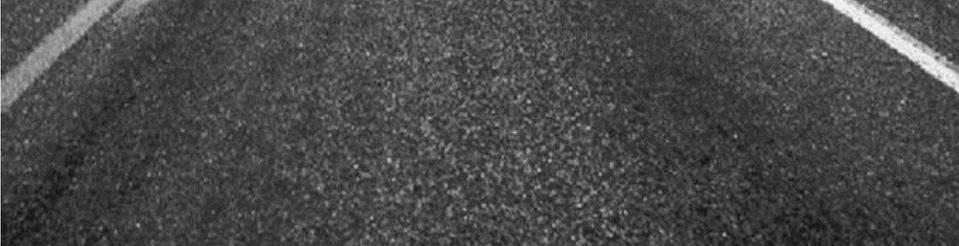# Reforming Moroccan Secured Transactions Against the Background of the French Reform

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C L I F F O R D
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The goals of the secured transactions reform in Morocco

- Increasing access to credit to the private sector in particular small and medium businesses

- Stimulating the private sector growth, in particular in the context of the implementation of Casablanca Finance City

- Estimating the companies' assets in a satisfactory manner

- Setting up a modern, efficient and contractual secured transactions system for movable properties inspired from the best systems all over the world

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The current secured transaction system in Morocco

■ **The importance given to the dispossession of the asset**: the dispossession is a condition of validity of the pledge

■ **This role given to dispossession can be explained by the fact that:**
  ➢ the dispossession ensures that the creditor will be able to enforce its security;
  ➢ the dispossession is a manner to make the security interest public *vis-à-vis* third parties; and
  ➢ the dispossession allows to keep the pledged assets separate from the other assets of the debtor.

■ **Economically, the dispossession is inefficient and overdated:**
  ➢ the companies need those assets to run their business;
  ➢ the banks don't want to be in charge of keeping and preserving the pledged assets; and
  ➢ the same asset cannot be easily given as security to multiple creditors.

The current secured transaction system in Morocco

- **The limited type of movable assets that may be used as security:**

  - Tangible assets and intangible assets can be given as security

  - Given that dispossession is a condition of validity, security on future assets is not possible

  - Except for the pledge over ongoing business (*nantissement de fonds de commerce*), it is not possible to grant a floating charge over the assets of a company

- **A complex system of creation of a security**

  - The necessity of dispossession

  - The necessity to have a written document containing certain mandatory information.

  - The necessity of registration. Instead of being a condition of enforceability against third parties, the registration is a condition of validity, as is the case for the pledge over business (*nantissement de fonds de commerce*) and the pledge over tools and equipment (*nantissement d'outillage et du matériel d'équipement*)

The current secured transaction system in Morocco

- **The impossibility of enforcement out of court:**

  - The in-court enforcement and more especially public auctions are time consuming, unpredictable expensive and an inefficient way to optimise the sale price of the seized assets and the assets are quickly depreciated

  - Creditors consider that public auctions in Morocco are not transparent and arbitrary*

- **A n incomplete, expensive and non centralised system of publicity:**

  - An incomplete system of publicity: legal privileges and security based on property are not published

  - A decentralised paper based system of publicity: multiple registers in different courts

  - An expensive system of publicity: a proportionate fee corresponding to 0,5% of the secured obligation

- **A confusing priority schemes for creditors:**

  - Confusing vocabulary used by the Moroccan Civil code (*nantissement, gage, privilège*)

  - Lack of legislation and case law defining a clear priority scheme between creditors

* *Increasing access to credit through reforming secured transactions in the MENA region, Alejandro Alvarez de la Campa, Policy research working paper 5613, March 2011*

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Recommendations for the secured transactions reform in Morocco

- The French security reform of 2006 was basis but not sufficient (OHADA, other European legislation…)

- Role of the coopération with AMF, EBRD and IFC

- The key role of the Moroccan authorities, Ministry of Finance and CNEA

Recommendations for the secured transactions reform in Morocco

- To clarify the terminology

- To release the secured transactions system from the dispossession requirement

- To soften the principle of specification

- To extend the nature of the assets which can be given to secure a transaction (namely future assets and current assets)

Recommendations for the secured transactions reform in Morocco

- To simplify the creation of the security by making the registration a requirement for enforceability against third parties instead of a requirement for validity

- To introduce a complete and centralised electronic system of publicity

- To introduce a clear priority scheme for creditors

- To introduce an out of court enforcement of security interests

- Implementing the sharing of securities between creditors

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