GRR INSIGHT

Europe, Middle East and Africa Restructuring Review 2020

EUROPE, MIDDLE EAST AND AFRICA

RESTRUCTURING REVIEW 2020

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Preface

Welcome to the *Europe, Middle East and Africa Restructuring Review 2020* – a Global Restructuring Review special report.

Global Restructuring Review is the online home for all those who specialise in cross-border restructuring and insolvency, telling them all they need to know about everything that matters.

Throughout the year, the GRR editorial team delivers daily news, surveys and features; organises the liveliest events ('GRR Live') – covid-19, etc, allowing; and provides our readers with innovative tools and know-how products. In addition, assisted by external contributors, we curate a range of comprehensive regional reviews – online and in print – that delve deeper into developments than the exigencies of journalism allow.

The *Europe, Middle East and Africa Restructuring Review 2020*, which you are reading, is part of that series. It contains insight and thought leadership from 23 pre-eminent practitioners from those regions.

Across 10 chapters and 122 pages, it is part invaluable retrospective and part primer on restructuring practice in different markets, with a little crystal ball gazing thrown in from time to time. All contributors are vetted for their standing and knowledge before being invited to take part.

Together, these contributors discuss recent changes and what they mean, supported by footnotes and relevant statistics.

This edition covers England and Wales, France, Ireland, Luxembourg, the Middle East, the Netherlands, Portugal, Spain and Switzerland, and it also has a fascinating overview on aviation, in particular how the United Kingdom's new Corporate Insolvency and Governance Act may circumvent protections in an international treaty.

Among the discoveries for the reader:

- valuation evidence may be much, much more important to schemes in London, going forwards;
- more than 50 per cent of the world's leased aircraft are leased from Ireland; and

- Campari-Milano, Fiat Crysler, and Cementir are all now 'Dutch' companies, having relocated their legal domiciles recently.

There's also a cracking table breaking down the key aspects of restructuring and insolvency regimes in three gulf states: Bahrain, Saudi Arabia and the United Arab Emirates.

We are indebted to our wonderful contributors, including our editor and GRR editorial board member Céline Domenget Morin, for their efforts. If you have any suggestions for future editions or want to take part – the review is put out annually – my colleagues and I would love to hear from you.

Please write to insight@globalrestructuringreview.com.

David Samuels
Publisher
November 2020

Recent Restructuring Developments in the Gulf Region

Patrick Gearon and Roger Elford
Charles Russell Speechlys

In summary

This article explores the introduction and promotion in recent years of modern restructuring laws and procedures for businesses facing distress by three Gulf Cooperation Council nations: the United Arab Emirates, Saudi Arabia and Bahrain.

Discussion points

- Restructuring laws and the Gulf Cooperation Council
- Preventive composition and settlement
- Financial reorganisation
- Liquidation
- In-court reorganisation

Referenced in this article

- Chapter 11 of the US Bankruptcy Code
- UAE Bankruptcy Law No. 9 of 2016
- DIFC Insolvency Law
- Reorganisation and Bankruptcy Law (Bahrain Law No. 22/2018)
- Central Bank of Bahrain and Financial Institutions Law 2006

Restructuring and the GCC

The Gulf states were heavily impacted by the financial crisis in 2009. Since the crisis, they have suffered and continue to suffer from declining oil revenue. Against that backdrop, the impact of the covid-19 pandemic, which started to materially affect the Gulf from March 2020 onwards, has been profound.

Prior to the pandemic, the Gulf nations had already recognised the need to depart from their historic reliance on oil production and had sought to upgrade the infrastructure supporting their economies to attract inward foreign investment. This article will focus on three Gulf Cooperation Council (GCC) states: the United Arab Emirates (UAE), Saudi Arabia and Bahrain. These three states have made positive moves in recent years to introduce and promote modern restructuring tools for businesses facing distress.

