Business Reorganisation Assessment

Morocco

European Bank
for Reconstruction and Development

Special thanks to:

Clifford Chance International LLP

DLA Piper

Kettani Law Firm

Part A

General Information

Macro Data

35.952	4.5%	US$ 3,410	درهم Moroccan dirham–MAD	10-30%	0.8%	10.5%
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 legislative text governing insolvency and restructuring proceedings for entrepreneurs (traders) and companies in Morocco is Chapter V (the Insolvency Law) (Procedures for Businesses in Financial Difficulties) of **Law No. 15-95 of 1 August 1996** as amended, establishing the Commercial Code, published in the **Official Gazette No. 4418** of 3 October 1996.

Insolvency Data

There are no official published Moroccan statistics with respect to the number or type of insolvency proceedings. However, legal database InfoRisk carried out a **Study on Business Insolvency in Morocco** in 2019 and cited 8,439 insolvency cases of which only 11 involved safeguard proceedings for the entire 12-month period of 2019. According to the same study, 93 per cent of the insolvency proceedings led to insolvent liquidation.

The commercial courts can issue a non-insolvency certificate, known as a modèle 14 certificat, that attests that a company is not under any insolvency proceedings.

[1] **IMF – Source as of July 2021:** www.imf.org/en/Countries/MAR

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

Company Information

The Moroccan company law framework is governed mainly by the Commercial Code, the Civil Code and the Civil Procedure Code.

The **Central Trade Register of Morocco** gathers information relating to natural or legal persons exercising commercial activities or having a commercial structure mentioned in various local registers and documents registered at the local level (incorporation documents and financial statements). Any natural or legal persons exercising commercial activities must be registered with the Central Trade Register of Morocco (in the case of a legal person, on incorporation) and must submit information regarding any change in the corporate structure or exercised activity to the register. All the information about natural and legal persons registered in the Central Register is accessible to the public through the **DirectInfo** platform. Both the DirectInfo and the Central Trade Register platforms are maintained by the **Moroccan Office of Industrial and Commercial Property**.

Insolvency Courts, Regulatory Authorities and Practitioners

Insolvency proceedings are overseen by commercial courts, which are located in Rabat, Casablanca, Fez, Tangier, Marrakech, Agadir, Oujda and Meknes. The jurisdiction of the court in relation to legal entities is determined by the registered office of the business and in respect of entrepreneurs (traders), the place of main residence.

There is no specific regulatory authority for insolvency. The relevant actors in insolvency proceedings are: the judge commissionaire (juge commissaire) who oversees insolvency and restructuring cases; the conciliator (conciliateur) whose focus is on reaching an agreement between the debtor and its creditors; and the insolvency practitioner, also known as the trustee (syndic), who can be a clerk or a certified public accountant registered with the commercial court and is subject to a special status. Access to the profession is granted following successful exam results and an internship of three to six months. The trustee is appointed by the commercial court to assist the debtor and, in some cases, to manage the debtor's business during the observation period. The trustee is in charge of preparing the safeguard plan or the judicial rehabilitation plan.

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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 conciliation procedure, which is a hybrid procedure with minimal court intervention, allows to the debtor to reach an agreement with its creditors, under the supervision of a court-appointed conciliator. The final agreement is reflected in a plan which is ratified by the court.

What is the nature and purpose of the reorganisation procedure?

There are three types of reorganisation procedures: the conciliation procedure (procédure de conciliation), the safeguard procedure (procédure de sauvegarde) and the judicial rehabilitation procedure (procédure de redressement judiciaire).

Click here for a high-level overview of these reorganisation procedures.

Conciliation procedure

The procedure aims to achieve an agreement between the debtor and its creditors outside of court, which is ratified ultimately by the court. There is limited involvement of the court until the ratification stage (Article 554).

Safeguard procedure

The procedure aims to allow a distressed business to overcome its financial difficulties, guarantee the viability of its activities and discharge its debts (Article 560). This involves debt rescheduling as well as debt write-off, on approval of creditors which have declared their claims (Article 601).

Judicial rehabilitation procedure

In this procedure, the trustee, with the debtor's assistance and with the possible contribution of external accounting experts, prepares a detailed report of the financial and corporate situation of the debtor. Based on this report, the trustee proposes a rehabilitation plan which will ensure both the viability and continuation of the business or the transfer or sale of the business to a third party as a going concern. If the financial situation of the business is deemed to be irrevocably compromised, the trustee will propose that the business is liquidated (Articles 583 and 595).

