

# Business Reorganisation Assessment

📍 Tunisia



**European Bank**  
for Reconstruction and Development



## Special thanks to:

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Ferchiou & Associates  
Meziou & Elleuch Law Firm

## Part A

# General Information

## Macro Data

11.903	3.8%	US\$ 3,680	دينار Tunisian dinar – TND	15%	5.8%	16.7%
Population (million) <sup>1</sup>	GDP growth rate <sup>1</sup>	GDP per capita <sup>1</sup>	Currency	Corporate tax rate <sup>2</sup>	Inflation rate <sup>1</sup>	Unemployment rate <sup>3</sup>

## Insolvency Legislation

The primary legislative text governing insolvency and restructuring proceedings for businesses in Tunisia (including legal entities and entrepreneurs) is the Law No. 2016-36 (the Insolvency Law) dated 29 April 2016, as amended, relating to collective insolvency proceedings, which amended the Chapter IV of the Commercial Code, published in the **Official Gazette No. 038/10 May 2016**. Insolvency practitioners (known as liquidators, judicial administrators and trustees) are governed by the **Law No. 97-71** dated 11 November 1997. While foreseen by the Insolvency Law, there is no applicable secondary legislation yet for conciliators who are appointed as part of the amicable settlement procedure (see below).

## Insolvency Data

There is no official data available relating to insolvency proceedings. However, according to a **study** dated 26 December 2018 made by the Court of Audit (la Cour des Comptes) from 2012 to 2017, there was a total of 88 applications for amicable settlement (a reorganisation procedure), out of which only 36 were accepted by the court. According to the same study, there were 1,038 companies in judicial settlement (another reorganisation procedure) at the end of October 2017. Both the amicable settlement and judicial settlement procedures are described below.



<sup>1</sup> IMF – Source as of July 2021: [www.imf.org/en/Countries/TUN](http://www.imf.org/en/Countries/TUN)

<sup>2</sup> PWC – Source as of July 2021: [taxsummaries.pwc.com/tunisia/corporate/taxes-on-corporate-income](http://taxsummaries.pwc.com/tunisia/corporate/taxes-on-corporate-income)

<sup>3</sup> World Bank – Source as of December 2020: [data.worldbank.org/indicator/SL.UEM.TOTL.ZS?locations=TN](http://data.worldbank.org/indicator/SL.UEM.TOTL.ZS?locations=TN)



## Company Information

The Tunisian company law framework is governed mainly by the **Commercial Code** as established by the Law No. 94-34 of 17 April 1995, the **Code of Contracts and Obligations** as established by the Decree of 15 December 1906 published in the Official Gazette No. 100/15 December 1906, the **Code of Commercial Companies** as established by Law No. 2000-93 of 3 November 2000 published in the Official Gazette No. 89/7 November 2000.

The **National Register of Companies** in Tunisia, as established by Law No. 2018-52 of 29 November 2018, is a central repository of all information relating to individuals or legal entities exercising commercial activities or having a commercial structure. Companies must be registered in the National Register and the information contained in the register updated throughout their lifetime.

## Insolvency Courts, Regulatory Authorities and Practitioners

Insolvency proceedings are overseen by first instance courts of general civil jurisdiction (located in Tunis, Nabeul, Bizerte, Kef, Sousse, Monastir, Sfax, Gafsa, Gabès and Médenine). Jurisdiction of the court in relation to legal entities is determined by the registered office of the business and for entrepreneurs the place of main residence.

Commercial insolvency proceedings are overseen by judges sitting in the first instance courts. The insolvency judge (juge commissaire) is appointed by the president of the Tribunal.

The Ministry of Justice is the main government authority for insolvency and is responsible for maintaining two lists of insolvency practitioners, one for judicial administrators who are

appointed in the judicial settlement procedure and the other for trustees who are appointed in the insolvency liquidation procedure. Both lists are available **here** and the procedural rules that should be followed by such persons are available **here**. The **Law No. 97-71** dated 11 November 1995 sets out the criteria and process for the registration of insolvency practitioners (trustees and judicial administrators). The judicial administrator (administrateur judiciaire) assists the debtor in fulfilling all or part of the acts of management of the business within the framework of a judicial settlement procedure. The trustee (syndic) is responsible, in the context of insolvent liquidation proceedings, for, among other things: requesting the removal of the seals; carrying out an inventory of the debtor's assets and delivering it to the judge-commissioner; and ensuring the continuation of commercial activity, if authorised by the court. Judicial administrators and trustees should each obtain a special authorisation to act from the Ministry of Justice.

