Business Reorganisation Assessment

Jordan

European Bank
for Reconstruction and Development

Special thanks to:

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International Business Legal Associates (IBLAW)

Part A

General Information

Macro Data

10.209	2.0%	US$ 4,360	أ.د. Jordanian dinar – JOD	20%	2.3%	22.7%
Population (million)[1]	GDP growth rate[1]	GDP per capita[1]	Currency	Corporate tax rate[2]	Inflation rate[1]	Unemployment rate[1]

Insolvency Legislation

The primary legislation governing the insolvency of non-bank and financial institution legal entities and entrepreneurs in Jordan is the Insolvency Law No. 21/2018 (the Insolvency Law). The Insolvency Law was published in the Official Gazette No. 2640 dated 7 May 2018. A link to an online official version of the legislation is available **here**. Jordan has enacted **Insolvency Regulation No. 8/2019** (the Insolvency Regulation) which covers: the establishment of an electronic insolvency register; the licensing of insolvency practitioners; the calculation method of insolvency expenses in the event of insufficient funds to cover such expenses; the requirements of the creditors' committee; the basis of calculation of the insolvency practitioner's fees; and the sale of assets in the event of liquidation.

Insolvency Data

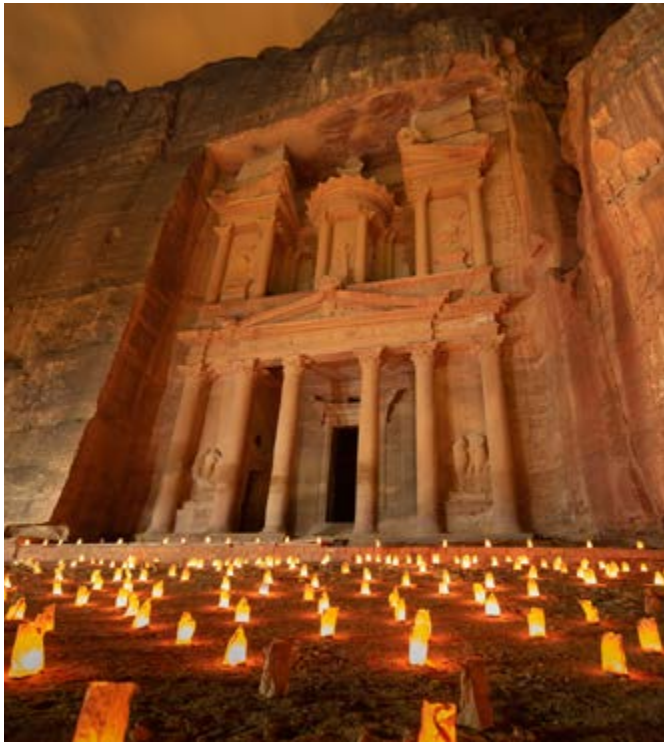
To date, the electronic register has not been established by the Ministry of Industry and Trade. As such, there is no publicly-available information on the number or type of insolvency proceedings on a national, consolidated basis.

Company Information

The Jordanian company law framework is governed by the **Companies Law No. 22/1997** (as amended). Information about companies is contained in the Companies Register which is maintained by the Companies Control Department at the Ministry of Industry and Trade in Jordan. General information regarding companies, i.e. the name of the company, its board of directors, the shareholders, authorised signatories and the company's capital is available on the Companies Control Department's website, free of charge at **www.ccd.gov.jo/Default/Ar**.

[1] **IMF- Source as of August 2021:** www.imf.org/en/Countries/JOR

[2] **PWC – Source as of August 2021:** www.taxsummaries.pwc.com/jordan/corporate/taxes-on-corporate-income



Insolvency Courts, Regulatory Authorities and Practitioners

Commercial insolvency proceedings are overseen by judges from the Court of First Instance in Jordan. Jurisdiction of the court is determined based on registered seat of the debtor for legal entities or place of main residence for entrepreneurs. The Insolvency Regulation establishes an Insolvency Commission composed of the Minister of Industry, Trade and Supply, the Minister of Justice, the Chairman of the Board of Commissioners at the Securities Commission, the Controller at the Companies Control Department, the Chairman of the Chamber of Commerce in Jordan, the Chairman of the Jordanian Association of Certified Public Accountants and the Dean of the Law School at any of the official universities designated by the Minister of Industry, Trade and Supply. The Insolvency Commission carries out multiple duties, which include preparing an entry examination for insolvency practitioners, certifying the examination results, licensing the insolvency practitioners and monitoring them. There is furthermore an Insolvency Unit, which is established at the Companies Control Department and is responsible for carrying out tasks that are provided to it by the Insolvency Commission.

