



USAID | **MOROCCO**
FROM THE AMERICAN PEOPLE



Improving the Business
Climate in Morocco

Regulatory Reform and Investment Promotion

**LEGAL ASSESSMENT:
REGISTRATION OF SECURED TRANSACTIONS
FOR MOVABLE PROPERTY**

AUGUST 2008

This publication was developed for the United States Agency for International Development (USAID). It was prepared by the Improving the Business Climate in Morocco Program implemented by DAI.

Improving the Business Climate in Morocco

Amélioration du Climat des Affaires au Maroc

IBCM Report

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

Acknowledgements

The publication of this report was made possible through support provided by the US Agency for International Development (USAID) under the terms of Contract No. GEG-I-00-04-00001, Order No. GEG-I-02-04-00001. Daniel Benay is the author of this report.

FOREWORD

Modern collateral registry systems can help expand the circle of creditworthy borrowers in a country, by providing banks and other lenders with accurate, real-time information on claims. For banks and other lenders to make use of these systems, however, the legal framework must provide the right incentives.

This report reviews the key ingredients of the legal framework for secured lending in Morocco, identifying areas where the current law is not compatible with the operation of a modern collateral registry system and outlines steps to be followed, if indeed there is political will to make changes.

The research for this report was conducted in February 2008. As part of the exercise and in collaboration with the Financial Services volunteer corps and the Bank Al-Maghreb, organized two roundtables on the topic of modernizing Morocco's collateral registry system, one in Casablanca and the other in Agadir. The Program also conducted a pre-feasibility study to identify administrative and technological solutions which will enhance the efficiency of the commercial register (*Registre de Commerce*). All reports are available on the Program website (www.businessclimate.ma / www.businessclimate.ma)

One decision that has been taken as a result of this legal assessment was, *not* to proceed forward with the development of a software or other information technology system focused on collateral registry until (1) Morocco has developed a system for allocating a national business identifier that is common – meaning known - to all government actors; (2) additional work has been conducted on the harmonization of operating procedures for the commercial register, and (3) a champion has come forward to lead the efforts to reform the country's secured lending framework. As work progresses on these and other fronts, USAID/Morocco and the Improving the Business Climate Program will welcome the opportunity to support Morocco in moving toward the implementation of a modernized collateral registry system.

We extend our appreciation to our institutional partners, as well as each of the individuals who shared their knowledge and insights with us during the preparation of this report. To offer comments, or request additional information, write to us at contact@climatdesaffaires.ma.

Lara Goldmark
Director
USAID Improving the Business Climate in Morocco Program

EXECUTIVE SUMMARY

Introduction and Analysis

An effective secured transactions regime is a fundamental component in any financial system. Secured transactions are essential to the development of an economy. They provide a legal regime through which secured creditors can reduce several of the risks relating to the granting of loans or other forms of credit to business enterprises (and consumers).

Most modern security systems recognize some form of non-possessory charges on debtors' movable property where the collateral, or movable property subject to the charge, remains in the possession and control of the debtor. These systems require secured creditors to register notices of their charges in a publicly accessible movable registry. This requirement protects third parties, including other secured creditors and potential creditors. In this manner, third parties can easily determine their respective rights (or priority) by simply examining the charge register by which the system publicizes the charges granted by debtors. To allow multiple parties to access up-to-date information, modern systems are computerized.

This report presents an assessment of the current state of registration of charge transactions (or secured transactions) over movable property under the *Code de commerce* (Commercial Code) and matters that must be addressed for the establishment of an efficient movable charge registration system in Morocco.

In Morocco, the *registre du commerce* (commercial register) provides information pertaining to business enterprises and merchants in Morocco, whether domestic or foreign. It also provides information concerning certain pledges of movable property made by business enterprises and merchants. The commercial register consists of a national register and local registers.

One particularity of the Moroccan context is that operation of the national register has been delegated by the Ministry of Justice to the Office of Industrial Property (OMPIC), an agency under the Ministry of Industry and Commerce. OMPIC works with each jurisdiction to collect data from the commercial registries. Some data is collected in electronic form while other data is only available in hard copy. OMPIC processes all data received, and puts it into a consistent electronic format. It is important to note that the information concerning non-possessory pledges under the commercial code is not centralized. Therefore, this information must be obtained through searches in the local registers and in some cases in special registers, causing

inefficiency and unreliability. This situation persists despite article 33 of the Commercial Code, which states that the purpose of the national register is to centralize for the Kingdom of Morocco all of the information contained in the local registers.

Currently, the commercial register can only be examined in presence of a staff member of the registry. As a result of this requirement, a fully modernized registry system will require modifications to the current legal framework. It would be extremely useful for creditors (including potential creditors and credit providers) and debtors to rely on a registry system organized as a single comprehensive system and operating through a central information base or through a network linked to a single common database. Secured creditors, debtors and third parties who rely on the registry about possible claims to movable property subject to a charge, or to protect their own charges, must be confident that the registry is accurate on a timely basis.

The Commercial Code recognizes various methods of creating a non-possessory charge on movable property. In addition, the *Code des obligations et des contrats* (Code of Obligations and Contracts) complements the rules concerning charge transactions under the Commercial Code. The rules applicable to non-possessory charges are not uniform and neither are the registration requirements. Moreover certain types of non-possessory charge transactions are not subject to registration for the validity of their enforcement against third parties, including creditors of the debtors, such as pledge on receivables.

Conclusion and Recommendations

This report recommends a low cost notice-filing requirement within a comprehensive computerized registration system (or universal registration requirement), with minimal review by officials only to determine that all required information (as set out in the regulations) is provided in the charge notice filed for registration by either debtors or secured creditors, or their representatives.

A comprehensive registration system of charges on movable property would lead to a transparent framework for publicizing charges; thereby eliminating uncertainty for third party creditors. However, modernizing the registration system is not in itself sufficient. In fact, the implementation of a modern secured transaction legal regime should also be considered and addressed by government authorities in Morocco.

In particular before investing in registry reform, it would be important that the responsible governmental agency consider a comprehensive secured transactions law reform. While

registration of charges is an essential component of any non-possessory charge regime, it will not in itself resolve all the problems of the current legal regime (i.e., the limited role that movable property plays as collateral for access to credit).

In summary, a legal problem requires a legal solution. Therefore, reforming the registration system as part of the secured transactions legal regime in Morocco will require first reforming the applicable legal framework (i.e., the rules governing creation, priority, publicity and enforcement), and then reforming the institutional framework for publication and registration of secured transactions. This reform will require (i) the preparation of a comprehensive study with a proposal for reform, including proposed modifications to the current legal regime; (ii) the sequence for the implementation of the reform, based on the study and recommendation for its implementation; (iii) the preparation of a draft law on secured transactions; (iv) the enactment of the law on secured transactions reform; (v) the preparation of the regulations; (vi) the selection of a registry filing system; (vii) the preparation of administrative and technical regulations for the selected registry filing system; (viii) the establishment of the selected registry filing system; and (ix) public awareness of the new secured transactions legal regime, including the registry filing system. This Phase II could be implemented over a period of 2 to 3 years.

