



KINGDOM OF MOROCCO
COURT OF ACCOUNTS
CHAMBER IV

Summary Report n°4/14/CH IV

Management Audit of
The Moroccan Office of Industrial and Commercial Property¹ (MOICP)

February 2015

¹ Office Marocain de la Propriété Industrielle et Commerciale (OMPIC)

SUMMARY

Presentation

The Moroccan Office of Industrial and Commercial Property (MOICP) is a public corporation created in 2000 by Law n°13-99 (of 15 February 2000). It is subjected to the supervision of the Ministry of Commerce and Industry.

According to Article 3 of Law n°13-99, the purpose of MOICP is as follows:

- *Keeping the national records of industrial property and the entry of all the transactions affecting the property of industrial property titles;*
- *Keeping the Central Trade Register and the alphabetical file for natural and legal persons;*
- *Conservation of transaction samples relating to the trade register emanating from local registers;*
- *Dissemination to the public of any necessary information for the protection of inventions and the registration of traders in the Trade Register, as well as the initiation of any training and awareness-raising campaign in these fields.*

MOICP revenues in 2013² stood at 56.34 million MAD. The Trademark activity constitutes the first source of revenue (39%), followed by services relating to trade names (24%).

The expenditure committed by MOICP in 2013 amounted to 53.64, including 79% devoted to operation (42.36 million MAD), and 21% MAD million to investment (11.28 million MAD).

The Court of Accounts examined some aspects of MOICP management relating to its core business. It noted observations relating mainly to the achievement of the objectives of the “Horizon 2015” Strategy and the planned projects, as to keeping the Central Trade Register, and the execution of public procurement.

1 – Performance contract “Horizon 2015”: Forecasts and achievements

Planned objectives

The performance contract “Horizon 2015” represents MOICP strategic plan over the period 2011-2015. This plan was translated into a set of projects and objectives

² MOICP revenues in 2014 amount to 61.47 million MAD.

linking MOICP directorate to its board of directors. It was adopted in January 2011, following the achievement of “Vision 2010” Strategic Plan covering the period 2005-2010.

The performance contract comprises 76 projects distributed on 4 strategic priorities, namely:

- Line 1: Customer services (23 projects);
- Line 2: Environment of the industrial and commercial property (21 projects);
- Line 3: Development and operation of the industrial and commercial property (18 projects);
- Line 4: Steering, resources and infrastructure (14 projects).

Some of the objectives targeted by the strategy are:

- an advanced legal framework of industrial and commercial property (ICP);
- simple and transparent procedures;
- quality information services;
- a better exploitation of industrial property assets;
- an effective partnership with the various stakeholders;
- targeted and sustained communication actions;
- a solid financial base.

In order to measure the impact of the implemented actions, the performance contract set quantified reference trademarks for the major elements of industrial and commercial property (ICP). These quantified targets are as follows:

- Patents: + 30% a year.
- Filing international patents: + 30% a year.
- Trademarks: + 10% a year.
- Filing international trademarks: + 20% a year.
- Industrial drawings and designs: + 20% a year.
- Online services: + 20% a year.
- Turnover: + 15% a year.

The Court noted the following observations as to the design and follow-up of the performance contract:

- Measurement indicators (trademark and patent filings, online services....) planned in the strategy do not allow to assess the evolution of all targeted objectives. For example, Objective 1 (advanced legal framework of industrial and commercial property) is not translated into an indicator measuring the progress made.
- The above-mentioned quantified targets are not the subject of any follow-up neither by the management of the Office nor by its board of directors.
- The performance contract contains for each project a “target completion timeframe” indicating its estimated completion rate over five years. However, no methodology is described for its calculation.
- The performance contract defined a projected budget to be allocated to each project whether it is under operation or investment. However, the follow-up of the implementation of such projected budget could not be conducted. Indeed, MOICP does not have a cost accounting and hence cannot accurately determine the distribution by project of the operating and investment expenses carried out. In this regard, it should be noted that MOICP had planned the establishment of cost accounting as of the year 2009.

Achievements: Case of the projects of the line relating to the development and operation of ICP

The preliminary examination by the Court of the four priorities of “Horizon 2015” Strategy revealed that line 3 (development and operation of the industrial and commercial property), broken down into 18 projects, records significant delays. The Court then focused on the examination of the progress of the projects of this important line and noted the following:

- Communication actions are overall weak at the regional scale. Contrary to what the performance contract stipulates, MOICP did not translate its communication and promotion strategy of ICP into regional promotion plans adapted to the needs and specificities for each region (Project n°233). Similarly, the awareness-raising and information effort is limited at the regional level. In 2013, for example, only four symposiums were organized at the level of regions.
- As regards the exhibitions devoted to inventions (Project n°315), their number remains limited in view of the events in which MOICP took part.

