

The Economic Impact of the Covid-19 Pandemic Related to Bahrain's Bankruptcy Law

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Abstract

The purpose of this paper is to address the concerns relating to the economic impact of the Covid-19 Pandemic in the Kingdom of Bahrain by observing the preventive measures taken by the government to ensure minimal economic deterrence. Furthermore, the paper shall also address the role and the position of the Reorganization and Bankruptcy Law no. (22) 2018 of Bahrain in light of the economic duress faced by the businesses in Bahrain and the role played by the government and financial institutions in resolving matters relating to bankruptcy that would be more prevalent due to the Covid-19 Pandemic.

The importance of the research is highlighted by highlighting the economic impact and the mechanism of bankruptcy procedures followed in Bahrain, especially in light of the global economic crisis it is facing due to the Covid-19 pandemic.

The study aims to clarify the laws related to bankruptcy with a study of the current situation in Bahrain. As there is no previous study regarding the economic effects on the movement of trade in the Kingdom of Bahrain in light of the Corona pandemic and the role of bankruptcy law in that. It was also clarified through this study to the close relationship between local legislation and international legislation and agreements related to this subject.

Keywords: UNCITRAL rules, Bahrain, bankruptcy, Covid-19, economic stimulus, Islamic finance

METHODOLOGY

The methodology adopted in the research for this paper involves a thorough reading and analysis of the Bankruptcy law and various government policies. Various reports of the IMF, OECD, UN, have also been referred to for a better understanding of the situations surrounding the concerned topic. The study is thus based primarily on a doctrinal-qualitative approach. Based on the research, co-relations have been drawn with the position of the law in other jurisdictions.

FINDINGS

It has observed as to how the laws have been made compliant to general practices surrounding bankruptcy proceedings guided by the UNCITRAL primarily. The domestic legislations of Bahrain have been compared to the global leading economies have been observed to be in lines of such standards and has constantly evolved to meet the growing challenges through time.

IMPORTANCE OF STUDY

The importance of research is highlighted by shedding light on the economic impact and the mechanism of Bankruptcy procedures adopted in Bahrain especially considering the global economic crisis faced due to the Covid-19 Pandemic.

ORIGINALITY

The paper intends to contribute to the research related to the existing conditions of the laws relating to bankruptcy while duly focusing on the present scenario in Bahrain. There is no study that is readily available regarding the position in Bahrain specifically despite of a plethora of material that discusses the provisions of the Reorganization and Bankruptcy Code on a general level. The Paper has also tried in drawing close relationships between the domestic legislation and the various regulations, mandates, conventions and requirements governing the same.

ETHICAL STATEMENT

The paper affirms that all the information provided in this paper is affirmative to the present legal position and in no way whatsoever seeks to claim or provide the reader with any false or misleading information. The author has also relied on prior sources from well reputed books and journals which have been duly cited as and where necessary. The author's opinion wheresoever added has been arrived at only after reading and duly understanding the current legal position.

DATA AVAILABILITY STATEMENT

The data used for understanding the jurisprudence in the present paper has been relied upon interpretation of the Bankruptcy Law which has been studied in detail from books and official websites of the Government of Bahrain. Furthermore, to understand the measures adopted in light of the Covid-19 Pandemic, reliance has been placed on sites such as Reuters and other allied official news sites. All sources have been duly cited as and where required.

INTRODUCTION:

The deadly contagion of the COVID-19 leading to a pandemic has severely impacted the economic and business structures of almost all nations globally, despite of taking measures to curb the effect. The effect of COVID-19 on the economy and business sector of Bahrain has resulted in the nation taking proactive measures to reduce the impact and hardships caused to the above-mentioned sectors. Bahrain, being one of the least wealthy nations amongst the oil producing Gulf nations has observed the assistance provided not only to the citizens, but also businesses by the government. The paper shall be addressing the economic impact of the pandemic faced by Kingdom of Bahrain by closely studying the financial as well as the bankruptcy regime in the Kingdom of Bahrain.

PART – 1**ECONOMIC IMPACT OF COVID-19 ON BAHRAIN**

The major economic factor in Bahrain can be attributed to the global fluctuations of crude oil prices. But it is observed that the impact with the onset of the pandemic on Bahrain is not as adverse as that of the other nations, due to the diverse business sector of the Bahraini economy.¹ The forecast of the GDP growth was estimated to be -4.9% in 2020 and a growth of 5% was predicted for the year 2021 by the IMF forecasts in April 2020.² The nation has also observed very low unemployment rates with the onset of the COVID-19 pandemic, which can be attributed to the early assistance and proactive measures of the government to assist businesses retain their employees and face the least effect of the economic shocks. It has been reported that due to the restrictions, the Bahraini economy fell by 8.9% in the second quarter of the year and the non-oil associated economy also declined by 11.5%.³

The pandemic has led to a major roadblock by causing socio-economic disruptions which poses a significant threat to the route of Bahrain to achieve its 2030 Agenda for Sustainable development. With the plethora of on-time initiatives by the government, the impact is less felt as of now. The worst impacted sector would be that of the SME, and Bahrain has been seen to be well equipped at par with other Gulf nations to prevent any unemployment or bankruptcy. Bahrain has provided small businesses with deferring debts and Tamkeen programs.⁴

MEASURES ADOPTED BY THE GOVERNMENT OF BAHRAIN IN LIGHT OF COVID-19

The Government of Bahrain had decided on the onset of the pandemic that it shall provide economic stimulus packages valuing up to \$570mn. by means of paying salaries of upto 100,000 private sector employees in the months of April to June in order to ensure that the economic blow due to the pandemic is remedied.⁵ The government had also rolled out measures where they would pay the electricity and water bills of businesses and citizens along with extending tax breaks. This in fact has been observed as one of the most efficient and effective economic stimulus packages adopted by any nation at the nascent stages of the pandemic, which is not only restricted to the citizens, but also extends to the business to help them not suffer tremendous business losses.

The government had further provided exemptions from paying of municipality fees by commercial establishment along with exemptions of industrial and commercial entities from paying government rents.⁶ In support of the SMEs, there was an increase in the liquidity fund that the government provides for. In order to prevent any foreseeable corporate bankruptcy that a corporate entity may face due to the economic shock of the pandemic, the government redirected the Tamkeen⁷ programs in order to financially support the adversely impacted corporate entities and directed in the restructuring of all debts issues by Tamkeen.⁸

¹ Nordea Trade, <https://www.nordeatrade.com/no/explore-new-market/bahrain/economical-context>, (last visited Feb 16, 2021).

² UN, *Shared Responsibility, Global Solidarity: Responding to the socio-economic impacts of COVID-19*, Report of the Secretary General, March 2020.

³ Reuters Staff, *Bahrain's economy shrank by 8.9% in second-quarter amid coronavirus restrictions*, REUTERS, (Sept. 27, 2020, 5:58 PM), <https://www.reuters.com/article/bahrain-gdp-int-idUSKBN2610IT>.

⁴ *Joint United Nations Covid-19 Socio-Economic response and recovery Framework*, UNITED NATIONS IN THE KINGDOM OF BAHRAIN, UNITED NATIONS SUSTAINABLE DEVELOPMENT GOALS, 3, 16, https://unsdg.un.org/sites/default/files/2020-11/BHR_Socioeconomic-Response-Plan_2020.pdf.

⁵ Mohammed Hamad, *Coronavirus wages: Bahrain to pay private sector salaries*, ALJAZEERA, (last visited Feb. 12, 2021, 5:30 PM), <https://www.aljazeera.com/economy/2020/4/8/coronavirus-wages-bahrain-to-pay-private-sector-salaries>.

⁶ *Policy Responses to COVID-19*, INTERNATIONAL MONETARY FUND, <https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19#B> (last visited Feb. 18, 2021, 7:30PM).

⁷ Tamkeen is a semi-autonomous government agency that provides loans and assistance to businesses.

⁸ Supra note 4.

