

Regulatory Procedures for Corporate Bankruptcy: A Comparative Analysis between the Kingdom of Saudi Arabia and the United States of America

Osama Abdullah Almutairi¹

Abstract

The following paper provides a qualitative comparative analysis of the regulatory processes involved in corporate bankruptcy in the Kingdom of Saudi Arabia (KSA) and the United States of America (USA). The work analyses the legislation, main subjects, procedures, and results of corporate insolvency in both countries. As such, this study seeks to analyze the differences and comparisons of these regulations to address the question of the efficiency of each regime and the gaps for changes. The features of recent changes in Saudi Arabian legislation in the sphere of bankruptcy and the influence of these changes on the business environment are discussed, as well as the obligatory American Chapter 11 procedures. The comparative approach provides policy-implementing, legal-advice, and business-useful outlooks to the policymakers, lawyers, and enterprises operating in both countries for subsequent reasons. Based on the research findings and the shift in the Bankruptcy system in Saudi Arabia, this paper also acknowledges insider influence, particularly the influence of the U.S. model as the world's benchmark on corporate restructuring best practices.

Keywords: Corporate Bankruptcy; Regulatory Procedures; Saudi Arabia; Comparative Law; Vision 2030; Cross-Border Insolvency

Introduction

Business failure is a significant component in any country's company and financial structure since it may be seen as a protection tool in case of an organization's failure and potential solutions to its economic problems. It is deployed to define the governance of the process of bankruptcy that is instrumental to regulating the business environment and leading to the formation of investors' attitudes, as well as economic stability. This paper focuses on a comparative analysis of corporate bankruptcy regulations in two significant but markedly different economies: the Kingdom of Saudi Arabia (KSA) and the United States of America (USA).

The Kingdom of Saudi Arabia, aware of the challenges posed by its giant based on the Vision 2030 diversification strategy, has recently profoundly transformed its bankruptcy laws (Al Naimi, 2022). These changes are intended for the kingdom's contemporary radical transformation and the flow of foreign investments. On the other hand, the United States has a stable and sophisticated bankruptcy regime, with Chapter 11 of the US bankruptcy code widely acclaimed

¹ The author Dr. Osama Abdullah Almutairi is an Assistant Professor, Department of Law, College of Business Administration, Northern Border University, Arar, Kingdom of Saudi Arabia. Email: osamah.almutiri@nbu.edu.sa; Orcid: <https://orcid.org/0009-0008-9420-1634>

as a best practice for corporate rehabilitation internationally (Warren & Westbrook, 2008).

This paper aims to compare and contrast the two systems in the hope of identifying their special characteristics, advantages, and possibly disadvantages. The parameters to be compared will consist of the legal systems of both countries, who are involved in the process, how to file for bankruptcy, and how it plays out normally for companies and creditors (Fahamsyah et al., 2024).

The importance of this study is born out of the harsh global economic climate that has been witnessed in the recent past, notably the COVID-19 pandemic, which has led to unacceptably high levels of financial pressure on companies. In this regard, proper and speedy execution of bankruptcy processes is essential, like never before, in support of economic reconstruction.

A literature review was conducted, and then the materials and methods used in a comparative analysis of the papers were discussed in detail in this paper. The results and discussion section will compare key characteristics of both Saudi Arabia and the United States of America's bankruptcy systems. Last, it will specify the main findings derived from the forthcoming analysis, as well as the research and policy implications suggestions.

Research Objectives

1. To identify the similarities and differences between the KSA and the USA in terms of legal stipulations, participants involved, and processes around corporate bankruptcy. This will also involve a section-by-section and case-by-case analysis of the current structure and implementation of each country's bankruptcy system and comparing and contrasting the similarities and differences.

2. The analysis of the issues arising out of the differences in the legal structure of corporate bankruptcy regimes in KSA and the USA for the companies, investors, and other stakeholders who invest in the companies existing in these two jurisdictions. This is in relation to the objectives relating to the continuity of enterprises, protection of creditors, effectiveness of procedures, international aspects, and social and cultural effects.

