

The New Moroccan Framework on International Jurisdiction and Foreign Judgment Enforcement - A Preliminary Critical Assessment



I. Introduction

Finally out: the new Moroccan Code of Civil Procedure (Law No. 58.25), the preparation of which was previously announced on this blog, has been promulgated by *Dahir* (Royal Decree) No. 1.26.07 of 11 February 2026 and published in the Official Journal (*Al-Jarida Ar-Rasmiyya*) No. 7485 of 23 February 2026. The legislative process was fraught with difficulties, and the draft went back and forth several times before its final adoption earlier this year. The Code will enter into force six months after its publication, i.e. on 24 August 2026.

As previously introduced on this blog, the preparatory work for the new Code dates back to 2023, when a first draft was submitted to the Moroccan House of Representatives (Draft No. 02.23). One of the main innovations of the new Code is

the introduction, *for the first time in Moroccan history*, of a catalogue of rules on international jurisdiction. The Code also amends the existing rules governing the recognition and enforcement of foreign judgments. Apart from a few minor exceptions, the provisions contained in the new Code, both on international jurisdiction and on the recognition and enforcement of foreign judgments, remain largely unchanged compared with those previously presented, save for limited linguistic and stylistic adjustments that do not entail any substantive legal implications.

What follows is a brief outline of the main solutions adopted in the Code, followed by a short assessment.

II. International Judicial Jurisdiction

The rules governing international jurisdiction are now expressly set out in Articles 72 to 75 of the new Code, contained in Chapter IV, entitled “*International Judicial Jurisdiction*” (*al-Ikhtisas al-Qada’i ad-Duwali*). The new rules may be summarized as follows:

1. General jurisdiction based on the defendant’s Moroccan nationality and the domicile or residence of a foreign defendant in Morocco (Articles 72 and 73)

Article 72 confers general jurisdiction on Moroccan courts on the basis of the Moroccan nationality of the defendant, even where the latter has neither domicile nor residence in Morocco. Article 73, by contrast, adopts the classical principle of *actor sequitur forum rei* when proceedings are brought against a foreign defendant. In both cases, jurisdiction is excluded where the action concerns an immovable property located abroad (last sentence of Articles 72 and 73).

2. Special jurisdiction in cases where the action is brought against foreign defendants with no domicile or residence in Morocco (Article 74)

Article 74 lays down an additional set of rules on special international jurisdiction

applicable where proceedings are brought against foreign defendants who have neither domicile nor residence in Morocco. In such cases, Moroccan courts may assume jurisdiction when the action concerns:

1) assets located in Morocco, or obligations formed, performed, or to be performed in Morocco (Article 74(1));

2) tortious liability where the act giving rise to liability or the damage occurred in Morocco (Article 74(2));

3) the protection of intellectual property rights in Morocco (Article 74(3));

4) proceedings relating to businesses in difficulty instituted in Morocco (Article 74(4));

5) cases involving multiple defendants, provided that at least one of them is domiciled in Morocco (Article 74(5));

6) maintenance obligations where the maintenance beneficiary resides in Morocco (Article 74(6));

7) matters relating to the filiation of a minor residing in Morocco, or to guardianship over a person or property (Article 74(7));

8) matters of personal status where

- (i) the plaintiff is Moroccan, or
- (ii) the plaintiff is a foreigner residing in Morocco and the defendant has no known domicile abroad (Article 74(8))

9) dissolution of the marital bond where

- (i) the marriage contract was concluded in Morocco;
- (ii) the action is brought by a spouse who is a Moroccan national; or
- (iii) one spouse has abandoned the other and established domicile abroad or has been deported from Morocco (Article 74(9)).

In addition, article 74 *in fine* further clarifies the ancillary heads of international jurisdiction. In particular, Moroccan courts to hear an original action are also empowered can assume jurisdiction to adjudicate any counterclaims and related claims arising from the same legal relationship. Finally, Moroccan courts are

granted jurisdiction to order conservative and provisional measures intended to be executed in Morocco, even where they lack jurisdiction over the merits of the principal dispute.

3. Jurisdiction based on the agreement of the parties (Art. 75)

The new Code also recognises party autonomy as an independent basis of international jurisdiction. Under Article 75 para. 1, even where a dispute would not otherwise fall within the ordinary heads of jurisdiction set out above, Moroccan courts may assume jurisdiction where the defendant expressly or implicitly consents to, or submits to, their jurisdiction. This jurisdiction by consent is, however, excluded where the action concerns immovable property situated abroad.

