

CORPORATE FORMS AND INCORPORATION PROCESS IN MOROCCO

**An introduction to different legal corporate forms and the establishment
process by STC Maghreb, March 2010**

INTRODUCTION

One of the pillars in the Swedish Trade Council's work is to facilitate for Swedish companies to establish on foreign markets. In this paper we outline the different options and particularities with different establishment alternatives. The key driver in the establishment process is to find the most suitable establishment form depending on the companies activity and plans on the market.

The establishment process tend to change from time to time, e.g. minimum capital requirement, legal bodies involved etc. why this analysis must be reviewed before commencing the establishment process.

The Swedish Trade Council can take care of the whole incorporation process (paper work, legalisation, stamps, administration etc.) for your company and assist you in getting started on the market. We work in close collaboration with a Moroccan law firm and are happy to assist you on the market.

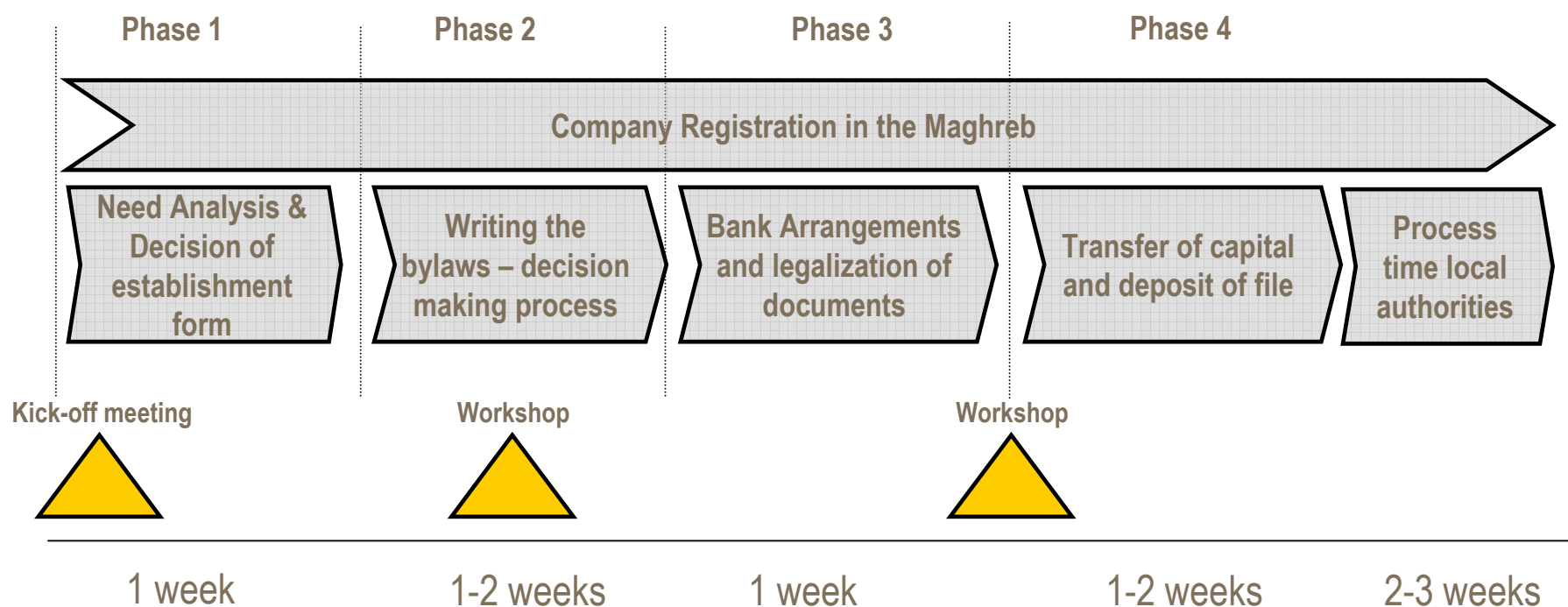
Welcome to Morocco!

Swedish Trade Council Maghreb, March 2010

WHEN IS IT RECOMMENDED TO GO FROM EXPORT TO ESTABLISHMENT IN A COUNTRY?

- Need for a physical presence in the country, often in order to recruit expatriates or local employees.
- The need to recruit is often preceded by an increasing demand on the market and a need to increase the control of the sales in the country, e.g. go from distributor set-up to own sales personnel
- As a rule of thumb sales should exceed 3-4 MSEK in order to make an establishment worthwhile

