Securitisation law reform: new perspectives for financing the Moroccan and wider African economy

Introduction

Securitisation became part of the Moroccan legal system in 1999 with securitisation act n°10–98. [1] This act, which aimed to promote housing financing, outlined the framework for the securitisation of mortgage loans and was strongly influenced by former French securitisation act n° 88–1201 of 23 December 1988 that introduced securitisation vehicles into the French legal system. Securitisation n°10–98 created securitisation investment funds, Moroccan securitisation vehicles, based on the former French securitisation vehicle (*fonds commun de créances*) ("**FPCT**").

The scope of application of the law was limited to non-litigious mortgage backed debt obligations, which carried no risk of non-repayment at the date of their transfer and were guaranteed by a first ranking mortgage.

In 2008, securitisation act n°10–98 was repealed by act n°33–06 in relation to the securitisation of receivables[2], allowing the redefinition of the legal framework for securitisation in Morocco, by enlarging the scope of eligible receivables and by improving the legal regime of FPCTs by giving them a bankruptcy remoteness status, creating ring-fenced collection accounts and making the rules relating to the transfer of receivables more flexible. Through this reform, Morocco has illustrated its desire to introduce into Moroccan law a legal regime for securitisation comparable to the best international standards.

Securitisation act n°33–06, however, presented certain barriers for the development of securitisation in Morocco, principally as a result of restricting the scope of eligible assets in securitisation operations to only certain categories of receivables and restricting eligible assignors to a limited number of originators only. In this way, it was not possible to securitise private companies nor was it possible to realise the securitisation of tangible assets or carry out synthetic securitisation through an FPCT.

Furthermore, securitisation act n°33–06 which, in particular, did not permit FPCTs to own real estate, except as a result of the enforcement of security rights attached to transferred receivables, was not adapted to favour the development of Islamic finance in Morocco.

Finally, certain tax disadvantages and regulatory constraints experienced by institutional investors, notably insurance companies and collective investment schemes, were also acting to impede the development of the securitisation market in Morocco.

It is for all of the above mentioned reasons that Morocco decided it was appropriate to seriously rethink the securitisation regime established by securitisation act n° 33–06. This reform, which was influenced by the best European practices, has implicated banking sector regulators, the capital markets and Moroccan insurance companies alike.

The proposal for securitisation act n° 119-12, amending and supplementing act n° 33-06, and amending other legislative texts and accompanying regulations, was adopted by the House of Representatives on 22 January 2013 and will be promulgated in the near future.

Inspired by some of the most reliable and secure extracts of foreign legislation, Morocco has illustrated its desire to provide a secure financial tool, which complements traditional financial methods, for the benefit of companies, investors and the Moroccan financial system as a whole, and to allow Morocco to position itself as the destination of choice for the development of securitisation and Islamic finance in Morocco and Africa.

It is in this context that Clifford Chance has assisted the Moroccan Finance Minister in this bold step forward.

[1] Act n°10–98 was promulgated by Dahir n°1-99-193 of 25 August 1999.
[2] Act n°33-06 was promulgated by Dahir n°1-08-95 of 20 October 2008.

It is worth noting that this reform has been adopted remarkably quickly even though it impacts a number of different legislative and regulatory texts. This speed is most certainly due to the fact that the Finance Minister and the concerned regulators have been coordinating their efforts to establish a clear roadmap for the process of reform.

The extension of the list of originators

Securitisation act n° 33-06 envisages that all persons and all schemes can be originators, regardless of whether they have separate legal personality. In addition to banks, insurance companies and other financial institutions, (i) all companies, whether regulated or not, quoted or not, (ii) the State and all of its subdivisions and (iii) all entities established in the form of funds, OPCs, trusts or partnerships, regardless of whether they have been granted legal personality, are eligible to be originators under the new securitisation regime, whether they are domiciled in Morocco or elsewhere.

