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## Investment in the Sports Sector: Is Legislation a Bottleneck?

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## **Investment in the Sports Sector: Is Legislation a Bottleneck?**

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### **Abstract**

*Since 2008 and following the royal directives in the letter addressed to the participants of the sports conference in Skhirat, Morocco, major efforts have been made to promote mass and spectator sports practice in order to improve the sporting landscape and to solve problems related to financing sports.*

*On the legislative side, there has been the promulgation of a law on physical education and sport, another on anti-doping and a third proposing measures to combat violence and vandalism during spectator sport. Laws were also to contribute to this dynamism through certain tax amendments intended to promote the professionalism of sport.*

*However, an in-depth analysis of the legislation governing the sports sector reveals several factors which must be addressed by the legislator in order to remedy the situation. These factors can seriously impede investment and wealth creation initiatives in this sector.*

**Keywords:** *funding, investment, legislation, sport.*

Track: *Governance*

Word count: 4.264

Since the Skhirat meetings in 2008, great efforts have been made in Morocco to allow sport to fulfill fully its functions. To promote mass sport, dozens of integrated socio-sport centers have been created. Huge aids have been given to the Moroccan National Olympic Committee to allow a good preparation of the sports elite. And basing on the idea that the development of sport cannot be achieved without strong involvement of the private sector, a revision of the legislation governing physical education and sports has been carried out.

This article aims to show that legislation, which is supposed to stimulate private investment in the sports sector sometimes turns into a real obstacle.

After a first part dealing with the virtues of sport on the economic level, a second part will present, in the light of the French experience, the serious will of Morocco to break with the amateurism in the management of the competition sports. Competition, and finally, a third part will tackle a critical analysis of certain aspects of the legislation related to sport.

### **1. The economic virtues of sport**

It is undeniable that sport has become a real economic sector. Because of its ability to create wealth and jobs and to attract investment, it deserves special attention from economic policy makers. The growth of this sector has been, in recent years of crisis, faster than world economy and its contribution to the latter is around 2% <sup>1</sup>.

It is deceiving, today, to continue to reduce amateur sport or mass sport to a simple game or a simple hobby. These are, just like professional sports, real economic locomotives.

Before discussing the difficulty encountered by the researcher to approach the sports sector, it is necessary to measure the economic importance of the latter on the basis of a foreign experience which is the French experience.

### 1.1. The importance of the sports economy in France

When we know that in France, 65% of the population practised physical activity or sport, at least once a week, in 2010<sup>2</sup> and that the various sports federations have issued more than 15.5 million licenses in 2012<sup>3</sup>. We then understand why the wealth created by the sports sector in France alone can exceed the GDP of several developing countries. The practice of mass sports, especially when it is regular, combined with the craze for sports shows, contributes in the multiplication of its positive effect. The table below provides insight into the contribution of the sports sector in France to job creation, to the state budget, the boosting of economic activity and the strengthening of companies' competitiveness.

<b>Table 1 : Economic benefits of sport for France in 2013</b>	
Indicator	Value
Sports expenditure	35 billion euros 1.8% of GDP
Jobs in the sports sector	350,000 employees about 275,000 FTEs
Public revenue	7 to 8 billion euros (Taxes and social contributions)
Economic valorisation of volunteering	11 billion euros (Estimate based on the minimum wage or the average wage of the sector)
Reduction of health care costs	€ 5 billion (prevention and health costs)
Improving productivity and reducing absenteeism <sup>4</sup>	€ 4.8 billion

Source: Our summary of an article by Thomas Delteil<sup>5</sup>

As easy as it is to approach the issue of sport economy in a developed country, it is very difficult to lead the same approach in a developing country. For the second group of countries, this is due to a shortage of reliable statistics and a communication deficit displayed by the supervisory administrations. This information shortage is very detrimental for researchers, but also and especially for investors who, in general, need high visibility.

### 1.2. The difficulty of approaching the economy of sport in Morocco

The first results of the national survey on the use of time carried out by the High Commissioner for Planning in 2012 show that Moroccans spend an average of only two minutes a day on sports and reading. This figure corroborates those presented in 2008 in Skhirat at the national conference of sport. In fact, according to the document presenting the national sport strategy for 2020, only one in six Moroccans practices a sports activity and only one in a hundred is affiliated to a sports federation. If these figures are worrying, we must continue to consider that the potential of the sport economy in Morocco is not negligible. The enthusiasm for the sports show that Moroccans have witnessed during the two editions of the world cup of clubs organized in Morocco is a good signal in this regard. The 330 million dirhams<sup>6</sup> devoted to the preparation of high-level athletes in application of royal instructions are one of the signs of the emergence of a true sports economy in Morocco.

