
CHAMBERS GLOBAL PRACTICE GUIDES

Insolvency 2022

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Bahrain: Law & Practice

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Law and Practice

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1. State of the Restructuring Market

1.1 Market Trends and Changes

Although there are no published statistics on the financial restructuring trends in the Bahraini market, it is notable that a number of local banks and consultancy companies have given special attention to this activity in the financial market lately. The aim is to focus on helping their clients to navigate the current market environment, by putting their companies back on the path of growth, and giving them the ability to resume making positive contributions to the local and regional markets.

Having said that, and as we are drawing near to the end of the COVID-19 pandemic, business entities in the Kingdom of Bahrain have benefited from a period of maintained economic growth led by the rebound of the non-oil sector as a result of the easing of COVID-19 measures in Bahrain and around the world in general. Different sectors in the Bahraini economy have benefited from sustained year-on-year economic growth as Bahrain recorded a significant increase in business transactions across multiple sectors, with the main sectors contributing to Bahrain's economic growth being the real estate and the manufacturing sectors.

Moreover, on 1 January 2022, Bahrain implemented an increase in its imposed rate of Value Added Tax (VAT) from 5% to 10%, making it the second country in the Gulf Cooperation Council to increase its VAT rate from the initial rate of 5%. This constituted an obstacle for businesses operating in Bahrain. However, despite it posing a challenge to how business entities operate, its effects have been outweighed by the economic growth instigated by the easing of COVID-19 restriction across the country.

As a result of Bahrain's sustained economic growth this year in multiple sectors across Bahrain's economy, there has not been a major change in the market trends in terms of financial restructuring and insolvency applications this past year. Despite Bahrain implementing an increase in the VAT rate from the initial 5% to 10%, the effect of this on business entities across the country has been outweighed by the positive impact made by the easing of COVID-19 restrictions across the country.

Nevertheless, the sustained economic growth witnessed in Bahrain may be prone to slowing down due to external global factors such as the Russia-Ukraine military conflict, and China implementing lockdown in certain parts of its economy. Both these external factors could impact the global demand for oil and increase the price of commodities. This could consequently affect the productivity and profitability of business entities in the Kingdom of Bahrain, which could lead to changes in insolvency and corporate restructuring market trends in Bahrain.

In terms of bankruptcy applications before the courts of Bahrain, since Law No 22 of the year 2018 promulgating the Reorganisation and Bankruptcy Law (the Bankruptcy Law) was issued, the list of applications has been published on the Ministry of Justice's website. The proceedings published so far were all initiated by the debtor.

2. Statutory Regimes Governing Restructurings, Reorganisations, Insolvencies and Liquidations

2.1 Overview of Laws and Statutory Regimes

In the Kingdom of Bahrain, a number of laws come into play when it comes to reorganisation, liquidation and insolvency of entities, depending on the activity of the entity and the nature of the action in question.

When it comes to financial institutions licensed by the Central Bank of Bahrain (CBB) (the CBB Licensees), Law No 64 of the year 2006 promulgating the Central Bank of Bahrain and Financial Institutions Law (the CBB Law) provides for a regime of administration and liquidation that applies specifically to insolvent CBB Licensees and which shall be conducted under the supervision of the CBB, which is the regulator. The process provided for under the CBB Law commences with a period of administration, whereby the CBB-appointed administrator shall attempt to restore and enhance the entity's position, failing which the CBB Licensee shall then move to the liquidation phase through a court process.

With regard to other commercial entities or individuals practising a commercial activity in Bahrain, the Bankruptcy Law shall apply when those entities become insolvent. The objective under this law is, where possible, to restore the entity or individual's financial position, to the extent possible, and to capitalise on the assets thereof and try to protect them in order to enhance the benefit therefrom for the entity's/individual's creditors.

Legislative Decree No 21 of the year 2001 promulgating the Commercial Companies Law (the Commercial Companies Law, or CCL) shall

apply in the event of voluntary liquidation, for both CBB Licensees and other entities taking one of the forms of companies set out under the CCL.

2.2 Types of Voluntary and Involuntary Restructurings, Reorganisations, Insolvencies and Receivership

Voluntary Process

Voluntary liquidation is provided for under the CCL, whereby the company shall dissolve in the event that the partners/shareholders unanimously decide to dissolve it, the duration of the company expires, or if the assets of the company are destroyed, rendering its continuation pointless (Article 320 of the CCL). Pursuant to Article 325 of the CCL, every company in a dissolution position shall be liquidated. The process of voluntary liquidation is supervised and controlled by the shareholders/partners, who will be empowered to appoint the liquidator. The process will generally be supervised and monitored by the Ministry of Industry, Commerce and Tourism.

Involuntary Process

This shall be done through the CBB for CBB Licensees, whereby the CBB may place the licensee under administration under the CBB's supervision, or request the competent court to place the licensee under liquidation, as need be. The request to place a licensee under liquidation may also be made by the licensee itself or one of its creditors.

For a non-CBB Licensee, the process of involuntary reorganisation or liquidation of its assets shall be done in compliance with the Bankruptcy Law, whereby the insolvent debtor or an interested creditor may file an action before the court requesting commencement of the reorganisation or liquidation process. The court, once convinced that the requirements set out under the

law have been met, shall appoint a bankruptcy trustee who will be mandated by the court to assist in the plan either to reorganise or liquidate the entity.

2.3 Obligation to Commence Formal Insolvency Proceedings

Article 6 of the Bankruptcy Law provides that the debtor shall file a petition to commence bankruptcy proceedings in the event of (i) failure to pay its debts within 30 days from their due date or should such a failure be expected for upcoming due dates, and/or (ii) the total indebtedness amount exceeds its assets. While the Bankruptcy Law stipulates that the failure to pay debts within 30 days of them becoming due gives rise to a bankruptcy action, it does not specify a deadline for commencing an insolvency proceeding after the company's failure to pay debts.

In respect of CBB Licensees, placing a CBB Licensee under administration is a decision taken at the initiative of the CBB itself when, among other events, the CBB Licensee is in financial distress. However, the administrator, the CBB Licensee or any of its creditors may submit a request to the competent court to place the CBB Licensee under liquidation.

2.4 Commencing Involuntary Proceedings

Under the Bankruptcy Law, creditors of an entity may file a case before the court requesting the opening of bankruptcy proceedings in the event that (i) the debtor fails to pay its debts to the creditor after being served with a 30-day notice, and/or (ii) the total indebtedness amount exceeds its assets.

The CBB Law also provides the possibility for the creditors of a CBB Licensee to submit a request to the competent court to place the CBB

Licensee under liquidation when it is in financial distress (insolvent) or is likely to become financially distressed.