Literature Review

Many scholars, like Closset et al. (2023), have devoted considerable attention to comparative studies of the structures of laws in corporate bankruptcy, especially regarding the new reforms that have occurred in some countries. The primary sources incorporated in this review include bankruptcy systems in KSA and the United States and comparison studies with other jurisdictions.

Al-Amri et al. (2021) analyzed the new Saudi insolvency law and posited that the new law could spur foreign investment and stoke the economic growth of the Kingdom. The paper also offers valuable suggestions regarding the recent changes in the Saudi bankruptcy system for enhancing the business climate. However, the author also points out that it will be imperative to consider how the transition

towards the new system of governance works; this will entail the evolution of new supporting institutions to the new system of governance.

Based on this, Alnori and Alqahtani (2019) carried out legal research on the legal reforms of the bankruptcy system in Saudi Arabia: consistency and inconsistency while identifying the challenges and opportunities under the new system. This research provides a literature review of the Saudi bankruptcy law and how it can be applied in practice. Accordingly, the empirical emphasis that Alnori and Alqahtani (2019) provide on the cultural imperatives of change, as well as the conception of the new law as an undertaking that will necessitate not merely legal reforms but also transformations in the manner in which bankruptcy is regarded of business.

Discussing the outcomes in the context of the United States, McMichael et al. (2022) addressed many of the criticisms of the U.S. bankruptcy system, which are often leveled at Chapter 11. Their work provides more insights into the efficiency and result of the U.S. strategy on corporate restructuring. To the authors' minds, Chapter 11 has been a more successful process than its critics depict it, above all, in protecting business value and employment. But they also recognize that there exist areas in which the reform could improve the efficiency and equity of the system.

In his recent work, Sybbli (2022) has compared the corporate insolvency laws with lessons from the U.S. and Saudi Arabia. This paper brings a connection between the two systems and fills a knowledge gap for Saudi Arabia to learn from the U.S. experiences and develop further on bankruptcy regulations. The major strength of Sybbli's work more so in underlining the fact that there could be areas in the Saudi system that could be reinforced by the jurisprudence of the U.S. and the practical enhanced exposure of about four decades.

Altogether, these papers form a basis for comprehending the present state of analyzing the rules regulating corporate bankruptcy in Saudi Arabia and the United States, discussing the current arguments and changes in the field. They indicate that bankruptcy law remains a work in progress, with players like Saudi Arabia changing the regime of analysis and the U.S., which also changes legislation and the judiciary system (Albaheth, 2021).

Further development is still expected to include deeper comparative studies that would briefly address not only the legal but also the operational efficacy and cost-effectiveness of various bankruptcy systems. This paper is, therefore, intended to be a more recent comparison of the Saudi and the U.S. systems, taking into account both new changes and priorities in the systems.

Materials and Methods

Therefore, this work uses the comparative legal analysis approach with a comparison of the corporate bankruptcy rules in Saudi Arabian and the United States laws. The research methodology is qualitative since the study is based on a

critical evaluation of legal instruments, scholarly publications, Cases, and policies. The primary materials used in this research include:

Legal texts: The major data sources for this research are the Saudi Bankruptcy Law promulgated in 2018 and its implementing rules, as well as the United States Bankruptcy Code, specifically Chapter 11. These texts lay the basic framework for the legal systems in each jurisdiction.

Academic literature: Articles from AGD peer-reviewed journals and books on bankruptcy law, but from the last five years only. This, of course, encompasses theories and evaluations of the efficacy of various bankruptcy systems.

Case studies: Used examples of particular cases in both jurisdictions to explain how the regulations are implemented. These cases have been selected based on the historical importance that these cases have had for the development of the conception of the applied and interpreted laws of bankruptcy in the chosen countries.

Policy documents: Publications in the form of government papers and policy papers touching on themes of bankruptcy reform in light of the Saudi Arabian Vision 2030 (Alazemi, 2022). These documents help me understand some of the goals of current reforms.

The comparative analysis is structured around key aspects of bankruptcy proceedings; Charters, legislation and regulatory authorities, Filing for bankruptcy, Debtor in possession and Management control, If a consumer files for Chapter 13 bankruptcy, then Automatic stay coupled with creditor protection will be applicable in this case, Corporate reorganization and legal requirement of creditors, Disposal of assets of audited secured creditors, Priority of claims, and Provisions relating to cross-border insolvency.

