INTERNATIONAL JOURNAL OF SCIENTIFIC RESEARCH AND INNOVATIVE STUDIES
IJSRIS journal
ISSN: 2820-7157
Advancing Knowledge, Inspiring Innovation
www.ijsrisjournal.com
INDEXED JOURNAL
PEER REVIEWED Rigorous & Transparent | DOI: CROSSREF Member | OPEN ACCESS For Global Visibility | BI-MONTHLY Timely Publication | WIDE READERSHIP High Impact & Visibility | AUTHOR FRIENDLY Fast | Supportive | Reliable

RECEIVED 19 June 2026 | ACCEPTED 10 July 2026 | PUBLISHED 1 August 2026
August 2026 | Volume 5 | Number 4
Pages from: 334 to 343

Corporate mergers in Morocco: from the universal transfer of assets to the protection of stakeholders

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Crossref doi
PREFIX : 10.63883
IJSRIS JOURNAL

ABSTRACT

Company mergers are among the most significant restructuring operations under Moroccan business law, balancing the need for asset consolidation with the requirement to protect stakeholders. This article examines the capacity of the Moroccan legal framework to reconcile the efficiency of the transaction with legal certainty for shareholders, creditors and employees. Through an analysis of the normative foundations of mergers (Law 17-95, Law 104-12, the General Tax Code and the Labour Code), its procedural framework (due diligence, competition scrutiny, the involvement of statutory auditors, decisions by general meetings), its tax regime (immediate taxation and tax deferral) and its multiple legal effects, it appears that the Moroccan legislature has established the merger as a highly regulated process. The analysis shows that Moroccan law seeks to

reconcile the need to facilitate corporate restructuring with the requirement for legal certainty and the protection of stakeholders' interests.

Keywords: Company mergers; merger by absorption; universal transfer of assets; Law No. 17-95; restructuring; minority shareholders; creditors; employees; competition law; taxation of mergers; governance; intra-group restructuring.

Introduction

A company merger is one of the most significant restructuring operations under Moroccan business law, both in terms of its financial implications and its legal complexity. Far from being a mere accounting formality, it represents a profound transformation in the lives of the companies concerned, leading to the dissolution of one of them in favour of a larger entity, without prior liquidation. This technique, widely used in groups' external development strategies, operates within a pluralistic regulatory framework in which Law 17-95 on public limited companies, as amended and supplemented, plays a central role, without, however, overshadowing the contributions of competition law, tax law and employment law.

The question that then arises is to what extent this legal framework succeeds in reconciling the efficiency of the transaction with the protection of stakeholders. Indeed, whilst a merger is a powerful tool for business consolidation and the rationalisation of legal structures, it remains a highly regulated process in which the balance between the commercial utility of the transaction and the legal certainty of third parties guides the entire legislative framework. This tension forms the central theme of this study.

For both practitioners and academics, mastering this process requires skilfully navigating between strict procedural requirements, issues of asset valuation and the need to protect shareholders, creditors and employees. In this regard, Moroccan practice offers several examples of merger transactions across various sectors. For instance, in the cement sector, the merger by absorption of Holcim Morocco by Lafarge Ciments gave rise to one of the leading national players. More recently, in 2026, the retail sector also underwent a restructuring operation with the merger by absorption of Sodigec 5, which operates the Marjane City brand, by Acima, which operates the Marjane Market brand; both entities belong to the Marjane Holding group. These transactions illustrate the use of mergers as a means of simplifying group organisation and seeking synergies.

This article aims to provide a systematic overview of company mergers in Morocco, setting out in turn the legal foundations of the process, the formal procedure underpinning it, the applicable tax regimes and, finally, the various effects it has on directors, shareholders, creditors and employees.

