrusted to it;
- failure to respect the rights of the defence; or
- contradiction of the recognition or enforcement of the award with international or national public policy.

Recourse Against Arbitral Awards

In domestic arbitration, three forms of legal recourse are available against an arbitral award:

- retraction application, notably in the case of misrepresentation, false evidence or key evidence withheld by a party, or contradictory provisions in the award;^[33]
- third-party opposition, introduced by a third party to the dispute if the award results in damage to its rights;^[34] and
- annulment, for causes exhaustively listed by Act No. 95-17, notably the following:
 - absence of arbitration agreement, of nullity of the arbitration agreement or award rendered after the expiration of the time frame provided for the arbitration;
 - irregularity in the composition of the arbitration tribunal;
 - non-compliance of the arbitration tribunal with the mission entrusted to it;
 - non-compliance of the award with the prescribed form applicable to it under Act No. 95-17;
 - failure to respect the rights of the defence;
 - contradiction of the recognition or enforcement of the award with international or national public policy; and
 - breach of the rules of procedure applicable to the arbitration.^[35]

For international arbitration, unless otherwise agreed by the parties, an arbitral award can be subject to annulment under the conditions mentioned above, in which case the exequatur decree is in itself not susceptible to appeal.^[36]

Arbitration Institutions Based In Morocco

Various arbitration institutions are based in Morocco. The two with the most international exposure are:

- the Moroccan International Chamber of Commerce, which has a dedicated arbitration institution through the Moroccan Court of Arbitration; and
- Casablanca Finance City, a financial and free trade zone created by an act of parliament, which also provides an arbitration institution through the International Centre for Mediation and Arbitration (CIMAC).

IN FOCUS: LEGAL FRAMEWORK FOR INVESTMENTS IN MOROCCO AND ARBITRATION

Morocco has enacted various provisions in support of foreign investments, with an increasing number of investor-friendly measures in the past 20 years. Foreign investors can thus avail themselves of various incentives and a clear legal framework, on top of a functioning arbitration system in the case of dispute.

Foreign Exchange Regulations

Morocco is subject to foreign exchange regulations, whereby the incoming and outgoing flux of currencies is regulated and monitored by the Foreign Exchange Office, in accordance with the Foreign Exchange Office Instruction (the Instruction).^[37]

Under the Instruction, in principle, foreign investment can be done freely in Morocco.

However, the Instruction enforces an investment scheme for non-resident persons or entities where:

- foreign investment brought into the country in capital or debt can only be made on a repatriable basis when made in foreign currency;
- the prior approval of the Foreign Exchange Office is required for certain transactions, in particular but not limited to:
 - any set-off of debts or receivables between a non-resident and a resident entity; and
 - any indemnity clause that may cause a resident entity to indemnify a non-resident entity.

In practical terms, this means that any foreign investment made in Morocco must be made in foreign currency so as to make use of the repatriation regime. Additionally, in the case of share transfer in a Moroccan entity by a foreign investor, the transferee inherits the foreign exchange status of the transferor, so that particular care should be given to pre-acquisition due diligence.

Investment Charter

In a national and international context affected by a global inflationary crisis, Morocco has taken the initiative by adopting a 'new competitive investment charter' (the Charter) (see Act No. 03-22 promulgated on 9 December 2022), in order to promote the country's economy. The new Charter replaces and supersedes Framework Act No. 18-95, the former investment charter.

The Charter was passed with a view towards developing the attractiveness of investments in Morocco and 'adapting it to the requirements of the new development model and to the profound institutional, economic, social, environmental and technological changes taking place on a national and international scale'.^[38]

The legal framework around the Charter was completed by Decree No. 2.231, relating to the implementation of the main support mechanisms for investment and the specific support mechanism applicable to strategic investment projects. The Decree was approved by the Government Council on 26 January 2023.^[39]

Main Investment Support Mechanisms

Investment support mechanisms are available to foreign investments that fulfil the following alternative conditions in relation to the amount invested or the number of stable jobs created:

- a total investment amount higher than or equal to 50 million dirhams, which is intended to create a number of jobs within a threshold to be set later via a decision of the Head of Government, with a maximum of 149 jobs; or
- an investment that creates at least 150 stable jobs.

