

Initial Results of the Hawkamah-World Bank Task Force on Insolvency and Creditor Rights Systems in MENA

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**DIFC, Dubai
Dr. Nasser Saidi,
Executive Director, Hawkamah**

Introduction: Task Force On Insolvency and Creditor Rights Systems

- Recognising the importance of well established Insolvency regimes and frameworks, the Hawkamah launched a Task Force on Insolvency and Creditor Rights System with the World Bank, INSOL and the OECD

Objectives

- To take stock of the Insolvency Regimes existing in the MENA countries
- To develop a MENA Policy Brief on Insolvency and Creditor Rights Framework
- To identify priorities and propose concrete recommendations.

Executive Summary-The Survey

2008 Hawkamah/ World Bank / INSOL/ OECD survey:

- 11 MENA Jurisdictions Insolvency Systems
 - DIFC
 - Egypt
 - Jordan
 - Kuwait
 - Oman
 - Palestine
 - Saudi Arabia
 - UAE
 - Yemen
 - Qatar

Lebanon results are being translated

- Countries scored out of a total of 155 possible points

The Questionnaire

172 Questions covering the following topics:

- Part A: Legal Framework for Creditor Rights
- Part B: Risk Management and Corporate Workouts
- Part C: Legal Framework for Insolvency
- Part D: Re-organisation Proceedings
- Part E: Implementation of the Insolvency Systems

Overall Survey Results-DIFC Score

- DIFC scored the most points in the **overall survey results** (126 Points out of total 155 possible points). Oman follows with 105 points. UAE scored 74 points.
- DIFC was the second highest scorer in the area of **contract avoidance**. (89% positive answers provided). The MENA Average is 65%. UAE scored 100%.

Summary of Results-DIFC Score

- DIFC and Palestine were the highest scorers in the area of **Insolvency representatives**. (86% positive answers provided). The MENA Average is 65%. UAE scored 80%.
- DIFC scored the second highest points in the area of **oversight management in reorganisations** (80% positive answers provided against the MENA Average of 45%). Oman scored 100% and UAE 25%.

Specific Areas of Strength in MENA

- MENA Insolvency Laws address the following most strongly:
 - Laws provide for efficient, transparent and reliable methods of satisfying creditors' rights
 - Clear rules governing priority of claims over security exist
 - Laws identify courts or tribunals in which insolvency proceedings should be commenced
 - Control of the insolvency estate must be immediately transferred to the insolvency practitioner
 - Unsecured creditors can lodge their claims cheaply and quickly
 - Courts are freely accessible by all parties
 - Judges have rules to deal conflicts of interest
 - Courts have sufficient authority to address abuse of the court

Strength of Insolvency Laws by Country

- DIFC - 126*
- Oman - 106
- Kuwait – 105

Strongest
MENA Countries

- Jordan - 51
- Yemen - 61
- UAE - 74

Weakest
MENA Countries

These results reflect the laws as drafted. Domestic implementation of laws affects results.

*Of a possible 155. The average of all countries was 87.

Strength of Insolvency Laws by Issue

- Corporate Governance – 81*
- Secured Transactions - 71
- Creditors' Committees – 71

- Credit Information Systems – 28
- Regulation of Practitioners – 37
- International Considerations - 38



