

Examining Law and Policy Implementation in Cooperation Countries with Reference to Competition, Arbitration and Bankruptcy Laws

Shivani Soni, ILNU &
Sankalp Mirani, MNLU

Abstract- Need for the Competition Law develops from the requirement of Fair trade within the market, to forbid firms from taking advantage of their dominant position, to guard buyers and startups from the use of discriminating and destructive practices of corporate giants, to elevate economic development, modernization and economical use of resources. globalization, trade liberalization and agreements have become promoters in driving international organizations like the World Trade Organisation, Organisation for Economic Co-operation and Development, World Bank, International Monetary Fund, and the International Competition Network in persuading nations to implement Competition laws. It is against this background where competition laws have become a necessity, the GCC states have enacted and enforced supervisory frameworks and strategies to handle competition disputes and antitrust encounters. Preceding the beginning of the Covid-19 pandemic Gulf countries had by this time identified the necessity to retreat from their historic dependence on oil production and hence had strived to develop the infrastructure auxiliary to their economies with the intention to invite inward foreign investment. A crucial part of the shift to becoming a more appealing home for investment was the requirement for up-to-date, familiar insolvency regimes, which encompass modern reorganization tools for businesses facing distress. Hence, the competition laws and the bankruptcy laws of the countries of GCC become significant and gain importance. This paper analyses the implementation of laws and policies regarding the competition laws as well as bankruptcy laws in the countries of United Arab Emirates, Saudi Arabia, Kuwait, Qatar, Oman and Bahrain which form the Gulf Cooperation Council.

INTRODUCTION

Understanding the logic of both national and international competition regulations is a vital and smart component of any successful business model in the current market. Since competition laws regulate a wide variety of activities such as communication with competing companies, acquiring and sustaining a market dominance and operation in joint ventures, they may truly have a promising impact on every feature of a company's business plans and operations. Consequently, any corporation considering to form a partnership in business or taking a different approach with its competitors must comply with the conditions given in the Competition laws.¹

It is a complex undertaking to analyse and enforce competition law in developing nations like the Member States of the Gulf Cooperation Council (also referred to as GCC). Between 2004 and 2014, the countries that are the members of GCC which are Kuwait, the United Arab Emirates (UAE), Saudi Arabia (Saudi), Qatar, and Oman all enacted competition laws. The final country in the Gulf Cooperation Council (GCC) to adopt a competition law in the year 2018 is Bahrain.²

Meanwhile, a latest trend of restructuring legislative changes in the GCC has been propelled by the worldwide effects of the financial crisis, a drop in oil pricing, and an increasing awareness that bankruptcy and restructuring rules in the Middle East have not managed to keep up with the pace of changes in the economic environment. The UAE was the first member country which enacted a new bankruptcy law in 2016 followed by Bahrain enacting a new Reorganisation and Bankruptcy Law and Saudi Arabia

¹Alkandari A., The Emergence of Competition Law in the Gulf Cooperation Council Countries and the Need for Common Competition Law and Policy, 7 Kilaw Journal 125, 126-143 (2019).

² Memeti N., *Evolving Dynamics in Competition Law: A GCC Perspective*, 19 Yearbook of Antitrust and Regulatory Studies 173, 173-198 (2019).

enacting new bankruptcy laws both in 2018. However, Kuwait, Qatar and Oman are yet to develop their reforms.³

Competition and Bankruptcy laws in Gulf
Cooperation Countries
Saudi Arabia

Competition Law

As of now, Saudi Arabia is the only nation in the region to have passed two competition laws. When Saudi Arabia decided to enter the World Trade Organization (WTO), it was required to enact legislation to build a free-market economy, which culminated in the GCC region's earliest competition law, Royal Decree No. M/25, being passed in 2004.⁴ This was further amended in 2014 which consisted of only 21 articles and the Competition Council was formed under Article 9 of the Competition Act to function as an independent authority and competition enforcer in Saudi Arabia.⁵

The second and new Competition Law was passed in 2019 which also directs for the setting up of an Independent Authority responsible for enforcing the law, which will be housed under the Ministry of Commerce and Industry.⁶ The law tries to accomplish goals, namely safeguarding and supporting genuine competition, as well as overseeing and regulating acts that could harm it. The law prohibits three essential cornerstones of competition law which are the (Anti) Competitive Arrangements (Agreements), Abuse of a Dominant Position, and Concentrations.⁷

Bankruptcy Laws

Until now, Saudi Arabia's restructuring law has been largely limited to liquidation or capital injection requirements to bring back a company to solvency. The only way for companies facing over-asset claims to avoid bankruptcy was to attempt an out-of-court

settlement by taking over 100% of the creditor base, which consists primarily of banks. Not surprisingly, this rarely happened.

