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# THE LEGAL IMPACTS OF CORPORATE FINANCIAL RESTRUCTURING: A COMPARATIVE ANALYTICAL STUDY OF UAE, KUWAIT AND FRANCE

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## ABSTRACT

*This research examines the legal implications of initiating financial reorganization through a comparative analysis of UAE Federal Decree-Law No. 51 of 2023 and Kuwait Law No. 71 of 2020 and French laws. It addresses key consequences of opening proceedings, including lawsuits and enforcement, the respective roles of the Bankruptcy Court, Trustee, Controller, the treatment of ongoing contracts and the allocation of decision-making by stakeholders. It also analyzes the preparation, creditor voting, judicial confirmation of reorganization plans and evaluating their effectiveness in preserving creditor rights while maintaining the debtor as a going concern to avoid liquidation. Using a comparative and legal doctrine methods, the paper assesses the extent to which these mechanisms balance debtor protection, creditor safeguards, and broader economic stability. It identifies legal gaps and implementation frictions particularly regarding the timing and scope of the stay, Small and Medium Enterprises (SME) access and cost, priority and safeguards for interim Debtor-in-Possession Financing (DIP) financing, and the clarity of voting and confirmation standards and offers legislative recommendations to strengthen efficiency, predictability, and credibility. The findings contribute to comparative insolvency scholarship and provide practical guidance for policymakers and practitioners in the region. As the research indicates that UAE and Kuwaiti laws give the Trustee direct authority over the debtor's assets and business, however UAE law places more emphasis on the supervision of the bankruptcy unit regarding the performance of the Trustee, while in Kuwaiti law the Trustee enjoys a broad authority to act, especially if the debtor is a company.*

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**KEYWORDS:** Distressed Companies, Legislative Reform, Creditors' Rights, Defaulting Debtor, Trustee, Judicial Controller, Bankruptcy Courts, Legislative Process, Restructuring Plan.

## 1. INTRODUCTION

Financial reorganization procedures represent one of the most prominent modern legal means through which the legislator sought to balance the interest of the debtor in the continuation of its economic activity while preserving the creditors' rights through giving distressed companies a legal opportunity to reorganize their finances. The starting phase of these proceedings is important; it establishes the subsequent effects that regulate the relationship between all parties.

Emirati, Kuwaiti and French legislators have paid considerable attention to organizing this phase with a differing legislative and procedural philosophy.

**In this context, a fundamental problematic arises**  
How sufficient is the legislation to provide effective guarantees by enabling the debtor to regain his financial balance while protecting the interests of creditors within a framework of judicial control?

The importance of this topic lies in its direct implications for the stability of the trade and financial environment, especially in the context of economic conditions that lead to the disruption of productive entities; this makes these measures a proactive means of protecting the national economy.

This study aims to analyze the financial reorganization legal framework governing the starting phase of proceedings, pointing out similarities and differences between the three comparable laws and assesses the adequacy of the guarantees granted to creditors in opposition to the opportunities granted to the debtor.

This study is based on a comparative and analytical approach regarding Emirati Law, Kuwaiti Law and mainly French Law by analyzing relevant legal texts, comparing their theoretical and practical outputs, highlighting the procedural and supervisory aspects mentioned in each law.

**The study is divided into two main topics** The first concerns the judiciary's oversight of the starting of financial reorganization proceedings, while the second focuses on the preparation of a financial reorganization plan and its approval mechanisms.

(<sup>1</sup>) Article (89), clauses (2) and (3); The legislator stipulated the following: " 2. The Trustee may request the debtor, creditors, or the unit, if the debtor is subject to a supervisory body, the bankruptcy administration or the controller, as the case may be, to provide him with any information or documents available to them regarding the debt, business or assets of the debtor. The Trustee may take all necessary measures to monitor the debtor's financial operations and verify the soundness of the debtor's management of its assets and business.

## 2. EFFECTS OF STARTING PROCEEDINGS ON THE CONDUCT OF THE DEBTOR

### 2.1. *The Debtor Continues to Conduct Its Business under the Supervision of the Trustee*

The UAE legislator states in Article (89) of the Financial reorganization and Bankruptcy Law No. 51 of 2023 as follows: "The debtor shall be allowed, after the issuance of the decision to initiate the restructuring procedures, to continue to manage its assets and business under the supervision of the Trustee. He may take the necessary actions in relation to his business activity, provided that they do not harm the interests of creditors, unless the Bankruptcy Court decides otherwise."

It is understood from this provision that the decision - of the Bankruptcy Court - to start financial reorganization proceedings does not deprive the debtor of the management or disposal of its assets, however the debtor remains responsible for the management of its commercial or professional activity under the supervision of the Trustee of Financial reorganization, and the debtor retains the right to take all actions necessary to conduct its business. provided that such conduct does not prejudice the interests of creditors. (Fares, 2025).

In order to facilitate the task of the Trustee in supervising the debtor's administration of its assets and business after the decision to start the financial reorganization proceedings; Article (89)<sup>1</sup> of the Financial reorganization and Bankruptcy Law requires all parties to the proceedings - the debtor, the creditors, the Financial reorganization and Bankruptcy Unit if the debtor is subject to a supervisory authority, in addition to the bankruptcy administration and the controller<sup>(2)</sup> as the case may be - to provide the Trustee with all the information or documents available concerning the debts, assets or business of the debtor, and the same article also authorizes the Trustee to take the necessary measures to monitor the financial operations of the debtor and to verify the soundness of his management of his assets and activities; The debtor may be asked to refrain from performing certain acts without obtaining the prior consent of the Trustee.

3. The Executive Regulations of this Law shall specify the acts and actions for which the debtor must obtain the approval of the Trustee before undertaking them.

(2) The UAE legislator defined a controller in article (1) as: "a person who is responsible for following up on the implementation of preventive settlement, restructuring and bankruptcy declaration procedures".

One jurist points out that in restructuring cases, keeping the debtor in the company administration in an administrative position is economically preferable than an early exclusion, provided that there is an effective control from the Trustee. (Al-Shafei, 2016).

With reference to Article (10) of the implementing Regulations of the Financial reorganization and Bankruptcy Law, issued by a decision of the Council of Ministers based on Emirati Federal Law Decree No. (51) of 2023; It appears that the legislator has determined that the debtor must obtain the approval of the Trustee before they can proceed, as it states: "The debtor shall, after the starting of the restructuring proceedings, **obtain the Trustee's written or electronic approval before the beginning of any of the following acts or actions**

1. Providing or renewing a guarantee to others.
2. Payment of debts on or before their maturities.
3. Establishing a subsidiary company or buying share in another company.
4. Transfer of all or part of his or her property, business or assets outside the normal course of his or her business.
5. Waive any judicial claim or enter into any financial settlement."