The sport potential of Morocco can also be explained by the youth of its population. The populations under 30 years and 60 years and over respectively represent, according to the results of the census of the Moroccan population of 2014, 53.3% and 9.6%<sup>7</sup>.

According to Mohamed KAACH<sup>8</sup>, the only person who has proposed to evaluate the economic benefits of sport "Sport in Morocco contains elements that can make it evolve into a real economic sector, through which must normally pass a significant part of the economic activity of the country »<sup>9</sup>

It seems imperative today for the High Commission to plan, in consultation with the various components of the sports movement, to conduct surveys to understand the causes of youth idleness and to publish statistics and studies whose researchers need to scientifically approach the sports sector and contribute to its dynamics.

In Morocco, everyone agrees on the depth and relevance of the diagnosis of the sports sector brought to the Skhirat meeting in 2008 by the royal letter. The King considered that "sport is becoming bogged down in improvisation and decay, and that it is subjected by intruders to a shameful exploitation for mercantilist or selfish reasons". In his letter, the King did not stop at the level of diagnosis. He has instructed that the governance of sport is to be rethought, that its legislative framework is to be adapted and that its funding problem needs to be solved. The King also insisted on strengthening the control, audit and accountability mechanisms.

The response of the decision-makers was quick. In fact, a new law governing sport was promulgated<sup>10</sup> on August 24, 2010, recognizing the need for sports clubs, if certain conditions are met, to create anonymous societies to manage their professional activities<sup>11</sup>.

## **2. The economic opportunity of the new legislation on physical education and sports**

The option of Law 30-09 for SA is not fortuitous. With its open capital, with its statutory auditors, with its general meetings, with the criminal responsibility of its directors ... it seems to respond, at least formally, to the recommendations of the royal letter of Skhirat about control, governance and funding problem.

It is a question of presenting, briefly, the French experience in the matter of the rights of the sports companies before treating of the Moroccan case which envisages for the companies with object sporting a single form namely, the joint stock company of common law of the companies.

### **2.1. The types of sports companies in France**

The French experience in the field of sports company law is rich in lessons. In addition to the local mixed sports economy society considered in France as obsolete, three other legal forms are provided for by French law. These are the public limited company with sporting object, the professional sports limited company and the single-sport sports company with limited liability.

#### **- Local Mixed Sports Economy Company (LMSEC) <sup>12</sup>.**

The creation of LMSEC has often allowed some local authorities to intervene to alleviate the financial shortage of some professional football clubs. In this type of company, the majority of the share capital and the majority of the votes are held by the support association alone or jointly by the support association and local authorities. LMSEC can not distribute dividends or remunerate its directors.

The LMSEC is conceivable today in France only for the clubs which already had this form before the exit of the law on the professional sports companies on December 28th, 1999 and which wished the preserved one.

#### **- Sport Utility Company (SUC) <sup>13</sup>**

SUC, as an SA, naturally seeks profits, however its purpose must be selfless. Its peculiarity results from two derogations from the common law of companies. The first is the

impossibility of distributing profits, and the second is the impossibility of remunerating the people who manage them. In this form of society, the support association, which can sometimes lack resources, must hold at least one-third of the capital, which may explain its under-capitalization.

- Professional Sports Company (PSC)

This commercial company is governed by second Book II of the Commercial Code subject to the specific provisions of the law of July 16, 1984. It is a sports company whose form is closest to common law commercial companies. It differs from other forms in its ability to distribute profits and remunerate its directors. The fact that it is not required to hold a minimum share of the capital makes it attractive for private investors thus constituting the legal form favored by the largest French professional clubs.

- Single Sport Sports Company Limited Liability (SSSCLL) <sup>14</sup>

For this legal form, the sole partner is the support association. Profits can not be distributed and are fully allocated to reserve accounts. "On the other hand, it can pay its leaders. This is a manager, a natural person, appointed by the sole partner. This formula is interesting for associations wishing to maintain full control over the operation of the trading company. However, it does not allow the use of external private partner financing. "<sup>15</sup>

## **2.2. The limited company in Moroccan law of physical education and sport**

In Morocco, Law 06-87<sup>16</sup> run by Article 116 of Law 30-09 devoted its fifth chapter to profit sports activities. This law provided in its article 45: "profit sports companies must be constituted in one of the forms provided for by company law". Clearly, Article 45 does not exclude, apparently, any legal form by referring to the forms provided for by Moroccan company law. Likewise, it deals with the company as a legal entity that does not necessarily imply a participation of the support association in its capital, which does not exclude the scenario of the transformation of the sports association into a company.

