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How Debtors in Saudi Arabia Can Manage Insolvency Risk Post-Covid-19

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Introduction

Like much of the world, residents in the Kingdom of Saudi Arabia currently live under social distancing measures and government lockdowns. As a result, many businesses, particularly in the retail, food & beverage, entertainment, travel and hospitality sectors are experiencing unprecedented drops in revenue, which in turn is placing incredible pressure on their cash flows and operations.

While the Kingdom has announced a multibillion-riyal financial assistance programme to help the private sector in this difficult time, it is likely, if not inevitable, that many businesses in the Kingdom will need to consider whether they can remain as a going concern. It is fortunate, therefore, that the Kingdom, in 2018 (1439H), adopted the Bankruptcy Law[1] (the BL) and its Implementing Regulations[2] (the BLIR), which were designed to help businesses establish workouts/restructuring plans. Indeed, it is among the stated aims of the BLIR to enable "*Distressed Debtors … to restructure [their] financial position and maintain [their] activities with an aim to contribute to the economy and support it*."

This note addresses the applicability of the BL and the BLIR to persons in the Kingdom and considerations for businesses that are approaching, or already in, a distressed situation.

Who is Subject to the Bankruptcy Law?

The BL applies to each of the following persons:[3]

- any person, whether natural or legal, practicing commercial or professional activities and generating profits in the Kingdom;
- any commercial or professional company registered in the Kingdom; and
- any foreign investor, whether a natural or legal person, owning assets or participating in commercial or professional activities, or any other activity to generate profits through a licensed entity in the Kingdom.

[1] Royal Decree No. M/50 dated 28/05/1439H (corresponding to 15 January 2018).

[2] Council of Ministries Resolution No. 622 dated 24/12/1439H (corresponding to 4 September 2018).

[3] Article 4 of the BL.

When is a Person 'Insolvent' in the Kingdom?

The BL draws a distinction between a person as someone who is in a distressed situation (described in the BL as a "Distressed Debtor") and a person who is insolvent (an "Insolvent Debtor").[4]

A Distressed Debtor is a person that fails to discharge a debt on the date it comes due for payment. Although there is insufficient judicial interpretation of the BL due to its recent enactment, we believe that, consistent with the internationally accepted concept of insolvency, this term is effectively a cash flow test.[5]

To be an Insolvent Debtor, a debtor's debts must have consumed all of its assets (a test of that person's balance sheet). A Distressed Debtor may well become an Insolvent Debtor at the time its debt is next due to be discharged.[6]

What are the Options Available to an Insolvent Entity?

It is worth stepping back to consider the broader aims of the BL and the BLIR. The bankruptcy regime in the Kingdom has the following among its objectives:

- helping the Insolvent or Distressed Debtor to resume its activities and contribute to the economy of the Kingdom;
- balancing the position and needs of an Insolvent or Distressed Debtor with a fair consideration of creditors' rights, and ensuring that there is a fair distribution of assets to creditors upon liquidation; and
- reducing the cost of legal proceedings for Insolvent or Distressed Debtors.

With this in mind, the BL and the BLIR established five broad procedures for a debtor that balance the above objectives with the likelihood of a rescue, ranging from a preventative settlement, all the way through to liquidation (the "Bankruptcy Procedures"):

- **Preventative Settlement**—a form of collaborative procedure to facilitate agreement between a Distressed Debtor and its creditors, where the Distressed Debtor maintains the right to manage its activities;
- **Financial Restructuring**—a restructuring of the debtor's activity under a supervision of the Bankruptcy Officer; the debtor will not lose total control of its business, but the supervision by the Bankruptcy Officer will likely result in the debtor being required to sell certain assets to pay its debts;

[4] Article 1 of the BL.

[5] Article 1 of the BL defines Distressed Debtor as "*a Debtor who has not paid a due debt on its due date.*"

[6] Article 1 of the BL defines Bankrupt/Insolvent as "*a Debtor whose Debts have consumed all of its Assets*." While the Arabic term [مفلس] might often translate as "bankrupt," given the test applied, in this note we have chosen to use the more familiar term "Insolvent Debtor."