OVERVIEW OF THE ESTABLISHMENT PROCESS

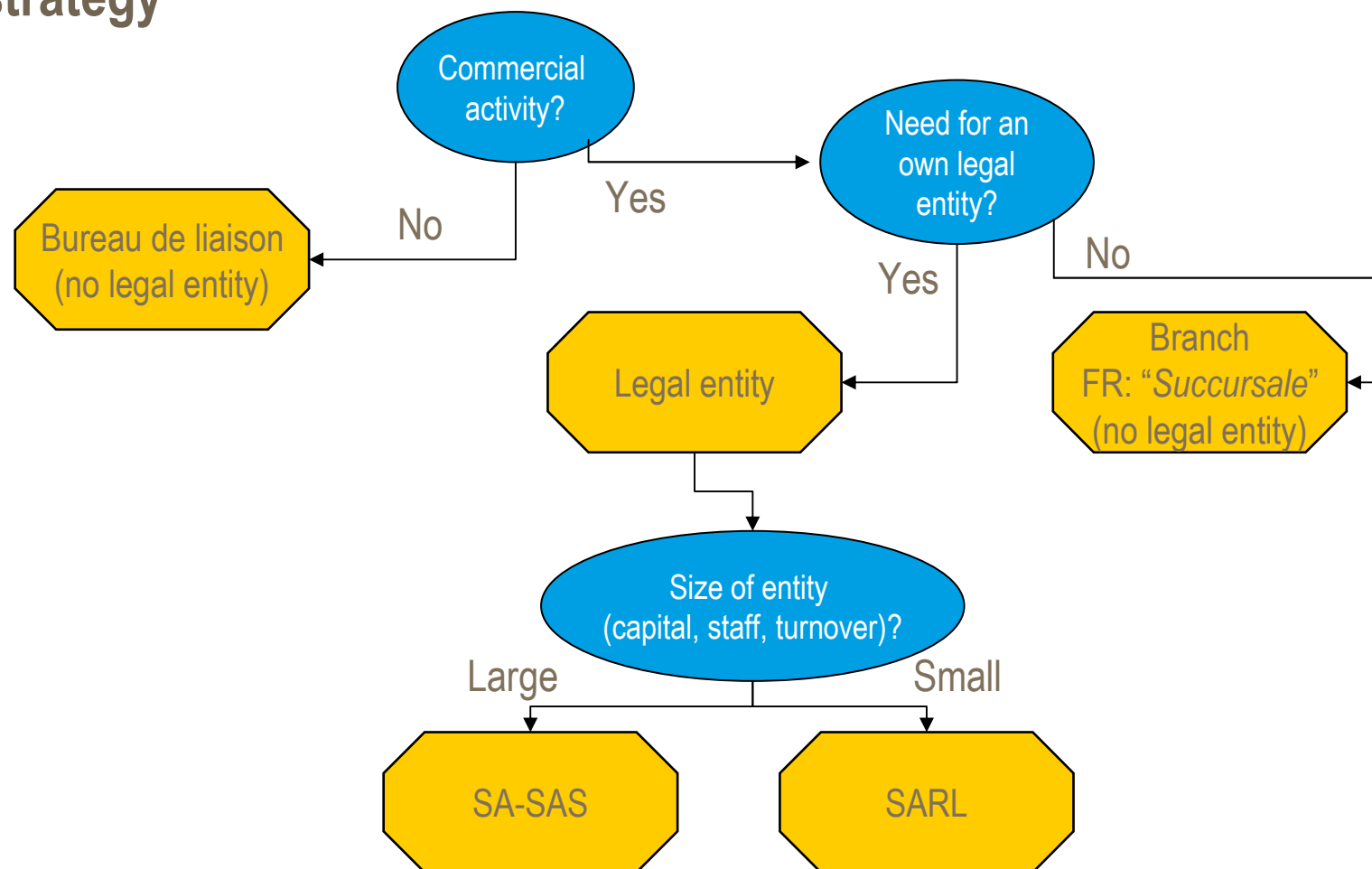


Depending on internal or external lead times the overall process takes approximately 2 months

