

**Project no. XYZ/123/00**  
**Middle East Regional Bankruptcy Reform Initiative**

***Stocktaking Report on  
Middle East Regional Bankruptcy Reform Initiative***

PREPARED BY THE ARAB CENTER FOR THE DEVELOPMENT OF RULE OF LAW AND INTEGRITY



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## Executive Summary

*Bankruptcy law reform has been a significant issue in the recent years since the economic development requires the presence of adequate legal and judicial environment. This environment can play a significant role in encouraging investment through providing reassurance for investors and creditors.*

*In this line, the Arab Center for the development of the Rule of Law and Integrity (ACRLI) is in the process of implementing a 12-month project entitled “Middle East Regional Bankruptcy Reform Initiative”. This project is implemented with the support of the Bureau of Near Eastern Affairs, Office of the Middle East Partnership Initiative (MEPI).*

*The strategic objectives of the project are twofold, the first of which is to formulate well-researched proposals and recommendations for reforming bankruptcy laws in both Egypt and Jordan. Based on the reform proposals and recommendations a cross-country comparisons report will be developed to make synergies between countries facing similar situations.*

*The second of the strategic objectives is the creation of effective advocacy campaigns for bankruptcy law reform, which will activate the participation of multiple stakeholders in their respective countries. The advocacy campaigns will target only stakeholders with an interest in bankruptcy law reform, and hopefully the means to effectively pressure policy-makers to enact reforms.*

*Stocktaking exercise of previous projects on bankruptcy law reform in both Egypt and Jordan were collected to ensure that this project will build upon their accomplishments. Two stocktaking reports will be done separately, one for Egypt and the other for Jordan.*

*Therefore, initiatives and activities that have been implemented in the previous couple of years in the Republic of Egypt were covered in this report to avoid duplication of efforts when designing and implementing the project activities and to fully divulge the current situation upon which the rest of the project can be built. Also, this report covers a number of international best practices to allow the project team to access the latest development in this regards, and enable him to build upon similar perspectives that are compatible with the reality of Egypt*

## I- Objective of Stocktaking Report

The objective of this Stocktaking Report is to present the findings of the research conducted to collect available documents and assess various activities that are related to bankruptcy law in Egypt during the last decade, the outputs of the report are displayed at three levels:

1. The first level is specific to Egypt. This level covers the legal frameworks that govern the bankruptcy system (laws, bylaws and regulations) as well as background and explanatory papers, studies, initiative, and articles that have been produced and implemented in the last decade.
2. While the focus of the data rested on Egypt, pertinent data from the entire MENA region proved valuable in their specificities of the country. These data are mentioned in the second level of this report.
3. The third level focuses on the **international best practices**. The diversity of practices varies between studies and researches on bankruptcy law reform that have been preceded by other countries to modify its legal system and reduce the defects that are existed in its bankruptcy system.

## II- Methodology of Report

The methodology that has been followed to collect the above documents has been based on research using the references available at the libraries of the Arab Center for the Development of the Rule of Law and Integrity (ACRLI) as well as on desk research, web-surfing, extraction of data from the available database of legislations, and coordination with the Egyptian author.

A plethora of sources were found on the World Wide Web, including reports, narratives, interviews, assessment studies, articles, publications, forums and agendas, questionnaires, papers, etc.

## Level 1: Researched Information and Documents that are specific to Egypt

ACRLI and its National Expert in Egypt have researched a series of documents that are specific to bankruptcy law. However, the challenges that have arisen during the project concern data collection, the foremost of which is that the plethora of resources lacks a centralized location. Because information cannot be gathered from one resource, a great variety can be found in the resources, not to mention the breadth of locations from which it must be gathered, including ministries, libraries, field resources, institutions, organizations, and the World Wide Web. Relating to the last location mentioned, information pertaining specifically to insolvency law in Egypt and Jordan is not abundant on the Internet.

**The following is a list of documents that have been found through desk research, web surfing and ACRLI's library:**

1. Regional insolvency conference: Egypt is at a critical juncture- published by daily news- 2012.
2. Investment Climate Statement – Egypt - published by US department of state 2013
3. Business Law and Commercial Conflict Resolution- published by OECD-2010
4. Commercial laws of Egypt – An assessment by the European Bank for Reconstruction and Development (EBRD) – 2012.
5. Business Reforms in Egypt, Arab Republic, by the World bank, 2011
6. Corporate Recovery & Insolvency 2013- international comparative legal guide (ICLG)- 2013
7. The Efficiency of the Bankruptcy System in Egypt, the Egyptian Center for Economic Studies - 2005
8. Poor economy increases bankruptcy reform push, by American chamber of commerce in Egypt- 2012
9. Commercial enforcement and insolvency systems – the World Bank- Forum 2003
10. Bankruptcy Law and the Capital Market: An Assessment by US Aid - 2000
11. Market Exit Rules: A Tool for Entry- published by the Center for International Private Enterprise (CIPE) - by Samir Hamza
12. لجنة تحديث التشريعات الاقتصادية تؤكد أهمية وجود آلية لتنظيم الخروج من السوق - سرى صيام -

13. مؤتمر يناقش تشريعات الإفلاس - سري صيام: تطوير التشريع يستهدف تحسين مناخ الاستثمار واستقرار الأسواق – نجلاء ذكري – 2007 )
14. وزير العدل يفتتح مؤتمر تحديث التشريعات الاقتصادية – 2007 - مؤتمر اللجنة القومية لتحديث التشريعات الاقتصادية، حول تحديث الاحكام التشريعية للافلاس والصلح الواقي منه-
15. مؤتمر الإفلاس العالمي 2012
16. قانون الافلاس والصلح الواقي الجديد يركز على الحفاظ على المشروع والعمالة 2009
17. مؤتمر "الإفلاس الإقليمي" يوصى بضرورة الإصلاح التشريعي 2012 –

Attached to this report is detailed table (*annex 1*) that identifies the collected documents that have been researched on the internet with a brief description of each source to give an idea about the content of each document.

Despite the importance of the above documents, it was nessecary to reach the Egyptian legislations to better understand the legal framework of bankruptcy system.

**The following is a list of relevant laws and regulations that are related to bankruptcy and have been received from the national expert in Egypt:** (*Detailed explanatory paper covering regulations and its ammendments is available in Arabic and can be found in annex 2*)

1. **Chapter V of the Code of Commerce No. 17 of 1999, Articles 550 to 772**(bankruptcy), and Articles 725 to 767, 769, and 772 (preventive conciliation).
2. **Law No. 56 of 1945**
3. **Law No. 141 (2004)**
4. **Leasing law**
5. **Real estate financial law**
6. **The Central Bank and Banking System**
7. **Cash Law No. 88 of 2003-** Law of the Central Bank and the banking and monetary system: article 133.
8. **Article 52 of Law No. 93 of 2000**
9. **The Civil Code Law No. 131 of 1948:** Articles 549 to 557
10. **Decision of the Board of Directors of the Central Bank No. 202 of 2005** dated 18/1/2005 on conciliation and arbitration.

11. Law No. 95 of 1995- **Leasing**: article 19
12. Law No. 159 of 1981- **Corporate Code**: Articles 97 to 100, and 102 (for shareholding companies); Articles 30, 117 and 122 (for limited liability companies); Articles 6/2, and 161 to 163 ( general provisions)
13. Decision No. 96 of 1982-By-laws for the **corporate law**: Article 71
14. **Commercial Code** according to Law No.17 of 1999: Article 740.
15. Law No. 131 of 1948- **Civil Code**: articles 163- 175 (Contractual liability) and articles 211, 217, 221, and 222 (Torts liability)

## Analysis of the Egyptian-Relevant Documents:

### 1. The Drafted Laws

The legal provisions dealing with bankruptcy are dispersed between Articles 550 to 772 of the Commercial Code issued under the Law No. 17 in 1999. Provisions for preventive conciliation of bankruptcy are present in Articles 725 to 767, 769, and 772 of the Commercial Code.

Bankruptcy and conciliation are entirely regulated through Chapter V of **the Commercial Code No. 17 of 1999**. This chapter is divided into 10 consecutive sections as the following:

1. Conditions required by law to declare bankruptcy.
2. Person in charge to manage bankruptcy.
3. Effects of bankruptcy declaration on creditor and debtor
4. Management of bankruptcy proceedings
5. Closing bankruptcy
6. Shortcut the execution procedures on bankruptcy funds
7. Followed rules to corporate bankruptcy
8. Commerce rehabilitation
9. Preventive conciliation of bankruptcy
10. Bankruptcy and conciliation crimes

**The Civil Code** issued by the Law No. 131 of 1948 has defined the general framework of civil responsibility. It consists of a fault-based system of compensation that imposes the



compensation to harmed parties by the one who is at fault (Contractual liability: Articles 163 to 175; Torts liability: Articles 211, 217, 221, 222).

**The Corporate Code** issued by the Law No. 159 of 1981 (amended by the Law No. 3 of 1998) has mentioned the duties and liability of the director(s) for mismanagement in various types of companies, specifically shareholding companies (Articles 97 to 100, and 102), and limited liability companies (Articles 30, 117, and 122), in addition to the general provisions of the law applicable on all companies (Article 6/2, 161 to 163).

In this context, and with regard to the directors' responsibility in the limited liability companies, the article 117 of the Corporate Code has stipulated that a register should be kept at the head office of the company, comprising all data as defined by the regulations... The managers of the company will be jointly liable with regard to any harm caused on account of incorrect keeping of this register, or of preparation of the lists in a defectives manner, or of incorrectness of the data recorded in the register or in the lists.

Additionally, the Commercial Code issued by the Law No.17 of 1999 has allocated one article for the director's responsibility (Article 740) in case of the company's bankruptcy.

The executive bylaw of the corporate law issued under the Decision No. 96 of 1982 has exposed in the Article 71 the extent of the director's liability in case of increasing the company's capital amount.

The courts in Egypt do not face many lawsuits that deal with directors' civil liability. The court of cassation in its decision no. 802 dated 24/03/2009, has considered that in the shareholding companies and the limited liability companies, the Board of Directors and managers are liable for any mismanagement or violation of the company's by-laws, yet, their acts are binding to the company. In other terms, it is not possible for the company to pretend in front of the third parties that the director did not follow the provisions or the procedures mentioned in the company's by-laws.

The law No. 141 of 2004 applies by analogy to entrepreneurs regarding small and micro enterprise development, but as for those applying directly to entrepreneurs, there are none; instead, Market Exit is addressed in the general rules of both the Commercial Code and the Companies Law (and are thereby applicable to entrepreneurs).

**In 2008, economic courts were established** in the Act No. 120 due to the lack of knowledge in economic and investment issues among judges, as well as the lack of their specialization

in business and economic laws in general, and their penchant for hiring technical and financial experts to resolve the presented issues.

General Authority for Investment and Free Zones (GAFI) play a role in simplifying the market exit procedures. In 2007, GAFI issued a resolution that defines the rules that should be followed by companies and establishments before applying the voluntary liquidation.

As to the compulsory route of exiting, regulations are addressed in Articles 586 to 604 of the Commercial Code, and rehabilitation is covered in Articles 712 to 724. Rehabilitation can be achieved in two ways, whether it be by operation of the law or by court order; it is not allowed, however, should fraud have been the reason for the bankruptcy.

It is worth mentioning that in addition to the above primary legal texts, scattered provisions related to bankruptcy, reconciliation and debt restructuring were cited in a number of legal and regulatory texts such as **leasing law, real estate financial law, the Central Bank and Banking System and Cash Law No. 88 of 2003, and Article 52 of Law No. 93 of 2000**, which addresses the Cash Central Depository Law. **The Civil Code Law No. 120 of 2008** established economic courts that have exclusive jurisdiction to hear bankruptcy claims.

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## 2. Other activities

A number of activities have taken place since the implementation of the Code of Commerce No. 17 in 1999.

Several Ministerial Meetings have been held, the first **in 2006** in Jordan, followed by meetings in Cairo in May and November of 2007, all of which worked towards the enhancement of legislation reform.

The meeting **in May of 2007** entitled “Building Sound Insolvency Systems in the MENA region, focused specifically on bankruptcy, and insolvency experts and academics alike participated. The meeting aimed to dissect the legal and institutional framework of MENA insolvency systems.

Also **in September of 2007**, Egypt participated in a workshop related to modernizing Bankruptcy Legislation.

**According to the OECD report, Making Reforms Succeed**, the National Law Commission was established in 2007, with the mission to compare and contrast the current Egyptian

regulations with international guidelines and standards. A part of the Commission is designated to investigate insolvency legislation in order to better form recommendations. Problems include: “low rates of debt recovery” and “weak underlying mechanisms” which have led to resentment between creditors and debtors. Debtors have thus been labeled as criminals and at times had their civil rights revoked. “Debt millionaires” have arisen due to weak policies and loose lending procedures by banks. The revision process of the existing institutional framework in terms of insolvency falls under the National Law Commission.

The most recent activities show a definite interest in bankruptcy, the first of which was a **conference held on the 2nd and 3rd of September** regarding modernizing economic legislation. Additionally, a **Regional Insolvency Conference held on the 24th of November 2012** was sponsored by the World Bank’s International Finance Cooperation (IFC) in partnership with the Swiss confederation’s State Secretariat for Economic Affairs (SECO).

Since the beginning of the year 2007, the Ministry of Investment, Trade and Industry have been collaborated for the composition of the **National Committee to update economic legislation**. The committee has focused on bankruptcy development, as well as it called more than fifty specialists in the subject of bankruptcy and market exit to deliberate in the issues that must be amended in bankruptcy legislations.

**Minister of Justice Ahmed Mekky signed two agreements with IFC<sup>1</sup>**; the first is related to settling commercial and economic disputes and aims to promote Egypt’s capabilities as regional hub for mediation training and to raise awareness of it as a tool to simply and rapidly settle disputes, helping to boost investor confidence, attract investments, and achieve economic development. The second agreement addresses cooperation in promoting insolvency systems. It aims to train Egyptian judges to deal with restructuring distressed companies and use friendly methods to settle bankruptcy disputes. This is planned in order to thoroughly promote bankruptcy rules and regulations in a manner that is consistent with modern international judicial trends, all the while resolving the practical problems triggered by the application of the existing law.

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<sup>1</sup> <http://allafrica.com/stories/201211250323.html>

## Level 2: Pertinent data from the entire MENA region, including Egypt

A pilot initiative entitled “Modernizing Commercial Law across Arab Countries” has been undertaken by the World Bank Group and implemented by the Arab Center for the Development of the Rule of Law and Integrity (ACRLI). This initiative aims to improve the quality of the commercial law framework in the Arab countries, as to create a more transparent and consistent legal regime as well as a more attractive environment for entrepreneurship, Micro, Small and Medium Enterprises (MSMEs) development, and foreign investors. The project addresses both the regulatory framework and its implementation in practice, to ensure a more comprehensive evaluation of the business environment that investors face.