- **Liquidation**—the managed winding up of a debtor's business and the distribution of the sale proceeds to its creditors by the Bankruptcy Officer;
- **Administrative Liquidation**—a Liquidation process managed by the Bankruptcy Commission where the remaining assets of the debtor are insufficient to cover both the debts that are owed and the costs of the liquidation process; and
- **Small Debtor Procedures**—streamlined and simplified procedures that are available for smaller debtors where amounts owed are less than SAR 2 million.

Businesses should note, however, that there is now a public register of persons subject to Bankruptcy Procedures, so while it might be a necessary step to save a business, undertaking a Bankruptcy Procedure will be a matter of public record (though the record does not include the names of officers and directors/managers).

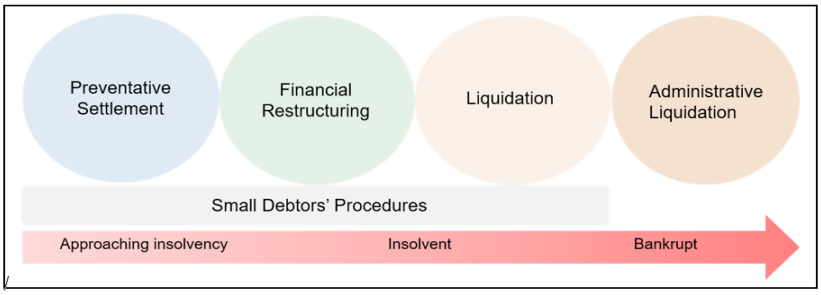

Fig.1. The range of Bankruptcy Procedures in the Kingdom

In the following sections, each of these procedures is considered in more detail. However, before adopting any Bankruptcy Procedure, the directors, managers and officers of a debtor must carefully consider what their liabilities will be both before and after adopting the applicable procedure.

Directors' Duties

The duties, responsibilities and liabilities of managers of a limited liability company (LLC) and directors of a joint stock company (JSC) are for the most part contained in the Companies Law (the CL),[7] the BL, the BLIR and

[7] Royal Decree No. M/3 dated 28/1/1437H (corresponding to 30 October 2015), as amended.

the company's constitutional documents (the articles of association for LLCs and the articles of association and bylaws for JSCs).[8]

Offences under the CL

LLC managers and JSC directors of debtors in financial difficulty should be aware that wrongful actions or failure to act can result in personal liability if shareholder or third-party losses are sustained as a result thereof.[9] If, for example, LLC managers and JSC directors misrepresent their company's financial position to shareholders or third parties (*e.g.* a lending bank), they could potentially face imprisonment for a term not exceeding five years and/or a fine not exceeding SAR 5 million.[10] However, provided that LLC managers and JSC directors continue to act in an open and transparent way when dealing with their stakeholders, take steps to balance the best interests of the company and its creditors when the company approaches insolvency and take appropriate advice when required, this risk should be relatively straightforward to navigate.

Offences under the BL and the BLIR

The BL and the BLIR contain a number of provisions dealing with the personal liability of LLC managers and JSC directors in the context of bankruptcy proceedings under the BL.

Directors' Actions before a Bankruptcy Procedure

Articles 200 to 211 of the BL make it a commission of an offence if the managers/directors or other officers[11] of a debtor, prior to the commencement of any Bankruptcy Procedure:

- misuse or seize personally the debtor's assets, or otherwise abuse their powers;[12]

[8] Directors and executive officers of listed JSCs are also subject to various rules and regulations issued by the Capital Market Authority (the CMA), including, for example, the Corporate Governance Regulations.

[9] LLC managers will be jointly liable for damages incurred by the LLC, its partners or third parties as a result of violating the provisions of the CL or the company's articles of association or as a result of wrongful acts committed by them in the performance of their duties (Article 165 of the CL). A similar provision is contained in Article 78 of the CL in relation to JSC directors.

[10] Article 211(a) of the CL.

[11] The BL uses the term "مسؤول" which can be translated as "responsible persons" and is understood to include senior employees (*e.g.* CEO, CFO) and employees who can make decisions binding on the debtor. We have used the term "officers" throughout this note to refer to this category of employees.