The extension of the list of eligible assets

One of the principal objectives of the reform has been to stimulate growth, so far as is possible, in the securitisation of all types of assets, both tangible and intangible and to enlarge the scope of securitisation beyond the securitisation of receivables.

The growth in tangible assets (such as planes, boats, plant and machinery, other types of equipment, etc.) was necessary to allow FPCTs to issue *sukuk* certificates. In this way, inspired by the list established by the Irish Tax Law of 2011, which allows Irish SPVs to acquire tangible assets in a tax efficient way, the new Article 16 of the act extends the scope of securitisation to three distinct categories of assets:

1. all types of receivables resulting from an existing or a future contract denominated in Moroccan Dirham or in a foreign currency;

2. *sukuk* certificates, equity securities and debt securities, notably negotiable debt securities governed by securitisation act n° 35- 94, each one representing a right of claim against the entity which issued them, transferrable by book entry or physical delivery, with the exception of the debt securities which give direct or indirect access to the capital of a company; and

3. assets, tangible or intangible, movable or immovable and commodities.

Eligible assets may, under the revised law, be located outside of Morocco and can also be governed by foreign legislation.

The acquisition of eligible assets by an FPCT can be effected by any appropriate legal means of either Moroccan or foreign law, including by direct subscription if the concerned assets are financial securities.

The transfer of receivables can still be made by the mere delivery by the originator to the FPCT of a simplified deed of assignment. The sale takes effect and becomes enforceable against third parties as from the date affixed on the deed upon its remittance to the FPCT and the receivable ceases to be part of the originator's assets as from that date.

The deed of assignment must indicate if the ancillary rights such as pledges, mortgages, guarantees or insurances that could be attached to the transferred receivables are also transferred to the FPCT.

Where the secured assets are existing receivables, the deed of assignment must list all receivables and indicate, for each one of them, the elements which enable their identification. Where the receivables are listed by electronic means, the deed of assignment can only indicate the method by which the receivables have been transferred, designated and individualised, an assessment of their number and their global amount.

Where the securitised assets are future receivables, their identification can be limited to those elements which allow their determination in a very generic way, such as the identification of the debtor, the type of debtor or the instruments or contracts, or the types of instruments or contracts, by which the receivables would be originated.

The possibility of an FPCT acquiring the shares of a company has also been provided for in order to allow the issuance of *sukuk al musharaka*.

To enable a wide range of possibilities in terms of structuring *sukuk*, eligible assets, under the revised law, can also include the creation of separate *in rem* interests in relation to property (*démembrement de propriété*).

The opening of new securitisation operations

Purchase of new assets

Article 17 permits FPCTs to buy new eligible assets after the initial issuance in the conditions fixed in its regulations (*règlement de gestion*).

The possibility of transferring the assets

Article 18 allows an FPCT to transfer its assets before the term of the securitisation transaction, in the circumstances and according to the methods fixed by regulation, and where such transfer is authorised under the FPCT's regulations. A FPCT can transfer receivables in the same way, whether or not the receivables have reached maturity.

The transfer of eligible assets by an FPCT is effected by any appropriate legal instrument necessary in the conditions set out by the regulations. If the concerned assets are receivables, the transfer by an FPCT can be effected by the delivery of a deed of assignment.

Temporary acquisition of eligible assets

The acquisition by an FPCT of an eligible asset can be definitive or temporary. FPCTs can accordingly realise any kind of repurchase transactions (repo) and any other form of temporary transfer or lease associated with an option to purchase (for example, a stock lending).

The possibility of temporary transfers allows the establishment of *sukuk al ijara* programmes, a structure based on the acquisition of an eligible asset with a view to leasing it out to an originator and then reselling it at the end of the financing (sale and leaseback).

Lending transactions

FPCTs can directly grant loans to originators in the conditions to be set out by regulation. This ability to lend directly to originators removes the need for an intermediary party between the FPCT and the respective originator.