The paper critically analyzes the provisions of both jurisdictions and their differences in each area. It also studies the existing legal rules with reference to historical conditions and recent changes, including the Saudi Arabian experience, to show the current state of legislation on bankruptcy in both countries (Albaheth, 2021).

The methodology involves systematic review of legal texts and academic literature to identify key features of each bankruptcy system, and comparative analysis of these features, noting similarities and differences between the Saudi and U.S. approaches. It also involves examination of case studies to understand how legal provisions are applied in practice. Comprising analysis of policy documents to understand the objectives and rationale behind recent reforms, particularly in Saudi Arabia. Lastly, synthesis of findings to identify strengths, weaknesses, and potential areas for improvement in each system.

Such an approach makes it possible to compare them not only in terms of the description of legal regulations but also in terms of the feasibility and efficiency of the systems observed. The purpose of the study is to complement an exposition of the legal texts of these three states with an examination of the relevant scholarly

literature and cases in order to develop a more detailed understanding of how these systems of bankruptcy operate in function.

Results and Discussion

The comparative analysis of regulations related to corporate bankruptcy demonstrates certain differences in the systems of Saudi Arabia and the United States, as well as the growing convergence. The following section provides the result of the analysis concerning the major aspects of bankruptcy procedures and examines its business, creditor, and economic repercussions.

The Legal and the Regulatory Bodies

Saudi Arabia's current corporate bankruptcy is mainly anchored on the Bankruptcy Law of 2018, which was a significant shift of approach toward corporate financial troubles in the kingdom (Didea & Ilie, 2024). The following laws support this law: The Bankruptcy Law Implementation Regulations, the Commercial Courts Law, and the Companies Law. The key governing bodies include:

- The Bankruptcy Commission: An independent agency to supervise the enforcement of the Bankruptcy Law.
- Commercial Courts: They, therefore, have the responsibility of hearing and determining bankruptcy.
- Licensed Bankruptcy Practitioners: Employees who are assigned to attend to diverse issues concerning bankruptcy work.

However, the current system is bound by the traditional system of the United States Bankruptcy Code, including Chapter 11 of Corporate Reconstruction (Simmons, 2021). This is also pursuant to the Federal Rules of Bankruptcy Procedure and the local bankruptcy court rules. The key governing bodies in the U.S. system include:

- U.S. Bankruptcy Courts: Federal lig courts governing the cases involving bankruptcy.
- U.S. Trustees: Administrators for cases in bankruptcy law as appointed by the officials in the Department of Justice.
- Securities and Exchange Commission (SEC): Concerns public companies case.

The former shows that these legal frameworks are of different ages and are developed in various ways. Whereas the U.S. system has evolved through a long process of jurisprudence and fine-tuning, the new process shown in Saudi Arabia is a deliberate attempt to bring its bankruptcy law at par with the contemporary emerging economies in the international market (Al-Sarraf, 2020). This difference is quite apparent in the degree of development of case laws and precedents in each jurisdiction.

Starting of the Bankruptcy Process

In Saudi Arabia, bankruptcy proceedings can be initiated by:

- The debtor company

Creditors (subject to the peculiarities of certain circumstances).

- A certification of legal requirements (in exceptional circumstances)

The Saudi law is even more apparent when it comes to determining the need for finances, and there are specific set standards of measure of distress. The process usually starts with the filing of a petition in the appropriate commercial court.

In the United States, bankruptcy proceedings can be initiated by:

The debtor company (Chapter 11 voluntary filing)

Creditors (available only in an involuntary filing and always subject to the fulfillment of certain conditions).

However, regarding Chapter 11 proceedings in the United States, no recognized insolvency permits corporations to file for the procedure before its occurrence (Warren & Westbrook, 2008). This feature of the U.S. system is widely seen as a major strength since it permits interventions that may raise the likelihood of restructuring occurring earlier.

Some of the differences relating to the roles of the regulatory authorities involve the Saudi system embracing the regulatory authorities as potential actors that may start bankruptcy procedures as a result of the centralized economic power in the kingdom (Murr & Carrera, 2022). This provision could potentially, on occasion, permit earlier intervention where a company's failure may have a more significant systemic impact.