This project is a regional study that used as assessment / benchmark four Arab priority countries namely Egypt, Jordan, Tunisia and Lebanon. It had targeted three thematic areas that are in need of reform: corporate mismanagement (corporate law), non-possessory interest over movable property (collateral law), and restructuring agreements with creditors prior to bankruptcy (insolvency law).

The third topic, the paper addresses, which is about restructuring agreements with creditors before bankruptcy proceedings – conciliation- is an essential references for the project.

In addition to the specific information to Egypt and the above mentioned World Bank project, an intensive research was done to identify different approaches between countries - from the MENA region - in the fields of restructuring, liquidation and many other concepts related to bankruptcy law reform.

**The following is a list of relevant documents that have been retrived from miscellaneous organizations:** *(Attached to this report detailed table (annex 3) that identifies the researched documents with their links and the issuer body. A brief description of each source has been written to give a brief idea about the content of each document.)*

1. Study on Insolvency Systems in the Middle East and North Africa, developed by HAWKAMA, WORLDBANK (WB), OECD, INSOL

2. "NO WAY OUT": THE LACK OF EFFICIENT INSOLVENCY REGIMES IN THE MENA REGION, WB, 2010.
3. Law in transition -Panel interview: Reform in the southern and eastern Mediterranean region Insolvency – a second chance?, European Bank for Reconstruction and Development (EBRD), 2013
4. Law in transition -Why modern insolvency laws seek to promote business rescue, EBRD, 2013
5. Private Sector Development in the Middle East and North Africa, Making Reforms Succeed, MOVING FORWARD WITH THE MENA INVESTMENT POLICY AGENDA, OECD, 2008.
6. Business Reforms in Middle East& North Africa, WB
7. MENA Flagship Report : INSOLVENCY Private Sector Development Specialist Investment Climate Department Restructuring & Insolvency, by IFC and WB, 2010
8. OECD Policy Brief on Building Sound Insolvency Systems in the MENA Region, OECD
9. Arab World Competitiveness Report 2011-2012 ( Published by the World Economic Forum and OECD)
10. Reviewing Investment in the MENA Region, by A. Bohmer, head of MENA-OECD Investment Programme, 6 Dec 2011
11. MENA-OECD Investment Programme, Business Climate Development Strategy, Phase 1 Policy Assessment, EGYPT, Dimension II-3, Business Law and Commercial Conflict Resolution
12. Building sounds insolvency systems in the MENA region, OECD-2007
13. Study on insolvency systems in the middle east and north Africa, OECD

### **Level 3: International best practices and standards**

The above two levels have been supported by an intensive research to identify the international best practices in the fields of bankruptcy law reform in particular to the corporate restructuring in and out of court.

The emergence of various defects during the application of bankruptcy procedure was a reason for several countries to conduct new concepts in reducing bankruptcy and reforming its regulations, especially in the aspect of pre-bankruptcy.

The World Bank principles for Effective Insolvency and creditor/debtor regimes and the UNCITRAL Legislative Guide on Insolvency Law in its 3 parts play a role in building up roadmap for both creditors and debtors to recover debts and reduce losses. This concept was expressed by a set of principles and recommendations to reflect the best international practice concerning the insolvency of Enterprise Groups

Attached to this report detailed table (annex 4) that identifies the researched documents with their links and the issuer body. A brief description of each source has been written to give a brief idea about the content of each document

### **III- Conclusion**

This stocktaking report covers a set of documents which is considered as a starting point of the project to achieve the expected results and goals of the project.

The researched documents and Information form the basis for the upcoming reports that are supposed to be produced throughout the project period.

## IV- List of Annexes

Annex Number	Description
Annex 1	Specific findings for Egypt
Annex 2	Explanatory paper received from the Egyptian expert
Annex 3	Pertinent data from the entire MENA region, including Egypt
Annex 4	International best practices and standards

**Annex 1**

**Specific findings for Egypt**

#	Link	Title of the document	Published by	Type of the document	Brief summary
	<a href="http://www.dailynewsegypt.com/2012/11/24/regional-insolvency-conference-egypt-is-at-a-critical-juncture/">http://www.dailynewsegypt.com/2012/11/24/regional-insolvency-conference-egypt-is-at-a-critical-juncture/</a>	Regional insolvency conference: Egypt is at a critical juncture	Daily news	Conference	<p>The conference was held on 24 Nov 2012. as sponsored by the World Bank's International Finance Cooperation (IFC), in partnership with the Swiss confederation's State Secretariat for Economic Affairs (SECO). Mekky signed two agreements with IFC; the first is related to settling commercial and economic disputes. The agreement aims to promote Egypt's capabilities as regional hub for mediation training, and to raise awareness of it as a tool to simply and rapidly settle disputes, helping to boost investor confidence, attract investments, and achieve economic development.</p> <p>The second agreement addressed cooperation in promoting insolvency systems. It aims to train Egyptian judges to deal with restructuring distressed companies, and use to friendly methods to settle bankruptcy disputes. This is planned in order to thoroughly promote bankruptcy rules and regulations, in a manner that is consistent with modern international judicial trends, and at the same time resolves the practical problems triggered by the application of the existing law.</p>
	<a href="http://www.state.gov/e/eb/rls/othr/ics/2013/204635.htm">http://www.state.gov/e/eb/rls/othr/ics/2013/204635.htm</a>	2013 Investment Climate Statement - Egypt	US department of state	Report	<p>The report contains 2013 Investment Climate Statement in Egypt</p> <p>The part related to bankruptcy is the following:</p> <p>Egypt does not have a bankruptcy law per se, but Commercial Law 17 of 1999 includes a chapter on bankruptcy. The terms of the bankruptcy chapter are silent or ambiguous on several key issues that are crucial to the reduction of settlement risks. The Ministry of Industry and Foreign Trade has identified the lack of a functioning bankruptcy code as a significant weakness for investment in Egypt and has indicated in public statements that efforts are underway to initiate new bankruptcy legislation</p>
1.	<a href="http://www.oecd.org/daf/psd/46341549.pdf">http://www.oecd.org/daf/psd/46341549.pdf</a>	BUSINESS CLIMATE DEVELOPMENT STRATEGY Phase 1 Policy Assessment EGYPT DIMENSION II-3 Business Law and Commercial Conflict Resolution-2010	OECD	DEVELOPMENT STRATEGY	<p>In order to remain competitive in the global marketplace, countries also compete against each other with regard to the attractiveness of their legal systems, and especially with regard to their business law regimes. Maintaining a sound, clear and transparent legal framework for the conduct of business activities is thus not only a prerequisite for being competitive in the international market place, it is also a major challenge for business climate policy makers. Successful reform in countries such as Egypt would lead to a lowering of the risk perceptions of inward investors. The process through which business laws and regulations are conceptualised, drafted, enacted, and enforced should be transparent and interactive. The process of reforming existing legislation while also introducing new business law regimes is complex and requires consensus building. It is an incremental process which should involve the executive and legislative branches, law reform commissions, non-governmental organisations, academia, and a broader circle</p>



					of stakeholders.
2.	<a href="http://www.ebrd.com/downloads/sector/legal/egypt.pdf">http://www.ebrd.com/downloads/sector/legal/egypt.pdf</a>	COMMERCIAL LAWS OF EGYPT October 2012 AN ASSESSMENT BY THE EBRD	EBRD	Study	This section contains an overview of bankruptcy proceedings in Egypt and related key issues. Bankruptcy proceedings are mainly regulated by Chapter V of the Code of Commerce No. 17 of 1999 (the Bankruptcy Law), with some additional bankruptcy related provisions contained in the Civil Code. Law No. 120 of 2008 establishing the Economic Courts granted these courts exclusive jurisdiction to hear bankruptcy claims. The initial review conducted by the EBRD has focused upon interpretation of existing Egyptian insolvency legislative texts and analysis of commentary from leading Egyptian legal practitioners on insolvency
3.	<a href="http://www.doingbusiness.org/reforms/overview/economy/egypt">http://www.doingbusiness.org/reforms/overview/economy/egypt</a>	Business Reforms in Egypt, Arab Republic	WB		Provides an overall assessment of easing access to business opportunities assessment from 2008-2011.
4.	<a href="http://www.iclg.co.uk/practice-areas/corporate-recovery-and-insolvency/corporate-recovery-&amp;-insolvency-2013/egypt">http://www.iclg.co.uk/practice-areas/corporate-recovery-and-insolvency/corporate-recovery-&amp;-insolvency-2013/egypt</a>	Corporate Recovery & Insolvency 2013	International comparative legal guide - ICLG	Comparative Legal Guide 2013	Chapters address issues arising when a company is in financial difficulties, formal procedures, creditors, continuing the business, claims, ending the formal procedure, restructuring, and international.
5.	<a href="http://www.eces.org.eg/Uploaded_Files/%7BE6BD9326-F643-4152-8319-5C4800CE6B6C%7D_ECESWP100.pdf">http://www.eces.org.eg/Uploaded_Files/%7BE6BD9326-F643-4152-8319-5C4800CE6B6C%7D_ECESWP100.pdf</a>	The Efficiency of the Bankruptcy System in Egypt	The Egyptian center for economic studies	Paper 2005	The purpose of this paper is to assess the efficiency of Egypt's bankruptcy system, identify and analyze the main reasons for its inefficiency and offer specific proposals for bankruptcy reform. Its merit lies in focusing on market exit – a fundamental feature of a well-functioning market economy that has remained largely unexplored in Egypt. The paper concludes that a more efficient and effective bankruptcy system should provide appropriate incentives for the debtor, creditors, and the bankruptcy trustee to reorganize potentially viable firms thereby preventing premature liquidation. Fulfilling these requirements will help protect the interests of various stakeholders, particularly workers and minority shareholders, and promote investment and credit.
6.	<a href="http://www.amcham.org.eg/resources_publications/publications/business_monthly/issue.asp?sec=4&amp;subsec=BANKRUPTCY%20LAW&amp;im=6&amp;iy=2012">http://www.amcham.org.eg/resources_publications/publications/business_monthly/issue.asp?sec=4&amp;subsec=BANKRUPTCY%20LAW&amp;im=6&amp;iy=2012</a>	POOR ECONOMY INCREASES BANKRUPTCY REFORM PUSH	American chamber of commerce in Egypt	Article2012	Starting a business in Egypt has never been easy, nor is closing up shop under bankruptcy laws that have remained largely unchanged since 1883. And with more businesses calling it quits during the past 16 months, many in the private sector are calling for an overhaul of the law to align it with international practices...
7.	<a href="http://www.dailynewsegypt.com/2012/11/24/regional-insolvency-conference-egypt-is-">http://www.dailynewsegypt.com/2012/11/24/regional-insolvency-conference-egypt-is-</a>	Regional insolvency conference: Egypt is at a critical juncture	Daily news	Article2012	The three-day-regional conference provided participants with an opportunity to discuss the challenges of reforming the insolvency laws across the region. Egyptian Minister of Justice Ahmed Mekky, inaugurated on Saturday the regional insolvency conference “Challenges and Choices for

	at-a-critical-juncture/				Economic Development.
8.	<a href="http://siteresources.worldbank.org/GILD/ConferenceMaterial/20156096/Egypt%20-%20CR2.pdf">http://siteresources.worldbank.org/GILD/ConferenceMaterial/20156096/Egypt%20-%20CR2.pdf</a>	COMMERCIAL ENFORCEMENT AND INSOLVENCY SYSTEMS	WB	Forum 2003	Legal framework for creditor rights, liquidation, rehabilitation / compositions / schemes, institutional framework for insolvency, regulatory framework for insolvency, cross-border insolvency, proposed or pending legislation
9.	<a href="http://pdf.usaid.gov/pdf_docs/PNACJ498.pdf">http://pdf.usaid.gov/pdf_docs/PNACJ498.pdf</a>	Bankruptcy Law and the Capital Market: An Assessment	US aid	Assessment 2000	Purpose of Assessment, key settlement principle, risk-containment mechanisms to ensure settlement, specific issues in Egypt's bankruptcy law, workshop consensus, assessment, and conclusion
10.	<a href="http://www.cipe-arabia.org/files/pdf/event32_paper1_en.pdf">http://www.cipe-arabia.org/files/pdf/event32_paper1_en.pdf</a>	Market Exit Rules: A Tool for Entry	Center for International Private Enterprise (CIPE)	Paper	
11.	<a href="http://www.oecd.org/daf/psd/46341549.pdf">http://www.oecd.org/daf/psd/46341549.pdf</a>	BUSINESS CLIMATE DEVELOPMENT STRATEGY	OECD	Policy Assessment 2010	Subdivision 3.2.8 Fundamental Business Law: Insolvency Law and Recommendations for Insolvency Law
12.	<a href="http://carnegieendowment.org/sada/2012/01/26/revolutionary-business/96km">http://carnegieendowment.org/sada/2012/01/26/revolutionary-business/96km</a>	Revolutionary Business: Rethinking Entrepreneurship in the Middle East	Carnegie endowment for international peace	Article 2012	Revolutionary Business: Rethinking Entrepreneurship in the Middle East. The Arab uprisings have unleashed a new entrepreneurial spirit in the region, particularly among younger entrepreneurs who feel emboldened to launch new small- and medium-sized enterprises (SMEs). The international donor community has long supported SMEs as they create jobs, greater domestic income (especially among lower-income groups), economic growth, and social stability in emerging markets. Yet, donor activities have sometimes been misguided—however well-intentioned—and the current environment provides an opportunity to reevaluate the best ways to encourage entrepreneurship.
13.	<a href="http://www.qatarshares.com/vb/showthread.php?96073-%E3%D5%D1-%FE-%E1%CC%E4%C9-%CA%CD%CF%ED%CB-%C7%E1%CA%D4%D1%ED%DA%C7%CA-%C7%E1%C7%DE%CA%D5%C7%CF%ED%C9-%CA%C4%DF%CF-%C3%E5%E3%ED%C9-%E6%CC%E6%CF-%C2%E1%ED%C9-%E1%CA%E4%D9%ED%E3-%C7%E1%CE%D1%E6%CC-%E3%E4-%C7%E1%D3%E6%DE">http://www.qatarshares.com/vb/showthread.php?96073-%E3%D5%D1-%FE-%E1%CC%E4%C9-%CA%CD%CF%ED%CB-%C7%E1%CA%D4%D1%ED%DA%C7%CA-%C7%E1%C7%DE%CA%D5%C7%CF%ED%C9-%CA%C4%DF%CF-%C3%E5%E3%ED%C9-%E6%CC%E6%CF-%C2%E1%ED%C9-%E1%CA%E4%D9%ED%E3-%C7%E1%CE%D1%E6%CC-%E3%E4-%C7%E1%D3%E6%DE</a>	لجنة تحديث التشريعات الاقتصادية تؤكد أهمية وجود آلية لتنظيم الخروج من السوق - سري صيام	شبكة الاسهم القطرية	Article	
14.	<a href="http://yyy.ahram.org.eg/archive/2007/9/3/ECON1">http://yyy.ahram.org.eg/archive/2007/9/3/ECON1</a>	مؤتمر يناقش تشريعات الإفلاس - سري صيام: تطوير التشريع يستهدف تحسين مناخ الاستثمار	مؤسسة الاهرام	Article	

