

# **Modernizing the Bankruptcy System**

## **(Egypt and Jordan)**



**The U.S.-Middle East Partnership Initiative**



**The Arab Center for the Rule of Law and Integrity**

Beirut - Lebanon 2014

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## Preface

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The Arab Center for the Development of the Rule of Law and Integrity (ACRLI)<sup>1</sup> has designed and implemented a regional project entitled “Middle East Bankruptcy Law Reform Initiative” in each of Egypt and Jordan with the support of the U.S. Middle East Partnership Initiative (MEPI)<sup>2</sup>.

ACRLI performed this project in cooperation with its partners; Eurasia Foundation<sup>3</sup>, the “Nile Advisory Group”<sup>4</sup> from Egypt and “Bakr & Odeh Advocates & Legal Consultants”<sup>5</sup> from Jordan, with the collaboration of national networks of concerned stakeholders and decision makers from both countries.

The project aims at creating a business-enabling legal environment that enhances trust in the investments and loans’ processes, through an in-depth legal analysis of the bankruptcy system in each of the two concerned countries with a view to improving the bankruptcy system proceedings and achieving the economic growth.

The project aims to

1) Develop a national report for each of the two concerned countries. This report presents a general overview on the deficiencies, strengths and weaknesses of the current bankruptcy law, with an emphasis on the previous reform attempts. It also sets out a series of reform proposals/recommendations which includes the addition, amendment and abrogation of certain legal provisions, in order to protect the creditors’ rights, strengthen the national economy and promote trust in the business environment and investment. Based on these reform proposals, a comparative report is developed to present the results of both national reports in light of the main international principles and best practices.

- 1 The Arab Center for the Development of the Rule of Law and Integrity (ACRLI) is an Arab regional, non-governmental and non-profit organization, founded in 2003 by a group of judges, specialists in rule of law, lawyers and academics from various Arab countries. For more information, please check the following website: [www.arabruleoflaw.org](http://www.arabruleoflaw.org).
- 2 The U.S.-Middle East Partnership Initiative (MEPI) of the State Department offers assistance, training, and support to groups and individuals striving to create positive change in the society. MEPI works in 18 countries and territories. MEPI has been active in the MENA region since 2002, contributing over \$600 million to more than 1,000 grant projects. For more information, please check the following website: <http://mepi.state.gov>
- 3 Eurasia Foundation is a leader in the development of open, just and progressive societies. Its programs promote local economic development, youth engagement, cross border cooperation, independent media and public policy, and institution building. Eurasia Foundation encourages and enables citizens and communities to seek local solutions for local problems. For more information, please check the following website: <http://eurasia.org/>
- 4 Nile Advisory Group is a limited liability company that is established in 2008 in Egypt by a number of specialists in the field of law and investment.
- 5 Bakr & Odeh Advocates & Legal Consultants - Amman – Jordan.

2) Implement advocacy and awareness campaigns which target concerned decision and policy-makers from both countries in order to promote the modernization of the bankruptcy systems and the implementation of the reform recommendations through convincing policy makers to support them. The awareness campaign shall comprise several activities and tools which are 1) Interviews with decision-makers concerned in modernizing bankruptcy systems in both Egypt and Jordan2,) Press and television interviews highlighting the importance and the need to modernize bankruptcy, 3) Brochures introducing and briefing on the project and highlighting the importance of modernizing bankruptcy systems in both Egypt and Jordan, and 4) A documentary movie about bankruptcy law reform in each of the two countries.

## Project Executive Summary

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The project adopted a clear scientific methodological approach to implement its activities, and to develop the national reports for reform.

The approach ,however ,differed according to the peculiarities of each country, especially that the Hashemite Kingdom of Jordan has already witnessed the proposal of a draft law for modernizing the bankruptcy system which is currently being studied by the competent parliamentary committees in order to be issued.

The implementation stage of the project went through several phases, which extended over a period of one year.

The Arab Center for the Development of the Rule of Law and Integrity (ACRLI), and in collaboration with its partners, has conducted the following activities:

1-Developing methodologies for drafting the national and regional reports as well as for managing the focus groups' sessions and formulating the baseline survey questions.

2 - Holding a series of plenary sessions/focus groups in each of the concerned countries in the project. A group consisting of concerned ministries representatives (e.g. Ministry of Commerce, the companies control department and others), jurists (judges, lawyers, professors of law) and businessmen involved in bankruptcy, has participated in these plenary sessions. These sessions have discussed various topics, mainly: **1)** The strengths and weaknesses of the current bankruptcy law, especially on the practical level, with a focus on the previous reform initiatives; **2)** Specific Legal issues related to the bankruptcy system and commercial law (Liability of the company's director – execution procedures-access to information. . .); **3)** Different international experiences of bankruptcy law reform.

3- Implementing the baseline survey in each of the two countries: Egypt and Jordan. The respondents included about 60 persons who were chosen based on their involvement in bankruptcy, as a field. The baseline survey questions were developed by experts from the Advocacy, Consultancy & Arbitration Office (ACA), based on the outcomes of the plenary sessions regarding the strengths and weaknesses of the current bankruptcy law (of the two concerned countries) and the draft law presented to the parliament (in Jordan). The questions were formulated based on the discussed topics.

4- Preparation of two national reports: A legal expert in each country has prepared a national report which highlighted on some of the facts of the bankruptcy system in the country, both from a theoretical and practical perspective. The formulation of each report was based on a logical reform methodology which has presented the main strengths and weaknesses of the current bankruptcy system. The report included an analysis on the shortcomings of specific legal points with an emphasis on the reasons

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for their incompatibility with the situation of the country. Furthermore, the reform proposals, which were brought forward, have been explained and supported by the results of the baseline survey and the outcomes of the brainstorming sessions as well as by the main related international instruments, namely The World Bank Principles for Effective Creditor Rights and Insolvency Systems and UNCITRAL Legislative Guide on Insolvency Law.

5- Organization of national workshops in each of the concerned countries which aimed to present and discuss the draft national report in order to achieve a common understanding between the participants and obtain their endorsement on the reform recommendations therein. These workshops have gathered a large group of public sector representatives, judges, concerned stakeholders and civil society organizations (CSOs), during which fruitful discussions took place regarding the reform priorities and possibilities and the needed strategies for their applications. The draft reports have been amended by the experts in light of the discussions that took place during the national workshops and accordingly have been finalized.

6- Development of a compendium that includes:

Outputs and results of the project,

A list of national, regional and international references related to bankruptcy law reform, including the main international principles,

National laws and jurisprudence from both concerned countries,

Other references from the MENA region related to Bankruptcy system.

ACRLI will be continuously updating the compendium throughout the duration of the project and beyond. It will become an electronic portal that includes legal information related to bankruptcy systems..

7 -Preparation of a regional report :the report was mainly based on the reports of the two national experts ,the background papers prepared by ACRLI Research Department ,and on the outputs of brainstorming sessions .The report focused on the common elements and the differences between each of the two concerned countries taking into account the institutional ,economic and social discrepancies .At the end ,it has presented an analysis of the baseline surveys results and put forward a set of reform recommendations as part of an overall modernization strategy ,in accordance with the international principles) The World Bank Principles for Effective Creditor Rights and Insolvency Systems ,and the UNCITRAL Legislative Guide on Insolvency Law.(

8 -Organization of the regional conference:

The project activities shall end by a regional conference which will be attended by experts from the concerned two countries ,in addition to representatives for concerned international organizations) World Bank ,UNCITRAL ,etc.(.

The conference not only aims to discuss the regional report but also to develop a road map towards enhancing the bankruptcy system and achieving the reform recommendations.

This book explains and examines the prominent efforts exerted in the context of



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the project ,in the field of research ,analysis and audit ,which aim at reforming the bankruptcy system in each of the two countries :Egypt and Jordan. It includes three main sections, in addition to the Executive Summary and Appendices. The first section includes a comparative regional report. The following sections include the National Report of Jordan and the national report of Egypt.

The Arab Center for the Development of the Rule of Law and Integrity acknowledges the efforts of all parties who helped in the development of this book, and extends appreciation to the distinctive contribution of:

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Eurasia Foundation

Advocacy, Consultancy & Arbitration Office (ACA)

Regional Project team: Nancy Antoun El-Khoury, Sarah Rammal, Ivana Assi.

ACRLI repeats its gratitude to all of the above parties and confirms its willingness to maintain the reform activities toward strengthening the rule of law in the Arab countries.

**Wassim Harb**

**Chief Technical Advisor**

**Middle East Bankruptcy Law Reform**



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## **Section One**

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# **The Comparative Regional Report**



## Introduction

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Bankruptcy, as a system, provides a legal mechanism for creditors to recover their debts through seizing and selling the assets of the debtor; and thus, it has gained high importance as a main pillar of commercial law. Most related global approaches fall within two main trends: the first is the Roman collective liquidation system which ensures equality among all creditors in recovering their debts by means of attachment of debtor's property and distributing the outcome on the creditors based on the amount of each one's debt. The second approach is the Germanic system, where the creditor attaches in advance part of the debtor's property, as a guarantee to recover his debt, in case of nonfulfillment, prior to all other creditors<sup>1</sup>. It should be noted that the legislations that govern the bankruptcy systems are different in terms of their extent of comprehensiveness when applied. Therefore, in several Middle Eastern and African countries, including Egypt and Jordan, bankruptcy is exclusively applicable to traders; whereas in some other countries like Germany, the United States of America, and Switzerland, bankruptcy is applied on citizens, both traders and non-traders alike, without exceptions.

Bankruptcy, which is a highly correlated concept with the credit system, serves not only as a cornerstone to an effective commercial system, but also as the pushing force which encourages all sorts of commercial relations and transactions. Such transactions would be no doubt enhanced through an effective and solid lending process that in turn requires trust in the legal system that governs them in such a way that protects debts and the ability to collect them; specifically in terms of recovering the amount of money that has been loaned.

Any business (whether owned by an individual or a company) may go through

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1- The modern bankruptcy system originated from the laws of the Italian cities which adopted the collective Roman liquidation system; this system has spread from Italy to France where the French commercial laws of 1673 and of 1807 were keen to force the debtor and to arrest him regardless the reason of his bankruptcy as well as to deprive him from some of his civil and political rights. Such harsh treatment caused the debtor to escape whenever he felt that his financial position is about to be unstable; a thing that led to difficulties in the process of liquidation of his properties. In view of that, in 1838, the French legislator introduced some legislative modifications to mitigate this severity. Also in 1889, a system for the traders with good faith was established in order to differentiate between trader with ill intentions and unfortunate traders with good intentions. As a result, the French law comprised two distinct systems for traders who ceased paying their debts: the first is bankruptcy, whereas the second is legal liquidation which was replaced by legal settlement system in the law that was issued in 1955. This latter system ensures the ability to continue the operation of the business enterprise despite its cessation of payment through composition with the creditors. As for bankruptcy, it became considered as a mere sanction for the ineligible and negligent trader.

financial crises. These crises may start to happen before the trader reaches the state of cessation of payment, either because of bad or unreasonable project management or because of external objective economic conditions, like (war, corruption..., or other several reasons...). In all of these cases, the cessation of payment is either because of a temporary shortage in liquidity- though not necessarily in solvency (the enterprise might own assets that largely exceed its liabilities), or because of a permanent shortage in liquidity which manifests weakness in solvency.

Recently, The system of bankruptcy has witnessed several developments, especially in view of the current globalization, the expansion of trade outside the region limits, and the intensification of the economic competition, whether within the country or abroad; the positive balance accounts of the trader accounts are no longer based on his keenness and intelligence only, but it is also based on external factors that are inevitable<sup>1</sup>, which leads to a disturbance in the business of the trader and thus the cessation of payment. This problem led many international organizations, including the International Trade Organization, UNCITRAL, the World Bank, and others to work on the protection of creditors and investors, as well as on enhancing the process of lending and commercial trust through setting out a set of international principles and guidelines (World Bank Principles for Effective Insolvency and Creditor's Rights System and UNCITRAL Legislative Guide on Insolvency Law) which help and motivate the countries to reform their legal system. Bankruptcy is no longer an internal concern only, but an external one as well.

Yet, and in spite of what was mentioned previously, the bankruptcy laws of most Arab countries, including Egypt and Jordan, which are inspired from the old French legal system, have not witnessed any radical modifications. A few other Arab countries, however, like the Gulf countries and some northwest African Arab countries have modernized their commercial legislation in conformity with the recent endeavor of developed countries to find new ways to avoid bankruptcy through reorganization. In this regard, there are two approaches<sup>2</sup>.

**The Anglo-Saxon approach:** it paved the way to save the business before it actually defaults; thus, whenever there is any indication that the business is going to suffer from defaulting, either because of personal or external circumstances (disturbance in the financial markets, shortage in the primary resources, sudden and high increase in the prices of raw materials, etc...). This rescue operation manifests the importance of the business enterprise as a strong keystone to the national economy, since it aims to end its defaults and reorganize it either by merging it with another project, or by increasing its capital or any other solution. As for **the French approach**, its whole strategy is based on the idea that no attempts to rescue shall be made unless the business enterprise has

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1- Like the continuous international and national economic crises, like the recent international economic crises that took place in 2008.

2- One of the approaches is dominated by the Anglo-Saxons system, and the other is dominated by the Romanian-Germanic system, which formed that French system.

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already entered into the phase of defaulting (a significant decrease in liquidity, and a significant decrease in solvency) which precedes the phase of cessation of payment. Thus, rescuing attempts can be proposed either by reorganizing the capital of the business or by rescheduling the debts (same solutions of reorganization that was mentioned previously), or any other rescue solutions that are different in nature and mechanism from what is proposed by the bankruptcy prevention settlement system (composition), which remains valid as one of the settlements to rescue the defaulted business.

In Egypt and Jordan, bankruptcy plays a very important role in improving the business environment and making it more enabling for credit and investment. Thus, the modification, addition, and abrogation of some bankruptcy provisions is highly necessary and should be a priority for the Egyptian and Jordanian legislators, especially in view that the bankruptcy systems there are quite old and have not been modified in a very long time.

Consequently, a national expert from each of Egypt and Jordan has prepared a theoretical and practical field study on the bankruptcy system in his country, whereby he addressed the obstacles, difficulties, and problems that encounter bankruptcy proceedings before courts (for example, the delay in decision making, the slow recovery of debts, the high cost of bankruptcy and its consumption of the organization assets, etc.) Therefore, several reform recommendations were set out by the two national experts.

This comparative report includes firstly an analytical assessment and comparison of the shared and distinct factors between each of the two pilot countries, while taking into consideration the institutional, economic, and social differences; it then contains a comparative presentation of the survey results; and finally, it reviews the reform recommendations in conformity with the international principles, namely the World Bank Principles for Effective Insolvency and Creditor's Rights System and UNCITRAL Legislative Guide on Insolvency Law.

## Chapter One

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### **The Relation between the Two Pilot Countries (Egypt and Jordan): Similarities and Differences**

Any comprehensive study, analysis, and comparison of the two legal systems in Egypt and Jordan should start off from an identification of the social, economic, cultural, and political factors that influence the legal environment in them. This, in turn, requires, first, comparing the applicable bankruptcy systems in both countries, and, second, presenting any previous reform attempts that have been made, and, finally, reviewing the legal texts on bankruptcy in each of the two countries.

#### **A. Comparing the bankruptcy system in the two countries**

The Egyptian legal system, which belongs to the family of the Roman-Germanic laws, dates back to the second half of the 19th century, whereby it was influenced by the French legislation. The same period also witnessed the inception of many Ottoman laws, which were also influenced by the European laws.

On the other hand, the modern Jordanian legal system started to be formed only shortly after the Second World War. When the Hashemite Kingdom of Jordan emerged, its legal system had double affiliation; a section of the Jordanian legislations were influenced by the Roman-Germanic laws that were inherited from the Ottoman legislations; whereas the other section was based on the traditions and the tribal customs, and was abrogated in the second half of the 20th century. The current Jordanian legal system has the “civil law” character which usually prevails in the European legislations.

Just like the modern Egyptian legislation, the first Egyptian commercial law was issued in the third quarter of the 19th century in 1883; it was strongly influenced by the French law which was issued in 1838 and modified in 1838. While it respects the provisions of the Islamic law “sharia”, it also includes some articles from the British law and contains a special chapter on bankruptcy. The mentioned bankruptcy law remained into force until it got abrogated and replaced by the law no. 17/1999; during this period the law no: 56/1945, which regulated the composition system before bankruptcy was also issued.

Going back to the Jordanian commercial law (law no 2/1966), which is relatively new like all other national laws, it was issued in 1966 and included a specific chapter on bankruptcy. This law is still applied to date and no amendments have been made to it since it was issued. Despite the fact that both the Egyptian and Jordanian bankruptcy legislations are relatively new, the two national experts who developed



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the national reports asserted that several loopholes should be addressed, through amendment, addition, or abrogation, in order to modernize these articles in such a way that conforms with modern international standards; especially the principles of the World Bank Principles for Effective Insolvency and Creditor Rights Systems and UNCITRAL Legislative Guide on Insolvency.

- Article 550 of the Egyptian Trade Law No. 17 of 1999 states that every trader who by virtue of the provisions of this law is bound to hold commercial books shall be considered in a state of bankruptcy if he stops paying his commercial debts following disturbance of his financial affairs.”
- Article 316 No.12 of 1966 of the Jordanian Trade Law states that “while maintaining all provisions mentioned in the previous chapter, every trader shall be considered in a state of bankruptcy if he stops paying his commercial debts or who maintains his commercial credibility only through illegitimate means.” According to the two legal Articles, the criterion used for the declaration of bankruptcy of a trader is the cessation of paying his commercial debts due to lack in liquidity, even if his whole assets exceed his liabilities.
- In practice, the legal provisions of the above mentioned Jordanian and Egyptian commercial Laws related to the procedures of composition in bankruptcy are rarely applied; this is despite the fact that such procedures represent a form of compromise that can be used in order to prevent bankruptcy and save the debtor from its consequences. The reason behind not resorting frequently to these provisions is that they have become ineffective, unsuitable, and slow to an extent that they are being used merely as means of delaying bankruptcy. During the past years, any use of these articles was simply meant to delay the court proceedings and enforcement of judgments and not to reorganize the trader’s business.
- According to the Doing Business Index, the statistics of the World Bank and the International Finance Corporation have shown the ranks of Egypt and Jordan as very low at the settlement of insolvencies, compared to the other countries. Today, in 2014, Egypt has the rank of 146 out of 185, whereas Jordan has the rank of 113. The statistics have also shown that Jordan has ranked very low in the protection of investors (rank of 170 out of 185), whereas Egypt has ranked 147 in the exact same year.
- The procedures of bankruptcy and liquidation, which are currently applied before national courts, whether in Egypt or Jordan, are time-consuming; According to the statistics of the World Bank and the International Finance Corporation, the duration of procedures of bankruptcy cases is 4.2 years in the Egyptian courts, which exceeds the duration in the Jordanian courts which is usually 3 years. Even though the duration of the procedures is long, only a small percentage of the debt is collected and it does not exceed 30%. However, this percentage exceeds 70% in the OECD countries. In addition, the costs of the bankruptcy procedures in Egypt consume about 22% of the value of the assets under attachment. In Jordan, it is about 20%. In

- Egypt, the rate of the return of the debtor in US dollar is \$16.9, and \$27.2 in Jordan.
- The current bankruptcy system in each of the two countries does not include any practical actions that can be taken in order to save the insolvent trader, whether an individual or a company, from his crisis. This had and continues a negative impact on the general commercial stability, and leads to unease and serious disturbance in the rules of getting out of an investment for both local and foreign investors. The Investor's trust, especially foreign investors, in the official authorities' ability to collect and recover their debts abroad is the main path to encourage investment; always accompanied with operative bankruptcy provisions that serve as a main guarantee and means of protection for the investment.

It is important to shed light on the discrepancies in the reports of the Egyptian and the Jordanian experts whether concerning the priorities of reform they focused on, or the means of empowering the national economy and encouraging investment in the country, or the possible provided assistance to creditors in collecting a higher percentage of their debts, or finally ways to help large companies reorganize to avoid bankruptcy.

## **B. The two countries previous reform attempts**

Both countries have encountered several reform attempts; some have failed, others have made radical changes on the current bankruptcy system, and some are still under experimentation.

**In Egypt**, the commercial law issued in 1883 was replaced by law No.17 of 1999. This development led to the abrogation of the law on composition in bankruptcy No.56 of 1945. Composition was reorganized now under the new law, specifically in Chapter IX (Articles 725 to 767), and Chapter X, which particularly addresses bankruptcy crimes and its prevention settlement system. Even though the new trade law has neither drastically modified the bankruptcy systems nor has it improved the legal and the economic conditions of the country, yet it cannot be denied that it has added provisions that were missing in the old law. A major added provision is the non-ability of declaring a trader bankrupt unless he was obliged to hold commercial books.

Egypt has witnessed the second reform attempt in 2008; it mainly addressed the rules of jurisdiction of the courts that deals with the cases of bankruptcy, namely through **issuing the Law No.120 of 2008 that is related to the economic courts, in order to form a judiciary specialized in the economic cases** to replace the regular first instance court. However, this attempt was not as successful as the legislator has made it to be, since the law did not amend many stipulations, neither did it improve the situation of the creditors or the defaulting traders, nor has it enhanced the legal and the investment conditions in the country. Thus, the same problems remained, and all what the new law has changed was the name of the courts.

Since that date, neither the governmental organizations nor the non-governmental ones have amended or tried to amend the bankruptcy system in Egypt, despite the urgent need for it.

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**In Jordan**, a remarkable reform attempt, which might lead to radical changes in the current bankruptcy system, has been made. The aim of this attempt is to amend the current bankruptcy system, with a view to stimulating the economy and constructing a legal foundation that increases investments. This has specifically been done through drafting a law project on reorganizing **businesses and the provisions of bankruptcy and liquidation**; the law project was adopted by the government and was sent to the parliament for discussion. It is worthwhile mentioning that this law has several advantages and disadvantages, which led the Jordanian national expert to shed light on in his national report, and to suggest related reform recommendations that aim at improving the current bankruptcy system in general, and the provisions of the draft law of reorganization and liquidation in particular.

Moreover, it was stated in the report of the Jordanian national expert that: “in three years, after issuing the new banking law of 2000, the credit information law No.82 of 2003 was issued. In spite of being aware of the importance of this law and its role in protecting the funders, whether when providing loans and banking facilities, or when selling by installments or deferred payment; yet, the provisions of this law were not applied for several reasons, which have led to issuing a new temporary law for credit information (**credit information law No.15 of 2010**). It should be noted that this law has not entered into force until 9/7/2011 through the decree number 36/2011 which was activated on 1/8/2011. Moreover, the company envisioned in this law was not licensed until very short time ago and has not yet launched its activities until the date of preparing this report. Therefore, it was impossible to assess the practical applications of this law, and test its effectiveness and impacts.” Thus, this reform attempt was not started or applied until of preparing this report.

It is worth mentioning that this law allows the creditor to obtain data related to the client’s overall financial situation and the extent of his commitment to the conditions and guarantees thereto.

### **C. Legal articles on bankruptcy in the two countries**

Any comprehensive understanding of bankruptcy requires an in-depth study of the related legal systems that intersect and complement it. The system of bankruptcy would not be successful nor effective unless accompanied with effective procedures for collecting debts through a modern system to access business information, especially credit information. As it was mentioned previously, Jordan has witnessed a reform attempt that resulted in issuing a Temporary Law for Credit Information in 2010; however, it was not activated until the date of the report, whereas Egypt has not witnessed any similar attempt.

On the other hand, the application of the bankruptcy law and its procedures resulted in some problems that emanated mainly from the relation of this law with other domestic laws like taxation laws and real-estate laws, specifically those related to lien and priority debts that are exempted from registration, in addition to laws that

are related to money guarantees, and the social security law, particularly as regards the upper hand in application.

There are laws that exempted some priority debts from being registered in the trade register, which led the creditor who has a lien debt to encounter real problem when trying to execute on the related security property. That is because when distributing the money, the priority debts that are exempted from registration are paid first as they are preferred over the other creditors including the owners of lien debts; a fact that impacted the process of lending negatively; especially when the creditors are banks, since the mortgage or guarantee provided by the debtor loses its effect due to presence of unregistered priority debts that the creditor has no possibility of inquiring their presence in advance.

The Jordanian law on “placing movable property as debt security” (Law No.1 of 2012) does not include sufficient provisions regarding the mortgage of business premises, especially that there is no legal requirement to register moveable property; yet, the search is still going in order to issue a new law to regulate the provisions of real estate security.

Moreover, some of the laws’ provisions contradict the bankruptcy system in regards imposing sanctions on the fraudulent bankrupt, the simple bankrupt, managers, agents, and bankruptcy trustees in case there is a negligence by any of them.

The Egyptian penal law No.58 of 1937 mentions in section 328 and 335 the crimes of fraudulent and simple bankruptcy and the penalties imposed on each of them. As for the Jordanian commercial law, it states that the bankrupt gets deprived from his political rights, until he gets rehabilitation, with no distinction between the fraudulent bankrupt, the simple bankrupt, or the normal bankruptcy.

According to Article 335/4 of the Egyptian Penal Law: “shall be punished... by imprisonment or a fine... or either of the two penalties...trustees who steal money while performing their job, and the judge shall decide automatically on the compensation to be given to those who suffered damages even in the case of innocence.” The above mentioned penal law did not impose any civil or criminal liability on the bankruptcy trustee in case he proves inattentive and negligent at performing his job.

Regarding the cases of prosecuting the managers of the company for their responsibilities, the Article No.332 of the Egyptian Penal Law punishes the members of the board of directors or the managers of the companies by imprisonment for a period of 3 to 5 years in case that the company has got bankrupt due to their deception or fraud.

Finally, it should be noted that the reform of the bankruptcy system in each of the two countries requires the participation of several governmental sectors, due to the connection and interrelation between several the bankruptcy provisions and other non-related legal provisions.

## Chapter Two

### Comparison between the Results of the Baseline Survey

First, it is important to note that the survey questions, which were prepared by ACRLI in collaboration with the Advocacy, Consultancy and Arbitration (ACA) and the two national, and which were endorsed by a group of concerned people through brainstorming sessions, included common question for both countries as well as country specific questions. First, the baseline survey included 42 questions for Egypt and 50 questions for Jordan; in addition to an optional question and 7 questions related to the civil society in order to determine how active they are in the field of bankruptcy reform.<sup>1</sup>

The questions were presented in a logical sequence, and they were formed in a way that can be understood by all those who are interested in the issue; they were classified and divided into four topics as follows: 1) the phase before bankruptcy, 2) bankruptcy and its procedures, 3) legislations related to bankruptcy system, 4) liquidation.

By viewing the results of the survey, there appears to be a high degree of similarity between the answers of each of the two countries yet some differences in percentages which will be explained further.

The results of the survey of the two countries can be presented in such a way that shows A) the similarities in the opinions of the respondents of the two countries, B) the differences in the opinions of the respondent of the two countries, C) the results of the survey of the Hashemite Kingdom of Jordan, D) the results of the survey of the Arab Republic of Egypt.

#### **A. The similarities in the opinions of the respondents in Egypt and Jordan**

1. The results of the survey show that there is unanimous agreement among the respondents on the importance of bankruptcy as a legal system and the need to reform some of its provisions in Egypt and Jordan.
2. Most respondents (96% in Egypt and 87% in Jordan) considered the current procedures of composition as outlined in the commercial laws as ineffective and unable to save the defaulted trader.
3. The results of the survey have shown a unanimous agreement among the respondents in Egypt (100%) and an almost unanimous agreement in Jordan (93%) on the necessity of introducing legislative amendments that allow saving and reorganizing the defaulted business enterprise and companies to enable them to avoid bankruptcy and ultimately liquidation.

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1- For more information regarding the selected respondents, refer to annex n° 7 and 8.

4. 51% of the respondents in each of Egypt and Jordan believed that the procedures of reorganization should be applied only on companies with a certain capital.
5. Regarding approving the reorganization plan, most of the respondents (83% in Egypt and 68% in Jordan) require a common majority of the debts and the creditors.
6. The results of the survey show that there is a unanimous agreement in Egypt (100%) and semi-unanimous agreement in Jordan (86%) on the lengthy delay that bankruptcy cases before courts are suffering from.
7. 72% of the respondents in Egypt and 91% of the respondents in Jordan have supported the necessity of having special provisions for the liquidation of some organizations (like banks and insurance companies), that are different from the currently applied provisions.
8. 79% of the respondents in Egypt and 63% of the respondents in Jordan thought that decreasing the role of the creditors group in administering the bankruptcy estate and increasing the role of the court would provide better guarantees regarding the speed and the integrity of the case and would better protect the creditors' rights.
9. 98% of the Egyptian respondents and 59% of the Jordanian respondents believe that the current credit information system is not sufficient to provide enough data for the creditors in order to enquire about the financial status of the trader and his debts before giving him credit or loans or business installments deals. 62% of the respondents in Egypt and 42% of the respondents in Jordan think that the best solution to this problem is by establishing private companies or public organizations to provide credit information.
10. 94% of the respondents in Egypt and 75% of the respondents in Jordan think that it is better to add some Articles to the bankruptcy legislation in order to protect the partners and the stockholders who did not actively participate in the management of the company from bankruptcy even if it was a fraudulent bankruptcy caused by the board members.
11. 100% of the respondents in Egypt and 60% of the respondents in Jordan believe that the duration of liquidation procedures in courts is very long,
12. 87% of the respondents in Egypt and 55% of the respondents in Jordan believe that it is better not to give the public prosecutor or the general commercial court any power to begin a bankruptcy legal proceeding.
13. 96% of the respondents in Egypt and 57% of the respondents in Jordan believe that it is necessary to amend the internal national legislations in such a way that conforms to the international principles.
14. 81% of the respondents in Egypt and 58% of the respondents in Jordan believe that it is important to take into consideration the number of employees at a company and not only its capital when setting the conditions of applying for reorganization.



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## **B. The differences in the opinions of the respondents in Egypt and Jordan**

The results of the survey have shown a variation in the percentage of the respondents in the two countries as follows:

1. 71% of the respondents in Jordan have approved the role of the court in saving and reorganizing the business enterprises and companies, whereas 57% of the respondents in Egypt have refused to support this.
2. In Egypt, 66% of the respondents believe that upon the acceptance of any formal request of reorganization, any attempts for execution on secured movable and immovable property should be halted and discontinued until a decision is made on the request. However, 59% in Jordan refused to support this.
3. In Jordan, 77% believe that both the creditors and the guarantors can vote on the reorganization plan; whereas in Egypt, they were divided between 49% who believe that both creditors and guarantors can vote, and those 49% who gave this right only to creditors.
4. In Jordan, 63% of the respondents believe that the creditor should have the right to begin a legal proceeding for bankruptcy against his debtor if they have previously agreed on resolving all disputes that might arise from this agreement or are related to it by arbitration; whereas in Egypt 68% of the respondent has refused it.
5. Regarding the responsibility of the director and the members of the board of directors and the torts they might commit in management towards the stockholders or a third party, 75% of the respondents in Jordan believe that this responsibility shall also cover the debts of the company in case their torts or intended actions led the company to bankruptcy and liquidation; whereas in Egypt 62% refused.
6. In Egypt 75% of the respondents believe that the current companies' law includes clear regulations and procedures related to selling the company's assets under liquidation; whereas in Jordan, only 18% of the respondents agree.
7. In Jordan, 66% of the respondents believe that the right to appoint an auditor for the compulsory liquidation should be given to the court and not the liquidator; on the other hand, 55% of the respondents in Egypt refused to give the court such authorities.
8. In Jordan, 67% of the respondents believe that the penalties for the auditors who provide false information is considered a sufficient guarantee for the creditors rights; whereas 73% of the respondents of Egypt believe that it is not sufficient.

## **C. The Hashemite Kingdom of Jordan survey results**

1. 91% of the respondents in Jordan support the idea of setting special provisions of bankruptcy for certain companies (like banks and insurance companies) different from the general provisions of bankruptcy and liquidation.
2. 93% of the respondents in Jordan believe that an automatic consequence of the decision of declaration of bankruptcy is preventing the trader from operating his business enterprise in order to protect the creditors' rights.

3. 68% of the respondents in Jordan believe that selling the assets of the bankrupt creates several complications when applied.
4. 57% of the respondents in Jordan believe that prioritizing the payment of debts creates several complications when applied.
5. 40% of the respondents in Jordan believe that the authorities of the bankruptcy judge according to the commercial law are practically sufficient, whereas 46% of them do not think so, and only 9% answered by saying "I do not know"
6. 68% of the respondents of Jordan believe that the bankruptcy of the mother company should not lead to the bankruptcy of its affiliate.
7. 70% of the respondents in Jordan believe that it is important to amend the provisions of bankruptcy in the current commercial law in order to be able to deal with foreign bankruptcy cases.
8. 41% of the respondents in Jordan believe that it is necessary to have provisions in the Jordanian law regarding the mortgage of a business enterprise, including its moral elements (like its trade name and reputation) and its material like future goods that will replace the goods that were present at the beginning of the mortgage; whereas 57% of them believe it is not necessary.
9. 67% of the respondents in Jordan believe that it is important to add an explicit provision in the law stating that the liability of managers encompasses not only the designated managers but all persons who have participated regularly and effectively (realistically) in the management of the company.
10. 49% of the respondents in Jordan believe the prioritization of paying the debts of the company during liquidation causes many practical problems.
11. 86% of the respondents in Jordan believe that the current companies' law includes clear provisions which determine the wages and the remuneration of the liquidator.

#### **D. The Arab Republic of Egypt survey results**

1. 71% of the respondents of in Egypt believe that in case there are a number of companies forming one legal group distributed around different countries, there should be a specified date to start the period of doubt for all these companies.
2. 94% the respondents in Egypt believe that the current commercial law includes an organization for the international bankruptcy cases.
3. 98% of the respondents in Egypt believe that there is a need to add an explicit article in the Egyptian commercial law to determine the liability of the members of the board of directors of the joint stock company and its actual managers in case of the bankruptcy of the company.



## Chapter Three

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### Reform Proposals / Recommendations

Each of the national reports of Egypt and Jordan has its own background and rationale, especially that the situation in each country is different; in Jordan, for example, there is draft law which is being discussed in the parliamentary committees on “**reorganizing businesses and the provisions of bankruptcy and liquidation**”, as previously mentioned. Moreover, the judiciary condition, as it was stated in the two national reports, varies depending on the social, cultural, and economic conditions in each of the two countries; for example the legal and business community in Egypt deals with bankruptcy in a way that is different from that of Jordan.

When drafting the reform recommendations in his report, the Jordanian national expert took into account, the law project above mentioned, especially its evident loopholes with a view to avoiding them. He suggested amending, adding, or abrogation some of the law’s stipulation which do not comply with the legal requirements and considerations and with what was expressed in the survey and the consultation processes. This has led him to set out justifying reasons for many of the reform recommendations he suggested.

As for the Egyptian national expert, he depended largely in the process of developing the reform recommendations on the currently applied law after studying its advantages and disadvantages in theory and in practice, in light of the experience and the bankruptcy law suits that are in the Egyptian courts. Moreover, he discussed and consulted with the concerned decision any opinions and suggestions that are aimed at improving the business environment and the bankruptcy system in the Arab Republic of Egypt.

Any approach of reforming the bankruptcy legal system requires, like any other legal system, a scientific methodology that is based on classifying and collecting all related developmental suggestions under three<sup>1</sup> headings. These headings are as follows:

- 1- Institutional reform which is concerned with introducing new concepts or removing current concepts (like introducing the concept of reorganizing the defaulted companies or removing the concept of pre-bankruptcy composition).
- 2- Procedural reform which is concerned with amending certain legal procedural provisions (for example: amending the period of uncertainty)

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1- It should be mentioned here that this division is an idiomatic division and it may not be completely accurate, due to the possibility of the existence of some of the suggestions or recommendations that are mentioned in more than one level, and they are considered part of the procedural institutional reforms.

### 3- Legal drafting reform which covers the structure, the form and the content of the text.

Such reform takes place through 1) selecting accurate and clear phrases, which have only one meaning in order to avoid ambiguity or confusion or misunderstanding of the legal text, and thus narrowing down the need for interpreting it, 2) organizing the legal articles classifying them in a logical sequential order, 3) making a detailed index of the contents of the law.

The reform suggestions that are mentioned in the two national reports are focusing on introducing new concepts that were not acknowledged before in the two countries, and removing and modifying some of provisions in the law that were practically unapplied due to the complications they created. In addition to proposing some reforms regarding the wording and the form of the law as this is quite important in order to avoid ambiguity, duplication and redundancy in the legal texts, there is a need to classify the topics in a way that is logical and easy to retrieve.

Hence, as mentioned the proposals or the reform recommendations that are mentioned in the two national reports have been classified into three headings, as follows:

#### **First- The institutional level**

Each of the two national experts of Egypt and Jordan have dealt with the reform recommendations that are under the heading “institutional reform” in a logical scientific manner that serves the purpose of improvement and development in each of the two countries.

Upon analytical and precise examination of the reform recommendations, it becomes evident the variations between each country as regards its prioritized areas of reform.

**The Egyptian national expert has** introduced new concepts on bankruptcy system, some of which are 1) reorganizing defaulted businesses, 2) introducing different provisions for the bankruptcy of certain companies, like insurance companies and banks, 3) establishing a public or private specialized company that would be responsible for providing credit information, 4) establishing a fund that covers all risks related to the default of traders and enterprises, and specifying the conditions of its recourse, 5) establishing an administration in the Ministry of Justice or the Ministry of Commerce that would be responsible for counting the bankruptcy cases and providing the necessary data on them. **On the other hand, the Jordanian national expert has** 1) suggested remedies for the loopholes in the law project on reorganizing businesses and the provisions of bankruptcy and liquidation, 2) asserted the necessity and the urgent need to activate the temporary credit information system that was issued in 2010, in addition to proposing new developmental ideas that are not found in the current law, 3) brought out the importance of making a specialized court in order to consider the requests of reorganization, 4) unified and organized the priority list of all the debts of the bankrupt person or company under liquidation, in such a way that

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there can be a single clear reference to the distribution of the properties among the creditors, 5) gave the court the authority to cancel the bankruptcy declaration that was issued against the trader, if the latter would pay all his debts before the closing of bankruptcy.

**Moreover, the two experts emphasized the need to amend some general legal provisions that related to bankruptcy and which consequently affect its legal system as a whole. Among these amendments that were mentioned in the report of the Egyptian expert are:** 1) increasing the minimum of the investment capital to be five million pounds at least, instead of twenty thousand pounds and using it as a condition to accept the bankruptcy case, while at the same time devising a less severe legal means to deal with traders whose business capital is less than five million pounds and stopped paying due to troubled financial conditions, 2) exempting the bankruptcy legal proceeding from passing through the phase of preparation and conciliation, which take place currently in the economic courts, and reconsidering this whole preliminary phase in the economic courts in general, 3) cancelling the provision that gives the public prosecution the right to request bankruptcy of a trader on its own, 4) reconsidering the competence of the economic courts in general, in such a way that its first instance units would look into bankruptcy disputes in general (qualitative competence) and any appeal to its decisions would take place before the appeal court and consequently the court of cassation, 5) giving the bankruptcy court a role in evaluating and assessing the economic and social conditions that will result from the bankruptcy decision (especially the y of companies and enterprises) before it is issued, while giving the bankruptcy court the authority of assigning a temporary commissioner for six months, for example, in order to administer the money of the defaulted business instead of giving a hasty decision in declaring his bankruptcy.

**On the other hand, the Jordanian national expert approached the recommendations related to bankruptcy from a different perspective, especially that every country has its own needs and the different practical problems it faces. Some of these recommendations are:** 1) differentiating between the debts with secured mortgages and the debts with unsecured mortgages, when authorizing a reorganization plan, or when authorizing a legal settlement plan while taking into consideration the differentiation between real estate mortgages, and shares mortgages, and stocks mortgages and other mortgages, 2) exempting the court from having to proceed automatically, with no request, with the procedures of declaring bankruptcy whenever the reorganization plan ends, and making this obligation only limited to the case when a request to vote on ending the reorganization plan is presented by of 50% of the debts of the creditors , 3) settling the lawsuits that aim at collecting the debts of the bankrupt or the liquidated company, 4) removing the secured properties out of the reorganization procedure unless approved by not less than 50% of the secured debts; otherwise a negative impact might fall on the on the banking sector.

## **Second- The procedural level**

Each of the Egyptian and the Jordanian experts have dealt with reform on the procedural level from a different angle, while using an approach that allows qualitative development in the legal system of bankruptcy specifically regarding the collection of debts and the speeding up of the litigation process.

Each expert started by pointing out to the shortcomings of the bankruptcy system while suggesting mechanisms to overcome them, specifically related to the lawsuit procedures of the five concerned bankruptcy administration entities (the bankruptcy court, the bankruptcy judge, the bankruptcy trustee, the bankruptcy observer, the creditors group) as it will be explained later.

### **1. The recommendations mentioned in the national report of the Arab Republic of Egypt have been summarized, and they are included within the procedural level reforming, as follows:**

- 1.1. Reorganizing the task of the bankruptcy trustees and setting some of the guarantees that ensure efficient performance of their tasks,
- 1.2. Reducing the authorities of the bankruptcy judge and giving some of this authorities to the bankruptcy court,
- 1.3. Setting the civil liability of the bankruptcy trustee in case he proves negligent in doing his task, and his criminal liability in case this negligence was accompanied by fraud
- 1.4. Giving the Minister of Commerce or the Minister of Justice the authority to organize the profession of the bankruptcy trustees and to set the required conditions for them,
- 1.5. Obliging the creditors group to choose an attorney that is specialized in the financial and accounting cases in order to supervise the bankruptcy trustee,
- 1.6. Adding a legal text in the bankruptcy provisions that expresses Egypt's position on the cross-border bankruptcy issues (international bankruptcy),
- 1.7. Taking a clear decision regarding the impact of the arbitration agreement that is concluded between the creditor and the debtor on the right of the debtor to file bankruptcy lawsuit before the courts,
- 1.8. Restructuring the unit of lawsuit preparation in the economic court in order to increase the effectiveness of its role, specifically through identifying its exclusive jurisdiction in such a way that allows it to give a decision in all the motions. It shall be also obliged to prepare a legal objective report about the dispute, similar to what is done at the Commissioners of the State Council in Egypt.
- 1.9. Limit the cases in which the economic courts have the right to require expertise.
- 1.10. Facilitating the procedures of the bankruptcy prevention settlement system (pre-bankruptcy composition), and obliging the Ministry of Commerce to

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- prepare an awareness program for the traders and the managers in order to outline the strategy of getting out of the investment at the right time,
- 1.11. Reconsidering the means of appeal against the bankruptcy declaration decision, and reconsidering all the procedural means that are mentioned in the bankruptcy section in the commercial Law.

**2. The recommendations that are mentioned in the national report of the Hashemite Kingdom of Jordan which are included in the procedural level reforming are as follows:**

- 2.1 Refusing any requests to pause the lawsuits or the requests or to halt execution or seizure during the period between the date of the formal acceptance of the request of reorganization or the formal acceptance of legal settlement and the date of issuing of the court's decision on the request. However, any final decisions should be postponed.
- 2.2. Developing a clear mechanism that assesses the value of the bankrupt trader's assets and the liquidated company and maintaining its value all throughout the procedures.
- 2.3. Expanding the territorial jurisdiction of the specialized court to include any area where there are bankruptcy and liquidation properties, even if they are in more than one place within the Kingdom.
- 2.4. Setting clear and specialized procedures for selling the assets of bankruptcy and liquidation,
- 2.5. Halting all seizures and selling of the bankrupt's property which are prior to the declaration of bankruptcy, and including them in the creditors group,
- 2.6. Developing a clear mechanism to determine the fees of the attorney of bankruptcy and liquidator,
- 2.7. Increasing the authorities of the liquidation judge in supervising the liquidator though giving him the right to assign a liquidation auditor which should present a report to the court.

**Third- The legislative drafting level; the structure and the form of the text**

The significance of the legislative drafting and classification of legal provisions was seriously taken into account by the two national experts, the Egyptian and the Jordanian. Since the wording and the form of any reform recommendation or legislative amendment is very detrimental, it becomes imperative to use precise phrases that will not create any ambiguity when being applied. Also, the classification of the legal topics and categorizing and arranging them in a clear manner gains high value; in addition to identifying all legal texts that are related to the bankruptcy system and putting them together in a single law to avoid duplication.

**Regarding the form,** the Egyptian national expert suggested issuing a law that organizes the bankruptcy of companies and moral personalities, and it should be

independent from the law that deals with the bankruptcy of individuals. In addition, he suggested transferring the bankruptcy criminal penalties due to default or fraud that are mentioned in the panel code to the commercial law and including them under the penalties section in it. The Jordanian national expert, on the other hand, recommended the cancellation of all the provisions that govern bankruptcy and liquidation in the commercial law project and companies law.

**Regarding the legal formulation,** both the two national experts have mentioned that the legal texts in their countries are relatively ambiguous, and that there is a need to clarify them. The Egyptian legislator, as it was mentioned in the national report, has explicitly adopted the principle of the territoriality of the bankruptcy declaration; all though some of the legal texts can be interpreted to this end. The Egyptian legislator has not explicitly imposed any civil or criminal liability on the members of board of directors of the bankrupt company due to fraud or negligence; nor has he adopted the prevalent view of legal scholars, which allows bankruptcy lawsuits, even if there was only one creditor. All of these issues raise questions and problems that might delay the procedures or affect them negatively.

As for the Jordanian report it has discussed Article (13/A/1) of the draft law of organizing the business and the bankruptcy provisions which states that any ratification of the reorganization plan by the court requires the agreement of the creditors who “represent more than 60% of the debts”; the expert, for that matter, insisted that there should be certain conditions for the creditors and the debts, in addition to specific procedures that would allow the court to perform sufficient review. This is an evident example of the ambiguity of this text, whereby these conditions and procedures were unclear.

Finally, it should be noted that all the suggested recommendations, outlined under the above three headings, have been supported, in the two national reports, with the explanatory context, rationale, and background. Moreover, these recommendations have been discussed in national workshops and individual interviews which were devoted to this purpose.

## Conclusion

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This regional report contains a general review of all the points mentioned in the two national reports. It was recognized that the current commercial law, in the Arab Republic of Egypt and the Hashemite Kingdom of Jordan, is still outdated and has not been amended or reformed, despite the economic and financial evolution that took place due to globalization.

The major reform action, that took place in 1999 in the Egyptian commercial law, has not typically conformed to the recent international principles and best practices, nor has it introduced new concepts that address the situation of default of debtors, whether they are traders, companies, or institutions, in a way that allows them to get over their financial crises or to end their businesses with minimal losses and damage, in order to enhance the national economy and investment.

On the other hand, the Jordanian commercial law, which dates back to 1966, has only witnessed one reform attempt in 2012, whereby a number of law projects were presented with a view to introducing new concepts that were alien to the current commercial law. All though this step is still considered a mere attempt since it has not yet been translated into an agreed-upon law by the parliament, yet it remains a major leap for the concerned decision makers.

Each of the Egyptian and Jordanian national experts has written a report which explains the condition of the legal texts of bankruptcy in his country, with a focus on their practical dimension. Each report also included a set of reform recommendations.

These recommendations have served as a set of developmental suggestions that contribute, in one way or another, in enhancing the commercial stability and improving the bankruptcy legal system in such a way that conforms and complies with the international principles and best practices, the World Bank Principles for Effective Insolvency and Creditor's Rights System and UNCITRAL Legislative Guide on Insolvency Law.

Each of the two national experts has sought to achieve the symmetry between the reform recommendations and the international standards in a way that caters to the conditions and the needs of the two countries.

In fact, several of the World Bank principles, which are mentioned above, are found in the current Egyptian and Jordanian commercial laws, and as for the others that are missing, they have been used by the national expert as an inspiration for the reform recommendations that have been made with the purpose of achieving more concrete improvements on the economic and developmental levels.

On the other hand, it has been realized that some of the principles of the World Bank cannot be adopted in either of the two countries, due to the impossibility of applying them, and their incompatibility with the social, legal, and economic conditions of the country. For example, "the financial sector in the country has to develop a code of conduct based on the voluntary procedures which are agreed upon in order to face the



cases of financial defaulting of the companies that has received large loans from banks or financial institutions, especially in vulnerable markets.”

The international experience of bankruptcy, especially in the United States of America, has included several legal texts that aimed at protecting the debtor and the creditors group equally, as it has allowed the debtor, whether an individual or a company, to reorganize his business in order to avoid bankruptcy, on one side. And on another, it allowed the creditors themselves to collect or recover as much as they can from the money they loaned, with as minimum loss as possible.

Such an advanced step affects investment positively and enhances the national economy and development. The presence of simple and flexible legislations have allowed the defaulting companies to overcome their financial problems in a legal and well-studied manner that contributes to the prosperity of the national economy and allows the construction of a clear legal framework for bankruptcy and its procedures that focuses on the general framework and does not go into minuscule details that might hinder the implementation of the law and make it subject to continuous change.

Reform in this sense helps in developing businesses in the Middle East and Africa, and gives an opportunity for the promising companies to restructure or reorganize themselves.

The Arab Republic of Egypt, in light of the recent political changes and the statements of the officials in it, has a great potential for reform on various levels, especially on the economic one. Thus, one of the main important tasks of the current government is to strengthen the economy as it is the gateway for development and overcoming the previous crises that the country witnessed.

Regarding the Hashemite Kingdom of Jordan, it has always reiterated its desire to develop its commercial institutions and projects. The reform plan is, thus, rich and motivating, especially given the strong national will which is accompanied by external support and proper exploitation of national wealth, which are factors that aim all together to achieve development, enhance investment and prosper the economy.

Reform of the bankruptcy system is an important milestone towards achieving trust and economic flourish, in aspiration that the circumstances in both countries will be suitable for the issuance of new legislations.

This reform promise which Egypt and Jordan is aspiring to achieve can find similar roots in some other Arab countries like Morocco and some Gulf countries. As for the Middle Easter and African countries, including Syria, Lebanon, and Iraq, the legal and economic reform in them is very complicated and difficult due to the lack of a fertile environment for development and change; especially that security and politics remain the one and overwhelming concern.

In conclusion, this report is considered a rich and substantial material which can be used to build awareness and motivate the legislator and other concerned authorities to make a quick reform to the bankruptcy system. This system is, first and foremost, an integral part of the legal system, and, second, a main incentive for progress in the field of loaning and credit system and, finally, a major drive to increase the level of investments which in turn contribute to the development process.



## **Section Two**

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# **The National Report of the Arab Republic of Egypt**



## Introductory Chapter

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This report aims to promote a business-enabling legal environment in Egypt with a view to attracting more foreign direct investments and contributing to sustainable economic development, through building awareness in the civil society sector and among stakeholders, including state officials and judges who are in charge of resolving the business and investment related disputes, on the importance of facilitating the procedures of starting up a business. However, and more importantly, it aims to convince investors that the Egyptian Legal System provides them with ways for ending any investment if they chose to (facilitating and simplifying the liquidation procedures of enterprises); it also sets out procedures for the forced winding up of their business in case of defaulting and inability to continue with it; finally, it maintains a balance between guaranteeing the creditors' rights in case of investment insolvency and protecting the rights of investors who are obliged to leave the investment, since this is a necessity for growth and investment attraction.

To be more specific, this report aims at: (1) shedding light on the legal system of bankruptcy in Egypt, as a main way for compulsory exiting an investment, through demonstrating the legal and practical obstacles which prevent the insolvent debtor from finding a way out, and limit the smoothness of compulsory withdrawal from the investment in case the debtor stopped fulfilling his due liabilities completely. (2) presenting a set of suggestions and recommendations necessary to develop the bankruptcy system in Egypt that are inspired from international experiences and recommendations of the concerned international institutions without overlooking the judicial precedents and the Egyptian jurisprudence efforts that extended for over a century.

The debtor's violation of his commitments and contracts creates a sense of insecurity for the creditor who loses trust in the overall system of commercial transactions; therefore, the law had to interfere to protect the creditor and guarantee the recovery of his rights. Besides, the debtor must realize that bankruptcy – when no other option is found – is not catastrophic, and that the society is always willing to help and support him if he proved his good faith and integrity; and then, his bankruptcy become a transitional crisis that he can overcome to start rebuilding his commercial life all over again.

In order to achieve the above mentioned purpose, we will begin in this report by describing the current situation of the bankruptcy legal system in Egypt, specifically **“its advantages and disadvantages – its imperfections and added values”**, and then we shall mention some of the reform attempts that had been directed at it, especially during the past fifteen years, and that were always guided by the Egyptian precedents and doctrine for over a hundred years. Moreover, we will try to present the reform challenges of the bankruptcy system, its difficulties and the lessons learned from

the internationally exerted efforts to standardize its stipulations or to build the gap between different point of views regarding its organization, in light of the economic and investment situation in Egypt after the 25<sup>th</sup> of January 2011 revolution by demonstrating the results of the baseline survey administered by us and answered by more than sixty specialists concerned with the subject of bankruptcy such as jurists, bankers, businessmen, and civil society organizations.

In conclusion, we shall present the most important recommendations and reform suggestions that we believe are necessary to facilitate ways of compulsory withdrawal from the investment and to upgrade the bankruptcy system and procedures in Egypt, especially in view of the reached consensus on the need to review the bankruptcy terms and rules in Egypt, perhaps from scratch, and incorporate into them what ways through which the country can intervention to solve some cases of commercial insolvency.<sup>1</sup>

In every legal system, trade is based on the principles trust and credit, and the debtor's inability to timely fulfill his debts in time jeopardizes these principles and demolishes their foundation; for that reason, it was quite logical for the different legal systems to set out a framework for the merchant who faces hardships and unexpected events – due to either bad faith or lack of experience and negligence - in order to avoid any damage that he might cause to the credit system as a whole and to the trust which is the foundation of all commercial transactions. For all these reasons, the bankruptcy system was established to confront the behaviour of those merchants.

The willingness of lending by creditors is always affected by the extent of trust they have in the legal system is and their conviction in the ability to recover their debts. And the overall sense of security of the debtors is affected by the ability of this same legal system to strike a balance between supporting his financial status and providing him with the opportunity to reorganizing his business enterprise on the basis of honesty, clarity, and integrity on one side and protecting the rights of the creditors and preserving their interests on another. Such a balance would no doubt guarantee economic growth, progress, and development.

6- Based on the above, the Egyptian legislator allocated one third of the commercial law to the provisions of bankruptcy, and like every legislator introduced articles and stipulations that take into account the peculiar economic, political, and religious fundamental foundations in the society being organized. Many scholars, however, nowadays, do call for overcoming the differences in the social backgrounds and contexts of the national legal frameworks of bankruptcy, and ultimately for standardizing the articles found in them, especially that the domain of these rules is often transnational and impacts more than one legal system. This would provide a solution for the problems resulting from conflict of laws.

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1- Setting out ways for the compulsory withdrawal from an investment, achieves social justice, preserves the rights of parties to the failing enterprise, and helps the market get rid of the slow and inefficient projects and replace them with more lucrative ones. Besides, it builds trust at the level of the investors in their ability to reallocate their money in different domains and to invest it in other projects in case they face hardships in the market.

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## Chapter One

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### The Global Trends for Market Exit

Bankruptcy laws in different legal systems have the greatest resistance – from among other branches of law- towards the idea of global standardization of rules, since its provisions, as mentioned earlier, relate strongly to the sovereignty of the country and its legal, moral, economic and social security. Moreover, bankruptcy laws are closely relate to aspects that strongly affect every regular citizen like the ownership system, debts settlement guarantees, courts structure, organization of the financial relation between married couples, all types of securities and guarantees, with all the interrelated (like promulgation, registration, enrollment, and so on), in addition to the influence of some religious beliefs on all of that.

As a consequence of all what was previously mentioned, ideas and steps of standardizing bankruptcy provisions internationally were slow, hesitant and incomparable to some other areas of law like the International Sale of Goods, maritime and air shipment contracts, Letters of Credit, bank guarantees, international arbitration and so forth. This reality, which is caused by the particularity of the bankruptcy system and its connection with internal issues, explains the jurisprudence's hesitation in adopting a serious call to set standardized rules for bankruptcy internationally.

Even some of the greatest legal writers didn't hesitate to emphasize the uniqueness of the rules of bankruptcy in each legal system and explain the difficulty of standardizing them, especially in light of the huge disagreement on some basic bankruptcy principles like the territoriality of bankruptcy, the unity or multiplicity of bankruptcies, the conflict of laws, which is, is deep-rooted in the hearts of jurists and in jurisprudential writings concerned with bankruptcy.<sup>1</sup>

Yet despite what was mentioned previously, attempts to standardize bankruptcy rules had some supporters; in 1877, the International Law Reform and Coding Association held a convention in the city of Inverness, Belgium which resulted in setting a draft international treaty based on the principle of “**Unity of Bankruptcy**”, and the effect of the bankruptcy declaration decision in one of the signing countries on the other countries.

1- In America , England and countries influenced by their legal system, bankruptcy is considered as a predictable event in the commercial life, and there is no shame in the bankrupt unless he has committed fraud and deception, for the legislator in these countries takes care of the debtor, stands by him and tries to ease his hardship in the same way he protects his creditors, but in the French and Egyptian Laws and countries influenced by them, bankruptcy is considered a shame resulted from the perfidy and villainous of the debtor, even if there was no fraud or deception in the process, so, the legislator in these countries is generous in protecting the creditor, miser in taking care of the debtor.

However, and upon the failure of this draft treaty to gain adoption by the countries, this topic remained subject of research in other conferences organized by the International law Association and several other meetings in Paris and The Hague, specifically the sixth International Law convention held in The Hague in 1928. Yet, efforts exerted in this regard did not result in any international treaty to put an end to Laws disagreement regarding bankruptcy in the Private International Law.

Recently, the United Nations Commission on the International Trade Law (UNCITRAL) and the International Institute for the Unification of Private Law in Rome (UNIDROIT) exerted efforts to bring closer the different legislative approaches on bankruptcy. However, what remains necessary is to exert all efforts to standardize bankruptcy rules and procedures on the international level, and to prepare templates for the bankruptcy laws to guide different countries' legislators while respecting the peculiarities in their countries, and to set out unified objective solutions to the conflict of laws, and to highlight the successful experiences of some countries in improving the business and investing environment drastically. Finally, the aspiration to succeed remains although it seems out of reach at the time being; below are some of the most important recent international efforts done to proximate points of view regarding bankruptcy:

The General Assembly of the United Nations approved during December 1997 the typical law of insolvency across borders, which was compiled and approved by the United Nations Commission on the International Trade Law (UNCITRAL); it includes some procedural ways which aims at enhancing adjudication in lawsuits where the bankrupt has assets or debts in more than one country. This typical law has been applied by 19 countries up until the end of March 2011.

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## Chapter Two

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### An Introduction to the Bankruptcy System

#### Section one: Data on bankruptcy in Egypt

It is very important to track (1) the bankruptcy cases and provide accurate numbers on them, (2) the portions of debts that are being recovered by the debts, (3) the number of bankruptcy cases that are ending by arrangement or by union, (4) the cases where prevention settlement system was effective, (5) the cases of closed bankruptcies with insufficient funds, (6) the cases of fraudulent or negligence bankruptcy, and (7) the cases of simple bankruptcy, and other subjects which have many advantages.

Accurate data allow the legislator to evaluate the good or bad application of the bankruptcy legal systems and recognize the weak points in it. Also, they give a clear picture of the general economic situation in the country and the degree of its development, and depict those branches and the categories of commerce that are more exposed to bankruptcy than the others. Furthermore, it demonstrates the level of morality of traders in their transactions and supplies the administrative authorities in the country with information about the lucrative business and the damaged capitals as a result of liquidation or bankruptcy.

