Chapter 35

The Commercial Laws of Morocco

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I. GENERAL SYSTEM OF LAW

§ 35:1 Description of the law system

The law is the supreme expression of the will of the Moroccan Nation. Moroccan law
is based on Moroccan Civil Law named “Dahir formant Code des Obligations et
Contrats: DOC”) of 12 August 1913 and a combination of Muslim and Jewish traditions.

Laws (*Dahirs*) are bills proposed by the King, the Prime Minister or
by a group Member of Parliament and then subsequently approved by
both houses of Parliament.
If Parliament were to legislate in an area that were not within its competence, then the law once promulgated would still be valid. Any law or regulation must be published in the Bulletin Officiel.

All legislation must be promulgated by Royal Dahir, which is then accorded precedence over any other related texts. This applies to Acts of Parliament as well as to certain types of legislation that must be enacted as “organic laws,” according to the constitution.

The laws of personal status, capacity, and inheritance are submitted to the new Family Code no 70 — 03 of 3 February 2004, which is based on an Islamic codification (Malékite School).

Legislation on contracts, obligations, and real property is submitted to the code of obligations and contracts promulgated in 1913. Custom is also a source of law in Morocco. Custom cannot prevail against a definitive law. Custom can be invoked only if:

- It is general or prevailing; and
- It is not against the public policy or good character.

§ 35:2 Constitutional law

The Constitution is the highest form of law in Morocco. As well as containing various principles of law, it also sets out the role and inter-relationship of the various organs of the Monarchy.

The 1974 Code of Civil Procedure limits the role of the judiciary by which courts are forbidden to judge the constitutionality of a law or decree and the judiciary is equally reluctant to review administrative acts.

§ 35:3 Statutory law

The King exercises by Royal Decrees the statutory powers explicitly conferred upon him by the Constitution.

Royal Decrees are countersigned by the Prime Minister, with the exception of those provided in some articles of the Constitution.

Decrees are issued by the Prime Minister in two circumstances:

- decrees relating to the detail of the implementation of a law that is expressly reserved as being within the competence of the Government; and
- decrees in relation to matters that are not within the domain of Parliament.

The Government can delegate its regulation capacity to a wide range of bodies and individuals, such as government ministers and other governmental officers and who issue orders (“arrêtés” or “Circulaires”) depending on who has issued them.

§ 35:4 The legal profession

The legal profession is not a unified profession. The principal profes-
sions are those of the notaries ("Notaires"), the barristers ("Avocats"), the traditional notaries ("Adouls"), the copyists or transcribers and the legal experts.

Notaries are legal professionals who have a state-granted monopoly covering the authentication or drafting of various specific documents.

Barristers perform a multitude of roles that also include, in addition to advising on legal issues, drafting documentation, overseeing litigation, and preparing written pleadings and making oral pleadings before the Courts.

Adouls are public officers who are charged with receiving deeds that have to be verified and notarized. Their powers cover all of civilian life, purchasing, selling, donation, will, marriage and repudiation. They are traditional solicitors, different from modern solicitors by being the only ones permitted to intervene in the personal status area. A Moroccan Muslim can make a donation only through the Adoul Ministry.

Legal experts are persons who have knowledge in various domains of the sciences and technology and are invited by the court to give their appraisal.

The profession of copyist is a traditional profession, exercised at the level of the services of the tawtiq “acts authentication” with the First degree jurisdiction. The copyists help the adouls in the transcription of the acts of adouls in special registers.

II. TRADERS AND NON-TRADERS

§ 35:5 Definition of trader—Legal definition

Article six of the Moroccan Commercial Code no 15 — 95 of 1st August 1996, which was amended several times, the last amendment being made by Law n° 81-14 promulgated by Dahir n° 1-14-146 dated August 22, 2014, provides for a legal definition of a trader: “traders are the people who make commercial acts as a usual and habitual profession.”

Article 6 of the Commercial Code enumerates a list of acts of commerce:

- purchase of movable or immovable property in order to sell it in kind, after to have worked them or in order to rent them;
- leasing of movable or immovable property in order to sub lease them and;
- purchase of immovable in order to sell them in without or after transformation;
- the research and exploitation of the mines and quarries;
- transportation;
- bank, credit and financial transactions;
- insurances operations;
brokering, commission on all agents operations;
exploitation of warehouses and department stores “Magasins Généraux”;
press printing and editions;
building and the public works;
travel agencies, fiduciaries, information offices and advertising ones;
 supply of products and services;
shows organization and entertainments;
auction sales;
supply of water, electricity and gas; and
post and telecommunications.

In addition, Article 8 lists other acts of commerce:
operations concerning vessels and aircrafts; and
operations concerning maritime and aerial commerce.

Article 9 considers promissory notes and bills of exchange as acts of commerce.

A trader may have legal capacity. Therefore, minors can be registered as traders with authorization by the Judge.
Foreign citizens may have authority to practice as traders in Morocco.

§ 35:6 Definition of trader—Specific rules applicable to traders

Statute of limitation: The term of limitation is five years instead of the general and legal prescription of 15 years.

Litigation before Commercial Courts: Commercial Courts have jurisdiction over any disputes between two traders regarding their commercial activity, between partners of commercial companies, and between any persons when commercial acts are involved.

Traders can produce any kind of proof and evidence regarding their litigation, and are not subject to the legal and general rules of evidence as provided in the Articles of Obligations and Contracts Code.

Joint and several liability is presumed for traders: traders are jointly and severally liable if they have incurred individual or collective obligations, in such a manner that the entire obligation can be enforced against any one of them.

§ 35:7 Registration of traders

Each Moroccan Commercial Court keeps a Trade Register called the “Registre du Commerce”).

The principal purpose of the Trade Register is to make available information concerning any trader or commercial company as for
instance, annual accounts, names of directors and managers of the companies, articles of incorporation, and so forth.

All Moroccan or foreigner traders and companies have the obligation to register with the Trade Register. Traders must register within three months from the beginning of their commercial activity. The trader or the commercial company will then get their registration number that allows their identification. All the modifications concerning the activity must also be registered in order to keep the register updated.

In addition, a Central Trade Registry is held by administrative authority.

§ 35:8 Other requirements of traders—Obligations regarding their internal management

According to the dahir no 1-92-138 of 25 December 1992, it is compulsory for traders to keep official accounting books that must be deposited yearly to the Trade Register, showing the balance sheet, appendix, and the income statement.

Article 18 of the Commercial Code sets out that traders must have a bank or postal account for their commercial activities.

§ 35:9 Other requirements of traders—Obligation concerning bankruptcy proceedings

Traders and commercial companies are subject to legal insolvency proceedings provided by the commercial law and which state among others to respectively the reorganization and to the liquidation phases.

§ 35:10 Other requirements of traders—Tax obligations

Traders have the obligation to pay:

- The income tax on their commercial profits;
- The tax on lease and equipment (Patente);
- The urban tax;
- The Ediltility tax; and
- The Value Added Tax (at the main rate of 20% and other below rates).

III. FOREIGN TRADE

§ 35:11 General discussion

Morocco welcomes foreign investors, offering political stability, a liberalized economy in which foreign trade plays a major role, and a strategic geographical position. Foreign investors enjoy the same rights and incentives as domestic investors, with automatic freedom to repatriate profits, dividends and capital.
§ 35:12 Regulations and restrictions—Morocco legislation

In Morocco, the carrying on of international business is subject to registration on the registers for companies and for the professional tax.

The law no 13-89 of 9 November 1992 governing foreign trade is based on the principle of freedom to import and export goods and services, except in the interests of protecting morality, security, law and order, the health of individuals or to protect the fauna and flora, the historical, archaeological and artistic national heritage or to preserve the external financial position of the country.

Pursuant to this law, national production benefits from a protective system operating in two ways:

- tariff protection, when national production proves to be profitable; and
- quota protection, for new products, for a maximum period of five years that may be extended once for a maximum period of three years.

Some documentation procedures are required to import into Morocco. A person or entity must:

- be registered in a register of importers; and
- obtain the authority to import from the Ministry in charge of Commerce and Industry. This import registration form should be obtained from a Moroccan bank. This form facilitates both custom formalities and the payments of the invoice.

Export licenses are not required, and export sales are not subject to any export tax. The sole obligation on the part of the exporter is the repatriation of export benefits. The repatriation should be performed in a 120 days period; however, the deadline can be extended in case the trade obligations require do so.

Settlements relating to exports can be made in foreign currency, and the exporter is no longer required to produce the customs declarations justifying the import of foreign currency.

A bill n° 91-14 on foreign trade has been introduced by the Government. This bill includes additional provisions on restriction on trade and protection of domestic production, which were not provided for in Law No. 13-89 on foreign trade.

In substance, the bill provides for:

- the establishment of a register for foreign trade operators as a preliminary formality for the performance of the import and export business; and
- the establishment of requirements for negotiating trade agreements “that would circumscribe the negotiations” in order to make the negotiation process more inclusive and transparent.
§ 35:13 Regulations and restrictions—Regulation of foreign trade between Morocco and foreign countries—Multilateral agreements

Morocco has signed a large number of multilateral trade and investment agreements, the most important being:

- **The World Trade Organisation (WTO) agreements**
  On 15 April 1994 at Marrakech in Morocco, the final act summarizing the results of the Uruguay Round negotiations and the agreement creating the WTO was signed;

- **The Multilateral Investment Guarantee Agency**
  Morocco adhered to MIGA on 11 April 1986. The law approving its ratification in principle was adopted by the Chamber of Representatives on 13 April 1988, and submitted for the Royal Seal;

- **Morocco-Arab Maghreb Union (AMU) Agreement**
  The Treaty of Marrakech, creating the Arab Maghreb Union (AMU), was signed on 17 February 1989. One of the aims of this treaty was to ensure gradually the free movement of persons, goods, services and capital and to adopt a common policy in various fields; and

- **Inter-Arab Co-operation Agreement**
  The legal framework of Inter-Arab Co-Operation is the convention on facilitation and development of inter-Arab trade signed in 1981. Morocco ratified it in 1993.

§ 35:14 Regulations and restrictions—Regulation of foreign trade between Morocco and foreign countries—Bilateral agreements

Morocco has concluded conventional trade agreements with a number of developed and developing countries. These agreements stipulate for the Most Favoured Nation status and give no tariff advantages.

- **Morocco-European Union Association Agreement**
  The Morocco-European Union Association Agreement was signed on 1 January 1997. This agreement replaces the Co-operation Agreement of 1 November 1978. This is part of the intensification of the European Union’s Mediterranean policy. Its innovations relate to:
    — the gradual setting up of a free trade area in accordance with WTO rules;
    — reciprocal preferential commercial treatment;
    — the introduction of trade in services (rights of establishment and provision of services); and
    — the setting up of a political dialogue with the European Union.
Free Trade Agreement with the United States (FTA)

The Trade and Investment Framework Agreement (TIFA) was signed in March 1995 between Morocco and the United States, and ratified in May 1995. The Agreement aims to prepare the ground for commercial co-operation in order to lead to a free trade area (FTA) between the two parties which was signed in Washington on 22 April 2002 and entered into force on 1st January 2006. The main activities are:

— establishment of a committee to monitor Morocco-US trade relations;
— optimisation of the use of the General System of Trade Preferences; and
— promotion of investment and trade between Morocco and the United States.

Agreements concluded with Arab and African regions

Morocco has additional partnership relationships with Arabic and African regions. Morocco has signed bilateral commercial and tariff agreements with:

1. the North African countries,
2. Arab countries (Jordan, Iraq, Saudi Arabia, Sudan and Egypt), and
3. African countries (Senegal and Guinea).

Free-trade declaration with the EFTA countries

Morocco-EFTA commercial relations are submitted to the Morocco-Norway trade agreement of 2 December 1996 and the Morocco-Switzerland protocol of 29 August 1957 on the MFN clause on customs duties and formalities.

Free-trade declaration with Tunisia

The new trade and customs agreement was signed between Morocco and Tunisia on 28 November 1996. Commercial relations between the two countries are governed as follows:

— exemption from customs duties and equivalent charges for a list of products;
— payment of a unified tax of 17.5% for a list of products; and
— elimination of all non-tariff barriers in favour of all products originating in the two countries.

§ 35:15 Regulations and restrictions—Restrictions concerning foreign trade

Except for certain products (explosives, retreaded tyres, secondhand clothes, used tractors and public transport vehicles and secondhand
goods), the importation of which is subject to an import licence, all products may be freely imported.

All import operations are carried out with:
— an import document represented either by a contract,
— an import licence or, in special cases, and
— a declaration made prior to importation.

Protective measures are also provided by law when imports cause or may causing harm to established domestic production or considerably delay the creation of national production. These imports are then subject to a compensatory fee if the imported products benefit directly or indirectly from a premium or subsidy on manufacturing, production or exporting in the country of origin or export, or an antidumping fee if the price of the import is less than its normal value in the country of origin.

§ 35:16 Taxation of foreign trade

The Double Taxation Agreement aims to avoid duplication of taxes and to prevent evasion of income tax and of tax on profits arising from alienation of assets. Agreements have been signed with the following countries:

● European countries: Sweden, France, Belgium, Norway, Italy, Germany, Finland, Spain, the Netherlands, Luxembourg, United Kingdom, Romania, Denmark, Switzerland, Hungary and Poland;
● Arab countries: Tunisia, Libya, Egypt, the Arab Maghreb Union (AMU); and
● the United States and Canada.

