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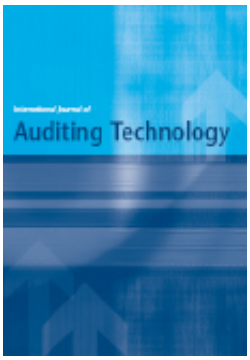

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The similarities of judicial reorganisation process of SMEs in financial distress: cross-cultural analysis of France and Morocco during COVID-19

Samia Sabounji, Joshua Onome Imoniana

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The similarities of judicial reorganisation process of SMEs in financial distress: cross-cultural analysis of France and Morocco during COVID-19

Samia Sabounji

IESEG School of Management,
Université Catholique Lille,
3 Rue de la Digue, Lille, 59000, France
Email: samia.sabounji@ieseg.fr

Joshua Onome Imoniana*

University of São Paulo,
Prof. Luciano Gualberto Ave. 908,
FEA 3 Building Room 238,
São Paulo, 05508-010, Brazil
Email: josh.imoniana@usp.br
Email: josh.imoniana@yahoo.com
*Corresponding author

Abstract: The SMEs are the cornerstone of the development and mainstay of any economy. This study examined the similarities of judicial reorganisation of SMEs in France and Morocco. It is a qualitative study drawing on the interpretivist and constructivist perspectives toeing discourse analysis. Thirteen SMEs constitute the data corpus based on interviews, recorded, and later transcribed. Also, archival documents relating to the regulation of French and Moroccan laws were explored. Thematic coding was performed to reorganise and present the analysis. The study concludes for several similarities ranging from commercial codes to administrative procedures of organisation of the two countries. Notwithstanding, the study observed several imperfections in the process of reorganisation. Findings also show that the COVID-19 pandemic crisis had accelerated the difficulties of SMEs that were having hindrances to structural pedigree. Finally, this study shows an implication in the literatures as it throws more light into theories and practice thus serving as a support for the policymakers, practitioners, and academia in view of decision making.

Keywords: judicial reorganisation; small and medium sized enterprises; SMEs; cross-cultural; France; Morocco; COVID-19.

JEL codes: D82, G14.

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Biographical notes: Samia Sabounji holds a Masters of Science in Accounting and Management Control from the Université Catholique Lille, France. She has specialties in auditing and business reorganisation.

Joshua Onome Imoniana is an Associate Professor of Auditing of University of Sao Paulo. He is a Fellow at the Institute of Public Accountant of Australia and also certified in Governance of Enterprise IT (CGeIT). He is a Research Fellow at the University of Bologna and the former Director of Internationalisation and Accreditation. He is a Visiting Professor at the IESEG School of Management. He has a past experience as an auditor – IBRU, IS auditor – PwC, IS Audit Manager – Deloitte, Credit Risk Manager – ABB, controller – Canbras TV, ISACA advocate, and a committee member of ISACA.

1 Introduction

The judicial reorganisation also interpreted as business rescue is the genuine awareness of the pains spurred by failures of organisation in our society. Business failure is undoubtedly one of the most raised issues in the field of business management and the small and medium sized enterprises (SMEs) are the ones that suffer the most (Chenguel and Jouirou, 2019). SMEs play an important economic role in many countries, especially in developing countries. In Morocco, for example, they make up more than 90% of Moroccan companies and contribute around 50% to job creation and considerably to value-added. The analysis of business failures has been the subject of a great deal of work since authors and researchers became interested in this phenomenon (Jamel et al., 2019).

According to Arasti et al. (2014), the factors of entrepreneurial failure are very numerous and difficult to define. Their relative importance will depend on the specificities of the companies and the characteristics of their environment which can be both endogenous and exogenous. Internal factors are linked to age, size, organisational structure, management skills, marketing skills, financial management skills, and the owner's skills. External factors are linked to the global economic context: interest rates and the unemployment rate, the main determinants of what could be considered forced default (Everett and Watson, 1998). For instance, imagine the impacts of the war between Ukraine and Russia on various businesses. Depending on their importance, difficulties could conduct them to judicial liquidation.

A company is never safe from an incident that can risk its survival. For instance, a decrease in activity, an unfortunate decision, accumulating debts can provoke a decrease in cash generated and by then a bankruptcy.

Even though the SMEs play a vital role in providing jobs in most of the larger economies and sustenance of the governments' promises, this same governments in a greater number do not really seem cater for them, leading to financial distress and possible bankruptcy. Big companies' failures have serious consequences for the economy of a country and particularly on the financial market, thus drawing more concern. However, the SMEs collectively could draw concern. Therefore, this study concentrates on the judicial reorganisation of the medium and small size organisations.

At the beginning, the drawback of some of the companies is economic which generates financial distress and if the problems persist legal protection is secured and ultimately business closure. But before condemning companies to death, governments might have taken several legal dispositions in order to salvage those companies and to keep them alive by safeguarding their economic balance, protecting their creditors and preserving their workforce. This study will focus on the French and Moroccan

governments and express the similarities between them in terms of companies' judicial reorganisation when they are confronted with financial distress.

The French government implemented in March 1st, 1984, regulations to oblige companies to present financial documents and sensitise company's directors to be more responsible and transparent. It allows the management to request for the assignation of a conciliator in order to negotiate with their creditors, particularly in regard to the payment deadlines and debts. Analysing accounting documents helps to prevent bankruptcy and detect the difficulties of the companies as soon as they appear (Paillusseau and Petiteau, 1985). These regulatory measures are based on internal and external alerts. Internal alerts are made by the management, auditors' employees or partners. External alerts are initiated by the court. The purpose of this alert is to act quickly in order to save the company from suspension of payments. In regard to this, companies have less than 45 days to declare the suspension of payment in France.

The legislative reform of June 10, 1994 aims at reinforcing the preventive system, through a significant increase of the role is held by the president of the commercial court by encouraging the use of the ad hoc mandate procedures. In 1996 there was instituted the first law related to companies' difficulties in Morocco. The French law of March 1984 served as a model to encourage this change. The main objective was to save companies and people from unemployment. The great innovation of the *Dahir* of the Commercial Code is providing a general framework for dealing with business difficulties. Prior to this, only judicial liquidation or bankruptcy was reserved for companies. However, this model did not meet with the expected success (Legros et al., 1996). In fact, the annual number of bankruptcies has not stopped increasing in Morocco.

In France, a new reform characterised as a safeguard law was introduced in 2005. It aims to better detect companies' difficulties and reduce collective procedures, and enhance case by case approach. The bankruptcy procedure and its deleterious effects have led the legislator to initiate a major reform. It is now not a question of treating the difficulties of the debtor, but of preventing and detecting the said difficulties in a timely basis. This Safeguard Law specifies the obligation for social organisations, the public treasury and the customs to publish their claims at the clerk's office of the court under penalty of losing their privileges. In 2008, the order of December 18 allows the company's directors to open a safeguard procedure, rather than to request a judicial reorganisation procedure (Le Corre, 2012). This reform had very good consequences in the sense that the number of collective procedures decreased. Business leader's mindset has evolved in the right direction with the culture of anticipating difficulties (Lienhard, 2011).

In 2003, the Moroccan Justice Minister in collaboration with the United States Agency for International Development (USAID) signed a memorandum of understanding to improve the actual commercial code in order to prevent business difficulties. A total of 28 amendments were proposed to reform the commercial code which highlights the difficulty of understanding this book due to its lack of clarity. A lot of interpretations are given. This will have an impact on the collective procedures. Judge will not always have legal solutions.

Based on the aforementioned, the current study sought to answer the following question: *what are the similarities of judicial reorganisation process of SMEs in financial distress in France and Morocco during COVID-19*?

That said this study objectifies to examine the similarities of judicial reorganisation of companies in financial distress. A cross-cultural analysis of France and Morocco during

COVID-19. Ultimately, the study strengthens the discussion among companies and policy makers on the judicial procedures as reorganisation serves as a vital tool to avoid bankruptcy and liquidation. This study should further enhance the understanding of better procedures (social and economic benefits) deemed as more appropriate to support this process. A lot of managers do not know that those procedures exist, and this explains why they do not take actions earlier (Bollare, 1986). Most of the time, it is too late to save companies that are in danger and going bankrupt. It will help to reduce the company's liquidation by guiding the practitioners, academia and the organising bodies, apart from providing information to the standard setters.

After this introduction the remaining part of this study is structured as follows, the literature review, then the methodology and data analysis. In the same sequence, follows the discussion of the study, the conclusion and finally the references.

2 Literature review

2.1 Concepts of reorganisation in a common law, civil law and Sharia environments

Most nations today follow one of two major legal traditions, common law or civil law. The common law tradition emerged in England during the middle ages and was applied within British colonies across continents. The civil law tradition developed in continental Europe at the same time and was applied in the colonies of European imperial powers such as in France, Spain and Portugal. The Sharia law was effective in Muslim countries and mostly in North Africa and Middle East and has existed to date.

2.1.1 Civil law

The term 'civil law' is derived from the Latin words 'jus civile', by which the Romans designated the laws that only the Roman citizens or 'cives' were originally privileged to enjoy (Dainow, 1966). The civil law is generally codified.

The law allows countries which apply this kind of law to continuously update their legal codes in order to apply the most appropriate sentences for each case. There are different categories of law in Civil law: substantive law, procedural law and penal law. In civil law, the judge's role is to establish the facts of the case and to apply the provisions of the applicable code. It means that the judge's decision is less important than the legislator's decisions and legal scholars who draft and interpret the codes.

2.1.2 Common law

The common law, as a legal system, is associated with its origin and development in England, where the social and economic and political history as well as the foundation of its law stem from the feudal system and its incidents (Dainow, 1966).

The common law is generally uncodified. This law is largely based on judicial decisions that have already been rendered in similar cases. The precedents to be applied in deciding each new case are determined by the judge. In other terms, judges play a huge role in the development of British law. He or she decides the appropriate sentence and is

surrounded by a jury of non-legally trained people who cast a vote and an opinion on the case.

2.1.3 Sharia law or Islamic law

Islamic law' covers all aspects of human behaviour. It is much wider than the Western understanding of 'law' and governs 'the Muslim's way of life in literally every detail, from political government to the sale of real property, from hunting to the etiquette of dinning, from sexual relations to worship and prayer (Hallaq, 2003).

Notwithstanding the coverage of the Sharia, it has been eventually overtaken by the West in such areas as technology, warfare and trade techniques. The consequence of European domination was the desire to 'modernise', that is, to imitate and adopt the ideas and institutions that seemed to have given Europe the advantage. The modernisation movement led to the abandonment of Sharia with astonishing speed and comprehensiveness in all areas except family law (Hourani, 1983).

The Sharia commercial law has disappeared from almost all the regions, except in the Arabian Peninsula and, more recently, only in Saudi Arabia. Because of globalisation, the Western commercial law has been adopted in its place.

2.1.4 Comparative of the common, code and Sharia laws

According to Dainow (1966), when we do a comparative study of code law and common law, observations allow us to conclude that the net result is approximately the same in both systems. In effect, while the common law starts with a case-law basis it also includes legislative encroachments, and while the civil law starts with a legislative basis, it incorporates developments of case-law.

With a positive impact of law, legislation and judicial decisions have their place in both systems, but their relative importance is very different. The status in England and judicial lawmaking in France have not brought about any change in the classification of the respective legal systems. On the contrary, the importance of the difference between the civil law and common law is confirmed by an examination in the two systems of their doctrinal materials, legal education and mode of research, as well as in the organisation and functioning of their judicial systems (Dainow, 1966).

Unlike the common and code laws, the distinction between transactions and institutions is not relevant in Islamic law because there is virtually no concept of legal entity. As for the distinction between commercial and non-commercial law, jurists naturally categorised sharia, but the main divisions were akhlaq (morality), ibada (religious observance) and mu'amalat (transactions), and although they recognised the difference between commercial and non-commercial transactions to some extent (Hassan, 2002).