Who can commence the process and what entry conditions apply?

Conciliation procedure

A business that applies for conciliation should not be in a state of insolvency, which is defined as a 'cessation of payments' (Article 564) but must be facing financial difficulties. Only the debtor is entitled to request the opening of a conciliation procedure and can do so by presenting a report proving the financial situation of the business, its financing needs, and what means are available to the business to deal with its financial situation (Article 551).

Safeguard procedure

A business placed in this procedure must be facing insurmountable financial difficulties that can lead to an imminent cessation of payments or cash-flow insolvency (Article 561). The debtor must file its application with the secretariat clerk's office (secrétariat greffe) of the competent court and must present the documents listed in Article 577 or explain their absence. In addition, it must present a safeguard plan, otherwise its application will be rejected. The debtor must also pay without delay the costs of advertising and administration fixed by the President of the Court.

Judicial rehabilitation procedure

A business placed in this procedure must be in a state of cessation of payments or cash-flow insolvency. Cessation of payments is established if the business is unable to meet its current liabilities with its available assets (Article 575).

The debtor has an obligation to request the opening of the judicial rehabilitation procedure 30 days after the date of cessation of payments (Article 576).

A creditor can also request the opening of this procedure. Furthermore, the court can, of its own accord or following a request of the Minister of Public Affairs, also decide to open judicial rehabilitation proceedings (Article 578).

The court can decide in favour of the continuation of the business either by the preparation of a rehabilitation plan or by the transfer/sale of the business to a third party only if there is a serious possibility of rehabilitation. Otherwise, the court will announce the liquidation of the debtor business (Article 583).

References to Articles in this part are to Articles of the Insolvency Law, i.e. Chapter V of the Commercial Code, unless specified otherwise. For an explanation of technical terms, please see the **Glossary of the Main Assessment Report**

Is there any court involvement?

Conciliation procedure

Yes, this procedure involves the court, but entails a more light-touch court involvement than in the safeguard and judicial rehabilitation procedures. The debtor files a request to the court to open a conciliation procedure. The judge examining the application has the discretionary power to decide, based on the financial statements of the business, whether a conciliation procedure is sufficient to restore the balance sheets of the business or if the commencement of a judicial rehabilitation or judicial liquidation should be pronounced by the court (Article 553). An agreement is reached out of court between the debtor and its creditors, with the assistance of a court-appointed mediator known as a conciliator.

Safeguard procedure

Yes, this procedure is fully court-supervised. The court declares the opening of a safeguard procedure, where all grounds for commencement are met, 15 days after a request by the debtor (Article 563).

The court adopts the safeguard plan and may approve the rescheduling and reduction of creditors' claims (Article 570). Furthermore, the court may impose uniform payment deadlines on creditors which did not agree to any rescheduling of claims and/or write-offs (non-consenting creditors), effectively rescheduling their claims. The payment deadlines may exceed the duration of the safeguard plan. However the first payment to non-consenting creditors must be made within one year from the date of the court's decision (Article 630 which applies by virtue of Article 570).

If, following the opening of the procedure, it is established that the company was in a state of cessation of payments on the date that the procedure was officially opened, the court should convert the procedure into either a judicial rehabilitation procedure (see below) or a judicial insolvent liquidation procedure (Article 564).

Judicial rehabilitation procedure

Yes, this procedure is fully court-supervised. The debtor or a creditor should request the opening of a judicial rehabilitation procedure before the court (Article 576). With the opening judgement, the court appoints a judge commissioner and a trustee who represents the creditors (Article 670). The trustee must submit the plan approved by the debtor and the creditors to the court and the court approves the plan provided that creditors should receive more under the plan than in judicial liquidation procedure (Articles 615 and 616).

The court has the power to ratify the rescheduling of the claims and write-offs agreed by the creditors. The rescheduling of the claims and write-offs may, if necessary, be reduced by the court. As with the safeguard procedure, the court may impose uniform payment deadlines on non-consenting creditors, thereby rescheduling their claims. These deadlines may exceed the duration of the judicial rehabilitation plan. However, the first payment to non-consenting creditors must be made within one year from the date of the court's decision (Article 630).

Are there any hybrid reorganisation procedures?