Policy makers in Morocco must not only address the fundamental questions concerning the creation, priority, publicity and enforcement of secured transactions, as four integral components and not in isolation, but must also confront questions that transcend all of these four questions when deciding on a course of action regarding the selection of a registration system for secured transactions, within an economically effective comprehensive legal regime. As such the unified functionality for secured transactions should satisfy certain minimum economic requirements. They are: creation that is inexpensive, simple and comprehensive; publicity that is public and inexpensive to file and search; priority based on a simple and clear principle – first-to-file rule; and enforcement that is inexpensive and efficient.

TABLE OF CONTENTS

Foreword.....	a
Executive Summary	ii
I. Introduction.....	1
II. Background.....	4
III. Overview of Secured Transactions.....	4
IV. Overview of Movable Charge Registration.....	5
V. Overview of Commercial Register	14
VI. Conclusion and Recommendations.....	17

I. INTRODUCTION

This report presents an assessment of the current state of registration of charge transactions (or secured transactions) over movable property under the *Code de commerce* (Commercial Code) and matters that must be addressed for the establishment of a national functioning and efficient movable charge registration system in Morocco.

Registration (or publicizing security in property) forms part of the law of secured transactions. Secured transactions legal regime is the area of law that governs charges on property (or security interests) other than immovable property (or real property) to secure the performance of obligations. The legal regime for secured transactions customarily covers creation (i.e., how creditors establish rights in the collateral to secure payment or performance of obligations), priority (i.e., how creditors establish a ranking of their respective rights in the collateral), publicity (i.e., how creditors publicize their ranking of their rights in the collateral), and enforcement (i.e., how creditors take possession of the collateral and sell it to satisfy their rights).

An effective secured transactions regime is a fundamental component in any financial system. Secured transactions are essential to the development of an economy. They provide a legal regime through which secured creditors can reduce several of the risks relating to the granting of loans or other forms of credit to business enterprises (and consumers). Most modern security systems recognize some form of non-possessory charges on debtors' movable property where the collateral, or movable property subject to the charge, remains in the possession and control of the debtor. These systems require secured creditors to register notices of their charges in a publicly accessible movable registry. This requirement protects third parties, including other secured creditors and potential creditors. In this manner, third parties can easily determine their respective rights (or priority) by simply examining the charge register by which the system publicizes the charges granted by debtors.

An entirely computerized system that requires electronic transmission of registration information and access (or retrieval of recorded information) to the database would be the most efficient approach for Morocco considering its experience in operating and maintaining the current *registre du commerce* pursuant to the Commercial Code. As demonstrated in other jurisdictions, transition from a document filing system to a notice computerized system can be carried out within a controlled transitional implementation framework that would limit interference with the operations of the registry during the temporary conversion period.

The design of a movable charge registry involves wide-ranging legal and technical questions that must be reviewed and analyzed. Moreover, it is essential to consider several factors, including the legal, social and economic aspects existing in Morocco in which the registry will operate. The review process requires the assessment of modern registration design features used in several jurisdictions and their potential application and adaptation in Morocco. The concept of registration covers the act of recording information relating to a person, whether an individual, corporation or other form of entity, or property, whether movable or immovable property, in a registry (or official record), maintained and operated by a governmental agency (or other entity, including through public - private arrangements).

The purpose of public records (or official registries) varies. It includes the collection of information regarding businesses, business enterprises and property, (such as immovable rights registries, motor vehicle registries, immovable title or ownership property registries), and charges (or security interests) on movable property registries. The registration process involves the entering of prescribed information in a public registry for the purpose of publicizing secured transactions. The information contained in the registry is accessible by the public, whether directly or through registry staff.

Modern registration systems use computers and electronic communications in their operations. This use of modern technology makes these systems efficient and cost effective. The essential function of these registries, specifically registrations, amendments and discharges of recorded charges and searches in the register are effected by electronic communications through the internet. Users (such as secured creditors, debtors or potential creditors, or insolvency administrators) communicate their requests for registrations or searches through remote computer terminals operated by pre-approved users (also accessible through local governmental terminals) and the register database. The registrations, amendments and discharges are made on a “real time basis”, while search results are available within a short time delay. For the most part, the registration of the information, including searches, is automatic and requires little, if any, registry staff involvement. The computerization of the operations and standardization of the process of the registry reduces considerably errors in the entry of registration information.

The registration notices contain basic information concerning the actual (or potential, if authorized by the applicable legal regime) contractual relationship, including basic information on the agreement which creates the charge between the debtor and secured creditor. The purpose of the notice is to make known to the public the existence of a contractual relationship between the debtor and the secured creditor in respect of a charge transaction over the debtor's

movable property. As mentioned above, a paper-based system can be maintained during a transitional period for the implementations of a conversion process from a paper-based registry system to an electronic-based registry system. The flexibility of a computerized registration notices system makes its implementation relatively simple.

This report is divided in six parts, including the above introduction. Section II of the report presents background information on the importance of secured transactions in modern enterprise economies. It is followed in Section III with an overview of secured transactions and their importance in the national economic development. Section IV presents an overview of the common features of modern movable registries for giving notice of secured transactions affecting movable property. On the whole, the principles discussed in Section V and elsewhere in this report are not necessarily new or exclusive to certain jurisdictions. In fact, they are derived from several jurisdictions, whether civil or common law systems, which have modernized their secured transactions systems, including registration. In particular, these principles provide a systematic basis for reform of the registration system in Morocco. Section V of this report highlights certain inadequacies of the current charge registration system under the Commercial Code. Section VI presents conclusions and recommendations for building on the current registration system towards an efficient movable charge registry, which would form part of a comprehensive reform of the secured transactions legal regime in Morocco.

In brief, as the ensuing report shows that an investment in registry system reform without a comprehensive review and reform of the law of secured transactions that constrain (or is incomplete) creation, priority, publicity and enforcement will not necessarily in itself increase secured transactions credit in Morocco.

This report recommends first reforming the legal framework for secured transactions in Morocco (i.e., the law that governs all the stages of charges over movable property: creation, priority, publicity and enforcement), and then reforming the institutional framework for making public the existence of secured transactions (or movable registry) through the establishment of a modern system for publicizing secured transactions, which would modify and expend the existing registration system.

The reform of the secured transactions regime in Morocco should include (i) the preparation of a study (i.e., the identification of all issues and proposed options for reform); (ii) the determination of the sequence of the reform and its implementation, which depends, in part, on policy decisions; (iii) the preparation of a draft law and regulations and their implementation; (iv) the

selection of a registry filing system (i.e., a notice-filing system); and (v) the training and public awareness of the reformed regime.

