



Copyright © 2021 International Journal of Criminal Justice Sciences (IJCS) – Official Journal of the South Asian Society of Criminology and Victimology (SASCV) - Publisher & Editor-in-Chief – K. Jaishankar ISSN: 0973-5089 July – December 2021. Vol. 16 (2): 103–118. DOI: 10.5281/zenodo.4756064 / IJCJS is a Diamond Open Access (Authors / Readers No Pay Journal). Indexed in Scopus and Emerging Sources Citation Index (Web of Science).

This is an Open Access article distributed under the terms of the Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.



Corporate Rescue Culture in Saudi Arabia and Egypt: A Comparative Review of New Bankruptcy Laws

Hamza E. Albaheth¹

Shari'ah and Law Collage, Taif University, Saudi Arabia

Abstract

Legislators in Saudi Arabia and Egypt have enacted new bankruptcy laws in respective countries that are radically different from the prevalent laws. The objective of this paper was to discuss whether these bankruptcy laws in Saudi Arabia and Egypt created a secure corporate rescue culture similar to corporate laws in developed countries. A conceptual framework was chosen to find out whether the new laws promoted a corporate rescue culture. The exploratory research method in this qualitative study examined the secondary sources including published journal articles and data on government websites. It was revealed that the new rescue laws provided an efficient framework for out of court settlements and restructuring. It provided assurance to investors during the unstable investment climate protecting both the interest of debtors and creditors. Thus, these laws had many similarities with laws in the western countries particularly the EU and the US. These findings would help policy makers and investors to know about the present corporate climate in the Middle East and North Africa (MENA) region.

Key Words: Saudi Company Law, Saudi Bankruptcy Law, Egyptian Bankruptcy Law, Corporate Rescue, Foreign Investments.

Introduction

Companies are a product of the company law since the laws define the nature of the corporation (Mayer, 2021). Company laws specify the governance, shared, and joint authority of operating the company within a particular location (Suess, 2014). The laws define the ethical values and corporate governance that will guide the activities of the company (Abdullah & Valentine, 2009). It is argued that the traditional regulation has proved inadequate in preventing market failures (Mayer, 2021). This is the reason that many countries are introducing reforms in company

¹ Faculty member at the Shari'ah and Law Collage, Assistant Professor at Law Department, Taif University, Saudi Arabia. He achieved his Bachelor of Science degree in Law with honor in 2004 from King Abdul Aziz University in Jeddah, Saudi Arabia. Also, he got the Master's degree in law (2013) and then Doctorate in Juridical Science in Law (2018) from Southern Methodist University (SMU), Dedman School of Law, in Dallas, Texas State, United States. Currently, he is the general supervisor of the Legal Administration Office and the secretary of Taif University Council. He has published a few articles in the field of Law.

laws to improve corporate governance and structure in line with the changing nature of the businesses.

Company laws in Saudi Arabia and Egypt have undergone changes in the past few years to bring them up-to-date with modern corporate requirements. Saudi Arabia Company law was passed in 1965 and was overhauled and revamped in 2015 to harmonize the laws with modern requirements (Sfeir, 1988). While there have been no significant changes in the Egyptian Companies law after it was introduced in 1981, various amendments have been passed with the most recent one in 2018 (Abdelsalam & Weetman, 2007).

This exploratory study reviewed and explored the commonalities and differences in Saudi Arabian and Egypt Company Law in terms of a transition to a rescue culture to reduce the risks of corporate failures. The study also aimed to find out whether the corporate rescue legislative protection measures in the two countries of the Middle East and North African (MENA) region are in harmony with the bankruptcy laws in the western countries. The author chose to compare bankruptcy laws of the two regions in the MENA regions with the western bankruptcy laws as the intent was to compare the corporate rescue regulations with countries with a *laissez faire* attitude towards corporate governance. The legislative processes of any of the Western nations was not examined in the study since the government laws focus on greater state control similar to that in Saudi Arabia and Egypt. The intent of the study was to compare and contrast the corporate rescue cultures of countries having starkly different government structures.

Conceptual framework

Corporate rescue was used as the conceptual framework of the study. The rescue culture implies that the value of the business as a growing concern is greater than the scrap value of the organization (Pretorius & Rosslyn-Smith, 2014). The framework was chosen to find out whether the bankruptcy laws in Egypt and Saudi Arabia promote a corporate rescue culture. The framework covers legislative remedial actions allowing to a company during the time of financial distress in the respective countries.

Every paradigm has its own ontological and epistemological foundation (Scotland, 2012). The study topic was examined under the interpretive paradigm. The ontological position of interpretive paradigm is relativism, which puts forward the view that reality is subjective and differs from one person to another. There are different realities that are individually constructed and there are as many realities as there are individuals (Hines, 1988). The corporate rescue culture was interpreted based on the bankruptcy laws enacted in 2016 and 2018 in Saudi Arabia and Egypt, respectively.

Literature Review

A. Corporate Rescue Mechanisms in Saudi Arabian Company Law

The business environment in Saudi Arabia has changed radically over the past few decades. There has been a growth in large family-owned businesses and public listed companies (Alamri, 2011; Azmi & Abd Razak, 2014; Okpa et al., 2020). Therefore, a change was required in the Company laws. The old company laws required limited liability companies and joint-stock companies to set aside 10 percent of net profit as a mandatory reserve until the reserve reached 50 percent of the paid-up capital. The reserve was set to ensure that the company had enough liquidity for meeting financial

obligations. Under the new Company laws in Saudi Arabia, the reserve requirement was reduced to 30 percent of paid-up capital for both LLCs and JSCs (Abdelhady et al., 2016; Kanungo & Chatteraj, 2020). This provision improved the cash flow position particularly of companies with a high paid-up capital resulting in improved liquidity position (Gudalov & Treshchenkov, 2020; Kocturk, 2020; Mehar, 2005). In addition, the paid-up capital for joint-stock companies was reduced from 2 million riyals to just 500,000 riyals. Failure rates of small businesses are much higher than large businesses (Heinrich et al., 2020; Watson & Everett, 1993; Zych, 2020). So, the new laws showed that the government was more tolerant towards the default of companies in a bid to encourage more private participation.

