

MOROCCAN LAND LAW

NON-AGRICULTURAL VOCATION CERTIFICATE

When Morocco regained its independence in 1956, one of the characteristics of the country was a clear inequality in agricultural ownership between large, modernized farms mainly owned by settlers and traditional family farms, which were often very small. One of the objectives of the agrarian reform that followed independence was to reduce these disparities.

As part of a series of measures aimed at the reappropriation of agricultural land, in 1973 Morocco adopted Law No. 1-73-213¹ which transferred the ownership of land belonging to foreign natural persons or non-Moroccan² legal entities to the State, if it was located wholly or partly outside urban areas³.

This regulation still prohibits the acquisition by foreigners, whether natural persons or legal entities, of agricultural land or land with an agricultural vocation, it being specified that a legal entity will be considered as foreign if it is not wholly owned by Moroccan persons⁴.

However, a foreign investor may apply for a non-agricultural certificate (so called "AVNA") which results in a rural plot of land losing its agricultural vocation.

Such a non-agricultural certificate⁵ is obtained in two steps:

- A provisional certificate issued on the basis of the project⁶ and a provisional sales agreement between the investor and the current owner of the land⁷;
- A final certificate⁸ issued after the project has been observed *in situ* by a specific commission.

The AVNA is issued by the Wali of the region after the opinion of the *Unified Regional Investment Commission* which he chairs, except in the case of delegation to the President of the Regional

¹ Dahir providing law n°1-73-213 of March 2, 1973 relating to the transfer to the State of ownership of agricultural or considered as agricultural real estate belonging to foreign natural persons or legal entities.

² As amended notably by the Dahir providing law n°1-73-644 of 26 December 1974 amending and supplementing the Dahir providing law n°1-73-213 of 26 moharrem 1393 (2 March 1973) relating to the transfer to the State of ownership of agricultural or considered as agricultural real estate belonging to foreign natural persons or legal entities.

³ The town-planning nature of the land can be checked by consulting the town-planning information note relating to the said land at the competent Urban Agency. Application subject to a fee.

⁴ Interpretation of art. 2° of Law n°1-73-645 in the light of art. 8 of Decree n°2-04-683 of December 29, 2004 relating to the regional commission in charge of certain land operations.

⁵ Art. 8 to 12 of Decree No. 2-04-683.

⁶ Art. 10 and 11, 1st paragraph of Decree No. 2-04-683.

⁷ Art. 10 and 11, 1st paragraph of Decree No. 2-04-683.

⁸ Art. 11, paragraph 2 of Decree No. 2-04-683.

Investment Centre (named "CRI")⁹. The application and the documents that must accompany it must be submitted to the competent CRI, as the permanent secretariat of the said Commission¹⁰.

When examining the application for a provisional AVNA, the Commission will ensure in particular that the land covered by the application does not have strong agricultural potential and will assess the value of the planned investment project.

The Commission shall give its opinion within a maximum of 30 days from the date of submission of the project file by the CRI to the Commission¹¹. Finally, this procedure is generally rapid, the processing period depending mainly on the dates on which the Commission holds its sessions.

Any decision of refusal must be motivated and can be appealed to the Wali of the region or to a specific ministerial commission called the "*Ministerial Pilotage Commission*"¹².

Between the issue of the provisional and the final certificate, the land covered by the provisional certificate cannot, in most cases, be transferred. Indeed, the provisional AVNA generally provides for an inalienability clause prohibiting any transfer of the land concerned. The provisional AVNA may also prohibit any change in the shareholding of the acquiring company.

The investor must carry out the project under the terms and conditions set out in the provisional AVNA. Failure to do so will result in the final AVNA not being granted.

The result would be that:

- The Provisional AVNA would be cancelled, which is usually expressly stated in the document enacting the Provisional AVNA;
- The State would theoretically be able to recover ownership of agricultural land under the provisions of Law No. 1-73-213.

The question arises as to whether an AVNA is necessary in the case of a transaction involving a dismembered real right.

Law n° 1-73-645 does not define the notion of ownership. However, this notion may be interpreted either restrictively, as only concerning cases of full ownership ("*pleine propriété*"), or extensively as including dismemberments of ownership such as usufruct, emphyteusis or surface rights.

For its part, Decree No. 2-04-683 *relating to the Regional Commission in charge of certain land transactions* uses the expression "*real estate transactions*" involving foreign individuals, joint stock companies or companies whose capital is wholly or partly owned by foreign persons.

Opinions differ among experts on this issue. It is then recommended to question the Wali of the region or the CRI concerned, but also and above all the Land Registrar in charge of registering such real rights in the land register about the need for an AVNA. Although the latter is not involved in the procedure for granting the AVNA, unlike the Wali of the Region and the CRI, it is up to him to accept or reject

⁹ Competence devolved until recently to the *Commissions in charge of certain land operations* (cf. art. 29-B-2 of Law n°47-18 *reforming the regional investment centres and creating unified regional investment commissions*).

¹⁰ Art. 39 of Law n°47-18.

¹¹ Art. 34, paragraph 4 of Law No. 47-18.

¹² Art. 37 of Law n°47-18.

applications for the registration of the said real rights and thus to demand or not demand an AVNA in this context, and this independently of the position of the Wali of the Region or the CRI.

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