To enable a more systematic approach and increase the likelihood that debtors will get support for restructuring plans, the Ministry of Commerce and Investment (MOCI) of Saudi Arabia unveiled a group of regulations which are favourable to the investors, along with a new bankruptcy law enforced in 2018.

The law intends to give bankrupt or insolvent debtors the option to restructure and save their companies, as well as simplify the liquidation procedure and ensure a more equitable transfer of assets to creditors at the time of liquidation.

United Arab Emirates

Competition Law

There are 33 articles in the law that regulate competition in all commercial domains.⁸

The Anticompetitive Law was enacted in 2013 and has been labeled "peculiar" because the lawmaker included an opening section describing the policy underlying the Competition Law, a strategy that may aid organizations involved in judicial review.⁹

The appropriate competition regulator in the nation is given for by a Committee constituted on the premise of the Competition Law and operating under the purview of the Ministry of Economy. The Committee was formed rather lately in 2018. The list of infringements on competitive disadvantage is quite extensive. The Cabinet within the Ministry of Commerce has discretionary authority in this area, notwithstanding the fact that the law does not specify a limit.

Bankruptcy Law

In 2016, the revised UAE Bankruptcy Law No. 9 of 2016¹⁰ went into effect, introducing the Financial

³Polina Lyadnova, Fatema Al-Arayedh, Maha Alali, Lucinda Smart & Mohamad Taha, *Bankruptcy and Restructuring in the GCC: An Update on Recent Developments*, EMERGING MARKETS RESTRUCTURING JOURNAL, <https://www.clearygottlieb.com/-/media/files/emrj-materials/issue-9-2018/bankruptcy-and-restructuring-in-the-gcc--an-update-on-recent-developments-pdf.pdf>.

⁴ Alkandari A., *The Emergence of Competition Law in the Gulf Cooperation Council Countries and the*

Need for Common Competition Law and Policy, 7 Kilaw Journal 125, 126-143 (2019).

⁵ *Ibid.*

⁶ Law on Protection of Competition, Art. 8-11.

⁷ Nora, *supra* 2.

⁸ Nora, *supra* 2.

⁹ *Ibid.*

¹⁰ Federal Decree Law No. (9) of 2016 On Bankruptcy.

Restructuring Committee's capacity to oversee restructuring operations done by regulated financial institutions, along with other matters. The law mainly affects business entities, including financial companies, that are incorporated under UAE law, with the exception of corporations in the DIFC and ADGM. Preventive composition and bankruptcy are the two basic methods available to debtors in financial distress.¹¹

Before the enactment of this new law, the laws concerning trader insolvency were included in Chapter V of UAE Federal Law Number 18 of 1993 prior to the adoption of the New Law (Commercial Transactions Law). Furthermore, the UAE Federal Law Number 3 of 1987 included comparable bankruptcy-related punitive clauses (UAE Penal Code).¹²

The amendments were intended to ensure the preservation of companies in economic distress while also tackling one of the main issues under the previous regime, namely strict criminal liability for issuers of bounced checks; however, they did not completely eliminate the risk of criminal liability in accordance with bankruptcy proceedings.¹³

Kuwait

Competition Law

The Competition Law of Kuwait came into force in 2009. It was associated with two particular ordinances, the first of which was passed in 2009 and the other in 2015. Existing anti-competitive clauses in the country's Commercial Code were abrogated by the Competition Law. Yet, part VII of the New Company Law of 2016¹⁴ specifies the procedure with which the mergers should be carried out in the nation. It might be stated that competition law is regarded as a significant aspect of business law in Kuwait and the GCC in total according to the terms set forth therein.¹⁵

The Authority for Protection of Competition was established by law to achieve the goals set forth in the law, which are under the authority of the Ministry of

Economy. Apart from following the Competition Law, corporations involved in mergers must also adhere to other laws, such as Company Law, and others, Law was enacted.¹⁶

Bankruptcy Law

The bankruptcy legislation ('Bankruptcy Law') was enacted by Law 71 of 2020¹⁷ and was adopted by the Parliament of Kuwait on September 29, 2020. This law intends to provide security for distressed companies by giving them two new choices before they are compelled to declare bankruptcy.

Traditionally, in Kuwait, most companies' insolvencies have been addressed through voluntary reorganization of the debtor company's liabilities because people in the industry were hesitant to depend on laws that were relatively not tested.

