EVOLVING INSOLVENCY REGIMES IN THE MIDDLE EAST

Authored by: Ryan Hockling (Barrister) and Phillip Patterson (Barrister) - Gatehouse Chambers

Introduction

The Gulf Cooperation Council ("GCC") region is currently experiencing both rapid development and also significant cultural change. Ambitious projects such as the FIFA World Cup in Qatar and the Saudi Vision 2030 have been underpinned by significant investment, both from regional Governments and international funders. There is an increasing awareness in the region that this investment requires alongside it a stable and modern system of insolvency and debt recovery. This has required some similarly significant legislative reforms.

Reforms In The Region

In Saudi Arabia, the current insolvency regime was put in place in 2018, soon after the launch of the Vision 2030 project. Prior to 2018, the legislative control of insolvency in the Kingdom was limited and widely thought to be unsuited to the challenges brought about by the implementation of Vision 2030. The New Saudi Insolvency Law (Royal Decree M50 of 1439, Resolution No. 264 of 1439) introduced concepts familiar to common lawyers, namely a form of moratorium through the Protective Settlement procedure and the use of independent insolvency practitioners to take over control of insolvent companies in the Financial Restructuring and Liquidation procedures. There is also an innovative concept of Administrative Liquidation, a slimmed down procedure available where the insolvent company has no or minimal assets at the point of insolvency. More recently, the Saudi Civil Transactions Law has been introduced to offer greater prescriptive guidance for Judges in the interpretation of laws in the Kingdom and reducing the recourse to the discretionary Sharia principles.

In the Abu Dhabi Global Market freezone ("ADGM") the Insolvency Regulations 2022 now provide the applicable insolvency regime. A number of clear parallels can be drawn between these Regulations and the Insolvency Act 1986 and Insolvency (England and Wales) Rules 2016. Practitioners in the ADGM have access to the familiar concepts of administration, receivership and winding-up. The UNCITRAL Model Law is also given the force of law in the ADGM by virtue of Regulation 271.

Elsewhere in the United Arab Emirates ("UAE"), the Dubai International Financial Centre ("DIFC") Insolvency Law (No. 1 of 2019) contains some processes familiar to common lawyers: CVA, receivership, and forms of compulsory and voluntary liquidation. The DIFC's Insolvency Law also makes provision for Rehabilitation Plans, which bear some similarity to the Scheme of Arrangement regime under the English Companies Act 2006. Finally, there is an administration regime, though this process is only available upon application by one or more creditors, de-emphasising its utility for corporate rescue.

Outside the freezones, onshore insolvencies in the UAE are governed by its Bankruptcy Law (Federal Decree-Law No. (9) of 2016), which allows for protective compositions, financial restructuring, and liquidation of companies registered in the UAE. From 1 May 2024, the new Financial and Bankruptcy Law (Federal Decree-Law No. (53) of 2023) will come into force, replacing protective compositions with a new, less stringent protective settlement regime, clarifying certain definitions, and carving out labour claims and personal status actions from the scope of any moratorium (in common with many other jurisdictions). This new law will also introduce a specialist Bankruptcy Court. In tandem with the recent first appointment of international bankruptcy trustees in the UAE (in October 2021, over the KBBO Group), this appears to signal a change in attitude towards insolvency and corporate rescue in the jurisdiction and a steady maturation of its regime.

In Qatar, the QFC freezone applies the QFC Insolvency Regulations 2005 which operate alongside the Commercial Law No 27 of 2006 which governs local matters outside the QFC. Within the QFC, the familiar concepts of administration and winding-up apply. Article 7, prescribing as it does the purposes of administration bear a striking similarity to the purposes set out in paragraph 3 of Schedule B1 to the Insolvency Act 1986.

Kuwait undertook a wholesale upheaval of its insolvency regime in 2020 with the passing of the Kuwait Law No. 71/2020. This legislation included the creation of a Specialist Bankruptcy Court presided over by a senior specialist Judge. Importantly, it introduced a greater suite of 'rescue culture' type measures aimed at offering flexible solutions to companies in financial difficulties.

Bahrain sought to bring its own domestic insolvency legislation in line with other major commercial jurisdictions in 2018 with the passing of the Insolvency Law (Law No. 22 of 2018). In Bahrain, practitioners can make use of the familiar procedures of administration and liquidation. In the same year, the Business Companies Regulations 2018 were passed in the Ras Al Khaimah International Corporate Centre.

Conclusion

The region's ambitious development plans will no doubt generate disputes and defaults under contractual payment obligations. This will test the scope and effectiveness of these various new legislative regimes. It will be interesting to see how well these regimes cope and how the Courts will apply them in jurisdictions where debt has historically been viewed as something of a taboo in cultural terms. Given the overlap between these new regimes and the Insolvency Act and Rules in the UK, the jurisprudence and knowledge base here in the UK may come to be of increasing use and relevance in the GCC area. Indeed, it is understood that UK lawyers have often been called upon to assist in the drafting of this legislation. What has historically been seen as a region where insolvency principles are of limited application may come to be an important focal point in coming years.