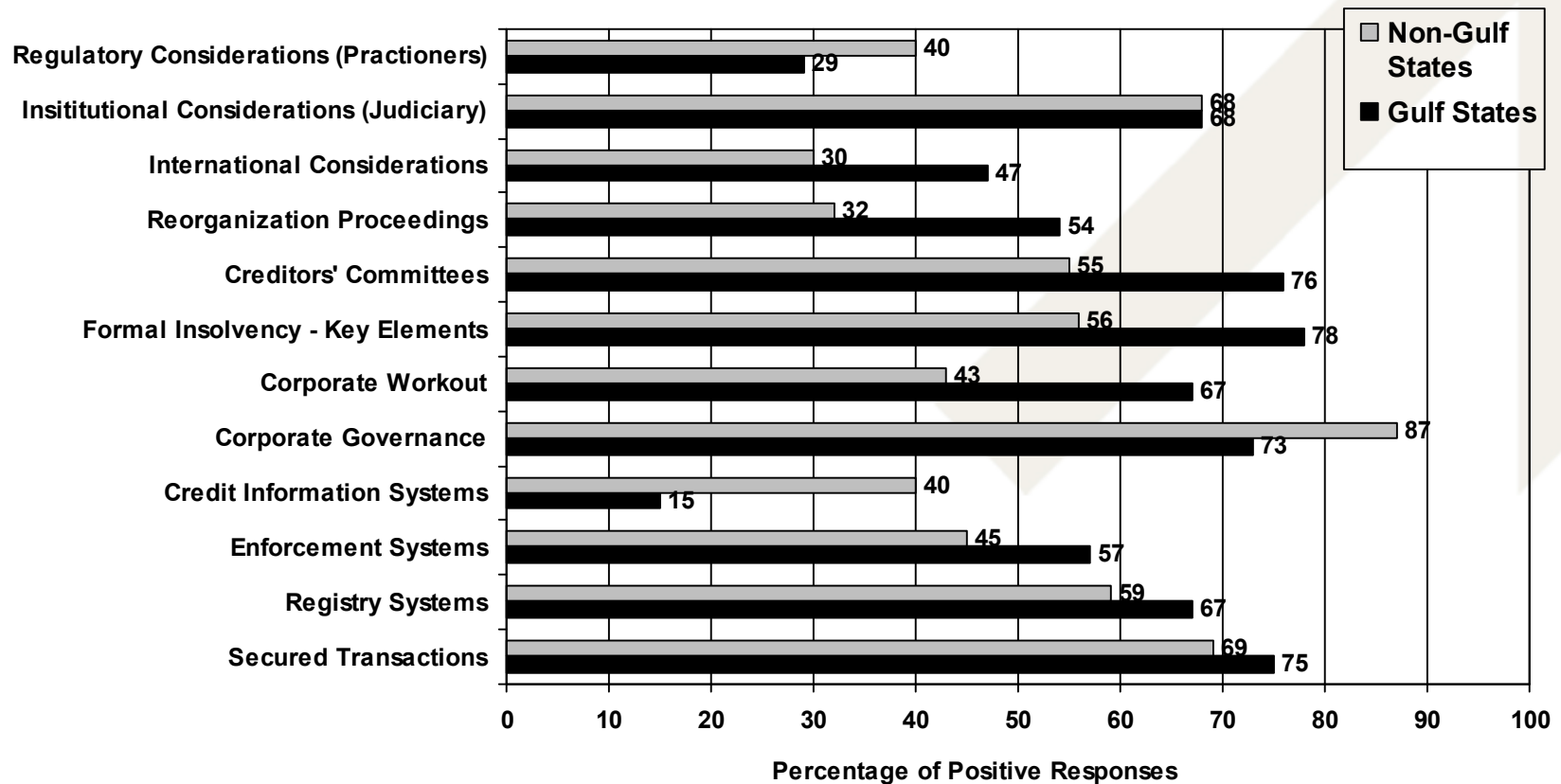
Strongest issues
in
MENA Countries



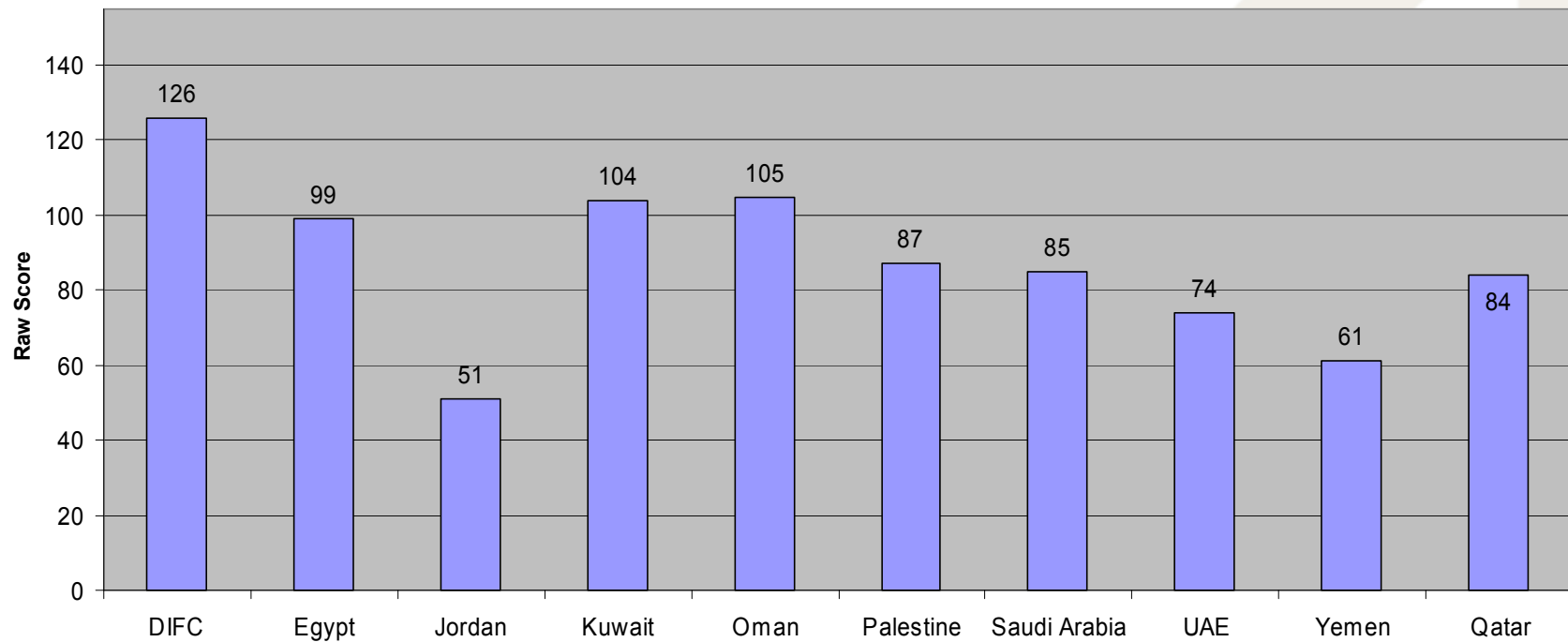
Weakest issues in
MENA Countries

***of a possible 100**

Results for Gulf v. Non-Gulf States



Overall Survey Results: Jurisdiction Rankings

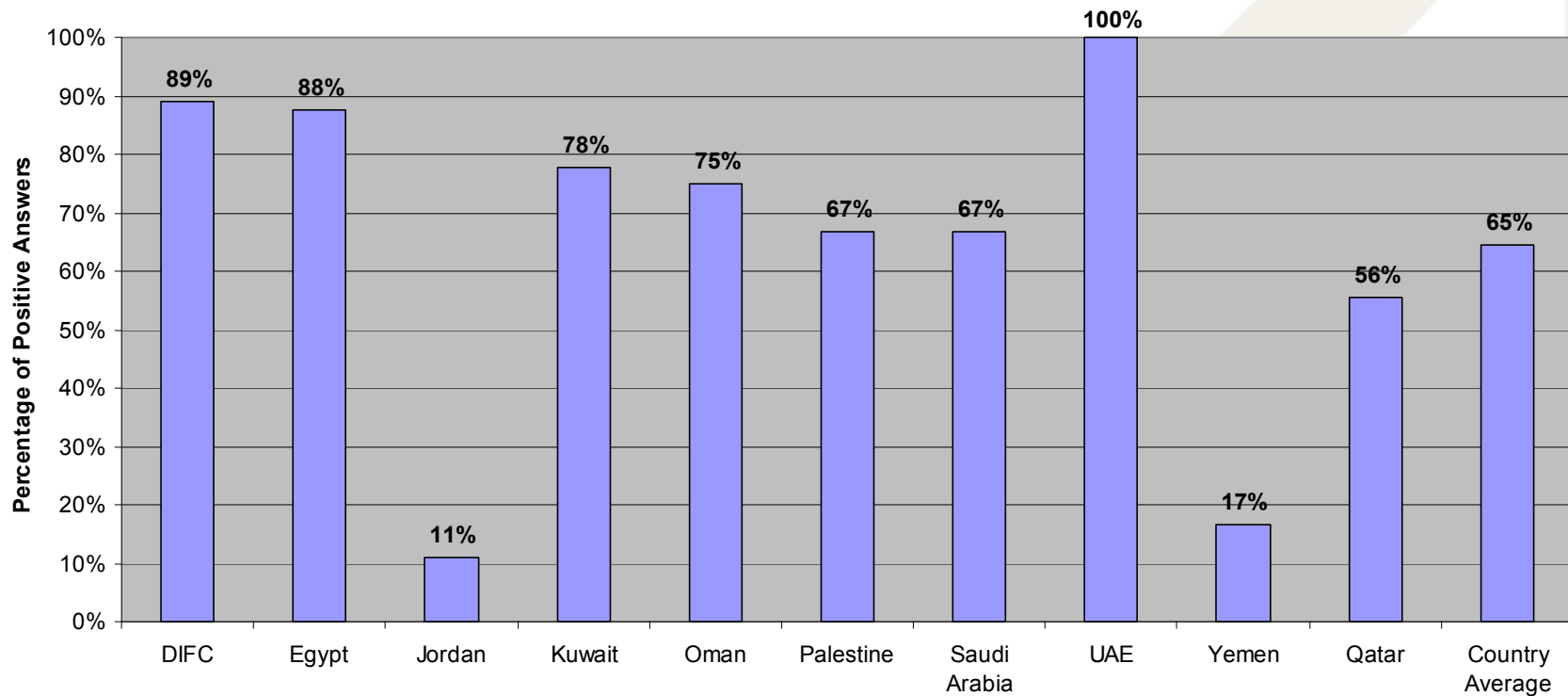


The World Bank Insolvency Principles and Corporate Governance

- Under the law, it should be possible to retroactively void and 'undo' certain transactions, provided that the scope of such 'reviewable transactions' is very clearly defined. The effect of such a provision will be to necessarily limit the practical ability of management to engage in certain transactions when counterparties believe that an insolvency might be imminent. (IPG C11)

Contract Avoidance in Insolvency

Insolvency Laws in most MENA countries should be strengthened in the area of contract avoidance.