Moreover, the old Company Law, 1965 made shareholders personally liable for debts if the losses were more than 50 percent of paid of capital for LLC and 75 percent of paid-up capital for JSC. As per the new Saudi Company Law of 2015, the shareholders are not personally liable for debts. Instead, shareholders must convene a meeting to dissolve the company in case the losses exceed the specified threshold. The company will be deemed dissolved if the shareholders do not convene a meeting when losses exceed the threshold paid-up capital.

The introduction of Saudi Company bankruptcy laws in 2016 showed a seismic shift towards a corporate rescue culture in the country. The new bankruptcy laws applied to Saudi and non-Saudi investors and corporations including banks, telecommunication, and insurance companies that carried on for-profit, commercial, or professional businesses in Saudi Arabia (Danielle, 2020; Nigam & Boughanmi, 2017). The new laws aimed to modernize the company laws of Saudi Arabia to bring it in line with pro-debtor laws implemented in western countries in line with Saudi Vision 2030 (He et al., 2020; Wells, 2008). The new law was pro-debtor law that contrasted with the previous laws which encouraged a pro-creditor culture. Shareholders were no longer personally liable for the debts. Moreover, companies were allowed to operate even if incurring losses until a certain loss threshold were met. In this respect, the new pro-debtor company rescue culture was superior to the western bankruptcy laws in that the laws tried to achieve a balance between respecting the rights of debtors and creditors. The new Saudi Arabian company bankruptcy law aimed to assist a firm facing financial difficulties to reorganize its finances so that it continues its operations. But if it were not able to meet the loss threshold, the law ensured that creditors are provided fair compensation upon liquidation of the company (Jaafar, 2020; Wells, 2008).

The hallmark of the new Saudi Arabian company law was the provision of a simplified process for debtors to reorganize their finances. In the event of financial difficulties, the debtor can request the court in Saudi Arabia to start the Preventive Settlement Procedure that involved the suspension of claims by creditors for 90 days that can be extended to a maximum of 180 days. The new company bankruptcy laws of Saudi Arabia also allowed financial restructuring that is defined as, "Procedure that aims at facilitating the debtor's coming to terms with his creditors regarding the financial restructuring of his business under the supervision of a Financial Restructuring Officer."

Activities of the companies in Saudi Arabia are regulated by two organizations namely the Ministry of Investment of Saudi Arabia (MISA) which was previously called General

Investment Authority (SAGIA) and the Ministry of Commerce (MC). These agencies promote foreign investment to achieve the diversification strategies identified in the Saudi Vision, 2030 and the National Transformation Plan, 2020. The regulatory authorities supervise the activities of companies operating in Saudi Arabia as per the company's laws. SAGIA announced in 2015 that it will allow establishment of 100 percent foreign owned trading companies that would employ mostly Saudi nationals. The corporate rescue plan will equally be implemented on local and foreign owned firms.

A number of problems existed prior to the implementation of new Saudi Company Law. The payment of debts after a dissolution of a company was disorderly and some creditors were paid while others were left out (Al-Sarraf, 2020). In addition, there was little scope for negotiations with the creditors to ensure that the company continued to operate in case of a temporary disruption (Al-Sarraf, 2020). There was also a lack of guidance regarding when a company was considered insolvent. Saudi courts did not declare a company bankrupt until all the other debt enforcement methods were tried (Al-Sarraf, 2020). The new Company Law and Bankruptcy Law of Saudi Arabia (introduced in 2015 and 2018 introduced various protection measures to protect debtor corporations. The both laws in a way created a rescue culture providing a breathing space for businesses facing financial problems. This helps preserve businesses that is in the best interest of most creditors as they would not have to receive a lower settlement amount. The 2018 Bankruptcy Law was similar to the bankruptcy protection offered to companies in western countries. It brought clarity to the issue of bankruptcy for both debtors and creditors through the creation of new forms of insolvency procedures. The new laws regarding corporate rescue however address issues in the old laws about insolvencies.

The new Saudi Bankruptcy Law contains provisions to assist insolvent corporations facing financial problems to reorganize their finances and continue operations thereby contributing to the economy. The laws also ensure equitable treatment of creditor when creating a financial reorganization plan of a debtor company. The laws provide a simplified process for debtor companies to request bankruptcy protection when facing financial troubles. One of the significant features of The new Saudi Bankruptcy Law is that it clearly distinguishes 'insolvent' and 'bankrupt' corporations. The insolvent debtor in the new law is defined as corporations or individuals who don't make payment when due. In contrast, bankrupt company is one that has sold all assets to pay back the debt (Al-Sarraf, 2020). This means that a debtor who has assets cannot declare bankruptcy. The provision clearly shows a transition from a liquidity culture to corporate rescue culture. An insolvent company is allowed to continue operations by delaying claims from creditors.

The new laws allow a debtor to request Preventative Settlement procedure both in case of insolvency and bankruptcy. The debtor can allow the debtor who is facing financial issues to request a temporary extension in debt payment for up to 180 days. Claims from the creditors are put on hold until the company's finances have improved. The new laws do not impact existing contract between the two parties. The contract between the debtor and creditors remain in place until both the parties declare void the old debt contract and create a new one. The only exception is government agency and financial companies' debtor contracts. The new laws have defined procedures for the facilitation of the debtor to meet financial obligations of the creditor through restructuring of the business.

This financial restructuring is supervised by a Financial Restructuring Officer. (FRO) The application for the assignment of the FRO can be made by the regulatory authority, creditor, or debtor. The FRO will supervise the activities of the debtor firm to ensure that the activities are in alignment with the approved restructuring plan. The FRO will act as a trustee to ensure the procedures are fair and equitably executed. Approval of the FRO is necessary to carry out activities that will have a major impact on the liabilities or assets of the company. The trustee is given access to all information including confidential data that will help in assessing the debtors' ability to restructure its financing as specified in article 59 of the Bankruptcy Law 2018 of Saudi Arabia.