2.5 Requirement for Insolvency

Insolvency is not required for commencing voluntary proceedings. The unanimous approval of shareholders/partners shall suffice to commence any such process pursuant to the CCL, unless the constitutional documents of the company provide for a lesser threshold for the approval of commencing voluntary proceedings.

In the case of involuntary proceedings, the Bankruptcy Law sets out the criteria for determining the existence of insolvency as follows: (i) the failure of the company to pay its debts within 30 days from their due date, or should such a failure be expected for upcoming due dates, and/or (ii) the total indebtedness amount exceeds the company's assets.

In respect of CBB Licensees, the CBB Law stipulates that a licensee may be placed under administration if the licensee is or is expected to be in financial distress, but also if the licensee continuing to provide regulated services has resulted in inflicting damages on the financial services industry in the Kingdom, and in the case where the licensee's licence is revoked or amended.

The CBB may, on the basis of these same reasons, apply to the competent court requesting the liquidation of the licensee. In respect of an application by the licensee's creditors, such an application may be made on the basis of the licensee's financial distress and failure to pay maturing debts.

2.6 Specific Statutory Restructuring and Insolvency Regimes

Banks, insurance companies, credit institutions and other entities that operate in financial markets will be subject to the regime of administration and liquidation stipulated under the CBB Law (see 2.1 Overview of Laws and Statutory Regimes).

Any other entities that are registered as commercial companies pursuant to the CCL, without regard to their sector or their ownership, will be subject to the bankruptcy and reorganisation regimes stipulated under the Bankruptcy Law (see 2.1 Overview of Laws and Statutory Regimes and 2.2 Types of Voluntary and Involuntary Restructurings, Reorganisations, Insolvencies and Receivership respectively).

The laws of Bahrain do not contain any specific provisions that address restructuring and insolvency regimes for government bodies and authorities, as the aforementioned authorities may not be subject to insolvency. Restructuring or merging government entities may only occur pursuant to a decree issued by His Majesty the King, in accordance with the powers vested in him as per Article 39 of the Constitution of the Kingdom of Bahrain.

3. Out-of-Court Restructurings and Consensual Workouts

3.1 Consensual and Other Out-of-Court Workouts and Restructurings

Consensual and out-of-court restructurings are common in Bahrain. Mergers and acquisitions of companies in financial difficulties, following a valuation and assessment of their position, are frequently seen in the Bahraini market.

Although not mandatory or required under the laws of Bahrain before initiating formal insolvency processes before courts, banks and financial institutions in Bahrain are also open to agreement on restructurings on an amicable basis, whereby the banks will enter into a protocol with the debtor and set up a committee to supervise its management for a certain period of time to ensure the continuity and flow of income.

3.2 Consensual Restructuring and Workout Processes

Consensual restructurings are not specifically regulated under the law. Hence, any such restructuring shall be subject to the contractual terms agreed upon between the debtor and his or her or its creditors. It is to be noted that precedents of consensual restructurings are limited in Bahrain, to the extent these are made publicly known. The Bankruptcy Law allows for such a contractual reorganisation plan to be submitted to court for ratification.

In a typical consensual restructuring agreement, the debtor will be managed by the major creditors in co-ordination with small creditors, unlike the reorganisation arrangement under the Bankruptcy Law whereby the secured creditors do not take the lead. The fees and management process of the company are detailed and agreed upon under what is called a “protocol”, with the aim of enhancing the financial position of the debtor.

Typically, in the implementation of consensual restructuring, the creditors will monitor the activities of the company closely and will subject most of its actions, in particular those that result in creating obligations over the assets of the debtor, to their advance approval.

3.3 New Money

Injecting new money shall be subject to the relevant parties' agreement under the protocol.

3.4 Duties on Creditors

Consensual restructuring is not specifically regulated under the law, hence the terms of the protocol shall apply in addition to the general rules, including without limitation of Law No 19 of 2001 promulgating the Civil Code (Civil Code) and Decree Law No 7 of 1987 on the issuance of the Law of Commerce (Law of Commerce).

3.5 Out-of-Court Financial Restructuring or Workout

See 3.4 Duties on Creditors.

4. Secured Creditor Rights, Remedies and Priorities

4.1 Liens/Security

The provisions of the Civil Code and Law of Commerce enable creditors to take the following types of liens/security.

Mortgage Over Immovable Property

Creditors may create security over immovable property (ie, real estate) pursuant to Articles 942-997 and 1019-1020 of the Civil Code. In order for a mortgage to be valid, it has to be evidenced via a notarised document. The mortgage should specify the amount of the debt secured, or the maximum amount which that debt may reach.

Pursuant to Land Registration Law No 13 of 2013, a mortgage over immovable property shall be deemed effective against third parties from the date on which the mortgage is registered on the title deed of the property.

Mortgage Over Movable Property (Possessory Pledge)

Creditors may create security of movable property in accordance with Articles 998-1018 and 1021-2014 of the Civil Code. In order for a possessory pledge to be valid towards third parties, the pledged movable asset must be held in the possession of the pledgee or by a trustee nominated by the parties. The pledge agreement should specify the amount of the debt secured, or the maximum amount which that debt may reach.

Possession of the pledged movable by the pledgee or a nominated trustee is required in order for the pledge to be effective towards third parties.

Commercial Mortgage

Commercial mortgages are regulated under Articles 136-147 of the Law of Commerce.

Article 137 of the Law of Commerce defines the term "commercial mortgage" as any mortgage created over movable property as security for a debt which is deemed commercial for the debtor.

A commercial mortgage includes pledge of equity shares, pledge of bank account/deposit and another property (excluding real estate).

A commercial mortgage over a movable property requires that the possession of the mortgaged property pass to the mortgagee creditor or to a trustee nominated by both contracting parties and must remain in the possession of either of those parties until the extinguishment of the mortgage.

A commercial mortgage over rights established in deeds, such as equity shares and bonds, shall be mortgaged by way of assignment indicating

that the instrument in question is mortgaged. The mortgage shall be registered in the records of the institution which issued the deed (and the register of the instrument) and on the deed itself. In practice, a mortgage of equity shares that are not listed shall be filed with the Ministry of Industry, Commerce and Tourism, while a mortgage of equity shares of listed companies shall be filed with the Bahrain Bourse (previously known as the Bahrain Stock Exchange) (CBB Resolution No 59 of 2011).

A commercial mortgage over rights established in commercial papers requires an endorsement on the instrument stating that it is by way of a mortgage, or any other statement to this effect.

Business Mortgage

Creditors may obtain security over the entire business of the debtor by following the procedures of business mortgage under Articles 43-49 of the Law of Commerce.

A business mortgage is a common form of security taken in the course of commercial activities, as the scope of a business mortgage is very wide and it may capture any aspects of the business that are expressly outlined under the mortgage document, which may include any tangible or intangible aspects of the business and any relevant right arising therefrom – except for rights that require specific procedures to be mortgaged, such as equity shares and real estate.