By its nature, a securitisation constitutes a credit operation: by acquiring an unmatured receivable, the FPCT grants an advance to the originator, who will be reimbursed by the debtor on the expiry date of the receivable. The right granted to an FPCT to grant loans does not, therefore, change the nature of the financing where the loan is to be used to finance the acquisition of eligible assets.

The act, however, provides that the prudential rules and controls around these operations, as well as the methods used to realise these operations, will be set out by regulation.

The introduction of an FPCT securitised and supervised by the CDVM which can conduct financing of eligible assets without going through a bank intermediary, will be a key factor for the development of securitisation in Morocco, notably in the context of the introduction of Basel III (BRI, Financial Stability Institute, FSI Survey – Basel II, 2.5 and III Implementation).

Synthetic Securitisation

Furthermore, as with French and Luxembourg securitisation funds, it is now possible for FPCTs to conduct synthetic securitisations (securitisation of credit risk as well as securitisation of insurance and reinsurance risks), like the ART (alternative risk transfer) vehicles or the international transformers, in the case of the issuance of obligations which are index-linked to catastrophic environmental risks (for example, droughts) on a parametric or indemnity basis.

The securitisation act provides that the prudential rules and controls around these operations, as well as the methods used to realise these operations, will be set out by regulation.

Forms of vehicles

Duality of forms

Influenced by article L.214-42-1 of the French Monetary and Financial Code, the new act introduces the concept of the duality of forms (fund and company). The FPCTs, Moroccan securitisation vehicles, can henceforth take the form of:

1. Securitisation schemes (*fonds de placements collectifs en titrisation*) ("**FT**"), with or without separate legal personality (this option does not exist in French or Luxembourg securitisation law); or

2. Securitisation companies (*sociétés de titrisation*) ("**ST**"). Inspired by Luxembourg law and, contrary to French securitisation companies, which can only be constituted in the form of SA or SAS, the ST will be able to assume many different forms.

Whatever the form, an FPCT can be composed of many different compartments from its establishment or during its lifetime, if this has been provided for in its regulations.

This duality of forms is designed to offer the maximum flexibility in the structuring of the vehicle, notably with regards to the issuance of *sukuk* certificates destined to be invested in both the international or local markets.

Constitution of an FPCT on the initiative of the management company

Before the reform, an FPCT was constituted by the joint initiative of the management and depository organisations.

This practice revealed that joint constitution could create certain difficulties. Where the custodian did not participate in the structuring of the

securitisation operation or the writing of constitutional documents, it did not seem justified that the depository organisation should share the responsibility of founder of the FPCT with the management company.

In response to these difficulties and to provide for the needs of the investors, securitisation act n° 33-06 states that the FPCT shall be constituted at the sole initiative of the management company who will establish the management rules. The role of the depository organisation is limited to accepting the management rules.

Following the consent of the Finance Minister, having consulted with the CDVM[3], the management company will conduct securitisation operations for the FPCT's account and manage the FPCT in the exclusive interest of the investors. The management company will also take possession of every documentary or constitutive title of the FPCT's eligible assets as well as all related documents.

The depository organisation is responsible for the custody of the assets of the FPCT. Only regulated banks, the *Caisse de Dépôt et de Gestion* and organisations having a registered office in Morocco whose corporate object is the deposit, credit, guarantee, management of funds or insurance or reinsurance transactions, and who appear on a list established by the Finance Minister following consultation with CDVM, can act as a custodian.

Constitution of the FT

Securitisation act n° 33-06 provides that the FT, or each compartment of it, is constituted by only one issuance, with at least two parts representing assets which are attributed to the FT or one of its compartments, even if they are only held by one security holder and even if it does not acquire any eligible assets on the date of its establishment. These improvements remove certain legal uncertainties related to the legal nature of the FT establishment as co-ownership.

Novelty of FTs with legal personality

It is possible to grant legal personality to an FT at the time of its establishment. This option enables the FT notably to benefit from international fiscal conventions concluded by Morocco which aim to prevent double taxation and facilitate the movement of FT units, *sukuk* certificates and other securities issued by an FT with foreign investors.