Furthermore, the Central Bank of Bahrain's assistance by increasing its lending facilities to banks in order for the banks to facilitate any deferred debt payment and also provide a credit repayment extension and loan deferral has been extended to the first half of 2021.⁹

PART – 2

BANKRUPTCY LAW IN BAHRAIN

With the onset of any economic crisis, there comes an evitable situation of businesses irrespective of their size to face significant hardships which may even nudge the businessmen, traders or even big corporates to file for bankruptcy. A nation tends to protect such stakeholders of the economy by assisting businesses by means of adopting beneficial laws and procedures aimed at assisting businesses from economic hardships and pave a path for financial and business recovery. The economy of Bahrain is majorly run by the oil companies and foreign investors who have been attracted due to the wonderful and beneficial business environment and infrastructure. Like all Bankruptcy and Bankruptcy related laws, the 2018 law of Bahrain had been formulated with the intention of assisting the growth of the nation's international market reputation and the foreign business market by means of drawing in more investors whilst maintaining and strengthening the economic and business community. It is observed as to how the system introduced by way of the 2018 law is closely interrelated to the US Chapter 11 Bankruptcy Legislation.¹⁰

The 2018 Legislation has evolved from the Bankruptcy and Composition Law 1987 which became obsolete when it came to addressing the growing importance of trader and commerce in Bahrain. The purpose behind promulgating the 2018 Bankruptcy Law was to ensure that Bahrain is able to sufficiently provide beneficial laws that enhanced market protection to those entities that have been set up in Bahrain as well as the entities that have seen a significant amount of foreign investment; and to also permit and provide for a modern requirement of ensuring that businesses are duly permitted to restructure instead of winding-up, which plays a crucial role for companies that have tremendous levels of debts.¹¹ By realizing the aspirations of the Kingdom to be an upcoming 'economic-hub' where innovation and entrepreneurship is fostered and promoted, such a law which is seen to 'decriminalize' business failures plays a pivotal role in attracting more market players.¹²

Bahrain has passed the Reorganization and Bankruptcy Law (hereinafter referred to as the Bankruptcy Law) 2018¹³ which has replaced and repealed the Bankruptcy and Composition Law of 1978 with the aim of updating the procedure involved in dealing with bankruptcy in order to attract and encourage investment. The law is applicable to commercial companies and individual traders whose businesses have been registered in Bahrain. It is seen as to how the New Law has not included companies that have been either legally exempted or exempted based on being licensees of the Central Bank of Bahrain (CBC), and procedure for the same has been discussed in the Financial Institutions Law, 2006.¹⁴ Since the enactment of the law which gives the Hon'ble High Civil Court the power to address issues and claims of bankruptcy and bankruptcy as well as for reorganization, only 10 cases have been presented before the court for its due adjudication.¹⁵

The Bankruptcy Law of Bahrain has been implemented to meet the goals of ensuring the protection of the bankruptcy estate so that the best value can be realized of such estates, ensuring and promoting utmost transparency and integrity of the reorganization or bankruptcy/bankruptcy process, aims at avoiding liquidation by addressing the beneficial reorganization of the debtor whilst the dues are cleared and lastly to ensure that there

⁹ Regulatory Measures to Contain Financial Repercussions of the Covid-19 Dated 17/03/2020, CENTRAL BANK OF BAHRAIN,

[https://cbben.thomsonreuters.com/sites/default/files/net_file_store/Regulatory Measures to Contain the Financial Repercussions of the Covid-19 17 March 2020.pdf](https://cbben.thomsonreuters.com/sites/default/files/net_file_store/Regulatory%20Measures%20to%20Contain%20the%20Financial%20Repercussions%20of%20the%20Covid-19%2017%20March%202020.pdf).

¹⁰ STA Law Firm, *New Bahrain Bankruptcy Law*, MONDAQ, (Nov. 30 2018), <https://www.mondaq.com/insolvencybankruptcy/759978/new-bahrain-bankruptcy-law?login=true>.

¹¹ Buthaina Amin and David Billington, *Bahrain's New Bankruptcy Law*, EMERGING MARKETS RESTRUCTURING JOURNAL, Vol. 9, 2019, <https://www.clearygotlieb.com/-/media/files/emrj-materials/issue-9-2018/bahrains-new-bankruptcy-law-pdf.pdf>

¹² *Id.*

¹³ Reorganization and Bankruptcy Law (New Law), Law No. 22 of 2018.

¹⁴ Zu'bi and Partners, *Bahrain's New Bankruptcy Law*, OXFORD BUSINESS GROUP THE REPORT: BAHRAIN 2020 EDITION, [https://zubipartners.com/2020/03/10/bahrains-new-bankruptcy-law/#:~:text=The%20New%20Law%20does%20not%20apply%20to%20personal%2C%20family%20or%20corporate%20insolvency%20case](https://zubipartners.com/2020/03/10/bahrains-new-bankruptcy-law/#:~:text=The%20New%20Law%20does%20not%20apply%20to%20personal%2C%20family%20or%20corporate%20insolvency%20case.). (last visited Feb. 16, 2021, 5:30PM).

¹⁵ Cases of reorganization and bankruptcy, Ministry of Justice, Islamic Affairs and Wakf, <https://www.moj.gov.bh/ar/reorganization-bankruptcy-cases> (last viewed Feb. 20, 2021, 7:30PM).

is a fair distribution and equal distribution of creditors involved.¹⁶ This is seen to ensure that the banks assist their domestic and international clients by ‘navigating’ them through the current market environment towards growth along with providing them with assistance to resume their profitable businesses.

The financial assistance provided by the government through the various stimulus packages has also ensured that businesses do not face dire straits and has thus ensured that the business economy of Bahrain is not prone to financial restructuring and bankruptcy proceedings.¹⁷

2.1 Understanding the Sharia Principles Associated to Bankruptcy in Islamic Finances

Bahrain is recognized as one of the leaders in Islamic Finance as recognized by the MENA and ICD, where the banks and financial institutions have followed the standards of the Sharia banking procedures. Hence it is quite pertinent to first gain an understanding of how the principles of Sharia law is applicable to instances of Bankruptcy.

Under the Holy Quran, concepts of bankruptcy and bankruptcy (taffis) emanates from concepts of social responsibility and charity and how it’s a sin and not a mere legal obligation to repay debts once taken.¹⁸ Under the Sharia law, there is no justification dealing with the discharge of debts other than the payment and performance of activities such as fraud and excuses.¹⁹ Hence, the repayment of debts can be postponed if the wealth of the debtor is insufficient, but the obligation to repay can never be said to have been discharged. Bankruptcy (Iflas) under the Sharia law does not distinguish between the bankruptcy of small entities or bankruptcy of individuals.

Under the Sharia law, recovery in instances of bankruptcies is usually commenced by the creditors and there is an obligation that becomes imposed on the debtor to repay the same. This can be associated to the involuntary proceeding under the modern law of bankruptcy. The Sharia principles emphasize on how the judges usually distrain the property of the debtor, which can be related to the practice of granting the automatic moratorium under the Bankruptcy law 2018. Furthermore, another similarity and maintenance of the Sharia principles of bankruptcy procedures can be observed by the fact that the modern law has maintained the practice of sulh or voluntary settlement or compromise in order to reorganize, repay and/or restructure the debt.

2.2 Key Legal Provisions Involved in The Reorganization, Liquidation, Bankruptcy and Bankruptcy of Entities

For commercial entities (companies, partnerships and sole proprietors/individuals) the Bankruptcy Law 2018 shall be applicable for matters involving claims of liquidation and/or bankruptcy. For the entities that have been licensed by the Central Bank of Bahrain (CBB), the Central Bank of Bahrain and Financial Institutions Law, 2006²⁰ oversees the regime for liquidation that shall be applicable only to the insolvent CBB licensees under the supervision of the CBB. Furthermore, for voluntary liquidation of any entity shall be governed by the Commercial Companies Law 2001.²¹

The present law does not discuss with aspects of initiation of bankruptcy procedures for individuals not being traders. It is also observed as to how in such instance, the personal and family property of the individual trader is not pulled into the bankruptcy proceeding. The law merely restricts itself to business, companies, corporates, and traders (those who are not licensees under the CBB).

Action for recovery of debts of the debtor is invoked through the means of Article 6 of the Bankruptcy Law where the debtor himself files a petition to commence bankruptcy on grounds of failure to repay debts, debts exceed the assets. The Bankruptcy Law also provides for the creditors (involuntary proceeding) to file a case before the Hon’ble High Court whereby they request for the commencement of bankruptcy proceedings, on similar

¹⁶ Art.2, Reorganization and Bankruptcy Law, Legislative Decree No. 22 of 2018, <https://bahrainbusinesslaws.com/laws/Reorganization-and-Bankruptcy-Law>.