Debtor in possession and management control

Both systems incorporate debtor-in-possession provisions, but with some notable differences:

Saudi Arabia:

The Protective Settlement and Financial Restructuring procedures permit debtor-in-possession management (Alarifi, 2023). The creditors are protected through the services of a court-appointed bankruptcy trustee or administrator.

They said that the level of management control could be very different depending on the type of procedure and court decisions.

United States:

Chapter 11 is most noted for its robust debtor-in-possession characteristics. Management mostly remains in complete control of the operations of the business enterprise with limitations expected from the judiciary though.

Where there is an act of fraud or even mismanagement to whichever extent, the court will devise a trustee to oversee the running of the business.

The U.S. approach generally offers more organizational autonomy to the existing management, as the thought process here is that management is more aware of the business (Arregle et al., 2023). Thus, the Saudi system, while in this process, still preserves a relatively greater openness to external control. These disparities are

due to dissimilarities in confidence in managerial business efficacy and in managing debtor-creditor equations.

The Automatic Stay and Creditor Protection

Both systems provide for an automatic stay on creditor actions upon the commencement of bankruptcy proceedings, but with some differences in scope and duration:

Saudi Arabia:

The automatic moratorium usually ranges from 180 days and can be rolled over depending on some conditions (Al-Sarraf, 2018). The stay includes virtually all forms of creditor activity but might exclude secured creditors in certain circumstances.

United States:

The automatic stay is random and wide-ranging, suspending all forms of collection proceedings triggered by the creditor.

It applies to creditors with secured assets and creditors without secured assets. Creditors with secured assets can ask for the dismissal of the stay depending on certain conditions.

The length of the stay is, in most cases, related to the size of the process of bankruptcy.

Essential to both of these systems, the automatic stay affords the debtor this protection, this breathing space. Hence more comprehensive stay provision is manifested in the U.S. system that emphasizes heavily the grant of the chance to restructure to the debtor (Simaremare et al., 2021). The concept is adopted by the Saudi system but with some degree of flexibility, especially to secured creditors, which may be explained by a desire to balance debtor protection with protection of the rights of creditors.

The Reconstructions Schemes and Creditors Consent

Saudi Arabia:

It is generally prepared and proposed by the debtor with the help of the bankruptcy trustee or administrator, as the case may be. While approval needs the majority of creditors that at least two-thirds of the total value of the debts within the class of creditors (Al-Sarraf, 2020).

The plan is then subject to the stamp of the court approval based on issues of fairness and feasibility, among others.

United States:

The debtor has a twenty-four -months exclusive period to file a reorganization plan, which can be extended to eighteen months. The plan has to be confirmed by creditors, and it involves voting by the exciting part of creditors with a certain quorum.

The U.S. system also has “cram down” provisions under which the court can confirm the plan without the approval of creditors (Stef, 2023). In this case, all the

creditors must receive at least as much as they would be paid if the debtor were liquidated, and at least one impaired class of creditors must vote in favor of the plan.

The U.S. system we have studied also contains a specific feature called “cram down,” which can result in restructuring regardless of the creditors’ wishes (Seymour & Schwarcz, 2021). This is consistent with the policy decision to support business rescue and economic efficiency. While overall, the Saudi system is gradually changing from an anti-reorganization stance, the importance of creditor approval remains considerably more significant there.

Implications for Businesses and Investors

Business Continuity and Restructuring Opportunities:

They both value business continuity and provide restructuring prospects but with dissimilar purposes. The U.S. Chapter 11 is one of the most flexible and debtor-friendly processes commonly observed, allowing companies to emerge from the bankruptcy system as going concerns (Broude, 2024). This can be flattering for companies that, for one reason or another, find themselves in a state of financial crisis but whose operations are otherwise healthy.

Saudi Arabia’s new Bankruptcy Law also demonstrates similar tendencies. The use of procedures such as the Protective Settlement and Financial Restructuring lets Saudi businesses have more ways of handling financial issues as a business without necessarily being forced into liquidation (Almatrafi, 2019). That could mean more successful turnarounds and a possible lessening of the persona of bankruptcy in the Saudi business society.