In order for a business mortgage to be valid, the mortgage documents shall be notarised and filed with the Ministry of Industry, Commerce and Tourism, and the registration must be renewed every five years.

4.2 Rights and Remedies

Enforcing a secured creditor's rights shall occur by way of sale in a public auction after submitting a petition to the court of execution. The secured creditor will have priority in receiving the amount of his or her or its secured debt out of the proceeds of the sale of the property.

An exception to the aforementioned procedure is enforcing security over financial instruments mortgaged to banks or financial institutions adhering to the CBB, as they are entitled by virtue of Article 147 of the Law of Commerce to enforce a commercial mortgage over financial instruments without resorting to the court.

In addition, and from a practical point of view, a pledge over bank accounts/deposits may be enforced by banks and financial institutions, without resorting to the court, by setting off the amount of the secured debt from the pledged account/deposits.

In the context of insolvency, the approval of bankruptcy proceedings shall result in a moratorium of claims (120 days), during which secured creditors cannot enforce their secured rights. Secured creditors will be able to enforce their security upon the end of the moratorium period as per Article 54 of the Bankruptcy Law.

The court will only approve the bankruptcy trustee's request to extend the moratorium period (i) upon approval of secured creditors, or (ii) if any such extension is necessary to maximise the value of the bankruptcy assets.

4.3 Special Procedural Protections and Rights

The Bankruptcy Law allows secured creditors to submit an application to enforce their security

rights by requesting the termination of a moratorium on secured debts in the following cases:

- the moratorium is not necessary to maximise bankruptcy assets' value for the benefit of creditors or any stakeholder in the claim;
- the encumbered property depreciates due to the commencing of bankruptcy proceedings and the secured creditor does not obtain appropriate protection from depreciation or any other loss during the period of the moratorium;
- the reorganisation plan was not approved on the specified date; or
- the encumbered property is not necessary for reorganisation or for the potential sale of the debtor's operating business.

Protection of the Encumbered Property

Pursuant to Articles 83 and 84 of the Bankruptcy Law, the secured creditor has the right of protection from depreciation in the value of the encumbered property and from any loss his or her or its claim may sustain. In this respect, the secured creditor is entitled to submit an application to the court requesting obtaining protection of his or her or its secured claim.

In addition, the law provides that the bankruptcy trustee may request the court to terminate the moratorium in the case where it is unable to protect the encumbered property.

5. Unsecured Creditor Rights, Remedies and Priorities

5.1 Differing Rights and Priorities

Secured creditors are treated differently from unsecured creditors under the Bankruptcy Law, as secured creditors may enforce their secured rights right after the end or termination of the

moratorium period (see **4.3 Special Procedural Protections and Rights**). Secured creditors have priority in the proceeds of the encumbered property securing their claims.

In the context of reorganisation, a group of unsecured creditors with claims constituting not less than 25% of the total claims may form the creditors' committee. The creditors' committee is entrusted with assisting the reorganisation trustee and following up its performance, giving those creditors the power to monitor closely and advise in relation to matters pertaining to the rights of unsecured creditors.

In terms of voting during reorganisation, different classes of creditors will be classified into different categories based on the similarity of their rights (ie, secured creditors, unsecured creditors, employees, other concessionaires and shareholders). All classes of unsecured creditors shall have the same rights in voting on the procedures of reorganisation plan.

The priorities of different classes of creditors are discussed in further detail in **5.5 Priority Claims in Restructuring and Insolvency Proceedings**.

5.2 Unsecured Trade Creditors

The law does not specifically stipulate that trade creditors shall be categorised into a separate class during the process of reorganisation; however, the reorganisation trustee is empowered to classify the creditors on the basis of the similarity of their rights.

5.3 Rights and Remedies for Unsecured Creditors

The rights and remedies of unsecured creditors include:

- applying for interim measures to be taken on the debtor for the duration before the bankruptcy proceedings, such as imposing restrictions on the trading of the debtor's business, assignment of the debtor's business administration to a bankruptcy trustee or any other provisional measures determined by the court;
- requesting and submitting a reorganisation plan and voting on the approval or dismissal of the debtor's reorganisation plan;
- trade creditors may recover any goods they sold to the debtor if the sale consideration is outstanding, within 45 days of the approval of the opening of the bankruptcy proceedings.

Furthermore, unsecured creditors may, if ordered by the court, be represented by a creditors' committee which consists of no more than five members among unsecured creditors whose claims are initially accepted.

The role of the creditors' committee includes exerting reasonable effort required by the circumstances to protect the interests it represents and consulting with the bankruptcy trustee on the procedures of bankruptcy, such as, and without limitation, approving the disposition of substantial bankruptcy assets.

In the context of reorganisation, the creditors' committee has the right to vote on the reorganisation plan and may further request the transition of reorganisation proceedings into liquidation proceedings.

5.4 Pre-judgment Attachments

Article 16 of the Bankruptcy Law provides examples of pre-judgment precautionary measures, including:

- suspension of the moratorium of claims (see **4.3 Special Procedural Protections and Rights**);
- imposing temporary restrictions on the debtor with regard to its business administration, the conduct of its business procedures or limiting its administration powers over the business;
- assignment of the debtor's business administration and facilities operation to a temporary bankruptcy trustee or any other appropriate person appointed by the court;
- assignment of liquidation of the debtor's funds in the non-ordinary context of business to a temporary trustee, or any other appropriate person appointed by the court, if the funds are prone to loss or damage, or diminishing in value;
- any other temporary or provisional measures determined by the court.

5.5 Priority Claims in Restructuring and Insolvency Proceedings

The Bankruptcy Law sets out eight categories of priority for claims in relation to bankruptcy proceedings, and after the payment of the rights of secured claims, in the following order.

First Level of Priority

This is reserved for amounts due to any unsecured form of financing obtained after the commencement of the bankruptcy proceedings in order to finance the continuation of the debtor's facility operation or for the purpose of maintaining the value of bankruptcy assets and protection thereof.

Second Level

This level is for costs and expenses of the bankruptcy, including without limitation the fees of the bankruptcy trustee, lawyers, agents or experts who provide their services in the course of bankruptcy, and amounts due on contracts entered

into by the bankruptcy trustee or the debtor after the commencement of the bankruptcy proceedings.

Third Level

The third level covers the following claims which arose prior to the commencement of the bankruptcy in proportion:

- salaries and financial benefits due to the debtor's employees, capped at BHD3,000 for each employee;
- clients' claims for instalments paid to the debtor in order to purchase goods and services from the debtor, capped at BHD1,000 for each client;
- taxes and fees due to government authorities and agencies, capped at BHD10,000 for each authority.