I. Company mergers: a tool for economic restructuring governed by a pluralistic legal framework

A) Origins and foundations of the legal framework applicable to merger transactions

1. The regulatory foundation: Law No. 17-95 as the reference text. With the enactment of Law No. 17-95 on public limited companies, Moroccan company law underwent a substantial modernisation of its legal framework governing restructuring operations. This Act, which draws heavily on French and European legal models, devotes a specific title to mergers and demergers, set out in Articles 222 to 242. These provisions form the structural foundation of the transaction, defining in particular the procedures for carrying it out, the conditions for its validity and the effects attached to the merger. It should be emphasised that, although this legislation applies in principle to public limited companies, it often serves as an interpretative reference for other types of company, insofar as the Moroccan legislature has not always provided them with a separate legal regime. Law 17-95 thus strikes a delicate balance between the freedom to conduct business – which encourages companies to merge in order to become more competitive – and the need to protect the diverse interests of shareholders, creditors and employees. In this respect, it reflects a legislative commitment to ensuring the security of capital concentration transactions.

2. Competition regulation under Law No. 104-12. Alongside company law, mergers are subject to close scrutiny under competition law, as set out in Law No. 104-12 on freedom of pricing and competition. Sections 11, 12 and 13 of this Act establish a mechanism for the prior scrutiny of concentration transactions, of which mergers are the archetype. The guiding principle is simple: the freedom to form associations or groups cannot justify the creation or strengthening of a dominant position likely to distort the normal functioning of the market. The Competition Council, an independent administrative authority, is thus entrusted with an economic oversight role consisting of examining, prior to their completion, transactions that exceed certain thresholds. This competition-related aspect, often overlooked by economic operators, is nevertheless an absolute prerequisite for the finalisation of the merger. Neglecting this stage exposes the transaction to particularly severe penalties, ranging from the annulment of the merger to substantial fines.

3. Social and tax implications: the Labour Code and the General Tax Code. A merger is not a transaction confined to the corporate and competition spheres. It has significant implications under labour law and tax law, areas governed respectively by the Labour Code and the General Tax Code (CGI). Articles 19 and 131 of the Labour Code ensure the continuity of employment relationships despite the change of employer resulting from the transaction, whilst the CGI, through Articles 105, 114, 129, 150, 162, 180, 220-IX, 221 and 232, establishes a complex tax regime offering companies the choice between the general law regime – which entails immediate taxation – and a special preferential regime based on deferred taxation. This diversity of legislation, far from being a mere accumulation of constraints, reflects the legislator's intention to treat a merger as a cross-cutting transaction affecting all aspects of a company's operations.

B) The concept of a merger and its key characteristics

4. The legal definition and the two methods of implementation. Section 222 of Law 17-95 defines a merger as the transaction by which one company is absorbed by another or participates in the formation of a new company. This legal definition, whilst seemingly simple, actually encompasses two distinct mechanisms. A merger by absorption, on the one hand, refers to the transaction whereby an existing company (the absorbing company) takes over the entire assets of another company (the absorbed company), which consequently ceases to exist. A merger through the creation of a new company, on the other hand, involves the simultaneous dissolution of several participating companies in favour of a new entity created from scratch by the transaction. In both cases, the dissolution of the company or companies that cease to exist takes place without liquidation, which is undoubtedly the major advantage of a merger over the isolated transfer of assets. The assets are transferred as they stand, including all assets and liabilities, thereby creating economic and legal continuity that liquidation would inevitably have interrupted.

5. The universal transfer of assets as a defining feature. Article 224 of Law 17-95 expressly enshrines the principle of the universal transfer of assets. This mechanism implies that the company benefiting from the merger is automatically subrogated to all the rights and obligations of the absorbed company, without the need to carry out separate transfer deeds for each of the components of its assets. Thus, current contracts, receivables, debts, intellectual property rights and all other assets and liabilities are automatically transferred to the absorbing company. This transfer is one of the key features of a merger, in that it ensures the legal continuity of the business whilst avoiding the formalities and costs associated with the individual transfer of assets, rights and obligations.

The effects of this mechanism in relation to third parties have been illustrated by Moroccan case law. The Casablanca *Commercial* Court *of Appeal* has thus ruled that a merger by absorption becomes enforceable against third parties once the publication formalities prescribed by law have been completed and the period for creditors to lodge objections has expired, thereby confirming the effectiveness of the absorbing company's subrogation to the rights and obligations of the absorbed company (*Casablanca Commercial Court of Appeal, judgement No. 4172 of 22 June 2023, case No. 823/8201/2023*).