However, it should be noted that the data on bankruptcy does not achieve all of the supposed advantages unless it was global, precise and issued from competent and neutral parties. This can be guaranteed through regulations that make information available in a regular, simple, and transparent way. Based on the available data in Egypt- despite its scarcity- the following becomes evident:

**First:** - the level of morality among traders is decreasing, specifically honesty and loyalty in commercial transactions. This is demonstrated by the limited number of bankruptcy lawsuits which are initiated by debtors, since most traders try to delay as much as possible the declaration of their bankruptcy until they lose the large part of their assets.

**Second:** - the long period that a bankruptcy case can take, which can reach several years and the complexities of its procedure, is a remarkable observation.

**Third:** - the high costs of bankruptcy procedures.

**Fourth:** - the low return from the bankruptcy estate in comparison to the actual amount of debts.

We will mention hereinafter several data on bankruptcy cases in Egypt in the last period<sup>1</sup>:

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1 Information and decisions support center in the Egyptian cabinet. <http://www.eip.gov.eg>.

- The number of bankruptcy cases of companies and individuals settled by the divisions of first instance in the economic courts during November 2013 increased by 24% as compared to November 2012. The increase on the appeal level was by 20% during the same period of time.
- The number of companies' bankruptcy increased by 80% in the period between January and March compared to the same period in 2011, and the number of lawsuits initiated in this period increased by 68% compared to what was in the same period of 2011.
- The number of bankruptcy cases has increased in the first five month of 2011 by 235.3% compared to the same period of 2010.
- The number of companies and individual bankruptcy cases increased by 43% in October 2013 compared to the same period in 2012.

### **Section two: History of bankruptcy system in the Egyptian Law**

Historically, the Egyptian legislator considered bankruptcy as part of the commercial law and thus had not organized the bankruptcy system with an independent law; the old commercial law, issued in 1883, contains more than 225 articles (number 195 to 419) that represent 54% of the whole law. This law, which is inspired by the bankruptcy provisions in the French commercial law issued in 1807 and amended 1882, remained in use for 116 years. Moreover, the Egyptian legislator, here inspired by the English law, gave the seller the right to restore the sold goods if the buyer got bankrupt while they were still in the process of delivery. It also aimed at creating a balance between the Islamic law and the bankruptcy rules, for example he did not grant any rights for the creditors of the bankrupt on the assets he inherits unless the dues of the deceased's creditors were already fulfilled. This is a typical application of the principle "No inheritance before the fulfillment of all debts". Moreover, the Egyptian legislator did not follow the French example regarding the right of the wife to recover her possessions from the bankruptcy estate but rather modifies this to suit the Islamic tradition and customs which give the wife an entitlement on her own possessions which are separate from her husband's, for example, the dower, the home furniture, her expenses and such.

The bankruptcy rules existing in the Egyptian commercial law remained unchanged until 1944, and in 1945 the Egyptian legislator stipulated the Law No. 56 of 1945 to regulate the bankruptcy prevention settlement system; this Law, inspired by the already existing mixed law which was applied by the mixed courts in Egypt since 1900, eliminated –at least theoretically- the incoherence in the Egyptian law, whereby the bankruptcy prevention settlement system became applicable before civil courts not mixed courts the way it was before.

In the early 50s, the winds of change blew in Egypt and led to a radical change in its economic system whereby it soon changed after a few years - July revolution of 1952- from a Capitalist country to an aggressively socialist one, and for that reason the bankruptcy prevention settlement system did not have any visible effect on the



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business enabling legal environment in Egypt. It is no exaggeration if we say that this system was never applied in Egypt since its establishment until its cancellation. Later, those same winds of change after blew again in the country and Egypt began to timidly transform -after the October war in 1973- to a more open economy where capitalism was followed slowly and with hesitation until the beginning of the twentieth century, which marked the clear adoption of Capitalism in economics and business laws.

Without doubt, several decisions of the Egyptian courts and the jurisprudence of several jurists have played an important role in the development of bankruptcy provisions, whereby these trends – influenced by the doctrine and the French laws – were of strong assistance for the Egyptian legislator when introducing the bankruptcy provisions in the new commercial law. Thus, the precedents of the Supreme Court on bankruptcy eighty years ago introduced new trends that Egypt kept applying for the past two centuries, and great jurists (like Mohsen Chafik Mohamed Salah Bik, Mohamed Kamel Amin Melch, Farid Mechraki, Aktham Al Khouli , and Ali Younes) exerted efforts to clarify and explain the applicable bankruptcy legal framework and criticize the loopholes in it, as well as it compare it with foreign laws. A new group of also great jurists (like professors Ali Jamel Aldeen, Samir Al-Sharqawi, Husni Al-Masri, Abu Zaid Radwan, Mostafa Taha, Ali Al-Baroudi, Samiha Al-Kalioubi and others) were more interested in explaining the current bankruptcy provisions in the Egyptian law without any attempt to suggest reform recommendation. Afterwards, some other generations of jurist came and their role was mostly limited to quoting the pioneers without any visible innovation<sup>1</sup>.

In 1999, the Egyptian legislator cancelled the previously mentioned commercial law and replaced it with the new commercial law No.17 of 1999, which several articles on bankruptcy and the bankruptcy prevention settlement system (from Article 550 to 772, which amount to 223 provisions out of 772 provision that represent all the provisions of the mentioned law ). This new commercial law was promoted as milestone which shall lead to a radical change in the Egyptian commercial life; it was described as containing magical, simple, facilitating solutions for withdrawal from investment specifically for the companies and individuals. This report attempts to analyse the bankruptcy provision in this law, with a focus on the possible reform attempts, especially in the context of what that the practical application had revealed within the last fifteen years regarding the fact that the creditors strongly hesitate before initiating a bankruptcy lawsuit against their debtor. These creditors believe that the personal individual solutions to which the creditor may resort to recollect his rights might be much more effective than the collective liquidation of the debtor assets due to bankruptcy, in addition to their concerns about the rejection of the court to the lawsuit, which may have a negative effect to his rights against the debtor<sup>2</sup>.

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1 Please refer to the list of references found at the end of this of this report.

2 Different branches laws in Egypt regulate bankruptcy subjects ( for example, the central bank and the financial and monetary authority law, law of real estate financing, Law of financial leasing- law

### **Section three: An overview on the bankruptcy system in the Egyptian Law**

Bankruptcy is an enforcement procedure against a merchant's assets who stopped paying his due commercial debts; its provisions aim to liquidate his properties in a collective liquidation and to distribute its value among the creditors in a fair manner without any distinction or prioritization. After the declaration of bankruptcy, there are many procedures that aim at gathering the assets of the bankrupt and collecting his debts and fulfilling his dues until the creditors are able to have a full picture of the assets and liabilities of the bankrupt and decide on the best solution for their interests. This whole process should be assumed by competent experts assigned and supervised by the court, who are expected to do this mission, without any negligence or fraud.

Bankruptcy as a sanction in Egypt is only applied on merchants who stop or fail to pay their due debts regardless whether this failure is due to an actual state of insolvency or a temporary inability fulfill their obligations. Thus, bankruptcy cannot be enforced except on merchants.

The bankruptcy system is different from the insolvency system, which was regulated by the civil law (Articles No.249 to 264) and which is not applied to merchants. Therefore, the civil insolvency is a state whereby the negative elements of the person's patrimony become more than the positive elements, whereas the cessation of payment, which is a condition for bankruptcy, is simply an inability to pay debts on their due time. Bankruptcy, no doubt, puts the debtor through a serious financial crisis which perturbs his credit position, notwithstanding his negative or positive patrimony position<sup>1</sup>.

Based on that, the explanatory memorandum of the Civil law<sup>2</sup>, mentioned- in the context of justifying the regulation of insolvency in Civil law- the following: "... and the fact that fluctuation between solvency and insolvency is a common phenomenon among traders, whether the industry of legislation like it or not, the insolvency in this case is a reality which the law must recognize and solve the difficulties emerging from it. For that reason, the law project chose to buffer down its disturbances, especially that it does not provide the debtor with the least amount of help, but rather it incurs damage to the creditors' interests. Thus, the law built a legal system for insolvency which provides protection without any distinction for the debtor and the creditor."

Despite this fundamental difference between insolvency and bankruptcy as two separate and distinct legal systems, yet the practical reality brings them closer; often, the cause of the merchant's inability to pay his due debts is insolvency. Moreover,

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of inscription and central deposit of securities..... etc.)

- 1 For a better understanding of commercial bankruptcy fundamentals and its comparison with insolvency systems-, please refer to the book of the the Jurist Abd El Razzak Al Sanhoury- Explanation of Civil Law- Second part- Volume two- Second Edition amended by Counselor Mustapha Abd Alfakih- DarInahda Al Arabia Press p.1552 et seq.
- 2 the preparatory works of the Civil law- Second part- Obligations "Origin of obligation"- articles 89 to 264 Press Dar Al Kitab Al Arabi Press p.p. 658 and 659.

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the court does not decide to declare bankruptcy unless it is certain that stoppage of payment is continuous and perpetual, because the temporary stoppage of payment or the emergence of a transitional incident cannot justify the issuance of the bankruptcy decision.

On the other hand, the bankruptcy decision has several future consequences; it affects the bankrupt person's ability to manage his business enterprise or his property, also, it might go back to annul some transactions that he conducted during the period of uncertainty. Also, some of these effects affect the bankrupt's creditors whom the legislator is always keen to treat equally and avoid any dispute between them; therefore, the liquidation mechanism of the assets of the bankrupt was organized in a way that permits every creditor to receive some his debt by using the division system among the creditors<sup>1</sup>. In order to reach this aim, the law obligated the creditors to form a single group called "the creditors group", and obliged the court to appoint an attorney "**Bankruptcy Trustee**" who would take in charge the management of the bankruptcy estate on their behalf.

The creditors can choose to help the bankrupt debtor and assist him to regain his financial position and continue his commercial activities through approving on an arrangement with him whereby every creditor would cede a part of his debts or whereby the bankrupt would be given a grace period to fulfill his commitments, or both solutions at the same time. This agreement is a regular agreement, to which the court is not part to, and it is subject the general rules of the civil law and requires the approval of all creditors, this agreement is called "friendly compromise or settlement". The Egyptian legislator was aware that reaching such agreement can be impossible in most times and thus regulated another arrangement, this time supervised by the bankruptcy court, which is "the judicial settlement" and it is only requires the approval of a mixed majority from the creditors and the debts.

The bankrupt debtor can choose to negotiate with his creditors to waive them all his assets in exchange for exempting from all their debts; this arrangement is called "arrangement with assets' waive"> in the case where none of the above arrangements were reached, the only remaining solution would be the union of the creditors , this union is the hardest solution for bankruptcy against the debtor , as it is an undesired end for both of the creditors and the debtor.

#### **Section four: The philosophy behind the bankruptcy system in the current Egyptian commercial law**

Any observer of the bankruptcy cases, on which the new commercial law has been applied to, can note the following remarks-

(a) The strictness of the new commercial law with the debtor. The reason behind this

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1 Even if the interests of creditors are unified and they agree on liquidating the bankrupt assets to recover their rights, they remain in fact adversary because everyone wishes to eliminate the other in order to have a higher portion of the estate at the time of distribution.

is that the bankruptcy system in Egypt is still affected by the approach that treats the bankrupt as a criminal, especially that the public opinion still looks at the bankrupt as disloyal and negligent toward his creditors' right. Thus, bankruptcy becomes a shame and dishonour which chase the bankrupt and his family and it is the duty of the legislator aims to purify the market from the corrupted and damaging elements of trust and credit.

- (b) There are no traces of the reform element that the legal system of bankruptcy was said to contain after the promulgation of the new commercial law in the actual practice of bankruptcy lawsuits. The main reason behind that is the insufficient training of judges, lawyers and other concerned persons on the advantages of these innovations.

Most of the Egyptian doctrines are limited to explaining and analyzing the subject of bankruptcy in the new commercial law. Actually most jurists only reformulated their old books on bankruptcy which they have written in explanation of the old commercial law; by changing the numbers of the articles and making some necessary additions. Therefore, the idea of a complete and global theory has disappeared from their explanations of the provision of the bankruptcy law under the new commercial law. Moreover, the young jurists have not studied the bankruptcy provisions carefully, whether by explanation or analysis, because of the available academic books which explain bankruptcy in a shallow manner. We do hope to witness soon the revival of the Arabic legal library, through the publishing of some important books on bankruptcy; especially, that the subject of withdrawal from investment and facilitating it is considered the best way to attract foreign investments, as the foreign investor does not feel safe to start an investment unless he expects to withdraw from it easily.

- (c) In the context of the preparation of the bankruptcy provisions in the commercial law, of 1999, the Egyptian legislator was so focused on the hypothetical technocratic theory which aims to keep the future of the bankrupt in the hands of his debtors, without taking into enough consideration the economic environment in which he was operating his business before the cessation of payment. Therefore, the legislator has exaggerated in organizing some the procedural and theoretical aspects of bankruptcy which are rarely applied.

### **Section five: The most important features of the current bankruptcy law in Egypt**

Based on all the above, it becomes evident the bankruptcy section in the current Egyptian commercial Law and some other particular laws has been formed without considering the social, economical, and political situations that has changed in the Egyptian society, particularly after the great development in the communication and information technologies that have changed all the traditional methods of business transactions. However, the Egyptian legislator still wrongly presumes that traders

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deal with each other with honour, sincerity, and honesty and closes his eyes on the unfortunate deterioration of values and ethics in the business society in Egypt. This deterioration becomes evident when looking at the number of criminal cases of cheques without provisions in the courts, and also the number of unfulfilled bank loans and facilities, and the number of cases in which the banks deliberately exceeds the legal interest rate.

The previously mentioned cases had a negative impact on litigation in the Egyptian courts, whereby many legal provisions on bankruptcy, whether in the commercial law or other specialized laws, were simply theoretical with no value on the practical level and full of loopholes that lawyers and the litigants abused in delaying disputes. Thus, the phrasing of the provisions led to bureaucracy which in turn failed the rationale behind these provisions<sup>1</sup>.

All the above led to unease and disturbance in the provisions of compulsory withdrawal from investment in Egypt among all investors, especially after the revolution of January 25, 2011 which worried many investors in different areas. This situation has led to a retraction on the rank of Egypt on the measure of Doing Business, that was issued by the World Bank and the International Finance Corporation, as Egypt has got a very low rank in investment withdrawal compared to other countries (rank 146 out of 185 in 2013). In this regard, it is important to assert that providing facilities for withdrawal from investment is as important as attracting this investment, especially that planning for a recognized method of investment withdrawal protects the legal expectations of the investors.

On the other hand, the Egyptian legislator has not diligently considered the effect of bankruptcy on the economy of the country, the workers and sectors in the new commercial law<sup>2</sup>, even though this is a very important consideration for most international legislations.

For example, the French law No.98 of 1985 of correction, reform and liquidation looked at the business enterprise as an active economic unit within the economic framework of the country, whose complications not only affect the trader but the workers, the partners, and perhaps the society itself<sup>3</sup>.

In the following, we will present some of the categories that the Egyptian legislator is concerned with and has given them priority lien rights on the bankruptcy estate-

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- 1 For example, the Egyptian courts rarely or perhaps never apply criminal penalties on the defaulted bankruptcy or fraudulent bankruptcy; therefore, it is impossible - through real bankruptcy - to oblige the bankrupted person to repay his debts, as bankruptcy has become a way out for the bankrupt person at times, instead of being a threat that scares him and makes him feel ashamed.
  - 2 Check, for example, Dr. Abdul Rahman Qarman - Previous Reference p.24 and Check p.43 et seq.
  - 3 Ripert et Robolot - Traite de droit commercial, tome 2 ed 15 par Philippe Delbecq et German Michel p.868

A – A privilege is given to the judicial expenses that were spent on the creditors to preserve the assets of the bankrupt; these expenses have the priority in getting repaid, according to the provision of the Article (1138) of the civil law, and the expenses also include the remuneration of the bankruptcy trustee and his assistants of lawyers, accountants, clerks, and workers; as these expenses are considered a due debt on the creditors group, thus it has to be repaid before the process of distribution, even before the owners of rights secured by mortgages. Also, the expenses that were spent on selling the bankrupt's property come before the expenses spent on the distribution procedures (Article 1139/2 civil).

B – All debts to the government have a lien right, which includes taxes, fees, etc.; according to the provision mentioned in Article 618 of the commercial law, the government's privilege includes only the taxes that are due taxes for the years that are prior to promulgating the bankruptcy.

Whereas the other due taxes of the country which do not belong to this period of time are included in the distribution as they are considered as normal debts, and it seems that the provision mentioned in Article No. 618 stipulates that "the due amounts to the public treasury of taxes, fees, and other rights of any kind has the priority lien right as per the conditions stated in the laws and the rules that were issued for it, and these amounts will be recovered before any other lien right even if it was a lien or a debt secured by mortgages, except for the judicial expenses."

C- The wages, salaries, and the due amounts to workers of any kind that are owed by the bankrupt for a period of 30 days prior to the issuance of the bankruptcy decision, with the conditions that they get the permission from the judge of bankruptcy within 10 days following the date of the bankruptcy decision; and if the bankruptcy trustee did not have enough assets to fulfill these debts, he has to fulfill them as soon as he does even if there are other debts prior to it in the level of lien, (Article No.616 of the commercial law). In contrast, the Egyptian civil law, in 1141, gave priority "for servants, clerks, and workers, and every other employee" regarding their salary of the last six months before the declaration of bankruptcy. It is clear that the provision mentioned in Article No.616 of the commercial law are considered as an explanation and limitations of those mentioned in Article 1141 of the civil law in the three aspects:- (1) regarding the people who are categorized as "workers of the bankrupt" this refers to everyone who receives payment regardless of the kind of work or the position that he occupies; the legal text of the commercial law is comprehensive and inclusive and is not open for interpretations; (2) shortening the duration which is covered by this privilege to 30 days instead of six months; (3) emphasizing the need to fulfill the due debts to the workers, even if there is other debts that is prior to it in the degree of lien.

On another side, the Egyptian legislator focused on with the bankruptcy of the individual trader "the natural person", even though its impact is practically limited in Egypt since before the end of the 20th century, and neglected organizing the bankruptcy of companies (businesses), even though it there is a huge amount of



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lawsuits that are submitted to the courts due to their stoppage of payment. For example, the section organizing the bankruptcy of companies is timid and only includes 14 Articles (from 698 to 711 of the commercial law) out of an overall of 223 Articles that organize bankruptcy. Moreover, it stipulated that almost all provisions applied on individuals shall be applied on companies as well, ignoring that each one of them has a different legal system and that they cannot meet at many points. Actually, the bankruptcy of individuals became no more than a consequence of the bankruptcy of the moral entities (companies, establishment, and organizations) which dominate more than 95% of the economic activities. It thus becomes very unwise to treat the “natural person bankruptcy” as principal and organize the “companies’ bankruptcy” as secondary.

Therefore, **we recommend** that the Egyptian legislator, were he really sincere about reform in the bankruptcy system, should reorganize the companies’ bankruptcy system as a principal element in the market and treat that of individuals as secondary, thus developing a separate law for each of them; for example, the English law has formed an independent law that deals with the bankruptcy of companies, which many legislations in different countries has used as a guide.

**On another level**, the Egyptian legislator involved himself with some procedural details that follow the bankruptcy declaration; in a way that renders the bankruptcy judge and the bankruptcy trustee as machines working towards the same purpose, without giving any of them any objective role in assessing the bankruptcy estate or providing remedies to the factors that threaten it or the hopes of the creditors in collecting part of their debts. Thus, the role of those two persons in the bankruptcy procedure has become the biggest obstacle towards resolving the bankruptcy cases of traders and companies<sup>1</sup>, and we shall address in a coming chapter the solutions that can be used to deal with these loopholes.

**Also**, the Egyptian legislator has ignored the phase that precedes insolvency, and rather focused on the bankruptcy lawsuit; in other words, the legislator did not discuss the role of the creditors- at least in certain cases – in providing support to the insolvent trader to overcome his insolvency by rescheduling his debts, or by releasing part of their debt, or following up with him and supervising his business for some time, or by using any approach to collaborate with the debtor and help him in overcoming the crisis.

More specifically, the Egyptian legislator did not clarify whether it was permissible for a public administrative body (Free Zones & Investment Authority- Federation of Industries- Commercial or Industrial Chambers) or an association of investors or businessmen to give the trader a reviving assistance and help him to avoid bankruptcy.

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1 Refer, for example, the Articles No. 553 - 4/3/567 - 578 - 621 - 633 - 635 - 637 - 687 - 731 and others; these articles deal with the details that the legislator does not need to mention in the law, and it is enough if he just focused on achieving the ability to modify by specialization of organizing it to the Minister of Justice, for example.

More specifically, the Egyptian legislator neglected whether a fund could be established to ensure the defaulting risks of the traders or the business enterprises and to determine the conditions of cashing from it, and by whom it will be funded, and the role of the chambers of commerce in this regard; also whether the Ministry of Trade and Investment or the banks generally can have a supporting role in this regard even if at the expense of the contribution of the shareholders in the troubled company as necessary to save it.

In addition, the Egyptian legislator discussed in full detail the procedural issues which should have been regulated by the administration (the Prime Minister- Minister of Commerce & Industry- Minister of Justice), specifically regarding the documents that must be attached to the lawsuit submitted to the competent court for the declaration of bankruptcy. For example, some of the documents mentioned in Article 731 of the commercial law are very outdated, and are not yet issued nor will they be by the administrative bodies referred to in the same article. The commercial register in Egypt, for example, does not issue certificates on the extent of meticulousness during the two years preceding reconciliation. Also, the Chambers of Commerce do not issue a certificate that confirms the continuous practice of commerce during the two years preceding reconciliation. Also, when observing on the practical level, one can say that the Chambers of Commerce no longer provide services to their members but have rather become only a tool for collecting fees as well as its membership or presidency has become a sort of social prestige.

Moreover, the Egyptian legislator granted both the public prosecutor and the court - during its examination of civil or commercial cases or even criminal prosecutions- the right to file bankruptcy against the trader whom it sees has stopped paying his business debts even if his creditors do not claim his bankruptcy.<sup>1</sup> Some of the Egyptian jurisprudence criticized the legislator in this regard believing that he was exceeding the limit and allowing the unpleasant intervention of the state, represented by the Public Prosecution, in the financial and business affairs of the individuals, which ideally should be kept away from the state. In addition, this takes courts out of its natural role in adjudicating disputes and renders them as a plaintiff in bankruptcy lawsuits. Also, the justification of this opinion that bankruptcy provisions relate to public order, seems unconvincing since criminal offenses for example, are definitely related to the public order, yet, criminal courts do not apply the prescribed penalties thereon, only if a criminal lawsuit has been filed in the criminal courts<sup>2</sup> therefore, some comparative

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1 It is said in justifying this matter that bankruptcy provisions are related to public order, so the court should apply it of its own. If it sees that bankruptcy conditions are available in someone, it should apply on him bankruptcy provisions of its own even if not asked.

2 see also D. Ali El ZeinyBek, the origin of the commercial law - third part - bankruptcy - second edition 1946 page 65 Ff, D. Mohsen Shafik - the Egyptian commercial law - second part - bankruptcy - first edition 1951 page 230 Ff, and see also D. Salama Fares Arab - the intermediary in commercial law - third part - bankruptcy - the Arabian Renaissance House 2013 - page 130,



legislations proceeded to deprive the courts from the right of declaring bankruptcy by itself<sup>1</sup>. Finally, and in hope that the text which gives the court the right of declaring bankruptcy by itself will be canceled, it is expected that the courts refrain from using this right unless it was evident the creditors' rights - and notably those who are absent - is inevitably exposed to the loss.

The lengthy time that the procedures of the lawsuit of bankruptcy take from their beginning to the end, because of the intensity or the slow pace of the litigation, or the bureaucracy of the procedural legal rules is considered as the biggest hindrance that prevents the easiness of leaving the market, which in turn is a very important indicator to the evaluation of the system of bankruptcy in Egypt. The average time needed to finalize the procedures of a bankruptcy case is, according to the most optimistic estimates, between four and five years, and may be more. Also the average of percentage of debt collection in cases of bankruptcy in Egypt does not exceed 20% from the total debt. We list in the following table some of these indicators.

Indicator	Egypt	Middle East and North Africa
The time needed to end the bankruptcy	4.2 years	3.8 years
bankruptcy proceedings costs compared to its assets	18%	13%
The percentage rate of return per one dollar debit	18.4%	28.6%

These data are based on the field surveys of 2004, and the situation became more complicated after the revolution of 25 January 2011, and it should be noted that the World Bank usually relies on the average of revenue per dollar debit as an indicator of the efficiency of the bankruptcy system in different countries, and thus whenever this revenue increases, the bankruptcy system became more efficient, and vice versa.

The current rules of bankruptcy in Egypt do not urge or motivate the bankrupt to contribute and cooperate in the procedures of ending his bankruptcy nor does he abide by the rules that govern it. These rules impose on the debtor, from the moment of the issuance of the declaration of bankruptcy, a set of strict sanctions which start by forbidding him from managing his funds, to restricting his place of residence and

wherefore, it is not strange that we found the bank - although it makes a legal form for the shareholding company - they resorts to the public prosecution to force the borrowers to repay their loans if they tumbles, claiming that their funds are public funds which must be protected according to the provisions of the penal code, and unfortunately this way found a reaction with some public prosecution men, and also with the judges on the basis of an abusive interpretation of some texts in the Egyptian penal code issued on 1937 and which introduces the funds of the shareholding company in the category of public funds, and we think that the authors of the penal code have not thought as such if they knew that it will be applied as such

1 Like the English american and german law

preventing him from exercising his civil, political and professional rights, as well as to exposing him to criminal sanctions. Thus, the debtor appears in front of himself and his family as helpless and as a source of disgrace and dishonour due to the verdict of bankruptcy, and therefore his interest is always in complicating the procedures and embezzling his funds and to follow the extreme rules of routine, in the hope of consuming his creditors and forcing them to reach a friendly satisfying settlement for him and unsuitable for them. The practical reality is full of cases that refers to the bureaucratic application of the rules of bankruptcy whereby this latter has become no more than a way used to punish his creditors and torturing them. It is as if the whole process has been reversed; the bankrupt is in full control and the creditors are at the risk of losing what they own.

Based on the above, the practical complications that result from the application of bankruptcy deterred creditors from resorting to it to collect their debts, especially that often some other competing debts would be secured by a mortgage that consumes all the assets of the debtor. Thus bankruptcy becomes from the view point of the debtor a procedure that that barely has any economic return, especially that there is always a hidden creditor who does not appear until the time of the distribution of the bankruptcy fund; this hidden creditor is often the state represented by all its organs and its departments ( Tax Department, social insurance, court fees and others administrative bodies that the law gives its debts a priority).

46- Meanwhile, the biggest and most important obstacle of bankruptcy in the Egyptian law lies in the institution in charge of its administration, management, applying its theoretical provisions. After all, no matter how coherent and solid a legal framework seemed in theory, this has no value if the body applying it dealt with in a bureaucratic way that is always very reluctant and apprehensive of taking a decision that would incur liability on it. This is exactly the case in the bankruptcy system in Egypt.

The bankruptcy institution in Egypt consists of 5 main components and any disorder in the work mechanism of any of these five components damages, in our belief, any special regulation which can be reached for bankruptcy control in Egypt. We can refer to these five components as follows:

- A. Bankruptcy Court
- B. Bankruptcy judge
- C. Bankruptcy trustee
- D. Bankruptcy auditor
- E. Creditors group

Each of these five components has, with various degrees, a role in hindering the smoothness of the bankruptcy system in the Egyptian Commercial Law. It is certain, thus, that unless all these five components were reformed, no development would be achieved on the bankruptcy system as whole even if all international principles were incorporated into it. Therefore any legal system would remain futile if it was not

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properly applied in such a way that relieves the dryness of its texts and transforms them into a helpful active reality; especially since, unlike most other judicial decisions, the declaration of bankruptcy is:<sup>1</sup>

- A. A judgment that creates a legal state which did not exist before,
- B. A judgment with an absolute binding force, not only on the parties to it, but also on everyone within the state where it was issued,
- C. A judgment that consumes all the assets of the bankrupt, whether they were under his possession at the time of the judgment or became under his possession later on and regardless their source (a contract, inheritance, will, etc.).
- D. The authority of the bankruptcy court is not limited to the judgment issued, but is extended to cover all the procedures after its issuance and till ending the bankrupt and closing it. A Bankruptcy case, in fact, is a prolonged process which starts by the initiation of the lawsuit by anyone who is granted this authority and then after many exhaustive judicial procedures, reaches a final bankruptcy court judgment. Afterwards, it goes through the harshest stage which often extends for many years (the stage of the identification and recollections of debts, managing and ending the bankruptcy,)

Upon the issuance of the judgment of bankruptcy, the work of the Bankruptcy institution with its aforementioned five components starts by applying the relevant legal rules that were intended to deal with individual traders or companies which cease to pay their debts in a manner that jeopardizes credit. Therefore, reforming these five components is more vital than reforming the bankruptcy system itself, since most of the criticisms directed to the bankruptcy system in Egypt revolve around the work of this institution.

Nevertheless, the reform of these components in Egypt requires a reconsideration of some of the bankruptcy rules stipulated in the commercial law through their amendment, abrogation, or addition, as well as a review of some other legal systems related to the mentioned components of the bankruptcy system.

Based on the above, a legislative review of the bankruptcy system and some other related legislations is needed in order to create coherence and harmony and thus guarantee a better performance of such institution. We have previously set out throughout this report some recommendations which we think are important for the reform of the bankruptcy institution's components and in the following we shall suggest other actions and suggestions that can help overcome the obstacles resulting from performance of the aforementioned components of the bankruptcy institution.

It is noticed that many commercial projects have become multinational, whereby their activity covers more than one country. This created several problems regarding the conflict of laws and of jurisdiction. The Egyptian law was not keen to properly

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1 Refer Dr. Salama Fares Arab -Ibid. – P. 152 et seq. refer to also Dr. Ali Al Zaini Bik – Trade Law Assets – Third Part – Bankruptcy - 2nd edition 1946 – p. 139 et seq.

address this conflict and the scholars did not consider this area of study a priority in their writings.<sup>1</sup>

As evidence on the complication of this conflict and its overlapping and inconsistent solutions on which the countries are in profound disagreement, we pose the following questions:-

- i. Is it possible to declare the bankruptcy of a foreign trader- an individual or a company- in Egypt? And if so, what is the applicable law?
- ii. Upon answering the aforesaid question, should we apply the provisions of Bankruptcy of the Egyptian Law or the Foreign Law which is referred to?
- iii. What is the case if the bankruptcy of the foreign person, whose activities are in more than one country, is declared in a country other than Egypt; is this Judgment enforceable in Egypt and does it have direct effects on the bankrupt person or his assets in Egypt?
- iv. Is it allowed to declare the Bankruptcy of the same person in more than one country albeit the enforced law in Egypt which forbids the declaration of dual bankruptcy (Principle of Unity of Bankruptcy)?
- v. How are the assets of the bankrupt person distributed among his creditors in more than one country? Would there only one creditors' group or more than one depending on the number of the countries in which the bankrupt person has assets?
- vi. Does the Egyptian Law allow the enforcement of a foreign judgment declaring the Bankruptcy of an Egyptian inside Egypt?
- vii. What is the effect of the settlement reached between the bankrupt and his creditors in Egypt on the situation of Bankruptcy declared in a foreign country and vice versa?
- viii. Is it allowed to enforce a foreign Judgment of declaration of Bankruptcy according to the provisions of the Egyptian Law particularly those pertaining to the enforcement of foreign judgments stipulated in the Code of Civil Procedures? If allowed, what is the effect of the acts made by the bankrupt trader whose bankruptcy is declared outside Egypt during the period between the date of Judgment and the date of permission to apply it in Egypt according to the Code of Procedure applicable in Egypt, particularly, it is possible during this period that the bankrupt person's acts on his assets in Egypt have negative impacts on his creditors?
- ix. Can the cessation of payment of debts of someone outside Egypt be considered as a reason for declaring his bankruptcy inside Egypt?

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1 See Dr. Abdulmoneim Zamzam – Commercial Bankruptcy regionally and internationally – Paper published by Legislation and Law Magazine – Issue No. 45, January 2011, p. 333 et seq. See also Dr. Ali Al Zaini Bik – Trade Law Assets – Third Part – Bankruptcy - 2nd edition 1946 – p. 65 et seq. refer to also Dr. Salama Fares Arab - Ibid. – P. 157, and Melchi-& ZOUNGRANA, Les faillites internationales dans L'OHADA, Memoire 2003

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54- It is clear that the aforesaid questions<sup>1</sup> do not raise the issue of how to determine the applicable law only in the case of International Bankruptcy, but also raise many very important and critical matters and issues as related to the scope of the sovereignty of each country on its territory and the status of foreigners, conditions of applying foreign laws inside it, and the jurisdiction of its courts over the disputes caused inside it and other matters. Any attempt to resolve these issues in this short report would be considered an oversimplification of the. We believe that there is no way to resolve such difficulties but to enter into a Bilateral Agreements regulating the issue of International Bankruptcy between Egypt and countries with whom it has commercial relations.

**In addition**, we notice that the Egyptian Legislator did not touch on the case where one parties of a contract, which includes an arbitration clause, fails to perform his obligations. Would it still be possible for the creditor to initiate a lawsuit of bankruptcy despite the arbitration clause? Any answer for that should take into consideration that the Egyptian Legislator did not exclude the disputes related to bankruptcy from the scope of the arbitration, especially that such disputes may be amicably settled and arbitration is allowed in all matters amicably settled.

Article 13 of the Egyptian Arbitration Law No.27 of 1994 stipulates that the court before which the dispute, which contains an arbitration clause, is brought should refuse to look into the case if the defendant rose up the issue of arbitration before providing any request or defense. Article 11 of the same Law sets forth that arbitration is not allowed in matters which may not amicably settled. It is known that the amicable settlement is permitted in the bankruptcy; thus one can reach the conclusion that arbitration is allowed in bankruptcy<sup>(20)</sup>.

**Another question:** Do both contracting parties have the right to mutually agree that no party can – even if the other party did not pay his obligations - file a bankruptcy suit against the other? The law does not reject such agreement as the contract is "Pactasuntservanda"; and if it is possible the creditor renounces his debt, then he definitely can wave one of the means guaranteed by law to protect this debt. In this case, the creditor has to follow the normal path for claiming his right (file a suit to recollect his debt)

On the other hand, the aforesaid question raises another one: is bankruptcy law suit related to public order or not? Hence, is bankruptcy just a procedural claim independent from the plaintiff's request to reclaim his unfulfilled debt or is it a mixed claim of procedures and the substantive right? In accordance with the prevalent opinion in the Egyptian jurisprudence, the bankruptcy suit is related to public order because it is a procedural claim raised by the plaintiff not for claiming the substantive debt but to confirm that his debtor has stopped paying his commercial debts (whether for the

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1 We provided these questions for highlighting and the legislator to take them into his consideration during redrafting the governing provisions of bankruptcy. Therefore identification of the problem = more than 50% of its solution. Then we leave development suggestions on this regard for those involved in the amending draft of bankruptcy provisions in Egypt.

plaintiff and third party)). However, we argue that not all aspects of the bankruptcy lawsuit is not as a whole are related to public order, since it a mix between procedures and the reclamation of a substantive right.

Moreover, is it imperative to have more than one creditor in order to accept a bankruptcy claim or having one creditor is enough, if he was able to prove that the debtor is not repaying his debts? Jurisprudence differed in answering this question; some called for the rejection of the bankruptcy proceedings unless there were several creditors, because the application of the provisions of the bankruptcy assumes the formation of a group of creditors as a consequence for the declaration of bankruptcy and the formation of this group requires multiple creditors. Another opinion believes that the law did not require explicitly the multiplicity of creditors to accept a case of bankruptcy, so this latter should be accepted, even if there was only one creditor, especially that often other creditors emerge after the declaration of bankruptcy and during the stage of debt identification. This opinion has been adopted by the courts in France and Egypt. We believe that the Egyptian legislator should provide an explicit solution for these to avoid discrepancies between courts.<sup>1(21)2(22)</sup>

58- The Egyptian legislator has elaborated immensely on the means of appeal against the decisions of the bankruptcy judge and declaration of bankruptcy. Bankruptcy was viewed as an autonomous legal framework independent of the general rules of civil procedures, regardless of the fact that bankruptcy rules are considered as part of the commercial law. Therefore, we recommend reconsidering the means of appeal against the bankruptcy judgment and all proceedings set forth in the commercial law in order to create harmony between them and the stipulations mentioned in the law of civil procedures.

The Egyptian criminal law in articles 328 to 335 still contains the two types bankruptcy crimes (simple and fraudulent). It would have been preferable if this section was transferred to be a part of the commercial Law (Chapter Ten- Part Five) that regulates bankruptcy crimes and bankruptcy composition; the same way this has been done in the crimes of checks without balance contained in Article (534) of the Commercial Law.

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1 For details, refer to Dr. Salama Fares Arab - Ibid.

2 A question was raised that do you accept bankruptcy suit brought by son against his father or vice versa (the lawsuits that are filed by the assets and branches and all those who are connected by blood or kinship)? Some do not accept such cases, because the bankruptcy procedure is dangerous and brings shame on the bankrupt and are subjected to criminal penalties, which could harm the reputation of the family to which both the creditor and the debtor belong. Assets, ethics and rules of fitness require to refrain relatives for exposing each other for such things which bring shame on and a disservice to both parties. As well as to preserve the relations of the relatives is better than maintaining the credit. However, this view did not find many supporters because there is no text in the law which supports the result of this case, as well as to request the bankruptcy is a financial nature, for the creditor to use all means to regain his right, and kinship does not prevent the claim rights.



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It is noted that any form of participation in fraudulent bankruptcy is sanctioned according to the criminal law and the law of criminal procedures, especially that this type of bankruptcy, and any attempt of it, is a felony even if there was no explicit provision on this matter (Article 46 Penalties). On such basis, Articles (41 & 329) of the Penal Code sanction and intervention in fraudulent bankruptcy; one form of participation is the complicity with a merchant prior to the sentence of bankruptcy on drafting a commercial paper (bill, promissory note or check) then presenting this debt to the bankruptcy trustee while knowing that it is a false debt. We strongly support the position of the legislator in this regards since bankruptcy is an intentional act that entails an indication of bad intention and a clear aim towards harming the creditors. Hence, a good criminal justice system should sanction this crime.

However, can a criminal law suit be initiated by the beneficiary in a check without sufficient funds against the debtor – after the declaration of his bankruptcy – through a direct civil claim as per Article (594) of the Commercial Law that stipulates “it’s not permissible after the declaration of bankruptcy to file and raise an action by or against the bankrupt or even a proceeding therein, save and except for as follows:” ... (C) Criminal Actions?

As far as we know, no such question was raised in the Egyptian jurisprudence; we believe that, under the General Rules, the criminal law suit initiated in accordance with Law through direct civil action (direct claim) is related intrinsically to the civil law suit. Thus, if the terms and conditions of civil actions were not fulfilled, the criminal law suit which is based on it shall be refuted; and thus, the Misdemeanor Appellant Court should reject any criminal law suit of a check without sufficient balance, if this lawsuit was initiated by a faulty civil claim. Therefore, we recommend the legislator to provide a provision to articulate this subject of matter.

Besides the abovementioned, it’s noted that Article (332) of Penal Code penalizes the members of the Board of Directors of a joint stock Company and the managers of individual companies, if they were not shareholders, with imprisonment for a period of time ranging from (3 – 5 years) if the company becomes bankrupt as a result of fraud or deceit by them. The Egyptian Law here is not clear to this matter whether it implies the members of the board of directors or managers at the time of the declaration of the bankruptcy or those whose under mandate the fraud or deceit took place, even if before the date of bankruptcy or non-payment; nor is it clear on the effect of acquitting the members of the board of directors in a joint stock company by the General Assembly on the application of Article (332) of the penal code. Moreover, is it possible to specify a certain period of time (five years for example) for the prescription of the right to file a lawsuit against the members of the board of directors in case of bankruptcy? We believe that Egyptian legislator shall have a clear opinion in such matter; we propose its solutions shall be come in line with Companies Law not in bankruptcy provisions.

## **Section six: The exceptional effect of criminal trials on bankruptcy procedures**

The criminal trial of the bankrupt, regardless of the cause of this trial, may have (Murder felony – Embezzlement – Defalcation – Theft under duress – Abortion – Fraudulent bankruptcy) some occasional effects on bankruptcy procedures that shall be proceeded after judgment of bankruptcy as follows:

For instance, the conviction of the bankrupt by fraudulent bankruptcy may result in disqualification in management of money during the execution of his sanction, and the court of law shall appoint a person to manage of his funds (Article 25 penalties), but this does not mean that the person appointed by Court shall replace the trustee in the management of bankruptcy, but only in challenging the decisions of the mentioned trustee and the bankruptcy judge as well as attending the meeting of creditors; however, it should be noted such case may create problems in application, hence the legislator shall address this with an articulated provision.

From another side, the fraudulent bankrupt can not reach a judicial settlement with creditors group since this settlement is in its essence a contract under which two parties reach a settlement of arising or potential dispute through which each party gives up part of his debt.

Finally, the cost of bankruptcy (bankruptcy trustee's fees and the fees of his collaborators from lawyers, accountants and general expenses) in Egypt, according to the baseline surveys which were conducted recently is estimated approximately 18% of the value of the assets of the bankruptcy and this ratio is too high when compared with other countries, especially if the average rate of return on each dollar of debt out of the bankruptcy estate does not exceed 18.5% of the total values of the debt owed.<sup>1</sup>

The previous shortcomings have led to a decline in the efficiency of the Bankruptcy in Egypt system and a decline in the desire of the creditors in resorting to it as a formal frame to claim their rights as they prefer to resort to informal means to settle the cases of defaulted debtors<sup>2</sup> This method differs necessarily from case to case depending on the circumstances of each case; a thing that led to the loss of the guarantees and ultimately jeopardized the rights of creditors or stakeholders as a result of the lack of fair controls which control these adjustments, as well as the possibility that some of the creditors take all their rights and others do not get anything. The whole concept of

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1 The average of this cost is 13% in the Middle East and North Africa, and this drops to be in the range of 7% in high-income countries. In Kuwait, it is only 1% and about 4% in Israel, and the average of return on the dollar is 29% almost in the area Middle East and North Africa, and this percentage rises in Japan to become about 92%. Referred to in the mechanisms the market exit and developing a system Bankruptcy in Egypt issued by the Council of Ministers - Center for Information and Decision Support in July 2005 – p10.

2 The survey which was conducted in 1997 on a sample of 154 company revealed that the settlement of disputes amicably is more meaningful than the formal framework and 90% of respondents said the amicable settlement normally takes one year while they are on formal level takes about four and a half years.



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bankruptcy is based on the idea that in case the assets of the bankruptcy estate were not sufficient to cover all the debts, each debtor should take a share proportional to his debt.

In spite of the criticisms that we were directed above to the current legal system of bankruptcy in Egypt, but we do not deny that the current legal regulation of bankruptcy system in Egypt has some advantages if compared with the case in some other countries, or if compared to what it was the case in the Egyptian Trade Act which was canceled, according to the following:

**Section seven: Reforms introduced by the legislator to improve the legal environment of the bankruptcy system and the preventive conciliation in Egypt since 1999 and until now**

In the following years of the issuance of the new commercial law (after 1999) several criticisms have been directed to the rules of bankruptcy in it, whether regarding its institutional and philosophical rationale or in terms of the details of the solutions contained therein and the several practical problems it raised at the substantive and procedural levels, in addition to the fact that it ignored the social and economic effects which resulted from the lack of clarity of the strategic legislative dimension which motivates to formulate the rules of bankruptcy, as provided currently, particularly with respect to:

- (a) Setting a maximum time limit estimated for lawsuits Bankruptcy
- (b) Non-specialization of concerned in the matter of bankruptcy and economic issues in general

The bankruptcy lawsuits must be considered expeditiously or at least should not be deferred at a one time for more than 10 days, also the legislator must specify for the courts a maximum number of delays that can be granted to the dispute parties in this claim, and the concerned judges, must be trained and prepared to respect the privacy and particularity of the economic topics that raise before them.

And in an attempt to prevent some of the criticisms directed to the bankruptcy system as regards the long period that the litigation process takes and the lack of many judges of the economic and investment background due to their unawareness of the Business Law and its techniques, a reconsideration of the litigation jurisdiction rules of the authorized bankruptcy courts took place, with a view to creating specialized courts in economic issues to activate laws of economic and commercial nature, including the bankruptcy rules and procedures mentioned in the commercial Law.

Therefore, the legislator issued the Economic Courts Law No. 120 of 2008 to establish a specialized court system in economic issues and matters that affect the environment and business climate, and justified the issuance of this law in several reform theoretical and ideal ideas that the practice has proved to be no more than illusions.

For example, the idea of preparing the law suit and the attempt to conciliate or

reconcile between the disputing parties before viewing by the Court in order to save the time and the effort of the Court in this regard, completely failed since it was being applied in a very redundant form, without any real effect and constituted a waste of time and a prolonging of the dispute without any interest. Although, the preparations committee referred to in article 8 of the Economic Courts Law is presided by a judge from the Appeals Chamber and composed of members from this chamber or the first instance courts, as well as a sufficient number of managers and employees and clerks, the practice has not demonstrated any real or tangible success to this committee since its role has been a formality and bureaucratic role with adverse effects on the dispute. Thus, we recommend a restructuring of the preparations committee before the Economic Court to be more litigant-friendly, as well as a detailed specification of its exclusive authorities, whereby it gives decisions on all the related motions and prepares a substantive legal report on the subject of the dispute, like the case of the State Commissioners Committee in the Egyptian State Council.

On another aspect, the idea of specialization of the Economic Courts Judges and their knowledge of business law and the ability to judge in the economic disputes in a professional and experienced manner have not been spared from criticism. The actual practice confirms that the Economic Court Judges refer many cases before them to the accountant experts and technicians, and many of their judgments contained a referral of purely legal matters to those experts; very often, the Economic Courts rely on the mentioned expertise without checking the validity of the results, to an extent that the experts started taking the role of the judges. Actually, most decision issued by the Economic Courts nowadays include the phrase: **“The Court rests assured to the outcome of the expert”**, and the judges of economic courts consider that the expert reports is the route that rescues them from hardships. The expert’s report is **“the last straw”** that the lazy judge clings to.

Consequently, the legislator’s attempt in creating specialized courts for Economic Disputes failed in reconstructing the rift caused by the criticisms of the bankruptcy rules in Egypt, the same criticisms that were directed to the bankruptcy system under the umbrella of the Trial Courts still went under the umbrella of Economic Courts; the problem, thus, is not in the name of the Court but rather in the judges composing the Court and the extent of their comprehension of the economic and investment affairs and the actual environment of its business activities.

And on the other hand, the legal text on these economic courts, has raised a doctrinal and judicial dispute which was not existing before that:-Does the bankruptcy law suit have a specific monetary value and thus is distributed between the trial chambers and the Appeals Chambers in economic court on the basis that their value exceeds five million pounds or do not exceed this amount? Or is the claim with no monetary value, and thus, the Appeals Chambers is automatically competent to look into it?

If the bankruptcy law suits were classified according to their monetary value, will

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their value be based on the debt of the creditor who first filed the lawsuit or should it take into consideration the value of the debts of the other creditors who have intervened in the claims before the Court before issued its judgments? Whereas, if they were not classified as such, the appellate chambers in the Economic Courts are authorized to view them directly.

The same controversy arose when talking about the appeal methods in bankruptcy, is litigation in the Egyptian law on bankruptcy on one or two degrees? Unfortunately, each of the opinions has its supporters and opponents, the Supreme Court itself hesitated between the two opinions, since each had its advantages. Thus, the legislator must resolve this issue to prevent conflict, and must reconsider the matter of jurisdiction before the Economic Courts in general. First instance courts should have the competence to look into bankruptcy disputes, the decisions of which can be challenged before the appeal chamber and later on before the Cassation Court, according to the general rules in their jurisdiction.

On the other hand several special laws organized some bankruptcy issues in a manner contradictory with to the General rules mentioned in the Trade Law; for example, article 52 of the deposit law and central registry for bonds issued in law No. 93 of 2000 States that “upon the bankruptcy of one of the members of the central depository, the company completes finalizes the clearing and settlement for the transactions that this member was a party before the bankruptcy judgment; however, the Commission may annul such operations or some of them on its own initiative or at the request of the bankrupt member trustee if made in bad faith “; and as is evident, this text includes a departure from the General rules on the Trade Law especially the rules related to the inopposability of the bankrupt’s action on the creditors groups during the period of uncertainty, as well as giving financial supervisory authority the power to invalidate acts as concluded by the bankrupt member in mistrust, despite that this invalidation is the jurisdiction of the bankruptcy court in accordance with the General Rules.

We conclude from the foregoing that the provisions governing the Bankruptcy Judgments in the Egyptian Trade Law have not yet reached the point of Balance that reconciles different conflicting interests, guided by the case in modern legal systems. The Egyptian legislator has not yet reached the understanding that the legal regime governing bankruptcy is merely a part of an integrated strategy for creating and improving the business environment and the climate of commercial and investment activities in the State; bankruptcy, a way out of the investment, must be seen as a complementary mechanism and catalyst for the development of investments and not vice versa.

Below are examples of some of the reforms introduced by the legislator in or on the New Trade Law in order to enhance the legal environment for the bankruptcy system in Egypt and the composition in Egypt:

A. The legislator put in the New Trade Law No. 17 of 1999 a new constraint that

did not exist in the previous Law issued of 1883 which required as a condition to accept the bankruptcy lawsuit that the concerned merchant holds commercial books, and in accordance with article 21 of the law: every merchant, whose investment capital exceeds twenty thousand pounds, is obliged to hold commercial books as required by the nature of his business. Thus, small craft owners whose investment capital does not exceed the amount referred to above, are not obliged to hold commercial books and thus cannot be declared bankrupt. In this regard we recommend an increase in the amount referred to in this article as will be explained below.

- B. The new Trade Law attempted to mitigate the requirement of an adversarial Attorney-General in bankruptcy proceedings claims which was found under the Old Trade Law, whereby it required the mere notification of the public prosecutor without its quarrel in the suit, therefore the presence of a representative on behalf of the prosecution does not preclude the issuance of a bankruptcy decision. The Court, in the case of failure of the public prosecution representative to attend the hearing, and when the case is not ready to be finalized, can just put away the case in accordance with the provision contained in article 82 of the law of civil procedures
- C- The legislator did not adopt the concept of actual bankruptcy which was found in article 215 of the old law as a consequence of the cessation of payment; the New Trade Law no longer recognizes the idea of actual bankruptcy.
- D- Although the New Trade Law does not permit the bankruptcy of a merchant who stopped paying a civil debt, but allows the creditor of a civil debt to join the debtors of a commercial debt; however, if the commercial debt was fulfilled, the Court can no longer declare bankruptcy even if the civil debts remained unpaid.
- E- The legislator singled out in the Trade Law an exception to the rule that the cessation of payment of debts leads to bankruptcy; it relates to the debts to the government, as criminal fines, taxes or fees, social insurance, whose cessation does not lead to bankruptcy. This exception reflects the eagerness of the legislator to promote the trust which is the basis of the business transactions and the credit system, whereby the merchant can continue in his commercial business if he accepted to fulfill his obligations despite not paying the debts of the government. This is due to the ability of the State to recover its debt by other means than bankruptcy; however, if the merchant's was bankruptcy declared upon the request of other creditors, the State should intervene in bankruptcy when distributing the bankruptcy funds, and the State has a priority right to recover its debts that go back to two years prior the bankruptcy judgment.
- F. The legislator allowed – exceptionally – initiating the bankruptcy proceedings based on a non outstanding debts if certain conditions were met; for example if the merchant did not have a known and fixed address in Egypt or if he escaped

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and closed his enterprise or started liquidating his commercial business or performed harmful actions towards his creditors, on a condition that the creditor who raised the claim proves that the merchant stopped also paying his current commercial debts.

- G- The Egyptian legislator regulates pre-bankruptcy composition in part IX (articles from 725 to 767) as a method by which the merchant can avoid bankruptcy, especially if he has good faith and proves that, his cessation of payment and his financial distress are due to circumstances beyond his control and that he was not responsible for the damage occurred to the creditors. The legislator has stipulated a number of conditions necessary for composition, as follows: The merchant must be subject to the system of bankruptcy, and has operated his business continuously for two years, and the disruption of its business came due to circumstances beyond his control, and applying the composition within fifteen days from the date of the payment stop.

In the event of the merchant death, his heirs can request composition within three months from the date of the death, and the Court has to give its decision based on the common interest of the debtor and the creditors together, and the Court has to take some measures to preserve the merchant's money. However, the Court must reject any composition request if the bankrupt committed a crime in violation of honor or it was proven that he has already quit trade. In case of approval of the request for composition, the Court must assign one of its judges to oversee procedures and appoint a composition trustee; it may ask the merchant to deposit cash to meet the expenses of composition procedures, and the court can cancel any composition decision if the merchant refused to pay the expenses referred to above.

- H- As for the ways to challenge the bankruptcy judgment, the legislator has taken into account in the New Trade Law, the absence and attendance rules contained in the law of Commercial and Civil procedures and ensured that the challenge of the bankruptcy judgment is consistent and in line with established practice in the Law of civil procedures, whereby he introduced a new means which is the "third-party stakeholder's objection" (Like a co-debtor with the bankrupt or a sponsor or a creditor who has already fulfilled the debtor's debt), instead of the opposition rules, which were provided by the Old Trade Law. This new means of aims at the abolition of the bankruptcy judgment, and the condition to accept this objection is that the challenging person should not be a party to the bankruptcy claim. The Court competent to look into the objection is the court which declared bankruptcy, unless it was subject to appeal or cassation, whereby the Appeal Court would, then, be competent to view the objection.<sup>1</sup>
- I. The legislator explicitly adopted in article 568 of the new Trade Law the opinion which was prevalent in judicial practice in the ancient Trade Law, which

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1- refer, Dr. Salama Fares Arab, Bankruptcy Principles, page 132.

considers that if the merchant fulfilled all his debts during the proceedings of the bankruptcy law suit before the Court of first or second degree, or even after a bankruptcy ruling has been made, as long as the decision did not receive the executor power.

- J- The legislator allowed the bankrupt to request from the bankruptcy judge a Subsidy, whereby a part of the bankruptcy funds would be allocated for his basic necessities and those of his family for humanitarian considerations; this text was not found in the old Trade Law. Also, the new Trade Law permits the bankrupted merchant, despite his lack of legal capacity, to file a law suit to claim rights that are not related to his financial conditions.

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## Chapter Three

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### Review of the Experiments and the Reform Attempts at the International Level

Several attempts have been made over more than a century to reform the bankruptcy system at the international level in order to develop a model that would first serve as an example for each state when preparing its bankruptcy rules, and second contribute to the unification of the legal rules on bankruptcy at the international level. The World Bank is one of the prominent international institutions that introduce reforms on the business enabling environment in various countries of the world to ensure the rapid flow of capital and investment across international borders; in this context, the World Bank issues an annual report about doing business in different countries which shows the rank of these countries based on their ability of providing a business enabling environment and a favorable climate for investment. This ranking is based on the points which every State gets according to ten indicators set down by World Bank experts as a measure to revitalize and streamline the investment climate.

Among these indicators is “The index of settling insolvency and bankruptcy” (market exit). It should be noted that Egypt had a very low ranking in 2013 (No. 146 out of 189 countries) as regards the extent to which its legal system supports the settlement of insolvency and bankruptcy cases. Evidently, this rank reflects the fragile confidence in the Egyptian legal system’s ability to resolve insolvency and bankruptcy cases in terms of the length of the settlement bankruptcy cases or the level of return on every dollar of debt paid from the proceeds of the bankruptcy or termination of bankruptcy proceedings costs, both theoretically and practically as previously mentioned this report.<sup>1</sup>

World Bank experts have clarified on more than one occasion that countries who really aim at reforming their economic system should start with the bankruptcy sector and facilitate the procedures for exiting the market. This will contribute in helping traders or insolvent companies to come out of their plights, as well as secured creditors in recovering most of their debts, which in turn builds trust in the overall credit system. Moreover, this reform has many indirect benefits that particularly include strengthening the principle of “legitimate expectations of creditors” when Identifying the magnitude of risks on their insolvent debtors, particularly if they want to support them and trying to lift them out of their plight. It should be noted that some countries which had responded to the recommendations of the World Bank in this regard encountered some success stories in improving their international business index as we referred to above, particularly with regard to:-

1- Refer to link: [>>http://arabic.doingbusiness.org/rankings](http://arabic.doingbusiness.org/rankings).



- A. Rehabilitation of the defaulting businesses corporations and reincorporating them into the economic sector they were operating in.
- B. Providing unified, fair and expeditious procedures for the highest recollection of the debts of the bankrupt's creditors.
- C. Providing sufficient information for creditors so they can take the appropriate decision on supporting the merchant or company that is in the process of bankruptcy or continuing in bankruptcy procedures and distribution of its assets among them pro rata.

it may be helpful in this regard to refer to the reforms introduced to the bankruptcy system of several African countries by the efforts of the Organization for the Harmonization of African Business Law; i.e. "Organization pour l'Harmonisation en Afrique du Droit des Affaires-OHADA" which includes to date 17 countries (Burkina Faso - Cameroon - Comoros island - Cote d'Ivoire (Ivory Coast) - Central African Republic - Benin - Gabon - Guinea-Bissau - Guinea - Equatorial Guinea - Democratic Republic of Congo - Senegal - Chad - Togo - Mali - Niger - Congo)

This organization aims to facilitate trade and investment and enhance the business enabling environment as well as to ensure the legal and judicial security of commercial activities in the concerned countries; thus advancing the economic development and creating an integrated market that makes Africa a center for development. Based on that, OHADA worked to:-

- (a) Configure the joint court of justice and arbitration (CCJA OHADA) for the transfer of judicial experience of the countries of the world to unify trends of national courts in the Member States in the field of business laws
- (b) The establishment of the High Institute for the Regional Judiciary (ERSUMA) in order to train concerned professionals and develop their skills; this institute constitutes as well as center of research for business law in the member States.<sup>1</sup>

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1 Cette Organisation a pour principal objectif de remédier à l'insécurité juridique et judiciaire existant dans les Etats Parties. L'insécurité juridique s'explique notamment par la vétusté des textes juridiques en vigueur: la plupart d'entre eux datent en effet de l'époque de la colonisation et ne correspondent manifestement plus à la situation économique et aux rapports internationaux actuels. Très peu de réformes ont été entreprises jusqu'alors, chaque Etat légiférant sans tenir compte de la législation des Etats de la zone franc. A cela s'ajoute l'énorme difficulté pour les justiciables comme pour les professionnels de connaître les textes juridiques applicables. L'insécurité judiciaire découle de la dégradation de la façon dont est rendue la justice, tant en droit qu'en matière de déontologie, notamment en raison d'un manque de moyens matériels, d'une formation insuffisante des magistrats et des auxiliaires de justice.

Dans les États de la zone franc, les opérateurs économiques avaient coutume de dénoncer une situation qui leur était préjudiciable et qui était caractérisée par:

- la coexistence de textes contradictoires;
- la lenteur des procédures;
- l'imprévisibilité des tribunaux;
- la corruption des systèmes judiciaires;
- les difficultés d'exécution des décisions.