II. BACKGROUND

The use of a charge on movable property to support extensions of credit has become a widespread and almost essential practice in modern enterprise economies. Where the primary source of funding for enterprises is not the government but banks, financial institutions and other credit providers, lending money (or delivering property) to enterprises in the expectation of future payments often require more than the unsupported promise of the borrower (or purchaser). Similar considerations make it easier for individuals to obtain credit for consumer goods. A charge on movable property provides the lender (or unpaid seller) with a second source of payment or the performance of other obligations. The property which is pledged as security for the satisfaction of an obligation (or collateral) is always designed solely to protect the “return” of the equivalent of the lender’s property by the borrower in the event of the borrower’s failure to repay the loan or to perform any of the other obligations towards the lender as secured creditor.

In Morocco, as it is the case in other jurisdictions, there is a requirement that in order to make the security enforceable against third parties (or *opposable*), creditors must comply with one or more requirements for the creation, priority, publicity and enforcement of the charge. The steps required for publicity are designed to give third parties some notice of the existence of a charge on movable property. These steps also permit creditors (including potential credit providers) to discover whether any other creditor has obtained a charge over the debtors’ movable property. In the absence of a registration system, no practicable and reliable way exists to determine whether a debtor has granted a charge on movable property.

III. OVERVIEW OF SECURED TRANSACTIONS

Generally, a secured transaction arises when, in exchange for a loan or credit, a borrower (or debtor) agrees in a charge agreement (or other agreement), that the lender (or secured party) may enforce the charge over the specified property (the collateral) owned by the borrower if the borrower should default (or otherwise fail to perform specified obligations) on the loan or other agreement. A secured transaction, subject to the applicable legal regime, also provides the secured party with enforcement rights that if the borrower should become bankrupt (or subject

to other insolvency events), the secured party may be able to recover the value of the loan in priority to unsecured creditors by enforcing the charges, including selling by public auction, bids or private sale, or taking possession of the specified collateral instead of receiving only a portion of the borrower's property after it is divided among all the debtor's creditors.

In secured transactions, the promise to repay the loan is backed by collateral (or property which is subject to a charge in favour of the secured creditor) that the lender can seize and sell if the loan is not repaid as promised by the borrower. Collateral may be immovable or movable property (whether tangible property such as inventory, equipment, livestock, crops or intangible property such as accounts receivable, intellectual property, documents, shares and other intangibles).

The terms of the relationship are governed by contract (or charge or security agreement) between the debtor and creditors (and other parties) subject to the applicable legal regime.

Secured transactions are an important part of the law and economy. By allowing lenders (or other secured creditors) to take a charge on a debtor's property as collateral, secured transactions provide lenders (and other credit providers) with greater confidence that they will be repaid. This increased assurance allows lenders to lend capital on better terms and at interest rates that are lower than the rates these businesses would otherwise be able to obtain. In effect, secured transactions help lower the cost of capital, and thereby encourage the growth of the economy. Moreover, secured transactions provide more credit by reducing the costs of borrowing and thus increasing the amount of available credit in the economy.

Lenders do not like uncertainty. Lenders want to know their respective rights against competing creditors, whether secured or unsecured. When lenders can easily determine their respective rights, access to credit generally expands. After all the risk of a secured creditor is only reduced if the secured creditor has the legal right to enforce the right to appropriate the economic value of the collateral to satisfy the repayment obligation (and the performance of other obligations) of the borrower pursuant to the loan or credit arrangements in preference to the claims of the debtor's other creditors, whether secured or unsecured.

IV. OVERVIEW OF MOVABLE CHARGE REGISTRATION

The distinction between a possessory pledge and a non-possessory pledge is essential to the proper management of risks in secured transactions, including secured lending. A possessory

pledge requires the delivery of possession (or control over) of the pledged collateral to the secured creditor (or designated third party). Although not complete in itself, the delivery of possession requirement provides some comfort to the secured creditor that the debtor has not already pledged the same collateral in favour of another secured creditor. The dispossession of the collateral by the debtor also indicates to third parties that the debtor no longer has absolute rights to or control over the collateral. Possessory pledges are of limited use in a commercial context. Not all-movable property is of a kind that the debtor may (or wish to) deliver possession or control. This excludes many types of movable property (despite their economic value), such as trade receivables, intellectual property or other intangibles, including after-acquired or future assets. Notably a debtor may need the collateral to pursue its business enterprise and create wealth (e.g., equipment, raw materials, inventory and other property, including after-acquired or future property). This ability will also allow the debtor to satisfy its obligations (repayment of the financing) to its secured debtor (or lender or credit provider).

Even when delivery of possession or control is possible, other circumstances may mitigate its suitability such as cost of storage, insurance and potential liability. Most importantly, commercial debtors need to retain possession of their equipment, inventory and other business assets to carry on their business activities and generate the income necessary to satisfy their business obligations, including repayment of the loan or credit facilities. This is also applicable to consumer financing where a loan is made to finance the acquisition of consumer assets, which also serve as collateral, such as automobiles and other vehicles, household appliances and other high value goods.

A secured transactions regime that provides for a comprehensive disclosure of non-possessory security by public registration eliminates the legal risk posed by charges that are legally created but are not publicized.

The establishment of a public registry system does not restrict the ability of a debtor to grant multiple charges on collateral that has already been charged in favour of a secured creditor. However, the secured transactions regime must provide for rules concerning the order of the priority of charges based on their order of registration on the public registry. Most modern regimes apply the first-to-register rule as the governing principle for the establishment of priority of multiple charges, without regard to actual knowledge of existing charges. If secured creditors must register their charges in a public register to establish their priority and the register is accessible to the public, then determining priority on the basis of timing of registration is relatively easy and inexpensive.

This basic first-to-file priority rule significantly reduces litigation on the question of competing rights with respect to several secured creditors claiming priority over collateral subject to multiple charges. The rule is reasonable and fair since all secured creditors can simply protect their respective rights by merely complying with the requirement of registering their respective charges on the public register. The first-to-file rule is however subject to specific exceptions that are necessary and fair. As a result, legal regimes that have adopted the first-to-register rule often create limited exceptions to this rule. For example, purchases in the ordinary course of the debtor's business acquire the collateral free from the charge, whether registered subsequently or not, and succeeding secured creditors who finance the debtor's acquisition of new assets (or "purchase money security") have a prior claim on the newly financed asset subject to registration within a short period after the conclusion of the transaction.