¹⁷ Noor Radhi, Noora Janahi, Hassan Alkoofi, *Insolvency 2020 Bahrain*, CHAMBERS AND PARTNERS, (Nov. 19, 2020), <https://practiceguides.chambers.com/practice-guides/insolvency-2020/bahrain>.

¹⁸ McMillen Michael, *An Introduction to Shari'ah Considerations in Bankruptcy and Insolvency Contexts and Islamic Finance's First Bankruptcy (East Cameron)*, 2012, SSRN ELECTRONIC JOURNAL, 10.2139/ssrn.1826246,

https://www.researchgate.net/publication/228186759_An_Introduction_to_Shari'ah_Considerations_in_Bankruptcy_and_Insolvency_Contexts_and_Islamic_Finance's_First_Bankruptcy_East_Cameron.

¹⁹ Abed Awad and Robert E. Michael, *Iflas and Chapter 11: Classical Islamic Law and Modern Bankruptcy*, 44 THE INTERNATIONAL LAWYER 975 (2010) (“Awad & Michael”), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1758020.

²⁰ The Central Bank of Bahrain and Financial Institutions Law, 2006, Legislative Decree No. 64 of 2006.

²¹ The Commercial Companies Law, Legislative Decree No. 21 of 2001

grounds under Article 6.²² A notable feature of the law, unlike other jurisdictions' bankruptcy and bankruptcy law is that, there is not requirement for 'bankruptcy' of the entity to exist for the commencement of the voluntary proceedings, and rather it rests on the unanimous approval of shareholders or partners of the entity. As discussed earlier, the main rationale behind the law is to ensure that the business activity restores its financial position to the best possible extent by capitalizing its assets.

The trend observed in Bahrain and other Gulf Nations of the GCC is the involvement of a consensual and out-of-court mechanism of restructuring of companies (inclusive of situations such as mergers and acquisitions, bankruptcy, valuation, etc.).²³ The law also ensures to address the aspects of resolving such issues related to debts based on amicable settlements and thus does not mandate the involvement of the courts, rather the law and practice ensures the constant involvement of banks to ensure the best outcome. It can be observed as to how the courts can ratify the agreements entered into by the parties.²⁴

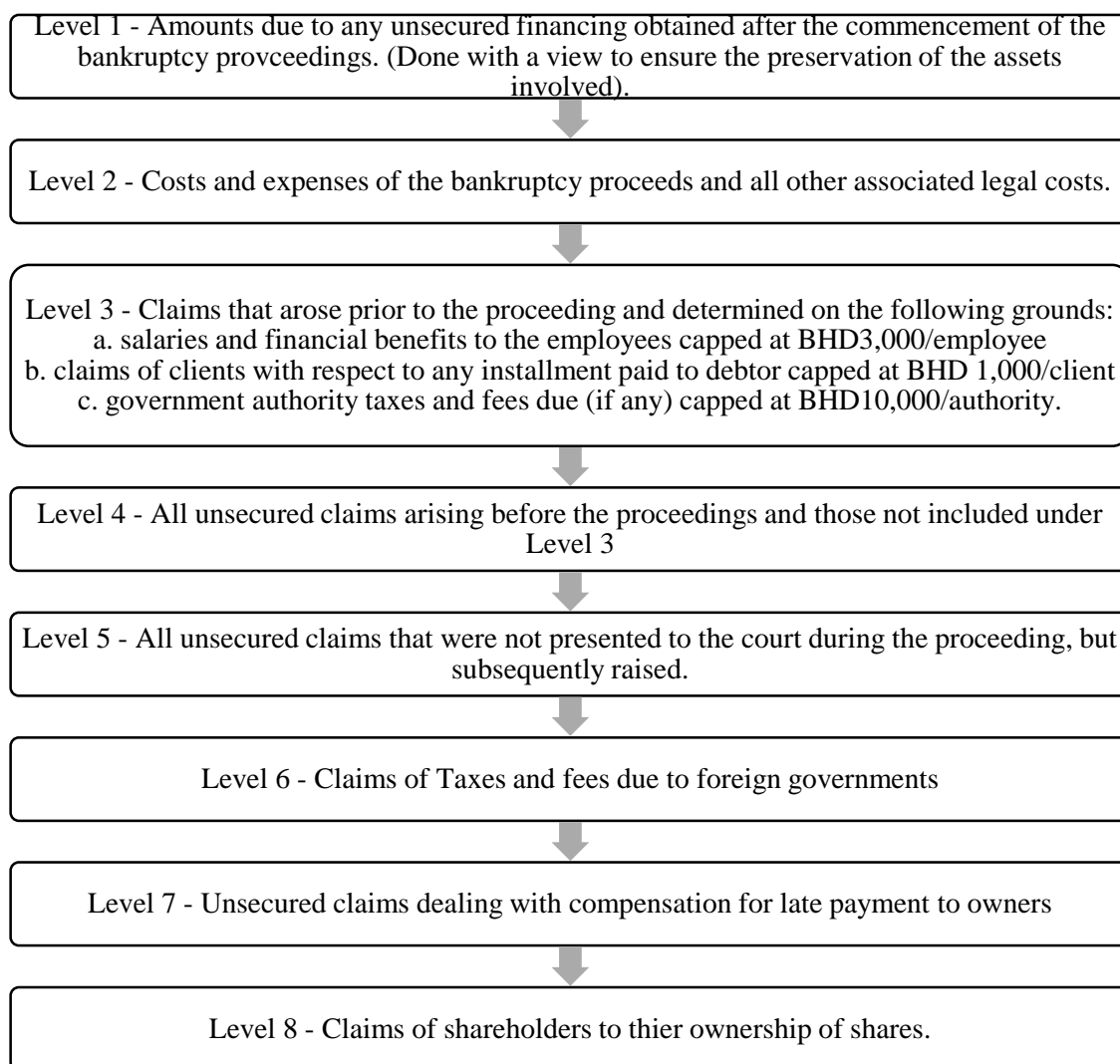
The law provides for detailed provisions relating to the realization and recovery of the assets by means of sale and auctions and repaying the proceeds to the creditors based on a certain preference. Parties are entitled to create and enforce mortgages, securities, pledges as well.

The priority of claims is provided under the law based on a hierarchical mechanism is divided into 8 different levels that are determined based on priority for the remaining concerned parties to such transactions of realization and recovery of debts. This is seen to be quite a comprehensive mechanism adopted under the law for the realization of all debts. These levels under Art.93 of the Bankruptcy law can be summarized as:

²² Art.8, Reorganization and Bankruptcy Law, Legislative Decree No. 22 of 2018, <https://bahrainbusinesslaws.com/laws/Reorganization-and-Bankruptcy-Law>.

²³ Supra, note 17.

²⁴ Art. 115-117, Reorganization and Bankruptcy Law, Legislative Decree No. 22 of 2018, <https://bahrainbusinesslaws.com/laws/Reorganization-and-Bankruptcy-Law>.



There are provisions dealing with moratorium of 120 days in instances of bankruptcy upon the approval of the bankruptcy proceedings and during this moratorium the credits are disallowed from enforcing their secured rights.²⁵ The introduction of moratorium is considered to be one of the most crucial and important features of the Bankruptcy Law. The moratorium even not provided for explicitly, commences automatically with the start of the proceeding and lasts till the end of the case (before the settlement of the claims associated). This practice was adopted with the measure to ensure that the creditors do not take undue advantage of the distressed and disputed assets of the debtor, thus ensuring that the Law is 'debtor-friendly' (in consonance with the model Chapter 11 of the US Bankruptcy Code).²⁶ This also oversees the fact that Bankruptcy Law ensures that businesses that face bankruptcy or bankruptcy do get an equitable and rather beneficial position regarding receiving the maximum value for the assets. The request of moratorium being extended is also welcomed by the courts, whilst having restrictions regarding derivatives and set offs of unsecured creditors.

2.3 Cross-border Bankruptcy

The Bankruptcy Law made Bahrain the first GCC nation to deal and discuss matters pertaining to cross-border bankruptcy that has been implemented to ensure the protection provided for foreign investors and their investments.²⁷ This follows the general practices in other jurisdictions, where requests are filed before the Bahraini High Court by the foreign courts to initiate bankruptcy cases that are to be run concurrently in both the nations involved. This ensures that there is an equitable cooperation between the different jurisdiction courts that would

²⁵ Art. 54, Reorganization and Bankruptcy Law, Legislative Decree No. 22 of 2018, <https://bahrainbusinesslaws.com/laws/Reorganization-and-Bankruptcy-Law>.

