

Bankruptcy as per the Omani Law

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The Omani legislator dedicated a special law governing bankruptcy by the promulgation of the Royal Decree no. 53/2019 AD and relevant provisions. Bankruptcy is defined as being the perturbation of the financial situation of the merchant entailing his inability to fulfill his commercial obligations and settle his debts; and the implementation of the bankruptcy law shall be limited to merchants only and it is only applied by virtue of a court judgment.

Furthermore, the Omani legislator was keen on avoiding the bankruptcy of the debtor merchant, by taking some precautionary measures prior to the adjudication of bankruptcy, same consisting in the restructuration and composition of bankruptcy and aiming to handle the debts of the merchant to avoid his bankruptcy. As a matter of fact, the composition has different forms, namely the judicial composition prior to the end of bankruptcy (simple composition), or the composition accompanied by the abandon of the estate. The legislator dedicated full chapters to such precautionary measures, where he clarified the procedures and judgments pronounced in this regard. And the law on bankruptcy governed the acts that take place during the period when the merchant has effectively stopped settling his debts, same preceding the declaration of bankruptcy and called (the period of doubt); knowing that pertinent acts vary between the compulsory and optional nullification at the discretion of the competent court.

The competence of considering bankruptcy matters is attributed to the court situated in the same district as the registered office of the debtor merchant, or his local branch / agency if his registered office is located outside the Sultanate, such court being the competent authority to consider the lawsuits that arise from the application of the bankruptcy law. Moreover, the law handled several competence situations – a public order competence, and whenever the merchant bankruptcy judgment is rendered, it shall have authority over all persons, and it tackles the all financial obligations of the merchant, while also giving rise to a legal position that did not exist before, since it is not a decided judgment; in this case, the bankruptcy period gives place to the period of doubt which lasts no more than two years from the date of pronouncement of the bankruptcy judgment.

In addition, the law regulated the conditions of ruling for merchant bankruptcy, which means that he stops settling his commercial debts which reached their maturity date, and which amount is known and which involve no serious conflict, at the request of the debtor merchant or any of his creditors or which is tackled by the court itself. No petition for declaration of bankruptcy shall be accepted if the debt is totally secured, and dated and signed supporting documents shall be enclosed with the petition, namely the assets of the business book, a copy of the last audited balance sheet and the income statement, the statement of total personal expenditures related to his accounts for the two years preceding the presentation of the petition or the whole trade practice period if less than two years, a detailed statement of his funds and real estates and pertinent value as on the date of discontinuance of settlement, a statement of the names of the creditors and debtors and their addresses and the amount of their entitlements along with the guaranteeing securities if existing, a statement of the complaints on failure of settlement related to the securities issued against him throughout the two years preceding the petition, a certificate from the register ascertaining the non-initiation of any composition procedures or any request for restructuration. The law further regulated the cases of opposition to the verdict by non-litigants.

The competent court in charge of considering the declaration of bankruptcy and any lawsuits that arise from bankruptcy, and the rights and obligations of the merchant, shall take the necessary measures in order to keep or manage the funds of the merchant for a period of three months, renewable for a similar period, until the case is settled. In this case, a liquidator is nominated from the experts of the list, who shall be charged of publishing the summary of judgment in the official gazette and entering the same in

the real estate register in the name of the group of creditors. Also a trustee is nominated to help the liquidator fulfill his mission, and a bankruptcy controller is selected to monitor the bankruptcy and check the balance sheet and report of the debtor, and to ask for any clarifications about the process of procedures related to the revenues and expenditures and the status of pertinent actions, in addition to any control missions related to the acts of the liquidator attributed to him by the bankruptcy judge, while also taking the necessary procedures to get familiar with the financial situation of the merchant and the reasons behind the discontinuance of debt settlement, and verifying his incapacity and loss of credit. On the other hand, the bankruptcy judge is charged of controlling the management of bankruptcy and following the process of pertinent procedures, while taking necessary measures for the preservation of the estate, etc. It shall be possible to declare the bankruptcy of the merchant following his retirement or death provided the occurrence of settlement discontinuance and the presentation of the petition for declaration of bankruptcy in the year following his death or name cancellation from the register. It is worth mentioning that the bankruptcy judgment is invalidated if the merchant fulfills all his financial obligations before the bankruptcy judgment gains the force of the adjudged.