As a member of WTO, Morocco has gradually removed most restrictions for imports originating from other member countries.

In the event that imports are deemed to have a negative impact on national production, an import license may be required or some duties can be imposed:
— compensatory duties; or
— an anti-dumping duty.

● Duty custom

Most products imported are subject to import duties, the rates of which vary between 2.5 percent and ten percent for equipment, materials, spare parts and accessories. Are exempted materials and products imported under:
— the investment charter; or
— customs economic systems and those using renewable energies.

● Import Tax Levy

The Import Tax Levy is imposed on imported commodities at a fixed rate of 15 percent. This tax, however, can be reduced or eliminated.
• **Value Added Tax**
  Value added tax applies to industrial, commercial and handicraft-type business or to operations related to professional activities carried out in Morocco. It also applies to imported products except those that are exempted.
  Applicable Rates:
  — 20%: normal rate;
  — 14% for enterprise business related to real estate sales and involving coffee and other products;
  — 10% for restauration, credit operations, lawyers services and so forth
  — 7% for basic products of prime necessity, and so forth.

• **Domestic consumer taxes**
  These rates apply to certain categories of commodities imported or produced locally such as lemonades, mineral water, wines, beers, oil products, and so forth.

• **Parafiscal tax at importation**
  This tax (rate 0.25%) applies to imported commodities. The following are exempted:
  — imports benefiting from the customs economic systems; and
  — imports of materials, tools and equipment goods cited in an investment program having received a conformity approval or being the subject of a convention.

**IV. FOREIGN DIRECT INVESTMENT**

§ 35:17  **General discussion**

Foreign investment means any input in kind or financial input, meant to help realize a project, in any form, and carried out by aliens, should they reside or not in Morocco and by Moroccan individuals residing abroad.

Foreign direct investments have been authorised in practically all sectors of the economy since 1990. A new investment charter came into effect in January 1996. Its aim is to encourage both domestic and foreign private sector investment by offering systematic access to all the available benefits and by rationalising and simplifying the administrative procedures.

Direct investments may take the form of:
• firms setting up;
• participation in the capital of a company in the making;
• application to increase the capital of an existing company;
• setting up of a branch or a liaison office;
• acquisition of Moroccan stocks and shares;
§ 35:17

- payment into the current account associates in cash or in trade loans;
- non-remunerated short term financial participation;
- acquisition of real property or the use rights related to the said property;
- financing of construction works by proper funds; and
- setting up or acquisition of an individual business.

§ 35:18 Regulations and restrictions

Morocco wishes to establish an internationally competitive investment environment to increase foreign investment. The Investment Charter was adopted in January 1996.

The aim of the Investment Charter is to define the State’s role regarding the promotion of investments in the next ten years. It replaces the investment codes for various sectors, except for the agricultural sector.

This Investment Charter principally seeks to encourage private sector investment, both domestic and foreign, by offering:
- alleviation of the fiscal burden with a better spread of the burden;
- a preferential fiscal system in favour of regional development;
- abolition of the conformity authorization for granting advantages; and
- establishment of investment incentives in both the installation and operational phases.

§ 35:19 Taxation of foreign direct investment

The Investment Charter gives several advantages for foreign direct investment:

§ 35:20 Taxation of foreign direct investment—Registration fees

- exoneration from formalities for the acquisition of land destined for an investment project;
- enforcement of a rate of 2.5% for acquisition formalities for land destined for building and real estate development; and
- enforcement of a rate of 0.5% for inputs in capital formation of companies or increases in capital.

§ 35:21 Taxation of foreign direct investment—Customs dues

These apply to the import of equipment, materials, tools, components, spare parts and accessories.
- import dues: between 2.5% and 10%; and
- exoneration of Import fiscal levy (PFI).
§ 35:22 Taxation of foreign direct investment—Value added tax (VAT)

Exoneration or reimbursement for equipment, materials and tools acquired locally or imported.

§ 35:23 Taxation of foreign direct investment—Patent tax

— Suppression of the variable tax; and
— Exoneration during the first five years of operation for enterprises in the industrial, tourism, commercial, handicraft and real estate promotion and development.

§ 35:24 Taxation of foreign direct investment—Urban tax

Exoneration for five years after their completion or installation for new buildings and extensions, as well as machinery that is an integral part of enterprises for the production of goods and services.

In addition, the Investment Charter gives some other incentives for foreign investors:

— profits and income liable to the corporate tax are not subject to the national solidarity contribution;
— exoneration from corporate tax for exporting enterprises for five years, followed by a 50% reduction thereafter, for both product and services exports;
— a 50% reduction in the corporate tax or income tax during the first five years of operation for handicraft enterprises and for enterprises established in areas where the level of activity requires a preferential fiscal system;
— application of sliding scale amortisations for equipment;
— exoneration from real estate profits when premises are first ceded for use as accommodation;
— the transfer of net profits after tax without limitation of the amount or duration;
— the transfer of the product of cessions and complete or partial liquidation including value added;
— Morocco finance for part of equipping industrial zones established in areas where the level of economic development justifies special State aid; and
— when the investment has a certain size, or when it results in the creation of numerous stable jobs, Morocco provides partial finance for the cost of acquiring land, expenditure on external infrastructure linked to the project, and the cost of professional training.

V. CONTRACTS

§ 35:25 In general

Article 2 of the Moroccan Civil code (“DOC”) provides four essential conditions for the validity of a contract:

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the capacity to contract,
the agreement of the parties,
a specified purpose as consideration of the commitment, and
a valid cause.

Therefore, Morocco law sets out the principle of the mutual consent of the parties and does not require any particular form, except for specific transactions.

§ 35:26 Formation of contracts, offer and acceptance

The formation of contracts is basically evidenced by an offeror’s offer followed by the offeree’s acceptance, which constitutes the mutual consent.

§ 35:27 Formation of contracts, offer and acceptance—Offer
(Article 14 and following of the DOC)

The offer is a proposal that may be written or oral but which must be clearly stated. An offer must carry out the following characteristics:
— the offeror is engaged by the first acceptance if he makes an offer to one person or to a class of persons;
— the offeror can provide for a particular duration during which the offer will be maintained;
— the offer must contain the main provisions of the contract;
— once the offer is made, it may be revoked before it has been accepted, subject to certain conditions;
— when an offer is made to the general public with no particular period of time, the offeror is free to revoke his offer;
— if an offer is made to one person with no particular period of time, the offer must be maintained during the reasonable time necessary for the offeree to consider it and to answer; and
— if the offeror has stipulated the period of time during which the offer may be accepted, the revocation of the offer is considered as a fault and the offeror may be held responsible.

§ 35:28 Formation of contracts, offer and acceptance—Acceptance

Acceptance, which is the agreement to the offer, must show the clear intention of the offeree. By acceptance, the offeree is deemed to know all the provisions of the contract; a stipulation that is not in the offer is considered as not accepted by the offeree.

The acceptance must be:
— firm: if the offeree does not answer, the contract is not created. Silence cannot be considered as an acceptance, except in very particular conditions provided by law and particularly when the offer is made in the sole interest of the offeree;
— definite: any amendment is considered as a rejection or a counter-proposal;
— exercised as the offeror prescribes: the contract is created only by a positive answer to the terms laid down by the offeror; and
— unequivocal.

§ 35:29 Capacity to contract

The capacity is one of the conditions for the validity of a contract (Article 3 and following of the DOC). The civil capacity is regulated by the law that governs personal statute.

Morocco law protects minors and some adults declared incapables. These persons may execute a contract only if they are represented or assisted by a person who has capacity.

The minor and the incapable one that contracted without the authorization of their father or guardian are not obliged for the engagements taken by them and are able sometimes to request the rescission.

Nevertheless, these obligations can be validated by the approval given by the father or guardian to the act accomplished by the minor or the incapable one. This approval must be given in the form required by the law.

The minor, duly authorized to exercise commerce or industry, cannot act against the engagements that he takes to reason of his commerce, in the limits of the authorization that was given to him.

The authorization to exercise the commerce can be revoked by the Tribunal at any time for a serious reason.

§ 35:30 Formal requirements of a contract—General

Under Moroccan law a contract is created by the sole combination of the mutual consent of the parties.

No particular form or written document is requested, except in particular cases provided by law. The contract may be oral or in writing or consist of a simple letter or of any other document. In consideration of evidence, however, a written document is generally recommended.

When particular formalities are requested by law, they generally consist in a written document or a notary deed.

§ 35:31 Formal requirements of a contract—Acknowledgments

The acknowledgment procedure, as provided by US law that is, “a formal declaration before the authorized public officer by a person who has executed the instrument so that such instrument is his free act and deed,” does not exist under Morocco law.

Its equivalent may be the registration procedure of the contract. The registration is an administrative formality that entails the payment of nominal stamp tax.
The registration procedure has also to be fulfilled as a tax formality (partnership agreements, transfer of goodwill, transfer of trademarks, and so on) without being assimilated to a condition of validity of the contract. Furthermore, the registration enables the parties to certify the date of signature of the contract, which is sometimes requested to evidence such date.

§ 35:32 Formal requirements of a contract—Notaries

The formalization through a deed of notary is sometimes necessarily requested for contracts such as:

— donation;
— marriage contract;
— mortgage; and
— sale of real estate property.

The Dahir n° 1.15.15 of 19 February 2015 promulgating Law n° 09.15 amends Article 1.2 of the DOC as follows: “When a writing is required for the validity of a legal act, it can be established and maintained in electronic form in accordance with Articles 417-1 and 417-2 below.”

§ 35:33 Performance of contracts

The parties may draft the contract under their own autonomy; they may freely conceive their obligations, subject to public order rules.

A contract is binding and must be implemented by the parties; amendments can only result by mutual agreement, except when the contract infringes compulsory legal provisions.

A contract is also binding with regard to the courts, which may not release the parties or amend the contract.

In very special cases, however, courts may amend excessive or abusive stipulations.

In case of an obscure clause or of a contradiction between two clauses, the courts may interpret the contract with the other clauses.

If the above mentioned rules do not permit the magistrate to interpret the contract, he may revert to the optional legal provisions, usage or equity.

§ 35:34 Remedies for failure to perform

In case of failure to perform, the obligor is put in default without an instrument and merely by expiration of the term stipulation. If any contractual stipulation is not stipulated, the obligor is put in default either by a judicial notice (summation) or another equivalent instrument such as registered mail.

Only after putting in default do the consequences of nonperfor-
mance, arises for instance, payment of legal interest on a debt and
damages if any.

The debtor is exempted from the requirement to pay damages if he
proves external circumstances of the failure of performance, such as
in the case of absolute necessity or chance.

When the law requires putting in default, but it is not done, the
creditor is supposed to waive his rights until the debtor receives no-
tice of default.

§ 35:35 Distinction between civil and commercial contracts

The distinction between civil and commercial contracts is to
determine the applicable law and the relevant jurisdiction.

Such distinction will be made according to the characteristics of the
parties (trader or non trader). If the parties are traders and act in the
course of their professional activity, the contract is a commercial one
and, in the opposite case, if the parties are non traders or act in the
course of their private life the contract is a civil one.

The contract may, however, be civil for one party and commercial
for the other. In such a case, commercial law is applicable against the
trader and civil law against the non trader.

§ 35:36 Special requirements of sales contracts

Sales contracts must comply with the rules applicable to all
contracts.

Some specific provisions, however, apply:
— Concerning the price to sales contracts, article 487 of DOC,
requires that the price be determined or at least that the contract
provides precisely for the information necessary for its
determination. The Judge must not interfere and substitute the
parties’ intent. A sale contract with no price is null and void.
— The parties must therefore indicate a price or provide for a mech-
anism to determine the price. In this regard, the determination
of the price must not be left to the sole appreciation of the buyer;
if at the moment of the sale the price is left unknown or to the
buyer's discretion, the contract may be declared null.

Regarding the transfer of risks and of title, Moroccan law distin-
guishes the transfer of both title and risks from the formation of the
contract.

The rule is that ownership is transferred at the moment the parties
agree on the subject matter of the sale and its price. It is however pos-
sible to delay such transfer to the moment of delivery or to condition
the transfer to the full payment of the price.

Applicable law imposes the seller to guarantee the quiet ownership
to a purchaser as well as the guarantee against defects.
VI. AGENCY AND COMMERCIAL REPRESENTATION

§ 35:37 Formation of the agency contract

Article 393 and subsq. of Moroccan commercial code provides that it is a proxy contract by which one capable person, called the Principal, gives to another, called the Agent, the power to accomplish in the name and for the account of the principal one or several commercial acts, subject the latter remunerates the agent.

A written contract is necessary for the validity of the agency contract.

§ 35:38 Rights and duties of principal and agent—The rights and obligations of the agent

The Agent might perform his obligations:
— strictly within the recommendations of the Principal;
— with haste; and
— with conscientiousness.

In addition, he must inform the Principal for all circumstances and to justify his management in relation with the agency.

He is liable for all damages that may arise from the failure to perform his obligations or from acts committed out of his performance.

The Agent must avoid liability for failure to perform by establishing that he is not responsible for the failure.