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In the field of bankruptcy laws, all member states agreed on issuing a unified law the organizes collective procedures for judicial settlement and collective liquidation of the debtor's assets; this law was issued in 1998 and entered into force in 1999, and articles I and II of the law stated that this law includes all those who are considered merchants, whether a natural or a moral person, as long as it is established in accordance with the forms of private law even if its capital is owned by the State or by its public bodies in order to ....

“D’organiser les procédures collectives de règlement préventif, de redressement judiciaire et de liquidation des biens du débiteur en vue de l’apurement collectif de son passif.”

In Poland, the reforms that were introduced to its law, in order to reduce the time required for bankruptcy by approximately 25% and increase the rate of return for each dollar of borrowed funds to about 68%,. The same applies to Bulgaria which introduced a package of amendments to the bankruptcy law in order to reduce the legal time required for bankruptcy and decrease the chances of challenging the bankruptcy judgments and shrink the available time for creditors to apply for their money after the bankruptcy to three months instead of six months and reduce the cost of bankruptcy cases by more than 50%.

Notwithstanding the above, we emphasize that the literal duplication of a successful bankruptcy system in a particular country or group of countries **is not preferable in terms of the principle of legislative drafting** due to the variations in the legal cultures and the environment as well as the economic and social dimensions from one community to another (from one State to another) even if they shared the same legal or economic system (for example Latin legal system or the Anglo-American or the Capitalist Economic System or the Socialist one ).

In the same direction it should be noted that many seminars and international conferences and initiatives were organized to modernize the bankruptcy systems in the Middle East and North Africa, such as those organized by Corporate Governance Institute in cooperation with the Organization for Economic Co-operation and Development (OCED) and the World Bank. For example, during the Conference held

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Et il est indéniable que la balkanisation juridique et l’insécurité judiciaire constituaient une entrave réelle au développement économique. L’harmonisation du droit économique et l’amélioration du fonctionnement des systèmes judiciaires dans les Etats Parties étaient donc considérés comme nécessaires pour restaurer la confiance des investisseurs, faciliter les échanges entre les pays et développer un secteur privé performant, condition sine qua non de la réussite des programmes de privatisation.

La mondialisation de l’économie exige l’harmonisation des droits et des pratiques du droit. Cette exigence constitue pour des pays en développement une priorité pour créer les conditions favorables à l’instauration d’un espace de sécurité juridique et judiciaire indispensable pour drainer des flux importants d’investissements, car investir est déjà en soi un risque, même s’il est calculé; s’il faut doubler ce risque premier inéluctable de celui d’un système juridique fluctuant, ondoyant et insaisissable, il n’y a pas beaucoup de chance de susciter l’attrait des investisseurs.

in Dubai in 2009 and 2010, it was stated that several countries in the Middle East and North Africa introduced some reforms on insolvency and bankruptcy systems due to the challenges imposed by the financial crisis of 2008, whereby legislators made their effort to secure the stability of financial markets and reduce the negative impacts of the financial crisis on the economies of these States in view of the high number of bankruptcies that accompanied the crisis. The conference also witnessed a willingness of many states to discuss how to deal with Islamic financial transactions in the case of bankruptcy of one of its parties in order to provide transparency and clarity to the markets.

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## Chapter Four

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### An Analysis of the Results of the Baseline Survey

Annex n°1 of this report includes a compilation of the detailed results of the baseline survey which was conducted in collaboration with several bankruptcy experts and national stakeholder. More than 60 specialists in the field of bankruptcy responded to the questions of the survey. In this regard, the following remarks can be made:

- The majority of the respondents were males (91%) This is because the men dominated most of the occupations that related to the matter of bankruptcy (judges, lawyers, law professors and even businessmen and employees in civil society organizations)
- 68% of the respondents belonged to the private sector, and 22% belonged to the government sector.
- 66% of the respondents fell in the age group category of 45 to 54 years 24% , of them were older than 55 years, and 10% of them fell in the age group category of 35 to 45 years.
- 79% of the respondents had an undergraduate degree, and 13% had a masters, and 5% had a doctoral degree.
- 98% of the respondents were interested in the issue of bankruptcy

Commenting on the analysis of the answers of some questions, we would like to note the following:

1. 57% of the respondents believe in not granting the court any role in the reorganization of the commercial institutions and the defaulted company while 43% of the respondents believe in giving the court a role in this regard.

**Comment:** it seems that the majority support this position out of conviction that the Bankruptcy Judge is a civil one who applies the neutrality principle (neutrality of the civil judge) which prevents the court from interfering in directing the legal proceeding to one party. However we are of the opinion of the minority, which imposes on the bankruptcy court a role in assessing the legal proceeding while considering the economic and social dimensions of the bankruptcy decision; since prevention is better than cure. The bankruptcy court should also have the power in assigning a temporary commissioner for six months to manage the defaulted business enterprise instead of issuing a hasty bankruptcy decision.

2. 96% of the respondents believe that the composition procedures provided in the existing commercial law are ineffective.

**Comment:** we think that the reason of this high percentage is due to the absence of awareness that composition is the best method to avoid the bankruptcy and its

impacts. We hope that the Egyptian legislator facilitates the composition procedures as well as the necessity of informing the merchants and businessmen with the culture of pre-bankruptcy composition and its importance in rescuing the distressed projects.

**3.** 81% of the respondents believe, with respect to setting a minimum number of employees in the defaulted company as a condition to apply for reorganizing, that there is no need to take the number of the labors of the company into consideration because they are not creditors and cannot solve their problems at the expense of creditors; also, since the law provides them with a priority on the bankruptcy estate as regards their salaries of the previous six months. 18% of the respondents believe the need to treat the labors as a vulnerable category, and thus providing them with guarantees to them when preparing new terms to reorganize the defaulted projects.

**Comment:** each of the two diverging opinions has its own significance; the first opinion looks at the case from an economic perspective represented in protecting the creditors without regard to other considerations while the second opinion has some social justifications that may not be ignored completely.

**4.** 49% of the respondents believe that there should be no distinction between the ordinary creditors and the secured creditors when participating in voting on the reorganization plan of the Composition of bankruptcy. 49% of the respondents believe that voting should take place by the ordinary creditors only. The same percentage believed in the participation of the creditors of non-outstanding debts in voting on the reorganization plan.

**Comment:** We believe in the necessity of supporting the position adopted by the Egyptian legislator which allows the creditors of non-outstanding debts to vote on the reorganization plan because their rights will be ultimately affected by accepting this plan.

**5.** The analysis of the results of survey demonstrates a consensus that the duration of the bankruptcy legal proceedings is too long, the followed procedures in this regard are extended and complicated and that it is important to facilitate the procedures and put a time limit for the bankruptcy legal proceedings.

**Comment:** We fully support this result.

**6.** 61% of the respondents believe that it is necessary to determine the date of the cessation of payment starting from the date of filing the lawsuit and not the date of issuing the judgment. It seems that they aim to avoid the lengthy duration of the bankruptcy legal proceedings before the competent court.

**Comment:** we believe that this criterion is uncontrollable and tries to solve the problem of the length of the litigation at the expense of the confidence in the commercial transactions, which requires shortening, as much possible, the period of uncertainty.

**7.** 98% of the respondents believe that the system of credit information is insufficient to provide data that allows creditors to investigate the financial situation

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of their debtors before loaning them. Some believe in the need to create an integrated system for credit information for all merchants and companies, while providing some benefits to its subscribers. In contrast, another opinion only calls for adjusting the current Commercial Record System to include some credit indicators for the registered merchants.

**Comment:** We totally support the opinion of the majority.

8. 98% of the respondents believe that the Egyptian law must include an explicit text that specifies the liability of the people responsible for the actual management of the company (the members of Board of Directors – managers) in case its bankruptcy was due to the decrease in the return of the bankruptcy (return rate per debit Pound or Dollar) as a result of their mismanagement to the company.

**Comment:** we support this opinion and suggest that the period for the lapse of this responsibility be five years prior to the bankruptcy judgment.

9. The majority of the respondents believe that the role of the Civil society organizations in calling for modernizing the bankruptcy rules is still low; these organizations must participate effectively in calling for reform.

**Most of respondents unanimously agree that the Egyptian legislator must interfere to adjust the bankruptcy system especially in the following matters:-**

## Chapter Five

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### Reform Proposals / Recommendations

Upon reviewing the advantages and disadvantages of the bankruptcy system provided in the Egyptian Trade Law no. 17 of 1999 as detailed above, and upon examining the results of the baseline surveys, and guided by the principles and recommendations of the world Bank and the United Nations committee of the International Trade Law (UNCITRAL) and the case of some comparative legislation, several reform recommendations and opinions required to develop the bankruptcy system in the Egyptian Law can be suggested, as follows:

1. We recommend drafting a law on the bankruptcy of companies and legal persons independent of the legal system ruling the bankruptcy of the natural persons; this is due to the particularity of the companies bankruptcy and its impact on several sensitive areas like the national economy, in addition to the impossibility of applying the personal impacts of bankruptcy on the legal persons.

2. We recommend cancelling the text granting the Public Prosecution the right to demand the declaration of bankruptcy by itself, since this might act as a pressuring means on the merchants or companies to force them in a certain direction, especially in times where there is a mutual influence and interest between the Executive and Judicial Authority, which usually witness an increase in the use of general policy to influence business.

3. The necessity of reforming and modernizing the bankruptcy institution with its five components indicated in this report, especially the role of the bankruptcy judge and bankruptcy trustee, especially that almost all criticism directed to the bankruptcy system in Egypt revolves around the work method of these two people who accompany the bankruptcy from the beginning to the end. There is no doubt that the law on bankruptcy in any country, no matter how well-drafted, cannot achieve its desired results and benefits except if accompanied with the appointment of an honest and experienced bankruptcy trustee. It is unfortunate that the Egyptian Law is still suffering from significant gaps in this regard, so we suggest reorganizing the profession of bankruptcy trustee through introducing some guarantees that ensure their good performance as will be mentioned later.

4. We believe in the need to narrow the jurisdiction of the bankruptcy judge through transferring some of his authorities to the bankruptcy court specifically in the cases where the legal system allows the appeal on the bankruptcy judge's decisions before the bankruptcy court since, usually, the court accepts the appeals on the decisions issued by the bankruptcy judge.

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5. In order to ensure conformity between the sense of initiative of the bankruptcy trustee in performing his mission expeditiously and professionally while balancing between the bankrupt rights and the creditors', it becomes necessary to impose on this trustee a civil liability in cases of negligence and criminal liability if this negligence was characterized by deceit. This is similar to the criminal liability of the bankrupt which is stipulated the current trade law and current penal law.

6. We suggest the transfer of the criminal sanctions of fraudulent and simple bankruptcy which are mentioned in penal code to the current trade law, specifically in its bankruptcy chapter; this helps achieve the unity of the subject under one legislation in order to increase awareness of the business society on the penalties associated with fraudulent and simple bankruptcy.

7. The minister of Trade and the minister of justice should regulate the profession of bankruptcy trustees and put its required terms and conditions; we suggest that the terms must be provided as follow:-

- Obliging the bankruptcy trustee to place an insurance that would cover his possible professional mistakes during his mission; this insurance should remain applicable for at least one year after the bankruptcy.
- The value of the insurance document should be equivalent to the value of the bankruptcy estate.
- The person, interested in becoming a bankruptcy trustee, must pass a test that reflects his wide knowledge of the general rules of law and the bankruptcy rules and procedures, as well as the principles of accounting according to which he performs his mission.<sup>1</sup>
- We recommend the legislator to allow the professional companies and institutions (Law Firms and accounting office) to get the occupational licensing of the profession of bankruptcy trustees, where the bankruptcy trustee is no longer required to be a natural person.
- The bankruptcy trustee must be honest, experienced and capable; he must not be sentenced in crime involving moral turpitude.
- He must reside in the same area as the court chamber where he works.
- The bankruptcy practitioner should take an oath before the court where he works.
- It is necessary to reconsider the list of the bankruptcy trustees every year.

The current Egyptian trade law contain one single condition for the bankruptcy trustee, which is that he must not be husband, brother-in-law or relative to the bankrupt; thus, the bankruptcy practitioner may be one of the creditors or others. Sometimes, the Egyptian courts choose the bankruptcy trustee from non-creditors; and he may be

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1 Some legislation stipulate that the bankruptcy trustee must be an attorney, It should be noted that the judiciary statute which was issued on 9 July 1939 and was applied by Mixed courts in Egypt before its cancellation was significantly interested in selecting the persons who manage the bankruptcy. This selection used to take place by the general assembly of the mixed appeal court.

a foreigner. The gender of the trustee does not matter; although not very common in the current practice, women can act as bankruptcy trustees. The Egyptian law does not require a specific degree, like a master degree in law or accounting.<sup>1</sup>

**8.** We recommend that the law obliges the creditors to choose an agent from the specialists in finance and accounting in order to monitor the work of the bankruptcy trustee, as is the case for the auditor in a joint stock company. The presence of this person who should provide a periodical report (quarterly or half yearly) to the creditors group on the bankruptcy estate progress and the method of its trustee in its management and his degree of abidance by the provisions of law and accounting principles as well as his diligence in collecting its rights or transferring its assets to cash flow, create a frame of transparency and clarity and limits the appeal on the decisions of the bankruptcy trustee. The reports prepared by this person will support the principle of access to information, and may result in a cooperation between the creditors and the bankruptcy trustee towards suggesting solutions which facilitate the bankruptcy management.

**9.** We think that the legislator must consider the review of certain specialized legal texts in a way that is more compatible with the bankruptcy system; these law are namely the law regulating the incorporeal and personal guarantees and insurances (official mortgage on the property - Privileges – special Chattel mortgages – bonds mortgage and Partners' shares) since any attachment on the properties of these securities and guarantees affect the performance of the bankruptcy system.

**10.** We believe that the legislator must also review certain stipulations of the law of civil and commercial procedures that relate to with the bankruptcy system, specifically those relating to objection to enforcement of judicial decisions, rules of seizure and forced selling, provisional attachments, attachment proceedings, sale by public auction and Absence and attendance rules before the courts to create procedural harmony between them and settle any conflict that might arise. Unity and coherence between these texts will lead to facilitate the bankruptcy estate management, thus reducing the time and efforts of finishing it.

**11.** The general legal framework of bankruptcy must include special rules related to the bankruptcy of companies that have a special nature, whether in terms of the type of its commercial activity, like insurance companies, banks, real estate financing companies and leasing companies or in terms of the high number of shareholders in its capital (Companies listed on the stock exchange). Judges are usually cautious in

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1 it should be noted that bankruptcy trustee is not a public official, but he is authorized to perform a public service and thus the provisions provided in the penal code on the public officials as the Provisions of bribery are applied on them. If the bankruptcy trustee was subject to the indignity during performing his job, the doer is subject to the penalties provided in the clauses from 133 to 137 of Penal Code. If the bankruptcy trustee embezzles any of the bankruptcy funds, he is considered perpetrator of confidence because he is agent and the agency is among the confidence contracts which are note in the article 341 of penal code.



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declaring the bankruptcy of these companies considering their nature and impact on the national economy. We saw that the bankruptcy of some of American banks in 2008 caused an international economic crisis that had repercussion on many countries all over the world.

**12** We suggest that the chambers of commerce commit to create a fund that guarantees the default risks of merchants or commercial enterprises after specifying the rules of resorting to it as a pre-emptive measure before reaching the bankruptcy stage; this option will help the merchants confront the crisis that they may encounter and lead to their cessation of payment.

**13.** We suggest the creation of a competent administrative authority (or specialized company) whose mission is providing credit information about the merchants and the commercial companies working in Egypt so that the clients would have enough knowledge about the financial situation of the merchants dealing with them.

**14.** We recommend increasing the minimum capital of a commercial investment to be at least five million pounds instead of twenty thousand pound, as a condition to accept any bankruptcy law suit; such amendment will decrease the number of the bankruptcy cases that can be heard before the courts. At the same time, a new mitigated legal method to deal with the merchants whose invested capital in trade is below five million pound and whose cessation of payment is due to the disturbance of the financial situations should be devised

**15.** We suggest exempting bankruptcy case from passing through the preparation stage of the cases and the reconciliation attempts which take place before the economic courts in order to save the time and effort because the bankruptcy case is not in its origins a disputed case whose parties are quarreling on the presence of the creditor's right or not. In this regard, we suggest an overall review of the preliminary stage relating to the case preparation in the economic courts generally because we think that it will not have any positive impact according to the expected objects when it is approved.

**16.** We recommend including a legal stipulation on the position of Egypt on bankruptcy across borders (international bankruptcy), specifically in terms of the territorial conflict of law that it raises.

**17.** We also believe that the Egyptian legislator should to take clear stand on the influence of the arbitration clause or agreement on the acceptance of a bankruptcy lawsuit before the courts, especially that the bankruptcy case, as per the law, accepts reconciliation and thus should accept arbitration, at least theoretically.

**18.** The Egyptian legislator does not state a clear and explicit opinion regarding the principle of the territoriality of the bankruptcy judgment or the principle of the internationality of the bankruptcy judgment, although the apparent interpretation of its texts indicates that he adopts the territoriality principle, and thus there is no effect for the bankruptcy judgment issued in Egypt on the assets of the bankrupt which are outside Egypt; nor there is an effect of the foreign decisions of bankruptcy on the assets in Egypt. It is recommended that the legislator explicitly adopts the principle

of the territoriality of the bankruptcy judgment because this will accelerate the completion of the bankruptcy actions and not allow the influence of the foreign laws (Procedural and substantive) on the proceedings of the bankruptcy lawsuit. Moreover, the intervention of different languages and variant legal systems in one bankruptcy estate would complicate and delay it; thus, the multiplicity of bankruptcies as per the multiplicity of countries is easier than having one bankruptcy extend over more than one country.

**19.** We recommend establishing a department in the Ministry of Justice or of Trade whose mission is to track the bankruptcy cases and provide public data on them; such statistics allow the legislators to stand on the good or poor functioning of systems and the legal provisions of the bankruptcy and assess their strength and weaknesses. Moreover, they provide a clear picture of the general economic conditions in the country and the degree of its evolution and indicate the economic sectors that are most susceptible to bankruptcy. In addition, statistics reveal the level of morality of traders; they also provide the administrative authorities in the state with information on the capital that is disrupted due to the delayed implementation of liquidation and bankruptcy.

**20.** We believe that the Egyptian legislator should explicitly recognize the civil liability and the criminal liability for directors and the member of Board of directors of companies which undergo fraudulent or simple bankruptcy. Any stipulation on this matter should be mentioned in the Companies' Law and not in the Bankruptcy Law.

**21.** We recommend restructuring the case preparation unit before the Economic courts either towards increasing the effectiveness of its role in a manner that allows the litigants a positive engagement with it or totally cancel it its idea. This restructuring shall not be achieved unless its exclusive competencies are limited to enable it to decide on all motions related to the dispute raised before it permanently. The unit should prepare a substantive report of its legal opinion on the matter of the dispute, as is the case with the State Commissioners Institution in the Egyptian State Council. The current situation of the case preparation unit simply prolongs the proceedings and does not benefit the litigants.

**22.** We recommend limiting the cases in which the Economic Courts can resort to expertise. Practice confirms that expertise is being used even in cases that do not require it. For example, the Court cannot request an expert opinion in a matter of a purely legal nature since it is supposed to be aware of all the legal issues raised by its national law, especially that it is being also assisted by the lawyers who are contending before it, and who have a great benefit in reaching the legally correct opinion.

**23.** We propose that the legislator reconsiders the matter of the jurisdiction of the Economic Courts in general, whereby the bankruptcy lawsuit starts before the first instance courts and is the appealed before the Appeal Chambers. As for the Cassation Court, it is competent to hear challenges on legal questions exclusively, in accordance with the General principles of jurisdiction. The current rules of jurisdiction of the

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Economic Courts are incompatible with the provisions of the Constitution by which the litigation must be made on two levels (first instance and appellate) with the possibility of Cassation if its causes are available, so if this recommendation is adopted, this will eliminate the current jurisprudential and judicial conflict on the issue of jurisdiction.

**24.** We recommend that the Bankruptcy Court assumes a role in evaluating and taking into account the economic and social dimensions of the bankruptcy judgment (especially bankruptcy of companies and enterprises) before declaring bankruptcy in order to prevent damage before it occurs. The Bankruptcy Court should be granted the authority to hire an Interim Commissioner for six months, for example, to manage the defaulted commercial business enterprise instead of rushing to initiate adjudication in bankruptcy.

**25.** We recommend the legislator to facilitate the composition procedures of bankruptcy and to oblige the Ministry of Trade to set up awareness campaigns that aim at introducing traders and companies' managers on the importance of the timely and appropriate exit of the investment. In addition, it is very important to study the possibility of introducing a course to law students or students of Economics and Business Administration that familiarizes them with the methods of engaging in investment and the timely exit out of it.

**26.** We believe that the Egyptian legislator should adopt the prevailing view in jurisprudence which accepts the bankruptcy lawsuit even if there is one creditor only, especially that it is possible that new creditors will appear during the stage of the debts documentation and fulfillment.

**27.** We recommend reconsidering the means of appeal against the bankruptcy judgment and reconsidering all criminal sanctions provided in the bankruptcy chapter in the trade law to create harmony between these means and the procedural rules provided in the law of civil and commercial Procedures.

**28.** We recommend an overall review of the concept of reorganization of defaulted enterprises; this will contribute to the promotion of a business enabling legal environment in line with the recommendations of the international organizations concerned with the unification of the bankruptcy rules.

## Conclusion

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This report provides a quick over view of the bankruptcy system in the Egypt with a focus on its advantages and disadvantages. We do not claim to have covered all the related topics, but we believe that the following constitutes a humble attempt to explain the bankruptcy rules and bring forward reform proposals for modernization. We hope that a new law related to the bankruptcy of defaulted companies and enterprises is issued soon with a view towards enhancing the national economy, recovering the creditors' rights and preserving the interests of the bankrupt. The purpose of bankruptcy, as a mechanism, is rehabilitation reintegration rather than punishment, which should be restricted to the narrowest possible limit.

Within this context came the initiative of the "Nile Group for Legal and Investment Consultation" in collaboration with "Arab Centre for the development of the Rule of Law and Integrity" which aims not only at improving the bankruptcy rules in the Egyptian law but also simplifying the rules of getting out of investment in general. There is no doubt that modernizing the bankruptcy system in Egypt requires the efforts of all concerned stakeholders, whereby each would contribute according to his field of expertise in order to establish a purposeful dialogue which takes into account all persons and authorities that are affected and affect the bankruptcy system and the rules of getting out of investment.

Thus, our call was extended to a large audience to participate together in architecture of the future policies and strategies in the field of bankruptcy and the rules of exiting investment generally. This report was the first step in this regard, hoping that it would constitute a major contribution to the literature on bankruptcy in Egypt.

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**Annex n° “1”**

Table of indicators concerning the efficiency of the Egyptian bankruptcy system compared with a number of selected countries

<b>Country</b>	<b>The rate of return on debt (per one dollar)</b>	<b>Time (year)</b>	<b>Cost (% of assets of the debtor company)</b>
Japan	92.4%	Year	4%
UK (United Kingdom)	85.8%	Year	6%
USA (United States of America)	68.2%	3 years	8%
Colombia	54.6%	3 years	1%
Tunis	50.1%	1.3 year	8%
Israel	38%	4 years	23%
Algiers	37%	3.5 years	4%
Malaysia	35.4%	2.3 years	18%
China	35.2%	2.4 years	18%
Morocco	34.8%	1.8 years	18%
South Africa	31.8%	2 years	18%
Kingdom of Saudi Arabia	31.7%	2.8 years	18%
Jordan	26.7%	4.3 years	8%
Turkey	25.7%	2.9 years	8%
Chile	19.3%	5.6 years	18%
Egypt	18.4%	4.2 years	18%
India	12.5%	10 years	8%
Indonesia	10.6%	6 years	18%
The United Arab Emirates	4.7%	5.1 years	38%
Brazil	0.2%	10 years	8%
Middle East and North Africa	28.6%	3.8 years	13%
States of the Organization for Economic Cooperation and Development	72.2%	1.6 years	6.8%

This Data is based on field surveys in the concerned State and reflects the situation in January 2004

**Annex n° “2”**

The development of the total of the first instance and final bankruptcy judgments during the period (1997 – 2004)

<b>Year</b>	<b>First instance judgments</b>	<b>Final judgments</b>
1997	22691	1663
1998	22623	1570
1999	33781	2612
2000	12325	2408
2001	6788	2321
2002	4966	1616
2003	3127	1238
2004	2755	858

## **Section Three**

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# **National Report of the Hashemite Kingdom of Jordan**





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## Introduction

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The general provisions of bankruptcy have been mentioned in the commercial law of 1966, and in about 50 years of issuing this law, no modifications have been done to its provisions, even though it is known that urgent modifications to some of its provisions and creating new provisions that deals with issues that was not addressed in the original law has become mandatory. However, it was impossible for many political considerations to modify anything in the commercial law, which has led the financial, industrial, commercial, and service sectors to ask for modifying the legal provisions that are related them in the trade law, and to seek help to avoid being subject to the commercial law by issuing a specialized law for their work and activities, some of it is as follows:

- Banking law of 1992.
- Insurance regulations law of 1999.
- Banks law of 2000.
- Commercial Attorneys and mediators law of 2001.

Regarding the provisions of the trade law and the bankruptcy provisions mentioned in them, there is no specific governmental or public organization that are responsible for them and they remained undeveloped for fifty years.

On the other hand, The results of the international crisis in 2008 has harmed many of the economic sectors of countries in the Middle-East and North Africa, including Jordan; this crisis has caused many public joint stock companies to suffer from defaulting, especially the real estate companies, because their debts have accumulated and their capital have eroded due to this financial crisis. Despite the fact that some of these companies own main assets of high value, yet they were idle and did not bring any revenue, which led to a delay in paying their debts to the banks; this situations worsened the banks debts and created a liquidity crisis, which led the banks to loan under very strict conditions and complicated requirements, this in itself led to a decline in investment and weakening the national economy.

Accordingly, last year witnessed an increasing demand not only to modify the bankruptcy provisions in the trade law of 1966, but also to develop the entire bankruptcy system, and use the new bankruptcy systems that are applied in other countries for many years now, in order to find new ways to help the insolvent companies, if possible, and also to find effective means to restructure them in such a way that allows them to properly utilize their resources and thus return back to business. This would provide the necessary guarantees to protect the rights of the creditors and the shareholders,

and fulfill the needs of the workers as well; which will consequently lead to motivating investment and social and economic stability<sup>1</sup>.

Therefore, this initiative attempts to reform the legal system of bankruptcy in Jordan, through adopting a methodology that is based on including the individuals who has experience, practice and interest in bankruptcy; like the public sector, the judges, the lawyers, the university staff, the auditors, civil society organizations, chambers of commerce and industry, banks associations and others who are interested in getting their opinions on the current bankruptcy system in the kingdom and their expectations regarding improving its procedures and provisions<sup>2</sup>.

Thus, the report is an additional contribution to the previous works for reforming the legal system of bankruptcy in Jordan. It highlights the need to apply this reform given the importance of bankruptcy provisions in the commercial legislative framework and in attracting investment and motivating and maintaining economic growth and stability, and maintaining the job opportunities which enhance the social welfare and stability.

This report will deal with the issue of reforming the bankruptcy provisions on four chapters; the first chapter will summarize the general features of the current bankruptcy system and liquidation in the Kingdom; the second chapter will deal with the draft of the new law on reorganization of business and the provisions of bankruptcy and liquidation of 2012 that is currently discussed in the Parliament. The third chapter will be concerned with analyzing the results of the baseline survey that has been given to a representative sample of the sectors that are involved and influential in the concept of bankruptcy in the public and private sectors, the lawyers, the judges, the auditors, the civil society organizations and others. In the conclusion, we will give a set of recommendations that are based on the discussions that took place with the entities involved in this matter and based on the results of the questionnaire, the principles and the international standards that is concerned with the bankruptcy systems that is issued by the United Nations Commission on the International Trade Law (UNCITRAL) and the World Bank.

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- 1 It is noted that in most of the international reports, the word “insolvency”, is used to denote the state of company’s insolvent or trader’s insolvent and the inability to pay the business debts. Therefore, the word “insolvency” in this report is the same one used in the bankruptcy concept in the trade law of 1966.
  - 2 The Arab Center for the Development and the Rule of Law and Integrity, which is a non-profit organization located in Beirut which is concerned with the rule of law in the Arab countries, by implementing this initiative within the Middle East Partnership initiative project of reforming the bankruptcy systems in Egypt and Jordan.

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## Chapter One

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### The general Features of the Current Bankruptcy and Liquidation System

If the trader is suffering from financial problems and stopped paying his debts, then the legal system which has to be applied on him is bankruptcy and bankruptcy prevention settlement systems that are mentioned in the commercial law, along with all the compulsory liquidation procedures according to the provisions of the companies law. If the trader is a company, it is allowed to begin with the compulsory liquidation procedures for the company without declaring bankruptcy.

By referring to the statistics of the department of Companies Control, we have found that the number of the companies that got liquidated is 57, 142, and 182 in years 2008, 2009 and 2010, respectively<sup>1</sup>; By 30/06/2011, they reached 136 company, in 2012, 79 compulsory liquidation cases have been registered, including 20 cases against the public joint stock companies; in 2012, the companies control department has dealt with 50 insolvent companies to reform their conditions and inform the department with their plans and programs in order to study them and to make a decision about its ability to reform its conditions<sup>2</sup>. The companies control department has adopted two indicators for insolvency in the **public** joint stock companies in its annual report in 2003; these standards are based on reaching 50% accumulated losses of the capital and suffering from losses for two successive years<sup>3</sup>. The remarkable increase in the use of liquidation with the insolvent companies during (2008-2012) is mainly based

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1 Companies Control Department Annual Report of 2010.

2 An interview made by the Jordanian News Agency "Petra" with the companies' general supervisor on 22/09/2012.

3 However, these modern standards for insolvency are based on a group of indicators and financial studies, and the situation and the future of the company which might give an idea of the financial difficulties that will lead to the company's inability to meet with its obligations and to continue being an investment that achieves the minimum acceptable revenue. The term "technical insolvency" is used to describe cases of companies that fail to pay their debts on time, due to their inability to convert its assets to cash, even though the value of the assets is high than their liabilities. In case that the value of the assets is lower than the debts, then it is called (real financial insolvency). In any case, if it is proven through those standards that if there is a company suffering from insolvency, then the solution to this is based on the concept that the company can stay in business and focus on restructuring itself according to the economic basis; the company that does not have this possibility and its liquidation value is higher than its value as an organization, then it has to be liquidated immediately. Accordingly, the outcome of liquidation will be taken from a failed investment and be used in a new investment which will create new job opportunities.

on the lack of the legal procedures that allows saving the insolvent companies which have the chances of staying in business, thus, giving the chance to reduce its debts and rescheduling the remaining amount, until it recovers its financial condition and overcomes the insolvency phase. As a matter of fact, there is no clear and effective system in the Jordanian legislations that deals with the companies that suffer from insolvency or are under the risk of suffering from it<sup>1</sup>.

### **Chapter one: The provisions of bankruptcy and liquidation as it is mentioned in the commercial law and the law of companies**

In Jordan, the provisions that deals with the bankruptcy and liquidation have been mentioned in more than one legislation; and this might lead sometimes to the difficulty in reconciling between them, especially in matters regarding the priorities of debts repayment, some of these legislations are as follows:

- 1) The fifth book of the commercial law No.12 of 1966.
- 2) The first and the thirteenth sections of the companies law No.22 of 1997, which are related to the expiry of the unlimited partnership and the liquidation and the abrogation of the public joint stock company.
- 3) The provisions 62 and 86 of the negotiable instruments law No.76 of 2002, which are applied to financial service companies that will be liquidated according to the provisions of the companies' law.
- 4) The provisions of Article (28) of Exchange Law No. 26 of 1992, which applies to the exchange companies that will be liquidated according to the provisions of the companies' law.
- 5) The provisions of Article (22) of regulating the dealings in foreign stock markets No.50 of 2008 and the provisions of the companies' law that apply on the companies that deal with foreign stock markets.
- 6) The Article (84) of banks law No.28 of 2000 on issuing the liquidation decision, and the provisions of deposit insurance corporation No.33 of 2000 on the liquidation of banks.
- 7) The provisions in the insurance companies' regulatory law No.33 of 1999 on the liquidation of insurance companies.

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1 The process of saving traders and companies from insolvency is an integrated technical process that has financial, administrative, and several legal aspects; it involves defining the legal meaning of insolvent and identifying the legal consequences of it, as it might require modifying the mechanism of selecting the members of the board directors in order to ensure that it includes some specialists in the field of the company's business in order to be able to provide advice for taking the right decisions, or modifying some of the goals of the company and reconsidering some of the production lines in order to renew them and remove non-beneficial activities; and reconsidering the structure of the capital and the way of dealing with losses; and examining the way its human resources are organized and the extent of the actual need for their effort; and looking forward to opening new markets and attract strategic partners who provide real added value to the activity of the company in order to contribute in its development.

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This report has excluded banks and insurance companies, since there are provisions specialized for regulating, restructuring, liquidating them in a way that is different from other companies.

In fact, the current bankruptcy system does not include applicable provisions that could save the trader who is suffering from financial difficulties and enable him of reorganizing his business and rescheduling his debts, so he can stay in business and avoid bankruptcy. As for the Articles in the commercial law that deal with the bankruptcy prevention settlement system, they are rarely applied, even though they were issued 50 years ago. The rareness of applying these provisions is an evidence of their inability to reorganize the business of the insolvent trader, even though lately it was used more often, with bad intentions, in order to delay lawsuits or enforcement against the debtor and not for the purpose of reorganizing the business and maintaining his business<sup>1</sup>.

In addition to what was mentioned previously, it is noted that the currently applied bankruptcy and liquidation procedures take long time before courts; in many cases, it exceeds five years before finishing the liquidation and closing of bankruptcy. It is agreed that all the bankruptcy and liquidation procedures reduce the value of the liquidated assets, and this leads to reducing the percentage that creditors get out of their debts. In this regard, we refer to the results of the report of the World Bank in 2010, which is called: "Doing Business 2014 World Bank-IFC Report", which included a set of indicators related to practicing business activities, including bankruptcy systems in the countries of the Middle East and Africa; according to the report, Jordan is ranked (113) of (189) country in insolvency settlement cases, the procedures of bankruptcy lawsuit take 3 years in courts, whereas the rate of these procedures in other countries of the region is (3.2) years and in the OECD<sup>2</sup> countries about (1.7) years. The rate of recovering the debts of the creditors after the procedures of bankruptcy in Jordan is (27.2%), whereas the average percentage is (29.4%) in the region and (70.6%) in the (OECD) countries. On the contrary, in Jordan, the company which goes into bankruptcy procedures usually loses (20%) of its value, where as the average of loss in other countries of the region is (14%) and (9%) in the (OECD) countries.

It is noted that the current approved indicator to declare a trader bankruptcy is the cessation of payment of his business debts, even if his assets exceed his liabilities. This

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1 In a recent and important decision of the Appellate Court in Amman on 29/09/2013, the court has decided that the sole request of the debtor for a preventive legal settlement is not enough in itself to stop the enforcement procedures on his property, as this requires the decision of the court according to the provisions of Article (293/1) of the commercial law whereby all the creditors present before the judge who is assigned to study their settlement request, after the subject-matter court has considered the settlement request legal and accepted.

2 They are the countries that belong to the Organization for Economic Co-operation and Development, which includes the United States of America, Canada, United Kingdom, Germany, France, Italy, Spain, Belgium, Switzerland, Austria, Sweden, Japan, Australia, Turkey, Mexico, and others.

might actually lead to the bankruptcy of many enterprises only due to their inability of transforming their assets into liquidity, for whatsoever reason.

It is also noted that the bankruptcy procedures that are mentioned in the companies law are unclear and subject to interpretation in many cases; one reason for that is that the system, that was mentioned in Article (252/B) of companies law, has not been issued; this system should specify, arrange, and apply the bankruptcy procedures and specify the tasks of the liquidator including the reports that should be submitted by him. Furthermore, the procedures of selling the assets of the company under liquidation are unclear, in regards to the manner of selling and if it should be executed by the execution departments or by the liquidator, and if the approval of the liquidated company (debtor) is required to proceed with this selling. In addition, the current law provisions do not explain any conditions or required qualifications in the person who works as a bankruptcy trustee or liquidator, it also does not deal with the current system which is concerned with the effect of bankruptcy issues abroad and the effects of foreign bankruptcy procedures on the debtor who resides in Jordan or whose assets are in Jordan.

The current trade law deprives the bankrupt person from some of his political rights until he is rehabilitated according to the provisions of the law, thus without distinction between the fraudulent bankrupt, and the simple bankrupt, and the person who got bankrupted due to economical, commercial or general reasons that are out of his control; i.e. the normal bankrupt.

## **Chapter two: Other legislations that are related business credit**

The other legislation which are related to commercial credit and that have direct connection to bankruptcy, in general, vary, as some of these legislations are concerned with exchanging credit information of the trader, and others are concerned with the real-estate security and other securities that the trader can present in order to get different credit facilities which provide liquidity for his business, activities, and future plans and prevent insolvency and financial disturbance. We will discuss these legislations briefly:

### **1- Legislations related to exchanging credit information**

Three years after the issuance of the new banking law of 2000, the information credit law No.(82) of 2003 was issued. Despite recognizing the importance of this law and its role in protecting the funding organizations, when providing loans or banking facilities or when paying in installment or deferred payment, the provisions of this law were not applied due to several reasons. This led to issuing the new credit information law (Temporary credit information law No.15 of 2010) which also was not immediately applied in accordance with the regular procedures, but rather was delayed till its system (No. 2011/36) was organized on 9/7/2011 and executed on 1/8/2011.

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Moreover, the company envisaged in this law, which supposedly should gather, store and process the credit information (Article 12 of the law), was not licensed except shortly before the date of this report; therefore, it is difficult to depend on the practical applications of this law in order to test its effectiveness and success.

In any case, this law allows the creditor to benefit from its provisions by getting credit information of the debtor and his identification and business record, if available, and his credit record during a specified period, including the credit facilities granted to him and the legalized deferred sales and the due date of each of them, and the provisions and the conditions and the guarantees of each of them, and the mechanism of repayment, and his level of commitment to do it.

## **2- Legislations on real estate securities**

The law No.46 of 1953 regarding real estate securities is still applicable and it includes the main provisions regarding real estate securities and the mechanism of their obligatory attachments. It should be mentioned that the origin of this law is the Ottoman law on real estate securities which was issued in 1331 AH which included several provisions that are still valid until today, among which is the right of the creditor to impose a penalty on the debtor if he paid his debts before the due date.

On the other hand, most of the credit facilities that are granted by banks to the clients (which are not from the government, the public bodies, and public joint stock companies, or companies owned by the government and the public bodies) are secured by real estate mortgages under the provisions of this law; therefore, there is no exaggeration in saying that this law is the most relevant to banking operations after banking law.

According to the recent jurisprudence, especially after issuing the modified law No.8 of 2009 of real estate securities, where the creditor who is an owner of a mortgage is not obliged to bring a lawsuit at the specialized courts to get a legal adjudication of his debts before resorting to obligatory execution of the mortgage, as he can simply resort to the enforcement of his mortgage at the concerned enforcement unit. The debtor's objection is not enough to stop the execution of the procedure, but if he has real essential reasons that halt the enforcement, then the debtor has the right to seek legal proceedings at specialized courts and to obtain an urgent judicial decision in order to stop the execution, and usually the debtor does not succeed in getting the court to give him this decision unless there were strong sufficient legal reasons.

## **3- Legislations on moveable property guarantees**

Discussing the guarantees on moveable properties calls for differentiating between:

- Moveable property that is not registered at any official organization under the owner's name.
- And movable property that needs to be registered at an official organization.

As there is no reason to register the majority of the moveable property under any legal provisions, a law No.1 of 2012 to use moveable property as a guarantee was issued



in order to facilitate the procedures of mortgaging a business or any moveable property which helps traders to get the required financial credit from lenders.

However, by studying these legal texts, we can note that the law has also dealt with shares, stocks, cars, ships, and plans, which are regulated by specific laws that require their registration. Thus, there was no original need to reorganize the provisions of these moveable properties in the new law No.(1) of 2012<sup>1</sup>.

On the other hand, this law does not include provisions that deal with mortgaging moveable property which does not have a special law that requires registering it; and it does not deal sufficiently with the provisions of mortgaging a business enterprise premises; currently, there is a request to issue a new law to regulate the provision of moveable property guarantee to replace the law No.1 of 2012.

Certainly, it is possible to mortgage moveable property partially, according to the provisions of the civil law; however, the currently applied provisions are not sufficient to guarantee the effectiveness and the usefulness of this mortgage; therefore, banks usually do not accept this kind of mortgage for loans and granted banking facilities.

Some of the special laws that require registering the moveable property, including legal texts that are related to selling and mortgaging, are as follows:-

- Companies law No.22 of 1997 which regulate the provisions of mortgaging shares in individuals' companies and the limited liability companies, and mortgaging stocks in public joint stock companies.
- The instructions of registering and depositing of negotiable instruments and marketing them of 2004, which was issued under the provision of securities law No.76 of 2002, which deals with regulating the procedures of exchange stocks mortgaging in the stock-market of Amman.
- Traffic law No.49 of 2008, which deals with mortgage contracts of vehicles and documenting them.
- Chapter Two of the second book of the commercial law, which deals with mortgaging debts and commercial mortgage in general, which requires obtaining a legal decision before implementing the commercial mortgage.
- Civil aviation law No.41 of 2007, which regulates the provisions that deals with airplanes, and their mortgage.

Regarding mortgage bonds on these properties, the creditor can seek the creditor who is the owner of the mortgage to present their mortgage bonds for direct obligatory enforcement at the specialized departments, without getting a legal decision on the secured debt that is under the mortgage bond. However, the debtor can object on the secured debts under the mortgage bond, before the implementation department;

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1 It is noted that this law sought to apply the standards of the World Bank for insolvency and creditor's rights (specially the standard No. A3 that is concerned with the insurances on moveable property) which can be retrieved from the following link: [http://siteresources.worldbank.org/EXTGILD/Resources/5807554-1357753926066/ICRPrinciples-Jan2011\[FINAL\].pdf](http://siteresources.worldbank.org/EXTGILD/Resources/5807554-1357753926066/ICRPrinciples-Jan2011[FINAL].pdf)



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this objection is sufficient to stop the procedures of implementation regardless of any supporting evidence. And in this case, the creditor has no choice except to file a lawsuit to obtain a legal decision of the origin of his debt and/or implement the mortgage bond; this abstract objection which the debtor can raise without supporting it with evidence may lead to weakening the guarantee of this moveable properties and give it a lesser value than real estate mortgage<sup>1</sup> in terms of strength and stability. Therefore, we believe that, just like the real estate securities, it is necessary to require additional procedures and not only be satisfied with this abstract objection; otherwise it would be used as a means for stalling and stopping the execution. One possible mechanism is to impose on the debtor a compensation, which represents a percentage of the disputed debt, in case the objection proved to be invalid.

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1 The official authorities that legalize and regulate the rights on movable and immovable property are:-

- The department of lands and space in the Ministry of Finance in Jordan, which is mainly specialized in ensuring the ownership of immovable property and documenting and facilitating using them, it also provides a computerized integrated database for lands and real estates in the kingdom, including any restrictions, rights that are given by attachment, mortgage, or anything.
- The Jordanian Maritime Authority, regarding the registration of property ownership of ships, according to the law No.46 of 2006 of the Jordanian Maritime Authority.
- The civil aviation regulatory organization, regarding the ownership of planes, according to the aviation civil law No.41 of 2007.
- Trademarks Registry, regarding the ownership of trademarks, according to the trademarks law and its modifications No.33 of 1952.
- Trade Names Registry, regarding the ownership of brand names, according to the trade names law No.9 of 2006.
- The Securities Depository Center, regarding the ownership of stocks and other securities, according to securities law No.76 of 2002.
- The depository center in the national library department, regarding the authors copyrights, according to the copyrights protection law and its modifications No.22 of 1992.

## Chapter Two

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# The Draft Law of Reforming Bankruptcy and Liquidation System

### Introduction

The real efforts of working on reforming the legal system of bankruptcy in Jordan started in 2009, that is when the Companies Control Department in the Ministry of Industry and Commerce, with the collaboration of government authorities, the representatives of the public and the private sectors, the chambers of industry and commerce, and banks, in addition to a number of judges, lawyers, and university staff, wrote the draft of “business insolvency law in 2009”. After this law draft was presented to the Prime Minister, it was referred to the Legal Ministerial Committee which decided to re-study it in order to assess whether there is a need to issue a new separate law or simply modify the existing companies laws in such a way that includes the necessary provisions for the reorganization of insolvent companies and for the debts’ legal settlement.

In 2012, the Companies Control Department and the “International Finance Corporation” (IFC) have prepared a new draft for this law, which went through several reviews by the Bureau of Legislation and Opinion, in addition to the modifications of the legal ministerial committee.

On 14/11/2012, the Council of Ministers approved the draft (Business Reorganization Law and the provisions of bankruptcy and liquidation of 2012) in its final form with its explanatory statement and forwarded it to the parliament on 22/11/2012. The parliament decided in its session on 12/2/2013 to forward the draft to the legal committee at the parliament and then to the economy and investment committee in the parliament and it is still under review and discussion until today.

The draft law has adopted several new reform concepts which do not exist in the current legislation; out of which the most important is the process of reorganization and legal settlement. Moreover it has gathered all the bankruptcy provisions in the commercial law together with the compulsory liquidation provisions and the voluntary liquidation that are mentioned in the companies law and combined them in a single law.

It is also noted that the draft law has adopted the concept of “financial disturbance” or “default” as a novel measure to determine the extent to which a trader can reorganize his business and his ability to settle his debts legally with a view to assessing the necessity to declare bankruptcy. This concept implies that the trader is encountering operational difficulties in his regular activity and an increase in the inductors of his inability to

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stay in business according to the international standards for financial reporting and approved auditing. We will address in the following each of these separately.

### **First: Reorganization**

At the beginning, it should be noted that the decision of the voluntary or the compulsory liquidation must include a decision of assigning a liquidator and that Article (253) of the companies' law has stipulated explicitly that the authority of the liquidator includes "overseeing the business of the company and saving its property and assets." Moreover, Article (A) of (254) of the companies' law has stipulated that the liquidated company has to stop" practicing the business from the date of issuing the decision of the General Authority in the case of voluntary liquidation and on the date of the court's decision in the case of compulsory liquidation; this means that it is inconceivable to set a plan for reorganizing or restructuring the company in order to return back in business after the issuance of the liquidation decision. Only one option remains for the liquidated company which is to abrogate it and dissolve it.

On the other hand, the process of liquidation depends mainly on the financial assets of the company, although the technical skills and the reputation of the company might be of greater importance than the financial assets. Thus, the company will lose the essential elements on which the initial company's success and prosperity were founded if the decision to proceed with the liquidation is taken.

Regarding the concept of (reorganization), resorting to it does not aim at helping the company exit the market and run out of business completely; on the contrary, it is based as stipulated in Article (8) of the draft law on setting out an integrated action program that includes the following:-

1. Determining the financial, operational, and administrative conditions and the legal procedures that should be followed to deal with these conditions.
2. Enlisting the trader's rights and obligations, the creditors and the debtors and their addresses, and the rights of his employees.
3. The timetable for implementation the plan, and who is implementing it, and the expected duration to implement it, which must not exceed 2 years.

The draft law has explained many of the rules and the procedures to be taken into account, for the purposes of reorganization, including the following:-

1. Within a year from the date of the financial disturbance, the trader has to present an integrated plan for reorganizing his business, if certain conditions are met and assigning someone to implement the plan; after accepting the request, the court appoints an expert to study the request and give his reports thereon<sup>1</sup>.
2. As a consequence the promulgation of the court's decision to formally accept the request of reorganization, all lawsuits and the cases against the trader related to

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1 According to the UNCITRAL Legislative Guidelines on Insolvency, countries can choose between allowing the debtor to request reorganization or allow creditors also to submit a request for reorganizing the business of debtor. (Kindly read footnote No.(15) of this report).

his commercial activity would be halted until the issuance of the court's decision on the approved reorganization plan.

3. If the court accepts the request of reorganization, it authorizes the expert to call the creditors to vote on the reorganization plan; the court approves the plan, if the creditors who represent more than 60% of the debt approved it, including the secured creditors and the unsecured creditors alike; the courts assigns a person to supervise the implementation of the court's decision<sup>1</sup>, this decision is not subject to appeal.
4. After debtors who represent (60%) of the debts approve the plan, and after the approval of the court on it, the plan becomes compulsory for all the creditors, including the creditors who have not voted, or who have not approved it, even the creditors who are secured by mortgage.
5. During the implementation of the plan, and based on a request from the person implementing it or supervising its implementation, the court approves to call the creditors to vote on the modification of the plan, as long as it does not entail an increase in the time limit for more than one single year. Based on the request of the creditors who represent at least (50%) of the total debts, without any distinction between the secured and the unsecured debts, or based on the trader's request, the court can approve calling the creditors to vote on ending the plan or changing the person who implements it or supervise it.
6. If the duration of the plan has ended without fully implementing it, or if the trader has not followed it, or if the trader has done any fraudulent behaviors or any prohibited acts, then the reorganization plan ends; the plan also ends by the court's own decision, or based on the recommendation of the supervisor which is based on the reports submitted by him.

In any case, if the plan ends due to one of the reasons mentioned on item (5) or (6) above, the court is authorized to proceed with the procedures of bankruptcy.

## **Second: Judicial settlement**

The commercial law includes provisions that deal with the bankruptcy prevention settlement system, yet after 50 years, they have proven inapplicable. Thus, a search for a new mechanism is a must in order to allow the insolvent trader to reach an amicable settlement with the creditors in a manner that protects him from bankruptcy and liquidation and thus ending his business.

Accordingly, the draft law includes a separate chapter on the "judicial settlement"; the most important provisions can be summed up as follows:-

1. The draft law allows the trader, in case he suffers from financial disturbance and there is an increasing indication of his inability to stay in business and the

1- The UNCITRAL legislative guide on insolvency law stipulates for the continuity of the work of the debtor and the restructured company, either under its current administration or under the independent administration or through merging both administrations.

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inability to fulfill his obligations within the three months after the submission of the request, to submit a request to the court in order to present to his creditors a scheme of arrangement. The request has to include the scheme of arrangement whereby he specifies the percentage of debts to be paid and their time plan; this percentage should not less than (30%) of the normal debt and (50%) of the debts secured by mortgages, the implementation period of the plan should not exceed 3 years.

2. If the court accepts formally the scheme of arrangement request, in accordance with its decision, that is not a subject to appeal, it assigns an expert to study it and present a report to the court thereon.
3. If the court accepts the scheme of arrangement request after the expert submits the report, it assigns that expert or another expert to call the creditors to document their debts; the expert prepares a list of the trader's undisputed debts and that have the right to vote at the creditor's meeting. If there is a disputed debt, it gets referred to the court to make a primary decision, for the purpose of participating in the vote.
4. The consequences of the issuance of the court's decision to approve the scheme of arrangement is stopping the lawsuits and the requests submitted against the trader at any other judicial authority, and thus preventing any action of attachment or implementation to any mortgage on the trader's property or disposition of his property until the court approves the arrangement.
5. The court approves the scheme of arrangement, if it is approved by creditors representing more than two-thirds of the debt, without any distinction between secured debts and unsecured debts. Then, the court assigns an expert to implement or supervise the implementation of the plan.
6. The result of the court's decision to approve the scheme of arrangement is stopping the legal proceedings and rejecting any request or lawsuit related to any previous debt that requires the trader to pay any amount, in addition to stopping any seizure or selling of the property or the real estate of the trader which are required to execute the settlement.
7. The court's approval of the scheme of arrangement does not result in resiliating any legal contract with the trader due to his inability to fulfill his financial obligations thereunder; however, he has to repay the financial obligations of these contracts in accordance with the mentioned arrangement.
8. If the court decided to reject the request of the scheme of arrangement, then it has to declare the bankruptcy of the trader, according to the provisions of the law.

### **Three: Bankruptcy**

The draft law has dealt with the bankruptcy provisions in a separate chapter, and the following are some of the new provisions in the draft law:-

1. Considering the overall defaulted financial situation of the trader that leads in

the cessation of paying his debts as an indicator to consider that this trader is in a bankruptcy condition, and not only the mere fact of stopping to pay his debts, as is the case in the currently applicable commercial law; this is the same indicator that is approved by the draft law for the purposes of presenting reorganization or scheme of arrangement requests. The draft law also considers as bankrupt any trader who suffers from financial crisis due to using illegal means to support his business credit, even if he did not totally stop paying his debts.

2. The draft law stipulates the invalidity of some actions of the bankrupt towards the creditors group, which take place during the duration that the expert sets and the court approves in accordance with the financial disturbance indicators; thus the period of uncertainty is determined by the expert, despite the serious legal consequences that might arise thence.
3. The draft law has authorized the court to prevent the trader, the chairman, the members of the board of director's, the general manager of the company, its employees, or the authorized signatory from traveling.
4. In order to facilitate understanding the new draft law, below is a comparison between the provisions of the bankruptcy of the existing commercial law and the new provision in the draft law:-

Comparison between the Bankruptcy Provisions:-		
Trade Law No.12 of 1966	Draft Law of Business Reorganization and the Provisions of Bankruptcy and Liquidation of 2012	
The Declaration of Bankruptcy		
Article/316	The traders who stop repaying the commercial debts, and who do support their financial trust by illegal means, are considered bankrupt.	Article/40 It is considered as a case of bankruptcy when:- 1) The trader stops repaying his financial due to financial disturbance. 2) If the trader suffered from a financial crisis and if it is proven that he used illegal means to support his financial trust, even if he has not stopped paying completely.
		Article/41-A The court decides to declare the bankruptcy of a trader when any of the above cases are proven, also when the financial disturbance of the trader is proven according to the international standards of financial reporting and auditing, before deciding to declare the bankruptcy of the trader.
Submitting the Bankruptcy Request		
Article/318	The case might be submitted to the court by the trader himself.	Submitting bankruptcy request can be by the following:- The civil attorney general or the companies' general controller (in case the bankrupt is a company and thus is obliged to provide its financial statement to the controller. (Article/42-A) The creditor. The trader himself.
Article/319	The case might also be submitted to the court by a charge presented by creditor(s).	
Article/320	When necessary, the court can declare bankruptcy by itself as well.	

<b>The Non outstanding Debts</b>		
	(There is no corresponding provision available)	Article/44-B The creditor of a non outstanding debt has the right to submit a bankruptcy request against the trader who stops paying his commercial debts without a reason.
<b>Civil Debts</b>		
	(There is no corresponding provision available)	Article/44-C The outstanding civil debt creditors have the right to submit a bankruptcy request against the trader, if it is proven that the trader has stopped paying his commercial outstanding debts in addition to his civil debt.
<b>Simple Bankruptcy</b>		
Article/318-2	If the trader himself submits a bankruptcy request, then he has to submit it to the specialized court within (20) days from the day he stopped paying under the penalty of being convicted of simple bankruptcy.	Article/46-A If the trader submits a bankruptcy request, he has to present it before stopping the payment due to his financial disturbance or within (45) days from the day he stopped paying under the penalty of being convicted of simple bankruptcy.
<b>Documents attached to the bankruptcy request</b>		
Article/318-3	The trader has to enclose with the bankruptcy request a detailed budget that conforms to the assets and the debt required from him.	Article/46-B The trader has to enclose with the bankruptcy request the following documents signed by him personally:- A report showing his disturbed financial position and the reasons for stopping paying or that prevented him from fulfilling his obligations. A photocopy of his commercial books, or accounting statements that go bank to at least one year before the date of the request submission, unless he started business since less than a year. Documents that prove that his business is licensed and registered at official authorities. A list of the creditors names and addresses and the due amounts to each of them, and the guarantees presented, if any.



			<p>A list of the debtors' names and addresses and the amounts due to him and the guaranties presented, if any.</p> <p>A detailed statement of his moveable and immoveable assets and the approximate values as they were on the day of submitting the bankruptcy request.</p> <p>Any other documents or information required by the court.</p>
Notifying the debtor and the dates of the procedures and the judgment			
Article/319	<p>The first hearing session should not exceed (3) days from the date of the submission of the law suit.</p> <p>In urgent cases, when the trader closes his business and flees or hides a significant part of his assets, the creditors have the right to ask the court to take a decision without any public hearing and without the presence of the parties (There are no legal texts as regards the notification of the trader or the expert or the duration for giving the final judgment on the request. Thus, the general rules apply to them according to the procedures mentioned in the law of civil procedures, which generally provide longer duration for the procedures)</p> <p>The court's decision on bankruptcy declaration or on altering the date of stopping payment must be posted within (5) days of issuance by the bankruptcy trustee in the court hall which has issued it, and in the nearest stock market center, if available, and at the door of the bankrupt person organization.</p>	Article/47	<p>A- If the bankruptcy request is submitted by someone other than the trader himself, then the court has to inform him within (3) days after the date of receiving it.</p> <p>B- The trader has to present his response, information and defenses on the request within (7) days that are following the date of being informed with it.</p> <p>The court studies the bankruptcy request defense within (7) days of the date of receiving it or from the day following the expiration of the (15) days as mentioned below.</p> <p>The court may assign an expert to prepare a report within (15) days from the day of assigning, in order to study the financial position of the trader, and his debts, and the level of his financial disturbance, and the extent of his inability to fulfill his obligations, and whether he stopped paying his debt or the duration expected for that, and the extent of his inability to stay in business, and the extent of having all the requirement to proceed with the bankruptcy procedures, and whether the assets are enough to cover the costs of bankruptcy or not.</p>
Article/323		Article/48-A	

	<p>Its summary has to be published on the same date in one of the daily newspapers. This publishing should be in the same area where the declaration of bankruptcy took place and in all the areas where the bankrupt has business organizations.</p> <p>At the same time, the decisions have to be registered in the commercial register and the public prosecutor has to be informed.</p>	Article/48-C	<p>The court issues its decision to accept the request or reject it within (7) days from the date of the final trial, as long as it does not exceed the period of consideration and judging which is (60) days from the date of registration.</p> <p>The court informs each of the trader and the creditors, in addition to the civil attorney general or the general auditor of the companies within (3) days of its issuance date, if none of them were present. Then, the court publishes its decision in two local daily newspapers at least within (3) from the day following its issuance.</p>
<b>Bankruptcy Decision Inclusions and The Assigning of a Bankruptcy Attorney</b>			
Article/322-1	The decision of declaring bankruptcy has to include the time of the cessation of payment	Article/50	The court has to include in its decision of declaring the bankruptcy the following:-
Article/338-2	The bankruptcy decision also includes assigning bankruptcy trustees(s). It can be increased up to three trustees every time.		Setting a time for the trader to fulfill his debts if he has stopped or the expected time to shop paying his debts as a result to his financial crisis.
Article/346	With its bankruptcy decision, the court assigns one of its members to be managing judge.	Article/41-C	Assigning one or more liquidator(s).
Article/351-1	In its decision, the court has to order to put seals on the bankrupts properties.		Preventing the bankrupt from contracting or starting a lawsuit unless through the liquidator that was assigned by the court.
			Calling the creditors whose names are enlisted in the trader's statements and records to consolidate their debts and approve them in order to form a creditors group.
			The court which declared the bankruptcy of the trader has to take the decision of compulsory bankruptcy and assign a liquidator or more for this purpose.

