



Communiqué on Insolvency and Creditor Debtor Rights Systems Reform in MENA

The 2009 regional symposium on insolvency laws and creditor rights systems organized by Hawkamah, in association with the OECD, the World Bank Group and INSOL International on May 26-27, 2009 in Abu Dhabi, UAE (Symposium) brought together officials from MENA countries.

Towards the end of the 2 day Symposium, a declaration called the ‘Hawkamah Declaration’¹ was issued affirming the commitment to modernize insolvency regimes in the MENA region.

One of the key resolutions of the Hawkamah Declaration was the commitment to establish a regional forum on insolvency reform, the purpose of which is to engage, educate and inform stakeholders about insolvency reform and to serve as a platform for sharing international and regional best practice and experiences.

In November, 2009 at the Hawkamah Regional Conference in Dubai, UAE, a joint regional survey (Survey) on insolvency systems in MENA was officially launched. The survey, conducted jointly by Hawkamah, the World Bank Group, the OECD and INSOL International, with the support of PricewaterhouseCoopers LLP and Korn/Ferry International, disclosed significant limitations in the design and implementation of insolvency regimes in the MENA region.

Hawkamah disseminated the Survey² to Ministers, regulators, lawmakers, accountants, auditors, bank and non-bank corporate sector, media and academia.

A number of countries in the MENA region have begun to undertake reforms of their insolvency regimes and in the time elapsed since the Hawkamah Declaration and the launch of the Survey, the need for such a platform has become even more acute, as evidenced by, *inter alia*:

- The challenges posed to policy makers by the financial crisis, as they attempt to stabilise financial markets and curtail economic disruption;
- The rise in both personal and corporate bankruptcy filings around the world;
- The reluctance, in the MENA region, of enterprises to file for bankruptcy protection and the limits posed by the legal framework in achieving successful business turnaround and restructuring;

THEREFORE, on the occasion of the INSOL International regional conference, a first regional FIRM roundtable was organized by Hawkamah, in association with the, the World Bank Group, OECD and INSOL International on February 24, 2010 in Dubai. The meeting brought together officials, policy

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http://www.hawkamah.org/events/conferences/insolvency_declaration/files/hawkamah_declaration_on_insolvency_english.pdf)

² http://www.hawkamah.org/events/conferences/conference_2009/files/mena_study_insolvency.pdf

makers and representatives from UAE, Turkey, Tunisia, Oman, Egypt, Qatar, Saudi Arabia, Lebanon and Jordan (the Participants).

Hawkamah HEREBY calls upon MENA countries and regional and international institutions to:

ACKNOWLEDGE the benefits of sound insolvency systems for the efficient reallocation of resources and as part of the broader private sector development programme;

RECOGNIZE the need to modernize insolvency regimes across the region in a way that is consistent with existing legal structures and responsive to existing business practices in the region;

REVIEW the results of the Survey and undertake internationally recognized diagnostic efforts to design reform initiatives in the region;

STUDY the effectiveness of liquidation and rescue procedures;

RECOGNISE the critical importance of integrating the private sector in any reform initiatives;

DISCUSS how Islamic finance transactions should be treated in cases of insolvency, so as to provide clarity and transparency to the market;

CONSIDER the specific needs of small and medium enterprises (SMEs), which constitute a significant portion of MENA economies³, when designing insolvency systems – in order to promote *inter alia*, access to credit for SMEs;

STRENGTHEN the institutional framework of insolvency regulators to improve the performance of insolvency office holders across the region;

STRENGTHEN the performance of courts that have jurisdiction over insolvency cases, whether through the development of special claim financial courts, the introduction of case management tools, the streamlining of court processes or other methods suitable for individual countries;

MAKE AVAILABLE to the FIRM all public data on insolvency cases in their respective countries;

PARTICIPATE actively in future FIRM events, recognizing the critical importance of peer-to-peer learning as a tool for the improvement of insolvency regimes in MENA;

ENGAGE national and international organizations, expert non-governmental bodies, the FIRM and other donors and aid organizations in the support of implementing insolvency reforms in the MENA region; and

³ source: <http://www.oecd.org/dataoecd/5/30/42869189.pdf>

ACTIVELY WORK WITH THE FIRM to design and implement future goals, which include, but are not limited to:

1. Holding regular FIRM regional roundtables in the MENA region, hosted by participating countries ;
2. Widen the participation of relevant stakeholders from the region in the FIRM roundtables;
3. Produce analytical policy oriented research material (2 per year), focusing on developing a regional real life case study on insolvency/restructuring and cross border insolvency, the economic cost of not doing restructuring ; the statistics in the region for out of court settlements/Informal workouts and other topical issues;
4. Hold 1-2 workshops /public awareness sessions per year in the countries of the region;
5. Create a resource-webpage with material on Insolvency in English and Arabic;
6. Make available documents, toolkits & resources on insolvency and debtor/creditor rights in Arabic;
7. Identify countries and organisations to provide the necessary financial and non-financial resources to help Hawkamah act as Secretariat of the FIRM and to work with its partner organisations to implement the Insolvency Reforms;
8. Approach regulators, policy makers and institutions working in the region to assist in the implementation of policy reform recommendations;
9. Developing training programs for practitioners, regulators and judges; and
10. Organizing and hosting the second meeting of the FIRM in 2010 to:
 - bring together international, regional and country-level bodies engaged in insolvency reforms,
 - disseminate international and regional experiences in order to increase the understanding for viable policy options,
 - engage the relevant stakeholders and
 - identify resources and priorities for Research on Insolvency