The UAE's Vision 2021 states the UAE's aim to become 'the economic, touristic and commercial capital for more than two billion people'. In seeking to foster and promote an environment that encourages entrepreneurialism and attracts inward investment, the UAE recognised the need to strengthen its regulatory framework to provide modern, flexible procedures for restructuring under-performing businesses or for providing certainty of outcome.

Similarly, the second pillar of Saudi Arabia's ambitious Vision 2030 programme is to become a global investment powerhouse while becoming less reliant on oil revenue. Bahrain has stated its own, similar ambitions in its Vision 2030 programme, which shares common goals and themes with its closest neighbour.

In pursuing those ambitions, the UAE, Saudi Arabia and Bahrain have all implemented new laws in recent years to facilitate effective restructurings for debtors in distressed situations in those jurisdictions. The goal has been to challenge the common perception that GCC businesses and financial institution creditors have adopted a 'kick the can down the road' attitude and to address widely held views that local creditors will privately be given priority over foreign creditors in any process.

All three nations have drawn upon and borrowed from the restructuring framework contained in Chapter 11 of the US Bankruptcy Code when implementing new procedures of their own. Chapter 11 remains the gold standard for formal debtor-in-possession restructuring cases. Universal reach, certainty of process and outcome as well as access to skilled professionals operating in the Chapter 11 arena have all led debtors around the world to adopt the Chapter 11 route. After all, a Chapter 11 case can be established where any debtor can demonstrate they have property in the United States – and for these purposes, 'a dollar, a dime or a peppercorn located in the United States' will be sufficient.[1]

In large-scale cross-border restructurings with the necessary US element, Chapter 11 is likely to remain the 'weapon of choice' for many; however, where the local jurisdiction can provide a robust alternative, the benefits of the alternative will be many and varied: cost, language, time differences and other local considerations will all undoubtedly come into play.

1 *Re McTague*, 198 BR 428, 421 to 432 (Bankr WDNY 1996).

By adopting measures that align with widely accepted principles of global restructuring, the UAE, Bahrain and Saudi Arabia have created processes that ought to be capable of recognition by foreign courts throughout the world, particularly by those (including the United States and the United Kingdom) who have adopted UNCITRAL's Model Law on Cross-Border Insolvency Proceedings.

UAE

The UAE led the charge in 2016 by introducing widespread reforms to its restructuring procedures through the introduction of the UAE Bankruptcy Law No. 9 of 2016 (the UAE Bankruptcy Law), which came into force on 29 December 2016.

The Law applies to UAE corporate entities (including financial institutions), except for those incorporated under the UAE's independent free zones, primarily the Dubai International Financial Centre (DIFC) (which offers companies 100 per cent ownership without the need for a local partner and is governed by a common law framework distinct from the UAE legal system, with laws and regulations issued in English) and the Abu Dhabi Global Market.

From 13 June 2019, the DIFC Insolvency Law (Law No. 1 of 2019) (and its supporting regulations) has governed companies operating in the DIFC, repealing and replacing DIFC Law No. 3 of 2009. From a restructuring perspective, it introduces:

- English-style voluntary arrangements (with the option to apply for a stay of proceedings akin to article 362 of the Chapter 11 of the US Code);
- a process for rehabilitation of debtors, akin to a US Chapter 11 procedure; and
- a comprehensive framework for the recognition of foreign insolvency proceedings by the DIFC courts.

By introducing a 'preventive composition' as an alternative to bankruptcy, the UAE Bankruptcy Law seeks to enable debtors to restructure their affairs on a consensual basis, while several criminal sanctions for individuals involved with companies that did not pay their debts have been removed or relaxed.

The UAE followed the lead of the United States by rendering void any provision in a contract that defines the debtor's entry into a preventive composition as an event of default for which a counterparty could terminate (ipso facto clauses).

Preventive composition (and bankruptcy) proceedings include a moratorium on claims, which subsists for the duration of the restructuring except where the court orders otherwise.