	.HTM	واستقرار الأسواق – نجلاء ذكري – 2007			
15.	<a href="http://yyy.ahram.org.eg/archive/2007/8/8/ECON9.HTM">http://yyy.ahram.org.eg/archive/2007/8/8/ECON9.HTM</a>	وزير العدل يفتتح مؤتمر تحديث التشريعات الاقتصادية – 2007 - مؤتمر اللجنة القومية لتحديث التشريعات الاقتصادية، حول تحديث الاحكام التشريعية للافلاس والصلح الوافي منه-	مؤسسة الاهرام	Article	
16.	<a href="http://maktoob.news.yahoo.com/%D9%85%D8%A4%D8%AA%D9%85%D8%B1-%D8%A7%D9%84%D8%A5%D9%81%D9%84%D8%A7%D8%B3-%D8%A7%D9%84%D8%A5%D9%82%D9%84%D9%8A%D9%85%D9%89-%D9%8A%D9%88%D8%B5%D9%89-%D8%A8%D8%B6%D8%B1%D9%88%D8%B1%D8%A9-%D8%A7%D9%84%D8%A5%D8%B5%D9%84%D8%A7%D8%AD-%D8%A7%D9%84%D8%AA%D8%B4%D8%B1%D9%8A%D8%B9%D9%89-153113704.html">http://maktoob.news.yahoo.com/%D9%85%D8%A4%D8%AA%D9%85%D8%B1-%D8%A7%D9%84%D8%A5%D9%81%D9%84%D8%A7%D8%B3-%D8%A7%D9%84%D8%A5%D9%82%D9%84%D9%8A%D9%85%D9%89-%D9%8A%D9%88%D8%B5%D9%89-%D8%A8%D8%B6%D8%B1%D9%88%D8%B1%D8%A9-%D8%A7%D9%84%D8%A5%D8%B5%D9%84%D8%A7%D8%AD-%D8%A7%D9%84%D8%AA%D8%B4%D8%B1%D9%8A%D8%B9%D9%89-153113704.html</a>	مؤتمر الإفلاس العالمي 2012	اليوم السابع	Article	
17.	<a href="http://today.almasryalyoum.com/article2.aspx?ArticleID=213252">http://today.almasryalyoum.com/article2.aspx?ArticleID=213252</a>	قانون الافلاس والصلح الوافي الجديد يركز على الحفاظ على المشروع والعمالة 2009	المصرية اليوم	Article	
18.	<a href="http://www.hoqook.com/56460/%D9%85%D8%A4%D8%AA%D9%85%D8%B1-%D8%A7%D9%84%D8%A5%D9%81%D9%84%D8%A7%D8%B3)-%D8%A7%D9%84%D8%B9%D8%A7%D9%84%D9%85%D9%88%D8%B5%D9%8A-%D8%A8%D8%AD%D9%85%D8%A7%D9%8A%D8%A9-%D8%AD%D9%82%D9%88%D9%82-%D8%A7%D9%84%D8%AF%D8%A7%D8%A6%D9%86%D9%8A%D9%86-%D9%88%D8%A7%D9%84%D9%85%D8%AF%D9%8A%D9%86%D9%8A%D9%86#.Us6DBNKSzqE">http://www.hoqook.com/56460/%D9%85%D8%A4%D8%AA%D9%85%D8%B1-%D8%A7%D9%84%D8%A5%D9%81%D9%84%D8%A7%D8%B3)-%D8%A7%D9%84%D8%B9%D8%A7%D9%84%D9%85%D9%88%D8%B5%D9%8A-%D8%A8%D8%AD%D9%85%D8%A7%D9%8A%D8%A9-%D8%AD%D9%82%D9%88%D9%82-%D8%A7%D9%84%D8%AF%D8%A7%D8%A6%D9%86%D9%8A%D9%86-%D9%88%D8%A7%D9%84%D9%85%D8%AF%D9%8A%D9%86%D9%8A%D9%86#.Us6DBNKSzqE</a>	مؤتمر "الإفلاس الإقليمي" يوصى بضرورة الإصلاح التشريعي 2012 -	حقوق اعلام بلا حدود	Article	

## مشروع مبادرة إصلاح النظام القانونى للإفلاس فى مصر

### التنظيم الحالى لقواعد الإفلاس فى القانون المصرى

قواعد الإفلاس المعمول بها فى القانون المصرى حاليا واردة فى المواد من 550 إلى 772 من قانون التجارة المصرى الجديد الصادر بالقانون رقم 17 لسنة 1999 ، وقد تم سن هذه القواعد بعد أن ظلت قواعد الإفلاس الواردة فى قانون التجارة القديم الصادر سنة 1883 (المواد من 195 إلى 419) سارية لمدة 116 عام تقريبا ، وفى عام 1945 أصدر المشرع المصرى القانون رقم 56 الخاص بتنظيم الصلح الواقى من الإفلاس الذى لم يكن له تأثير يذكر على تحسين البيئة القانونية لقانون الأعمال ، لأسىما بعد أن اتجه المشرع المصرى فى سنوات الخمسينات والستينات وبداية السبعينيات من القرن الماضى لإعتناق المذهب الاشتراكى فى الفكر الإقتصادى وإلى تأميم المشروعات التجارية والصناعية التى كانت موجودة من قبل .<sup>(2)</sup>

وقد غلب على ذهن المشرع عند إعداده لقواعد الإفلاس فى قانون التجارة الجديد عام 1999 فكر التكنوقراط ، ومن ثم سنت هذه القواعد دون أن تراعى الأبعاد السياسية والاجتماعية والاقتصادية السائدة فى المجتمع المصرى ، لذلك جاءت هذه القواعد ذات مسحة نظرية تتنافر فى بعض جوانبها مع ما يجرى فى الواقع العملى ، وكانت فى معظمها بعيدة عن الواقع وملبئة بالثغرات التى يتسلل إليها ذوى النفوس الضعيفة

( 2) - قبل عام 1883 كانت القواعد المتبعة فى استيفاء الديون فى مصر مستمدة من الرأى الراجح فى المذهب الحنفى (أحد المذاهب الكبرى فى الفقه الإسلامى) ، ويطلق الإفلاس فى الشريعة الإسلامية على استغراق الدين كل مال المدين فلا يكون فى ماله ما يكفى للوفاء بدينه ، أو ألا يكون للمدين مال معلوم أصلا ، راجع ابن رشد - بداية المجتهد ونهاية المقتصد - ج 2 ص 136 .

للإلتفاف عليها فى إطالة أمد النزاعات أو لخرق الفكرة النظرية التى بنيت عليها ، وقد إنعكس ما تقدم على ترتيب مصر فى مؤشر قياس ممارسة أنشطة الأعمال على المستوى الدولى (الـ Doing Business) حيث حازت مصر على ترتيب متأخر على مؤشر ممارسة الأعمال على مستوى العالم على الرغم من الضجة الإعلامية التى صاحبت إصدار قانون التجارة حيث روج له أنه سيمثل نقلة نوعية فى تطوير أنشطة التجارة والأعمال ، ولنا عودة للحديث عن تقرير الـ Doing Business تفصيلا .

وقد جاءت قواعد الإفلاس فى قانون التجارة الجديد الصادر عام 1999 فى الباب الخامس الذى يحمل عنوان "الإفلاس والصلح الواقى منه" ، وقد قسم هذا الباب إلى عشر فصول متتابعة بدأ الأول منها بعرض الشروط التى يتطلبها القانون لشهر إفلاس التجار ، ثم عرضت الفصول التالية له للأشخاص الذين يديرون التفليسة ، ثم أثار الحكم بشهر الإفلاس بالنسبة للمدين والدائنين ، فكيفية إدارة التفليسة ، وفى الفصل الخامس تناول المشرع بالتفصيل انتهاء التفليسة ، ثم عرض للإجراءات المختصرة للتنفيذ على أموال التفليسة إذا كانت قيمتها لا تزيد عن 50000 جنيه ، ثم تناول القواعد الواجب اتباعها لإفلاس الشركات ، فقواعد رد الاعتبار التجارى ، وفى الفصل التاسع تناول بالتفصيل الصلح الواقى من الإفلاس ، وأخيرا تناول فى الفصل العاشر جرائم الإفلاس والصلح الواقى منه .

### **الفلسفة التى تحكم نظام الإفلاس فى قانون التجارة المصرى الجديد الصادر عام 1999**

للأسف لم تتغير كثيرا نظرة المشرع المصرى فى ظل قانون التجارة الجديد للفلسفة التى يقوم عليها نظام الإفلاس عن نظريته لها فى ظل قانون التجارة الملغى ، فما زال المشرع المصرى ينظر إلى المفلس نفس النظرة القديمة التى يملئها الشك وسوء الظن فى تصرفاته ، ومازال يتعامل - فى تنظيمه للقواعد القانونية المنظمة للإفلاس - على أساس الظاهر من الأمر حيث يقرر جواز شهر إفلاس التاجر متى عجز عن الوفاء بديونه فى مواعيد استحقاقها حتى ولو كانت ذمته المالية مؤسرة ، وما زال يعمد إلى التكتيل الشديد بالمفلس إذا ثبت أنه فى حالة إفلاس بالتدليس ، وأكثر مما تقدم لم ينظر المشرع بالعناية الواجبة فى أثر الحكم بالإفلاس على المصالح الاقتصادية القومية أو على حقوق العمال الذين يعملون طرف المفلس .

## مدى تناسق أحكام الإفلاس فى القانون المصرى

أهتم المشرع المصرى بإفلاس التاجر الفرد "**الشخص الطبيعى**" آيما إهتمام على الرغم من إنكماش مفهومه وإنحسار تأثيره من الناحية الواقعية ، وأصابه الشح عند تنظيمه لإفلاس المشروع التجارى "الشركات" على الرغم من إتساع مفهومه وكثرة الدعاوى التى تعرض على القضاء بمناسبة توقفه عن سداد ديونه ، فأورد على إستحياء (المواد من 698 إلى 711 من قانون التجارة) موضوع إفلاس الشركات ، وإشار إلى أن القواعد المنظمة لإفلاس التاجر الفرد ستتطبق على الشركات فيما عدا ما يتصل منها به بوصفه شخص طبيعى متناسيا أن لكل منهما نظام قانونى مختلف وقد لا يلتقيان .

لذلك يمكننا التأكيد على أن الأحكام المنظمة للإفلاس فى القانون المصرى لم تصل بعد إلى نقطة التوازن التى توفق بين مختلف المصالح التى يتعين التوفيق بينها إستهداء بما عليه الحال فى النظم القانونية الحديثة التى حاولت التوفيق بين عدة أمور متعارضة على غرار ما فعل النظام القانونى الانجلوأمريكى - النظام القانونى الفرنسى) ، فالمشرع المصرى لم يدرك أن النظام القانونى الحاكم للإفلاس لا يعدو أن يكون جزء من استراتيجية متكاملة لتهيئة وتحسين ممارسة الأنشطة التجارية والاستثمارية فى كل دولة ، لذلك أعتبر تقرير ال Doing Business الذى يصدر عن البنك الدولى ومؤسسة التمويل الدولية سنويا موضوع الإفلاس والاعسار والتصفية (الخروج من الإستثمار) أحد المؤشرات الضرورية لتقييم المناخ الاستثمارى فى كل دولة ، ومن ثم مدى جاذبيتها للإستثمار الأجنبى المباشر مقارنة مع الدول الأخرى ، فضلا عن أن المشرع يتعين عليه أن يراعى الآثار المترتبة على حكم الإفلاس فيما يخص إنسيابية وسائل الإئتمان وإتاحتها .<sup>(3)</sup>

## محاولات إصلاح قواعد الإفلاس والصلح الواقى منه منذ عام 1999 وحتى الآن

منذ صدور قانون التجارة الجديد فى عام 1999 المتضمن لقواعد الإفلاس والصلح الواقى منه وسهام النقد من كل حذب توجه لهذه القواعد سواء من حيث أصل نسقها المؤسسى والفلسفى أو من حيث تفاصيلها

<sup>3</sup> - يتعين التأكيد منذ البداية على أن القانون لا يمكن أن يضع حلولا عادلة لكل الصعوبات التى تواجه المشروعات التجارية المتعثرة نتيجة الأزمات التى تواجهها من حين لآخر ، لكنه يستطيع أن يترسم خطى الإصلاح ما استطاع حيث يجب عليه ألا يتوقف عند حد حماية الدائنين كهدف وحيد للقواعد القانونية التى يسنها فى هذا المجال .

الحلول الواردة بها وما تثيره من مشاكل واقعية لا تخطئها العين ، فضلا عن الآثار الاجتماعية والاقتصادية التي نجمت عن تجاهل النشع المصرى لبعض الأمور ذات البعد الاستراتيجى الضرورى عند تنظيم قواعد الإفلاس .

ومنذ عام 2005 وحتى الآن تعقد الكثير من الندوات وجلسات العصف الفكرى التى دعى اليها جمعيات رجال الأعمال والمتخصصين المهتمين بتطوير بقانون الأعمال Droit des Affaires لمناقشة التعديلات التى يتعين أن تدخل على قواعد الإفلاس ، لاسيما بعد التأثير الذى أحدثته القواعد الموحدة الصادرة عن لجنة الأمم المتحدة لقانون التجارة الدولية (اليونسترال) أو بعد الإسهامات التى قدمها المعهد الدولى لتوحيد القانون الخاص بروما (Undroit) ، وكذا الجهود الكبيرة التى قادها البنك الدولى ومؤسسة التمويل الدولية فى هذا الخصوص ، وسوف نشير إلى بعض منها فى هذا التقرير .

وأكثر من ذلك فقد شكّلت بالجهات الإدارية بالدولة (وزارة التجارة والصناعة ووزارة الاستثمار بمشاركة من وزارة العدل وبعض الجمعيات الأهلية) عدة لجان لمناقشة تطوير قواعد الإفلاس ولإعداد مشروع جديد مستقل له يراعى الحد من المثالب والانتقادات التى توجه للتنظيم القانونى الحالى الوارد فى قانون التجارة .

فالجهات الإدارية بالدولة (وزارة الاستثمار ووزارة التجارة والصناعة) رأت - أزاء شعورها بعدم كفاية التنظيم القانونى لقواعد الإفلاس ، أو بالأحرى أزاء شعورهم بعدم كفايتها فى مجابهة ما يثار من مشاكل واقعية - من الضرورى الأخذ بزمام المبادرة لإعادة تنقية قواعد الإفلاس مما بها من شوائب أو إعادة صياغة قانون جديد له على نسق التجديدات التى طرأت على مفهومه على مستوى العالم لاسيما فى النظام القانونى الأمريكى وما تضمنته التقارير الصادرة عن المنظمات الدولية ، وعليه فقد دعت الجهات الإدارية بعض المصلحين المهتمين بتطوير قواعد الإفلاس للإستماع إلى آرائهم وتحليل انتقاداتهم فى ضوء الواقع العملى لبيئة قطاع الأعمال والاستثمار السائدة والمأمولة فى مصر .