As for the Kuwaiti legislator, in article (99) paragraph (2), the judicial controller was added to the debtor, creditors, the bankruptcy committee and the bankruptcy unit, when it stipulated the following:

"...The Trustee may request the debtor and creditors, the bankruptcy committee, the bankruptcy unit, the controller or the controller, provide him with any information ..." <sup>(3)</sup>. The judicial controller has an essential role to play in monitoring the debtor's actions and reporting to the Court any irregularities that the debtor may have committed. The Controller must report and cooperate with the Trustee.

The Kuwaiti legislature combined the concepts of administration and disposal of the company's assets regarding the debtor into a single text, allowing him to carry out all administrative activities under the supervision of the Trustee, provided that it is related to its business activity and does not adversely affect the interest of creditors. (Al-Fleeti, 2019).

<sup>(3)</sup> (Kuwaiti Law No. (71) of 2020 promulgating the Bankruptcy Law.)

<sup>(4)</sup> Article 90 of the UAE Law: "1. The Bankruptcy Court may, on its own initiative or upon a reasoned request submitted by the Trustee, one of the creditors or the unit in the case of the debtor being subject to a supervisory body, decide within ten (10) days from the date of submission of the application to restrain the debtor, its board of directors or directors from managing its assets and business, and entrust such management to the Trustee. In such

In the event that the debtor is found to have violated the provisions of the Financial Reorganization and Bankruptcy Law in the management of his activity, such as carrying out unusual actions without obtaining prior permission from the Bankruptcy Court or the Trustee, or if he has committed an act that harms the interests of the creditors, the Bankruptcy Court may, on its own initiative, or upon a reasoned request submitted by the Trustee, a creditor, or the Financial Reorganization and Bankruptcy Unit if the debtor is subject to a supervisory body, decide within ten days from the date of submission of the request, to suspend the debtor, its board of directors or directors from the management of its assets and business.

The Court shall assign the Trustee to administer such assets and business, so that all administrative powers that the debtor and its board of directors had shall be transferred to the Trustee, unless the Court decides otherwise. The decision issued must be justified, whether accepted or rejected (Fares, 2025), according to the UAE Law article (90).<sup>4</sup>

According to this provision, the Bankruptcy Court in the United Arab Emirates may issue a quick decision to shackle the debtor if, for example, it is established that he has paid undue debts to close persons without the permission of the Court or the Trustee, which is a breach of the order of priorities among creditors and may result in the transfer of full administrative powers to the Trustee. (Khalil, 2019).

In Kuwaiti law, the legislator stipulated similar provisions in article (101), granting the bankruptcy judge the power to take a decision to prevent the debtor from managing his assets within ten working days from the date of submission of the application. The legislator added powers to the Trustee: he could, as well, exercise all the powers of the debtor and the general assembly of his company.<sup>5</sup>

In a Commercial Case No. (472/2020), the Kuwaiti Court ruled that the conduct of one of the debtors that led to providing a personal guarantee without referring to the Trustee was invalid, and the Court decided to prevent him from managing his assets

a case, the Trustee shall have all the powers of the debtor, its board of directors and its executive management, unless the Court decides otherwise.

2. In all cases, the decision of the Bankruptcy Court to accept or reject the application shall be justified."

<sup>(5)</sup> The Kuwaiti legislator stipulated in Article (101) paragraph (1) the following: "... and to entrust that administration to the Trustee. In such a case, the Trustee shall have all the powers of the debtor, his executive board of directors and his general assembly..."

because of the clear breach of the interests of creditors.<sup>6</sup>

Under UAE law, the debtor is required to refrain from making donations, and transactions that are partially or completely free of charge; They may be detrimental to the interests of creditors, and such actions must not be enforced against them. The payment by the debtor of its future debts before they are due is an act that is detrimental to creditors and is not effective if outstanding debts other than the approved upon (e.g., payment is made with goods or real state instead of money). In all cases, the payment is effective if the outstanding debts are met in accordance with the approval of both the debtor and its creditor. (Al-Suwaidi, 2024).

In contrast, the Kuwaiti legislator prohibited the debtor from engaging any action in its assets that would be detrimental to the interests of creditors and specified certain acts prohibited to the debtor; Such as selling that is not related to his usual business activity, donations, borrowing and lending, and any free business, in addition to financial guarantees and the determination of any mortgage or insurance. (Al-Fleeti, 2019).

It appears that the two laws share the protection of the rights of creditors; Kuwaiti law sets out prohibitions in detail, while UAE law leaves more room for the discretion of the judge in some cases.

Moreover, French law (No. 845-2005) on the settlement of distressed companies (Loi N°2005-845 du 26 Juillet 2005) provides that the debtor may continue to manage its business during the first instance of the procedure of judicial settlement or restructuring process (Procédure de redressement judiciaire), under judicial supervision and in the presence of a judicial controller (administrateur judiciaire) appointed by the Commercial Court.<sup>7</sup>

Article (L631-11-1) of the French Code of Commerce provides that the debtor may retain full or partial powers of administration as determined by the Court, depending on the state of the enterprise and the degree of default.

According to French jurisprudence, keeping the debtor in the center of management, even if under supervision, contributes to maintaining the continuity of the project and protecting it from rapid collapse, which is a practical application of the principle of continuity of activity (continuité de l'exploitation). (Frison-Roche, 2015).

<sup>(6)</sup> Nawaf Al-Shahoumi, Debtor Control in Restructuring, article published online. For more information, see the following link: <http://www.kuwaitlawjournal.org.kw/>, visited on 1/5/2025.

<sup>(7)</sup> Code de commerce français, article L631-11-1, Loi n°2005-845 du 26 juillet 2005 relative au traitement des difficultés des

French law intersects with UAE and Kuwaiti law in maintaining the debtor's management of its business, but under more intrusive supervision by the Court or a supervisory authority, and is more detailed in dividing the types of management into: exclusive, joint, or partially managed, depending on the degree of default, which is not clearly reflected in UAE and Kuwaiti law.

The Nexcom SA case, heard by the Court of Commerce in Paris in 2018, is an example of this framework, where the Court kept the debtor in its executive position with strict control, and required notification of the judicial controller and prior approval of unusual conduct, such as the transfer of assets or contracting outside of the usual activity. (Poracchia, 2022).

## 2.2. Suspension of Judicial Claims

In Article (1) of the Financial reorganization and Bankruptcy Law, the UAE legislator defined the concept of suspension of judicial claims as the suspension of any action or executive action deposited against the debtor if it relates to his assets or financial obligations, with the exception of actions related to his activity and personal status, provided that some personal status cases are excluded when linked to inheritance judicial conflict.<sup>8</sup>

When a Court decision to start the financial reorganization procedure, one of the most significant consequences of this is the suspension of all judicial and executive actions against the debtor for the duration of the proceedings. Analyzing this matter through a comparative law it appears that there is a recognition of the previous mentioned effects as means of providing a stable legal environment that enables the debtor to continue its business and implement the reorganization plan without interference from creditors or third parties.