There is currently no list of authorised conciliators (*conciliateurs*), who help the debtor and its creditors reach an agreement during the amicable settlement procedure. Such list is envisaged by the Insolvency Law but has not yet been enacted. In practice, the courts appoint certified public accountants to act as conciliators. The mission of the conciliator can also be delegated, if the debtor agrees, to a government administrative body known as the Enterprise Monitoring Commission (commission de suivi des entreprises économiques).



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## Part B

# Business Reorganisation

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

There are no specific incentives for debtor and creditors to conclude an extrajudicial voluntary agreement. However, the amicable settlement procedure, which is a hybrid procedure, allows the debtor to reach an extrajudicial agreement with its creditors, under the supervision of a court-appointed conciliator. The final agreement is reflected in a plan which is subsequently ratified by the court.

### What is the nature and purpose of the reorganisation procedure?

Tunisia has two main procedures leading to reorganisation of the debtor: the amicable settlement procedure (procédure de règlement amiable) and the judicial settlement procedure (procédure de règlement judiciaire). **Click here** for a high-level overview of the procedures.

#### **Amicable settlement procedure**

This procedure aims to reach an agreement between the debtor, which is not in a state of cessation of payments or insolvency, and its creditors, in order to guarantee the continuity and viability of the debtor business (Article 422).

#### **Judicial settlement procedure**

This procedure aims to adopt a reorganisation plan in order to guarantee the continuity of the debtor's business activities (Section III), or the leasing of the business, including with a view to transferring it or the transfer of the business or its management to a third party (Section IV).

However, the court can decide at any time to place the debtor into insolvent liquidation (faillite) if the relevant conditions are met (Article 433).

### Who can commence the process and what entry conditions apply?

#### **Amicable settlement procedure**

Only the debtor can request in writing to the court to initiate an amicable settlement procedure. The debtor should be facing financial difficulties and should not be in a state of 'cessation of payments' (insolvency). The debtor should thus be able to meet its current liabilities with its current cash and realisable assets (Articles 422 and 423).

#### **Judicial settlement procedure**

Any insolvent debtor in a state of cessation of payments can apply for judicial settlement (Article 434). An application for judicial settlement can be submitted to the president of the court of first instance by: the debtor, the chairman, the general director or the majority of the company's board, the sole shareholder or the shareholders holding more than five per cent of the share capital, or any creditor with an outstanding claim (Article 435).

### Is there any court involvement?

#### **Amicable settlement procedure**

There is minimal court involvement, since the court only intervenes following the application in order to commence the procedure and appoint a conciliator (Article 424). The court later pronounces the adoption (or rejection) of the agreement concluded between the debtor and all its creditors (Article 428).

#### **Judicial settlement procedure**

The president of the court initiates the procedure and fixes the date of insolvency, i.e. cessation of payments. It opens an observation period of nine months, during which the situation of the debtor is monitored and a plan is prepared. The observation period is extendable once only, for a period not exceeding three

months by reasoned decision based on the situation of the debtor. The date of the cessation of payments is important as it determines which claims should be submitted and it also determines the look back period for avoidance provisions (Articles 439, 445 and 449).

The president of the court appoints a judge commissioner and an insolvency practitioner, known as a judicial administrator (Article 439). The court adopts the reorganisation plan envisaging the continuation of the debtor's activities, its leasing, including leasing with a view to its sale, leasing of the management or transfer to a third party. The court also sets the duration of the plan and appoints one or more supervisors of the implementation of the plan, who can be either the judicial administrator, a creditors' representative or any other person (Article 453).



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**

### Are there any hybrid reorganisation procedures?

The amicable settlement procedure is considered a hybrid reorganisation procedure since there is minimal court involvement of the court and the debtor and creditors reach agreement out-of-court which is subsequently ratified by the court.