The procedure can be pursued by a debtor who, while not technically insolvent (on a balance sheet basis), has defaulted on the payment of its debts, provided that the default has not subsisted for more than 30 business days. It cannot be imposed on the debtor by its creditors.

When filing the application for preventive composition, the debtor must also file cash flow projections and a proposed restructuring plan. The court will then appoint a trustee to supervise the process. Working with the debtor, the trustee will devise a settlement plan to be proposed to the creditors.

As with an English company voluntary arrangement, one of the perceived limitations of a plan for preventive composition is that the plan may not seek to compromise the rights of secured creditors without their express consent; secured creditors will not be able to vote on the plan unless they relinquish all their security.

For the scheme to be approved, unsecured creditors (whose debts are admitted) must vote in favour of the scheme both by a majority in number and by two-thirds in value of the total ordinary admitted debts. The vote is binding on non-consenting unsecured creditors.

In contrast with preventive composition, bankruptcy proceedings can be instigated by creditors who are owed debts of at least 100,000 dirhams by the debtor or by the Office of the Public Prosecutor. Under the UAE Bankruptcy Law, a bankruptcy proceeding will no longer lead to an inevitable liquidation of the debtor's assets, and the Law's primary aim is to facilitate the ongoing trade of the debtor as a going concern through the restructuring of its debts.

Once the bankruptcy petition is approved, the court will appoint a trustee. Based on his or her assessment of the debtor's affairs (including detailed investigations into the asset and liability position), the trustee will report on whether a restructuring might be possible or whether the debtor should be declared bankrupt. In the former case, the trustee will devise a plan, and it will be proposed to the creditors in a similar way to the preventive composition procedures. In the latter case, the debtor's assets are liquidated and distributed among the creditors.

Saudi Arabia

Historically, Saudi Arabia has not always been a straightforward place to do business for foreign investors and counterparties. Difficulties in enforcing foreign judgments in Saudi Arabia's courts, coupled with historic rules and conventions favouring local creditors over the claims of foreign creditors, have traditionally caused great uncertainty for foreign counterparties dealing with defaulting or insolvent entities in Saudi Arabia.

Even judgments of other GCC courts, which can be enforced in Saudi Arabia under the GCC Convention for the Execution of Judgments, Delegations and Judicial Notifications, cannot be enforced until the judgment creditor has exhausted all efforts in the jurisdiction in which the judgment was obtained before seeking enforcement in Saudi Arabia.

Given its vast wealth and significance in the Middle East, these issues have not deterred international banks and other businesses from investing and lending in Saudi Arabia. However, the decade-long attempts to restructure the Saudi Arabia-based Saad Group and Ahmad Hamad Al Gosaibi and Brothers (AHAB), and to resolve high-profile allegations of fraud by AHAB against Saad Group founder Maan Al Sanea, have shone a spotlight on what many have seen as being the shortcomings of Saudi Arabia's existing laws to deal with complex cross-border matters of this nature and value.

These issues have been worsened by the international investment banks' historic laissez-faire attitude towards 'name lending' in the region. The Chief Justice in the Grand Court of the Cayman Islands recently described AHAB's operations as being the 'largest Ponzi

scheme in history'. The Saad Group's international operations are the subject of liquidation and administration proceedings in England, the United States, Switzerland and the Cayman Islands, among other jurisdictions.

Historically, Saudi Arabia's restructuring laws were essentially limited to liquidation or requiring the injection of capital to return a company to solvency. Faced with claims in the region of US$9 billion, AHAB's only route to avoid the bankruptcy of its partners and the liquidation of their assets was to seek to agree an out-of-court settlement with the buy-in of 100 per cent of its creditor base, which predominantly comprised international investment banks, Saudi banks and hedge funds that have acquired debt on the secondary markets. Unsurprisingly, that did not occur.