The decision to grant legal personality must be made when the funds are established and be accompanied by the registration of the FT in the company register, as is the case for every legal person carrying out a commercial activity in Morocco, in accordance with the provisions of article 37 of the Code of Commerce. This decision is irrevocable.

This option of granting legal personality to the FT offers maximum flexibility if it is considered that the use of a securitisation company is too stringent for the type of securitisation envisaged.

The creation of STs

STs can be constituted in the form of a public limited liability company (*société anonyme*), a simplified limited liability company (*société anonyme simplifiée*) or a limited partnership with share captial (*société en commandite par actions*).

Given the flexibility granted by the law to organise the management of the company, the form of a simplified limited company would often be used.

Furthermore, and to take account of the specificities of a securitisation company, certain stringent provisions of Moroccan law have been excluded.

The regime of the regulated conventions (*conventions règlementées*) will not apply to operations concluded in conformity with the FPCT regulations. The rules of securitisation act n° 17–95 in relation to public limited liability companies generated by capital increases have been relaxed, notably, with regards to the rules on quorum.

Derogation from article 70 of securitisation act n°17-95 permits the ST to transfer eligible assets or grant guarantees without the prior authorisation of the board of directors.

Possibility for an FPCT to issue different types of debt securities and *sukuk*

With the creation of the Casablanca Finance City (CFC), Morocco aims to position itself as a regional financial centre at the forefront of securitisation. Morocco also envisages turning Casablanca into a regional hub which would serve Maghreb and Western Africa. As a result, it is necessary for Morocco to offer a wide range of financial instruments (notably Islamic) in order to maintain its competitiveness and to attract new foreign investors (primarily from the

[3] The CDVM will soon be replaced by the Moroccan Authority for Capital Markets (*Autorité Marocaine des Marchés de Capitaux*) (AMMC). The proposal for this act in relation to the establishment of the AMMC has been adopted by Parliament and should be promulgated in the near future.

Golf countries). In order to complement the reform of the Moroccan banking act which will allow banks called "participatives" to offer Islamic finance products, securitisation act n°33-06 opens the path for the issuance of *sukuk* certificates, known for being the most used debt instruments in Islamic finance.

Inspired by Lebanese law, the new Moroccan securitisation act will use the FPCT as a vehicle for issuing *sukuk* certificates.

Debt Securities

An FPCT can issue all types of instruments in accordance with its regulations and relevant subscription agreements. These securities can be issued in the form of registered or bearer notes.

The securities issued by an FPCT can constitute different classes or sub-classes.

The different classes or sub-classes of securities issued by an FPCT represent different rights with respect to all, or a part of, the assets of the FPCT or the concerned compartment, subject to the conditions provided for by the FPCT's regulations.

The payment of outstanding debts under FT units or shares issued by the FPCT are subordinated to the payment of outstanding debts owed to holders of debt securities, *sukuk* certificates issued by the FPCT and the repayment of sums due from any cash borrowings.

Taking into account Anglo-Saxon practices with regards to international issuances, the new securitisation act permits, when consulting with the holders of *sukuk* certificates or debt receivables issued by the FPCT before making a decision, the management company to prioritise the interests of one or more classes or sub-classes of security holders over others, taking into account their priority ranking or respective subordination, within the conditions defined by the FPCT's regulations.

Introduction of sukuk into the Moroccan legal system – definition

In accordance with the previous version of the rules of the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI), *sukuk* certificates are defined as being certificates of equal value representing undivided shares in ownership of the eligible assets acquired or to be acquired, or investments realised or to be realised, of the issuer of the securities.

In order to facilitate the use of *sukuk* certificates issued by an FPCT in the Golf countries or other regions of the world such as South East Asia, it states in article 6 of the act that *sukuk* certificates can be governed by all foreign laws and be expressed in foreign currencies.