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

#### **Amicable settlement procedure**

Yes, the debtor's management remains in full possession and control since the conciliator is only charged with facilitating discussions between the debtor and its creditors.

#### **Judicial settlement procedure**

It depends on the court's determination. The president of the court defines the role of the insolvency practitioner (judicial administrator). Such person may assume management powers in part or in full depending on the circumstances (Article 443).



### Is there a need to appoint an insolvency practitioner?

#### **Amicable settlement procedure**

No, the court appoints a mediator known as a 'conciliator' to help reach agreement between the debtor and its creditors. The conciliator is appointed for a maximum period of three months, which can be extended by one month by decision of the court (Articles 424 and 425).

#### **Judicial settlement procedure**

Yes, an insolvency practitioner (judicial administrator) is appointed by the court. As mentioned above, the practitioner is responsible for supervising the debtor's management or assisting the debtor in performing in whole or part the acts of management, under the conditions defined by the president of the court (Articles 439 and 443).

### Is there any applicable stay or moratorium?

#### **Amicable settlement procedure**

Yes, a stay is possible but is not automatic. The president of the court may only order the suspension of enforcement proceedings aimed at recovering a claim which arose prior to the decision to initiate the amicable settlement procedure if: the payment of such claim would lead to a deterioration in the situation of the debtor and it would constitute an obstacle to the debtor's recovery. The president may also order a suspension in attachment of any movable or immovable property provided the property is indispensable to the activity of the debtor. The court may also order the suspension of forfeiture periods (Article 427).

The president of the court will order the suspension of enforcement proceedings only after summoning and hearing the creditors, the guarantor or any joint and several co-debtors. The suspension ends automatically as soon as a decision is made regarding the amicable settlement.

The court-ratified settlement agreement results, for the creditors covered by the agreement, in a stay of execution proceedings for the recovery of a claim dated prior to the agreement or the attachment of movable or immovable property due to the non-payment of a debt, until the end of the settlement agreement period (Article 428).

#### **Judicial settlement procedure**

Yes, during the observation period, acts of execution aimed at the recovery of a claim dated prior to the observation period or the detachment of movable or immovable property due to non-payment of a debt, as well as the accrual of interest, damages for late payment and time limits for forfeiture, are suspended. The suspension of enforcement actions and forfeiture periods is automatically lifted at the end of the observation period, and in any case after twelve months from commencement of the procedure (Article 449).





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

#### **Amicable settlement procedure**

There is no express provision protecting essential contracts or preventing parties from including termination provisions based on entry into amicable settlement proceedings.

However, the amicable settlement procedure is confidential until the ratification of the agreement by the president of the court, which results in the registration of the agreement, by the court clerk, in the National Register of Companies (Article 428). The confidentiality of the procedure provides some indirect protection from third party termination of contracts (to the extent that third parties are unaware of the opening of the procedure).

#### **Judicial settlement procedure**

Yes with respect to termination provisions. Notwithstanding any contractual clause, the execution of ongoing contracts binding the debtor to third parties, customers, suppliers, and others is continued (Article 451). This means that third-party termination clauses are inapplicable.

The court may terminate contracts at the request of the judicial administrator or the debtor if the contracts are not necessary for the continuity of the debtor's activities and if such termination does not unduly prejudice the interests of the counterparty of the contract (Article 451).

There are no specific provisions with respect to protection of contracts that are essential for the debtor's day-to-day activities.

### Is new financing protected by law?

#### **Amicable settlement procedure**

Yes. If judicial settlement or liquidation proceedings are subsequently opened, creditors who had agreed in a ratified amicable settlement agreement to provide new funds to the debtor, or to the supply of movable or immovable property or the provision of services to ensure the continuation of the debtor's business, will be paid prior to any other unsecured claim, except those with super privilege (e.g. salaries) (Article 429).

#### **Judicial settlement procedure**

Yes. Priority is given to new debts arising as of the beginning of the observation period if they are directly related to and necessary for the continuation of the debtor's activities. Creditors providing new financing are paid before other unsecured and secured creditors (Article 450).