Fourth Level

All unsecured claims which arose before the approval of the commencement of the bankruptcy proceedings, including the remaining amounts of the claims outlined under the third level of priority, are covered by this level.

Fifth Level

This level includes all other unsecured claims which arose before filing for bankruptcy and were not presented to the court in time but were presented to the court in a timely manner as regards the reporting of distribution rights in the bankruptcy claim.

Sixth Level

Claims for taxes and fees due to foreign governments are included in the sixth level.

Seventh Level

The seventh level covers unsecured claims to compensate owners for late payments due to them from the debtor.

Eighth Level

Shareholders' claim of their ownership of shares in accordance with the priority prescribed for each one is covered by the eighth level.

6. Statutory Restructuring, Rehabilitation and Reorganisation Proceedings

6.1 Statutory Process for a Financial Restructuring/Reorganisation

Upon admission of a petition for bankruptcy by the court, a temporary bankruptcy trustee is appointed to assess the position of the debtor. This assessment is done with the aim of deciding whether to proceed with bankruptcy or whether the debtor shall move towards liquidation altogether. The court is open to hear views of the relevant parties, and the decision is also subject to objections by interested parties.

The reorganisation process is court-driven and is closely supervised by the court. Should the court decide to start the reorganisation process, the bankruptcy trustee (who is also referred to as the reorganisation trustee) shall supervise the reorganisation process, prepare the reorganisation plan and obtain approvals thereof. The authorities of the bankruptcy trustee in the event of reorganisation are set out under the Bankruptcy Law, which include, among others, the power to protect the assets of the debtor, to improve the business of the debtor, to obtain the necessary financing to help manage and continue the debtor's business, and to uphold and terminate contracts. During this process the debtor

shall remain in business, in co-ordination with the bankruptcy trustee, and shall take actions within the normal course of business after the reorganisation process starts, unless the court decides otherwise. The bankruptcy trustee shall submit periodic reports to the court on the way the business is being run by the debtor.

A creditors' committee of members not exceeding five unsecured creditors shall be formed. The composition of the creditors' committee is made up of creditors who are interested in being part of the committee and, after its announcement and hearing views of relevant parties, shall be composed of unsecured creditors whose claims together total not less than 25% of the total claims and have no material conflict of interest in representing unsecured creditors. The court may at its own initiative or upon request of interested parties constitute one or more additional creditors' committee(s) if it deems it necessary in order to represent different categories of creditors.

The role of the creditors' committee, among others, is to provide the debtor or bankruptcy trustee with the required assistance, to monitor the financial position of the debtor and the way its business is being conducted and to assess whether its continuity is in the interest of the creditors represented by it. The committee shall also take part in drafting the reorganisation plan, and it may advise on the sale of the debtor's assets and submit requests or objections to the court to protect the interests of the creditors it represents.

Unless the court decides to grant a longer period, the bankruptcy trustee shall submit the reorganisation plan to the court within three months from the date of the court's approval to commence the bankruptcy process. Extension

requests submitted by the debtor, the bankruptcy trustee, the creditors' committee or any of the creditors (holding not less than 10% of the unsecured debts) are subject to the court's assessment. The Bankruptcy Law also gives room to creditors who have not less than one-third of the total debts to submit a reorganisation plan, in the event that the bankruptcy trustee fails to do so within six months from the commencement of the bankruptcy process and that the proposed plan is in the interest of the debtor's assets.

The options provided under the Bankruptcy Law are wide in terms of the outcome of such a plan, which could cover selling all or part of the debtor's assets to repay creditors and could invest with the remainder of the proceeds, introducing investors to the business, recapitalisation, merger, etc. Upon obtaining a preliminary approval of the proposed plan from the court, the bankruptcy trustee shall present the plan, along with a disclosure statement, to the creditors, during a creditors' meeting set by the court and notified to all creditors whose debts are accepted by the court. Voting by creditors shall take place 30 days following its first presentation, or within 20 days of the date of its amendment based on the court instructions. Extensions are permissible upon the court's approval. Voting shall be limited to creditors whose rights are affected by the plan and will be conducted based on the categories of creditors. The resolution shall pass upon approval of the majority of creditors in each category, provided that two-thirds of the unsecured creditors are part thereof.

After the approval is issued by the creditors' categories and the objections of other creditors are heard, the court shall decide to ratify or reject the reorganisation plan. Should the plan be ratified, it will be enforceable and effective vis-à-vis all

creditors, including those who rejected the plan or abstained from voting.

The Bankruptcy Law provides for the possibility of appealing against the ratified and enforced reorganisation plan within 30 days from the date of ratification.

The Bankruptcy Law also provides for the possibility of the filing of a request by the debtor for the court to approve a pre-agreed reorganisation plan with its creditors.

6.2 Position of the Company

A moratorium is applied by virtue of the general provisions applicable to reorganisation and liquidation. The moratorium shall continue until the time of entry into force of the reorganisation plan by the ratification of the court, or upon the lapse of 120 days from the date of the court's approval to commence the proceedings when it comes to secured creditors.

During the process, the debtor shall remain in business, in co-ordination with the bankruptcy trustee, and shall take actions within the normal course of business after the reorganisation process starts, unless the court decides otherwise. The bankruptcy trustee shall submit periodic reports to the court on the way the business is being run by the debtor. The management shall be under the supervision of the court and the creditors' committee shall monitor the process closely and provide its advice thereon.

The bankruptcy trustee is empowered to apply for financing to help the debtor manage its affairs and improve its position, subject to the provisions of the law.

6.3 Roles of Creditors

Creditors are involved in the reorganisation process through their participation or representation in the creditors' committee(s). The Bankruptcy Law provides initially for a creditors' committee of unsecured creditors whose claims form at least 25% of the approved and accepted claims.

The criterion in distinguishing between creditors is whether their rights are secured or unsecured, and the law provides for some level of flexibility for the court, at its own initiative or based on the request of creditors, to modify the composition of the creditors' committee or to create more than one committee for different categories of creditors.

Creditors' committee(s) or creditors owning not less than 10% of the total indebtedness may request the court to call for a meeting for a purpose to be defined by the creditors. Creditors, whether in the committee or otherwise, have access to information on the company and are given the right to attend a meeting called by the court for the presentation of the reorganisation plan and disclosure statement. A creditor may appoint a proxy to attend the reorganisation presentation meeting on his or her or its behalf.

6.4 Claims of Dissenting Creditors

In so far as the required majority approval is obtained and the reorganisation plan is ratified by the court, the plan shall be enforceable vis-à-vis all creditors, including those who were absent or raised their objection.

Any creditor who voted for refusal of the plan shall have the right to obtain no less than the amount which he or she or it would have received in the event of liquidation.