- No communication action was conducted to promote Moroccan patents in order to support their exploitation and the technology transfer related to such patents (Project n°324). However, the performance contract stipulates actions to be carried out in this regard, such as the development of periodic collections of free patents of exploitation as well as the creation of a technological patent exchange platform making it possible to bring together patent holders and Moroccan companies.

Nevertheless, in 2014 MOICP conducted a feasibility study for the establishment of an organizational structure of enhancement and marketing of the results of the research and development of inventions, which constitutes a first step within this framework.

The above-mentioned study has uncovered weaknesses in the enhancement process of inventions, as regards the incentive to patenting innovations, the supply of IP professional advisors for the drafting of patents, expertise in patent assessment and private investors.

In addition, although MOICP is only one actor among others, the results achieved as regards the exploitation of Moroccan patents are poor. An indicator of this weakness is the limited number of registrations allocating property or the enjoyment of the rights relating to such patents.

- The performance contract also stipulated the preparation of thematic publications “innovation manuals” (Project n°325) in order to benefit the companies and the seekers of the opportunities offered by the technologies existing and described in the patents available throughout the world, as well as by the research works conducted in Morocco. Only one issue was published, in April 2011, whereas the ambition was to publish six issues a year.
- Among the support actions benefiting the private sector, Project n°332 of the performance contract stipulates the identification of companies and their support for the establishment of technological intelligence units. However, only two companies benefited from this support over the period 2011-2013. The target objective for the year 2013, for example, was to provide support to 20 companies.
- MOICP gave up a contract launched in 2010 within the framework of Morocco Innovation Initiative (Project n°334), for the creation of a platform dedicated to innovation (Moroccan Club of Innovation). The amount spent in this regard amounts to 764.720 MAD.
- In the field of the exploitation of information on industrial and commercial property, MOICP did not set up the study committee - composed of experts – provided under Project n°342 project, tasked with steering the choice of the

studies to be conducted (statistical studies, qualitative analyses and case studies). By the same token, MOICP is slow in materializing the project (n°244) relating to the analysis and dissemination of jurisprudence on industrial and commercial property.

- MOICP provides economic actors and operators with the legal and financial databases (n°344 project). Within this framework, the prices of the CD sold range, according to the relevant options, between 100.000 MAD and 300.000 MAD. The control of the process of supplying this service revealed failures involving shortfall risks for the Office, as shown below:

- The CDs Sold are not provided with anti-duplication and access controls;
- The absence of electronic traceability of the services and databases which were extracted from MOICP computing system.

Impact indicators

The Table below makes it possible to compare the results achieved at the end of 2013 with the impact objectives provided under the performance contract:

	Situation in 2010	Situation in 2013	Achievements in terms of average evolution rate between 2010 and 2013	Estimated objective of annual evolution (as from 2011)
Patents (number of patents filed) *	1007	1118	+3.55%	+30%
Patents (number of international patents filed)	22	54	+34.89%	+30%
Trademarks (number of patents filed) *	11022	11702	+2.02%	+10%
Trademarks (number of international patents filed according to PCT system)	81	48	-16.01%	+20%
Industrial drawings and designs (number of filings) *	1418	1272	-3.56%	+20%
Online services (number of transactions)	40040	48452	+6.56%	+20%
Turnover (in MAD)	44890	46691	+1,32 %	+15 %

* These filings include both Moroccan and foreign filings.

Source: MOICP Management Reports and financial statements

It seems that except for the international filings of patents which witnessed a significant development exceeding the target objective, the entire set of indicators fall

short of the target objectives and even declining for filing international trademarks as well as filing industrial drawings and designs. It follows that the actions actually conducted after the adoption of the performance contract (2011-2015) remain far from reaching the expected results, two years away from its termination date.

2 - Central Trade Register

Trade Register is composed of the Local Registers kept by trade courts and lower courts, as well as the Central Trade Register kept by MOICP.

The Central Register is in charge of updating companies' legal information in order to ensure the safety and transparency of transactions and to facilitate business relations thanks to registration advertising. For this purpose, MOICP is entitled to receive the registration declarations relating to the trade register concerning registrations, registration amendments and deletions as well as entering them in the Central Trade Register in accordance with the Trade Code. MOICP is also entitled to propose to the official authority any reform that it deems useful in this regard.

Transfer of documents between the local registers and Central Register

The role of MOICP as to the centralization of the information mentioned in local registers is limited by two factors:

- Several courts content themselves with transmitting registration forms without the deeds annexed thereto. This breaches the above-mentioned Law n°13-99 and Decree n°2-96-906². The role of conservation and centralized archiving of the trade register managed by MOICP is then sharply decreased.
- The registrations relating to encumbrance (collaterals) and registrations relating to judgments as well as the related deeds and documents are not transmitted to the Central Trade Register. This runs counter to the provisions of Article 33 of Commercial Law and Articles 18, 19 and 20 of Decree n°2-96-906. Moreover, this anomaly is not conducive to the transparency of business climate and business transactions.