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

#### **Amicable settlement procedure**

No. As there is no voting procedure, the law does not recognise separate classes of creditors for voting purposes. The amicable settlement agreement is based on the consent of the creditors. However, the communication details and identities of all creditors should be submitted to the court alongside the application for the opening of an amicable settlement procedure (Article 417).

#### **Judicial settlement procedure**

No. While creditors can be grouped into categories according to their interests in order to communicate their observations to the insolvency judge, the law does not specify voting by separate classes of creditors and if the different groups and interests of creditors should be taken into account during the voting (Article 444). As for amicable settlement, creditors nonetheless are requested to provide their consent to the plan.

## What are the majorities required to approve a reorganisation plan?

### Amicable settlement procedure

The court can ratify the amicable settlement agreement signed by creditors whose claims represent two-thirds of the total amount of the claims and order the rescheduling of other claims, whatever their nature, over a period not exceeding the duration of the agreement and not exceeding, in any case, three years (Article 428). The president of the court pronounces the adoption of the amicable settlement agreed between the debtor and all its creditors.

### Judicial settlement procedure

The court can only ratify a judicial settlement plan with the consent of creditors holding at least half of the total amount of debts (i.e. a majority in value), and after having verified that the plan takes into consideration the interests of all creditors (Article 456).

## Who does the reorganisation plan bind?

### Amicable settlement procedure

The amicable settlement agreement ratified by the court binds the creditors which participated in the procedure. The ratified settlement agreement can include the rescheduling of claims and the write-off of claims among other measures. The court can also order the rescheduling of the claims of non-participating creditors, for a period not exceeding the duration of the agreement and in any case not more than three years (Article 428).

### Judicial settlement procedure

The court-ratified judicial settlement plan binds all creditors regardless of whether they participated in the approval process. The judicial rehabilitation plan can include the rescheduling of claims and the write-off of claims. However, debt write-off cannot be imposed on the affected creditors unless their consent is obtained. Debt rescheduling for a period equal to or less than seven years can be imposed on dissenting creditors if provided



for in the approved plan. Rescheduling beyond any seven-year period requires the consent of the affected creditors (Article 456).

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

### Amicable settlement procedure

The conciliator is responsible for bringing the debtor and its creditors to an agreement within a period not exceeding three months, which may be extended by one month by decision of the president of the court (Article 425). A moratorium can be imposed – although it is not mandatory – during the negotiating period and until the settlement agreement is ratified by the court (Articles 425 and 427).

On ratification of the amicable settlement agreement, an automatic moratorium is imposed until the end of the period described in the agreement, which in any case cannot exceed three years (Article 428).

### Judicial settlement procedure

The observation period for a judicial settlement procedure can last up to nine months, and is extendable once, for a period of up to three months (Article 439).

In order for creditors to participate in the procedure, they must register their claims dated prior to the opening of the procedure within thirty days from the date of publication regarding the commencement of the procedure in the Official Gazette of the

Republic of Tunisia. Creditors residing abroad have 60 days to register their claims (Article 445).

A moratorium is automatically imposed during the observation period and remains in place for a period not exceeding twelve months (Article 449).