§ 35:39 Rights and duties of principal and agent—Obligations of the principal

The principal is bound to perform the contracts entered into by the agent, according to the powers granted to him. The principal is not bound by agreements exceeding the powers granted to the agent except if such agreements have been ratified, whether expressly or tacitly.

§ 35:40 Termination of the agency

The agency contract may be entered into for a specified or unspecified term.

The law provides that, unless otherwise provided by the parties, a contract entered into for a specified term is considered as entered into for an unspecified term when performance is continued by both parties after expiration of term.

Article 396 of the Commercial Code gives the following notice period for the termination of the agency:
— termination notice is of one month for the first year of the contract;
— termination notice is of two months for the second year of the contract; and
— termination notice is of three month for the third year of the contract.

In addition, article 402 of the commercial code provides for mandatory compensation for termination of the commercial agency agreement and a contrary clause would not prevail.

VII. ASSIGNMENTS

§ 35:41 Assignments of contracts

The assignment of contracts and rights may be provided by the law or by a convention between the parties.

The assignment may have for object rights or debts and it is not possible when the contract has already been performed; an attempt to assign would be re characterized as a new contract. Assignment of an instantaneous contract is therefore not possible.

The assignment is null in the following cases:
— when the law or the constitutive title forbids the transfer of assignment or rights;
— when it has a purely personal character; and
— when the claim cannot form seizure object or of opposition.

§ 35:42 Assignments of debts

The assignment of a debt is a contract by which a debtor transfers his debt to a third party who will be liable for it towards the creditor. An important issue is to know whether a new debtor may be imposed to the creditor, and whether the former debtor may be released.

The assignee becomes debtor or creditor only for obligations subsequent to the assignment. The assigning party remains liable not only for the obligations due prior to the assignment, but also as guarantor of future obligations, since the assigning party imposes to its contractor a new contracting party.

By the assignment, the assignee is substituted to the assigning party in the contractual relation with the contracting party not a party to the assignment. The assignee may therefore exercise over the contracting party not a party to the assignment all the rights previously exercised by the assigning party. The rights the contracting party not a party to the assignment previously exercised against the assigning party may be exercised against the assignee.

§ 35:43 Assignments of debts—The general rule

Putting aside the particular case of the transfer of a debt after the death of the debtor, the rule is that debts may not be assigned inter vivos.
Such an assignment would necessarily imply the consent of the creditor who agreed a loan in consideration of the solvability of the debtor and his capacity to pay back. Therefore, assignments of debts may not be envisaged in the same way as assignments of claims.

§ 35:44 Assignments of debts—Various types of assignments of debts

Novation of the contract by substitution of debtor Article 347 of DOC;

Novation of the contract consists in a change of a contracting party (the debtor). The former debtor is released from his obligations. The initial contractual relation no longer exists and a new relation is established putting new rights and obligations upon the debtor;

Delegation as per Article 217 of DOC;

Delegation in a contract by which the debt of the contracting debtor (le délégant) will be paid by a third party (le délégué) to the creditor (le délégataire). In this situation, payment by the third party implies the consent of the creditor. Furthermore, commitment to pay of the third party does not release the initial debtor from his obligation. Therefore, delegation must be considered as a creation of a new debt, and not as novation of the initial debt.

§ 35:45 Assignments of debts—Assignment of a claim

The assignment of a claim is a contract by which a creditor assigns the claim he holds against his debtor to a third party who becomes the creditor in place of the assigning party.

A contract for the assignment of a claim is subject to the ordinary conditions regarding the validity of a contract (consent, capacity, subject matter, cause). No particular form is required.

The assignment of a claim may not be invoked against a third party (which includes the debtor himself) unless the assignment contract has been duly notified to the debtor or expressly accepted by the debtor under a deed.

VIII. BILLS OF EXCHANGE, PROMISSORY NOTES AND CHECKS

§ 35:46 In general

Bills of exchange and promissory notes are classified within the commercial paper category.

A commercial paper is a negotiable title that evidences a claim benefiting to the bearer. They are commonly used either as a mode of payment, or as a mean to obtain short term credits, or sometimes as a guaranty. Morocco provisions on bills of exchange are derived from the Commercial Code (Art. 159 to 238).
Checks are not commercial papers as they are not only used in business life and may not be subject to negotiation. Legislation on checks, however, is derived from the Commercial Code (Art 239 to 328).

§ 35:47 Bills of exchange (drafts)—Definition

A bill of exchange is a written title issued by a drawer “tireur,” who orders a drawee “tiré” to pay the bearer.

§ 35:48 Bills of exchange (drafts)—Formal requirements

To be valid, the bill exchange must comply with formal requirements and indications (Art 159 of Commercial Code) such as:

- the denomination “Lettre de change”;
- the order to pay a sum certain;
- the drawee’s (tiré) name;
- the deadline (30, 60, 90 days deferred payment or sight payment if no deadline is mentioned);
- the place where the payment must be done;
- the beneficiary’s name;
- the date and the place of issuance;
- the drawer’s signature; and

In case of non-compliance with those requirements, the title will only be considered as a mere acknowledgment of debt submitted to common provisions about obligations. A regularization, however, may sometimes be accepted (Art 16 Commercial Code).

§ 35:49 Promissory notes—Definition. Special notes (warrants, bearer orders)

A promissory note concerns only two persons: the payer enforces himself to pay a beneficiary by issuing a note subject to formal requirements.

There are two other main types of notes:
- bearer title by which the maker enforces himself to pay the person who is the bearer at the moment of the due date; and
- warrants are used by traders as securities on commodities to guaranty a payment.

§ 35:50 Promissory notes—Formal requirements

Provisions pursuant to notes are included in the Morocco Commercial Code, articles 234 to 238. A promissory note must contain the following indications:

- the denomination “à l’ordre de” or “billet à ordre”;
- the promise to pay a sum certain;
- the deadline;
§ 35:50

- the place of payment;
- the place and date of the issuance;
- the payer’s address;
- the name of the beneficiary; and
- the payer’s hand written signature.

In case of non-compliance with those requirements, the title will only be considered as a mere acknowledgment of debt submitted to common provisions about obligations. A regularization, however, may sometimes be accepted (Art 233 Commercial Code).

§ 35:51 Checks—Definition

A check is a title drawn on a bank to the benefit of a bearer. It represents a transferable sum of money and it may be either civil or commercial depending on whether it was issued by a trader for his business activity.

§ 35:52 Checks—Formal requirements

To be valid, a check must contain formal mentions (art 239 commercial code):
- the denomination “chèque”;
- the order to pay a sum certain;
- the drawee’s (tiré) name (name of the bank);
- the place of payment;
- the date and the place of the issuance;
- the issuer’s hand written signature; and

A check that is not in compliance with those requirements is considered as a mere order to pay and the bearer loses the recourses attached to the title (Art 240 of Commercial Code).

§ 35:53 Checks—Crossed check; certified check

A crossed check form has two parallel lines printed on, and may, in practice, only be endorsed either to a bank or to the banking department of a post office (Art 311 of commercial code).

In order to guarantee the payment, the drawer may ask the drawee to certify the check by guaranteeing its payment. Banks may also draw checks upon themselves called banker’s checks that constitute a strong guarantee of payment for the bearer, except if he obtained such check by fraud (Art 242 of Commercial Code).

§ 35:54 Presentation and protest—Presentation for acceptance

Before asking for the payment of a bill of exchange, the holder has to obtain an acceptance from the drawee.
The drawee may undertake to pay at maturity, or contest the bill of exchange's validity. In order to preserve his recourses, the holder has to draw up a protest. At last, the holder may enforce payment from one or several guarantors.

- Acceptance, Non Acceptance, Protest (Article 174 of Commercial Code)

The holder will present the bill at the drawee’s residence and possibly after a 24-hour period if the drawee wishes to do so. This second presentation is necessary for the holder to avoid leaving the bill in the drawee’s hands, as the delivery is considered as the transfer of the bill of exchange. The drawee is not bound to accept, or may give a partial acceptance. He is not, however, entitled to give a conditional one.

An acceptance is irrevocable after that the bill is given back to the holder, signed, with the word “accepté” or similar expression. The drawee is then bound to pay at maturity and can not raise any exception existing between the drawer and himself. The bill is considered refused, however, if the drawee crosses it out before leaving the bill in the holder’s hands.

After the drawee’s refusal, the bill is only worth a title of claim. In order to preserve his rights against the signatories and guarantors, the bearer must draw up a protest. He will ask a bailiff to ascertain the drawee’s non-acceptance.

- Guarantee (Article 180 of Commercial Code)

Payment may be secured by a guarantee (aval). A guarantor having signed the draft together with the words “bon pour aval” or “equal expression” is bound to honor the draft in case of non-payment by another signatory.

§ 35:55 Presentation and protest—Presentation for payment

- Bill of Exchange (Article 184 of Commercial Code)

The holder has to present the draft to the drawee, either at his residence or the location mentioned on the draft, within ten days following the due date, but not before.

A bearer’s creditor is not authorized to:
- seize the sum to be transferred in the drawee’s hands, and a signatory (drawee, drawer, endorsee, guarantor); or
- to ask for an escrow by arguing that he is not the debtor of the subsequent endorsee;

Payment may be stopped only in cases of:
- theft;
- lost draft; or
- the bearer’s receivership or bankruptcy.

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Once the draft is paid, the drawee may ask for its remittal with the mention “paid” on it.

- Promissory Note
  Rules governing the payment of promissory notes are the same as those applicable to drafts.

§ 35:56  Endorsements

The endorsement is the mode of transfer of a draft by which an endorser signs on the back and remits the bill to the new bearer, the endorsee.

§ 35:57  Endorsements—Common endorsements

Endorsement may be either blank or made to an expressly determined endorsee. It can not be partial but only for the full amount of the title.

There is no obligation to mention any date when endorsing. Endorsements are presumed to be made before a protest. An endorsement actually made after a protest, however, is considered as a claim transfer.

An endorsement includes a transfer of rights to a new bearer who acquires recourse against all the previous endorsers. Restrictive endorsement may be stipulated, however: a previous endorser may forbid an endorsee to endorse and he may not be bound to pay the subsequent endorsers.

§ 35:58  Endorsements—Endorsement of a promissory note

Rules about the endorsement of a note are the same as those for the bill of exchange, but contrary to the draft, the provision pursuant to the note is not transferred and, in case of a receivership of the drawer, the bearer is not secured.

§ 35:59  Endorsements—Endorsement of a check (Article 252 of Commercial Code)

The payable stipulated check to the profit of a person known as person with or without clause express “to order” is transmittable by the way of the endorsement. The payable stipulated check to the profit of a person known as person with the clause “not to order” or an equivalent clause is not transmittable that in the form and with the effects of an ordinary transfer.

The check endorsement may be done even to the profit of the marksman or of all other obligees. The endorsement must be definite: all condition to which it is subordinated is reputed no written. The endorsement to the bearer is worth as an endorsement in white (endorsement en blanc).
The endorsement must be registered on the check or on a leaf that there is attached. It must be signed by the endorser. The endorsement cannot designate the profitable one or consist simply in the signature of the endorser (endorsement in white). In the latter cases, the endorsement to be valid, must be registered to the back of the check or on the lengthens.

§ 35:60 Recourse and non-recourse

Except in the case of a clause exempting him from doing so (clause de dispense de protêt), before exercising any recourse, the bearer of a non-accepted or an unpaid draft/note has to draw up a protest by the mean of a bailiff who will state the refusal and its reasons, if any, in a formal act, and send two copies of the protest to office of the court clerk.

In case of non acceptance, the protest has to be drawn up before the instrument's maturity while, in case of a refusal to pay, the period during which a protest must be made in case of:

— a refusal to pay a draft payable within a certain period after presentation for acceptance;
— a protest must be drawn up within ten days after the draft’s maturity; or
— a bill of exchange payable on sight, it has to be drawn up within the one year period allowed to present the draft for payment.

According to the principle of joint liability, the bearer may exercise his recourse against all the previous signatories (drawer, acceptor, endorsers, and guarantors) collectively or individually. The signatory who has been forced to pay may bring an action against the other signatories, including the drawer.

The principle of non invocability of exceptions prevents any signatory from asserting any exceptions related to his contractual relation with the previous holder, except in cases of forged draft, of lack of capacity to sign or if the holder acquired the draft in bad faith with the knowledge that it would be harmful to a signatory.

The bearer of a dishonored check may ask the drawee (the bank refusing the payment) to deliver a certificate of non-payment in order to evidence the drawer's failure. The drawer may get his situation sorted out either by transferring funds on his bank account, or merely by paying the bearer within thirty days.

If the check is not honored within this period, the drawee will establish a non payment certificate that will be notified by a bailiff, at the holder’s request, to the drawer. Such notification is a formal demand to pay. If the drawer fails again to honor the check and additional taxes, the bailiff delivers an enforceable title to initiate a seizure on the debtor’s assets or his bank account without having to go through any judicial proceedings.
IX. FRAUD AND FORGERY

§ 35:61 Offences related to the check

Issuing checks with insufficient funds is not considered as an offence and is only punishable by a bank ban preventing the issuance of checks during five years. A drawer who issues checks while forbidden to do so, however, commits an offence and may be tryable by penal tribunals.

A drawer may not stop the payment of a check, except in case of:

— theft;
— lost check; or
— receivership of the holder.