وقد تشجع الاتجاه الإصلاحى فى المطالبة بإجراء تطوير فعال فى قواعد الإفلاس بعد أن استبان له أن المشرع - أمام الانتقادات التى وجهت لنظام الإفلاس - سارع إلى تضمين بعض القوانين الخاصة التى تنظم

أنشطة تجارية واستثمارية بعينها بعض القواعد المتعلقة بالإفلاس ، وسوف نشير إلى نماذج من هذه القوانين فى مواضع لاحقة .

## خطوات إصلاح نظام الإفلاس فى القانون المصرى

### أولا :- إنشاء المحاكم الاقتصادية وتأثير ذلك على تطوير نظام الإفلاس

اتضح للمشرع المصرى أن ما لا يدرك كله لا يترك جله ، لذلك حاول تلافى الانتقادات الأساسية التى توجه لنظام الإفلاس بالقضاء على أكبرها جساما ، حيث وضح له أن أكبر نقد يوجه لنظام الإفلاس هو بطء التقاضى فى منازعات الإفلاس وعدم توافر الحس الاقتصادى والاستثمارى لدى كثير من القضاة بالنظر لعدم تخصصهم فى قوانين الأعمال والقوانين الاقتصادية بصفة عامة وميلهم إلى الاستعانة بالخبراء الفنيين والماليين لحسم الموضوعات التى تعرض عليهم حتى أن بعضهم أضحى يأخذ تقرير الخبير على عاونه دون أى تسبب له ويحكم بمقتضاه وكأنه حقيقة دامغة على الرغم من تدخل الهوى الشخصى وربما الفساد فى إعداد تقارير الخبراء .

لذلك عمد المشرع المصرى إلى القضاء على هذا العيب (عيب بطء التقاضى وعدم تخصص القضاة) إلى إعادة النظر فى قواعد الاختصاص القضائى للمحاكم المختصة بنظر دعاوى الإفلاس بأن أصدر فى عام 2008 - تحت تأثير أنصار التيار الإصلاحى - قانون إنشاء المحاكم الاقتصادية رقم 120 لسنة 2008 بعد أن وقر فى ذهنه أن إنشاء قضاء متخصص للمسائل الاقتصادية سيكون له أثر فعال فى تبسيط إجراءات الإفلاس ، وتوسم خيرا فى أن تخصص قضاة هذه المحاكم والدورات التدريبية التى يحصلون عليها سيصلح بعض من العطب الذى أصاب الأحكام القانونية المنظمة للإفلاس ، وقد قبل أنصار التيار الإصلاحى هذا التطوير الجزئى على مضض على الرغم من عد قناعتهم بنجاح هذا الأسلوب فى القضاء على مثالب نظام الإفلاس فى مصر .

وعلى الرغم من الضجة الإعلامية التى صاحبت إنشاء المحاكم الاقتصادية بموجب أحكام القانون رقم 120 لسنة 2008 وما روج له من أن إنشائها سيقضى على كثير من العقبات التى تعترض سبيل الخروج من



الاستثمار بصفة عامة وتبسيط إجراءات إفلاس المشروعات التجارية بصفة خاصة إلا أن هذه المحاكم (المحاكم الاقتصادية) لم تفلح فى رآب صدع الشروخ التى ملئت قواعد الإفلاس فى القانون المصرى ، فقد ظل تطبيق المحاكم الاقتصادية لقواعد الإفلاس يتم بذات الأسلوب الذى كانت تطبقها به المحاكم العادية دون تجديد يذكر .

وما تقدم فتح الباب على مصراعيه أمام أنصار التيار إصلاحى للدعوة لتطوير قواعد الإفلاس لتواكب وتساير ما عليه الحال فى النظم القانونية الحديثة التى قطعت شوطا لا بأس به فى هذا الشأن ، وقد دعا أنصار التيار الإصلاحى الى تفهم روح العصر وتفهم الأفكار الاقتصادية والفلسفات السائدة فيه فدعوا إلى وجوب أن يتضمن القانون تفرقة بين الإنسان والمشروع التجارى وبين مسألة العقاب ومسألة الذمة المالية، وبين الإجراءات التى يمكن اتخاذها ضد المشروعات التجارية وتلك التى تتخذ ضد الأشخاص القائمين على إدارة هذه المشروعات ، وقد أكد أنصار التيار الإصلاحى أن تقييس أحد المشروعات التجارية له الكثير من الآثار الاجتماعية والاقتصادية التى توجب محاولة البحث عن وسيلة لخلق كيان حى جديد من رحم المشروع التجارى المفلس للحد من الآثار التى ترتبت على إفلاس هذا المشروع .

### **ثانيا :- سن بعض القواعد الخاصة بالإفلاس فى بعض التشريعات الخاصة بأنشطة معينة .**

أزاء كثرة الانتقادات التى وجهها أنصار التيار الإصلاحى وجد المشرع المصرى نفسه فى موقف حرج ، إذ ليس أمامه سوى المبادرة بإعداد قانون جديد للإفلاس ولقواعد الخروج من الإستثمار بصفة عامة أو تقديم بعض المسكنات (المضادات الحيوية) التى تقلل تأثير المعوقات التى يصادفها نظام الإفلاس فى نطاق بعض الأنشطة الاستثمارية والاقتصادية التى يرغب فى تطويرها فى أسرع وقت ، وقد جنح المشرع المصرى نحو هذا الحل الأخير تحرجا منه لتعديل قانون التجارة رقم 17 لسنة 1999 الذى كان قد سنه وإصدره منذ بضعة سنوات قليلة ، ومن بين القوانين الخاصة التى تضمنت بعض المواد التى تعدل فى نطاقها بعض قواعد الإفلاس العامة الواردة فى قانون التجارة يمكن أن نشير إلى القوانين التالية :-

### **1- قانون الإيداع والقيد المركزى للأوراق المالية (القانون رقم 93 لسنة 2000)**

تضمن القانون المشار إليه بعض القواعد الخاصة التي لا تنطبق سوى على إفلاس الشركات أعضاء الإيداع المركزي للأوراق المالية (المادة 52 من القانون المشار إليه) هذه القواعد الخاصة تغاير ما عليه الحال في القواعد العامة الواردة في قانون التجارة رقم 17 لسنة 1999 المشار إليه أعلاه .

## **2- قانون البنك المركزي والجهاز المصرفى والنقد (القانون رقم 88 لسنة 2003)**

وقد تحدث عن الإجراءات التي يمكن أن يلجأ إليها البنك المركزي المصري إذا أصاب أحد البنوك إختلال فى هيكله المالى ، وكيفية مساندة البنك فى هذه الحالة ، وتبعات إفلاسه إذا لم يكن بد من ذلك ، وكيفية حماية حقوق المدخرين والمتعاملين معه .

## **3- قانون التأجير التمويلى**

تناول هذا القانون أثر حكم شهر الإفلاس الصادر بحق أحد المتعاملين مع شركة التأجير التمويلى ، وكذا أثر شهر إفلاس شركة التأجير التمويلى نفسها على حقوق المتعاملين معها سواء دائنيها أو مدينها أو البنوك التي تتعامل معها .

## **4- قانون التمويل العقارى**

تناول هذا القانون أثر حكم شهر الإفلاس الصادر بحق شركة التمويل العقارى وأثر هذا الحكم على المتعاملين معها وعلى دائنيها أو مدينها أو على البنوك التي تتعامل معها ، فضلا عن أثر هذا الحكم على شركة إعادة التمويل العقارى ، وحالات التوريق securitizations التي تصدرها الشركة لتمويل أعمالها

5- توجد بعض التشريعات الأخرى التي تتعرض لموضوع الإفلاس بشكل مباشر أو بشكل غير مباشر ،

## **ثالثا :- دور الهيئة العامة للاستثمار والمناطق الحرة GAFI فى تبسيط إجراءات التصفية الاختيارية .**

ساهمت الهيئة العامة للاستثمار بدور متواضع فى سن بعض الإجراءات التي قد تساهم فى تبسيط إجراءات الخروج من الاستثمار ، فأصدرت قرارا فى عام 2007 يحدد قواعد التصفية الاختيارية للشركات والمنشآت فى مصر على نحو أكثر سهولة ويسرا من ما عليه الحال فى القواعد العامة ، بحسبان أن التصفية الاختيارية قد تحد فى بعض الأحيان من اللجوء إلى الإفلاس وما يترتب عليه من تصفية إجبارية .

## خامسا :- دور وزارة الاستثمار ووزارة التجارة والصناعة فى إعادة النظر فى بعض قواعد الإفلاس فى مصر

منذ مطلع سنة 2007 تعاونت كل من وزارة الاستثمار ووزارة التجارة والصناعة المصرية فى تكوين اللجنة القومية لتحديث التشريعات الاقتصادية ، وقد اهتمت هذه اللجنة منذ البداية بموضوع تطوير قواعد الإفلاس ، وقد دعت هذه اللجنة أكثر من خمسين متخصص فى موضوع الإفلاس والخروج من الاستثمار للتشاور فيما يجب إدخاله من تعديلات على قواعد الإفلاس الواردة فى قانون التجارة بما يتناسب مع تطلعات المصلحين ويتوافق مع ما عليه الحال فى النظم القانونية الحديثة لاسيما النظام الأمريكى الذى يميل إلى إيقاف المطالبات التى يباشرها الدائنون فى مواجهة المدين لحين إجراء إعادة هيكلة لموقفه المالى للوقوف على ما إذا كان يمكن مساندة وتقديم العون له لعودته مرة أخرى لمزاولة نشاطه أم أن حاله أصبح ميئوسا منه ولا جدوى من الوقوف جانبه .

لكن مجهودات هذه اللجنة وما تفرع عنها من مجموعات عمل لم تثمر عن مشروع قانون متكامل يمكن للحكومة المصرية أن تقدمه للسلطة التشريعية للنظر فى إقراره ، والسبب فى اعتقادنا يرجع إلى أن الجميع – بما فيهم التيار الإصلاحى – كان يدرك إلى أن ظروف المشرع فى هذا الوقت (البرلمان المصرى من عام 2005 : 2010) لم تكن ملائمة من الناحية السياسية للنظر فى إعداد تشريع كبير بحجم قانون الإفلاس ، فهذه الفترة كانت محلا لبعض التعديلات الدستورية التى كانت تهدف لتوريث الحكم وقتذاك ، لذلك كان الأمل عند انصار التيار الإصلاحى معقود على أن البرلمان الذى سيتم تكوينه بعد انتخابات 2010 هو الذى سيتمكن من تحديث وتطوير قواعد الإفلاس ، لكن الثورة المصرية التى اندلعت فى مطلع عام 2011 (25 يناير 2011) قضت على كل الخطط التشريعية فى هذا الشأن ، ومن ثم علق عمل اللجان المهمة بتطوير قانون الإفلاس إلى أجل غير مسمى.

**الموضوعات الأساسية التى طالب أنصار التيار الإصلاحى بتطويرها فى قواعد الإفلاس الحالية فى مصر**  
**دور أمناء التفليسة (السنديك)**

بات من المؤكد فى مصر أن الأشخاص اللذين يتولون مهمة أمناء التفليسة "السنديك" هم من لهم القول الفصل فى حسن أو فى سوء تطبيق قواعد الإفلاس الواردة فى قانون التجارة رقم 17 لسنة 1999 فى مصر ، وبات قاضى التفليسة الذى تعينه المحكمة التى أصدرت حكم الإفلاس لمتابعة شئونها مجرد "حامل ختم" أو "مجرى لتوقيع" ، فالأمر بالنسبة له لم يعد - فى كثير من الحالات - سوى ملء بعض الخانات Fill some fields التى يطلب أمين التفليسة منه ملئها ، ومن ثم نعتقد فى أن الأمر لم يعد يرجع فقط إلى حسن ضبط قواعد قانونية موضوعية تحكم الإفلاس ، وإنما بات تطبيق هذه القواعد الإفلاس يتعلق بأمر مهنية شخصية تخص أمناء التفليسة ، هذه الأمور يتعين تنظيمها والسيطرة على مطالبها قبل أى شئ آخر ، فغالبا ما يكون لأمناء التفليسة مصلحة شخصية فى تعقيد الأمور وخلق نوع من الكهنوت القانونى لإطالة أمد التفليسة مما يقضى على آمال التاجر فى معالجة أزمته ، فاستمرار التفليسة يعتبر - بالنسبة لأمين التفليسة - مورد رزق يعمل على إطالته ، لذلك فإن أنصار التيار الإصلاحى يعتقدون فى وجوب إضافة بعض النوادر التى تنظم مهمة أمناء التفليسة وتحدد حقوقهم والتزاماتهم ومسئولياتهم المدنية والجنائية والمهنية عن الأعمال التى يتولونها .

### **هل دعوى الإفلاس دعوى إجراءات صرفة أم دعوى مطالبة موضوعية بالحق**

هل مقصود الدائن من وراء رفع دعوى الإفلاس هو شهر إفلاس المدين الذى اضطرت أحواله المالية أم الحصول على حقه الذى تقاعس هذا المدين عن سداه له فى ميعاد استحقاقه ، أثار هذا الموضوع خلاف فقهى وقضائى كبير حتى أن محكمة النقض المصرية أدلت بدلوها فى هذا الخصوص وقررت أن دعوى الإفلاس دعوى إجراءات صرفة تهدف إلى اثبات حالة التوقف عن الدفع دون أى أمر آخر ، ووفقا لهذا الرأى تعتبر مقدمة للمطالبة بالحق وليست أداة مباشرة لإستئداء الحق ، ورغم ذلك لم يتوقف الخلاف حوله بسبب وجود بعض الآثار التى تتناقض من الناحية القانونية الصرفة مع اتجاه محكمة النقض ، فعلى سبيل المثال فإن رأى محكمة النقض يترتب عليه أن رفع دعوى الإفلاس لا يقطع تقادم الحق ، فى حين أن القواعد العامة فى القانون المدنى ترتب انقطاع التقادم نتيجة لرفع أى دعوى (المطالبة القضائية) ، لذلك طلب إنصار التيار الإصلاحى حسم هذا الموضوع فى أقرب تعديل لقواعد الإفلاس .

### **أثر تحقق الشرط الفاسخ فى الاتفاق المبرم بين المدين والدائن على حكم الإفلاس**

ثار جدل فى مصر عن أثر تحقق الشرط الفاسخ الوارد فى الاتفاق المبرم بين الدائن والمدين بعد صدور حكم الإفلاس ، هل يلغى حكم شهر الإفلاس بكل ما ترتب عليه من آثار لأم ماذا ، لم يحسم قانون التجارة هذا الموضوع وقد أثار بعض الصعوبات العملية ، لذا يرى انصار التيار الإصلاحى معالجة هذا الموضوع فى اقرب تعديل لقواعد الإفلاس .