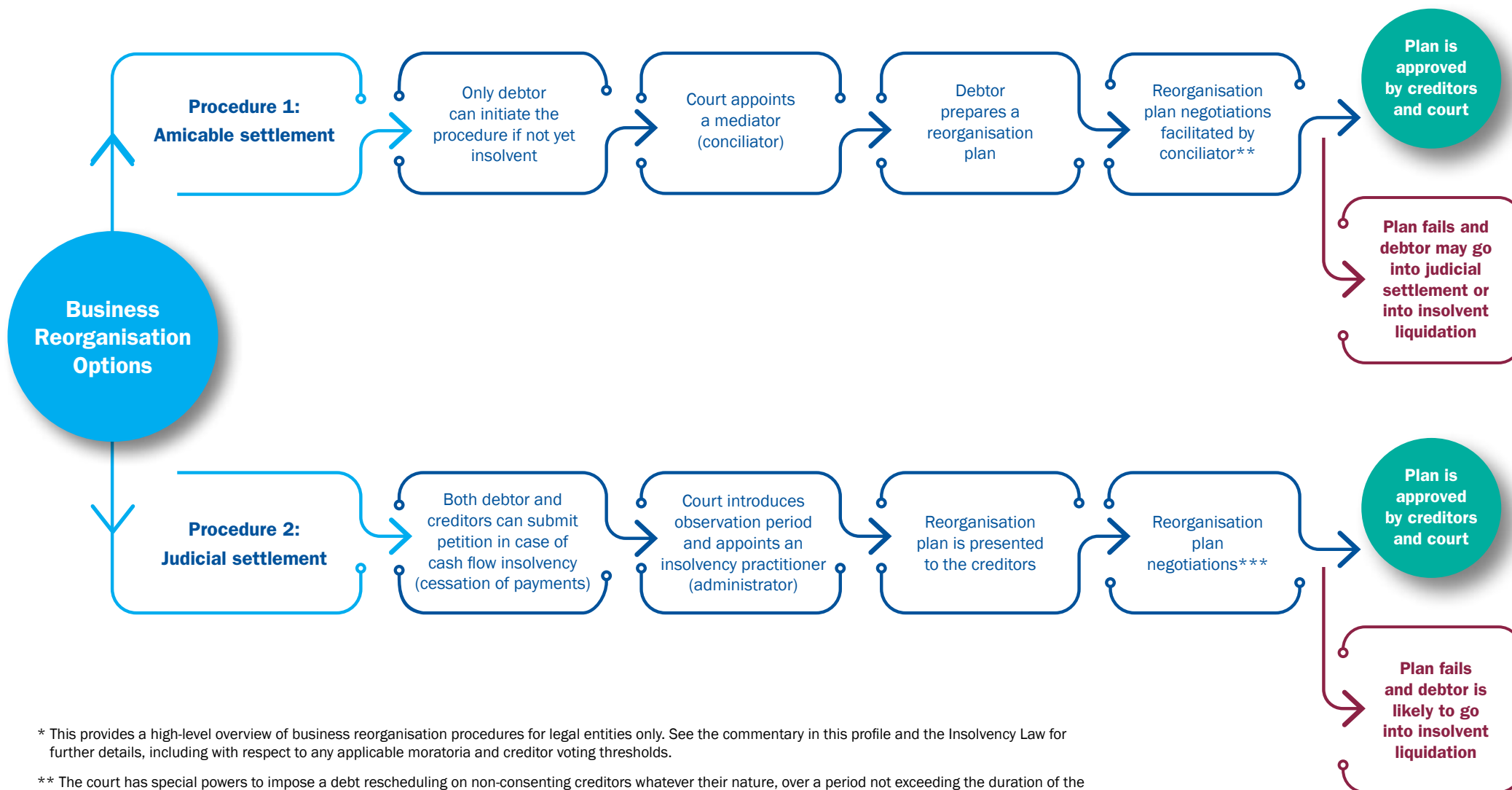
## Has the UNCITRAL Model Law on Cross Border Insolvency been adopted?

No, the UNCITRAL Model Law has not been adopted and the Insolvency Law does not contain any details on the recognition of foreign insolvency proceedings or any cooperation with foreign courts or representatives.

## Special features/observations:

- The Tunisian insolvency law framework is highly influenced by French law and contains similar reorganisation procedures.
- The court has special powers in both the amicable settlement and judicial rehabilitation procedures to impose a debt rescheduling on non-consenting creditors whatever their nature. The maximum period is limited to three years for amicable settlement and seven years for judicial rehabilitation (Article 428).
- In both the amicable settlement and judicial rehabilitation procedures, provisions regarding creditor approval are less detailed than in other jurisdictions. By law creditors are required to agree or consent to a plan rather than to vote on a plan.

# Overview of Tunisian Business Reorganisation Procedures\*



\* This provides a high-level overview of business reorganisation procedures for legal entities only. 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 court has special powers to impose a debt rescheduling on non-consenting creditors whatever their nature, over a period not exceeding the duration of the agreement and, in any case, three years.

\*\*\* Debt rescheduling for a period equal to or less than seven years can be imposed on dissenting creditors if provided for in the approved plan.



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