
REPORT ON THE OBSERVANCE OF STANDARDS AND CODES (ROSC)

MOROCCO

INSOLVENCY AND CREDITOR RIGHTS SYSTEMS

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EXECUTIVE SUMMARY

Legal systems provide reasonably modern protections for creditors and credit recovery means in Morocco. While court enforcement proceedings tend to be relatively inefficient, recent reforms are resulting in some improvements. Creditor rights are based on a contract and procedural system inspired by French law and provide for a wide range of security and collateral devices. The system is somewhat complex as regards the priority ranking classes and liens. Constraints in the system and illiquid markets typically result in low recoveries, even for secured creditors. All kinds of security are provided for under the Code of Obligations and Contracts and the Code of Commerce allow for many types of collateral, although notably pledges and mortgages are preferred by banks along with the use of debt discount, factoring and assignment of claims techniques. Reliable as these devices are, secured creditors are still plagued by inefficiencies in the judiciary that hinder efficient enforcement and recovery, but this problem is decreasing.

The Moroccan legal framework for commercial insolvency was overhauled in 1996 with the adoption of a new legal framework. This new system provides for pre-insolvency, rehabilitation and liquidation procedures. New commercial courts (at first instance and appellate level), with jurisdiction over insolvency matters, were created in 1997 and facilitate the application of the new insolvency law in a consistent manner. Rehabilitation and liquidation procedures are governed by a unified procedure leading to one or the other solution. The effectiveness of the new system is restricted by abusive filings by debtors who benefit from the stay of proceedings, in certain instances for an undue period of time, and by a lack of adequately trained and qualified professionals (syndics).

The establishment of new commercial courts has considerably improved the resolution of commercial matters and has contributed to more consistent and efficient processing of cases by the judiciary. Conversely, the absence of court performance standards and judicial training are counterbalancing factors that hinder the systems overall efficiency. Similarly, the absence of a regulatory body and of competency requirements for insolvency administrators and liquidators is a major impediment to the effective functioning of the insolvency system.

Nearly all corporate lending in Morocco is secured, with unsecured lending accounting for minority of total corporate advances. Large domestic and foreign banks maintain advanced procedures for managing credit defaults, and use a wide-range of techniques for recovery and resolution. While workout procedures have not been formalized, banks and financial institutions routinely employ workout techniques to reach amicable arrangements to reschedule debts and restructure businesses. Still banks complain about low recoveries, slow and inefficient court processes, encumbered by the excessive use of experts whose mission is not always justified and properly handled.

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I. INTRODUCTION

1. The World Bank assessed the Moroccan insolvency and creditor rights systems pursuant to a joint IMF-World Bank initiative on observance of standards and codes ("ROSC") in 2003. The review was carried out using the World Bank *Principles and Guidelines for Effective Insolvency and Creditor Rights Systems* (Principles).² These systems constitute an essential cornerstone of commercial confidence and the bedrock for a sound credit management and its resolution.

2. The conclusions in the present assessment are based on: (i) a background report on home practice prepared by the Moroccan firm Naciri & Partners; (ii) a review of the relevant legislation,³ and other relevant pieces of legislation, regulations and related information; and (iii) various meetings held with a wide range of stakeholders, institutions and professionals both in the public and private sectors, representing a cross section of country stakeholders to review and discuss the effectiveness of the legal infrastructure supporting debtor-creditor relationships, the insolvency system, credit risk management and resolution practices.

II. DESCRIPTION OF COUNTRY PRACTICE

A. CREDITORS RIGHTS AND ENFORCEMENT PROCEDURES

3. **Morocco has a developing, credit-based economy.** Banks and leasing companies are the core players in the market. Credit instruments are mainly limited to direct working capital and investment lending from banks, leasing and factoring. There is an insignificant level of activity involving complex and/or derivative instruments. Consumer lending and mortgage lending make up a small part of the overall portfolio of credit institutions other than specialized financial institutions. Bank credit is nearly always secured, with a few exceptions of unsecured lending for the most creditworthy clients. The systems of

² World Bank, *Principles and Guidelines for Effective Insolvency and Creditor Rights Systems* (April 2001) http://www.worldbank.org/ifa/rosic_icr.html.