2.2 The main causes of reorganisation

In a general perspective, the propulsor of the reorganisation is not farfetched. There are innumerable numbers of causes that contribute to business quasi failures attracting reorganisation. According to Jamel et al. (2019), business failure is undoubtedly one of the most raised issues in the field of business management. There are numerous factors which, from a theoretical point of view, seem to be the most explanatory of failure: The

stable job coverage rate, the liquidity of the company, the debt capacity. Also, the financial profitability is a factor explaining the failure of the company, Economic profitability explains the failure of the company, Commercial profitability can explain business failure, and customer delays may explain business failure.

Moreover, according to Arasti et al. (2014), the factors of entrepreneurial failure of SMEs are very difficult to define. Their relative importance will depend on the specificities of the SME and the characteristics of its environment.

Other factors are also to be considered, especially those relating to the economic policies of the country leading, for example, to the variety of taxes, high tax rates, rampant inflation, and unsuitable regulations or deregulation for certain industries (Ihua and Siyanbola, 2012). Temtime and Pansiri (2004) also discuss exchange rates, the size of the internal market, and the purchasing power of customers, limited access to new technologies, market policy, fiscal policy and price control measures. The economic recession, the tight labour market, the high cost of labour (Ropega, 2011) and unfair competition from the public sector, large companies and imports are also factors that can negatively affect SMEs.

Furthermore, according to El Amine and Bouayad (2020), liquidity, solvency, profitability and working capital level are still the most expressive signals of companies' financial health. Then, healthy SMEs have a higher level of liquidity than that of failing SMEs which can go up to twice. This is an obvious reality since distressed companies find it difficult to honour their commitments due to a lack of liquidity (Nokairi, 2019).

The first signs of financial difficulties are emitted voluntarily or involuntarily; they take various forms. The first category of signs regroups together financial signals directly perceptible by bankers such as overdrafts, unpaid deadlines, payment defaults. A second category regroups signals which have only an indirect repercussion on the commitments of companies regarding banks. For example, internal conflicts within the company, conflicts between the company and a creditor or a third party, default payment from a customer or supplier (Bloch et al., 1995).

A significant amount of working capital shows that companies are running risks since it refers to the difference between assets and liabilities; a high working capital means that the company cannot meet its engagements by the available resources. Also, high working capital leads companies to increase sales while it burdens extra charges that lead companies to bankruptcy (Kieschnick et al., 2013).

2.3 The main engineering response to reorganisation

2.3.1 Economic and financial

According to Silva and Saito (2020), reorganisation seems to provide a good alternative for companies in bad situations, making it possible to preserve organisational values and enabling financially distressed firms to follow growth opportunities after a failure event. Court or out-of-court choices are related to firms' liquidity, leverage, level of economic distress, and creditor coordination problems. Court reorganisation would be preferable in cases of information asymmetry and considerable conflicts of interest. Firms usually prepare their reorganisation plans considering more than ten years to exit reorganisation status. Hence, post-reorganisation performance is still a topic to be investigated.

For companies, a lot of actions are taken in order to save them and avoid bankruptcy. All the legal actions taken by creditors against the company in difficulty are suspended.

However, there are some exceptions such as the actions taken for reclamation and seizure of a claim. Creditors are obliged to declare their claims to the trustee.

The company will know an interruption of its legal and conventional interests. As well as the suspension of late payment interest and surcharges. The company's bank accounts will be blocked. A new account, called 'judicial recovery account' or 'BIS account', is created by the administrator. Likewise, the partners' shares and securities are blocked. The shares are also transferred to a special blocked account until the end of the procedure.

An important goal of a reorganisation is to obtain financing to permit the debtor to continue its business operations with the supervision of the court. The bankruptcy code grants far-reaching powers to a debtor to enable it to raise new financing. The court may grant the new lender a special priority of its claim for repayment, ahead of the claims of other creditors not having collateral (Schwarcz, 1985).

2.3.2 Social

Firm reorganisations deeply affect employees. Management can reorganise in different ways, focusing on costs or acknowledging the involvement of employees (Aalbers et al., 2014).

According to the article L.3253-6 of the French labour code, all employers under private law shall insure their employees, including those seconded abroad or expatriates mentioned in Article L. 5422 13, against the risk of non-payment of sums due to them in execution of the employment contract, in the event of safeguard, recovery or judicial liquidation proceedings. This guarantee is financed by an employer's contribution set at 0.15%.

When the company is in reorganisation, the employees of the companies in difficulty must elect a representative to ensure their interests. Indeed, according to article L. 631-17 of the French Commercial Code, no dismissal can be carried out unless it is urgent and necessary.

Table 1 Main claims advanced by AGS

Super-privilege claims – Article L.3253-16-2°	These claims are linked to the employees and must be paid priority
Post-safeguard plan claims – Article L.622-17	Claims due to economic layoff during the observation period
Claims under – Articles L. 622-17 and L. 641-13	Claims due during the observation period in the context of a judicial recovery
Preferential claims – Articles L. 2331-4° and L.2375-2	Claims guaranteed for the movable and immovable property of the individual or legal entity
Unsecured claims	Claims reimbursed either according to the plan or in case of judicial liquidation

The company director must contact the judicial representative's office to provide him with the elements necessary for the intervention of the AGS (wage guarantee scheme), for the advance of the wages not paid at the date of the judgement.

According to the AGS (2021), the main claims guaranteed by law concern the remuneration of employees and apprentices; compensation resulting from the end of employment contracts; profit-sharing and incentive schemes, as soon as the amounts due

are payable and finally the provisions of social plans resulting from legal and conventional stipulations. The main claims advanced by AGS are summarised in Table 1.

Different measures to maintain employment allow to adapt the working hours of the employees to the reality of the activity. Dismissals are avoided but the working hours of some employees are reduced. Managers can decide to use partial activity under certain conditions. In fact, according to the article L.5122-1 of the French labour code, employees are placed in a partial activity position, after express or implicit authorisation from the administrative authority, if they suffer a loss of remuneration attributable either to the temporary closure of their establishment or part of an establishment; or to the reduction of the working hours practiced in the establishment or part of an establishment below the legal working hours. In the event of a collective reduction in working hours, employees may be placed in a partial activity position individually and alternately.

In this situation employees suffer from a significant loss of salary, and they remain engaged by their contract. Thus, when a company is in difficulty, it can apply to the various social administrations for a payment schedule, remission of penalties, and temporary assistance. The first organisation that can assist those companies is the Sécurité Sociale des independents in France. In fact, companies can negotiate with the Sécurité Sociale for the employment to obtain a moratorium, remission of increases or, if necessary, exceptional aid.

The second organisation is the URSSAF. However, before any request for a delay in payment or remission of late penalties, it is imperative to pay the full amount of the employee's share and to pay any bailiff's fees. Indeed, the employee contributions correspond to the employee's financial contribution to his social protection. The employer is obliged to pay these amounts to URSSAF.

2.3.3 Psychological

Since the economic crisis of 2008, an increase in the number of companies in difficulty has been noted in the commercial courts. And now with COVID-19 pandemic, the psychological state of the entrepreneur is getting worse and worse. Lyazami (2020) talks about psychic distress that also strikes our leaders, who tirelessly fight against their agony and that of their company in complete solitude.

The current economic and social context is very difficult for companies and more specifically for company managers. Thus, the question of support for these entrepreneurs is raised. Indeed, the economic crises have had significant consequences on entrepreneurs who present distinctive characteristics: lack of self-confidence, precariousness, isolation, lack of network and professional experience (Fayolle and Nakara, 2012).

Yet, according to Dür (2008), while the trend is towards 'better living in companies', there is a temptation to ignore the company director who maintains this image of invulnerability and whose mission is to take care of his employees. It turns out that there is a significant psychological distress of the head of the company and the professionals of the consular jurisdictions are often powerless to bring them the human help they need.

The head of the company will often be marked by the judicial procedures, because of his psychological feeling both before the opening of the procedure (anguish, fear of justice...), and afterwards (trauma, the notion of loss, guilt...). The opening of a collective procedure will be considered by the head of the company as a failure in his professional life and will consequently have an impact on his personal life (Dür, 2008). Moroccan and French society, as opposed to American society, does not see failure as a fault of the

leader. Public opinion often associates bankruptcy with fraud or personal incapacity. This whole period prior to the opening of the procedure is therefore a period of stress and anguish for the company manager.

The opening of the collective procedure is generally experienced as a trauma. The trauma will result in sleep disorders, a change in character, depression, aggressiveness, feelings of guilt, loss of confidence. All these consequences will very often have family and personal repercussions.

In fact, the results of the study realised by Fayolle and Nakara (2012) clearly show that the family network is a necessary component to overcome isolation and highlight the importance of a relationship of trust based on affect between certain advisors and these psychologically fragile entrepreneurs.

The main engine of reorganisation is the importance of the relation between managers and the legal representative. The administrator or the judicial representative will have a role as an adviser for the head of the company who will expect explanations regarding the procedures and the legal terms used.

A relationship of trust will have to be established between the two parties so that the debtor is accompanied on a personal and legal level. The debtor will need to be reassured. It is possible to compare the treatment of a company in difficulty to that of a patient and his doctor.

2.4 Cultural relationship between Moroccan and French Commercial Laws of Reorganisation

The cultural relationships between countries have always been thing of great interest for investigation and particularly the case of France and Morocco signals this, inasmuch as the historical and cultural ties call for the need of this understanding. Previous studies providing cross-country comparisons (Tavakoli et al., 2003; Park et al., 2008) cited culture as being homogenous within a country.

The Maghreb is the first French-speaking group in the world. It is constructed by three countries that present a lot of similarities. From a religious, historical, cultural and linguistic point of view, the three countries that make up the Maghreb are located at the crossroads of the Mediterranean Sea.

Although these countries belong to what is commonly called in comparative law ‘the Islamic system’, which seems to be far removed from French law. it must be noted that the structure of the French legal system is not totally foreign to the Maghreb countries (Halpern and Ruano-Borbalan, 2004). In fact, at the beginning of the last century, the three countries were either under French protectorate (Morocco and Tunisia) or simply a French department (Algeria). Above all, after independence, the French legal structures that had been put in place were, for the most part, retained despite some reticence due to nationalist sentiment (De Singly, 2003).

The French law is considered the preferred source of reference for Moroccan legislators. The French legislative system has brought several innovations that may attract the Moroccan legislator. In Morocco, the experts, involved in the elaboration of the new law in 1995–1996, chose to transplant a slightly simplified version of the two French laws governing companies in difficulty (the law of March 1, 1984, and the law of January 25, 1985), neglecting the institutional framework. The authors of the reform were based mainly on the French legal texts, without considering the regulatory texts and application

decrees. The commercial courts in Morocco were then forced to develop case law to fill the gaps.

On reading the various texts of the Moroccan commercial code, one realises that Moroccan business law has become firmly rooted in Europe. It has thus adapted to international standards, which will not fail to pull us upwards and improve the legal basis of the Moroccan company. The latter is then condemned to adapt to the new standards. The new legislation on business law is not Moroccan. This is due to the globalisation of business, which requires the standardisation of national legislation. Morocco could not escape it anymore.

2.5 The differences of reorganisation process between France and Morocco

Moroccan law defines the enterprise as an economic unit of production with a commercial purpose. However, in France, the notion of enterprise does not only cover commercial companies or traders. It is an economic law approach, so that a professional, a craftsman, or an association may have recourse to the law on companies in difficulty (Gomez-Bassac, 2009).

The trauma of plant closures, dismissals and bankruptcy filings is commonplace in Morocco. Even if the number of bankrupt companies can be counted, the attempt is still not very credible, since the Moroccan statistical system is disparate and cannot even quantify or count the exact number of companies in difficulty. These companies are not counted in the same way as other companies. The latter are only counted once the file is filed with the commercial court. In the same way, the heads of companies in difficulty often prefer to keep 'business secrets' (Lyazzami, 2013). In France, on the other hand, work on the number of business failures is easy, because of the availability of accurate and reliable figures made available to those concerned, sometimes by the Paris Commercial Court, which provides statistical monitoring of business difficulties. There are even reports provided by the national revitalisation fund (FNRT).