²⁶ Supra, note 15.

²⁷ Chapter 5, Reorganization and Bankruptcy Law, Legislative Decree No. 22 of 2018, <https://bahrainbusinesslaws.com/laws/Reorganization-and-Bankruptcy-Law>.

be associated to the Bahraini Courts which aims at protecting the interests of debtors as well as the creditors whilst ensuring that foreign relations are not disrupted.

The Bankruptcy Law 2018 has adopted the principles and requirements enshrined in the UNCITRAL Model Law on Cross-Border Bankruptcy 1997 in order to facilitate and accommodate the best principles involved in cross-border insolvencies. This can be observed by virtue of Art.165 of the Bankruptcy Law.

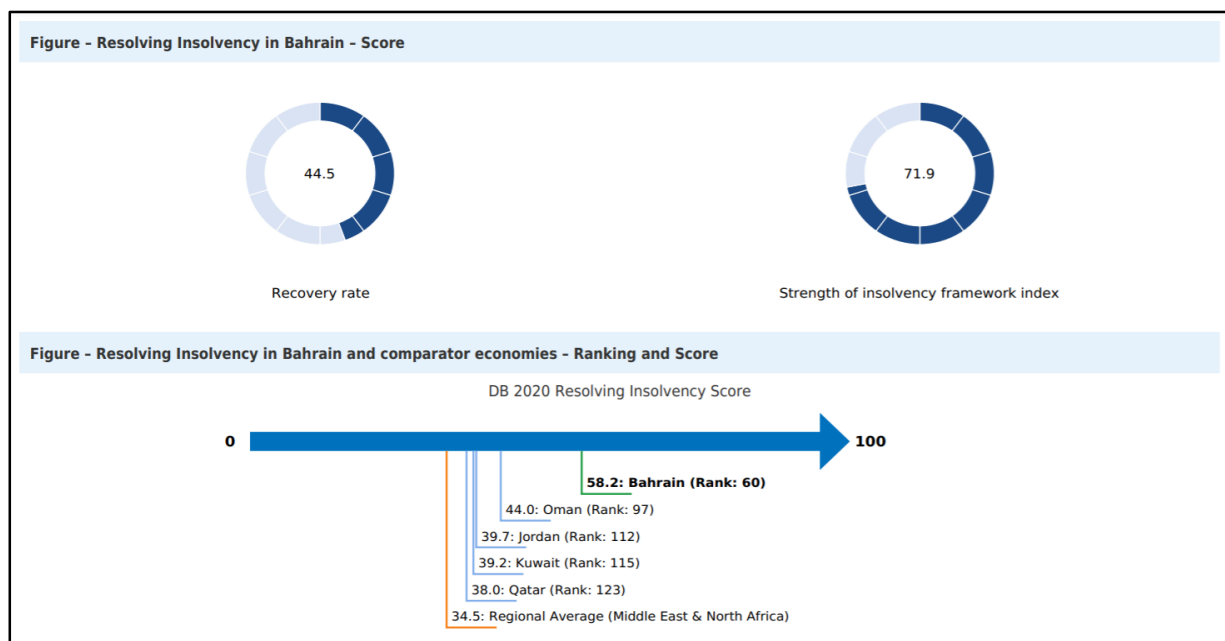
Reference can be relied on Art.161 of the Bankruptcy Law where it provides that there shall be an overruling of any provision under the Bankruptcy Law in those situations where Bahrain is a party to any international treaty or convention. This is slightly problematic as in order to satisfy and attract the foreign parties and to avoid conflict of law, the domestic law is being undermined to a great extent. Foreign creditors have been vested with the power to be represented by appointed administrators or appointed liquidators in all foreign proceedings that can be addressed in Bahrain. The law is seen to take measures where it is safeguarding the interest of the foreign creditors by providing them with equally beneficial rights and treatment such as those provided to the domestic Bahraini creditors.

The third chapter of the Bankruptcy Law is set of key provisions where the legislators and the judiciary has recognized the practice of foreign bankruptcy proceedings. The law provides with the remedy to foreign courts to initiate bankruptcy proceedings before the Courts in Bahrain on the fulfilment of certain procedural applications, it also notably provides for the creditors to apply for any interim protection measure with respect to the disputed assets and associated debts/properties. The aspect of the domestic courts of Bahrain interacting and concurrently working with any other foreign court can be observed under Art.186 of the Bankruptcy Law in relation to proceedings instituted against the common debtor involved in the bankruptcy proceedings where the foreign courts are seen to possess certain legal interests.

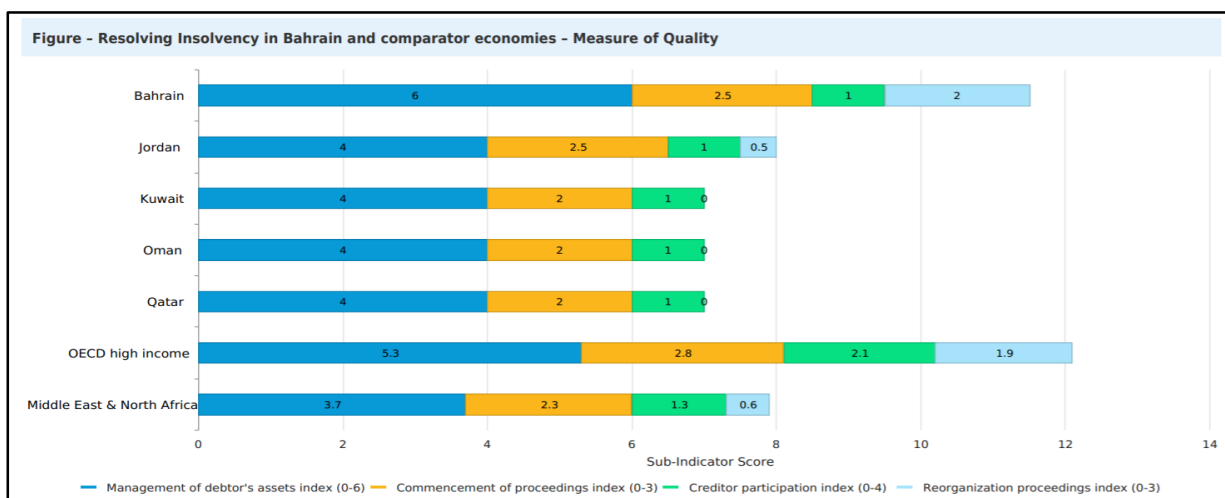
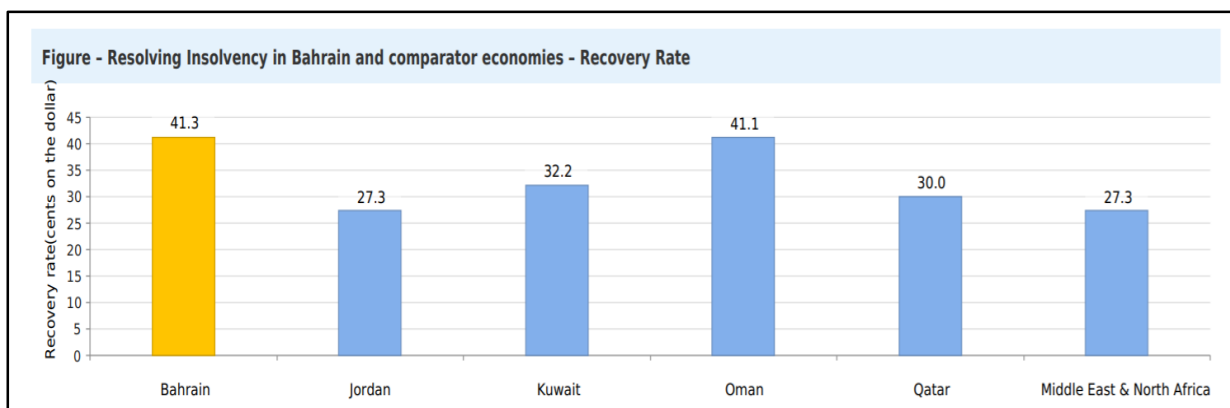
2.4 Effectiveness of Bankruptcy Proceedings in Bahrain

In order to understand the effectiveness of the New Bankruptcy Law in Bahrain, we can rely on the following facts and figures taken from the World Bank Group’s Economic Profile of Bahrain – Doing Business 2020 Report.²⁸ (The following charts have been taken from the same report merely for understanding the position and factual figures better).