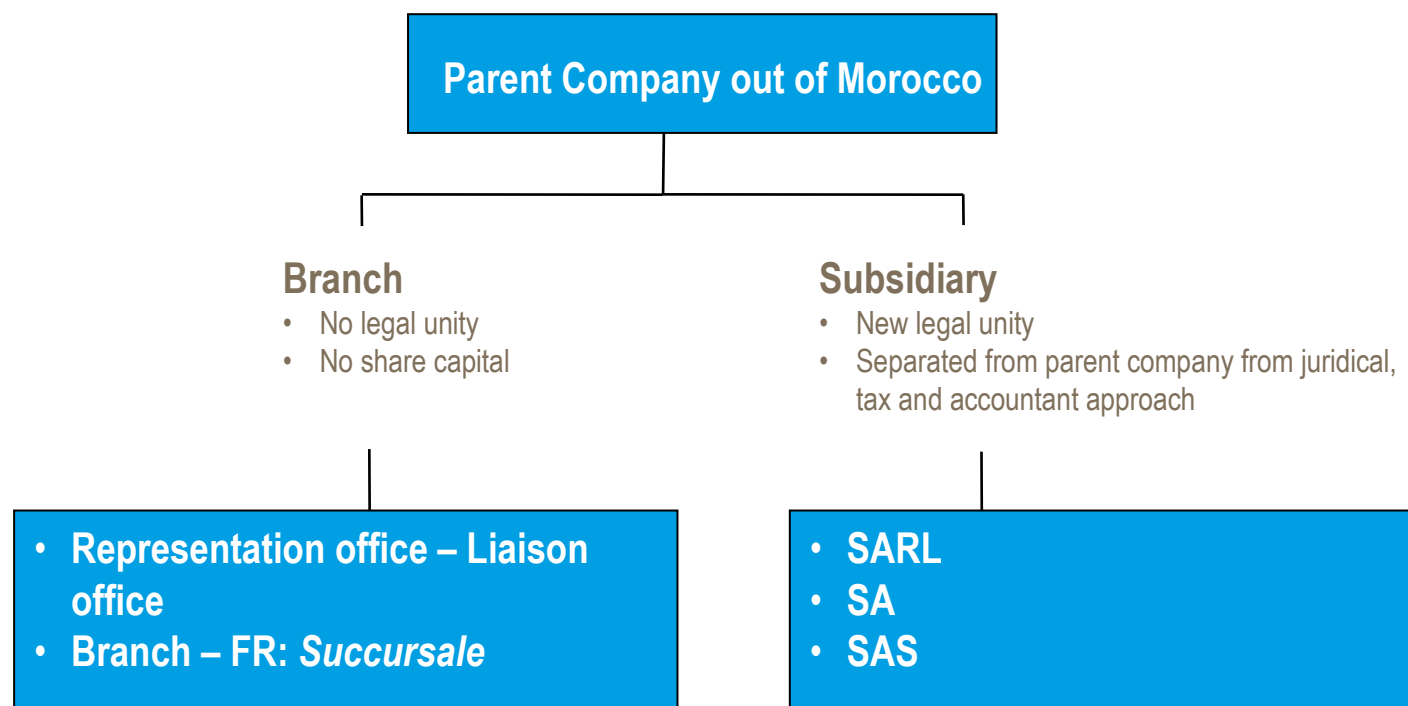
CONTENT

- Introduction
- **Morocco – establishment forms**
- Morocco – establishment process

THE MOST SUITABLE ESTABLISHMENT FORM DEPENDS ON THE NEEDS - A simplified guide to decide on the best establishment strategy



THERE ARE 5 DIFFERENT ALTERNATIVE ESTABLISHMENT FORMS IN MOROCCO



A REPRESENTATION OFFICE / BUREAU DE LIAISON IS NOT ALLOWED TO INVOICE ITS CUSTOMERS IN MOROCCO

REPRESENTATION OFFICE

- Is not a legal entity, it is tied to the parent company
- Is not allowed to invoice
- Can only do marketing, prospection etc.
- Not recognised at commercial registry, which could hinder administrative issues

BRANCH

- Is not a legal entity, it is tied to the parent company
- Can invoice
- Subject to same corporate tax as a legal entity, e.g. *Sarl*
- Recognised at the commercial registry

Having no legal entity means that the parent company is legally responsible for all the company's actions in Morocco

SOCIÉTÉS ANONYMES (SA) - JOINT-STOCK COMPANY

- Suitable for large companies and a heavy origination form

Ownership: minimum of 5 owners (legal/ physical persons)

Min. capital: 300 000 MAD

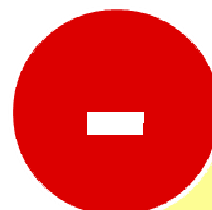
Accounting: Accountants have to be appointed



-The most prestigious form

- No personal responsibility

- Allows free transfer of shares



-Heavy form to run and administrate

- More capital stock than SARL business forms (min. capital of 300 000 MAD)

SOCIÉTÉ ANONYME SIMPLIFIÉE (SAS)- SIMPLIFIED JOINT STOCK COMPANY:- Ideal to create a parent company

Ownership: at least 2 owners (only legal persons)

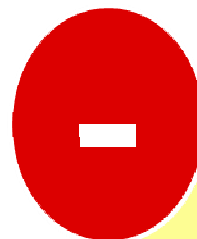
Min. capital: 300 000 MAD

Accounting: Accountant have to be appointed



-Freedom to amend articles of incorporation

- The president can be a physical person



- No public contributions allowed

- More capital stock than other business forms (min. capital of 200 000 €)

SOCIÉTÉ À RESPONSABILITÉ LIMITÉE (SARL)- LIMITED COMPANY

-Easy to set up and operate for a closed ownership structure

Ownership: 1-50 owners (legal/ physical persons)

Min. capital: 10 000 MAD

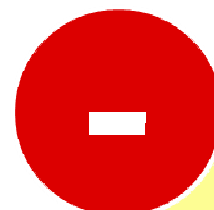
Accounting: No accountants have to be appointed



-Easier to register, less bureaucracy than a SA

- Less capital stock than a SA

-Most common form among newly established companies



-Less prestigious than SA

-Restrictions relating to share transfers

- Director has very large influence, less control from parent company

BUREAU DE LIAISON- BRANCH

- Extension of the mother company, could be useful as a first step

Ownership: mother company

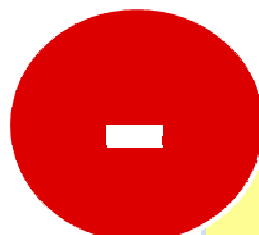
Min. capital: No capital needed

Accounting: No accountants have to be appointed



- The company is able to "try" the Moroccan market

- Possibility to have employees, open bank account (using the mother company's name)



- Not allowed to invoice

- Is forced to go via the mother company when invoicing or if a contract must be signed up, etc.

