

DAHIR No. 1-04-04 OF 1ST RABII I 1425 (21 APRIL 2004) ENACTING LAW No. 24-01 ON REPURCHASE TRANSACTIONS (modified and completed by law 33-06 and law 119-12)

PRAISE TO GOD ALONE!

(Great Seal of His Majesty Mohamed VI)

Let it be known hereby - May God elevate and strengthen the content!

That our Sherifian Majesty,

Having regard to the Constitution, particularly articles 26 and 58.

HAS DECIDED AS FOLLOWS:

Law no. 24-01 on repurchase transactions is hereby enacted and shall be published in the Official Gazette, further to this Dahir, as adopted by the House of Counsellors and the House of Representatives.

Done in Tanger, on the 1st of Rabii I 1425 (Avril 21 2004).

For countersignature:

The Prime Minister,

Driss Jettou.

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Law No.24-01 on Repurchase Transactions

Chapter one: General Provisions

Article one: A repurchase is the transaction by which a legal entity, a mutual investment fund as defined by the Dahir on law no. 1-93-213 of 4 Rabii II 1414 (September 21, 1993) on undertakings for collective investment in transferable securities, or a securitization mutual investment fund as defined by law no. 10-98 on mortgage loan securitization, transfers full ownership to another legal entity, to a mutual investment fund or to a securitization collective investment fund, for an agreed price, securities or bills referred to in article 2 of this law by which the transferor and the transferee undertake respectively and irrevocably, the first to repurchase the securities or bills, and the second to sell them back at an agreed price and a stated date.

Article 2: *(article amended and completed in accordance with article 7 of law 119-12)*

The securities or bills which may be subject to repurchase or reverse repurchase referred to in article 1 above are as follows:

1. transferable securities listed on the Stock Exchange;
2. tradeable debt securities defined by law no. 35-94 on certain tradeable debt securities;
3. securities issued by the treasury;
4. private bills;

5. securities issued by a securitization mutual investment fund defined by law no. 33-06 on the securitization of receivables as amended and completed within the limits set by regulations.

However, only credit institutions may repurchase or reverse repurchase private bills.

The repurchase may, however, only cover securities or bills that are not liable to be subject, throughout the period of the repurchase, to the payment of an income subject to a withholding tax.

Article 3:

Repurchase transactions can only be carried out through a bank or any other body authorized for this purpose by the administration, after consulting Bank Al-Maghrib.

To be authorized, a body must have human, material and organizational resources to allow it to exercise intermediation in respect of repurchase transactions.

The institutions referred to in the 1st paragraph of this article must ensure the regularity and conformity of the repurchase transactions carried out through them with the provisions of this law as well as those of the framework convention provided for in article 4 of this law.

Chapter II: Terms and conditions for the conclusion of repurchase transactions

Article 4:

Repurchase transactions are the subject of a framework convention drawn up in writing between the parties, which must conform to a standard model developed by Bank Al-Maghrib and approved by the administration.

Under penalty of nullity, any framework convention entered into between the parties and referred to in the previous paragraph shall be approved by Bank Al-Maghrib.

The agreement referred to in this article, any repurchase agreement or any rights or obligations arising therefrom for a party may not be transferred or assigned without the prior consent of the other party.

The party making such transfers or assignments shall notify Bank Al-Maghrib thereof.

Article 5:

Each party declares and certifies at the conclusion of the framework convention entered into between them and referred to in article 4 above:

- that it is duly constituted and operates in accordance with the laws and regulations in force, the articles of association and the other documents applicable to it;
- that it has full power and capacity to enter into the framework convention and any related repurchase and that these have been validly authorized by its executive bodies or by any other competent body;
- that the conclusion and execution of the framework convention and any related repurchase do not contravene any provision of the laws and regulations in force, articles of association or other documents applicable to this party;
- that all authorizations necessary for the conclusion and execution of the framework convention and any related repurchases have been obtained and remain valid;
- that no event of default provided for in article 19 of this law exists as far as it is concerned;

- that it has the necessary knowledge and experience to assess the benefits and risks involved in each repurchase and that it has not relied on the other party to do so;
- that the framework convention and the repurchase concluded under this law constitute a set of rights and obligations that are binding on it in all their provisions, and
- that no action or arbitral, judicial, or administrative proceeding or other has been brought against it that could result in a manifest and substantial deterioration of its business, property or financial position or that could affect the validity or proper performance of the framework convention and any related repurchase.