To facilitate a more structured approach and to improve debtors' chances of securing support for their restructuring plans, the Ministry of Commerce and Investment (MOCI) published a new set of investor-friendly rules and regulations in February 2018, including a new bankruptcy law that came into effect in August 2018 and that draws on large portions of the US Chapter 11 procedure.

Similar to other jurisdictions, the law aims to provide bankrupt or insolvent debtors with an opportunity to reorganise and rescue their businesses, while also providing for a simplified liquidation process and a fairer distribution to creditors upon liquidation. The law introduces the formation of a specialist bankruptcy committee that reports to the MOCI and is an independent administrative and financial legal body. The committee's responsibilities include managing a bankruptcy register and coordinating the relevant liquidation and bankruptcy procedures.

In addition to liquidation, Royal Decree No. M/50 introduced two new restructuring procedures for the restructuring and rescue of a debtor's affairs. A debtor now has two options to reach an agreement with its creditors to settle its debts, both with the involvement of the court: in preventative settlement, the debtor maintains the management of its business, whereas the financial reorganisation procedure is run under the supervision of a bankruptcy trustee.

Preventive composition or settlement

This is a voluntary court-supervised process that may only be commenced by the debtor. It leaves the debtor's existing management in control of the debtor's business.

Upon submitting a preventative settlement request to the court, the court may impose a moratorium on creditor action. This procedure is available to debtors with expected as well as actual financial distress and to debtors who are already bankrupt. It is not available to debtors who have been granted settlement within the previous 12 months.

Qualifying debtors may submit a preventative settlement request to the court, and the court will then determine a hearing date, which must occur within 40 days of the debtor submitting the request. The debtor is given 40 days to submit the plan for settlement. Assuming the court opens the preventative settlement process, it will then set a date for creditors to vote on the proposals, usually within a period not exceeding 40 days from the date of opening the proceedings. To pass, the settlement proposal must be approved by two-thirds (in value) of creditors in each class of creditors, of whom at least 50 per cent must be unconnected to the debtor.

The proposal is then ratified by the court, and even if the creditors fail to vote on it, the court may still rule in its favour if it deems it appropriate. The debtor may request that the court suspend any claims arising from the creditors in which they aim to declare the debtor's bankruptcy or any requests to execute on the debtor's assets for a period not exceeding 180 days; however, to make the request, it must be accompanied by a report prepared by a bankruptcy-licensed trustee, and the court will be unable to accept a request if the trustee's report does not confirm that the majority of the concerned creditors are likely to approve the settlement proposal

Financial reorganisation

A debtor, competent authority or creditor may submit a request for reorganisation, and the court will then appoint a bankruptcy trustee and notify the creditors. The trustee will assume responsibility for the management of the debtor's business. A moratorium on creditors' actions will apply upon the filing of the petition to request financial reorganisation.

Once appointed, the trustee prepares a proposal for financial reorganisation and files it with the court. The proposal includes a description of the debtor's financial situation and the effects of the economic situation on it. The trustee must also provide the court with an indication of the likelihood of the creditors' approval of the proposal.

Once the proposal has been filed with the court, the court sets a date on which the proposal will be put before the creditors. As with preventative settlement, a proposal is approved by creditors whose claims represent two-thirds of the value of the claims in the same class, including creditors whose claims represent more than half the value of the claims of non-related parties (if any). The proposal is then ratified by the court, and even if the creditors fail to vote on it, the court may still rule in its favour if it deems it appropriate. The registration of the petition to open financial reorganisation proceedings results in a suspension of claims. The suspension period will remain in effect until the date on which the court either rejects or ratifies the petition, or the financial reorganisation proceedings terminate.

Both AHAB and the Saad Group are currently the subject of financial reorganisation proceedings in Saudi Arabia and are under the control of their appointed trustees. There has been engagement with creditors (both domestic and foreign), and it remains to be seen whether either entity or both entities will emerge from the process as going concerns in the future. As test cases go, these two cases could not be sterner tests of the robustness of Saudi Arabia's new procedures.