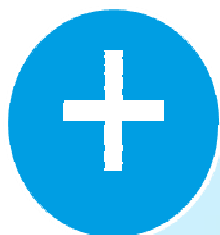
SUCCESSOR- BRANCH

- Is a part of a –branch- from the Swedish company

Ownership: mother company

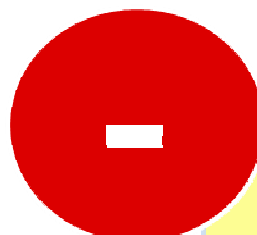
Min. capital: No capital needed

Accounting: No accountants have to be appointed



-Allowed to have limited
economical activities

-Relatively easy and rapid
register process



- Involves some risk as the
mother company is recognized
fully responsible for the
company's activities in Morocco

- Very good management from
Sweden is needed

CONTENT

- Introduction
- Morocco – establishment forms
- **Morocco – comparative analysis between establishment forms**
- Morocco – establishment process

10 000 DIRHAMS AS SHARE CAPITAL IS NEEDED TO FOR A SARL

SA

- MAD 300.000 for non listed companies.
- All shares must be subscribed and issued.
- 25% of the contribution may be paid up on incorporation, the 75% balance within 3 years.

SAS

- MAD 300.000.
- All shares must be subscribed and issued.
- 100% of the contribution must be paid up on incorporation.

SARL

- MAD 10,000.
- Minimum per value: MAD 10 each share.
- All shares must be subscribed and issued.
- A minimum or 25% of the contribution in cash must be paid up on incorporation, the balance within 5 years.

THE SARL IS THE ONLY CORPORATE FORM ALLOWING ONLY ONE SHAREHOLDER

SA

- **Number:** 5, No maximum.
- **Nature:** Individual or legal entity (at least one individual, as Chairman of the board).