These effects, as stipulated in the UAE Financial reorganization and Bankruptcy Law in Article (92), entails the suspension of all claims against the debtor from the day after the decision to start the restructuring proceedings, and this suspension shall continue until the adoption of the restructuring plan. The debtor is also entitled to request the bankruptcy unit to issue an official statement confirming that such claims have been discontinued during that period;

entreprise;Legifrance,  
[https://www.legifrance.gouv.fr/codes/article\\_lc/legiarti000006278643](https://www.legifrance.gouv.fr/codes/article_lc/legiarti000006278643) visited on 15/5/2025

<sup>(8)</sup> Federal Decree-Law No. (51) of 2023 on Financial Reorganization and Bankruptcy.

It should be noted that the UAE legislator in regulating the effect of starting the financial restructuring proceedings has decided to suspend claims against the debtor starting from the day following the date of issuance of the decision, which reflects legislative timeliness, but delaying the implementation of the decision's effects for the next day may leave a short legal gap that some creditors can exploit to take action against the debtor before the suspension officially begins.

It should be noted that the legislator linked the period of the suspension to the period of financial reorganization, as it ends when the Court approves the financial reorganization plan, but the text does not clearly define the consequences of the suspension in the event of rejection or failure of the plan. Another notable positive effect is that the legislator granted the debtor the right to request an official affidavit from the Bankruptcy Administration to suspend claims, which strengthens its legal status, but without stipulating a binding time frame for the issuance of such a statement, or a mechanism for appealing in the event that the administration refrains from issuing it, which may weaken the effectiveness of this right in practice. (Al-Fleeti, 2019).

The position of the Kuwaiti legislator is in line with that of the UAE legislator in this regard, as provided for in article (102) of the Kuwaiti Bankruptcy legislation.<sup>9</sup>

The Emirati, Kuwaiti<sup>10</sup> and French legislation<sup>11</sup> stipulates that the period of suspension of judicial claims ends either with the approval of the financial reorganization plan by the Bankruptcy Court or with the Court decision to terminate the proceedings. We have to note that the UAE legislator has adopted a more flexible and realistic regulation regarding the suspension of claims against the debtor; It did not restrict it to a fixed period of time, as some other legislation has done, the suspension was limited to three months, which could be extended to six months, but rather linked it to the status of the procedure itself in terms of the Court's approval of

the financial reorganization plan or the termination of the proceedings, which is consistent with the nature of this stage: it takes into account the circumstances of each individual case, ensuring the effectiveness of the procedure without prejudice to the legal positions of litigants. (Fares, 2025).

It is clear that the UAE and Kuwaiti legislation approve establishing the effect of the suspension of judicial actions and executive actions against the debtor from the moment of the starting of the financial reorganization proceedings; This is in order to grant the debtor temporary protection to continue to carry out its business and prepare the restructuring plan without legal obstacles. The UAE legislator did not restrict such protection by a specified period of time, but rather linked its continuation to the outcome of the reorganization proceedings; This reflects legislative flexibility that takes into account the circumstances of each case. French law is consistent with the previous mentioned legislations regarding the legal protection provided to the debtor during the financial reorganization phase, but the difference is in the adopted legal delays and flexibility of each law.

### 2.3. Possibility of Termination of Contracts

Article (94) of the Emirati law concerning the financial reorganization and bankruptcy<sup>12</sup> provided for the continuation of the validity of existing contracts and new financing, and the organization of the creditors committee. Under this provision contracts signed with the debtor shall remain into force after the decision to start the financial reorganization proceedings and may not be terminated on the basis of the mere starting of the proceedings, even if the contract contains a provision determining this termination. In contrast, the contracting party is obliged to continue to perform its contractual obligations, to the extent that the debtor discharges its obligations arising after the date of the decision to start the proceedings. (Fares, 2025).

(<sup>9</sup>) The Kuwaiti legislature stipulated the following: "The issuance of the decision to start the restructuring proceedings shall result in the suspension of claims from the day following the date of issuance of this decision until the date of ratification of the restructuring plan. The Bankruptcy unit shall deliver to the debtor, upon his request, a notice of cessation of these claims."

(<sup>10</sup>) The legislator stipulated the following: "The period of suspension of claims shall expire in the event of any of the following cases: The Bankruptcy Court ratifies the restructuring plan.

The Bankruptcy Court's decision to terminate the restructuring procedures was issued."

(<sup>11</sup>) The Kuwaiti legislator stipulated in the Bankruptcy Law as follows: "The issuance of the decision to start the restructuring proceedings shall result in the suspension of claims from the day

following the date of the issuance of this decision until the date of ratification of the restructuring plan. The Bankruptcy unit shall deliver to the debtor, upon his request, a notice of cessation of these claims."

(<sup>12</sup>) In French law, the legislature stipulates in article (L622-21) of the Commercial Code that all judicial and enforcement proceedings and proceedings against the debtor shall be suspended as soon as judicial settlement proceedings have been initiated, and creditors are prohibited from taking or continuing any judicial action or enforcement relating to a claim for a debt arising prior to the starting ruling.

(<sup>13</sup>) Article 94 of the UAE legislature stipulates the following: "The provisions stipulated in Part One of this Special Law shall apply to contracts, new financing and the creditors' committee."

However, if the debtor breaches any of its obligations arising out of the contract, the Bankruptcy Court may, upon a claim from the contracting party, order the avoidance of the contract, as an exception to the rule of suspension of judicial claims established during the period of the financial reorganization proceedings.<sup>13</sup>

If the Court determines fair compensation for the contracting party for damages suffered as a result of the contract's avoidance, the contractor is entitled to claim a compensation from the debtor in the preventive settlement proceedings, as an ordinary creditor of such compensation.<sup>14</sup>

Article 65 of Kuwaiti law provides that existing contracts shall continue to be valid after the issuance of the decision to start preventive settlement proceedings<sup>15</sup> : they may not be terminated merely upon the commencement of such proceedings, even if the contract contains a provision stipulating the contrary. The contracting party shall be obliged by the debtor to continue to perform its contractual obligations, as long as the debtor fulfills its obligations arising after the starting date of the decision regarding the financial reorganization proceedings.<sup>16</sup> It is clear that this includes the possibility of obtaining new financing according to Kuwaiti and Emirati laws according to the rules of preventive settlement, taking into consideration the principle of continuity of contracts concluded with the debtor even after the starting of bankruptcy proceedings or financial reorganization, and prohibits the termination of such contracts based on the mere starting of the proceedings, and obliges the contracting party with the debtor to continue to perform its contractual obligations as long as the debtor fulfills its performance obligations after the date of starting the proceedings. In the event that the debtor breaches any of its obligations, the Contracting Party or the debtor itself may apply to the Court for avoidance of the contract, provided that

this is necessary for the continued conduct of the debtor's business or for the protection of the interest of creditors. The aggrieved party has the right to claim fair compensation for the damages suffered as a result of the termination of the contract, and this compensation is included in the bankruptcy debts as a normal debt.