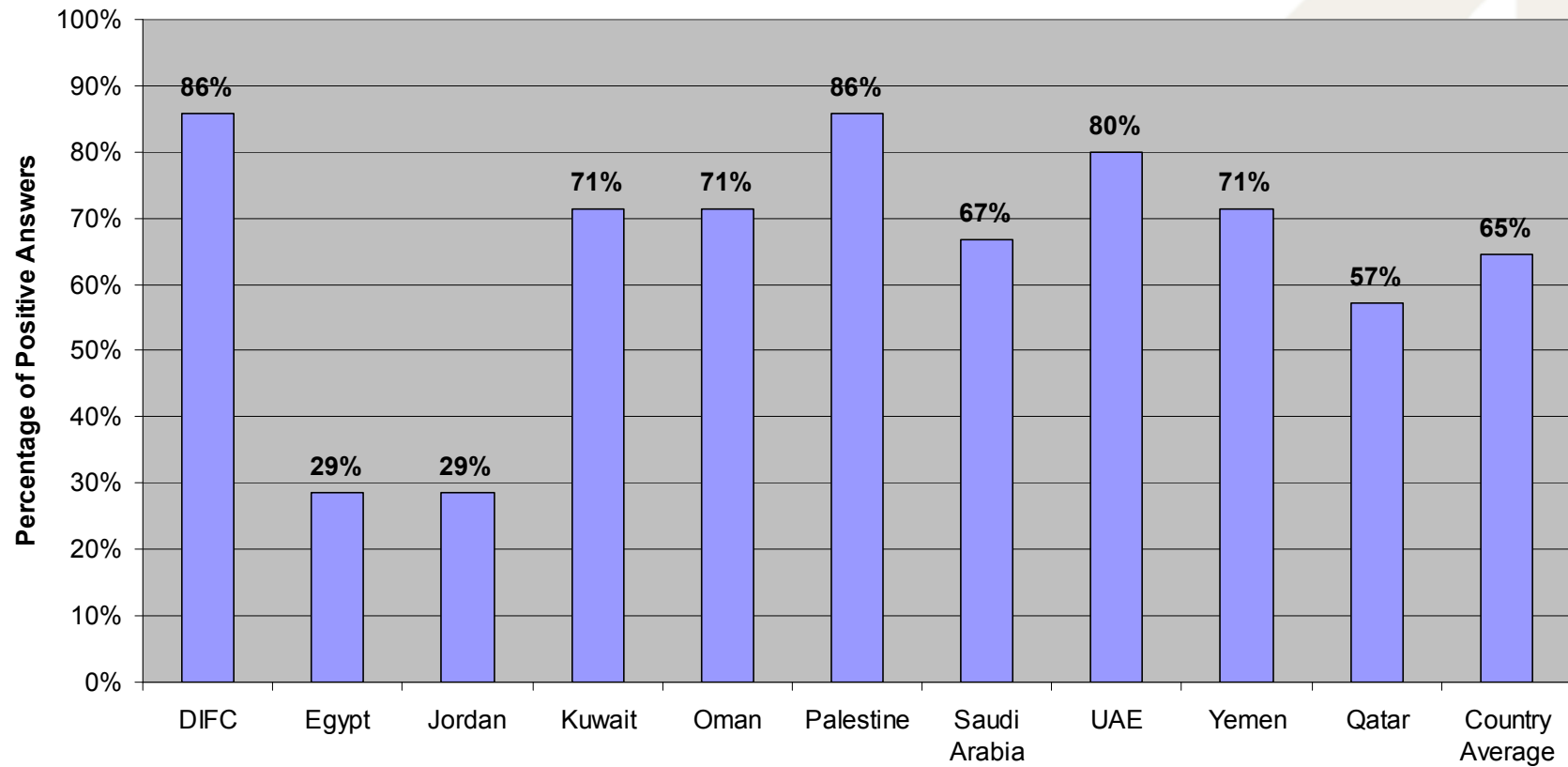
The World Bank Insolvency Principles and Corporate Governance

- In liquidation proceedings, management should be completely divested of its ability to deal with the assets of the company. Control of the assets should immediately be turned over to an independent party (usually the 'insolvency representative'). (IPG C6)
- In such situations, there should be a positive obligation upon officers and directors to cooperate and assist the insolvency representative, wherever reasonable. This may include, surrendering books and records of the company that are in the director's possession. Such positive obligations, if not met, should result in sanctions. (IPG C2)

Key Types of Officer and Director Liability in Insolvency Situations

- 1. Failure to cooperate during an insolvency proceeding;**
- 2. Liability for specific types of debts** – For example, funds collected in trust for another party that the officer or director caused to be squandered;
- 3. Fraudulent Trading** – the intentional or reckless incurring of debts when the officer or director knows that there is no prospect of paying, so that this is a fraud;
- 4. Negligent Trading** – Similar to 1 but requiring a much lower standard of proof on the part of the party alleging malfeasance. In order to be liable, the officer or director must have incurred debts at a time when a reasonable person in his or her position ought to have known that there was virtually no possibility of those funds being repaid; and
- 5. Business Misjudgments** – Leading the company into a course of action that, on an objective basis, is likely to result in financial disaster.