In France, legal texts are constantly changing and are updated on an almost annual basis. In Morocco, the legislative texts relating to business difficulties are embryonic and stagnant. Differences have been increasing over the years due to the recent apparition of commercial courts in Morocco, as well as the absence of a specialised judiciary and the absence of state subsidies for Moroccan companies in difficulty.

Furthermore, unlike the French legislator, the Moroccan legislator did not wish to integrate the staff representatives in the internal procedure, despite the place they occupy in the management of social conflicts, and their interests in the safeguarding of the company. The aim is to avoid conflicts between the managers and the staff representatives (El Hammoumi, 2006).

Moreover, state subsidies granted to companies in difficulty in France are non-existent in Morocco. No financial aid is provided for a company going through difficulties. These support measures for French companies should inspire the Moroccan legislator. The diversification of measures of anticipation and risk management in French law is very good. Entrepreneurs are increasingly turning to lawyers and accountants to diagnose and prepare solutions (Lyazzami, 2013).

Another aspect related to information must be raised. The purpose of information is to exercise the power of the party or to challenge the power of the party. The Moroccan law guarantees insufficient information to the shareholders in order to exercise their power. In

Morocco, the marginalisation of the institutions representing the personnel does not allow the work's council to play the role that it should (Brunet and Germain, 1984). In France, thanks to the law of 28 October 1982, the works council is better informed than the shareholders.

In France, the judges of the commercial court have a knowledge of the economic world and master the functioning of the company. In Morocco, on the other hand, commercial judges are magistrates who have followed a 'classic' legal curriculum. Most of the time, they do not have the skills to read and understand financial statements, which sometimes makes it difficult to handle certain cases.

In Morocco, the company in difficulty is only treated at the time of the cessation of payments, which remains the only criteria for intervention by the court. Unfortunately, at this stage, the health of the company is compromised. Thus, in Table 2 one can find additional comparison on items of various facets of SMEs between France and Morocco.

Table 2 Comparison of the reorganisation process of Morocco and France (internal and external preventive procedures

Facts	*Applicable in Morocco*	*Applicable in France*
Triggering the alert	CAC or any associate must trigger the alert procedure	Auditor or CAC (Commissaire Aux Comptes)
Delay of the alert	8 days (Article 546)	There is no delay (Article R234 1)
Who is informed?	The head of the company is informed and the decisional committee.	A general meeting between stockholders is convened
	Employees are not informed of the company's situation.	Employees are informed of the company situation
	In Morocco, at the beginning, president of the court is not informed to preserve the secret.	Inform the president of the court at the second stage of the prevention procedure.
	(Article 546)	(Article L. 612-3)
Do all companies have access to an external procedure?	Where it appears from any act, document or procedure that a commercial company, or an individual commercial or artisanal enterprise (Article 548)	Where it appears from any act, document or procedure that a commercial company, an economic interest grouping or an individual commercial or economic interest grouping, or a sole proprietorship, commercial or artisanal enterprise (Article L. 611-2).
		The French legislator has included EIGs in the companies that can benefit from the external prevention procedure

Source: Adapted from Berdai et al. (2021)

Table 2 Comparison of the reorganisation process of Morocco and France (internal and external preventive procedures (continued)

Facts	*Applicable in Morocco*	*Applicable in France*
Information power of the president of the court	To obtain information from the auditor, the authorities, the public entities or the staff representative. Credit and financial institutions are not mentioned (Article 548)	Obtain information from the statutory auditors, members and representatives of the personnel, public administrations, social security and provident organisations as well as the services responsible for the centralisation of banking risks and payment incidents (Article L. 611-2).
The initiative of the designation of a judicial representative (Mandataire or judicial administrator).	Comes from the sole will of the president of the court (Article 549).	It is an agreement between the president of the court and the debtor (Article L. 611-3).
The nomination of a judicial representative	The head of the company cannot request the appointment of a judicial representative (Article 549).	The debtor can give the president of the court the name of a representant he wishes to have (Article L. 611-3).
For whom can the preventive procedures be applicable?	Only commercial or artisanal companies (Article 550)	Extends to legal persons under private law + any person exercising an independent professional activity (Article L. 611-5).
Criterions to open a preventive procedure	Absence of suspension of payment + addition of the criterion relating to financing needs adapted to the possibilities of the companies (Article 550).	Cessation of payment but time limits < 45 days + deletion of the criterion relating to financing needs (Article L. 611-4).
Jurisdiction of the court	President of the commercial court (Article 550)	President of the tribunal de Grande instance (Article L. 611-4)
Designation of the conciliator	At the initiative of the president of the court (Article 550)	At the initiative of the debtor + power to challenge the conciliator proposed by the president of the court (Article L. 611-5).
Procedure duration	3 months (Article 553)	4 months (Article L. 611-6)
Techniques used for the settlement amicable/conciliation	Provisional suspension of legal proceedings by the debtor's creditors (Article 555).	Granting of payment deadlines + remission of debts by the organisations to the company's debtor (Article L. 611-7).

Source: Adapted from Berdai et al. (2021)

2.6 The similarities of reorganisation process in Morocco and France

One cannot say that the imprinting of the French model is considered a gross fault, or an inappropriate option made by the Moroccan legislator and reformers. However, it would be wise to preserve the current French-inspired framework, initiate revisions and adapt it to the current business context in Morocco.

Table 3 Comparison of the reorganisation process of Morocco and France (collective procedures)

Facts	*Applicable in Morocco*	*Applicable in France*
Establishment of the administrator to manage the reorganisation.	Applicable	Applicable
Who can ask for a judicial reorganisational procedure?	The company director; a creditor; the court on its own initiative, or at the request of the public prosecutor or the president of the court.	Similar
Conditions	In case of cessation of payment, the head of the company is obliged to request the opening of a judicial reorganisation procedure by filing his application with the clerk of the competent court, at the latest within 45 days from the date of cessation of payment.	By the debtor at the latest 45 days after the date of cessation of payments.
Opening process of a judicial reorganisation procedure	Publication of the RJ opening judgement in the RCS	Publication of the RJ opening judgement in the RCS + notification of the RJ procedure by the clerk of the court to the debtor within eight days.
Observation period	5–6 months	Six months (renewable one time) and if exception extended by six months.
Documents to provide	Remittance by the debtor to the administrator/judicial representative + the list of creditors; the amount of debts; a list and valuation of all the company's movable and immovable assets; the list of employees, or their representatives; the main contracts in progress; possible proceedings in progress; post and pre-procedure claims; profit and loss account, balance sheet of the last four years.	Similar
Judicial representing designation	Designation by the Court of the: Jugecommissaire; a judicial representative (with sole capacity to act on behalf of and in the collective interest of the creditors); one judicial administrator (in charge of supervising the debtor in the management or assisting him in the management acts)	Similar
Establishment of an economical and social report	During the observation period, the administrator establishes an economic and social report of the company specifying the origin and the importance of the difficulties + list of claims declared by the Mandator.	Similar
Establishment of the reorganisational plan	Applicable	Applicable: the reorganisation plan includes the terms of payment of the debts (after deduction of the deadlines and remissions granted by the creditors).
Execution of the reorganisational plan period	8–10 years	The judicial recovery plan cannot exceed ten years.
The partial or total transfer of the company	Applicable	Applicable

The alert procedure can be very effective, because it is triggered by a professional who permanently follows the evolution of the company and can act as soon as the first signs of difficulties appear (Chaput, 1986). See additional comparison of the reorganisation process of Morocco and France considering the collective procedures in Table 3.

2.7 Neo-sociological theory and business reorganisation

The sociological approach of neo-institutional theory (NIT) was born at the end of the 1970s with the work of Meyer and Rowan (1977) and Scott and Meyer in 1982. The collective work coordinated by DiMaggio and Powell, 'the new institutional in organisational analysis, 'introduced this approach into the circle of major currents in organisational management.

Neo-institutionalism in organisational analysis takes as its starting point the striking homogeneity of practices and devices found in the labour market, in schools, states and firms (DiMaggio, 1991). The field of neo-institutionalised authors is conceived at a higher order level and group's together suppliers, consumers or their professional representatives, governmental agencies and service producers (DiMaggio and Powell, 1997).

This theory insists on the fact that organisations interact to form an institutional environment. They influence each other in order to survive. Any institution is influenced by this large environment. Also, existing theories consider that institutions can influence the behaviour of individuals. Individuals do not freely choose between institutions, habits, social norms or legal procedures. Theorists consider that actors associate certain actions with certain situations via rules of convenience (March and Olsen, 2006) acquired through socialisation, education, learning or submission to conventions. Individuals make choices based on comparable situations and according to obligations.

Institutional devices are reproduced because individuals often cannot conceive of appropriate alternatives that they can imagine (DiMaggio and Powell, 1997). Institutions set the standard by which individuals discover their own preferences. An important contribution of neo-institutionalism is to add a type of cognitive influence.

When several organisations structure themselves in the same field, they tend to become like each other. DiMaggio and Powell call this process institutional isomorphic change. More than for questions of efficiency or performance, homogenisation would reinforce the legitimacy of organisations (Meyer and Rowan, 1977). Adopting the operating modes of reputable and legitimate organisations provides a social reference to guide individual or collective actions. DiMaggio and Powell speak of convergence by mimetic isomorphism. Uncertainties push organisations in the same field to imitate each other in order to be perceived as more legitimate.

For our case, economic, legal and economic developments should lead States wishing to advance their legislation to find in comparative law an effective source of inspiration. This is precisely the case for Moroccan law, which has not really freed itself from its colonial past, of which it retains clear traces. The imprint of French law is very strong because the legal constructions and 'infrastructures' were born at the time of the protectorate (Gomez-Bassac, 2009). Without doubt, this mimicry has resulted in the construction of a completely autonomous law, a true Moroccan law, but one that is insufficiently detached from its original source without having taken its evolution into account.

However, over the last decade, Morocco has made very dramatic progress in modernising its economy and, consequently, the legal environment for business. Thus, the transposition of a foreign system, especially in business law, quickly presents limits, for various reasons, namely different economic contexts, specific composition of commercial jurisdictions, diverse cultural environment. The inspiration of the French model must be review. Indeed, the difficulty lies in the need to achieve a balance between the different actors as companies, public and private creditors, banks, employees, shareholders (Gomez-Bassac, 2009).

2.8 The turnaround during COVID-19

The COVID-19 crisis has opened a different perspective for the SME companies in distress. Some had to close up and lay off their employees because there was no rescue and generally the SMEs received their backing from the proprietors who are resilient to the effect of COVID-19. Another phenomenon that sprang up was the open negotiation among the employees, the suppliers, the clients and the banks with an aim to mitigate the direct effect of COVID-19. In this scenario, the SMEs who have partnership terms fully established before the phenomenon could take advantage of the situation inasmuch as the banks needed to reciprocate their clients in a risky situation.

As per Sangster et al. (2020), COVID-19 led to fundamental change in countries around the world. Healthcare systems, economies and the lives of citizens have altered in a myriad of ways that were unimaginable (social distancing, mask-wearing, 'working from home', etc.) as elements of a 'new normal.

3 Methodology

The chosen approach for this study is interpretative qualitative which is operationalised by content analysis. In effect, information will be categorised according to identifiers. The study follows an inductive way by focusing on individual experiences, feelings, and perception from the participants to discover what is in place to build a picture of their practices. The research will compare their answers and build my theories by comparing the differences. The objective is to produce a contextual real-world knowledge about the behaviours, social structures, and shared beliefs of a specific group of people.