The notion of a *sukuk* certificate is construed as broadly as possible, permitting a lot of flexibility. *Sukuk* certificates can take the form of both the classic sale structures and also the sale and lease back structure (named *sukuk al ijara*). *Sukuk* certificates can also be based on an investment (*sukuk al mudaraba*), or assets under construction or future assets (*salam* and *istisna*). In this way the Moroccan regime for *sukuk* certificates can be distinguished from the Turkish regime of lease certificates of which it is inspired.

Finally, taking into account the absence of precise qualification of the right created by *sukuk* certificates for their holders, and given that this right could notably be qualified, in traditional civil law countries, by co-ownership (including those issued by an ST), subparagraph 5 of article 7-1 states that the FPCT remains completely invested in the attributes of the property, to perform all of the administrative acts and specifically provisions concerning the eligible assets on which the right created by the *sukuk* certificates is carried, limited by the FPCT's regulations.

Creation of Comité Charia for Finance

In order to unify the doctrine and ensure a certain degree of legal certainty for investors wanting to subscribe to securities conforming to the principles of Charia, the new securitisation act provides for the establishment of a committee, *Comité Charia*, for Finance whose composition, prerogatives and operational procedures will be fixed by a special Dahir, in conformity with article 41 of the Constitution.

When *sukuk* certificates are placed with Moroccan investors, ensuring conformity of the financing with the applicable rules of the Charia will be verified and confirmed by the *Comité Charia* for Finance. The objective envisaged by the legislators is, in effect, to limit the risk of challenge based on different interpretations which could result from various private sharia boards, as is often the case for international *sukuk*. Nonetheless, when the *sukuk* certificates are placed with the international investors, one or more competent sharia boards will have to be designated in accordance with current practices of the market.

Protection against the risk of insolvency

FPCT immune from insolvency

In order to protect securitisation

transactions and the rights of investors, the risk of insolvency of the FPCT has been removed: an FPCT cannot be subject to any insolvency proceedings of book V of the Commercial Code on the provisions for companies in difficulty. As with French securitisation schemes, Moroccan FPCTs are therefore, by statute, bankruptcy remote.

The validity and effectiveness of the limited recourse provisions

Strongly inspired by French securitisation law, the new securitisation act sets out the principle of the validity of provisions governing payment allocations and creditor rights subordination (waterfalls) as well as provisions limiting creditors' recourse to the assets of the FPCT. The payment allocations rules are valid and enforceable against shareholders, FT unit holders, holders of debt securities and *sukuk* certificates, even in the event of liquidation of the FPCT.

These payment allocation rules are equally enforceable against creditors who have accepted them.

Protection against other civil action

The new securitisation act expressly protects the FPCT's assets against potential civil action. The assets of an FPCT cannot be attached or seized by any creditors other than pursuant to the payment allocations rules provided for by its regulations.

Protection against the insolvency of the originator

The last subparagraph of article 20, which applies to transfers of every eligible asset, that is to say, not only receivables, provides that all transfers of eligible assets are immune from the insolvency of the originator. The transfer of assets to the FPCT cannot therefore be affected (notably, in terms of claw-back risk, but not exclusively) by the commencement of any insolvency proceedings against the originator following the transfer, governed by book V of the Commercial Code or an equivalent foreign procedure.

Protection against the insolvency of the establishment in charge of recovery

Article 31 provides for a "ring fencing" collection account mechanism. Such mechanism takes the form of a segregated collection account opened in the name of any entity which is in charge of collecting sums owed by the obligors of securitised receivables. This account is dedicated to the FPCT or, if applicable, the compartment of the FPCT. This regime is comparable to the regime set out in article L.214-46 of the French Monetary and Financial Code.

The creditors of the establishment in charge of the recovery may not pursue payment of their receivables in the dedicated accounts, even in insolvency proceedings affecting the servicer.

