

MOROCCO



Legislative framework

Legislative framework for insolvency proceedings

Insolvency proceedings in Morocco are governed by Book V (Businesses Difficulties) of the Commercial Code.¹ The insolvency legal framework applies to all traders (“*commerçants*”), artisans and any commercial companies as defined in the Dahir No. 1-96-83 promulgating the law No. 15-95 on the Commercial Code.

Legislative framework for insolvency office holders

The main provisions relating to insolvency office holders (IOHs) are found in the Commercial Code.

Types of insolvency procedures

The Moroccan regime provides a comprehensive legislative framework for businesses in financial difficulty: (i) a system of “prevention” of financial difficulties for those businesses that are not yet insolvent which can be either an amicable settlement procedure (*règlement amiable*) or an initial “internal prevention procedure”; and (ii) judicial insolvency proceedings.

The judicial insolvency proceedings available for insolvent businesses under Moroccan law encompass: (i) a judicial rehabilitation procedure aimed at preserving the business by means of a continuation plan and/or a sale or transfer where there is a real prospect of rescuing the business and settling its liabilities and (ii) a liquidation procedure for businesses that are irredeemably insolvent, leading to the sale of the debtor’s business and assets.

Institutional framework

Pursuant to Book V of the Commercial Code, the key players in insolvency proceedings in Morocco are the insolvency court (the judge commissioner), the IOH and, to a limited extent, creditors as represented by the controller(s).

In Morocco insolvency proceedings are overseen by the competent insolvency court (being the commercial court where the headquarters of the business are registered or where the company has its principal place of business) and the judge commissioner. The court directs and controls the proceedings from opening to closure. The court decides, among other matters, on initiation and termination of proceedings and on the appointment of the judge commissioner and the trustee (syndic). The judge commissioner supervises the proceedings and takes the necessary steps to preserve the debtor's property and funds.

The IOH, known as the syndic, is appointed by the court acting at its own discretion. The syndic monitors or assists the management of the debtor or takes over all or part of the management of the debtor's business, as defined by the court. The majority of the syndic's actions are subject to prior approval of the court.

Creditors do not have a strong role in insolvency proceedings. Nevertheless, one to three controller(s) are appointed among the creditors by the judge commissioner to assist the syndic in the course of his actions and the judge commissioner in the supervision of the administration of the proceedings. They are entitled to have access to the documents submitted to the syndic. A controller's appointment may be revoked by the court based on a request from the judge commissioner or syndic.

Assessment overview/strengths and weaknesses

Based on the results of the assessment, a weak legal framework exists for the IOH profession in Morocco, which would benefit from significant improvement to address key areas of weaknesses and raise IOH professional capacity and performance.

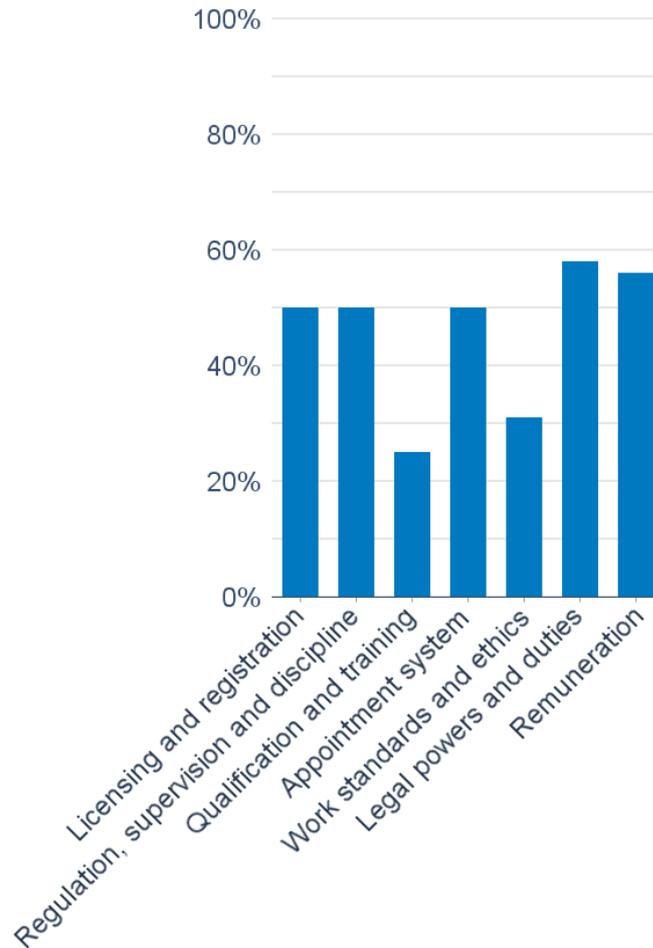
Benchmarks	Strengths of the Moroccan IOH professional framework	Weaknesses of the Moroccan IOH professional framework
Licensing and registration:		<ul style="list-style-type: none"> IOHs are not required to obtain a licence or to be part of a centralised register. There is no official list of IOHs, although each court maintains its own list.
Regulation, supervision and discipline:		<ul style="list-style-type: none"> There is no dedicated regulatory body for IOHs. However, the court (judge) supervises the activities of the IOH in particular proceedings. There is no legal requirement for (regular) monitoring of the performance/activities of IOHs. There is no complaints system operated by a dedicated body.