An important aspect of the Saudi bankruptcy law is the evaluation of the bankruptcy assets. The assets evaluated during the bankruptcy proceeding are similar to the Property of the Estate of the US bankruptcy laws. The asset of the debtor at the start of the bankruptcy proceeding are evaluated that may include both tangible and intangible asset. This wide scope of asset evaluation aims to bring the laws more in alignment with the modern bankruptcy laws.

The financial restructuring plan must be approved by creditors or courts whose claims make up two-thirds of the total debts. Once a restructuring plan is approved, the claims of the creditor are halted unless the court approves a request for the termination of the plan or the financial reorganization plan is terminated without approval of the court. Creditors are allowed to oppose actions by the debtor in disposing assets within a year after the start of the bankruptcy proceeding and two years in case the transaction was carried out with a related party as per Article 210.

According to the new Bankruptcy laws, the liquidation of the debtor facing financial difficulties is approved only when the debtor believes that it is not possible to continue business operations. The process of liquidation is approved only when the debtor company has become bankrupt or insolvent. If the court approves the liquidation request by the debtor or creditor, a liquidation trustee is appointed that will manage the assets of the debtor. The bankruptcy trustee is given the power to verify claims of the creditors, liquidate assets, and ensure maximum distribution of the sale of debtor's assets. The proceeds from the sale of the assets are distributed equitably to the creditors. The 2016 Saudi company law allows debt metallization to ensure creditors are treated equitably (Al-Sarraf, 2020). The company laws of Saudi Arabia allow set offs only prior to commencement of the reorganization plan. The law also prohibits concealment of assets that would harm creditors. Violation of this rule will make the management personally liable due to which they would have to pay fines up to 5 million Riyals, serve jail term up to five years, and avoid co-founding or managing another business.

The 2015 Saudi company law has mandated to record the bankruptcy proceeding in a bankruptcy register. This register will be open to the public for inspection. The aim of creating the bankruptcy register is to ensure transparency of the process of reorganization. The new law that was created in 2016 represented a seismic shift that offered more protection to corporations facing financial problems. It has created framework for the restructuring of the companies facing financial problems. The laws have created a bankruptcy commission that ensures that debtors and creditors are able to come to a mutual understanding regarding payment of debts. The bankruptcy

protection laws have clearly defined the procedures (and penalties) for the restructuring of companies. It has created an accelerated bankruptcy protection mechanism to ensure that firms are able to reorganize and restructure their activities in a timely manner for the benefit of all stakeholders. The new laws have allowed restructuring or corporate rescue to be seen as a viable and preferred method. It contrasts starkly with the older company law that focuses on liquidation and dissolution of the company operations. The laws ensure that competing claims of creditors are effectively managed while ensuring continuation of the business. The 2016 company law led for the formation of the Saudi Bankruptcy Law in 2018 that clarified restructuring process of companies so that they continue their operations. The laws serve as guidance for courts to ensure equitable restructuring process to ensure every aspect of the process is covered including moratorium periods.

Businesses in Saudi Arabia today can negotiate with creditors in a formal manner through supervision of the courts. The new laws provide reassurance to foreign firms who are used to the rescue culture dominant in the western countries. The provisions of creating a Bankruptcy Commission can be compared to the establishment of the Bankruptcy trustee in the US or the Insolvency Practitioner in the UK. The Bankruptcy protection laws provide protective settlement that transforms the previous court driven approach to a debtor driven process. The debtor creates a plan subject to the approval of the court to continue its operations as a going concern so that it becomes able to meet all its financial obligations. The courts will look at the application to determine if a debtor firms will be able continue the business and repay the creditor in a reasonable timeframe. In this respect, the latest Saudi company laws aim to bring a balance between the rights of the debtors and creditors. The financial position of the business is investigated to find out if they can continue as a going concern. The debtor business must provide sufficient information to convince the courts that it will be able to sustain the operation if the claims of the creditors are halted for a certain period.

The debtor can apply for a moratorium once the application of the protective settlement has been approved. The Saudi company bankruptcy laws introduced in 2018 require the creditors to vote on the approved restructuring proposal. The provision is similar to the provisions of the Corporate Insolvency and Governance Act that requires the creditors to vote in favor of the restructuring plan to be approved. But unlike the UK bankruptcy laws, the vote of the shareholders is not required for the approval of the financial restructuring plan. Moreover, the laws differ from the US bankruptcy laws where the court may approve a plan even if unsecured creditors voted against a plan (White, 1996).

Financial restructuring under the Saudi bankruptcy laws has been brought under the common law. The debtor continues its operations as a growing concern under the supervision of a registered insolvency practitioner. The financial restructuring activities are supervised by the insolvency practitioner to ensure that they are carried out as per the approved restructuring plan. Various companies have been subjected and undergoing restructuring pursuant to the new bankruptcy laws of Saudi Arabia. Notable examples are the insolvency case of the Ahmed Hamad Algosaiibi and Brothers (AHAB). The Dammam Saudi Court accepted the AHAB's request for bankruptcy protection in 2019 (Kilborn, 2020). The court rejected demand for liquidation by creditors that included Raiffeisen Bank and HSBC, which clearly

indicate a shift in Saudi Arabia to a corporate rescue culture. The company that had defaulted on loan payments of \$22 billion applied for a financial restructuring process that was accepted by the court. AHAB was able to get approval from 94 percent of creditors for a restructuring plan at a discount ([Bassey, 2020](#); [Hatton & Pistor, 2011](#)).

Saudi Courts resort to liquidation as a last measure in case the business that are not likely to continue operations. The court issues a moratorium in case of liquidation of the firm. The moratorium becomes effective on the date of making an application of liquidation by the debtor or the creditor. This process has also been streamlined by introduction of provisions in the bankruptcy laws introduced in 2018. The law requires audit of the asset of the debtor and distribution of the creditors based on priority of the debts. The administrative liquidation comes into effect if the debtor's assets do not cover all the claims ensuring equitable and efficient distribution of assets upon liquidation.