Liquidation

The new bankruptcy law sets out new liquidation procedures and details the ranking of debt in Saudi Arabia (the basic ranking being, from highest to lowest priority, secured debts, certain priority debts (eg, employees' wages, family expenses, continuing business expenses during liquidation process), unsecured debts and taxes) so that any proceeds obtained from a liquidation process will be distributed in accordance with a clear order of priority.

Before a debtor or creditor can seek an order for liquidation, the following conditions must be met:

- the debt must have matured and be a fixed amount;
- the debt must not be below the amount stipulated by the Bankruptcy Committee; and
- the creditor must prove that it has requested the debtor to pay its claim 28 days before the date of registration of the liquidation petition with the court.

The liquidation process is supervised by a court-appointed trustee and is completed when the trustee applies to the court to terminate the liquidation proceedings. The trustee may only make that application after completion of the procedure for the sale of bankruptcy assets, the end of the legal proceedings to which the debtor is a party, and the final distribution to creditors.

The trustee must provide final accounts and financial reports with its petition and notify the creditors before filing the petition. An interested party may object to the trustee's petition before the court within 14 days of its filing. Upon the registration of liquidation proceedings or of the court's judgment to open the proceedings, there is a period of suspension of all claims until the date of the court's judgment dismissing the petition or terminating the proceedings. The court also has the ability (at the request of the relevant interested party) to suspend the time limit for suspension of specific claims for which an action has been taken prior to the suspension, if it is found to be in the interests both of the debtor and the majority of creditors.

Bahrain

As with many other GCC countries, Bahrain has set out its stall and made its pitch to become a principal player in investment, banking and commerce. Its Economic Vision 2030 focuses on shaping the government's vision for Bahrain's society and economy based around three guiding principles: sustainability, fairness and competitiveness.

From a restructuring perspective, the clear prerequisites for a successful and competitive economy are having a clear and comprehensive system for restructuring distressed businesses that provides certainty of process and outcome, and an effective court system. The US system is a prime example of this.

On 30 May 2018, Bahrain adopted its new Reorganisation and Bankruptcy Law (Bahrain Law No. 22/2018), with the objective of maximising the value of insolvent estates, creating a safety net for fledgling businesses and promoting corporate rescue and reorganisation over liquidation. The Law replaced the insolvency provisions contained in the Bankruptcy and Composition Law No. 11 of 1987 and the Commercial Companies Law No. 21 of 2001.

The new bankruptcy law does not apply to banking and other financial institutions regulated by the Central Bank of Bahrain. The restructuring of those institutions remains under the purview of the Central Bank of Bahrain and Financial Institutions Law 2006 (CBBFIL). The CBBFIL does not provide any mechanism for any form of debtor-in-possession or preventive restructuring of its licensed institutions. Further, insolvency procedures under the CBBFIL are limited to administration, where the Central Bank will act as administrator (with the ability to appoint an external firm or individual as its external administrator, who is deemed to act as agent of the Central Bank), and liquidation upon the petition of the debtor, a creditor or the Central Bank as administrator.

It remains to be seen whether the law relating to financial institutions will be brought into line with the new Law applicable to other companies and traders, or whether Bahraini banking institutions seeking to restructure without intervention from the Central Bank must continue to avail themselves of foreign procedures, as the Bahraini bank Arcapita Bank BSC did when it filed under US Chapter 11 in 2012 in the New York Court (Southern District Case No. 12-11076 SHL).

There may be reasons why banks (and other internationally focused businesses) would turn to Chapter 11 in any event, even where legislation in their home jurisdiction provides a mechanism for restructuring, not least the threat of court sanctions in the United States for any creditor operating in the United States that is acting in defiance of the section 362 automatic stay.