To gather the qualitative data, the study made a content analysis (archival data). Involving the use of documents, laws, regulations etc. issued by the Moroccan and the French Governments.

De facto, content analysis is indigenous to communication research and is potentially one of the most important research techniques in the social sciences. It seeks to analyse data within a specific context in view of the meanings someone, a group or a culture, attributes to them (Krippendorff, 1989). Qualitative content analysis is a method for systematically describing the meaning of qualitative data (Shreier, 2014). It is a research technique for the systematic and quantitative objective description of the manifest content of a communication (Berelson, 1952).

In addition to the above mentioned, the study is also based on collected primary data through interviews. The interviews took place in Paris (France) and in Rabat (Morocco). The study will interview respondents by using Zoom or Skype but prioritise face to face interviews. According to me, it is more professional to do so. Semi-structured interviews

will be held with 13 (seven in Morocco and six in France) experts in companies' difficulties and companies' owners. The main targets will be lawyers, managers, companies' owners, judicial representant, auditors, bankers (25–65 years), people will be contacted via LinkedIn, e-mail and network. Each interview will last 40 minutes. Responses will be recorded through notetaking and filmed if the respondents give their consent to be filmed.

Moreover, as the study is focusing on qualitative research, it needed to categorise and code the ideas and themes that are identified from the raw data. Also, techniques such as narrative analysis or discourse analysis should be used to interpret the meaning behind responses given. The research will then use computer software NVivo to analyse the results during the research. The interviews will be transcript and thematic analysis will be conducted. This involved coding all the data before identifying and reviewing key themes.

Table 4 Demography of the respondents

Country	*Respondent*	*Gender*	*Age*	*Experience*	*Profile*
France	(E1) SIL	M	42	22 years	Manager of a well-known company in Paris (BRICORAMA)
	(E2) MAR	F	25	2 years	Banker in Crédit Agricole Evreux (headquarter)
	(E3) RAN	F	33	8 years	Banker in Crédit du Nord, Paris
	(E4) DEL	F	35	12 years	Accountant in a company which is a leader in construction and building in France.
	(E5) CHA	M	28	5 years	Banker in Bnpparibas in Lyon
	(E6) CCA	F	38	13 years	Business owner of a Parisian restaurant which is in judicial process.
Morocco	(E7) YAS	F	48	23 years	Banker at Attijariwafa Bank (important bank in Morocco).
	(E8) GUE	M	57	32 years	Accountant working in a big cabinet in Rabat. Involved in very big company cases.
	(E9) HAJ	M	40	15 years	Lawyer specialised in business law and companies in difficulties.
	(E10) NAB	F	38	13 years	Banker at BMCE in Morocco
	(E11) MEC	M	65	35 years	CEO of a company in Kenitra (Morocco)
	(E12) SEK	M	60	40 years	Former external Auditor at Deloitte and former financial director in a company in Morocco.
	(E13) LAK	M	68	42 years	Business owner of a Moroccan company specialised in rice production which has been liquidated.

Yet, the choice of unstructured interviews was chosen because they usually produce results that cannot be generalised beyond the sample group, but they provide a more

in-depth understanding of participants' perceptions, motivations, and emotions. It also allows improvision relevant interview questions that allow abstraction from the lived experience. In respect of this the study drew on the methodology elaborated by Imoniana et al. (2021).

Moreover, as it is an unstructured interview, questions differed per subject and depended on answers given on previous questions. The research prepared at the beginning 30 questions that were reduced according to the interviewee. A deadline of three weeks was fixed to conduct all the interviews. The study took one week to transcript them all on Word. Due to the pandemic all the respondents could not be reached face to face, but by phone calls and Skype. Invitations were sent by e-mail one week before each interview, so we can organise and schedule the meetings. Each interview lasted as predicted 40 minutes.

Furthermore, two weeks were taken to analyse all the interviews, regroup and reorganise data in order to come up with pertinent and reliable results. Only the key results were presented, the more pertinent ones. Research data were prioritised based on their importance, focusing heavily on the information that directly relates to the research questions using the subheadings. The results of the research were reported after comparing all the differences and similarities between the answers of all participants. The study opted for NVivo because it is the easiest software to use. It looks like using traditional methods (pen and paper). The respondents were represented by their initials in Table 4.

4 Data analysis

Document analysis is a systematic procedure for reviewing or evaluating documents both printed and electronic (computer-based and Internet-transmitted) material. Like other analytical methods in qualitative research, document analysis requires that data be examined and interpreted in order to elicit meaning, gain understanding, and develop empirical knowledge (Corbin and Strauss, 2008).

Moreover, according to me, the best way to present all the Data's is to describe them by using tables, diagrams, images and graphs… that's why the study used coding and pay attention to accuracy and precision and be careful to not give bias results. Of course, using colours, numbers, statistics were very relevant. For the results, figures and tables must be clear so the readers understand the message (Hofmann, 2013). The use of these visual illustrations is necessary so the readers can summarise, compare, and interpret large data immediately. Qualitative content analysis is a method for systematically describing the meaning of qualitative data (Schreier, 2014).

By using NVivo software, the study selected, categorised and organised the data, showing the word count and percentage of the ones most expressed and mentioned in all the interviews shown in Table 5.

According to this table, this can show us that there is a lot of similarities between judicial reorganisation process in France and in Morocco. A lot of words are repeated and used by both respondents from each country. The word counts, company, companies, judicial, (3.46%, 1.82%, 1.25%, respectively) are the most cited words followed by the words procedure (1.19%) and reorganisation (1.18%).

Table 5 Word count extract

Word	*Length*	*Count*	*Weighted percentage*
Company	7	244	3.46%
Companies	9	128	1.82%
Judicial	8	88	1.25%
Procedure	9	84	1.19%
Reorganisation	14	83	1.18%
Court	5	67	0.95%
Difficulty	10	67	0.95%
Commercial	10	59	0.84%
Financial	9	53	0.75%
Procedures	10	52	0.74%
Situation	9	52	0.74%
Accounts	8	44	0.62%
Preventive	10	43	0.61%
Difficulties	12	42	0.60%
Process	7	42	0.60%
State	5	40	0.57%
Information	11	39	0.55%
Public	6	38	0.54%
Management	10	35	0.50%
Opening	7	35	0.50%
Cessation	9	34	0.48%
Payment	7	34	0.48%
Recovery	8	34	0.48%
Managers	8	33	0.47%
Moroccan	8	33	0.47%
Payments	8	32	0.45%
Statements	10	30	0.43%
Morocco	7	27	0.38%
Activity	8	26	0.37%
Debts	5	26	0.37%
Legal	5	26	0.37%
Prosecutor	10	26	0.37%
Bankruptcy	10	25	0.35%
Suspension	10	25	0.35%
Liquidation	11	24	0.34%
Order	5	24	0.34%

Table 5 Word count extract (continued)

Word	*Length*	*Count*	*Weighted percentage*
Creditors	9	23	0.33%
French	6	23	0.33%
Safeguard	9	23	0.33%
Article	7	20	0.28%
Control	7	20	0.28%
Corrective	10	20	0.28%
Prevention	10	20	0.28%
Proceedings	11	20	0.28%
Trustee	7	20	0.28%
Manager	7	19	0.27%
According	9	18	0.26%
Important	9	18	0.26%
Period	6	18	0.26%
Support	7	18	0.26%

This observation can be supported by the cloud bellow which represents the most mentioned words.

Figure 1 Word cloud/most mentioned words from the interview comments (see online version for colours)

Moreover, categories titles were collected according to the different interviews. The study shows 14 categories overall, one for each question asked. Then NVivo was used to hierarchies those codes.

4.1 Evolution of reorganisation process

4.1.1 In Morocco

Reorganisation is pronounced by the court when a company is compromised financially and is no longer able to pursue its activity. In Morocco, the commercial code has known an important evolution trough the time especially regarding reorganisation process and preventive procedures.

According to HAJ:

> "In Morocco, the collective procedures applicable to companies in difficulty were governed by the Dahir forming the commercial code of 12 August 1913. This Dahir provided for two types of procedures: bankruptcy and judicial liquidation. In this sense, the judicial liquidation was oriented towards the continuation of the activity, whereas the bankruptcy had more severe and rigorous consequences on the person and the goods of the bankrupt, namely, the seizure of the goods of the debtor and the imprisonment of the dishonest bankrupt."

It was at the beginning a law that sanctions companies' leaders rather than a law that helps them to safeguard their activity.

Yet, according to HAJ:

> "It is only in 1996 (new commercial code) that the first rules relating to the treatment of the difficulties of the companies were instituted in Morocco, it is in fact the passage of a right of the sanction to a more flexible right aiming at the safeguard of the company. These new rules constitute a significant advance compared to the old bankruptcy system."

It was inspired by the French commercial law and knew a lot of reforms starting from the 90s. However, it seems that a lot of work must be done, especially regarding business leaders' sensitisation and communication about preventive and collective procedures. The results obtained are far from being sufficient.

YAS observed that:

> "Prevention on paper is present in Moroccan law but very difficult to apply. Business leaders do not know the usefulness of it or have never heard of it. In general, companies end up being liquidated because business leaders are not aware of their rights and in particular the need for prevention procedures. Companies react once it is too late. The company is generally too indebted or even in suspension of payment."

This is in line with the affirmation of NAB who notices that companies' leaders think that preventive procedures are a waste of time and start collective procedures once it is too late.

4.1.2 In France

French commercial code was elaborated in 1807. At that time, the only known procedure was 'bankruptcy', which consisted of the distribution of the merchant's assets among the creditors in as equal a manner as possible. The business was closed, and the merchant was incarcerated. It was a law that punishes the head of the company. Since then, a lot of reforms have been made. Today the term bankruptcy has another meaning.

According to SIL:

> "To me, the term bankruptcy means cessation of payments. It is a term that means that the company is no longer able to meet its debts. It gathers all the concepts related to the procedure of the difficulties of the company (legal redress, liquidation, bankruptcy...)."

In addition, according to DEL:

> "It is a real situation in which a company does not have sufficient funds to face its debts and deadlines and is overwhelmed. For example, supplier debts, bank loans, personnel costs and others. Its assets are no longer sufficient to cover its liabilities."

Every 20 years, there is a reform to adapt the law to the economic transitions. One could cite as examples the reforms of 1967 and the reform of 1985.

The law of July 13, 1967, has made it possible to dissociate the fate of the company and the fate of the debtor company manager. From now on, the court will see if the company can be saved or not and criteria have been written to help the judges to qualify the behaviour of the head of the company, some of which are still used today (good faith, carelessness, negligence, fraud, etc.).

The reform of 27 July 2005 is the more recent and the more adaptable to the current economic situation. This law can be initiated by the head of the company before the cessation of payment is noted. This procedure is intended to facilitate the reorganisation of the company whose situation is compromised in order to allow the continuation of economic activity and the maintenance of employment.

Moreover, if the company in difficulty in suspension of payment, the court can put it in judicial reorganisation process. Therefore, if the court considers the situation to be viable/compatible after a thorough examination of the company's activity and the accountant, then it can place the company under supervision of the judicial administrator. The objective is to improve the company's situation as well as to safeguard jobs (employees, managers).

4.2 Support of the state to companies in financial distress

4.2.1 In Morocco

From the 90s, the introduction of the new commercial code has revolutionised the judicial system and evict the old bankruptcy system. The court has a new objective to safeguard companies and employment. With this new code, the failure of the company is no longer solely the fault of the company director.

HAJ observed that:

> "The assessment is no longer based on the debtor's attitude but also on the company's economic prospects... In fact, the new code has the merit to introduce preventive procedures for companies in difficulty."

According to me, Morocco has made a great effort to help companies in difficulty. The court still has to encourage companies to have recourse to preventive procedures as soon as difficulties are identified by the accountant or the directors of the companies in order to avoid liquidations.