³ Major legislation reviewed include, amongst others, the Code of Commerce (*Dahir n°1-96-83* of August 1, 1996 *portant promulgation de la loi n° 15-95 formant code de commerce*); the Law of Obligations and Contract (*Dahir* of September 12, 1913 *formant code des Obligations et des contrats* as amended and supplemented lastly by *Dahir* of May 11, 1995); the Law establishing Commercial Courts (*Dahir 1-97-65* of February 12, 1997 *portant promulgation de la loi n° 53-95 instituant les juridictions de commerce*); Law on Limited company (*Dahir n° 1-96-124* of August 30, 1996 *portant promulgation de la loi n° 17-95 relative aux sociétés anonymes*); the Code of Civil Procedure (*Dahir* of September 28, 1974 *portant loi n°1-74-447 approuvant le texte du code de procédure civile*); the Banking Law (*Dahir portent loi n° 1-93-147* of July 6, 1993 *relative à l'exercice de l'activité des établissements de crédit et à leur contrôle*); the Law on Registered Real Property (*Dahir fixant la législation applicable aux immeubles immatriculés* of June 2, 1915); the Code of Recovery of Public Debts (*Dahir n°1-00-175* of May 3, 2000 *portant promulgation de la loi n° 15-97 formant code de recouvrement des créances publiques*); the Law on Industrial Property (*Dahir* of February 15, 2000 *relatif à la protection de la propriété industrielle*); the Law Regulating the Sale on Credit of Automotive Vehicles (*Dahir* of July 17, 1936); the Decree Regulating Civil Aviation (*Décret n° 2-61-161* of July 10, 1962); the Maritime Code of Commerce (*Dahir portent Code de commerce maritime* of March 31, 1919); the Law on the Practice of Lawyers (*Dahir n° 1-93-162 organisant l'exercice de la profession d'avocat* of September 10, 1993).

enforcement of both unsecured and secured credit claims outside the framework of insolvency, as well as within the insolvency system, work reasonably well together.

4. **The law provides for a wide array of security interests over a broad range of assets.** This includes surety or personal security given by a third party (*cautionnement*), retention right, assignment of receivables by way of delegation, assignment of professional debts, pledge on bonds, debentures and shares, pledge on movable and immovable property, pledge of the business, pledge of tools and equipment, mortgages on real estate, ships and aircraft and privileges. Laws regulating the creation and enforcement of security include the Law of Obligations and Contract (*Dahir des Obligations et des Contrats* of August 12, 1913 as amended and supplemented by *Dahir* of May 11, 1995), the Law on Registered Real Property 1915 (*Dahir fixant la législation applicable aux immeubles immatriculés* of June 2, 1915), the Code of Commerce (*Dahir n°1-74-447 formant code de commerce* of August 1, 1996) and the Code of Recovery of Public Debts (*Dahir n°1-00-175 formant code de recouvrement des créances publiques* of May 3, 2000).

5. **Accelerated procedures enable unsecured creditors to recover overdue debts more swiftly by means of a payment order, attachment proceedings or commencement of a lawsuit.** A creditor, irrespective of nationality, may apply to the competent Court to obtain payment of his claim according to the applicable procedural rules. Moroccan law provides for efficient means of recovery by creditors whose claims fulfill certain conditions. The payment order proceeding is a fast track procedure consisting of an ordinance adjudicated upon filing of a request by the President of the Court. Such ordinance allows the creditor whose claim is based on a deed, or a confirmed undertaking, to obtain prompt settlement by the debtor or, instead, an enforceable title granting him the right to perform a distraint over movable or immovable assets.

6. **Attachment proceedings are effective and less costly than a lawsuit, which typically takes longer and costs more.** They allow for the sale of movable as well as immovable property including a trader's business or a company. An array of legal means are available such as attachment of movable and real property, including sequestration of property, distraint, garnishment, writ of execution on tenant's furniture and chattels, and seizure under a prior claim. Unsecured creditors may not request forced sale of a real property unless the movable property of the debtor has been exhausted. Judicial intervention is nonetheless required should the creditor wants to sell the debtor's whole business including equipment and stocks.

7. **A few laws have recently been enacted with the aim to accelerate the recovery of civil and commercial debts by shortening delays and limiting the effect of the appeal under certain circumstances.** In particular, Law n°19-02 supplementing the Civil Procedural Code provides that the execution of an injunction ordered by the President of the Court of First Instance, which is based on a commercial paper or a notarized deed, cannot be suspended by the effect of the time period allowed to lodge an appeal nor by the appeal once it is made. Law n° 1.8.02, supplementing the law creating the Commercial Courts vests the President of the Commercial Court with the power to hear and adjudicate on claims above 20.000 Dirham when based on same legal instruments.

8. **Creditors' priorities, established by law, promote a satisfactory level of predictability in recovery when a property interest is pledged or granted to more than one creditor.** In particular, tax liens on immovable property must be registered with the Real Estate Office to ensure enforceability against third parties.