According to French Law, article L622-13, effects of contracts -into force- continue after the commencement of judicial settlement proceedings and may not be automatically terminated by reason of the commencement of the proceedings, unless the debtor breaches its obligations after the judgement. (Vallens, 2020). It appears that this is in line with what is stated in the UAE and Kuwaiti laws, as the three laws emphasize the preservation of contracts aiming at protecting the continuity of the economic activity, with the possibility of termination by a Court ruling if the debtor violates the terms of the contract.

#### 2.4. Eligibility for a New Financing

Article (62) of the UAE Law allows the debtor, after the issuance of the decision to start the financial restructuring proceedings, to obtain new financing, whether in the form of loans or bank facilities with or without collateral, in accordance with what is stipulated in the application for starting the proceedings or in any subsequent application submitted to the Bankruptcy unit before the issuance of the decision. The debtor may also obtain financing during the implementation phases of the financial reorganization plan, if expressly stated in the proposed plan or approved by a prescribed majority of creditors, unless the Bankruptcy Court decides otherwise. It is legally required that the lender of the bank facility be notified that the debtor is subject to financial restructuring procedures to ensure transparency and provide legal protection to the

(<sup>13</sup>) Article 61, Clause (3) of the UAE Law, the legislator stipulates the following: " 3. Except for contracts covered by the preventive settlement procedures, and in the event that the debtor breaches any of its contractual obligations, and is exempt from the suspension of claims, the Bankruptcy Court may, at the request of the contractor, rule on the termination of the contract...", in accordance with Article (94).

(<sup>14</sup>) In Article 61, Clause 4 of the UAE Law, the legislator stipulates the following: " 4. The Bankruptcy Court may, at the request of the debtor, order the termination of any valid contract to which the debtor is a party if it is necessary to enable the debtor to carry out its business or to achieve the interest of the creditors, provided that the termination does not cause serious damage to the interests of the contractor with the debtor, unless the Court decides to compensate the contractor fairly. In such a case, the contractor shall be entitled to participate in the preventive settlement

proceedings as an ordinary creditor with compensation resulting from the avoidance."

(<sup>15</sup>)The legislature defined a preventive settlement in article 1 as: "Measures taken at the request of the debtor, aimed at helping him to continue his business activity and meet his debts through the debtor's application of the preventive settlement proposal, while the debtor continues to manage his business and assets in a normal manner, which are approved by the Bankruptcy Court and supervised by the Bankruptcy Court."

(<sup>16</sup>) Mohammed Al-Marjah, The Effects of the Issuance of the Decision to Start Preventive Settlement Procedures in the Kuwaiti Bankruptcy Law (71) of 2020, website. For more information, see here:

[https://almirjah.wordpress.com/2021/08/16/224/?utm\\_source=chatgpt.com](https://almirjah.wordpress.com/2021/08/16/224/?utm_source=chatgpt.com), visited on 21/5/2025.

financier when dealing with a debtor subject to procedural bankruptcy restrictions. (Fares, 2025).

The debtor may not obtain loans or credit facilities from banks or financial institutions except in cases expressly provided for in the Law, without obtaining prior permission from the Bankruptcy Court, which issued the decision to start the financial reorganization procedures, because borrowing is considered an unusual business of management. The Court may, upon a request submitted by the debtor, and after obtaining the opinion of the Financial Restructuring and Bankruptcy Unit, in the event that the debtor is subject to a supervisory body, authorize the debtor to obtain new financing. In such a case, the financing creditor shall be given priority over any ordinary debt outstanding to the debtor at the date of the decision to start the proceedings, to the extent that the financing is proved to be necessary for the continued activity of the debtor as long as it does not harm the common interest of the creditors. (Fares, 2025).

However, the new financing granted to the debtor during the financial reorganization proceedings may be secured by a pledge of its assets, whether unencumbered or encumbered. If the money is not encumbered, it is normally mortgaged. If the assets are already encumbered, a new mortgage may be arranged provided that it is in a rank next to the existing one. In certain cases, financing may be granted that is encumbered in the same or even earlier rank as the previous mortgage, but in this case the consent of the creditors with the previous mortgage is required to protect their rights<sup>17</sup>.

On the other hand, French law in article L622-17 permits the financing of a distressed enterprise during the period of judicial settlement, and grants priority to repayment provided after the starting, provided that the financing is necessary to ensure the continuity its activity and is subject to the approval of the Court. (Vallens, 2020).

### **3. CONSEQUENCES OF THE STARTING OF PROCEEDINGS ON THE FINANCIAL RESTRUCTURING TRUSTEE**

#### ***3.1 Appointment of the Trustee***

The UAE law requires the appointment by the competent Court of the Trustee immediately upon the commencement of the proceedings according to

<sup>(17)</sup> In the UAE Law, Article 62, Clause 5: "... 5. The new financing may be secured by a mortgage arrangement on any of the debtor's mortgaged assets, equal in rank to the rank of any mortgage based on or preceded by the assets to be mortgaged. In such a case, the previous encumbered creditors must be approved in the rank."

Article (36)<sup>18</sup> of the Financial Restructuring and Bankruptcy Law. The appointment of a financial restructuring Trustee at this stage is necessary and logical, as once the proceedings have been initiated, the debtor is prevented from managing and disposing of its assets, which requires the presence of an entity to manage those assets on its behalf (Al-Qaliubi, 2007); The Kuwaiti legislator has authorized the appointment of a Trustee - not member of the Financial Reorganization Unit - if the interest of the parties so requires as stated in Article (34) paragraph (2): "The bankruptcy judge may, upon the proposal of the Bankruptcy Committee, appoint one or more Trustees from persons other than those licensed by the Authority or registered with it, whenever this is in the interest of the debtor and creditors."

In the event that a legal person is appointed as a Trustee, the bankruptcy judge has to nominate one or more representatives - natural persons - registered in the roster of experts to carry out the duties of the Trustee in accordance with the provisions of the Law. The UAE legislator has granted the Court the power to appoint more than one Trustee if the nature and size of the debtor's business so requires. They are jointly responsible for their actions and may also determine their fees on their own initiative or at the request of the debtor or the Financial Reorganization Unit. (Al-Qaliubi, 2007).

Article (37) of the UAE Bankruptcy Law stipulates that the Bankruptcy Court may, whether on its own initiative or at the request of the debtor or the competent supervisory authority if the debtor is subject to its supervision, request that entity to nominate more than one Trustee and determine the proposed financial consideration for their fees. If several Trustees are appointed, they carry out their duties collectively, and they are jointly responsible for all the work they perform, with the possibility of delegating one to the other, and delegating persons from outside the group is permitted only with the approval of the Court. The Court may distribute tasks among them or assign one of them a specific task, in which case the scope of the Trustee's responsibility is limited to what has been assigned to him. In an effort to ensure the integrity and impartiality of the Trustee, the legislature stipulated the exclusion of certain persons from appointment to this position, due to their connection with the debtor

<sup>(18)</sup> Article 36 of the legislature stipulates the following: "If the Bankruptcy Court decides to accept the application for the starting of restructuring proceedings or the declaration of bankruptcy, the Trustee nominated by the Authority shall be appointed in the same decision and his fees shall be assessed in accordance with the provisions of this Law."

or one of the creditors or if they have been sentenced for crimes against honor or dignity, as well as any partner of the debtor, whether an agent or an employee...<sup>(19)</sup>.