Precautionary Procedures		
Article/320	The court can order to take precautionary procedures to protect the rights of the creditors in accordance with the public prosecution or by itself.	Article/S1-B The court has to take the required precautionary procedures to prevent smuggling the property of the trader or part of it or hiding it, in order to protect the creditors' rights and it has to prevent the trader, the chairman, the members of the board of directors, the general manager, or any of the employees or the commissioner of management or signature outside the kingdom from traveling and force them to be house arrest.
The Consequences of Bankruptcy Decision		
Article/327	The bankruptcy decision entails that the bankrupt person gives up the management of his property including his money that he can possess during the bankruptcy duration to the bankruptcy trustee. The bankrupt is not allowed to sell anything of his property and he has no right to fulfill or receive any debt, unless it is based on good intention to support the business. He is not allowed to contract or to sue before courts unless through the bankruptcy trustee. He can do all preventive actions to maintain his rights. The consequent result of bankruptcy is stopping the normal creditors or the lien creditors from individual lawsuit.	Article/52 The consequences of trader's bankruptcy:- Considering all the bankrupt's debts, whether normal or secured, as due; however, this does not apply on the co-debtors of the bankrupt. Stopping any interest rates on the debts starting from the date of declaring bankruptcy. Stopping all procedures and commercial and civil lawsuits of the normal creditors and the mortgage holder creditors, and limiting them to the liquidator. Preventing the implementation of any attachment, or mortgage on the trader's property, unless it is done through the liquidator. The bankrupt trader stops practicing his business from the date of issuance of bankruptcy.
Article/329-1	After issuing the decision, the bankruptcy trustees are the sole persons to file lawsuits to recollect debts, civil and commercial	

Article/329-2	The bankruptcy decision affects the creditors group only as regards the interests of the debts that are unsecured by lien or mortgage or moveable mortgage; whereas the interests of the secured debts can only be claimed from the assets of the money of selling the guarantee property.		
Article/330	The bankruptcy decision entails that all the debts of the bankrupt, as due; however, this does not apply on the co-debtors of the bankrupt and the secured creditors can benefit from the due date.		
Article/331			
<b>Setting the Uncertainty Period</b>			
Article/322	The bankruptcy decision has to include the time of cessation of payment. The court is allowed to return the time of payment or stoppage to an earlier date by a judgment or several judgments of altering the given date, according to the report of the managing judge, or by itself, or by a request from concerned person, especially the creditors; each of the creditors has the right to file a request on his own. In all cases, it is impossible to set the stoppage of payment date to more than (18) months before the bankruptcy judgment.	Article/53-A	The transactions of the bankrupt trader shown below are invalid towards the creditors group if they were made during the period that is determined by the expert and approved by the court which is based on the indicators of financial disturbance.
<b>Forming the Creditors Group</b>			
Article/409	If a scheme could not be achieved (simple settlement according to the provisions of Article / 383 et seq.) the creditors must form a union.	Article/50-D Article/55-A	It is understood from the legal draft law texts, especially Article (50/D) and (55/A) that the creditors group is formed immediately after the issuance of bankruptcy.

The Process of Debts Repayment		
Article/418	Distributing the bankruptcy property among all the creditors according to the debt ratio for each of them, after deducting the administration and the subsidies expenses that are given to the bankrupt or his family, and the amounts paid to the privileged priority creditors.	Article/108 The liquidator is committed to paying the trader's debts according to the following order:- The liquidation expenses and its legal expenses. The wages of the trader's employees. The money owed to the public treasury and the municipalities. The due rent allowed to the landlord of any of the rented real estate. Debts of the mortgaged creditors, in the order of the mortgage degree. Debt of regular creditors, including the partners' debt.
Selling the Trader's Assets		
	(There is no corresponding provision available)	Article/115 The court may allow the liquidator to sell all the assets of the trader at once under the liquidation, whether it is compulsory liquidation or voluntary liquidation, if it is proven that it is for the interest of the trader and the creditors. The court may allow the liquidator to sell the trader's business enterprise if it is a productive project and the outcome of the selling does not provide less than (75%) of the debts.
Fraudulent Bankruptcy Lawsuit		
Article/459	(There is no corresponding provision available) Bankruptcy attorney cannot make a lawsuit for defaulted bankruptcy, and they are not allowed to take the position of the Personal Prosecutor in the name of the creditors' group, unless they get a license by the majority of the present creditors.	Article/126 A criminal lawsuit of fraudulent bankruptcy can be filed against the trader, the members of the board of directors, or the managers, or the manager of the company under the compulsory liquidation, if any of them commits any of the actions that constitute it by themselves, or participated, or interfered, or facilitated committing them.

		Article/127	The liquidator is not allowed to make a fraudulent or defaulted bankruptcy lawsuit or to take the position of the plaintiff in the name of the creditors or the creditors group, until he gets the approval of the majority of the creditors who possess two-thirds of the debt amount.
<b>Specifications of Liquidators and Experts</b>			
	(There is no corresponding provision available)	Article/131	<p>The following characteristics have to be available in the liquidator or the expert in accordance with the provisions of this law:-</p> <p>He has to be licensed, qualified and experienced.</p> <p>He does not have any personal connection to the trader or the members of the board of directors or the managers, if the trader is a company; nor any relation to the creditors like being a relative, or by marriage, or even a fourth degree relationship, or a business relationship, or any form of relationship that might influence his neutrality.</p> <p>He has to be not convicted for felony, moral misdemeanor, such as bribery, embezzlement, forgery, misuse of credit and false testimony, or public ethics.</p>
<b>Judicial Rehabilitation to the Bankrupt</b>			
Article/466	After 10 years of the declaration of bankruptcy, the bankrupt person rehabilitates his position without any additional requirement if he is not defaulted or fraud.	Article/120	The bankrupt recovers his position after the court's approval on the liquidation plan and completing it in, as long as it is not be less than two years without any additional requirement, if he is not defaulted or fraud.

Despite the importance and the scope of the new bankruptcy provisions which are in the new draft law, yet the application of Article (137) which confirms the applicability of the provisions of the trade law and the companies law on all what is not mentioned in the draft law, might practically lead to contradicting interpretations when applied, especially as regards individual law suits and halting the process of enforcement on mortgaged property during the compulsory liquidation, and the simple compositions, and forming creditors group, and the rights of the bankrupt wife, and other provisions. On the other hand, and apart from these new provisions, we find the other provisions that are included in the draft law substantially similar to what is stated in the current applied trade law; for example, below is a table of the Articles contained in the draft law and the corresponding Articles in the current trade law:-

<b>The Articles of the Draft Law</b>	<b>The Similar Articles in the Current Trade Law</b>
Article 43	Article 321
Article 52	Articles 329-331
Article 53	Article 333
Article 56	Article 335
Article 59	Article 410

#### **Four : Compulsory liquidation**

The draft law addresses the compulsory liquidation of unlimited partnership, limited partnership, public joint-stock, private joint-stock, and limited liability companies; most of its provisions are adapted from current companies law.

The draft law includes, regarding compulsory liquidation, some of the following provisions:

- A. The court may appoint a mentor that will manage the affairs of the bankrupt, pending a decision concerning a company's compulsory liquidation and the appointment of a liquidator.
- B. In cases of compulsory liquidation, only the court has the authority to appoint, remove, or replace the liquidator and to authenticate and execute the liquidation plan set by the liquidator.
- C. The provisions in this section concerning liquidation include liquidation arising from reasons other than financial disturbance and merchant's failure to pay its commercial debts (e.g., the fundamental and continuous breach by a partner, in a partnership company, of its memorandum of association; the breach, at any point, of the partnership company of the provisions of companies law; the end of the company's duration and purpose; or a joint-stock, limited liability, or limited partnership company's total loss of shares exceeding 75% of the total capital); however it would have been better to leave these provisions within companies law.

In all cases, the draft law does not refer to the effect of the request of bankruptcy placed by a company, which is already under compulsory liquidation on the process

of this liquidation; especially that this latter is inevitably a consequent phase to the declaration of the company's bankruptcy for the purpose of dissolving it and ending its legal existence. Moreover, this chapter does not include any provisions concerning the role of creditors in compulsory liquidation procedures.

### **Five: Optional liquidation**

The provisions mentioned in this draft law regarding optional liquidation aim to organize, for merchants and non-distressed business corporations, voluntary exit from the market.

It requires, for optional liquidation, that a merchant's assets be sufficient to pay no less than 75% of his outstanding and non-outstanding debts and liquidation expenses, provided that its operations cease within one year of the date of issuance of its approval decision; this period must be extendable to a maximum of two years.

The draft law authorizes the companies' general controller to approve or reject requests for optional liquidation, provided the company's right to challenge such decisions in court.

It also authorizes the general assembly of the company to remove a liquidator, to select another liquidator, and to withdraw from liquidation.

It also allows the conversion from optional liquidation to compulsory liquidation. It is noticeable here that the draft law has also adapted most of the provisions of this chapter from the provisions of optional liquidation stipulated in company's law.

We believe that it is better to leave optional liquidation under the provisions of companies' law because it does not necessarily arise from a company's financial turmoil.

### **Six: The consequences of bankruptcy declaration and liquidation**

The draft law stipulates, in the chapter on general provisions, the invalidity of all mortgage contracts and security of the merchant's assets, as well as the invalidity of all contracts and other procedures that impose financial obligations on the merchant, if these procedures are undertaken within the six months preceding the issuance of the liquidation decision, without regard to whether liquidation is optional or compulsory. These stipulations are a draft away of the general rules regulating optional liquidation, and thus may open the door to inflicting damage on creditors and dealers with the company.

The draft law authorizes the court to allow the liquidator to sell all merchant's assets at once for a lump sum under either compulsory or optional liquidation if it is in the interest of creditors. It also authorizes the court to allow the liquidator sale of the merchant business enterprise if it is in the form of a productive enterprise, and if the sale outcome provides at least 75% of the debt.

The draft law includes provisions for pursuit of legal action against legal moral persons, the company's manager, or members of a company's board of directors who participate in the fraudulent declaration of bankruptcy under compulsory liquidation.



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It also authorizes the liquidator, upon the approval of the majority of creditors holding at least two-thirds of the debt, to sue on behalf of the creditor's group in response to fraudulent or simple bankruptcy.

The draft law sets a prioritization for the fulfillment of the merchant's debt from the liquidation funds without distinction between the individual merchant and the company under liquidation.

It also gives priority to the treasury and municipal rights over the debts and rights of individuals, in contradiction with most international priorities which give the priority for the debts of the individual. All current legislations, however, stress the priority of treasury rights.

There is a reference here to the possibility of an emerging conflict between the draft law's provisions and the texts of the current trade law and companies law, particularly in light of the former's article (137) concerning the applicability of the provisions of the trade law and the companies law on all matters not stipulated in it.

## Chapter Three

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### The Results of the Baseline Survey<sup>1</sup>

In the framework of this initiative, bankruptcy and liquidation experts were surveyed for their opinions regarding the texts included in “the draft law of the merchant business reorganization and the provisions of bankruptcy and liquidation for the year of 2012.”

The results of this survey are as follows:

1. 100% believe that current pre-bankruptcy composition procedures are ineffective and incapable of saving the situation of the hindered merchant.
2. 93% see the need for legislative intervention to save and reorganize businesses and troubled companies, enabling them to avoid bankruptcy and liquidation.
3. 30% believe that the court must have a role in saving and reorganizing companies and businesses.
4. 68% think that a double majority of debts and creditors must be required upon the approval of the reorganization plan.
5. 77% see the need to provide an opportunity for applying for reorganization through governmental or private authority, with the role of the court being only to validate the body’s authority.
6. 66% said that pre-bankruptcy composition should be restricted to normal debts and should exclude debt secured by mortgages.
7. 86% think that the time bankruptcy and liquidation proceedings take before the courts is very long.
8. 68% see fundamental problems in the practical application of sale under liquidation of a bankrupt company.
9. 57% see fundamental problems in the practical application of prioritization of discharging the debt of a bankrupt company under liquidation.
10. 70% see the need to amend the legislation to grant foreign bankruptcy decision the executor power in the Kingdom.
11. 41% want legal provisions particular to the business enterprise mortgage.

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<sup>1</sup> Please refer to annex 1

## Chapter four

### Reform Proposals / Recommendations

In light of the baseline survey results shown in the previous chapter and the results of brainstorming sessions held with bankruptcy experts from the public and private sectors and civil society organizations,<sup>1</sup> and in line with international standards for systems of bankruptcy developed by the United Nations Commission on International Trade Law (UNCITRAL),<sup>2</sup> and in light of the principles set by the World Bank for insolvency and creditors' rights,<sup>3</sup> we would like to express the following recommendations for the

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1 In the framework of this initiative, three brainstorming sessions have been held in Jordan to reflect reformative ideas for the provisions of bankruptcy; the first session was held on November 9, 2013 and included a group of judges, representatives from the public sector and the Association of Banks, as well as auditors; the second was held on December 3, 2013, and it was attended by representatives from the public and private sectors and civil society organizations; As for the final session, which was held on February 26, 2014, it hosted a number of banks lawyers, working in the Kingdom.

2 These standards were mentioned within "the Legislative Guide on Insolvency Law" issued by UNCITRAL, which is found in two parts adopted by the resolution of the General Assembly of the United Nations No. 59/40 on December 2, 2004.

UNCITRAL then issued a third part of the Guide and it was also adopted by General Assembly resolution No. 65/24 on December 6, 2010.

Recently, the fourth part of the Guide has been issued, and the decision has been adopted by the General Assembly; the full version of this guide can be reviewed at the following website: - [http://www.uncitral.org/pdf/english/texts/insolven/05-80722\\_Ebook.pdf](http://www.uncitral.org/pdf/english/texts/insolven/05-80722_Ebook.pdf)

3 "Principles and Guidelines for Effective Insolvency Systems and creditors' rights," issued by the World Bank for the year of 2001, are as follows:

These principles have been designed as a general tool to help the state in evaluating its effort to develop the fundamental principles in its trade laws to create a cohesive climate for trade and investment, including insolvency systems. In fact, there are, in the Jordanian legislations, several applications of the principles and guidelines of the World Bank mentioned hereinafter; for example, there is a detailed legal regulation concerning the matter of bankruptcy, providing an opportunity for creditors and debtors alike to pursue the lawsuit of declaring bankruptcy; it also provides identical treatment for all creditors, whether they are national or foreign. It determines the priorities of fulfilling debts by legal provisions, and it gives the creditors a role in the bankruptcy procedures in terms of voting on the composition proposals, or appointing a bankruptcy trustee and supervising its procedures. On the other hand, in Jordan, the credit can be easily obtained in return for real estate or movable guarantees. Moreover, the legal system of the real estate in the Kingdom allows the proprietor and the owner of the right in rem perform all transactions, including placing a mortgage, through an efficient and effective system of registering and documentation, which includes the moveable or the immovable property subject to registration such as: automobile, helicopters and ships.

reform of the legal system of bankruptcy, considering the provisions of trade law and companies law currently in force, as well as the provisions of the draft of the merchant business reorganization and the provisions of bankruptcy and liquidation of the year of 2012.

### **Section One: Reorganization**

- A. The court validation of the reorganization plan, in accordance with Article 13-A-1 of the draft law, should be adopted by creditors “representing more than 60% of the debt.” The draft law lists no specific conditions that creditors or debts must meet to be eligible to vote on the reorganization plan. It also lacks a clear mechanism in by which it can distinguish between actual debts and false debts.

Accordingly, it is necessary to determine the conditions that a debt must meet to be eligible for a vote for reorganization, while setting specific measures that will enable the Court to validate the validity of this debt; for example, an expert would validate the debt in accordance with approved International Standards on Auditing, or according to whether it is documented in the merchant’s audited final accounts for at least the last two consecutive years; at a later stage, this would be verified by an expert appointed by the court for the purposes of considering the reorganization plan.

- B. According to Article 13 of the draft law, the percentage required for ratification of the reorganization plan is 60% of the debt. The draft does not differentiate here between debt secured by mortgages and debt not secured by mortgages. However, it is not permissible to level the debt secured by mortgages with the unsecured debt upon authentication on the reorganization plan. Thus, it must either exclude mortgaged properties from the scope of the reorganization process or obtain the consent of at least 50% of the holders of secured debts for the introduction of such mortgaged properties under the reorganization plan. Also, 50% of all types of mortgages must be calculated separately, i.e., a distinction must be made between mortgage-lien and stocks, quotas, and other mortgages. Otherwise, there will be a legitimate fear of causing great damage to banks’ lending operations in the Kingdom. The main principle of mortgage insurance is to create secondary right in rem for the debtor (mortgagee) on the money mortgaged, enabling him to collect his debt of this property in priority to other creditors. Therefore, any weakening or breach of this guarantee will lead to increased credit risk, borne by banks, which would increase the cost of credit for investors and merchants, ultimately leading to a negative impact on investment.

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The registering also includes stocks and shares in companies and Intellectual Property Rights. There is, in the kingdom, a compelling and effective system of execution of the bonds of secured real estate put as guarantee for the debts. For more information about the principals of the World Bank concerning insolvency and creditors’ rights, please review the full version of these principals on the World Bank website: [http://siteresources.worldbank.org/EXTGILD/Resources/5807554-1357753926066/ICRPrinciples-Jan2011\[FINAL\].pdf](http://siteresources.worldbank.org/EXTGILD/Resources/5807554-1357753926066/ICRPrinciples-Jan2011[FINAL].pdf)

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It should be noted that the “principles of the World Bank for effective systems of insolvency and creditors’ rights,” issued in 2001, explicitly distinguish between the debt secured by mortgages and unsecured debt, stating:

The priorities of secured debts must be respected on the properties guaranteeing them, and unless the preferred creditors approved, it is not permissible to give a primacy for any rights created during insolvency over the priorities of these debts on the assets guaranteeing them. After distributing the returns of the secured assets on the secured creditors and after fulfilling all debts related to the management costs and expenses, the remaining proceeds of the sale must be distributed on the rest of ordinary creditors, each according to his share, except if there are other binding reasons which justify giving priority to a certain class of entitlements.

- C. During the period between the date of the formal acceptance of request for the reorganization and the court’s decision on this request, Article 9-B of the draft law directs the following:-

- The halt of all law suits and claims against the merchant.
- The prevention of the execution, seizure, or selling of any mortgaged property related to his commercial activity.

It is well known that many months can pass between the initiation of the bankruptcy lawsuits and the issuance of final judgments and completion of transactions of the enforcement procedures of mortgage bonds. Thus, while there is no justification for halting law suits and claims or preventing execution or enforcement, it is possible to defer issuing final judgment in a lawsuit or in an executive procedure. Otherwise, there could be fear of abusing “reorganization” as a means to stop lawsuits and enforcement procedures in general.

In addition, the procedures mentioned in Article 9 of the draft law need a deep and detailed legal review.

- D. As long as reorganization is considered a new legal system and can affect a significant number of merchants, companies, and large business enterprises that fulfill the requirements stipulated in Article 4 of the law draft, and since it will affect the interests of the banks and financial companies, a specialized court should be developed to consider requests for reorganization. This can be achieved by charging Amman Court of First Instance specifically to consider these applications. This will lead to the existence of a specialized judicial body to consider all the requests for reorganization and procedures at the national level, which will ensure issuing unified decisions and precedents, which in turn would cater to the success and stability of the novel legal system and the achievement of economic and social objectives pursued by legislator while setting it.
- E. Article 19-B of the draft law states that if a reorganization plan ends, in specific cases the Court will be bound to run procedures of bankruptcy declaration. We do not believe it is right to oblige the court to run the procedures of bankruptcy declaration by itself in all cases in which the reorganization plan ends, but it must

be limited only to the case mentioned in Article 17-B of the draft: a request to the court by creditors representing 50% of the debt to invite the creditors to vote on the termination of the reorganization plan.

The basic principle is that the bankruptcy system was created to preserve the interests of the creditors, and they alone should decide on how to use this legal means according to their interests. The court's administration of bankruptcy declaration proceedings on its own and without the request of any creditor could thwart any settlement the creditors might have been able to reach with the merchant outside the court.

## **Section two: The judicial settlement**

- A. The draft law adopts the "judicial settlement" as a wider and more comprehensive concept than the composition, acting as an alternative to it and thus saving companies from bankruptcy. The draft law allows all types of debt, including debt secured by mortgages, to be approved by creditors for a judicial settlement plan, while the current trade law excludes privileged debt and debt secured by mortgages unless the owners of those debts decide to give up their privileges. . In all cases, it is not acceptable to equally treat the secured debts and those non secured by the judicial settlement plan, because this would contradict with the purposes of the draft law as regards the debt security system, especially that the concept of security mortgage insurance provisions is based on creating a collateral right in rem for the creditor on the mortgaged property, enabling him, i.e. the creditor, to collect his debt from the returns of this specific property and in priority to all other creditors following him in rank. Thus, the whole rationale would be defied if a secured creditor was placed on the same level like a regular creditor who did not secure his debt by a specific property but rather relied on the total possessions of the creditor. Moreover, the equality between mortgage-secured and unsecured debt is not consistent with "the principles of the World Bank's effective systems for insolvency and creditors' rights," mentioned hereinafter in paragraph 32, which requires either exclusion of the guarantees from the scope of the settlement process or the consent of at least 50% of the holders of mortgage-secured debt on the judicial settlement plan. Also, 50% of all types of mortgages must be calculated separately, i.e., a distinction must be made between mortgage-lien and stocks, quotas, and other mortgages. Otherwise, there will be a legitimate fear of causing great damage to banks' lending operations in the Kingdom, as it has been explained in item (b) of the previous recommendation regarding the reorganization.
- B. Although the Article 28-A of the draft law grants authority to the appointed expert to verify the merchant's debt, the article does not specify the requirements and conditions that a certain verified debt should fulfill in order for it to be eligible to a vote regarding the judicial settlement plan. The bill also does not include detailed

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provisions for how to verify the secured debt. The importance of such requirements and standards is that they constitute an essential guarantee for the validity of the debt, and they ensure the exclusion of a false debt. This is especially significant when such a settlement may lead to the renunciation of a specific percentage of the debt origin. For example, an option would be that the expert validates the debt in accordance with approved International Standards on Auditing, or according to whether it is documented in the merchant's audited final accounts for at least the last two consecutive years.

- C. According to Article 26-A of the draft law, upon the preliminary approval of the court on the judicial settlement and until the issuance of a final decision on this request, all lawsuits and claims submitted against the merchant should be halted, as well as any execution, seizure or selling of the merchant's commercial activity. It is well known that many months can pass between the initiation of the bankruptcy lawsuits and the issuance of final judgments and completion of transactions of the enforcement procedures of mortgage bonds. Thus, while there is no justification for halting law suits and claims or preventing execution or enforcement, it is possible to defer issuing final judgment in a lawsuit or in an executive procedure. Otherwise, there could be fear of abusing "reorganization" as a means to stop lawsuits and enforcement procedures in general.

### **Section three: The provisions on bankruptcy and liquidation**

Since the draft law retained several bankruptcy provisions that are outlined in the current commercial law without any modification or adjustment, and since most of its provisions on liquidation are exactly copied from the companies law, and in view of the deficiencies that were revealed by the practical application of these provisions, it becomes necessary that a comprehensive review of all the bankruptcy and liquidation provisions be made with an attempt to bridging the gap and removing legal obstacles delaying decisions in bankruptcy and liquidation lawsuits. Examples of this, as mentioned in the baseline survey results, are the following:

- A. Developing a clear mechanism for determining the value of the bankrupt merchant's assets under liquidation and preserving its value all through the duration of the proceedings; the speed and adequacy of the procedures are considered critical factors in retaining the value of the bankruptcy assets and the assets of the company under liquidation. Moreover, the validity and accuracy of the available information on the assets of bankruptcy or liquidation make an essential contribution in determining its approximate value. In light of this value, the court, agents of the bankruptcy, liquidators, and the creditors group will be able to assess the practical utility of resorting to a composition with the bankrupt party or with the creditors of the company under liquidation as opposed to the option of the continuation of the liquidation and selling the debtor's assets. Estimating the value of the assets must be based once on the grounds that they are income-generating



- operating assets and again on the basis that they are subject to liquidation and sale in order to reach the appropriate decision in this regard.
- B. Facilitating access to the assets of the bankruptcy estate and those under liquidation funds if they are in more than one place, through expanding the territorial jurisdiction of the authorized court to cover any place where those funds are within the Kingdom.
  - C. Laying out clear and concise procedures for the sale of bankruptcy and liquidation assets for obtaining the largest possible value, which can be achieved by accelerating the bankruptcy and liquidation proceedings and reducing the specified due date and legal extension to half. These dates include notice dates for alerting creditors of their obligation to file claims, dates for presenting debt bonds or for objecting against them, and dates for challenging decisions, as well as other periods set forth in trade law and companies law. The aim is to reduce the time needed for the court to reach final judgments on the lawsuits. The same can be also achieved by defining clearly the role and authority of the court, the bankruptcy trustee, and the liquidator, both when deciding to sell and when deciding on the method for implementing this sale( whether through an auction through the judicial enforcement unit or directly through the bankruptcy trustee or liquidator), and also by never requiring the consent of the bankrupt debtor on the decision to sell his assets, as he may refrain from giving such consent in order to cause more damage to the creditors and disrupt the proceedings.
  - D. Addressing lawsuits which are filed to recover the debts of the bankruptcy estate or the company under liquidation by allowing creditors to request several partial liquidations for the available assets and to postpone the liquidation of the bankruptcy estate assets, subject of law suits, until a final court decision is made.
  - E. Addressing the case where there are attachments (seizures) on the assets of the debtor previous to the bankruptcy declaration, as the draft law stipulates on halting the execution of such attachments, and the law suits of the concerned debtors, who must join the creditors group in order in consistence with the principle of equality between creditors. It is important to do this to avoid dispersing the funds of the bankruptcy estate between them and to preserve the unity of these funds and their value.
  - F. Unifying the prioritization and privileges of the debts that must be fulfilled by the bankrupt and the company under liquidation in view of the different stipulating legal texts, in order to reach one clear authority who is responsible for dividing the money among creditors in a manner that protects the priority of the mortgages, employees, and the public treasury rights, taking into account the equality among creditors of equal rank. This authority would also clearly identify the preferred rights by law and arrange the priority of each of them when they compete. Such unified arrangement may be incorporated within the draft law in such a way that takes into account the relevant provisions mentioned in civil law, the enforcement



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law, trade law, companies law, law of the collection of state funds, labour law, law of the bar association, customs law, law on maritime trade and other relevant laws.

- G. In the interest of the bankrupt merchant and creditors alike, giving authority to the court to abolish bankruptcy judgment already issued against the merchant if the latter has fulfilled all his debts before closing the bankruptcy, thus allowing the merchant to avoid the negative composition of bankruptcy that might deprive him of his political rights, preventing him from the management of his assets and from performing his commercial activities.
- H. Developing a clear mechanism to determine remuneration of the bankruptcy trustee and the liquidator, in such a way that recognizes the size of the bankruptcy estate and the adequacy of its assets, the simplicity or complexity of the required procedures for its management, the number of creditors and the disputed debts, the time and effort which bankruptcy procedures took, always while taking into account the provisions for the closure of bankruptcy due to the inadequacy of assets.
- I. Strengthening the role of the judge in the liquidation process through giving him the right to appoint an auditor for the accounts of the liquidation. The auditor would submit a report to the court.

The Processing of the above points within the draft law will shorten the proceedings and accelerate their termination in a reasonable time. As a result, this will maximize the value of the merchant's assets and increase opportunities for creditors to recover a larger proportion of their debts while ensuring the rights of the trustees and liquidators of bankruptcy. On the other hand, this will also enhance the transparency of bankruptcy and liquidation proceedings and will prevent their abuse, which will be reflected in a positive way to encourage investment.

#### **Section four: The general provisions**

Since the draft law has set out its own bankruptcy and liquidation provisions, we recommend that the corresponding provisions in each of the commercial law and companies law be abrogated in order to avoid duplication and to facilitate for the judges, lawyers, and traders the determination of the legal provisions that must be applied.

The application of Article 137 of the draft law, which refers to the commercial law and companies law to fill in any legislative gaps in the draft law itself, may lead in practice to conflicting interpretations and application of the laws, especially regarding the right of initiating a bankruptcy case by only one creditor, the halting of execution during the compulsory liquidation, the issues of simple composition, the formation of the creditors' group, the rights of the bankrupt's spouse, and other provisions.

On the other hand, the following is a table of some of the articles mentioned in the draft law and corresponding articles in current trade law, for example: -

Articles of the draft law	The corresponding articles in the current trade law
Article 43	Article 321
Article 52	Articles 329 – 331
Article 53	Article 333
Article 56	Article 335
Article 59	Article 410

## **List of Annexes**

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- Annex1: List of legal texts related to the bankruptcy system in Egypt
- Annex 2: List of legal texts related to the bankruptcy system in Jordan
- Annex3: Reorganization businesses and the provisions of bankruptcy and liquidation
- Annex 4: Credit information companies regulation
- Annex 5: Base-line survey regarding the reform of the bankruptcy system in the Arab Republic of Egypt
- Annex 6: Base-line survey regarding the reform of the bankruptcy system in the Hashemite Kingdom of Jordan
- Annex 7: Report on the results of the survey on reforming the bankruptcy system In the Arab Republic of Egypt
- Annex 8: Report on the results of the survey on reforming the bankruptcy system In the Hashemite Kingdom of Jordan
- Annex 9: Comparison chart for the results of the survey
- Annex 10: The World Bank Principles for Effective Creditor Rights and Insolvency Systems
- Annex 11: Table of Content relative to the UNCITRAL Legislative Guide on Insolvency Law
- Annex 12: List of references.



## **Annex 1**

### **List of legal texts related to the bankruptcy system in Egypt**

<b>MAJOR LEGISLATIONS</b>
Penal Code number 58 year 1937
Sale and Mortgage of Trade Law number 11 year 1940
Law promulgating the Civil Code number 131 year 1948
Law promulgating the Banks and Credit Law number 163 year 1957
Law promulgating the real estate register number 34 year 1976
Insurance Law in Egypt number 10 year 1981
Companies Law ( Joint Stock Company – Limited partnership by shares) number 159 year 1981
Decision issuing the executive regulation of companies law ( joint stock company – limited partnership by shares – limited liability companies and its explanatory note) number 96 year 1982
Maritime Trade law number 8 year 1990
Capital Markets Law ( and its execution regulations ) number 95 year 1992
Executive Regulations of the Capital Market Law number 95 year 1992
Law promulgating the financial Lease number 95 year 1995
Arbitration in Civil and Commercial Matters Law and its amendments number 9 year 1997
Commercial Law number 17 year 1999
Central Securities Depository and Registry law number 93 year 2000
Central Bank , Banking Sector and Money Law number 88 year 2003
Central Bank , Banking Sector and Money Law number 93 year 2005
Law on the protection of Competition and the Prohibition of Monopolistic Practices number 3 year 2005
Establishing Economic Courts Law number 120 year 2008
Protection of Competition and the prohibition of Monopolistic Practices Law ( and its amendments) number 190 year 2008

<b>Other Related Legislations</b>
Commercial Agency Law number 120 year 1982
Presidential Decree on the Confidentiality of Bank Accounts Law number 205 year 1990
Combating Fraud and Deception Law number 281 year 1994
Decree Issuing the executive Statutes of Law No.10 of the year 1981 (Insurance Law in Egypt ) number 362 year 1996
Law on Investment guarantees and incentives number 8 year 1997
Real Estate Finance Law number 148 year 2001
Executive Regulations of Special Economic Zones Law number 83 year 2002
Labor Law number 12 year 2003
Customs Law ( and its amendments) number 95 year 2005

## Annex 2

### List of legal texts related to the bankruptcy system in Jordan

<b>MAJOR LEGISLATIONS</b>
Commerce Act number 12 year 1966
Central Bank of Jordan Law ( and its amendments) number 23 year 1971
Maritime Commercial Law number 12 year 1972
Civil Code number 43 year 1976
Companies Regulation and its amendments number 50 year 1997
Companies Law number 22 year 1997
Industry and Trade Law number 18 year 1998
Trade Secrets and Unfair Competition Law number 15 year 2000
Deposit Insurance Corporation Law number 33 year 2000
Banking Law number 28 year 2000
The Aqaba Special Economic Zone Law number 32 year 2000
Regulation of Insurance Business Fees Regulation and the Amendments number 36 year 2000
Jordanian Arbitration Law number 31 year 2001
Commercial Agents and Mediators Law number 28 year 2001
Securities Law number 76 year 2002
Frozen Deposit Administration Law number 17 year 2004
Competition Law number 33 year 2004
Execution Law number 25 year 2007
Credit Information Law ( temporary) number 15 year 2008
Leasing Act number 45 year 2008
Order on Lease of movable assets number 45 year 2008
Commercial Insolvency Draft law year 2009
Information companies regulation number 36 year 2011

Reorganization and Bankruptcy and Liquidation Draft Law year 2011
Law of attaching immovable properties to secure debt ( by mortgage) number 1 year 2012
<b>Other Related Legislations</b>
Settlement of lands and waters law number 4 date 1952
Authorization and monitoring foreign banks and financial institution representative offices in the kingdom and its amendments Law number 11 year 1977
Free Zones Corporation Law number 32 year 1984
Investment Promotion Law number 16 year 1995
Regulation for Insurance Business Fees number 36 year 2000
Electronic Transactions Law ( temporary ) number 85 year 2001
National Production Protection number 21 year 2004
Jordan Maritime Authority Law number 46 year 2006
Trade Names Law number 9 year 2006
Labor Code and its amendments number 12 year 2007
Civil Aviations Law number 41 year 2007
Trademarks Law ( and its amendments ) number 15 year 2008
Labor Code ( and its amendments ) (temporary) number 26 year 2010
Customs Law and its amendments ( temporary ) number 37 year 2010



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**Annex 3**  
**Reorganization businesses**  
**and the provisions of bankruptcy and liquidation**  
(Available in Arabic)

For more information about the draft law please visit our compendium web page:  
[http://www.arabruloflaw.com/bankruptcyreform/?page\\_id=437](http://www.arabruloflaw.com/bankruptcyreform/?page_id=437)

## **Annex 4**

### **Credit information companies regulation**

(Available in Arabic)

For more information about the law please visit our compendium web page:  
[http://www.arabrulEOFlaw.com/bankruptcyreform/wp-content/  
uploads/2014/05/JL\\_Nizam-charikat-maaloumat-iitimania\\_36\\_2011.pdf](http://www.arabrulEOFlaw.com/bankruptcyreform/wp-content/uploads/2014/05/JL_Nizam-charikat-maaloumat-iitimania_36_2011.pdf)

## Annex 5

### Base-line Survey regarding the reform of the bankruptcy system in the Arab Republic of Egypt

#### General information about the questionnaire – Investigator

Form serial number: \_\_\_\_\_

Date of interview: \_\_\_\_\_

Field investigator's name: \_\_\_\_\_

#### Information about the respondent

Name of the respondent: \_\_\_\_\_

Position: \_\_\_\_\_

Gender: 1. Male 2. Female

Address: \_\_\_\_\_

Landline Number: \_\_\_\_\_ Mobile Number : \_\_\_\_\_

Email: \_\_\_\_\_

Age: \_\_\_\_\_

Less than 24 years	from 24 – 34 years	from 35 – 44 years	from 45 – 54 years	more than 55 years
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#### Level of education

PHD	Masters – MS/ MA/LLM	Bachelor ( LLB/ BA/BS)	others
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Profession (please specify): \_\_\_\_\_

Years of experience in the field: \_\_\_\_\_ years

#### Sector:

Private Sector	Public Sector	semi governmental
other sectors (organizations or non –governmental bodies etc... ) specify		

#### The field of activity of your enterprise . Please detail activity

Name of the enterprise: \_\_\_\_\_

Is bankruptcy important in your field of work? ☐ Yes ☐ No

Do you think that there is any need to reform the bankruptcy provisions in Egypt?

☐ Yes ☐ No ☐ Uncertain

## Introduction

Economic development requires an encouraging legal and judicial milieu manifested in the existence of suitable legal articles (provisions – texts ) in addition to the presence of impartial judiciary that would provide reassurance for the investors and creditors . Bankruptcy issues , mortgages , liability of chairmen , credit information systems and seizure practices are some of the important legal themes that , combined, affect the economic development of a country and constitute one of the initial stages of commercial stability. On a different level, it is important to note that the improvement attempts of reforming the bankruptcy system of any country comprised, in general, the following:

- The study of cases of insolvency or defaulting and suggested solutions to rescue the commercial enterprise (whether a company or natural entities) by avoiding its liquidation. (Reorganization)

- Bankruptcy, its trajectory and procedures

- Other legal regulations that intersect bankruptcy schemes (mortgage, insurance of movables and immovable property, liability of chairman, and credit information systems ...)

It is acknowledged that a business enterprise (whether owned by an individual or by a company) passes through insolvencies, difficulties which appear even before the trader reaches the point of cessation of paying his debts. The reasons behind defaulting are many , it is either due to faulty or irrational project management of the commercial enterprise or due to general objective economic conditions ( war , corruption and many others). In all these cases, the business enterprise stops paying its debts and obligations either due to its inability to convert its assets to cash, even though the value of the assets is higher than the amount of its liabilities “ technical insolvency “ or because the value of its assets is lower than its liabilities “ real financial insolvency.” (In all of these cases, the stoppage of payment is either because of a temporary shortage in liquidity not in solvency (as the project might has asserts that worth more than their liabilities), or because of permanent lack in liquidity which shows weakness in solvency.)

The Arab Center for the development of the Rule of Law and Integrity, through commendable support, is implementing an initiative of reforming the bankruptcy systems in both Egypt and Jordan “Initiative project to reform the bankruptcy system in the Middle East” in coordination with Dr. Salama Arab ( the Egyptian National Expert) and H.E prof Ayman Audi ( The Jordanian National Expert) , this project seeks to draft a national report of the bankruptcy system and the relevant laws ( revise above ). It is being drafted based on opinions of people concerned in economic development and commercial stability whether they emanate from the public sector or from diverse professional sectors or belong to the legal domain in the country.

The survey is done through organizing workshops in the framework of small groups

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displaying through which the strengths and weaknesses of the current system passing through discussing the forwarded reform projects suggesting ideas for reform that feed ideas into the drafting of the national report and supporting the outcome and the conclusion of the workshop and the brainstorming sessions in doing a widely covering survey that comprises all professional categories. This survey will provide sufficient data for contemplation and analysis in the process of the drafting of the national report

In the end and after the preparation of the national report, it is forwarded for discussion in a regional national summit to broaden the spectrum of benefits deduced from people involved in this issue to draft the final national report that suits the ambiance of the concerned countries (Egypt and Jordan ) and sets the stage for an appropriate legal milieu.

The questionnaire attached to this introduction consists of several questions presented in a logical order and in a conscription that could be comprehended by all groups interested in this subject matter whether business men or those who belong to organizations who represent the various economic sectors or decision makers in the executive and legislative facilities of the state or those who belong to the legal profession (judges – lawyers)

Based on the above,

We ask all professionals that receive the survey to answer based on what they think, takes into consideration the current provisions of the Egyptian law, in addition to the practical situation of cases of defaulting and bankruptcy that are held before the Egyptian courts. We also advise them to read all the questions of the survey first, and then start answering question by question.

The Arab Center for the development of the Rule of Law and Integrity and their partners highly appreciate your useful participation whether through the brainstorming sessions or by answering the questions of the questionnaire attached.

The questions mentioned above were divided into several chapters as follow:

Chapter 1: the period that precedes bankruptcy

Chapter 2: bankruptcy and its procedures

Chapter 3: legislations pertaining to bankruptcy systems

**Chapter 1: The period that precedes bankruptcy**

- 1- Do you believe that the procedures of preventive legal settlement of bankruptcy stated in the current Egyptian commercial law are effective and could save the defaulting trader?  
☐ Yes      ☐ No      ☐ No Answer
- 2- Do you consent that the preventive legal settlement of bankruptcy confines to regular debts as is the case now in the valid commercial law, i.e doesn't include secured debts?  
☐ Yes      ☐ No      ☐ No Answer
- 3- What is the best choice to accept the preventive legal settlement request:  
(Choose one of the following answers)  
☐ Requiring a specific majority of debts to accept the preventive legal settlement request (judicial settlement)  
☐ Requiring a specific majority of the number of creditors to accept the preventive legal settlement request (judicial settlement)  
☐ Requiring a double majority (of both debts and number of creditors) to accept the preventive legal settlement request (judicial settlement)?
- 4- Do you think that the legislator should intervene to amend the law thus offering an opportunity to save and reorganize defaulting business enterprises and corporations to help them avoid bankruptcy and liquidation?  
☐ Yes      ☐ No      ☐ No Answer
- 4.1. If your answer was yes to the previous question, do you consent that the court should have a role in saving and reorganizing business enterprises and companies?  
☐ Yes      ☐ No      ☐ No Answer
- 5- Do you think creditors whose debts are not documented and still under dispute should be allowed to vote on the reorganization plan?  
☐ Yes      ☐ No      ☐ No Answer
- 6- Do you think that reorganization procedures should be restricted to companies with a certain minimum capital?  
☐ Yes      ☐ No      ☐ No Answer
- 7- Do you believe that the number of employees at the company, and not only its capital should be taken into consideration when developing the conditions of the reorganization request?  
☐ Yes      ☐ No      ☐ No Answer
- 8- Do you agree that the consequence of preliminary acceptance of reorganization request would be halting lawsuits and enforcement proceedings against the

creditor until deciding on the request or should halting limit to the enforcement proceedings?

*Choose one of the following answers*

- ☐ Halting lawsuits and provisory suspension and enforcement proceedings
- ☐ Halting provisory seizure and enforcement proceedings only
- ☐ I don't know

9- Do you agree that the consequence of preliminary acceptance of the reorganization request would be halting the execution of the mortgage bonds of movables and immovable property until deciding on the request?

- ☐ Yes
- ☐ No
- ☐ No Answer

10- Do you think there should be a preceding vote on the reorganization plan?

*Choose one of the following answers*

- ☐ Both regular and secured creditors
- ☐ Regular creditors only
- ☐ Secured creditors only

11- Do you think that the creditors of non-outstanding debts should be allowed to vote on the reorganization plan?

- ☐ Yes
- ☐ No
- ☐ No Answer

12- With regards the approval on the reorganization plan, do you think there should be a requirement of

*Choose one of the following answers*

- ☐ Specific majority of debts
- ☐ Specific majority of the number of creditors
- ☐ Double majority of debts and number of creditors

13- Do you support giving the insolvent individual enterprises and companies and their creditors a chance to apply the procedures of the reorganization plan through a private or a governmental agency in which the role of the court restricts to approving the decision of this agency?

- ☐ Yes
- ☐ No
- ☐ No Answer

## **Chapter 2: Bankruptcy and its procedures**

14- Do you think that the period that the bankruptcy lawsuit takes before the court is

*Choose one of the following answers*

- ☐ Adequate period?
- ☐ Very long period?
- ☐ Short period?

15- A trader is declared bankrupt in the Egyptian legal system if he ceases paying his business debts whereas the trend in the new legislations is to declare bankruptcy of the trader even if he stopped paying his civil debts, do you think the Egyptian law should be amended to harmonize with the new legislations?

- ☐ Yes
- ☐ No
- ☐ No Answer

16-Do you agree that the date of cessation of payments ( then deciding on the period of uncertainty) should be tied with a certain period starting from the date of the filing of the lawsuit instead of the date of the court's decision declaring bankruptcy?  
☐ Yes ☐ No ☐ No Answer

17-In the case of several companies -forming one legal and economic entity- found in various different countries, would the bankruptcy of the mother company lead to the bankruptcy of the affiliate companies found in the different countries?  
☐ Yes ☐ No ☐ No Answer

17.1 If you answer was yes to the previous question, how would we identify the starting date of the period of uncertainty with respect to all these companies (members of the group)?  
☐ Would this date be unified for all members?  
☐ Would this date be independent for each member alone?  
☐ I don't know

18- in your opinion if the bankruptcy of the mother company extended to the affiliate companies , should ( *choose one of the following answers*)  
☐ Each company be considered alone and its paperwork accomplished, if necessary, independently  
☐ Action be taken to extend bankruptcy to include the other companies that compose the group of companies.

19-Which of these courts, in your opinion, is the most competent to look into the request of bankruptcy that includes the entity of group of companies? *Choose one of the following answers*

The state court before which the bankruptcy lawsuit was first filed , in which the remaining requests get transferred to it from other state courts	<input type="checkbox"/>
The court within whose jurisdiction lies the head office of the mother company , in the event the group of companies was established on this bases and the mother company was included in the request	<input type="checkbox"/>
The court within whose jurisdiction lies the biggest number of debtors of the various members of the group	<input type="checkbox"/>
The court within whose jurisdiction lies the center of control and decision making in the mother company.	<input type="checkbox"/>

20- Do you think it is necessary that the current commercial law includes regulations for cases of international bankruptcy?  
☐ Yes ☐ No ☐ No Answer

21-Do you believe that there is no necessary to require the bankrupt's approval on the reconciliation that is done by the bankruptcy trustee with the creditors under the supervision of the court?  
☐ Yes ☐ No ☐ No Answer



22-Can the creditor file a bankruptcy lawsuit against his debtor if he had previously agreed with the latter to solve all disputes stemming from this agreement through arbitration?

☐ Yes ☐ No ☐ No Answer

23-Do you approve the presence of specific provisions for the liquidation of certain enterprises (banks and insurance companies) independent from the current bankruptcy and liquidation provisions?

☐ Yes ☐ No ☐ No Answer

24-In your opinion, is the inclination towards decreasing the role of the creditor's group in the management of the bankruptcy estate and doubling the role of the judicial authority in this regard would provide greater guarantees in the speed and honesty and maintenance of the rights of the creditors?

☐ Yes ☐ No ☐ No Answer

25-Do you think articles should be added which would allow the court that declared bankruptcy to take urgent measures (placing seals and the preparation of inventories) beyond the territorial jurisdiction i.e so that its jurisdiction will include the whole country?

☐ Yes ☐ No ☐ No Answer

26-Do you think it is useful to give the general prosecution or the court before which is held any commercial dispute a role in initiating a bankruptcy lawsuit?

☐ Yes ☐ No ☐ No Answer

27-Which of these personal consequences should apply to the bankrupt in cases of normal bankruptcy (not simple or fraudulent bankruptcy) *you can choose more than one answer.*

Banning the bankrupt from traveling	<input type="checkbox"/>
Depriving the bankrupt from his professional rights	<input type="checkbox"/>
Depriving the bankrupt from his political rights	<input type="checkbox"/>
Depriving the bankrupt from practicing some activities and acts	<input type="checkbox"/>
No consequences	<input type="checkbox"/>

28-In the case of fraudulent bankruptcy, which of these personal consequences should apply to the bankrupt? *You can choose more than one answer*

Banning the bankrupt from traveling and restricting his residence in a specified geographical area	<input type="checkbox"/>
Depriving the bankrupt from his professional rights	<input type="checkbox"/>
Depriving the bankrupt from his political rights	<input type="checkbox"/>
Depriving the bankrupt from practicing some activities and acts	<input type="checkbox"/>
No consequences	<input type="checkbox"/>

### Chapter 3: legislations pertaining to bankruptcy systems

29-The Egyptian law allows mortgaging the movables of the debtor a possessing mortgage. Do you think that the provisions of possessing mortgage of movables are enough to protect the rights of the creditors?

☐ Yes ☐ No ☐ No Answer

30-do you think that the current credit information system in Egypt ( for instance: commercial register and statistical information issued by investment authority and financial control department authority) is enough to provide the information needed for creditors to inquire about the financial position of the trader's status and his debts before giving him any kind of credit whether loans or business dealings in installments?

☐ Yes ☐ No ☐ No Answer

30.1. If your answer was no to the previous question, what, in your opinion, is the best solution. Choose one of the following answers

- ☐ Establish a company to gather the credit information
- ☐ Amending the present commercial register system in order to widen the spectrum of credit information gathered
- ☐ Linking the credit information enterprises (commercial register, real estate register, securities register) with a comprehensive information system.

31-Contrary to the previous question, are there any legal articles that manage credit inquiry service and give access to data to check the debtor's status with respect to his debts and facilities?

☐ Yes ☐ No ☐ No Answer

31.1 If your answer was yes to the previous question, please answer the following questions:

	Yes	No
Is this system central and found on the national level?	<input type="checkbox"/>	<input type="checkbox"/>
Is this system doable, accessible and could be inspected?	<input type="checkbox"/>	<input type="checkbox"/>
Have any conditions been specified for using the information provided by such a system so as not to abuse it for defamation	<input type="checkbox"/>	<input type="checkbox"/>
Are there any measures to protect the information provided by the credit inquiry system	<input type="checkbox"/>	<input type="checkbox"/>
Would the concerned people be informed when information related to them is being used to take decisions against them	<input type="checkbox"/>	<input type="checkbox"/>
Can the debtor object on the false and incomplete information about him?	<input type="checkbox"/>	<input type="checkbox"/>
Are there any mechanisms to investigate the objections/ disputes and to correct the information?	<input type="checkbox"/>	<input type="checkbox"/>

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32-Do you think it is important to add an explicit provision in the Egyptian law which declares the liability of the chairman and the board of directors in a joint stock company who participate regularly and effectively in the management of the company in the case of bankruptcy?

☐ Yes ☐ No ☐ No Answer

33-Is it preferable to add provisions to the bankruptcy law which protects partners and contributors who did not effectively participate in the management of the company from the effects of the declaration of bankruptcy even if it was fraudulent bankruptcy caused by the board of directors?

☐ Yes ☐ No ☐ No Answer

34-The commercial law declares the liability of the chairman and board of directors for mistakes done during their management of the company before the contributors and third person. Do you think that this article could include liability of the chairman and board of directors concerned to bare the debts of the company in case their mistake in management or negligence or deliberate action lead to company to bankruptcy or liquidation?

☐ Yes ☐ No ☐ No Answer

#### **Chapter 4: liquidation**

35-Do you think that the period that liquidation lawsuits take before the court is

*Choose one of the following answers*

☐ Adequate period? ☐ Very long period ? ☐ Short period?

36-Do you assent the role of the general prosecution in the obligatory liquidation cases?

☐ Yes ☐ No ☐ No Answer

37-Does the current commercial law include restraints and clear and specified procedures for selling the company's assets in liquidation?

☐ Yes ☐ No ☐ No Answer

38-Do you believe that the competence of assigning an auditor in obligatory liquidation should be given to the court instead of the liquidator?

☐ Yes ☐ No ☐ No Answer

39-Do you believe that the punishments imposed on the auditor for submitting false data is an enough guarantee for the rights of the creditors?

☐ Yes ☐ No ☐ No Answer

**Optional**

In addition to the questions mentioned above , do you have any ideas to add for reforming the legal system that manages the insolvency in paying off debts due to insolvency or absence of liquidity ( bankruptcy system and liquidation and other laws that overlap) whether

-In amending or vacating or explaining certain ambiguity of the current systems not brought up in the above questions; or

-Adding new concepts where in restructuring of the company or reorganizing to save; or

- Setting systems for the information of the trader regarding his debts and his movables and immovable property

**Only Civil society organizations**

The below chapter aims to define the level of your connection with the topic “**reforming the bankruptcy system**”. Please rank your organization’s performance on a scale of 0 to 3 to each of the following elements

**The scale**

0: no connection at all

1: slight connection

2: significant connection

3: vital connection/ on a wide level

*Please circle the corresponding answer for each of the following clauses:*

- 1- The priority and importance of the topic of reforming bankruptcy systems for and in favor of you organization:

*(Explanation: reforming bankruptcy system is considered a priority and very important for your organization if :*

- Bankruptcy is of fundamental interest for the members of the group
- Bankruptcy has now, and in the future a decisive importance for the civil society organization you belong to and/or you is clients of
- There are new opportunities for an effective performance
- At least some of the decision makes accept the idea)

*(Choose one of the following answers)*

0.at all	<input type="checkbox"/>
1.slightly	<input type="checkbox"/>
2. significantly	<input type="checkbox"/>
3.vitally/on a wide level	<input type="checkbox"/>

- 2- Has your organization previously compiled information and contributions for reforming bankruptcy:

*(Explanation: the information that has been collected contains one or all of these elements:*

- information about governmental institutions concerned ,and the role of each in bankruptcy on the local and national level ; examining the extent of consideration and the stance of it
- information about the audiences' contribution concerning the topic of bankruptcy through field studies
- information and present data regarding this topic like abstracts and other documents
- analysis of the general policy from the legal, political, justice and social aspect)

0.at all	<input type="checkbox"/>
1.slightly	<input type="checkbox"/>
2. significantly	<input type="checkbox"/>
3.vitally/on a wide level	<input type="checkbox"/>

- 3- Did your organization take a general political position regarding bankruptcy reforming system?

*(Explanation: the general political position should comprise the following elements and characteristics:*

- the policy was composed in a participatory manner( minding gender differences)
- invitations of general policies which were documented in writing and stated in manner that suits the various audience and policy makers
- the general policy was clearly expressed and in a persuasive manner
- the logical basis for the policy is coherent , persuasive and uses the information compiled based on element 2 ( your organization has complied information and contribution regarding bankruptcy reform)
- usage of graph in presenting the general policy

0.at all	<input type="checkbox"/>
1.slightly	<input type="checkbox"/>
2. significantly	<input type="checkbox"/>
3.vitally/on a wide level	<input type="checkbox"/>

- 4- Did your organization obtain or allocate resources (especially time and money) to call for reform of the bankruptcy system?

*(Explanation: the allocated resources contain one or all of the following elements:*

- contributions that has been collected from members or concerned citizens, and/or from other organizations ( companies , enterprises and other groups)
- financial resources and other resources regarding banking reform from civil society organizations
- volunteer work was accepted to helping for calling for reform
- the international organizations that are concerned with bankruptcy were pinpointed as well as the procedures to get funds from them)

0.at all	<input type="checkbox"/>
1.slightly	<input type="checkbox"/>
2. significantly	<input type="checkbox"/>
3.vitally/on a wide level	<input type="checkbox"/>

- 5- Does your organization participate in coalition or building the network to get cooperative efforts to join and to work on reforming the bankruptcy system?  
*(Explanation: the coalition or network includes all or one of the following elements:*  
 - Other groups including governmental organizations and people interested in reforming bankruptcy system/or were convinced to pay attention to the subject  
 - Certain coalition ( it was defined to be any kind of group work)

0.at all	<input type="checkbox"/>
1.slightly	<input type="checkbox"/>
2. significantly	<input type="checkbox"/>
3.vitally/on a wide level	<input type="checkbox"/>

- 6- Does your organization take any measures to affect the general policy or other aspects to reform the bankruptcy system?  
*(Explanation: measures comprise all or one of the following elements:*  
 - news bulletins that were produced or the general meetings that have been held  
 - Members/ people encouraged to take right decision, for example corresponding legislators, etc...  
 - Pressuring activities for reforming bankruptcy systems done through hearing testimony, legislators visits, etc.  
 - drafting model legislations and circulating it to legislators  
 - documents and recommendations published that were based on contributions that were collected and coalitions of similar interests)

0.at all	<input type="checkbox"/>
1.slightly	<input type="checkbox"/>
2. significantly	<input type="checkbox"/>
3.vitally/on a wide level	<input type="checkbox"/>

- 7- After taking a general political decision, does your organization follow up to ensure execution and/or protecting the public welfare?  
*(Explanation: follow up includes all or one of the following elements:*  
 - monitoring the execution of a law or a newly issued policy, for example through ensuring that the fund allocated by the government was spent, and the executor decrees have been stipulated and promulgated, confirming the implementation of the law or the public policy in the field, and interrogating members in order to receive feedback about its performance

- 
- some employees were assigned for this case or public policy for the purpose of monitoring, along with time and resources
  - if the pursuit public policy didn't succeed , at least the minimum of means of call would have been maintained in order to exploit the upcoming opportunity in order to push forward for reforming bankruptcy system , perhaps by redrafting of the approach or other details
  - if the pursuit doesn't succeed, the public awareness would have been checked and the subject would have been addressed , to look up for examples and opportunities to establish or insistently reviving the feeling regarding reforming the bankruptcy system.)

0.at all	<input type="checkbox"/>
1.slightly	<input type="checkbox"/>
2. significantly	<input type="checkbox"/>
3.vitally/on a wide level	<input type="checkbox"/>

## Annex 6

### Opinion poll regarding the reform of the bankruptcy system in the Hashemite Kingdom of Jordan

#### General information about the questionnaire – Investigator

Form serial number: \_\_\_\_\_

Date of interview: \_\_\_\_\_

Field investigator's name: \_\_\_\_\_

#### Information about the respondent

Name of the respondent: \_\_\_\_\_

Position: \_\_\_\_\_

Gender: 1. Male 2. Female

Address: \_\_\_\_\_

Landline Number: \_\_\_\_\_ Mobile Number : \_\_\_\_\_

Email: \_\_\_\_\_

Age: \_\_\_\_\_

Less than 24 years	from 24 – 34 years	from 35 – 44 years	from 45 – 54 years	more than 55 years
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#### Level of education

PHD	Masters – MS/ MA/LLM	Bachelor ( LLB/ BA/BS)	others
-----	-------------------------	---------------------------	--------

Profession (please specify): \_\_\_\_\_

Years of experience in the field: \_\_\_\_\_ years

#### Sector:

Private Sector	Public Sector	semi governmental
other sectors (organizations or non –governmental bodies etc... ) specify		

#### The field of activity of your enterprise .Please detail activity

Name of the enterprise: \_\_\_\_\_

Is bankruptcy important in your field of work? ☐ Yes ☐ No

Do you think that there is any need to reform the bankruptcy provisions in Egypt?

☐ Yes ☐ No ☐ Uncertain



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## Introduction

Economic development requires an encouraging legal and judicial milieu manifested in the existence of suitable legal articles and in the presence of ---- judiciary (honest, worthy of and effective) that would provide reassurance for the investors and creditors.

Bankruptcy, along with other legal issues related to it (mortgages, liability of chairman, credit information systems and seizure practices) are some of the important legal themes that, combined, affect the economic development of a country, and constitute on the initial stages of commercial stability

Reform approaches of bankruptcy is divided in general to three main kinds cases of insolvency or defaulting and the suggested solutions to rescue the commercial enterprise and thus the trader ( whether a company or natural entities ) by avoiding its liquidation (reorganization ) Bankruptcy , its trajectory and procedures

Other legal regulations that intersect bankruptcy schemes (mortgage , insurance of movables and immovable property , liability of chairman , and credit information systems...

It is acknowledged that a commercial enterprise (whether owned by an individual or by a company) passes through insolvencies, difficulties which appear even before the trader reaches the point of cessation of paying his debts. The reasons behind defaulting are many , it is either due to faulty or irrational project management of the commercial enterprise or due to general objective economic conditions ( war , corruption and many others). In all these cases , the business enterprise stops paying its debts and obligations either due to its inability to convert its assets to cash, even though the value of the assets is higher than the amount of its liabilities “ technical insolvency “ or because the value of its assets is lower than its liabilities “ real financial insolvency. ...). (In all of these cases, the stoppage of payment is either because of a temporary shortage in liquidity not in solvency (as the project might has asserts that worth more than their liabilities), or because of permanent lack in liquidity which shows weakness in solvency.)

The Arab Center for the development of the Rule of Law and Integrity, through commendable support, is implementing an initiative of reforming the bankruptcy systems in Egypt and Jordan “Initiative project to reform the bankruptcy system in the Middle East” in coordination with Dr. Salama Arab ( the Egyptian National Expert) and H.E prof Ayman Audi ( The Jordanian National Expert) , this project seeks to draft a national report of the bankruptcy system and the relevant laws ( revise above ). It is being drafted based on opinions of people concerned in economic development and commercial stability whether they emanate from the public sector or from diverse professional sectors or belong to the legal domain in the country.