6.5 Trading of Claims Against a Company

The trading of claims is not explicitly regulated under the Bankruptcy Law. However, it may take place as part of the reorganisation plan in so far as the proposed trading maintains equal treatment of the debtor's creditors and is beneficial to the debtor's position.

6.6 Use of a Restructuring Procedure to Reorganise a Corporate Group

Within the structure of a group of companies, each entity shall apply for bankruptcy independently. The court, subject to proving the interrelated transactions and consolidation of accounts, may consider joining the various actions for ease of process, provided any such joining of actions does not entail any unfair treatment to the creditors of these various entities within the group.

6.7 Restrictions on a Company's Use of Its Assets

Following the commencement of the reorganisation process, the debtor, under the supervision of the bankruptcy trustee, may continue to run the daily business, unless the court decides otherwise after hearing the creditors' views. The acts falling within the normal course of action that may be conducted by the debtor are:

- buying and selling goods and services and settling payments related thereto;
- concluding and executing contracts and agreements with clients; and
- payment of employees' salaries and entitlements except bonuses and other types of exceptional benefits.

Any other acts relating to the assets of the debtor that are beyond the scope of the ordinary course of business shall require the court's approval.

Once the reorganisation plan has been approved and ratified, it shall be implemented in terms of the disposal and acts relating to the debtor's assets. For instance, the reorganisation plan may provide for the sale of all or some of the debtor's assets and the use of the proceeds thereof to settle the creditors' claims or to invest in certain areas of the debtor's business. As a consequence of the ratification of the reorganisation plan, all the assets of the debtor shall devolve to the debtor to be reorganised according to the plan, or to the reorganisation trustee or the person who receives those assets under the plan. The assets shall devolve clear of the claims and rights of others, unless otherwise provided by the plan.

6.8 Asset Disposition and Related Procedures

Disposal of the assets during the restructuring process shall be in line with the reorganisation plan. The execution of the plan and the disposal of assets shall be by the debtor, the bankruptcy trustee or a representative of the debtor as directed by the court.

6.9 Secured Creditor Liens and Security Arrangements

The reorganisation plan may contain provisions amending the terms of indebtedness of the different classes of creditors, including maintaining or releasing the security provided to the secured creditors over certain assets of the debtor.

6.10 Priority New Money

The bankruptcy trustee may apply to the court to request its permission to obtain loans against security or other priority treatment. It is not clear under the law whether such security may be obtained over assets encumbered by a pre-existing secured creditor. However, the prevailing view is that obtaining security must

not prejudice the claims of the secured creditors, and that giving up their secured position may be achieved with their approval as part of a reorganisation plan.

6.11 Determining the Value of Claims and Creditors

Creditors' claims are submitted to the court at the commencement of the bankruptcy proceedings. The reorganisation plan shall contain a statement of all creditors and their respective claims. The statement shall also divide the creditors into groups and define the treatment to be received by each of these groups of creditors. Among the possible recommendations that may be contained in a reorganisation plan are the following:

- amending the terms of payment of the debtor's debts, whether secured or not, including extending the date of maturity, or amending the interest rate or any other terms;
- issuing bond debts or securities to creditors in return for existing claims;
- distributing the proceeds of the sale of property or businesses from among the debtor's assets to the creditors;
- cancelling the rights of shareholders for a consideration, or not;
- exclusion of claims and financial rights.

6.12 Restructuring or Reorganisation Agreement

The reorganisation plan shall be drafted in a manner that achieves the best results for the creditors but also deals with the creditors and interested parties in the proceedings with impartiality and fairness.

The bankruptcy trustee may rescind a contract entered into by the debtor, subject to the court's approval, should the contract be deemed unfa-

vourable to the interest of the debtor's assets. The bankruptcy trustee may also make a request to the court if it wishes to assign contracts or nullify those contracts if they are considered fraudulent or harmful. The bankruptcy trustee may also request the court to nullify acts of the debtor granting certain creditors preferential treatment compared to others, except where the act was for an indebtedness created within the normal course of business, or if that preferential treatment is based on a financing relationship concluded within the normal course of business, or if the act was performed according to a commutative contract between the debtor and creditor through which the debtor is granted fair and reasonable value, or in cases where the creditor was granted an additional consideration or a new amount to the debtor after the completion of the act, or if the bargain has not resulted in the decrease of the assets of the debtor available to fulfil the debts of the creditors.

6.13 Non-debtor Parties

The Bankruptcy Law does not provide for releasing non-debtor parties from their liabilities towards the debtor, but it gives the court the power to order the payment of an alternative obligation.

6.14 Rights of Set-Off

A set-off right which arose before the filing of the bankruptcy proceedings may be pleaded during the bankruptcy proceedings if it was effective under the applicable law, but the initiation of the set-off right shall be subject to the stay of proceedings (moratorium), unless the set-off is invoked on financial derivatives contracts. The set-off right shall not be effective if the creditor has obtained his or her or its claim through the debtor for the purpose of creation of a set-off right.

6.15 Failure to Observe the Terms of Agreements

The court may convert the reorganisation process to a liquidation process in the event that it is proved that the debtor, after the filing of the reorganisation plan, committed, in bad faith, acts that are detrimental to the creditors, or if the debtor has substantially breached the clauses of the reorganisation plan, or if the debtor's failure to implement the plan is proved.

6.16 Existing Equity Owners

Cancelling the rights of shareholders for a consideration, or not, may be among the proposals that are contained in the reorganisation plan, subject to the creditors' vote and the court's ratification thereof.

7. Statutory Insolvency and Liquidation Proceedings

7.1 Types of Voluntary/Involuntary Proceedings

Creditors shall submit their claims (detailed statements of the claimed rights alongside supporting documents) to the bankruptcy trustee after receiving a notification from the bankruptcy trustee to do so, within the specified timeline indicated in the trustee's notification and in accordance with the requirements of filing a claim. The set deadline for submission of claims from creditors that are resident in Bahrain may not exceed three months.

The aforementioned notification may, alternatively, be served on creditors and other interested parties as part of the notification of the opening of bankruptcy proceedings.

The validity of claims will be decided based on the applicable law governing the agreements

between each creditor and the insolvent debtor, and the bankruptcy trustee may challenge the validity of each such claim before the court by adhering to any defences that are available to the debtor.

The bankruptcy trustee shall be responsible for maintaining a register of all claims submitted by the creditors and shall submit a report to the court on the creditors' claims, and his or her opinion on the validity and amount of claims submitted to him or her. The court may decide the following in justified cases:

- to dismiss the claim in whole or in part;
- to restrict the creditor's voting rights;
- to downgrade the creditor to a lower rank in terms of priority in receiving his or her or its claim. This may be decided by the court if the creditor has intentionally overestimated his or her or its debts or rights, has illegitimately tried to gain special advantages to harm other creditors, or has provided false or misleading data or withheld data, information, registers or documents from those that he or she or it is obliged to submit to the court or bankruptcy trustee.