Article 6:

Repurchases take effect between the parties as soon as their consent is exchanged. The conclusion of each repurchase shall be followed by an exchange of written confirmation.

In the event of disagreement on the terms of a confirmation, which must be immediately notified to the other party, each party may refer to the terms set out in the framework convention for consent as evidence to establish the terms of the corresponding repurchase.

Article 7:

The parties may agree on additional deliveries, of fully owned securities or bills referred to in article 2 above or sums of money, to take into account changes in the value of the securities or bills initially sold under repurchase agreements.

Article 8:

The parties may at any time agree to substitute securities or bills already sold under repurchase agreements or submitted as additional deliveries with other securities or bills referred to in article 2 above, provided that on the date on which they decide on the substitution, the new securities have a value at least equal to that of the original securities.

The substitution shall be carried out, under the conditions referred to in article 10 below, by the transfer, by the transferor to the transferee, of ownership of the securities substituted and by the transfer, by the transferee to the transferor, of the securities initially sold under repurchase agreements.

This substitution has no novatory effect on the repurchase in question or on the additional delivery already constituted. As a result, the parties remain bound by the terms and conditions agreed between them for the repurchase in question, the undertaking of retrocession henceforth covering the substituted securities.

Article 9:

The repurchase is enforceable against third parties upon delivery of the securities or bills concerned.

Article 10:

Any delivery of securities or bills shall be made in such a way that the recipient has full ownership of the securities delivered.

The delivery terms are as follows:

Physically created private bills are said to be delivered if, at the time of the repurchase agreement, they are actually and physically delivered to the transferee or their agent. As concerns promissory notes, they must be endorsed in advance in accordance with the legislation in force.

Dematerialized securities or bills circulating by account-to-account transfer are said to be delivered if, at the time of the repurchase agreement, they are registered in an account opened in the name of the transferee with an intermediary authorized in accordance with the legislation in force or, where applicable, with the issuing legal entity.

Chapter III: Transfer and retrocession of securities

Article 11:

The transferor delivers or causes to be delivered to the transferee the securities or bills put under repurchase agreements, in return for payment of the transfer price by the latter.

Article 12:

However, the parties may agree in the framework convention they have established that:

- in the event of late payment of the transfer price, the repurchase agreement in question shall be maintained unchanged, even if the securities or bills concerned have not been delivered on time by the transferor due to the late payment. The transferee must pay, in addition to the transfer price, default interest;

- in the event of late delivery of the securities or bills put under a repurchase agreement, the repurchase agreement in question shall be maintained unchanged, even if the transfer price has not been paid on time by the transferee due to the non-delivery of the securities.

If, however, the transfer price has been paid to the transferor, the latter is then required, in addition to the delivery of securities, to pay default interest.

Article 13:

At the end of the retrocession period, the transferor pays the agreed price to the transferee while the latter returns the securities or bills to the transferor.

Article 14:

However, the parties may agree in the framework convention that they have established that:

- in the event of late payment of the retrocession price, the retrocession price shall be recalculated as if the repurchase agreement in question were originally due on the date of actual payment of the price, even if the securities or bills concerned have not been delivered on time by the transferee due to late payment. The transferor must pay, in addition to the recalculated retrocession price, default interest;

- in the event of a delayed retrocession of the securities or bills put under a repurchase agreement and if the retrocession price has not been paid on time due to the non- retrocession of the securities, the retrocession price shall not be modified so that, on the effective date of the retrocession of the securities put under repurchase agreements, the transferor shall only be required to pay the initially agreed retrocession price;

- in the event of a late retrocession of the securities or bills placed under a repurchase agreement and if the retrocession price has been paid to the transferee, the latter must, in addition to the retrocession of the securities, pay default interest.

Article 15:

The default interest referred to in articles 12 and 14 above shall be due immediately, automatically and without prior formal notice. It is calculated under the terms and conditions set out in the framework convention.

Article 16:

Without prejudice to the provisions of articles 12, 14 and 15 of this law, the party delivering or paying late on the date of transfer or retrocession shall be required to bear all costs, damages and penalties that the other party would be liable to pay due to the delay in question, which are foreseeable at the date of conclusion of the repurchase agreement in question and which it would be able to justify.

