

TUNISIA



Legislative framework

Legislative framework for insolvency proceedings

The main legislative provisions governing insolvency of businesses (including sole traders) are set out in the Book IV on composition procedures and insolvency of the Commercial Code of 1959 (as amended on 16 April 2016, the Insolvency Law). Further provisions governing distributions on insolvent (and also solvent) liquidation of companies and priority debts are contained in Title III on Liquidation of Companies of the Commercial Code and Title VI of the Real Property Code promulgated by Law No. 65-5 of 12 February 1965 (the Real Property Code) respectively.

Legislative framework for insolvency office holders

In addition to the Insolvency Law, the main provisions relating to insolvency office holders (IOHs) are found in the Law No. 71 of 1997 on Insolvency Office Holders (the IPL) and in a number of orders of the Minister of Justice, including: (i) the Order of the Minister of Justice of 10 February 1998 relating to the Composition of the Commission Responsible for Examining the Request for Registration of IOHs; (ii) the Order of the Minister of Justice of 15 April 1999 relating to the Minimum Amount of Insurance Cover for the Liability of IOHs; and (iii) the Order of the Ministry of Justice of 3 June 2000 relating to Approval of the Manual Governing Proceedings Relating to IOHs.

Types of insolvency procedures

All insolvent businesses are required to enter the judicial settlement (*règlement judiciaire*) procedure aimed at achieving a reorganisation of the debtor's business. Debtors that are not yet insolvent can also apply for conciliation, a procedure involving the appointment of a 'conciliator' by the court aimed at assisting the debtor to broker an agreement with its creditors and amicable settlement (*règlement amiable*), a type of reorganisation procedure. If judicial settlement reorganisation fails, bankruptcy proceedings will be commenced, which may result in either liquidation of the debtor's business and assets or a compromise between the debtor and its unsecured creditors.

Institutional framework

The key players in insolvency proceedings are the insolvency court, the judge commissioner (*juge commissaire*) and the IOH (the administrator (*administrateur judiciaire*) in reorganisation-type procedures or the official receiver (*syndic*) in liquidation).¹ The judge commissioner can also appoint controllers selected from the group of creditors subject to their consent.

In Tunisia insolvency proceedings are court-driven and overseen by the competent court (being the commercial chamber of the ordinary district court where the principal establishment of the business is located).

The judge commissioner appointed by the court exercises the majority of rights and responsibilities relating to the conduct of the insolvency proceedings. He is required to oversee the activities of the IOH, report to the court on any contentious matters during the bankruptcy proceedings and must generally provide the court with any other relevant information.

In liquidation proceedings, the IOH, known as the official receiver, is entrusted by the court to manage the debtor's property, sell any of the debtor's assets and distribute the proceeds of such assets to creditors. The official receiver is required to submit reports to the judge commissioner on the development of the insolvency case and to manage the debtor's estate, largely in accordance with the directions (and authorisation) of the judge commissioner.

In reorganisation-type proceedings, the IOH, known as the administrator, is entrusted by the court with managing the debtor's business in distress and preparing a reorganisation plan or, alternatively (in judicial settlement proceedings only) selling the debtor's business to a third party. The disposal of the debtor's business to a potential buyer may be preceded by the lease of the business for a maximum period of two years.

Assessment overview/strengths and weaknesses

Based on the results of the pilot assessment, a partially developed legal framework exists for the IOH profession in Tunisia, but this is relatively weak and would benefit from improvements to address certain key issues and improve IOH professional capacity.

| Benchmarks | Strengths of the Tunisian IOH professional framework | Weaknesses of the Tunisian IOH professional framework |
|------------------------------------|--|--|
| Licensing and registration: | <ul style="list-style-type: none"> The official lists of authorised IOHs and judicial experts are available online on the Ministry of Justice web site. | <ul style="list-style-type: none"> Admission to the IOH profession is dependent on registration in one of the two lists maintained by the Ministry of Justice for administrators and official receivers; however, the court can appoint a judicial expert as IOH from a different list held with the Ministry of Justice. |