The survey is done through organizing workshops in the framework of small groups displaying through which the strengths and weaknesses of the current system

passing through discussing the forwarded reform projects suggesting ideas for reform that feed into the drafting of the national report and supporting the outcome and the conclusion of the workshop and the brainstorming sessions in doing a widely covering survey that comprises all professional categories. This survey will provide sufficient data for contemplation and analysis in the process of the drafting of the national report

In the end and after the preparation of the national report, it is forwarded for discussion in a regional national summit to broaden the spectrum of benefits deduced from people involved in this issue to draft the final national report that suits the ambiance of the concerned countries (Egypt and Jordan ) and sets the stage for an appropriate legal milieu.

The questionnaire attached to this introduction consists of 42 questions presented in a logical order and in a conscription that could be comprehended by all groups interested in this subject matter whether business men or those who belong to organizations who represent the various economic sectors or decision makers in the executive and legislative facilities of the state or those who belong to the legal profession ( judges – lawyers)

Based on the above,  
in order to adequately answer the questions of this questionnaire, it is advised to read all the questions first and then start answering question by question.

There is an additional explanatory paper of bankruptcy that summarizes the recent reforming approaches of it. Reading this paper aids in giving specific answers to the questions of the survey.

Arab Center for the development of the Rule of Law and Integrity and their partners highly appreciate your useful participation whether through the brainstorming sessions or by answering the questions of the questionnaire attached.

The questions mentioned above were divided into several chapters as follow:

Chapter 1 : the period that precedes bankruptcy

Chapter 2: bankruptcy and its procedures

Chapter 3 :legislations pertaining to bankruptcy systems

Chapter 4: liquidation

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## Chapter 1: The period that precedes bankruptcy

- 1- Do you believe that the procedures of preventive legal settlement of bankruptcy stated in the commercial law of 1966 are effective and could save the defaulting trader?  
☐ Yes                      ☐ No                      ☐ No Answer
- 2- Do you consent that the preventive legal settlement of bankruptcy confines to regular debts as is the case now in the valid commercial law , i.e doesn't include secured debts?  
☐ Yes                      ☐ No                      ☐ No Answer
- 3- What is the best choice to accept the preventive legal settlement request :  
(Choose one of the following answers)  
☐ Requiring a specific majority of debts to accept the preventive legal settlement request ( judicial settlement)  
☐ Requiring a specific majority of the number of creditors to accept the preventive legal settlement request (judicial settlement)  
☐ Requiring a double majority (of both debts and number of creditors to accept the preventive legal settlement request) judicial settlement)?
- 4- Do you think that the legislator should intervene to amend the law thus offering an opportunity to save and reorganize defaulting business enterprise and corporations to help them avoid bankruptcy and liquidation?  
☐ Yes                      ☐ No                      ☐ No Answer
- 4.1- if your answer was yes to the previous question, do you consent that the court should have a role in saving and reorganizing business enterprises and companies?  
☐ Yes                      ☐ No                      ☐ No Answer
- 5- Do you think creditors whose debts are not documented and still under dispute should be allowed to vote on the reorganization plan?  
☐ Yes                      ☐ No                      ☐ No Answer
- 6- Do you think that reorganization policies should be restricted to companies with a certain minimum capital?  
☐ Yes                      ☐ No                      ☐ No Answer
- 7- Do you believe that the number of employees at the company, and not only its capital should be taken into consideration when developing the conditions of the reorganization request?  
☐ Yes                      ☐ No                      ☐ No Answer
- 8- Do you agree that the consequence of preliminary acceptance reorganization request would be halting lawsuits and enforcement proceedings against the debtor until deciding on the request or should halting limit to the enforcement proceedings?  
*Choose one of the following answers*

- ☐ Halting lawsuits and enforcement proceedings  
☐ Halting enforcement proceedings only  
☐ I don't know
- 9- Do you agree that the consequence of formal acceptance of the reorganization request would be halting the execution of the mortgage bonds of movables and immovable property until deciding on the request?  
☐ Yes      ☐ No      ☐ No Answer
- 10-Do you think there should be a proceeding vote on the reorganization plan?  
*Choose one of the following answers*  
☐ Both regular and secured creditors  
☐ Regular creditors only  
☐ Secured creditor only
- 11-Do you think that the creditors of non-outstanding debts should be allowed to vote on the reorganization plan?  
☐ Yes      ☐ No      ☐ No Answer
- 12-With regards the approval on the reorganization plan , do you think there should be a requirement of  
*Choose one of the following answers*  
☐ Specific majority of debts  
☐ Specific majority of the number of creditors  
☐ Double majority of debts and number of creditors
- 13-Do you support giving the insolvent individual enterprises and companies and their creditors a chance to apply the procedures of the reorganization plan through a private or a governmental agency in which the role of the court restricts to approving on the decision of this agency?  
☐ Yes      ☐ No      ☐ No Answer

## **Chapter 2: Bankruptcy and its procedures**

- 14-Do you think that the period that the bankruptcy lawsuit takes before the court is  
*Choose one of the following answers*  
☐ Adequate period?      ☐ Very long period ?      ☐ Short period?
- 15-A trader is declared bankrupt in the current legal system if he ceases paying his business debts where as the trend in the new legislations is to declare bankruptcy of the trader even if he stopped paying his civil debts, do you think the internal national law should be amended to harmonize with the new legislations?  
☐ Yes      ☐ No      ☐ No Answer
- 16-Do you agree that the date of cessation of payments should be tied with a certain period starting from the date of the filing of the lawsuit instead of the date of the court's decision declaring bankruptcy?  
☐ Yes      ☐ No      ☐ No Answer

- 
- 17-In the case several companies -forming one legal entity - found in various different companies, how should the start of the period of uncertainty be marked out and how to identify it with respect to other members of the entity?
- ☐ Would this date be unified for all members?
- ☐ Would this date be independent for each member alone?
- ☐ I don't know
- 18- Do you believe that there is no necessary to require the bankrupt's approval on the reconciliation that is done by the bankruptcy trustee with the creditors under the supervision of the court?
- ☐ Yes                      ☐ No                      ☐ No Answer
- 19-Can the creditor file a bankruptcy lawsuit against his debtor if he had previously agreed with the latter to solve all disputes stemming from this agreement through arbitration?
- ☐ Yes                      ☐ No                      ☐ No Answer
- 20-Do you approve the presence of specific provisions for the liquidation of certain enterprises (banks and insurance companies) independent from the current bankruptcy and liquidation provisions?
- ☐ Yes                      ☐ No                      ☐ No Answer
- 21-In your opinion, is the inclination towards decreasing the role of the creditor's group in the management and running of the bankruptcy estate and doubling the role of the judicial authority in this regard, so that it would have an active and a guiding role and not only an observing and supervising role, would provide greater guarantees in the speed and honesty and maintenance of the rights of the creditors?
- ☐ Yes                      ☐ No                      ☐ No Answer
- 22-Do you think articles should be added which would allow the court that declared bankruptcy to take urgent measures (placing seals and the preparation of inventories) beyond the territorial jurisdiction i.e so that its jurisdiction will include the whole country?
- ☐ Yes                      ☐ No                      ☐ No Answer
- 23-Do you think it is useful to give the general prosecution a role in initiating a bankruptcy lawsuit?
- ☐ Yes                      ☐ No                      ☐ No Answer
- 24-Do you think that the court , after declaring the trader bankrupt , to protect the rights of the creditors has to inform the bankrupt that he has to stop and is forbidden from doing any commercial act ?
- ☐ Yes                      ☐ No                      ☐ No Answer
- 25-Do you think that selling the assets of the bankrupt could cause major controversies in practical application?
- ☐ Yes                      ☐ No                      ☐ No Answer

25.1- if your answer was yes to the previous question, what, in your opinion, are those major controversies?

26-Do you think prioritizing the payment of debts of the bankrupt could cause major controversies in practical application?

☐ Yes ☐ No ☐ No Answer

26.1- if your answer was yes to the previous question , what , in your opinion , are those major controversies?

27-Do you think that the competence of the commissioner is broad enough in practical application?

☐ Yes ☐ No ☐ No Answer

27.1- if your answer was no to the previous question , please give specific answers supporting your opinion

28-Do you think it is permissible to declare bankrupt an affiliate company consequent to the bankruptcy of the mother company?

☐ Yes ☐ No ☐ No Answer

29-Do you believe , if the bankruptcy of the mother company extended to the affiliate companies

*Choose one of the following answers*

☐ Should each company be considered alone and accomplish its paperwork, if necessarily, independently in case it was bankrupted

☐ Should action be taken to extend bankruptcy to include the other companies that compose the group of companies

30-Which of these courts , in your opinion, is the most competent to look into the request of bankruptcy that includes the entity of group of companies? Choose one of the following answers

The court before which the bankruptcy lawsuit was first filed, in which the remaining requests get transferred to it from the other courts	<input type="checkbox"/>
The court within whose jurisdiction lies the head office of the mother company , in the event the group of companies was established on this bases and the mother company was included in the request	<input type="checkbox"/>
The court within whose jurisdiction lies the biggest number of debtors of the various members of the group	<input type="checkbox"/>
The court within whose jurisdiction lies the center of control and decision making in the company.	<input type="checkbox"/>

31-the provisions of the current commercial law does not deal with cases of international bankruptcy while the current provisions concerning the execution of foreign verdicts doesn't allow the execution of these verdicts in the kingdom , do you think these provisions should be amended?

☐ Yes ☐ No ☐ No Answer

32-Which of these personal consequences should apply to bankrupt in cases of normal bankruptcy ( not simple or fraudulent bankruptcy) *you can choose more than one answer.*

1. Banning the bankrupt from traveling	<input type="checkbox"/>
2. Depriving the bankrupt from his professional rights	<input type="checkbox"/>
3. Depriving the bankrupt from his political rights	<input type="checkbox"/>
4. Depriving the bankrupt from practicing some activities and acts	<input type="checkbox"/>
5. No consequences	<input type="checkbox"/>

33-In the case of fraudulent bankruptcy , which of these personal consequences should apply to the bankrupt? *You can choose more than one answer*

1. Banning the bankrupt from traveling	<input type="checkbox"/>
2. Depriving the bankrupt from his professional rights	<input type="checkbox"/>
3. Depriving the bankrupt from his political rights	<input type="checkbox"/>
4. Depriving the bankrupt from practicing some activities and acts	<input type="checkbox"/>
5. No consequences	<input type="checkbox"/>

### Chapter 3: legislations pertaining to bankruptcy systems

34- The Jordanian law allows mortgaging the movables of the debtor (contrary to stocks, shares, cars) a possessing mortgage. Do you think that the provisions of possessing mortgage for the other movables are enough to protect the rights of the creditors?

☐ Yes ☐ No ☐ No Answer

35-Do you think it is necessary to have specific provisions in the Jordanian law concerning the mortgage of the business enterprise together with its moral elements (commercial name, customers) and material elements like future merchandises which would replace existing merchandise present at the time of the mortgage?

☐ Yes ☐ No ☐ No Answer

36-Do you think that the current credit information system (for instance: commercial register and data of companies control department) is enough to give the information needed for creditors to inquire about the financial position of the trader's status and his debts before giving him any kind of credit whether loans or business dealings in installments?

☐ Yes ☐ No ☐ No Answer

36.1- if your answer was no to the previous question , what , in your opinion , is the best solution. *Choose one of the following answers*

- ☐ Establish a company to gather the credit information
- ☐ Amending the present commercial register system in order to widen the spectrum of credit information gathered
- ☐ Link the credit information enterprises (commercial register, real estate register, securities register) with a comprehensive information system.

37-Contrary to the previous question, are there any legal articles that manage credit inquiry service and allows access to the data to check the debtor's status with respect to his debts and facilities?

- ☐ Yes                      ☐ No                      ☐ No Answer

37.1- if your answer was yes to the previous question please answer the following questions:

	Yes	No
Is this system central and found on the national level?	<input type="checkbox"/>	<input type="checkbox"/>
Is this system doable, accessible and could be inspected?	<input type="checkbox"/>	<input type="checkbox"/>
Have any conditions been specified for using the information provided by such a system so as not to abuse it for defamation	<input type="checkbox"/>	<input type="checkbox"/>
Are there any measures to protect the information provided by the credit inquiry system	<input type="checkbox"/>	<input type="checkbox"/>
Would the concerned people be informed when information related to them is being used to take decisions against them	<input type="checkbox"/>	<input type="checkbox"/>
Can the debtor object on the false and incomplete information about him?	<input type="checkbox"/>	<input type="checkbox"/>
Are there any mechanisms to investigate the objections/ disputes and to correct the information?	<input type="checkbox"/>	<input type="checkbox"/>

38-Do you think it is important to add an explicit provision in the law which declares that the liability of chairmen in a joint stock company does not affect the chairmen alone, who are responsible for managing the company, it extends to affect every person participating regularly and effectively (realistically) in the management of the company?

- ☐ Yes                      ☐ No                      ☐ No Answer

39-Is it preferable to add provisions to the bankruptcy law which protects partners and contributors who did not effectively participate in the management of the company from the effects of the declaration of bankruptcy even if it was fraudulent bankruptcy caused by the board of directors?

- ☐ Yes                      ☐ No                      ☐ No Answer

40-The commercial law declares the liability of the chairman and board of directors for



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mistakes done during their management of the company before the contributors and third person. Do you think that this article could include liability of the chairman and board of directors concerned to bare the debts of the company in case their mistake in management or negligence or deliberate action lead to company to bankruptcy or liquidation ?

☐ Yes ☐ No ☐ No Answer

#### **Chapter 4: liquidation**

41-Do you think that the period that liquidation lawsuits take before the court is

*Choose one of the following answers*

☐ Adequate period? ☐ Very long period ? ☐ Short period?

41.1- if you think that liquidation lawsuits takes so much time before the courts, what, in your opinion, are the major amendments that should be done in order to shorten the length of litigation in those lawsuits?

42- Do you assent the role of the general prosecution in the obligatory liquidation cases?

☐ Yes ☐ No ☐ No Answer

43-Does the current commercial law include restraints and clear and specified procedures for selling the company's assets in liquidation?

☐ Yes ☐ No ☐ No Answer

43.1- what are, in your opinion, the major controversies, if any, that are caused by selling the assets of the company in liquidation?

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44-Does prioritizing the payments of debts in liquidation cause controversies in practical application?

☐ Yes ☐ No ☐ No Answer

44.1- if your answer was yes to the previous question, what are, in your opinion, those major controversies?

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45-Do you believe that the competence of assigning an auditor in the obligatory liquidation should be given to the court instead of the liquidator?

☐ Yes ☐ No ☐ No Answer

46-Does the current commercial law include clear and specified provisions to as to allocating the salaries and fees of the liquidator?

☐ Yes ☐ No ☐ No Answer

47-Do you believe the punishments applied on the auditor for submitting false data is an enough guarantee for the rights of the creditors?

☐ Yes ☐ No ☐ No Answer

**Optional**

In addition to the questions mentioned above , do you have any ideas to add for reforming the legal system that manages the financial difficulties in paying off debts due to insolvency or absence of liquidity ( bankruptcy system and liquidation and laws that overlap) whether

In amending or vacating or explaining certain ambiguity of the current systems not brought up in the above questions; or

Adding new concepts where in restructuring of the company or reorganizing to save; or

Setting systems for the information of the trader regarding his debts and his movables and immovable property

**Only Civil society organizations**

The below chapter aims to define the level of your connection with the topic “**reforming the bankruptcy system**”. Please rank your organization’s performance on a scale of 0 to 3 to each of the following elements

**The scale**

0: no connection at all

1: slight connection

2: significant connection

3: vital connection/ on a wide level

*Please circle the corresponding answer for each of the following clauses:*

- 1- The priority and importance of the topic of reforming bankruptcy systems for and in favor of you organization:

*(Explanation: reforming bankruptcy system is considered a priority and very important for your organization if :*

- Bankruptcy is of fundamental interest for the members of the group*
- Bankruptcy has now, and in the future a decisive importance for the civil society organization you belong to and/or you is clients of*
- There are new opportunities for an effective performance*
- At least some of the decision makes accept the idea)*

*(Choose one of the following answers)*

0.at all	<input type="checkbox"/>
1.slightly	<input type="checkbox"/>
2. significantly	<input type="checkbox"/>
3.vitally/on a wide level	<input type="checkbox"/>

- 2- Has your organization previously compiled information and contributions for reforming bankruptcy:

*(Explanation: the information that has been collected contains one or all of these elements:*

- *information about governmental institutions concerned ,and the role of each in bankruptcy on the local and national level ; examining the extent of consideration and the stance of it*
- *information about the audiences' contribution concerning the topic of bankruptcy through field studies*
- *information and present data regarding this topic like abstracts and other documents*
- *analysis of the general policy from the legal, political, justice and social aspect)*

0.at all	<input type="checkbox"/>
1.slightly	<input type="checkbox"/>
2. significantly	<input type="checkbox"/>
3.vitally/on a wide level	<input type="checkbox"/>

- 3- Did your organization take a general political position regarding bankruptcy reforming system?

*(Explanation: the general political position should comprise the following elements and characteristics:*

- *the policy was composed in a participatory manner( minding gender differences)*
- *invitations of general policies which were documented in writing and stated in manner that suits the various audience and policy makers*
- *the general policy was clearly expressed and in a persuasive manner*
- *the logical basis for the policy is coherent , persuasive and uses the information compiled based on element 2 ( your organization has complied information and contribution regarding bankruptcy reform)*
- *usage of graph in presenting the general policy*

0.at all	<input type="checkbox"/>
1.slightly	<input type="checkbox"/>
2. significantly	<input type="checkbox"/>
3.vitally/on a wide level	<input type="checkbox"/>

- 4- Did your organization obtain or allocate resources (especially time and money) to call for reform of the bankruptcy system?

*(Explanation: the allocated resources contain one or all of the following elements:*

- *contributions that has been collected from members or concerned citizens, and/or from other organizations ( companies , enterprises and other groups)*
- *financial resources and other resources regarding banking reform from civil society organizations*

- volunteer work was accepted to helping for calling for reform
- the international organizations that are concerned with bankruptcy were pinpointed as well as the procedures to get funds from them)

0.at all	<input type="checkbox"/>
1.slightly	<input type="checkbox"/>
2. significantly	<input type="checkbox"/>
3.vitally/on a wide level	<input type="checkbox"/>

- 5- Does your organization participate in coalition or building the network to get cooperative efforts to join and to work on reforming the bankruptcy system?  
(Explanation: the coalition or network includes all or one of the following elements:

- Other groups including governmental organizations and people interested in reforming bankruptcy system/or were convinced to pay attention to the subject
- Certain coalition ( it was defined to be any kind of group work)

0.at all	<input type="checkbox"/>
1.slightly	<input type="checkbox"/>
2. significantly	<input type="checkbox"/>
3.vitally/on a wide level	<input type="checkbox"/>

- 6- Does your organization take any measures to affect the general policy or other aspects to reform the bankruptcy system?

(Explanation: measures comprise all or one of the following elements:

- news bulletins that were produced or the general meetings that have been held
- Members/ people encouraged to take right decision, for example corresponding legislators, etc...
- Pressuring activities for reforming bankruptcy systems done through hearing testimony, legislators visits, etc.
- drafting model legislations and circulating it to legislators
- documents and recommendations published that were based on contributions that were collected and coalitions of similar interests)

0.at all	<input type="checkbox"/>
1.slightly	<input type="checkbox"/>
2. significantly	<input type="checkbox"/>
3.vitally/on a wide level	<input type="checkbox"/>

- 7- After taking a general political decision, does your organization follow up to ensure execution and/or protecting the public welfare?

(Explanation: follow up includes all or one of the following elements:

- monitoring the execution of a law or a newly issued policy, for example through ensuring that the fund allocated by the government was spent, and the executor decrees have been

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*stipulated and promulgated, confirming the implementation of the law or the public policy in the field, and interrogating members in order to receive feedback about its performance*

- some employees were assigned for this case or public policy for the purpose of monitoring, along with time and resources*
- if the pursuit public policy didn't succeed , at least the minimum of means of call would have been maintained in order to exploit the upcoming opportunity in order to push forward for reforming bankruptcy system , perhaps by redrafting of the approach or other details*
- if the pursuit doesn't succeed, the public awareness would have been checked and the subject would have been addressed , to look up for examples and opportunities to establish or insistently reviving the feeling regarding reforming the bankruptcy system.)*

0.at all	<input type="checkbox"/>
1.slightly	<input type="checkbox"/>
2. significantly	<input type="checkbox"/>
3.vitally/on a wide level	<input type="checkbox"/>

## **Annex 7**

### **Report on the results of the survey on reforming the bankruptcy system In the Arab Republic of Egypt**

#### **Introduction**

##### **Background of the study**

The Arab Center for the development of the Rule of Law and Integrity, is a non-profit organizations located in Beirut that is concerned with the rule of law in the Arab countries, through the preparation of studies , doing intense research , developing capabilities, developing knowledge and supporting the concept of integrity.

The Arab Center for the development of the Rule of Law and Integrity is executing a regional project under the title of “the Middle East Regional Bankruptcy Reform initiative” in both the Arab Republic of Egypt and Hashemite Kingdom of Jordan with the support of middle east partnership initiative ( MEPI) . the period of the project is 12 months starting from September 2013 until September 2014.

The Arab Center is implementing this project in cooperation with its partners in both Egypt ( the Nile advisory group) and Jordan ( Bakr and Odeh foundation ) and the assistance of a national network of concerned stakeholders and decision makers from both countries.

##### **Goals**

The project aims in general to promote and increase confidence in the commercial acts in both Egypt and Jordan through establishing and activating concepts of the rule of law in the business and commerce fields through

- drafting a national report – explanatory which discusses renewing the bankruptcy system based on a survey on those concerned with bankruptcy , to finally suggest recommendations and the appropriate amendments for the legal and practical status in both Egypt and Jordan

- raising awareness and effectively advocating the need to improve and renew the bankruptcy system in both Egypt and Jordan

The Arab Center for the Development and the Rule of Law and Integrity delegated office of legal Consultation and Arbitration (ACA) to (1) prepare the technical tools for the survey (2) supervising and following up the implementation of the field work (3) preparing a statistical analytical report for both Egypt and Jordan

The main goal of the survey is to collect statistical information which would help the concerned parties in the two countries in setting up their national reports regarding the subject. Moreover , the survey would give a general idea about the different views of the respondents and decides on movements that could be of help for the party responsible of the project.

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## **Methodology**

### **Sample size and characteristics of respondents**

The survey targeted 60 persons from people concerned in the subject of the study in each of the two countries, which means that the total sample reach 120 respondents in both countries. The sample was distributed among several sectors (sub division of the sample). The respondents were chosen based on the degree of their knowledge in the present topic bearing in mind the following distribution:

Judges : 15

Lawyers: 17

Academics : 3

People of civil society organizations : 10

Decision makers: 5

Business men ( trustees, experts ) : 10

The sample was divided in consideration with gender representation and various age groups, years of experience etc... (as much as possible) to reach the maximum number of needed data.

### **Technical Tool**

The office of legal Consultation and Arbitration (ACA) prepared a survey based on the list of subjects and suggested topics by the national experts with the help of The Arab Center for the Development and the Rule of Law and Integrity. The team in the enterprise resorted to revising the etiquette of the suggested topic (the draft of the national report for instance).

It is important to mark the devoted cooperation between office of legal Consultation and Arbitration (ACA) and the Arab Center in which many meetings were held to discuss the various stages of work, revise and comment on the draft of the questionnaire prepared by the enterprise. Various comments and suggestions from the national experts were taken into consideration.

The office of legal Consultation and Arbitration (ACA) prepared a questionnaire which would set the stage for obtaining statistical data about renewing the bankruptcy system.

A pretest of the questionnaire was done by 5 respondents in each of the four countries and some slight amendments were added to the questionnaire based on the comments found in the model.

### **Impact of field work**

According to the office of legal Consultation and Arbitration (ACA) which was assigned to do the surveys, the team didn't face any notable predicaments during execution. Still, there were some minor, limited impediments:

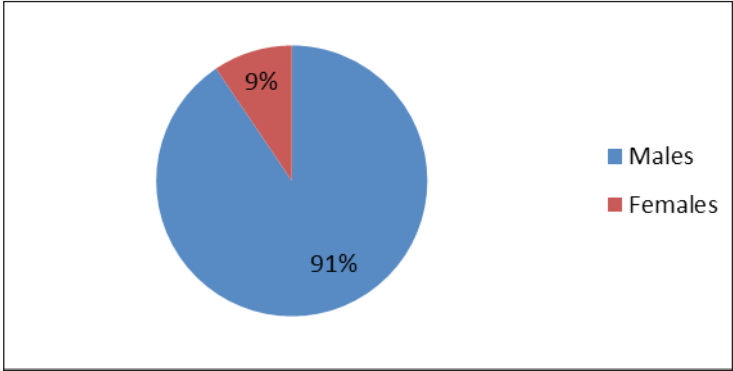
- most respondents criticized the size of the survey
- Some incapability of meeting some of the presumed respondents was noted due to the absence of some in their holiday, or because some others were busy and

canceled their participation in this lengthy survey due to their time constraints

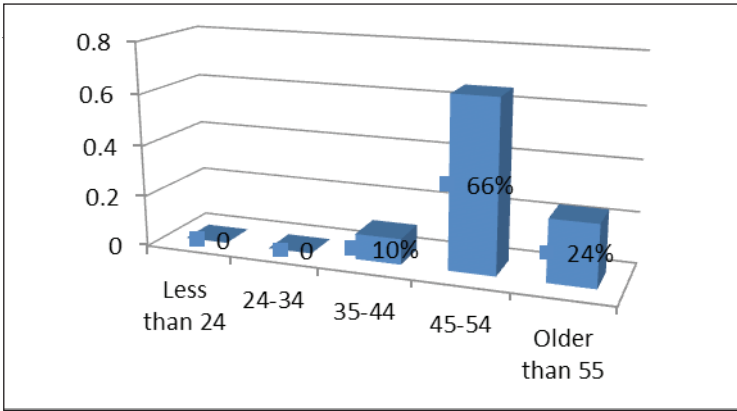
- some respondents found it difficult to assess the effectiveness of some clauses found in the questionnaire or in the work of some enterprises

**Characteristics of respondents**

**Gender**



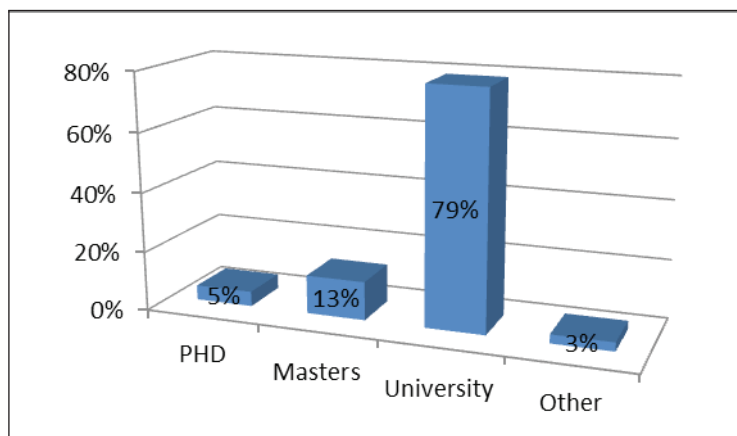
The survey in Egypt included 53 respondent 9% of which are females and 91 % are males



The survey displayed that the age of more than 66% of the respondents vary between 45 and 54 years old whereas 24% of them are older than 55 years old whereas 10% of the respondents are between 35 and 44 years old

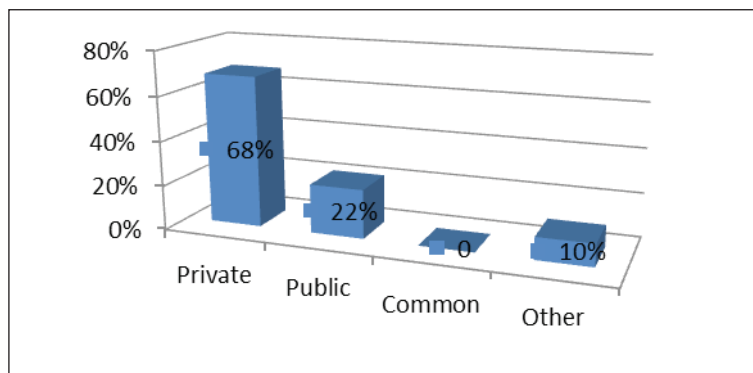


### Level of education



Results of the survey illustrated that the level of education of the majority of respondents is the university level, with a percentage of 79, whereas respondents with masters constituted 13%, whereas the percentage of respondents with PHD didn't exceed 5% of the total

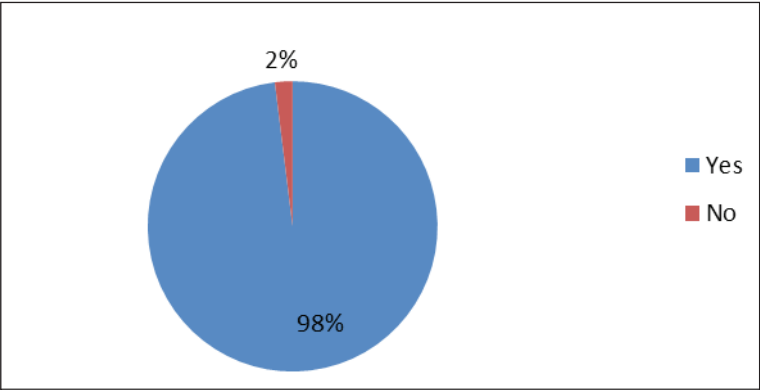
### Sectors



68% of the respondents worked in the private sector whereas only 22% of them worked in public sector (and 10% worked in other sectors)

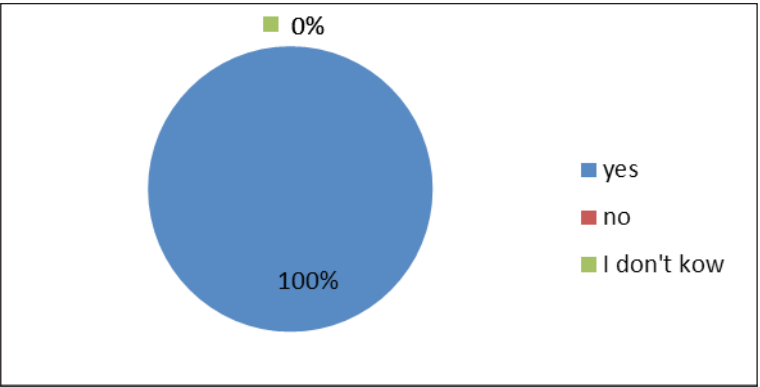
**Results of Survey**

**The importance of bankruptcy for different scopes of work**



98% of people surveyed considered that bankruptcy is of importance in their scope of work and 2% considered bankruptcy is not important in their scope of work

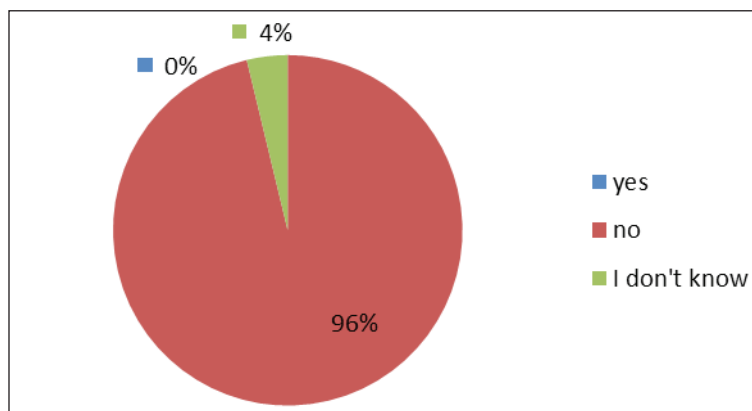
**The need to reform the bankruptcy provisions**



All the respondents (100%) unanimously agreed that there is a need to reform bankruptcy provisions

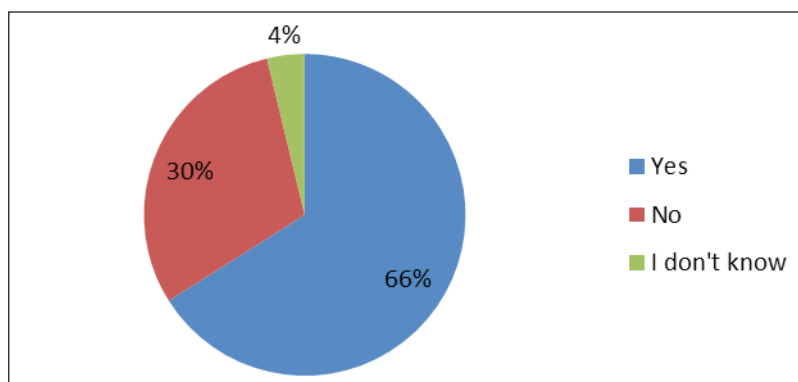
## Chapter 1: The phase before bankruptcy

1- The effectiveness of the procedures of the preventive legal settlement request for bankruptcy stipulated in the commercial law of year 1966



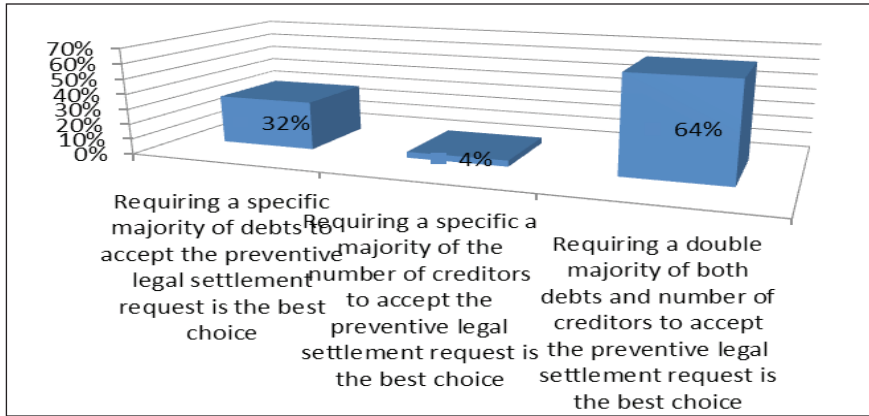
Most of the respondents in the Arab Republic of Egypt ( 96%) considered the procedures of the preventive legal settlement request for bankruptcy stipulated in the commercial law of year 1966 ineffective and don't save the insolvent trader whereas 4% were neutral and said they didn't know if those procedures were effective or not

2- Limitation of preventive legal settlement of bankruptcy to regular debts only without the mortgaging debts as is the case now in the valid commercial law



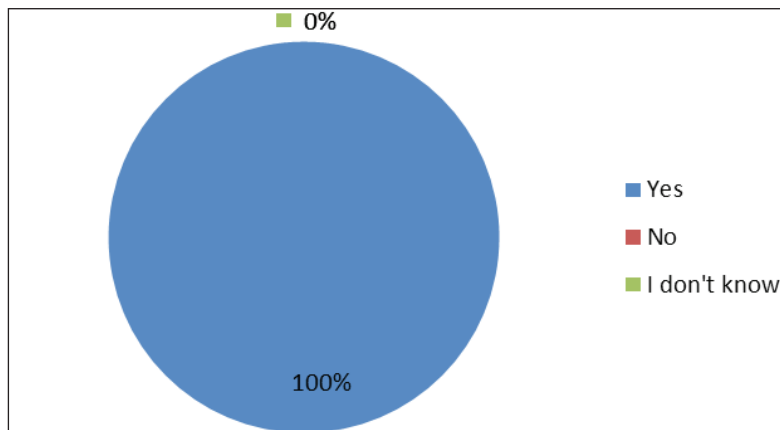
66% consented that preventive legal settlement of bankruptcy confines to regular debts as is the case now in the valid commercial law , i.e doesn't include mortgaging debts whereas 30% refused the permanence of such a provision and 4% were neutral and answered " I don't know"

### 3- The best choice to accept the preventive legal settlement request



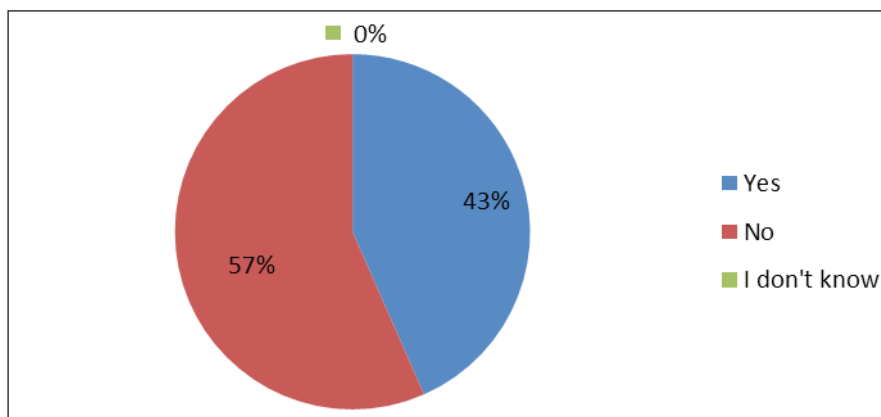
When asked about the best choice to accept the preventive legal settlement request , 64% of them considered Requiring a double majority of both debts and number of creditors to accept the preventive legal settlement request is the best choice whereas 32% said Requiring a specific majority of debts to accept the preventive legal settlement request is the best choice and finally 4% said Requiring a specific a majority of the number of creditors to accept the preventive legal settlement request is the best choice

### 4- Legislator's intervention to amend the law thus offering an opportunity to save and reorganize defaulting business enterprises and corporations to help avoid bankruptcy and liquidation



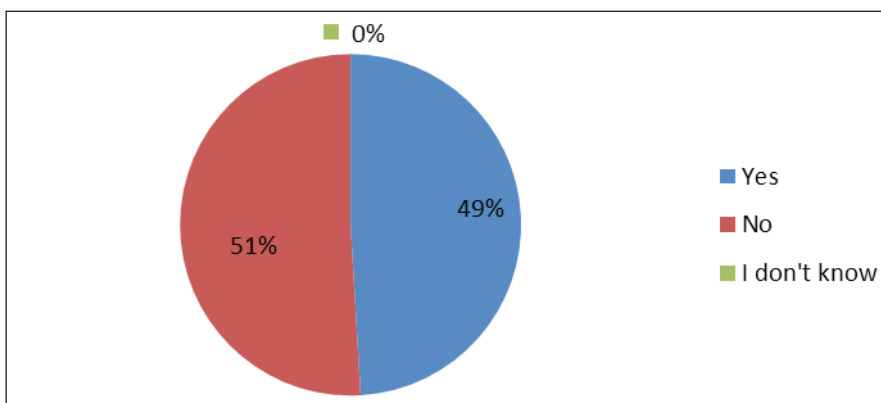
All the respondents agreed on the necessity of the legislator's intervention to amend the law thus offering an opportunity to save and reorganize defaulting business enterprises and corporations to help avoid bankruptcy and liquidation

4.1- The consent that the court has a role in saving and reorganizing business enterprises and companies?



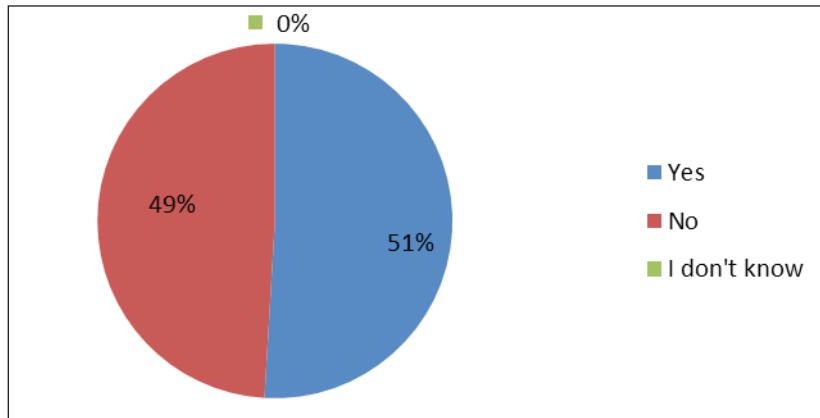
Commenting on the previous question concerning the necessity of the legislator's intervention to amend the law thus offering an opportunity to save and reorganize defaulting business enterprises and corporations to help avoid bankruptcy and liquidation, 57% of respondents refused that the court gets a role in saving and reorganizing business enterprises and companies whereas 43 consented

5- Allowing the creditors whose debts are not documented and still under dispute should be allowed to vote on the reorganization plan



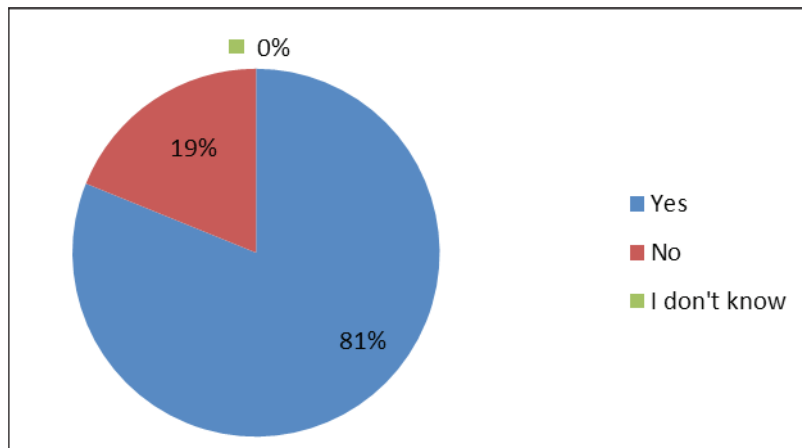
49% of the respondents consented allowing the creditors whose debts are not documented and still under dispute to vote on the reorganization plan whereas 51% refused.

6- Restricting reorganization procedures to companies with a certain minimum capital



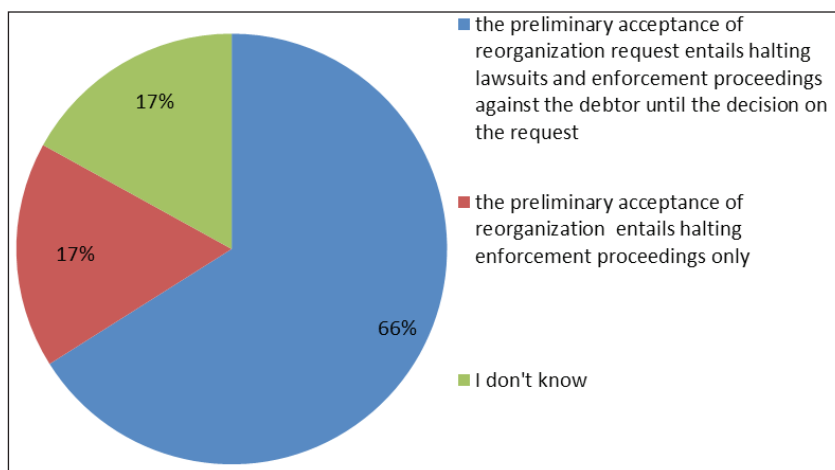
51% of the respondents deemed restricting reorganization policies to companies with a certain minimum capital whereas 49% disregarded that.

7- Taking into consideration the number of employees at the company and not only its capital when developing the conditions of the request of reorganization



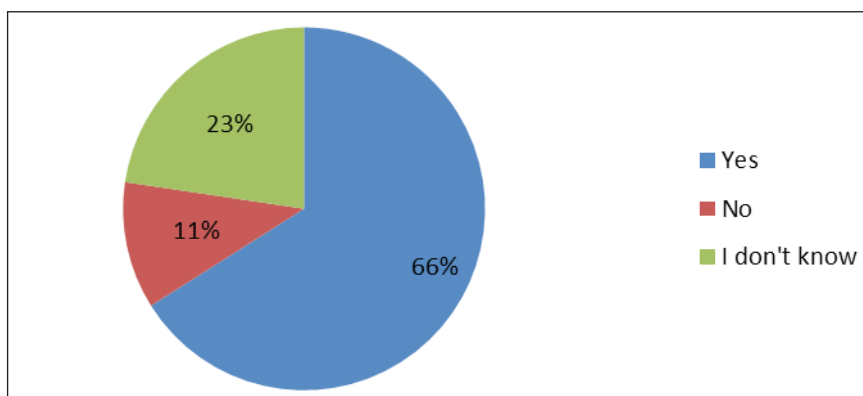
81% of the respondents considered that when developing the conditions of the request of reorganization, the number of employees at the company should be taken into account and not only the capital of the company, while 19% don't consent to take the number of employees in the company in account when considering the reorganization request

- 8- Limitation of the procedures of preliminary acceptance of reorganization request on halting enforcement proceedings or its extension to include halting lawsuits and provisory suspension and enforcement proceedings against the debtor until the decision on the request.



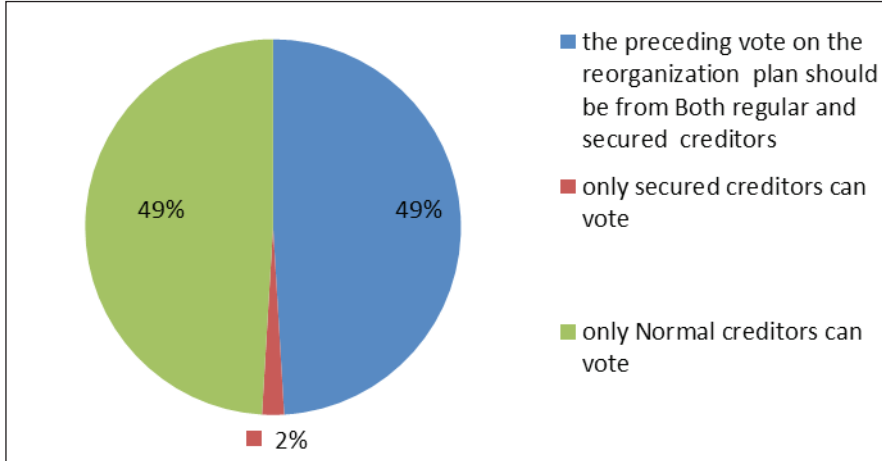
66% of the respondents deemed that the preliminary acceptance of reorganization request entails halting lawsuits and enforcement proceedings against the debtor until the decision on the request while 17% considered that it entails halting enforcement proceedings only, where 17% answered I don't know

- 9- Halting of the execution of the mortgage bonds of movables and immovable property for preliminary acceptance of reorganization request



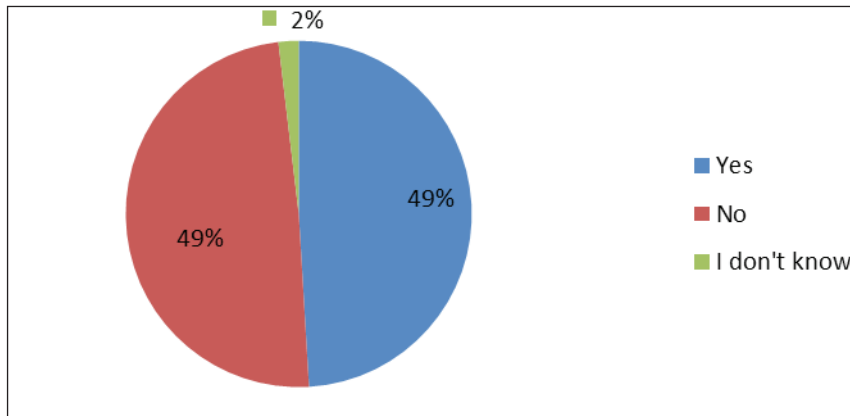
66% agreed on Halting of the execution of the mortgage bonds of movables and immovable property for preliminary acceptance of reorganization request until the decision on it while 11% refused this procedure. 23% answered "I don't know"

## 10- Preceding vote on the reorganization plan



49% of the respondents deemed that the preceding vote on the reorganization plan should be from Both regular and secured creditors while 49 % deemed only Normal creditors can vote and 26% said only secured creditors can vote

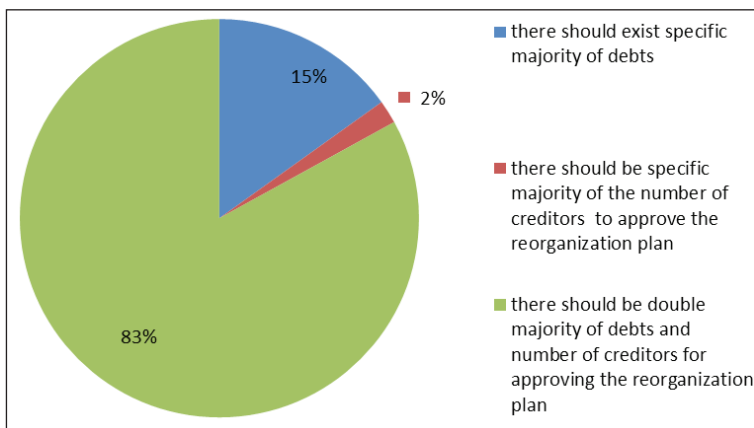
## 11- The vote on the reorganization plan from Creditors of non-outstanding debts



49% of the respondents consented that Creditors of non-outstanding debts can vote, whereas 49 % of them refused . 2% answered "I don't know"

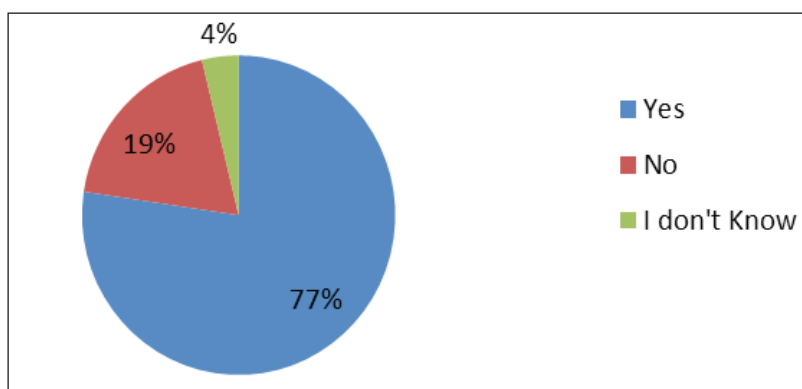


## 12- Requiring approval on the reorganization plan



83% of respondents said there should be double majority of debts and number of creditors for approving the reorganization plan whereas 15% said there should exist specific majority of debts and 2% answered that there should be specific majority of the number of creditors to approve the reorganization plan

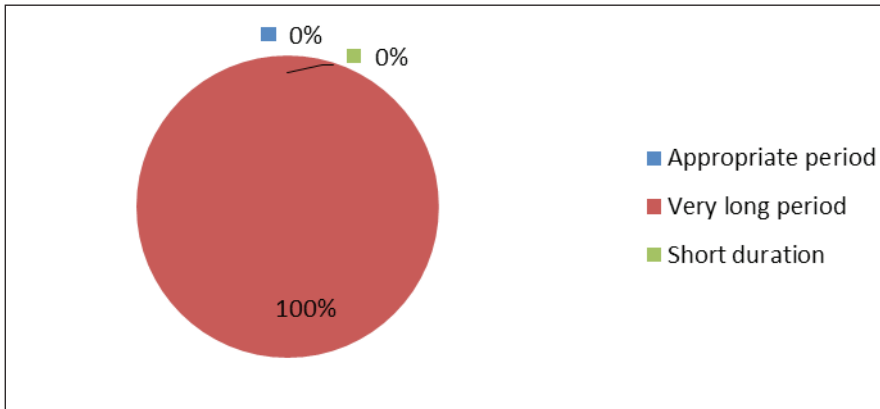
## 13- Giving the insolvent individual enterprises and companies and their creditors a chance to apply the procedures of the reorganization plan through a private or a governmental agency in which the role of the court restricts to approving the decision of this agency



77% of the respondents supported giving the insolvent individual enterprises and companies and their creditors a chance to apply the procedures of the reorganization plan through a private or a governmental agency in which the role of the court restricts to approving the decision of this agency while 19% refused to support and 2% answered I don't know

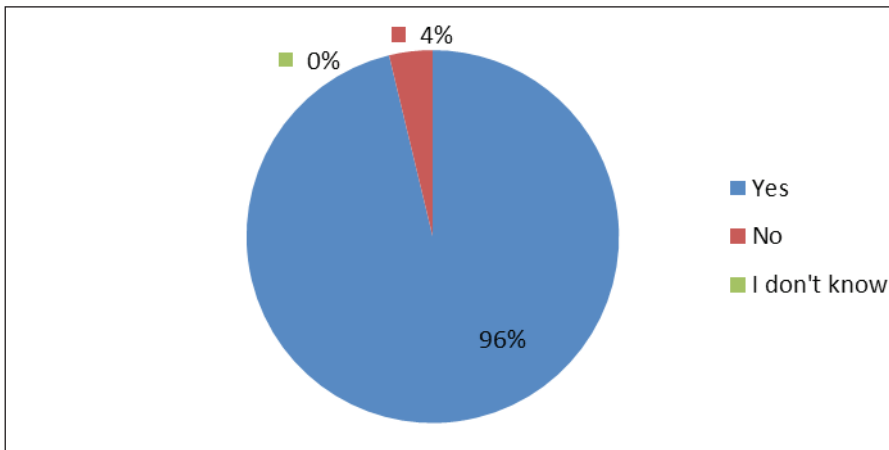
## Chapter 2: Bankruptcy and its procedures

### 14- Time period of bankruptcy law suit before courts



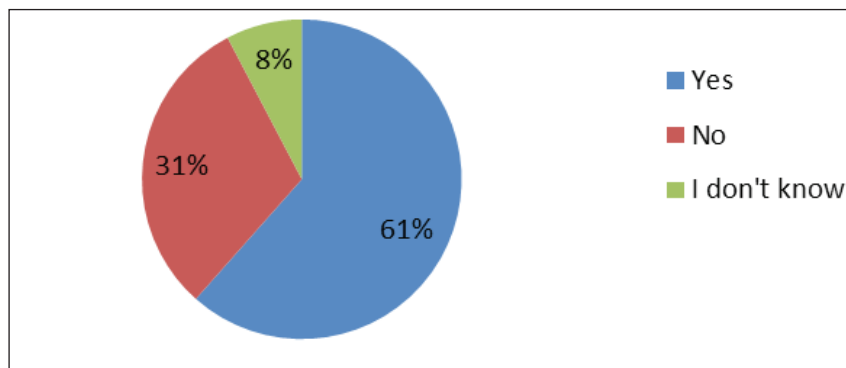
The respondents unanimously agreed that the period of bankruptcy law suits takes a very long period before the courts

### 15- Amending the internal national legislations which declare a trader bankrupt in the event he ceases paying his business debts to harmonize with international trend of declaring a trader bankrupt when he stops paying any of the civil or business debts.



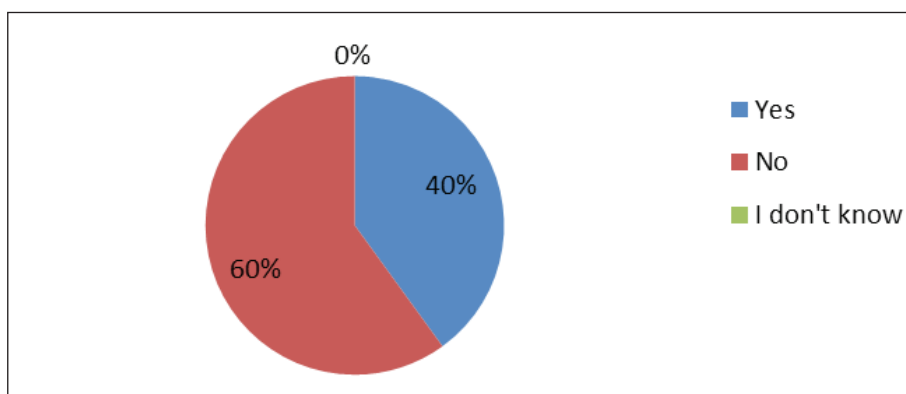
96% of the respondents said that internal national legislations should be amended to harmonize with international trend whereas 4% refused this amendment

16-Linking the date of cessation of payments with a certain calculated period from the date of the filing of the lawsuit rather than the date of the court's decision declaring bankruptcy



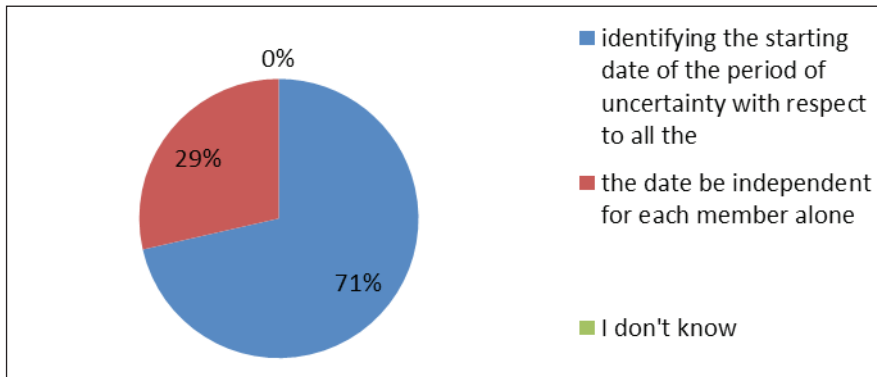
61% of the respondents supported Linking the date of cessation of payments with a certain calculated period from the date of the filing of the lawsuit rather than the date of the court's decision declaring bankruptcy whereas 31% refused this link and 8% were neutral and answered "I don't know"

17- Identification of the starting date of the period of uncertainty with respect to all the members of the group if they formed one legal entity with its companies in different countries



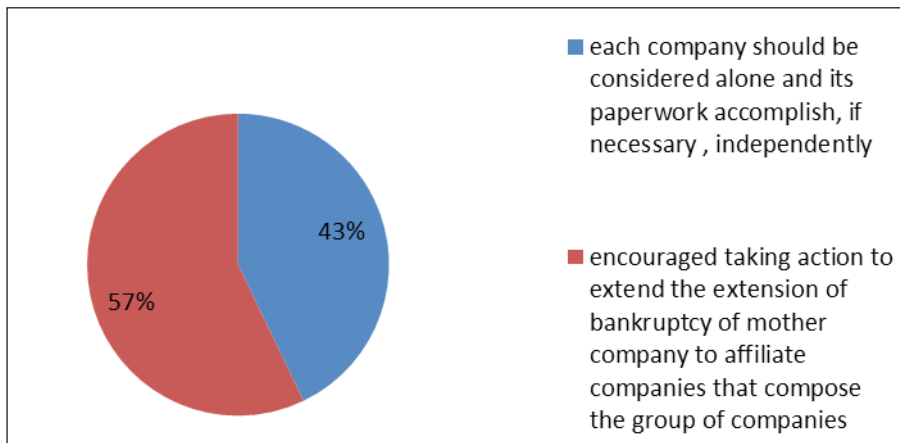
40% said Identification of the starting date of the period of uncertainty should be with respect to all the members of the group if they formed one legal entity with its companies in different countries whereas 60% refused.

