

The English Floating charge and the reform of French personal property law: contribution to the conceptualisation of a French global security

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The aim of a security interest is to confer rights in the debtor's assets to the secured creditor as security for the performance of an obligation or for the repayment of a debt. Secured creditors enjoy a priority of repayment on the secured assets over other unsecured creditors. It is well established that an efficient personal property security law fosters economic development and that without it, it would be almost impossible for a national economy to develop. The aim of an efficient personal property security law regime is to facilitate the granting of credit at low costs thanks to clear, certain and accessible rules. In addition, it should permit the debtor to use all categories of assets as security whilst remaining free to use them, such as with the English floating charge. It is a type of non-possessory security which is said to 'hover' over the debtor's changing fund of assets until it 'crystallises' upon certain events, at which point, it becomes fixed.

The concept of a global security, such as the floating charge, does not exist in France but its features have aroused academic interests. Given that French law does not recognise the concept of equity, a true equivalent security mechanism to the English floating charge does not exist. Yet, several French law reforms have adopted some of the features of the floating charge suggesting that French law is beginning to develop the conceptual foundations of a global security. A global security would bring many advantages to debtors and creditors including the possibility for the debtor to charge all of his assets, hereby increasing access to credit opportunities whilst remaining free to use the assets in the course of business. Many argue that adopting the concept of a global security would contribute significantly to a more comprehensive rationalisation and modernisation of French law.

Many international initiatives have actively fostered the adoption of this kind of global security by incorporating the concept into model laws (for example those of the European Bank for Reconstruction and Development (EBRD) or the United Nations Commission on International Trade Law (UNCITRAL)). Many jurisdictions, including the Civil law jurisdiction of Quebec, have been influenced by these international initiatives and reformed their laws accordingly. Comparative analysis of both Civil and Common law models of global securities can therefore make a useful contribution to any attempt to conceptualise a French global security.

The aim of this paper is twofold. It contributes to a better understanding of the nature of the English floating charge by drawing out and analysing its key characteristics in order to identify possible functional equivalents in French law. Given the absence of a true equivalent to the floating charge in French law, this paper also discusses the experience of Quebec which adopted the concept of a global security and which may contribute to the conceptualisation of a French global security for future legal reforms.