A job is deemed stable if it continues for a minimum duration of 18 consecutive months, with Moroccan citizens duly enrolled in the national social security fund.

For eligible projects, three types of premiums are available to foreign investors: territorial, common and sectoral.^[40]

According to the Government Council, the cumulative total of premiums cannot exceed a ceiling of 30 per cent of the investment amount, and a ceiling of 30 million dirhams^[41] for renewable energy projects.^[42] Nevertheless, Act No. 03-22 provides that when an investment project is carried out in two or more sectors of activity, the investor concerned can only benefit once from the sectoral premium corresponding to the sector of activity in which the largest share of its total investment is made.^[43]

Territorial premiums can be granted to reduce disparities between provinces and administrative districts in Morocco in terms of foreign investment. Common premiums are granted according to criteria relating to the number of permanent jobs (with a bonus of 5 to 10 per cent of the amount of the investment); according to the percentage of women employed in the company (3 per cent of the amount of the investment); trades with a high technological content or upgrading projects (3 per cent of the amount of the investment); sustainable development (3 per cent of the amount of the investment); and local integration (3 per cent of the amount of the investment).^[44]

Finally, sectoral premiums can be granted up to 5 per cent of the amount of the investment, to 'develop investments in priority sectors'^[45] such as transportation, tourism and leisure, industries and renewable energy.

Specific Mechanism For Strategic Investment Projects

The second key mechanism introduced by the Charter is the specific support mechanism applicable to investment projects of a strategic nature, which can provide specific negotiated advantages.^[46]

Investment projects are deemed to be strategic if the total amount invested is greater than or equal to two billion dirhams^[47] and meets one of the following criteria:

- it provides effective contribution to water, energy, food or health security in Morocco;
- it provides a significant contribution to the development of technologies; and

- there is a significant creation of jobs.

The various incentives mentioned above under the Charter are steered by a ministerial commission chaired by the Head of Government, who is in charge of the approbation of any draft investment agreement drawn up within the framework of the main support mechanism, when its total amount is equal to or greater than 250 million dirhams, and of the determination of the strategic nature of any investment project.^[48]

Hassan II

The Hassan II Fund for economic and social development was created by Act No. 36-01 dated 29 January 2002 for participation in the financing of investment projects in specific private sectors listed by the government.

The Fund brings financial support to certain investment projects in Morocco that have an economic and social impact on the country.

Casablanca Finance City

Casablanca Finance City (CFC) is a government initiative enacted under Act No. 44-10 to promote and attract foreign investment in Africa, with Casablanca as a gateway to the continent.

Act No. 44-10, as amended, has created a CFC status under which an eligible export-oriented company (the main eligibility criterion is 50 per cent export-oriented production) can use various tax advantages, exchange control facilitation measures as well as other benefits for doing business. Companies with this status must have their registered address in the CFC real estate development compound.

Free Economic Zones

Free economic zones (FEZs) are determined geographic free-trade zones where the operations of a company are partially or totally exempted from the legal provisions related to customs and foreign trade.

The various FEZs are promulgated by decree:

- Decree 2-96-511 of 10 November 1997 on the creation of the Tangier export processing zone;
- Decree 2-02-642 of 30 October 2002 on the creation of the Tangier–Mediterranean special development zone and export processing zone;
- Decree 2-09-203 of 21 December 2009 on the creation of the Dakhla export processing zone;
- Decree 2-09-203 of 21 December 2009 on the creation of the Nador export processing zone;
- Decree 2-11-151 of 16 June 2011 on the creation of the Oujda export processing zone;
- Decree 2-09-204 of 21 December 2009 on the creation of the Laayoune export processing zone;
- Decree 2-09-442 of 21 December 2009 on the creation of the Kenitra export processing zone;
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Decree 2-09-684 of 17 March 2010 on the creation of the Betoja export processing zone;