The new Reorganisation and Bankruptcy Law introduces a purpose-built tool for commercial companies and merchants (in respect of their trade liabilities) that borrows restructuring concepts from Chapter 11 of the US Bankruptcy Code's and the United Kingdom's pre-packaged insolvency procedures. It includes a twin-track process for debt restructuring or liquidation (article 18).

Some important highlights include:

- the ability to cram down across classes where the court is satisfied that the dissenting classes will be better off under the plan than in a liquidation scenario;
- the ability to sell assets out of the bankrupt estate free of liens;
- a moratorium or stay on enforcement proceedings (article 51);
- the ability to obtain debtor-in-possession financing; and
- the right of the debtor to continue to manage its business in the ordinary course.

The debtor also has the option to submit a pre-packaged reorganisation plan for ratification by the court, which is substantially similar to the English law pre-pack procedure; however, in the United Kingdom, the onus is usually on the insolvency professional selling the business to satisfy him or herself that the sale will achieve the stated purpose of the administration process, whereas in Bahrain, the specific sanction of the Bahrain Civil High Court is required.

In-court reorganisation

Unlike in the United States but similar to the United Kingdom (in the case of administration), the debtor must be deemed to be insolvent (or facing the risk of insolvency) before it can avail itself of the new Law. Under the new Law, an in-court reorganisation can be commenced either by the debtor or by one or more of its creditors where:

- the debtor has failed to pay its debts for a period of 30 days from their due date or will become incapable of paying its financial liabilities as they fall due; or
- the value of the debtor's liabilities exceeds the value of its assets.

Within five days of the case being filed, the court will issue a provisional resolution to commence bankruptcy procedures (article 7). The court can appoint a provisional bankruptcy trustee (article 34) if assets are at risk or if other factors necessitate urgent intervention.

The court will form a creditors' committee and appoint a debt restructuring trustee (article 96) (sometimes referred to as an independent reorganisation trustee). As the debtor's supervisor, the trustee is responsible for preparing and submitting a reorganisation plan. The plan must be submitted within three months of the commencement of the bankruptcy proceedings and must be accompanied by a disclosure statement, which is prepared by the trustee and sets out the current financial position of the debtor.

During that three-month period, a moratorium on claims against the debtor applies, which is activated upon the court approving the opening of the bankruptcy case. The court has the power to extend the duration of the moratorium, either at the request of the trustee or where it is satisfied that an extension is essential for the purpose of maximising the estate's value. A secured creditor may seek to lift the moratorium in limited cases, for example, where the value of their security is at risk or where the trustee has not provided the secured creditor with 'adequate protection' (a term borrowed from US Chapter 11) of its position.

The creditors' committee, or a group of creditors holding claims of not less than one-third of the debtor's liabilities, can submit its own restructuring plan if six months have passed since the opening of the bankruptcy case and the trustee is yet to finalise a plan.

Voting on the plan takes place 30 days from its submission to the court (and then 20 days from the date of any amendments that are proposed to it). A class of creditor that will be paid in full under the plan is deemed to have accepted the plan. In all other cases, two-thirds of each class of creditors who vote on the plan must vote in favour of it; there is no quorum or requirement on the proportion of creditors in a particular class that must vote on the plan. The court has the power to overrule the decisions of dissenting classes of creditors where it is satisfied that the dissenting classes of creditors will be better off under the plan than in a liquidation.

The approved plan is then submitted to the court and, once ratified, becomes binding on all creditors, wherever they are located and irrespective of whether they voted. Ratification of the plan by the court discharges and releases the debtor from all debts and liabilities covered by the plan.

The first publically known case under Bahrain's Reorganisation and Bankruptcy Law commenced in January 2019 when Bahrain's Gulf Aluminium Rolling Mill (Garmco) filed a voluntary petition for relief under the section 3 of the Law. Garmco reportedly employs around 750 people in a variety of jurisdictions and has a turnover of approximately US$500 million.