Article 17:

The provisions of articles 12, 14, 15 and 16 above shall not prevent the implementation, where applicable, of the provisions of Chapter IV of this law relating to the termination of repurchase agreements.

Chapter IV: Termination of Repurchases**Article 18:**

Repurchase operations concluded pursuant to the framework convention established between the parties may be terminated, in the event of default by one of the parties or in the event of change of circumstances, under the conditions provided for in this chapter.

**Section One
Events of Default****Article 19:**

For the purposes of this law, each of the following events constitutes an event of default for one of the parties:

- 1- the non-performance of any of the provisions of this law, of the framework convention or of a repurchase agreement relating thereto which has not been remedied either upon notification of non-performance by the non-defaulting party where such non-performance concerns a constitution or retrocession of the additional deliveries provided for in article 7 of this law, or within a period determined by the contracting parties in the framework convention as from the said notification in other cases;
- 2- any declaration provided for in article 5 of this law that is found to have been inaccurate at the time it was made by the defaulting party, or has ceased to be accurate;
- 3- the declaration by this party to the other party of the impossibility or refusal to pay all or part of its debts or to perform its obligations, a procedure for the amicable settlement of the enterprise's difficulties, the appointment of a provisional director, the prohibition to issue securities, and any equivalent procedure;
- 4- the de facto cessation of activity, the opening of an amicable liquidation procedure or any other equivalent procedure;
- 5- the opening of a recovery or liquidation procedure or any other equivalent procedure;
- 6- any event likely to result in the nullity, unenforceability, or disappearance of any security or guarantee granted by separate act in favor of the other party in respect of one or more

repurchase agreements, as well as any event referred to in paragraphs 3 to 5 above affecting a third party having issued its personal guarantee in respect of a repurchase agreement.

Article 20:

The occurrence of an event of default under article 19 above shall entitle the non-defaulting party, upon simple notification to the defaulting party, to suspend the performance of its payment and delivery obligations and to terminate all ongoing repurchase transactions between the parties. This notification shall specify the case of default invoked and the termination date determined.

Article 21:

Where the default results from the non-payment by the transferor of the retrocession price at the time set for the retrocession, the securities or bills shall remain with the transferee and where the default results from the transferee's non-payment of the securities or bills at the time set for the retrocession, the transfer amount shall remain with the transferor.

The non-defaulting party also has common law remedies against the defaulting party.

Article 22:

Where one of the parties is subject to any of the recovery and judicial liquidation procedures provided for in title II of Book V of law no. 15-95 on the Commercial Code, the framework convention drawn up between the parties may provide for the automatic termination of all repurchase transactions governed by the said agreement, enforceable against third parties.

Section 2 New Circumstances

Article 23:

For the purposes of this law, any of the following events constitutes a new circumstance for a party:

- 1- the entry into force of a new law or regulation, the amendment of a law or any mandatory text, which results in a repurchase agreement being unlawful for the party concerned or that it must be proceeded with a deduction or new withholding of a fiscal nature from an amount it shall receive from the other party in respect of the said repurchase agreement or
- 2- any merger or demerger affecting the party concerned or any transfer of assets by the latter resulting in an evident and substantial deterioration in its business, assets or financial situation.

Article 24:

Upon occurrence of a new circumstance referred to in paragraph 1 of article 23 above, any party shall inform the other party, as soon as possible, together with the repurchase affected by this new circumstance.

The parties will then suspend the execution of their payment and delivery obligations for the repurchase concerned only and will seek in good faith for a period of 30 days a mutually satisfactory solution.

If at the end of this period no mutually satisfactory solution can be reached, either party, or the party receiving less than the amount provided for, may notify the other of the termination of the repurchases concerned only by the new circumstance. This notification will specify the termination date selected.

Article 25:

Upon occurrence of a new circumstance referred to in paragraph 2 of article 23 above, all repurchases shall be considered affected by that circumstance.

The party not affected by this new circumstance shall then have the right, upon simple notification to the other party, to suspend the execution of its payment and delivery obligations and to terminate all ongoing repurchases between the parties. This notification will specify the termination date selected.

Section 3 Termination Effects

Article 26:

The parties are released, as of the date of termination, from any obligation to pay or deliver for terminated repurchases.

Termination gives the right, for terminated repurchases, to the payment of a termination balance calculated in accordance with the terms set in the framework convention provided for in article 4 of this law.