The rate of recovery from the Bankruptcy process in Bahrain is at 41.3% with an approximate of 2.5 Years taken to resolve a dispute. The Average in the Middle East and North Africa Region is 27.3% recovery rate and a duration of 2.7 Years that is usually taken. The nature of recovery and resolving the cases of Bankruptcy in Bahrain is seen to be the highest in the Gulf region. The costs involved as well, that is associated with the recovery and other costs incurred during the process is valued at an average of 9.5% of the involved estate value, which shows the beneficial result of the recovery mechanism implemented in Bahrain.



²⁸ Doing Business 2020, Economic Profile Bahrain, WORLD BANK GROUP, 2, 55, <https://www.doingbusiness.org/content/dam/doingBusiness/country/b/bahrain/BHR.pdf> , (last viewed Feb 20, 2021, 7:30 PM).



(Source: <https://www.doingbusiness.org/content/dam/doingBusiness/country/b/bahrain/BHR.pdf>)

The first case enlisted under the Bankruptcy Law 2018 is that of the voluntary application filed by GARMCO (Gulf Aluminum Rolling Mill Co.), a Bahrain based business entity. The application was filed under the law for a restructuring plan to be implemented to revive the company. The company received the due moratorium as provided based on the procedure enshrined under the law. The Company’s main concern was to seek sufficient time to prepare a strategic reorganization plan that had commenced in 2018, but due to severe impediments and technical issues it could not be concluded. Thus, the Court granted the protections as provided under the law so that the company could meet the involved legal obligations and also obtain the protection that could warrant their business to continue its operation while undergoing a reorganization.²⁹

PART – 3
INTERNATIONAL PERSPECTIVES OF BANKRUPTCY LAWS

3.1 The UNCITRAL Bankruptcy Law

The UNCITRAL Model Law on Cross-border Bankruptcy 1997 (MLCBI) provides for the framework of the global practices of bankruptcy regime ideally involving a single debtor. The MLCBI ensures procedural expediency and lower costs involved in the adjudication of bankruptcy. The MLCBI revolutionized the sector of dealing with issues of bankruptcy as it was quite a sensitive activity for any nation to adopt.³⁰ The UNCITRAL has been constantly working in the direction to establish a simple and expedient global bankruptcy regime by means of developing mechanisms and solutions that would address beneficially the concerns and claims of bankruptcy of individuals, MSMEs, traditional family-run businesses having personal debts.

For most nations, the works of the UNCITRAL has been the guiding light in the formulation of laws and policies surrounding the Bankruptcy procedures and processes along with benefits that can be provided under the

²⁹ Gulf Aluminum Rolling Mill vs. National Bank of Bahrain and Ors., Case Number 02/2019/00563/2.

³⁰ Samira Musayeva, *The current work by UNCITRAL in the area of insolvency law*, INTERNATIONAL INSOLVENCY & RESTRUCTURING REPORT 2020/21, (Dec. 11, 2020), <https://www.iiiglobal.org/sites/default/files/media/International%20Insolvency%20%26%20Restructuring%20Report%202020-21%20e-book.pdf>.

law. The Working Group under the UNCITRAL that deals with the aspects of formulating laws and policies around bankruptcy plays a significant role. Since 2019, the Working Group is primarily focusing on developing measures to establish and ensure a simplified and proper bankruptcy regime, redresses cases where there are ‘no assets, no income and no fraud’ and developing stronger and adaptive mechanisms to protect the rights of the creditors without jeopardizing other considerations involved.³¹

With the onset of the Pandemic which has majorly affected MSEs and other smaller entrepreneurs and businesses, the UNCITRAL’s assistance has been proven to be helpful to various nations to formulate new economic and commercial policies. The activities of the Working Group’s and the formulation of their final policy on MSE bankruptcy, when it is presented to UNCITRAL for its finalization and adoption, can only be enriched by results of the thorough assessment of that experience.

The key focus of the debt restructuring model and practice adopted by the Bahraini Bankruptcy Law can be attributed to the principles and practices enshrined under the UNCITRAL Model law which seeks to encourage debt restructuring done in furtherance and in favor of liquidation while simultaneously does not prevent debtors from continuing their ordinary course of business even during the court-supervised procedures due to the enforcement of moratorium has been proven in Bahrain having a significantly low number of cases of bankruptcy.

3.2 The GCC Practice

With the onset of the 2020 Covid-19 Pandemic in the Gulf Countries, have led to the nations facing similar economic impacts that were caused by the 2008-09 Financial crisis. The nations of GCC have begun realizing that their sustenance on an oil-based economy is becoming less beneficial in the long run in the days to come and have hence are seen to deviate towards opening their economy and business market towards new and diverse ventures. For any nation to attract foreign investors and foreign investment, amending laws towards it being more beneficial for the foreign stakeholders plays a crucial role. In the last 5 years, it has been observed as to how Bahrain, along with Saudi Arabia and the United Arab Emirates have rapidly progressed towards opening their markets and economies to a rapidly advancing and ever-growing globalized world. These 3 nations have shaped their bankruptcy related laws towards a corporate or commercial restructuring law by providing tools in hands of the distressed debtors who can continue the running of their businesses while ensuring that they best clear their market debts.

All the 3 nations have adopted their new Bankruptcy laws in light of the golden principle of ‘debtor in possession-oriented restructuring practices’ from Chapter 11 of the US Bankruptcy Code.³² The nations have also ensured that they are well adapted with the UNCITRAL Model Law on Cross-Border Bankruptcy Proceedings which would portray the legal scenario surrounding the bankruptcy and restructuring proceedings in a positive light. A few distinguishing features between the law of Bahrain and that of the United Arab Emirates and Saudi Arabia are as under:

- The Bahraini law duly recognizes in-court, liquidation proceedings as well as a pre-packaged reorganization procedure. The UAE law is centered around a preventative composition procedure, while the Saudi Arabian law can be seen to have common features between the legislation of Bahrain and UAE.
- Creditors under the Bahraini and the Saudi Arabian Bankruptcy laws can commence involuntary bankruptcy proceedings in certain circumstances as enshrined under the law of the respective nations. Whereas the creditors cannot initiate involuntary reorganization proceedings but can be the direct participants as beneficiaries to such proceedings.
- When it comes to the status of secured creditors, it can be seen as to how under the bankruptcy law in Bahrain and Saudi Arabia, they have been entitled to be bound by any reorganization proposal, be it done voluntarily or through the court (but in both cases, the scheme or proposal is to be ratified by the court). On the other hand, the law in UAE has not provided for any beneficial status to secured creditors to be participants in the reorganization, until and unless they relinquish their security rights, which is seen to bear certain detrimental effects on the creditors.

3.3 Comparison between the US, Indian and Bahraini Laws of Insolvency, Bankruptcy and Reorganization

The US Bankruptcy Code, better known as the Title 11 of the US Code³³ is the primary legislation governing aspects and procedures of bankruptcy for businesses and individuals dealt by the US

³¹ *Id.*

³² Patrick Gearon and Roger Elford, *Recent Restructuring Developments in the Gulf Region*, GLOBAL RESTRUCTURING REVIEW, G.R.R., (Dec. 15, 2020), <https://globalrestructuringreview.com/review/europe-middle-east-and-africa-restructuring-review/2020/article/recent-restructuring-developments-in-the-gulf-region>.

³³ Title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (2012).

Bankruptcy Court. The Code comprises primarily of the Bankruptcy Reform Act 1978³⁴ and the Bankruptcy Abuse Prevention and Consumer Protection Act 2005³⁵. The US Bankruptcy Code is a Federal Legislation comprising of 6 core aspects (Chapter 9 to Chapter 15) of Bankruptcy and Reorganization, which are harmoniously applicable to businesses and individuals under distress of their economic position. The US Bankruptcy Code follows a two-pronged approach to efficiently provide redressal to such persons, which are the trustee-controlled liquidation mechanism under Chapter 7 and the Debtor in possession (DIP) controlled mechanism of reorganization and structured liquidation as duly provided in Chapter 11.