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		<p>Nevertheless, complaints may be filed with the insolvency court.</p> <ul style="list-style-type: none"> • A full range of sanctions cannot be imposed on IOHs for misconduct (the court only has the power to revoke the IOH's appointment or to change the scope of his duties).
Qualification and training:	<ul style="list-style-type: none"> • In some cases the function of IOH is carried out by the clerk of the trade court. 	<ul style="list-style-type: none"> • A tertiary qualification is not required for prospective IOHs. • IOHs are not required to pass a specific examination for entry to the profession. • There is no requirement for prospective IOHs to have previous work experience with an IOH. • There is no prohibition for candidates with criminal records being admitted to the profession. • There is no continuing training requirement.
Appointment system:	<ul style="list-style-type: none"> • No relative of the managers up to the fourth degree can be appointed as IOH. 	<ul style="list-style-type: none"> • The court appoints the IOH on a random basis, acting at its own discretion and without input from stakeholders, including creditors. • Creditors have limited rights to propose the replacement of the IOH.
Work standards and ethics:	<ul style="list-style-type: none"> • IOHs shall comply with all legal and contractual obligations applying to managers of the debtor. 	<ul style="list-style-type: none"> • There is no professional code of conduct covering professional and/or ethical rules.
Legal powers and duties:	<ul style="list-style-type: none"> • IOHs have certain powers and duties set forth in the legislation which, inter alia, enables them to obtain information relating the debtor's financial situation from the debtor (and parties 	<ul style="list-style-type: none"> • IOHs are subject to strong judicial oversight, including in the sale of debtor's assets. • IOHs are not required to report regularly to the

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	<p>connected to the debtor), statutory auditors, state authorities and any other party.</p> <ul style="list-style-type: none"> IOH are entitled to require performance of the pending contracts if the service promised by the debtor to the other contracting party is performed. 	<p>creditors or the court. However, the controller(s) is/are entitled to examine the documents submitted to the IOH.</p> <ul style="list-style-type: none"> Although the debtor, state authorities and third parties have certain duties to cooperated with the IOH and provide information, there are no statutory sanctions for failure to cooperate.
Remuneration:	<ul style="list-style-type: none"> Remuneration of IOHs forms part of the procedural costs and is settled before unsecured and preferential claims such as state taxes and employees claims. 	<ul style="list-style-type: none"> There is no system prescribed by law for the calculation of IOH remuneration. The court approves the IOH's fees. Creditors and the debtor cannot file an appeal against the level of IOH remuneration.

The following chart shows us the quality of legal framework related to IOHs in the key areas as listed below.

Morocco



Key recommendations

As illustrated in the chart above, Morocco appears to have an underdeveloped legal framework for the IOH profession which covers only some of the key elements of the profession. Therefore, there are reforms are particularly needed in a range of areas including: licensing and registration; regulation, supervision and discipline; qualification and training; appointment process; professional conduct and remuneration.

- A licensing and registration system should be developed in order that IOHs have specific authorisation to act in recognition of the specialist and highly skilled nature of the IOH's work.

- Further consideration should be given to the creation of a dedicated regulatory body for IOHs. Experience demonstrates that an active regulatory body is more effective at enhancing IOH professional standing and performance. Such a regulatory body could monitor the activities of IOHs on a regular basis. In this regard, the establishment of a separate complaints procedure operated by such dedicated regulatory body should be considered.
- Specific entry exams, relevant practical insolvency work experience with a practising IOH for prospective IOHs as well as regular continuing educational training for authorised IOHs should be introduced in order to enhance the performance of IOHs.
- The IOH appointment procedure should be revised to provide a fair and transparent appointment system for the protection of stakeholders' interests. Creditor input in the selection of the IOH would be desirable.
- A comprehensive and publicly available code of professional conduct for IOHs of a binding nature should be adopted to provide useful guidelines and principles for IOH professional activities.
- Wider duties of cooperation to assist the IOH in the recovery of assets belonging to the debtor's estate should be introduced, together with appropriate sanctions for failure to cooperate.
- Statutory provisions regarding the definition and amount of remuneration of all IOHs should be clarified, as well as the priority ranking of IOH remuneration.

¹ Law No. 15-95.