Besides those three cases, the drawer may be prosecuted.

§ 35:62 Forgery

Forging checks, bills or notes is considered an offence. The forger may be sentenced to jail (maximum of five years) and to pay a fine (maximum of 10,000 Dirhams). Moreover, the holder of a forged bill of exchange or promissory note is not entitled to invoke the “non invocability of exceptions” to enforce the payment. The exception of forgery may always be argued against him.

X. REAL ESTATE

§ 35:63 Forms of ownership

Ownership in real property is usually held by a single person who is freely entitled to dispose of it (pleine propriété). Rights may also be divided among several individuals, however: one having the right to use, enjoy and receive the profits of the property (usufruit) and another being deprived of that right (nu-propriétaire). Property may also be divided among several individuals, each having a right in the full property (indivision). This situation is not only regulated by law, but also by contract (réglement de copropriété) and is often met in collective housing.

§ 35:64 Land registration and transfer of title—Transfer of title

Morocco law has two statute for title of ownership:

— The melkia: it is an “adoulaire” document governed by the traditional rules of the islamic law. It is legally valid but very imprecise, especially on the definition of the estate (position, area, consistency and limits of the building). The “Melkia” can be transferred in various following forms:
  — by act “adoulaire” (Dahir of 7 February, 1944).
  — by registered deed (Article 489 of DOC).
— The title of land: a juridical modern established title in the name of the owner. It is final and unassailable. It cancels all title and purges all previous rights. A special name and the plan of the building there are annexed.

Only good faith third parties may benefit from the non-conformity with registration requirements when they insist upon their rights by producing satisfactory registration over the same real estate property.

Conflicts between successive buyers are not solved according to the dates of their respective deeds, but according to the order of their publication. Knowledge or constructive knowledge by a second buyer of a precedent transfer of title, however, will be considered by the courts to prevent him from invoking the absence of registration.

§ 35:65 Land registration and transfer of title—Registration agency

The system of land registration is instituted by the Dahir of 12 August 1913. Except “Melkia” titles, all title of ownership must be registered within the deed form at Land Registration Agency named (“Conservation de la Propriété Foncière”).

The publication requirements are not always compulsory. They apply to a variety of deeds. Non compliance with those requirements, may lead to the non-invocability of the deed. Registration is compulsory for donations inter vivos, sales, creations of easements, and so on.

The deed may be deposited at the “conservation de la propriété foncière et des hypothèques.” The concerned parties have to precise their identification, designation of the real estate and the fixing of boundaries.

The land registrar “conservateur de la propriété foncière,” who is in charge of the registration, may refuse to register if the deed appears irregular in its form.

The land registrar may not appreciate the validity of a deed, nor the right or capacity of the parties.

§ 35:66 Leases (form of leases)

Moroccan law distinguishes a various types of leases that are subject to special regulations:
— commercial leases;
— rural leases; and
— habitation leases.

Except leases concerning immovable or real estates, leases may be simply agreed orally. Leases contracts must comply with the rules applicable to all contracts, but also to other specific legal provisions aiming at the protection of living conditions or, where applicable, to the specificity of the lease: commercial, rural or professional.
The landlord has the rights to sell a property subject to a lease, while the tenant traditionally has a pre-emptive right for its purchase. The landlord also benefits from a special privilege on the personal estate of the tenant for the payment of rent.

The landlord's major obligations are:
— to deliver the property to the tenant;
— to maintain the property in a state suitable for the purpose of the lease; and
— to enable the tenant to benefit peacefully from the property.

The tenant's obligations consist of:
— paying the rent;
— using the property with “family care”;
— paying applicable taxes relating to the lease; and
— repairing losses or degradations, including repairs that law specifically puts under its responsibility.

Termination of the lease may occur in a variety of circumstances:
— specified term;
— proper notice; and
— judicial decision.

After expiration, the landlord must organize an official and contradictory inventory of fixtures that may be produced before the courts.

§ 35:67  Zoning and land use planning

National and regional development planning consists in establishing a coherent program for habitation, economic or industrial activities, leisure and tourism, community infrastructures, protection of nature and so forth.

The most important regulations on urbanism consist in:

— **The S.D.A.** *(le Schéma Directeur d’Aménagement)* it is an urban planning tool that is programmed for 25 years. It gives the guidelines of the development program to integrate the urban towns and their imminent zones.

— **The S.D.A.U.** *(Schéma Directeur d’Aménagement Urbain)* it is an urban program elaborated to cover the coastal one and its influence zone.

— **The P.Z.** The Plan of Zonage (PZ) is an urbanism document statutory that divides up a territory in affected zones each to a determined type of occupation of the ground inside the territories to which ones it applies. This document, composed of a graphic document and of a regulation, is destined to preserve the orientations of the outline director installation urban (SDAU) and allow the administration to take conservatory measures necessary to the preparation of the installation plan. It defines the allocation
of the following zones the principal usage that must be done such as habitat zone, tourist zone, industrial zone, and so forth. It produces its effects during a period of two years after the date of publication.

— **The P.A.** (*le plan d’aménagement*) is statutory document of urbanism that defines the rules for urban expansion, agricultural or economic activities, and preservation of natural sites. A new text has reduced the effects of this document to ten years instead of 20.

— **The P.A.C.:** (*le Plan d’Aménagement Communal*) it is a document that determine within all or part of a town or village the general rules of urbanism and the easements affecting the soil, which may include a total prohibition to build. More generally, the PAC indicates the maximum height of buildings and the use to which they can be affected in every part of the town.

— **The P.D.A.R.** (*Plan de développement Rural*): it is at once a graphic and juridical document that instituted by the dahir no 1-60-063 of 25 June 1960 in order to facilitate and stimulate the development of the rural towns.

— **The P.A.S.** (*les Plans d’Aménagement Spécifiques*): it is an urbanism documents established for the centers or sites presenting characteristics or specificities and that would be protected. It concerns:
  - the Médinas;
  - the Casbahs;
  - the touristic interest or special ecological zones;
  - the coastal zones;
  - the strategic reserves;
  - the industrial and mining vocation sectors; and
  - the higher potential of economical and development sectors.

In addition, Public easements may be imposed upon the principle that public interest prevails on private interest. Easements may include alignment, road construction, right of way along the coast, cable installation. Creation of an easement does not always open a right for compensation. Exceptionally, compensation may be granted in case of violation of a legally acquired right (new easement preventing a construction previously authorised) or in case of a direct, special and serious damage.

§ 35:68 Oil, gas and mineral law

The research and the exploitation of oil, gas and minerals in Morocco are governed by several texts. The Moroccan hydrocarbons legislation i.e. the legislation governing research and exploitation of oil and gas includes the following texts:

- Law No. 21-90 relating to the exploration for and the exploita-
tion of hydrocarbon deposits enacted by Dahir (Royal Decree) No. 1-91-118 of April 1, 1992, amended and completed by Law No. 27-99 enacted by Dahir (Royal Decree) No. 1-99-340 of February 15, 2000 (hereinafter the “Hydrocarbons Law”); and

- Decree No. 2-93-786 of November 3, 1993, amended and completed by the Decree No. 2-99-210 of March 16, 2000, implementing the provisions of the Law (hereinafter the “Hydrocarbons Decree”).

In 2003, the ONHYM (“National Office of Hydrocarbons and Mines”) was created following the merger of the Bureau de Recherches et de Participations Minières (“BRPM”) and the National Office for Research and Petroleum Explorations or Office National de Recherche et d’Exploitations Pétrolières (“ONAREP”), marking a new era, characterized by a dynamic strategy based on the synergy of all components of the ONHYM, in order to identify and develop oil and mining potential of Morocco.

The import, export and refining of hydrocarbons is governed by Dahir promulgating law N°1-72-255 February 22, 1973 on the import, export, refining, recovery in refinery and center Packer, storage and distribution of hydrocarbons, forming the “Mining Code”.

Up until July 2015, the Moroccan legislation on mines was governed by a Dahir of April 16, 1951 (hereinafter, the “Mining Regulation”), that was amended by Law n° 33-13 of July 1, 2015 relating to mines (hereinafter, “Law n°33-13”).

Indeed, since the promulgation of the Mining Regulation, the Moroccan soil has witnesed significant research and mining which have led to the discovery of many sites and mineral fields some of which have been subject to important exploitation operations at an industrial scale. The main object of Law n°33-13 is to modernize the existent legal regime in order to adapt it to the Moroccan resources and to the international requirements in this field.

For instance, Law n°33-13 has made the following amendments:

- the definition of mining titles;
- the extension of the mining title to all mining products, which avoids the superposition of mining titles of different categories in the current system;
- the introduction of the study of the impact on the environment for the research and/or exploitation of mining products, etc.

XI. LIENS ON REAL PROPERTY

§ 35:69 In general

Morocco law provides for four categories of liens: contractual mortgage, protective mortgage, living pledge and special real property liens.
§ 35:70 Property subject to liens

The mortgage is a real right (*droit réel*) over immovable encumbered for the performance of an obligation. The mortgage is a guarantee given in exchange of a credit but without dispossessing the owner of the hypothecated property.

Only the following matters are subject to mortgage:
— Immovable property and those accessories relating to the property; and
— The usufruct relating to the immovable property.

The unpaid creditor has the right to undertake a judicial seizure the owner’s real estate.: He has some rights against the owner:
— *(iuspropter rem or droit de suite)*: this is the right for the mortgaged creditor whatever his rank to seize the real estate alienated by the debtor, in the hands of a third party holder of pledged goods. The third party holder of pledged goods against whom is exercised the *droit de suite* can invoke certain exceptions or acknowledge the legal action and either pay the creditors, abandon the real estate or redeem the mortgage.
— the preference *(droit depréférence)*: this is the right of the mortgaged creditors to be paid by priority before all other creditors. They are paid out of the sale proceeds of the real estate sold by a court order.

§ 35:71 Creation of liens

The conventional mortgage may be granted only by those who have the capacity to alienate the immovable that they encumber. The conventional mortgage must be registered before both tax administration and land registrar.

A judicial mortgage arises in a favor of those obtaining judgments, whether contested or by default, final or provisional. The judicial mortgage is taken by a judicial decision.

§ 35:72 Perfection of liens

The mortgage must be registered at the land registrar to be opposable to the third parties.

The registration can be made at any time after the creation of the mortgage until the termination of the debt.

§ 35:73 Judicial liens—Definition

The judge can authorize the creditor to register a judicial protective mortgage (*hypothèque judiciaire conservatoire*).

If the debtor is convicted, the judicial mortgage will be the first step to seizure of the real estate.

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§ 35:74 Judicial liens—Conditions

The debt must be well-founded; and the recovery of the debt by other means is not possible otherwise.

§ 35:75 Judicial liens—Procedure

The creditor makes application for the registration of a judicial mortgage to the Court of the first Instance without any contradictory debate;

The judge delivers an order that authorizes the creditor to take a provisional registration at the land registrar;

This provisional registration of the mortgage is made within three months from the authorization;

The writ in relation of the claim must be taken within the month following the registration;

The notification of the registration to the debtor must be made within fifteen days from the registration;

The final registration of the mortgage must be made within two months from the condemnation judgment against the debtor.

§ 35:76 Judicial liens—Effects of the registration

There is a legal unavailability of the mortgaged estate by a protective judicial mortgage. If the action of the creditor is rejected, the registration is struck out. In the contrary case, the final registration substitutes the provisional registration.

§ 35:77 Realization on property subject to lien

The procedure of realization on property subject to lien is the seizure of real estate. The mortgaged creditor has to do the following requirements:

— notifies a writ for the seizure of real estate to the debtor; and
— notifies this writ to the land registrar.

In the deadline and if the debtor does not meet with its obligations, the mortgaged creditor can proceed with the judicial seizure and then the sale auction of the mortgaged real estate.

§ 35:78 Termination of liens

As long as part of the debt subsists, the mortgage subsists on the whole real estate. The mortgage that follows the debt and is extinguished at the same time as the debt.

The mortgage is completely extinguished even if the debt subsists by:

— renunciation of the mortgage by the creditor;
— prescription of the mortgage;
— the alienation to a third party potential loss of the mortgaged rights upon the destruction of the building; and
— by renunciation.

XII. PLEDGES AND CHATTEL MORTGAGES

§ 35:79 In general

The Pledge is a contract by which the debtor himself, or a third person, remits to the creditor a movable object to serve him as security (article 1170 of DOC and article 537 subsq. of commercial code.).

The Government is currently working on a bill aiming at amending the applicable law to movable assets securities, which main purpose would be to promote companies’ access to financing, and to modernize applicable law to movable assets securities.

§ 35:80 Property subject to pledge or chattel mortgage

The Pledge can concern:
— all object that can be sold;
— a future thing;
— deposit of money or securities; and
— a claim.

§ 35:81 Creation of pledge or chattel mortgage

The Pledge may be granted only by those whose have the capacity to alienate the thing. The lien attaches to the pledge only if the pledge has been placed and remains in the possession of the third person agreed by the parties or the creditor.

The pledge confers to the creditor the right to receive payment from the thing pledged by way of lien and of preference over any creditors.