In the same line of thought, NAB observed:

> "The major role of the state must therefore be to accompany Moroccan business leaders to have confidence in amicable procedures and to encourage lawyers to favorize these procedures. Thus, the number of collective procedures will decrease and especially the number of judicial liquidations will be reduced in order to save jobs and companies."

Additionally, GUE mentioned that:

> "I can say that the intervention of the state takes place only when the company is already in difficulty, so I would qualify the state aid as corrective because there is not enough prevention."

In the same vein, SEK observed:

> "The practice of these procedures still encounters difficulties (problem of slowness in the treatment of requests, lack of training of judges...)."

Moreover, according to LAK:

> "My company was in a very difficult situation and could not be saved anymore. The court had exanimated all the consequences of an interruption of the activity as unemployment and other… but it was too late according to them. My only regret is that I didn't ask for help when it was possible. In Morocco, there isn't a judicial administrator as in France. In Morocco, the lawyers are the professionals who follow those procedures which is very sad because most of them don't have the ability to give good advises. The Lawyers that have a very good reputation and good knowledge on those procedures are very expensive and difficult to afford."

In other words, there is still a long way to go for the actual Moroccan system. There is not a financial support for companies as in France. Morocco must invest on the trainings for their commercial judge who received a theoretical formation and not a practical one. They must know the company environment and process files more quickly to avoid delays which accelerate the liquidation of companies in difficulty.

The Moroccan Government's support for companies in difficulty is a corrective procedure also, since it is essentially put in place following periods of crisis. The latest example is the implementation of the guaranteed mechanism called 'Damane Oxygène' following the crisis induced by COVID-19. This new guaranteed product allows the mobilisation of financing resources in favour of companies whose situation has deteriorated due to the decline in their activity.

4.2.2 In France

According to SIL:

> "The procedures are obviously corrective in my opinion because the legislator is in favor of safeguard procedure for companies that are not yet in cessation of payment. It allows you to suspend the payment of the debts of the company and to put it under the protection of the law from the opening of the procedure."

Additionally, CCA mentioned:

> "Restauration industry have experienced a significant drop in turnover due to covid19. This was the case of my restaurant. Repeated lockdowns and closures had a huge impact on my customers and my turnover. I didn't have enough money to pay my employees or even to pay myself a salary. At the very first lockdown, the aid was not yet in place. However, lockdowns that followed

> were better prepared and the state was able to provide subsidies and financial aid."

Then, MAR observed:

> "During the health crisis, the French government was able to put in place various measures to mitigate the losses of certain sectors of activity. I was mainly confronted with the implementation of the PGE (State Guaranteed Loans)."

According to CHA:

> ":The government helps through state agencies such as URSSAF or AGS to take care of the payroll. The company can also obtain payment delays, debt forgiveness or loans."

In France, the General Directorate of Public Finance (DGFP) allows companies in difficulty to benefit from a personalised debt settlement plan. This involves the payment of tax, social security and employer's contributions in instalments. In France compared to Morocco, we have organisations that help companies in difficulties during a reorganisation process as URSSAF and AGS.

Company managers must pay a contribution called AGS. It allows to guarantee the salaries of the employees in case of difficulties of the company (safeguard, recovery, liquidation). It pays salaries for the last 60 days of work. It allows the payment of notice periods and indemnities at the end of the contract. These organisations are also available to anticipate difficulties. Morocco should follow the example of France in this field and create organisations like these to prevent difficulties and save employees.

4.3 Common causes of business failure

4.3.1 In Morocco

According to NAB:

> "There can be many causes. During my career, I have noticed that the most common ones are increase in debts and unpaid bills, weakened and negative cash-flow, weak operating result due to a decrease in activity and consequently in turnover, disagreement between partners and managers on projects, economic crisis and closure (COVID-19), loss of important customers or too much competition."

In the same of thought, YAS mentioned:

> "Strong competition, shut down for a long period of time (COVID-19), dependence on large customers, decrease in turnover, strike of the employees, increase of debts in relation to assets, disagreement with important suppliers."

As well as, LAK observed:

> "Morocco, like many other countries in the world, has signed a series of trade agreements following the recommendations of the WTO (World Trade Organisation) and in order to establish globalization. Morocco has signed, among others, trade agreements with the European Union, the United States and the Quadra agreement regrouping Egypt, Jordan, Tunisia and Morocco. The Quadra agreement has had a very negative impact on the rice sector in Morocco because of Egypt. Indeed, Egypt subsidizes rice cultivation, particularly seeds, fertilizers and free irrigation water from the Nile. ...."

> "Several companies found themselves in difficulty, including a cooperative that was badly managed. This cooperative, which also suffered from disagreements between members, did not ask for the protection of the law. It found itself in cessation of payments because the banks proceeded to seize its accounts as well as to institute proceedings to recover the counterpart of the debts granted to this entity."

4.3.2 In France

According to CHA:

> "A bad industrial or commercial strategy, high indebtedness, bad management, drastic decrease in activity, significant loss of market share, outdated technology, bad investment decisions, etc..."

In the same though MAR observed:

> "In my experience, the main causes of insolvency are, poor management on the part of the manager, an initial contribution in share capital that is too low and a poor understanding of the need to finance the operating cycle, disproportionate remuneration of managers, the macroeconomic context."

According to RAN:

> "First, whatever the causes, it should be noted that in most cases of business difficulties, the corrections are made late. This sometimes makes it difficult to rectify the situation. The causes of suspension of payments can be of internal origin, notably poor management (poor control of operating costs, rapid growth disproportionate to the company's resources, succession problems, notably in family companies, disputes between partners, incompetence of managers or of external origin (failure of the company to adapt to major technological changes in its sector, arrival in the sector of large competitors ....)."

Globally, all the respondents had the same answers. The most common causes of business failure according to me are the same in France and in Morocco. The environment of both countries is very similar. However, in France we have more companies and maybe less obstacles to fail. It is only my point of view. In Morocco, you must be very careful with whom you deal. Contracts can be terminated very quickly, and commitments not respected. Finally, companies' directors must act quickly when difficulties arise and not when it is too late. They must request a preventive procedure from the court.

4.4 Role of accountants to assure the reliability of financial statements

4.4.1 In Morocco

According to GUE:

> "The auditor must inform the head of the company of any risk or difficulty (financial, legal or social) that he/she has identified during his/her mission, as these difficulties may oblige the company to cease its payments and compromise the continuation of its activity."

In the same though SEK:

> "The financial statements certified by the CAC are done in a context of operational control and must reflect the real situation of the company. The users of these financial statements, in particular the shareholders, must be informed of any risk or danger in future projects. For this reason, the legislator has made the CAC responsible for reporting facts likely to threaten the continuity of the company, to the head of the company if he does not react."

According to article 547 of the Moroccan commercial law, the chartered accountant is obliged to provide each year financial statements about the companies that he oversees. He has an obligation to inform the head of the company and the stockholders he detects any issue or risk that can make the exploitation of the company in danger. His main role is to verify the accounts published by the company and make sure that they reflect the real situation. He can also formulate reserves if he thinks that something is wrong or if he has doubts. The accountant is obliged to draw up the financial statements of the company and to submit them to the commercial court.

Additionally, according to HAJ:

> "If the head of the company does not react, the CAC must incite him, within 8 days by registered letter, to rectify the situation, otherwise the CAC must inform the shareholders. In the absence of a deliberation of the assembly within 15 days from the date of notification of his report, the CAC must inform the president of the commercial court of all these steps."

Therefore, the role of the chartered accountants is very important because he must produce a report that assures the reliability of the accounts and the financial statements of the actors that constitute the environment of the company. He is the reference to follow.

4.4.2 In France

According to CHA:

> "The CAC is obliged to certify the financial statements of the companies he assists, in accordance with well-defined accounting standards."

Furthermore, CCA observed:

> "From a general point of view, their mission is to control the concordance and sincerity of the annual accounts."

In the same vein RAN mentioned:

In its audit report, the auditor also mentions any reservations that may provide additional information, in particular the risks involved, to the users of the financial statements. Without forgetting also that the auditor is obliged to inform, in the event of a risk threatening the continuity of operations, the head of the company and, if necessary, the general meeting and the President of the court.

Still, according to Silva:

> "The financial statements certified by the CAC and intended for the various users, in particular shareholders, tax authorities, banks, etc., must also mention any present or future risks that may threaten the company's activity."

In France, the auditor (CAC) is a legal and external auditor to the company. He intervenes to verify the sincerity and the conformity of the financial data of the company with specific standards. The role of the auditor during his statutory mission is to certify his client's accounts according to French GAAP. The mission of the auditor is of general

interest since he can certify the annual accounts of a company for the tax authorities and the state. The intervention of a CAC may be mandatory in certain cases as in preventive and collective procedures. His mandate with the company lasts then six years.

4.5 Obligation of social accounts and filing of summary statements by the head of the company

4.5.1 In Morocco

As it was specified previously that the accountant has an obligation to provide financial statements to the head of the company who must bring them to the court to normalise his situation. In fact, in a normal period or when the company is in crisis, the head of the company must deposit several documents in the clerk's office. If not, the director will be forced to pay a fine.

According to MEC:

> "At the opening of the judicial procedure, the company director has the obligation to file the company's accounts at the clerk's office of the Commercial Court. He must attach to the file certain information such as: the company's articles of association, Minutes of the employees' manager, balance sheet of the last 3 financial years, the causes of the suspension of payment and the declaration of cessation of payment, financial statements, the list of creditors (see with judicial representative), the table of charges and the list and valuation of all the company's assets."

The failure of the head of the company to file the annual accounts or any document within the time limit is punishable by law. The head of the company will have to pay a fine to the clerk.

In the same tone, GUE observed:

> "The head of the company will have to pay a sum of up to 50,000 dhs depending on the company."

4.5.2 In France

According to DEL:

> "This is the duty of the company's manager. The administrator designated by the court has the obligation to write a detailed report of the causes of cessation of payment and the summary statements are necessary for the request of the opening of the judicial recovery procedure."

In France, the filing of annual financial statements and related documents with the clerk of the commercial court is mandatory for companies. Business owners must file financial statements certified by the statutory auditors and reflect a true and fair view of the company of the assets, the financial situation and the accounting results of the activity of these companies.

Balance sheet filings are sources of information for managers, partners, investors, administrations, creditors such as bankers, suppliers, customers, competing companies, commercial courts and, possibly, other judicial authorities responsible for the prevention and treatment of business difficulties.

In the same thought CCA mentioned:

> "The filing of annual accounts is a mandatory formality for most commercial companies. This filing must be made and delivered to the clerk of the commercial court every year."

Furthermore, SIL observed:

> "The non-deposit of the statements of summaries, among others, leads to the refusal of the request for the opening of the procedure."

Finally, failure to file the annual accounts and related documents with the registry is punishable by a fine of 1,500 euros, and 3,000 euros in the event of a repeat offence.

4.6 Implications of failure for filing with the clerk's office within established date

4.6.1 In Morocco

According to HAJ:

> "Documents must be dated, signed and certified by the company director. In the case that one of the documents cannot be provided, the declaration must contain an indication of the reasons that prevent its production. The failure to produce any of these documents justifies the rejection of the application for the opening of processing procedures."

In case of a reorganisation procedure, if these documents are not brought; the opening of the procedure can be questioned and cancelled and a fine will be paid.

In the same vein SEK says:

> "Failure to file any of the documents will result in the rejection of the application for the opening of judicial proceedings. Moreover, as a rule (article 420 of the Companies Act), failure by the head of the company to file the annual accounts or any document relating to the required information within the time limit is punishable by a fine of between 1,000 and 50,000 DHS."

4.6.2 In France

According to DEL:

> "The filing of the annual accounts is the responsibility of the company's director. If he/she does not file them in due time, he/she will be punished by the law and the head of the company must pay a fine."