### **هل يجوز للدائن أن يتنازل مقدما عن حقه فى رفع دعوى شهر الإفلاس ضد مدينه .**

أثار هذا الموضوع جدلا كبيرا فى مصر ، ويميل أنصار التيار الإصلاحى إلى اعتناق الرأى القائل بجواز هذا الاتفاق الذى يحجب حق الدائن فى رفع دعوى شهر إفلاس مدينه ، لكن هل هذا الحل يمكن تطبيقه حول منع هذا الدائن من التدخل فى التفليسة بعد صدور حكم شهر الإفلاس ؟ لا يوجد حل لهذا الموضوع لذلك يجب التعرض لهذا الموضوع عند أقرب تعديل لقواعد الإفلاس .

### **هل يجوز للدائن رفع دعوى شهر إفلاس ضد مدينه إذا كان قد اتفق فى الاتفاق المبرم بينهما على حسم كافة النزاعات الناشئة عنه أو المتعلقة به عن طريق التحكيم ؟**

يقرر انصار التيار الإصلاحى بأن وجود شرط تحكيم فى الاتفاق المبرم بين الدائن والمدين يؤدى إلى عدم قبول دعوى الإفلاس التى يرفعها الدائن ضد مدينه الذى توقف عن السداد ، وبالتالي لا تقبل دعوى الإفلاس أمام المحكمة المختصة ، لكن هل يجوز لهيئة التحكيم (المحكم) أن يصدر حكما بالإفلاس استنادا لأنه المختص - بموجب اتفاق التحكيم - بالفصل فى كافة النزاعات الناشئة عن الاتفاق ؟ الأمر محل خلاف كبير فى مصر ، ومن ثم يتعين حسمه فى اقرب تعديل ممكن لقواعد الافلاس .

### **وبقصد تحاشى الدخول فى التفاصيل سنطرح بعض المعوقات التى يرى المصلحين أنه يتعين على المشرع التعرض لها عند تعديل قواعد الإفلاس :-**

- 1- أثر حكم شهر الإفلاس على عقد التأمين الذى يبرمه المفلس قبل صدور حكم الإفلاس لصالح زوجته أو إبناؤه ، هل يسرى فى حق التفليسة أم لا ؟
- 2- مدى جواز رجوع التفاليس على بعضها فى حالة تفاليس الشركاء فى الدين دفعة واحدة .

- 3- مدى جواز شهر أعضاء مجلس إدارة شركة المساهمة تبعا لشهر إفلاس الشركة إذا ساهموا بشكل جدى فى إنهيار الشركة وتعثرها .
- 4- تطوير قواعد الصلح القضائى لإنهاء التقلية بحيث يتم تبسيط إجراءاته عن طريق تسهيل اتصال جماعة الدائنين بقاضى التقلية .
- 5- تطوير قواعد الصلح الواقى من الإفلاس على نحو يجعل منها وسيلة ناجعة لتفادى صدور حكم الإفلاس ، بعد أن دل الواقع العملى على أن اللجوء إلى فكرته أمر غير شائع بسبب صعوبة إجراءاته .
- 6- ضرورة عقد دورات تثقيفية للمحامين وللقضاة ورجال الأعمال لإطلاعهم على حسن تطبيق قانون الإفلاس وأهميته .
- 7- ضرورة إنشاء سجل مركزى على مستوى الجمهورية لتسجيل بيانات دعاوى الإفلاس والصلح الواقى منه والدعاوى المرتبطة بها ، وكذلك تسجيل بيانات احتجاجات عدم الوفاء ، وإتاحة هذه المعلومات للكافة .

### **سادسا :- الجهات الدولية التى ساهمت فى إعادة النظر فى بعض قواعد الإفلاس فى مصر**

ساهمت بعض الجهات الدولية مع مصر فى العمل على تطوير أحكام الإفلاس والخروج من السوف بحسبان أن أى تطوير فى هذا المجال من شأنه إحداث تطور فى بيئة الأعمال والاستثمار ، وقد ساهم البنك الدولى ومؤسسة التمويل الدولية فى دعم التيار الإصلاحى الذى يطالب بتطوير أحكام الإفلاس وتقديم الدعم الفنى والمالى لورش العمل والندوات والمؤتمرات التى عقدت لمناقشة تطوير هذه الأحكام .

ومن جهة أخرى فقد لجنة الأمم المتحدة لقانون التجارة الدولية (اليونسترال) والمعهد الدولى لتوحيد القانون الخاص بروما (Undroit) بدور فعال فى هذا الخصوص عن طريق وضع نماذج استرشادية لما يجب أن تكون عليه حال قواعد الإفلاس والصلح الواقى منه ، وسوف نرفق مع هذا التقرير ملحق يوضح أهم الندوات والمؤتمرات التى عقدت فى مصر فى السنوات الخمس الأخيرة والتى كانت تهدف إلى إعادة النظر فى قواعد الإفلاس والصلح الواقى منه فى ضوء البيئة التشريعية فى مصر .

**سابعا :- ترتيب مصر على مؤشر ممارسة الأعمال (الـ Doing Business) فيما يخص موضوع الإفلاس والخروج من الاستثمار .**

يتعين أن نشير في الختام إلى الترتيب الذى حصلت عليه مصر فى السنوات الخمس الأخيرة بالنسبة لموضوع قواعد الخروج من الاستثمار والإفلاس طبقا للتقرير السنوى الذى يعده البنك الدولى ومؤسسة التمويل الدولية (تقرير الـ Doing Business) وذلك على النحو التالى :-

2014	2013	2012	2011	2010	الترتيب من أصل 185 دولة
146	141	140			الترتيب فى موضوع الإفلاس والخروج من الاستثمار من أصل 185 دولة
128	127		94		الترتيب العام لمصر من أصل 185 دولة
من أربعة إلى خمس سنوات على الأقل					عدد السنوات اللازمة للإنتهاء من التقلية

وواضح أن ترتيب مصر ضمن مؤشر قياس ممارسة أنشطة الأعمال على المستوى الدولى الصادر عن البنك الدولى ومؤسسة التمويل الدولية فى تراجع مستمر ، وإن مصر فى السنوات الخمس الأخيرة لم تحرز أى تقدم ، وهذا يستتبع ضرورة التطوير الجذرى لقواعد الإفلاس وليس تقديم مسكنات له ، فترتيب مصر لن يتقدم فى هذا الخصوص إلا إذا تم القضاء على كل العيوب والانتقادات التى يبديها التيار الإصلاحى لقواعد الإفلاس فى مصر ، وهذا لن يتحقق إلا بإعادة صياغة شاملة لهذه القواعد.

#	Link	Title of the document	Published by	Type of the document	Brief summary
1.	<a href="http://www.oecd.org/corporate/ca/corporategovernanceprinciples/44375185.pdf">http://www.oecd.org/corporate/ca/corporategovernanceprinciples/44375185.pdf</a>	Study on Insolvency Systems in the Middle East and North Africa	Hawkamah/ World Bank/ OECD/INSO L International	Study	Survey on Insolvency Systems in the Middle East and North Africa
2.	<a href="http://www-wds.worldbank.org/servlet/WDSContentServlet/WDSP/IB/2011/03/24/000158349_20110324093837/Rendered/PDF/WPS5609.pdf">http://www-wds.worldbank.org/servlet/WDSContentServlet/WDSP/IB/2011/03/24/000158349_20110324093837/Rendered/PDF/WPS5609.pdf</a>	“NO WAY OUT”: THE LACK OF EFFICIENT INSOLVENCY REGIMES IN THE MENA REGION-2010	World bank	Paper	This paper provides a comparative summary of the payout phase of insolvency systems in the MENA Region. Countries in the region generally have weaker restructuring and liquidation systems than those in most other regions. The paper summarizes many of the weaknesses common across the region.
3.	<a href="http://www.ebrd.com/downloads/research/law/lit13ed.pdf">http://www.ebrd.com/downloads/research/law/lit13ed.pdf</a>	Law in transition 2013-Panel interview: Reform in the southern and eastern Mediterranean region Insolvency – a second chance?	EBRD European Bank for Reconstruction and Development	Report	
4.	<a href="http://www.ebrd.com/downloads/research/law/lit13ee.pdf">http://www.ebrd.com/downloads/research/law/lit13ee.pdf</a>	Law in transition 2013-Why modern insolvency laws seek to promote business rescue	EBRD European Bank for Reconstruction and Development	Report	This article considers some of the broad socio-historical, political and economic factors that have shaped modern insolvency laws leading to the development of the “rescue” culture. It also examines some of the unique features of insolvency law reform in the former socialist bloc and seeks to anticipate some of the issues that may be encountered in the southern and eastern Mediterranean region.
5.	<a href="http://browse.oecdbookshop.org/oecd/pdfs/product/2008021e.pdf">http://browse.oecdbookshop.org/oecd/pdfs/product/2008021e.pdf</a>	Private Sector Development in the Middle East and North Africa Making Reforms Succeed MOVING FORWARD WITH THE MENA INVESTMENT POLICY AGENDA	OECD	Report 2008	The present publication Making Reforms Succeed: Moving Forward with the Investment Policy Agenda is based on the work of the governments and other partners participating in the first phase of the MENA-OECD Investment Programme in its regional roundtables and projects with individual countries in the Middle East and North African countries (2005-2007). <sup>1</sup> The Ministerial Declarations, the Business Statements and the other instruments agreed upon during the two Ministerial meetings of the Programme, namely the Declaration on Fostering Women Entrepreneurship in the MENA Region, have all been developed in close coordination with and input from public and private sector officials from the region and beyond. In particular, the Secretariat would like to acknowledge the important input provided by the members of the Programme’s Steering Group.
6.	<a href="http://www.doingbusiness.org/reforms/overview/region/middle-east-and-north-africa">http://www.doingbusiness.org/reforms/overview/region/middle-east-and-north-africa</a>	Business Reforms in Middle East& North Africa	WB		Regional assessment of business indicators following the timeline 2008-2012, taking into account particularities of each country.
7.	<a href="http://www.haw">http://www.haw</a>	2010 MENA	IFC/ WB	Report	



	<a href="http://kamaconference.org/uploads/2010_files/conf_material/insolvency/IFC%20-%20Flagship%20Report%20on%20Insolvency%20in%20MENA.pdf">kamaconference.org/uploads/2010_files/conf_material/insolvency/IFC%20-%20Flagship%20Report%20on%20Insolvency%20in%20MENA.pdf</a>	Flagship Report : INSOLVENCY Private Sector Development Specialist Investment Climate Department Restructuring & Insolvency			
8.	<a href="http://www.oecd.org/dataoecd/11/52/42551472.pdf">http://www.oecd.org/dataoecd/11/52/42551472.pdf</a>	OECD Policy Brief on Building Sound Insolvency Systems in the MENA Region	OECD	Policy Brief	The purpose of the meeting organised by the OECD co hosted by the General Authority for Investmet and free zones and the Egyptian Institute of Directors in Cairo on 21 May 2007. The purpose of the meeting was to learn about the legal and institutional framework of MENA insolvency systems; introduce international guidance and emerging insolvency issues; identify areas of interest for a regional dialogue of insolvency in the region.
9.	<a href="http://www3.weforum.org/docs/WEF_AWC_Report_2011-12.pdf">http://www3.weforum.org/docs/WEF_AWC_Report_2011-12.pdf</a>	Arab World Competitiveness Report 2011-2012 ( Published by the World Economic Forum and OECD)	OECD		The report sheds light on new important changes taking place in the MENA region and socio-economic challenges, such as youth unemployment, regional inequalities, corruption, weak institutions, limited entrepreneurship and the need to advance the role of women in the economy, in order to meet the citizens' of the region aspirations.
10.	<a href="http://www.oecd.org/document/6/0,3746,en_34645207_34645590_49017606_1_1_1_1,00.html">http://www.oecd.org/document/6/0,3746,en_34645207_34645590_49017606_1_1_1_1,00.html</a>	Reviewing Investment in the MENA Region, 6 Dec 2011, by A. Bohmer, head of MENA-OECD Investment Programme	OECD	Conference	This special session, took place in parallel with the Global Forum on International Investment, and assessed the impact of the recent upheavals in the MENA region on investment and trade-flow trends.  Egypt investment opportunities
11.	<a href="http://www.oecd.org/dataoecd/49/36/46341549.pdf">http://www.oecd.org/dataoecd/49/36/46341549.pdf</a>	MENA-OECD Investment Programme, Business Climate Development Strategy, Phase 1 Policy Assessment, EGYPT, Dimension II-3, Business Law and Commercial Conflict Resolution	OECD	Policy Assessment	The publication outlines only the key findings to emerge from Phase 1 of the business climate assessment of Egypt. One key finding is that Egypt's investment and trade policy reforms have moved the country's business climate closer to best practice in OECD economies. However, the report notes that to attract further private investment, Egypt needs to improve the country's anti-corruption measures, skills development, infrastructure and access to finance, especially for the country's small-and-medium sized enterprises.
12.	<a href="http://www.oecd.org/daf/ca/corporategovernanceprinciples/42551472.pdf">http://www.oecd.org/daf/ca/corporategovernanceprinciples/42551472.pdf</a>	Building sounds insolvency systems in the MENA region-2007	OECD	Report	
13.	<a href="http://www.oecd.org">http://www.oecd.org</a>	Study on	OECD	Study	Survey on Insolvency Systems

	<a href="#">.org/corporate/corporategovernanceprinciples/44375185.pdf</a>	insolvency systems in the middle east and north Africa			in the Middle East and North Africa
14.	<a href="http://www.thelawyer.com/briefings/draft-jordanian-investment-law/3003558.article">http://www.thelawyer.com/briefings/draft-jordanian-investment-law/3003558.article</a>	Draft Jordanian Investment Law		Article 2013	The Draft Jordanian Investment Law is intended to attract and encourage both local and foreign investment in Jordan, and to reinforce confidence in the investment environment in Jordan for the organization, revitalization and development of the economic environment. The Draft Law is still under study, having recently undergone its second reading.
15.	<a href="http://www.reuters.com/article/2012/11/14/jordan-discontent-idUSL5E8ME35S20121114">http://www.reuters.com/article/2012/11/14/jordan-discontent-idUSL5E8ME35S20121114</a>	Jordan risks instability after lifting of subsidies	reuters	Article 2012	Facing the specter of bankruptcy, the Jordanian government lifted fuel subsidies to avert economic collapse. But the Western-backed kingdom now risks instability after long averting the Arab Spring unrest that shook its neighbors.