9. **Registration of secured interests over movable and immovable properties is formalized through numerous registries depending on the nature of the assets secured.** Registration relating to real property is made at two different registration venues, both of which are mandatory: the Real Estate Office (*Bureau de la conservation foncière et hypothécaire*); and the Registration Office (*Service de l'enregistrement*). Registration with the Real Estate Office determines enforceability of a mortgage vis-à-vis third parties, the latter being essential for tax purposes. Registration venues and systems relating to personal property depend on the type of personal property that is given in collateral. The privilege carried by a pledge on the business of the debtor is established on the Commercial Registry (*registre du commerce*) of the place of business of the debtor. Sureties on equipment and machinery are established on a Special Registry (*registre spécial*) held by the Clerk's Office in the Court of the location of said property and on the Register of Commerce and Special Register at the place of the head office of the debtor. Sureties on subsidiaries of the debtor must also be recorded with the Clerk's Office of the Court of their head offices. Other registers are specific to security interests taken on trademarks, aircrafts, vehicles and sea vessels.

10. **The registration procedure is deemed fairly transparent, costless, easily accessible and open to foreigners.** Recording real property procedures with the Registration Office, depending on the real property concerned may be free, submitted to a fixed rate or at *pro rata* of the mortgage value. Recording procedures with the Real Estate Office are always in proportion to the value of the mortgage itself. All records are made available to the public and the recording system may be deemed fairly transparent. Fees applied by the Commercial Registry are calculated *ad valorem*. There is no limitation on foreigners for taking and registering security.

11. **Enforcement of security rights is a rather easy procedure, especially within the industrial and commercial context but is often delayed due to an over-reliance on judicial experts.** The applicable laws governing enforcement of security interests are: the Commercial Code, the Law of Obligations and Contracts, the Law on Registered Real Property and the Civil Procedural Code defining the rules of distraint and forced sale for all Creditors, except the Government and the Administration, which are subject to the provision of the Law on Recovery of Public Debts with the exception of their commercial debts. In addition to their priority rights at the time of the distribution of the proceeds of the sale of the collateral, the secured creditors enjoy special rights in relation to the collateral, namely: (i) concerning real property, the mortgagee is entitled to carry out a distraint without having first to execute on personal property of the debtor; the registered secured creditor is entitled to proceed with the forced sale even if he has no enforceable title; (ii) concerning personal property, the pledgee is entitled to proceed with the sale without any delay and according to a simplified process. However, the enforcement procedures are congested due to the recourse to execution officers and the undue

intervention of experts requested to appraise the property that they sometimes quote irrespectively of its market value.

B. LEGAL FRAMEWORK FOR CORPORATE INSOLVENCY

12. **The legal framework for corporate insolvency was totally overhauled in 1996 and 1997.** The present Moroccan insolvency legal system results from the reform enacted by the *Dahir* of August 1, 1996, which established the new Commercial Code. The provisions pertaining to the treatment of the difficulties of the enterprise, included in “Book V” of the Commercial Code, encompass provisions on prevention of the difficulties through out of Court or judicial workout which may lead to a stay of proceedings, and provisions relating to rehabilitation and liquidation proceedings. These provisions have been supplemented by the *Dahir* of February 12, 1997, creating the Commercial Courts with jurisdiction over all cases related to insolvency. Among other things, the new legislation was designed to preserve businesses through rehabilitation—by means of a continuation plan of the business and/or a plan of transfer or through liquidation—the value of the assets of the debtor and the industrial and/or commercial potential of his firm as well as to preserve jobs while protecting the creditor’s interests through paying off the debts.

13. **The Moroccan unified insolvency procedure, a two step process,** represents a major step forward compared to the old regime of 1913 and is clearly better adapted to the context of a market economy. It includes many of the devices found in the modern insolvency laws of developed countries oriented towards rehabilitation of the businesses and reflects a concept oriented towards the predominant role of the judicial organs opposed to systems granting a decisional role to the creditors. The proceeding is uniform and leads to the rehabilitation or liquidation of the debtor. The rehabilitation proceedings may be converted into liquidation proceedings but not conversely.

14. **The new Code of Commerce establishes a comprehensive insolvency system that has yet to prove its efficiency.** The main impediments to efficiency are a general lack of references for Judges and a weak professional environment. Clearly, the system contains the necessary technical features and tools to make it appropriate when institutional and regulatory aspects will have been improved.