In the same tone, SIL mentioned:

> "Failure to file with the clerk's office within the prescribed period is punishable by law. Therefore, when the application for the opening of a company's insolvency proceedings is filed with the clerk's office, it must be accompanied by the annual accounts, or it will be rejected."

As in Morocco, in France, the head of the company must deposit the financial statements to the clerk's office if he does not want to pay a fine that can attain 3,000 euros.

4.7 Awareness before suspension of payment

According to HAJ:

> "Prevention is achieved firstly by early detection of difficulties, through accounting and financial information. Secondly, it is based on internal and external prevention. The first is triggered by the control bodies, in particular the auditors and the partners; the second is initiated by the president of the court. But it should be noted that at this stage the president of the court does not intervene as a judicial body but rather as a business professional."

In Morocco, the judicial system is made to help companies to prevent difficulties. Two kinds of prevention exist, internal and external prevention. Internal prevention is a technique, not a procedure that allows companies to deal with its difficulties. It is based on the principle that the sooner difficulties are tackled, the better they are overcome.

External prevention, on the other hand, intervenes within the framework of an amicable settlement. The amicable settlement is a confidential procedure which allows the managers of the companies to ask for the designation of a conciliator in order to negotiate with their creditors an amicable agreement in order to optimise the recovery of their companies.

Thus, before the suspension of payments, companies can have access to a safeguard procedure which is a collective procedure. The only condition to open this kind of procedure is that the company must not be in suspension of payment and can be saved according to the court.

In the same tone, GUE:

> "Before going to reorganization process, the company in difficulty can resort to the safeguard procedure, which is less complex than receivership. Its objective is the continuation of the company's activity, the maintenance of employment and the discharge of its liabilities."

4.7.1 In France

According to DEL:

> "It would be advisable for a company and even recommended to carry out an adhoc mandate or conciliation procedure and thus allow preventive action before cessation of payment. If the cessation of payment is already present, then it is obliged to resort to the more restrictive judicial procedures through judicial reorganization."

In the same vein, SIL said:

> "It is advisable and recommended for a company to go through an Adhoc mandate or a conciliation and to act in this way in a preventive manner."

The 2005 law (safeguard law) of companies allows French companies experiencing economic, legal or financial difficulties to deal with them upstream and as a preventive measure. The ad hoc mandate and conciliation allow the company director to negotiate his debts under the supervision of a conciliator, appointed by the president of the commercial court. Of course, the manager can have access to them only if the company is not already in suspension of payments.

4.8 Impacts of the reorganisation process on companies

4.8.1 In Morocco

When the court pronounces a judgement to open the reorganisation process, it designates the organs of the procedure and sets the date of the cessation of payments. The observation period starts for a duration of 6 months and can be renewable. The syndic who was designed by the court has to prepare a report which includes the economic and social situation of the company. The report is then transmitted to the court which will decide either to adopt the plan (continuation or transfer) or to pronounce judicial liquidation.

In the same vein, HAJ mentioned that:

> "This is a preparatory and conservatory phase which allows us to elaborate the economic and social assessment of the company in order to know if it is likely to recover. This period ends with the drafting of a report including an economic and social assessment of the company and a recovery plan."

The reorganisation process is ambitious, and its main objectives are to allow the continuation of the company's activity, to maintain employment and to clear the liabilities. This procedure limits the power of the debtor and restricts the rights of the creditors.

In the same vein, MEC says:

> "There can be several consequences of receivership as a prohibition to pay all debts contracted prior to the opening of the receivership, the settlement of debts after the opening of the receivership procedure, a halt to individual lawsuits by creditors, continuation of current contracts."

Moreover, it has several impacts on the head of the company, on the company and on the employees.

Yet, according to YAS:

> "Modification of his remuneration by no longer receiving the same salary which is generally lower, the head of the company may no longer be the manager in favor of the judicial administrator who will be appointed to supervise and assist the manager, freezing of liabilities, the company will be prohibited from paying its debts to creditors whose debts were incurred before the observation period, suspension of proceedings by creditors, stopping of interest payments, continuation of all employment contracts, however and possibility of dismissal in case of emergency with the agreement of the judge, drawing up of a report to designate the employees' representative."

4.8.2 In France

According to RAN:

> "When we talk about companies in cessation of payment, it means that we have already gone beyond the preventive procedures (the ad hoc mandate, the conciliation procedure) and the safeguard procedure that we naturally favor with in the bank."

When the judge opens the receivership procedure, an observation period of six months is pronounced. During this period, the company's debts and accounts are frozen. The company can no longer make any payments without the control of the judicial administrator. Suppliers and creditors must then declare their debts to the trustees and the

judicial administrator. It should be noted that the rights of the creditors are restricted because the company benefits from the protection of the court. In some cases, the company director is no longer in control and is assisted or even supervised by the judicial administrator.

Additionally, MAR said:

> "It turns out that many suppliers terminate their contracts with these companies in difficulty. The judicial administrator must do his best to negotiate with the customers and recover the company's money as soon as possible. Finally, during these procedures, the employees are also impacted in the sense that many ask to leave the company, which impacts the activity of the company."

Yet, according to Silva:

> "At the opening of the receivership procedure by the court, the managers of the company concerned see their powers limited, they will not be able to dispose of goods, liquidate stocks, ensure the repayment of certain creditors compared to others ....."

In the same tone, CCA mentioned:

> "The company director is the first person concerned by the opening of the reorganization procedure as it has a direct impact on his functions, his remuneration and the companies' management."

In addition, CHA observed:

> "Companies in suspension of payments may be forced to stop working with certain suppliers who would like to recover their money...Other creditors such as banks, for example, must be impacted because the files are managed by the decisions taken by the court...Finally, clients are reluctant to collaborate with companies in difficulty or in reorganization proceedings due to a lack of confidence."

4.9 Extension of the legal representative duties

4.9.1 In Morocco

When the company is in a reorganisation procedure and dependent on its financial situation the court will assign to it a syndic to help the head of the company in his missions to redress the company. The judgement of the opening procedure must contain the name of the syndic and the different organs. It includes the role and missions of the syndic as well according to the commercial code. According to article 576 in the Moroccan law, it exists three kinds of regimes (a role of assistance, a role of supervision and a role of full management system).

According to MEC:

> "The court can assign several roles to the trustee in accordance with the 3 possible regimes: A role of assistance in which he will assist the head of the company in the management of the company. A role where he will supervise all the transactions made by the head of the company. Finally, the trustee can also ensure the entire management of the company and the head of the company loses his role as manager and no longer has a word to say."

In the same tone, SEC observed:

> "Supervisory regime: the head of the company continues to manage but must report to the trustee who has a supervisory mission. Assistance system: in this case the trustee oversees the head of the company who cannot make any commitment without the prior agreement of the syndic. Full management system: the trustee manages the company alone or in part."

These measures are taken to extent the legal representative duties. The objective is to allow the company to pursue its activity in good positions and save employees from unemployment. The assistant and supervision of a third person or an external person is ambitious. It is an opportunity to observe how the head of the company manages its own company and make recommendations. He also helps the head of the company to negotiate with the creditors, the suppliers, the clients and other stakeholders.

However, the syndic is not completely free. He is obliged to inform the court very often of the evolution of the situation. A report, including an explanation of the difficulties and providing solutions, must be drafted by the syndic. At the end of the mission, he proposes a draft recovery plan, or he asks the court to put the company under judicial liquidation.

4.9.2 In France

The court is not obliged to appoint an administrator for a company with less than 20 employees and a turnover excluding tax of less than 3 million euros. If it is necessary, he can with the agreement of the head of the company to designate an administrator during the reorganisation process. Then, the judge can decide the missions and the role of the administrator which are indicated in the judgement. He can choose between 3 kinds of regimes that exist.

According to SIL:

> "a – the head of the company may continue to manage but under the control of the judicial administrator. b – the judicial administrator can oversee by assisting the head of the company who cannot make any commitment without his prior agreement. c – the judicial administrator can be appointed to manage the company alone or in part."

In the same thought, DEL observed:

> "The administrator designated by the court has the role of assisting the company's manager. He can also supervise the head of the company who has not the right to take any decision regarding the company without the administrator's agreement. Finally, the administrator can be the sole master on board or at least partly in the management of the company."

The court will assign an administrator to help the head of the company by giving him advice and will protect the company from any infringement, those of creditors who do not respect the current procedure and who would try to recover their claim.

4.10 Role of the public ministry in ensuring the process of judicial reorganisation

4.10.1 In Morocco

When a company is in reorganisation process, one of the organs that intervene is the prosecutor, who is also called the public ministry. The Public Ministry is there to protect

the interests of the country and those of other stakeholders against companies whose difficulties are the responsibility of the head of the company and its managers.

According to GUE:

> "The company directors can defraud and hide important information, even compromising the actors around them."

In the same tone LAK observed:

> "The public Ministry is there to protect public order in the event that the company director commits a reprehensible and fraudulent offence."

Moreover, SEK mentioned:

> "The difficulties of the company can constitute a favorable context to commit illicit acts. Therefore, we speak of a suspicious period from the time of cessation of payments. Criminal law punishes fraudulent acts, which explains the presence of the public prosecutor in the commercial courts."

In the vein, MEC observed:

> "Some will say that the role of the Public Prosecutor is non-existent in Morocco. However, in my opinion it is very important because the prosecutor must protect the interests of the kingdom and therefore anything that undermines public order. The prosecutor is there to protect the actors who surround the company, namely the creditors, the customers..."

In Morocco, a lot of companies' directors request a reorganisation process to be protected by the court and think that because they are protected, they can commit fraudulent acts. According to me a lot of mangers and head of companies do not know the role of the prosecutor in the court. The prosecutor is here to protect the public order in the case where the head of the company commits a reprehensible and fraudulent offence. He makes sure that the reorganisation process happens in good conditions.

4.10.2 In France

According to DEL:

> "The role of the Public Prosecutor's Office is to observe and pay attention to the claims of the different parties. In addition, criminal law punishes fraud and crime, hence the important role of the public prosecutor."

In the same thought, SIL said:

> "The problems of a company in difficulty have repercussions on its environment and therefore on the various stakeholders (creditors, public bodies, employees, banks ....). The role of the public prosecutor is to remain attentive to the claims and demands of the various parties. He receives requests for the opening of a transfer procedure from a creditor, from employees..."

Finally, according to Philipe Pernaud, a judicial mandator in Montpellier (France), in France, the public prosecutor has extensive powers of action. It can initiate certain procedures: opening of reorganisation procedure L631-5 or judicial liquidation L640-5, request for referral to another court R662-7, conversion of safeguard into receivership L622-10, resolution of the safeguard or receivership plan L626-27, as well as the transfer of business L642-11, request the exceptional renewal of the observation period (beyond one year, and for six additional months), to request the postponement of the date of

cessation of payments (L631-8), to request the closure of the judicial liquidation (L643-9), the resumption of the judicial liquidation (L643-13), to influence the appointment of the judicial representatives and to request the replacement of the director L631-19-1.

4.11 The relevance of the information communicated to the banks

4.11.1 In Morocco

The role of banks of last resort is to find short-term financing solutions that allow the company to pay its employees and its debts. The bank will provide operating assistance short-term credits or loans to allow the continuity of the company's activity. For that, the bank should accept to finance the company in difficulty. That's why the information communicated to the banks is important.

According to YAS:

> "In general, banks are very careful with the financial statements of companies. They take the time to study the files carefully and to contact the company managers in case of doubt. The files are studied and then re-examined so that nothing is missing, and nothing can compromise the collaboration of both parties."

Additionally, NAB mentioned:

> "The financial statements (balance sheet, income statement, summary statement and ratios...) of the company are essential and mandatory to clarify and identify the financial health of the company. This information is not sufficient in the sense that we live in a country where information can be impacted by the lack of transparency, fraud, notoriety of the person.... It is therefore always necessary to study and evaluate the files that are submitted."