As the case has progressed, there has been limited public reporting on Garmco's plan for reorganisation. At the time of writing, there have been no reports of the reorganisation case as having been recognised in any foreign jurisdictions, although the English, New York and Cayman courts have all been willing to readily recognise the administration cases of two Bahraini banks under the CBBFIL (*re Awal Bank*, BSC (10-15518 Bankr SDNY) and *re The International Banking Corporation*, BSC (439 BR 614 Bankr SDNY 2010)), notwithstanding the fact that the CBBFIL provides for extremely limited creditor involvement. One would fully expect the courts of foreign jurisdictions to look favourably upon a request for recognition for a reorganisation proceeding under the new Law, particularly those jurisdictions (including the United Kingdom and the United States) that have adopted UNCITRAL's Model Law on Cross-Border Insolvency Proceedings.

Summary table

	UAE	Saudi Arabia	Bahrain
Nature of proceedings available	Preventative composition and bankruptcy	Preventative composition or settlement, financial reorganisation and liquidation proceedings	In-court reorganisation, pre-packaged reorganisation and liquidation proceedings
Court role	• Appoints a bankruptcy or reorganisation trustee • Authorises the bankrupt debtor to carry on its trade • Approves and oversees the reorganisation plan or liquidation	• Appoints a bankruptcy trustee in financial reorganisation and liquidation • Sanctions the proposals in preventative composition or settlement and financial reorganisation	• Appoints a bankruptcy or reorganisation trustee • Approves transactions as required • Sanctions and supervises the reorganisation plan or liquidation
Creditors' rights to initiate restructuring and propose a plan	• Cannot initiate involuntary reorganisation but can participate directly • Cannot propose a plan but can propose changes to the plan put forward by the debtor	• Can commence a restructuring process and nominate the trustee of the court that they wish to appoint in the case of a financial reorganisation • Can seek a liquidation order in specified circumstances	• Can commence proceedings and, in certain circumstances, can file a reorganisation plan
Voting majorities	Two-thirds majority of unsecured claims	Two-thirds of the value of claims in the same class, including creditors whose claims represent more than half the value of the debts of a non-related party (if any)	Two-thirds of the value of claims in the same class but the court has discretion to ratify a plan without the approval of a class if the class will be better off under the plan than in a liquidation
Secured creditors' status	Plan not binding on secured creditors Secured creditors cannot vote or participate unless they relinquish their security rights	All affected creditors bound by the proposal	All affected creditors bound by the proposal
Debtor's right to initiate restructuring	Can make a preventive composition application provided it is not insolvent and has not been in default of the payment of its debts for more than 30 business days	Can initiate a preventative composition or settlement procedure if it is likely to face financial distress, it has ceased paying debts as they fall due, or its liabilities exceed its assets	Can initiate an in-court reorganisation or pre-packaged reorganisation if it is likely to face financial distress, it has ceased paying debts as they fall due, or its liabilities exceed its assets
Moratorium or stay on proceedings against the debtor	Moratorium imposed on all claims and enforcement proceedings until the plan is approved, unless court decides otherwise	Suspension order may be granted by the court in preventative composition or settlement, or liquidation process Moratorium imposed automatically in financial reorganisation on all claims until the court either rejects or ratifies the proposal (or terminates the proceedings at an earlier date)	Moratorium on claims against the debtor's estate triggered and lasts (initially) for 120 days upon the court approving the commencement of proceedings

Conclusion

The introduction by these three GCC nations of comprehensive frameworks for debtor-in-possession and other forms of operational and financial restructurings that are designed to rehabilitate debtors is to be welcomed. If implemented to the letter of the law, they ought to boost confidence in the regulatory and legal management of debtors experiencing financial distress in those jurisdictions.

The US and English courts in particular have shown great flexibility and ingenuity when dealing with complex restructuring schemes and proposals. How judges in those GCC civil law jurisdictions will exercise the powers and discretions afforded to them to sanction proposals (that may have been rejected by creditors) while acting within the confines of the written law should be kept under review.