Quality of the Central Trade Register data

To assess the quality (completeness and accuracy) of the Central Trade Register data, the Court of Accounts conducted, on the basis of a sample of 29 legal persons and 18 natural persons registered in the Trade Register of Rabat, the comparison between the data of the Local Register and those of the Central Register (via "Directinfo" server of MOICP)³.

³ <http://www.dirctinfo.ma>

In addition to the non-exhaustiveness of the Central Register due to the non-reception of registration amendments relating to encumbrance and court orders, the above-mentioned comparison revealed that the entire set of data of the Central Register compared to those of the analytical register of the Court of Rabat is only partial.

Therefore, for the examined sample, the average rate of discrepancies of properties (date, registration, address, activity, capital, manager, deletion) amounts to 39% for legal persons and 14% for natural persons. Mismatches exist even with regard to the information on the activity status (company in business or deleted), with discrepancy rates of 14% for legal persons and 22% for natural persons.

The mismatch rate as to the number of registration amendments of legal persons is also considerable: 26% for legal persons and 5% for natural persons.

Concerning the filing of financial statements, the average rate of the failure to file these documents is high bordering 61%. However, a positive development was recorded between the period 2003-2007 and 2008-2012. In this regard, it should be noted that the courts of the Kingdom do not apply the sanctions stipulated by the regulation in the cases of failure to submit the above-mentioned documents.

Problems of design and steering of Trade Register

The Court of Accounts mainly noted that the creation of the company and the follow-up of the other stages of its legal affairs are not managed at public administrations by a unified and integrated system involving the various actors concerned (local registers and Central Trade Register, Directorate of taxes, Regional Centers of Investment, Office of the High Commissioner for Planning, Social Security Fund, etc.). This has consequences in terms of cost, effectiveness and quality.

By the same token, the Court noted the delay in implementing the project of the Company Common Identifier (CCI), which mainly aims at facilitating the dematerialized exchange of information on companies between the administrations and organizations concerned.

In addition, the Court examined the implementation of the cooperation agreement concluded in March 2012 between the Ministry of Justice and the Ministry of Industry, Trade, and New Technologies. The project aims to set up a real-time updating system between the Central Register and local trade registers and provide information to the public on the Internet (www.erc.ma). It was noted in this regard that the adopted system was not optimized insofar as its operation requires multiple entries of the same information.

Other inadequacies of the existing system noted by the Court include the unreliability of information on the activities of companies. Indeed, as it is indicated by the

applicants and controlled by MOICP, this information does not always reflect reality, which constitutes a limitation, particularly with regard to statistical analyses.

3 - Execution of public procurement at MOICP

The Court examined the expenditure conducted by MOICP during the period 2008-2013. This expenditure is divided into two main categories: construction and development costs as well as the costs related to the information system of the Office.

MOICP committed as from the year 2008 more than 37 MMAD for the modernization of its head office. As for the expenditure relating to the information system, they relate mainly to the development of this system as well as the computer-based processing of the documents received from local trade registers.

The examination of the files of the above-mentioned expenditure indicates inadequacies in the internal control system of public procurements within MOICP. These dysfunctions are detailed below:

- Prevalence of only one company in the procurement of works;
- Gaps distorting competition in the contract awarding procedure especially the inadequate specification of the needs and selection criteria;
- Failure to audit the contracts amounting to more than five million MAD

4 - Major recommendations

On the basis of the above-mentioned remarks, the Court recommends the following to MOICP:

- 1. Conduct a rigorous follow-up of the progress of its projects by developing the relevant indicators allowing the measurement of such progress compared to the targeted objectives, and activate the establishment of an appropriate cost accounting in the performance measurement process.*
- 2. Expedite the implementation of the projects with great added-value intended for the enhancement and operation of industrial and commercial property.*
- 3. Promote online services for the greatest number of services.*
- 4. Re-consider the internal control system, especially the awarding processes of public contracts (specific conditions, consultation regulation, rating criteria) in order to ensure better competition and transparency, as well as conduct the audit of the contracts stipulated by the regulation.*

The Court also recommends the following to the public authorities:

- 5. Ensure the transfer, via the Ministry of Justice, to the Central Trade Register the entire set of information, provided under the law and regulation, required for the transparency of the business climate and business transactions, particularly those relating to encumbrance and court rulings, as well as the financial position of companies, with the application of the coercive measures stipulated by the law if necessary.*
- 6. Work through an appropriate coordination mechanism towards the establishment of a unified and integrated computing system connecting the various actors involved in the trade register (OHCP, Ministry of Justice, GDT, RCI, SSF, MOICP, etc.), to ensure their efficient management and improvement of the quality of services delivered to the users.*