Banks and specialised institutions are obviously not free of charge and are conditional on the provision of a guarantee. The most common tools are advances in stock and the mobilisation of receivables. During the reorganisation process, the bank can open a count for the company in difficulty with the agreement of the Syndic. All banks will not agree to deal with the companies that are in collective procedures.

4.11.2 In France

Banks do not limit themselves to the auditors' reports and financial statements to be informed of the company's financial situation. In fact, the audited financial statements can be used only after the closing of the annual accounts. Banks must be in continuous awareness and must always remain vigilant as to the evolution of the sectors of activity of their customers and their financial transactions. Several pieces of information essential to the study of the companies are then collected by using software.

According to MAR:

> "Overall, yes, we have a lot of internal resources to be aware of the structure's difficulties: the situation of the bank accounts, the delays of the loans, the accounting, the access to the databases to follow the collective procedures, if they exist."

Moreover, according to RAN:

> "For us, it is important to act preventively and not correctly. We process a set of information on customers through our customer services and customer risks...it is imperative to follow and remain vigilant about the customer's activity and its sector of activity. We collect a set of information (client account movements, operating and cash flow forecasts, information from various databases ....) that we try to cross-check."

According to CHA:

> "The banker must have a very good knowledge of his clients and their environment and to do this he must put in place the appropriate devices and tools to accompany his client companies and control the risks."

4.12 Rubrics used for the assessment of company under reorganisation by the banks

4.12.1 In Morocco

Banks are obliged to ask the head of the companies' documents in order to analyse them and evaluate the possibility of opening an account in the bank and collaborate with the company. Rubrics and indicators are then used to assess companies that are in difficulty and under reorganisation. Those documents must be certified and signed by a chartered accountant and all the actors that are involved as the Syndic.

According to YAS, several documents should be provided:

> "The balance sheet, income statement, working capital and working capital requirements, the importance of investments in fixed assets, cash flow, ratios (inventory, accounts receivable, accounts payable...)."

In the same tone, NAB mentioned:

> "In order to better study the financial statements of a company, several indicators should be considered, including the study and analysis of the level of the EBITDA, the level of the equity, the balance sheet (assets and liabilities)."

The law and regulations motivate these requests for evidence, whether in the fight against money laundering, tax fraud or consumer protection, within the framework of the duty of advice that the institution must provide.

4.12.2 In Franc

The indicators are globally the same in all banks around the world. It is therefore logical that we find the same headings used by bankers to evaluate companies in Morocco and in France. The documents must also be verified, certified and signed by a chartered accountant or an auditor.

According to MAR:

> "The first indicator is the level of equity, which will allow us to see the solidity of the company, its level of equity, its profit distribution policy. Then, we are interested in the EBITDA, which indicates the repayment capacity of the structure, i.e. whether it will be able to pay its annual instalments. We also look at the level of cash flow, the account balance, the management of the accounts, the overdraft, the presence of anomalies on the account and the Basel II rating."

In the same vein, CHA said:

> "The evolution of its fundamentals: sales, cash flow, profitability, capital base, WR, WCR, short and medium-term bank debt. Accounts receivable and payable, inventory levels, compliance with credit repayment deadlines, current account activity, etc."

Additionally, RAN observed:

> "Whether these indicators come from the financial statements through an analysis by ratio (debt, gross and net margin, liquidity, customer credit vs. supplier, inventory vs. sales, debt vs. equity ...) or a set of indicators emanating from the environment of the company (off-balance sheet commitments, sectoral risk including competition through free trade agreements, new players in the sector ....)."

4.13 Double edge sword of recovery service

4.13.1 In Morocco

According to YAS:

> "In fact, my bank, like all banks in the world, has a department specialized in the follow-up of companies in difficulty. This department is called the risk and recovery service. It specializes in the daily and regular follow-up of the accounts of the companies, in charge of the exchanges with the head of the companies and the follow-up of the refunds..."

In the same vein NAB said:

> "This department monitors the repayment status of companies in difficulty and can possibly propose operations to spread out debts and consolidate them. This department also deals with non-payment situations. If necessary, the bank will be obliged to warn and provide the bank's legal department."

In the current banking system, banks are prepared to anticipate the difficulties of companies and help them to continue their activities even in crisis. This is due to the follow-up that they operate. The follow-up is carried out by the risk and recovery department which accompanies companies in difficulty by regularly monitoring the company's accounts, the follow-up of repayments as well as unpaid debts.

4.13.2 In France

According to CHA:

> "The department that monitors companies is called the risks and recovery department. This service will accompany the companies throughout the legal proceedings. They also intervene in a preventive way before the opening judgment of the collective procedures."

Yet, MAR observed:

> "We have an entity called 'Amicable Recovery' which allows us to follow up on companies in difficulty and to provide their CRD (outstanding capital) as a preventive measure. Of course, this entity also serves to establish a follow-up with the company manager, to advise him and to accompany him to improve his situation."

In the same tone, RAN mentioned:

> "We have a risk management department that regularly monitors and studies the evolution of our clients' activities and their sectors. Its role is to intervene upstream and in a preventive manner."

In France, in each bank there is a service that helps companies to face their difficulties. The risk and recovery service allow companies and bankers to do a follow-up regarding their debts, payments. Unlike, in Morocco, in France we have banks that are specialised on companies in difficulties. I can cite for example 'Themis bank which was originally a specialised department within a traditional bank, before becoming a fully-fledged specialised bank in 2002 to better meet customer expectations.

The individual is trained in preventive and collective procedures, in those banks' teams are specialists in managing corporate accounts, assessing risks and proposing adapted financing solutions. When a company is in suspension of payments and declared in reorganisation procedure, the judicial administrator (equivalent of the syndic in Morocco) has to open an account on those specialised banks for the company in difficulty to manage their operations.

4.14 Criticisms and way forward in the current judicial recovery process

4.14.1 In Morocco

According to GUE:

> "The critical point that I can make is that the die is generally cast, especially in this time of pandemic (COVID-19). I think the suspect period should be extended and not limited to a date of more than 18 months."

Additionally, YAS observed:

> "In Morocco, companies are quickly abandoned by the state which precipitates their liquidation in order not to accumulate paperwork. To remedy this situation, it would be necessary to encourage company managers to have recourse to collective procedures by raising their awareness. They should not wait and should react very quickly."

In the same tone HAJ mentioned:

> "Out of all the cases submitted to the commercial courts, more than 95% of judicial procedures (recovery and liquidation) are initiated directly without going through the prevention phase."

Yet, according to NAB:

> "It is necessary to stop blaming the head of the company and help them to find solutions to get out of it. Finally, do not take the easy way out and condemn the company by sending it into judicial liquidation."

In the same vein MEC said:

> "Moreover, I think that Morocco must invest more in the training of judges who deal with cases of collective and amicable procedures in order to train them. In my opinion, their training is very theoretical and not adapted to practice."

According to SEK:

> "The procedures concerning business difficulties in Morocco are still recent and their implementation dates to the year 2000. The trustees and judges of the

> commercial courts are still in training and do not have enough experience to deal with complicated cases."

Morocco has made a huge advance on commercial law by taking inspiration from the French commercial code. The new code was supposed to safeguard and not to sanction the company anymore.

However, the number of liquidations remains very high and the recourse to preventive and collective procedures remains very low. In fact, even if the support of the Moroccan government is certain through all the reforms that have been made since the 90s, the results are not following, and a lot of companies put the keys under the door. The judge without real experience in business prefers to liquidate companies rather than save them.

According to me, the Moroccan Government should invest on the judge trainings and sensitise the head of the companies on the importance of the preventive procedures. Also, do not wait until the last minute to request the opening of a safeguard procedure, especially when the company is already on cessation of the payment. A last point that I would like to insist on is the fact that the court should not blame the head of the company anymore and try to help him to find solutions to the company's financial issues.

4.14.2 In France

In France, companies that have access to preventive procedures earlier are successfully saved compared to companies that wait until it is too late and are obliged to be liquidated. The French code is older than the Moroccan one which explains why preventive procedure are more developed and used. Mandat ad hoc and Conciliation are preventive and confidential procedures. The aim is to restore the company's situation before the cessation of payments without the information being transmitted to the actors of the external environment (suppliers, clients, banks...).

According to SIL:

> "More efforts should be made at the level of information to make companies in difficulty resort to preventive procedures. It is clear today that companies in difficulty resort to preventive and safeguard procedures are more successful in their recovery."

In the same vein to RAN:

> "Companies that opt for this procedure have a better chance of recovering and this is well seen by us and by the various creditors and partners. Some companies prefer preventive procedures (Mandat ad hoc or conciliation) to protect their reputation or good name."

According to MAR:

> "If I have one criticism to make, it is the slowness of the commercial courts in processing cases of reorganization process. The procedure is far too long. Moreover, the State must encourage company directors to open safeguard procedures before it is too late in order to avoid companies being liquidated."

Still, according to CHA:

> "Some judges are not trained in business and management and do not know the reality of the field. The French state must therefore better train its judges in the commercial and high courts."

Finally, as in Morocco, the critics are mostly the same. In my opinion, what should be worked on is the slowness of the cases that are treated by the judges. It is a real problem in the sense that the slowness of justice reveals above all a chronic lack of material and human means that these few partial remedies do not make up for. This slowness is even more worrying as it is generally detrimental to the most fragile litigants, and it is in no way a guarantee of a quality decision.

5 Discussion

All said and done, the results demonstrate a good number of similarities between the reorganisation process in France and in Morocco. Both countries knew a lot of reforms that conducted to the actual respective commercial codes. Through the interviews and the responses obtained, it is uncommon to say that there is a significant difference. However, all the respondents agreed to say that the Moroccan commercial code was inspired mostly from the French. The two countries have very close relations established after the protectorate. Below, the similarities are expatiated on.

5.1 Differences and similarities of the reorganisation between France and Morocco

To triangulate with the literature review, the study summarised in Table 6 new elements regarding the reorganisation process in France and in Morocco and a comparison to complement the research was made.

5.2 Lens of neo-sociology theory on the Moroccan and French relationship

As it was conducted previously in the literature review, the sociological approach of NIT was born at the end of the 1970s with the work of Meyer and Rowan (1977) and Scott and Meyer in 1982. This theory was really implanted by Dimaggio (1991) who are considered as the precursors of this theory. This theory insists on the fact that institutions interact between them to improve themselves.

In this case Morocco was influenced by the Europeans judicial law especially the French one. It abolished the Sharia law and implemented the western law after the protectorate when it gained its independence in 1956. When several organisations structure themselves in the same field, they tend to become similar to each other. DiMaggio and Powell call this process institutional isomorphic change. Moroccan law has not really freed itself from its colonial past, of which it retains clear traces.

According to me, Morocco cannot detach itself from its primary source of inspiration and this despite the evolution that may have. You can see in Table 6, the similarities that have been highlighted and the judicial mimetism that emerge from it.

The isomorphic strategy of reorganisation by the Moroccan government in relation to France is probably well grounded inasmuch as it gets closer to the western standards. Thus, mimetism of commercial law of France by Morocco seems to have some advantages hence the plain alignment may continue to exist let to talk about the concerns about the SMEs.