The bankruptcy protection laws have also introduced protection laws for small debtors whose debts are 2 million Saudi Riyals or less. The protective measures include less control of creditors in restructuring of the firm as compared to restructuring of big firms with debts exceeding the stated threshold. As a result, the implementation of corporate bankruptcy laws in Saudi Arabia allowed it to jump 30 places to 62 in the World Bank report for resolving insolvency ([Fallatah, 2020](#)).

B. Corporate Rescue Mechanisms in Egyptian Company Laws

Corporate policy makers have stirred reform in Egypt regarding corporate bankruptcy law. The Egyptian bankruptcy law was approved by the Egyptian Cabinet in January 2017 and ratified by the parliament in January 2018. The new Bankruptcy Law No.11 represents a step forward for Egypt to modernize the corporate law and bring in line with the western corporate laws([Ebrahim & Fattah, 2015](#)). It represents a transition from a liquidation culture promulgated by the Chapter 5 of the Trade Law No. 17 to a corporate rescue culture ([Al-Sarraf, 2020](#); [Hajjar, 2020](#)).

The goal of the Egyptian bankruptcy law (2018) is to assist firms to reorganize their finance through management restructuring, debt restructuring, asset reevaluation, capital appreciation, and cash flow improvement ([Al-Sarraf, 2020](#)). The aim of the shift towards a corporate rescue culture was to create an attractive and safe corporate environment for foreign investors ([Xu et al., 2020](#)). It had replaced the previous trade law that focused on liquidation and declaring bankruptcy instead of ensuring struggling businesses continue operations as a going concern. Article 15 of the new Egyptian bankruptcy law allows restructuring of legit businesses in operation for more than 2 years whose capital is over one million Egyptian Pounds. The aim of the new law is specifically stated in Article 18 as to develop a restructuring plan for the businesses' administration and finance through identifying proposed finance sources to pay out the debts. In addition, Article 29 of the Egyptian Bankruptcy law prevents creditors from taking an action against the creditor until the end of the restructuring process. However, it also protects the interest of the creditors by barring debtors from taking any action that adversely affects creditor's interest which is stated in Article 25 of the plan. During the restructuring process, the debtor is not allowed to donate, gift, borrow, lend, sale of assets, offer guarantees, lien, or pledge that would hurt the creditor's claim.

As per the new Bankruptcy Law introduced in 2018, a restructuring committee consisting of bankruptcy administration experts will oversee the restructuring process and reevaluate the finances of the company. The committee will consist of experts from Egyptian Financial Regulatory Authority, Central Bank of Egypt, Ministries of Finance Investment Trade, Industry and Manpower, General Authority for Investment and Free Zones, Egyptian Exchange, Egyptian Financial Regulatory Authority, Egyptian Federation of Chamber of Commerce, Egyptian, Exchange, Federation of Egyptian Industries, appraisers, trustees in bankruptcy, and others if required (Onuoha, 2013).

Companies facing financial difficulties which have not carried out fraud or other wrongful act may apply for bankruptcy protection by submitting an application addressed to the head of the bankruptcy department and the local court specifying the reason for the financial disturbance and the plan for restructuring the business and guarantees for its implementation. The new law instigates a corporate rescue culture by protecting reputation of bankrupt individuals through preventing bankruptcy and also saving time of creditors in claiming debts through complex processes (Altman & Hotchkiss, 2010).

The 2018 bankruptcy laws also allow mediation between the debtor and collector through a Bankruptcy judge for an out-of-court settlement. The relevant court in the jurisdiction of the debtor will hear cases while ensuring privacy of confidential information. In case the trader is registered in a foreign country, the court within the jurisdiction of the local office shall be responsible for bankruptcy protection related processes. The competent court will hear the cases in the first instance court at the registered office of the debtor. The court will assess the restructured plan that when approves and signed by the creditors and debtor company becomes binding. Unlike the Saudi Arabian bankruptcy law, the restructuring plan does not have to be signed by a minimum threshold of creditors. If the court approves the plan, it becomes binding on the creditors who sign the agreement. The plan puts a moratorium on all claims that will only be lifted at the completion of the plan or annulment of the plan by the court.

A highlight of the 2018 Egyptian bankruptcy law is the preventive composition that is similar to the voluntary arrangement plans of the English law (Al-Barashdi, 2018). The solvent debtor can prevent liquidation upon submission of a settlement plan to pay part or all of the debts as approved by the creditors and the court. The debtor can submit preventive composition no more than 15 days of last payment due. The application of preventive consumption is different from the restructuring plan and accompanies the same. The trustee will prepare a claim list after approval of the preventive application and assess the practicality of the settlement plan. There is a minimum threshold for the preventive settlement plan that includes creditors with 2/3 value of the claim. The minimum threshold for bondholders or corporate sukuk is less i.e. 1/3 of the value of the claim (Al-Barashdi, 2018).

The court uses a cash flow test to determine bankruptcy status of a company. A debtor company will be adjudged bankrupt if it is unable to pay commercial obligations when due because of financial problems. The debtor may lose the capacity to manage the finances if declared bankrupt but the debtor can invest in a new business with capital that is not part of the bankruptcy proceeding. All the claims against the bankrupt debtor will be waived off three years after the end of the

bankruptcy process. The bankruptcy laws are particularly strict against debtors who are guilty of negligence in maintaining funds of the company resulting in bankruptcy. The guilty directors will be disqualified in assuming certain posts including board membership of the companies if the company's assets are not sufficient to pay back at the minimum 20 percent of debts. The court may even order the directors to personally pay back the debts if they do not exercise reasonable care as is expected of a prudent individual running the business (Al-Barashdi, 2018).