§ 35:82 Perfection of pledge or chattel mortgage

The debtor has the right to demand the creditor to give him a receipt. The receipt that is dated and signed by the creditor must indicate:
— the nature of the thing that is pledged;
— the quality of the thing that is pledged;
— weights and measures of the pledged thing;
— the special brand of the pledged thing; and
— the number and nominal value, in the case of the bearer titles.

The creditor lien’s cannot be opposed to third parties if the pledge is not formulated by a written deed having a valid legal date.
§ 35:83 Enforcement on property subject to pledge or chattel mortgage

If payment has not been made when due, the creditor, seven days after a simple notification served upon the debtor and the third party holder of the pledge, may proceed to a judicial public auction sale of the objects pledged. Article 1226 of Obligations and Contracts Code provides that any clause authorizing a creditor to appropriate the pledge to himself or to dispose of it without the formalities prescribed above is void.

Unless the pledge abuses it, the debtor may not demand restitution until he has paid in full, with the respect to principal as well as the interest and expenses, the debt that the pledge was given to secure.

§ 35:84 Termination of pledge or chattel mortgage

The pledge is completely extinguished by:
— renunciation of the creditor;
— the loss or the destruction of the thing pledged;
— the confusion;
— resolution of the right of the creditor;
— assignment of the debt without the pledge;
— a regular sale of the pledge; and
— expiration of the deadline of the termination condition.

XIII. INTELLECTUAL PROPERTY

§ 35:85 In general

Morocco has a new comprehensive regulatory and legislative system for the protection of intellectual property rights.

§ 35:86 Copyrights (Droits d’auteur)

Moroccan law (Law no 2-00 of 15 February 2000) provides copyright protection for the literary or artistic expression of an idea.

§ 35:87 Copyrights (Droits d’auteur)—Object of copyrights

Every author may benefit from the rights stipulated in copyrights law with respect to his literary or artistic work.

A copyright protection confers upon the author two principal rights:
— the property right gives the author the exclusive right to exploit the copyrighted work for pecuniary gain; and
— the ethical right protects an author’s non-pecuniary interest in the literary or artistic work, which includes the protection of authorship and integrity. Authors may sell all or part of their property rights, or the right to perform or reproduce the work, without forfeiting their ethical rights.
§ 35:88  Copyrights (Droits d’auteur)—Authorship/ownership

The ownership of artistic/literary work initially belongs to the author unless it is transferred.

§ 35:89  Copyrights (Droits d’auteur)—Duration

This property right extends throughout the author’s lifetime, and thereafter it is transferred to the benefit of the author’s heirs for a period of fifty years.

The ethical right is perpetual, inalienable, and remains with the author until death, and thereafter, with the author’s heirs.

§ 35:90  Copyrights (Droits d’auteur)—Formalities

No registration requirement is compulsory to invoke such protection.

The unauthorized use or reproduction of a copyrighted work can be challenged through an infringement action.

Morocco is part of several international conventions providing for international rules governing copyright protection, such as the Bern Convention for the Protection of Literary and Artistic Works (October 9, 1886) and the Universal Copyright Convention of Geneva (September 6, 1952).

§ 35:91  Trademarks

The WIPO international classification of goods is followed in Morocco. The trademarks protection law in Moroccan is contained in a general Industrial Property Law (“IPL”) no 1. 00. 19 of 15 February 2000 which relates also to patent and industrial drawns and designs.

The mark is defined as well as the one who has the right to use and to register it.

§ 35:92  Trademarks—Object of protection

The following signs can be protected as trademarks: names, such as words, letters, numbers, logos; sounding signs, such as sounds or musical sentences; figurative signs such as drawings, holograms, colors, and combinations of the above-mentioned.

Trademarks must be distinctive. Signs, words or shapes are not distinctive if:

— they are generic;
— they are merely designate the product;
— they are descriptive; or
— the shapes reproduce the object or are part of its identity.

§ 35:93  Trademarks—Ownership

The owner of a trademark is the individual or legal person under whose name the registration is made.
§ 35:94 Trademarks—Duration

A registered trademark is valid for ten years from the date of registration renewable for additional ten years periods without limitation.

§ 35:95 Trademarks—Registration formalities

Trademark applications are examined by the Trademark Office (Office Marocain de la Propriété Industrielle) only with regard to form. Registered trademarks in the preceding year are to be published in a special trademark supplement of the Official Gazette. No opposition procedure is provided.

Transfer of trademark rights must be registered with the Trademark Office in order to be valid against third parties. Infringement of a registered trademark may be punishable under either the penal or civil laws of Morocco.

§ 35:96 Patents

Under the new Moroccan IPL, universal novelty of the invention is required by law to grant a patent, and working of patents issued is required by law to maintain the patent. Patents rights may be freely transferred to third parties, however, the transfer must be registered with the Patent Office in order to be effective against third parties.

The scope of a patent is the monopoly on the use of the invention throughout its duration in the territory for which it is patented.

Patent protection starts from the date of the first filing. The owner of a patent can defend his monopoly through an infringement action.

§ 35:97 Patents—Object of protection

Objects of protection include inventions, with the exclusion of ideas, mathematical formulas, discoveries, esthetic creations, plans, information, plant, animal or biological process, harmful inventions, and human organ.

To be patentable, an invention must be:

— *New*: the invention must not be included in the state of the art of the domain in which it is related before the date of the patent application;

— *the product of an inventive activity*: the invention must not be obvious for someone skilled in the domain in order to be patentable; and

— *capable of industrial application*: the invention must be susceptible to be put to an industrial use, which excludes surgical or therapeutic treatments or diagnostic methods.

§ 35:98 Patents—Ownership

The ownership of industrial property belongs to the inventor. The
owner of a patent is initially the person under whose name the patent has been filed. In the event of several identical inventions, the patent belongs to the first person who filed it.

§ 35:99  Patents—Duration
No opposition procedure is provided; patents issued are valid for for a 20 years duration not subject to any renewal.

§ 35:100  Patents—Registration formalities
Any individual or legal entity may file an application for a patent with the Moroccan Patent Office (Office Marocain de la Propriété Industrielle). The Patent Office examines applications with regard to form only and not with regard to novelty or merit. The particulars of the application are published in the Patent Official Gazette.

XIV. ELECTRONIC COMMERCE
§ 35:101  In general
Moroccan e-commerce is mainly governed by the Dahir n°1-07-129 of November 30, 2007, promulgating Law n° 53-05 on the electronic exchange of legal data (hereinafter the “Moroccan Electronic Law”), and Law n° 31-08 dated February 18, 2011, relating to consumer’s protection measures.

The Moroccan Electronic Law governs contracts concluded over an electronic medium. Contracts concluded over an electronic medium have the same value as contracts concluded on paper as long as (i) the person who issued said electronic contract can be duly identified and (ii) the electronic contract is established and maintained under conditions that ensure its integrity.

Any legal act can be concluded over an electronic medium except for documents relating to the Family Code, or for documents regarding personal or real securities relating to civil or commercial matters.

§ 35:102  Digital signatures/encryption policy
Law n° 53-05 recognizes electronic signatures.

Pursuant to the provisions of the Moroccan Electronic Law, an electronic signature must be linked to the document attached to it. The link between the signature and the document is presumed when the signature is secured by a process of creation of the electronic signature certified by a conformity certificate under electronic means. This conformity certificate can be simple or secured pursuant to the Moroccan Electronic Law.

The use of cryptographic scrambling technology is a legal requirement for the electronic signature to form a valid and binding agreement between the parties.
Electronic signatures must comply with the following requirements:

- The signature must be the signatory's own signature;
- It must be created by means that the signatory is able to keep under his control;
- It must guarantee a link with the document attached to it in a manner that any modification of said document could be detected;
- It must be created through a process of creation of electronic signatures certified by a conformity certificate.

The signatory is the natural person, acting for its own account or on behalf of the person or entity it represents, which uses a device for creating electronic signatures pursuant to the provisions of the Moroccan Electronic Law.

Additionally, the device for creating electronic signatures is an equipment and/or intended software to apply the data of creation of electronic signatures, including the distinctive elements characterizing the signatory, such as the private cryptographic key, used by him to create an electronic signature.

The “Autorité nationale d'agrément et de surveillance de la certification électronique” is responsible for the implementation of the encryption policy.

§ 35:103 Liability of on-line service providers for actions of subscribers (defamation, copyright infringement)

Morocco does not currently have laws that limit content or assign liability when the information displayed may be illegal or immoral or violate an intellectual property owner's copyright.

§ 35:104 Licensing issues (attorneys, doctors practicing via Internet across jurisdictional lines) [Reserved]

§ 35:105 Restrictions on use of Internet

The bill of Moroccan e-commerce will have rules that define rights and responsibilities as well as provide sanctions against those who engage in crimes over the Internet. Such a law has to provide for government intervention when necessary to reach the criminal responsible for such acts.

§ 35:106 Privacy and e-mail issues

The draft legislation for e-commerce will protect the personal information of those individuals who choose to participate in e-commerce.

XV. COMPETITION AND ANTITRUST LAWS

§ 35:107 Anti-competitive practices—Competition council

The Competition Council was established by Dahir no. 1-00-225 of
June 5, 2000, promulgating Law n° 06-99 on freedom of price and competition (hereinafter, “Law n° 06-99”), and has competence to hear all matters concerning anti-competitive practices.

The Competition Council may be consulted by:
— Parliamentary commissions relating to proposed laws or questions concerning competition;
— the Government;
— professional or trade associations;
— consumer organizations; or
— the Courts: Courts may consult the Council on matters of anti-competitive practices.

The Dahir n° 1-14-117 dated June 30, 2014, promulgating Law n° 20-13 relating to the Competition Council has made the following amendments:

- Recognition of the Competition Council as an independent authority pursuant to Article 166 of the Constitution;
- Definition of the powers of the Board (advisory functions and decision-making powers);
- Definition of the composition, organization and operating procedures of the Board;
- Establishment by the Board of an annual report on its activities before June 30th each year, addressed to His Majesty the King and Head of Government, and published in the Official Bulletin;
- Presentation by the Chairman of an annual report to both Houses of Parliament; and
- Repeal of sections 14 to 23 of Law n° 06-99.

§ 35:108 Anti-competitive practices—Types of anti-competitive practices

Moroccan competition law prohibits any implicit or explicit agreement that has as its purpose or effect the restraint or distortion of competition in a given market by:

- limiting the access of other enterprises to the market, or limiting competition between enterprises;
- preventing the stabilization of prices through free competition by facilitating their artificial rise; and
- limiting or controlling production, avenues of trade, investments or technical progress; or dividing the market or supply sources.

Generally, an agreement would have an anti-competitive purpose or effect if it was an anti-competitive agreement relating to prices, seeking to divide the market, or restricting the ability of a market participant to do business.

Moroccan merger operations control was previously governed by Law n° 06-99 and is now governed by Law n° 104-12 promulgated by
§ 35:109  **Anti-competitive practices—Abuses of dominant market positions**

It is illegal for an enterprise, with a dominant market position on the domestic market, or a substantial part of it, to exploit this position by carrying out activities that have as their purpose or effect the restraint or distortion of competition.

§ 35:110  **Anti-competitive practices—Abuses of state of economic dependence**

It is illegal for an enterprise or group of enterprises to exploit a client’s or suppliers’ state of economic dependence of that enterprise when that client or supplier has no alternative solution and when such abuses have anti-competitive purposes or effects.

§ 35:111  **Anti-competitive practices—Exceptions**

These agreements or abuses are permitted where they result from the application of a legislative text or regulations issued in the application of such legislation; or they will be to ensure economic progress.

§ 35:112  **Anti-competitive practices—Sanctions**

— *Administrative sanctions*

They are imposed by the Competition Council who may order injunctions against acting and impose fines (maximum, Dirhams 300,000).

— *Criminal sanctions*

Where it seems appropriate, the Competition Council may submit the matter for criminal prosecution or alternatively, the victim of the anti-competitive practice may instigate the proceedings. The action would be against an individual who personally and fraudulently took part in the anti-competitive practice. They could be fined up to Dirhams à 500,000 and/or imprisoned for two months to one year.

§ 35:113  **Anti-competitive practices—Concentrations (mergers, acquisitions or business structures)**

These can be subject to review if the concentration is one that could harm competition.

Under Law n° 104-12, every merger operation is subject to a prior notification to the competition council by the entities involved in the operation. Furthermore, the notification condition is required when the following three conditions are fulfilled:
(1) the total worldwide turnover, tax free, of the entire companies or groups of companies or individuals involved in the merger exceeds the amount set out by regulation;

(2) the total turnover, tax free, realized in Morocco by at least two of the companies or groups of companies or individuals involved in the merger exceeds the amount set out by regulation;

(3) the companies parties or subject to the merger or economically related to it have realized together, during the previous civil year, more than 40% of the sales, purchases or any other trans-action in a national market of goods, products or services of same nature or interchangeable, or in a substantial part of said market.

Law n° 104-12 provides that the obligation of notification is the responsibility of the individuals and companies which acquire the control of all or a part of a company or, in the case of a merger or if a common company is created, to all parties concerned that have thus to make a common notification.

Pursuant to Law n° 104-12, the Competition council is entitled to fine the entities subject to the prior notification obligation for a maximum amount of 5% tax free of the turnover realized in Morocco during the latest financial year, increased by, if applicable, the turnover realized by the acquired company, and, for individuals, 5 million MAD.