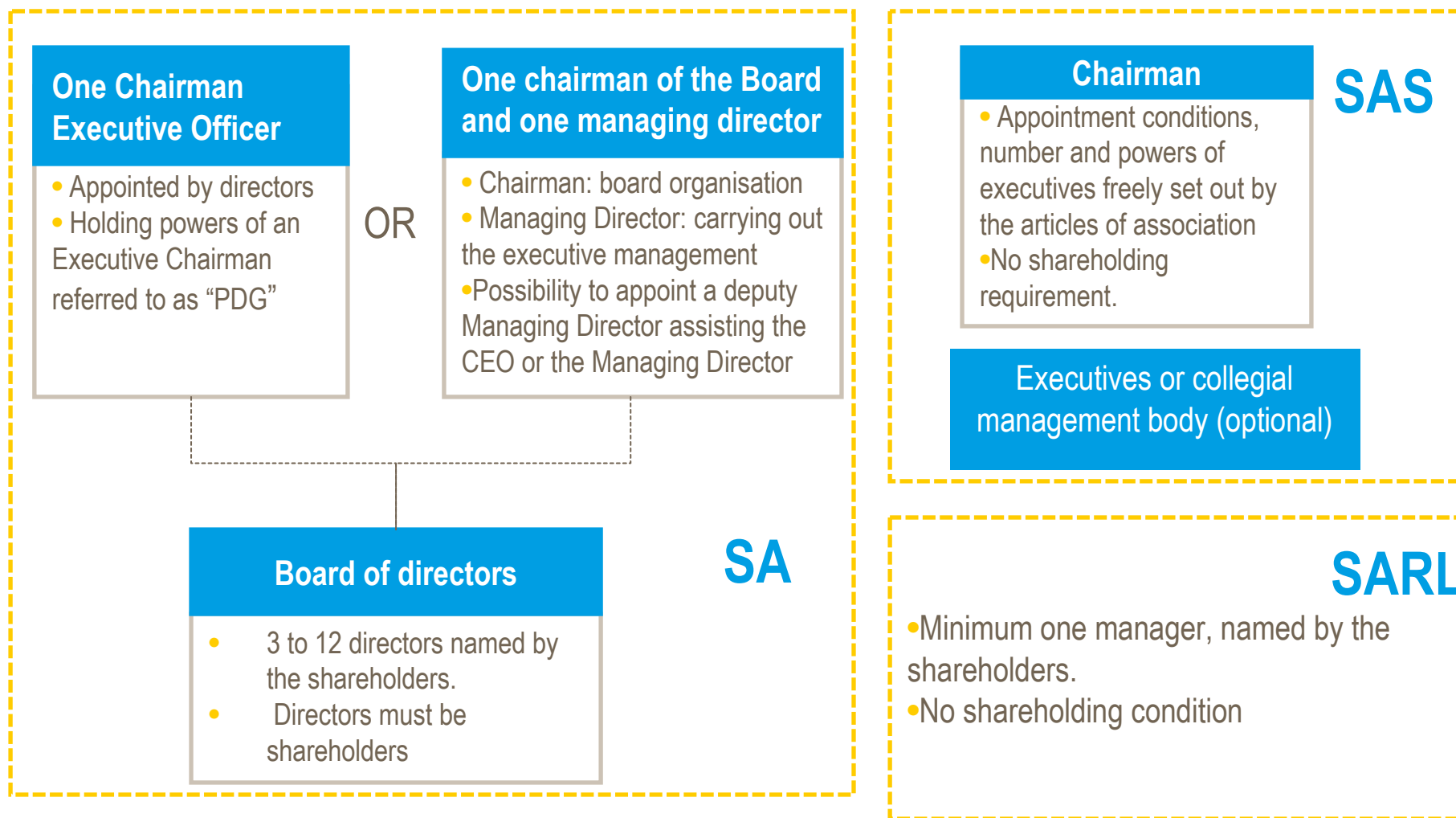
SARL

- **Number:** Minimum 1, Maximum: 50.
- **Nature:** Individual or legal entity.

SAS

- **Number:** 2, No Maximum.
- **Nature:** Legal entities having a share capital of MAD 2.000.000 each, at least.

SARL HAVE THE MOST SIMPLIFIED MANAGEMENT STRUCTURE



DISMISSAL OF EXECUTIVE BOARD NEEDS TO BE JUSTIFIED OTHERWISE DAMAGES MAY BE AWARDED IN CASE OF SA

SA

- **Directors:** by an ordinary general shareholder meeting and without notice or compensation.
- **Supervisory Board Members:** by an extraordinary general meeting and without notice or compensation.
- **Executive Board Members:** by the shareholders on proposal of the Supervisory Board.

SAS

- Freely organized by the articles of association.

SARL

- Manager(s) removable by the shareholders. Dismissal needs to be motivated. Otherwise damages may be awarded.

SAS ALLOWS MORE FLEXIBILITY TO DECIDE FOR ORGANIZATION OF MEETINGS AND DECISIONS APPROVALS

SA

- **Convening:** ordinary mails for shareholders. Auditor informed by Registered mail with return receipt.
- **Form of decisions:** Video conference meetings.
- **Quorum:** Ordinary $\frac{1}{4}$ of capital
Extraordinary; $\frac{1}{2}$ of the capital on first call, $\frac{1}{4}$ of the second call
- **Approval of decisions:** ordinary; majority of shares. extraordinary; $\frac{2}{3}$ of the votes

SAS

- **Convening:** Freely organized by the articles of association.
- **Form of decisions:** depends on the association articles
- **Quorum:** depends on the association articles
- **Approval of decisions:** Depends on the association articles

SARL

- **Convening:** Registered letter.
- **Form of decisions:** Take decision by written consultation, except for the annual accounts approval.
- **Quorum:** N/A
- **Approval of decisions:** ordinary; majority of shares. extraordinary; $\frac{3}{4}$ of the shares

IN ALL COMPANIES FORMS, THIRD PARTIES COULD OWN SHARES

SA

SHARES :

- Registered shares only for non listed companies.
- Freely transferable.
- Possibility to provide for an approval procedure or preemptive right for transfers to third parties.

SAS

SHARES :

- Registered shares.
- Transfer of the share is Freely organized by the articles of association

SARL

SHARES :

- Registered shares
- Transfer:

To shareholders: freely transferable subject to contrary provisions provided by articles of association.

To third parties: prior agreement of the majority of the shareholders representing at least 3/4 of the shares.

SA, SAS, AND SARL ARE SIMILAR WHEN IT COMES TO LIABILITY AND CONTROL

SA, SAS, SARL

- **LIABILITY:**

- Share owner Limited to their contributions, unless securities are granted.

The Manger

- **Manger LIABILITY:**

- Civil liability; infringement of legal provisions, violation of the articles of association, management faults.

- Criminal liability; in respect of the management in certain circumstances, namely payment of dividends that are not founded on a valid inventory (a MAD 100,000 fine and/or prison penalties from 1 to 6 months).

- **CONTROL:** External auditor is compulsory for both SA and SAS while it is required if the turn over exceed 50 M MAD in case of SARL.

