

Restructuring and insolvency regimes

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The insolvency regimes in the Middle East have been a focus since the Global Financial Crisis and many of these regimes have been the subject of transformation over recent times.

Bankruptcy laws have been updated in 2020 in the United Arab Emirates ('UAE'), Kingdom of Saudi Arabia ('KSA') the Hashemite Kingdom of Jordan ('Jordan'), the Sultanate of Oman ('Oman'), the State of Kuwait ('Kuwait'), the Kingdom of Bahrain ('Bahrain') as Governments seek to modernise their regimes and offer solutions to both debtors and creditors.

The Oman Bankruptcy Law issued by Royal Decree 53/2019, came into effect on 7, July 2020 and tidied up numerous issues which could traditionally cause problems to creditors when dealing with insolvent debtors. The Oman Bankruptcy Law applies to any person engaging in commercial activities, companies and branches of foreign companies. Banks and insurance companies are excluded from the Oman Bankruptcy Law.

In the UAE, the UAE Cabinet approved a further amendment law (law no. 21 of 2020) (Amendment Law) to Federal Law No 9 of 2016 (the Corporate Bankruptcy Law). The Amendment Law follows the previous amendment of the Corporate Bankruptcy Law in 2019 (pursuant to Federal Law No 23 of 2019). In addition to other important amendments, the Amendment Law seeks to address periods during which an 'Emergency Financial Crisis' exists. To deal with such situations, the Amendment Law adds a new chapter (Chapter 15) to Section Four of the Corporate Bankruptcy Law titled "Bankruptcy Proceedings during the Emergency Financial Crisis". An Emergency Financial Crisis is defined as "A general situation that affects trade or investment in the country, such as a pandemic, natural or environmental disaster, war, etc." Although a definition is included within the Amendment Law, the law goes on to provide that the UAE

Cabinet shall determine when such a situation exists, and also the period of the same. This would appear to indicate that a decision of the UAE Cabinet would be required prior to parties being entitled to rely on the provisions in Chapter 15.

In addition to the Corporate Bankruptcy Law, in the context of UAE, each of the financial free zones in the UAE (i.e. Abu Dhabi Global Market ('ADGM') and Dubai International Financial Centre ("DIFC:)) have their independent insolvency laws to which companies in those respective jurisdictions are subject to.

The DIFC Insolvency Law, Law No. 1 of 2019 is relatively new. The new insolvency law was enacted on 30 May 2019 and came into force on 6 June 2019. The law introduces: i) a new debtor in possession bankruptcy regime in line with best practice internationally; and ii) a new administration process where there is evidence of mismanagement or misconduct. The law also enhances the rules governing winding up procedures; and adopts the UNCITRAL Model Law on cross-border insolvency proceedings with certain modifications which are compatible with the DIFC.

The newly enacted law complements the DIFC's commitment to international best practice, with the Insolvency Law aiming to balance the needs of all stakeholders in the context of distressed and bankruptcy related situations in the DIFC, facilitating a more efficient and effective bankruptcy restructuring regime. The insolvency regime in the ADGM is subject to the provisions of the ADGM Insolvency Regulations 2015, which have been amended from time to time and most recently on 8 July 2020 ('Amendment No. 4;). The Insolvency Regulations in the jurisdiction were amended in 2020, primarily with the objective of providing greater clarity on the prescribed form and content in procedural matters under the regulations and align them with proceedings under the ADGM court system. In addition to the provision of such clarity on the procedural aspects, Amendment No. 4 introduced the concept of priority financing thereby allowing administrators to avail financing for purpose of administration costs and expenses.

The KSA Bankruptcy Law issued by Royal Decree No. M/50 of 28/5/1439H, came into effect in 2018 and tidied up numerous issues that have traditionally cause problems to creditors when dealing with insolvent debtors. The KSA Bankruptcy Law introduces several restructuring and liquidation procedures, i.e. protective settlement, financial restructuring, liquidation, small debtor's procedures and administrative liquidation. The KSA Bankruptcy Law applies to individuals/corporations carrying on commercial, professional or for-profit businesses in KSA and non-Saudi investors who have assets in KSA or carry on commercial, professional or for-profit businesses through a licensed entity in KSA.