Also, can we consider that the reflection, with the law 06-87 is located at the level of the sports sections and not at the level of the sports clubs.

With the law 30-09<sup>17</sup>. Things are different. Indeed, Article 15 provides that "Any sports association with a sports section:

- More than 50% of the major licensees are professionals;
- Which generates to the association, during 3 consecutive sporting seasons, an average income higher than the amount fixed by regulation;
- or whose average payroll, in the course of 3 consecutive sports seasons, exceeds an amount fixed by regulation, must create and remain associated in order to ensure the management of said section.

The sports society is governed by the provisions of Law no. 17-95 related to public limited companies ... It takes the form of a public limited company, whose capital is necessarily composed of registered shares and of which at least one third of the shares and one-third of the voting rights must be held by the sports association ... ".

It is therefore a reflection conducted at the level of the omnisport club that is trying to rehabilitate, a society created by the association and not a society intended to replace it. And it is finally a particular form of society that must be created namely the public limited company common law and to incorporate certain provisions of the law 30-09 on physical education and sports.

It should be pointed out that Article 16 of the same law gives the possibility to sports associations wishing to create companies to do so without any of the conditions of Article 15 being verified.

### **3. Legislative obstacles to investing in sports anonymous society**

The analysis of legislation governing physical education and sports helps to overcome a number of obstacles to private investment in the sports sector. The first is to analyze the obstacles inherent in Law 30-09 before passing, in the second title, the analysis of other legislative aspects related to sport.

#### **3.1. Obstacles inherent to the law 30-09**

Article 17 of Law 30-09 requires that a sports society is to be created by the sports association omnisport as soon as one of the three conditions that emerge from Article 15 of the same law is verified. These are therefore alternative and non-cumulative conditions. The omnisport association has the period of one year to run from the date on which one of its sections meets one of the criteria defined in the first paragraph of article 15.

The first criterion in Article 15, which is related to the proportion of professional license-holders, is almost verified by all clubs of BOTOLA PRO. A professional athlete is, according to article 1 of the 30-09 law, the one who practices against a remuneration, principal or exclusive, a sporting activity in order to participate in competitions or sports events. For the second and third criteria relating respectively to revenue and the wage bill, their application depends on a threshold which must be set by regulation.

It can therefore be concluded that as soon as the criteria are alternative and that almost all the clubs of BOTOLA PRO verify the first condition, the associations verifying this condition must proceed with the creation of companies to trust them with the management of the professional part of their activity, except that article 118 of the law 30-09 wants that the provisions of this law come into force only after the publication in the official bulletin of the statutory texts necessary to their full application. To summarize, we can say that under articles 15 and 17 of the 30-09 law all the sports associations concerned by the BOTOLA PRO must create anonymous companies, except that no society will be created, according to the spirit of Article 118 of the same law, for lack of regulatory texts whose publication is late. Law 30-09 also wants the company to be created to take the form of a public limited company whose capital is necessarily composed of registered shares and of which at least one third of the shares and at least one third of the voting rights must be held by the sports association »<sup>18</sup>.

The exclusive option for the public limited company is debatable to the extent that it is not enough to open the capital to have investors. As this form seems compatible with the management of the professional component of the major clubs of economic capital (WAC and RCA) who have benefited from the experience of sponsorship and continue to seduce the sponsors, it seems incompatible with the clubs heavily dependent on public subsidies or those that are substantially related to certain people<sup>9</sup>. And since we have been inspired by the French experience, we could have envisaged semi-public companies and single-member companies with limited liability.

Mixed economy sports companies may have the advantage of creating competition between regions for the financing of sports activities, especially since with advanced regionalization, each region will logically seek to be represented in elite sport. Not to mention, also, that this



form rhymes perfectly with the spirit of the new constitution which clearly underlines the responsibility of the public authorities in the promotion of sport<sup>20</sup>.