The bankruptcy acts begin with the fulfillment of the debts through the liquidator, assisted by the controller, and in the presence of the bankrupt debtor or after his summon to appear. Then the liquidator provides the secretariat of the court with a list of the debts, relevant documents and the litigation grounds if existing, and a statement of the creditors holding special securities along with relevant amount and the type of securities, within 60 days from the date of convocation of the creditors to reveal their debts, and same is published in the official gazette and submitted to the bankruptcy judge who prepares a final list of the debts. Should the creditors fail to reveal their debts and relevant documents, the bankruptcy judge re-invites the creditors, and the creditors shall, within 30 days from the date of second publication, reveal their debts and relevant documents, otherwise, the right to enter in the bankruptcy process lapses.

The effects arising from the judgment of declaring merchant bankruptcy can be related to his person, like banning travel from the Sultanate for a period of three renewable months in case he committed an act causing damage to the creditors, and he shall not leave his hometown without notifying the liquidator in written of his place, while abstaining from changing the same unless by permit of the bankruptcy judge with the reasons of the change, so he can contact him and provide him with the necessary clarifications and ask for the required documents. Other effects can be related to the estate, whereas the bankrupt is forbidden, upon the pronouncement of the bankruptcy judgment, from the management of his funds and disposal thereof until the end of bankruptcy process; this means that he shall not fulfill his debts, or seek to obtain his entitlements, excluding the fulfillment of any securities he holds unless the liquidator objects to the same, and provided that pertinent value shall be deposited in the bankruptcy account; all this is taken to protect the interests of the creditors. There shall be excluded the funds that cannot be legally attached and the expense decided for the bankrupt, or the funds owned by others or the rights related to his person or his personal status or the compensation due for a valid security contract. And the judgment shall not forbid him, subject to the approval of the bankruptcy judge, from starting a new business with other than the bankruptcy estate, and managing the estate of his minor children, and the competent court in this case shall be the court of personal status and not the court of bankruptcy. And the settlement of accounts following the pronouncement of the bankruptcy judgment only takes place if a certain relation exists between them.

On the other hand, the effects of the bankruptcy declaration judgment on the creditors cover the group of creditors and arise from the force of the law imposed upon the pronouncement of the judgment, and it is represented by the liquidator. The holders of pledge or privilege-secured debts shall not be considered among the group of creditors, except for the cases of their inclusion as normal creditors, however, they are included in the union of creditors with their securities, and it shall not be allowed to have recourse against the group of creditors by asking for the enforcement of any acts made following the declaration of bankruptcy, and the bankruptcy judge rules in this case for non-enforcement of such acts against the group of creditors and whenever the judgment is rendered following the enforcement of the act, the bona fide party disposed shall be bound to return what he obtained from the bankrupt or its equivalent value and returns from the date of earning till the date of bankruptcy process. And the disposer shall be entitled

to redeem the compensation paid to the bankrupt if existing or get involved as creditor in the bankruptcy process. The bankrupt acts shall be invalidated during the period of doubt whenever related to his estate and in case they contradict the declaration of bankruptcy, knowing that the invalidation is decided by force of the law.