ALL COMPANIES FORM HAVE THE SAME TAX RATE

SA, SAS, SARL

- **Registration duties:**
 - Set up and capital increase: - 1 % *ad valorem* on share capital for the subsidiary
 - Share transfer: Registration required. If any, registration duties are levied at a 3% rate on the
- **Capital gain:**
 - Resident individual shareholder: Personal income tax (10%)
 - Resident legal entity shareholder: CIT (10%)
 - Non resident: Capital gains are taxable in the state where the beneficiary has his tax residency. Therefore, generally not taxable in Morocco
- **Corporate Income Tax:** 30% on the tax benefit

CONTENT

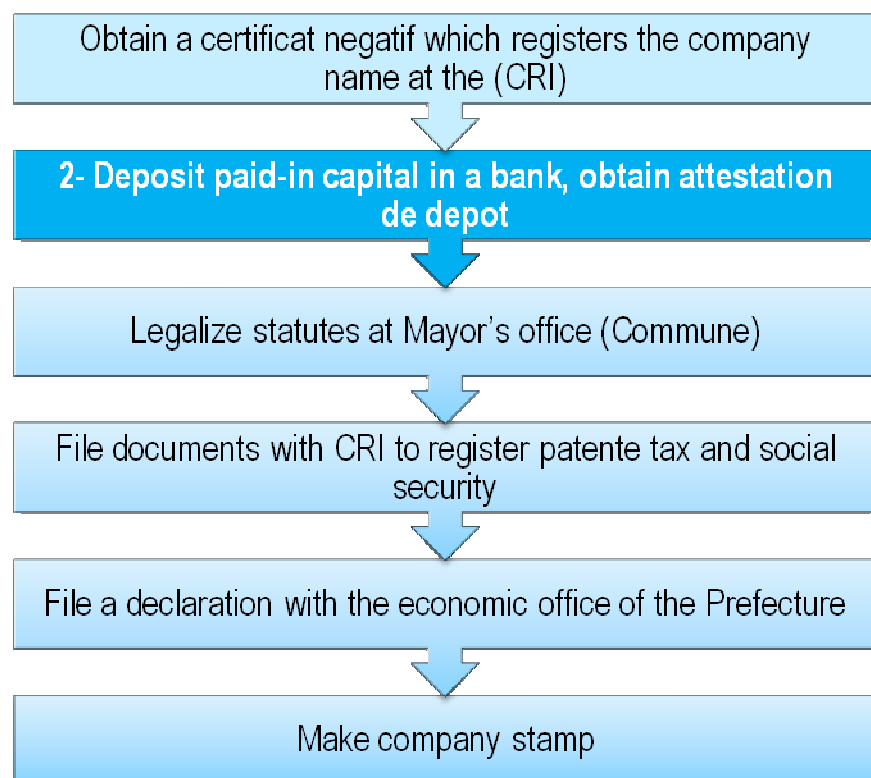
- Introduction
- Morocco – establishment forms
- Morocco – comparative analysis between establishment forms
- **Morocco – establishment process**

THE FOLLOWING STEPS ARE TO BE TAKEN WHEN INCORPORATING A MOROCCAN LEGAL ENTITY ONCE THE ENTITY FORM HAS BEEN CHOSEN



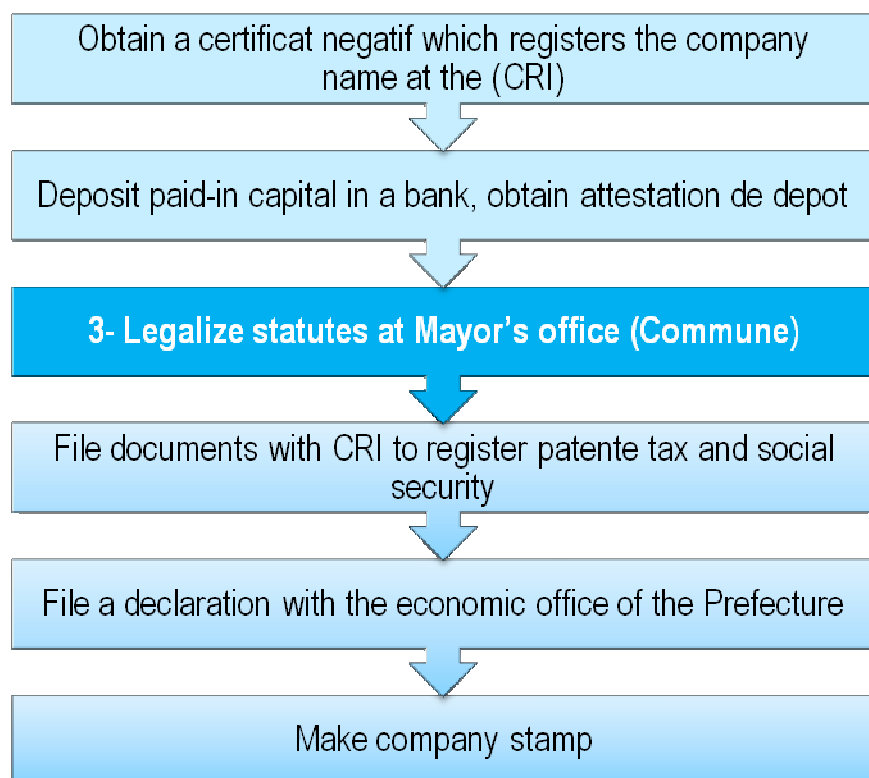
- **CRI:** Morocco's 16 Regional Investment Centers (CRI in French) serves as a "one-stop shopping centers" for foreign businesses wanting to enter the Moroccan market. They are located in major cities and trained staff at each CRI assists new businesses in the preparation of license applications and other documents.
- **Estimated time to complete:** 1 day
- **Cost to complete:** MAD 190 (MAD 170 + MAD 20 stamp duties)