Table 6 Similarities and differences between reorganisation process in France and in Morocco

Facts	*Applicable in Morocco*	*Applicable in France*
Law of sanction rather than indulgent law	Applicable	Applicable
Government support	Corrective procedures	Corrective/preventive: URSSAF/AGS
Preventive procedures	Not applicable	Applicable: Madate Adhoc and conciliation
Main causes of business failure	Poor control of operating costs, rapid growth disproportionate to the company's resources, succession problems, notably in family companies, disputes between partners, incompetence of managers or of external origin.	Similar
Accountant's role to file financial statements	Applicable: must produce a report that assures the reliability of the accounts and the financial statements of the actors that constitute the environment of the company (banks, stakeholders…)	Applicable: similar
Submission of the financial statements by the head of the company	Applicable: if not the head of the company will have to pay between 1,000 and 50,000 dhs depending on the company.	Applicable: if not, punishable by a fine of 1,500 euros, and 3,000 euros
Reorganisation impacts	Freezing of liabilities, the company will be prohibited from paying its debts to creditors whose debts were incurred before the observation period, suspension of proceedings by creditors, stopping of interest payments, continuation of all employment contracts	Similar
Legal representative	Syndic	'Administrateur judiciaire' in French
Legal representative duties	Three kinds of regimes (a role of assistance, a role of supervision and a role of full management system)	Similar

Table 6 Similarities and differences between reorganisation process in France and in Morocco (continued)

Facts	*Applicable in Morocco*	*Applicable in France*
Public ministry role	Protect the interests of the country and those of other stakeholders against companies whose difficulties are the responsibility of the head of the company and its managers.	Opening of reorganisation procedure or judicial liquidation, request for referral to another court, conversion of safeguard into receivership, resolution of the safeguard or receivership plan, as well as the transfer of business, request the exceptional renewal of the observation period (beyond one year, and for six additional months), to request the postponement of the date of cessation of payments, to request the closure of the judicial liquidation, the resumption of the judicial liquidation, to influence the appointment of the judicial representatives and to request the replacement of the director.
Information communicated to the banks	Balance sheet, income statement, summary statement and ratios.	Similar
Rubrics used to assess companies	The balance sheet, income statement, working capital and working capital requirements, the level of the EBITDA, the level of the equity, the importance of investments in fixed assets, cash flow, ratios (inventory, accounts receivable, accounts payable...).	Similar
Risk and recovery department in banks	Applicable	Applicable
Critics	Invest in judge training	The slowness of the cases that are treated
	Apply preventive procedures	Sensitise the head of the companies on the importance of the preventive procedures
	Sensitise the head of the companies on the importance of the preventive procedures	
	Do not blame the head of the company	
	The slowness of the cases that are treated	

However, over the last decade Morocco has known important changes by modernising its economy and judicial system which means that Morocco must stop copying international systems and start its own system. We should not forget that Morocco is a developing country in comparison to France. Certain factors can slow down the use and application of good practices for companies in difficulty. The French model cannot be transposed without considering the numerous decrees of the Dahir.

Since the French reform of 2005, the gap has widened between the two countries. In fact, this law has introduced new procedures such as mandate ad hoc and conciliation which are preventive procedures that the head of companies can use before going to the reorganisation process (Gomez-Bassac, 2009). Of course, those procedures can be used only of the company is not in suspension of payment. In Morocco these procedures do not exist which is according to me very unfortunate. This can be explained by the fact that the existing procedures applicable to companies in difficulty are most often used by unscrupulous business leaders who use these 'methods' with the unique purpose of not honouring their debts (Zouhry, 2008).

The introduction of amicable preventive procedures is therefore quite questionable because of the corruption of the courts and therefore the judges. The research can then talk about mimetism limits.

5.3 COVID-19 crisis and its impacts on companies

According to Purwanto et al. (2020), some industries reduce imports of raw materials, some of them decrease sales, some employees leave and work alternately, reducing production capacity, order demand has declined, and sales turnover has also decreased dramatically. Other companies have declined in sales, difficulty in sending distribution of goods, working hours have been divided into two shifts.

Yet, the measures of containment and social distancing were announced from scratch causing a reversal of priorities, economic distress, financial distress, outstanding debts, and insidious cash flow but in this case a psychological suffering whose after-effects can last in the long-term (Lyazami, 2020).

Undeniably courageous initiatives were taken by the Moroccan and French governments to help companies in difficulty.

In Morocco, the latest example is the implementation of the guaranteed mechanism called 'Damane Oxygène' following the crisis induced by COVID-19. Bank of Africa (2021) has mobilised its efforts to assist businesses that have been impacted by the COVID-19 health crisis by providing them with financing to maintain the continuity of their activity through DAMANE Oxygen. It is a loan that has made it possible to finance up to three months of current expenses that cannot be postponed or suspended (such as staff salaries, rent, overheads, or the necessary purchase of materials, etc.).

In France, the General Directorate of Public Finance (DGFP) allows companies in difficulty to benefit from a personalised debt settlement plan. This involves the payment of tax, social security and employer's contributions in instalments.

A company whose cash flow is impacted by the coronavirus epidemic – COVID-19 – can apply for a state-guaranteed loan, regardless of its size and status. This assistance applies until December 31, 2021. The company must make an appointment with its usual bank, which gives a pre-approval. The process is then done online with BPI France, which returns a unique number. The company communicates this number to its bank, which can then release the loan amount. In France compared to Morocco, we have

organisations that help companies in difficulties during a reorganisation process as URSSAF and AGS.

However, even if both countries made a lot of initiatives to help companies, they did not consider the psychological effects and impacts that the pandemic can have on the head of the companies and employees. In France, according to Delattre (2020), the leaders are psychologically washed out, at the end of their strength, who see the ground crumble under their feet and their reference points collapse. That is why cells and measures of personalised support and listening to the heads of companies in distress because of COVID-19 were created to help them to cross this crisis and the state of depression that it can generate.

In addition, measures of psychological listening were adopted in favour of certain people (university students, employees, prison officials, medical staff, women victims of domestic violence or intra-family problems during confinement and even people with special needs or disabilities (Lyazami, 2020). In Morocco, the head of the company could not be part of the people invited to these cells, whereas his mental health can be altered following the financial, professional and personal trauma.

These shortcomings highlight 'institutional voids' (Mair and Marti, 2009) identified in the processes of accompanying business leaders in the face of this crisis. For all these reasons, it seems more than necessary to innovate socially and rethink the practices of accompaniment in order to make them more compatible with the profiles and needs of the people they are supposed to help (Fayolle and Nakara, 2012).

5.4 Research limitations

By doing a qualitative study, it implies to program and do interviews with respondents. Some difficulties were encountered, like finding people who agree to be interviewed. It was originally planned to realise 25 interviews. At the end, 13 respondents were interviewed out of 50 people were contacted in LinkedIn, by e-mail and by phone. A lot of people refused to answer the questions.

Moreover, the topic implies reading many articles of law from the commercial code. As the authors are not very conversant with legal structures, more time was spent searching and comparing the French and Moroccan law articles. However, thanks to this study, one has learned a lot about business law and more particularly the interpretation of the commercial code.

6 Conclusions

At the end of this study summarising on the similarities of reorganisation process between Morocco and France, one finds it judicious to resume the key elements through this piece. It is notable that there are several similarities between the commercial codes of these two countries because the French law constitutes the primary source of inspiration of the Moroccan law.

Also, additional similarities found are: the conditions and the process to open a reorganisational procedure in both countries, legal representative duties are very similar as they have three kinds of regimes, rubrics used to assess companies by the banks and the courts are the same. In both countries an accountant must produce a report that

assures the reliability of the bookkeeping and the financial statements of the actors that constitute the environment of the company. The observation period after the opening of the procedure lasts between 5 and 6 months for both countries and the execution of the reorganisational plan period lasts between 8 and 10 months.

The study observed several issues and imperfections that hinder the smooth running of the reorganisation process. It was able to extract the different preventive and collective procedures to which the company managers can have access. It turns out that some of these procedures are not applied in Morocco, namely the conciliation procedure and the adhoc mandate. There is a real gap between what is applied and what is decreed.

In France, the judges of the commercial court are responsible of managing collective proceedings and these judges have a knowledge of the economics, whereas in Morocco the judges are not conversant with economics of reorganisation. The reorganisation process which is likened to a session of torture for the management of organisation in process of reorganisation in Morocco is malleable on the side of France.

This study has allowed us to subject Moroccan and French law to critical look where we conclude that there is still a long way to go. Morocco, for example, has remained frozen in time compared to France which has undergone several reforms in recent years. I can cite as an example the 2005 safeguard law that introduced new preventive procedures. Also, France did not hesitate to improve its laws inspired by US law and UK law recently. France initiated corrections to improve the effectiveness of its legal system and sensitise entrepreneurs to act before suspension of payments in comparison to Morocco. In fact, Morocco must make preventive procedures known to business leaders and encourage them to use them. The Moroccan legislator must encourage companies to use the safeguard procedure as what its done in France.

Furthermore, the study shows that it can go further and propose radical solutions to serious problems. Accordingly, it will be wise to invest on judge training programs. In France, the judges of the commercial court are responsible of managing collective proceedings. These judges have a knowledge of the economic world and master the functioning of the company and its accounting and legal environment. However, it can happen that judges are not familiar with the business world. Therefore, the courts provide legal training for them.

In Morocco, on the contrary, the commercial judges are magistrates who have followed a classic legal curriculum and know nothing about the business world. Most of the time, they have no skills to read and understand a balance sheet, and thus their lack of understanding of the business and financial world sometimes makes it difficult to handle certain cases and delay their verdict which explain the slowness of the cases. Some even rely on expert opinions, even though these experts are neither certified nor regulated. It is therefore necessary to ensure the establishment in Morocco of a more efficient and effective judicial system whose judgements are more coherent, more transparent and more predictable (Gomez-Bassac, 2009). For this to happen, the courts must have the material means and infrastructure to carry out their mission. In the same meaning, access of information for all is essential to reduce corruption.

Moreover, to avoid companies' suspension of payments and in the worst-case liquidation, governments should accompany heads of companies judicially, financially and psychologically. Therefore, courts should sensitise companies in difficulty on the importance of preventive procedures. In France and in Morocco, the government must communicate the importance on the preventive procedure in entrepreneurship.

The study concludes for a collaborative approach of the court to be more indulgent and not sanctionative. The reorganisation process which is likened to a session of torture for the management of organisation in process of reorganisation in Morocco is malleable on the side of France. It should not blame the head of the company per se. It is not because the company is in crisis, that it becomes the fault of the general overseer. In order to preserve viable companies, it is not only necessary to rely on the initiatives of the legislator, but also to make a joint effort. All the players in the prevention field are called upon to participate actively and effectively in the smooth running of the prevention procedure (Lyazzami, 2013). However, it is true that the success of this prevention will largely depend on the attitude of the head of the company who, unfortunately, tends to react late.

De facto, COVID-19 crisis and 2008 crisis have accelerated the difficulties of companies that were already experiencing structural problems. However, even in normal times, we can see that business leaders are afraid to go to court. Therefore, it is important to reinforce the role of the accountant by the obligation of disclosure under penalty. The financial statements certified by the accountant are done in a context of operational control and must reflect the real situation of the company. The users of these financial statements, in particular the shareholders, must be informed of any risk or danger in future projects. For this reason, the legislator has made the CAC responsible for reporting facts likely to threaten the continuity of the company, to the head of the company if he does not react.

Overall, both systems need to improve the situation of creditors, the 'great forgotten ones' of insolvency law. In fact, when a company is in a reorganisation process, debts are frozen which impacts suppliers and creditors in the sense that they can have their money back. In consequence, it is had an impact on the activity. Even if it is beneficial for the company in difficulty, it is sanctionative to the creditor. Similarly, the institution of 'cherry picking' implies that in the event of the opening of collective proceedings, the parties are 'inadmissible to request or provide for the resolution of a contract'. The commercial code also prohibits any legal action against a debtor in reorganisation or judicial liquidation. Finally, the last illustration of the exorbitance of bankruptcy law is the possibility for the court to call into question payments made by the debtor to the creditor before the declaration of bankruptcy (Gomez-Bassac, 2009).

Finally, the study allowed one to conclude that deficiencies still exist in the French judicial system, which in turn was not preserved from criticism. Consequently, the two French-Moroccan legislative approaches complement each other. For future studies, it will be wise to develop assumptions regarding the reorganisation process in both countries and compare them by using deductive analysis. This study therefore, will allow these states and the governing bodies to check their policies probably with mimetic frameworks in view of correcting any anomaly that may exist in their processes of reorganisation of the companies.

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