The establishment of a movable charge registry will not in itself protect the interests of the parties. The registry system, including the registration requirement, must be supported by a substantive legal regime that requires registration as a condition to the secured creditor's rights to enforce its charge against the debtor's other creditors and insolvency administrators. In this manner, the charge becomes effective against third party creditors only upon its registration in the movable registry, irrespective of knowledge of its existence. This prerequisite to the enforceability of the charge against third parties in itself creates a reason for secured creditors to comply promptly with the simple registration requirement that is within their control.

Registration of a charge does not protect a secured creditor from legal challenge by unsecured creditors or insolvency administrators. The purpose of registration is solely to ensure that third party creditors or insolvency administrators can simply determine whether a debtor has granted a charge in favour of a secured creditor, with the additional comfort that only the registered charges are enforceable against third parties, irrespective of actual knowledge of the existence of a charge. As a result, laws of general application such as laws governing the validity of contracts, unjust or fraudulent preferences or effectiveness of transactions prior to insolvency remain applicable. In short, registration does not create any right other than to render effective a charge against secured creditors and, insolvency administrators and other third party creditors of the debtor. The objective is to allow creditors (or potential creditors) to be confident about their respective priorities and the debtors (or potential debtors) to demonstrate easily and reliably the status of existing charges and priority at a low cost.

The establishment of a movable registry, together with a priority regime, will not be successful if not supported by comprehensive efficient and fair enforcement rules, including rules governing

bankruptcy and insolvency of debtors with secured creditors. Time-consuming and expensive enforcement of secured transactions represent the greatest barrier to using movable property as collateral. Slow and costly enforcement of charges on movable property entails a loss of access to credit. An enforcement process for the collection and sale of one to three years makes most movable property worthless as collateral.

In several jurisdictions, secured creditors are required to tender a copy (either original or notarized or certified) of the charge agreement, together with a request for registration whether on a prescribed form or application containing the required information) and applicable registration fees to the registry. The registry staff examines the documents and manually files these documents in the registry records based on the debtor's name, which permits the retrieval of the documents filed upon request and payment of the applicable search fee. The registry staff either provides a copy of the documents filed in the registry or an extract of the documents on request upon payment of a fee.

A notice-registration system requires only that the secured creditor submit a registration notice of the charge in a standard form (or application containing the required information), setting out only the information necessary to provide essential facts regarding the existence of the charge registered under the debtor's name and description, whether specific or generic, of the movable property subject to the charge and applicable registration fees. Modern movable registry systems are generally notice-registration systems, which are preferred to document filing. The following benefits explain the choice of the notice registration system:

- Reduction of the registry's administrative and archival costs since only limited and standardized information is registered (or stored or recorded);
- Simplification of multilingual registries and transactions from a paper-based registry system to an electronic system;
- Reduction of transaction costs for users of the registry;
- Simplification of compliance with privacy concerns of both the debtors and secured creditors;
- Registration before the creation of the charge transaction and a single registration to cover successive agreements between the same parties and covering the same collateral.

In a notice-registration system, the secured creditor's priority is determined in accordance with the date (and time) of registration in the registry (or the first-to-file rule). The registered notice as such is not proof of the legal validity of the underlying charge transaction between the debtor

and secured creditor. In brief, the notice merely provides notice that the identified debtor has created a charge on the identified movable property in favour of the identified secured creditor. Consequently, the existence, validity and scope of the charge, including the respective rights and obligations of the parties, can only be ascertained on the examination of actual agreements between them and the applicable secured transactions legal regime. This fundamental principle has a direct effect on the design of the registry, including on its regulatory framework and operational and administrative components.

Prospective creditors (or buyers) will normally pursue their credit and documentation inquiry directly with the debtor, as part of their credit assessment and due diligence process. In accordance with their review and outcome, potential creditors (or buyers) may decide to pursue their transactions or simply refuse any further negotiations or subject the proposed transactions to certain conditions, including the discharge of existing charges or buy-out the prior ranking interest of the secured creditors. However, the situation for existing secured creditors of record, including insolvency administrators, is rather different. The legal secured transactions regime must provide a straightforward framework that would require secured creditors to respond to requests for information and other related inquiries concerning the nature, scope and status of registered charges. This information would in turn complement the basic information contained in the registry. Based on the information gathered by the prospective creditor, an informed decision would be made regarding the appropriateness of the proposed credit transaction, including its terms and pricing.

In addition to privacy concerns and protection, minimal information required in the notice of charge would generally lower the risk of errors in entries of the information in the registry records. This essential information requirement is consistent with the primary (if not the sole) purpose of movable charge registry. In short, the registry provides public notice of the existence of a charge, without disclosing further details of the contractual arrangements between debtors and secured creditors. As mentioned above, registration of a charge in itself does not confer protection to the secured creditors of record from challenges as to the validity and scope of charge transactions. They remain subject to the applicable legal regime of secured transactions and other commercial and civil laws.

The requisite information would cover the debtor's name (or other identifier, such as government issued identification number), the debtor's address, the generic or specific description of the movable property subject to the charge (or other identifier, such as serial number of vehicles), the creditor's name (or other identifier) and the creditor's address. The

identification of the creditor's name (or government issued identification number) is essential to comply with the informational requirements and search criteria concerning the charge transactions recorded in the registry. The requirement of the debtor's signature on the registered notice of the charge as evidence of the authority to its registration is however incompatible with the operations of a computerized registry system. In some jurisdictions, the secured creditor must be authorized by the debtor to effect registration of a charge in the registry. This requirement is customarily satisfied by an express authorization contained in the charge agreement between the debtor and the secured creditor. This authorization is not shown or filed with the registry staff. The consent requirement is enforced by a financial penalty and civil liability, together with a simple procedure to enforce discharge of any unauthorized registration.

In most modern systems, the records of movable registries are maintained in digital form, in a computerized database. Accordingly, all entries and searches are carried out on the centralized database. The use of digital records systems offers several important advantages over paper records (and archives). In particular, digital records are less susceptible to the risk of destruction or damage through theft or sabotage, fire, flood or other disasters. As a result, electronic entry and retrieval of information contained in a computerized database is undoubtedly more efficient and cost-effective than a paper archive system where filings and searches are carried out manually in the paper records (or archives) maintained by the registry. The computerized system would provide for a direct on-line entry and search of information in the computer database, without direct (or limited) involvement of the registry staff.

The feasibility of creating a digital information based system is contingent on several factors. These factors include the applicable legal regime, infrastructure constraints and particular social and economic context. Nonetheless, a manual paper-based system can easily be supplemented with a supporting digital record system. The back up system would require that the paper notices be scanned and entered into a digital database. An existing manual document filing system could easily be converted over a transitional period to a computerized system. Throughout the transition period, the registry staff would convert the paper records contained in the paper archives into a computer database system. This requires the adoption of appropriate safeguards and other measures to ensure the reliability of the information in the computer database. The ultimate purpose of the conversion process is to convert in its entirety the existing paper-based system over a transitional period to an electronic computer data system. For the duration of the transition period, the legal framework would authorize the filing of paper notices by mail, telecopy or electronic mail, and requests for searches and research results by mail, telecopy or

electronic mail. In addition, telephone search requests could be made and followed by a written confirmation. Alternatively, the current paper – based systems could simply be replaced by a computerized system without any conversion of the existing paper – based system and data. In this case, all current paper-based registrations that are effective would be subject to a renewal of registration requirement under the new computerized system over a transitional period, after which all non-renewed former registrations (i.e. not registered in the computer database) would cease to have any effect as of a designated date.