As for registered shares, they pose a serious problem for potential investors. "The fact is that it can be stipulated by a clause of the status, since they are registered shares, except in case of succession or assignment to either a spouse or a relative or ally to the second. Degree included, the transfer of shares to a third party for any reason whatsoever, is subject to the approval of the company. This is a limit to the free trade of securities, and may be considered by potential investors as an obstacle in case they wish to exit the capital, especially since, moreover, the pledge of registered shares can also be subject to the approval of the company"<sup>21</sup>.

The ability of sports companies to attract private investors may be limited by the obligation for the supporting association to hold at least one-third of the shares and at least one-third of the voting rights. The minimum of one-third guarantees, in fact, to the support association the blocking minority. And if it decides to go beyond the third party, it will have the right to oppose the statutory amendments. Also, its inability to respond to capital increases, if proven, is likely to block the capitalization of the sports society.

The sports association and the sports society define their relationship by an agreement approved by the administration and whose duration cannot exceed 10 years<sup>22</sup>. This means that the social purpose of the sports society created by the support association remains highly dependent on a convention that is not automatically renewable thus limiting the visibility of private investors.

With regard to the audiovisual and multimedia exploitation of sports competitions or events, Law 30-09 states that "The proportion of products coming back to sports associations and sports companies is redistributed to them at a rate of 50% according to a principle of pooling and at the rate of 50% according to the criteria established by the federation or, where appropriate, by the professional league, based in particular on their sports performance and their reputation "<sup>23</sup>. If the spirit of the law goes in the direction of a conciliation between the principles of solidarity and merit, it should be noted that it is the mutualisation which is the rule today and that the criteria of merit are not yet defined clearly and precisely.

### 3.2. Other obstacles

The public limited company is automatically subject to corporation tax. In order for the tax provisions to promote the creation of sports companies, the finance law for the year 2012<sup>24</sup> has provided reduced rate of 17.5%. Given the current state of finances of Moroccan football clubs, it can be assumed that it is very difficult for them to make a profit in the near future. That is to say that what may sound like a tax incentive for decision-makers is, in reality, a real obstacle to the participation in the capital of an SA operating in the field of sport.

The same finance law has provided for another tax provision related this time with the imposition of players' salaries. It is for the calculation of their net subject to income tax, to benefit from a 40% <sup>25</sup> tax allowances. The scale applicable to their income, meanwhile, remained the common law.

For an athlete who negotiates an annual net salary of one million dirhams will cost the club:  
 $((1.000.000 + X) * 0.4 * 0.38)) - 24.400 = X$

With X: IR

40% or 0.4: abatement

38% or 0.38: marginal rate corresponding to the upper bracket of the IR scale

24,400: Amount to be deducted

After calculations  $X = 150,472$ . That is to say that the player who wishes to benefit from a salary available of 1.000.000 dirhams to correspond for his club with a cost of 1.150.472 dirhams, or 15% more than the net salary, is a higher salary-cost 15% at the wage-price, without taking into account social charges.

This example, when we know that the player represents for the club, an ephemeral asset since we went from the license to the contract.

Far from legislative considerations, the incentive to invest in the sports sector assumes that clubs' business models are readable. It turns out that objective considerations do not favor this readability.

The private investor needs to fight against corruption, clientelism and anarchy in the management of ticketing. Unnumbered seats and anonymous tickets show that we are far from an approach aimed at retaining the consumer of sports entertainment.

Derivatives, when they exist, cannot generate a satisfactory recipe because of unfair competition that is the fact of counterfeit articles sold in the open in the light of everyone's knowledge without the intervention authorities.

As for the players whose value of the contracts constitutes a good part of the assets of the clubs, the experiment showed that their training remains, again, the weak link of the sport management in Morocco. The higher prices of players requires a serious reflection on the quality of lawns, and the need to promote sports medicine to preserve an asset whose life cannot be greater than five years for a single contract.

Potential investors in sport cannot forget that Moroccan professional clubs do not have competition grounds. This means that they must invest in intangible assets which value remains highly dependent on the sports performance, referee decisions and the mood of some journalists.

### Conclusion

The economic potential of sport is very important. However, the Office of the High Commissioner for Planning does not produce statistics to scientifically approach this sector. To this, we can add the discontinuity characterizing the public policies implemented to promote the sporting thing<sup>26</sup>, thus limiting the visibility of investors. Also, the promotion of investment in the sports sector assumes that the legislation in force is the result of a strong consultation among the various stakeholders so that the locks likely to oppose the formation of fixed capital unlock.

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