This principle is, however, not without practical difficulties, particularly where certain contracts contain change-of-control clauses or other provisions **limiting** the scope for transfer. In practice, it is the responsibility of the parties' legal advisers to identify, prior to the transaction, any factors that might hinder the universal transfer of assets in order to complete, where necessary, the required formalities or procedures.

6. Formal flexibility: the possibility of mergers between companies of different legal forms. Article 223 of Law 17-95 introduces a significant nuance by permitting mergers between companies of the same or different legal forms. This provision breaks with a rigid conception of mergers that would have restricted the transaction to legally homogeneous companies.

Thus, a limited liability company may, in principle, merge with a public limited company, provided it complies with the incorporation rules specific to the form of the receiving or new company. This flexibility reflects an economic reality in which mergers do not always take place between entities of the same size or with the same legal structure. Nevertheless, this formal freedom must not obscure the substantial constraints weighing on the transaction, particularly regarding the protection of creditors and the provision of information to shareholders. The diversity of the corporate forms involved may indeed complicate the determination of the share exchange ratio, insofar as the value of partnership interests and that of shares do not always meet the same valuation criteria.

7. The exchange of securities and exceptions to the principle of consideration. A merger involves the exchange of the securities of the absorbed company for those of the absorbing company. This exchange constitutes the consideration offered to the shareholders of the company being dissolved in exchange for the transfer of their assets.

However, Article 224 of Law 17-95 provides for a notable exception to this principle of exchange where the securities of the absorbed company are held by the receiving company itself, or by a person acting on its behalf, or where the company that ceases to exist holds its own securities. In these circumstances, no exchange takes place, thereby avoiding circular transactions that lack economic meaning. This exception, whilst technical in nature, demonstrates the legislator's subtlety in rationalising restructuring operations. In particular, it prevents a parent company from receiving additional shares in itself when it absorbs a subsidiary in which it already holds a 100 per cent stake.

C) Safeguards for shareholders and the rules governing the formation of a new company

8. The protection of shareholders' rights against any unilateral alteration. Article 223 of Law No. 17-95 guarantees the preservation of shareholders' rights by stipulating that mergers or demergers may not have the effect of altering the distribution of their rights or increasing their liabilities, unless there is unanimous agreement among all shareholders. Thus, unanimity is required in the event of the absorption of a limited liability company (SARL) by a general partnership (SNC) (*D. Bert and T. Lakhdari, 'The application of the unanimity rule to merger-by-absorption transactions', Recueil Dalloz 2005, 1636*).

This rule constitutes one of the main safeguards for shareholders in the context of restructuring operations.

Indeed, a merger is likely to result in a reshuffling of the shareholder base and to alter the balance of governance within the receiving company. To prevent such consequences from being imposed on certain shareholders against their will, the legislator makes any infringement of their rights or any increase in their obligations subject to their unanimous consent. This requirement is in line with the principles of protecting shareholders' property rights and respecting their consent.

In practice, this provision requires particular care to be taken when determining the share exchange ratio. This must be established in accordance with objective and fair criteria, so as to prevent it from resulting, directly or indirectly, in a change to the distribution of shareholders' rights in breach of the requirements of Article 223 of Law No. 17-95.

9. The incorporation of a new company subject to the rules specific to the form adopted. Where the merger takes the form of the creation of a new company, each of the entities resulting from the transaction must be incorporated in accordance with the rules specific to the corporate form adopted. This rule, enshrined in Article 223 of Law No. 17-95, means that the new company resulting from the merger is not exempt from the ordinary incorporation formalities. It must draw up articles of association, appoint its corporate bodies, and satisfy the capital and disclosure requirements laid down by law for the chosen form of company. This requirement for formal compliance ensures that the new company, although resulting from a restructuring operation, has a sound legal foundation that complies with legal standards. For those involved, this means allowing sufficient time in the merger timetable to complete these formalities, in particular the filing of the articles of association and registration with the Companies Register.