The Bankruptcy Law 2018 is the first one in Egypt that specifically focuses on bankruptcy cases. Prior to this law, there was a lot of confusion regarding bankruptcy and liquidation proceedings. Courts adjudged the cases on individual cases with some imposing prison time even in case of non-fraudulent bankruptcy (Al-Sarraf, 2020). The new bankruptcy laws abolish the prison penalty and only impose fines for bankruptcy. It allows the debtor to continue to keep the business open in case of a bankruptcy and negotiate with the creditors. This represents a marked shift in attitude towards corporate bankruptcy in Egypt where struggling business owners were generally imprisoned outright.

The introduction of the new law brings the bankruptcy proceedings in line with the western laws regarding corporate restructuring. It creates a balance between the requirements of the struggling businesses and creditors. The law provides a structured process for struggling businesses to continue their operations. The restructuring of the indebted firm is carried out in within 60 days of submitting the request for bankruptcy protection. Even in case of liquidation, the process is made more streamlined that reduces the timeframe of the liquidation from 2 years to about 9 months. The new law was introduced after a critical Doing Business Report of the World Bank that ranked the country 115 among 190 countries in insolvency procedures (Abou Taleb & Al Farooque, 2021).

The bankruptcy law of Egypt similar to the Saudi Arabian bankruptcy law represents a shift away from liquidation to a corporate rescue culture. The implicit aim of the plan is to attract investors to set up a business in the country through creating a secure corporate environment. The law focuses on the requirements of both the debtor and the creditor firms. The law allows debtors and creditors to agree to a rescheduling of payments that promotes financial stability. The new law creates a legal framework for the first time for dealing with firms facing financial difficulties. The bankruptcy law provides an alternative to the liquidation option following the laws in other developed countries such as the US, UK, Singapore, and the EU. It affords protection composition similar to the provisions of Chapter 11 bankruptcy protection. It has allowed orderly management of distressed firms in Egypt. It allows the debtor to remain in charge of the transformation process under the supervision of a trustee. The restructuring committee serves as a conduit between the claims of the creditors and the debtor. In this regard, the corporate rescue culture similar to the new Saudi Arabian bankruptcy protection laws is administrative in nature.

The new bankruptcy protection law in Egypt provides assurances to international investors about the protection of capital. It promotes structural reforms creating a rescue culture encouraging participation from different stakeholders creating an entrepreneurial ecosystem that accounts for risk-return relationship in business and investment. Prior to the adoption of the bankruptcy protection law in Egypt, firms

faced a costly and lengthy liquidation process under the trade law. The companies were forced to liquidate and enter into insolvency proceedings that took two years or more. The inefficient insolvency structure created obstacles in creating an optimum corporate culture in Egypt similar to the one in developed nations. Egyptian firms faced particular difficulties during financial crises with most forced to wind up operations. The previous Egyptian trade laws made no distinction between fraudulent and non-fraudulent activities. Investors faced the risk of imprisonment even if they played by the book solely due to facing financial difficulties that occur in many cases due to factors outside of the control of the management. The outdated trade laws prevented most foreign firms from investing in Egypt. The condition was acknowledged by the World Bank that ranked it at the bottom of the countries when it came to insolvency proceedings.

The firms prior to the introduction of the 2018 bankruptcy protection laws had an informal phase of corporate rescue that depended solely on the management of the debtor firm. The introduction of the new bankruptcy law in Egypt created a formal corporate rescue plan addressing the institutional challenges to allow firms facing financial distress to continue as a going concern.

Egyptian legislators have adopted a more investment friendly approach when preparing the new bankruptcy laws. The reforms were necessitated due to grave financial and economic difficulties faced by the country during the past decade (Miller & Waisman, 2004). It was only financial support from the Saudi Arabia, UAE, and Kuwait artificially bloated the size of the Egyptian economy (Shichor, 1998). The efforts seemed to have paid back as after the introduction of the bankruptcy laws, the macroeconomic condition seemed to have stabilized with sustained economic growth even after the country was hit by the Covid-19 pandemic (Hryhoruk et al., 2021). It was the only country in Middle East and North Africa (MENA) region that has not experienced a recession due to Covid pandemic.

The introduction of the bankruptcy laws resulted in improvement of Egypt's World Bank ranking from 115 to 104 in addressing insolvency (Al-Sarraf, 2020). Moreover, statistics in Figure 1, from the Central Bank, BNP Paribas, show that foreign direct investment increased significantly in the year just prior and following the introduction of the bankruptcy protection laws with the exception of 2020 when the FDI had dried internationally due to the COVID pandemic.

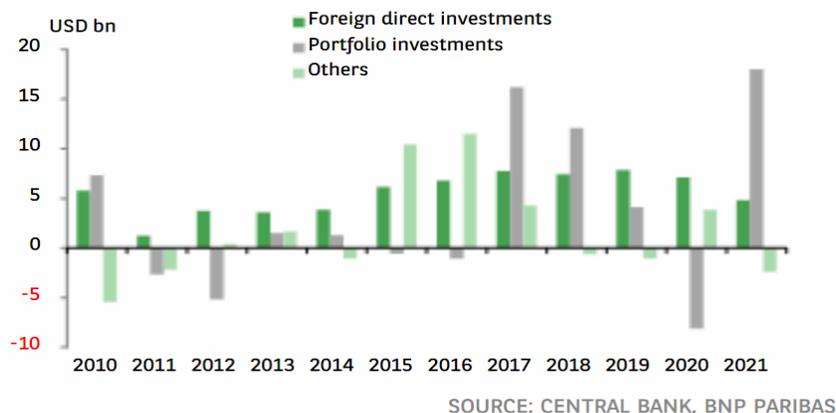


Figure:1 Foreign Direct Investment Statistics

The insolvency practitioners seek to create a corporate rescue model that is in harmony with international standards. It increases the chances of repayment of debt through a process that is in harmony with the interest of both the debtor and the creditor firms. The law allows timely initiation of a process that aims to rescue firms facing financial problems.