The decision of the court in relation to the validity of a claim will be notified to the concerned creditor accordingly.

Acceptance of the creditor's claim will establish his or her or its right to participate in the bankruptcy proceedings, and identify the creditor's priority rank and participation in the distribution process of the bankruptcy assets in accordance with its rank of priority (see **5.5 Priority Claims in Restructuring and Insolvency Proceedings**).

Rights of Set-Off

The general position under the Bankruptcy Law is that creditors may adhere to their right of set-off if that right is established before the commencement of bankruptcy proceedings. However, exercising the right of set-off will be subject to the moratorium of claims (see **4.2 Rights and Remedies**), unless the set-off is on a financial derivatives contract or if the implementation of the set-off will enhance the position of the bankruptcy assets, in which case the court may approve the effecting of the set-off by suspending the moratorium in relation to the debt in question.

Information Available to Creditors

The Bankruptcy Law states that creditors or any interested party may participate in the bankruptcy proceedings and obtain information from the court, or the bankruptcy trustee, on the debtor's affairs and financial position as well as the procedures and measures taken by the court or bankruptcy trustee.

The creditors will be bound by duty of confidentiality with respect to any information obtained in connection with the bankruptcy proceedings, which may include, without limitation, information on the financial position of the debtor, lists of customers or suppliers, research information, trade secrets, development and professional secrets, and other similar information.

7.2 Distressed Disposals

Generally, the commencement or approval of bankruptcy proceedings prevents the debtor from administering his or her or its business, operating his or her or its facility, using funds and making the disposals that are within the normal course of business, unless the court decides otherwise.

Upon the appointment of a bankruptcy trustee, the bankruptcy trustee will be responsible for preserving the bankruptcy assets by undertaking the management of the debtor's operations (if required and after the approval of the court) and exercising his or her duty of liquidating the assets of bankruptcy into cash by selling them in accordance with the liquidation plan prepared by the bankruptcy trustee.

Purchasers of the insolvent debtor's assets will acquire good title to the assets purchased. The provisions of the Bankruptcy Law do not contain specific rules governing bidding by the creditors for the company's assets. The prevailing view is that there is no prohibition on selling the bankruptcy assets to creditors, as long as any such disposal is in the best interest of the bankruptcy assets.

7.3 Organisation of Creditors or Committees

Unsecured creditors may, if ordered by the court, be represented by a creditors' committee which consists of no more than five members among unsecured creditors whose claims are initially accepted. The members of the creditors' committee must have total unsecured claims of not less than 25% of the total claims, and have no substantial conflict of interests in the representation of unsecured creditors.

The role of the creditors' committee shall be to exert reasonable effort required by the circumstances to protect the interests it represents, and its duties include:

- consulting with the bankruptcy trustee and the debtor on the procedures for liquidating bankruptcy assets;
- following up the performance of the bankruptcy trustee and the debtor;

- submitting any request or objection allowed by law to the court;
- performing the work necessary to protect the interests of unsecured creditors.

The creditors' committee is also entitled to request the court to stop the administration of the debtor's business if ceasing the operations of the insolvent debtor would achieve the best interest of the bankruptcy assets.

The court may decide to appoint more than one creditors' committee if it is deemed necessary to protect the interest of unsecured creditors of a certain category.

The creditors' committee may, after obtaining the court's approval, designate an agent or technician on reasonable terms to represent the committee in the liquidation proceedings. The creditors' committee shall bear the expense of the remuneration of the appointed agent, and may subsequently request the court to reimburse any such expense as an administrative claim (see **5.5 Priority Claims in Restructuring and Insolvency Proceedings**). The court shall take into consideration the contribution of the agent to the bankruptcy proceedings before approving reimbursement of his or her expenses.

In the context of reorganisation, the creditors' committee has the right to vote on the reorganisation plan and may further request the transition of reorganisation proceedings into liquidation proceedings.

8. International/Cross-Border Issues and Processes

8.1 Recognition or Relief in Connection With Overseas Proceedings

Recognition

In order for foreign proceedings to be recognised by the courts of Bahrain, foreign creditors or their representatives are required to submit an application to the courts of Bahrain, accompanied by a copy of the decision of the appointment of a liquidator in the foreign proceedings and a certificate of confirmation thereof from the foreign court, which shall be presumed by Bahraini courts to be in conformity with the Bankruptcy Law as to the content of the decision and the terminology used therein.

The recognition of foreign proceedings shall result in:

- a stay on any proceedings concerning the debtor's assets, rights or obligations;
- a stay on execution against the bankruptcy assets;
- suspension of the debtor's right to transfer, encumber or dispose of the bankruptcy assets.

The effect of recognition of foreign proceedings shall not prejudice the rights of creditors that are vested to them pursuant to the Bankruptcy Law, such as filing for commencement of local bankruptcy proceedings or taking any action to preserve the creditors' claims.

Relief

The Bankruptcy Law entitles representatives of foreign proceedings upon making an application for recognition to apply for interim protection measures, such as staying execution on the

debtor's assets or entrusting that debtor's assets to an administrator appointed by the court.

The foreign representative is further entitled, upon the recognition of the foreign judgment, to render ineffective acts detrimental to creditors, such as by intervening in any ongoing proceedings in which the debtor is a party, examination of witnesses and collecting evidence with regard to the debtor's asset, and being entrusted with the administration of the debtor's assets that are present in Bahrain.

8.2 Co-ordination in Cross-Border Cases

The courts of Bahrain are required to co-operate with foreign courts either directly or through the bankruptcy trustee. The Bankruptcy Law allows the courts of Bahrain to communicate directly with foreign courts or foreign representatives of foreign insolvency proceedings in order to request assistance or information.

Examples of the forms of co-operation between the courts of Bahrain and foreign courts include:

- the appointment of a person or body to act at the direction and decision of the court;
- communication of information by any means considered appropriate by the court;
- co-ordination of the administration and supervision of the debtor's assets and affairs;
- approval or implementation by the courts of agreements concerning the co-ordination or implementation of proceedings;
- co-ordination of concurrent proceedings regarding the same debtor;
- any other methods of co-operation to be determined by a decision of the relevant minister after the approval of the Supreme Judicial Council thereof.

8.3 Rules, Standards and Guidelines

The rules, decisions and laws of the foreign jurisdiction will be applicable, unless they contravene the public policy of Bahrain.

8.4 Foreign Creditors

Foreign creditors are given equal rights and treatment with creditors in the Kingdom of Bahrain in respect of the commencement of or participation in any bankruptcy proceedings in the Kingdom.