[12] It is assumed that "abuse of powers" in relation to directors and officers of the debtor means the exercise of powers and authorities granted to them under: (a) law (*e.g.* the CL); (b) the debtor's constitutional documents; or (c) any other corporate authorisation instruments that is either: (i) beyond the scope of the authority granted; or (ii) exercised for an improper purpose (*e.g.* for personal interests of a director or his relatives rather than in the interest of the debtor).

> ***"The best way to mitigate* [personal liability for actions] *is for directors, managers and officers to take and document regular legal and financial advice on their position, thereby creating a strong foundation of evidence to support their decisions, should they ever be challenged."***

- engage in the debtor's activities for the purpose of defrauding its creditors;
- continue the debtor's activities with no possibility of avoiding liquidation;
- adopt arbitrary or negligent methods to avoid or delay the commencement of a liquidation procedure, and therefore prejudice the rights of creditors, including through the sale of goods at rates below the market price to generate cash;
- execute transactions for free or for unfair consideration;
- pay the debts of any of the creditors in such a manner that prejudices the rights of other creditors (*i.e.*, preferential treatment); or
- abuse any of the Bankruptcy Procedures set out in the BL.

Each of the above offences is designed to ensure that directors, managers and officers are giving appropriate thought and consideration to the interests of creditors and are not simply trying to extract value from the business.

It is also an offence for a person[13] (including directors, managers and other officers) to commit any of the following acts prior to, or after, the commencement of any of the Bankruptcy Procedures:

- embezzling or concealing any of the debtor's assets or any of the bankruptcy assets;
- concealing, destroying or altering any of the debtor's books, or keeping books with incomplete or irregular data;
- retaining false accounts, failing to keep accounts in accordance with approved standards or removing documents from company accounts;
- engaging in fraudulent conduct for the purpose of inflating the obligations of the debtor or reducing the value of its assets;
- submitting misleading or incorrect information in any form to a Bankruptcy Officer, the court or the Bankruptcy Commission or failing to provide relevant information to those parties upon request;
- pledging or disposing of any of the debtor's assets or repaying all or part of any debts in violation of the BL or a judicial ruling;

[13] Article 201 of the BL uses the term "من كل" which in English means "anyone." Therefore, managers, directors and other officers of the debtor are subject to Article 201.

- settling any creditor rights or disposing of assets in violation of an agreed Bankruptcy Procedure, with the exception of any partial or total discharge of obligations granted by creditors to the debtor; or
- abusing any powers for personal gain or unlawful benefit.

While most of these offences might be considered to be "bad faith" actions, some of them fall within a grey area. For instance, with regard to negligent methods, we expect it could be disputed whether in the current environment, it will be clear that directors, managers and other officers have adopted "arbitrary or negligent methods" to delay the commencement of a liquidation procedure. The uncertainty as to how long social distancing and other lock-down measures will last puts directors, managers and other officers in a difficult position. The best way to mitigate this is for directors, managers and other officers to take regular legal and financial advice on their position and to document the advice they receive, thereby creating a strong foundation of evidence to support their decisions should they ever be challenged.

The penalties for breach of the above provisions of the BL are severe: imprisonment for a term not exceeding five years and/or a fine not exceeding SAR 5 million. In addition, the court may also ban offenders from directly or indirectly managing, participating, owning or voting an interest in any commercial establishment for a period not exceeding five years. Penalties are doubled in the case of repeat offences.

Risk of Challenge to Actions

The BL has introduced a regime that allows interested parties to challenge and set aside actions taken by the debtor (or its directors/managers/officers) during the period preceding the onset of a Bankruptcy Procedure, particularly in relation to related party[14] transactions for which there is a longer "look-back" or "hardening" period. The hardening period is the period during which transactions are vulnerable to challenge by interested parties.

Under Article 210 of the BL, any interested party has the right to object before the court to any of the following actions taken by the debtor during the 12 months preceding the commencement of a Bankruptcy Procedure with a *non-related party*, or during the 24 months preceding the commencement of a Bankruptcy Procedure with a *related party*:

[14] The BL defines "related parties" broadly, including: (i) debtor's manager, a member of its managing board, the debtor's partner and owner and the relatives of the foregoing persons up to the third degree; (ii) any person who has an employment relationship with the debtor; (iii) any person under common control with the debtor; (iv) any person directly or indirectly controlling the debtor and holding over 50% of its capital; and (v) any person directly or indirectly controlled by the debtor and holding over 50% of its capital.