Under the approach of Chapter 7, bankruptcies are considered to be as legal (court based) proceedings where a trustee is appointed by the court to wind-up the business and release the pending dues owed to the creditors after asset realization or liquidation.³⁶ The approach undertaken in situations under Chapter 11, the company is not wound up and the debtor’s board and management continue to carry on business whilst simultaneously working on repaying the debts and subsequently reorganizing the company. The Code recognizes court-based settlement mechanisms as well as out of court settlements based on the benefit of the parties to the insolvency suit. Chapter 15 of the US Bankruptcy Code provides for provisions dealing with cross border insolvency. It has been observed as to how the Bahraini Bankruptcy Law closely resembles the Chapter 11 of the US Bankruptcy Code.

The Indian approach is slightly dissimilar to the laws of US and Bahrain. The Insolvency and Bankruptcy Code 2016³⁷ (hereinafter referred to as the IBC) was seen as a sentinel to the insolvency laws of India and was thus promulgated keeping the view of the creditor in possession approach unlike the debtor in possession approach. The IBC provides for statutory, non-statutory as well as voluntary restructuring frameworks.³⁸ The IBC was promulgated with a view of consolidating the various debt recovery and restructuring related laws of distressed companies, and thus aiming at providing the Indian market an effective and efficient restructuring mechanism relating to the reorganization and realization of a company’s debt along with ensuring that there is a speedy liquidation and remedial mechanism to ensure the most optimal recovery of the creditor’s investment.³⁹ The adjudicating body under the IBC would not be the courts, but would be the National Company Law Tribunal (NCLT), as well as the Debt Recovery Tribunal (DRT) instead of the Civil Courts. This has been done with the intention of reducing the burden on the judiciary by establishing specialized quasi-judicial authorities which would ensure the best remedy and a speedy disposal of the case. The Government of India had also established the Insolvency and Bankruptcy Board of India (IBBI) which had the power and function relating to oversight over the technical implementation of the Code as well as the functioning of special personnel known as the Insolvency Professionals. The approach in Bahrain can be seen to be on a different tangent that of India. The following⁴⁰ covers a few of the core features of the laws of USA, India and its comparison with the law in Bahrain.

BAHRAIN	USA	INDIA
GOVERNING LAW(S)		
<ul style="list-style-type: none"> • Reorganization and Bankruptcy Law, Law No. 22 of 2018. • Central Bank of Bahrain and Financial Institutions Law, Law No. 64 of 2006 – for Financial Institutions licensed by the CBB. 	<ul style="list-style-type: none"> • Title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (2012). • Bankruptcy Reform Act, 1978, Pub. L. No. 95-598 (1978) • Bankruptcy Abuse and Consumer Protection Act, 2005, Pub. L. No. 109-8 (2005). 	<ul style="list-style-type: none"> • The Insolvency and Bankruptcy Code, 2016, Act No. 31 of 2016. • Companies Act 1956 and Companies Act 2013. • Limited Liability Partnership Act, 2008.

³⁴ Bankruptcy Reform Act, 1978, Pub. L. No. 95-598 (1978)

³⁵ Bankruptcy Abuse and Consumer Protection Act, 2005, Pub. L. No. 109-8 (2005)

³⁶ Christopher Hunker, Maximilian Freullo and Robert Trust, *Corporate Insolvency & Restructuring Report 2020: Covid-19 Special Focus: United States*, IFLR (Sept. 17, 2020), <https://www.iflr.com/article/b1nf2xt21f4tkm/corporate-insolvency-amp-restructuring-report-2020-covid19-special-focus-united-states>.

³⁷ The Insolvency and Bankruptcy Code, 2016, Act No. 31 of 2016, India, <https://www.mca.gov.in/Ministry/pdf/TheInsolvencyandBankruptcyofIndia.pdf>.

³⁸ Bahram N Vakil and Nilang T Desai, *Insolvency 2020 India*, CHAMBERS AND PARTNERS, (Nov. 19, 2020), <https://practiceguides.chambers.com/practice-guides/insolvency-2020/india>.

³⁹ *Short Note on Insolvency and Bankruptcy Code*, IBC LAWS, (Jul. 30, 2019), <https://ibclaw.in/short-note-on-insolvency-and-bankruptcy-code-2016/>.

⁴⁰ *Insolvency 2020 Comparisons*, CHAMBERS AND PARTNERS, (Nov. 19, 2020), <https://practiceguides.chambers.com/practice-guides/comparison/513/5949-5986-5963/9343-9345-9352-9358-9362-9368-9385-9389-9394-9398-9401-9344-9346-9347-9395-9393-9392-9391-9390-9386-9380-9377-9375-9374-9370-9371-9367-9366-9363-9349-9350-9351-9348>.

<ul style="list-style-type: none"> Commercial Companies Law, Legislative Decree No. 21 of 2001. (CCL) Involved Government Authority – Ministry of Industry, Commerce and Tourism. 		<ul style="list-style-type: none"> Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002. Recovery of Debt Due to Banks and Financial Institutions Act 1993. Banking Regulation Act, 1949 (for private sector banks).
TYPE OF INSOLVENCY, BANKRUPTCY OR REORGANIZATION		
<ul style="list-style-type: none"> Voluntary Liquidation – Governed primarily by the CCL. Involuntary Liquidation – Governed primarily by the CBB for CBB-licensees. Involuntary Liquidation – Governed by the Bankruptcy Law for non-CBB Licensees.\ Can be filed by the Debtor or Creditor before the Court. 	<ul style="list-style-type: none"> Liquidation and Reorganization is dealt under Federal and State law regimes. Federal Regime – Chapter 7 liquidation, Chapter 11 for reorganization, and Chapter 9 for municipality bankruptcy. Voluntary Involuntary State laws also follow the above in addition to contractual arrangements and out-of-court restructurings. General assignments for the benefit of creditors (ABCs) Receiverships Statutory Dissolutions 	<ul style="list-style-type: none"> Voluntary Liquidation overseen under the provisions of the IBC. Involuntary Liquidation overseen under the provisions of the IBC. Companies can proceed under the provisions of the Companies Act 2013, to implement schemes of arrangement, compromise for the purposes of reorganization of business. This procedure is much more tedious, and IBC is more preferred due to the position of the role of the creditors. Other grounds of statutory winding-up. Even Civil litigation can be filed for the enforcement of debts. Liquidation should be completed within 1 year.
GROUND TO COMMENCE PROCEEDINGS		
<ul style="list-style-type: none"> Petition filed by Debtor on grounds of inability to pay debts within 30 days of due date and/or when liabilities (debts) exceed assets – Art.6 of Bankruptcy Law. Similar grounds as mentioned above for creditors to initiate bankruptcy proceedings by filing a request before the court. In case of CBB Licensees, the grounds and situations are decided by the CBB. The CBB can approach the court as well based on the abovementioned grounds. 	<ul style="list-style-type: none"> No mandate under law that the entity must be subjected to bankruptcy and insolvency proceedings if insolvent. Often, placed into bankruptcy based on the discretion of the directors and officers. Creditors may commence involuntary bankruptcy cases against a financially distressed company (Sec.303 of the Bankruptcy Code). Involuntary bankruptcy proceedings can be filed against debtor who has 12 or more creditors and claims should not be less than USD 16,750. 	<ul style="list-style-type: none"> Requires a minimum default in repayment of debt valued at INR 10,000,000. Filed often by the creditors. Debtor need not be insolvent in all cases. On delay of 30 days from the occurrence of a default and determination of a resolution strategy and resolution, based on the mandates of the Company Law and RBI frameworks.
BODIES THAT THE LAWS ARE APPLICABLE TO		
<ul style="list-style-type: none"> CBB is applicable to Banks, insurance companies, credit institutions and other entities that operate in financial markets. Any other entity that is registered under CCL as commercial company irrespective of nature of sector and ownership is subjected to the Bankruptcy Law. The law does not cover government related bodies. Such is only permitted by means of Art.39 of Constitution of Kingdom of Bahrain. 	<ul style="list-style-type: none"> All body corporates, commercial activity holders and municipalities. Banks are not eligible under the Code. 	<ul style="list-style-type: none"> Corporate debtors include companies and limited liability partnerships. Non-corporate debtors include partnerships, sole proprietors, individuals. Non-Banking Financial Companies having asset size of INR. 5,000,000,000 or more.