### 17.1. Means of identification of the starting date of the period of uncertainty with respect to all the companies (one legal entity)



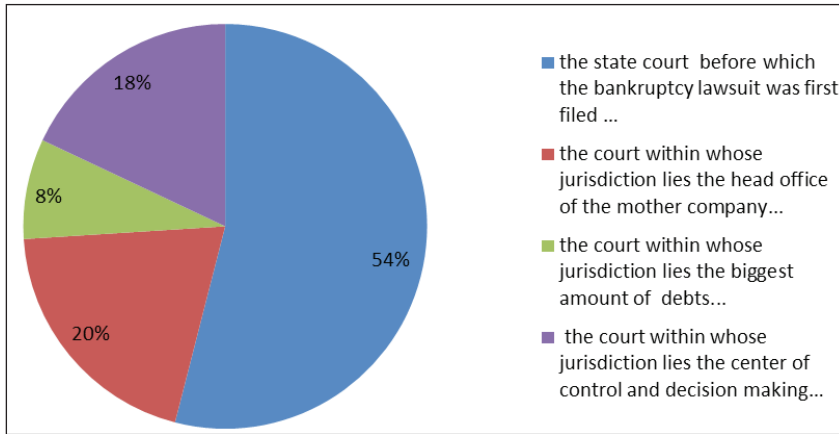
Commenting on the previous question, 71% of the respondents -that supported identifying the starting date of the period of uncertainty with respect to all the members of the group, if they formed one legal entity with its companies in different countries - said that the starting date should be unified for all members whereas 29% believed that the date be independent for each member alone

### 18- Extension of bankruptcy of mother company to affiliate companies



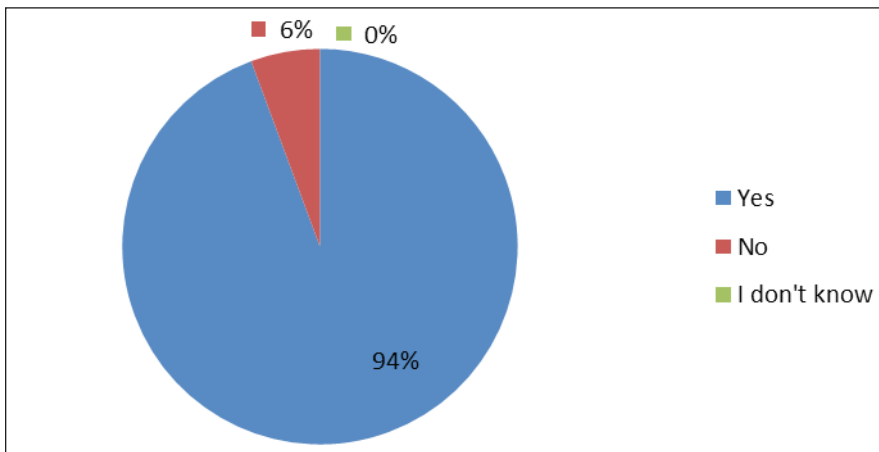
57% of the respondents encouraged taking action to extend the extension of bankruptcy of mother company to affiliate companies that compose the group of companies whereas 43 % said each company should be considered alone and its paperwork accomplish, if necessary, independently

19- The most competent court to look into the request of bankruptcy that includes the entity of group of companies



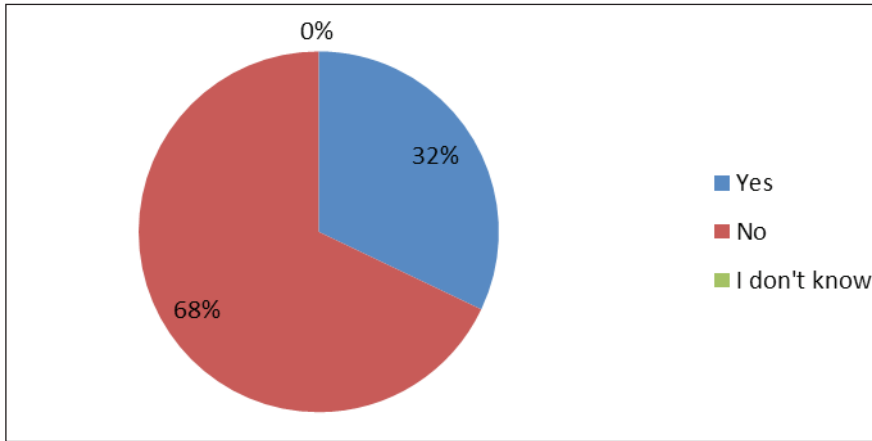
54% of the respondents considered the state court before which the bankruptcy lawsuit was first filed, in which the remaining requests get transferred to it from the other state courts is the most competent, where as 18% considered the court within whose jurisdiction lies the center of control and decision making in the mother company is the most competent and 20% considered the court within whose jurisdiction lies the head office of the mother company if the group was established on this basis and the mother company was included in the request of bankruptcy while 8% considered the court within whose jurisdiction lies the biggest amount of debts of the various companies of the group is the most competent.

20- Inclusion of the current commercial law regulation of cases of international bankruptcy



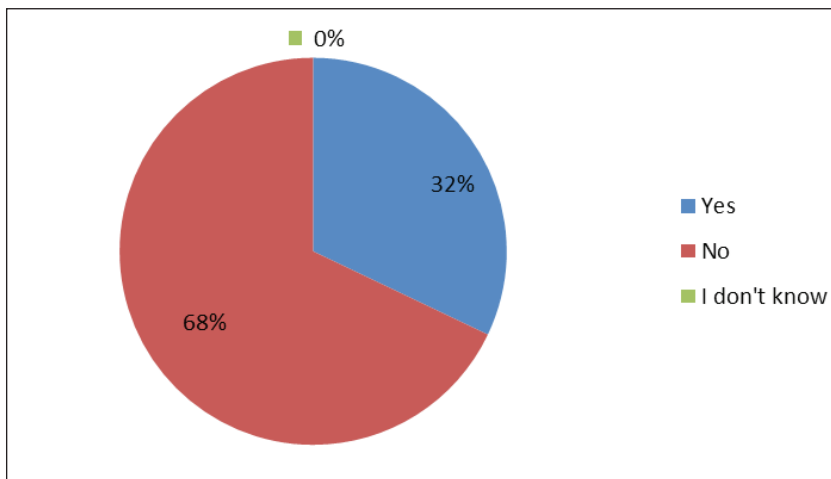
94% of respondents believed there is a necessity that the current commercial law includes regulation of cases of international bankruptcy whereas 6% found no necessity for that

21- The bankrupt's approval on the reconciliation that is done by the bankruptcy trustee with the creditors under the supervision of the court



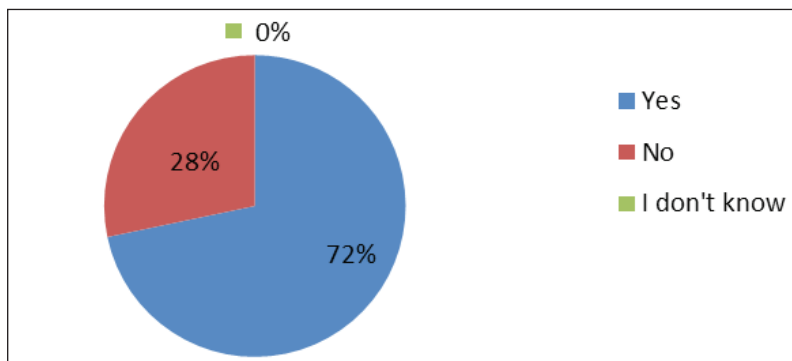
68% of the respondents deemed a necessity of the bankrupt's approval on the reconciliation that is done by the bankruptcy trustee with the creditors under the supervision of the court whereas 32% deemed no necessity for such an approval

22- Creditor filing a bankruptcy lawsuit against his debtor if he had previously agreed with the latter to solve all disputes stemming from this agreement through arbitration



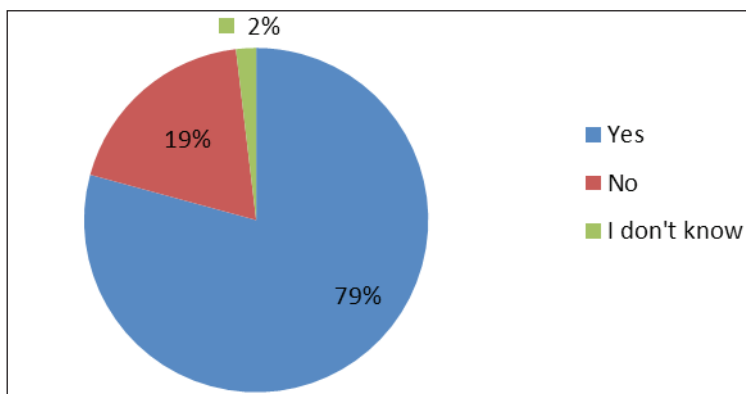
68% of the respondents deemed that the creditor cannot file a bankruptcy lawsuit against his debtor if he had previously agreed with the latter to solve all disputes stemming from this agreement through arbitration while 32% deemed that he can

23- The presence of specific provisions for the liquidation of certain enterprises (banks and insurance companies) independent from the current bankruptcy and liquidation provisions



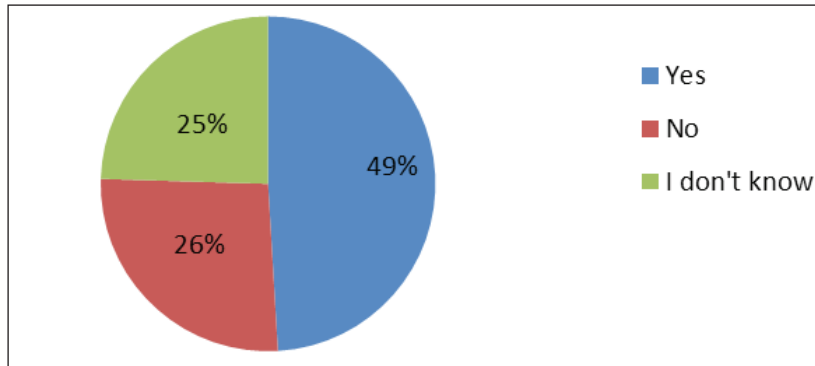
72% of the respondents supported the presence of specific provisions for the liquidation of certain enterprises (banks and insurance companies) independent from the current bankruptcy and liquidation provisions whereas 28% of them opposed

24- Decreasing the role of the creditor's group in the management of the bankruptcy estate and doubling the role of the judicial authority in this regard



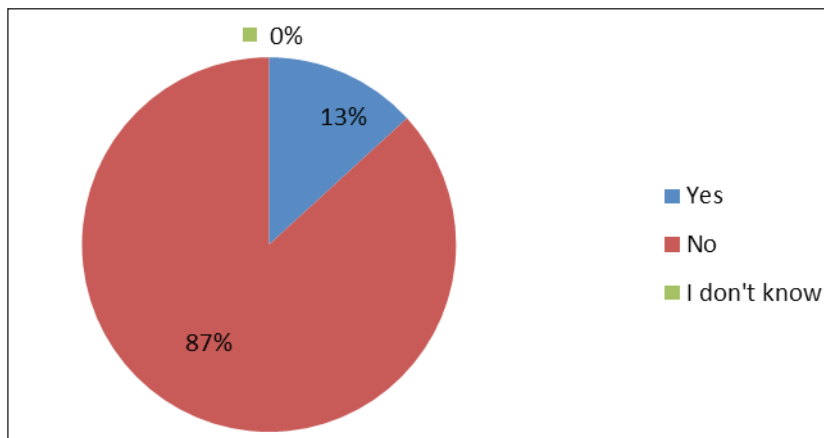
79% of the respondents considered that the decrease in the role of the creditor's group in the management of the bankruptcy and doubling the role of the judicial authority in this regard so that it would provide greater guarantees in the speed and honesty and maintenance of the rights of the creditors whereas 19% oppose the above mentioned and 2% answered I don't know

25-Addition of articles which would allow the court that declared bankruptcy to take urgent measures ( placing seals and the preparation of inventories) beyond the territorial jurisdiction i.e so that its jurisdiction will include the whole country



49% of the respondents supported adding articles which would allow the court that declared bankruptcy to take urgent measures ( placing seals and the preparation of inventories) beyond the territorial jurisdiction i.e so that its jurisdiction will include the whole country while 26% of them opposed and 25% were neutral regarding the topic and answered I Don't know

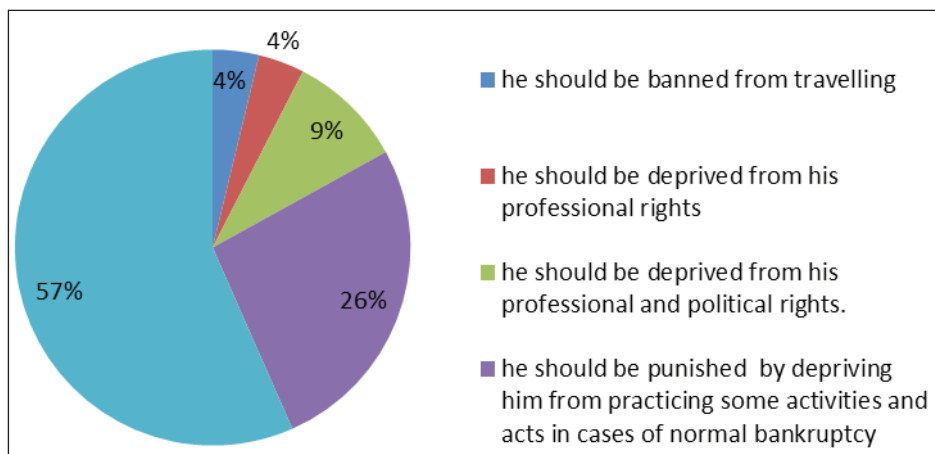
26-Giving the general prosecution or the court before which is held any commercial dispute a role in initiating a bankruptcy lawsuit



13 % of the respondents deemed useful giving the general prosecution or the court before which is held any commercial dispute a role in initiating a bankruptcy lawsuit whereas 87% don't feel it is useful to give the general prosecution or the court before which is held any commercial dispute, any role.

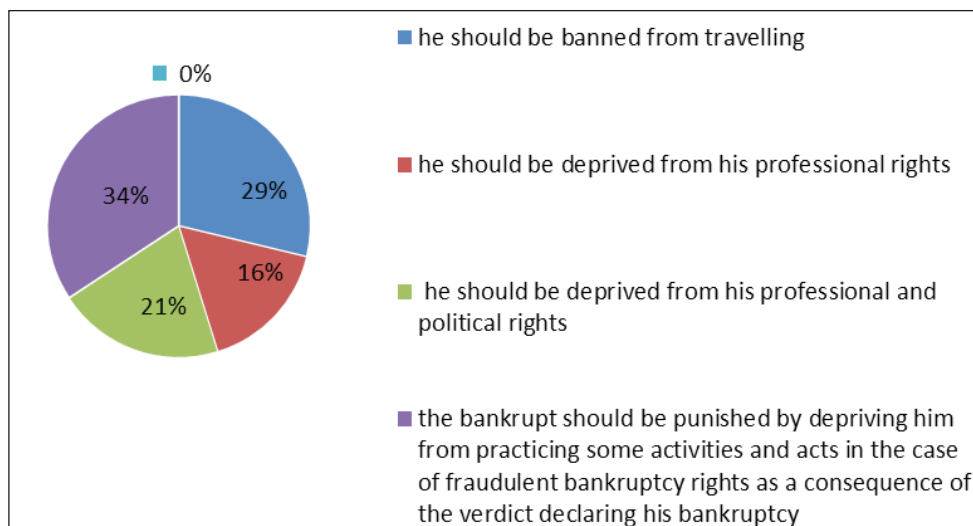


27- Personal consequences that should apply to the bankrupt in cases of normal bankruptcy



57 % of the respondents deemed no consequences should apply to the bankrupt in cases of normal bankruptcy whereas 26% deemed that he should be punished by depriving him from practicing some activities and acts in cases of normal bankruptcy and 4% said he should be deprived from his professional rights in addition to 4% who believed he should be banned from traveling and 9% believed he should be deprived from his professional and political rights.

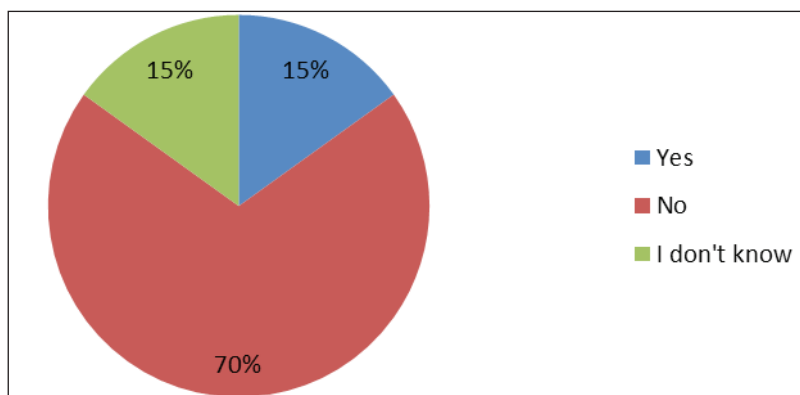
28- Personal consequences that should apply to the bankrupt in cases of fraudulent bankruptcy



34% deemed that the bankrupt should be punished by depriving him from practicing some activities and acts in the case of fraudulent bankruptcy rights as a consequence of the verdict declaring his bankruptcy in addition to 29% who believed he should be banned from traveling whereas 21% believed he should be deprived from his professional and political rights and 16% said he should be deprived from his professional rights

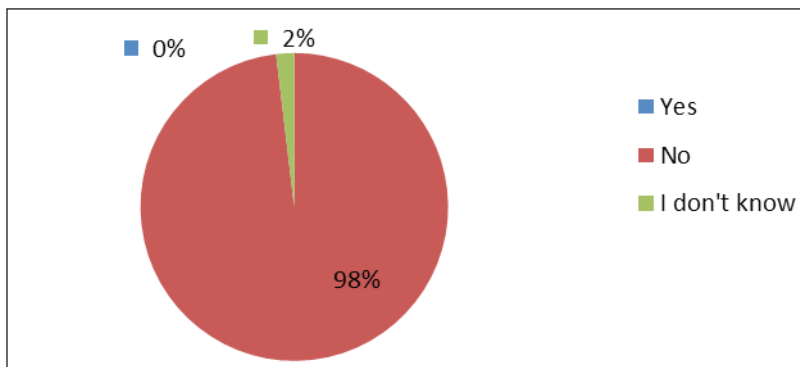
### Chapter 3: Legislations pertaining to bankruptcy systems

29- Protecting the rights of the creditors and the provisions of possessing mortgage of the movables of the debtor ( contrary to shares , stocks and cars )



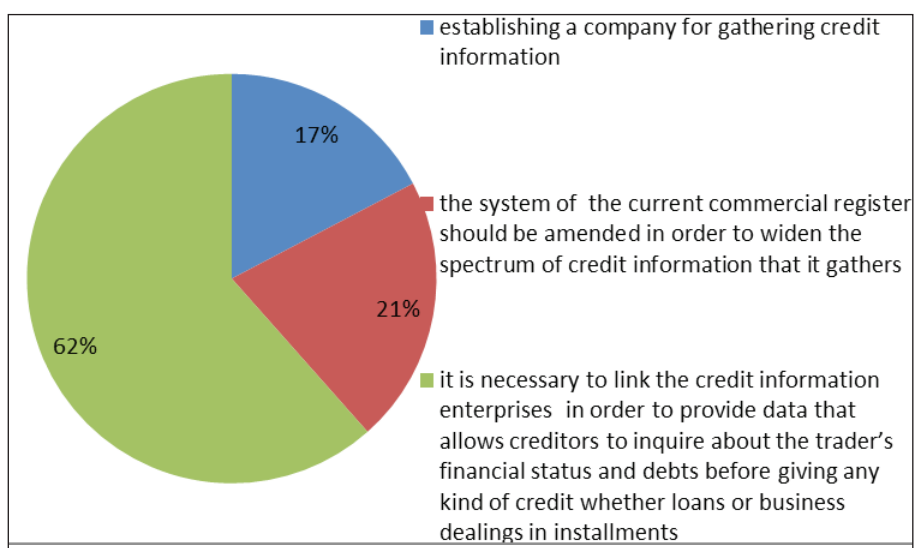
70% of respondents deemed that the provisions of the possessing mortgage of movables are not enough to protect the creditors in the Egyptian law , whereas 15% of them considered the provisions enough and 15% answered I don't know

30- The current credit information system in Egypt ( for instance: commercial register and statistical information issued by investment authority and financial control department authority ) is enough to give the information needed for creditors to inquire about the financial position of the trader's status and his debts before giving him any kind of credit whether loans or business dealings in installments



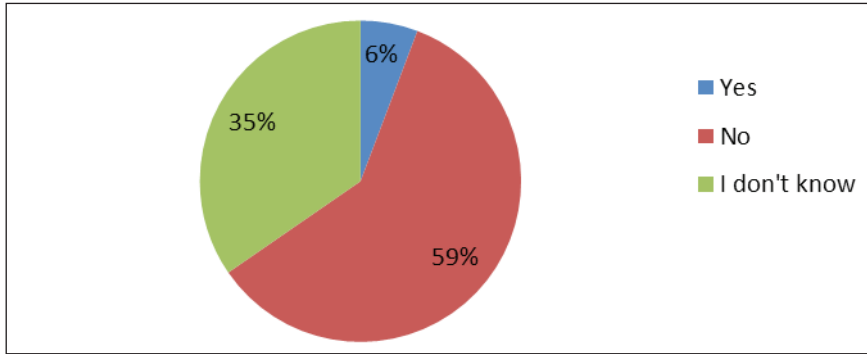
Most of the respondents ( 98%) agreed that the current credit information system in Egypt ( for instance: commercial register and statistical information issued by investment authority and financial control department authority ) is not enough to give the information needed for creditors to inquire about the financial position of the trader's status and his debts before giving him any kind of credit whether loans or business dealings in installments, whereas 2% answered I don't know

31.1. The best solution to provide data which allows creditors to inquire about the trader' financial status and debts before giving any kind of credit whether loans or business dealings in installments



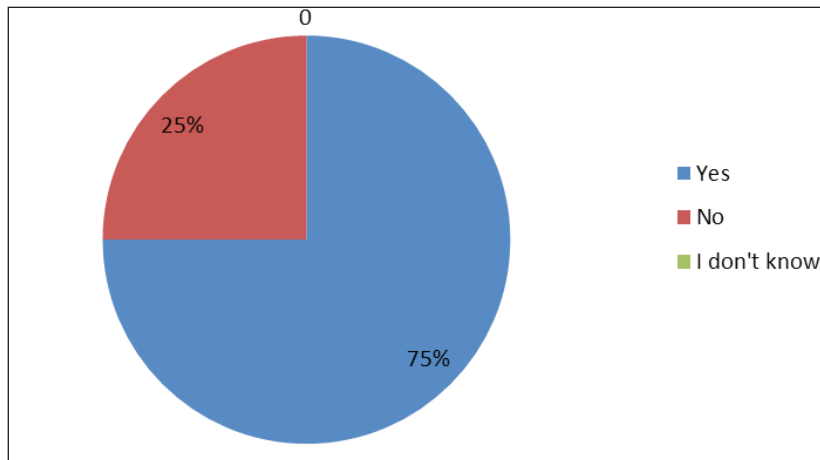
Commenting on the previous question , 62% of the respondents considered that it is necessary to link the credit information enterprises in order to provide data that allows creditors to inquire about the trader's financial status and debts before giving any kind of credit whether loans or business dealings in installments where as 21% of them said the system of the current commercial register should be amended in order to widen the spectrum of credit information that it gathers , and 17% of the respondents considered the solution is found in establishing a company for gathering credit information.

31- The presence of legal articles that manages credit inquiry service and gives access to data to check the debtor's status with respect to his debts and facilities



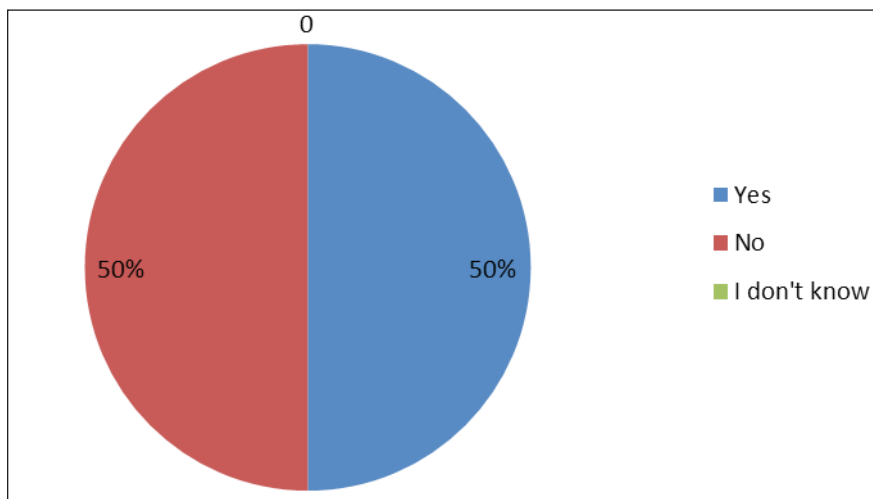
59% of the respondents considered that there were no legal articles that manages information inquiry service and gives access to data to check the debtor's status with respect to his debts and facilities whereas 6% of them deemed the presence of legal articles that manages credit inquiry service and gives access to the information to check the debtor's status with respect to his debts and facilities and 35% of them answered "I don't know"

31.1 Centralism of legal articles that manages credit inquiry service and gives access to data to check the debtor's status with respect to his debts and facilities



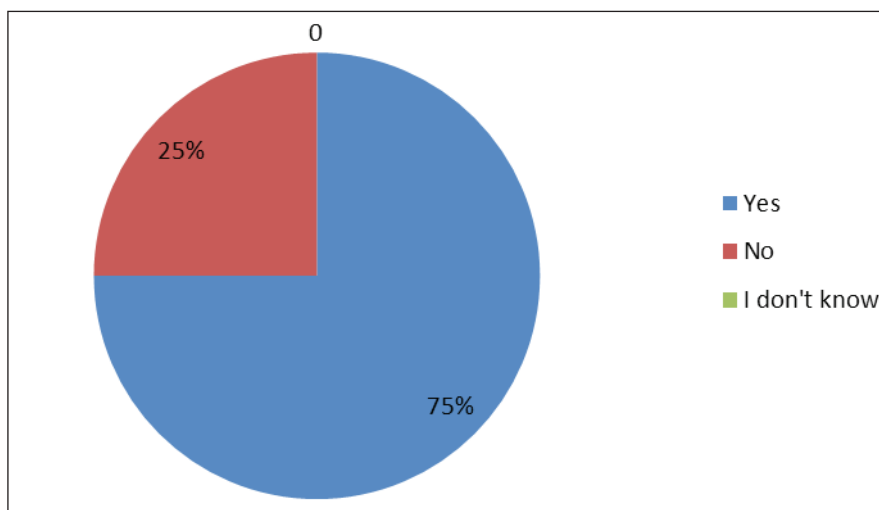
Commenting on the previous question regarding the presence of legal articles that manages information inquiry service and gives access to data to check the debtor's status with respect to his debts and facilities, 75% of the respondents considered the system central and found on the national level

### 31.2 Easy access and inspection on the credit information system



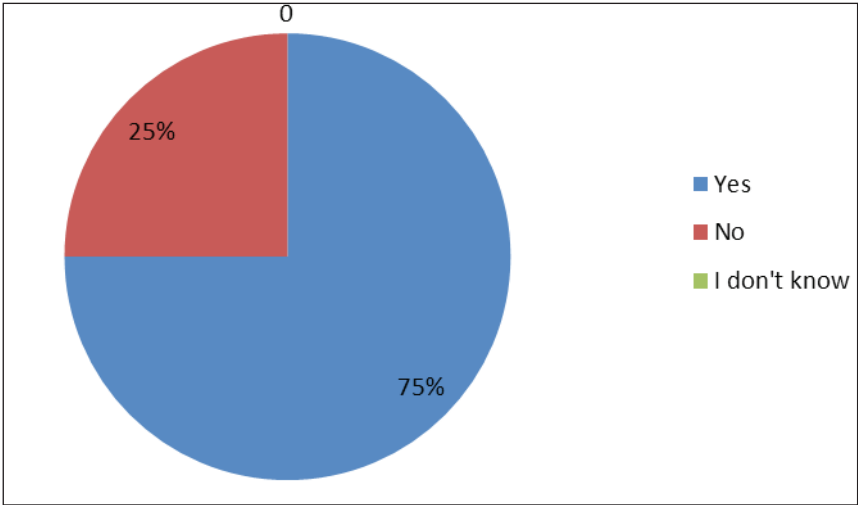
50% of the respondents deemed the credit information system doable ,accessible and could be inspected

### 31.3 Conditions for using the information provided by such a system so as not to abuse their for defamation



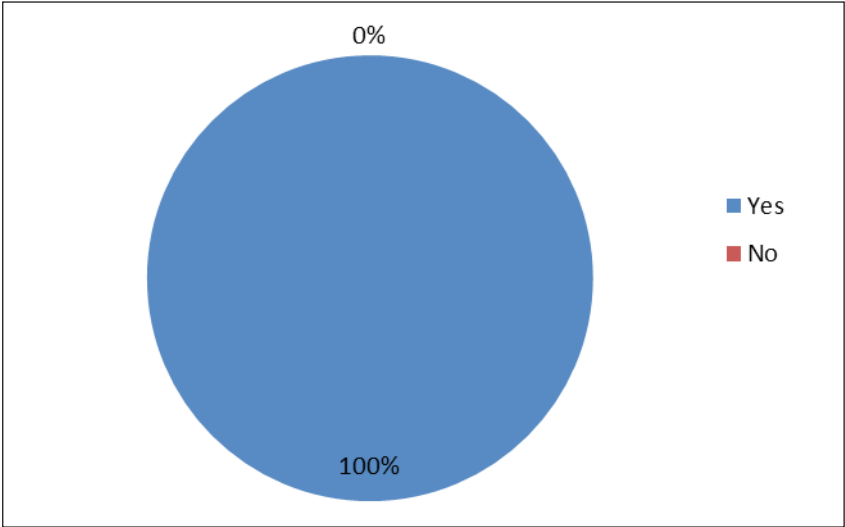
75% of the respondents deemed that the conditions for using the information provided by such a system were pinpointed so as not to abuse the system for defamation

31.4 Measures to protect the information provided by the credit inquiry system



75% of the respondents deemed that the credit inquiry system includes measures to protect the information provided by the system

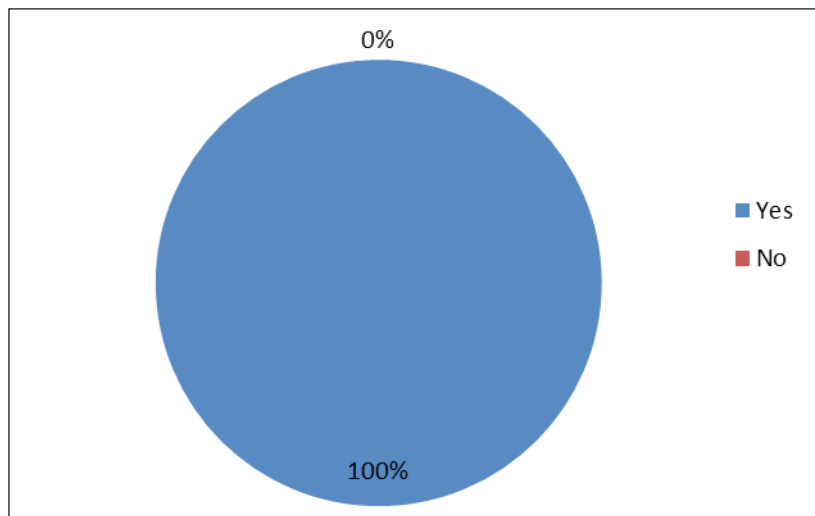
31.5 informing the concerned people when information related to them is being used for decisions to take decisions against them



The respondents unanimously agreed ( 100%) on the necessity of informing the concerned people when information related to them is being used to take decisions against them

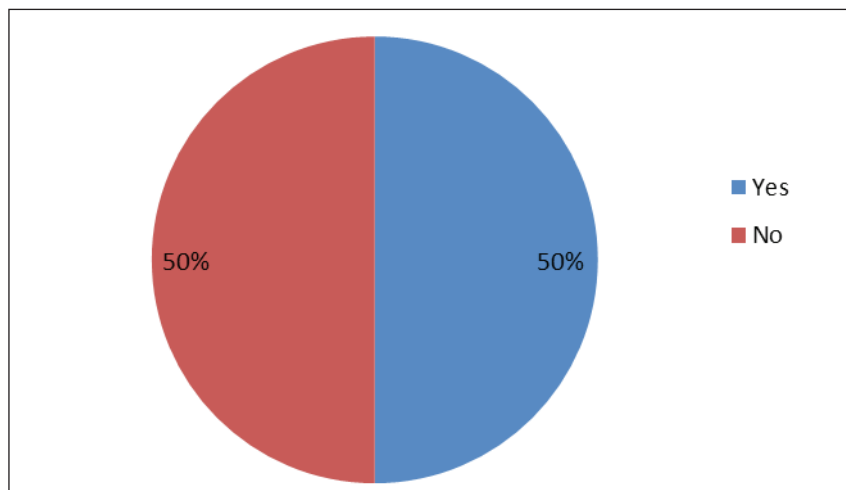
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### 31.6 The debtor's right to object on the false and incomplete information about him



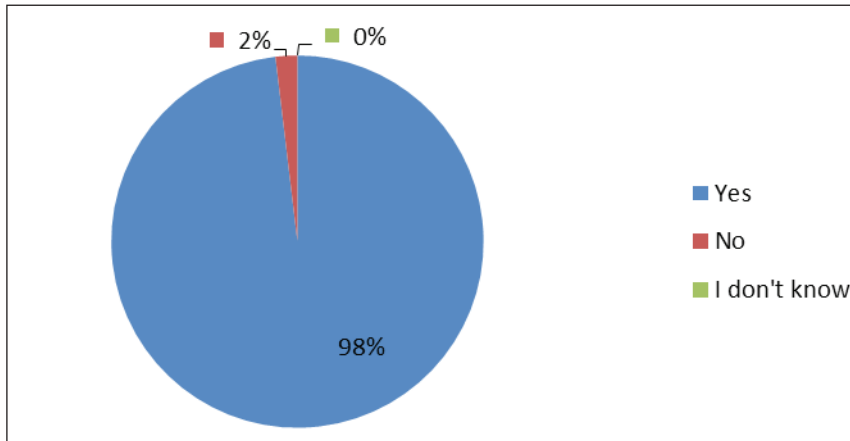
The respondents unanimously agreed ( 100%) that the debtor has the right to object on the false and incomplete information about him

### 31.7 Mechanisms to investigate the objections/ disputes and to correct the information



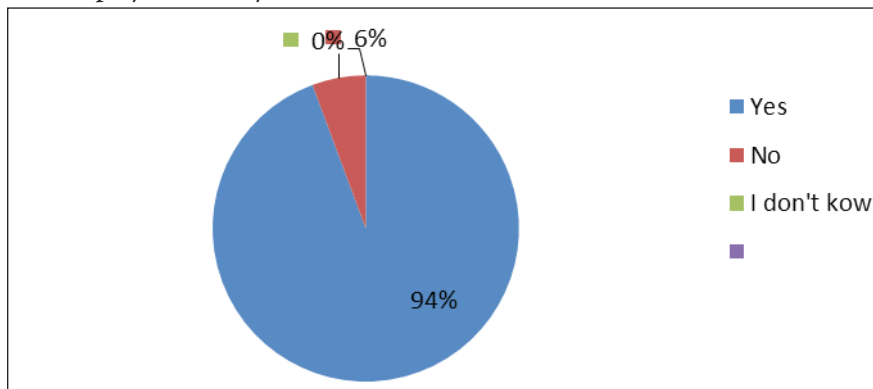
Further to the previous question, 50 % of the respondents considered that there mechanisms to investigate the objections/ disputes and to correct the information

- 32- The Egyptian law included an explicit provision which pinpoints the liability of the chairman and board of directors of a joint stock company that practice actual administrative affairs in the case of the bankruptcy of the company



98% of the respondents believed that the Egyptian law should include an explicit provision which pinpoints the liability of the chairman and board of directors of a joint stock company that practice actual administrative affairs in the case of the bankruptcy of the company whereas 2% believed that it is not necessary that the Egyptian law include an explicit provision which pinpoints the liability of the chairman and board of directors on a joint stock company that practice actual administrative affairs in the case of the bankruptcy of the company

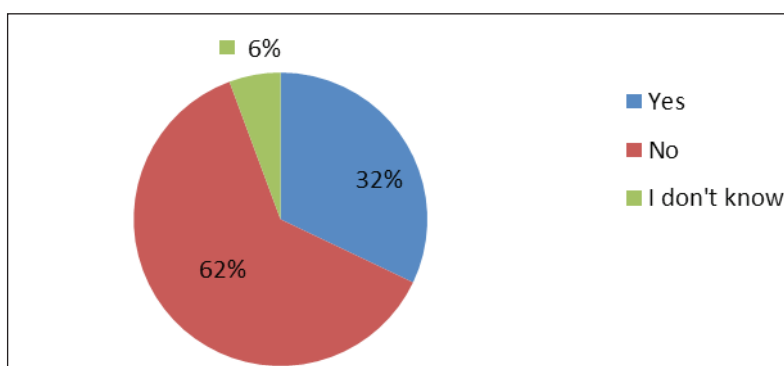
- 33-Additions of provisions to the bankruptcy law which protects partners and contributors who did not effectively participate in the management of the company from the effects of the declaration of bankruptcy even if it was fraudulent bankruptcy caused by the board of directors





94% of the respondents considered it is preferable to add provisions to the bankruptcy law which protects partners and contributors who did not effectively participate in the management of the company from the effects of the declaration of bankruptcy even if it was fraudulent bankruptcy caused by the board of directors where as 6 % refused

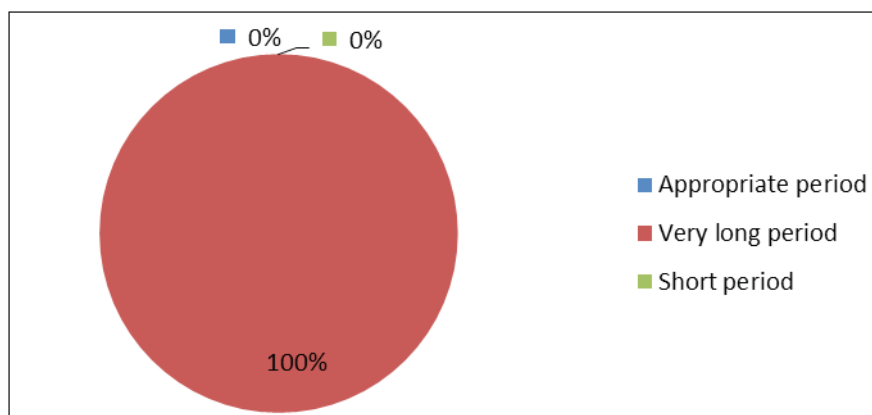
34- The commercial law declares the liability of the chairman and board of directors and thus bearing the debts of the companies in case the mistakes they did during their management of the company or their negligence or deliberate action lead to the bankruptcy or liquidation of the company



32% of the respondents nominated that the commercial law should stipulate the liability of the chairman and board of directors and thus bearing the debts of the companies in case the mistakes they did during their management of the company or their negligence or deliberate action lead to the bankruptcy of the company where as 62% of them refused that. 6% were neutral and answered I don't know

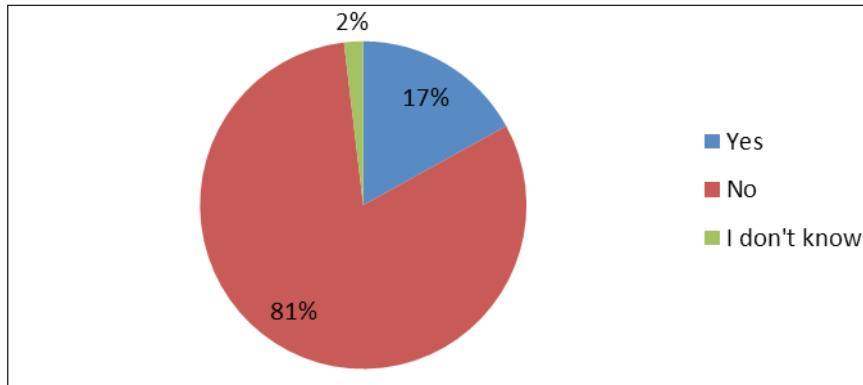
## Chapter 4: liquidation

35- The period that liquidation lawsuits take before the courts



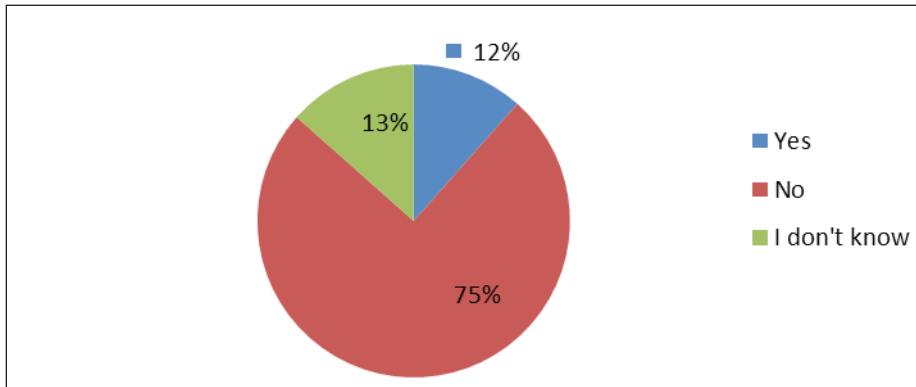
The respondents unanimously agreed that the period that liquidation lawsuits take before the courts is very long

### 36- The role of the general prosecution in the obligatory liquidation cases



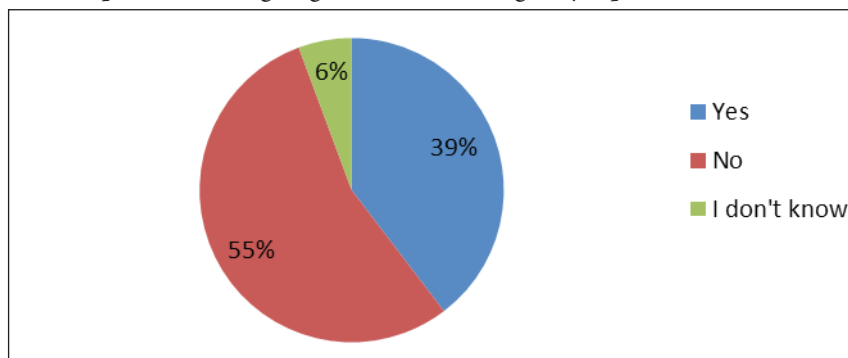
81% of respondents nominated the presence of the role of the general prosecution in the obligatory liquidation cases whereas 17% refused and 2 % were neutral and answered I don't know

### 37-Inclusion of the current commercial law restraints in addition to clear and specified procedures for selling the company's assets in liquidation



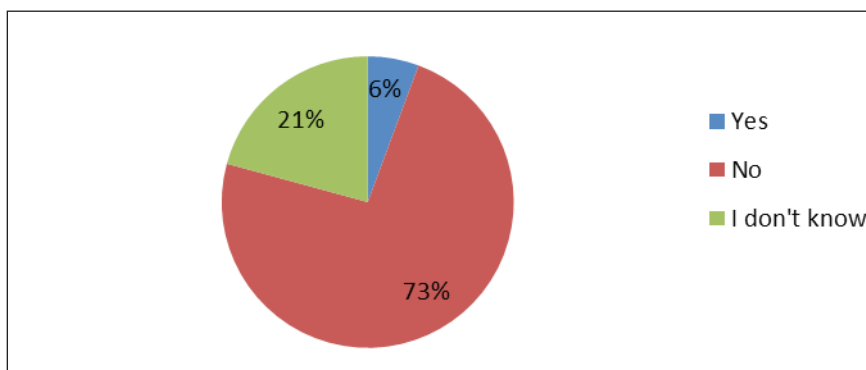
75% of the respondents nominated that the current commercial law includes restraints in addition to clear and specified procedures for selling the company's assets in liquidation while 12% of them nominated that it doesn't include restraints or clear and specified procedures for selling the company's assets in liquidation. 13 % were neutral and answered " I don't know"

38- The competence of assigning an auditor in obligatory liquidation



39% of the respondents suggested giving the competence of assigning an auditor in obligatory liquidation to the court instead of the liquidator whereas 55% of them refused giving the court this competence and 6 % answered with I don't know

39- Punishments imposed on the auditor for submitting false data consists an sufficient guarantee for the rights of the creditors



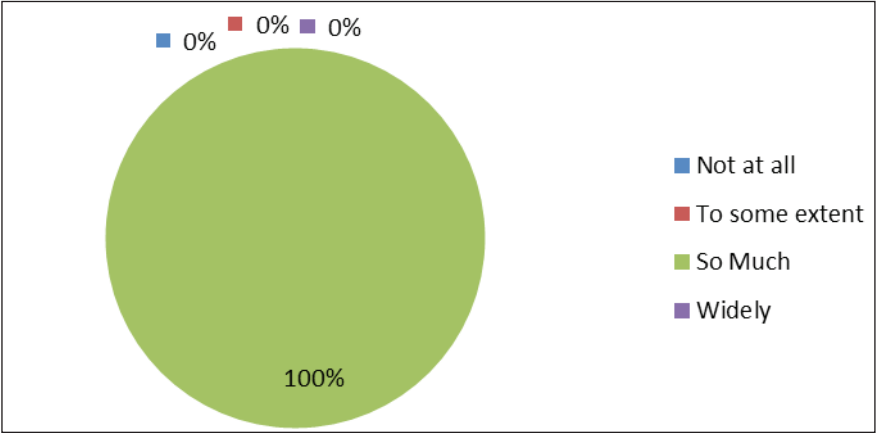
6% of the respondents considered the punishments imposed on the auditor for submitting false data consist a sufficient guarantee for the rights of the creditors where is 73% of them refused upholding and 6%were neutral as regards the subject and answered "I don't know"

**Optional**

Sequent to the previous examples , and whether the respondents had have any ideas to add for reforming the legal system that manages the default in paying debts due to insolvency or absence of liquidity ( bankruptcy system and liquidation and other laws that overlap) whether in amending or vacating or explaining certain ambiguity of the current systems or by adding new concepts ( whether in restructuring of the company or its reorganizing to save) or setting systems related to the information of the trader regarding his debts and his movables and immovable property. It was suggested to speed up the execution of procedures and the issued verdicts and adding conditions to it in addition to shortening the exchange period and taking the necessary action in cases of fraud and bankruptcy. In addition to setting principles of solidarity between consulting agencies and appointing a clerk to carry out feasibility studies and technical advice with the bankrupt on the basis of protecting the good will bankrupt and the inclusion of definite appointments to sort out disputes related to bankruptcy in legislations. Imposing prohibitive sanctions for purposeful negligence in concealing information and data. Publish verdicts of bankruptcy and liquidation and incorporate them into the governmental lists that ban the interactions with the economic parties in the state.

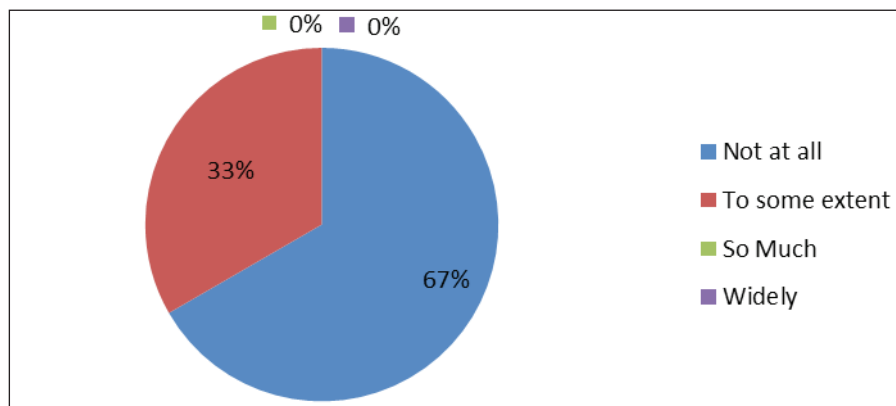
**Chapter 5: private for civil society organization**

1- The priority and importance of the reforming bankruptcy systems for civil society organization



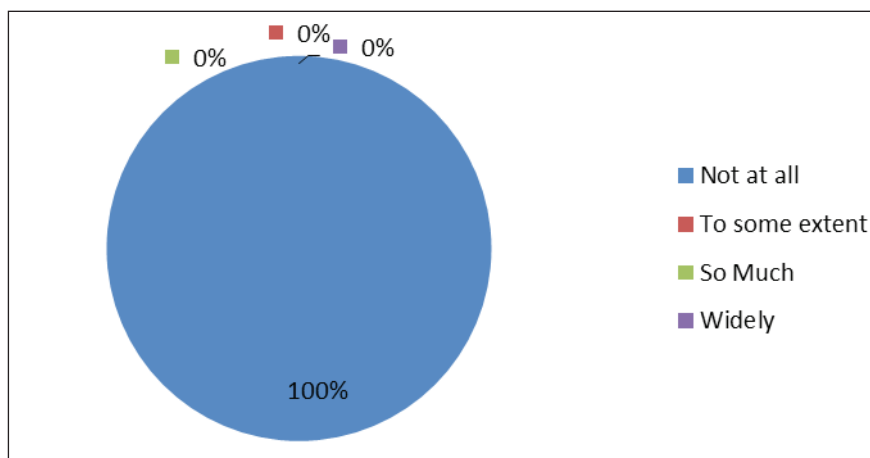
The civil society organization that participated in the survey unanimously agreed on the priority and importance of the reforming bankruptcy systems for it

## 2- Information of organizations and contributions for reforming bankruptcy



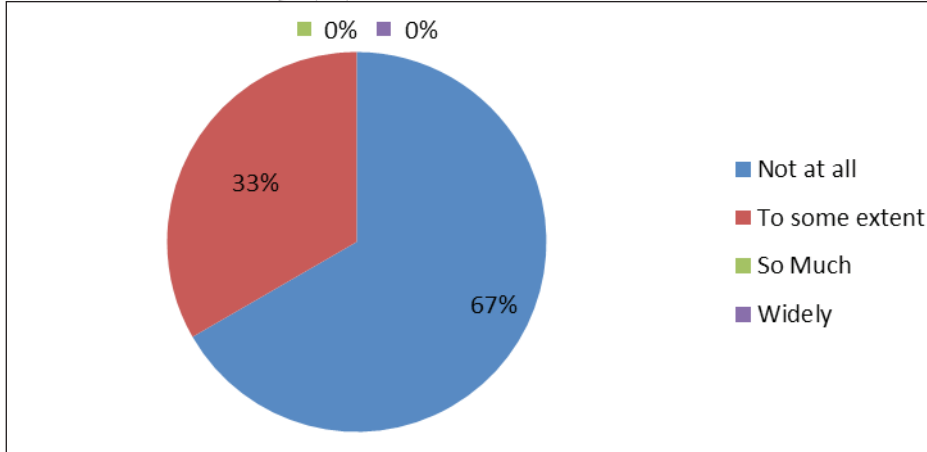
67 % of civil society organizations stated that it has never compiled information and contributions related to bankruptcy reform, whereas 33% has previously to a certain extent collected information and contributions related to bankruptcy reform.

## 3- The political position of organizations regarding bankruptcy reform system



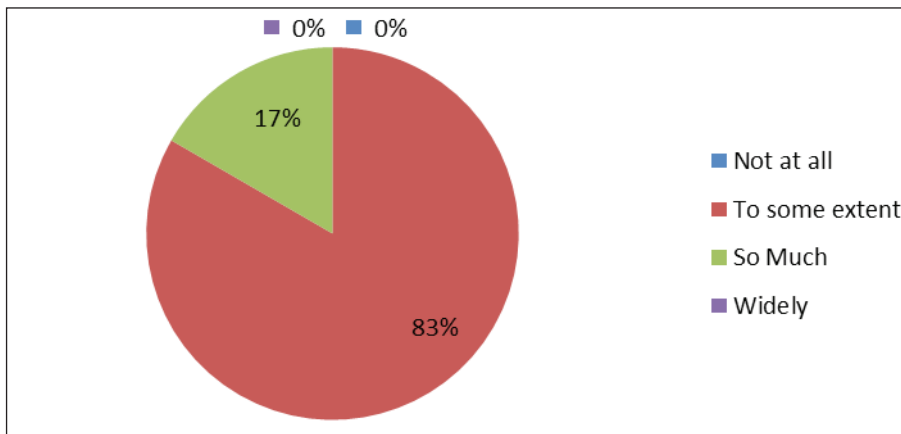
The civil society organizations that participated in the survey unanimously agreed that it never took a general political position regarding bankruptcy reform system

4- Allocation of resources by organizations ( especially time and money) to call for reform of the bankruptcy system



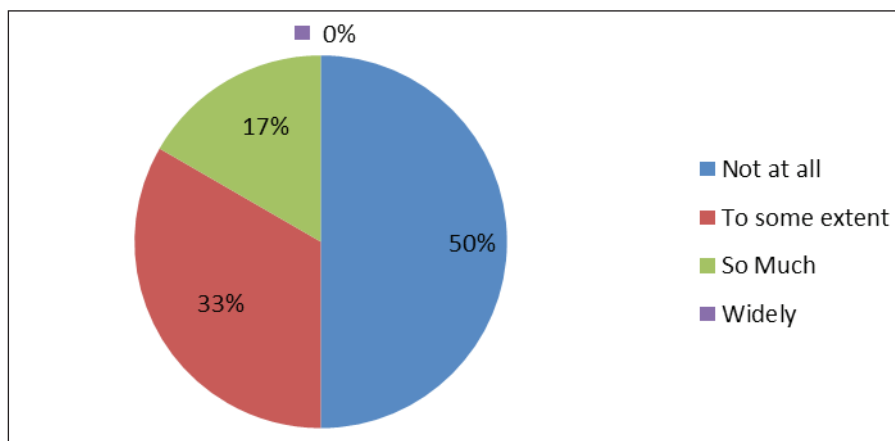
67% of the organizations stated that it has never allocated resources ( especially time and money ) to call for reform of the bankruptcy system where as 33% of it did allocate some to a certain extent

5- Participation of organizations in coalition or building the network to get the cooperative efforts to join and to work on reforming the bankruptcy system



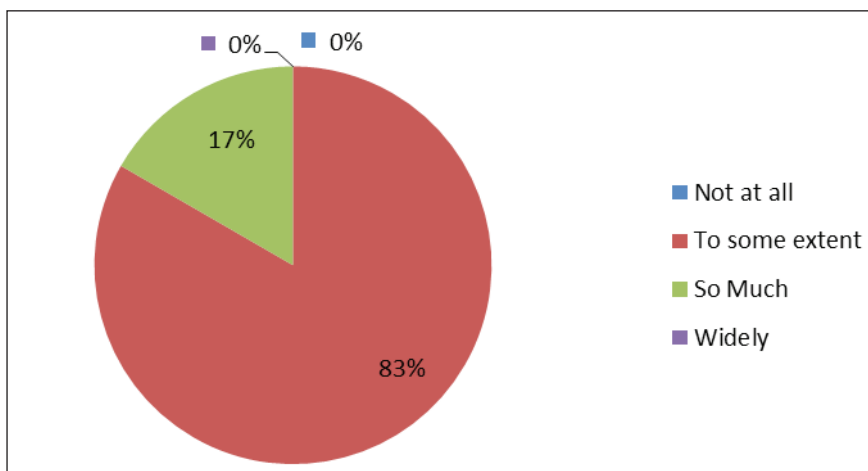
17% of the organizations expressed its enormous participation in coalition or/and building the network to get the cooperative efforts to join and to work on reforming the bankruptcy system where as 83% expressed to a certain extent its miniature participation

6- Measures of organizations to affect the general policy or other aspects to reform the bankruptcy system



17% of the organizations expressed that it takes enormous measures to affect the general policy or other aspects to reform the bankruptcy system where as 33% of them takes to a certain extent measures to affect the general policy or other aspects to reform the bankruptcy system and 50% of them don't take any measures for this topic

7- Follow up of organizations after a general political decision up to ensure execution and/or protect the public welfare



17% of the organizations expressed its willingness to follow up after a general political decision to ensure execution and/or protect the public welfare whereas 83% of them expressed their partial willingness to follow up

## **Annex 8**

### **Report on the results of the survey on reforming the bankruptcy system in the Hashemite Kingdom of Jordan**

#### **Introduction**

##### **Background of the study**

The Arab Center for the Development of the Rule of Law and Integrity, is a non-profit organizations located in Beirut that is concerned with the rule of law in the Arab countries, through the preparation of studies , doing intense research , developing capabilities, developing knowledge and supporting the concept of integrity.

The Arab Center for the Development of the Rule of Law and Integrity is executing a regional project under the title of “ the Middle East regional bankruptcy reform initiative” in both the Arab Republic of Egypt and Hashemite Kingdom of Jordan with support from middle east partnership initiative ( MEPI ) . the period of the project is 12 months starts from September 2013 until September 2014.

The Arab Center is implementing this project in cooperation with its partners in both Egypt ( the Nile advisory group ) and Jordan (Bakr and Odeh foundation) with the assistance of a national network of concerned stakeholders and decision makers from both countries

##### **Goals**

The project aims in general to promote and increase confidence in the commercial acts in both Egypt and Jordan through establishing and activating concepts of the rule of law in the business and commerce fields through

- drafting a national report – explanatory which discusses renewing the bankruptcy system based on a survey on those concerned with bankruptcy , to finally suggest recommendations and the appropriate amendments for the legal and practical status in both Egypt and Jordan

- raising awareness and effectively advocating the need to improve and renew the bankruptcy system in both Egypt and Jordan

The Arab Center for the Development and the Rule of Law and Integrity delegated office of legal Consultation and Arbitration (ACA) to (1) prepare the technical tools for the survey (2) supervising and following up the implementation of the field work (3) preparing a statistical analytical report for both Egypt and Jordan

The main goal of the survey is to collect statistical information which would help the concerned parties in the two countries in setting up their national reports regarding the subject. Moreover , the survey would give a general idea about the different views of the respondents and decides on movements that could be of help for the party responsible of the project.



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## **Methodology**

### **Sample size and characteristics of respondents**

The survey targeted 60 persons from people concerned in the subject of the study in each of the two countries , which means that the total sample reached 120 respondents in both countries . the sample was distributed among several sectors ( sub division of the sample) . the respondents were chosen based on the degree of their knowledge in the present topic bearing in mind the following distribution :

Judges : 15

Lawyers: 17

Academics : 3

People of civil society organizations : 10

Decision makers:5

Business men ( trustees , experts ) : 10

The sample was divided in accordance with gender representation and various age groups , years of experience etc... ( as much as possible ) to reach the maximum number of needed data.

### **Technical Tool**

The office of legal Consultation and Arbitration (ACA) prepared a survey based on the list of subjects and suggested topics by the national experts with the help of The Arab Center for the Development and the Rule of Law and Integrity. the team in the enterprise resorted to revising the etiquette of the suggested topic ( the draft of the national report for instance)

It is important to mark the devoted cooperation between office of legal Consultation and Arbitration (ACA) and the Arab Center in which many meetings were held to discuss the various stages of work , revise and comment on the draft of the questionnaire prepared by the enterprise. Various comments and suggestions from the national experts were taken into consideration

The office of legal Consultation and Arbitration (ACA) prepared a questionnaire which would set the stage for obtaining statistical data about renewing the bankruptcy system .