In a digital registration system, registrations and searches can be carried out on a centralized computer database on a real-time basis, from facilities located in strategic localities within the country. Consequently, regardless of the geographic location of the users (whether registrants or searchers), registrations and searches can easily be carried out throughout the country, without requiring physical presence at the registry (whether at a central or local registry). This is an obvious benefit over a paper archive system, where users of a paper registry must deliver notices to the registry and carry out searches physically at the relevant registry.

In a paper-based archive system, registration of notices and access to the recorded information are made by manual filings and physical searches in the paper archives maintained by the registry staff. This is in stark contrast to a digital based system where the registration and search process are entirely computerized. In a computerized system, secured creditors and debtors are responsible for directly entering the required registration information (and other information, such as modifications and cancellations) in digital form into the electronic database (the data registry) operated and maintained by the movable registry. Searchers (and other users) are also responsible for directly entering their own search criteria and retrieving the results. A complete electronic entry and search data system should result in a significant reduction in the registry's overall operational and maintenance costs, while providing an essential public service. Although a combined paper-computerized system is possible where users may either effect registrations and searches in a paper format, which would involve the registry staff in this process, or in an electronic format without the registry staff's participation. In compliance with modern movable registry reform, dual systems are not recommended, except possibly during a short transitional period where a paper registry system is converted to an all-inclusive computerized system.

The use of a harmonized indexing (entry, search and retrieval) criteria of the registered information is critical. The registration and retrieval of recorded information criteria are customarily centered on the debtor (or grantor of the charge), which would generally cover the legal name (or government issued identification number) and address of the debtor, and

information (or description whether specific or generic) concerning the movable property subject to the charge (or, where practicable, some other form of identifier, such as serial numbers of specific assets, such as motor vehicles). In most jurisdictions, the primary registration search criterion is the debtor's name (or other unique identifier), either the debtor's legal name or government issued identification number. Accordingly, the registration and search rules must provide direction on the required debtor's identifier for registrations and searches. In bilingual countries, it may be necessary to require the use of the debtor's government issued identification number as the principal (if not exclusive) registration and search criterion. The registration and search regulations should also provide a secondary method of identifying debtors who are not nationals or who do not have a government identification number issued by the designated government authority in the jurisdiction in which they wish to register a charge against their movable property.

In a document filing system, it is not possible for secured creditors to effect registration of charges over movable property until the debtor has executed the charge agreement creating the charge. In a notice-registration system, advance registration (where permitted under the legal charge transactions regime) is possible, provided that the charge irrespective of its registration becomes effective only upon its actual grant by the debtor. The advantage of permitting advanced registration results from the application of the first-to-register governing priority rule. In particular, the advance registration establishes a first-ranking priority position against succeeding charges at the registration phase, with the possibility to advance the credit to the debtor almost immediately as the financing arrangements, including the charge, are completed between the debtor and creditor following registration of the charge. In regimes that authorize advance registration, the debtor of record (or potential debtor) may request the secured creditor of record (or potential secured creditor) to cancel the entry in the register of the charge registered in advance, where the charge is not subsequently authorized by an agreement between the parties. The failure by the secured creditor of record is usually supported by financial penalties and civil liability, which are enforced through a summary procedure. In jurisdictions that allow advance registrations it is relatively rare for creditors of record to refuse to cancel (or modify) their registrations of charges that are not supported by outstanding secured obligations of debtors.

In addition to advance registration of a charge, the registration system can also permit the same parties to use a single registration for successive charge agreements between them that covers the same movable property irrespective of the underlying secured obligations. The flexibility of the

single registration for successive charges reduces registration costs for the parties, but most importantly permits the parties to modify and adapt their contractual financing arrangements as they develop over time without the loss of priority. As mentioned above, this option is possible only where the first-to register priority rule is the governing principle.

In a paper-notice system there is an unavoidable delay (according to several factors) between the receipt of the notice of registration (or amendment or discharge) by the registry staff and the time when the notice (or information) is recorded in (or entered into) the registry records by the registry staff and can be retrieved (or searchable) by the public. A delay also exists in an electronic registration process where the required information is first examined by the registry staff before it is entered in the registry's records for access by the public. In most modern registry systems, registration is legally effective only when the requisite information is entered in the registry records and can be searched and retrieved by the public. This situation requires that the secured creditors assume a risk of intervening registrations. The allocation of intervening registered charges risk is easily managed (if not eliminated) by secured creditors by permitting advances pursuant to the credit arrangements only upon receipt of the registration information as it appears in the register. Again, this allocation of risk complies with the purpose of the registration system and allocation of responsibilities to the parties to secured transactions.

It is impractical to require the registry's staff to either verify or otherwise guarantee the legal effect of the charge agreements, including the authority of the parties to effect registrations, amendments and discharges. The legal framework must provide for the effect of unauthorized entries in the register. Even though there are various approaches to this complex question, several modern movable registry systems deem all registered entries in the register, whether authorized or unauthorized, legally effective against third parties. This pragmatic approach allows searchers (or the public) to rely on the integrity of the disclosed information on the public records. If necessary, the charge transactions system could require that the registry staff promptly inform debtors and secured creditors of record of any registration, modification or discharge, and allow the parties to reinstate their registrations, subject to intervening third party rights in the collateral. The legal effect of unauthorised entries would not prejudice the respective rights of the parties for damages and other claims under applicable law.

The rules regarding errors or omissions in registered information of most modern movable charge registry regimes are based on the objective effect that information contained in the registry records has on third party searches. In other words, an error or omission in the registration is invalid solely if the error or omission is seriously misleading for third party

searchers. In fact, only errors or omissions that likely would have misled a reasonable person searching the registry are relevant. In a computerized registry, the registry designer must adopt a computer search programme that results in the retrieval of registrations that are consistent with the registration-search criterion used by searchers.

Modern movable registry systems are concerned with efficiently, reliably and accurately on a timely manner (preferably on a real-time basis) recording information submitted for registration in the registry and disclosing recorded information to applicants (whether debtors or secured creditors, or third parties and their representatives). They are also concerned with the protection of recorded information from unauthorized change, loss or damage that would put at risk the reliability and accurateness of the registry and the availability of the recorded information to the public. For this purpose, debtors and creditors of record must be confident that all information submitted cannot be amended or deleted without their consent, except as contained in the prescribed forms, or will be lost or varied in the registration process. Moreover, third parties (including parties who are acquiring rights in the collateral) must be certain that the information provided by the registry replicates accurately the information contained in the registry as submitted by the registrants.