Methodology

The exploratory research method was used in the study. The research method conforms to the objective of exploring different aspects of the corporate rescue culture in Egypt and Saudi Arabia. The study examines the secondary sources including published journal articles and government websites of the countries included in the study to gather qualitative data. Qualitative research method involved an interpretive and inductive approach to analyze data through the process of deduction. The research method was selected as it allowed a deep exploration of the topic without constraints of the quantitative data. The method allowed flexible approaches to explore and study the research phenomena (Brooks et al., 2015). The study explored the bankruptcy protection laws in Egypt and Saudi Arabia. Relevant literature that delved into the topic was also explored to determine the practicality of the laws in terms of creating a corporate rescue environment.

One of the critical issues that can occur during a research study is that of researcher bias. Harding (1992) emphasized on the importance of carrying out extensive research to avoid partial theories resulting in bad sciences. Subjective evaluation based on insufficient data leads to incorrect observation. Many times selective observation leads to an incorrect assumption. A researcher needs to look at all the data based on the idiographic research method that involves looking at a topic from different perspectives as described by Mingers (2003).

The data triangulation technique was used to avoid researcher bias in interpreting bankruptcy laws. Triangulation involves confirming the results of the study. According to Flick (2007), triangulation can result in a more accurate estimate of qualitative results for a given construct. Cotton et al. (2010) had recommended the analyst triangulation method whereby the same data is interpreted by different observers. The study does not just look at the respective bankruptcy legislations but also examines multiple studies as a triangulation tool to verify findings and discovering new trends and patterns regarding bankruptcy laws in Saudi Arabia and Egypt.

Findings and Discussion

The bankruptcy laws in Egypt and Saudi Arabia and the recent regulations have shifted the legal landscape from a pro-creditor liquidation culture to a western-styled pro-debtor corporate rescue culture. The laws have reshaped the framework for the restructuring and liquidation in Saudi Arabia that is more equitable and just for all creditors. The laws have created restructuring processes that are flexible and dependent on the specific circumstances surrounding the insolvent company. It gives companies a chance to turnaround the situation and continues its operations as a going-concern contributing to the economy.

The previous bankruptcy laws in Egypt as well as Saudi Arabia were modeled after the British Companies Act of 1948. The laws favored liquidation of the financially distressed companies. The present laws that are modeled on the modern bankruptcy

laws in the US and the UK represents a seismic shift from the liquidation to a corporate rescue culture. The introduction of the present bankruptcy laws is due to the dire needs of the modern uncertain economy. The laws give right to the debtor firms to initiate a restructuring process that results in timely repayment of debts while ensuring survival of the firm. The outcome is likely to be positive when the debtor firm recognizes the dire need to reform within a specific timeframe and is given full control over the process of reformation. It will result in continuation of the business that will contribute to a positive outlook on the respective country's economies through saving jobs and preserving tax revenues.

The corporate rescue culture promoted by the present laws mitigates the cost involved in pursuing the debt. It allows creditors to reduce legal costs involved in pursuing their claims individually. The law pools the interest of creditors allowing the debtor to respond as per the procedural laws to improve its financial circumstances and repay the debt. It involves aggregating the interests of all the creditors and verifying the asserts of the debtor firm. The collective rescue culture facilitates tacit collusion resulting Cournot-Nash equilibrium (Prelec & Loewenstein, 1998). The creditor and debtors have symmetric cost due to liquidation that can be avoided through an agreement to reorganize under the bankruptcy protection laws. The new bankruptcy laws result is a win-win legislative environment for the creditors and debtors in Saudi Arabia and Egypt. Continuous-time valuation model with endogenous default and corporate protection laws show that companies with a large share of intangible assets and low volatility asset value and low portion of debt in the capital structure spend less time in bankruptcy protection (Paseka, 2003).

While the corporate rescue culture is in alignment with international standards, it is also important to understand the weakness of the debtor based corporate protection legislation. The problem with corporate rescue plans is that the traditional governance strategies such as stock options are worthless in the event of insolvency. This creates challenges for the management to steer the company during dire financial times. Nevertheless, the policymakers in Egypt and Saudi Arabia seem to be confident about the corporate rescue culture in creating an investment friendly corporate environment. The bankruptcy protection law has replaced fractured corporate laws that promoted liquidation of distressed firms. The law represents a large step towards the business as a going concern legislation to ensure continuity of business through more efficient and fair distribution of assets of the debtor firm. This is achieved through a streamlined bankruptcy process that harmonizes the interests of both the debtors and creditors.

Moreover, the corporate rescue culture in Egypt and Saudi Arabia allow liquidation through legislation as a measure to protect the interest of the investors if the company does not meet a specific loss threshold. In contrast, the new EU and US laws does not have such limits and rather encourages providing tools that help in restructuring of the business in distress providing them a second chance to discharge debts and continue to operate profitably (Zhang, 2019). Any company can voluntarily file for bankruptcy protection irrespective of the loss amount (White, 1989). Allowing all companies to file bankruptcy protection would have been a better option to ensure continued operations of firms.

However, the outcome of the new bankruptcy laws in the two countries in the MENA region are an improvement in terms of corporate rescue culture since the new laws allow firms to opt for bankruptcy protection instead of forcing them into liquidation by default as was the case with pre-2016 bankruptcy laws in Saudi Arabia and pre-2018 bankruptcy laws in Egypt. The new laws allow insolvent firms to continue their business through restructuring or preventive composition for the first time in the history of Egyptian and Saudi Arabian legislation. The alternative to liquidation is in alignment with international standards. It is projected the new corporate rescue culture laws will continue to have a positive impact on the investment climate and economies of the respective countries.

Conclusion

The study examined the corporate legislative protection measures in Saudi Arabia and Egypt and compared them to the western corporate rescue culture. The timing of the bankruptcy laws in Egypt and Saudi Arabia was perfect. It allowed firms facing financial difficulties due to COVID-19 to reorganize their finances in the wake of lower demand due to restrictions. The corporate rescue laws provided an efficient framework for out of court settlements and restructuring. It provided assurance to investors during the unstable investment climate protecting both the interest of debtors and creditors. After the enactment of the new bankruptcy laws in the two countries, the bankruptcy protection laws bare similarities with laws in the western countries particularly the EU and the US.