World Bank					
#	Link	Title of the document	Published by	Type of the document	Brief summary
	<a href="http://siteresources.worldbank.org/INTGILD/Resources/ICRPrinciples_Jan2011.pdf">http://siteresources.worldbank.org/INTGILD/Resources/ICRPrinciples_Jan2011.pdf</a>	2011 Principles for Effective Insolvency and creditor/debtor regimes	World bank	Principles	The document includes the principles that have been reviewed and revised by the WB on Effective Insolvency and Creditor/ Debtor regimes to incorporate updates from UNCITRAL's legislative guide on insolvency law. New principles have been added to reflect the best international practice concerning the insolvency of Enterprise Groups.
	<a href="http://www.worldbank.org/ifa/ippg_eng.pdf">http://www.worldbank.org/ifa/ippg_eng.pdf</a>	2011 Principles for Effective Insolvency and creditor rights systems(2001)	World bank	Principles	The Principles and Guidelines are a distillation of international best practice on design aspects of these systems, emphasizing contextual, integrated solutions and the policy choices involved in developing these solutions. The principles will be used in a series of experimental country assessments.
	<a href="http://siteresources.worldbank.org/EXTGILD/Resources/WB_TF_2011_Out_of_Ct_Restructuring.pdf">http://siteresources.worldbank.org/EXTGILD/Resources/WB_TF_2011_Out_of_Ct_Restructuring.pdf</a>	The WB Insolvency and Creditor/Debtor Regimes Task Force Meetings Out-of-Court Restructuring, Rapporteur's Synopsis( 10 Jan.2011)	World bank	Paper	Out-of-court debt restructuring involves changing the composition and/or structure of assets and liabilities of debtors in financial difficulty without resorting to a full judicial intervention. Out-of-court restructurings can help promote efficiency, restore growth, and minimize the costs associated with the debtor's financial difficulties. They are crucial for insolvency policymakers.
	<a href="http://www.doingbusiness.org/methodology/~media/GIAWB/Doing%20Business/Documents/Methodology/Supporting-Papers/DB-Methodology-Debt-Enforcement-around-the-World.pdf">http://www.doingbusiness.org/methodology/~media/GIAWB/Doing%20Business/Documents/Methodology/Supporting-Papers/DB-Methodology-Debt-Enforcement-around-the-World.pdf</a>	Debt Enforcement around the World	Worldbank / Harvard university		
	<a href="http://www.doingbusiness.org/~media/fpdkm/doing%20business/documents/annual-reports/english/db12-fullreport.pdf">http://www.doingbusiness.org/~media/fpdkm/doing%20business/documents/annual-reports/english/db12-fullreport.pdf</a>	Doing Business in a More Transparent World: Comparing Regulation for Domestic Firms in 183 Economies	WB	Report	Doing Business presents quantitative indicators on business regulation and the protection of property rights that can be compared across 183 economies—from Afghanistan to Zimbabwe—and over time. Regulations affecting 11 areas of the life of a business are covered: starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting investors, paying taxes, trading across borders, enforcing contracts, resolving insolvency(formerly closing a business) and employing workers.
	<a href="http://www.doingbusiness.org">http://www.doingbusiness.org</a>	Resolving insolvency	WB		

	org/reports/global-reports/~media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB12-Chapters/Resolving-Insolvency.pdf	(formerly closing a business)			
	http://www.doingbusiness.org/rankings	Ranking of economies-doing business-WBG	WB	Ranks	
	http://www.doingbusiness.org/reports/doing-business/~media/fpdkm/doing%20business/documents/annual-reports/english/db11-chapters/db11-refsum.pdf	Summaries of doing business reform in 2009/10	WB	Summary	<p>Doing Business reforms affecting all sets of indicators included in this year's ranking on the ease of doing business, implemented between June 2009 and May 2010.</p> <p>Doing Business reform making it easier to do business</p> <p>Doing Business reform making it more difficult to do business</p>
	http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/04/03/000386194_20120403014911/Rendered/PDF/678040VP00PUBL0280Saving0Businesses.pdf	Saving Viable Businesses- The Effect of Insolvency Reform-2012	World bank	View point	<p>The 2008 financial crisis and consequent rise in corporate insolvencies highlight the clear need for efficient bankruptcy systems to liquidate unviable firms and reorganize viable ones—and to do so in a way that maximizes the proceeds for creditors, shareholders, employees, and other stakeholders. This Note summarizes the empirical literature on the effect of insolvency reforms on economic and financial activity. Overall, research suggests that effective reforms increase timely repayments, reduce the cost of credit, and lower the rate of liquidation among distressed firms.</p>
	http://siteresources.worldbank.org/GILD/Resources/InsolvencyLawRe	INSOLVENCY LAW REFORM IN TRANSITION ECONOMIES-2003	World bank	Doctoral Thesis By Mike Falke	<p>It mainly focuses on corporate insolvencies rather than insolvencies of natural persons. The project deals with general insolvency issues, but the main focus is on various rescue models and the related questions, they pose. Main concerns are thereby the relevant substantive issues even if procedural provisions may be similarly important. It further excludes the</p>

	forminTransiti onEconomies. pdf				important and highly topical debate on conflict of law issues in insolvency
	<a href="http://www.doingbusiness.org/~media/GIAWB/Doing%20Business/Documents/Topics/resolving-insolvency.pdf">http://www.doingbusiness.org/~media/GIAWB/Doing%20Business/Documents/Topics/resolving-insolvency.pdf</a>	Resolving Insolvency-2012	IFC/WB	Report	This topic identifies weaknesses in existing bankruptcy law and the main procedural and administrative bottlenecks in the bankruptcy process. The most recent round of data collection for the project was completed in June 201
	<a href="http://siteresources.worldbank.org/INTGILD/Resources/Out_of_Court.pdf">http://siteresources.worldbank.org/INTGILD/Resources/Out_of_Court.pdf</a>	EFFECTIVE INSOLVENCY SYSTEMS Issues Note on Out-of-Court Debt Restructuring 2010	World bank	Paper	This paper constitutes a work-in-progress, containing analysis and proposed guidelines to review issues related to out-of-court debt restructuring. This document is likely to undergo further refinement based on ongoing discussions and therefore should not be used, cited, or quoted at this stage. The World Bank appreciates your review of and feedback on this discussion paper
	<a href="http://www.worldbank.org/ifa/rosc_icr.html">http://www.worldbank.org/ifa/rosc_icr.html</a>	CREDITOR RIGHTS AND INSOLVENCY ROSC ASSESSMENT METHODOLOGY-2005	World bank	Assessment methodology	based on THE WORLD BANK PRINCIPLES FOR EFFECTIVE CREDITOR RIGHTS AND INSOLVENCY SYSTEMS (Revised December 2005) and UNCITRAL LEGISLATIVE GUIDE ON INSOLVENCY LAW
	<a href="http://publications.worldbank.org/index.php?main_page=product_info&amp;cPath=0&amp;products_id=23757&amp;wbid=f9fcbdfa5d438a9d8fa158db98ebc22e">http://publications.worldbank.org/index.php?main_page=product_info&amp;cPath=0&amp;products_id=23757&amp;wbid=f9fcbdfa5d438a9d8fa158db98ebc22e</a>	A Global View of Business Insolvency Systems-2010	World bank	Book	The recent crises underscore the need for modern, sophisticated systems to govern the resolution of business distress, in order to maximize value in the distressed estate and to protect economic institutions. This work analyses how legal systems around the world respond to the general default of business debtors. Inspired by the approach enshrined in the World Bank's Principles for Effective Insolvency and Creditor Rights Systems, it emphasizes the close inter-relationship among various elements of an insolvency regime, examining them not so much as sets of discrete rules as system-wide attempts to reconcile competing policy goals. It posits that any insolvency law pursues the goals of transparency, predictability, and efficiency, while at the same time seeking to address issues of fairness and social justice. Within this framework, the authors examine the principal international approaches to pre-distress debt collection and security enforcement; liquidation and reorganization of distressed businesses; out-of-court workouts; the institutions entrusted with the conduct of such proceedings, including courts, official administrators, and private trustees; the position of the employees of distressed businesses; and cross-border insolvency. Without being prescriptive, the

					authors set out the costs and benefits of settling the myriad policy questions in these domains one way or another. This book would be of interest to legal and international policy-makers, academics and advanced students, courts and practitioners dealing with domestic and cross-border insolvency, and anyone seeking to understand or reform insolvency systems.
	<a href="http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/01/09/000356161_2012109022525/Rendered/PDF/662320PUB0EPI00turing09780821389836.pdf">http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/01/09/000356161_2012109022525/Rendered/PDF/662320PUB0EPI00turing09780821389836.pdf</a>	Out-of-Court Debt Restructuring	World bank	Report	This study provides a conceptual framework for the analysis of the questions of out of-court debt restructuring from a policy-oriented perspective. The starting point of the analysis is given by the World Bank Principles for Effective Insolvency and Creditor Rights Systems. The study offers an overview of out-of-court restructuring, which is not seen as fundamentally opposed to formal insolvency procedures. Actually, the study contemplates different restructuring techniques as forming a continuum to the treatment of financial difficulties.
OECD					
	<a href="http://www.doingbusiness.org/methodology/resolving-insolvency">http://www.doingbusiness.org/methodology/resolving-insolvency</a>	Resolving Insolvency Methodology	OECD	Methodology	Doing Business studies the time, cost and outcome of insolvency proceedings involving domestic entities. Proposed steps to be followed as methodology.
	<a href="http://www.doingbusiness.org/~media/fpdkm/doing%20business/documents/methodology/supporting-papers/db-methodology-debt-enforcement-around-the-world.pdf">http://www.doingbusiness.org/~media/fpdkm/doing%20business/documents/methodology/supporting-papers/db-methodology-debt-enforcement-around-the-world.pdf</a>	Debt Enforcement around the World, Journal of Political Economy, 2008, University of Chicago	OECD	Report	Insolvency practitioners from 88 countries describe how debt enforcement will proceed against an identical hotel about to default on its debt. The article uses the data on time, cost, and the likely disposition of the assets (preservation as a going concern vs. piecemeal sale) to construct a measure of the efficiency of debt enforcement in each country.
	<a href="http://www.doingbusiness.org/methodology/getting-credit">http://www.doingbusiness.org/methodology/getting-credit</a>	Methodology for getting credit-doing business-world bank group	OECD	Methodology	
UNCITRAL					
	<a href="http://www.uncitral.org/pdf/engl">http://www.uncitral.org/pdf/engl</a>	Model Law on Cross-Border	UNCITRAL	Report	The present text discusses the UNCITRAL Model Law on Cross-Border Insolvency from a judge's perspective.

	<a href="#">ish/texts/insolve n/V1188129-Judicial_Perspective_ebook-E.pdf</a>	Insolvency: The Judicial Perspective-2012			Recognizing that some enacting States have amended the Model Law to suit local circumstances, different approaches might be required if a judge concludes that the omission or modification of a particular article from the text as enacted necessitates such a course. The present text is based on the Model Law as endorsed by the General Assembly of the United Nations in December 1997.1 It neither makes reference to nor expresses views on the various adaptations to the Model Law made in some enacting States.
	<a href="http://www.uncitral.org/pdf/english/texts/insolve n/Practice_Guide_Ebook_eng.pdf">http://www.uncitral.org/pdf/english/texts/insolve n/Practice_Guide_Ebook_eng.pdf</a>	Practice Guide on Cross-Border Insolvency Cooperation	UNCITRAL	Guide	The purpose of the Practice Guide on Cross-Border Insolvency Cooperation is to provide information for practitioners and judges on practical aspects of cooperation and communication in cross-border insolvency cases, specifically in cases involving insolvency proceedings in multiple States where the insolvent debtor has assets and cases where some of the debtor's creditors are not from the State in which the insolvency proceedings have commenced.
	<a href="http://www.uncitral.org/pdf/english/texts/insolve n/05-80722_Ebook.pdf">http://www.uncitral.org/pdf/english/texts/insolve n/05-80722_Ebook.pdf</a>	UNCITRAL Legislative Guide on Insolvency Law part 1/2/3	UNCITRAL	Legislative Guide	The project arose from a proposal that UNCITRAL should undertake further work on insolvency law, specifically corporate insolvency, to foster and encourage the adoption of effective national corporate insolvency regimes. The work was also undertaken in close collaboration with Working Group VI( Security Interests), to ensure coordination of the treatment of security interests in insolvency with the legislative guide on secured transactions being developed by UNCITRAL.
EU					
	<a href="http://ec.europa.eu/enterprise/policies/sme/business-environment/files/second_chance_final_report_en.pdf">http://ec.europa.eu/enterprise/policies/sme/business-environment/files/second_chance_final_report_en.pdf</a>	A second chance for entrepreneurs PREVENTION OF BANKRUPTCY , SIMPLIFICATION OF BANKRUPTCY PROCEDURES AND SUPPORT FOR A FRESH START	European Commission Enterprise and Industry	Report	This report collects the conclusions and recommendations of a group of experts from 33 European countries on what are the key issues that public authorities should address to reduce the burden of bankruptcy on entrepreneurship. It is not about how to save companies at any cost regardless of their situation and perspectives but recognition that public policies and programmes during the time leading to, during and beyond bankruptcy/insolvency can create a business environment that helps entrepreneurs save viable businesses and create more companies.
	<a href="http://ec.europa.eu/enterprise/policies/sme/business-environment/index_en.htm">http://ec.europa.eu/enterprise/policies/sme/business-environment/index_en.htm</a>				
	<a href="http://www.europeanrestructuring.com/">http://www.europeanrestructuring.com/</a>	The European Restructuring and Insolvency Guide 2005/2006	EU	Guide	
	<a href="http://www.e">http://www.e</a>	EBRD	European	PRINCIPLES	These Principles seek to advance the integrity, fairness and

	<a href="http://brd.com/downloads/legal/insolvency/ioh_principles.pdf">brd.com/downloads/legal/insolvency/ioh_principles.pdf</a>	PRINCIPLES IN RESPECT OF THE QUALIFICATIONS, APPOINTMENT, CONDUCT, SUPERVISION, AND REGULATION OF OFFICE HOLDERS IN INSOLVENCY CASES-2007	Bank for Reconstruction and Development		efficiency of the insolvency law system by ensuring that appropriately qualified professionals hold office in insolvency cases. The Principles should be viewed as guidelines that provide a checklist of issues which should be considered and applied when establishing an insolvency law regime that provides for the employment of an office holder in all insolvency cases
	<a href="http://www.ebrd.com/downloads/legal/insolvency/principle.pdf">http://www.ebrd.com/downloads/legal/insolvency/principle.pdf</a>	Core Principles for an Insolvency Law Regime	European Bank for Reconstruction and Development	Principles	
	<a href="http://ec.europa.eu/enterprise/policies/sme/files/sme2chance/doc/report_fra_en.pdf">http://ec.europa.eu/enterprise/policies/sme/files/sme2chance/doc/report_fra_en.pdf</a>	Legal Consequences of Bankruptcy in France	EU	Article	
International					
	<a href="http://www.lexinter.net/ACTUALITE/reforme_du_droit_de_la_faillite1.htm">http://www.lexinter.net/ACTUALITE/reforme_du_droit_de_la_faillite1.htm</a>	Reforme du Droit de la Faillite			Presentation of the thematique and reform conducted in the French system regarding bankruptcy law.
	<a href="http://www.net-iris.fr/veille-juridique/dossier/14548/la-reforme-du-droit-de-la-faillite-et-des-procedures-collectives.php">http://www.net-iris.fr/veille-juridique/dossier/14548/la-reforme-du-droit-de-la-faillite-et-des-procedures-collectives.php</a>	Reforme du droit de la Faillite et les procedures collectives			Description of the law no. 2005-845 of 26 July 2005 concerning the safeguards of the entreprises in France and the procedural reforms regarding it, including new conciliation methods.
	<a href="http://www.iflr.com/Article/2166556/France-Restructuring-and-insolvency-procedures.html">http://www.iflr.com/Article/2166556/France-Restructuring-and-insolvency-procedures.html</a>	France: Restructuring and insolvency procedures	IFLR	Article	French corporate restructuring and insolvency procedures have recently been reformed pursuant to Ordinance 2008-1345 of December 18 2008 that came into force on 15 Feb 2009. The ordinance is a response by the French legislator in particular to the issues encountered by debtor companies facing difficulties over the last three years since the introduction of the safeguard proceedings. The ordinance is principally aimed at making the safeguard proceedings more accessible to companies in difficulty, and generally give flexibility in the mandatoire ad hoc and conciliation procedures.