II. The legal process of the merger

A) The preparatory phase: due diligence and consultation with the corporate bodies

10. Due diligence as an essential prerequisite for any merger. Before commencing the formal merger procedure, the parties invariably carry out due diligence, that is to say, a thorough audit of the target company. This preparatory phase, although not expressly required by Law 17-95, has become an indispensable practice in the business world. It enables the acquiring company to assess the quality and value of the assets it is about to acquire, as well as to identify any risks that could affect the future profitability of the transaction. Without this step, the proposed merger could be based on inaccurate or incomplete data, thereby exposing the acquiring company to unforeseen difficulties once the transaction has been completed.

11. The five dimensions of due diligence: strategic, financial, legal, tax and social. In practice, due diligence is carried out along five complementary lines. Strategic or operational due diligence, designed to assess the company's strengths and weaknesses: production facilities, sales organisation, the company's market positioning, quality programme, and research and development (R&D) (Mohamed EL MERNISSI**,** *Moroccan Treatise on Company Law*, LexisNexis, 2019, p. 923) Financial due diligence involves analysing profitability, cash flow and debt levels by examining balance sheets, financial statements and budget forecasts. Legal due diligence involves reviewing contracts, in particular credit agreements, intra-group agreements, commercial contracts, title deeds for movable and immovable assets, authorisations, licences and operating permits, intellectual property, insurance policies, litigation and legal risks, particularly in relation to civil and criminal liability and proceedings arising from the company's financial difficulties

(*M. Zailaf, 'Legal Audit of Commercial Companies in Morocco', DESA thesis, Casablanca, 2006*). Tax due diligence examines tax returns, particularly in respect of corporation tax, VAT, income tax and local taxes, as well as payments made and any outstanding arrears. Finally, labour due diligence analyses employment contracts, the workforce, social security contributions and potential disputes. Each of these areas' sheds light on a specific aspect of the acquired company and helps to build a comprehensive picture. It is not uncommon for due diligence to reveal significant irregularities, such as insufficient provisions or concealed disputes, which lead the parties to abandon the merger or to amend its financial terms.

12. Consultation with corporate bodies and provision of information to shareholders. Consultation with corporate bodies is a fundamental stage in the merger process, as it ensures the transaction complies with the law and guarantees that shareholders are kept informed. The proposed merger is first approved by the board of directors, the executive board or the managing directors of each of the companies involved in the transaction. In public limited companies, each management body must also draw up a written report, made available to shareholders, setting out in detail the legal and economic grounds for the transaction, as well as details relating to the exchange ratio and the valuation methods adopted. This prior consultation ensures that the transaction is in the company's best interests and does not infringe on shareholders' rights. Furthermore, the provision of documents prior to the general meeting is a mandatory requirement for transparency. Any public limited company involved in a merger must make available to its shareholders, at least thirty (30) days before the date of the general meeting, the draft merger agreement, the share exchange ratio, and the summary financial statements for the last three financial years. This thirty (30)-day period, which may seem long, is justified by the complexity of the documents to be considered and the need to enable shareholders to form an informed opinion. In practice, this advance information contributes directly to the protection of minority shareholders and to the legal certainty of the transaction.

13. The content of the draft merger and the mandatory documents made available. Article 227 of Law 17-95 sets out a list of the details that the draft merger must contain. In particular, it must specify the legal form, name and registered office of the participating companies, as well as the reasons for and conditions of the transaction, such as the pursuit of synergies, the simplification of administrative and tax management, or the reorganisation of the structures concerned. It must also specify the description and valuation of the assets and liabilities being transferred, listing the assets and liabilities to be transferred, together with the value assigned to each.

The draft must also set out the arrangements for the transfer of shares, specifying how the shares will be allocated to the shareholders, the date from which they will carry dividend rights, and the accounting effective date of the transaction. It must also specify the dates of the financial statements used to determine the terms of the merger, the share exchange ratio—where applicable, accompanied by a cash adjustment—the anticipated amount of the merger premium, as well as the rights granted to shareholders holding special rights and any specific benefits.

This requirement for precision reflects the legislator's intention to ensure that shareholders are provided with comprehensive and transparent information, so that they may make an informed decision on a transaction likely to affect their financial rights. Consequently, the omission of any material information is likely to undermine the validity of the proposed merger and give rise to potential challenges. The proposed merger thus serves as a genuine instrument for transparency and the protection of shareholders, whilst contributing to the legal certainty of the transaction.