V. OVERVIEW OF COMMERCIAL REGISTER

The principal source of commercial law in Morocco is contained in the Commercial Code. The Commercial Code covers commercial law matters, including the commercial register (*registre du commerce*), local and national registers, the pledge of a business (*nantissement d'un fond de commerce*), and several other types of pledge and registration of certain non-possessory charges on movable property.

Articles 27 to 78, of the *Code de commerce*, provides for the legal framework for the establishment, operation and maintenance of the *registre du commerce* (commercial register). The commercial register consists of a national register and local registers. One of the functions of the national commercial register is to centralize all the information contained in the local registers. The local commercial registers are operated and maintained by the *secrétariat-greffe du tribunal compétent* (currently the *tribunal de commerce*) under the supervision of the president of the commercial court, or any other annually designated judge. Information in the commercial register is accessible to the public. Any person can obtain on request from the *greffier* an extract or a copy of the

information contained in the register. A certificate (*certificat négatif*) can also be delivered confirming that a given person is not registered in the registry.

In effect, the commercial register provides information pertaining to business enterprises and merchants in Morocco, whether domestic or foreign. It also provides information concerning certain pledges of movable property made by business enterprises and merchants. The register is a good source of information concerning business enterprises. The use of the commercial register is premised on its efficiency and reliability. However, the national commercial register can only be examined in presence of a staff member of the registry. As a result of this requirement, a fully computerized registry system will require modifications to the current legal framework.

Registrations of information concerning business enterprises are made in the local commercial register where the business enterprise or merchant has either its principal office or head office. This information is made available to the central register (*registre central de commerce*) which contains all information of the local registers, however not on a real-time basis. One particularity of the Moroccan context is that operation of the national register has been delegated by the Ministry of Justice to the Office of Industrial Property (OMPIC), an agency under the Ministry of Industry and Commerce. OMPIC works with each jurisdiction to collect data from the commercial registries. Some data is collected in electronic form while other data is only available in hard copy. OMPIC processes all data received, and puts it into a consistent electronic format.

However, the information concerning non-possessory pledges under the commercial code is not centralized. In effect, therefore, this information must be obtained through searches in the local registers and in some cases in special registers, causing inefficiency and unreliability. This situation persists despite article 33 of the Commercial Code, which states that the purpose of the national register is to centralize for the Kingdom of Morocco all of the information contained in the local registers.

Although the use of multiple registries is not the preferred method, to the extent that all registries are linked on a real-time basis with the central register, some of the inconveniences of divided registries could be mitigated. It would be extremely useful for creditors (including potential creditors and credit providers) and debtors to simply rely on a registry system organized as a single comprehensive system and operating through a central information base or through a network linked to a single common database. Secured creditors, debtors and third parties who

rely on the registry about possible claims to movable property subject to a charge, or to protect their own charges, must be confident that the registry is accurate on a timely basis.

In the report dated February 2008, prepared by cabinet Maria Bahnini, for the *ministère de la Justice* of Morocco, based on a review of the current status of the commercial registry, the author highlights several significant inefficiencies of the current system and makes several recommendations, including legal and structural reform options, the review of which is beyond the scope of this report.

In the July 2006 USAID / Morocco draft Report: *Building a Modern Secured Financing System for Movable Property in Morocco: Implementation Plan*, the author highlights a number of inefficiencies regarding the current system for registration of charges on movable property. In particular, the following inadequacies are mentioned: (i) there is no national registry; (ii) registration cannot be made electronically but rather requires the physical presence of the applicant at the local registry and the filing of physical documents which are examined; (iii) the registration process, including the requisite documents, are not standardized, which causes delays and creates uncertainties; (iv) the relevant data is manually entered in the register, first in a paper register and then in a local computer database; (v) the computerized systems are not available to the public and have limited capabilities; and (vi) the archiving process is unduly complex.

The Commercial Code recognizes various methods of creating a non-possessory charge on movable property. They are: (i) *nantissement du fonds de commerce* (business pledge); (ii) *nantissement de l'outillage et du matériel d'équipement* (pledge on tools and equipment); (iii) *nantissement de marchandises* (pledge on inventory); (iv) *dépôt en magasin général* (pledge on deposits in bonded warehouses); (v) *nantissement de titres* (pledge on securities); (vi) *nantissement de certains produits et matières* (pledge on certain products); (vii) *crédit-bail* (leasing); (viii) *cession des créances professionnelles* (pledge on receivables); and (ix) *nantissement d'effets de commerce* (pledge on commercial instruments). Moreover, the *Code des obligations et des contrats* (Code of Obligations and Contracts) complements the rules concerning charge transactions under the Commercial Code.

The rules applicable to non-possessory charges are not uniform and neither are the registration requirements. For example, registration of commercial leasing transactions for movable property is made on a distinct register maintained at the local register. As this information is not contained in the commercial register, accessing it requires a separate search. The pledge of receivables is not subject to registration; therefore, there is no public record of such a charge. Although the pledge on tools and equipment is subject to registration, registration has to first be made in a

special register maintained by the local registry and if the grantor is registered in the commercial, registration must be made in the commercial register. These examples are contrary to the fundamental first-to-file rule and publicizing charges, which is one of the guiding principles of secured transaction law of modern systems. They show the complexity and inefficiency caused by the absence of a comprehensive, modern uniform movable charge registration system. Moreover certain types of non-possessory charge transactions are not subject to registration for the validity of their enforcement against third parties, including creditors of the debtors, such as pledge on receivables. There are limits on the types of movable property that can serve as collateral. The Commercial Code also limits the creditors of security by restricting the type of party to the transaction, the types of credit (or obligations) that the charge may secure, and the capacity of the charge to follow the property subject to the charge.

The goal of the registration system is to allow creditors or potential creditors to ascertain with confidence, clarity and simplicity, the existence of charges on movable property of debtors, including their respective priority. The role of the registry is simply to provide access to the information contained in the register. It is the creditor and the debtor, and not the registry that must effect the registration and ensure the validity of the underlying contractual arrangements between them. It should be noted that a comprehensive registration system is only one of the essential components of a modern secured transactions system. The establishment of such a system would be an improvement, but would not necessarily lead to the desired result without the existence of comprehensive and efficient enforcement rules. It may therefore be necessary to consider reforming the legal framework for secured transactions in its entirety, which would include both substantive provisions (i.e., creations, priority, publicity and enforcement) and a registration framework.