8.5 Recognition and Enforcement of Foreign Judgments

In respect of the recognition and enforcement of foreign judgments, any reference to the term "foreign representative" shall mean any person or a competent authority, including a temporary appointee, which may be authorised under a foreign bankruptcy proceeding to manage the reorganisation or liquidation of the debtor's funds or business on a new basis or to act as a representative of the foreign proceeding (as defined under Article 160 of the Bankruptcy Law).

Any reference to the term "foreign bankruptcy proceeding" shall mean any judicial or administrative proceeding, including any provisional proceeding, taken in the application of the provisions of a bankruptcy law in a foreign state, under which the debtor's funds and affairs are subject to the control or supervision of a foreign court for the purpose of reorganisation or liquidation (as defined under Article 160 of the Bankruptcy Law).

The Bankruptcy Law recognises the principle of judicial co-operation between the courts of Bahrain and foreign courts under part 5 of the Bankruptcy Law, titled "Cross-border bankruptcy", and provides for recognition of foreign bankruptcy/reorganisation judgments and rul-

ings issued against the debtor in foreign bankruptcy proceedings.

An application for recognition of a foreign bankruptcy proceeding may be made by a foreign representative before the courts of Bahrain. The application shall consist of the following:

- a certified copy of the decision commencing the foreign bankruptcy proceeding and appointing the foreign representative;
- a certificate from the foreign court affirming the existence of the foreign bankruptcy proceeding and appointment of the foreign representative;
- in the absence of the aforementioned documents, the foreign representative may submit any other proof or documents which evidences the existence of the foreign bankruptcy proceeding and the appointment of the foreign representative; and
- translations of these documents into Arabic or English, as per the instructions of the court.

The recognition application shall be accompanied by a statement identifying all foreign proceedings relating to the debtor's bankruptcy that are known to the foreign representative.

The court will issue its decision on the application if the court is satisfied that:

- the subject-matter of the foreign proceedings application meets the definition of foreign bankruptcy proceeding;
- the applicant meets the definition of foreign representative; and
- the application for recognition contains all the documents required for the application (as previously outlined).

The foreign bankruptcy proceeding will either be considered by the court as a foreign main proceeding if it is taking place in the state where the debtor is centred and has its main interests, or as a foreign non-main proceeding if it is in a foreign state where the debtor has an establishment/presence.

The foreign representative will be under an ongoing obligation from the time of submitting the application for the recognition of the foreign bankruptcy proceedings to provide the courts of Bahrain with any substantial changes in the status of the foreign proceeding or the appointment of the foreign representative, as well as any other foreign proceeding regarding the same debtor which comes to be known by the foreign representative.

The Bankruptcy Law also provides that the court may, at the request of the foreign representative, enforce preventive measures such as a stay of execution against the debtor's assets or entrusting the foreign representative with the administration of the debtor's business to protect the bankruptcy assets from perishing or diminishing from the time of submitting an application for recognition of the foreign proceedings until the issuance of a decision on the recognition by the court.

Upon successful recognition of a foreign bankruptcy proceeding, the court may, at the request of the foreign representative, grant any of the following measures:

- staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities;
- staying execution against the bankruptcy assets;

- suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor;
- providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights or obligations;
- entrusting the administration or realisation of all or part of the debtor's assets located in the Kingdom to the foreign representative or another person designated by the court; and
- granting any additional relief that may be granted under the provisions of the Bankruptcy Law.

The court may also, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in Bahrain to the foreign representative or another person designated by the court, provided that the court is satisfied that the interests of creditors in the state where the foreign bankruptcy proceedings take place are adequately protected.

9. Trustees/Receivers/Statutory Officers

9.1 Types of Statutory Officers

The types of statutory officers who may be appointed in proceedings in Bahrain are as follows.

Temporary Bankruptcy Trustee

A temporary bankruptcy trustee may be appointed pursuant to the Bankruptcy Law as a provisional measure after filing for bankruptcy, and before the approval of the opening of bankruptcy proceedings.

Bankruptcy Trustee

A bankruptcy trustee is the statutory officer selected by the majority of creditors attending a meeting to be convened and notified to creditors within seven days of the approval of the opening of bankruptcy proceedings pursuant to the Bankruptcy Law. In the event that no selection is made, the court may appoint the bankruptcy trustee. The creditors' committee (if any) or creditors representing 50% of unsecured debts may request the court to replace the bankruptcy trustee within 30 days of his or her appointment.

Liquidation Trustee

A liquidation trustee is the name given to a bankruptcy trustee upon the commencement of liquidation proceedings of an insolvent company in accordance with the Bankruptcy Law.

Reorganisation Trustee

A reorganisation trustee is the name given to a bankruptcy trustee in the context of reorganisation as per the Bankruptcy Law.

Administrator/Liquidator

See 2.3 Obligation to Commence Formal Insolvency Proceedings.

9.2 Statutory Roles, Rights and Responsibilities of Officers

Reorganisation and Bankruptcy Law

Generally, the bankruptcy trustee reports directly to the court and his or her duties and responsibilities include, without limitation:

- the preparation of a report, immediately following his or her appointment, on the debtor's assets of his or her or its business, all circumstances affecting the financial position of the debtor and expected developments;
- the preparation of a register to record the data of creditors, secured creditors, the

amounts of their claims, the due date and the nature of their guarantees required on the assets of bankruptcy, attached therewith the documents that substantiate these claims;

- the preparation of a list of existing contracts;
- administration of bankruptcy assets on behalf of the debtor if the debtor is not continuing to manage, supervise or control the management of the assets;
- a request to invalidate the actions carried out by the debtor prior to the date of approval of the opening of bankruptcy proceedings;
- the collection of any debtor's funds or his or her or its rights due to others, and providing proofs of ownership of the debtor's funds or his or her or its entitlement thereto;
- to express his or her opinion on the proposed reorganisation plan and to provide assistance in its preparation;
- set-off procedures between what is owed by the debtor to creditors and vice versa;
- to present periodic reports to the court about his or her activities and actions taken, the results of bankruptcy assets' management, his or her observations on the progress of his or her work and all the expected developments;
- to prepare an inventory of debtor assets when commencing bankruptcy proceedings and to file the inventory to the court;
- the retention of receipts of funds and records of distributions he or she manages in the claim; and
- to appoint lawyers or other experts as may be necessary.

The bankruptcy trustee shall be committed to implement his or her functions and duties honourably and faithfully, and make the aims of his or her actions in favour of bankruptcy to the fullest extent by maximising the bankruptcy assets, to do his or her best to implement his or her

functions and duties, provided that his or her care is not less than that of the usual person who carries out those duties.