Indeed, there are other options to rescue firms such as buyouts and takeovers. But the topic is beyond the scope of this study since it focuses on legal provisions in terms of bankruptcy laws regarding corporate rescue culture.

References

- Abdelhady, H., Oliai, S. A., Sattout, I., Dib, D., Higham, E., Shabbir, Y., . . . Burns, J. G. (2016). Middle East Committee. *Int'l Law.*, 50, 639.
- Abdelsalam, O. H., & Weetman, P. (2007). Measuring accounting disclosure in a period of complex changes: the case of Egypt. *Advances in international accounting*, 20, 75-104. [https://doi.org/10.1016/S0897-3660\(07\)20004-2](https://doi.org/10.1016/S0897-3660(07)20004-2)
- Abdullah, H., & Valentine, B. (2009). Fundamental and ethics theories of corporate governance. *Middle Eastern Finance and Economics*, 4(4), 88-96.
- Abou Taleb, M., & Al Farooque, O. (2021). Towards a circular economy for sustainable development: An application of full cost accounting to municipal waste recyclables. *Journal of cleaner production*, 280, 124047. <https://doi.org/10.1016/j.jclepro.2021.126375>
- Al-Barashdi, S. (2018). Preventive Composition Scheme in Oman as a Rescue Scheme: Still a Myth? *Arab Law Quarterly*, 32(1), 80-97. <https://doi.org/10.1163/15730255-12313040>
- Al-Sarraf, A. (2020). Bankruptcy reform in the Middle East and North Africa: Analyzing the new bankruptcy Laws in the UAE, Saudi Arabia, Morocco, Egypt, and Bahrain. *International Insolvency Review*, 29(2), 159-180. <https://doi.org/10.1002/iir.1378>
- Alamri, M. (2011). Higher education in Saudi Arabia. *Journal of Higher Education Theory and Practice*, 11(4), 88-91.

- Altman, E. I., & Hotchkiss, E. (2010). *Corporate financial distress and bankruptcy: Predict and avoid bankruptcy, analyze and invest in distressed debt* (Vol. 289). John Wiley & Sons.
- Azmi, R., & Abd Razak, A. (2014). Corporate rehabilitation: Informal corporate rescue mechanisms for troubled companies in the United Kingdom and Malaysia. *VOL. 22 (S) JAN. 2014*, 161.
- Bassey, S. A. (2020). Technology, environmental sustainability and the ethics of anthropoholism. *socialspacejournal.eu*, 20(2), 85-110. [http://socialspacejournal.eu/Social%20Space%20Journal%202020\(20\).pdf#page=85](http://socialspacejournal.eu/Social%20Space%20Journal%202020(20).pdf#page=85)
- Brooks, J., McCluskey, S., Turley, E., & King, N. (2015). The utility of template analysis in qualitative psychology research. *Qualitative research in psychology*, 12(2), 202-222. <https://doi.org/10.1080/14780887.2014.955224>
- Cotton, D. R. E., Stokes, A., & Cotton, P. A. (2010). Using observational methods to research the student experience. *Journal of Geography in Higher Education*, 34(3), 463-473. <https://doi.org/10.1080/03098265.2010.501541>
- Danielle, N. (2020). Allocation of risk in public private partnerships in information and communications technology. *International Journal of Ebusiness and Egovernment Studies*, 12(1), 17-32. <http://www.sobiad.org/eJOURNALS/journal IJEBEG/archieves/IJEBEG 2020 1/d-nel.pdf>
- Ebrahim, A., & Fattah, T. A. (2015). Corporate governance and initial compliance with IFRS in emerging markets: The case of income tax accounting in Egypt. *Journal of International Accounting, Auditing and Taxation*, 24, 46-60. <https://doi.org/10.1016/j.intaccudtax.2015.02.003>
- Fallatah, H. I. (2020). Addressing the Need for a Proper Legal Environment to Support Entrepreneurship in Saudi Arabia. *J. Pol. & L.*, 13, 40. <https://doi.org/10.5539/jpl.v13n1p40>
- Flick, U. (2007). Concepts of triangulation. *Managing quality in qualitative research*, 38-54. <https://doi.org/10.4135/9781849209441.n4>
- Gudalov, N. N., & Treshchenkov, E. Y. (2020). The Resilience of the EU Neighbours to the South and to the East: A Comparative Analysis. *Croatian International Relations Review*, 26(86), 6-41. <https://cirri.org/index.php/cirri/article/view/392/386>
- Hajjar, R. M. (2020). A Diverse Young Man's Pursuit of the American Dream : From West Point Cadet to Army Officer and Professor. *Res Militaris*, 10(2), 1-25. <https://resmilitaris.net/index.php/2020/06/01/id1032025/>
- Harding, S. (1992). Rethinking standpoint epistemology: What is "strong objectivity?". *The Centennial Review*, 36(3), 437-470.
- Hatton, K., & Pistor, K. (2011). Maximizing autonomy in the shadow of great powers: The political economy of sovereign wealth funds. *Colum. J. Transnat'l L.*, 50, 1. <https://doi.org/10.2139/ssrn.1787565>
- He, L., Kim, I., & Zhang, Z. G. (2020). Vertical Cooperative Advertising: A Manufacturer's Perspective. *International Journal of Operations and Quantitative Management*, 26(3), 163-182. <https://www.ijoqm.org/papers/26-3-1-p.pdf>
- Heinrich, N., Blaauw, D., & Pretorius, A. (2020). Investigating the Hungarian money demand function: Possible implications for monetary policy. *International Journal of Economics and Finance Studies*, 12(1), 71-87. <http://www.sobiad.org/eJOURNALS/journal IJEF/archieves/IJEF-2020-1/h-nel.pdf>