CONSENSUAL AND OUT-OF-COURT SETTLEMENTS

<ul style="list-style-type: none"> • Common in Bahraini markets. • Not mandatory under law to always initiate proceedings through the courts. • Consensual restructuring is regulated by contractual terms between creditors and the debtor. • Banks may establish protocols and set up oversight committees to ensure best results. 	<ul style="list-style-type: none"> • Preferred when compared to litigation. • Used to provide the company with sufficient liquidity and a healthy balance sheet, avoid high costs, prevent reputation tarnishment. • Revolves primarily under the procedure provided for under Chapter 11 of the Code. • Strategic move to restructure the funded debt. • No fixed standard timeline or fixed process. • Possibility for inter-creditor agreements to exist along with the creditor-debtor agreements. 	<ul style="list-style-type: none"> • In a few instances, there can be a voluntary debt restructuring following the debtor-in-possession model which is regulated by the framework and process enumerated by the Reserve Bank of India (RBI). This can be observed to be as consensual non-statutory restructuring. • Creditors can try a consensual informal restructuring mechanism before resorting to the procedure under IBC. • No necessary or required interface required for consensual out-of-court settlement, provided that the framework and standards of the RBI are duly followed. • Steering and ad-hoc committees may be formed to oversee the procedure and to ensure that creditors are able to get the best return.
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RIGHTS AND REMEDIES APPLICABLE TO SECURED CREDITORS

<ul style="list-style-type: none"> • Granted to the creditors. • Governed by the Law of Commerce and Civil Code. Recognized under the Bankruptcy Law. • Can enforce mortgages, liens, possessory pledge. • Secured creditors' rights are enforced by means of public auctions after the submission of execution petition before the Civil Court (along with any of the above). • Rights can only be enforceable after the automatic 120 days moratorium. (Art.54 of Bankruptcy Law). The creditors can nevertheless apply for termination of moratorium subjected to the court's approval after factoring the best interests. • As per Art. 83 and 84 of the Bankruptcy Law, the secured creditors are given the right of protection of value depreciation of the encumbered property. • Rated on a preference scheme. • Usually, secured creditors have the priority in receiving benefits of the encumbered property. • All classes of unsecured creditors shall be vested with the same rights in relation to the bankruptcy process or the procedure associated to the reorganization plan. • Creditor committees can be formulated as well. • Pre-judgement Attachments are allowed. 	<ul style="list-style-type: none"> • Can enforce mortgages, liens, possessory pledge. Generally governed by non-bankruptcy laws. • Extent of claim is secured based on the interest of the secured creditor. • Depends strongly on the State laws. Includes remedies such as foreclosure, bids, sale, transfer of ownership, judicial sale. • Secured creditors have a stronger leverage and better property or asset or collateral protection based on the process under Chapter 7. • Adequate protection rights of liens and security interest. • Cram-Down Treatment Rights. • Pre-judgement Attachments are allowed. (Sec. 507) 	<ul style="list-style-type: none"> • Creditors have been expressly permitted to set-off their concerned properties associated with the corporate debtor, this can be attributable to the absence of a moratorium. • Creditors have been given the power to bid in the auction for the assets. • Types of creditors include operation creditors and financial creditors. • No automatic moratorium. Can be requested from the NCLT. Moratorium on the enforcement of security can be applicable only when the debtor is undergoing the process of insolvency. • Mortgages, Hypothecation, securities can be created by the creditors. • Rights of secured creditors are enforceable based on their contractual terms with the debtors. • IBC usually does not make distinction between creditors based on the securities except in cases of liquidation or CIRP (Corporate Insolvency Resolution Process). • All Financial Creditors can actively take part irrespective of being secured or unsecured. • The role of secured and unsecured creditors would vary in cases of schemes of reorganization of the company as its governed by the Companies Act. • Unsecured and secured creditors can form the Committee of Creditors as
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		<p>one body that is claiming the realization and distribution of the liquidated assets.</p> <ul style="list-style-type: none"> • Pre-judgement Attachments are allowed.
PREFERENCE MECHANISM – PRIORITY OF CLAIMS		
Refer to the 8 Levels as provided under Part 2.B of the paper above.	<p>The creditor priority scheme is as follows:</p> <ol style="list-style-type: none"> 1. secured claims. 2. administrative expense claims 3. priority unsecured claims 4. general unsecured claims; and 5. subordinated claims 	<p>Described as the Liquidation waterfall –</p> <ol style="list-style-type: none"> 1. Towards the payment of the costs of the Corporate Insolvency Resolution Procedure. 2. Workmen’s due for the last 24 months preceding to date of commencement of liquidation. 3. Wages and unpaid dues of the last 12 months owed to employees. 4. Financial debts owned to unsecured creditors. 5. Amounts due to government for the last 2 years. 6. Remaining debts and dues 7. Dues to preference shareholders 8. Dues towards equity shareholders and/or partners.
MECHANISM FOR VOLUNTARY AND COMPULSORY INSOLVENCY AND LIQUIDATION PROCEEDINGS		
<ul style="list-style-type: none"> • Claims forwarded by creditors to the bankruptcy trustee. • Validity of claims are determinant on the laws and contracts governing the relationship between the creditor and the debtor. • Creditor’s claim would not be entertained without the approval of the court gained along with the assistance of the bankruptcy trustee. • All associated/related creditors can seek information about the process from the bankruptcy trustee. • Unsecured Creditors may form a Creditor’s committee that can participate in the process upon the approval by the Court. 	<ul style="list-style-type: none"> • Based on the discretion of the company. Except in cases under Chapter 7 and Chapter 11. • Chapter 11 cases can be converted to cases that can proceed under Chapter 7. • Grounds as per Section 1112(b)(4) of the Bankruptcy Code include:⁴¹ <ul style="list-style-type: none"> ○ substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation. ○ gross mismanagement of the estate. ○ failure to file a disclosure statement, or to file or confirm a plan, within the time fixed either by the Bankruptcy Code or by order of the court; and ○ inability to effectuate substantial consummation of a confirmed plan. 	<ul style="list-style-type: none"> • The IBC provides for voluntary and involuntary proceedings. • No further suit can be entertained once the involuntary liquidation’s order has been passed. • The corporate debtor can also initiate voluntary insolvency proceeding if it has not made any default in payment, after obtaining a declaration from the majority from the board of directors. • At times, the corporate debtor would also need the approval of the shareholders and that of the creditors (3/4th in value of debt) to initiate voluntary proceedings. • Strict requirement of audited financial reports is mandated. • Proceedings are overseen by court appointed or court approved liquidators and insolvency professionals. • After assets are liquidated and distributed to the creditors, the corporate debtor can file for dissolution/winding-up. • Bidding on assets is overseen by the liquidator. • For involuntary liquidation, there is a formation of the Stakeholder’s Constitution Committee, by the liquidator.

⁴¹ Paul Leake, Christine A Okike, *Insolvency 2020 India*, CHAMBERS AND PARTNERS, (Nov. 19, 2020), <https://practiceguides.chambers.com/practice-guides/insolvency-2020/usa>

CROSS-BORDER INSOLVENCY

<ul style="list-style-type: none"> • Based on the UNCITRAL Model Law on Cross-Border Insolvency. • Applicable to any proceeding as prescribed under the Bankruptcy Law. • Foreign Proceedings are recognized in the Courts of Bahrain. • Application can be filed either directly by the Foreign Creditor or its representative, before the Court of Bahrain. • Mandatory submission of decision of appointment of liquidator in foreign proceedings from the foreign court. • Such cases shall not prejudice the domestic creditors and claims are to be entertained harmoniously. • Interim measures are provided to foreign creditors, which include stay on the execution of debtor’s assets. • Courts in Bahrain are to cooperate with the foreign courts, can be done through the appointment of ‘bankruptcy trustee’ as well. • Rules of foreign jurisdiction would be applicable unless the rules contravene the public policy of Bahrain. 	<ul style="list-style-type: none"> • Chapter 15 of the Bankruptcy Code is based on the UNCITRAL Model Law on Cross-Border Insolvency. • Chapter 15 of the US Bankruptcy Code recognizes the applicability of having cross-border insolvency proceedings. • These proceedings are considered to be ancillary to the bankruptcy cases in US, in order to assist the foreign courts. • The cross-border insolvency proceedings commencing under Chapter 15 are said to be performing protective (for the non-US debtor) as well as facultative (for restricting of the business of the debtor) functions. • Cases are presented by ‘foreign representatives’ dealing with administrative or judicial proceedings in the foreign country. • Proceedings are classified into foreign ‘main’ and ‘non-main’ proceedings based on the location of the main interests of the debtor. • Chapter 15 encourages the cooperation between the courts. • The bankruptcy court may appoint a specialized person to act at the directions of the court. • Rules of foreign jurisdiction would be applicable unless the rules contravene the public policy of USA. • Chapter 15 does not differentiate between foreign and domestic creditors when it comes to cross-border insolvency. 	<ul style="list-style-type: none"> • India has not adopted the UNCITRAL Model Law. It lacks a definitive framework but has released a report that discusses the guidelines and other aspects of cross-border insolvency.⁴² • Cross border insolvency in India is primarily regulated through bilateral treaties. • The guidelines are applicable only to corporate debtors and not to individual debtors. • Foreign judgements are enforceable in India subjected to the provisions of its municipal law – the Code of Civil Procedure 1908. • The IBC does not differentiate between foreign and domestic creditors when it comes to cross-border insolvency.
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PART – 4