In the case of an omission or a false statement when notifying, the Competition council is entitled to fine the companies or individuals who made the notification for a maximum amount of 5% tax free of the turnover realized in Morocco during the latest financial year, increased by, if applicable, the turnover realized by the acquired company, and, for individuals, 5 million MAD.

§ 35:114 Unfair competition

There is no specific legislation in Morocco relating to unfair competition. Instead such liability is based upon general principles of tort law. Some acts may be regulated, however, by statutory provision such as misleading advertisements.

XVI. BUSINESS ORGANIZATIONS

§ 35:115 In general

The Moroccan business companies’ code provides for several forms of Companies:

— SA (Société anonyme);
— SARL (Société à responsabilité limitée);
— Partnerships; and
Partnership company
• Limited partnership company with possibility of Sole Proprietorships

§ 35:116 Corporations (Société anonyme: SA)
The SA is typically used for larger corporations with greater capital requirements. It requires a minimum of five shareholders and a minimum capital contribution of Dirham (“MAD”) 3 millions if the corporation seeks public investment and MAD 300,000 in the contrary case.

The corporation (SA) has the following Characteristics:
— the corporation has a trade name;
— the stockholder’s liability is limited to his participation;
— the face-value of a stock must be MAD 100.00 at least;
— the associates may be either legal entities, or individuals; and
— firms’ shares are represented by negotiable shares: the stocks.

The SA was previously governed by the provisions of Law n° 17-95 promulgated by Dahir n° 1-96-124 of August 13, 1996 (hereinafter, “Law n° 17-95”) which latest amendment was made by Dahir n° 1-15-105 dated July 29, 2015 promulgating Law n° 78-12 amending and completing Law n° 17-95 (hereinafter, “Law n°78-12”).

The main amendments made by Law n° 78-12 are, for instance:
• the continuity of the company’s legal personality since its registration before the trade registry, even in cases of conversion to another form of company;
• the addition of the compulsory description in the bylaws of the SA, of the number of issued shares and their nominal value, distinguishing, where applicable, the different classes of shares issued and the rights attaching to each of these categories;
• the provisions relating to inconsistencies and replacement of auditors, etc.

§ 35:117 Corporations (Société anonyme: SA)—Formation
The Corporation will not have full legal existence until all of the following requirements have been fulfilled:
— Drafting and signature of the constitutional or statute (Statuts) documents of the Company;
— The funding of the capital requirements of the Company;
— Nomination of provisional management;
— Publication of an official notice in a legal newspaper; and
— Filing the articles with the clerk of the Commercial Court and having a trade registry number.

§ 35:118 Corporations (Société anonyme: SA)—Shareholders
An SA can issue a number of different shares carrying different
rights relating to voting, dividends and entitlement to a distribution on a winding-up. Shares of different classes can have different par values, the only restriction being that if the shares of an SA are to be quoted they have to carry a minimum par value of MAD 100.00 at least.

The Shareholders’ Meetings are convened:
— by the Board of Directors and failing that, by the Auditors;
— by a representative appointed on a judge’s order upon request of any person having an interest, in the case of emergency or one or several shareholders having at least one-tenth of the capital; or
— by the receivers.

Within fifteen days before the meeting, any shareholder has a right to review the documents related to the matters to be considered at the meeting.

The Extraordinary General Meeting alone is entitled to amend any provision of the statutes. It cannot, however, increase the commitments of the shareholders.

The quorum for an Extraordinary General Meeting is that the shareholders attending the meeting in person or proxy own at least one-half of the capital on the first convening and one-quarter on the second one.

Deliberations are passed by a majority of two-thirds of expressed votes.

The Ordinary General Meeting passes all the decisions concerning the company, other than those passed at the Extraordinary General Meeting.

The Meeting is held at least once a year, within the six months following the closing of the in order to take decisions on all the financial year matters related to the accounts of the past financial year.

A quorum requires that the shareholders present or represented own at least one quarter of the capital on the first convening. No quorum is required for the second convening.

§ 35:119 Corporations (Société anonyme: SA)—Management and representation

Management:
There are two alternative forms of management structure that can be adopted by the Corporation:

— An administrative board: this is a classic structure whose members must be shareholders. This structure is constituted by two organs:
  * The Board of Directors: it consists of three members at least and twelve at most; the first directors are nominated in the by laws and appointed at the General Shareholders’
Meeting for a period not exceeding six years. The other directors are appointed by the Ordinary General Meeting for a period determined in the Articles of Incorporation. They may be re-elected unless a stipulation to the contrary is in the Articles. A director cannot be an employee of the company. The board of directors has the following competencies:

1. The members of the Board of Directors must detain each of them at least 1 share of the capital. These shares are totally connected to guarantee stock of the company, the acts of management of the company and are not assignable.

2. The Board of Directors is vested with extensive powers to act in any circumstance on behalf of the company as limited by the objectives as stated in the Articles of Incorporation.

3. The Board of Directors can validly consider a question only if at least one half of its members are present; decisions are taken by a majority of votes of those present.

4. The directors can enter into a contract with the company only upon authorization by the General Meeting based on a report made by the auditor. They are likewise forbidden to make loans with the company or have it guarantee any obligations assumed by them with third parties.

Any such contracts passed without prior approval by the General Meeting may be annulled without prejudice to the liability of the director or manager concerned.

The General Meeting may agree to pay directors a fixed annual sum as a director’s fee.

- **The President of the Board of Directors**: He is elected by the Board from among its members. He can be re-elected and may be dismissed at any time by the Board of Directors. The Board of Directors may appoint one or two individuals as general managers to assist the President. The Board determines on agreement with the President the extent and duration of the powers of such managers. They may be dismissed at any time by the Board of Directors upon the President’s proposal.

  — **The directorate**: this is an individual or a committee called the Directorate (who need not to be shareholders) and who are responsible for the actual management of the SA under the control of a supervisory board elected by the shareholders.

*Representation:*

The Chairman of the Board of Directors assumes the general management of the company and represents it to third parties. He is
vested with extensive powers to act in any circumstances in the name of the company.

The directors assist the President in his conduct of affairs of the corporation. The directors have the same powers towards third parties as the President.

§ 35:120 Corporations (Société anonyme: SA)—Termination

Anticipatory dissolution of a corporation may be pronounced by an extraordinary general meeting of the shareholders. The commercial court may, upon request by any person having an interest, pronounce dissolution of the corporation, if the number of shareholders has been reduced to less than five for more one than a year. The corporation may also be dissolved in the event its assets are reduced to less than a quarter of its capital. In such case, the Board of Directors must convene an Extraordinary General Meeting to decide upon its dissolution.

§ 35:121 Corporations (Société anonyme: SA)—Liability of officers and directors

The members of management (except the supervisory board in the case of the new form of management) actually have a managerial responsibility towards the Company and as such can be liable for complacent management, abuse of corporate funds, payment of excessive salaries, lax supervision of employees, and so forth. Such a member may also be responsible to meet the shortfall of funds in the event of an insolvency of the Corporation.

In certain situations certain actions can lead to criminal liability such as the issuance of fraudulent accounts or the abuse of Company assets.

§ 35:122 Corporations (Société anonyme: SA)—Liability of shareholders

In such a corporation, the shareholders’ liability is limited to the amount of share equity the shareholder hold. Upon incorporation of the corporation, a quarter of the equity capital must be paid in advance if paid in cash contributions. If it is paid in contributions in kind, it must be fully paid upon corporation.

§ 35:123 General partnerships

The general partnership (Société en nom collectif: “SNC”) is a form of partnership whereby all of the associates are jointly and severally liable for the partnership’s liabilities.

All partners have the quality of tradesmen and are indefinitely and jointly responsible for company debts. The partnership style includes either the names of all partners or the name of one or several partners followed by the words “and company.”
§ 35:124  General partnerships—Formation

Article 5 of the companies' code provides some requirements for the formation of General Partnership:

The Statutes should indicate:

— the form of the company;
— first name, name and residence of each of the partners;
— duration of the company that cannot exceed ninety-nine years;
— the corporate name;
— the amount of stated capital if any;
— the purposes and the corporate seal of the company;
— the clerk of the court where the statutes will be deposited;
— the signature of all the associates;
— the funding of the capital requirements of the company; and
— the number and the value of the attributed parts to every partner.

§ 35:125  General partnerships—Liability and bankruptcy

In a general partnership, the partners are jointly and severally liable, without limitation, for the debts of the partnership. The partnership is obligated to third parties by the actions taken by the managers when performed for the objectives of the partnership.

The objection by one manager of an act of management performed by another one has no effect on third parties. The restrictions of the powers of the manager as set by the Statutes cannot be opposed to third parties.

§ 35:126  General partnerships—Management and representation

All partners are entrusted with the management of the partnership unless there is a clause to the contrary in the Statutes that may appoint one or several managers.

The manager has all powers to act in the interest of the company. When several partners are entrusted with the management of the partnership, they have individually equal powers, subject to the right of each one to object to any act of management before it is completed.

The decisions that exceed the powers given to the managing partners must be taken unanimously.

The Statutes may provide that some decisions may be reached by a majority of votes. In addition, the Statutes may provide that the decisions may be reached by written consultation if the Meeting is not convened by any of the partners.

The report concerning the financial year, and all the accounts has to be approved by the Partners’ Meeting within six months of closing of the financial year. All these documents and the draft resolutions have to be sent to the partners fifteen days before the Meeting.
§ 35:127  General partnerships—Termination

A partnership is terminated on the death of one of the partners, unless a clause to the contrary is in the Statutes.

In case, of bankruptcy, suspension from carrying on business or incapacity of one of the partners, the partnership is dissolved unless its continuance is provided for by the Statutes or unanimously decided by the partners.

§ 35:128  Limited partnerships

In a limited partnership company two categories of partners are included:

— **Active and Responsible Partners**: these are silent partners, held indefinitely and jointly liable for all partnership liabilities. All the rules governing the partnership companies are not applied to such partners.

— **Limited Partners**: such partners are liable for partnership debts only to the extent of their own participation. Limited partner’s names should not appear in the name of the firm. Limited partners cannot manage. By contrast, they can strike working contracts with the partnership and exercise a right of control and monitoring through their membership.

There are two types of limited partnerships:

§ 35:129  Limited partnerships—The limited partnership

*(Société en commandite simple: SCS)*

The Limited Partnership has two categories of associates:

— general partners: *(associés commandités)* they have the status of general partner (they are tradesmen and are jointly and severally liable without limitations for the partnership debts).

— limited partners: *(associés commanditaires)* they are liable for the partnership debts to the extent of the amount of their capital contribution.

§ 35:130  Limited partnerships—The limited stock partnership

*(Société en commandite par actions: SCA)*

This is a company whose capital is divided into shares that are freely negotiable and represented by stock certificates. There are two categories of associates:

— general partners: they are considered as tradesmen and are jointly and severally liable for the SCA’s liabilities.

— limited partners: they are considered as shareholders and bear the losses only to the extent of their contributions. The number of limited partners may not be less than three.
§ 35:131 Société à responsabilité limitée (SARL)

A SARL is organized by fewer persons, with less capital and is generally easier to incorporate, manage and operate and as it is relatively easy to transform it into an SA it is often used as an intermediate vehicle for growing businesses.

§ 35:132 Société à responsabilité limitée (SARL)—Formation

A limited liability company may be formed by two partners at least and fifty at the most. If more than fifty partners, the company must be transformed in Joint Stock Company in the time allowed of two years.

The minimum capital of the company that is MAD 100,000, is divided into shares having equal stated value of at least MAD 100; these shares either in cash or in kind, must be fully subscribed and paid up by partners and the funds deposited with a bank; these funds will be handed to the manager after registration of the company on the Register of Commerce. The statutes must indicate the value of shares and value of any contribution in kind.

§ 35:133 Société à responsabilité limitée (SARL)—Liability and bankruptcy

The company is bound even by the acts of the manager that do not fall within the scope of the objective of the partnership. Special limitations on powers of managers provided in the by-laws cannot be opposed by third parties.

Managers are liable towards the company and third parties, either individually or jointly, depending on circumstances, for violations of the Commercial Code, violations of the Statutes or negligence in their management.

The limited liability company is not dissolved by bankruptcy or death of one of the partners unless a provision to the contrary is in the Statutes.

§ 35:134 Société à responsabilité limitée (SARL)—Management and representation

A SARL is managed by one or more managers ("Gérant or cogérants") who do not need to be shareholders but must be individuals rather than companies.

The managers are appointed by the partners and their names appear in the Articles of Incorporation or in a subsequent deed. The decision to nominate the managers must be carried out by one or more partners representing more than one-half of the capital.

Decisions of the partners are taken in a meeting. The partners are convened to a meeting fifteen days beforehand by a registered letter
giving the agenda. Any partner also the right to examine, fifteen days before any meeting:
— the proposed resolutions;
— the report of the management; and
— the report by the Auditor.

Two kinds of decisions of partners can be take:
— **Ordinary decisions:** At a meeting or by written consultation, the decisions must be approved by partners representing more than one-half of the capital. Unless provided to the contrary in the Articles of Incorporation, if majority is not reached, the partners are convened to a second meeting or consulted again and the decisions are taken by a majority of votes and whatever the share of capital represented. Such decisions concern the management of the company.