The conciliation procedure is a hybrid procedure, since the debtor and its creditors should reach an agreement, facilitated by a court-appointed mediator known as a conciliator with minimal court intervention.

Does the debtor remain in possession of the company and continue carrying its business operations while conducting the reorganisation?

Conciliation procedure

Yes, the debtor remains in full possession and control. The conciliator appointed by the court is only in charge of reaching an agreement with the creditors (Article 554).

Safeguard procedure

Yes, the debtor remains in possession but is subject to the oversight of the trustee, who supervises the entire safeguard procedure (Articles 566 and 673).

Judicial rehabilitation procedure

Yes. Similar to the safeguard procedure, the debtor remains in possession but is subject to the oversight of the trustee, who supervises the entire judicial rehabilitation procedure. However, the court also has the discretion to increase the powers of the judicial administrator, who may be authorised to manage the day-to-day operations of the debtor's business, displacing the debtor's management (Articles 592 and 673).

Is there a need to appoint an insolvency practitioner?

Conciliation procedure

No. However the court appoints a mediator known as a conciliator to reach an agreement between the debtor and its creditors. The conciliator is appointed for a period of three months, which can be extended for a further three months if the conciliator requests it (Article 553).

Safeguard procedure and judicial rehabilitation procedure

Yes, with its opening judgment, the court appoints an insolvency practitioner known as a trustee. At the same time the court appoints a judge commissioner, who is in charge of supervising the procedure. The trustee represents the creditors and is in charge of the implementation of the safeguard plan or the judicial rehabilitation plan, as applicable (Article 670).

The judge commissioner appoints creditors to act as controllers, and to assist the trustee in the performance of duties and the judge commissioner in supervising the debtor's business operations (Article 678).

Is there any applicable stay or moratorium?

Conciliation procedure

Yes, but this is not automatic. The debtor or the conciliator may request the judge to impose a moratorium on any enforcement actions against the debtor regarding claims arising prior to the opening of the procedure, to facilitate the conclusion of an agreement (Article 555). The judge consults with principal creditors of the debtor and may impose a moratorium for a period no longer than the term of engagement of the conciliator, i.e. three months, extendable by another three months.

A ratified conciliation agreement imposes a stay on any enforcement action for the term of the agreement (Article 559).

Safeguard procedure and judicial rehabilitation procedure

Yes. The judgment opening the procedure imposes an automatic moratorium on any enforcement actions against the debtor with respect to creditor claims against movables or immovables arising prior to the opening of the procedure. However, creditors holding security over movables can request the judge commissioner to approve the sale of the secured assets (Article 686).

Ongoing enforcement proceedings by creditors are suspended and such creditors may only declare their claims and fixing their amount (Article 687).

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

Conciliation procedure and safeguard procedure

There are no general restrictions preventing contractual counterparties from terminating contracts on the basis of the commencement of a conciliation or safeguard procedure. There are also no specific provisions dealing with protection of contracts essential for the debtor's business. However, in practice, a provision stating that a contract cannot be terminated solely on the grounds of the opening of insolvency proceedings is generally included in private contracts in Morocco.

Judicial rehabilitation procedure

Yes, regardless of any statutory or contractual provision, a contract cannot be terminated solely on the grounds of the opening of a judicial rehabilitation procedure (Article 588).

Is new financing protected by law?

Conciliation procedure

Yes, creditors which provide new financing, new goods or new services, with the aim of assuring the viability of the business, enjoy priority of payment before all other unsecured and preferred creditors, but not secured creditors. This rule does not apply to shareholders in the case of an increase in share capital of the debtor (Article 558).

Safeguard and judicial rehabilitation procedures

Yes, claims arising after the decision to commence the procedure and which are indispensable for the continuation of the procedure or the activity of the business enjoy priority of payment, before all other unsecured, secured and preferred creditors, with the exception of creditors which provided new financing during a conciliation procedure. Such creditors rank higher in priority than the creditors providing new financing in either of the safeguard or judicial rehabilitation procedures (Articles 565 and 590).

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

No, the law does not recognise separate classes of creditors for voting purposes in any of the conciliation, safeguard or judicial rehabilitation procedures.

What are the majorities required to approve a reorganisation plan?