The UAE legislator stipulates that the Trustee is entitled to receive fees for the work he undertakes, in addition to recovering the expenses he has incurred to perform his duties. These fees shall be paid by the debtor's assets that have been seized or deposited by the Court. In cases where the debtor's assets are not known or the existing assets are insufficient to meet the Trustee's fees, he may apply to the competent president of the Court for the payment of his dues from the Court's treasury. It is expressly stipulated that: "The fees of the Trustee or any expense incurred during his work shall be paid through the debtor's assets to the Bankruptcy Administration: The Bankruptcy Court may disburse payment of such fees and expenses on account."

Pursuant to Article (53) of the Financial Reorganization and Bankruptcy Law, the Court may, at any time, after asking the opinion of the competent supervisory authority in the case of the debtor being subject to it, decide to replace the Trustee or controller. The debtor or any of the creditors may submit a request to replace either of them, provided that it is proven that his remaining in position is detrimental to the interests of the debtor or creditors. The Court may decide to replace the Trustee or the controller, who obliges the replaced person to cooperate to the extent necessary to enable his successor to perform his duties as required, and this obligation applies to those appointed before the entry into force of this law as well. The Trustee or the Controller may request the Court to relieve him of his or her duties, and the Court may accept such request and appoint a replacement, with the possibility of awarding him appropriate fees for the work performed during his or her tenure: (Khalil, 2019)

In Kuwaiti law, there are no specific legal provisions regulating the mechanism for replacing the Trustee in financial restructuring procedures, however, the general laws allow the competent Court to take action against the Trustee in the event of irregularities or failure to perform his duties, enabling it to replace him if necessary.

On the other hand, the French Commercial Code provides under articles L621-4 and L631-12 that the

<sup>(19)</sup>Article 41 of the UAE Law stipulates the following: "The Trustee may not be appointed from among the following persons:

1. One of the creditors.
2. Related party in respect of the debtor.
3. Any person against whom a conviction has been issued for a felony, or a misdemeanor of theft, embezzlement, fraud in commercial transactions, breach of trust, fraud, forgery, false

commercial Court shall appoint the judicial administrator - Administrateur judiciaire - if it deems it necessary in view of the size of the enterprise or the complexity of the financial situation. The Court may exempt from such an appointment if it considers that the debtor is able to continue to operate its business, or if the enterprise is small. The appointment is made by a decision of the Court and must be on the list of approved administrators (Vallens, 2020)

### 3.2. Tasks of the Trustee

The UAE legislator has addressed the duties and powers of the Trustee within the framework of financial restructuring and bankruptcy procedures through Articles (42) to (47) of Federal Decree-Law No. (51) of 2023, setting a precise regulation to ensure the effectiveness of the Trustee as a pivotal element in the proceedings and a mediator that achieves a balance between the interests of the debtor and creditors.

In Article (42), the legislator clarifies that the Trustee carries out his duties under the supervision of the Bankruptcy Administration. The Trustee is obliged to follow up the procedures quickly and steadily, and take measures that achieve effective protection of the rights of creditors. This provision establishes the principle of good governance in the management of the debtor's assets through an effective judicial oversight.

Article (43) grants the Trustee important competence in disputes related to the debtor's assets and business, as he may, after obtaining permission from the Bankruptcy Court - hear the debtor's statements or notifying them - enter into a conciliation or accept arbitration, as well as waive the debtor's rights or acknowledge the rights of others. This article embodies the limitation of the authority of the Trustee by legal controls that ensure a balance between the flexibility of the administration and the protection of the financial interests of the parties concerned.

In Article (44), the legislator linked the role of the Trustee to the requirements of the profession of judicial expertise, obliging him to abide by the same duties imposed on judicial experts under Federal Decree-Law No. (21) of 2022, as long as they do not

testimony, bribery, or any of the crimes stipulated in this Law, or any misdemeanor affecting the national economy, even if he has been rehabilitated.

4. Any person who, during the last two years preceding the request to start proceedings, was a partner or employee of the debtor, an auditor of its accounts, or an agent thereof."

conflict with the provisions of the Bankruptcy Law. It also permitted the Trustee to evaluate the debtor's assets, when necessary, as well to allow the debtor and the creditors to provide Requests to the Court to rule on the extent of its jurisdiction in specific matters, provided that the ongoing proceedings are not disrupted. This linkage between the functions of the Trustee and the profession of judicial expertise is a qualitative step that enhances professionalism and impartiality in the execution of these roles. (Al-Suwaidi, 2024).

In Article (45), the Trustee has to receive the debtor's correspondence related to the debtor's business, while enabling the debtor to access them, and to deliver to him correspondence of a personal nature or those that are subject to professional confidentiality and are not related to the procedures in course, which reflects the legislator's respect for the debtor's private rights within the general procedural framework.

Article (46) deals with the financial aspects, as it requires the Trustee to deposit any amount obtained within the procedures in a special account of the bank determined by the Court, within two working days from the date of receipt and submit an account statement to the Court within five days. In the event of undue delay, the Court may impose an annual fine of up to 9% of the arrears, provided that such fines are deposited within the general guarantee linked to the creditors. The Court may allow the replacement of the Trustee in the event of a repeat violation. This article shows the legislator's interest in establishing standards of financial discipline and ensuring the maximum protection of creditors' rights.

Article (47) establishes the principle of institutional transparency, as it obliges the Trustee to record all his work in organized books, whether in paper or electronically, and to make them accessible to the Supervisory Unit, creditors, and the debtor. The text authorizes these entities to request copies of documents or information related to the management of the debtor's assets. If the Trustee refuses to empower them, any interested party can

apply to the Court, and the request will be decided within ten days. This provision is one of the most prominent forms of preventive legal control, which prevents administrative abuse of power.

According to Article (49), the Trustee has to submit periodic reports - monthly or as determined by the Court - to the Bankruptcy unit and the Supervisory Unit (if any), including accurate data on the progress of the proceedings, the status of the debtor's assets, and the progress of the reorganization or bankruptcy plan. This institutional reporting commitment strengthens the element of continuous follow-up and enables the Court to intervene in a timely manner when necessary.

As for the Kuwaiti legislator, the duties of the Trustee were regulated within Law No. (71) of 2020, especially in Articles (41), (42) and (44).

Article 41 stipulates that the Trustee shall manage the debtor's assets and business, and shall act in his place in all the actions necessary for that administration, and shall even enjoy the same powers as the board of directors and the chief executive if the debtor is a company, which reflects the granting of broad executive authority to the Trustee. On the other hand, article 42 of the Kuwaiti Law<sup>20</sup>, is almost identical to article 43 of the UAE law by granting the Trustee the power to accept arbitration or conciliation, and waive the debtor's rights or to acknowledge the rights of others, subject to the approval of the bankruptcy Court, by hearing or notifying the debtor.<sup>21</sup>

From a financial point of view, Article (44) is binding the Trustee to deposit the received assets in a special account within two working days, with the submission of an account statement within five days or within the period determined by the Court. However, Kuwaiti law does not establish any fine for any delay, unlike UAE legislation, which has adopted a stricter approach.