<a href="http://www.internationallawoffice.com/newsletters/detail.aspx?g=622c08d3-88e2-4103-bc0d-a1dfdeea3f8">http://www.internationallawoffice.com/newsletters/detail.aspx?g=622c08d3-88e2-4103-bc0d-a1dfdeea3f8</a>	Insolvency and Restructuring: Mexico, The Role of Conciliator in Commercial Bankruptcy(Jan 2002)	International office		Document describing the role of the conciliator in the bankruptcy proceedings. In Mexico, he is appointed once a federal judges declares a merchant bankrupt. The conciliator is appointed by the Commercial Bankruptcy Specialists Institute.
<a href="http://en.wikipedia.org/wiki/Debt_restructuring">http://en.wikipedia.org/wiki/Debt_restructuring</a>	Debt Restructing, from Wikipedia	Wikipedia		Definition of the process.
<a href="http://www.iflr1000.com/LegislationGuide/194/The-conciliation-procedure-under-the-new-bankruptcy-code.html">http://www.iflr1000.com/LegislationGuide/194/The-conciliation-procedure-under-the-new-bankruptcy-code.html</a>	Greece: The conciliation procedure under the new bankruptcy law	IFLR	Article	The purpose of the conciliation procedure, provided by Articles 99 to 106 of Law 3588/2007 (Government Gazette Bulletin A 153), is to rescue enterprises encountering financial difficulties at a pre-bankruptcy stage. An agreement between the debtor and the majority of the creditors is required to be concluded before the suspension of payments of the debtor. This agreement is subject to ratification by the court.
<a href="http://www.bryancave.com/files/upload/Chow-ChinaInsolvencyDevelopmentsAdvisory.pdf">http://www.bryancave.com/files/upload/Chow-ChinaInsolvencyDevelopmentsAdvisory.pdf</a>	China Insolvency Developments: What US Companies doing Business in China Must Know	bryancave		This document raises awareness about rights and liabilities when you have investment in China. China's Bankruptcy Law came into effect on June 1, 2007, dealing with appointment of professional administrator, the increased role of creditors in bankruptcy proceedings, the powers of an administrator to investigate and review questionable transactions, the options to save the company through restructuring and conciliation.
<a href="http://globalinsolvency.com/legislatives/legal-news-france-learning-doing-or-sauvegarde-third-variant">http://globalinsolvency.com/legislatives/legal-news-france-learning-doing-or-sauvegarde-third-variant</a>	Legal News from France: Learning by doing or Sauvegarde, the third variant	globalinsolvency	Article	The French parliament has created a new form of safeguard insolvency proceedings by passing law No. 2010-1249 on Banks and Financial Regulation of 22nd October 2010. The sauvegarde insolvency proceedings were introduced in 2006 and had already been subject to extensive reform in 2009. The so-called "sauvegardefinancièreaccélérée" (Sfa), a fast-track form of sauvegarde for financial restructurings came into force on 1st March 2011. The proceedings were envisaged to combine the confidential pre-insolvency proceedings of conciliation with shortened sauvegarde proceedings.
<a href="http://www.iflr.com/Article/1984319/The-way-forward.html">http://www.iflr.com/Article/1984319/The-way-forward.html</a>	The Way Forward (April 2007)	IFLR	Article	New laws were introduced after the the Turkish economic crisis in November 2000. The new laws enabled non-performing debtors, in certain cases, to avoid bankruptcy and providing certain advantages to creditors. These laws were introduced in 2003 and 2004 by way of amendment to the Turkish Executions and Bankruptcy Law ( EBL) which is the principal legislation setting out enforcement proceedings. The amendments introduced new procedures into the EBL: postponement of bankruptcy, reorganization through abandonment of the debtor's assets and restructuring of capital stock companies through conciliation.
<a href="http://www.iflr.com/Article/2954088/Reform-of-Greek-Insolvency-Law.html">http://www.iflr.com/Article/2954088/Reform-of-Greek-Insolvency-Law.html</a>	Reform of Greek Insolvency Law	IFLR	Article	New law 4013/2011 was published on September 2011 substituting the provisions of the Greek Bankruptcy Code for the conciliation procedure and introduced the new Rehabilitation Procedure. The main goal of the new law is the enhancement of the prospects of rescuing an enterprise during the pre-bankruptcy stage by lifting the key drawback

					of the conciliation procedure: the lack of binding effect upon creditors who did not consent to the rescue plan.
	<a href="http://www.iflr.com/Article/2394945/An-easier-restructuring.html">http://www.iflr.com/Article/2394945/An-easier-restructuring.html</a>	An easier restructuring	IFLR	Article	The article describes Business RevitalisationADR(BRADR)in Japan, a private restructuring procedure, which has been used by companies in financial trouble as a method of restructuring. ADR stands for alternative dispute resolution and consists of dispute resolution processes and techniques that fall outside the judicial process. BRADR is a method of revitalising companies using negotiations conducted by a civil organisation through a neutral and fair third party. The BRADR procedure is quick, simple and efficient.
	<a href="http://www.journaldunet.com/management/0503/050375faillite.shtml">http://www.journaldunet.com/management/0503/050375faillite.shtml</a>	Droit des faillites: les nouveautes	.journal	Article	The article describes the draft law on Safeguard of the entreprise and the novelties brought in the French system. The law takes inspiration from the American procedures. It highlights that the main change will be on the conciliation procedure.
	<a href="http://www.droit-faillite.fr/article/definitions-juridiques/conciliation-champ-application-deroulement-procedure_692.htm">http://www.droit-faillite.fr/article/definitions-juridiques/conciliation-champ-application-deroulement-procedure_692.htm</a>	La conciliation: Champ application et deroulement de la procedure		Article	The conciliation procedure was largely extended in 2005, as it can be demanded by a large number of persons, it is voluntary and optional at the same time, the debtor is the only one to demand it. The previous judiciary nature of the procedure was changed to a sort of contractual nature
	<a href="http://www.droit-faillite.fr/article/societe-faillite/conciliation-issues-procedure_693.htm">http://www.droit-faillite.fr/article/societe-faillite/conciliation-issues-procedure_693.htm</a>	La conciliation: Issues de la procedure		Article	Unlike warning and ad hoc mandate aimed at early detection of difficulties, the reconciliation is intended to conclude an agreement between the debtor and (s) creditor (s) to obtain additional delays and possibly debt forgiveness. The interest of the privilege turns on failure of conciliation thus opening a reorganization or liquidation proceeding subsequently. Creditors holding the privilege of "new money" receive a preferential ranking highly (preceded only by employees and court costs in the liquidation), subject to submit a claim with the procedure. The agreement, whatever it is, of creditors outweighs the prohibition of any legal action and any individual pursuit to obtain payment of claims covered by the agreement (suspension of deadlines for action formulated to penalty forfeiture).
	<a href="http://www.internationallawoffice.com/Account/Login.aspx?ReturnUrl=http%3a%2f%2fwww.internationallawoffice.com%2fnewsletters%2fdetail.aspx%3fg%3dc8981483">http://www.internationallawoffice.com/Account/Login.aspx?ReturnUrl=http%3a%2f%2fwww.internationallawoffice.com%2fnewsletters%2fdetail.aspx%3fg%3dc8981483</a>	Best practice and tailored reforms in Africa insolvency: lessons from INSOL-international law office	INSOL	Best practice	

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<a href="http://www.financierworldwide.com/AnnualReviews/AR_Bankruptcy_lty174.pdf">http://www.financierworldwide.com/AnnualReviews/AR_Bankruptcy_lty174.pdf</a>	Bankruptcy and restructuring - 2011	Financier worldwide	Annual review Questionnaire	Questionnaire	
<a href="http://www.researchandmarkets.com/reports/2556080/global_insolvency_and_restructuring_review_201314">http://www.researchandmarkets.com/reports/2556080/global_insolvency_and_restructuring_review_201314</a>	Global insolvency and restructuring review-2013/14	Global insolvency	Review		
<a href="http://www.guerragonzalez-abogados.com/publicaciones/restructuring_&amp;_insolvency_051.pdf">http://www.guerragonzalez-abogados.com/publicaciones/restructuring_&amp;_insolvency_051.pdf</a>	Restructuring and insolvency 2005/06	GG&A	Handbook	Questionnaire	
<a href="http://trove.nla.gov.au/work/163619958?versionId=178385982">http://trove.nla.gov.au/work/163619958?versionId=178385982</a>	International company and commercial law review – rescue culture in the UK: realities and the need for delicate balancing act		Review		
<a href="http://www.worrells.net.au/Portals/0/factsheets/2012_Corporate_Insolvency.pdf">http://www.worrells.net.au/Portals/0/factsheets/2012_Corporate_Insolvency.pdf</a>	2012 GUIDE TO CORPORATE INSOLVENCY PLAIN TALK. STRAIGHT ANSWERS. FAST RESULTS.	Worrells:	Guide	Our Guides are designed to assist both debtors and creditors and to provide a quick reference resource to our legal, accounting and banking colleagues. Our Guides contain an accurate yet broad statement of insolvency law and practice as it stands at the date of publication. Yet, each insolvency is unique in some way and insolvency laws change, which is why we encourage readers to obtain formal accounting or legal advice or to contact any of the Worrells partners for a confidential and obligation free consultation. INDICATORS OF INSOLVENCY LIQUIDATION VOLUNTARY ADMINISTRATION DEEDS OF COMPANY ARRANGEMENT MEMBERS' VOLUNTARY WINDING UP PREFERENCES IN LIQUIDATIONS INSOLVENT TRADING UNREASONABLE DIRECTOR RELATED TRANSACTIONS UNCOMMERCIAL TRANSACTIONS SECTION 588FH PREFERENCES TO RELATED PARTIES	

					<b>DIRECTOR'S LIABILITIES FOR COMPANY DEBTS ENDING A LIQUIDATION</b>
	<a href="http://www.worrells.net.au/Portals/0/factsheets/2013_Corporate_Insolvency.pdf">http://www.worrells.net.au/Portals/0/factsheets/2013_Corporate_Insolvency.pdf</a>	2013/14 GUIDE TO CORPORATE INSOLVENCY	Worrells	Guide	The guide covers many topics: Corporate insolvency Indicators of insolvency... As well as worrells articles
	<a href="http://www.asic.gov.au/asic/pdflib.nsf/lookupByFileName/Insolvency_guide_for_directors.pdf/\$file/Insolvency_guide_for_directors.pdf">http://www.asic.gov.au/asic/pdflib.nsf/lookupByFileName/Insolvency_guide_for_directors.pdf/\$file/Insolvency_guide_for_directors.pdf</a>	Insolvency: a guide for directors	Australian securities and investments commission (ASIC)	Information sheet	This information sheet provides general information on insolvency for directors whose companies are in financial difficulty, or are insolvent, and includes information on the most common forms of external administration.
	<a href="http://webarchive.nationalarchives.gov.uk/+/http://www.insolvency.gov.uk/pdfs/guidanceleaflets/pdf/guidefordirectors.pdf">http://webarchive.nationalarchives.gov.uk/+/http://www.insolvency.gov.uk/pdfs/guidanceleaflets/pdf/guidefordirectors.pdf</a>	A Guide for Directors When - Where - How - What	Department of enterprise, trade and investment The insolvency services	Guide	This guide is for directors of any company involved in compulsory liquidation (winding up by the court) in England and Wales. It includes some information about the disqualification of company directors and criminal offences in relation to a company. It also summarises the other insolvency procedures that can apply to companies and explains some common insolvency terms. The insolvency procedures apply to companies and partnerships in England and Wales only. Under the law, the term "director" applies to anyone occupying the position of a director of a company, whether they are called a director or not. The law applies equally to, for example, "executive" and "non-executive" directors.
	<a href="http://www.detini.gov.uk/guide_for_directors.pdf">http://www.detini.gov.uk/guide_for_directors.pdf</a>	A Guide for Directors	Department of enterprise, trade and investment	Guide	This Guide is for directors of any company involved in compulsory liquidation (winding up by the High Court) in Northern Ireland. You will also find some information about the disqualification of company directors and criminal offences in relation to a company. There is a brief summary of the other insolvency procedures that can apply to companies and an explanation of some common insolvency terms. The insolvency procedures apply to companies and partnerships in Northern Ireland only. Under the law, the term "director" applies to anyone occupying the position of a director of a company, whether they are called a director or not. The law applies equally to, for example, "executive" and "non-executive" directors.
	<a href="http://www.insol.org/INSOLfaculty/pdfs/BasicReading/Session%205/European%20Communication">http://www.insol.org/INSOLfaculty/pdfs/BasicReading/Session%205/European%20Communication</a>	European Communication and Cooperation Guidelines for Cross-border Insolvency-2007	International Association of Restructuring, Insolvency	Article by Professor BobWessels and Professor MiguelVirgós	These Guidelines embody the overriding objective of enabling courts and liquidatorsto operate efficiently and effectively in cross-border insolvency proceedings within the context of the EC Insolvency Regulation. 1.2. In achieving the objective of Guideline 1.1., the interests of creditors are paramount and are treated equally. 1.3. All interested parties in cross-border insolvency proceedings are required to further the overriding objective