15. **If certain basic concepts of the new law have led to a number of difficulties of interpretation at the outset, the case law now seems to clarify it.** In particular, the law sets forth as a fundamental condition for the opening of an insolvency proceeding, the evidencing of cessation of payments of the debtor. Courts require evidence of a written demand for payment. Courts are now almost unanimous on the need to prove that the debtor is unable to pay its debts as they come due and where payment has actually been requested with available assets.

16. **Insolvency proceedings were slow before the reform but have improved significantly thanks to the creation of Commercial Courts.** However the overall situation has not improved due to a substantial increase in the number of cases. According to bankers and judges, the very important increase of the number of insolvency cases is largely due to a change of attitude from the debtors after the coming into force of the new

legislation. It appears that a number of traders and managers of small and medium size companies have often applied for insolvency for the sole advantage granted by the stay which comes automatically with the judgment opening the proceedings. The banks allege that it is now very common for debtors to try to negotiate their debts by claiming that they can stop foreclosure and enforcement by applying for insolvency. The application of the formal criteria of default of payment at maturity provides the debtor with a consequent leverage. It has thus been important to clarify the case law on the commencement of insolvency proceedings.

Table 1. Insolvency Cases in Casablanca

Type of Proceedings	1998	1999	2000	2001	2002
Registered petitions	39	127	384	397	492
Adjudicated petitions	29	114	342	387	503
Pending petitions	10	28	68	78	67
Rehabilitation judgments	13	66	78	73	45
Liquidation judgments	16	48	62	73	57

Source: Ministry of Justice - Statistics Office

17. **Enhanced powers by the insolvency judges facilitate more efficient disposal of real property.** Liquidation and transfer of asset proceedings are governed by general rules of civil procedure designed for claims resolution. The Insolvency Judge (*Juge commissaire*) holds particular powers in the context of liquidation that provide for a more efficient disposal of assets. After having consulted with the controllers representing the creditors—the Head of the business and the Syndic—the insolvency judge establishes the price and essential conditions of sale and determines the modalities for publicity. In as much as the consistency of immovable property, its location or offers received are of such nature as to allow for an amicable settlement in the best conditions, the Insolvency Judge may authorize the sale either by amicable adjudication on the price fixed or by consensus at the price and conditions that he determines, the outbidding of which is always possible. The adjudication redeems all security interests.

18. **The law grants to the Syndic strong powers enabling him to interfere with contractual obligations.** The Syndic is empowered to ask for the continuation and the performance of any contract in force before the commencement of the insolvency procedure, under the express condition that he performs the obligation of the debtor towards its contracting partner. The Syndic’s right can be exercised notwithstanding the non performance by the debtor of its obligation under the contract prior to the opening of the collective procedure.

19. **The law provides that, according to their nature, acts and transfers made under irregular conditions by the debtor within a determined pre-insolvency period (suspect period) can be or are automatically avoided.** The suspect period extends from the date of cessation of payments to the date of commencement of the proceedings in both liquidation and rehabilitation procedures, subject to prolongation for some specific contracts. The date of cessation of payment is determined by the Court in the judgment opening the proceedings and may be modified subsequently. The duration of the period cannot exceed eighteen months.

20. **The rights and priorities of creditors established prior to insolvency under civil and commercial laws are generally upheld in the insolvency procedure subject to certain exceptions.** The most important exception is the priority granted to the debts incurred by the debtor after the judgment opening insolvency proceedings. These debts are to be paid prior to those existing at the time of the opening of the procedure, whether secured, privileged or not. Because it is perceived as an incentive to contract with businesses under insolvency proceedings, such solution is aimed at encouraging successful reorganization proceedings.

21. **The law confers little control to creditors whose protection is devoted to insolvency administrators or liquidators (Syndics).** Creditors are also represented in the proceedings by so-called controllers, who are chosen among creditors by the insolvency judge. They have no direct access to the information concerning the debtor and do not participate to the elaboration of the plan of continuation or of transfer, nor do they vote on the plan decided upon by the Court alone, with the insolvency judge as the cornerstone of the proceedings. The information is channeled and transmitted by the controllers who are under no strict obligation to transmit a timely and fair amount of information to them.

22. **The legal provisions of the new Code of Commerce are conducive to judicial workouts according to the prevention procedure encompassing an alert procedure.** The alert procedure essentially carries on the professional duty imposed on the auditors (*commissaires aux comptes*) of a company and on the partners to initiate a warning procedure, should any fact which could be detrimental to the ongoing status of the company, come to their knowledge by way of notification to the manager of the enterprise. If no remedy is taken, the general assembly of the company must be convened and, ultimately, the President of the Commercial Court must be informed.