In the case of reorganisation, the reorganisation trustee shall assume the functions of overseeing the reorganisation management and the preparation and implementation of the reorganisation plan in order to achieve operational improvements to the debtor's business. The reorganisation trustee shall also be responsible for ascertaining whether it is in the best interest of the debtor to continue with reorganisation or to transit into liquidation.

In the context of liquidation, the liquidation trustee's main responsibilities shall be to protect the bankruptcy assets and protect them from diminishing in value while maximising the bankruptcy assets to the utmost extent possible, to sell the bankruptcy assets and to distribute the assets or the proceeds of their sale pursuant to the rank of priority and the manner stipulated under the law.

CBB Law

The administrator's main duty is to take all necessary measures, during the period of administration, to collect all of the entitlements due to the CBB Licensee.

The CBB Law further states that the administrator shall, within 30 days of assuming the administration of a licensee, make an inventory of the rights, assets and liabilities of the licensee. A report should be prepared on that inventory, and two copies made, one copy of which shall be kept at the principal place of business of the licensee in the Kingdom and shall be available for inspection by creditors and other interested parties. The other copy shall be kept at the CBB. The aforementioned report shall be updated periodically to reflect any updates.

Within a period of two years, the administrator shall conclude his or her tasks by submitting a petition to the competent court for compulsory liquidation of the licensee or otherwise to terminate the administration and restore the management to the officials of the licensee.

9.3 Selection of Officers

The provisions of the Bankruptcy Law state that the bankruptcy trustee shall be selected by creditors attending a meeting to be convened and announced within seven days from the date of approval of the opening the bankruptcy proceedings. In the absence of such a selection, the court may appoint the bankruptcy trustee itself. The creditors' committee (if any) and creditors representing 50% of unsecured debts are entitled to request the court to replace the appointed bankruptcy trustee within 30 days of his or her appointment.

The trustee shall be registered in the experts' panel in the category of reorganisation trustee in the case of reorganisation proceedings, or the category of liquidation trustee in the case of liquidation proceedings.

The trustee must be independent, impartial and free of conflict. The Bankruptcy Law further states that the trustee shall not be (i) one of the debtor's insiders, or (ii) a creditor to the debtor, his or her or its partner, his or her or its employee, or auditor, or his or her or its agent during the two years preceding the opening of bankruptcy proceedings.

In cases where the bankruptcy trustee is appointed by the court, the creditors' committee may, if the bankruptcy trustee is inappropriate, request the court to appoint another bankruptcy trustee within 30 days from the date of the appointment of the bankruptcy trustee.

In the context of placing a CBB Licensee under administration, the CBB may assume the administration of such a licensee or may appoint another person to conduct the administration of the licensee on behalf of the CBB.

Removal and Replacement of Statutory Officers

The CBB Law is silent on the procedures and circumstances of replacing/removing an appointed administrator or liquidator (in the case of compulsory liquidation).

The Bankruptcy Law provides for certain circumstances in which the court, by its own initiative or pursuant to a request from a debtor, a creditors' committee or creditors who own at least 10% of the total unsecured debt, dismiss the bankruptcy trustee from his or her duties. Examples of the aforementioned circumstances include:

- a lack of the necessary efficiency, inability to perform his or her functions and duties, or a want of due diligence;
- undertaking acts or dispositions contrary to the law or harmful to the assets of bankruptcy or creditors' interests;
- a lack of impartiality or independence, or the existence of a conflict of interest that justifies his or her dismissal;
- gross negligence;
- changing the function of the bankruptcy trustee; and
- removing his or her name from the panel of experts.

If the bankruptcy trustee is dismissed, a new bankruptcy trustee shall be appointed in accordance with the manner stipulated above.

10. Duties and Personal Liability of Directors and Officers of Financially Troubled Companies

10.1 Duties of Directors

Under the CCL, directors may be held personally liable to the extent of their personal assets if they incur obligations on the company despite knowing that the company will not be able to meet those obligations upon their maturity. The liability of the director may be proven if the company incurred those obligations due to the director's gross negligence or wrongdoing.

10.2 Direct Fiduciary Breach Claims

Upon the commencement of bankruptcy proceedings, and without prejudice to the moratorium of claims, the bankruptcy trustee shall undertake the defence of the company against any claims brought against it and will represent the company before the courts of Bahrain.

This will not prevent creditors from bringing an action against the director and the company jointly.

Since the bankruptcy trustee is entrusted with maximising the bankruptcy assets and collection of any debtor's funds, the bankruptcy trustee may – if a judicial judgment is sought against the company and the director jointly – exercise the company's right in bringing an action against the director for any liability or damages incurred by the company due to the director's breach of his or her fiduciary duties or commission of any act which gives rise to his or her personal liability.

11. Transfers/Transactions That May Be Set Aside

11.1 Historical Transactions

The bankruptcy trustee is entitled to request that the court invalidate and annul any historical transaction if that transaction was carried out with the intention of defrauding creditors (whether future or present), or if that transaction is deemed detrimental to the creditors' right in obtaining their claims.

The bankruptcy trustee may also apply to the court requesting the annulment of transactions (disposition and security) entered into by the debtor in circumstances where such a transaction gives preference to a certain creditor over others, or if it may prevent the debtor from paying his or her or its debts upon their maturity.

11.2 Look-Back Period

The look-back period is open-ended and not restricted by the Bankruptcy Law.

However, any such claim must be brought within six months from the date of the approval of the opening of bankruptcy proceedings, or within one year if the counterparty to that transaction is an insider.

11.3 Claims to Set Aside or Annul Transactions

Claims to set aside or annul transactions may be brought in both reorganisation and insolvency proceedings.

Claims for annulment must be brought by the bankruptcy trustee; however, the court may authorise the creditors' committee to submit such a claim directly in cases where the bankruptcy trustee refuses to submit that claim.

Hassan Radhi & Associates was founded by Dr Hassan Radhi in 1974, and within a few years the firm topped the list of the most reputable and leading law firms in Bahrain and in the Gulf region. The number of associates presently working at the office, including the partners, is 16, apart from the trainee lawyers, paralegals and articulated clerks. The firm's general practice extends to all facets of law. The firm represents its clients in all courts of Bahrain, as well as in domestic and international arbitration. The firm also appears on Bahrain's largest transactions in the financial and corporate sectors, including the issuance of bonds, sukuk, IPOs, M&A

and investments. The firm has solid experience in terms of financial restructuring, wherein it has assisted a number of clients (whether debtors or creditors) in consensual restructurings, in addition to having experience in voluntary and involuntary restructurings and liquidations. The firm is based in Bahrain and has been a member of the Lex Mundi network since 2000. In 2022, Hassan Radhi & Associates has been selected as Corporate & Finance Domestic Law Firm of the Year by Chambers and Partners and is top-ranked as a leading firm in Corporate & Finance by Chambers and Partners.

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