As of August 2021, the Insolvency Register had not yet been established. The Ministry of Industry and Trade has a limited regulatory role in respect to insolvency procedures and is mainly responsible for maintaining the Insolvency Register. The Insolvency Register is intended to contain information on insolvency procedures that are initiated each year. The Companies' Control Department (the Controller) is able to submit a petition for insolvency for any debtors that are companies.

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Part B

Business Reorganisation

Are there any incentives for extrajudicial voluntary agreements (workouts)?

There are no specific incentives for concluding an extrajudicial voluntary agreement; however, the Insolvency Law contains a pre-packaged reorganisation option which enables an extrajudicial agreement concluded between the debtor and its majority creditors to be approved by court and made binding on all affected creditors, as described below (Article 69).

What is the nature and purpose of the reorganisation procedure?

There are two reorganisation procedures under the Insolvency Law: the pre-packaged reorganisation procedure (Articles 69 to 75) (إعادة التنظيم وفق خطة مدعم مسبقاً) and the ordinary reorganisation procedure (إعادة التنظيم العايدية المرحلة) (Articles 76 to 97). Both aim to achieve a reorganisation of the economic activity of the debtor through a plan agreed between the debtor and its creditors (Article 68).

Pre-packaged reorganisation procedure

The purpose of this procedure is to reach a reorganisation agreement with creditors out-of-court, or at an earlier stage of the main insolvency procedure (within a period of 30 days from the date of publication of the court's declaration of insolvency, opening the proceedings), and then submit it to the court for its confirmation. The pre-packaged reorganisation plan should ensure the highest possible rate of creditors' satisfaction and the continuation of the debtor's business activity (Article 69).

Ordinary reorganisation procedure

This procedure can be accessed following the opening of the main insolvency proceedings, which may lead to either the reorganisation or the liquidation of the debtor's business.

The procedure is, therefore, an alternative to liquidation under Articles 98 to 137, and its purpose is to restructure the finances of a financially viable debtor. The reorganisation plan typically includes either a reorganisation of the commercial operations of the debtor or a reorganisation of its debts through a reduction or rescheduling of debts or other forms of financial restructuring. The plan should allow the debtor to continue operating its business and reach a settlement with its creditors without resorting to liquidation and ultimately ending the debtor's business.

Who can commence the process and what entry conditions apply?

Pre-packaged reorganisation procedure

This option may be proposed by a debtor which has reached an agreement with its creditors. The debtor's application to court should be accompanied by written evidence of the support of creditors holding at least 25 per cent of the total amount of claims with respect to the debtor. If the reorganisation plan is submitted to the court within 30 days from the date of publication of the court's declaration of insolvency, the provisions in the Insolvency Law relating to the pre-packaged reorganisation plan apply (Article 67).

Ordinary reorganisation procedure

This procedure can only be accessed following commencement of main insolvency proceedings. It can be initiated by a petition from the debtor or its legal representatives to the court, where the debtor is insolvent or at threat of imminent insolvency. The debtor and its directors, if the debtor is a legal entity, are under a duty to file for insolvency within two months from the moment they knew or should objectively have known that the debtor was insolvent (Article 7). A petition may also be submitted by a creditor or the Controller (see above), provided the debtor is insolvent (Article 6). Creditors must also provide evidence of a debt owed by the debtor to the creditor.

The amount of such debt must be ascertainable, due and unconditional (Article 10).

Following the court's acceptance of the insolvency petition, the preparatory phase begins. During this phase, the court gathers information about the debtor's business and analyses its financial position and existing creditors, and identifies the reasons for its financial distress and whether the business is viable. At the end of this phase, the court will open the reorganisation phase of the insolvency proceedings unless, among other matters, the debtor has requested liquidation or the report of the insolvency practitioner expressly states the unlikelihood of a reorganisation (Article 67). The reorganisation plan may be submitted by the debtor or creditors holding claims representing 10 per cent or more of the total amount of claims against the debtor. The reorganisation plan must be filed with the court within 30 days of the opening of the reorganisation phase (Article 76).

References to Articles are to Articles of the Insolvency Law, unless specified otherwise. For an explanation of technical terms, please see the **Glossary of the Main Assessment Report**

Is there any court involvement?

Yes, the reorganisation procedure is part of the main insolvency proceedings, which are administrated and supervised by the competent court. The pre-packaged reorganisation procedure is also subject to the court's final approval, although the private settlement may first be reached out-of-court.

Are there any hybrid procedures?