A pretest of the questionnaire was done by 5 respondents in each of the four countries and some slight amendments were added to the questionnaire based on the comments found in the model.

### **Impact of field work**

According to the office of legal Consultation and Arbitration (ACA) which was assigned to do the surveys , the team didn't face any notable predicaments during execution. Still , there were some minor ,limited impediments :

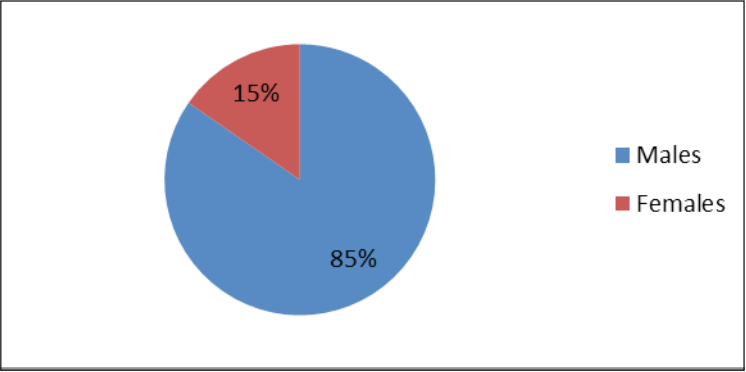
- most respondents criticized the size of the survey
- incapability of meeting some of the presumed respondents was noted due to their

absence on holiday , or because some others were busy and canceled their participation in this lengthy survey due to their time constraints

- some respondents found it difficult to assess the effectiveness of some clauses found in the questionnaire or in the work of some enterprises

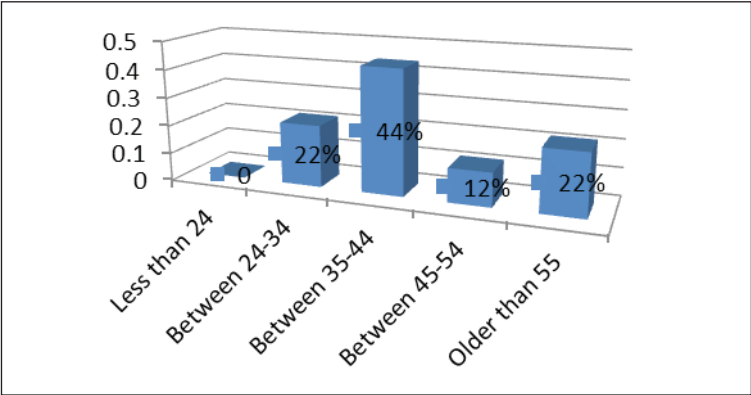
### Characteristics of respondents

#### Gender



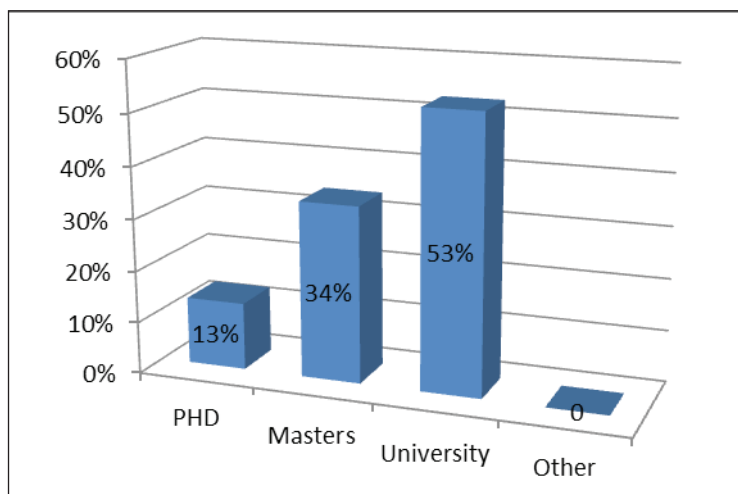
The survey in Jordan included 47 respondent 15% of which are females and 85 % are males

#### Age



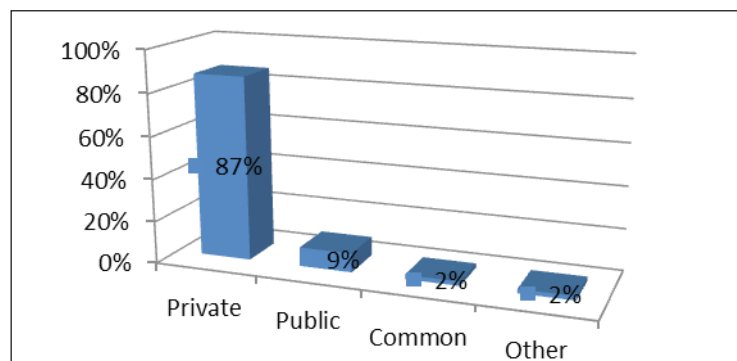
The survey displayed that the age of more than 44% of the respondents vary between 35 and 44 years old whereas 22% of the respondents vary between 24 and 34 years old and 22% of them are older than 55 years old and 12% of them between the ages of 45 and 54 years old

### Level of education



Results of the survey illustrated that the level of education of the respondents with university level, with a percentage of 53, whereas respondents with masters constituted 34% , whereas the percentage of respondents with PHD didn't exceed 13% of the total

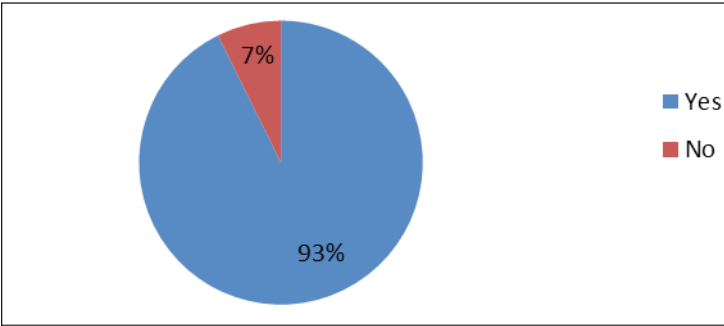
### Sectors



87% of the respondents worked in the private sector whereas 9% of them worked in public sector, 2 % worked in the common sector and 2% worked in other sectors

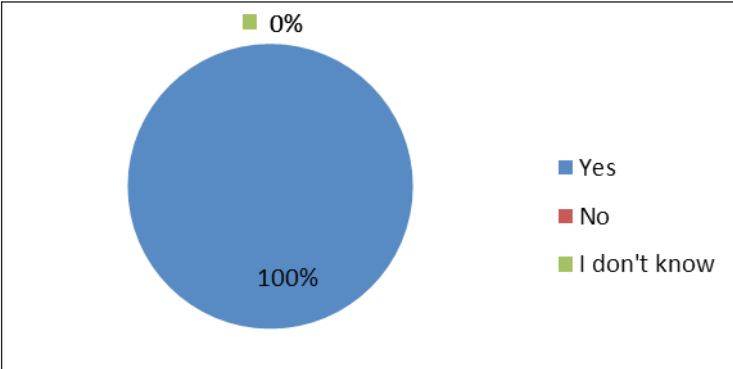
**Results of Survey**

**The importance of bankruptcy for different scopes of work**



93% of people surveyed considered that bankruptcy is of importance in their scope of work and 7% considered bankruptcy is not included and not important in their scope of work

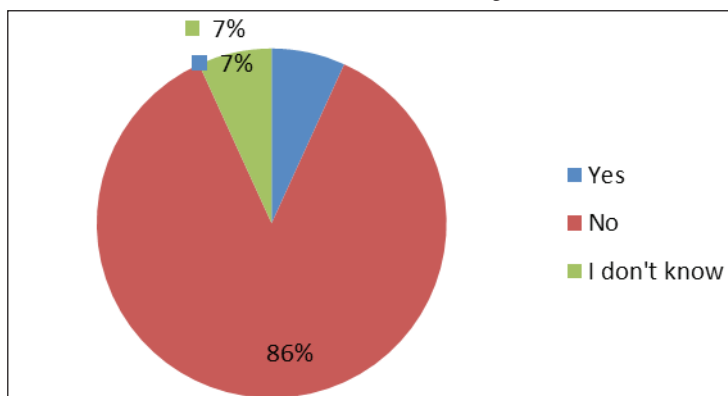
**The need to reform the bankruptcy provisions**



All the respondents (100%) agreed that there is a need to reform bankruptcy provisions in Jordan

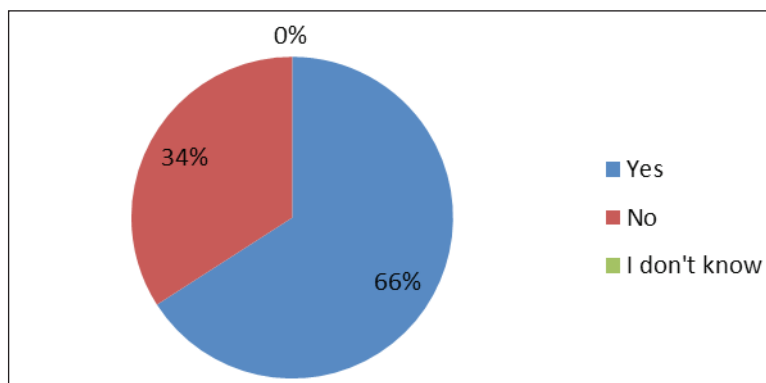
## Chapter 1: The phase before bankruptcy

- 1- The procedures of the preventive legal settlement request for bankruptcy stipulated in the commercial law and its effectiveness in saving the insolvent trader



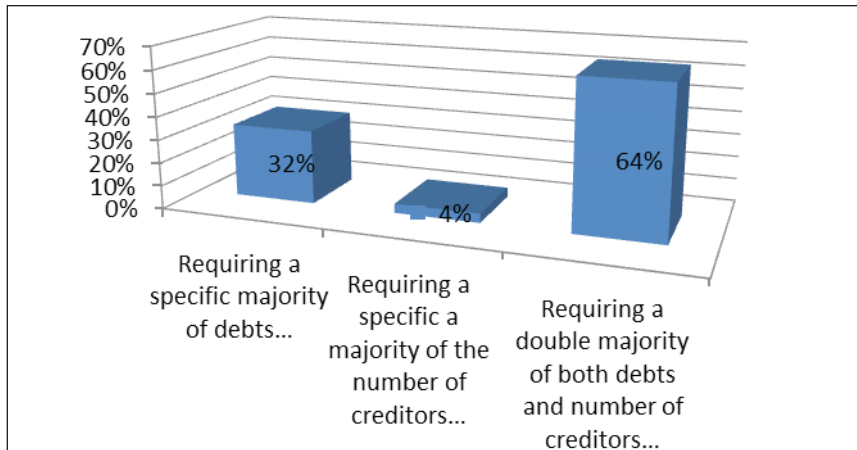
Most of the respondents in the Hashemite Kingdom of Jordan (86%) considered that the procedures of the preventive legal settlement request for bankruptcy stipulated in the commercial law of year 1966 ineffective and don't save the insolvent trader and 7 % considered it effective and qualified to save the insolvent trader whereas 7% said they didn't know if those procedures were effective and qualified to save the insolvent trader or not

- 2- Limitation of preventive legal settlement of bankruptcy to regular debts only without extending to include mortgaging debts



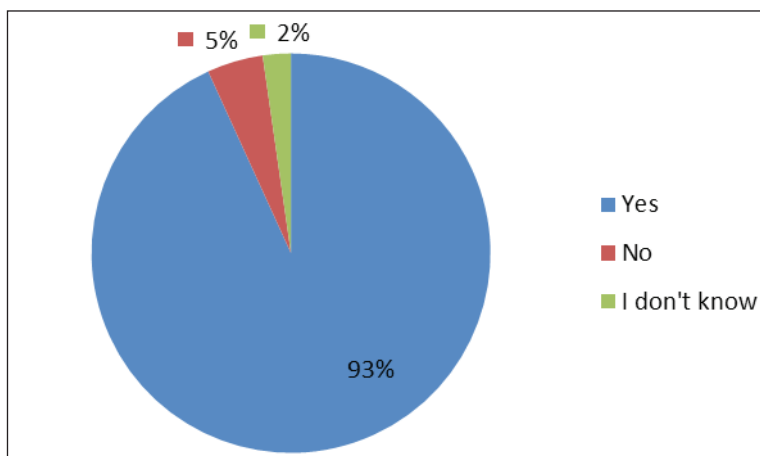
66% consented that preventive legal settlement of bankruptcy confines to regular debts without including mortgaging debts as is the case in the current commercial law, whereas 34% refused the permanence of such a provision

### 3- The best choice to accept the preventive legal settlement request



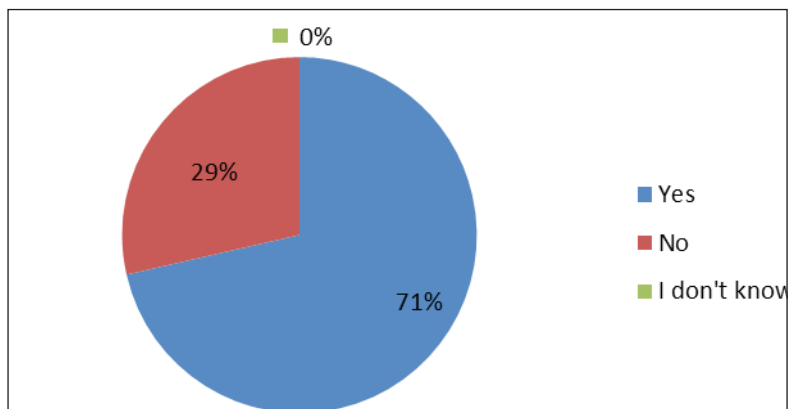
64% of the respondents considered Requiring a double majority of both debts and number of creditors to accept the preventive legal settlement request whereas 32% said Requiring a specific majority of debts to accept the preventive legal settlement request and finally 4% said Requiring a specific majority of the number of creditors to accept the preventive legal settlement request is the best choice

### 4- Legislator's intervention to amend the law thus offering an opportunity to save and reorganize defaulting business enterprise and corporations on the one hand and avoid bankruptcy and liquidation on the other



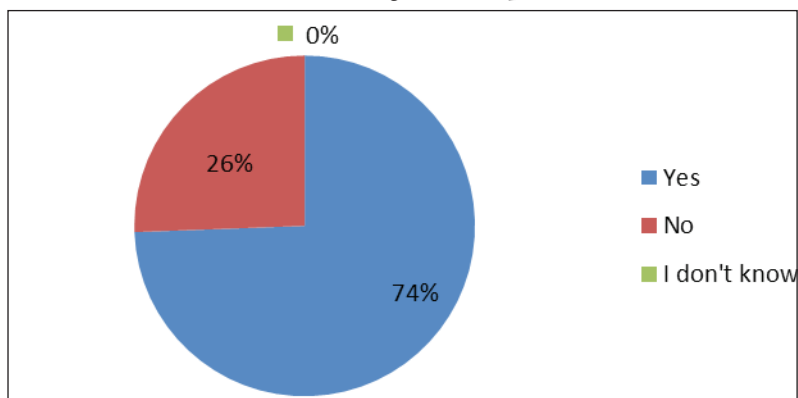
93% of the respondents agreed on the necessity of the legislator's intervention to amend the law thus offering an opportunity to save and reorganize defaulting business enterprise and corporations to help avoid bankruptcy and liquidation whereas 5 % refused this intervention and 2% answered by I don't know

#### 4.1. The role of the court in saving and reorganizing business enterprises and companies



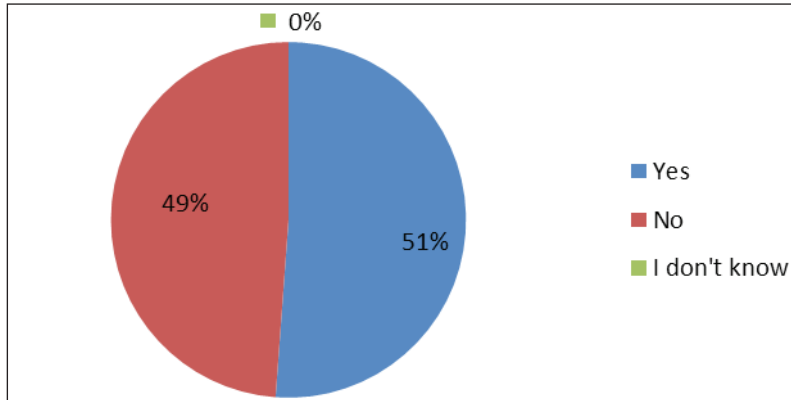
71% of the respondents supported that the court has a role in saving and reorganizing business enterprises and companies whereas 29% refused

#### 5- Allowing the creditors whose debts are not documented and still under dispute should be allowed to vote on the reorganization plan



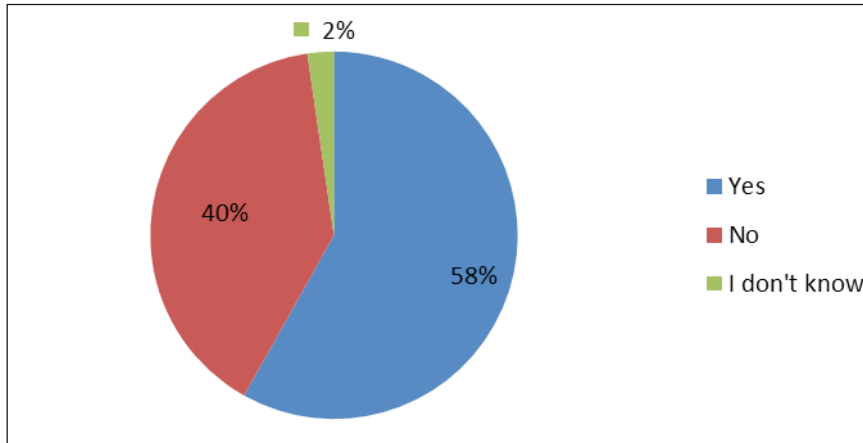
Concerning the vote on the reorganization plan, 74% of the respondents consented allowing the creditors whose debts are not documented and still under dispute should be allowed to vote on the reorganization plan whereas 26% refused.

6- Restricting reorganization policies to companies with a certain minimum capital



51% of the respondents deemed restricting reorganization policies to companies with a certain minimum capital whereas 49% disregarded that.

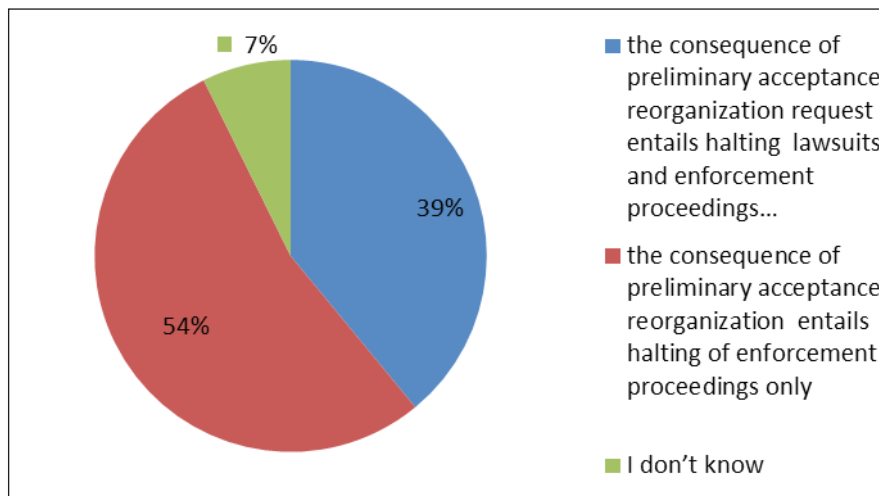
7- Taking into consideration the number of employees at the company and not only the capital of the company when developing the conditions of the request of reorganization



58% of the respondents suggested it is necessary to take into consideration the number of employees in addition to the capital of the company when developing the conditions of the request of reorganization, while 40% disagreed and 2% answered “I don't know”

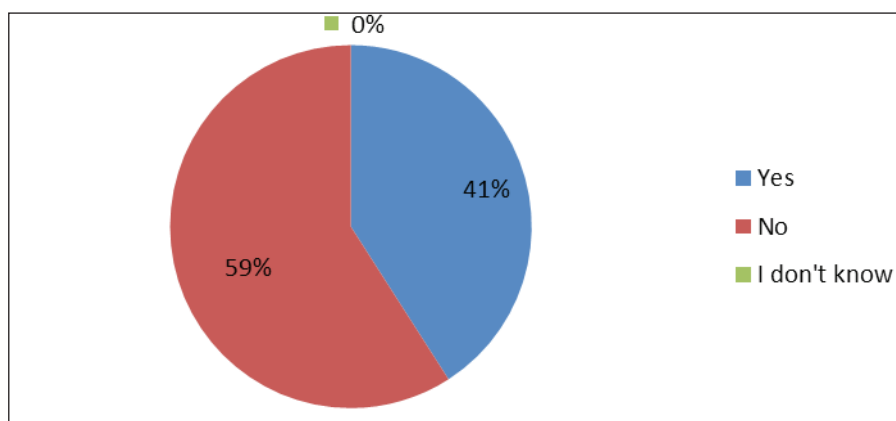


- 8- Halting of lawsuits and enforcement proceedings against the debtor until the decision on the reorganization request which is preliminary accepted



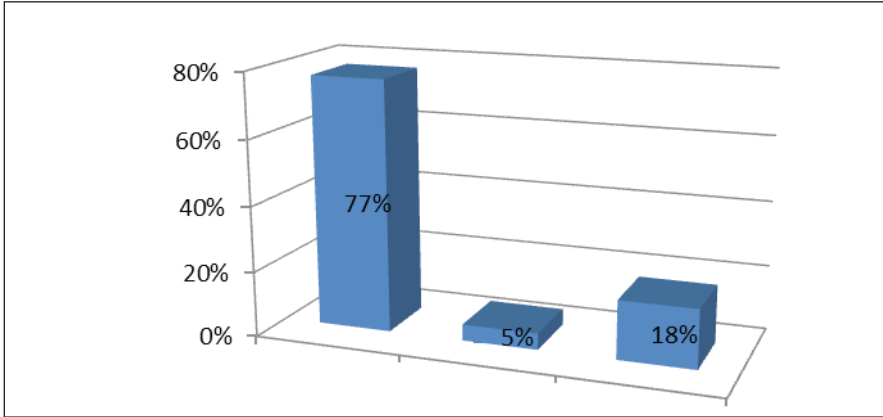
39% of the respondents deemed the consequence of preliminary acceptance reorganization request entails halting lawsuits and enforcement proceedings against the debtor until the decision on the request while 54% considered that it entails halting of enforcement proceedings only , where 7% answered I don't know

- 9- Halting the execution of the mortgage bonds of movables and immovable property for the preliminary acceptance of reorganization request



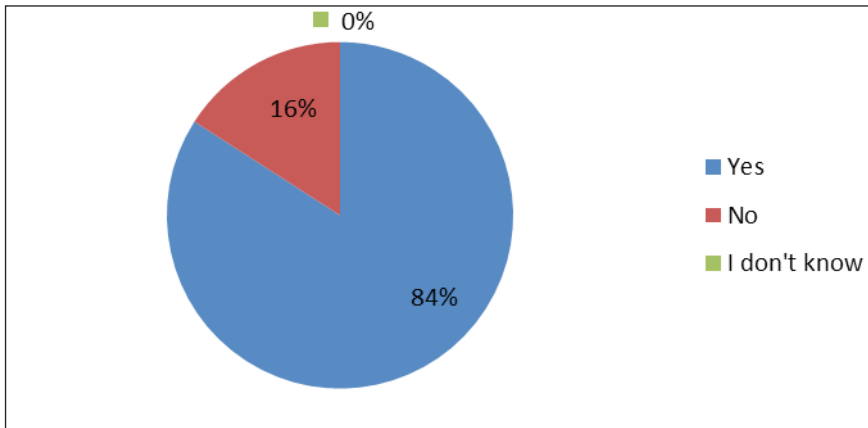
59% refused halting the execution of the mortgage bonds of movables and immovable property of the preliminary acceptance of reorganization request until deciding on it while 41% supported this issue

#### 10- Vote on the reorganization plan



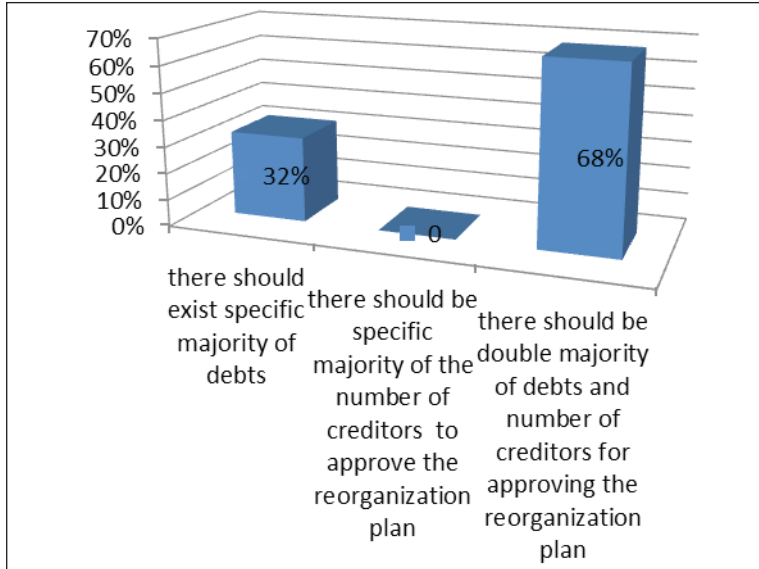
77% of the respondents deemed that voting on the reorganization plan should be from both regular and secured creditors while 18 % deemed only regular creditors can vote and 5% said only secured creditors can vote

#### 11- The vote on the reorganization plan from Creditors of non-outstanding debts



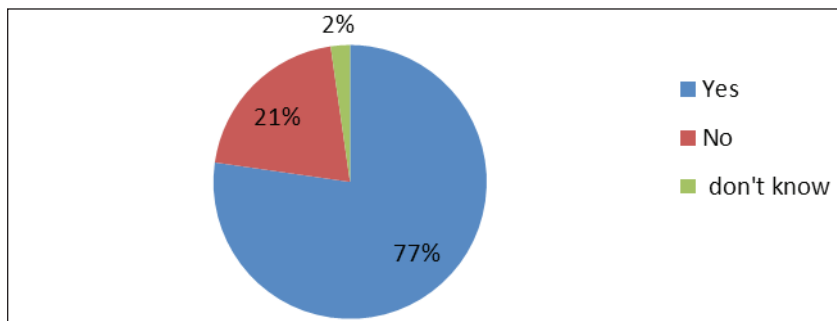
84% of the respondents consented that Creditors of non-outstanding debts, whereas 16 % of them refused

## 12-Approval on the reorganization plan



68% of respondents said there should be double majority of debts and number of creditors for approving the reorganization plan whereas 32% said there should exist specific majority of debts

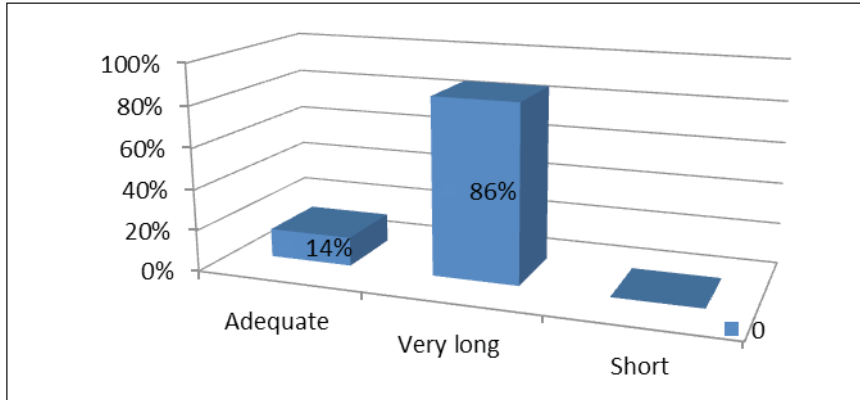
## 13-Giving the insolvent individual enterprises and companies and their creditors a chance to apply the procedures of the reorganization plan through a private or a governmental agency in which the role of the court restricts to approving the decision of this agency



77% of the respondents supported giving the insolvent individual enterprises and companies and their creditors a chance to apply the procedures of the reorganization plan through a private or a governmental agency in which the role of the court restricts to approving the decision of this agency while 21% refused to give support and 2% answered I don't know

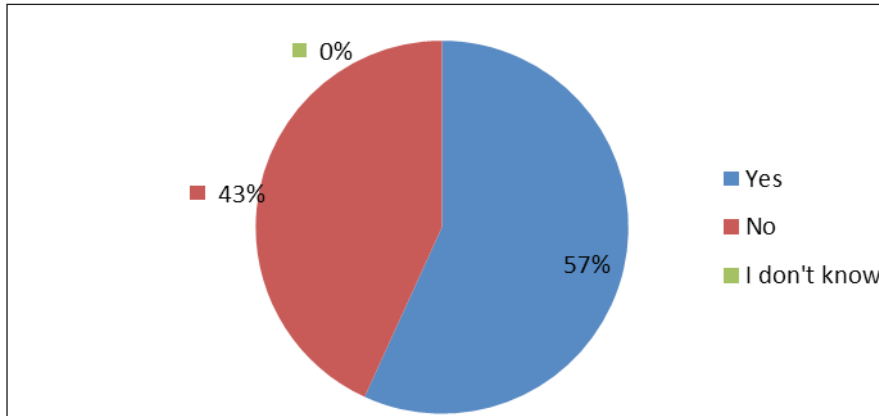
## Chapter 2: Bankruptcy and its procedures

### 14-Time period of bankruptcy law suit before courts



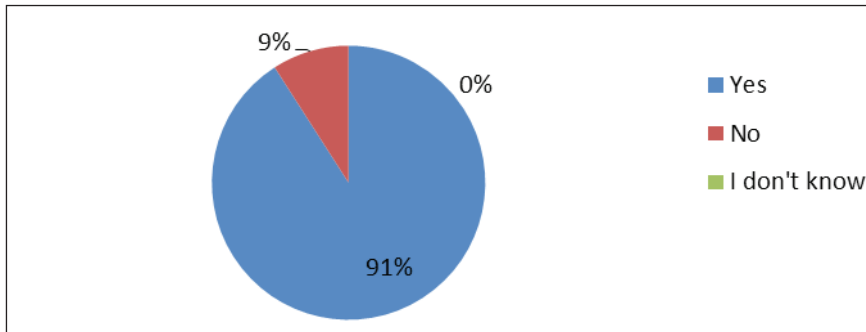
86 % of the respondents considered the period of bankruptcy law suits takes very long before the courts where as 14% considered the period is adequate

### 15-Amending the internal national legislations which declare a trader bankrupt in the event he ceases paying his business debts to harmonize with international trend of declaring a trader bankrupt when he stops paying any of the civil or business debts.



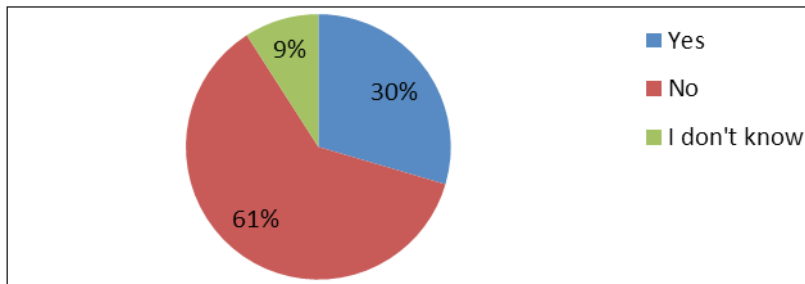
57% of the respondents said that internal national legislations should be amended to harmonize with international trend whereas 43% refused this amendment

### 16-Linking the date of cessation of payments with a certain calculated period from the date of the filing of the lawsuit rather than the date of the court's decision declaring bankruptcy



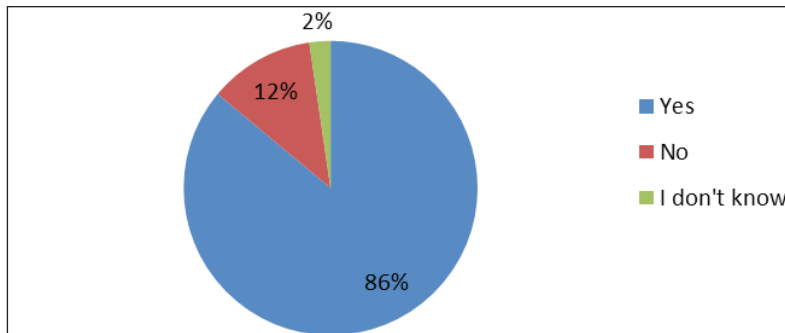
91% of the respondents supported Linking the date of cessation of payments with a certain calculated period from the date of the filing of the lawsuit rather than the date of the court's decision declaring bankruptcy whereas 9% refused this link

17-Identification of the starting date of the period of uncertainty with respect to all the members of the group if they formed one legal entity with its companies in different countries



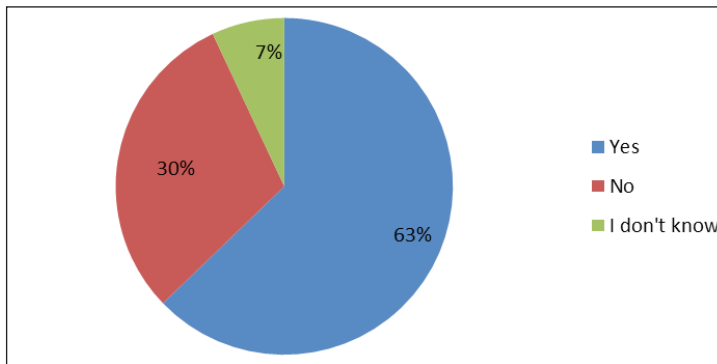
61% of the respondents refused identifying the starting date of the period of uncertainty should be with respect to all the members of the group if they formed one legal entity with its companies in different countries whereas 30% supported that and 9% of the respondents answered "I don't know"

18- The bankrupt's approval for the reconciliation that is done by the bankruptcy trustee with the creditors under the supervision of the court



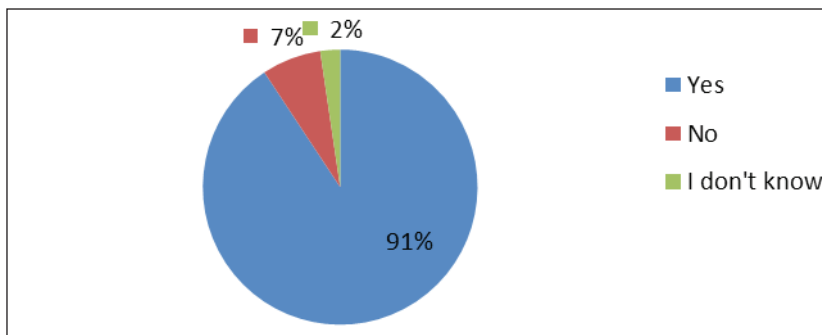
86% of the respondents deemed the bankrupt's approval not necessary on the reconciliation that is done by the bankruptcy trustee with the creditors under the supervision of the court whereas 12% deemed a necessity for such an approval and 2% answered I don't know

19-Creditor filing a bankruptcy lawsuit against his debtor if he had previously agreed with the latter to solve all disputes stemming from this agreement through arbitration



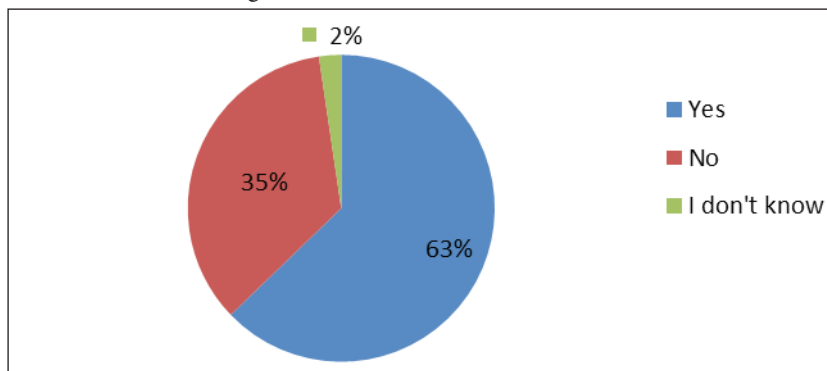
63% of the respondents deemed that the creditor can file a bankruptcy lawsuit against his debtor if he had previously agreed with the latter to solve all disputes stemming from this agreement through arbitration while 30% deemed that he can't and 7% answered I don't know

20-The presence of specific provisions for the liquidation of certain enterprises (banks and insurance companies) independent from the current bankruptcy and liquidation provisions



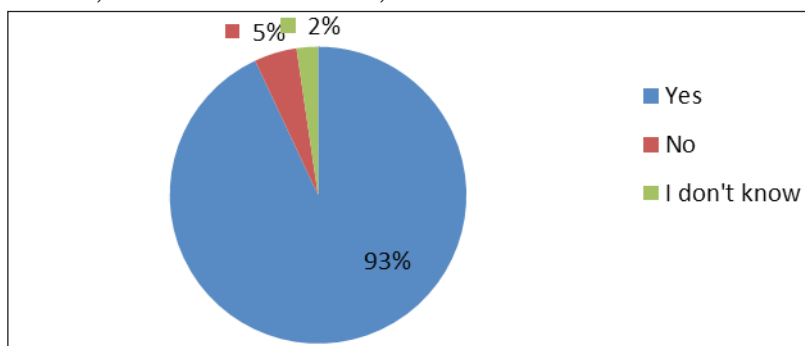
91% of the respondents supported the presence of specific provisions for the liquidation of certain enterprises (banks and insurance companies) independent from the current bankruptcy and liquidation provisions whereas 7% of them opposed and 2% answered "I don't know"

**21- Decreasing the role of the creditor's group in the management and running of the bankruptcy estate and doubling the role of the judicial authority in this regard would provide greater guarantees in the speed and honesty and maintenance of the rights of the creditors**



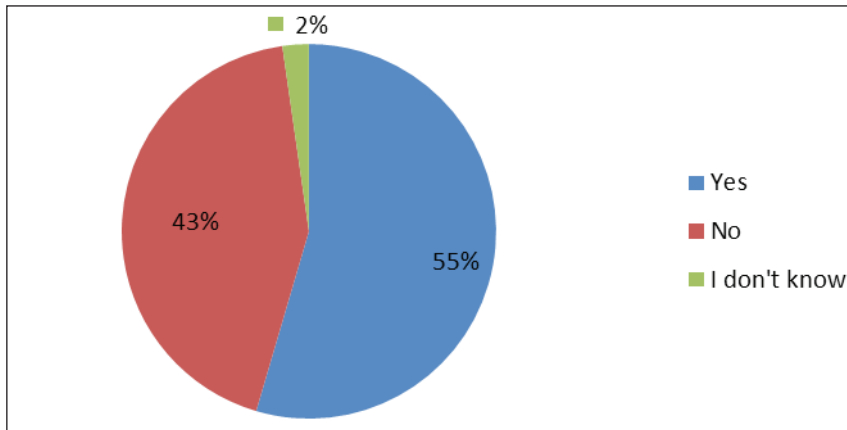
63% of the respondents considered that the decrease in the role of the creditor's group in the management and running of the bankruptcy estate and doubling the role of the judicial authority in this regard so that it would have an active and a guiding role and not only an observing and supervising role, would provide greater guarantees in the speed and honesty and maintenance the rights of the creditors whereas 35% opposed the above mentioned and 2% answered I don't know

**22- Addition of articles which would allow the court that declared bankruptcy to take urgent measures ( placing seals and the preparation of inventories) beyond the territorial jurisdiction i.e so that its jurisdiction will include the whole country**



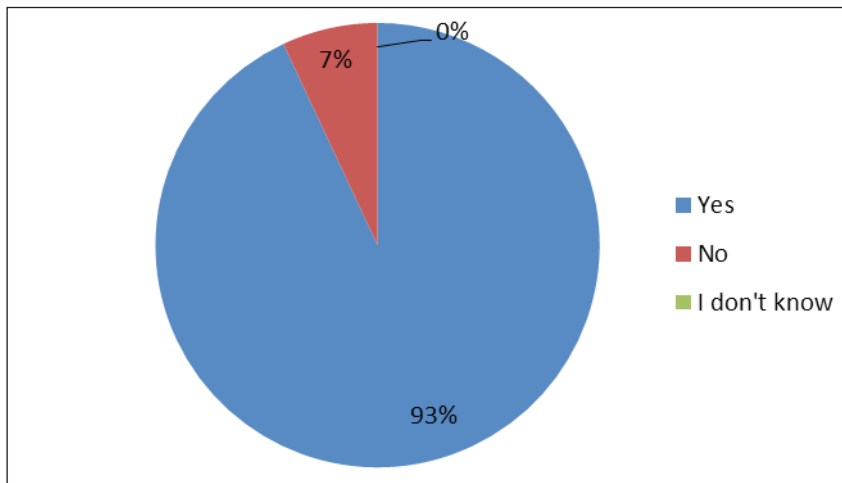
93% of the respondents supported adding articles which would allow the court that declared bankruptcy to take urgent measures ( placing seals and the preparation of inventories) beyond the territorial jurisdiction i.e so that its jurisdiction will include the whole country while 5% of them opposed and 2% were neutral regarding the topic and answered "I Don't know"

### 23- Giving the general prosecution a role in initiating a bankruptcy lawsuit



55 % of the respondents deemed useful giving the general prosecution a role in initiating a bankruptcy lawsuit whereas 43% don't feel it is useful to give the general prosecution any role and 2% answered I don't know.

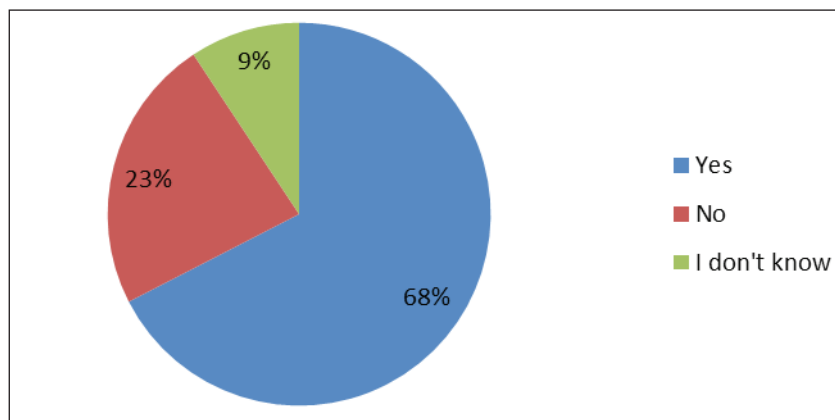
### 24- The court's role in informing the bankrupt trader, the ban from doing any commercial act



93 % of the respondents deemed , protecting the rights of the creditors , the court has to inform the trader that it declared his bankruptcy the ban from doing any commercial act, where as 7 % refused that



## 25-Controversies of selling the assets of the bankrupt trader in practical application

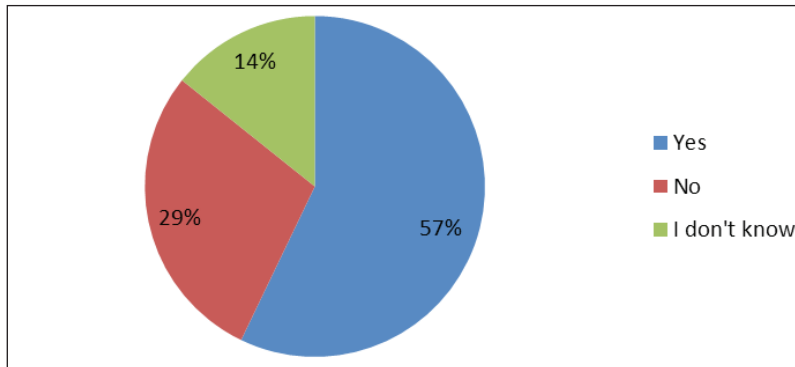


68% of the respondents considered that selling the assets of the bankrupt trader causes major controversies in practical application, where as 23 % doesn't consider this and 9 % answered I don't know

### 25.1 Controversies of selling the assets of the bankrupt trader

Further to the previous question, it was shown that almost 68% of the respondents considered that selling the assets of the bankrupt trader causes major controversies in practical application. The controversies that were nominated by respondents revolved around several issues highlighted in :lengthy selling procedures, absence of a clear mechanism in the procedures of selling, multiplicity of parties specialized in the sale of the assets of the bankrupt trader, evaluation procedures and the settlement of prices . evaluations of several experts of the trader's assets at the date of the declaration of bankruptcy, presence of previous seizure to the declaration of bankruptcy, deciding on means of sale, the dues of the official parties, depreciation of the assets of the bankruptcy estate, informing what the assets are, requiring the approval of the bankrupt in case sale was through the bankruptcy trustee, precisely clarifying the assets, presence of lawsuits and judicial or arbitrational claims during bankruptcy, absence of clear texts with the previous approval of the bankruptcy lawsuit, absence of clear criteria to evaluate the assets of the bankrupt, lateness of the decisions of the commissioner, for the sale of assets . real estate records, absence of monitoring on the sale or on the trustee of the bankruptcy and multiplicity of processes of announcement and bidding.

## 26- The controversies of prioritizing paying back the debts of the bankrupt in practical application

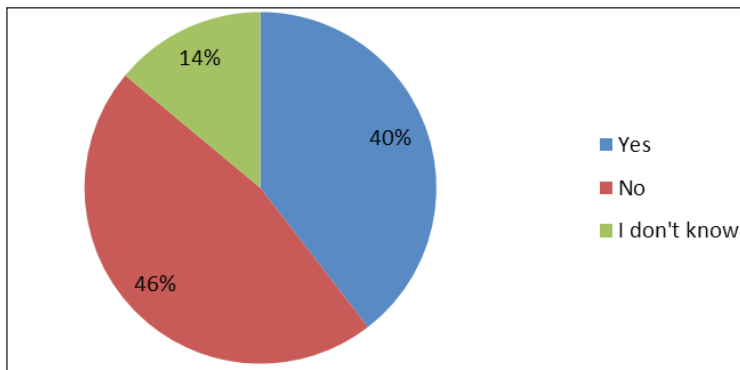


57% of the respondents considered that prioritizing paying back the debts of the bankrupt causes major controversies in practical application where as 29 % of them refused this consideration and 14 % answered I don't know

### 26.1 the controversies of prioritizing paying back the debts of the bankrupt

Further to the previous question, 57% of the respondents considered that prioritizing paying back the debts of the bankrupt causes major controversies in practical application. the controversies pivoted around several issues, the most important of which are: protecting the rights of the bankruptcy trustee in the absence of a financial fund that assures getting his rights and his fees, absence of enough assets, preemptive rights and the toughness of its application, variation of privileged rights according to laws – labor law, commercial law - prioritizing debts and not exempting the creditor, prioritizing creditors and privileged rights and not giving the creditor a preemptive right over the remaining rights, prioritizing preferential debts that are publicly privileged over debts that are privately privileged, multiplicity and contradiction of provisions of the laws between companies and enforcement provisions and work and presidential assets, contradiction of jurisprudence, dissipating the rights of owners of mortgages and not giving the creditor priority over other rights.

## 27- The extent of the sufficiency of the commissioner's competence in practical application



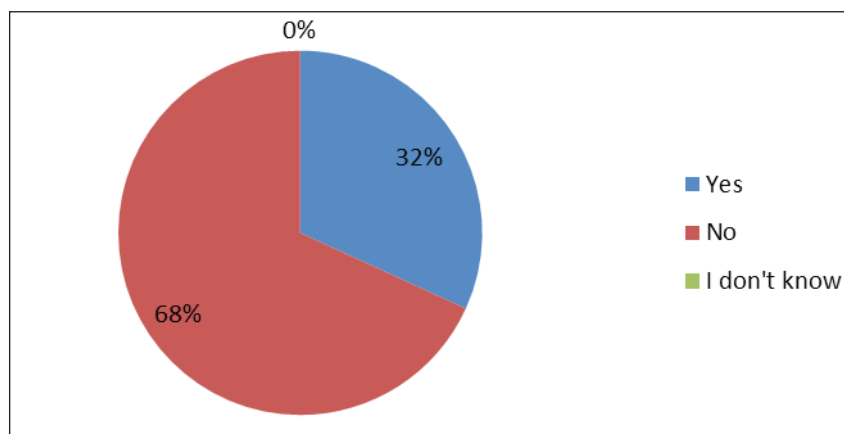
40% of the respondents considered that the competence of the commissioner in the commercial law are broad enough in practical application whereas 46% considered the competence is not enough and 14 % don't know

#### 27.1. Specified examples that nominate the insufficiency of the competence of the commissioner in practical application

40% of the respondents considered that the competence of the commissioner in the commercial law are broad enough in practical application justifying their opinions with various examples , some of which the most important are : article 358 of the same law in calling the agents of the bankrupt to close the commercial records and stopping its accounts in the presences of article 297 of the Jordanian commercial law : if the court considered the request legal , and it was preliminary accepted , it makes a final decision.

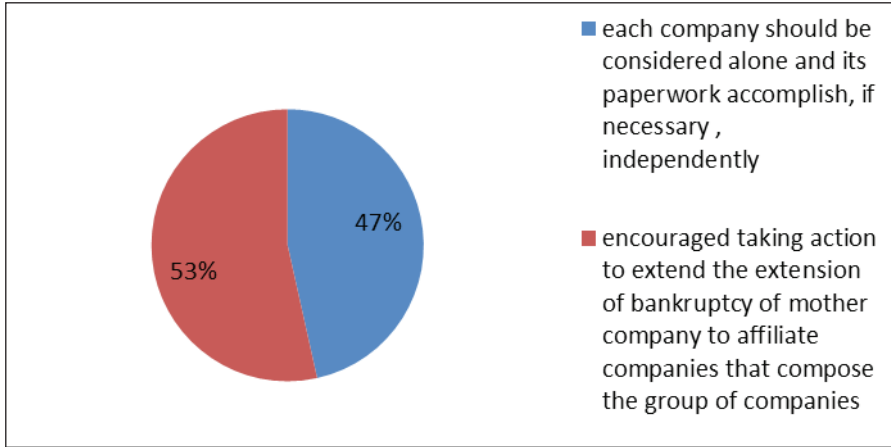
The absence in the commercial law from provision that describes the value of the trader's spending in the presence of indicators that the trader is on his way to defaulting , acceptance on sale , absence in the commercial law from arbitrary provisions divided between what is called and interests to the ability with the assistance of the trader and saving the defaulting trader from the dues of the bankruptcy estate , the obligation of giving the judge a wider role in monitoring the work of the bankruptcy trustee

#### 28-declaration of bankruptcy of affiliate companies as a result to the bankruptcy of the mother company



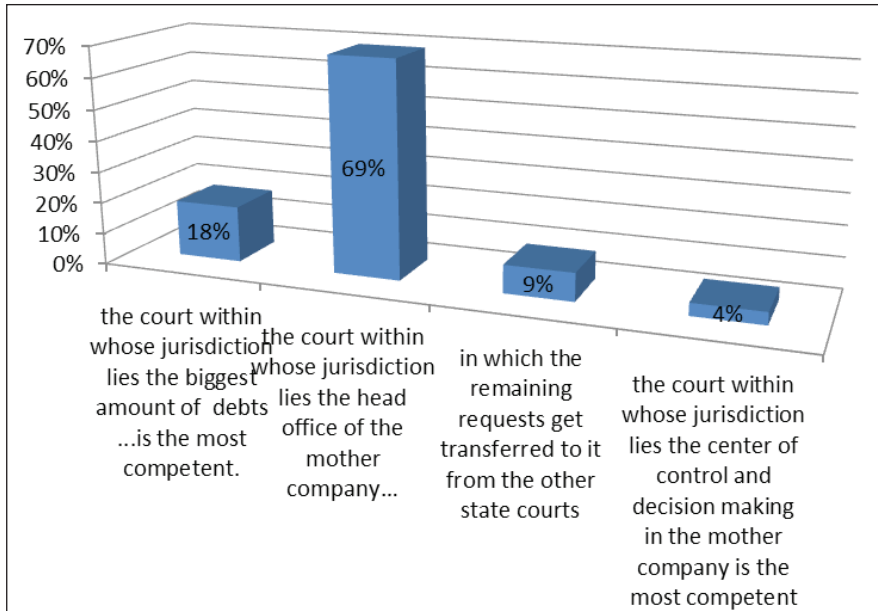
68% of the respondents refused declaring bankruptcy of the affiliate companies as a result of the bankruptcy of the mother company where as 32% of them supported.

## 29-Extension of bankruptcy of mother company to affiliate companies



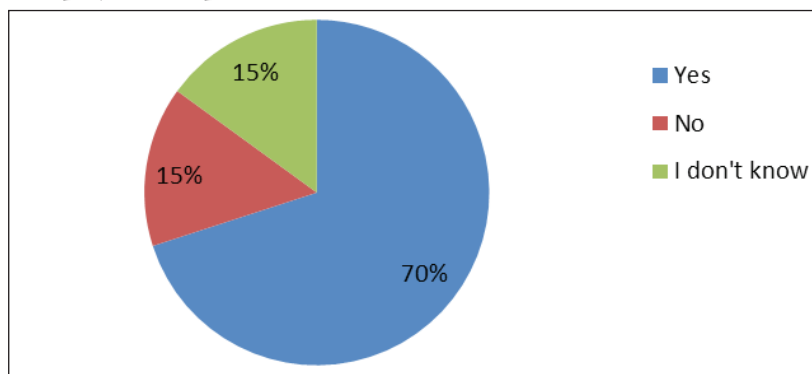
53% of the respondents encouraged taking action to extend the bankruptcy of the mother company to the affiliate companies that compose the group of companies whereas 47 % said each company should be considered alone and accomplish its paperwork , if necessary , independently

## 30-The most competent court to look into the request of bankruptcy that includes the entity of group of companies



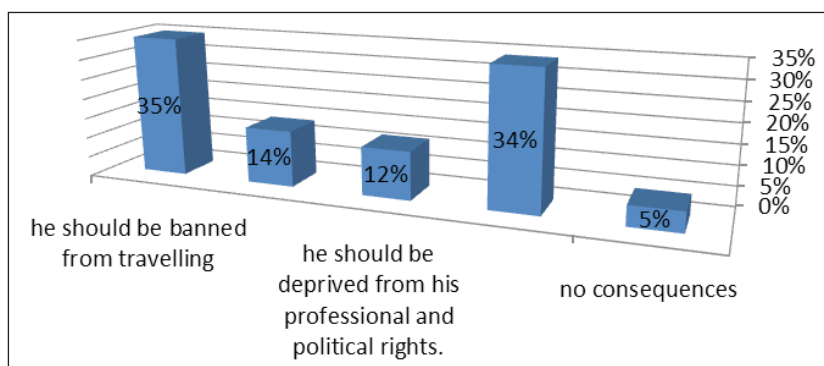
9% of the respondents considered the court before which the bankruptcy lawsuit was first filed, in which the remaining requests get transferred to it from the other state courts, whereas 4% considered the court within whose jurisdiction lies the center of control and decision making in the mother company is the most competent and 69% considered the court within whose jurisdiction lies the head office of the mother company if the group was established on this basis and the mother company was included in the request of bankruptcy while 18% considered the court within whose jurisdiction lies the biggest amount of debts of the various companies of the group is the most competent.

31-International bankruptcy and the possibility of amending the provisions of bankruptcy that are present in the current commercial law that tackles this subject



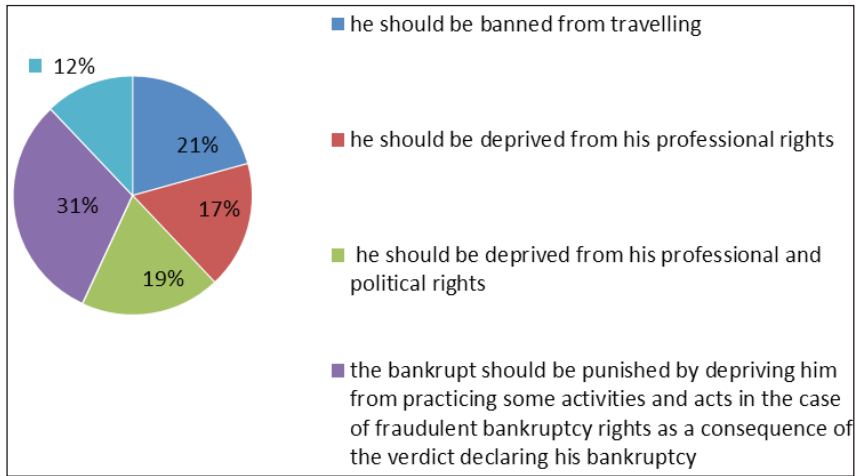
70% of the respondents nominated the necessity of amending the provisions of bankruptcy that are present in the current commercial law since it doesn't tackle the cases of international bankruptcy and because the current legal rules concerning the execution of foreign verdicts doesn't allow the execution of these verdicts in the kingdom whereas 15% considered that these provisions don't need amendment and 15% of the respondents were neutral towards the subject

32-Personal consequences that should apply to the bankrupt in cases of normal bankruptcy



5 % of the respondents deemed no consequences should apply to the bankrupt in cases of normal bankruptcy whereas 34% deemed that he should be punished by depriving him from practicing some activities and acts in cases of normal bankruptcy and 14% said he should be deprived from his professional rights in addition to 35 % who believed he should be banned from traveling and 12% believed he should be deprived from his professional and political rights.

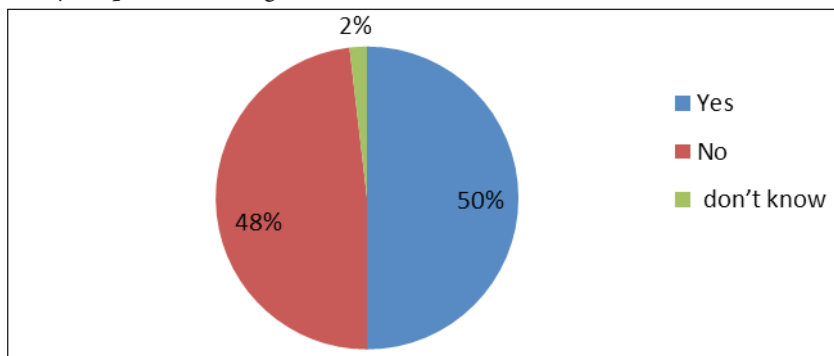
### 33-Personal consequences that should apply to the bankrupt in cases of fraudulent bankruptcy



31% deemed that the bankrupt should be punished by depriving him from practicing some activities and acts as a consequence to the declaration of his bankruptcy in addition to 21% who believed he should be banned from traveling whereas 19% believed he should be deprived from his professional and political rights and 17% said he should be deprived from his professional rights and 12% nominated no consequences in cases of fraudulent bankruptcy

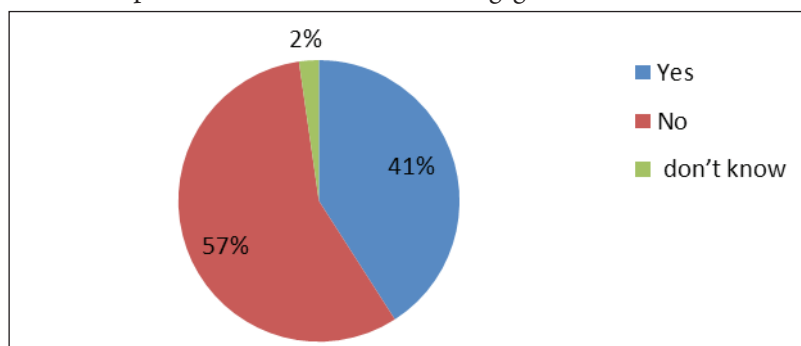
## Chapter 3: Legislations pertaining to bankruptcy systems

### 34-The provisions of possessing mortgage for the movables if the debtor and its satiety to protect the rights of the creditors



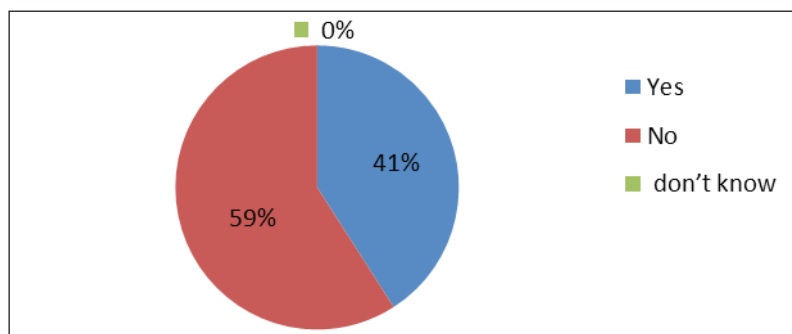
50% of the respondents nominated that the provisions of possessing mortgage of the debtor's movables ( **contrary to shares , stocks and cars** )are enough to protect the rights of the creditors in the Egyptian law while 48% of them considered that it is not enough to protect the rights and 2% were neutral with the subject and answered I don't know.