- assigning any of the debtor's assets, rights or security interests, wholly or partially;
- executing transactions for no consideration, or for a consideration that is below fair value;
- settling debts prior to their maturity dates;
- providing security for debts prior to being recorded as liabilities; or
- discharging a debtor to the company wholly or partially from its due debt.

A party that wishes to challenge such a transaction must do so within two years from the date of commencement of the relevant Bankruptcy Procedure. This means that directors'/managers'/officers' decisions are vulnerable to challenge for a period of four years in the case of related party transactions.

If a claim under Article 210 is approved by the court, the court will nullify the debtor's actions and its consequences, *unless* the action was in the interests of the debtor, *and* the debtor was not an Insolvent or Distressed Debtor at the time of taking such action. It is therefore important for directors/managers/officers to monitor closely when they move from merely experiencing financial difficulty to falling within the meaning of an Insolvent or Distressed Debtor.

Along with the annulment of the action, the court may also order any of the following measures:

- recovery of assets and the revenues generated from such assets, if any, or the payment of a fair value therefor if not capable of recovery;
- restoring any security interests previously provided by the debtor;
- requiring any person who received funds from the debtor to return them to the Bankruptcy Officer; or
- requiring a guarantor that was wholly or partially discharged to resubmit its security or to submit new security of equivalent value and ranking.

"If directors / managers believe that a company is approaching insolvency, it is even more important than usual to take detailed minutes of decisions."

The rights of a third-party purchaser in good faith without knowledge will not be affected by the court's revocation of the debtor's action.[15]

In summary, if directors/managers/officers believe that a company is approaching insolvency, it is even more important than usual to take detailed minutes of decisions, and make sure that everyone at a board/management meeting is kept informed as to the day-to-day financial situation of the company. Being aware of the company's situation may prevent transactions from being set aside in the future.

[15] Article 212 of the BL.

Can't a Distressed Debtor Just Wind Itself up Voluntarily?

Voluntary liquidation is not available for entities that can be classed as Insolvent or Distressed Debtors. Subject to receiving the right advice, voluntary liquidation could be an option for businesses that are at risk of, but not yet, insolvent if they do not want to enter the Bankruptcy Procedures, but it will depend on the circumstances at the time.

Statutory Obligations when a Company Becomes or Approaches Insolvency

Managers/directors and shareholders should also be aware of their statutory obligations under Article 150 (for JSCs) and Article 181 (for LLCs) of the CL if accumulated losses of the company reach 50% of its capital. If accumulated losses reach this threshold, the managers/directors have a duty to call a meeting of shareholders to make a decision on how to proceed.[16] The shareholders must decide:

- in the case of a JSC, either to increase or decrease capital of the JSC to the limit which would result in the losses falling below 50% of the capital, or to dissolve the JSC;[17] or
- in the case of an LLC, to continue with the business of the LLC (which, in practice, means an injection of cash or other form of financial support) or to dissolve the LLC.

As noted above, JSC directors and LLC managers may face penalties if they fail to comply with their statutory obligations under Articles 150 and 180, respectively.

Role of the Bankruptcy Commission

The Bankruptcy Commission operates under the supervision of the Minister of Commerce and was established to oversee the application of the Bankruptcy Procedures. Its roles include maintaining and managing the bankruptcy record, approving and supervising Bankruptcy Officers, managing administrative liquidation procedures, coordinating outreach and training in the field of bankruptcy and liaising with the Ministry of Commerce on proposals for amending/updating the system and regulations. It is not a judicial body and does not replace the role of the courts.

[16] The JSC board must, within 15 days from the date of becoming aware of the JSC's losses reaching 50% of the JSC capital, convene a meeting of the extraordinary general assembly to be held within 45 days from such date. LLC managers must convene a meeting of the partners to be held within a period not exceeding 90 days from the date when the LLC's losses reached 50% of the capital.