Yes, the pre-packaged reorganisation procedure is a hybrid procedure since it may involve an out-of-court agreement. However, and as noted above, the final approval of the court is required for the agreement to be valid.

Does the debtor remain in possession of and continue to manage its business?

Yes, if the application for opening main insolvency proceedings was submitted by the debtor, it will generally remain in possession of its business and will continue its business operations under the supervision of the insolvency practitioner (Article 17). However, creditors and the insolvency practitioner may request the court to limit the powers of the debtor and the court will remove the debtor's management if it is satisfied that such request is in the best interests of the debtor and its creditors.

However, if a creditor or the controller at the Companies Control Department at the Ministry of Industry, Trade and Supply in Jordan applies for the declaration of insolvency of the debtor and is successful, the debtor does not remain in possession of the business (Articles 13 and 17). In this case, the insolvency practitioner replaces the management of the debtor, unless the creditors or the insolvency practitioner request the court to keep the debtor in possession.

Is there a need to appoint an insolvency practitioner?

Pre-packaged reorganisation procedure

Yes, notwithstanding the fact the plan is pre-agreed with creditors and/or agreed with creditors at an early stage in the ordinary reorganisation procedure. The appointed insolvency practitioner is responsible for drafting a complete evaluation report of the proposal submitted by the debtor (Article 70). The evaluation must be finalised and available for discussion with the creditors within 30 days from the date of submittal of the proposal, if it is presented with the petition for declaration of insolvency, or within 10 days from the filing of the proposal before the court, if it is presented afterwards. Furthermore, votes on the plan must be expressed in written form and delivered to the insolvency practitioner at the designated address or through the court (if the plan is presented when the procedure has already commenced).

Ordinary reorganisation procedure

Yes, once the court declares the opening of insolvency proceedings, it appoints an insolvency practitioner, who should meet the requirements set out in Article 49. In its decision that declares the insolvency, the court also sets out the powers of the insolvency practitioner in managing and disposing of the insolvency estate and the powers of the debtor. As mentioned above, if the petition is submitted by the debtor, the debtor retains its powers of managing its day-to day activities under the supervision of the insolvency representative, but if the petition is submitted by a creditor, the debtor's powers of administration and disposition of assets are typically suspended.

Is there any applicable stay or moratorium?

Yes, after the court's declaration of insolvency and opening of the main insolvency proceedings, execution over the assets of the debtor is prohibited and any such proceedings which started before the declaration of insolvency are stayed. No new claims against the debtor may be brought to the courts except as provided in the Insolvency Law (Articles 21 and 22).

Is there any protection for essential contracts and to prevent termination of contracts by third parties?

Yes, with respect to third-party termination clauses only. Any clause in a contract to which the debtor is a party that allows the other party to terminate the contract or provides for the automatic termination of the contract in the case of the declaration of insolvency of the debtor is deemed null and void (Article 28). Furthermore, the declaration of insolvency does not automatically terminate administrative contracts, licences and concession rights (Article 32). However, a public administrative body is entitled to terminate the contract or the concession right where there are objective reasons to assume that the performance of the contract is at risk. The mere declaration of insolvency cannot be deemed as a sufficient reason for termination.

Is new financing protected by law?

Yes, new financing granted to the debtor after a declaration of insolvency with the approval of the insolvency practitioner has priority over existing unsecured creditors but not over secured creditors with respect to their collateral (Article 38).

Does the law recognise separate classes of creditors for voting purposes?

Yes, creditors are divided into separate classes according to their rank (Articles 38 and 40). The same rules apply to the pre-packaged reorganisation procedure and the ordinary reorganisation procedure. Creditors are divided into the following categories under the Insolvency Law in descending order of priority: secured creditors; preferred creditors; unsecured creditors; and subordinated creditors (Article 37). However, only secured creditors, preferred creditors and unsecured creditors may vote on the plan. Shareholders and subordinated creditors do not have voting rights (Article 85). The plan may also include the formation of additional classes based on reasons other than the economic value of the claims.

Secured creditors are creditors holding an enforceable property right including a pledge, mortgage or any other type of security (Article 39). Preferred creditors are creditors with the following claims: wages of employees of the debtor; claims for alimonies and similar obligations; and tort claims arising as a consequence of damage caused by the debtor before the declaration of insolvency (Article 40). Subordinated debts include: loans or facilities granted to the debtor by persons related to the debtor; default interest and penalties for late payment due before the declaration of insolvency; fines due by the debtor under the applicable laws; and debts which the creditor and the debtor have agreed to be subordinated (Article 41).