23. **The law provides for important investigation powers granted to the President of the commercial court.** The President of a commercial court can call for a meeting with the manager of the company to discuss the means to restore the company's condition and can request additional information from various sources in order to ascertain the actual financial condition of the company. The president of the Court has also the discretionary power to give a mandate to a third party in order to try to reconcile partners and counterparts positions.

24. **The law also provides for an amicable settlement procedure independent of the insolvency procedure reserved to debtors whose financial condition do not yet qualify for insolvency proceedings.** The amicable settlement procedure (*procédure de règlement amiable*) aim of which is to avoid formal insolvency proceedings for companies not yet in default is placed under the supervision of the Commercial Court led by an independent advisor (*conciliateur*). The initiative of such a procedure remains exclusively in the hands of the legal representative of the debtor. Upon the request of the conciliator, the President can grant a stay for the duration of the conciliator's mission, whose effect is to suspend all pending proceedings and to prohibit any further legal proceedings against the debtor relating to debts incurred prior to the opening of the procedure as well as any action in revocation of a contract. In case the stay is granted by the President and unless otherwise provided for in the grant order, such acts would be deemed null, the debtor is not

allowed to pay any debt, which occurred prior to the grant order (except in favor of employees), to compensate sureties having concurred to payment of such debt, to grant a mortgage or to dispose of assets otherwise than in the daily running of business.

C. REGULATORY FRAMEWORK FOR CREDITOR RIGHTS AND CORPORATE INSOLVENCY

Institutional Framework and Capacity

25. **The Law establishing Commercial Jurisdictions (LCJ) created in 1997 Commercial Courts and Commercial Courts of Appeal with jurisdiction over all matters related to insolvency.** The Commercial Courts have a broad competence extending to: the debtor, its representatives, officers and directors; debtor's estate (property and collection of claims); secured creditors; unsecured creditors; holders of equity interests; matters related to the debtor, its assets or its relations with creditors.

26. **The Court that pronounces the commencement of the insolvency procedure retains a large administrative power of the case and of the direction of operations.** It includes the decision to open the insolvency procedure, to decide upon liquidation or rehabilitation, to accept the plan or transfer of the business and/or to revoke the plan. It has an enlarged competency to adjudicate all matters and disputes relating to or deriving from the difficulties of the enterprises including prevention, rehabilitation and liquidation.

27. **Although specific training and competence of the Judges dealing with insolvency matters are not yet satisfactory, the situation is improving.** In practice, a number of judges appointed to the Commercial Courts in the insolvency divisions have been transferred from the chambers dealing previously with such matters within the old jurisdictions while the newcomers in the insolvency field have to catch up with a new practice and train themselves along with the experience they acquire from handling cases. In order to deal with these difficulties, the training school for magistrates (*Institut Supérieur de la Magistrature*) is moving towards further specialization of judges in commercial matters, and the Ministry of Justice organizes continuing education sessions on commercial law. Notwithstanding the fast growing number of insolvency cases and payment order procedures, the Commercial Courts prove to be active as shown in the table below.

Table 2. Insolvency Cases and Payment orders - Year 2002

		Pending petitions 01.01.02	Registered petitions	Total	Adjudicated petitions	Pending petitions 12.31.02
Casablanca	Insolvency	78	492	570	503	67
	<i>Payment orders</i>	0	12668	12668	12160	468
Rabat	Insolvency	7	59	66	62	4
	<i>Payment orders</i>	27	2006	2033	2030	3
Tangier	Insolvency	9	20	29	21	8
	<i>Payment orders</i>	0	634	634	634	0

Fees	Insolvency	9	15	24	20	4
	<i>Payment orders</i>	0	1182	1182	1182	0
Oujda	Insolvency	2	8	10	8	2
	<i>Payment orders</i>	0	395	395	395	0
Mekhnès	Insolvency	7	23	30	20	10
	<i>Payment orders</i>	0	848	848	848	0
Marrakech	Insolvency	21	44	65	52	13
	<i>Payment orders</i>	0	1620	1620	1620	0
Agadir	Insolvency	50	177	227	151	76
	<i>Payment orders</i>	0	2072	2072	2072	0
TOTAL	Insolvency	183	838	1021	837	184
	<i>Payment orders</i>	<i>27</i>	<i>21385</i>	<i>21412</i>	<i>20941</i>	<i>471</i>

Source: Ministry of Justice - Statistics Office

Regulatory Framework

28. There is no professional body regulating or supervising the insolvency administrators and liquidators (Syndics) who are freely chosen and administrated by the Court. According to the Code of Commerce, the function of insolvency administrator (Syndic) is carried out by the Clerk's Office of the Court but the Court may also designate a third party. In fact, on the one hand, the Court appoints members of its staff in case of liquidation of the debtor and, on the other hand, accountants in case of rehabilitation proceedings. The Syndic holds his mandate from the Court and acts as its agent. At the same time, he is the only person who has the capacity to act in the name and on behalf of the Creditors. While his role is vital to the insolvency procedure, no legal formal condition exists as to his qualification. There are no defined legal standards for his administration of cases and no consistent monitoring of the work done by the Syndic the control of which remains solely in the hands of the insolvency judge whose heavy responsibilities do not allow him much time to monitor the Syndics' work.