- Decree 2-10-286 of 29 October 2010 on the creation of the Nouaceur export processing zone;
- Decree 2-10-337 of 20 April 2011 on the creation of the Tangier Automotive City export processing zone;
- Decree 2-11-524 of 19 December 2011 on the creation of the Fez Ras Al Ma export processing zone;
- Decree 2-12-01 of 15 May 2012 on the creation of the Technopolis (Salé) export processing zone; and
- Decree 2-19-345 of 24 May 2019 on the creation of the Tangier-Tech export processing zone.

Companies located in FEZs notably avail of the following tax incentives:

- exoneration of any taxes or levies on goods entering or leaving FEZs;
- no corporate tax in the first five years and reduced tax rate for the next 10 financial years at 8.75 per cent; and
- no tax deducted at source on dividends when paid to non-resident shareholders (when paid to resident shareholders, application of a reduced rate at 7.5 per cent).

The decrees setting up the FEZs contain eligibility criteria that mean each FEZ specialises in a particular sector, notably:

- Tangier: automotive;
- Nouaceur: aeronautics;
- Oudja: renewable energy and energy-efficiency industry; and
- Technopolis (Salé): electronics and microelectronics; nanotechnology; biotechnology and pharmacology; optics and optometry; chemistry and parachemistry; renewable energy and energy efficiency.

INTERNATIONAL CONVENTIONS ENTERED INTO BY MOROCCO

Morocco has entered into 75 bilateral investment treaties with foreign countries.^[49]

It is also a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards, as well as the Washington Convention on the Settlement of Investment Disputes.

In a recent diplomatic development, following the normalisation of the diplomatic relationship between Morocco and Israel in December 2020, after the Abraham Accords, the two countries entered into various cooperation agreements and, most notably, into a memorandum of understanding in November 2021 to promote cooperation in defence matters.^[50]

IN FOCUS: INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES ARBITRATIONS CASES IN MOROCCO

The International Centre for Settlement of Investment Disputes (ICSID) was created by the Washington Convention in 1965 to address investment-related disputes between member states and the citizens of other member states.

Morocco ratified the Washington Convention in 1967 and has since been a defendant to nine cases introduced by foreign investors,^[51] with six cases concluded and three cases pending.

As at the time of writing, the cases pending are:

- Comercializadora Mediterránea de Viviendas SL (Comervi): in 2022, this Spanish company introduced a claim for the payment of €407 million as alleged damages in the context of the construction of the new town of Tamesna, near Rabat. As per the claimant, the Moroccan state was supposed to provide all the equipment and infrastructure necessary to conduct the construction of the new town, including its connections by highway, train and other transportation means. The alleged inaction from the Moroccan state would have resulted in the project being entirely derelict and abandoned;^[52]
- Finetis: an undisclosed claim filed by the French telecommunication group Finetis,^[53] and
- Corral Morocco Holdings AB: the main shareholder of the Moroccan company SAMIR (an oil refinery), in the course of insolvency proceedings, alleges wrongdoing from the Moroccan state and has filed an ICSID claim for damages.^[54]

Endnotes

- 1 Act No. 95-17, article 103. [^ Back to section](#)
- 2 *ibid*, article 3. [^ Back to section](#)
- 3 *ibid*, article 5. [^ Back to section](#)
- 4 *ibid*, article 8. [^ Back to section](#)
- 5 *ibid*, article 10. [^ Back to section](#)
- 6 *ibid*, article 32. [^ Back to section](#)
- 7 *ibid*, article 72. [^ Back to section](#)
- 8 *ibid*, article 14. [^ Back to section](#)
- 9 *ibid*, article 15. [^ Back to section](#)
- 10 *ibid*, article 16. [^ Back to section](#)
- 11 *ibid*, article 101. [^ Back to section](#)