B) Competition control and its economic implications

14. Thresholds for mandatory notification to the Competition Council. Mergers exceeding certain economic thresholds must be notified to the Competition Council, in accordance with Articles 11, 12 and 13 of Law 104-12 on freedom of prices and competition. Notification is mandatory where the parties' combined global turnover exceeds 750 million dirhams, or where at least two parties each generate more than 250 million dirhams in Morocco, or where the parties together account for more than 40 per cent of sales, purchases or other transactions on the national market. These thresholds, set at a level that covers transactions of significant size, are intended to prevent competition control from being burdened by mergers with little economic impact. For companies, calculating these thresholds requires a thorough understanding not only of their own turnover but also of that of the other party, which can sometimes pose practical difficulties when the target is an unlisted company with little inclination towards financial transparency.

15. The Competition Council's analysis of the transaction and the prevention of dominant positions. Once the notification has been made, the Competition Council examines whether the merger is likely to prevent or significantly restrict competition in the relevant market. This analysis focuses on the market structure, the parties' market shares, the existence of any potential efficiency gains, and the ability of remaining competitors or new entrants to counteract any dominant position. The objective is clear: to preserve the free play of the market and prevent the merger from leading to abuses of a dominant position, such as price increases or restrictions on supply. The Council may authorise the merger, authorise it subject to conditions, or oppose it.

16. The notification fee and penalties for non-compliance. Notification to the Competition Council is subject to a fee calculated on the basis of the transaction value. Under the standard procedure, the fee amounts to 1‰ of the transaction value, with a minimum of 20,000 dirhams and a maximum of 150,000 dirhams. In accelerated proceedings, requested by the parties to obtain a decision within a shorter timeframe, the fee rises to 2‰ of the transaction value, with a minimum of 40,000 dirhams and a maximum of 300,000 dirhams. In the case of the establishment of a joint venture, the fee is set at a flat rate of **20,000 dirhams** under the standard procedure and **40,000 dirhams** under the fast-track procedure. Furthermore, where the transaction amount is not declared, the maximum fee applies (*Article 12 of the aforementioned Law No. 104-12 and Article 8 bis of Decree No. 2-14-652 of 8 Sa Far 1436 (1 December 2014) issued for the implementation of the aforementioned Law No. 104-12*).

Failure to notify, as well as carrying out the transaction before the Competition Council has issued its decision, exposes the parties to particularly dissuasive penalties. The Council may, in fact, impose financial penalties of up to 5 per cent of the turnover excluding tax generated in Morocco during the last financial year ended, increased, where applicable, by the turnover generated in Morocco during the same period by the acquired party. For natural persons, the amount of the fine may reach **five million dirhams** (*Article 19 of the aforementioned Law No. 104-12*).

Carrying out the merger before obtaining the Competition Council's decision constitutes a serious breach, even if the transaction is ultimately authorised retrospectively. The parties must, without fail, suspend any actual implementation until the decision has been obtained, failing which they may be held liable and the transaction may be called into question in its entirety.

C) Scrutiny by the statutory auditors and public disclosure of the proposed merger

17. The involvement of the statutory auditors and their specific duties. The proposed merger must be communicated by the board of directors to the statutory auditors at least forty-five (45) days before the date of the extraordinary general meeting (*Article 233 of the aforementioned Law No. 17-95*). The auditors must ensure that the relative value attributed to the shares of the participating companies is appropriate and that the exchange ratio is fair; they must set out in their report the valuation methods used and assess their suitability; and they must verify whether the amount of the net assets contributed is at least equal to the amount of the capital increase of the acquiring company.

The auditors' report, which is made public or communicated to shareholders, provides an independent safeguard against any manipulation of the exchange ratio. Their involvement, based on recognised accounting and financial expertise, lends technical legitimacy to the transaction and reassures shareholders that there is no disguised dilution of their rights.