Insolvency Representatives

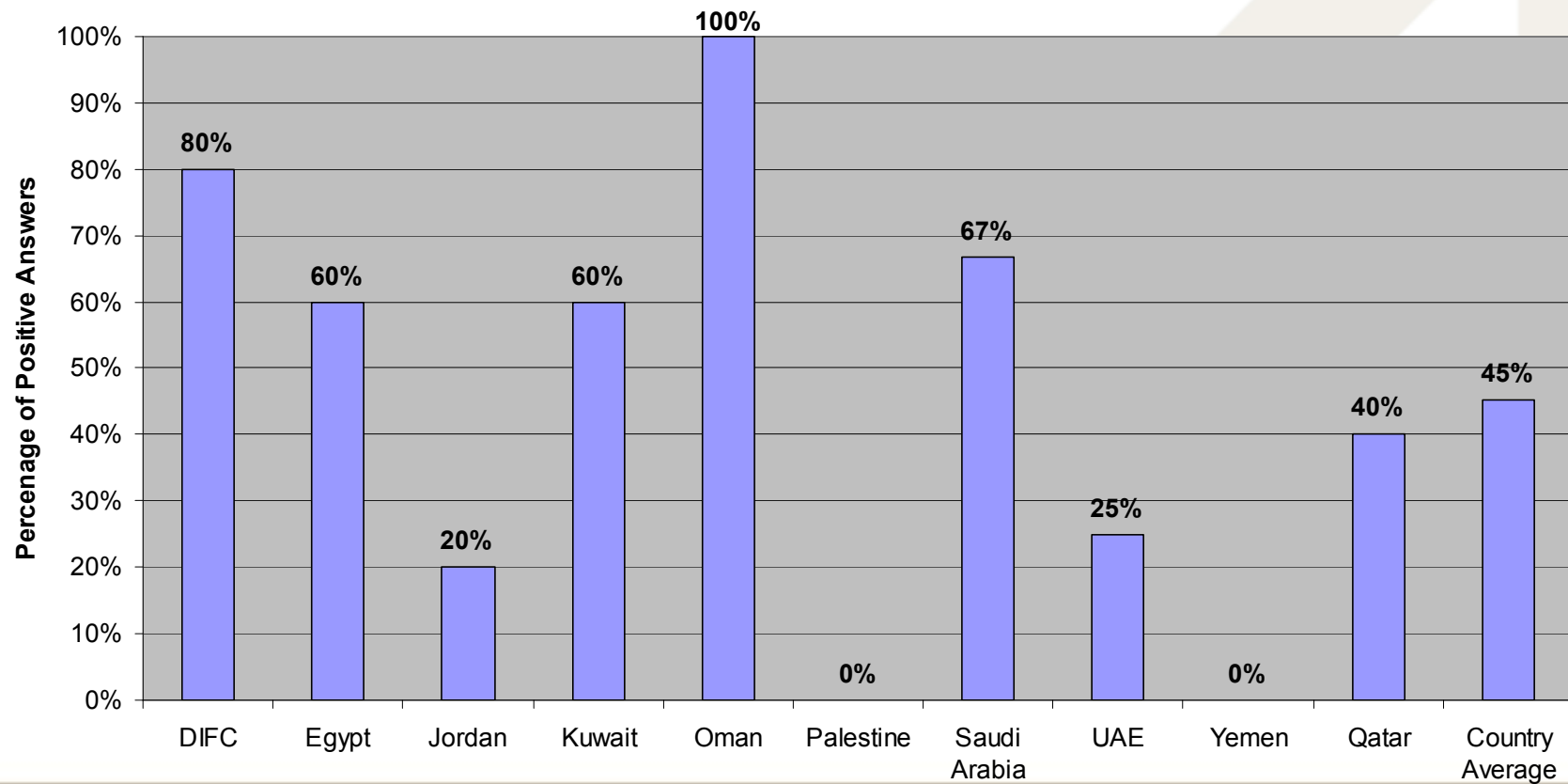


The World Bank Insolvency Principles and Corporate Governance

- Where the proceedings have become a reorganization, there are a number of policy options for control of the company, but all options require, at a minimum, some level of independent oversight of management and the ability to have management removed if it behaves in a negligent or reckless fashion. (IPG C14)

Oversight of Management in Reorganisations

Many MENA countries' laws should be strengthened to provide for independent oversight of management during reorganizations.



Next Steps

- Further Analysis of MENA Survey
- Policy Discussion
- Implementation Guide



But Most Importantly

- DIFC should use these survey results to encourage more companies to register
- DIFC can also use this survey to check the revised Insolvency Law for any shortcomings
- Given MENA's exposure to the crisis, countries must take preventative measures to mitigate the economic impact of the crisis.

Strengthening insolvency laws is crucial.