VI. CONCLUSION AND RECOMMENDATIONS

An effective legal regime for the creation and enforcement of charges on movable property, including the setting of priorities for charges and the publicizing of charges, is essential to increase access to credit. A comprehensive registration system of charges on movable property would lead to a transparent framework for publicizing charges; thereby eliminate uncertainty for third parties creditors. As mentioned above, modernizing the registration system is not in itself sufficient. In fact, the implementation of a modern secured transaction legal regime should also be considered and addressed by government authorities in Morocco.

In particular before investing in registry reform, it would be important that the responsible governmental agency consider a comprehensive secured transactions law reform. While registration of charges is an essential component of any non-possessory charge regime, it will not in itself resolve all the problems of the current legal regime (i.e., the limited role that movable property plays as collateral for access to credit). This review would require the examination and analysis of the constraints on creation, priority, publicity and enforcement of secured transactions law in Morocco, whether contained in the Commercial Code or in the Code of Obligations and Contracts, and propose principles for a modern secured transactions legal regime, including the necessary amendments to the current legal regime. For example, a modern filing system that is not comprehensive and permits other non-possessory charges without being registered in a centralized data system would defeat the purpose of the registration and publication of charges system. Alternatively, the requirement that documents are subject to a review by the staff of the movables registry before registration, or requires the filing of charge documents in addition to the notice of the charge, would compromise the effectiveness and reliability of the registration system.

An additional problem in Morocco is the very narrow (or limited) ranges of secured transactions in movable property that requires registration for their enforceability against third parties. Inefficient registration is also a problem. Third parties (including potential creditors) cannot identify all other possible secured creditors (or other claimants) to the collateral, or inform later potential creditors of their own security and that of other secured creditors. Also, the slow and costly enforcement represents a barrier to using movable property as collateral.

This report recommends a low cost notice-filing requirement within a comprehensive computerized registration system (or universal registration requirement), with minimal review by officials only to determine that all required information (as set out in the regulations) is provided in the charge notice filed for registration by either debtors or secured creditors, or their representatives. As we have seen, reforming the legal framework for using movable property as collateral will require first reforming the applicable framework that governs secured transactions in movable property followed by a reform of the registration system.

This report proposes two phases to accomplish this objective. The phases could be implemented separately, but as mentioned above and developed below, it would be clearly more advantageous to consider both phases as part of a comprehensive reform of the secured transactions legal regime in Morocco. It will be difficult (if at all possible) to implement a registry reform without first completing a review of the secured transactions legal regime in Morocco that is followed by

a reform of the rules concerning creation, priority, publicity and enforcement of secured transactions. Phase I would consist in improving on the current registration system for charges on movable property provided in the Commercial Code preferably on the basis of the proposed reformed legal framework. While Phase II would consist in a comprehensive review and analysis of the current secured transactions on movable property regime in Morocco, including the registration system, with a view to reform the legal framework for charges on movable property, including amendments to the current laws. As noted, Phase I is dependent on the outcome of Phase II. After all, it would be somewhat difficult and perhaps inefficient to implement and invest in technologies and systems for a registry reform to meet specific requirements, without a completed and approved proposed reform of the law of secured transactions in Morocco.

A simple comprehensive legal regime for secured transactions with a broad scope of application that emphasizes function, not simply legal form, would be the best way to reform the secured transactions regime under the Commercial Code, as supplemented by the Code of Obligations and Contracts. A comprehensive legal framework, whether contained in the Commercial Code or Code of Obligations and Contracts, or other code or law, should govern all components of secured transactions from the creation, priority, publicity to the enforcement of all secured transactions in movable property in Morocco.

The components for a comprehensive reform would include (i) the preparation of a study on the current regime and options for reform; (ii) the sequence for reform that would require specific attention and the decision whether to implement the proposed reform in incremental steps or to carry out a comprehensive change to the current legal regime; although, if possible, a thorough reform, subject nonetheless to a sequential implementation following a logical course of action, would be the best option, for example, the rules for publicizing changes must first be agreed before the registry is designed; (iii) the enactment of a secured transactions reform law, with regulations and selection of a registry filing system; (iv) the preparation of administrative and technical regulation for the selected registry filing system; and (v) the training and public awareness of the new regime.

However, if it is decided to modernize the registration system as a first phase or concurrently with Phase II, the following essential components should be carefully examined:

- Registration in the commercial register (*registre central*) of all non-possessory charges under the Commercial Code is required to render enforceable any such charges. This will require changes to the current legal regime. The system governing secured transactions in the

Commercial Code is limited and fragmented. Secured transactions take several forms, which are strictly defined (e.g., different types of pledges, see Section V). The framework is limited in that it authorizes only designated parties to create only specifically determined types of security over movable property. There is no comprehensive (or single) set of rules applicable to all secured transactions over movable property.

- Registration notice must be simplified to only require basic information concerning the debtor, the movable property subject to the charge and the secured creditor, without any requirement to submit for review the charge agreement or any other document to the registry staff. This will require changes to the current legal regime. Notice-registration system is preferred to document filing system in the majority of modern movables registry. The role of movables registry is to publicize secured transactions. The notice provides the names (or government issued identification number) and addresses of both the secured creditor and debtor and the existence of a security over movable property. Secured creditors and debtors are the ultimate source of reliable information about secured transactions which are registered in the registry. Third parties who wish to obtain relevant (i.e., reliable and complete) information on any registered secured transaction, would contact either the debtor or the secured creditor, or both, to obtain any further information regarding the secured transaction covered by the registered notice as it appears in the registry (i.e., the computer database).
- The registry is operated by a government department or a government corporation. The registry could also be managed under contract with a private organization, while remaining under the control and supervision of a governmental agency under a public-private arrangement.
- Registration is completed and has effect only when the following information is entered in the computer database of the registry and is accessible to the public: (i) the name (or government-issued identification number) and address of the secured creditor; (ii) the name (or government-issued identification number) and the address of the debtor; and (iii) a description of the collateral.
- Registration can be effected either (i) by the transmission of the required registration information directly to the computer database of the registry by approved users; or (ii) by the transmission of the required registration information in paper format (either by delivery,

mail, telecopy or electronic mail) to the registry. In this case, the information is entered into the computer database of the registry by the registry staff.