THE FOLLOWING STEPS ARE TO BE TAKEN WHEN INCORPORATING A MOROCCAN LEGAL ENTITY ONCE THE ENTITY FORM HAS BEEN CHOSEN



- **Comments:** Paid-in capital remains frozen until the company formation is completed. Deposits must be accompanied by a copy of the bylaws and a “certificat négatif” from the bank.
- **Estimated time to complete:** 1 day
- **Cost to complete:** no charge

THE FOLLOWING STEPS ARE TO BE TAKEN WHEN INCORPORATING A MOROCCAN LEGAL ENTITY ONCE THE ENTITY FORM HAS BEEN CHOSEN

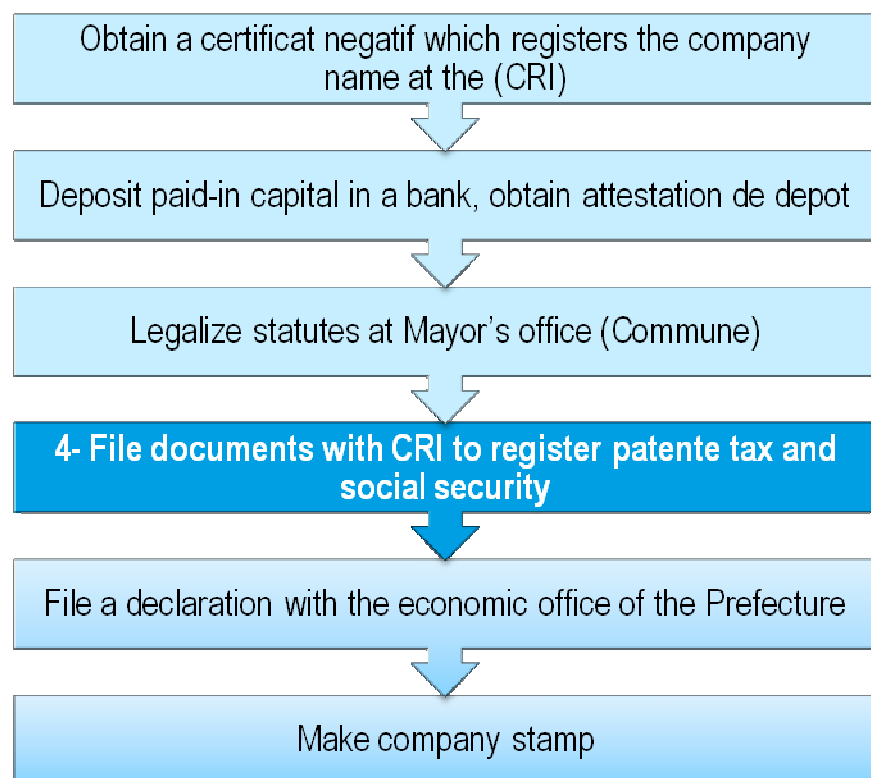


- **Comments:** Main decisions to be incorporated into the bylaws:
 - Secure company name
 - Elect president
 - Set capital
 - Set domiciliation address

The bylaws are recommended to be written by local law firm.

- **Estimated time to complete:** 10 days for the whole process
- **Cost to complete:**
 - Legalize: DH 20/page + DH10
 - Law firm: ?