4.1 The Way Forward for Islamic Finances

The mixture of the COVID-19 pandemic along with the uncertainty and volatility associated to the oil-markets poses unprecedented challenges to Islamic Finances. The Pandemic will leave a semi-permanent scar on the economies of almost nations, especially Islamic Finances as they have a major shareholding of SMEs in their business economy, which would face it quite cumbersome to recover from such an economic impact. It is seen as to how the impact of the 2008-09 global financial crisis is still felt by various nations, including Bahrain. Islamic Finances also become more prone to client defaults due to the lower financial strength of its clients. The only beneficial aspect despite any economic downfall on Islamic finances are the provision of interest free series and the strong prohibition of unethically high risked transactions.

Facing the harsh reality of global economic shutdowns has negatively shaken and disoriented the demand and supply chains resulting in major job losses and even recessions in certain nations. This has resulted in the scarcity of cash flows for businesses as well as individuals /citizens. Islamic financial institutions are seen as messiahs to redress economic concerns to a great extent as they provide financial tools which are free, ethical and sustainable and bears an equal importance to larger bodies as well as SMEs or even individual traders. Few of

⁴² Report of Insolvency Law Committee on Cross Border Insolvency, 2018, Ministry of Corporate Affairs, Government of India, https://www.mca.gov.in/Ministry/pdf/CrossBorderInsolvencyReport_22102018.pdf (last viewed Mar. 02, 2021).

these financial instruments include Zakat, Sukuk, Waqf endowments as well that provide for short term as well as long term assistance. These also bear a close link and importance in developing and contributing to the societal structure and needs. The most notable instrument is that of Sukuk as these are long term capital instruments that source finance to an enterprise as well as the Government, and it is seen as to how Sukuks are traded even as bonds. Another key benefit of Sukuk is that they are used to increase the investor base for a company even when it faces significant concerns of bankruptcy and is often used as tool to for a trader or an enterprise, business or commercial/corporate entity to recover its financial position. They also play a role of an insuring commodity as it provides protection to the Sukuk investor against any default of another member (individual, company or even member nation).

Islamic Finances are seen to now being slowly expanding their markets to more non-oil-based entities and adopting the growing sector of digital banking as well as FinTech. Nations such as Bahrain, Saudi Arabia and the United Arab Emirates are emerging as economic and industrial hotspots by attracting more foreign players by setting examples of the stability of domestic businesses primarily. In Bahrain, the conventional as well as Islamic financial bodies have taken a plethora of actions such as promoting digital banking, providing finances and postponements of installments of loans without additional fees, even the CBB has reduced the rate of bank rates by 1.5% as a measure to tackle the pandemic.

4.2 Concerns and Recommendations Surrounding the Law

Despite the Bankruptcy Law being one of the most progressive, adaptive and beneficial legislation dealing with Bankruptcy, there are certain concerns that can be duly observed. These issues do not bear or pose a serious impediment to the functioning of the law, but if duly addressed can help in a better outreach and implementation of the rights and liabilities associated thereof. These can be summarized as under:

- There exists certain ambiguity that presently lurks with respect to the detailed and actual timeline associated to any case that is been resolved by the court, or even being supervised by the court. There can be a future incorporation of ensuring a even higher degree of transparency with respect to the timeline which would help the lenders, creditors and all affected and concerned parties foresee the process and plan out the future set of events.
- There is no specialized institution that would only concern itself with matters of insolvency and bankruptcy that is present in Bahrain unlike those present in other rapidly growing economy. One reason behind this can be associated to the reason that there are not many cases that are bought up for adjudication, hence there is no requirement that is felt with respect to having a separate authority or body to oversee the same. But nevertheless, instituting a body would ensure that the court is less burdened and there would be experts from the field to address the matters arising in a more efficient and effective manner.
- The slight clash between the jurisdictional application of law and procedure dealing with Bankruptcy has to be strengthened in favor of Bahrain to ensure that the judiciary is not subdued to the jurisdiction and procedure of another court's jurisdiction, which would undermine the importance and position of the Bahraini Courts.
- There has to be certain clarifications that are to be provided pertaining to the process of how to addresses issues of individual insolvencies where the individual is not a trader. The law to the best of its extent protects an individual's personal (family) property and belongings but doesn't clarify the position on how matters are to be resolved incase an individual faces bankruptcy.
- The judiciary of Bahrain is to also provide for processes and provisions where all proceedings involving bankruptcy are available to the public in order for the public, the market and the other stakeholders to get well acquainted with the process and details involved so that future actions can be duly planned by others.

4.3 The Way Forward for Islamic Finances

Hence, with its own unique set of challenges faced by Bahrain in light of the Covid-19 pandemic that has affected the economy of the Kingdom to a reasonable extent, there have been a plethora of actions and assistance provided by the Government and the CBB. A notable concern of rise of bankruptcy claims that is quite expected to have arisen in such a economic downfall, has luckily not been witnessed in Bahrain. This can be attributed to 3 main reasons namely being (a) Government assistance by means of providing economic stimulus packages to individuals and businesses, (b) a beneficial bankruptcy law that seeks to ensure the continuance of the business venture and (c) the instruments provided by the Islamic Finance groups.

There nevertheless exists issues pertaining to the negative impacts of the pandemic. The Kingdom has been affected by the sudden and unprecedented volatility of the oil-markets and the lockdowns have led to a drop in the GDP. Nevertheless, the Kingdom has sustained itself over the last year on its own. There is also an increase seen in the Non-Performing Assets (NPAs) and there is also a simultaneous observation that due to the stimulus

provided by the government, there is a lower level of overdraft and default probability. The proactive role of the CBB in granting exemptions from dues and even overseeing the liquidity coverage has helped in preventing traders and business as well as companies from winding-up. The banks in Bahrain were seen to be quite proactive in the issuance of the Islamic fixed-income instrument, also known as the Sukuk, amongst all other nations in the GCC region.

Based on a plethora of studies conducted in the last year by various organizations and bodies, it is believed by economists that there would be a lurking of a significant threat and risk of company bankruptcy which would be doubled due to the economic situations aggravated by the pandemic. IMF economists have also raised concerns about the rapid deterioration in the banking system of Bahrain due to the continual economic packages and concessions provided to individuals and businesses, and the banks have not yet witnessed a return of their investments in the same, and this is further aggravated due to the constant decline in the stability and profitability of banks due to the imposition of deferments, lower interest and liquidity rates and the reduction in the holding of government bonds.⁴³ But these measures and impacts are to be short lived due to the stability and growth of the business economy that the government of Bahrain is focusing on at the present moment.

The Reorganization and Bankruptcy Law 2018 of Bahrain has been passed at the right time to ensure that businesses do not face the brunt of stringent penalization due to the unwarranted and unprecedented pandemic outbreak that was unavoidable. The law ensures that despite of the hardships faced by the entity, it is provided with sufficient opportunity to get back on its feet. There has not been any situation that would have led to the application and or amendment of the law due to the pandemic and the low number of cases can be attributed to how well the goals and objectives that the law sought to achieve have been met. The law being directly influenced by the UNCITRAL Model has ensured that the best provisions and measures relating to addressing issues of bankruptcy by the government authorities as well as the courts are duly redressed keeping in mind the benefits of the debtor. Hence, by means of such measures and beneficial laws, Bahrain is seen as a preferred destination for upcoming businesses to begin investing in the Bahraini markets and economy that would be mutually beneficial.

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