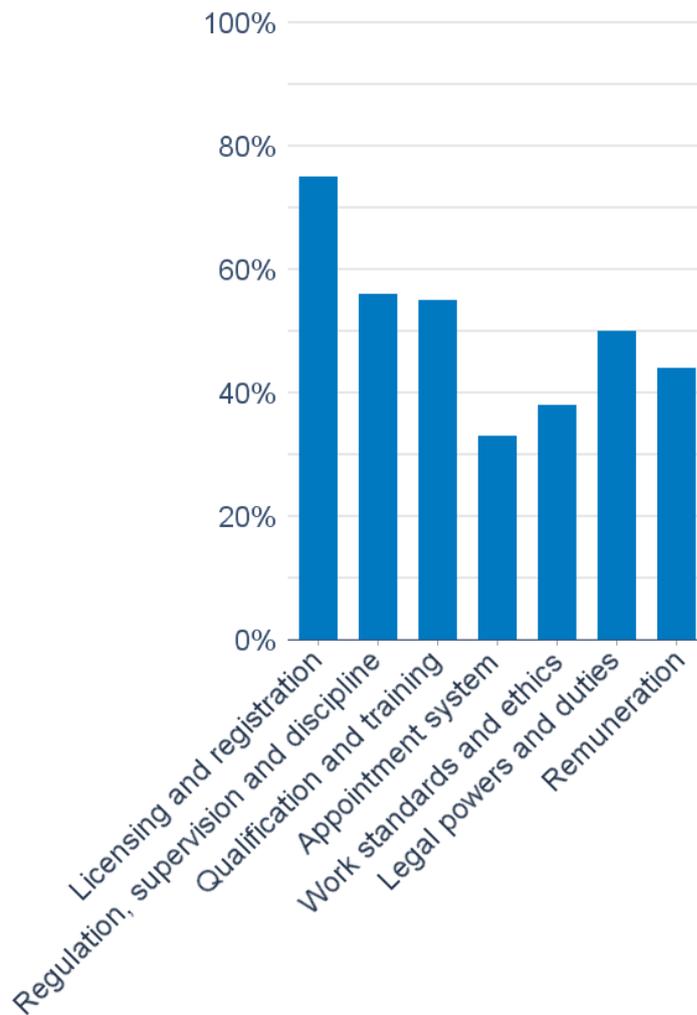
| Benchmarks | Strengths of the Tunisian IOH professional framework | Weaknesses of the Tunisian IOH professional framework |
|--|--|--|
| | | <ul style="list-style-type: none"> No proper distinction is drawn in practice between the professionals admitted to the two lists of IOHs, which undermines the rationale for having separate lists (and professionals). |
| Regulation, supervision and discipline: | | <ul style="list-style-type: none"> The commission within the Ministry of Justice charged with responsibility for IOHs does not appear to take an active role in matters of regulation, supervision and discipline. There is no legal requirement for regular monitoring of the activities of IOHs by the commission and the judge commissioner does not appear to play a significant role in sanctioning IOH misconduct. There is no official complaints system, complaints regarding IOH performance need to be filed with the Ministry of Justice and/or the court. Sanctioning power for IOH misconduct is limited since the Ministry of Justice is entitled to dismiss the IOH from the case and the court is entitled to impose a fine. |
| Qualification and training: | <ul style="list-style-type: none"> IOHs are required to have a university degree in law, economics or management. Intentional criminal offences are a bar to admittance to the profession and criminal checks are carried out. | <ul style="list-style-type: none"> There is no specific examination for entry to the profession. Substantial prior work experience is required, for IOH candidates, but this does not need to be undertaken with a practising IOH. There is no continuing training requirement for registered IOHs. |
| Appointment system: | | <ul style="list-style-type: none"> There is no express |

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|-----------------------------------|--|--|
| | | <p>statutory provision governing selection or appointment of IOHs by the court (although a manual exists).</p> <ul style="list-style-type: none"> • Creditors (and the debtor) have a limited right to request the replacement of an IOH; however, this is decided at the court's discretion. |
| Work standards and ethics: | | <ul style="list-style-type: none"> • There is no code of professional conduct or ethics for IOHs (although IOHs are required to swear an oath on admittance to the profession). |
| Legal powers and duties: | <ul style="list-style-type: none"> • In bankruptcy proceedings the official receiver can require the assistance of any relevant parties (through the court); however, there is no such statutory power in reorganisation proceedings. | <ul style="list-style-type: none"> • The IOH has limited powers to manage the debtor's business/property in an autonomous way and is subject to close court oversight. • There is no regular reporting requirement for the IOH in bankruptcy proceedings; nevertheless, the court may request reports at any time that may be accessible to other parties, subject to court permission. • In bankruptcy proceedings, reporting must only be carried out every six months. No specific sanctions are available for failure of parties to cooperate with the IOH (apart from holding the non-cooperative party jointly liable with the debtor). |
| Remuneration: | | <ul style="list-style-type: none"> • There is no clear statutory guideline for how various IOHs are to be remunerated, other than liquidators. • There is no express statutory provision for the protection of IOH fees, |

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| | | although in practice IOH fees are considered part of the bankruptcy costs and payable in priority to other creditors. |

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

Tunisia



Key recommendations

As illustrated in the chart above, Tunisia appears to have developed a legal framework for IOH profession which covers some of the key elements of the profession. Nevertheless, there are a number of areas where reforms are particularly needed including: regulation, supervision and discipline; qualifications and training; appointment system; work standards and ethics and remuneration.

- The registration system should be improved so that IOHs are appointed exclusively from the list(s) of IOHs maintained by the Ministry of Justice in recognition of the specialist nature of the work.
- Further consideration should be given to the creation of a dedicated regulatory body for IOHs outside of the Ministry of Justice. 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. The establishment of a separate complaints procedure operated by a dedicated regulatory body should be considered.
- Specific entry exams to the IOH profession, relevant practical insolvency work experience with a practising IOH for prospective IOHs, as well as regular continuing educational training for registered IOHs, should be introduced in order to enhance the performance of IOHs.
- Certain provisions should be introduced to clarify the IOH appointment system and to provide a fair and transparent appointment system for the protection of stakeholders' interests. Further 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.
- 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 A legal representative (*mandataire de justice*) may also be appointed to the extent that there are any assets (movable and/or immovable) or any money subject to litigation. A new professional known as the 'conciliator' was created by the legislative changes introduced by the Insolvency Law in April 2016 but is not yet regulated by any by-laws.