4. Ex officio declining jurisdiction in the event of non-appearance

The Code further introduces a rule aimed at preventing the exercise of jurisdiction by default (Article 75 *in fine*). Where the defendant fails to enter an appearance, the court is required, *ex officio*, to decline jurisdiction and to declare itself incompetent.

III. Recognition and Enforcement of Foreign Judgments

The new rules on the recognition and enforcement of foreign judgments are now set out in Articles 451 to 456 of the new Code. While they largely reproduce existing solutions, they nonetheless introduce several important innovations.

1. Necessity of *exequatur*

Article 451 establishes the principle that foreign judgments cannot be enforced in Morocco as such. Their enforcement is subject to a prior declaration of enforceability (*exequatur*) by the competent Moroccan court, granted in accordance with the conditions laid down in the Code. Article 452 sets out the

procedural framework governing applications for *exequatur*, while article 454 specifies the documentary requirements and the avenues of appeal applicable to *exequatur* proceedings.

2. Enforcement requirements

Article 453 sets out the substantive conditions that must be satisfied before a foreign judgment may be declared enforceable in Morocco. These requirements may be grouped as follows.

a) Requirements relating to the jurisdiction of the foreign court. First, the foreign court must not have ruled on a matter falling within the exclusive jurisdiction of Moroccan courts (Article 453(i)). In addition, the choice of the foreign forum must not have been tainted by fraud (Article 453(ii)).

b) Requirement relating to due process. Due process guarantees must have been respected, in particular insofar as the parties were duly summoned and properly represented in the proceedings before the foreign court (Article 453(iii)).

c) Requirements relating to finality and the absence of conflicting judgments. The judgment must be final and conclusive under the law of the court of origin (Article 453(iv)). Moreover, it must not be incompatible with a judgment previously rendered by Moroccan courts (Article 453(v)).

d) Requirement relating to public policy. The foreign judgment must not violate Moroccan public policy (Article 453(vi)).

e) Requirement relating to the contravention of international conventions ratified by Morocco. Finally, the content of the enforcement judgment must not contravene the provisions of any international convention ratified by Morocco and published in the Official Gazette (Article 453(vii)).

3. The reciprocity requirement

In addition to the foregoing conditions, Article 456 introduces the requirement of reciprocity as a condition for the enforcement of foreign judgments. While the

application of the above requirements remains subject to international conventions binding on Morocco, the new Code now expressly requires that the existence of reciprocal treatment between Morocco and the State of origin be taken into account when ruling on an application for *exequatur*.

4. Instruments eligible to enforcement

Article 455 extends the *exequatur* mechanism beyond foreign judgments to cover titles and authentic instruments drawn up abroad. Such instruments may be enforced in Morocco provided that they were established by competent public officers or public servants and that they qualify as enforceable titles under the law of the State of origin. Their enforcement in Morocco is subject to a prior declaration of enforceability and is conditional upon the instrument being enforceable in its State of origin and not being contrary to Moroccan public policy.

IV. Comments

The introduction of new rules on international jurisdiction and on the recognition and enforcement of foreign judgments is, in itself, a welcome development. It reflects a growing awareness among the Moroccan authorities of the practical importance of private international law and an intention to provide legal practitioners and courts with a clearer and more structured framework. This development is consistent with Morocco's increasing engagement at the international level, notably through the work of the Hague Conference on Private International Law (HCCH), an engagement that has recently culminated in the establishment of an HCCH Regional Office for Africa in Morocco.

However, from a substantive point of view, the newly adopted rules may leave a certain sense of dissatisfaction. This is due to a number of issues, most of which were already pointed out in a previous post on this blog.

1. International jurisdiction

First, as regards the legal framework governing international jurisdiction, a reading of the adopted provisions gives the impression that the legislature has remained attached to an outdated conception of private international law, and has failed to take account of more recent developments, even with respect to some fundamental issues. In particular, the new rules do not distinguish between exclusive and concurrent heads of jurisdiction, despite the practical importance of such a distinction for the recognition and enforcement of foreign judgments. Nor do they introduce specific regimes for situations requiring enhanced protection, such as disputes involving weaker parties (notably consumers and employees), or provide more detailed rules for parallel proceedings, including *lis pendens* and *connexity*.