	<p>%20and%20C ooperation%2 0Guidelines% 20for%20Cros s- border%20Ins olvency%20.p df</p>		<p>y &amp; Bankrupt cy Professio nals INSOL</p>		<p>asset out above in Guideline The aim of these Guidelines is to facilitate the coordination of the administration of insolvency proceedings involving the same debtor, including through the use of a governance protocol.</p>
	<p><a href="http://www.clarkemairs.com/checklists/Checklist_Employment_Dos-And-Donts-ForDirectors-Of-Company-On-Brink-Of-Insolvency.pdf">http://www.clarkemairs.com/checklists/Checklist_Employment_Dos-And-Donts-ForDirectors-Of-Company-On-Brink-Of-Insolvency.pdf</a></p>	<p>Checklist: Insolvency - Director's Do's and Don'ts</p>	<p>Morton legal</p>	<p>Checklist</p>	
	<p><a href="http://www.hdy.com.au/Media/docs/HDY_The%20Review%20Oct%2012-773affc0-eae4-4b0e-9698-9bce853f1c2f-0.pdf">http://www.hdy.com.au/Media/docs/HDY_The%20Review%20Oct%2012-773affc0-eae4-4b0e-9698-9bce853f1c2f-0.pdf</a></p>	<p>TOO BIG TO SAVE US INSOLVENCY GURU JIM MILLSTEIN ON THE PERILS STILL FACING GLOBAL FINANCE-2012</p>	<p>The review</p>	<p>An interview with Jim Millstein</p>	<p>The GFC brought the realisation that some banks and other financiers were simply too big to be allowed to fail. But now the survivors have become too big to save. In this interview, US insolvency expert Jim Millstein outlines the weighty issues still confronting us, including a break-up of the banking behemoths.</p>
	<p><a href="http://www.iii.global.org/component/jdownloads/finish/393/4108.html">http://www.iii.global.org/component/jdownloads/finish/393/4108.html</a></p>	<p>DIRECTORS' LIABILITIES AND CORPORATE GOVERNANCE IN INSOLVENCY AND PRE- INSOLVENCY CASES WORLDWIDE</p>	<p>the Internatio nal Insolvenc y Institute Committee on Corporate and Profession al Responsib ilities in Bankruptc y</p>	<p>Questionnaire</p>	<p>How is the conduct of Officers and Directors of corporations in financial distress influenced by the civil and criminal sanctions to which those people might be exposed? How might it be influenced? These questions were posed in the International Insolvency Institute Committee on Corporate and Professional Responsibility</p>
	<p><a href="http://www.potamitisvekris.com/_control/admin/_files/binaries/publications/fil_pu">http://www.potamitisvekris.com/_control/admin/_files/binaries/publications/fil_pu</a></p>	<p>Global Insolvency &amp; Restructuring Review 2012/13</p>			

	blications114409934.pdf				
	<a href="http://www.europeanrestructuring.com/05intro/026_035.htm">http://www.europeanrestructuring.com/05intro/026_035.htm</a>	Insolvency law and practice in Europe's transition economies	Mahesh Uttamchandani, Insolvency Counsel European Bank for Reconstruction and Development		the EBRD's Legal Transition Programme has made the assessment of commercial laws and legal systems a key component of its contribution to the reform of transition economies. These assessments have been continuously refined over the years and provide, among other things, detailed information to the EBRD's 27 countries of operation as to how their legal systems compare with international standards and best practices; they also help to inform the transition projects of the EBRD
	<a href="http://www.researchandmarkets.com/reports/2556080/global_insolvency_and_restructuring_review_201314">http://www.researchandmarkets.com/reports/2556080/global_insolvency_and_restructuring_review_201314</a>	Global Insolvency & Restructuring Review 2013/14		Articles by Anthony Pallett, Christopher Hall, Christian Adams and Adam Goldberg, Latham & Watkins LLP	The 2012/13 edition of this Global Insolvency & Restructuring Review featured an article by Latham & Watkins LLP addressing insolvency and restructuring law reform in the Middle East. In light of the popularity of the article and its continued relevance today, "Shifting Sands: Insolvency and Restructuring Law Reform in the Middle East" is republished on page 134. As a preface to the republishing of its original article, Latham & Watkins highlights two of the most significant recent developments in insolvency and restructuring practice in the Middle East with which it has been involved.
	<a href="http://www.nzlii.org/nz/other/nzlc/sp/SP11/SP11.pdf">http://www.nzlii.org/nz/other/nzlc/sp/SP11/SP11.pdf</a>	INSOLVENCY LAW REFORM: PROMOTING TRUST AND CONFIDENCE-2001	The Law Commission- New Zealand	REPORT	In this advisory report, which was delivered to the Ministry of Economic Development on the 14 March 2001, we address all of the topics mentioned below: (a) the role of the State in insolvency law; (b) whether additional provisions should be inserted into New Zealand law to deal with business rehabilitation or reorganisation; (c) whether statutory management under the Corporations (Investigation and Management) Act 1989 should be retained in its existing or some modified form; and (d) whether it was desirable for New Zealand to adopt a generic statute dealing with all insolvency law issues.
	<a href="http://www.internationallawoffice.com/newsletters/detail.aspx?g=c8981483-ea46-495c-aec7-ff585991ab93#Implementing%20law%20reform">http://www.internationallawoffice.com/newsletters/detail.aspx?g=c8981483-ea46-495c-aec7-ff585991ab93#Implementing%20law%20reform</a>	Insolvency & Restructuring – International/ Best practice and tailored reforms in African insolvency: lessons from INSOL-2012	International law office	Article	
	<a href="http://www.doingbusiness.org/reports/global-reports/~media/GIAWB/D">http://www.doingbusiness.org/reports/global-reports/~media/GIAWB/D</a>	Resolving insolvency (formerly closing a business)			Where is resolving insolvency easy—and where not? What are the time, cost and outcome of the insolvency proceedings against a local company? WHY DOES A GOOD INSOLVENCY REGIME MATTER? Who made resolving insolvency easier in 2010/11—and what did they do?

	<a href="#">ing%20Business/Documents/Annual-Reports/English/DB12-Chapters/Resolving-Insolvency.pdf</a>				<p>Good practices around the world in making it easy to resolve insolvency  Who makes resolving insolvency easy—and who does not?  What do the resolving insolvency indicators measure?</p>
	<a href="http://www.abiworld.org/webinars/judgesperspective/luandin9-05.pdf">http://www.abiworld.org/webinars/judgesperspective/luandin9-05.pdf</a>	Ten Principles of Bankruptcy Abuse Prevention and Consumer Protection Act BAPCPA: Not What Was Advertised	AMERICAN BANKRUPTCY INSTITUTE	Principles	One: Those Who Can Pay Should Pay Two: Don't Trust Debtors Three: Don't Trust Judges Four: Don't Trust Lawyers Five: Make the Door Smaller Six: The Rich Fare Better than the Poor Seven: Unsecured Creditors Don't Count Eight: Debtors Must Beg for Relief Nine: Malice or Incompetence? Ten: The Former Law Is Still There
	<a href="http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2113679##">http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2113679##</a>	Rehabilitating Bankruptcy Reform-2012	THE UNIVERSITY OF TOLEDO COLLEGE OF LAW	Paper	<p>Over the last thirty years, our bankruptcy laws have seen a series of amendments designed to enhance and solidify select creditors' entitlements in bankruptcy cases. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") dramatically furthers this trend. A number of BAPCPA's amendments, individually designed to provide financial incentives or increased control to a select creditor constituency, work together to limit a firm's ability to use bankruptcy as a tool for reorganization. Although these amendments affect all debtors seeking Chapter 11 bankruptcy protection, their impact is magnified for large retail debtors.</p> <p>BAPCPA's amendments reflect a legislative intent to increase creditor certainty by replacing flexible, judge-driven standards with mechanical rules. BAPCPA's rules have drained debtors' liquidity and increased parties' incentives to behave non-cooperatively. This article demonstrates how BAPCPA's overreliance on rules has eviscerated foundational bankruptcy policies and, counterproductively, has undermined BAPCPA's purported normative aims.</p> <p>Viewing the effects of BAPCPA's rigidity on large retail cases exposes enduring faults in the bankruptcy reform process. This article concludes by exploring how a standards-focused framework for reform could have attained BAPCPA's normative priorities while ensuring that debtors' assets are put to their highest-value use. This analysis clarifies key principles that should guide Congress in future bankruptcy reform efforts.</p>
	<a href="http://www.bankruptcydata.com/Research/Largest_2013.pdf">http://www.bankruptcydata.com/Research/Largest_2013.pdf</a>	Largest Public Company Bankruptcy Filings – 2013 to date			Largest Public Company Bankruptcy Filings – 2013 to date

	<a href="http://bookstore.abi.org/">http://bookstore.abi.org/</a>				Books related to insolvency law reform
	[hard copy obtained via Sciences Po]				
	<a href="http://www.hugheshubbard.com/ArticleDocuments/hallarticle.pdf">http://www.hugheshubbard.com/ArticleDocuments/hallarticle.pdf</a>	CORPORATE RESTRUCTURING OPERATIONS IN FRANCE	Hughes Hubbard	Article	
	<a href="http://blog.lafourcade.eu/corporate-restructuring-in-france-through-changes-in-capital-shareholding/">http://blog.lafourcade.eu/corporate-restructuring-in-france-through-changes-in-capital-shareholding/</a>	CORPORATE RESTRUCTURING IN FRANCE through changes in capital shareholding	Lafourcade Avocats – French Law Firm	Corporate Blog	
	<a href="http://www.iflr.com/Article/2166556/France-Restructuring-and-insolvency-procedures.html">http://www.iflr.com/Article/2166556/France-Restructuring-and-insolvency-procedures.html</a>	France: Restructuring and Insolvency Procedures	International financial law review	Article	
	<a href="http://www.economist.com/node/10283331">http://www.economist.com/node/10283331</a>	The Walking Dead	Economist	Article	
	<a href="http://www.hoganlovells.com/files/Publication/5c6a28b1-d958-447d-b31a-9221c1bd57f3/Presentation/PublicationAttachment/7d6fa672-b440-4d56-a60a-9750030cb62f/TaxPlanningInt_Legendre_Dec2008.pdf">http://www.hoganlovells.com/files/Publication/5c6a28b1-d958-447d-b31a-9221c1bd57f3/Presentation/PublicationAttachment/7d6fa672-b440-4d56-a60a-9750030cb62f/TaxPlanningInt_Legendre_Dec2008.pdf</a>	Taxation of Corporate Restructuring & Reorganizations	Hogan Lovells	Report	This Special Report takes a broad look at the area of corporate restructurings and reorganizations from a number of national perspectives, always bearing in mind that restructurings often cross national borders. Articles focus on key tax issues in the context of the current economic climate including areas such as business restructuring, corporate debt, transfer of assets and cross-border mergers. Transfer Pricing aspects of business restructuring are analysed, in the light of the recent OECD discussion draft on Transfer Pricing Aspects of Business Restructurings. Practical aspects such as tax due diligence and corporate turnaround are also considered, and finally, the Appendix gives a round up of recent developments in the area of corporate restructuring and reorganisation.
	<a href="http://eurorestructuring.weil.com/wp-content/uploads/2013/02/Comparative-Guide.pdf">http://eurorestructuring.weil.com/wp-content/uploads/2013/02/Comparative-Guide.pdf</a>	Comparative Guide to Restructuring Procedures	Weil EUROPEAN RESTRUCTURING WATCH	Comparative Guide	This comparative guide is intended to serve as a summary reference point of practical value to stakeholders with interests in companies facing financial difficulty as the impact of financial distress nowadays is rarely limited by geographic boundaries. In the absence of a universal bankruptcy system, tailored strategic solutions need to be crafted and explored to achieve the best stakeholder outcome, whether within or outside the available formal procedures. The starting point of the strategic analysis in any given situation must be based on an appreciation of the key characteristics of the available procedures
	<a href="http://mba.tuck">http://mba.tuck</a>	Bankruptcy and	Tuck	Thesis	



dartmouth.edu/Pages/Faculty/Karin.Thorburn/publications/Ch14-N53090.pdf	the Resolution of Financial Distress	MBA program			
http://www.abeam.com/research_reports/eng/R057_E(Corporate%20Restructuring).pdf	Corporate Restructuring: Shrink to Grow	Abeam consulting	Report		This report includes a number of case studies
http://www.privco.com/knowledge-bank/bankruptcy-and-restructuring	Bankruptcy and Restructuring	Private company financial intelligence	Article		
http://www.americasrestructuring.com/08_SF/p183-188%20Restructuring%20the%20obligations.pdf	Restructuring the obligations of a European corporation through a US-style process	The Americas Restructuring and Insolvency	Guide 2008/2009		
http://www.cgs.com/files/Publication/e11fe7f2-36ab-4b50-8bc4-9eaa8f332c12/Presentation/PublicationAttachment/292cc48a-cfcc-44bf-be62-a2702ed8d370/Cooper,%20Breneman%20%26%20Moss%20--%20Restructuring%20in%20Latin%20America.pdf	Expedited Restructurings in the U.S. and Select Latin American and Caribbean Jurisdictions	Cleary Gottlieb	Article		
http://www.jonesday.com/files/Publication/a4ceb99e-95e8-4566-97dd-ec6c0c4cec97/Presentation/PublicationAttachment/fc7d177f-6bc5-4937-ace2-	Corporate restructuring and bankruptcy Searching for Common Ground Out-of-Court Workouts Require Critical Players in the Process to Build	Newyork law journal	Article		

	<a href="#">40fe9ffbd6ac/NLJ_CommonGrounds.pdf</a>	a Consensus			
	<a href="http://www.skadden.com/newsletters/Skadden_2012_Insights_Corporate_Restructuring.pdf">http://www.skadden.com/newsletters/Skadden_2012_Insights_Corporate_Restructuring.pdf</a>	Corporate Restructuring	Skadden newsletter	Study	
	<a href="http://www.imf.org/external/pubs/ft/spn/2010/spn1002.pdf">http://www.imf.org/external/pubs/ft/spn/2010/spn1002.pdf</a>	Approaches to corporate debt restructuring in the wake of financial crisis	International monetary fund	Study	This paper starts from a discussion of the economic case for moderated government intervention in debt restructuring in the nonfinancial corporate sector. It then draws on lessons from past crises to explain three broad approaches that have been applied to corporate debt restructurings in the aftermath of a crisis. From there, it addresses challenges in designing and implementing a comprehensive debt restructuring strategy and draws together some key principles.
	<a href="http://www.imf.org/External/Pubs/FT/issues/issues31/">http://www.imf.org/External/Pubs/FT/issues/issues31/</a>	Corporate sector restructuring: the role of government in times of crisis	International monetary fund	Study	
	<a href="http://www.insol.org/_files/Africa%20Round%20Table/outofcourt.pdf">http://www.insol.org/_files/Africa%20Round%20Table/outofcourt.pdf</a>	Out of court debt restructuring	INSOL International	Study	
	<a href="http://www.skadden.com/insights/corporate-restructuring-0">http://www.skadden.com/insights/corporate-restructuring-0</a>	2012 Insights: corporate restructuring	Skadden	Article	
	<a href="http://www.mondaq.com/unitedstates/x/105646/Insolvency+Bankruptcy/Restructuring+Debts+In+and+Out+of+Court">http://www.mondaq.com/unitedstates/x/105646/Insolvency+Bankruptcy/Restructuring+Debts+In+and+Out+of+Court</a>	United States: Restructuring Debts In and Out of Court		Article	
	<a href="http://www.legal500.com/c/unit-ed-states/finance/corporate-restructuring-including-bankruptcy">http://www.legal500.com/c/unit-ed-states/finance/corporate-restructuring-including-bankruptcy</a>	Corporate restructuring (including bankruptcy)	The legal 500	Articles	
	<a href="http://evanflaschen.net/France%20Insolvency%20Laws.pdf">http://evanflaschen.net/France%20Insolvency%20Laws.pdf</a>	Restructuring and insolvency in 52 jurisdictions worldwide			
	<a href="http://www.debevoise.com/business-">http://www.debevoise.com/business-</a>	Business Restructuring & Workouts	Debevoise and Plimpton		

	restructuring-- workouts- practice-areas/		llp		
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