These new frameworks also bring those GCC countries more into line with the trend for 'rescue' objectives in restructuring processes that are designed to enable a debtor's management to remain engaged in the process. This trend is typified by Chapter 11 in the United States but is increasingly global, as evidenced by the European Union's publication on 26 June 2019 of Directive (EU) 2019/1023 on preventive restructuring frameworks, discharge of debt and disqualifications, and measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt.

Roger Elford
Charles Russell Speechlys LLP

Roger is a Fellow of INSOL International and has considerable domestic and cross border insolvency expertise, working with companies, insolvency office holders and other stakeholders in a variety of jurisdictions.

Roger is one of the lead restructuring partners working on Charles Russell Speechlys' appointment as the external administrator of Bahraini bank Awal Bank (with balance sheet assets of approximately US$6 billion) on behalf of the Central Bank of Bahrain, which has involved litigation in the United States, Cayman Islands, the United Kingdom, Switzerland and across the Middle East. He also advised the Government of The Commonwealth of the Bahamas in relation to the over US$3 billion development of mega resort Baha Mar. He advised the government in response to the project's developer filing for Chapter 11 Bankruptcy in the United States, which involved successfully opposing the recognition of US Chapter 11 in the Bahamas Court, petitioning for the appointment of provisional liquidators and advising the government on its strategy throughout.

In the United Kingdom, Roger acts for insolvency practitioners in pursuing office-holder (and other) claims to make recoveries for creditors, as well as acting for defendants in the defence of those claims.

Roger specialises in contentious insolvency matters and has particular expertise in real estate-related insolvency issues. He is the co-author of Jordan Publishing's *Property Insolvency* (2nd ed, 2015) and regularly speaks at seminars and conferences, including the Royal Institution of Chartered Surveyors, the National Association of Non-Administrative Receivers, Butterworths and R3.

Patrick Gearon
Charles Russell Speechlys LLP

Patrick is head of the firm's Middle East Dispute Resolution team, which comprises over 15 dispute resolution lawyers in the team's three offices in Dubai, Bahrain and Qatar. He has over 23 years of experience in arbitration, litigation and mediation, with an emphasis on international insolvency disputes, and is recognised as a leading individual in both *Chambers Global* and *The Legal 500*.

Patrick is one of the lead partners working on Charles Russell Speechlys' appointment as the external administrator of Bahraini bank Awal Bank (with balance sheet assets of approximately US$6 billion) on behalf of the Central Bank of Bahrain, which has involved litigation and arbitration in Bahrain, Saudi Arabia, Kuwait, the United States, Cayman Islands, the United Kingdom and Switzerland.

He has conducted litigation and arbitration in Bahrain, Qatar, Kuwait, Saudi Arabia, Egypt, the United Arab Emirates, the United States, France, Germany and Switzerland as well as all the courts in the United Kingdom.

Patrick became a Fellow of the Chartered Institute of Arbitrators in September 2018.

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Charles Russell Speechlys is a law firm headquartered in London with offices in the United Kingdom, Europe, the Middle East and Hong Kong. We have an unusually broad range of skills and experience across the full spectrum of business and personal needs. This gives us a wider perspective, clear insight and a strongly commercial long-term view.

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As well as daily news, GRR curates a range of comprehensive regional reviews. This volume, the *Europe, Middle East and Africa Restructuring Review 2020*, contains insight and thought leadership from 23 pre-eminent practitioners from these regions. As well as daily news, GRR curates a range of comprehensive regional reviews. This volume contains insight and thought leadership from 23 pre-eminent practitioners from these regions. Inside you will find chapters on England and Wales, France, Ireland, Luxembourg, the Netherlands, Portugal, Spain and Switzerland, as well as three Middle Eastern regimes (Bahrain, Saudi Arabia and the United Arab Emirates). There is a particular focus by many authors on newly introduced preventative restructuring tools and the response to the covid-19 pandemic.

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