#### **It appears from the above the following**

**First:** Within the scope of general powers and supervision: UAE and Kuwaiti laws give the Trustee direct authority over the debtor's assets and business

<sup>(20)</sup> Mishari Obaid Al-Anzi, Bankruptcy Law, website. For more information, see here: [https://kuwaitlawyer.net/459-2/?utm\\_source=chatgpt.com](https://kuwaitlawyer.net/459-2/?utm_source=chatgpt.com) visited on 1/6/2025.

<sup>(21)</sup> of the Law: "1. The Trustee shall record all acts relating to the management of the debtor's assets and business in the books and records prepared for that purpose, and the recording may be electronic. The Unit, creditors, and representatives of creditors' committees, as the case may be, and the debtor may have access to these books and records.

2. The Unit, creditors, and representatives of creditors' committees, as the case may be, and the debtor may request to be provided with

copies of the documents available with the Trustee whenever they relate to the debtor's assets or business, or to provide them with data or information from the books and records referred to in clause (1) of this Article.

3. In the event that the Trustee fails to provide the unit or creditors, as the case may be, or the debtor with copies of the documents available to him, any interested party may request the Bankruptcy Court to assign the Trustee to provide him with the documents or enable him to view them, and the Court shall issue its decision on the request within ten (10) days from the date of its submission.

however UAE law places more emphasis on the supervision of the bankruptcy unit regarding the performance of the Trustee, while in Kuwaiti law the Trustee enjoys a broad authority to act, especially if the debtor is a company.

**Second:** Regarding the acceptance of Arbitration or Conciliation: Both legislations restrict the Trustee's authority in this area to the need to obtain prior judicial authorization, after informing the debtor: this shows a balance between protecting the debtor's interests and giving the Trustee flexible powers.

**Third:** In the scope of Financial and Organizational Obligations: The UAE law added an important detail represented in the imposition of a delay fine on the Trustee if he does not deposit the amounts on time, which is considered a deterrent measure to ensure financial efficiency and discipline, while there is no explicit provision in Kuwaiti law.

**Fourth:** Regarding transparency and access to information :It is notable in the UAE law the elaboration of a mechanism for accessing the records of the Trustee as well as conceding the right of multiple parties (the bankruptcy unit, the creditors, the creditors' committees, and the debtor) to request copies and documents and get legal guarantees in the event of the Trustee's refusal, while Kuwaiti law did not detail such matter. (Shaaban, 2018)

It can be concluded that the UAE legislator has succeeded in building an integrated model of Trusteeship within the financial restructuring system, based on the principle of mutual control, procedural transparency, and administrative effectiveness, while providing clear legal paths for appeal or objection, which consolidates the confidence of the parties in the judicial process and enhances the chances of success of restructuring plans. Kuwait's legislature, while granting the Trustee broad administrative powers, the detailed organization of internal oversight and scrupulous accountability is less clear than that of the Emirati counterpart, which may lead to broader jurisprudence for the competent judge or Court.

### **3.3. Appointment and Duties of a Supervisory Body**

#### **3.3.1. The Role of the Controller in UAE Law**

Federal Decree-Law No. (51) of 2023 on Financial Reorganization and Bankruptcy in the United Arab Emirates entrusted the oversight tasks to two bodies

**1. The Bankruptcy unit:** It is the regulator that follows up the proceedings and provides administrative and technical support to the Court.

**2. A Controller:** According to Article (52), he shall be appointed by a decision of the Court when necessary, and his role shall be limited to the preparation of reports on the progress of the proceedings, without the powers of direct intervention or executive supervision of the actions of the debtor or the Trustee.

Thus, the supervisory role in UAE law remains limited, based on monitoring and reporting only, without granting the controller field powers to inspect or investigate, which may weaken the efficiency of oversight in complex or intertwined cases.

#### **3.3.2. The Role of the Inspector in Kuwaiti Law**

The Kuwaiti legislator introduced the position of Inspector ("controller") as an independent supervisory body in the Bankruptcy Law No. (71) of 2020, and defined it in article (1) as: "A licensed person who inspects the debtor's business and records or specific facts, and prepares a report thereon.". (Mohammed, 2019).

The legislator has set out the Inspector competencies in detail in Articles (51-53), **granting broad powers** as follows (Al-Anzi, 2025)

- Comprehensive inspection of the debtor's actions, or verification of certain facts related to his financial liability.
- Gather evidence and relevant information, and request testimonies without taking an oath.
- Request documents from any relevant party, whether the debtor; Creditors, regulatory or governmental bodies.
- Submit detailed reports to the bankruptcy judge within the specified time frames, with the possibility of requesting an extension.
- Recommend urgent precautionary measures to protect the debtor's assets or the interests of creditors.

The law also stipulates procedural guarantees represented by the concerned authorities to plea the controller's requests, within ten working days from the date of notification, and the bankruptcy judge will decide on them by a final decision that is not subject to appeal. In Kuwaiti law, the Inspector represents a strong and direct oversight tool that enhances transparency and provides real field control over the debtor's actions, which establishes the principles of integrity and accountability in bankruptcy proceedings.

#### **3.3.3. Supervisory Bodies in French Law**

French law takes a different approach, **as** it does not provide for the "controller" **as** an independent

body, but rather distributes the supervisory tasks to three **main bodies**

- **Judge Delegate (Juge-Commissaire):** Carries out general judicial supervision of proceedings and has the authority to direct the judicial administrator ( Administrateur judiciaire ).
- **Creditor representative (mandataire judiciaire):** represents the interests of creditors, collects their claims and certified them. (Vallens, 2020)
- **Judicial administrator (administrateur judiciaire):** has broad executive powers, including supervision, participation or full management of the debtor's business, prepares regular reports, and has the power to propose a reorganization or liquidation plan, and even to challenge the debtor's conduct. (Vallens, 2020).

The French model is characterized by the distribution of oversight tasks to more than one entity, which reduces the possibility of conflicts of interest and ensures accurate and multi-faceted oversight. We believe that Kuwaiti law is the most notable in terms of having an independent supervisory body with real field powers (the Inspector), which enhances transparency and ensures the effectiveness of control procedures in the financial reorganization phase. While the UAE law advancing in other procedural aspects, lacks a field inspection mechanism and relies on non-intrusive reports, which creates a regulatory gap that may affect the Quality of execution. French law excels in terms of institutional structure and the distribution of supervisory powers among several judicial and professional parties, which point out a balance between procedural speed and judicial and financial control.