The dedicated account is thus used to isolate collections belonging to the FPCT from the assets of the establishment in charge of the recovery, and protect these collections from the risk of insolvency of the establishment in charge of the recovery.

This legal recognition also allows the establishment of an efficient and robust mechanism for the securitisation of flows resulting from the recovery of securitised assets, protecting investors from the commingling risk.

Additionally, article 27 provides that the provisions of book V of the Commercial Code do not affect the right of the management company of the FPCT to terminate the appointment of the servicer, even if the recovery is entrusted with the originator. Additionally, the appointment of the servicer can always be terminated, in the conditions set out in the servicing agreement concluded between the management company and the servicer. This provision was influenced directly by article L.515-28 of the French Monetary and Financial Code in relation to *sociétés de crédit foncier*.

Specifics applicable to soverign securitisations

Exclusion of the law in relation to Privatisation

Article 111-1 of the new act states that the provisions of securitisation act n°39-89 authorising the transfer of public sector companies in the private sector, as amended and supplemented, do not apply to the transfer to an FPCT of eligible assets held by a legal person governed by public law, before being repurchased by an originator, in the framework of a securitisation operation.

Additionally, in the context of securitisation operations initiated by the State or other legal persons governed by public law providing for the repurchase of eligible assets by an originator:

- the creation of an FPCT will not be subject to any prior authorisation of the Finance Minister; and
- the transfer of assets or equity by a public company

will no longer be subject to the prior authorisation of the Finance Minister.

Exemption from the requirement to produce an Information Note

Article 111-2 provides that, for securitisation operations where the State is the originator, the Information Note required under article 13 of Dahir n° 1-93-212 by the CDVM and the information required when companies make public offerings is no longer required.

Preserving the confidentiality of information relating to State receivables

If, in the context of a securitisation operation, a transfer involves State receivables, notably of a fiscal nature, article 111-2 provides that no information, outside of that fixed by regulatory laws, which permits the debtors to be identified, either directly or indirectly, shall be disclosed to, amongst others, management companies, rating agencies, investors or potential investors.

These provisions aim to guarantee the confidentiality of information linked to tax receivables, by introducing an exception, by withholding the identity of debtors, to the general principle of determination and individualisation of transferred receivables. The new provisions have been directly influenced by Chapter 6 (*Securitisation of tax receivables of the State*) of the Belgium securitisation act of 11 July 2005.

The collection of receivables

Equally influenced by article 43 of the Belgium securitisation act of 11 July 2005, article 111-3 of the act provides that, notwithstanding all of the other provisions set out by the act, the recovery of State receivables which have been the subject of a securitisation shall be carried out in accordance with legislative and regulatory rules in force, notably act n° 15-97 of the Code enforcing public receivables.

Consequently, in the case of securitisation of tax receivables, the recovery of tax and its implementing measures, as well as all other conventional provisions, legal or regulatory, permitting or guaranteeing the recovery of tax, will be made only by the State.

Accompanying measures to make FPCTs' securities even more attractive

In addition to the new fiscal rules introduced by the 2013 Finance law, a number of other accompanying measures (namely, a number of acts, regulations, orders and circulars) have been proposed and are in the process of being adopted in addition to the amendment of securitisation act n°33-06, with the aim of increasing the attractiveness of securities issued by the FPCT in order to expand the list of investors, particularly institutional investors, such as insurance companies and undertakings for the collective investment in transferrable securities.

Taxation applicable to securitisation operations

The Finance act n° 115-12 for the 2013 annual budget, promulgated by the Dahir n° 1-12-57 of 28 December 2012 has brought many changes to the fiscal regime applicable to securitisation operations, aiming to achieve a certain form of fiscal neutrality between originators and FPCTs, designed to favour sale and lease back *sukuks* (*al ijara*), in particular. The legislator aimed to paralyse the potential additional fiscal costs for the originator, notably in terms of corporate tax, registration law or land registry fees.