35- The necessity to have specific provisions concerning the mortgage of the business enterprise together with its moral elements ( commercial name , customers) and material elements like future merchandises which would replace existing merchandise present at the time of the mortgage



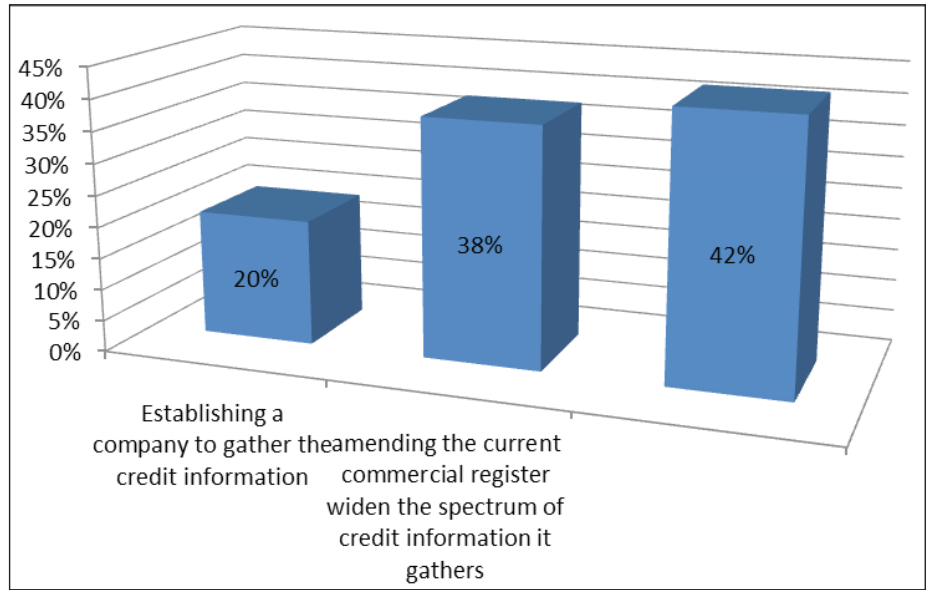
41% of the respondents nominated the necessity to have specific provisions in the Jordanian law concerning the mortgage of the business enterprise together with its moral elements ( commercial name , customers) and material elements like future merchandises which would replace existing merchandise present at the time of the mortgage whereas 57% of refused the necessity and 2% were neutral and answered I don't know

36- The ability of the current credit information system ( for instance: commercial register and financial control department authority ) is enough to give the information needed for creditors to inquire about the financial position of the trader's status and his debts before giving him any kind of credit whether loans or business dealings in installments



59% of the respondents considered that the current credit information system found in Egypt( for instance: commercial register and financial control department authority ) is not enough to give the information needed for creditors to inquire about the financial position of the trader's status and his debts before giving him any kind of credit whether loans or business dealings in installments whereas 41% of them consider it enough

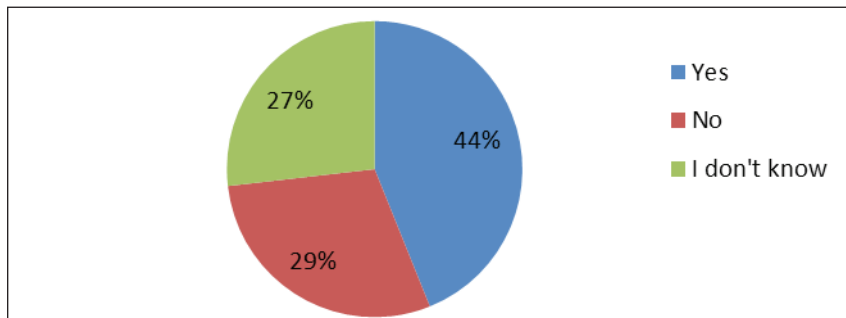
36.1. The best solution to provide data that allows creditors to inquire about the trader's financial status and debt status before giving any kind of credit whether loans or business dealings in installments



Further to the previous question , 42% of the respondents considered that is recommended to Link the credit information enterprises to provide data that allows creditors to inquire about the trader's financial status and debts before giving any kind of credit whether loans or business dealings in installments whereas 38% nominated amending the current commercial register widen the spectrum of credit information it gathers and 20% nominated Establishing a company to gather the credit information

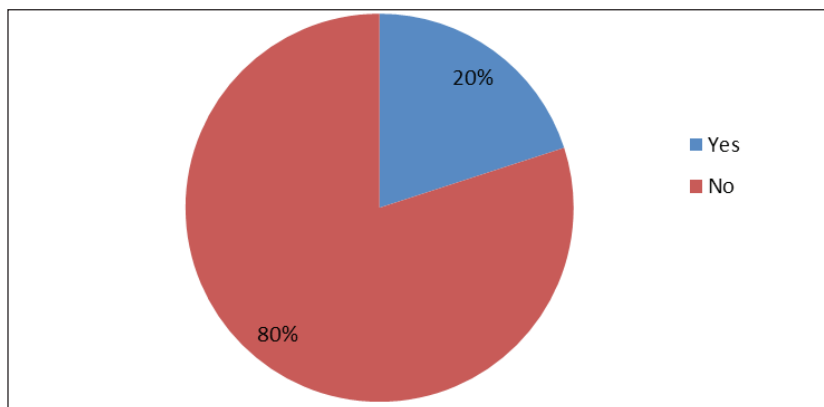


37- Legal articles that manages credit inquiry service and allows access to the information to check the debtor's status with respect to his debts and facilities



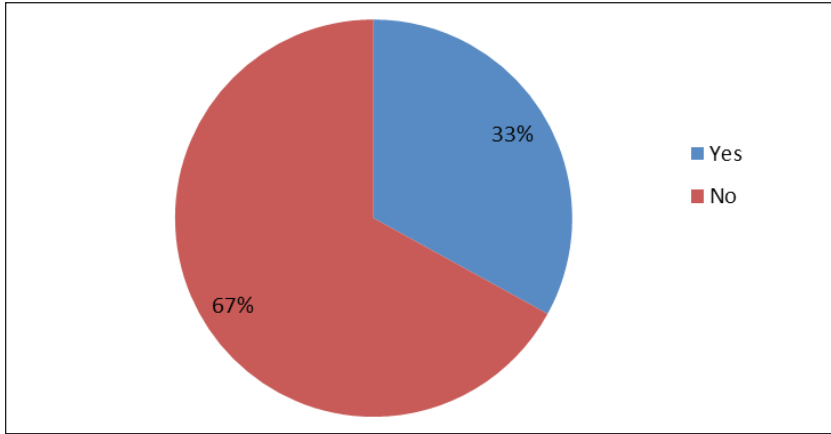
29% of the respondents considered that there are no legal articles that manages credit inquiry service and gives access to data to check the debtor's status with respect to his debts and facilities whereas 44% nominated the presence of legal articles that manages credit inquiry service and allows access to the information to check the debtor's status with respect to his debts and facilities and 27% of them answered I don't know

37.1. Centralism of legal articles that manages credit inquiry service and gives access to data to check the debtor's status with respect to his debts and facilities and its presence on the national level



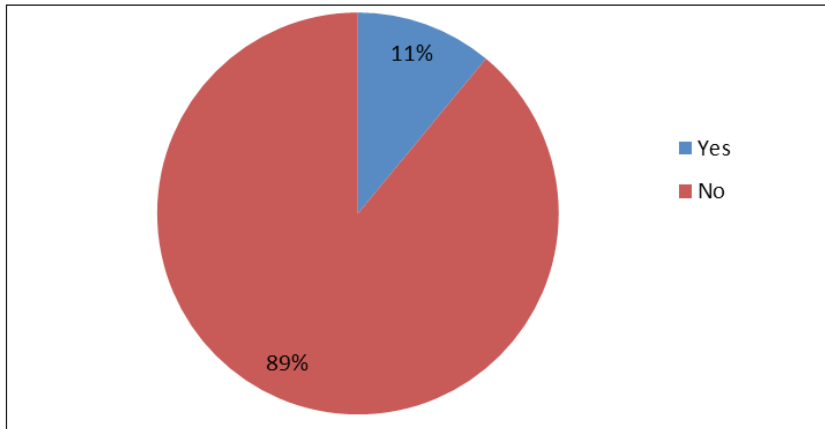
Further to the previous question on the presence of legal articles that manages credit inquiry service and gives access to data to check the debtor's status with respect to his debts and facilities, 20% considered that the system is central and found on the national level

### 37.2. Easy access and inspection on the credit inquiry system



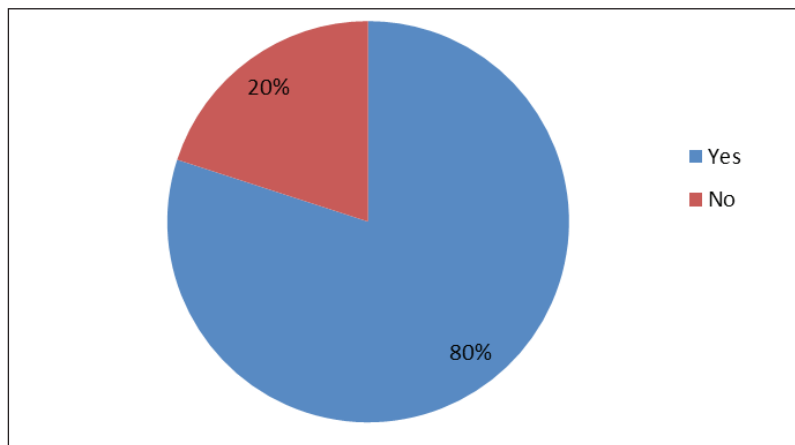
33% of the respondents deemed the system doable ,accessible and could be inspected

### 37.3 Conditions for using the information provided by such a system so as not to abuse it for defamation of the debtor



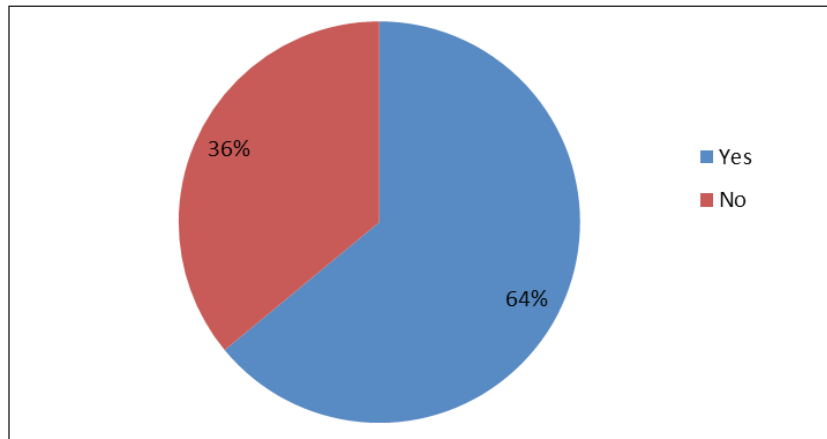
89% of the respondents considered that the conditions for using the information provided by such a system has been set so as not to abuse the system for defamation of the debtor

#### 37.4 Measures to protect the information provided by the credit inquiry system



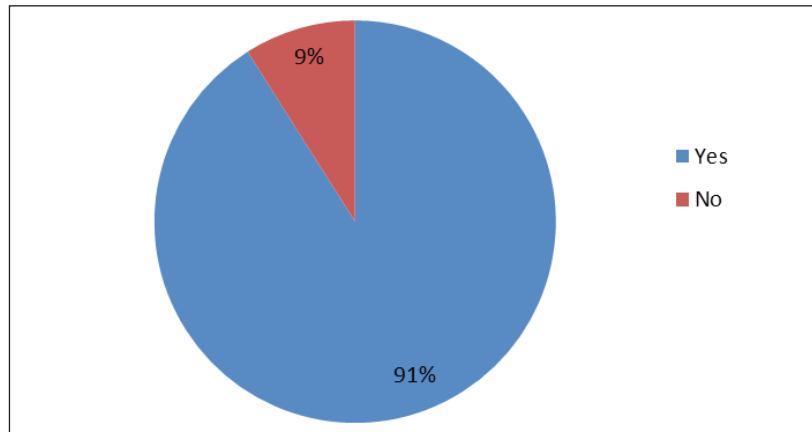
80% of the respondents deemed that the credit inquiry system includes measures to protect the information provided by the information inquiry system

#### 37.5 Informing the concerned people when information related to them is being used for decisions to take decisions against them



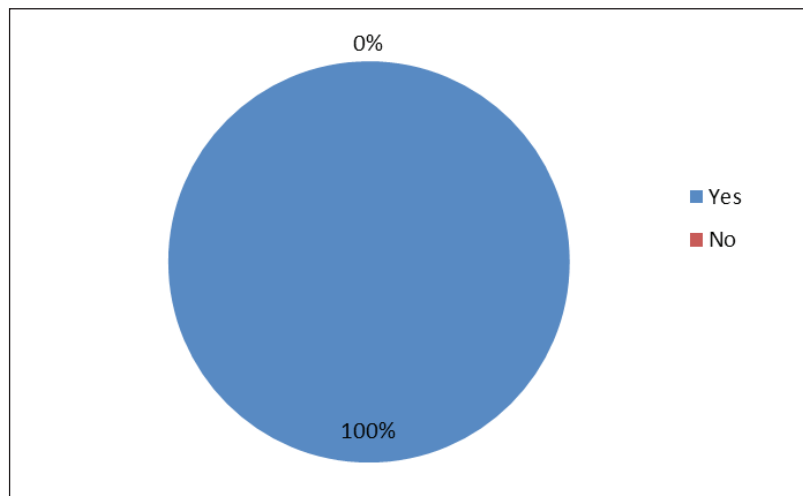
64% of the respondents deem that the concerned people are being informed when information related to them is being used for decisions to take decisions against them

37.6 The debtor's right to object on the false and incomplete information about him



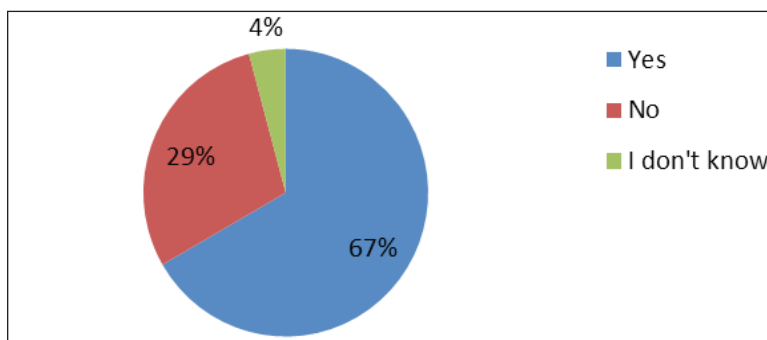
91% of the respondents deemed that the debtor has the right of the debtor to object on the false and incomplete information about him

37.7 Mechanisms to investigate these objections/ disputes and to correct the information



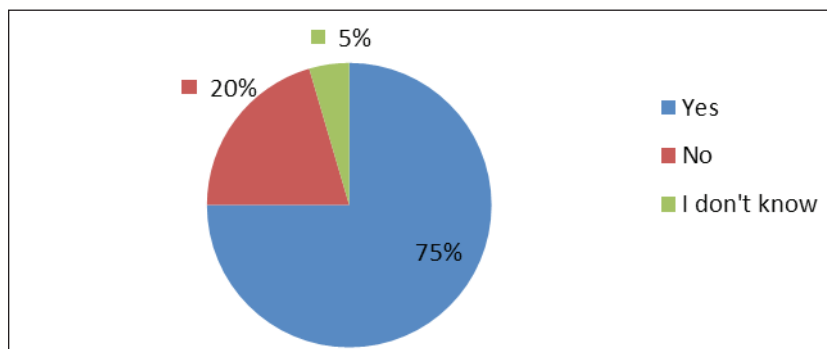
Further to the previous question , the respondents unanimously agreed on the presence of mechanisms to investigate these objections/ disputes and to correct the information

38- Addition of an explicit provision in the law which states that the liability of chairmen in a joint stock company does not affect the chairmen only, who are responsible for managing the company, it extends to affect every person participating regularly and effectively (realistically) in the management of the company



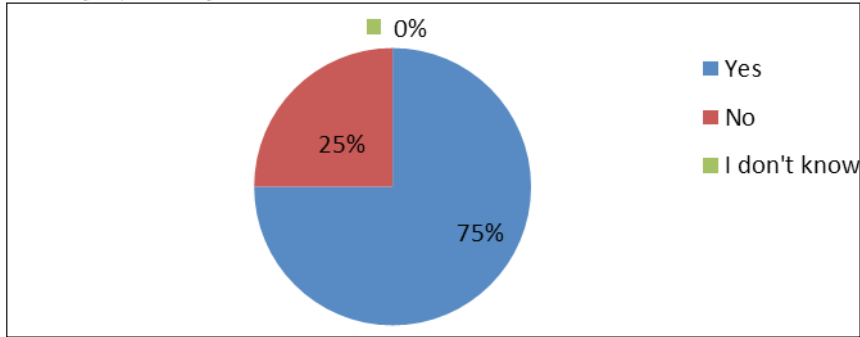
67% of the respondents deemed that it is better to add an explicit provision in the law which states that the liability of chairmen in a joint stock company does not affect the chairmen only, who are responsible for managing the company, it extends to affect every person participating regularly and effectively (realistically) in the management of the company whereas 29% refused this addition and 4% were neutral to the subject and answered I don't know

39- Addition of provisions to the bankruptcy law which protects partners and contributors who did not effectively participate in the management of the company from the effects of the declaration of bankruptcy even if it was fraudulent bankruptcy caused w`by the board of directors



75% of the respondents considered it is preferable to add provisions to the bankruptcy law which protects partners and contributors who did not effectively participate in the management of the company from the effects of the declaration of bankruptcy even if it was fraudulent bankruptcy caused by the board of directors where as 20% refused the addition and 5% answered I don't know

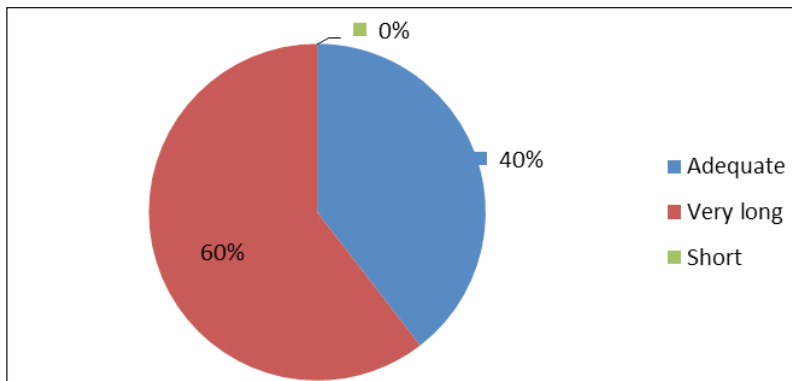
40- The commercial law and its comprehensiveness of the liability of the chairman and board of directors of companies for debts resulting from their mistake in management or negligence or deliberate action which lead the company to bankruptcy or liquidation



75% of the respondents believed that the commercial law should stipulate the liability of the chairman and board of directors of companies for debts resulting from their mistake in management or negligence or deliberate action which lead the company to bankruptcy or liquidation 25% refused the inclusion

#### Chapter 4: liquidation

41- The period that liquidation lawsuits take before the courts



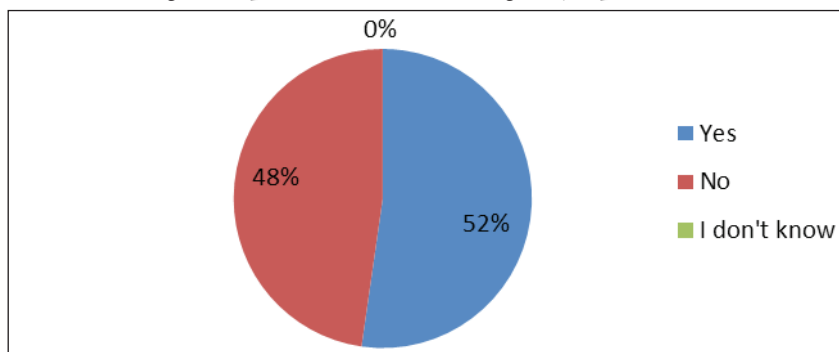
60% of The respondents considered the period that liquidation lawsuits take before the courts is very long whereas 40% sees it as an adequate period

41.1. The amendments that should be added to decrease the litigation period in lawsuits of sale of wealth of the company under liquidation

60% of The respondents considered the period that liquidation lawsuits take before the courts is very long. The opinions of the respondents varied concerning

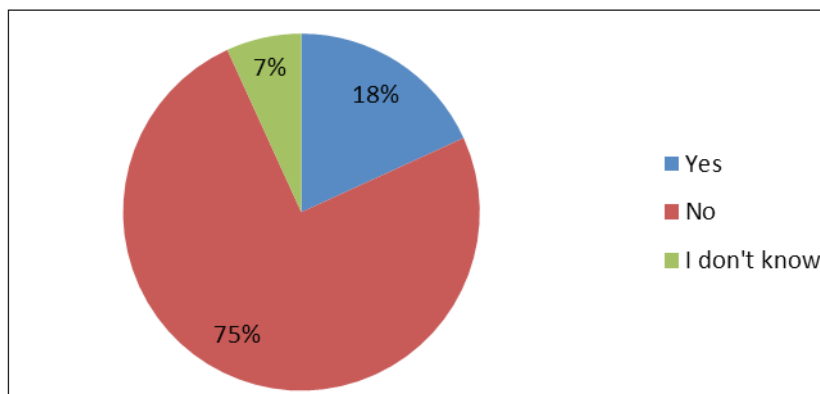
the amendments that should be added , to decrease the litigation period in those law suits . some of the major suggestions : clear legal provisions – inclusion of clear time periods for all procedures , setting the period for rehabilitation of court's sessions in days and setting a period to wrap up liquidation , increasing the number of court sessions and decreasing the period between one session and the other . not postponing the liquidation law suits in the recession period , setting a maximum period to issue verdicts , train a judicial cadre specialized in settling disputes related to declaring bankruptcy , raise awareness of the commercial sector through commercial chambers in the Hashemite Kingdom of Jordan of their vital role in the national economy and the importance of educating them to take the necessary actions for practicing commercial acts according to the correct commercial traditions so that they won't be subject to bankruptcy , requiring the approval of the debtor on the sale operation of the assets under liquidation and establish specialized courts in the subjects of liquidation , establishing specialized aperture in the department of monitoring companies specialized in liquidation , shortening the period of announcements , give the representative of the civil general attorney a role or the agent of the person requesting liquidation in unremitting follow up court sessions to be held in urgent manner , obliging the person requesting liquidation to submit sufficient information about the assets of the company . unifying lawsuits against the liquidation at one organization , follow up from the commissioner on the liquidator through getting seasonal reports about his work, completion of the liquidation procedures in a shorter period , abandoning data by the court that the court deems that it lengthen the phase of the dispute . specifying a time period for decisions , widening the court's authority in weighing the data , shorten the period of announcements and extensions and minimizing the number of announcements concerning the submissions of the creditors , the length of the procedures of sale of real estate and the assets of the company in case of liquidation by recommending specific instructions concerning this subject , granting the court and liquidator wider competence , simplifying sale procedures and distribution to creditors , to make verdicts enforceable at the time of issuance , train and coach specialized judges in this regards

#### 42- The role of the general prosecution in the obligatory liquidation



52% of respondents nominated the presence of the role of the general prosecution in the obligatory liquidation cases whereas 48% refused

43- The clarity of the restrictions and procedures of the sale of assets of the company under liquidation in the current commercial law



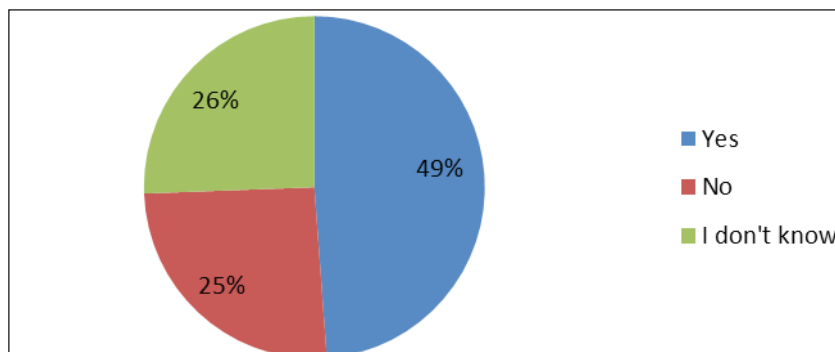
75% of the respondents considered that the restrictions and procedures of the sale of assets of the company under liquidation in the current commercial law are unclear and unspecified whereas 18% considered it clear and specified to sell the assets of the company under liquidation, while 7% were neutral and answered I don't know

43.1 The controversies that are caused from the sale of the assets of the company under liquidation

The respondents noted several controversies caused from the sale of the assets of the company under liquidation most of which are : the length of the period that sale takes , difficulty of checking the wealth of the trader whether companies or individual merchant because of the complications regarding procedures of inquiry , absence of clear texts , the small number of people watching over the liquidation especially if the wealth of the trader is mainly movables , procedures of the auction , absence of a party which is evaluating , the movables and immovable property and the assets of the company, continue influencing the expertise individuals in evaluation, the contrast and ambiguity of provisions concerning the priorities of debts , not addressing the case of an actual partner who is not registered especially in the case of registering in the records of the company without actual register in another record , sale of the company's assets , absence of effective monitoring from the commissioner and supervisor general of companies over the liquidator , absence of clear criteria to assess the value of the provision assets for sale, absence of restrictions for the sale of real estate , sale at a price lower than the real price , not covering the whole debts of the company , privilege rights and mortgage



#### 44-Controversies resulting from prioritizing the payments of debts of companies in liquidation in practical application

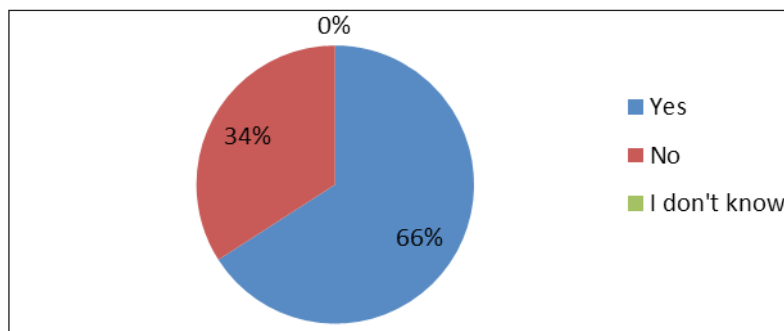


49% of the respondents considered that prioritizing the payments of debts in liquidation cause controversies in practical application whereas 25% considered it doesn't cause controversies in practical application

##### 44.1. Controversies resulting from prioritizing the payments of debts of companies in liquidation

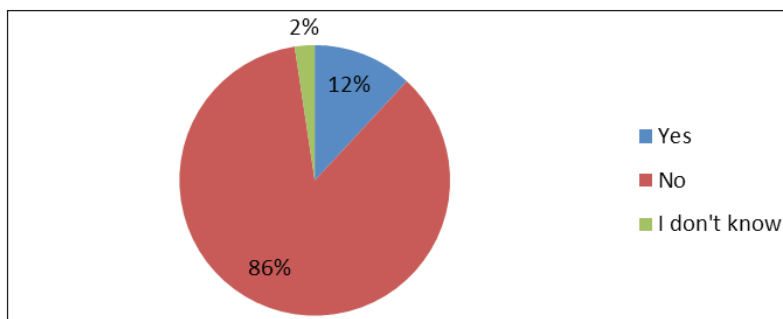
49% of the respondents considered that prioritizing the payments of debts in liquidation cause controversies in practical application, the controversies are : presences of several laws and the difficulty of documentation in its provisions, contradiction of laws and contrasting with partners' laws, priority of the government, registering and checking debts , conflict of interests , dues of official parties , wasting the rights of the creditors , prioritizing several privilege rights over mortgage rights

#### 45-The permissibility of giving the court the competence of assigning an auditor in the obligatory liquidation



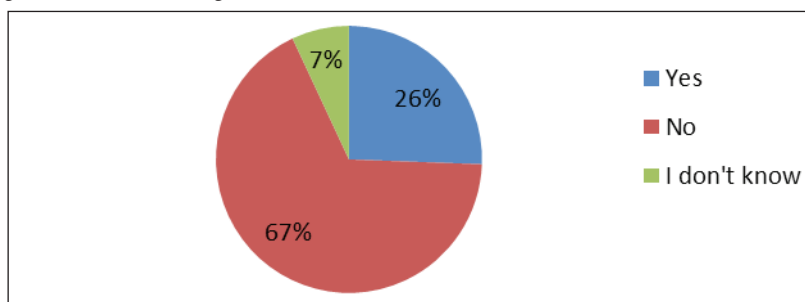
66% of the respondents suggested giving the court the competence of assigning an auditor in the obligatory liquidation instead of the liquidator where as 34% refused

46-The clarity of the provisions of the current commercial law concerning the allocation of salaries and fees of the liquidator



86% of the respondents considered that the current commercial law includes clear and specified provisions of allocation of salaries and fees of the liquidator whereas 12% don't agree that it includes clear and specified provision and 2% were neutral and said I don't know

47-The sufficiency of punishments applied on the auditor for submitting false data as a guarantee for the rights of the creditors



67% of the respondents deemed that punishments applied on the auditor for submitting false data are not an enough guarantee for the rights of the creditors where 26% considered them enough and 7 % were neutral.

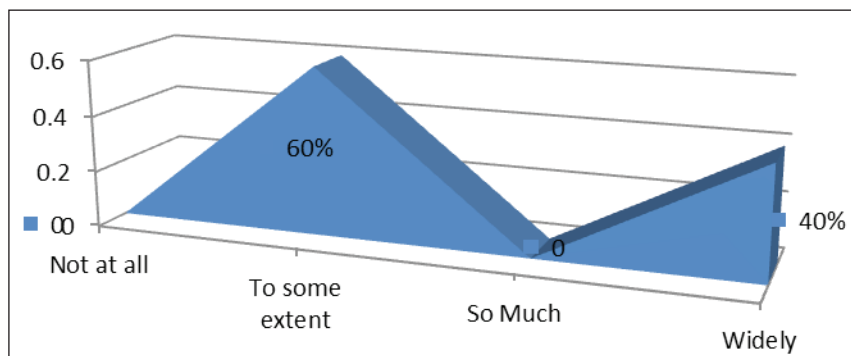
### Optional Question

At the end of the base line survey , some additions and suggestions were added to the survey for the reform of the legal system that manages defaulting in paying debts due to insolvency and lack of liquidity most importantly : a clear provision that explains the convergence in laws concerning prioritizing debts , amending the commercial law and giving the registered monitor the competence to monitor the acts of individual enterprises with a capital greater than a certain amount in which the monitoring is real and not pro forma , reorganizing the provisions of optional

liquidation specifically what relates to semi- annual report and what it includes of information and activation of legal texts concerning the banning of postponing the period of elective liquidation, not restricting to companies but extending to individual enterprises in any amendment in that regard , agreements between Arabic countries on establishing a unified project in one direction so that the legislation would be more accepted in these countries , unifying the judicial authority in the primarily and secondarily levels and initiating appeal in one court which helps a lot in saving time and comprehending the issues of the bankruptcy estate and liquidation , taking the court as an authority in the cases of bankruptcy estate and liquidity of companies and individual working in various sectors such as banks , insurance companies , exchange companies , mediation is the proper action since the referral of any company to liquidation for example the agent in these companies is not a bank agent or agent related to insurance or related to exchange so that the central bank or insurance organization or securities organization stays the supervising authority on the liquidation of these stable companies in these sectors . assigning legal auditors for bankruptcy estate and liquidation by the court or by supervisor general of companies which includes a detailed description of a detailed role of monitoring that the court or the supervisor general does

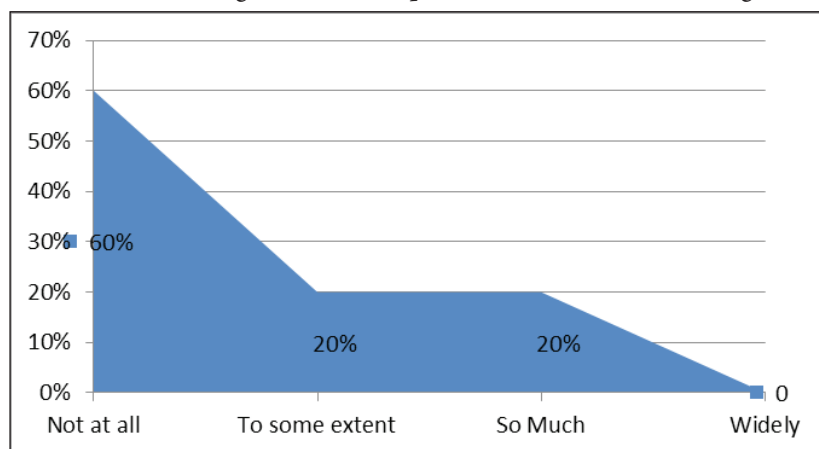
## Chapter 5: private for civil society organization

- 1- The priority and importance of the reforming bankruptcy systems for civil society organization



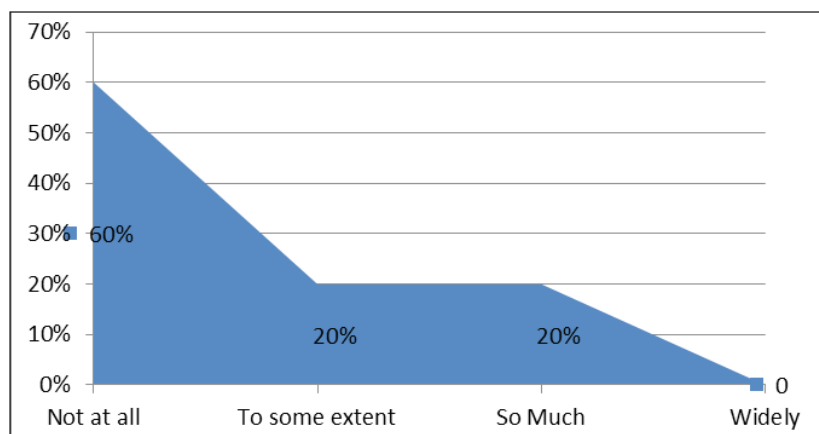
60% of the civil society organization that participated in the survey considered that the reforming bankruptcy systems is somehow a priority and important while 40 % of them considered it important on a wide level

## 2- The extent of which organization Compiled information for reforming bankruptcy



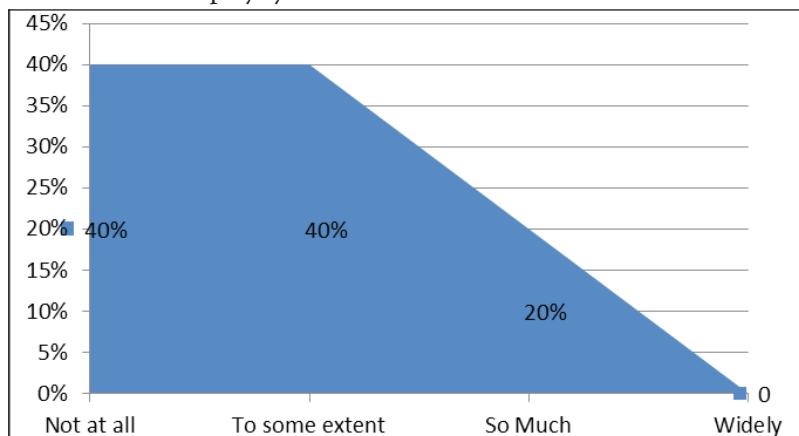
60% of The civil society organizations that participated in the survey declared that it never **Compiled information and contributions for reforming bankruptcy** whereas 20% had previously gathered to a certain extent information and contribution related to bankruptcy and 20% gathered lots of information and contributions related to bankruptcy

## 3- The political position of organizations regarding bankruptcy reform system



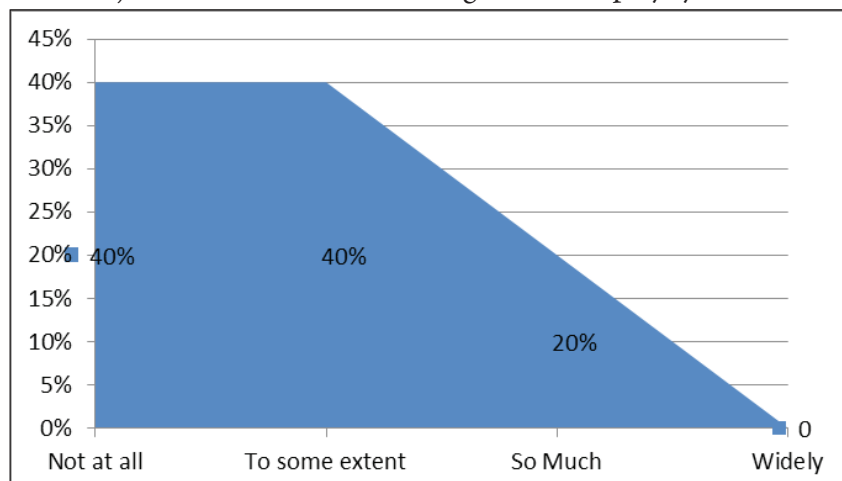
60% of The civil society organizations that participated in the survey declared that it never took a general political position regarding bankruptcy reform system whereas 20% had previously largely taken a general political position regarding bankruptcy reform system and 20% had somehow taken a general political position regarding bankruptcy reform system

4- Allocation of resources by organizations ( especially time and money) to call for reform of the bankruptcy system



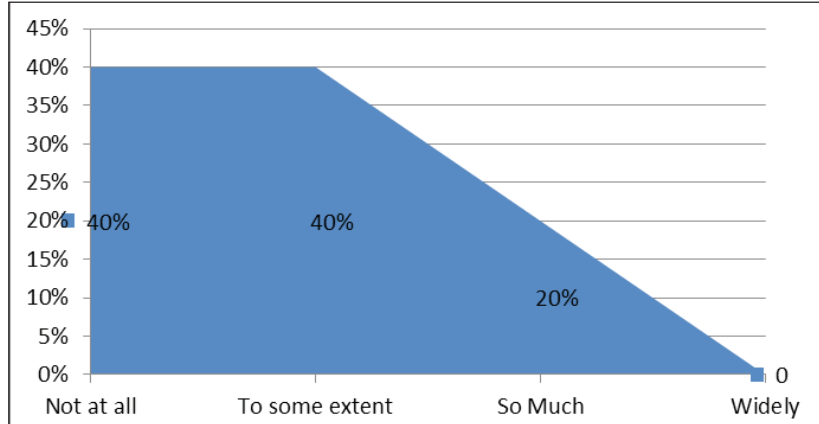
40% of the organizations stated that it has never allocated resources ( especially time and money ) to call for reform of the bankruptcy system where as 40% of it allocated some, to a certain extent and 20% of organizations had allocated lots of resources to call for reform of the bankruptcy system

5- Participation in coalition or building the network to get the cooperative efforts to join and to work on reforming the bankruptcy system



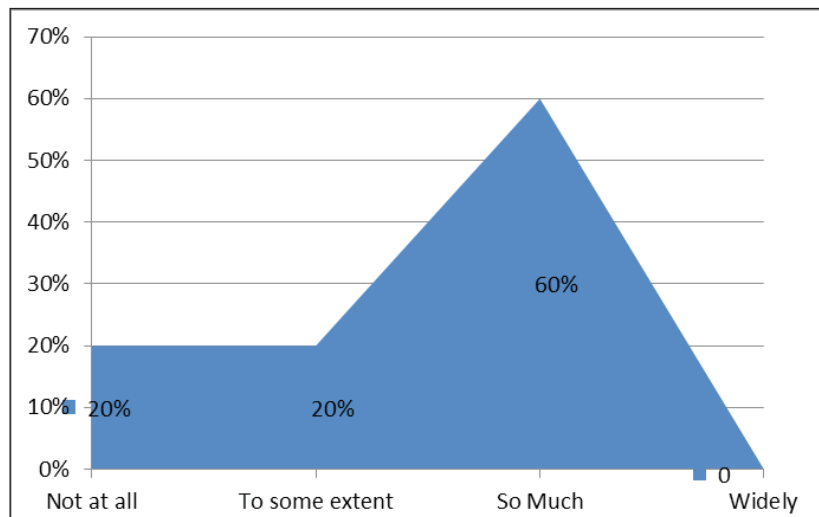
20% of the organizations expressed its enormous participation in coalition or building the network to get the cooperative efforts to join and to work on reforming the bankruptcy system where as 40% expressed to a certain extent its miniature participation **and 40 % had never participated** in coalition or building network to get the cooperative efforts to join and to work on reforming the bankruptcy system

6- Measures of organizations to affect the general policy or other aspects to reform the bankruptcy system



40% of the organizations expressed that it takes enormous measures to affect the general policy or other aspects to reform the bankruptcy system where as 40% of them takes some measures to affect the general policy or other aspects to reform the bankruptcy system and 20% of them don't take any measures for this topic

7- Follow up of organizations after a general political decision up to ensure execution and/or protect the public welfare



60% of the organizations expressed its great willingness to follow up after a general political decision to ensure execution and/or protect the public welfare whereas 20% of them are somehow ready to follow up and 20% are not willing to follow up at all to ensure execution and/or protect the public welfare

## Annex 9

Comparison chart for the results of the survey

	Common questions between the two countries	EGYPT			JORDAN		
		Yes	No 96%	No answer 4%	Yes 7%	No 87%	No answer 7%
1	Do you believe that the procedures of preventive legal settlement of bankruptcy stated in the current commercial law are effective and could save the defaulting trader?	Yes	No 96%	No answer 4%	Yes 7%	No 87%	No answer 7%
2	Do you consent that the preventive legal settlement of bankruptcy confines to regular debts as is the case now in the valid commercial law , i.e doesn't include secured debts?	Yes 66%	No 30%	No answer 4%	Yes 66%	No 34%	No answer
3	Do you think that the legislator should intervene to amend the law thus offering an opportunity to save and reorganize defaulting business enterprises and corporations to help them avoid bankruptcy and liquidation?	Yes 100%	No	No answer	Yes 93%	No 5%	No answer 2%
4	if your answer was yes to the previous question , do you consent that the court should have a role in saving and reorganizing business enterprises and companies ?	Yes 43%	No 57%	No answer	Yes 71%	No 29%	No answer
5	Do you think creditors whose debts are not documented and still under dispute should be allowed to vote on the reorganization plan?	Yes 49%	No 51%	No answer	Yes 74%	No 26%	No answer

6	Do you think that reorganization procedures should be restricted to companies with a certain minimum capital?	Yes 51%	No 49%	No answer	Yes 51%	No 49%	No answer
7	Do you believe that the number of employees at the company, and not only its capital should be taken into consideration when developing the conditions of the reorganization request?	Yes 81%	No 19%	No answer	Yes 58%	No 40%	No answer 2%
8	Do you agree that the consequence of preliminary acceptance reorganization request would be halting the execution of the mortgage bonds of movables and immovable property until deciding on the request?	Yes 66%	No 11%	No answer 23%	Yes 41%	No 59%	No answer
9	Do you think that the creditors of non-outstanding debts should be allowed to vote on the reorganization plan?	Yes 49%	No 49%	No answer 2%	Yes 84%	No 16%	No answer
10	Do you support giving the insolvent individual enterprises and companies and their creditors a chance to apply the procedures of the reorganization plan through a private or a governmental agency in which the role of the court restricts to approving the decision of this agency?	Yes 77%	No 19%	No answer 4%	Yes 77%	No 21%	No answer 2%
11	Do you think that the period that the bankruptcy lawsuit takes before the court is	Adequate period?	Very long period ?100%	Short period?	Adequate period?14%	Very long period ?86%	Short period?



12	A trader is declared bankrupt in the current legal system if he ceases paying his business debts where as the trend in the new legislations is to declare bankruptcy of the trader even if he stopped paying his civil debts , do you think the internal national law should be amended to harmonize with the new legislations?	Yes 96%	No 4%	No answer	Yes 57%	No 43%	No answer
13	Do you agree that the date of cessation of payments should be tied with a certain period starting from the date of the filing of the lawsuit instead of the date of the court's decision declaring bankruptcy?	Yes 61%	No 31%	No answer 8%	Yes 91%	No 9%	No answer
14	In the case several companies -forming one legal entity - found in various different companies, how should the start of the period of uncertainty be marked out and how to identify it with respect to other members of the entity?	Yes 40%	No 60%	No answer	Yes 30%	No 61%	No answer 9%
15	do you believe , if the bankruptcy of the mother company extended to the affiliate companies	Should each company be considered alone and accomplish its paperwork, if necessarily, in case it was bankrupted 43%	Should action be taken to extend bankruptcy to include the other companies that compose the group of companies 57%	---	Should each company be considered alone and accomplish its paperwork, if necessarily, independently in case it was bankrupted 47%	Should action be taken to extend bankruptcy to include the other companies that compose the group of companies 53%	---

16	Do you believe that there is no necessary to require the bankrupt's approval on the reconciliation that is done by the bankruptcy trustee with the creditors under the supervision of the court?	Yes 32%	No 68%	No answer	Yes 12%	No 83%	No answer 2%
17	Can the creditor file a bankruptcy lawsuit against his debtor if he had previously agreed with the latter to solve all disputes stemming from this agreement through arbitration?	Yes 32%	No 68%	No answer	Yes 63%	No 30%	No answer 7%
18	Do you approve the presence of specific provisions for the liquidation of certain enterprises (banks and insurance companies) independent from the current bankruptcy and liquidation provisions?	Yes 72%	No 28%	No answer	Yes 91%	No 7%	No answer 2%
19	In your opinion, is the inclination towards decreasing the role of the creditor's group in the management and running of the bankruptcy estate and doubling the role of the judicial authority in this regard, so that it would have an active and a guiding role and not only an observing and supervising role, would provide greater guarantees in the speed and honesty and maintenance of the rights of the creditors?	Yes 79%	No 19%	No answer 2%	Yes 63%	No 35%	No answer 2%

20	Do you think articles should be added which would allow the court that declared bankruptcy to take urgent measures ( placing seals and the preparation of inventories) beyond the territorial jurisdiction i.e so that its jurisdiction will include the whole country?	Yes 49%	No 26%	No answer 25%	Yes 93%	No 5%	No answer 2%
21	Do you think it is useful to give the general prosecution a role in initiating a bankruptcy lawsuit?	Yes 13%	No 87%	No answer	Yes 55%	No 43%	No answer 2%
22	the Jordanian law allows mortgaging the movables of the debtor ( contrary to stocks , shares , cars ) a possessing mortgage . do you think that the provisions of possessing mortgage for the other movables are enough to protect the rights of the creditors?	Yes 15%	No 70%	No answer 15%	Yes 50%	No 48%	No answer 2%
23	do you think that the Egyptian current credit information system ( for instance: commercial register and data of companies control department ) is enough to give the information needed for creditors to inquire about the financial position of the trader's status and his debts before giving him any kind of credit whether loans or business dealings in installments?	Yes	No 98%	No answer 2%	Yes 41%	No 59%	No answer

	if your answer was no to the previous question , what , in your opinion , is the best solution. Choose one of the following answers	Establish a company to gather the credit information17%	Amending the present commercial register system in order to widen the spectrum of credit information gathered21%	Linking the credit information enterprises ( commercial register, real estate register, securities register) with a comprehensive information system.62%	Establish a company to gather the credit information20%	Amending the present commercial register system in order to widen the spectrum of credit information gathered38%	Linking the credit information enterprises ( commercial register, real estate register, securities register) with a comprehensive information system.42%
23.1		Yes 6%	No 59%	No answer35%	Yes 44%	No 29%	No answer 27%
24	Contrary to the previous question , are there any legal articles that manages credit inquiry service and allows access to the data to check the debtor's status with respect to his debts and facilities?	Yes 75%	No 25%	No answer	Yes 20%	No 80%	No answer
24.1	if your answer was yes to the previous question, Is this system central and found on the national level?	Yes 50%	No 50%	No answer	Yes 33%	No 67%	No answer
24.2	if your answer was yes to question 24, Is this system doable ,accessible and could be inspected?	Yes 75%	No 25%	No answer	Yes 89%	No 11%	No answer
24.3	if your answer was yes to question 24, Have any conditions been specified for using the information provided by such a system so as not to abuse it for defamation						

24.4	if your answer was yes to question 24, Are there any measures to protect the information provided by the credit inquiry system	Yes 75%	No 25%	No answer	Yes 80%	No 20%	No answer
24.5	if your answer was yes to question 24, Would the concerned people be informed when information related to them is being used take decisions against them	Yes 100%	No	No answer	Yes 64%	No 36%	No answer
24.6	if your answer was yes to question 24, Can the debtor object on the false and incomplete information about him?	Yes 100%	No	No answer	Yes 91%	No 9%	No answer
24.7	if your answer was yes to question 24, Are there any mechanisms to investigate these objections / disputes and to correct the information?	Yes 50%	No 50%	No answer	Yes 100%	No	No answer
25	do you think it is important to add an explicit provision in the Egyptian law which declares the liability of the chairman and the board of directors in a joint stock company who participate regularly and effectively in the management of the company in the case of bankruptcy?	Yes 98%	No 2%	No answer	Yes	No	No answer

26	is it preferable to add provisions to the bankruptcy law which protects partners and contributors who did not effectively participate in the management of the company from the effects of the declaration of bankruptcy even if it was fraudulent bankruptcy caused by the board of directors?	Yes 94%	No 6%	No answer	Yes 75%	No 20%	No answer 5%
27	the commercial law declares the liability of the chairman and board of directors for mistakes done during their management of the company before the contributors and third person. Do you think that this article could include liability of the chairman and board of directors concerned to bare the debts of the company in case their mistake in management or negligence or deliberate action lead to company to bankruptcy or liquidation ?	Yes 32%	No 62%	No answer 6%	Yes 75%	No 25%	No answer
28	Do you think that the period that liquidation lawsuits take before the court is	Adequate period?	Very long period ?100%	Short period?	Adequate period?40%	Very long period ?60%	Short period?
29	Do you assent the role of the general prosecution in the obligatory liquidation cases?	Yes 81%	No 17%	No answer 2%	Yes 52%	No 48%	No answer
30	Does the current commercial law include restraints and clear and specified procedures for selling the company's assets in liquidation?	Yes 75%	No 12%	No answer 13%	Yes 18%	No 75%	No answer 7%

31	Do you believe that the competence of assigning an auditor in obligatory liquidation should be given to the court instead of the liquidator?	Yes 39%	No 55%	No answer 6%	Yes 66%	No 34%	No answer
32	Do you believe that the punishments imposed on the auditor for submitting false data is an enough guarantee for the rights of the creditors?	Yes 6%	No 73%	No answer 21%	Yes 67%	No 26%	No answer 7%
33	What is the best choice to accept the preventive legal settlement request ?	Requiring a specific majority of debts to accept the preventive legal settlement request (judicial settlement) 32%	Requiring a specific majority of the number of creditors to accept the preventive legal settlement request (judicial settlement) 4%	Requiring a double majority (of both debts and number of creditors) to accept the preventive legal settlement request (judicial settlement) 64%	Requiring a specific majority of debts to accept the preventive legal settlement request (judicial settlement) 32%	Requiring a specific majority of the number of creditors to accept the preventive legal settlement request (judicial settlement) 4%	Requiring a double majority (of both debts and number of creditors) to accept the preventive legal settlement request (judicial settlement) 64%

34	which of these courts , in your opinion, is the most competent to look into the request of bankruptcy that includes the entity of group of companies?	The court before which the bankruptcy lawsuit was first filed , in which the remaining requests get transferred to it from the other courts 54%	The court within whose jurisdiction lies the head office of the mother company , in the event the group of companies was established on this bases and the mother company was included in the request 20%	The court within whose jurisdiction lies the center of control and decision making in the company 18%	The court before which the bankruptcy lawsuit was first filed , in which the remaining requests get transferred to it from the other courts 9%	The court within whose jurisdiction lies the biggest number of debtors of the various members of the group 18%	The court within whose jurisdiction lies the center of control and decision making in the company 4%			
35	which of these personal consequences should apply to bankrupt in cases of normal bankruptcy ( not simple or fraudulent bankruptcy) you can choose more than one answer.	banning the bankrupt from traveling 4%	depriving the bankrupt from his professional rights 4%	depriving the bankrupt from his political rights 9%	no consequences 57%	banning the bankrupt from traveling 35%	depriving the bankrupt from his professional rights 14%	depriving the bankrupt from his political rights 12%	depriving the bankrupt from practicing some activities and acts 34%	no consequences 5%
		banning the bankrupt from traveling 29%	depriving the bankrupt from his professional rights 16%	depriving the bankrupt from his political rights 21%	no consequences %	banning the bankrupt from traveling 21%	depriving the bankrupt from his professional rights 16%	depriving the bankrupt from his political rights 19%	depriving the bankrupt from practicing some activities and acts 31%	no consequences 12%.
36	in the case of fraudulent bankruptcy , which of these personal consequences should apply to the bankrupt? You can choose more than one answer									



37	Do you agree that the consequence of preliminary acceptance reorganization request would be halting lawsuits and enforcement proceedings against the creditor until deciding on the request or should halting limit to the enforcement proceedings?	halting lawsuits and provisory suspension and enforcement proceedings 66%	halting provisory seizure and enforcement proceedings only 17%	I don't know 17%	halting lawsuits and provisory suspension and enforcement proceedings 39%	halting provisory seizure and enforcement proceedings only 54%	I don't know 7%
38	Do you think there should be a preceding vote on the reorganization plan	Both regular and secured creditors 49%	regular creditors only 2%	secured creditors only 49%	Both regular and secured creditors 77%	regular creditors only 5%	secured creditors only 18%
39	With regards the approval on the reorganization plan , do you think there should be a requirement of	specific majority of debts 15%	specific majority of the number of creditors 2%	double majority of debts and number of creditors 83%	specific majority of debts 32%	specific majority of the number of creditors	double majority of debts and number of creditors 68%

Only for EGYPT				
		Yes	No	No answer
40	In the case of several companies -forming one legal and economic entity- found in various different countries, would the bankruptcy of the mother company lead to the bankruptcy of the affiliate companies found in the different countries?			
41	If you answer was yes to the previous question, how would we identify the starting date of the period of uncertainty with respect to all these companies (members of the group)?	Would this date be unified for all members? 71%	Would this date be independent for each member alone? 29%	I don't know
42	Do you think it is necessary that the current commercial law includes regulations for cases of international bankruptcy?	Yes 94%	No 6%	I don't know

Only for JORDAN				
43	Do you approve the presence of specific provisions for the liquidation of certain enterprises (banks and insurance companies) independent from the current bankruptcy and liquidation provisions?	Yes 91%	No 7%	I don't know 2%
44	Do you think that the court , after declaring the trader bankrupt , to protect the rights of the creditors has to inform the bankrupt that he has to stop and is forbidden from doing any commercial act ?	Yes 93%	No 7%	I don't know
45	Do you think that selling the wealth of the bankrupt could cause major controversies in practical application?	Yes 68%	No 23%	I don't know 9%

46	Do you think prioritizing the payment of debts of the bankrupt could cause major controversies in practical application?	Yes 57%	No 29%	I don't know 14%
47	Do you think that the jurisdiction of the commissioner is broad enough in practical application?	Yes 40%	No 46%	I don't know 14%
48	Do you think it is permissible to declare bankrupt an affiliate company consequent to the bankruptcy of the mother company ?	Yes 32%	No 68%	I don't know
49	The provisions of the current commercial law does not deal with cases of international bankruptcy while the current provisions concerning the execution of foreign verdicts doesn't allow the execution of these verdicts in the kingdom , do you think these provisions should be amended?	Yes 70%	No 15%	I don't know 15%
50	Do you think it is necessary to have specific provisions in the Jordanian law concerning the mortgage of the business enterprise together with its moral elements ( commercial name, customers) and material elements like future merchandises which would replace existing merchandise present at the time of the mortgage?	Yes 41%	No 57%	I don't know 2%
51	Do you think it is important to add an explicit provision in the law which declares that the liability of chairmen in a joint stock company does not affect the chairmen alone, who are responsible for managing the company, it extends to affect every person participating regularly and effectively (realistically) in the management of the company?	Yes 67%	No 29%	I don't know 4%
52	Does prioritizing the payments of debts in liquidation cause controversies in practical application?	Yes 49%	No 25%	I don't know 26%
53	Does the current commercial law include clear and specified provisions to as to allocating the salaries and fees of the liquidator?	Yes 86%	No 12%	I don't know 2%

## Annex 10

### The World Bank Principles for effective creditor rights and insolvency systems



THE WORLD BANK

PRINCIPLES FOR

EFFECTIVE INSOLVENCY AND CREDITOR RIGHTS SYSTEMS

*(Revised)*

2005

#### **Revised Draft**

*This document contains the draft World Bank revised Principles for Effective Insolvency and Creditor Rights Systems. The Principles have been revised to take into account the lessons and experience based on a series of ROSC assessments, and based on feedback and dialogue with the World Bank's international partner organizations and the international community.*

*The revised principles have not as yet been reviewed by the World Bank's Board and should not be relied upon as being the final statement of these principles. Some aspects of the principles may be subject to further review and refinement. Commentaries on each of the revised Principles will be prepared after the Principles are finalized. The revised Principles are to be presented in the Bank's board shortly.*

*Questions or comments should be directed to the World Bank Legal Vice Presidency at [gild@worldbank.org](mailto:gild@worldbank.org)*

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A3	Security (Movable Property)
A4	Registry Systems
A5	Commercial Enforcement Systems
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B1	Credit Information Systems
B2	Director and Officer Accountability
B3	Enabling Legislative Framework
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	<b>Governance</b>
C6	Management
C7	Creditors and the Creditors Committee
	<b>Administration</b>
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C9	Stabilizing and Sustaining Business Operations
C10	Treatment of Contractual Obligations
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