[17] In addition to the requirements of Article 150 of the CL, JSCs listed on Tadawul should be aware of their ongoing disclosure obligations under the Rules of Offer of Securities and Continuing Obligations and the Procedures and Instructions Related to Listed Companies with Accumulated Losses Reaching 20% or More of Their Share Capital.

Role of Bankruptcy Officers

The BL has established the role of the Bankruptcy Officer. This is a person appointed by the court to perform certain tasks to assist with the application of Bankruptcy Procedures, and to manage the relevant Bankruptcy Procedure.

The role of a Bankruptcy Officer may vary depending on the type of Bankruptcy Procedure. For instance, in the case of a Preventative Settlement, the role of the Bankruptcy Officer is limited to preparing a report regarding the debtor's proposal to the creditors, but the Bankruptcy Officer has no day-to-day administration or oversight. A Financial Restructuring will require the Bankruptcy Officer to perform a more supervisory role, ensuring that the debtor carries out the terms of the plan as ratified by the courts. In a Liquidation, the Bankruptcy Officer will actively control the sale of assets and winding up of the debtor. The only Bankruptcy Procedure in which the Bankruptcy Officer has no role to play is Administrative Liquidation, which will be managed by the Bankruptcy Commission.

A Bankruptcy Officer must be a Saudi national, competent, neutral, of good conduct, licensed to practice law, accountancy or another related field, licensed by the Bankruptcy Commission and satisfy any other professional qualification requirements as set by the Bankruptcy Commission.

Options When a Company is Insolvent

There are several Bankruptcy Procedures available when a debtor becomes or is quickly approaching insolvency. Given the potential liabilities for managers and directors who continue to trade when insolvent, it is important that management consider the full range of options available rather than just continuing to trade.

Preventative Settlement

What is it?

A Preventative Settlement is "a procedure aiming to facilitate reaching an agreement between the Debtor and its Creditors to settle its debts, where the Debtor maintains the right to manage its activities."[18] It is a court-approved settlement that allows a debtor to reach an agreement by treating its creditors as a class, and getting the approval of a majority of that class. The main objective of this procedure is to protect and prevent a debtor from going out of business, so that it can survive in the longer term. Unlike other Bankruptcy Procedures, a debtor under the Preventative

[18] Article 1 of the BL.

Settlement can retain full control over its business. This is a process driven by the debtor.

What Are the Steps/Timing?

A debtor can apply for a Preventative Settlement not only if it has reached the stage of being an Insolvent or Distressed Debtor, but also if it is suffering financial difficulties that are resulting in financial distress to the debtor. As a result, an application can be made to the court much earlier in time. A Bankruptcy Officer will be required to produce a report on the suitability of the settlement, and this report is filed with the application.

The court will hear an application within 40 days of submission, and will usually approve the application if there is a likelihood of the debtor being able to continue its business and settle creditors' claims within a reasonable period of time, provided that the applicant has not been subject to another Preventative Settlement in the previous 12 months.

Following court approval, the terms of the proposed Preventative Settlement must be approved at a meeting of the affected creditors to be held within 40 days. A proposal will be deemed accepted by the creditors if creditors whose claims represent at least two-thirds of the value of debtor's outstanding debts vote in favour; provided that such number also includes approval from creditors whose claims represent more than half of all non-related party debt of the debtor, if any. In reality, and to increase the chances of approval, debtors should start the dialogue with key creditors in advance of applying to court.

As part of the wider process, the debtor can request from the court permission to terminate some of the contracts to which it is a party in order to ease pressure on its business. The court may grant this request if such termination is (i) necessary to protect the debtor's activity; (ii) in the interest of the majority of the creditors; and (iii) will not cause material damage to the relevant counterparty of the terminated contract. However, security interest contracts (including pledges),[19] financing contracts with financial institutions and government tenders and procurement contracts may not be terminated under such an application.

Once approved by the creditors, the terms of the proposed Preventative Settlement must be sent back to the court for ratification, and then filed with the Bankruptcy Register so that it becomes a matter of public record. In total, the process from applying to the court to registering the settlement should take between 90 and 120 days.

[19] Article 25(2) of the BL and Article 37 of the BLIR suggest that it would be open to the debtor to ask the court to terminate security interest contracts (including pledges) if the termination is necessary to protect the debtor's business and the interests of the majority of creditors, and does not cause material damage to the security holder.

