

Saudi bankruptcy law strengthens investor confidence

The new law came into effect in August last year and gives new options to bankrupt debtors while also protecting creditors' rights



Saudi Arabia's bankruptcy law is a significant step towards giving confidence to investors in the kingdom under the Vision 2030 National Transformation Programme. It provides options for debtors facing financial difficulties, distress or bankruptcy by implementing detailed guidelines related to liquidation, preventative settlement and financial reorganisation.

In addition, it protects creditors' rights by reducing the cost and timeframe of bankruptcy procedures, which is expected to improve



The law protects creditors by reducing the cost of bankruptcy procedures



conditions for both local and foreign investors. For potentially distressed investors, it provides the opportunity to re-evaluate financials, fulfil pending corporate obligations and continue business operations under eased procedures.

The law also incorporates advantageous provisions (under Articles 127 and 142) for small debtors looking to undergo a preventative settlement or financial reorganisation.

Preventative settlement

Article 13 of the law states that preventative settlement is a procedure that allows the debtor to reach an agreement with its creditors to settle its debts while maintaining the manage-

ment of its company. Debtors can initiate a preventative settlement if they are expecting financial distress that may prevent the continuity of their operations or if they are bankrupt, and within 40 days the court will post a hearing after notifying the debtor.

However, a preventative settlement may not be requested by a debtor that has already benefitted from such a settlement within the previous 12 months, or, according to Article 15 of the law, if, upon the court's discretion at the hearing, the debtor is deemed likely to incur additional financial indebtedness or if the settlement request is submitted in bad faith.

Financial reorganisation

Article 2 of the bankruptcy law defines financial reorganisation as a procedure that allows the debtor to reach an agreement with its creditors by reorganising its financials under the supervision of a bankruptcy licensed trustee. Under Article 17 of the law, any debtor classified as a preventative settlement beneficiary may submit a financial reorganisation request. Moreover, the debtor's creditors may make the request, in which case the debtor will be notified of the request within five days.

Liquidation

Liquidation is the act of selling the debtors' assets and distributing the proceeds to the creditors, through and under the supervision of the bankruptcy licensed trustee. Under Article 92 of the law, authorities may request a liquidation if the value of debt owed by a financially distressed or bankrupt debtor is above a certain threshold.

BENEFITS OF SAUDI ARABIA'S NEW BANKRUPTCY LAW



Regulates procedures such as settlements and liquidation



Aligned with regional and international commercial law practices



More efficient **recovery** of debt by creditors



Raises the value of debtors' assets

Article 100 of the law states that upon the commencement of the liquidation process, a bankruptcy licensed trustee will be appointed to carry out the liquidation procedures and the debtor or the entity under liquidation will be prohibited from managing their business operations, and any action taken by the debtor during this period will be null and void.

The AHAB test case

The kingdom's Ahmad Hamad al-Gosaibi & Brothers (AHAB) is the first company to file for financial restructuring under the Saudi bankruptcy law. The firm became one of the largest corporate casualties of the global financial crisis when it defaulted on around \$20bn-worth of debt in 2009.

The resulting 10-year saga represents one of the most complex restructuring cases in the world; claims and counter-claims arising from the default have been litigated in various courts around the globe.

A Saudi commercial court accepted a filing by AHAB to have its decade-long dispute with creditors resolved through financial restructuring under the kingdom's new bankruptcy law, and rejected a demand to liquidate the company filed by two of its creditors.

Earlier this year, it applied for a "protective settlement procedure" under the law. After that was rejected, it applied for the financial restructuring procedure. The court is now expected to appoint a bankruptcy trustee who will collect and assess creditors' claims.

The International Bank Corporation, a defaulted Bahraini bank with nearly \$3bn in claims against AHAB, has welcomed the court's

decision to accept financial restructuring, saying this would provide clarity going forward.

Impact of the new law

The regional and international creditors in the AHAB case represent more than 85 per cent of total debt, some of whom advised filing under the new bankruptcy law.

Previously the main options for debt defaults were liquidation or cash injections. The enactment of the law provides more options and regulates procedures such as settlements and liquidation. It is also more or less aligned with regional and international commercial law practices, which makes the probability of its success much higher.

The realised value of the past three auctions of AHAB properties was at 30 per cent of market value in a normal buyer-and-seller market. Continuing this would have significantly jeopardised the recovery ratio for all creditors, but the law now enables more efficient recovery of debt by creditors through the varied options available in the bankruptcy law.

In addition to strengthening investors' confidence in the local market, the new law will raise the value of debtors' assets, since they will not be obliged to sell for low prices through an enforced liquidation, and will enable creditors to recover the money owed to them more efficiently. 

ABOUT THE AUTHOR

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