- Registration can be effected before a charge agreement has been concluded between the debtor and the secured creditor, subject to the consent of the debtor. The priority of the charge has effect against third parties from the time of registration and not from the time the charge becomes effective between the parties. Alternatively, registration can only be effected after a charge agreement is executed between the debtor and secured creditor. The priority of the charge is determined from the time of registration (i.e., in the computer database) and not from the time the charge is created by the parties to the charge agreement.
- A single registration can cover several separate agreements between the same parties, provided that the description of the collateral is sufficient to cover the collateral under each agreement. A separate registration could be required for each agreement creating a new charge.
- Registration becomes effective only when it can be discovered (i.e., retrieved) through a search in the computer database of the registry by the public. It can be discharged at the request of the debtor if it does not relate to an existing charge. Registration remains effective for a time specified in regulations and must be renewed prior to the expiry of the specified time to maintain its effectiveness.
- All collateral, other than specified, uniquely identifiable collateral, may be described either in a detailed manner or in generic terms. Where the charge is on all present and future movable property of the debtor, an all-inclusive description may be used. Specified uniquely identifiable collateral must be described using the specific identifier (e.g., serial number) except where the collateral is inventory.
- Registration-search criteria are (i) the debtor's name (or government-issued identification number); and (ii) the identifier for uniquely identifiable collateral. Alternatively, the debtor's name (or government-issued identification number).
- A registration is invalidated by an error or omission in the registration data when all registration data cannot be retrieved by using the correct form of the registration-search criterion set out in the regulations.

- Amendments and discharges can be effected either (i) by the transmission of the amendment or discharge information directly to the computer database of the registry by approved users; or (ii) by the transmission of the amendment or discharge information in paper format (either by delivery, mail, telecopy or electronic mail). In this case, the information is entered into the computer database by the registry staff. Amendments and discharges become effective only when they can be discovered (and retrieved) through a search in the computer database of the registry by the public. Correction of unauthorized amendments or discharges is authorized, subject to the rules that protect third parties who rely on searches in the registry after the amendment or discharge and before reinstatement of the original recorded entries. Alternatively, amendments and discharges are recorded in the computer database of the registry, but become effective only if authorized by the secured creditor. This latter approach would however compromise the efficiency of the registry.

The principles described above are neither necessarily new nor exclusive to any jurisdiction or system of law, whether common law or civil law. The principles discussed in Section IV, together with those describe above, provide guiding principles for a modern and reformed registry for secured transactions on movable property in Morocco, within a comprehensive reformed secured transactions legal framework.

Based on its existing legal platform of the commercial register, Morocco can develop and implement a computerized registration system, based on a first-to-file system described above, that is accessible by the public and supported by proper regulations and operating procedures. This partial reform would require changes to the current legal regime contained in the Commercial Code and other implementing legal instruments. Although, as mentioned above, this reform would require the review and analysis of the current laws on charge transactions for a more comprehensive modernization of the secured transactions on movable property laws in Morocco. The architecture for the establishment of the proposed registration system, based on the legal framework, will require the following: identification of equipment, software, staffing, links to existing and new local registries and the central registry, fee structure, training and institutional and public awareness of the registration system. This will require amendments to current laws, in particular the Commercial Code.

By giving potential (and existing) creditors who rely on the commercial register the confidence that they can protect their own charges (and claims) and obtain reliable information on prior charges, such a registry system can reduce transaction costs for secured credit and significantly

increase the volume and speed of secured transactions. Without such an effective registry system, no law on secured transactions, no matter how modern, can deliver on the potential economic benefits of non-possessory secured credit. The architecture for the establishment of a computerized registration must be comprehensive, self-sustaining, reliable and easily, cheaply and quickly accessible by the public.

In Phase I the components of the charge registry system discussed above should be considered for its implantation within a comprehensive legal reform of secured transactions in Morocco. This implementation will require certain modifications to the current legal framework, including changes to the current computerized registration system. As mentioned in this report, and in particular in Sections III, IV and V, the current legal framework contained in the Commercial Code raises problems in publicizing security as well as problems relating to the creation, priority and enforcement of secured transactions. For example, problems in publicizing secured transactions include unclear rules regarding priority over other secured creditors, divided registration systems (or multiple registers), not all non-possessory charges are subject to registration, uncertain reliability of registered information, limited access to the filing of secured transactions, limited access by the public to register information and speed of the registries. As we have seen above, reforming the legal framework for secured transactions requires first reforming the applicable regime for secured transactions (i.e., the laws that allow movable property to be subject to a security (or charge) to secure payment or performance of an obligation), and then reforming the institutional framework for publicizing the existence of secured transactions, by establishing a registration filing system. This Phase 1 could be implemented over a period of 12 to 18 months.

In Phase II, the relevant government authority, with the assistance of experts, will provide a report on the current legal regime for charges on movable property, together with the principles of a modern secured transactions regime, which would apply to both business enterprises and consumers (subject to consumer protection laws and other laws on social protection of debtors), the nature of amendments to current laws on secured transactions in Morocco required for such a modern secured transactions regime, and harmonization of laws with the proposed secured transactions principles. Following the report, the working group will prepare a draft secured transactions law recommended for Morocco.

In particular a reformed legal framework for secured transactions should satisfy the following basic goals: (i) the law should permit inexpensive creation of a security (or charge) against all

movable property by any person for any transaction; (ii) the registration system should be based on a public filing system that allows the public inexpensively and in a timely manner to effect registered secured transactions in the computer database and file new secured transactions and to search in the computer database; (iii) the law should clearly recognize that priority should be based on the first-to-file rule; and (iv) the law should provide inexpensive and fast enforcement that allows recovery and sale of the collateral, including “self-help” by secured creditors without breach of peace or court order (i.e., a system that is administered by secured creditors subject to limited judiciary involvement).

In summary, a legal problem requires a legal solution. Therefore, reforming the registration system as part of the secured transactions legal regime in Morocco will require first reforming the applicable legal framework (i.e., the rules governing creation, priority, publicity and enforcement), and then reforming the institutional framework for publication and registration of secured transactions. This reform will require (i) the preparation of a comprehensive study with a proposal for reform, including proposed modifications to the current legal regime; (ii) the sequence for the implementation of the reform, based on the study and recommendation for its implementation; (iii) the preparation of a draft law on secured transactions; (iv) the enactment of the law on secured transactions reform; (v) the preparation of the regulations; (vi) the selection of a registry filing system; (vii) the preparation of administrative and technical regulations for the selected registry filing system; (viii) the establishment of the selected registry filing system; and (ix) public awareness of the new secured transactions legal regime, including the registry filing system. This Phase II could be implemented over a period of 2 to 3 years.

Moreover, the policy makers in Morocco must not only address the fundamental questions concerning the creation, priority, publicity and enforcement of secured transactions, as four integral components and not in isolation, but must also confront questions that transcend all of these four questions when deciding on a course of action regarding the selection of a registration system for secured transactions, within an economically effective comprehensive legal regime. As such the unified functionality for secured transactions should satisfy certain minimum economic requirements. They are as follows: creation that is inexpensive, simple and comprehensive; publicity that is public and inexpensive to file and search; priority based on a simple and clear principle – first-to-file rule; and enforcement that is inexpensive and efficient. In conclusion, both Phase I and Phase II together should form part of a comprehensive modernization of the legal framework for secured transactions in Morocco.