29. No qualification or technical and legal professional skills are requested from them as a prerequisite to be appointed by the Court. The gap between their qualified skills which should be those of administrators in charge of complex legal and economic procedures and the actual situation in Morocco is strongly perceived due to their prominent legal and practical role in the proceedings. There are a number of specialized accountants, but the trend is not uniform and is still marginal.

D. CREDIT RISK MANAGEMENT AND INFORMAL CORPORATE WORKOUTS

Credit risk management

30. Nearly all corporate lending by all banks (large and small) are secured, with unsecured lending constituting a relatively smaller percentage of the total corporate lending. Preferred security interests include sureties from officers of the firm or the trader, pledges and liens with or without dispossession on all kind of goods and assets including the debtor's business, tools and equipment, as well as liquid assets (e.g. deposits, securities

and insurance policies) and mortgages on immovable property (land, buildings, and fixtures), plant and machinery equipment. Security interests are also common on inventory and receivables. The banks also use the transfer of proceeds of contracts as security for advances made or credit facilities but not so much the transfer of commercial debts by certificate, which constitute a strong and flexible new instrument created by the new Code of Commerce. Corporate, parental and personal guarantees are also a common and additional form of security.

31. **Moroccan banks, whether local or foreign, are integrated in an advanced banking system and maintain effective internal procedures for managing credit defaults.** They have at their disposal a wide range of techniques for recovery and amicable resolution. Substantial credit institutions have in-house recovery services, some of them decentralized at the regional scale, while smaller banks have either small or no recovery departments and outsource most of the recovery work. The major banks maintain computerized methods for tracking bad debts and monitoring default levels, while smaller banks use monitoring data and statistics at a lesser degree. All banks are to apply the debt classification established according to a circular⁴ of Morocco's central bank, Bank-Al Maghrib, determining the different risk levels and, accordingly, their accounting treatment and amortization calculation. The finance and legal staff of the recovery departments generally have a thorough working knowledge of a wide range of recovery and resolution techniques. Most of the banks have a preference for amicable resolutions, given the relative length of judicial recoveries frequently lasting from three to five years. Consistent with the types of lending in Morocco, the levels of default as a percentage of lending by industry tend to be the highest in the agricultural, manufacturing, construction and trading sectors. Amount of non-performing loans is higher among domestic banks, possibly characteristic of a generally more selective lending criteria applied by foreign banks.

Informal Workout Procedures

32. **While workout procedures have not been formalized, banks and financial institutions routinely employ workout techniques to reach amicable arrangements to reschedule debts and restructure businesses.** Consistent with the practices in many countries, a wide range of approaches are employed to rescue viable business with a view of ensuring debt recovery. These include the usual techniques of requiring cost cutting measures and downsizing the workforce, disposing of non-core assets or units of the business, and the taking of additional collateral to secure repayment. These measures are more effective and useful for important debtors, thus leaving small debtors very much under the threat of inevitable insolvency. An organized program of conciliation under the supervision of the Courts or independently as provided for by the new insolvency law could be an effective approach to promoting more effective workouts among a wider range of businesses. This approach which can legally be initiated by the head of the business only is still rarely used by the banks.

⁴ Circular n°19 of December 22, 2002 relating to the classification of the debts and to their depreciation coverage.