— **Extraordinary decisions.** Any modifications of the Articles of Incorporation are decided by a majority of partners representing three quarters of the capital. Decisions taken in extraordinary meetings must be preceded by a report on the situation of the company.

§ 35:135  **Société à responsabilité limitée (SARL)—Termination**

In the event of the loss of three-quarters of the capital of the partnership, the managers must consult the partners as to whether or not they must vote the dissolution of the company. If the membership is more than twenty partners, the company has to be reorganized within one year into a stock-holding company. If not, it is dissolved. If the capital is reduced to less than MAD 100,000, the company must be reorganized. If not, any person having an interest may ask the judge to order the dissolution of the company.

§ 35:136  **Société à responsabilité limitée (SARL)—Partners liability**

The partners are jointly liable for five years towards third parties for the value given to contributions in kind on formation of the company.

**XVII. CIVIL ACTIONS AND PROCEDURES**

§ 35:137  **General description of court system**

The judicial authority is independent from the legislative power and the executive power.

The judicial system is organized on four branches: civil and commercial branch, criminal branch, administrative branch and specific jurisdictions.
§ 35:138 General description of court system—Civil branch

On the first level, there is
— the First Degree Jurisdiction Courts are competent for all civil affairs relevant to the personal or inheritance and commercial or social statute;
— The Trade Courts rule cases between tradesmen, involving commercial activities, disputes between associates of a trade company, cases related to trade effects and disputes related to business; and
— The Communal and District Courts are competent to adjudicate all personal estate actions brought against individuals who reside under their jurisdiction. In addition, they settle minor criminal offenses. The value of claims must be less than MAD 1000.

On the second jurisdiction level, there are courts of appeals that try criminal cases, appeals against judgments passed by Tribunals of first degree Jurisdiction and appeals against rulings made by the latter’s presiding judges.

On the last level, there is the supreme court that is competent for appeals for cassation of sentences without reviewing the merits of the appeal decided by anyone of the kingdom’s courts, appeals for cancellation of the Prime Minister’s decisions, jurisdiction disputes arising among courts above which there is no high court other than the Supreme Court, suits for bias filed against magistrates and courts with the exception of the Supreme Court, proceedings aimed at judge disqualifying because of likelihood of bias and disqualifying for reasons of public security or for the sake of a good administration of justice.

§ 35:139 General description of court system—The administrative branch

The administrative jurisdictions are competent:
— to make initial rulings on claims for cancellation of acts filed against administrative authorities;
— disputes related to administrative contracts;
— claims for compensation of prejudice caused by public entities’ acts or activities; and
— to set up the consistency of administrative acts with legal provisions.

§ 35:140 General description of court system—Specific jurisdictions

The High Court is competent for offences or crimes committed by government members during the discharge of their functions. They may be indicted by the two Houses of Parliament and referred to the High Court of Justice for trial.
The Standing Tribunal of the Royal Army Forces is competent for cases about unauthorized carrying of firearms, and offences committed by soldiers.

The audit court ("Cour des Comptes") is responsible for conducting overall supervision of the implementation of the budget. It's to ensure the sound conduct of receipt and expenditure operations and evaluate the management of public agencies placed under its control by law.

§ 35:141 Jurisdiction of courts

The choice of venue is determined by the domicile of the Defendant. In the case of a number of Defendants, however, the domicile of one of them at the choice of the Plaintiff.

If the claim concerns real property, then the venue of the action will be based upon the location of the property.

If the claim is contractual, the Plaintiff may alternatively elect to bring the matter in the place where the contract is to be or has been performed.

In tort actions, the location can also be where the damage was done or where it was felt.

Contracts between commercial entities or individuals can expressly provide for an alternative venue. Such clauses will be effective as long as they are clear.

§ 35:142 Parties

A Moroccan citizen national may bring an action in the Moroccan courts against another Moroccan person or against a foreign person for any cause whatsoever.

A foreign person may similarly bring an action in Moroccan Court for any claim whatsoever against a Moroccan national (unless the claim concerns property based overseas).

In the event of a number of Plaintiffs or a Defendant, each party normally conducts the litigation in its own name and for its own account.

There are a number of ways in which third party joinder can occur.

— The first way is “appel en cause”: the Defendant claims that a third party should be held liable, in whole or in part for the claim asserted by the Plaintiff, the Defendant may file an interlocutory demand on that third party;

— The second way is “intervention volontaire”: a third party seeks to have itself joined to the action in which it feels it has an interest; and

— Third-party motion to vacate: any person who has an interest is permitted to bring motion to vacate, on condition that he was neither a party nor represented in the judgment he is attacking.
§ 35:143  Discovery

The burden of proof rests with the plaintiff and although each different tribunal has slightly different procedural requirements in relation to matters such as the manner of providing evidence and the requirements of lawyer representation, the principles are similar.

Morocco civil law procedure is adversarial in nature. It is up to the parties:

— to bring the action before the Court;
— to decide on the object of litigation; and
— to agree to terminate the action.

The responsibility for the progression of the suit rests on the parties and it is for each of them to communicate the written evidence to the other party to the proceeding.

The judge can, however, serve injunctions on the parties:

— to require them to submit pleadings or submissions or (upon the request of one of the parties);
— to require the other party to provide certain specified documents; and
— to make enquiry directly of the parties or of third parties in order to assist with the resolution of the dispute.

§ 35:144  Statutes of limitations

There are a number of different statutes of limitation in Morocco providing time limits for the bringing of an action. Except where the law provides differently some examples of periods of limitation are:

— 15 years: civil actions, tort claims;
— five years: commercial matters, nullity or rescission of a contract, actions between partners, rent, pension, tenant farming, lease, and similar;
— two years: actions against:
  ● doctors;
  ● pharmacists;
  ● private or public institution that receives mental ill;
  ● architects, engineers, land surveyors, experts;
  ● traders and providers;
  ● farmers; and
— one year: salary, employers against their employees to reimburse loans, lessor’s actions against tenants.

Before the expiration of a period, the Plaintiff may preserve his rights and cause the period to run anew by taking certain actions such as commencing legal proceedings against the Defendant, serving a formal demand for payment or causing the seizure of assets of the Defendant.
XVIII. RECOGNITION OF FOREIGN JUDGMENTS

§ 35:145 Enforceable judgments

Morocco have entered into bilateral conventions with foreign countries such as:
— Germany;
— Belgium;
— France;
— Libya;
— Spain;
— Italy;
— U.A.E. (United Arab Emirates); and
— U.S.A.

These conventions provide specific rules of procedure for the enforcement of overseas judgments. Where a particular judgment is not covered by the terms of the relevant convention or a country is not party to a convention with Morocco, then the general rules described below will apply.

§ 35:146 Formal requirements of foreign judgment

The Morocco legal system will recognize and enforce appropriate decisions. These decisions must have the following character:

These decisions can be recognized and enforced in Morocco through an action for *exequatur* brought before a Morocco Court of First Instance (*tribunal depremiPre instance*).

§ 35:147 Procedure for enforcement of foreign judgment

The Court of First Instance will grant an order for *exequatur* of the foreign judgment provided that the following conditions have been met by the foreign court:
— the decision must be final;
— the decision must emanate from a sovereignty recognized by Morocco;
— the decision must be one concerning private law; and
— the decision must be one that comes from a body exercising a judicial authority.

The *exequatur* request is formed by the plaintiff before the court that condemned the defendant in the other State. The *exequatur* request is transmitted by diplomatic way: it is transmitted by the District Attorney's Office (*Parquet*) to the Ministry of Justice, then to the Ministry of the Foreign Affairs before following the inverse process in the other country to arrive before the court of the residence or residence of the defendant. The request is accompanied with a similar documents according of provisions of the Moroccan law.
The First Instance court examines requests it and returns his exequatur judgment, validating thus the execution of the justice decision returned by the courts of the country of the plaintiff.

XIX. WRITS OF EXECUTION

§ 35:148 Which courts have power to issue writs of execution

The Dahir no 1-74-447 of 28 September 1974 relating to the civil procedure code gives to the First Instance Courts a competence to issue Writs of Execution.

Creditors whose seeking a provisional execution must first obtain an attachment of the assets. The creditors who are seeking an execution following a final judgment, however, are entitled to certain information from the Public Prosecutor on the judgment debtor.

§ 35:149 Execution procedure

The judgment creditor is able to proceed with the following remedies against the assets of the judgment debtor if some conditions have been satisfied:

— The judgment must be final, meaning that there must be no possibility of appeal or any other form of review;
— The judgment creditor must be in possession of the relevant court paperwork that states that the judgment can be enforced; and
— Formal notice must have been given to the judgment debtor of the issuance of the judgment.

§ 35:150 Assets affected—Tangible personal property

The creditor must make formal demand for the payment. Seizure may then only take place after a period of eight days.

This seizure will be made by a bailiff (L’agent d’exécution) who prepares an affidavit of the property seized.

§ 35:151 Assets affected—Debt owed by a third party

Any creditor, by virtue of judgment, may garnish in the hands of third party (funds in a bank account or sum held by a third party), such sums and effects or he may restrain their transfer.

§ 35:152 Assets affected—Stock and other securities

Notice will be served on the appropriate third party, who is likely to be the company issuing the stock or other security and the manner of enforcing the sale of the stock depends on the nature of the stock and whether it concerns a private or public company.

§ 35:153 Assets affected—Tangible personal property

A creditor that has already obtained a provisional attachment over
goods that formed the basis of his claim can, upon obtaining the *titre exécutoire*, may apply for the full seizure of the goods in question.

§ 35:154 Assets affected—Real property

Once a formal demand for the payment of the debt prior to seizing the property has been made and settlement has not been received, the judgment creditor may have the matter registered against the property on the land register whereupon the property will be deemed to be seized.

Within 30 days of the property being seized, the creditor must begin the process of the sale of the property by filing at the Court details of the proposed sale of the property that will be sold by auction.

§ 35:155 Assets exempt from execution

Article 458 of Civil procedure Code provides some exemptions from execution:

— The compensations declared not attachable by the law;
— Alimonies;
— An un-attachable part of garnishment of wages;
— Cloths and kitchen utensils of the debtor and his family;
— The tent that is serving as the habitation of the debtor;
— Books and implements of the debtor necessary in his work;
— Necessary food for one month for the debtor and his family;
— Seeds; and
— Two cows, six ovines, one horse, one mule or camel and two donkeys.

XX. ATTACHMENTS

§ 35:156 In general

An attachment is a procedure, of the aim of which is to place under the control of the Courts the assets of a debtor until their sale so as to satisfy the claim of a creditor. The attachment therefore acts to prevent the debtor from disposing of the assets in question and in some situations allows for the forced sale of the assets so as to satisfy the claims of the creditor.

§ 35:157 Property subject to attachment

The types of property that can be the subject of an attachment include:

— Chattels;
— Stock;
— Intangible property;
— Money held by third parties including money held in a bank account;
§ 35:158 Examples of attachments

The following are only a few of the attachments available. They are probably, however, the principal ones.

§ 35:159 Examples of attachments—Saisie conservatoire: Article 452 of Civil Procedure Code (“CPC”)

This immobilizes a sum of money or personal property when specifically requested. The main characteristics are:

— Envisages the conservation when the assets are in danger of disappearing; often used where the creditor is solvent but slow in paying and therefore used to encourage the creditor to settle. Where this fails the attachment is therefore only provisional as it will need to be converted into an attachment with a power of sale;
— Normally used in relation to tangible assets although can concern intangible assets; and
— Can be issued against a third party where that party is the custodian of the property or is himself a debtor.

The attachment (saisie conservatoire) is possible when:

— It concerns a valid subsisting claim of an amount of money rather than an obligation to perform an act;
— It exists urgent circumstances that threaten the ability to recover the claim; and
— The creditor obtain the authority of the Court;

The seizure excludes:

— Cloths and kitchen utensils of the debtor and his family;
— The tent that is serving as the habitation of the debtor;
— Books and implements of the debtor necessary in his work;
— Necessary food for one month for the debtor and his family;
— Seeds; and
— Two cows, six ovines, one horse, one mule or camel and two donkeys.

§ 35:160 Examples of attachments—Saisie revendication: Article 500 of CPC

This form of attachment is possible when the plaintiff would have some form of recognizable interest in the property such as a lessor of property leased to the debtor or a purchaser of goods that the debtor has not yet delivered; the assets in question do not need to be necessarily the subject matter of the claim in question but may be the debt-
ors only significant asset of value that the creditor wished to preserve. The property will, however, need to form the basis of the claim.

The creditor submits a petition setting out the basis of his claim in respect of that property that if the Court sees the claim as being well-founded it will order an attachment of the goods.

Once a final judgment in the plaintiff's favor is given (titre exécutoire) the plaintiff can apply for proper seizure of the goods.

§ 35:161 Examples of attachments—Attachment with a right of sale (saisie vente)

The debtor's personal property is sold by court order. Once the expenses of the sale are paid, the proceeds are used to pay the creditors that are approved by the court and attached the debtor's assets. These creditors are entitled to share in proceeds, proportionately to the amount of their credit.