18. Exceptions to the audit by statutory auditors. Whilst the principle remains that a statutory auditor must be involved in merger transactions, professional practice allows for certain exemptions in specific cases of intra-group restructuring. Thus, their involvement is not required where, between the filing of the merger proposal with the registry and the completion of the transaction, the acquiring company holds all the shares of the company being acquired at all times. Similarly, such involvement is waived in the case of a merger between subsidiaries whose shares are wholly owned by the same parent company *(, Manual of Statutory and Contractual Audit Standards, Title 6, Standards relating to engagements ancillary to the general engagement, p. 361)*. These exceptions reflect a pragmatic approach: where there are no minority shareholders to protect, the external oversight provided by statutory auditors loses some of its justification. Nevertheless, even in such circumstances, it is recommended that independent expert advice be sought in order to ensure the fairness of the exchange ratio and to enhance the traceability of the decision.

19. Publication of the proposed merger and the formal requirements therefor. At least thirty (30) days before the date of the extraordinary general meeting, the proposed merger must be published. It must be filed with the registry of the court in the place where each of the participating companies has its registered office, and a notice must be published in a legal gazette. If any of the companies is publicly raising capital, the notice must also be published in the Official Gazette (*Article 228 of the aforementioned Law 17-95*). The purpose of this publication is to inform not only the shareholders, but also the creditors and the general public, of the terms of the proposed transaction. It forms a cornerstone of the system for the protection of third parties, enabling them to exercise their rights of objection where applicable.

D) The decision of the general meeting

20. The resolution of the extraordinary general meeting and any subsequent ratification. The merger is resolved upon by the extraordinary general meeting of each of the companies involved in the transaction (*Article 231 of the aforementioned Law 17-95*). This requirement for a dual decision – or even multiple decisions in the case of a merger by formation – reflects the principle that shareholders must be consulted on a transaction that substantially alters the structure of their company. Where applicable, the merger is subject, in each company, to ratification by special general meetings of shareholders, particularly where there are classes of shares with special rights. This ratification provides additional protection for holders of special shares, whose rights may be affected by the merger. The quorum and majority required for the extraordinary general meeting are those laid down by law and the articles of association for amendments to the articles of association, namely generally two-thirds of the shareholders present or represented.

21. The simplified regime for intra-group mergers. Article 231 of Law 17-95 provides for a special regime applicable to merger transactions carried out within groups of companies. Two situations are thus envisaged:

- Where the acquiring company permanently holds all the shares of the company being acquired, such that the latter constitutes a wholly-owned subsidiary of the acquiring company;

- Where the merger takes place between two subsidiary companies, all the shares of which are held by the same parent company, i.e. between two sister companies.

In both these cases, certain formalities are waived. In particular, it is not necessary to:

- Draw up a report by the board of directors or the executive board, or a report by the statutory auditor;

- To have the merger approved by the extraordinary general meetings of the companies being absorbed.

The extraordinary general meeting of the parent company or the acquiring company then decides on the transaction solely on the basis of the report drawn up by a contribution auditor, as is the case with a simple capital increase carried out by way of a contribution in kind **(Mohamed EL MERNISSI,** *Moroccan Treatise on Company Law*, LexisNexis, 2019, p. 946).

III. The tax treatment of mergers: between immediate taxation and tax deferral

Although a merger constitutes a transfer of assets taking effect automatically without liquidation, it remains, for tax purposes, classified as a disposal. This classification theoretically results in the immediate taxation of unrealised capital gains and profits on which taxation had been deferred. The Moroccan legislature, however, sought to ensure that the tax burden would not act as an obstacle to economic restructuring operations. It has therefore established a dual regulatory framework within the General Tax Code (CGI).

On the one hand, the general regime, set out in Article 150 of the CGI, subjects the absorbed company to immediate taxation and terminates its existence for tax purposes. On the other hand, the special preferential regime, enshrined in Article 162 of the CGI, offers a deferral of taxation and the tax-free carry-forward of provisions, subject to certain conditions and the waiver of carry-forward losses.

This section examines, in turn, the general regime and its financial consequences (A), the special preferential regime and the conditions for eligibility (B), and the tax treatment of the merger premium (C).