Creditor Rights and Predictability:

The probability and the regularity of the bankruptcy proceedings are on the list of priorities of creditors and investors. The system of the U.S., which has developed over many years and has a rich history along with a vast number of reported decisions, also provides a high level of predictability. Creditors can, for the most part, predict how their claims will be treated and what recourse they will be afforded (Kanda & Levmore, 2022).

Cross-Border Considerations:

Companies and firms with cross-border activities need to assess how the law deals with cross-border insolvency (Kliatskova et al., 2023). The United States provides an appropriate legal background when it comes to the handling of international facets of bankruptcy, with set Chapter 15 procedures in place (Couwenberg & Lubben, 2020). This is especially useful for international companies and organizations.

The cross-border provisions incorporated into Saudi Arabia’s new Bankruptcy Law are a good sign of moving in the right direction. This may help make Saudi Arabia more appealing to overseas companies and investors, as it gives a means for dealing with overseas insolvency processes (Gopalakrishnan &

Mohapatra, 2020). But, to some extent, their effectiveness has not yet been determined in their practical aspect.

Cultural and Social Implications:

The culture during bankruptcy processes plays a major factor in business when it comes to financial trouble. Chapter 11 reorganization, as a type of bankruptcy, is generally considered by Americans as a business management tool. This point of view can lead to the efficient usage of the mechanisms of bankruptcy procedures to solve failures.

In the past, bankruptcy had a particularly negative connotation for Saudi Arabian society. The new law is designed to alter this outlook and bring a reformatory culture toward business failure (Fagehy, 2023). If accomplished, this cultural change may mean improved earlier action on warning signals regarding specific businesses' ability to pay and, thus, more favorable results for companies and their creditors.

Impact on Entrepreneurship and Innovation:

Characteristics of bankruptcy regulations are capable of either promoting or dwindling the rate of entrepreneurial activity and innovation in an economy. Indeed, the United States, which focuses on second opportunities and restructuring, has been hailed for many years as creating an inviting atmosphere for entrepreneurship (Gerstle, 2022). Leveling the risks involved in an entrepreneurial process that ensures safety in the form of bankruptcy lets businesses grow more. Saudi Arabia's reforms aim to create a similar environment, reducing the penalties for business failure and offering more pathways for restructuring. This shift could potentially stimulate entrepreneurship and encourage more innovative ventures in the kingdom, aligning with its broader economic diversification goals under Vision 2030.

Conclusion

A cross-country comparison of the Saudi Arabian and American corporate bankruptcy laws shows that there is more than what meets the eye, both at the same and different levels. Although the U.S. system remains the reference model for reforming corporate restructuring around the world, the scenario of recent Saudi Arabian reforms suggests a clear desire to renew the attitude towards business financial distress and bring it closer to best practice. Bankruptcy regulations across Saudi Arabia are a relatively recent phenomenon and draw from an international template but are relatively recent and are still emerging (Fagehy, 2023). It is clear that both systems aim to achieve parity between debtor and creditor.

Recommendations:

- **Implementation Challenges:** Due to the relatively recent reform of Saudi Arabia's bankruptcy legislation, further research regarding its practical functioning and accomplishments will be essential. Comparing such case findings of results obtained, time taken, and overall satisfaction from stakeholders could be valuable.

- Harmonization of International Standards: Additional endeavor is thus required to study how national bankruptcy systems can better integrate with the prevalent international norms and practices subject to appropriation to domestic legal and cultural realities.
- Impact on Economic Growth and Innovation: Long-term investigations analyzing the long-term impacts of changes in bankruptcy regulations on Saudi Arabian entrepreneurship, innovation, and economic growth are needed to proffer lessons to other emerging economies.
- Technological Integration: Thus, as both countries advance their states toward the digital legal environment, the research on technology's impact on increasing the effectiveness and transparency of bankruptcy procedures can be valuable.
- Stakeholder Education: Because of the significant shifts in the Saudi Arabian system, a study of proper ways of informing businesses, creditors, and other legal professionals of the changes might be helpful.

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