Conciliation procedure

There is no specific voting process or majority consent threshold referred to in the legislation. The judge ratifies a conciliation plan which has been agreed between the debtor and all its creditors. However, the judge can also ratify a plan which has been agreed between the debtor and its main creditors and impose a debt rescheduling on any non-consenting creditors which were not party to the plan. In this case, creditors not included in the agreement and affected by the rescheduling must be informed (Article 556).

Safeguard procedure

There is no specific voting process or majority consent threshold referred to in the legislation. The trustee should seek and collect the consent of each creditor which has declared its claim following the opening of the procedure. In the case of non-reply, the consent is deemed to have been given (Article 601, which applies by virtue of Article 569). Similar to conciliation, the judge can impose a debt rescheduling on non-consenting creditors (Article 630).

The trustee, with assistance from the debtor, prepares a detailed report on the financial, economic and social situation of the business. Based on this report, the trustee proposes to the court either the approval of the plan or its amendment or the opening of a judicial rehabilitation or insolvent liquidation procedure (Article 569). The court will approve the plan if there is a realistic prospect that the business will be saved.

Judicial rehabilitation procedure

As with the safeguard procedure, the trustee appointed in a judicial rehabilitation procedure should seek and collect the consent of each creditor which has declared its claim. In the case of non-reply, the consent is deemed to have been given (Article 601). Similar to both the conciliation and safeguard procedures, the judge can impose a debt rescheduling on non-consenting creditors (Article 630).

The judicial rehabilitation plan is deemed to be approved if creditors holding 50 per cent or more of the total amount of claims held by the participating creditors present or represented at the meeting vote in favour of the plan (Article 611). A creditors' meeting is quorate if creditors holding at least two-thirds of the declared claims are present.

Who does the reorganisation plan bind?

Conciliation procedure

A conciliation plan ratified by the court is binding only on participating creditors. However the judge can impose a compulsory rescheduling of claims on non-participating creditors (see above) (Article 556).

Safeguard procedure

The safeguard plan binds only those creditors which have declared their claims (Articles 584 and 573).

Judicial rehabilitation procedure

An approved plan is binding even for creditors not present at the vote provided the creditors' meeting is quorate (Article 611). The law does not distinguish between unsecured, secured and preferred creditors. The approved plan is binding on all creditors.

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

Conciliation procedure

The duration of a conciliation procedure can be three months and can be extended by three more months. This is also the duration of the term of appointment of the conciliator (Article 553).

The duration of any discretionary moratorium granted by the judge cannot exceed the duration of the term of appointment of the conciliator (Article 555).

A ratified conciliation agreement imposes a stay on any enforcement actions by signatories for the duration of the agreement (Article 559).

Safeguard procedure

Unlike conciliation, there is no overall timeframe for the procedure; however, there are specific timeframes for actions set out by law. The court should pronounce on the opening of the safeguard procedure 15 days following the request by the debtor (Article 563).

The trustee should present to the judge his proposal for a safeguard plan within four months from the court's decision to open the procedure (Article 595).

Following an invitation of the trustee to the creditors to consent to the plan, the creditors have 30 days to reply, otherwise it is considered as implicit consent (Article 601).

The timeframe for implementation of the safeguard plan is fixed by the court and cannot exceed five years in total (Article 571).

Judicial rehabilitation procedure

Like the safeguard procedure, there is no overall timeframe for the procedure; however, there are specific timeframes for actions set out by law. The debtor should request the opening of the procedure within 30 days following cessation of payments or cash-flow insolvency (Article 576).

Eight days following the opening of the procedure, an announcement is published in newspapers and the Official Gazette inviting the creditors to declare their claims before the trustee (Article 584).

The trustee should present to the judge his proposal for either: a rehabilitation plan for continuity of the business or sale of the business as a going concern; or a judicial liquidation of the business, within four months from the opening decision of the procedure (Article 595).

Following an invitation from the judicial administrator, creditors have 30 days to provide their consent to the plan; failure to respond within this period is considered as implicit consent (Article 601).

The timeframe for implementation of the judicial rehabilitation plan is fixed by the court and cannot exceed 10 years (Article 628).