With regard to the rights of the bankrupt with third parties, it is worth mentioning that the returns on debts shall be discontinued for them yet not for the bankrupt, knowing that the liquidator shall be entitled to have recourse to another bankruptcy process. Concerning the effects of bankruptcy on contracts, the declaration of bankruptcy shall not entail the termination of contracts that bind both parties, in which the bankrupt is a party, unless they are based on personal considerations. Also the bankruptcy shall not entail the termination of lease or rental entitlement for the remaining period, and any provision to the contrary shall be considered null and void. Moreover, it shall be possible to terminate the indefinite employment contract by virtue of the law without compensation, unless such termination is arbitrary and the notice period is disregarded. And if the contract has a definite term, then it shall not be allowed to terminate the same, unless the liquidator decides not to proceed with the business with the right of the worker to compensation. And each person shall have the right to redeem things he owns from the bankruptcy process, and third parties shall be entitled to redeem things held by the bankrupt like to dispose or sell the same for the account of the owner or deliver the same, while redeeming the price of the goods, and the redeemer may settle the rights of the bankrupt to the liquidator, and the missing deposit shall not be redeemed since he is bound to returned the same yet he shall return a similar one or the value thereof. Securities delivered to the bankrupt shall be returned in order to be collected or dedicated to fulfill a specific matter, and redemption shall not be allowed if the goods lack their immanency. And the seller enters with the group of creditors when the merchandises are included in the purchase storehouses, and he shall have the right to in-kind enforcement and priority in getting the sale returns, and the law considers the funds of the bankrupt spouse as purchased with the money of the bankrupt debtor and same enter the assets of the bankruptcy process unless the contrary is proved, and same applies to the settlement of debts. The redemption action expires one year following the date of publication of the bankruptcy declaration judgment.

The bankruptcy judge affixes the seals on the stores, offices, treasury, books, papers and movables of the bankrupt debtor upon the pronouncement of the bankruptcy declaration judgment, and he or his delegate makes an inventory of the funds and properties of the bankrupt. Such inventory shall be signed by the person who made the process and the report shall be submitted to the bankruptcy judge, and the latter closes the same and delivers it to the liquidator. It shall not be allowed to put seal over clothes and necessary movables, or things that are rapidly deteriorated or which value is decreased or which maintenance require huge amounts or securities that are due on a close date, and the funds to be disbursed on the urgent matters of bankruptcy. The lift of seals and inventory shall start within 5 days from the date of pronouncement of the bankruptcy judgment. The liquidator shall lodge a report on the reasons of bankruptcy and status of bankruptcy, and the file is referred to the public prosecution whenever there is a penal suspicion, and the liquidator shall keep on submitting periodical reports on the status of the bankruptcy process to the bankruptcy judge.

The bankruptcy judge closes the same for insufficiency of funds whenever relevant introductions do not show any benefits for the creditors, and each creditor shall be entitled to file an individual lawsuit to claim for his right, and each right holder may claim for cancelling the decision of closure of bankruptcy within three months from the date thereof, if it is proved that there are sufficient funds for the expenditures of the bankruptcy process, and to lodge a grievance within ten days from the date of rejection of the request.

The bankruptcy judge rules for termination of the bankruptcy process whenever the investigations reveal the inexistence of accepted debts in the bankruptcy process, or the settlement of all accepted debts in the bankruptcy process, or in case of composition with the bankrupt debtor, or the inexistence of valid enforceable funds to the bankrupt debtor, or in case of liquidation of all funds of the bankrupt debtor and the ratification of the final account of bankruptcy, and the bankrupt debtor shall get back all his rights upon the expiry of the bankruptcy process.

Besides, the law regulated the conditions of bankruptcy of commercial companies that discontinued the settlement of their due commercial debts, the amount of which is known and which are not subject of a serious conflict, at the request of their legal representative (manager/liquidator) or the creditor of the company even if a partner, where the joint partners are to be also litigants therewith. And whenever the company is legally declared bankrupt, then all joint partners therein shall be declared bankrupt (joint partnerships, and the joint partners in the commandite company); also if the partner leaves the company after payment discontinuance and if no more than a year has elapsed from the date he left, he shall be declared bankrupt; even if the court is not the competent authority to declare the bankruptcy of such partners. On the other hand, the partners in shareholding companies and the partners or shareholders in commandite companies shall not be declared bankrupt as a result of the bankruptcy of the company. The partners shall not be declared bankrupt in case the company is dissolved and it was still existing without discontinuing the settlement or during its liquidation if it discontinued the settlement, since whenever the company is dissolved and liquidated, they lose their capacity as merchants upon the dissolution of the company even if such dissolution is not declared. Accordingly, in addition to the bankruptcy of the company, each of the joint partners is subject to a bankruptcy process, and one judge shall be appointed for each of such bankruptcy processes. The estate of the company's bankruptcy process shall cover its assets, including its shares, and shall not cover its liabilities save the rights of its creditors. However, the estate of each joint partner's bankruptcy process shall consist of his personal funds and the share he offered in the company. And the bankruptcy of the joint partners shall not entail the bankruptcy of the company as long as the remaining partners keep on settling its debts, yet it leads to the dissolution of the company unless otherwise stipulated in its memorandum of association.