#### 4. FORMULATION OF A FINANCIAL REORGANIZATION PROPOSAL

##### 4.1 Determining the content of the financial reorganization plan

The success of a financial restructuring plan depends on the accuracy and objectivity of its

<sup>(22)</sup> Gurrea-Martínez, A. (2023). *Debtor-in-possession in corporate reorganization: Comparative insights and reforms*. European Business Organization Law Review, 24(1), 51-78. <https://doi.org/10.1007/s40804-022-00284-z> visited on 9/6/2025.

<sup>(23)</sup> The UAE legislature stipulates the following: "1. If the Bankruptcy Court issues a decision to start the restructuring proceedings, the debtor shall prepare the restructuring plan under the supervision of the Trustee, and the debtor may use the unit if the debtor is subject to a supervisory authority in preparing the plan.

content, as it is the cornerstone of determining the future of the company and its financial and administrative position. **Therefore**, the preparation of a rigorous and objective study of the debtor's situation is essential and should include an analysis of the causes of the financial turmoil, identification of the affected sectors, and the development of practical solutions to remedy the deficiencies. Proposed corrective actions and operational mechanisms are an integral part of convincing the parties concerned of the feasibility of the plan and its necessity, which enhances the chances of its adoption and success.

One French jurist argued that the success of the restructuring plan depended on its transparency and objectivity, and on the extent to which it was subject to specialized supervision and effective judicial scrutiny, **thus** ensuring balanced protection of the interests of the creditors and the survival of the enterprise.<sup>22</sup>

Under article 107/1 of the UAE Financial Restructuring and Bankruptcy Law<sup>23</sup>, the preparation of the plan shall be entrusted to the debtor, as the party most familiar with the internal circumstances of the company, and in order to ensure the success of the plan in order to avoid declaring bankruptcy. The plan must be prepared under the supervision of the Trustee, and with the assistance of the Financial Restructuring and Bankruptcy Unit if the company is subject to external control. (Fares, 2025).

This approach was also adopted by Kuwaiti law in article 117/1, which confirmed the debtor's responsibility for the development of the plan.

The plan contains key information, such as the plan of the future company's activity, statements of creditors and debtors, classification of creditors, identification of activities to be discontinued, terms of settlements, guarantees, offers for the purchase of assets, debt scheduling, possible conversion of debt into equity, financing needs and mechanisms for the implementation of the plan.<sup>24</sup>

We conclude that a reorganization plan is a comprehensive tool that enables an intervention in various elements of the company, including

The debtor shall deposit the plan with the Bankruptcy unit within a period not exceeding three (3) months from the date of issuance of the decision, and the Court may extend this period for a similar period or more at the request of the debtor after hearing the unit. In all cases, the required majority must approve any extension that would make the period for the preparation and development of the restructuring plan exceed six (6) months...".

<sup>(24)</sup> Article (108) of the Financial Reorganization and Bankruptcy Law No. (51) of 2023.

management, assets, and operations, to achieve the dual goal of rehabilitating the business and achieving financial balance vis-à-vis creditors.

Article (111) of the UAE law established that the plan can be based on the debtor renouncing some or all of its assets, converting debts into equity, or transforming part of the debt into property shares subject to the approval of the General Assembly or its equivalent in other companies. However, Kuwaiti law stipulates in article 121 that the approval of the Extraordinary General Assembly must be obtained, reflecting a trend towards expanding collective participation in the approval of the plan.<sup>25</sup>

The main difference between the two texts is the nature of the entity that approves the plan, as UAE law requires the approval of the Ordinary General Assembly, while Kuwaiti law requires the approval of the Extraordinary General Assembly, which enhances the internal oversight nature and emphasizes the need for an expanded consensus.

#### **4.2. Deposit and Notification of the Financial Reorganization Plan**

Article 107 of the UAE Bankruptcy Law stipulates that the debtor is obliged to deposit a financial restructuring plan within three months from the date of commencement of the proceedings before the competent Court, the later may extend this period, if necessary, provided that the total period of preparation and development of the plan does not exceed six months except with the approval of the necessary majority of creditors. When the debtor is subject to external control, the Trustee is required to submit monthly reports to the Bankruptcy unit and the Financial Restructuring Unit on the progress of the preparation of the plan. (Fares, 2025).

After the plan has been deposited, the debtor shall notify the Trustee, the Financial Restructuring Unit, the representative of the creditors committee and all its members of the plan and its annexes. The representative of the creditors' committee shall be instructed to notify all the "categories" of creditors he represents on the day following the reception of the plan.

<sup>(25)</sup> Law No. (71) / 2020 regarding Kuwaiti Bankruptcy system.

<sup>(26)</sup> Article 110 of the UAE Financial Restructuring and Bankruptcy Law stipulates the following: "The debtor shall, within the deadline stipulated in clause (1) of Article 107 of this Law, notify the Trustee and the Unit, if the debtor is subject to a supervisory body, and the representative of the creditors committee and the members of the committee of the plan and its annexes, and the representative of the creditors committee shall notify the class of creditors he represents of the plan and its annexes no later than the end of the working day following the date of receipt of the plan

Kuwaiti law provides for a similar arrangement in Article 120, which strengthens participatory responsibility and prevents the monopoly of information.<sup>26</sup>

In comparative studies, one jurist has pointed out that the speed and transparency of the notifications are essential in enabling creditors to be informed when voting decisions on the plan<sup>27</sup>.

If the debtor fails to deposit the plan within the statutory time limit, UAE law allows the Court to terminate the reorganization proceedings at the request of creditors or the Supervisory Unit, within ten days of the submission of the application.

French law, in article L626-5 of the Commercial Code, places the responsibility for the deposit of the plan on the debtor or the judicial administrator and requires that the plan include a detailed economic analysis and financial statement, subject to strict judicial scrutiny (Vallens, 2020). This shows that French law is more stringent in evaluating the content of the plan than its Emirati and Kuwaiti counterparts.

We may conclude that all the laws under consideration underline the need to submit a detailed financial plan within a specific period, with the possibility of extension according to controls. The UAE and Kuwaiti laws are characterized by assigning responsibility for the preparation of the plan to the debtor with the supervision of the Trustee, while the French law excels in the rigor of the technical and supervisory evaluation of the content of the plan.

#### **4.3. Creditors' Approval of the Financial Reorganization Plan**

##### **4.3.1 Creditors Discuss Financial Restructuring Plan**

According to article 113 of the UAE Law the debtor has to call the creditors for a meeting within a period not exceeding 30 days from the date of delivery of a copy of the plan to the creditors committee. (Faydallah, 2022).

Article (123) of the Kuwaiti law is similar to the rules above mentioned, with the addition of the

and its annexes." The legislator stipulated In Article (120), the Kuwaiti stipulates the following: "... The representative of the creditors committee and each of its members shall notify the class of creditors he represents of the plan and its annexes no later than the end of the working day following the date of receipt of the plan and its annexes."

<sup>(27)</sup> Brouwer (M) (2006). *Reorganization in US Bankruptcy Law: A model for the EU?* International Review of Law and Economics, 26(4), pp 446-464. <https://doi.org/10.1016/j.irle.2007.01.001>, visited on 13/6/2025

organization of attendance at the meeting through modern means of communication. On the other hand, the Trustee must be present in person, and it is sufficient for the debtor and the Trustee or the chairman of the meeting to sign the minutes.