If the reorganisation plan alters or reduces the rights of secured creditors, the plan must disclose the extent to which such rights are reduced or altered, as well as the duration of any delay in the enforcement of the collection of the secured claims. Secured creditors vote on the plan if they are affected by the plan (Article 82).

What are the majorities required to approve a reorganisation plan?

Pre-packaged reorganisation procedure

The same rules regarding the ordinary reorganisation plan also apply to pre-packaged reorganisation plan (Article 73). If the plan does not obtain the majorities specified in the law, the insolvency practitioner must notify the court, which will declare the end of the preparatory stage and open ordinary reorganisation proceedings unless the debtor files for the commencement of liquidation.

Ordinary reorganisation procedure

The plan is adopted when it obtains the absolute majority of the total claims of creditors. If the plan envisages the write-down of more than 50 per cent of the claims or a rescheduling over more than five years, the creditors whose claims were written down or rescheduled must approve it with a majority of at least 60 per cent of the claims, and if the plan envisages that one group of creditors within the same class will receive a preferential treatment, the majority of those prejudiced by the preferential treatment must approve the plan in a separate vote (Article 90).

If not all voting classes approve the plan, the plan may nevertheless be confirmed by the court, if the following requirements are met (Article 91): creditors in the dissenting class may not be prejudiced in the case of implementation of the plan compared to the liquidation of the business; members of any class are not unfairly discriminated against as compared to the members of other classes within the same rank; and no member of any other class receives an amount which exceeds the total amount of claims of that class.

Who does the reorganisation plan bind?

The approval of the pre-packaged reorganisation plan has the same effects as the approval of the ordinary reorganisation plan (Article 74 (b)). Therefore, the same rules regarding the binding effect of the plan apply.

The ordinary reorganisation plan binds all parties. However, the plan is only binding on secured creditors if they have voted on the plan (Article 82). Moreover, preferred creditors are only bound if the absolute majority vote requirement specified under Article 90 is met.

What is the timeframe for the reorganisation procedure and any moratorium?

Main insolvency proceedings are divided into the following stages: a preparatory stage, a reorganisation stage and/or a liquidation stage.

The preparatory stage starts on the date of issuance of the decision of the court declaring the insolvency. This stage involves the determination of the insolvency estate and the creditors, as well as gathering, organising, and analysing the information concerning debtor's business activities, including the causes of its distress as well as its business viability. The decision declaring the debtor insolvent must also invite the debtor's creditors to submit their claims to the insolvency practitioner within 30 days from the publication of the decision declaring the insolvency in the Official Gazette.

The insolvency commission establishes a start date and a time-period for the reorganisation procedure. Therefore the law does not specify a set time-limit for the procedure, as it is set by the commission (Article 79). The reorganisation plan must be filed before the court within 30 days from the opening of the reorganisation phase (Article 76). The appointed creditors' committee, the employees of the debtor, the debtor and the insolvency practitioner have 10 days to review the plan.

The debtor may also submit to the court a proposed pre-packaged plan within one month from the date of declaration of insolvency, before entering into the reorganisation stage. Unless liquidation has been requested before the commencement of this stage, the reorganisation stage follows the preparatory stage if no pre-packaged plan is presented. During this stage, the debtor agrees with its creditors on a reorganisation plan.

The moratorium period starts from the declaration of insolvency and continues for a period of six months or until an agreement is reached in respect of the reorganisation plan, whichever is earlier.

Has the UNCITRAL Model Law on Cross Border Insolvency been adopted?

No, the UNCITRAL Model Law has not been adopted. International Insolvency is regulated by Chapter XIV of the Insolvency Law. Foreign creditors have the same rights as national creditors regarding the declaration of insolvency, and participation in the procedure. Article 122 regulates conditions for recognition of a foreign proceeding. Before the application for recognition is decided, the court may, at the request of the foreign insolvency practitioner, grant provisional relief of an urgent nature to protect the assets of the debtor or the interests of the creditors.

