



MENA Insolvency and Creditor Rights: A Call for Reform

The Hawkamah Institute for Corporate Governance announced the results of its pioneering benchmark survey of insolvency regimes of countries in the Middle East and North Africa region at its first **Symposium on Insolvency Laws and Creditor Rights Systems in the MENA region** in Abu Dhabi.

The survey was undertaken by Hawkamah jointly with the World Bank, INSOL International and the Organisation for Economic Cooperation and Development (OECD). The eleven jurisdictions included in the survey were the UAE, Lebanon, Egypt, Jordan, KSA, Bahrain, Qatar, Oman, Yemen, and Palestine, as well as the Insolvency Law of the Dubai International Financial Centre (DIFC). Key figures participating in the Symposium included HE Mahmoud Mohieldin, Minister of Investment in Egypt; Mahesh Uttamchandani, Senior Counsel at the World Bank; Dr Rainer Geiger, Senior Regional Advisor OECD; Robert Sanderson, President of INSOL International and Sumant Batra, Vice President, INSOL International.

Insolvency and creditor rights are part of market infrastructure, and are part of the core standards for sound financial systems. These international standards were developed to help countries achieve transparency of economic risks, and a financial system governed and regulated in a safe and sound manner which serves the nation efficiently and sustains ongoing growth and economic development.

In the MENA region, an appropriate insolvency regime also needs to strengthen the capacity of entrepreneurs and the private sector to be able to take risks, innovate, and to reduce the stigma of bankruptcy and insolvency and make it



Robert Sanderson (INSOL), Dr. Nasser Saidi (Hawkamah), Sumant Batra (INSOL)

possible for debtors to restart business on a clean slate after a failure.

Call to action

As a region, we need to build institutions that would support the development of sound insolvency frameworks. These include institutions and systems that are part of the insolvency framework:

- Look at the Liquidation and Rescue process
- Look at voting rights
- Consider lowering financial reporting requirements ↗

Hawkamah becomes first to sign the United Nations Principles for Responsible Investment (UNPRI)

Hawkamah held a workshop on responsible investment practices, in which it was announced that it had become an official signatory to the UN principles. At the same event, Dubai-based Abraaj Capital, the largest private equity firm outside Europe and the US, and Hawkamah's corporate partner followed Hawkamah's example and became the first private sector business in the MENA region to sign up to the UN-backed Principles.

"I'm looking forward to Hawkamah becoming an active participant in the PRI network and hope they can both learn from the good practice of other signatories and share any new ideas

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they have on how best to implement the Principles," Dr. Gifford added. ↗



Dr. Nasser Saidi, Director Hawkamah
Dr James Gifford, Executive Director, UNPRI



Frederic Sicre, Executive Director, Abraaj
Dr James Gifford, Executive Director, UNPRI

Hawkamah assists Qatar Financial Markets Authority in Developing a Code of Corporate Governance

Earlier this year, the Qatar Financial Markets Authority (QFMA) introduced a Code of Corporate Governance for Public and Listed Companies (the Code/CG Code), applicable to companies listed in markets regulated by the QFMA.

The code, which was approved by the QFMA board, was developed in association with Hawkamah, after studying international corporate governance best practices developed by leading international institutions focused on corporate governance. These include the Organisation for Economic Cooperation and Development (OECD), the International Finance Corporation (IFC), the Bank for International Settlements (BIS), the International Corporate Governance Network (ICGN), the World Bank Global Corporate Governance Forum (GCGF) and the International Institute of Finance (IIF), and receiving their feedback on the same.

The best practices advocated by these institutions were tailored to ensure that the Code was relevant to and consistent with Qatar's business environment, the Qatari Stock Market, and Qatar's existing Commercial Companies Law and Stock Market Regulations, while suggesting amendments to the Commercial Companies Law Stock Market Regulations in view of the principles of good corporate governance, such as the protection of minority shareholders and the separation of the roles and responsibilities of chairman of the board and chief executive officer .

The CG Code covers the six elements of Corporate Governance namely the Board of Directors, Internal Controls, External Auditors, Disclosure, Shareholders Rights, Stakeholders Rights and the Corporate Governance Report. It also addresses the Enforcement of the Code and Redress Mechanisms.

The Code has to comply or explain approach for all joint-stock companies listed on any market in Qatar. It defines an 'Independent Board member', 'Non-Executive Board member', a 'related party' and contains two appendices laying out the Board Charter Form and the Fit and Proper Guidelines for Appointment of the Directors.