More importantly, the new Code introduces a number of questionable grounds of jurisdiction. These include, in particular, the nationality of the defendant, the place of conclusion of the contract, and the mere location of property in Morocco, irrespective of its value. Finally, although the Code introduces a new rule based on party autonomy in matters of jurisdiction, it fails to provide a clear and coherent regime governing choice-of-court agreements, in particular as regards whether the parties may oust the jurisdiction of Moroccan courts that would otherwise be competent under the newly adopted rules.

2. Enforcement of foreign judgments

While the new provisions clarify the formal requirements for the enforcement of foreign judgments, they fail to take sufficient account of existing judicial practice and introduce rules that lack precision and are open to divergent interpretations.

For instance, Moroccan law does not, as a general rule, clearly distinguish between recognition and enforcement, as foreign judgments are in principle subject to a prior declaration of *exequatur*. Nevertheless, the case law of the Moroccan Supreme Court has, to some extent, developed a pragmatic approach that *de facto* allows the recognition of certain effects of foreign judgments even in the absence of a prior *exequatur* declaration. However, the new Code does not take these developments into account and instead adopts rules focusing exclusively on the enforcement of foreign judgments, thereby leaving the status quo on this issue largely unchanged.

In addition, the new rules clarify the control exercised over the jurisdiction of the foreign court by introducing a twofold examination. First, the matter decided by the foreign court must not fall within the exclusive jurisdiction of Moroccan courts. However, as noted above, the new provisions on international jurisdiction fail to identify or define the matters that are to be regarded as falling within such exclusive jurisdiction. Secondly, the rules require that the choice of the court of origin must not have been fraudulent. In this respect, it should be noted that an additional requirement concerning the existence of a characteristic connection between the dispute and the State of the rendering court had initially been envisaged. This requirement, which echoed the approach adopted by the French *Cour de cassation* in the well-known *Simitch* case, was ultimately removed from the final version of the Code, arguably because of the practical difficulties it would have entailed for judges in assessing the existence of such a connection.

Furthermore, the version finally adopted introduces a new requirement that was absent from earlier drafts and appears to have been added during the legislative process. This concerns the condition that the content of the enforcement judgment must not contravene an international convention duly ratified by Morocco. The rationale for the introduction of this requirement is not only unclear, but the provision itself is largely redundant. Indeed, Articles 454 and 456 of the new Code already give priority to the application of international conventions ratified by Morocco. The provision appears also to be difficult to apply in practice, given that the manner in which this provision is formulated, particularly in the Arabic version of the text, is awkward and makes its precise scope and operation difficult to ascertain.

Finally, the introduction of reciprocity as a condition for the enforcement of foreign judgments comes as something of a surprise and is arguably problematic. The former Code of Civil Procedure contained no reference to reciprocity, and Moroccan practice had long evolved without treating it as a relevant requirement. It is true that Article 19 of the *Dahir* (Royal Decree) of 12 August 1913 on the civil status of French nationals and foreigners in Morocco refers to reciprocity. However, although that provision has never been formally repealed, the prevailing view among Moroccan scholars is that it is no longer applicable, a position reflected in judicial practice, as Moroccan courts do not rely on it in their decisions. More importantly, the inclusion of reciprocity appears at odds with the general tendency in comparative law, which is either to abandon this requirement

or to significantly limit its effect. Its (re?)introduction sends a negative signal to jurisdictions where reciprocity remains a condition for recognition and enforcement and is likely to unnecessarily complicate both the recognition of foreign judgments in Morocco and, consequently, the circulation of Moroccan judgments abroad.

V. Concluding Remarks

The general impression that emerges from a reading of the new rules is, on the whole, one of disappointment. The newly adopted provisions appear to be based on an outdated model and fail to take account of recent developments, including those observed in neighbouring jurisdictions. The content of a number of provisions gives the impression of a step backwards in time. For instance, some of the newly adopted rules, notably in matters of international jurisdiction, are comparable to those formerly found, for example, in Tunisia under the Code of Civil Procedure of 1959, which were later repealed and replaced by more modern provisions now contained in the Code of Private International Law of 1998. The new rules also do not fully reflect existing Moroccan practice, whether at the diplomatic level, where Morocco has been actively engaged with the work of the HCCH - an engagement that contributed to the establishment of its Regional Office for Africa in Morocco - or at the judicial level, particularly in the field of recognition and enforcement of foreign judgments. Available records relating to the drafting process suggest that these issues did not receive the level of attention they deserved, nor did they benefit from sufficient expert consultation or discussion that might have allowed the legislature to draw on both recent international developments and established domestic practice. One hope nevertheless remains: that the Code will already be subject to early reform.