The Bahrain Insolvency Law (Law No. 22 of 2018) and the Central Bank of Bahrain ('CBB') and Financial Institutions Law (Law No. 64 of 2006 as amended) ('CBB Law') are the primary pieces of legislation under which insolvency or analogous proceedings to which a company incorporated under the Companies Law (Law No. 21 of 2001, as amended) can be subject to in Bahrain. The Insolvency Law applies to any company that is not licensed by the CBB. The CBB Law applies to any company that is licensed by the CBB. There are no laws that govern insolvency proceedings of an individual in Bahrain.

In the State of Qatar there are two concurrent bankruptcy regimes:

- the state law regime, primarily set out in the Commercial Law No 27 of 2006 ('State Regime'). The dissolution and liquidation of commercial companies is set out in the Commercial Companies Law No. 11 of 2015 (the 'Commercial Companies Law'), according to which a company may be dissolved and subsequently liquidated for prescribed reasons including, without limitation, a company's inability to pay its debts when due. If the losses of a company reach half of its share capital the shareholders of the company may decide whether to inject more capital or to dissolve the company by way of an order of the court. The company will be liquidated by a court-appointed liquidator.

Additionally, certain special provisions apply to financial institutions under the Qatar Central Bank Law No. 12 of 2013 (the 'QCB Law'). The QCB Law provides that the Qatar Central Bank may place a financial institution (including insurance companies) under interim administration if such an institution is threatened with insolvency or at the request of such financial institution.

In 2017, the Qatar cabinet approved a draft law on corporate bankruptcy and prevention which was aimed at developing detailed regulations for corporate bankruptcy and prevention, taking into account international standards in this regard. However, the draft law has not yet been approved and it is not clear when this law may come into force.

- Qatar Financial Centre insolvency regime, the provisions of which are found in the QFC Insolvency Regulations 2005 and applies to bodies corporate and branches registered in the QFC ('QFC Regime'). The QFC Regime is based on common law principles and is consequently similar to insolvency legislation in England and Wales. It offers a more comprehensive regime than the Local Regime and includes administration, winding up, liquidation, and dissolution of QFC entities. The QFC Regime provides more options on insolvency and bankruptcy which are more familiar to more established common law insolvency regimes.

The Egyptian Bankruptcy Law No. 11 of 2018 regulates the restructuring, preventive reconciliation and bankruptcy of troubled businesses and companies. It introduced the out-of-court restructuring procedures as well as mediation system supervised by courts. The law aims to protect the creditors of insolvent businesses and companies while attempting to prevent their closures by allowing businesses and companies to reorganise and restructure debts and hence providing a more inviting investment climate in Egypt.

The new Bankruptcy Law in Kuwait (Law No. 71 of 2020) was approved by parliament and published in the Official Gazette on 20 October 2020 and seeks to increase protection for troubled businesses, providing new options to distressed companies before they are forced into bankruptcy. Although the law was approved and published in the Official Gazette, the law mandates that it comes into force three months from the date of the issuance of the laws executive regulations.

In this section we look at those regimes.