Nasser Al Shaibi, Deputy Director General of the QFMA, said: "Hawkamah has provided invaluable support in developing a corporate governance code that provides a world-class benchmark for corporate policies, structures and practices in Qatar".

Dr. Nasser Saidi, Executive Director of Hawkamah, commented: "Better corporate governance requires the engagement and commitment of both the public and private sectors, to ensure that effective corporate governance practices take root in the region. We aim to

CORPORATE GOVERNANCE ADVISORY SERVICES

There is a general consensus that the global financial crisis largely stemmed from corporate governance failures and malpractices, and a number of companies in the MENA region are now re-assessing the adequacy of their corporate governance frameworks in order to ensure the sustainability of their businesses. Subsequently, more and more companies are interested in Hawkamah's corporate governance assessment services.

Hawkamah has recently been engaged by various types of organizations to carry out a benchmarking exercise of their current corporate governance policies and practices against regional and international best practices with a view to identifying any gaps and formulating tailored recommendations to address these gaps.


Typically the companies approaching Hawkamah to conduct such assessments already have established corporate governance practices, but they wish to build on the existing governance arrangements or seek re-assurance that they are on the right path with their governance development plans.

The Hawkamah assessment covers five aspects of corporate governance: commitment to good corporate governance, structure and function of the Board of Directors, control environment processes (internal controls, internal audit, external audit), transparency and disclosure, and treatment of shareholders/stakeholders.

The organizations engaging Hawkamah are varied in their nature and in their corporate governance needs, which requires Hawkamah to formulate company-specific recommendations setting out the short-term and longer-term corporate governance goals. The idea behind Hawkamah assessments and improvement plans is to make corporate governance work for the company, taking into account its culture, business and future goals.

We welcome these developments within the MENA companies and stand ready to work with other progressive companies on their corporate governance frameworks. For more information, please contact Nick Nadal, Director on info@hawkamah.org or call +971 4 362 2551 

work with the Qatari authorities for the implementation of this Code, making Qatar lead the way on corporate governance in the region".

The Code is expected to strongly strengthen the operating framework for corporate governance in Qatar in accord with best international practice and guidelines. 

Abu Dhabi Commercial Bank partners with Hawkamah



Dr. Nasser Saidi, Founder and Director, Hawkamah and Mr. Salem M Al Ameri, Board Member and Chairman of the ADCB Corporate Governance Committee

The Abu Dhabi Commercial Bank (ADCB) has signed a partnership agreement with the Hawkamah Institute of Corporate Governance (Hawkamah), to promote corporate governance reform in the Middle East and North Africa (MENA) region. ADCB has been actively implementing good corporate governance practices since 2007. The partnership with Hawkamah this year is another significant initiative that underlines the bank's commitment to international best practices and good governance.

As part of the agreement, ADCB will become a "Corporate Partner" of Hawkamah and contribute key resources necessary to supporting Hawkamah's mandate in strengthening corporate governance in the banking sector in the MENA region and ensuring the implementation of sound and robust corporate governance principles in the sector with the aim of building safer and sounder financial institutions. ↗

The Rise of Responsible Investment

The article below is written by UNPRI

In the past, it was rare that financial institutions saw 'extra-financial' matters, such as corporate governance and climate change, as being core to their business.

In recent years however, the importance of environmental, social and corporate governance (ESG) issues has soared as executives, investors and regulators become increasingly aware that good management of these issues can maximize long-term corporate profitability and enhance reputations.

In the last year, the global financial crisis has underlined to many people that good governance, transparency and robust risk management, by both investors and corporations, are central to the success of the global economy.

The idea behind responsible investment is simple. It is about building strong companies for the long term and taking account of a full range of risks and opportunities. It is not about philanthropy or sacrificing returns to save the world, but rather based on recognition that emerging environmental, social, and corporate governance trends are the drivers of future value of organisations. As responsible owners, investors must exercise their fiduciary duty in the best long-term interests of beneficiaries and factor these issues into their investment process. They should also recognise they are part owners of a business, and seek to improve the company's management of risk where necessary.

Modern responsible investors argue that well governed companies and entities are best able to deliver long-term value for investors. For example, a recent survey by McKinsey found that three-quarters of investment professionals now believe ESG activities create value for shareholders, with around 30% stating they affect shareholder value by between 2-5%.