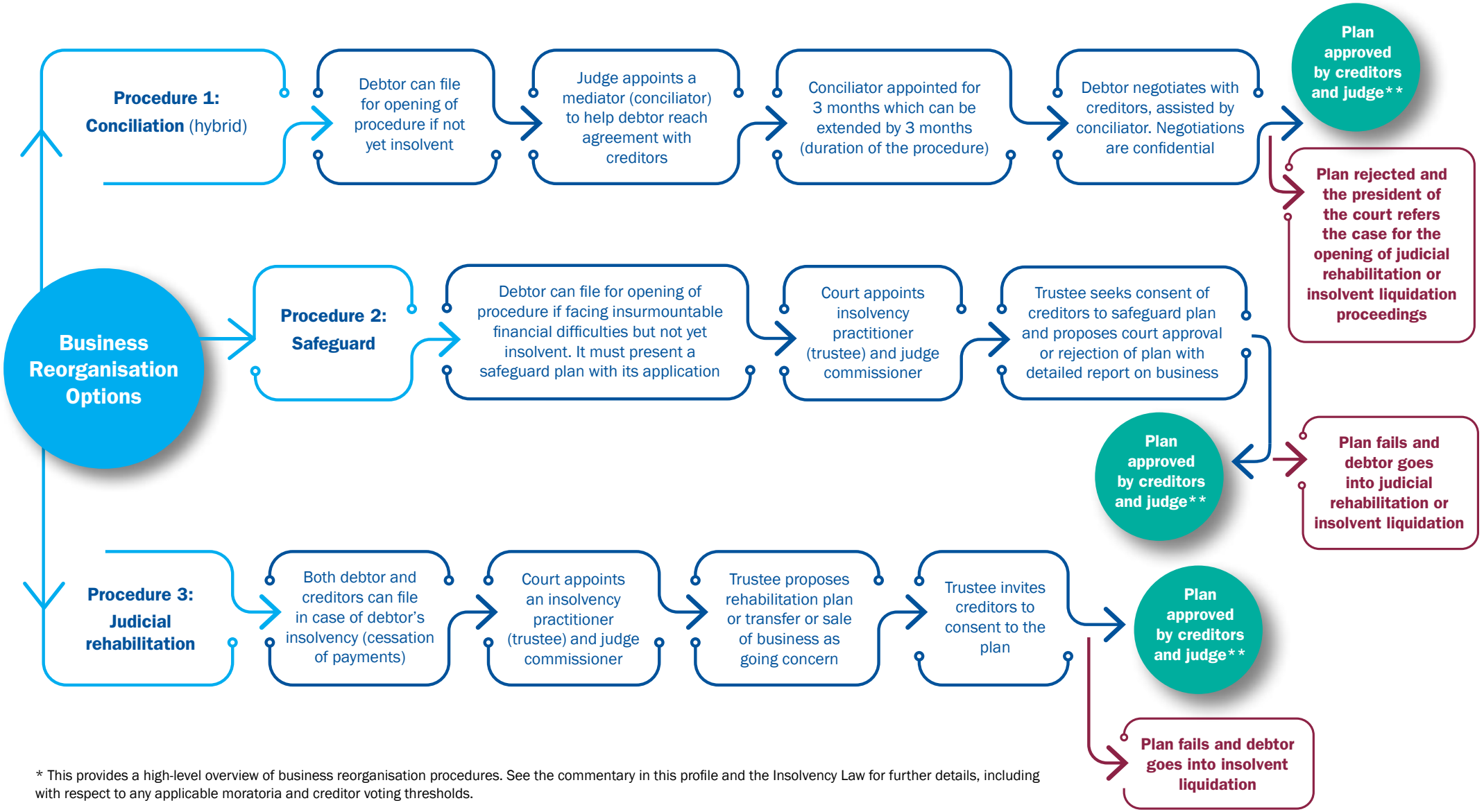
Has the UNCITRAL Model Law on Cross Border Insolvency been adopted?

No. The UNCITRAL Model Law has not been adopted but the Insolvency Law includes in Section IX provisions on cross-border insolvency proceedings, including provisions that facilitate cooperation with foreign courts and representatives.

Special features/observations:

- The Moroccan insolvency law framework is highly influenced by French law and contains similar reorganisation procedures. The court has special powers in the conciliation, safeguard and judicial rehabilitation procedures to impose a rescheduling of claims on non-consenting creditors.
- The pre-insolvency conciliation procedure, in which a court-appointed mediator assists the debtor to reach an agreement with its creditors, is confidential, and the conciliation agreement is only communicated to participating parties.

Overview of Moroccan 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.

** The judge can impose a compulsory rescheduling of claims on non-participating creditors in certain circumstances.

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