A) The general regime and its financial consequences

22. Classification as a disposal and the immediate taxation of capital gains. In the absence of an option for the special scheme, the merger is subject to the general regime provided for in Article 150 of the General Tax Code. In this scenario, the merger is classified as a disposal, which gives rise to immediate and often significant tax consequences. The company being absorbed is taxed on the net capital gains realised on the assets it contributes, as well as on items of profit on which taxation had been deferred, in particular provisions. Furthermore, the merger premium realised by the acquiring company is also subject to tax. This regime, which results in immediate taxation at the level of the absorbed company, can represent a considerable financial obstacle to the completion of the transaction, insofar as the absorbed company is required to pay the corresponding corporation tax even before it ceases to exist. This upfront tax burden reduces the net value of the contribution accordingly and may deter the parties from opting for a merger where the acquired company holds highly valued assets.

23. Reporting obligation. Under the general law regime, the company being absorbed is also required to file a declaration of cessation within forty-five (45) days of the date of the merger. This declaration, which formalises the ceasing company's removal from the scope of taxation, enables the tax authorities to audit and tax the results for the financial year in which the company ceases to exist.

B) The special preferential regime and its strict eligibility conditions

24. The favourable measures under the special scheme. To encourage restructuring operations and prevent the tax burden from acting as a barrier to economic concentration, the Moroccan legislature has established a special preferential scheme, enshrined in Article 162 of the General Tax Code. This scheme offers several substantial advantages. In the context of a merger by absorption, for example, the provisions of the absorbed company that retain their purpose are carried over tax-free to the absorbing company on the date of the merger. Unrealised capital gains on securities contributed by the absorbed company benefit from a tax deferral for the absorbing company until their actual disposal. Unrealised capital gains arising from the exchange of securities held by individuals or legal entities are also subject to a tax deferral. For depreciable assets, taxation is spread over the remaining depreciation period, whilst for non-depreciable assets, such as land and business assets, the tax deferral is maintained until disposal. Finally, transactions involving the formation or increase of capital in connection with the merger are exempt from registration duties. This regime, which is generally favourable, provides a powerful tax incentive for mergers.

25. Eligibility conditions for the special scheme. Access to the special scheme is not automatic; it is subject to certain conditions being met. Firstly, the acquiring company must submit a written declaration to the local tax office within thirty (30) days of the merger deed, accompanied by the merger agreement, the minutes of the extraordinary general meeting and the financial statements. Furthermore, it must expressly waive the carry-forward of its accumulated losses as shown in its last tax return prior to the merger, which is a waiver with significant consequences. Finally, the securities contributed by the acquired company and taken over by the acquiring company cannot give rise to a tax reduction via provisions for impairment whilst they are held by the acquiring company. This final condition is intended to prevent the tax deferral from being circumvented by an artificial accounting write-down. The choice between the general tax regime and the special regime requires a detailed analysis of the interests at stake, as waiving losses may sometimes prove more costly than the immediate taxation of capital gains, depending on the respective tax situations of the companies.

C) The merger premium and its tax treatment

26. The merger premium. The merger premium, which corresponds to the excess of the net assets contributed over the nominal value of the new shares created to remunerate the shareholders of the acquired company, is a key financial indicator. It reflects the unrealised capital gain on the contributed assets and demonstrates the actual economic value of the acquired company, which exceeds its mere book value. Under the general tax regime, this premium is taxed as a capital gain of the acquiring company. Under the special regime, the merger premium corresponding to the acquiring company's shareholding is exempt, which constitutes a significant advantage. However, the classification and treatment of the merger premium require particular attention from advisers, as any error in its calculation or its accounting treatment may lead to tax adjustments.

IV. The effects of the merger: a universal transfer with multiple implications

A) The effective date and its legal, tax and accounting implications

27. The date on which the merger takes legal effect. Article 225 of Law 17-95 distinguishes between two dates on which the merger takes legal effect, depending on the type of merger adopted. In the case of a merger involving the creation of a new company, the merger takes effect on the date of registration of the new company in the commercial register. In the case of a merger by absorption, it takes effect on the date of the last general meeting that approved the transaction, unless the merger agreement provides for a different effective date, for example, the fulfilment of conditions precedent. This distinction is of major practical importance, as it determines the precise moment at which the universal transfer of assets takes place, when creditors may exercise their rights, and when employees are transferred.