III. SUMMARY OF ASSESSMENT FINDINGS AND CONCLUSIONS

33. **Creditor rights and enforcement procedures** on the whole offer modern protections and were found to be largely observant of the Principles. In several areas, however, the procedures, rules and practice could be improved to achieve a higher level of effectiveness and more efficient results:

- *Security interests.* The legal framework for creation of a wide array of security interests on a broad range of movable and immovable property as well as the surety bond and assignment of receivables available under the Civil and Commercial Codes is well designed and comprehensive. However, in some respect, the system is becoming complex and outmoded. The complexity results in particular from the rules of priority, the number of which increased with the amalgamation to traditional instruments of a variety of new security interests and types of warranties needed or requested by new trading methods and more important international exposure. A reform should be undertaken to globally simplify the matter and reduce the number of classes of priority rights and reorganize the movable security interests in order to adapt them to their greater degree of mobility due to dematerialization of the negotiable instruments.
- *Registration.* This is another area where the process was found to be largely observed. The Moroccan recording and registration system of secured rights is quite effective; its access is inexpensive and is deemed fairly transparent. However, the recording of security on real property is complicated by the possibility opposition, the delays associated with such opposition, and by the significant power of the Registrar as to the fulfillment of the registration conditions. Also the registration is not always easily accessible and is not adequately computerized. In the present process of computerization, great attention should be paid to ensure a full consistency between the different Registrars and Offices. Computerization should allow an effective cross-checking as to the movable immovable properties and their title owners.
- *Enforcement.* Enforcement of security rights is a rather easy procedure, especially in the industrial and commercial context. Predictability is fair, as notices of foreclosure or sale must be expedited before taking any action, when the value of the secured property is normally sufficient to cover claims that are thereby secured. However, the ease and predictability of enforcement of security suffer from the extensive recourse to experts, which contribute to judicial decision-making but do not necessarily reflect fair market values, and tend to prolong the procedures of enforcement unduly. No timeframe is defined to obtain judgment to enforce security interests or to complete execution, foreclosure, public/private auction, including appeals on these matters. Oppositions may also complicate and extend the timeframe. For the sake of efficiency and confidence of the public in the judiciary, the recourse to experts, their role and qualifications, should be carefully reviewed. A decree for the application of the Law n° 45.00 relating to judicial experts, which is currently under preparation, is expected to improve the conditions of exercise of the profession and should strictly condition the recourse to them.

34. **The legal framework for corporate insolvency** was totally overhauled in 1996 by the adoption of a new law diverging fundamentally from the previous system oriented towards personal sanctions. The new law established a comprehensive and modern system encompassing tools for judicially assisted prevention of the difficulties of the enterprises, which may lead to a stay of proceedings, as well as rehabilitation and liquidation schemes, which are well designed subject to some qualifications by reference to the Principles. The law is largely observant with the Principles, although a number of weaknesses remain in some areas, including in the implementation of the process, as follows:

- The Moroccan insolvency system largely precludes creditors from the monitoring of the proceedings or from having a significant role in the governance of the proceedings, excepted in pre-judicial arrangement proceedings. It relies instead on strong judiciary control and on the syndics, who play a key role and serve as employees of the Court's Registrar (in liquidation proceedings) or accountants (in rehabilitation proceedings).
- Although on its face the law seems well framed in regard to governance of the process, few syndics have the necessary professional skills and experience. No professional qualification is required under the applicable texts. That combined with weak participation and control by creditors contributes to unpredictable outcomes. This concern is also underscored by the absence of a proper regulatory framework for syndics and other court appointed officials.
- Commencement of proceedings. Legal provisions relating to the conditions for the commencement of the insolvency proceedings, that is, the evidencing of cessation of payments defined as the impossibility to pay the debts at maturity, contribute to abusive filings. This prerequisite can too easily be demonstrated which allows bad faith debtors to apply for the opening of the insolvency procedure. In light of the experience acquired from the implementation of the new system more than six years ago, it is becoming urgent to review some aspects of the text.

35. **The implementation framework** was found to be between largely observant and materially non observant with respect to the Courts, but materially non-observant or non observant with respect to the regulation pertaining to insolvency practitioners. Particular areas for improvement include:

- *Court specialization and training.* The above findings reflect a certain ambiguity. On the one hand, the recent establishment of the Commercial Courts and corresponding appellate courts, and the existence within such courts of specialized departments dealing with prevention of difficulties and insolvency proceedings, reflects a significant advance in promoting consistency and efficiency in the resolution of commercial disputes. On the other hand, the performance standards of the Courts, training of the judges and court organization are not found fully satisfactory. This situation is worrying in the context where members of the Court, including the President and the Insolvency Judge, play a vital role in managing the procedure while no active participation and control is granted to creditors, and could easily improve thanks to the adoption of a code of good practices. Trained to

apply traditional law until quite recently, judges have a judicial education limited to one year at the National Institute of Judicial Studies, which is insufficient to acquaint them with complex commercial law matters, including commercial insolvency law. Few are those who have followed supplemental studies to compensate the shortage of training. Also, few seminars and occasional meetings constitute the extent of continuing education. One can however expect the specialization of the Courts and judges to help the situation, but an active policy of continuing education and exchange of professional experience as well as circulation of the judicial decisions amongst the Commercial Courts should systematically be organized and promoted.