Finally, it should be noted that a debtor, upon applying for the commencement of a Preventative Settlement Procedure, can also apply to the court to issue a moratorium/stay of existing debts, provided that such application must include a report signed by a Bankruptcy Officer suggesting that the majority of creditors are likely to accept the Preventative Settlement proposed by the debtor and that it is capable of being implemented. The courts can award a grace period of 90 days, extendable thereafter in 30-day increments up to 180 days in total.

Financial Restructuring

What is it?

Financial Restructuring is used by debtors that require greater supervision and assistance in order to meet the demands of their creditors, but can still continue as a going concern. It entails a significant restructuring of the debtor's activities, often involving the sale of assets and realignment of the business, all under the supervision of the Bankruptcy Officer. Like the Preventative Settlement, an application can be made by a debtor not only if it has reached the stage of being an Insolvent or Distressed Debtor, but also if it is suffering financial difficulties that are resulting in financial distress to the debtor. A creditor can also make an application to the court for its debtor to enter Financial Restructuring.

What Are the Steps/Timing?

If an application for a debtor's Financial Restructuring is made to the court by a creditor, the court will notify the debtor within five days of the scheduled date for the hearing. A debtor will have an opportunity to object to the application if it considers it unreasonable. If the court approves the application (usually at a hearing within 40 days), then it will appoint a Bankruptcy Officer to oversee the implementation of the procedure.

When appointed, a Bankruptcy Officer will publish the judgment of the court, and invite other creditors to file their claims against the debtor within 90 days. During this time, the debtor will be required to provide the Bankruptcy Officer with a list of its assets and all current and valid contracts to which it is a party. The Bankruptcy Officer will then review the list and prepare an inventory of available bankruptcy assets and a list of creditors' claims for submission to the court within 14 days of the end of the 90-day period.

The debtor and the Bankruptcy Officer will then work together on a Financial Restructuring plan. The preparation of the Financial Restructuring plan is intended to be a collaborative exercise that draws on the debtor's knowledge of its business. If necessary, the Bankruptcy Officer may request that a creditors' committee be formed for input on the plan. Once the Bankruptcy Officer is satisfied with the terms of the Financial Restructuring plan, it is filed with the court, and the debtor must then call a

meeting of creditors whose claims have been accepted and/or whose rights will be affected by the proposal. The meeting requires 21 days' notice, and, as with a Preventative Settlement, the plan will be deemed accepted by the creditors if creditors whose claims represent at least two-thirds of the value of debtor's outstanding debts vote in favour; provided that such number also includes approval from creditors whose claims represent more than half of all non-related party debt of the debtor, if any.

The Bankruptcy Officer may also decide to terminate any contract to which the debtor is a party to if it (i) is necessary to implement the restructuring proposal (after its ratification); (ii) is in the interests of the majority of the creditors; and (iii) will not cause material damage to the relevant counterparty. This can include early termination of lease agreements on 90 days' written notice to the landlord (or shorter notice if permitted in the lease), and such termination will be permitted even if the lease does not allow for an early break by the debtor as tenant. A Bankruptcy Officer is also permitted to sub-lease property rented by the debtor, in whole or in part, even if the underlying lease agreement does not permit sub-letting. However, the BL prevents the Bankruptcy Offer from terminating procurement contracts entered into with a governmental authority, or financing contracts entered into with financial institutions.[20]

When approved, the Financial Restructuring plan must be filed at court to be ratified and then filed with the Bankruptcy Register so that it becomes a matter of public record. The debtor will then proceed to implement the Financial Restructuring plan. Implementation may involve selling off assets, making redundancies, changing payment terms and so forth, all under the supervision of the Bankruptcy Officer. The debtor will be required to submit a report to the Bankruptcy Officer every three months so that progress can be monitored. Only after the restructuring plan has been carried out in full can an application be made for its termination and the removal of oversight by the Bankruptcy Officer.

As can be seen, this is a much more involved procedure, and debtors should allow an absolute minimum of six months to a year for it to be implemented. It is possible for complicated restructurings to last much longer, but at the end of the Financial Restructuring, the business should be in a position to carry on trading and contribute to the economy.