Those simple concepts are critical when considering that institutional portfolios are increasingly spread across sectors, asset classes, countries, and regions. Indeed, as globalisation of investments has proceeded, the concept of the "universal investor" has gained ground; that is, institutional investors that are highly diversified have a stake in the economy as a whole and should therefore be more concerned with health of the system as a whole, than the returns from any one investment. Therefore tackling an issue like corruption can have a positive impact on portfolio returns over the long term.

Perhaps the most obvious indication of the strong presence of responsible investment in the markets is the number of mainstream global investors now signed up to the UN-backed Principles for Responsible Investment. In just three years, over 500 investors from five continents, responsible for around US\$15 trillion of assets, have now adopted and are implementing the Principles.

The PRI Initiative is the first time institutional investors, fund managers, and professional service partners have developed a truly international and mutually supportive framework within which to consider, and take action on, the most important and material ESG issues.

Collaboration is a vital element in the success of the responsible investment movement and the PRI has set up its 'Engagement Clearinghouse' for signatories to come together to engage in collaborative activities. These engagements often take the form of direct interventions with companies to improve corporate behaviour on issues such as governance, climate change or labour rights.

For example, a recent Clearinghouse collaboration, led by UK investor Hermes, targeted construction companies in the Middle East to ensure they were not

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Old habits must go to tackle insider trading

Article by Dr. Nasser Saidi, published in *The National* on 28 July 2009

Starting in the US, Saudi Arabia and Kuwait, regulators are flexing their muscles and showing companies their resolve to implement market-strengthening regulations. In the post-Bernie Madoff world, regulators know that insider trading is bad for markets as it discourages transparency, indicates an unfair playing field, and kills investor trust and confidence.

But what exactly is insider trading? In a capital market system based on "equal access to information" for all investors, abuse of insider information drives investors away from the market. Liquidity is achieved by the common belief among participants that no investor has "special information". If investors believe that they will always lose out to those with superior information, they will not invest.

Put another way, governments provide limited liability protection to corporations and allow access to the savings of the public in exchange for a commitment by the corporation's board and management to treat the public fairly and abide by certain rules, namely to run the enterprises for the interest of all shareholders. Management has a "fiduciary relationship of trust" to behave that way. That process is "good corporate governance". If both sides play by the rules, the corporation has dependable access to liquid sources of capital, which generate investment returns that ultimately benefit the society as a whole.

The Hawkamah Institute for Corporate Governance partnered the Institute for International Finance (IIF) to survey the corporate governance framework in the GCC markets in 2006. One of the notable recommendations was the need for regulators in the region to work together to strengthen the capital markets in the GCC

particularly by eliminating structural weaknesses such as by requiring companies to obtain credit ratings for debt issuances, developing stronger IPO markets through book-building measures with the help of investment banks, and providing better oversight of mutual fund managers to prevent front-running. We also recommended developing and enforcing insider trading laws.

There have been a number of initiatives to further define insider trading and create anti-insider trading legal frameworks in the GCC, with Oman and Bahrain introducing frameworks as early as 2007 and Saudi, UAE, Kuwait and Qatar respectively following suit. As the region's capital markets take to the global stage, we need to internalise these values and start looking at our old habits with an eye towards reform. ↗

Article by UNPRI

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complicit in abuses of migrant workers. The investors engaged in a dialogue with 15 listed companies with projects in the Middle East and helped ensure appropriate management structures were in place to prevent such abuses. The rationale for this engagement was that if these companies were found to be involved in abuse of workers, there would be significant reputations impacts, and the companies could lose their licence to operate and face a consumer backlash. In addition, the evidence is clear that workers that are treated with respect and live in decent conditions are significantly more productive.

Corporate governance remains the most common area for collaboration among investors. A recent survey of 110 collaborations on the PRI Clearinghouse found 33% focused on corporate governance, compared to 13% for environment and 12% for social considerations.

We are delighted to have recently welcomed signatories from the Middle East such as Hawkamah and Abraaj Capital. ↗

Hawkamah Declaration on Insolvency and Creditor-Rights Systems for the Middle East and North Africa – [Arabic](#) [English](#)

Hawkamah TNI BASIC 2 Behavioral Assessment Score for Investors & Corporations

IFC Family Business Governance Handbook

For copies, please contact Hawkamah on info@hawkamah.org or call +971 4 362 2551

Forthcoming Events

11 October 2009

High Level Regional Bank Task Force Meeting (by Invitation only), Dubai, UAE

12 – 15 October 2009

Banking Outlook Middle East – Dubai, UAE

23 November 2009

Company Secretary Workshop, Dubai UAE

October – November 2009

Director Development Programme, Dubai UAE

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