- Hines, R. D. (1988). Financial accounting: in communicating reality, we construct reality. *Accounting, organizations and society*, 13(3), 251-261. [https://doi.org/10.1016/0361-3682\(88\)90003-7](https://doi.org/10.1016/0361-3682(88)90003-7)
- Hryhoruk, P., Khrushch, N., Grygoruk, S., Gorbatiuk, K., & Prystupa, L. (2021). Assessing the impact of COVID-19 pandemic on the regions' socio-economic development: The case of Ukraine. *European Journal of Sustainable Development*, 10(1), 63-63. <https://doi.org/10.14207/ejsd.2021.v10n1p63>
- Jaafar, K. (2020). The Impact of Culture Diversification on Project Processes. Evidence from Dubai-UAE. *The Journal of Modern Project Management*, 8(1). <https://www.journalmodernpm.com/index.php/jmpm/article/view/JMPM02309>
- Kanungo, E., & Chattoraj, P. (2020). Award of Compensation as a Mode of Victim Restoration: A Comparative Analysis of Laws in India, New Zealand and Germany. *International Journal of Criminal Justice Sciences*, 15(2), 325-342. <http://dx.doi.org/10.5281/zenodo.4743317>
- Kilborn, J. J. (2020). Small Business Bankruptcy Reform in the Arab World: Two Steps Forward, One Step Back. *Arab Law Quarterly*, 36(1-2), 122-157. <https://doi.org/10.1163/15730255-BJA10064>
- Koçturk, N. (2020). A retrospective study: according to online news, the victims, perpetrators and characteristics of sexual abuse at schools. *Eurasian Journal of Educational Research*, 20(86), 115-134. <https://ejer.com.tr/wp-content/uploads/2021/01/ejer.2020.86.6.pdf>
- Mayer, C. (2021). The Future of the Corporation and the Economics of Purpose. *Journal of Management Studies*, 58(3), 887-901. <https://doi.org/10.1111/joms.12660>
- Mehar, A. (2005). Impacts of equity financing on liquidity position of a firm. *Applied Financial Economics*, 15(6), 425-438. <https://doi.org/10.1080/0960310042000314197>
- Miller, H. R., & Waisman, S. Y. (2004). Does Chapter 11 reorganization remain a viable option for distressed business for the twenty-first century. *Am. Bankr. LJ*, 78, 153.
- Mingers, J. (2003). The paucity of multimethod research: a review of the information systems literature. *Information systems journal*, 13(3), 233-249. <https://doi.org/10.1046/j.1365-2575.2003.00143.x>
- Nigam, N., & Boughanmi, A. (2017). Can innovative reforms and practices efficiently resolve financial distress? *Journal of cleaner production*, 140, 1860-1871. <https://doi.org/10.1016/j.jclepro.2016.09.190>
- Okpa, J. T., Ajah, B. O., & Igbe, J. E. (2020). Rising Trend of Phishing Attacks on Corporate organisations in Cross River State, Nigeria. *International Journal of Cyber Criminology*, 14(2), 460-478. <http://dx.doi.org/10.5281/zenodo.4770111>
- Onuoha, B. C. (2013). Factors militating against the global competitiveness of manufacturing firms in Nigeria. *American International Journal of contemporary research*, 3(4), 54-63. <https://doi.org/10.5455/ijlr.20130409050039>
- Paseka, A. I. (2003). *Debt valuation with endogenous default and Chapter 11 reorganization*. The University of Arizona.
- Prelec, D., & Loewenstein, G. (1998). The red and the black: Mental accounting of savings and debt. *Marketing science*, 17(1), 4-28. <https://doi.org/10.1287/mksc.17.1.4>

- Pretorius, M., & Rosslyn-Smith, W. (2014). Expectations of a business rescue plan: International directives for Chapter 6 implementation. *Southern African Business Review*, 18(2), 108-139. <https://doi.org/10.25159/1998-8125/5681>
- Scotland, J. (2012). Exploring the philosophical underpinnings of research: Relating ontology and epistemology to the methodology and methods of the scientific, interpretive, and critical research paradigms. *English language teaching*, 5(9), 9-16. <https://doi.org/10.5539/elt.v5n9p9>
- Sfeir, G. N. (1988). The Saudi approach to law reform. *Am. J. Comp. L.*, 36, 729. <https://doi.org/10.2307/840279>
- Shichor, Y. (1998). China's Economic Relations with the Middle East: New Dimensions. *China Report*, 34(3-4), 419-439. <https://doi.org/10.1177/000944559803400310>
- Suess, J. (2014). Family governance–Literature review and the development of a conceptual model. *Journal of Family Business Strategy*, 5(2), 138-155. <https://doi.org/10.1016/j.jfbs.2014.02.001>
- Watson, J., & Everett, J. (1993). Defining small business failure. *International Small Business Journal*, 11(3), 35-48. <https://doi.org/10.1177/026624269301100302>
- Wells, H. (2008). The Modernization of Corporation Law, 1920-1940. *U. Pa. J. Bus. L.*, 11, 573.
- White, M. J. (1989). The corporate bankruptcy decision. *Journal of Economic Perspectives*, 3(2), 129-151. <https://doi.org/10.1257/jep.3.2.129>
- White, M. J. (1996). The costs of corporate bankruptcy: A US-European comparison. *Corporate bankruptcy: Economic and legal perspectives*, 467-500.
- Xu, X. L., Sun, C., Li, Y., & Zhou, N. (2020). The effects of environmental management and debt financing on sustainable financial growth in the tourism industry. *SAGE Open*, 10(3), 2158244020948530. <https://doi.org/10.1177/2158244020948530>
- Zhang, D. (2019). Preventive restructuring frameworks: a possible solution for financially distressed multinational corporate groups in the EU. *European Business Organization Law Review*, 20(2), 285-318. <https://doi.org/10.1007/s40804-018-0125-3>
- Zych, I. (2020). Research in educational sciences: its importance and quality standards for evidence based educational practice. *Educational Sciences: Theory & Practice*, 20(1), 1-4. <https://doi.org/10.12738/jestp.2020.1.001>