§ 35:162 Examples of attachments—Enforcement of a judgment against intangibles (saisie-arrêt: Article 488 of CPC)

The creditor may reach claims of his debtor against third parties. Saisie-arrêt may be based on any money claim, whether or not due or liquidated. The creditor also may reach chattels of his debtor that are not in the latter's possession. Are excluded from the Saisie-arrêt the following:

- The compensations declared not attachable by the law;
- Alimonies;
- Loans or reimbursement of office stationeries, of travel expenses, and so forth;
- Loans or reimbursements of expenses done by a worker, employed or committed in his work;
- Indemnities allowed to reason of family loads;
- Death asset (capital-décès);
- Civil pensions;
- Military pensions; and
- Retirement or invalidity pensions of the private sector.

Nevertheless, one can proceed to the seizure and to the transfer of these pensions subject to the same conditions and limits that for the remunerations.

§ 35:163 Examples of attachments—“Saisie-gagerie”: Article 497 of CPC

The lessor of all or part of a building or, of a rural good in quality of owner or in all other quality can, with the permission of the judge, may do the following:
— the seizure of some guaranteed rents or overdue tenants farming,
— the seizure of chattels, and
— the seizure of goods and product of rented or earth.

This seizure can, with the same permission, include the movable goods from the house or that served the rural exploitation, when the goods were moved without the consent of the lessor.

XXI. ARBITRATION

§ 35:164 Selection and appointment of arbitrators—Existence of arbitration

Dahir n° 1-07-169 of November 30, 2007, promulgating Law N° 08-05 of September 30, 2007 (the ‘New law’) repealed and replaced Chapter VIII of Title V of the Code of Civil Procedure relating to arbitration. The New law is based on the UNCITRAL model law and French law and bestows numerous solutions generated by the case law of the Moroccan Supreme Court in arbitration.

Resolution of disputes through arbitration takes place among two or more parties either according to a specific arbitration clause (clause compromissoire) contained in the contract linking them, or according to the terms of a separate agreement to arbitrate (compromis d’arbitrage).

According the article 307 of civil procedure code, arbitration clause must be included in the contract or in a document relating to it and must make specific reference to the means of appointment.

The arbitration clause must be distinguished from agreement to arbitrate: the arbitration clause is signed before any dispute and the agreement clause it is signed when a dispute has arisen. The agreement to arbitrate must be in handwriting, signed by the parties, it must set forth the object of the arbitration, and it must name the arbitrators or specify the means of their appointment.

§ 35:165 Selection and appointment of arbitrators—Appointment of arbitrators

Arbitrators are persons that are selected according to their acquired expertise in a particular field. It is possible to appoint a sole arbitrator or an odd number of them.

The arbitrators are appointed either contractually or by the arbitration tribunal.

When appointed contractually, the rules to their appointment can be set out in the arbitration clause or in the agreement to arbitrate.

§ 35:166 Enforcement of arbitral awards

An arbitral award is rendered according to the procedure provided
by article 327-22 and following of the Moroccan Civil Procedure Code that imposes to the arbitrators the respect of the relevant procedural principles:

— Arbitral award must be written, contain the claims of the parties and the indication of the dispute determined by the sentence.
— Arbitral award must be signed by the referees, specify their identity, and mention the date and the place where it was rendered.
— the award must be motivated, unless the parties have decided otherwise in the arbitration clause, or the law applicable to the arbitral proceedings does not require the motivation of the arbitral award.

The arbitral award is rendered enforceable by:

— order of the president of the court of first instance; and
— order of the President of court of Appeal in the case where the parties have compromised on the appeal of a judgment: the arbitral award is deposited to the appeals court registry.

§ 35:167 Appeal from awards—Before the appeals court

This appeal is carried before the appeals court.

Article 327-34 of civil procedure code provides that the appeal of an award is impossible, subject to the provisions of Articles 327-35 and 327-36 of civil procedure code relating to the opposition by a third party and the cancellation of the award.

The purpose of an appeal is the reformation or the cancellation of the award. The deadline to appeal is 15 days following the service of the award which award’s exequatur (enforcement title) has been granted.

The cancellation of an award is possible under the following circumstances:

— the arbitration is not based on the Agreement or it is based on a void or expired Agreement;
— the provisions relating to the names of the arbitrators and the date of the award have not been respected;
— it award has been rendered in an improper form;
— the arbitrators have exceeded their grant of authority;
— the parties rights to be heard have not been respected;
— the arbitrators have been appointed improperly; or
— the arbitrators did not respect an imperative rule of law.

§ 35:168 International commercial arbitration

According to the provisions of Article 327-40 of the civil procedure code, an arbitration is international if one of the following criteria is met:
§ 35:168  

1. The parties to the arbitration agreement have, at the conclusion of that agreement, their places of business in different States; or
2. One of the following places is located outside the State in which the parties have their establishment:
   a) the place of arbitration, if provided for in the arbitration agreement or determined pursuant to that agreement;
   b) any place where is to be performed a substantial part of the obligations of the commercial relationship or the place with which the dispute has the closest connection;
or
3. The parties have expressly agreed that the subject of the arbitration agreement relates to more than one country.

In applying the provisions of paragraph 2 of this Article:
   a. if a party has more than one establishment, the place of business shall be that which has the closest relationship to the arbitration agreement;
   b. if a party has no business, its habitual residence of that person.

Any other arbitration is classed as domestic.

International commercial arbitration allows the parties to set out freely the rules relating to:
— the appointment of arbitrators;
— the procedural rules; and
— the applicable law.

International arbitration can be “ad hoc” which applies the usual arbitration rules and the CNUDCI rules or institutional that is handled by international institutional bodies such as
   ● the International Chamber of Commerce;
   ● the London Court of International Arbitration; and
   ● the American Arbitration Association.

Once rendered, the international arbitral award has the force of res judicata and may be enforced pursuant to an order issued by the appropriate President of the court of first instance.

The appeal against the order granting exequatur to an international award is only open in the following cases:
   ● the arbitration is not based on the Agreement or it is based on a void or expired Agreement;
   ● the arbitrators have been appointed improperly;
   ● the arbitrators have exceeded their grant of authority;
   ● the parties rights to be heard have not been respected; or
   ● the enforcement or execution of the arbitral award would violate fundamental principles of international law.

XXII.  BANKRUPTCY AND CREDITORS RIGHTS

§ 35:169  Distinction between bankruptcy and composition

Bankruptcy law provides for the development of a plan that allows
a debtor who is unable to pay his creditors, to resolve his debts through the division of his assets among his creditors. The plan is compulsory because it is decided by judgment of Commercial court.

Dahir n° 1-14-142 of August 22, 2014, promulgating Law n° 81-14 modifying certain provisions of Law n° 15-95 mainly by enabling the legal representative of the company to remedy the facts which might jeopardize the company’s activity, or in case he does not do so, the possibility is given to the auditor if any, or to any shareholder to inform the company's legal representative of the facts which might jeopardize the company’s activity within eight days following the discovery of the facts.

A bill is currently discussed aiming at modifying the provisions of Law n° 15-95 relating to bankruptcy, mainly aiming at reinforcing the prevention system within the company, the strict control of the cessation of payments, and the suppression of bankruptcy and its replacement by a mechanism which aims to privilege the safeguarding and the continuation of the company’s activity.

A composition is an agreement between an insolvent debtor and several creditors whereby partial payment of the debts discharges in full the original obligations. A composition is compulsory between the parties whose have signed the agreement.

§ 35:170 Entities subject to bankruptcy

When traders, craftsman and commercial corporation are unable to pay their debts as they fall due, that debtor must file a bankruptcy petition within 15 days of the date upon which these persons or companies ceased to be able to meet its payments.

§ 35:171 Reorganization

The reorganization is pronounced if it appears that the position of the trader, craftsman (Artisan), or company is not compromised.

When the Court confirms that an enterprise is unable to pay its debts and gives an effective date for the point at which this inability occurred, a declaration of a reorganization order is pronounced. The Court will appoint a judge (Juge-commissaire) to manage and control the procedure, a syndic (syndic: usually he is a clerk of the Court) who will work with the Company to plan and implement the reorganization procedure and representatives to act on behalf of the employees and the creditors.

During this procedure, a financial report on the Company, including a draft reorganization plan, is prepared; the Syndic appointed by the Court will work with the Company’s officers to examine the economic position of the Company and make recommendations to the Court as to how the Company can operate in the future.

The Court will decide as to whether the Company can operate in its
current form or whether it needs to restructure in some way. The Court will adopt a reorganization plan and will appoint people to implement it. Once a Court decides that a reorganization plan is not effective, a liquidator will be appointed to wind up the Company.

§ 35:172 Court’s jurisdiction

The commercial Court is competent for all procedures relating to the Bankruptcy. The territorially competent court is that of the place where the business or the company are situated.

The judges may hear or duly call the trader, craftsman or the president of the company in the Chamber of counsel (Chambre de Conseil).

§ 35:173 Petition for bankruptcy

The petition of Bankruptcy is deposited by:
— traders, craftsman or company officer: the petition enunciates the causes of the suspension of payments and must be accompanied following documents:
  ● the synthesis states of the last exercise accountant;
  ● list of all the movable and real estate goods the business;
  ● list of the creditors and debtors with indication of their residence, the amount of their rights, credits and guaranteed to the date; and
  ● the table of the loads;
— procedure can be opened on a summons of the creditor whatever the nature of his credit; and
— the Court itself or on request of the Chief Attorney (Ministère Public), in cases of the failure of financial performance concluded in the framework of a private agreement.

§ 35:174 Procedural steps in bankruptcy

This process of the Bankruptcy has three stages:
— Declaration of a reorganization order. This is where the Court confirms that the enterprise is unable to pay its debts.

The declaration of a reorganization order takes effect from its date. It is mentioned without delay to the register of the commerce. In the eight days of the date back to the judgment, an opinion of the decision is published in a newspaper of legal announcements and to the official Bulletin (Bulletin officiel d'Annonces légales). It invites the creditors to declare their credits to the designated syndic. This opinion is posted by the cares of the clerk to the reserved panel to this effect to the court. In the same delay of eight days, the judgement is proclaimed to the business by the clerk.

The date of the declaration of the non payment of debts as declared by the Court creates an important distinction between the various creditors:
Creditors who are willing to deal with the business during the rehabilitation period are privileged.

Creditors whose debts arose after the date of the Order commencing the insolvency proceedings are given preferential rights over those creditors whose debts arose in the period arising before the Order.

The Court will appoint several individuals who will be involved with the reorganization procedure. During this period, a financial report on the Company including a draft reorganization plan is prepared and the syndic appointed by the Court will work with the Company's officers to examine the economic position of the Company and make recommendations to the Court as to how the Company can operate in the future.

The Company is still able to enter into new contracts as long as they are in the ordinary course of business of the Company. Sums owing under those contracts are to be paid in accordance with the stipulated payment dates.

**The approval and implementation of the reorganization plan.**

The Court will see whether the Company can continue as a viable economic entity. The Court will decide as to whether the Company can operate in its current form or whether it needs to restructure in some way. The Court will adopt a reorganization plan and will appoint people to implement it. Once a Court decides that the rehabilitation plan is not being effective then a liquidator will be appointed to wind the Company up.

**Liquidation:** Where the Court decides that the liquidation of the Company is the only viable option it will appoint a liquidator who will oversee the sale of the assets of the Company and the distribution to the various creditors in accordance with their rights.

### XXIII. ONLINE RESOURCES

**§ 35:175 In general**

- **Selected websites with web addresses listed:**

- **Official websites** (web addresses not listed, but can be found by searching Google):
  - Prime Minister
  - Ministry of Justice
  - Ministry for Agriculture
  - Secretary for housing conditions
  - Ministry for Parliamentary Relationship

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• Ministry for Equipment
• Ministry for Public Function and Administrative Reform
• Ministry for Foreign Affairs
• Ministry for Fishing and the Halieutics Resources
• Ministry for Habous and Islamic Affairs
• Ministry for Youth and the Sports
• Ministry for Finances
• Ministry for Trade and Industry
• Ministry for Communication
• Customs Administration
• National Agency of Telecommunications Regulation (ANRT)
• Morocco Post Office
• Development Center’s of Renewable Energies
• Moroccan Petroleum Office (ONHYM)
• Foreign Exchange Office (ODC)
• Office of Exploitation of Ports (ODEP)
• National Office of Airports (ONDA)
• National Office of Railroads (ONCF)
• National Office of Fishing (ONP)
• Office for Industriel Développement (ODI)

Legal websites:
• Guide to Morocco legal system by DahmPne Touchent (web addresses not listed, but can be found by searching Google):
• Hajji & Associés Law Firm: Quid Juris periodical letters (www.ahlom.ma)
• Legisnet
• Jurisnet

Law Faculties (web addresses not listed, but can be found by searching Google):
• University Mohammed V — Agdal — Rabat
• University Mohammed V — Souissi — Rabat
• University Hassan II — Ain Chok — Casablanca
• University Hassan II — Mohammedia
• University Hassan Ier — Settat
• University Sidi Mohammed Ben Abdellah — FPs
• University Quaraouiyine — FPs
• University Mohammed Ier — Oujda
• University Cadi Ayad — Marrakech
• University Moulay IsamVI — MeknPs
• University AbdelMalek Saadi — Tetouan
• University Chouaib Doukali — El Jadida
• Université Ibn Toufaiil — Kénitra
• University Ibnou Zohr — Agadir
• University Al Akhawayn — Ifrane

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