- 12** *ibid*, article 16. [^ Back to section](#)
- 13** *ibid*, article 17. [^ Back to section](#)
- 14** The concerned sanctions are those mentioned under Title VII, Book 5 of Act No. 15-95 relating to the Code of Commerce. [^ Back to section](#)
- 15** *ibid*, article 11. [^ Back to section](#)
- 16** *ibid*, article 12. [^ Back to section](#)
- 17** *ibid*, article 13. [^ Back to section](#)
- 18** *ibid*, article 20. [^ Back to section](#)
- 19** *idem*. [^ Back to section](#)
- 20** *ibid*, article 30. [^ Back to section](#)
- 21** *ibid*, article 31. [^ Back to section](#)
- 22** *ibid*, article 30. [^ Back to section](#)
- 23** *ibid*, article 24. [^ Back to section](#)
- 24** *idem*. [^ Back to section](#)
- 25** *ibid*, article 19. [^ Back to section](#)
- 26** *ibid*, articles 67 and 77. [^ Back to section](#)
- 27** *ibid*, articles 70 and 79. [^ Back to section](#)
- 28** *ibid*, article 67. [^ Back to section](#)
- 29** *ibid*, article 78. [^ Back to section](#)
- 30** *ibid*, article 69. [^ Back to section](#)
- 31** *ibid*, article 70. [^ Back to section](#)
- 32** *ibid*, article 80. [^ Back to section](#)
- 33** CPC, article 402. [^ Back to section](#)
- 34** *ibid*, articles 303 and seq. [^ Back to section](#)

- 35** Act No. 95-17, article 62. [^ Back to section](#)
- 36** *ibid*, article 80. [^ Back to section](#)
- 37** The last version of the Instruction is dated 3 January 2022 and is available here: <https://www.oc.gov.ma/sites/default/files/reglementation/pdf/2022-01/IGOC%202022.pdf> (last visited on 13 February 2022). [^ Back to section](#)
- 38** Act No. 03-22, preamble. [^ Back to section](#)
- 39** *ibid*, article 8. [^ Back to section](#)
- 40** *idem*. [^ Back to section](#)
- 41** US\$2,948,246.42. [^ Back to section](#)
- 42** Act No. 03-22, article 16. [^ Back to section](#)
- 43** *ibid*, article 14. [^ Back to section](#)
- 44** *ibid*, article 13. [^ Back to section](#)
- 45** *ibid*, article 14. [^ Back to section](#)
- 46** *ibid*, article 7. [^ Back to section](#)
- 47** US\$196,607,245.85. [^ Back to section](#)
- 48** Act No. 03-22, article 34. [^ Back to section](#)
- 49** <https://investmentpolicy.unctad.org/international-investment-agreements/countries/142/morocco> (last visited on 13 February 2023). [^ Back to section](#)
- 50** <https://www.jeuneafrique.com/1409731/politique/la-cooperation-entre-le-maroc-et-israel-va-setendre-a-la-guerreelectronique/#:~:text=Le%20Maroc%20et%20Isra%C3%9cl%20qui,et%20la%20guerre%20%C3%A9lectronique%20'%20indique> (last visited on 13 February 2023). [^ Back to section](#)
- 51** <https://icsid.worldbank.org/fr/affaires/base-de-donnees> (case list available by filter on the nationality of respondent; last visited on 13 February 2023). [^ Back to section](#)
- 52** <https://medias24.com/2022/06/17/le-fiasco-de-tamesna-au-coeur-dun-litige-international/> (last visited on 13 February 2023). [^ Back to section](#)
- 53** <https://medias24.com/2021/09/22/a-washington-le-maroc-implique-dans-un-nouvel-eau-litige-cirdi/> (last visited on 13 February 2023). [^ Back to section](#)

- 54 https://www.lopinion.ma/SAMIR-Dans-l-attente-de-la-sentence-decislve-du-CIR-DI_a36057.html (last visited on 13 February 2023). [^ Back to section](#)



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