



New Bankruptcy Law In Bahrain

14 February 2019

By: Mohamed Toorani | James Iremonger

On 30 May 2018, Law No. 22 of 2018 with respect to the Reorganization and Bankruptcy Law (the Bankruptcy Law) was introduced in the Kingdom of Bahrain (Bahrain), repealing Legislative Decree No. 11 of 1987 with respect to the Bankruptcy and Composition Law (the Old Law). The Bankruptcy Law recently came into force on 7 December 2018 and represents a modern and extensive reformulation of the bankruptcy regime in Bahrain.

Application to debtors

The Bankruptcy Law clearly delineates the type of debtor to which it will apply to. It is clear that whilst it covers the insolvency of trading individuals and companies, it excludes consumer debtors. In addition, the Bankruptcy Law specifies that cases relating to financial institutions and insurance companies licensed by the Central Bank of Bahrain will be excluded from the law.

Focus of legislation

The Bankruptcy Law follows the model of US and certain European insolvency regimes by emphasising on the restructuring of the debtor and the continuation of the debtor's business. This objective represents a reoccurring theme throughout the legislation.

The Bankruptcy Law allows for debtors to apply for restructuring proceedings within a bankruptcy framework and to remain as debtors in possession of and in management of the business during that period (subject to fairly usual carve outs on that position related to debtor behavior or the state of the business).

The restructuring proceedings envisaged by the Bankruptcy Law allow for a debtor to restructure their debts, to characterize creditors based upon the nature of their debts and to ensure that minority un-consenting creditors are subject to a cram down where the two-thirds of the creditors by value agree to the restructuring proposals. Significantly, the Bankruptcy Law anticipates that a debtor applying for the procedure may have already pre-agreed a restructuring plan and allows for an expedited process in that scenario.

Importantly and in line with the clear objectives of the legislation, the Bankruptcy Law allows for the liquidation of the assets of a debtor only where the question of whether the business can be saved has been considered.

Improvements over the old law

The Bankruptcy Law contains a number of concepts and clarifications which were not present in the Old Law, some of which break new ground in the Gulf Cooperation Council (GCC) insolvency regimes.

As would be expected in a comprehensive restatement of the insolvency law, the rights and priorities of creditors in a bankruptcy are clearly delineated and the position with regards to financial and derivatives contracts (and the associated

close out netting provisions) are made clear.

A novel aspect of the Bankruptcy Law is that it specifically envisions the issue of cross border insolvency, which is an issue arising in the GCC with increasing regularity. Chapter 5 of the Bankruptcy Law aims at co-operation between courts and competent authorities outside the jurisdiction with a view to promoting greater trade and investment. Specifically, the legislation allows (amongst other things) for an assistance application to be made by a foreign court or insolvency representatives and allows for the recognition of foreign insolvency proceedings in Bahrain.

Summary

The Bankruptcy Law represents a significant reformulation of the insolvency regime in Bahrain and is a significant improvement over the Old Law.

An effective and clear insolvency regime is critical in any jurisdiction to allow creditors and debtors to understand their respective positions on insolvency and to encourage certainty at all stages of the business cycle.

It is to be hoped that the clarity engendered by the Bankruptcy Law will be conducive to encouraging both domestic and foreign investment in line with Bahrain's Economic Vision 2030.

For more information on the Bankruptcy Law, please contact one of the authors.

AUTHORS



Mohamed Toorani

Partner

Manama | T: +973 1755 0890

mohamed.toorani@dlapiper.com



James Iremonger

Partner

Dubai | T: +971 4 438 6100

james.iremonger@dlapiper.com