Regimes in the Middle East - A Snapshot

	Bankruptcy Law	Administration Option	Composition/ Restructuring Schemes	Court consent to enforce security	New Money	Cross border recognition	Tested
UAE	Yes, Bankruptcy Law No. 9 of 2016 as amended	Yes. A debtor can be placed under administration prior to becoming insolvent in preventive composition arrangements (i.e. debtor is not yet insolvent).	Yes. Under Bankruptcy Law, bankruptcy is split into two limbs: i) restructuring plan; or ii) liquidation.	Yes. Secured creditors can enforce their security with the leave of the court	Yes provided that the transaction is carried out in good faith for the purpose of carrying out the debtor's Business, and only when the debtor entered into such transaction, there were reasons which led the debtor to believe that the transaction might benefit the debtor's business	No. The Corporate Bankruptcy Law does not recognise cross border bankruptcy proceedings.	Limited
DIFC	Yes, Insolvency Law DIFC Law No 1 of 2019 and Insolvency Regulations 2019	Yes.	Yes. Company Voluntary Arrangement: This arrangement allows the directors of the Company to propose a scheme of arrangement of the Company's affairs to its shareholders and creditors and to appoint a nominee of the Company (i.e. a person who is registered as an insolvency practitioner) to supervise the implementation of the voluntary proposal. Receivership: This is where a creditor of the Company appoints a person to sell the Company's property and/or assets to discharge debts due to that creditor, provided that the creditor has the specific power to sell such an asset/ property. Creditors or members' Voluntary Winding-up: A Members' Voluntary Winding-up may only be commenced where the Company is solvent and a creditors' winding-up may only be commenced in an insolvent winding-up. Compulsory winding-up: A Company may be wound up by the court if: 1) it is unable to pay its debts, 2) no voluntary arrangement has been approved upon the expiry of a moratorium, and 3) a court makes an order and is of the opinion that it is just and equitable to do so.	Not required	Yes The liquidator and administrative receiver have the power to borrow and raise money on behalf of the Company.	Yes The law also incorporates the UNCITRAL Model Law (Model Law) to assist in cross-border insolvency proceedings. The Model Law applies in a number of circumstances including where (i) assistance is sought in the DIFC in connection with foreign proceedings; or (ii) assistance is sought in a foreign country in relation to proceedings under the DIFC Insolvency Law.	Limited
ADGM	Yes, ADGM Insolvency Regulations 2016 (as amended from time to time)	Yes. The ADGM Insolvency Regulations provide for an administrator to be appointed to take over the management of a distressed company with the objective of: (a) rescuing the company as a going concern; (b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration); or (c) realising property in order to make a distribution to one or more secured or preferential creditors	Yes. The ADGM Insolvency Regulations provide for: Deed of Company Arrangement i.e. a deed of company arrangement between an ADGM company, all or some of its creditors and the administrator of the deed with a view to enter into a settlement with the creditors. Receivership where a Company grants a person powers contained in an instrument to appoint an office holder to get in and sell any part of its property and to apply the proceeds in reduction of a debt due to that other person and Administrative Receivership whereby a receiver appointed under powers contained in an instrument which constitutes a qualifying charge in respect of the property of a company which consists of the whole or substantially the whole of the property of that company or who would be such a receiver but for the appointment of some other person as the receiver of part of that company's property. Winding up which may be proposed by the debtor itself, the director of the debtor or any creditor of such debtor and may be approved by the ADGM courts.	Not required.	Yes, the administrator and the administrative receiver have the power to borrow monies under the regulation.	Yes, the Insolvency Regulations recognise cross border insolvency including winding up on non-ADGM companies in limited circumstances, recognition of foreign insolvency proceedings, noting that UNCITRAL Model Law has the force of law.	Limited
The State of Qatar (excluding Qatar Financial Centre)	Yes	Yes, in relation to financial institutions licensed by the Qatar Central Bank under the Qatar Central Bank Law No. 13 of 2012.	Yes	Yes	Yes	No	Largely untested
Qatar Financial Centre	Yes	Yes	Yes	No, subject to the requirements and conditions set out in the applicable QFC laws.	Yes	Yes	Limited
Bahrain (CBB Law)	Yes	Yes	No	Yes	Yes. The CBB Law does not expressly cover this. However, the administrator and/or the Bahraini court can approve this.	No	Limited
Bahrain (Insolvency Law)	Yes	No	Yes	Yes	Yes. Subject to obtaining the approval of the Bahraini court.	Yes	Limited
Kuwait	Yes	Yes	Yes	Yes	Yes	Yes	No
KSA	Yes	Yes (in the form of financial restructuring or preventive settlement proceedings)	Yes (in the form of financial restructuring or preventive settlement proceedings)	Yes	Yes	Yes. Anticipating issuance of regulations in this regard	Limited
Jordan	Jordan	Yes	Yes	Yes	Yes. Article 22(c) of the Jordanian Insolvency Law No. (2) of 2018 (Insolvency Law) stipulates that a creditor may enforce its respective security against a debtor who has declared insolvency, subject to such enforcement not affecting the debtor's economic activities, and subject to the collected amounts being handed to the insolvency agent for distribution in accordance with the Insolvency Law. Whilst such right is provided for under the Article, enforcement nonetheless generally requires review by courts or the Execution Department and remains subject to challenge.	Yes	Yes
Iraq	Not a special bankruptcy law. Bankruptcy is covered under Iraq (Commercial Law)	Yes. There is no independent legislation designated for the governance of insolvency procedures, and the insolvency framework is instead set forth under Articles 75-79 of the Trade Law No. (149) of 1970 (Commercial Law)	No	No	Yes	No	No
Oman	Yes	No	Yes	Yes	Yes	No	No
Egypt	Yes	Yes	Yes	Yes	Yes	No	Limited

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