The law also adopted the preventive settlement option to avert a bankrupt company's insolvency and allow the debtor company's debts to be discharged through a preventative settlement agreement with creditors.

This is the first time that a new specialised bankruptcy court has been established in Kuwait and the Bankruptcy Law stipulates that the court's decisions are binding without declaration and disputing the judgements is not permitted.¹⁸

Qatar

Competition Law

In 2006, Qatar passed the Act for the Protection of Competition and the Prevention of Monopolistic Practices.¹⁹ This law was implemented in conjunction with the nation's entrance to the World Trade Organization. It consists of twenty articles that lay out the prohibitions on anticompetitive agreements and actions among two or more enterprises, as well as the exploitation of monopoly or collective dominance, in

¹¹Polina, *supra* 3.

¹² Federal Law No. (3) of 1987 Promulgating the Penal Code, Ch. 8.

¹³ Polina, *supra* 3.

¹⁴ Law No. 1 of 2016 Promulgating the Company Law, Part VII.

¹⁵ Nora, *supra* 2.

¹⁶ *Ibid.*

¹⁷ Law No. 71 of 2020 regarding Bankruptcy.

¹⁸ Kaul, M., *New Bankruptcy Law in the UAE*, 1 Court Uncourt 5, 5-7 (2018).

¹⁹ Law No. 19 of 2006 Concerning Protection of Competition and the Prevention of Monopolistic Practices Law.

a plain manner.²⁰ The Qatari Competition Law sets a mechanism of a priori notification of acquisitions as well as mergers to the Ministry of Economy and Commerce's Committee with the aim of Safeguarding of Competition. In partnership with the Department of Commerce, the Committee which is in Charge of Law Implementation performs its tasks ex officio or upon appeal of an individual knowing of anticompetitive activity.²¹ A fine, established between the least and greatest amount, or criminal sanctions, along with formal approval by the Minister after the Committee's suggestion, are the consequences for breaking Qatari Competition Law.²²

Bankruptcy Law

Qatar doesn't possess a distinct bankruptcy legislation, but bankruptcy is addressed in several articles (606–846) of its Commercial Code.²³ People who are pronounced bankrupt should be merchants who have their financial matters in peril or who are having financial troubles and have ceased paying the due amounts to their debtors, as per the Commercial Code's article 606.²⁴ Bankruptcy can only be established by a court order, and no specialist bankruptcy courts exist in Qatar. Either the business, a lender, or the court can initiate the procedure. As per the Commercial Code's Art. 611²⁵, a trader's proposal to be announced bankrupt should be made in the form of a report towards the court, detailing the reasons for nonpayment. The procedure can also be started by a lender filing a case with the Court of First Instance.²⁶

²⁰ Law No. 19 of 2006 Concerning Protection of Competition and the Prevention of Monopolistic Practices, Art. 3 & 4.

²¹ Law No. 19 of 2006 Concerning Protection of Competition and the prevention of Monopolistic Practices, Art. 7-9

²² Nora Memeti, 'Evolving Dynamics in Competition Law: A GCC Perspective' 19 YARS 173 (2019).

²³ Law No. 27 of 2006 Promulgating the Trading Regulation Law, Art. 606-846.

²⁴ Law No. 27 of 2006 Promulgating the Trading Regulation Law, Art. 606.

²⁵ Law No. 27 of 2006 Promulgating the Trading Regulation Law, Art. 611.

Oman

Competition Law

The Sultanate of Oman had become the sixth Gulf Cooperation Council (GCC) country to enact a law regulating competition, the 'Competition Protection and Monopoly Prevention Law', in 2014.²⁷ The Omani Competition Law is divided into 5 chapters and 30 articles, which covers a wide range of operations such as manufacturing, trade, service, and any additional commercial or economic activity carried out both within and out of Oman. In terms of the first component, the legislation differentiates between two types of partnerships: monopolistic and restrictive agreements. Those who create or maintain an exclusively dominant position over manufacturing, import, distribution, or other activities with the ability to adversely effect the market fall into the first category; those who enter into agreements with two or more firms to avoid, remove, or disrupt competition fall into the second category.²⁸ The 2nd and 3rd components are protected by comparable regulations to those in some other GCC countries, albeit the clearance level in this country is increased to 50%. Oman was listed amongst the countries that have criminalised cartels and imposed civil fines in 2014. Omani competition policy does not create a novel or separate body to govern competition, rather tasking the Public Authority on the Protection of Customers to preserve competition, investigate such act which infringes competition, assessing market concentration practices, and making specific exemptions in cases where competition may stand to gain.²⁹

²⁶Zain Al Abdin Sharar, 'Bankruptcy In Qatar', QatarLaw, (Mar. 16, 2020) <https://www.qatarlaw.com/bankruptcy-in-qatar.html>.