Liquidation

What is it?

[20] Article 72 of the BL allows the Bankruptcy Officer during the period from the commencement of the Financial Restructuring until the court's ratification of the proposal to ask the court to approve the replacement of a security interest with another equivalent security interest when such action is in the interest of the majority of creditors. At the same time, Article 61 of the BL suggests that it would be open to the Bankruptcy Officer to terminate security interest contracts if the need for such termination satisfies the test set out in Article 61.

Liquidation is the process of ending a business and should be considered as the last resort. It is a process designed to limit all creditors' claims, forcing the debtor to sell off the remainder of its assets, with the sale proceeds distributed to the creditors by the Bankruptcy Officer. A creditor must give the debtor 28 days to settle its debt before it makes an application to the court for liquidation. The value of the debt must be at least SAR 50,000.

A court may reject an application for liquidation if it believes that the creditors' liabilities could be satisfied within a reasonable period, or if it believes the applicant is misusing the procedure.

What Are the Steps/Timing?

When a debtor or creditor has applied to court for Liquidation, the process is similar to a Financial Restructuring, save that after the 90-day period for creditors to file their claims and the approval of the proposed plan by the court, the Bankruptcy Officer takes over responsibility for the sale of the assets and the removal of the company from the commercial register. The length of the liquidation procedure will depend upon how long it takes to sell off the debtor's assets, but a Bankruptcy Officer can take over the running of the debtor within as little as 120 days from the date of the application.

Administration/Administrative Liquidation

Administrative Liquidation is a liquidation procedure applied when the assets of the debtor are not expected to cover the expenses of a Liquidation procedure. Given the insufficiency of assets to even pay the Bankruptcy Officer's fees, it must be managed by the Bankruptcy Commission, rather than a Bankruptcy Officer.

The court may reject an application for Administrative Liquidation if it believes that the debtor's assets are sufficient to fulfil the expenses of a liquidation procedure.

	Preventative Settlement	**Financial Restructuring**	**Liquidation**	**Administrative Liquidation**
What is it?	A pre-emptive form of rescue, where a debtor enters into an arrangement with its creditors	A court and creditor-mandated restructuring of the debtor, which may include asset sales and renegotiation or termination of certain contracts	The winding up and dissolution of an Insolvent entity, and the use of the assets to settle the outstanding debts	Liquidation managed by the Bankruptcy Commission, where the assets of the Insolvent entity are insufficient even to cover the costs of the liquidation
Most Suitable For?	An entity that is not yet Insolvent, but could be if it does not take	An entity that is not yet Insolvent, but could be if it does not take	A Distressed or Insolvent entity	A Distressed or Insolvent entity

	appropriate steps, a Distressed entity on the verge of becoming Insolvent or actually already insolvent	appropriate steps, a Distressed entity on the verge of becoming Insolvent or actually already insolvent		
Can the Debtor Continue Operating?	Yes, provided that the courts and creditors approve the plan, the debtor may ask for a moratorium on its debts in the meantime	Yes, but only with oversight from a Bankruptcy Officer, who will review the assets of the entity and oversee the implementation of the restructuring plan	No. The Bankruptcy Officer is responsible for liquidation of the entity's assets.	No. The debtor ceases to manage its activities immediately upon appointment of the Bankruptcy Commission.
Timing	Approximately 90–120 days from application to court	6–12 months	Time to completion can vary. Up to or as little as 120 days for the Bankruptcy Officer to take control	Can vary

Fig 2. A summary of the main forms of Bankruptcy Procedures

Small Debtor Process/Exceptions

For small and medium sized enterprises with debts that do not exceed SAR 2 million, a streamlined set of small debtor procedures are available. These procedures provide greater simplicity with the aim to save time and money for the small debtor. These simplified procedures should be considered by smaller debtors—lower costs of settlement are intended to offer small and medium businesses a greater chance of recovery.

Conclusions

The bankruptcy regime in the Kingdom is still new, but we expect this to be tested a number of times over the coming months. It has never been more important for directors, managers, officers and business owners to take the right advice, not only to protect them from personal liability, but hopefully to find the right path forward to rescue their business as a going concern.

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This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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