THE FOLLOWING STEPS ARE TO BE TAKEN WHEN INCORPORATING A MOROCCAN LEGAL ENTITY ONCE THE ENTITY FORM HAS BEEN CHOSEN

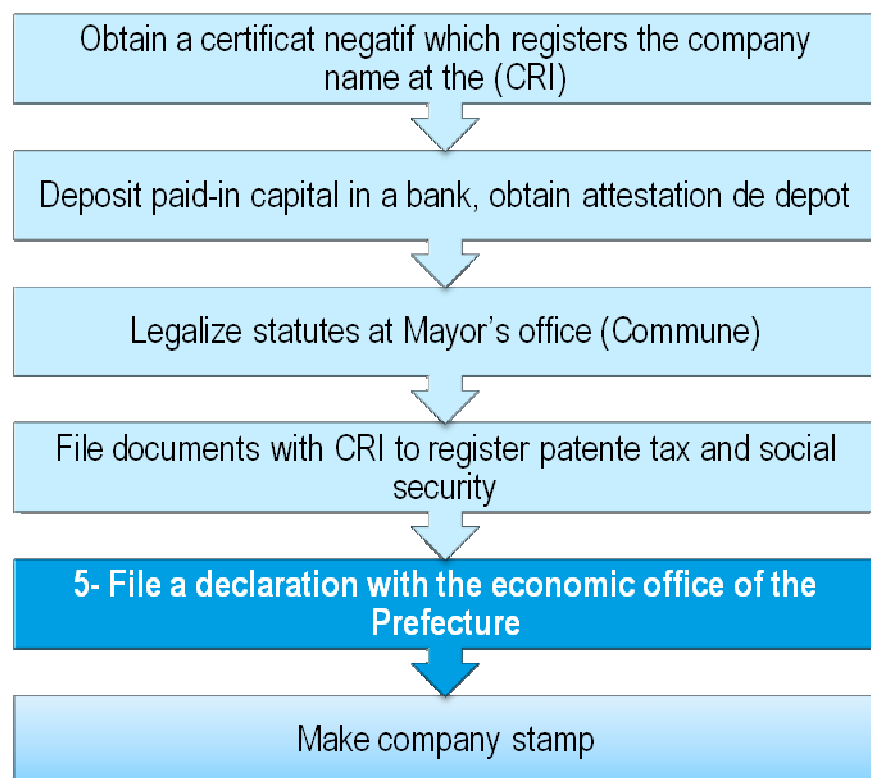


- **Comments:** File documents with CRI to register with the:
 - Ministry of Finance for patente tax (see appendix)
 - Tribunal of Commerce, and for social security and taxation ((see appendix)

- **Estimated time to complete:** 7 days for registration, 30 days for publication

- **Cost to complete:** DH 1,350 =DH1,000 (1% of capital, at least DH1,000) + DH200 (registration fee) + DH 350 (registration at commercial registry) + DH 150 publication fee (DH 8-9/ line in business paper, DH4/ line bulletin officiel).

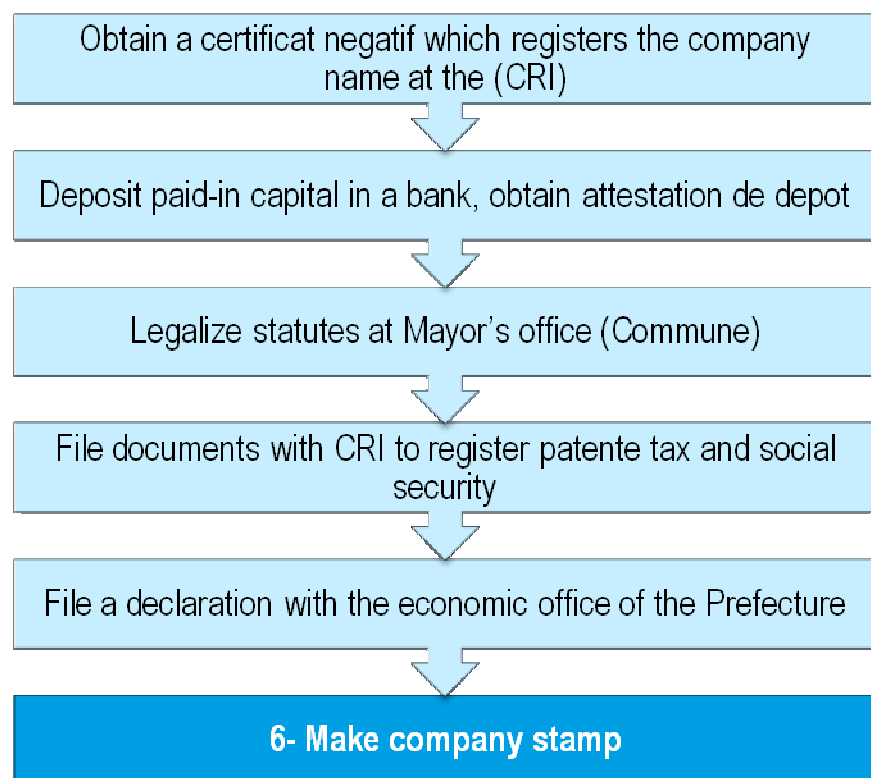
THE FOLLOWING STEPS ARE TO BE TAKEN WHEN INCORPORATING A MOROCCAN LEGAL ENTITY ONCE THE ENTITY FORM HAS BEEN CHOSEN



- **Comments:** The company must file:
 - a letter of solicitation
 - a copy of the “patente,”
 - a copy of the bylaws
 - another application letter (for the second type of authorization)
 - a map of the establishment, installations, fire controls, waste treatment, and so forth.

The Economic Office of the Prefecture assesses the company’s security and health conditions and its potential environment effects. The procedure can also be done at the CRI.
- **Estimated time to complete:** 1 day
- **Cost to complete:** no charge

THE FOLLOWING STEPS ARE TO BE TAKEN WHEN INCORPORATING A MOROCCAN LEGAL ENTITY ONCE THE ENTITY FORM HAS BEEN CHOSEN



- **Comments:** no
- **Estimated time to complete:** 1 day
- **Cost to complete:** MAD 200

FOR MORE INFORMATION, PLEASE CONTACT:

**Swedish Trade Council Maghreb / Exportrådet
Section Commerciale de l'Ambassade de Suède**

197, Angle Av. Zerktouni, Rue Chella

20100 Casablanca, Maroc

Tél: + 212 (0)522 36 25 10

Fax: +212 (0)522 36 24 63

Mob: +212 (0)661 377 212

maghreb@swedishtrade.se

www.swedishtrade.se