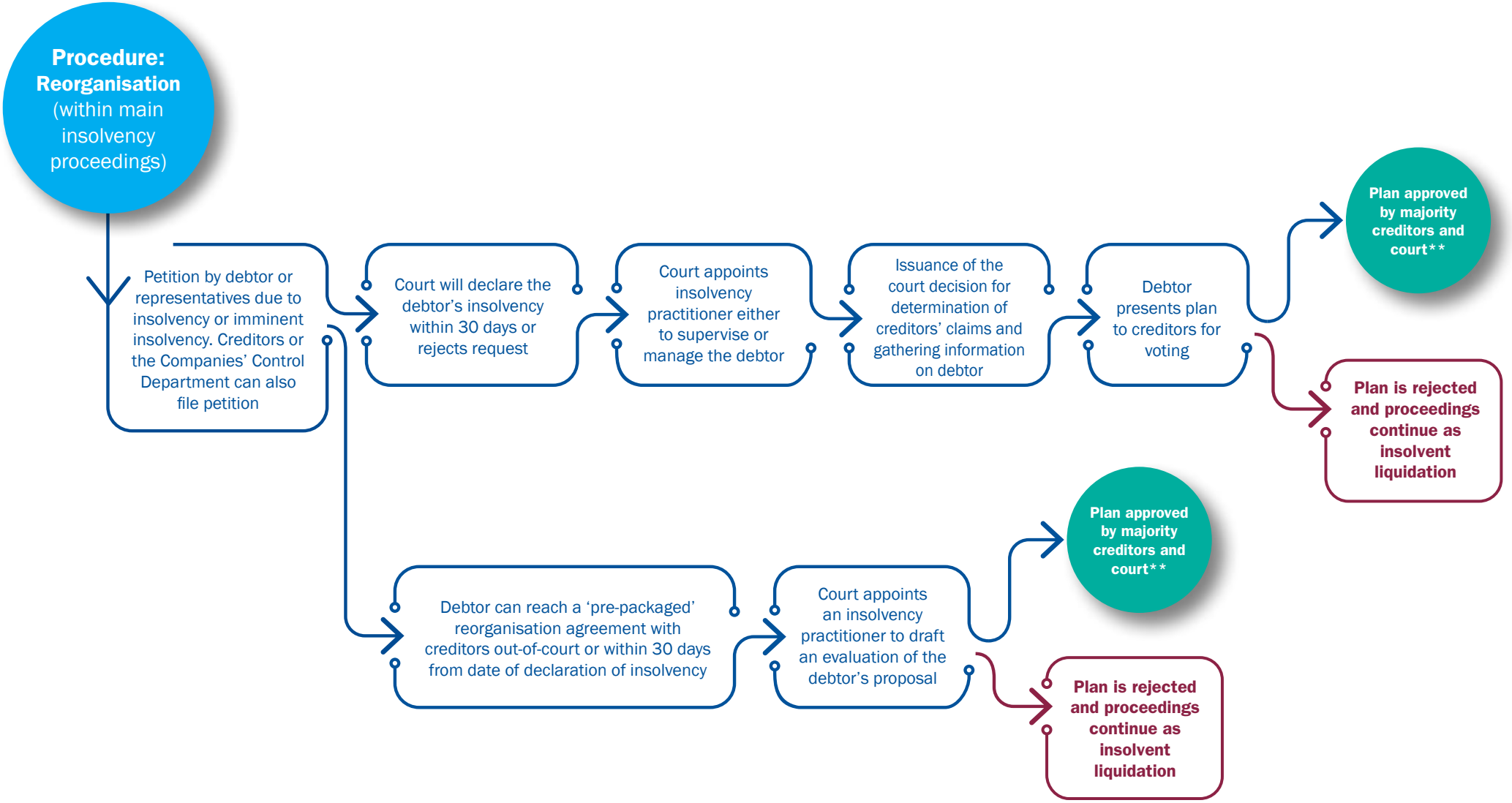
The recognition of a foreign main proceeding has the following effects: prohibition of commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities, except for any individual actions and proceedings brought by any legal person to the extent necessary to protect its rights against the debtor; suspension of execution against the debtor's assets; and suspension of the right to transfer, encumber or otherwise dispose of any assets of the debtor outside the ordinary course of business. After recognition of a foreign main proceeding, insolvency proceedings may only be initiated with respect to the debtor if the debtor has assets in Jordan.

Where a foreign proceeding and the insolvency proceeding in Jordan take place concurrently regarding the same debtor, the court will cooperate with the foreign court. If there is a conflict between the Insolvency Law and Jordan's obligations arising from international treaties to which Jordan is a party, the provisions of the international conventions apply.

Special features/observations:

- The Insolvency Law and accompanying framework is relatively new and untested. It represents a significant departure from the previously-applicable legislation.
- The pre-packaged reorganisation option available to the debtor allows for an efficient reorganisation and limited time spent in insolvency proceedings.

Overview of Jordanian Business Reorganisation Procedures*



* This provides a high-level overview of business reorganisation procedures. See the commentary in this profile and the Insolvency Law for further details, including with respect to any applicable moratoria and creditor voting thresholds

** Cross-class cram down available

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