28. The effective date of the merger for tax and accounting purposes. The effective date of the merger for tax and accounting purposes is set out in the merger agreement, but it must comply with two mandatory limits in the case of a merger by absorption. It may not be later than the end of the absorbing company's current financial year, nor earlier than the end of the last financial year of the absorbed company. In practice, the parties frequently choose as the effective date for tax and accounting purposes either the end of the last financial year of the absorbed company, or an intermediate date set at the end of a month. The choice of this date is not insignificant; it determines the allocation of profits between the two companies and may have implications for taxation in the financial year of the merger.

B) Consequences for the governing bodies and shareholders

29. Exceptions to the maximum number of members of boards of directors. As a merger brings together several companies, it often results in former directors from the dissolved entities co-existing within the acquiring company. To prevent this concentration from disrupting governance structures, Act 17-95 permits, by way of derogation, the maximum number of members of the board of directors or supervisory board to be exceeded. However, this limit may not be exceeded by more than twenty-four (24) members for unlisted companies, twenty-seven (27) members where the merger involves a listed company, and thirty (30) members in the event of a merger between two listed companies (*section 39 of the aforementioned Law 17-95*).

30. The automatic acquisition of shareholder status in the receiving company. The most visible effect of the merger for the shareholders of the absorbed company is the automatic acquisition of shareholder status in the absorbing company or the new company. In return for the universal transfer of assets, the shareholders of the company being wound up receive shares in the receiving company, in accordance with the exchange ratio set out in the draft merger agreement. This substitution of shares takes place automatically, without the need for any individual formalities on the part of the shareholders. However, this automatic acquisition does not mean that shareholders are compelled to accept, without recourse, an exchange ratio they consider unfair. In the event of disagreement, they may exercise their right to make a contribution in kind, or challenge the merger before the competent courts if they consider that the exchange ratio infringes their rights. In practice, the smooth running of the transaction depends largely on the quality of the prior negotiations regarding this exchange ratio.

C) The protection of creditors and the situation of employees

31. The rights of ordinary creditors and bondholders in the event of a merger. Act No. 17-95 provides for differentiated protection for the creditors of the company taking part in the merger, distinguishing between ordinary creditors and bondholders. Thus, in accordance with Article 239 of this Act, ordinary creditors – that is, those who do not hold bonds issued by the company – may lodge an objection to the merger within thirty (30) days of the final publication of the draft merger. Such an objection, brought before the competent court, does not automatically suspend the merger, but may lead the court to order either the repayment of the debt or the provision of guarantees deemed sufficient. By contrast, the legislature has established a specific regime for bondholders. Pursuant to Articles 236 and 238 of the aforementioned Act, the proposed merger is not subject to the approval of the bondholders' meeting of the acquiring company, provided that the acquiring company is automatically subrogated to the obligations of the company being acquired in respect of all its obligations towards the bondholders. This approach, which is based on the continuity of the debtor's legal personality with regard to the performance of bond obligations, prevents the merger from being held up by a systematic consultation process with bondholders. Nevertheless, the bondholders retain all the rights attached to their securities and may, in particular through their representatives, exercise the rights of objection provided for by law or rely on the contractual guarantees to which they are entitled.

32. The continuation of employment contracts and the continuity of collective agreements. The merger has significant implications under employment law, as set out in Articles 19 and 131 of the Labour Code. All employment contracts in force on the date of the change in the undertaking's legal status or form shall continue between the employees and the new employer. The new employer assumes the obligations of the pre, in particular with regard to the number of wages, redundancy pay and paid leave. Furthermore, the collective labour agreement remains in force between the employees and the new employer. This rule of automatic continuation of employment contracts, which is akin to a universal transfer of social obligations, constitutes an essential safeguard for employees. It prevents the merger from being used as a pretext for unfair dismissals or a unilateral deterioration in working conditions. For the acquiring employer, this means that it inherits not only the employees' skills but also all their acquired rights, including contractual benefits and length of service.

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