The debtor is supposed to chair the meeting, however, the Trustee, another creditor, or any impartial person may, with the majority consent, replace him. If the debtor refuses to call for the meeting, the Trustee, the supervisory unit, or a creditor may request the Court's intervention, which will issue a decision regarding the organization of the meeting: the Trustee shall preside over the meeting. The debtor must provide a detailed explanation of the plan, and any party present has the right to express its opinion or request amendments. If the requested amendments contain substantial details, a new meeting shall be convened to discuss them. (Ahmed, 2024).

We note that both UAE and Kuwaiti laws regulate the meeting in a way that balances the participation of creditors with the effectiveness of the proceedings, while providing guarantees of a legally regulated physical or electronically presence. French law in Article 626-29 gives a greater role to creditor committees, which are divided according to the type of debt, and the plan is presented to them for discussion and vote, reflecting a more precise and representative approach for the different creditors' interests.

#### **4.3.2. Creditors Vote on the Financial Reorganization Plan**

Voting is limited to creditors whose debts have been conclusively accepted, and the Court may enable provisional claimants to vote under conditions. (Al-Musafir, 2019). Those whose debts have been rejected are not entitled to vote. This approach also applies to Kuwaiti law under article (77) (Ahmed, 2024), which limits voting to creditors mentioned in the plan whose claims have been accepted.

Secured creditors are not entitled to vote unless their right is affected by the plan. In such a case, the Court may allow them to vote on the value of the secured debt without prejudice to their collateral, or to vote if they have waived it in advance. The plan is acceptable if it has the support of creditors representing two thirds of the value of the debt represented at the meeting. If a majority is not achieved, a second meeting shall be held ten days

later, and if the plan is not adopted, it shall be considered a final rejection.<sup>28</sup>

UAE law requires that the meeting be documented by a record signed by the present parties, or else, the signature of the debtor and the judicial controller be proved if the meeting is held electronically. In Kuwaiti law, Article 13 of the Executive Regulations requires that the meeting be recorded in audio and video, and a copy must be sent to the Bankruptcy unit.<sup>29</sup>

However, French law (L626-30) provides for the adoption of the plan by a numerical and financial majority within each creditors' committee, with the possibility of passing the plan despite any objection if the conditions of protection are met, reflecting a more accurate and fair system of representation. (Errabih, 2022).

It is clear from the comparison of the laws under study that the UAE system pays great attention to the formal procedural aspects, and seeks to achieve a balance between the powers of the debtor and the rights of creditors, but it remains more conservative compared to the French system in terms of representation and decision-making mechanisms. As for the Kuwaiti legislator, he focused on developing technical and electronic monitoring mechanisms, especially with regard to documenting meetings, providing a similar organization to the UAE system with some additions that enhance transparency and institutional oversight. In contrast, the French system is characterized by an advanced institutional structure, based on the existence of independent creditor committees and the requirement of a double majority (numerical and financial) within each committee, which ensures a fairer and more balanced representation of the interests of different categories of creditors, and emphasizes the participatory nature of the adoption of the financial restructuring plan.

#### **4.3.3. Implementation and Enforcement Challenges**

Immediate effect upon opening, clear statutory carve-outs and timely notification to creditors. Gaps in timing or service erode protection and may trigger creditor runs, whereas predictable timelines and sanctions for violations enhance plan feasibility. Interim (DIP) Financing. Judicially supervised access to new money together with calibrated priority and good-faith safeguards supports going-concern outcomes. Ambiguity over ranking or claw-back risk discourages lenders and can underfund otherwise viable plans. Institutional Capacity and Case

<sup>(28)</sup> Article 1, Concept of the absolute majority of the UAE Financial Restructuring and Bankruptcy Law.

<sup>(29)</sup> Executive Regulation No. (81) of 2021 regarding the Bankruptcy Law No. (71) of 2020.

**Management.** Specialized benches/units, standardized templates, and digital filing reduce frictions and shorten cycle-times. Where institutional capacity is nascent, enforcement gaps rather than black-letter law often explain weak outcomes. **SME Access and Cost.** Streamlined entry thresholds, capped professional fees, and simplified disclosure and voting broaden access to rescue without undermining creditor safeguards. Comparative Note. While the three systems share a rescue orientation, differences in institutional design (administrative support / committee / court-centric) mean that implementation tools not formal rules largely determine effectiveness in practice.

## 5. CONCLUSION

This research reached the conclusion that financial restructuring represents an effective legislative tool aimed at rescuing distressed enterprises and giving them an opportunity to restructure away from traditional bankruptcy procedures.

The comparative study between UAE and Kuwaiti laws showed that there is a notable convergence regarding the general structure and procedures, with partial differences related to the degree of flexibility, and expansion in the technical and supervisory aspects of Kuwaiti law. The French experience has shown the importance of involving special creditors' committees and rigorous judicial oversight and thus, enhancing the effectiveness of the plan and ensuring its fairness. It appears, also, in this research that the balance between the debtor's protection and an effective control performed by creditors is at the core of the success of the financial reorganization system.

Considering the comparative findings, the recommendations adopt a jurisdiction-specific orientation: (i) in the UAE, enhance procedural timelines and resource the centralized unit to consolidate stay enforcement; (ii) in Kuwait, calibrate voting and confirmation standards and develop predictable rules for supervised new money; (iii) in France, leverage mature cram-down practice while

streamlining SME access and cost. Across all three systems, capacity-building for courts and officeholders and transparent metrics for case management remain decisive for effective corporate rescue.

Finally, we recommend the need to strengthen the independence of the Controller by activating his supervisory role more clearly, as well as the need to expand the powers of the Court to ensure immediate intervention in the event of a breach of the plan. We also call for the preparation of reorganization plans with a higher level of transparency and financial rigor, and the inclusion of objective criteria to assess their feasibility before ratification. We, also, call for the development of the electronic structure of the proceedings, and the training of judges, judicial controllers and secretaries on reorganization mechanisms in line with international best practices.

## 6. RECOMMENDATIONS (JURISDICTION-SPECIFIC)

**United Arab Emirates (UAE).** Enhance procedural timelines for stay issuance and notifications; resource and standardize the centralized bankruptcy/restructuring unit; and adopt clear, court-supervised priority rules for interim Debtor-in-Possession Financing (DIP) finance.

**Kuwait.** Calibrate creditor voting and plan confirmation standards (feasibility/good faith); develop predictable, court-approved new-money mechanisms; and publish forms/guidance to reduce transaction costs for Small and Medium Enterprises (SMEs).

**France.** Leverage mature cram-down practice while streamlining access and costs for SMEs; continue digitizing filings and case management to shorten cycle-times.

**Cross-cutting.** Invest in institutional capacity (specialized benches/units, templates, digital portals) and adopt transparent performance metrics to close enforcement gaps across all three systems.

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