

Regional Secured Transactions Assessment – Tunisia

Non-possessory charge over movable property

The following table relates to non-possessory security over movable assets and rights. The survey is best understood if read in conjunction with the EBRD Core Principles, which specify the basic criteria for a modern secured transactions law. The Explanatory Notes describe the methodological approach to the survey.

A	Non-possessory charge - General	Grading
1.	Can anyone grant a charge?	1
2.	Can anyone take a charge?	1
3.	Can the charge cover all types of tangible movable property?	0
4.	Can the property be described in general terms?	0
5.	Can the charge be established over future property?	0
6.	Can the charge be established over changing pool of assets?	0
7.	Can the charge be established over going concern (enterprise) or all present and future assets of the chargor?	0
8.	Can debts of any type be secured by charge?	3
9.	Can parties agree on the rights of the chargor over charged assets?	3
10.	Is the good faith charge creditor protected from subsequent claims which may adversely affect the charge?	3
11.	Does a third party acquire property free from security in the ordinary course of business?	?
12.	Are subsequent charges permitted over same property?	3
13.	Can the charge creditor dispose of its priority position?	0
14.	In case of transfer of secured claim does charge follow automatically?	2

B	Non-possessory charge - Creation / Registration	Grading
15.	Are charges registered?	1
16.	Can a third party determine whether property is encumbered?	1
17.	Is the data centralised? Is the data from the register available on line?	0
18.	Is data in the register indexed against the name of the chargor?	1

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C	Non-possessory charge –Enforcement	Grading
19.	Are the manners of starting enforcement and the enforcement procedure clearly established?	3
20.	Does commencement of enforcement have to be publicised?	1
21.	Is out of court realisation of assets permitted?	0
22.	Can the charge creditor decide on the way the realisation will be done?	0
23.	Can the charge creditor exercise control over the realisation process?	0
24.	Is enforcement rapid?	0
25.	Is the purchaser protected?	3
26.	Is charge creditor protected against chargor's obstruction?	0
27.	Is taking possession of charged asset simple and quick?	0
28.	Can the charge creditor actively protect the charged assets?	3
29.	Is the charge creditor right protected in case of third party initiated enforcement against the asset?	3

Remarks

A1	The legal regime is diversified and different rules apply to different assets. Non-possessory charge under commercial charge is limited to commercial entities. Non possessory charge over tools, machinery and equipment can only be granted by the debtor to secure the debt resulting from their acquisition.
A2	The charger in commercial charge needs prior authorisation of the Central Bank of Tunisia if granted to a non-resident. The charger of charge over tools, machinery and professional equipment: can only be either the vendor of the equipment or the lender having financed the acquisition price of the equipment.
A3	Any movable assets having an economic value that can be traded could be subject to charge
A6	The only security over a floating pool of assets available in Tunisia is the charge over ongoing business “fonds de commerce”. The security agreement must precisely identify and specify all assets: the machinery, for example, must be specifically identified and if it is changed during the life of the security, amendments to the schedule of assets must be done and registration must be adequately amended.
A14	Re-registration is necessary but not seen as a new charge.
B15	Commercial charges are registered in the trade registry and with the courts having jurisdiction over each branch of the respective entity..
B16	For commercial charges.
B18	For commercial charges.
C20	Only for tools and machinery.