Brazil: Regulatory and legal aspects of Islamic finance

BRAZIL

By Fabio Amaral Figueira

As many of our readers know, the Muslim population in Brazil is small, possibly less than 1%. This is a possible reason why Brazil has never paid much attention to Islamic finance.

On the other hand, Brazil is a country with a large population (approximately 210 million inhabitants) and, consequently, with a big market for goods and services in general. Although the Brazilian percentage of participation in world trade is not high, Brazil is a country with relevant volumes of imports and exports.

One main export item for Brazil refers to agribusiness products. In the particular case of poultry, Brazil has been selling Halal poultry for decades to the Middle East and North Africa region.

In view of the aforementioned aspects, Brazil should start paying more attention to Islamic finance as an alternative for economic development just like what other countries with smaller Muslim populations have already done.

The banking and insurance industries are well regulated and the basic legislation governing these industries has existed for decades. In order to allow the introduction of Islamic finance products in Brazil, the current regulations need to be amended or altered. Financial institutions in Brazil need to provide detailed information on their activities and they cannot acquire and/or sell goods in general as part of its corporate purpose.

One good example regarding the regulated activities of banks in Brazil refers to the possible use of Murabahah in the case of import of products.

Brazilian banks are not allowed to buy certain goods abroad such as equipment and sell it to its client, the final purchaser, with an agreed profit. The banking law and regulations would have to be modified and Brazil should include Islamic finance in the political and economic agenda.

Another relevant aspect is that foreign banks still have restrictions in carrying out activities in Brazil through branches or subsidiaries. This would also lead to much debate in the country.

Fabio Amaral Figueira is a partner at Veirano Advogados. He can be contacted at fabio.figueira@veirano.com.br.

China's Belt and Road initiative in Kazakhstan and opportunities for Islamic finance

KAZAKHSTAN

By Shaimerden Chikanayev

Kazakhstan has high ambitions in China's Belt and Road initiative (BRI) as it is geographically an ideal junction between China and the west. There may, however, be some roadblocks for the BRI's projects in Kazakhstan. It is therefore important to examine past experiences in order to be able to predict what legal challenges may await Chinese investors when they engage in business with Kazakhstan.

In June 2005, when PetroKazakhstan, a Canadian oil company that has all its business focused on Kazakhstan, announced that it had been approached for a possible takeover by, among others, China National Petroleum Corporation (CNPC), the government of Kazakhstan announced that it would demand the right to acquire PetroKazakhstan prior to any merger or acquisition, because, evidently, it was an issue of energy security for Kazakhstan. Kazakh laws at that time did not require CNPC to seek any prior consent from the government of Kazakhstan to proceed with the transaction and, therefore, CNPC initially tried to ignore the position of the Kazakh government and entered its bid to acquire 100% of the shares of PetroKazakhstan in August 2005. Kazakh authorities immediately took action, devising controversial amendments to relevant legislation with the parliament of Kazakhstan approving the changes in record time and the legislative amendments taking legal effect by the 17th October 2005, just one day before PetroKazakhstan's shareholders were scheduled to vote in Canada on the deal with CNPC.

The amendments gave the government of Kazakhstan pre-emption rights (aka 'Droit du seigneur') in sales of foreign-held stakes of a parent company of a Kazakh entity and allowed the government to intervene in all similar deals in the future. As result, CNPC, which before this was keen to reject all offers of the government of Kazakhstan, had to agree to sign an MoU with the state-owned KazMunaiGas (KMG) and sell back 33% of the shares of PetroKazakhstan to KMG, a transaction which was completed on the 5th July 2006. The PetroKazakhstan case study proves, therefore, that Kazakhstan is ready to take on drastic measures if national security is at stake and if there are risks that the country's sovereignty could be eroded.

The BRI provides a unique opportunity for Kazakhstan to attract Chinese money and technology and become one of the largest transit hubs in Eurasia. There is no doubt, therefore, that Kazakhstan has a chance to become the best country within the BRI for Chinese companies to invest in and the door for China to the Eurasian Economic Union, a single market of 183 million people.

Worries over rising debt burdens on Chinese banks, however, are lately driving calls in Central Asia to get other sources of finance for the BRI's projects in the region. It is well known that the global Islamic finance market size is estimated to exceed US$2 trillion in 2018. Hence, Chinese companies involved in the BRI should explore Islamic finance to finance their projects in Kazakhstan and other Central Asia countries along that route.

Shaimerden Chikanayev is a partner at Grata Law Firm. He can be contacted at schikanayev@gratanet.com.