- Absence of regulatory body and competency requirements for practitioners. There is no supervisory body responsible for regulating the conduct of insolvency administrators and liquidators (Syndics). Furthermore, no qualification or technical and legal professional skills are requested from them as prerequisite to be appointed by the Court. The impact of this gap is strongly felt due to the prominent legal and practical role devolved to them in the proceedings. It appears that some accountants specialize but the trend is not uniform and still marginal. It is essential to provide the insolvency system with a regulated profession of administrator and liquidator and to specify strictly the professional obligations and liabilities of its members. It is also necessary to create binding standards of conduct and to promote active training and continuing legal and economic education.

36. Credit risk management and informal corporate workout practices. The Moroccan banking system provides a regulatory frame binding upon the banks as regards the methodology applied to valuation for accounting and prudential purposes which tend to limit the systemic risk. This frame provides indirectly a method for assessing the credit risks associated to firms/traders lending risk and may help the banks determining it but is of no help in dealing with it. The banks are entirely free to adopt whichever method of treatment they like, amicable or judicial according to the constraints resulting from the type of their loan portfolio, the financial strength of their clients and the way they are secured. One can note that banks suffer sometimes from the aggressive attitude of debtors towards them because of the relative ease for commencing an insolvency procedure that they use as leverage.

IV. POLICY RECOMMENDATIONS

Policy Recommendations. The authorities are encouraged to consider the following policy recommendations in each of the four areas:

37. Creditor rights and enforcement.

- Creditor rights and enforcement systems require some fine tuning as regards in particular: (i) computerization of the registration system and its spreading over the national territory as well as its enlargement to the coverage of all types of securities; (ii) clarifying the priority classes and limitation of their number; and

(iii) ascertaining proper measures for maximizing the value of the assets for sale upon seizure.

- The authorities anticipate that the substantial reform of the bailiffs' profession in 2006 should facilitate the enforcement of judgment and foreclosure on collateral. Consideration should be given to ensure that this new system is adequately implemented.

38. **Legal framework for corporate insolvency.**

- The reform of 1996 globally improves the system and should be pursued in order to make the insolvency legal system more efficient and resolve the difficulties met since its coming into force. The procedures set up in the law should be detailed in an enactment giving precise guidance and references to the judges, Syndics and stakeholders, and making more reliable and attractive the prevention procedures encompassed in the law.
- Some provisions deserve to be amended, in particular, the criteria of cessation of payments in order to reduce the possibilities of abusive recourse to the protective regime of insolvency detrimental to creditor interests including banks. Creditors' interests should be better protected by instituting a better representation and participation to the drawing up of rehabilitation solutions. One or more creditor committees would contribute to better balance the proceedings and come up with more realistic solutions. Powers granted to Syndics and strict rules of accountability should be designed to better serve the creditor interests. The large powers of the Insolvency Judge and of the Court could be somewhat qualified and detailed in order to give them more guidance in the implementation of their role and to allow stricter control over their decisions by the upper Courts, which would also help creating some jurisprudence.

39. **Implementation framework**

- Consideration should be given to the establishment of adequate continuing training of the Judges of the Commercial Courts, in particular for those intended to serve or serving in the department specializing in insolvency law, which is lacking presently and is made necessary due to the increasing complexity of the insolvency proceedings and the development of the market economy partly regulated through insolvency law.
- It is important to provide the insolvency system with a well organized, competent and reliable profession of administrator and liquidator. To that extent, it is necessary to specify strictly their professional obligations and liabilities and to set up binding standards of conduct. It is also necessary to organize a specific professional training and continuing legal and economic education. A regulatory monitoring body and clear regulations should be developed to establish minimum standards and deal with qualifications, licensing, professional performance and conduct. Also, it would be helpful to create a mutual guaranty fund financed by

insolvency professionals to cover their liabilities to the benefit of creditors, and also help promoting professional self-supervision.⁵

40. Credit risk management and informal corporate workouts

- Existing tax legislation does not support corporate workouts and restructurings. Lower rates applied to transfer of assets, the possibility to deduct deficits resulting from the acquisition and special tax treatment of debt forgiveness would constitute proper measures encouraging them. Such tax incentives would not however be in line with the general orientation of the existing global tax reform efforts.

⁵ Consideration shall be given to the specific features of such mutual guaranty fund, including in particular a definition of the fund's beneficiaries, the body responsible for managing the fund, as well the risks covered by such fund.