Article 27:

Reciprocal debts and receivables relating to the terminated repurchase operations, enforceable against third parties and governed by the framework convention, are offset and the balance of termination to be received or paid is set.

Article 28:

The termination of repurchases entitles a party, in the event of default by the other party, to reimbursement of costs and expenses incurred, including judicial proceedings, if any, and which it can justify.

Chapter V: Accounting System

Article 29:

The transferee's income, in whatever form, constitutes debt income and is subject to the interest scheme for accounting purposes.

Article 30:

Where the duration of the repurchase covers the date of payment of incomes attached to the securities or bills given as a repurchases, the transferee shall transfer them on the same day of said date to the transferor, who shall record them among products of the same kind.

Article 31:

The repurchase entails, on the part of the transferor, keeping as assets on their balance sheet securities or bills put under repurchase agreements and, on the other part, recording the amount of their debt as liabilities on the balance sheet vis-à-vis the transferee; these securities or bills and this debt are customized in a specific section in the transferor's accounts.

In addition, the amount of securities or bills put under repurchase agreements, broken down by the nature of the assets concerned, must be included in the financial statements.

Article 32:

Securities or bills received under repurchase agreements are not recorded on the transferee's balance sheet; the latter records on the assets side of their balance sheet the amount of their receivable from the transferor.

When the transferee sells securities or bills that they have received under repurchase agreements, he records on the liabilities side of their balance sheet the amount of this transfer representing their debt of securities or bills, which, at the end of the financial year, shall be valued at market price of these assets. The value differences recorded are used to determine the result for this financial year.

When the transferee issues securities or bills which they have received under repurchase agreements, they enter into the liabilities of their balance sheet the amount of their debt in respect of the new transferee.

The amounts representing the receivables and debts referred to in this article shall be customized in the transferee's accounts.

Article 33:

In the event of default by one of the parties, the proceeds from the sale of the securities or bills shall be equal to the difference between their real value on the day of default and their acquisition price in the transferor's records; it shall be included in the transferor's income for the year in which the default occurred.

Article 34:

The accounting procedures for repurchase transactions are specified by the accounting rules applicable to the parties in accordance with the law in force.

Chapter VI: Securities Transactions**Article 35:**

Amortization, drawing lots leading to a refund, conversion or exercise of a warrant terminates the repurchase transaction. The date of retransfer of the repurchase concerned shall automatically be brought forward to the second working day following the publication of the notice of the transaction concerned. When the securities undergoing such occurrence are given as a complementary discount, the party who gave the securities must substitute them under the conditions and procedures provided for in article 8 of this law.

Article 36:

In the event of convening of a meeting giving rise to the exercise of the voting rights of the holders of the transferred securities and unless otherwise agreed in the framework convention, the transferor may advance the date of retransfer of the securities to exercise the rights in question. For this purpose, the transferor shall send an advance notice of retransfer no later than two working days in addition to the usual delivery deadlines before the expiry date of the rights in question.

Article 37:

Other rights or securities granted as a result of the holding of securities are kept by the transferee and resumed at the same time as the securities to which they are related. They are taken into consideration in determining the value of the securities and the value of the complementary discount.

Chapter VII: Control

Article 38:

Bank Al-Maghrib ensures the compliance by the bodies referred to in the first paragraph of article 3 above with the provisions of this law and the framework convention and to ensure the proper functioning of the repurchase operations market.

For this purpose, the bodies referred to in the first paragraph of article 3 above shall be required to send to Bank Al-Maghrib the notification of the repurchase transactions in accordance with the form its sets and approved under the conditions provided for in article 4 above.

Any framework convention as well as any repurchase realized in contravention of the provisions of this law are void as of right.

Chapter VIII: Miscellaneous Provisions

Article 39:

The provisions of the second paragraph of article 80 of the Dahir enacting law no. 1-93-147 of 15 Muharram 1414 (July 6 1993) on the exercise of the activity of credit institutions and their control are completed by the following paragraph 6 °):

Article 80 (2nd paragraph): However, any company, of any type, may practice the following operations:

.....
.....;

6°) Take or put under repurchase securities listed on the Stock Exchange, marketable debt securities or securities issued by the Treasury.

OG n° 5210 du 06-05-2004 Page 658.

OG n° 5684 du 20-11-2008 Page 1560.

OG n° 6292 du 18-09-2014 p.4087