²⁷ Royal Decree Bearing No. 67/2014 Promulgating Competition Protection and Monopoly Prevention Law.

²⁸ Royal Decree Bearing No. 67/2014 Promulgating Competition Protection and Monopoly Prevention Law, Art. 9.

²⁹ Abdullah Alkandari, 'The Emergence of Competition Law in the Gulf Cooperation Council Countries

and the Need for Common Competition Law and Policy', 7 Kilaw Journal, 125-146, (2019).

Bankruptcy Law

The Bankruptcy Law, enacted by the Royal Decree 53/2019 ("Bankruptcy Law"),³⁰ has established a novel bankruptcy structure in Oman. The Bankruptcy Law went into force on July 7, 2020. Before this Bankruptcy Law, Oman's bankruptcy rules and procedures were scattered, with only limited coverage in pre-existing statutes. The Bankruptcy Law's goal is to create a straightforward, comprehensive, and advanced structure for regulating bankruptcy as well as liquidations within Oman for individuals but also businesses. This new legislation introduces the notion of a "Restructuring Plan" and restructuring methods with the goal of assisting enterprises in overcoming debt, reaching a debtor settlement, and avoiding bankruptcy. It also included clauses for creating an expert panel to review restructuring applications and plans, and also timeframes for the various procedures. It also established precautionary compositional processes, which were comparable to those detailed in the bankruptcy part of Commercial Law, but with more specifics on the privileges of the bankrupted individual, creditors, along with the public interest. Apart from rules on restructuring & preventative composition, which have been measures for borrowers to escape bankruptcy, the Bankruptcy Law has been updated to include new laws on the bankruptcy proceedings itself.³¹

Bahrain

Competition Law

Bahrain has been the sole nation in the GCC that does not have its own competition law. Fourth chapter of Bahrain's Consumer Protection Law of 2012, titled "Rules of Competition and Monopoly and Manifestations of Breach of Their Rules," deals with competition law.³² Anti-competitive actions, on the other hand, are effectively confined to a contract among competitors to protect competition and restrict monopolistic control.³³ As a result, numerous behaviours that impact competition, like concentrated

activity as well as exploitation of power, are not prohibited by the law. In addition, according to Article 39 of Implementing Regulation, a panel is charged with enforcing the law and has the authority to conduct investigations, investigate and collect information on competition infractions, dismiss cases, or submit them to a public prosecutor.³⁴ In Article 312 of its Commercial Companies Law of 2001,³⁵[4] Bahrain tackled the matter of acquisition/merger supervision by forbidding the filing of a consolidation leading to monopolization through its Commercial Registry.

CONCLUSION

It is commendable that recent advancements have benefited all GCC countries. They've all passed their own competition legislation now. Bahrain's Competition Law should improve as a result of the country's favorable economic growth. In terms of institutional architecture, Oman stands out due to the formation of a self governing Center for Competition Protection. Saudi Arabia has made progress in laying the groundwork for stronger enforcement. The unquestionable improvement of the trade and investment climate in Kuwait, the United Arab Emirates, and Qatar require a more competitive environment in order for customer welfare to become a critical priority. As a result, competition law is not a foreign concept anymore in the GCC. The writing phase of legislation in the gulf nations has come to an end, albeit slowly. The next logical step will be to improve the application, which is now deemed to be rather weak.

Meanwhile, the Bankruptcy laws are still in the development and massive changes have been witnessed in the nations. These laws is a major leap forward, and it is influenced by characteristics of other jurisdictions' bankruptcy laws, as well as global bankruptcy law developments. The effectiveness of these laws are still in speculation and it is too soon to evaluate the success of these laws.

³⁰ Royal Decree 53/2019 Promulgating the Bankruptcy Law.

³¹ 'Oman: Bankruptcy Law', PwC Middle East, (Jul. 2020) <https://www.pwc.com/m1/en/services/tax/me-tax-legal-news/2020/oman-bankruptcy-law.html>.

³² Law No. 35 of 2012 with respect to Consumer Protection.

³³ Law No. 35 of 2012 with respect to Consumer Protection, Art. 13 & 14.

³⁴ Law No. 35 of 2012 with respect to Consumer Protection Implementing regulation, art. 39.

³⁵ Law No. 21 of 2001 Promulgating Law on Commercial Companies, Art. 312.