The law regulated as well the way of selling the assets of the bankruptcy process, whereas it prohibited their sale in the period of preliminary procedures during which the seals are affixed on the goods that are not likely to be deteriorated, or subject to an urgent decrease in value, or which maintenance requires huge expenses; or if the sale aims to get the expenses of the bankruptcy process, or has a confirmed benefit in favor of the creditor and the bankrupt debtor after the sale notification. And the pledger creditor shall take the procedures required for the sale of the movables and real estates subject of his pledge no later than one year from the date of declaration of bankruptcy, otherwise the liquidator will have the right to dispose thereof. And if the pledger creditor sells the real estate, then he will get his right and the excess amount will be dedicated to the bankruptcy process, knowing that the sale takes place by means of an auction following the appraisal of the real estate with a list of conditions deposited by the liquidator or the secretary of the creditors' union. Following the sale of the bankruptcy process assets, the bankruptcy judge orders the distribution of the revenues among the creditors, and the secretary of the creditors' union shall notify the creditors of the same, while the share of the creditor marked as achieved and approved shall be fulfilled. In the event where any creditors object to the distribution decision, such objection shall not result in the interruption of the distribution process, however, the objectors may take part in the provisional distributions while reserving their share up till the settlement of the objection.

The good reputation of the bankrupt debtor is restored and his rights are given back to him three years following the end of the liquidation date, and if the bankrupt debtor fulfills all his debts, he shall get back his rights even if such period did not elapse, or if he gets a composition from his creditors, or if it is proved that the creditors acquitted him from all debts or have unanimously decided to restore his good reputation. His good reputation is also restored after his death at the request of any of his heirs lodged before the secretariat of the court, with a copy to the public prosecution and the register, and the creditors are informed thereof and the court shall render a final judgment in this regard; and in case the bankrupt is convicted of any bankruptcy crime following the pronouncement of the judgment on the restoration of the good reputation, then the judgment in question shall be considered null and void.

The law on bankruptcy stipulated that bankruptcy crimes shall be governed by the provisions of the penal code, knowing that the sanction of the bankrupt debtor varies between 6 months to 3 years of imprisonment, with a penalty not less than 1000 Omani Riyals and not exceeding 5000 Omani Riyals, or any one of the two, in case the bankrupt debtor hides in bad faith his funds, totally or partially, or overestimates the same to reach restructuration or composition, or unrightfully involves a creditor / or

enables him to get involved in the structuration or composition procedures, or in case he intentionally fails to mention the name of a creditor in the list of creditors. The sanction of the bankrupt debtor varies between 3 months to 2 years of imprisonment, with a penalty not less than 500 Omani Riyals and not exceeding 2000 Omani Riyals, in case the bankrupt debtor participates in bad faith in the composition deliberations and votes on the same without having the right to do so, or if the debtor merchant or any other person decides to grant him special features against voting in favor of the composition. On the other hand, the composition trustee shall be subject to the same sanction, if he submits or acknowledges incorrect statements about the situation of the debtor merchant. and there shall be imposed an imprisonment sanction varying between 3 months to 1 year, with a penalty not less than 500 Omani Riyals and not exceeding 2000 Omani Riyals, on each of the controller or supervisor who intentionally gives incorrect statements or supports such statements in order to cause damage to any of the creditors or the bankruptcy process. Last but not least, there shall be imposed an imprisonment sanction varying between 3 years to 5 years, with a penalty not less than 2000 Omani Riyals and not exceeding 3000 Omani Riyals, on the expert who gives incorrect information about the procedures set forth in the bankruptcy law or who acts in collusion with the bankrupt debtor or any of the creditors.

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