With regards to corporation tax, article 6-I-A-17° of the General Tax Code provides that FPCTs are completely exempt from corporation tax for benefits realised within the framework of the company's legal objectives.

With regards to the right to legally register the title to land, article 15 *bis* of the abovementioned act provides that the following are exempt from the Land Registry fees:

- the FPCTs in relation to acquisitions, in the context of a securitisation transaction, of assets from an originator which are destined to be re-transferred to the same originator, including for mortgage deeds;
- the originators in relation to the repurchase of assets which have previously been transferred, including the registration of a mortgage.

In the same way, in relation to registration rights, article 9 of the abovementioned finance act amended article 129-IV-12° of the General Tax Code to provide for the exemption of registration requirements in relation to: the constitution of FPCTs, the acquisition of assets for developmental needs or from the originators, the issuance and transfer of securities of the FPCT, the modification of management rules of the FPCTs and any other act in

relation to the management of the FPCT. This article provides that the repurchase of property assets, which have been the object of a transfer to FPCT, by the originator also benefit from an exemption under the registration law.

Furthermore, article 9-I-C of the General Tax Code sets out the principle of non-taxation of revenue from the sale of real estate assets, resulting from a sale between an originator and an FPCT in the context of a securitisation.

Consequently, in the context of a securitisation, for example, by the issuance of *sukuk* certificates entitled *al ijara*, the transfer of assets from the originator to the FPCT and its subsequent repurchase by the same originator will remain completely neutral from a fiscal point of view.

Technical Reserves of Insurance Companies

It is expected that the order of the Finance Minister to Privatisation act n°1548-05 of 10 October 2005 in relation to insurance and reinsurance companies (as amended and supplemented), governing the conditions of eligibility of financial notes in respect of technical reserves of insurance companies, will also be amended.

These modifications aim to create more favourable conditions for insurance companies, who have an important role to play in the Moroccan economy, to invest in securities issued by the FPCTs.

The first objective of the proposed modifications has been to align the eligibility conditions of FT units, shares, bonds and all securities issued by the FPCTs, including *sukuk* certificates. This treatment is justified by the identical risk profile of these instruments. This solution has already been applied in French law.

It is also proposed that, if the assets held by the FPCT consist of 90% of certain types of assets (securities, loans, etc.) (to take into account the available cash flow), the eligibility regime for securities issued by the FPCT should be the same as the regime that applies to these assets.

Furthermore, this "look through" approach has already been applied by:

- Order n° 1548-05 in relation to shares of SICAV; and
- EU Directive "Solvency 2", whose entry into force is currently set for 2014.

The reform, which proposes a general application of transparency, raises the question of whether the eligibility of financial notes of insurance companies is in effect the eligibility of the underlying eligible assets.

When an insurance company invests in an eligible asset, whether directly or through an FPCT, the nature of the risk stays the same and it would therefore be logical for there also to be consistency in respect of the conditions of eligibility for the technical reserves.

The FPCT is, by its very nature, an indirect investment vehicle making it suitable for this exercise.

This transparent treatment is the principle behind Solvency 2, which is based on a risk control approach and a transparent treatment of assets covering technical reserves, where possible.

Prudential Rules for Credit Institutions

Similar amendments, influenced by the same principle of transparency, have been proposed by the Bank of Maghrib in order that its rules for determining the capital requirements of credit institutions be modified to encourage credit institutions placed under its supervision to invest in the receivables issued by the FPCT.

Investments of undertakings for the collective investment in transferable securities

There have been proposals to add a new subparagraph to article 81-1 of Dahir establishing securitisation act n° 93-213 of 21 September 1993 in relation to undertakings for the collection investment in transferable securities to state that such undertakings cannot hold more than 20% of their assets in FT units, shares, debt securities or *sukuk* certificates issued by the FPCT, in the same way as the maximum ratio of negotiable debt securities and FT units of OPCR relative to the total assets of undertakings for the collective investment in transferable securities.

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