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Countdown to RIDW24: Legislative Changes Mark New Era In Debt Recovery In Saudi Arabia

Sarah Gonem (Zamakchary and Co) · Thursday, February 15th, 2024

Six years ago, the Kingdom of Saudi Arabia ("KSA") introduced the Bankruptcy Law, revolutionizing the legal landscape for liquidation and restructuring. This marked a significant shift by establishing a clear framework for handling insolvent entities. Recently, the Saudi Civil Transactions Law ("CTL"), effective from December 2023, enables creditors to transfer their rights for consideration, potentially reshaping established practices in the KSA. This article outlines the 2018 Bankruptcy Law's impact over the past six years and anticipates the transformative effects of the CTL.

The Bankruptcy Law

The 2018 introduction of KSA's Bankruptcy Law aimed to replace the previous fragmented regulatory framework for insolvency, aligning with the Saudi Vision 2030 to boost economic activity and international investment. In the intervening six years, we have seen the Bankruptcy Law being put to the test in working towards the resolution of some of the largest and most complex insolvencies in the KSA.

Among the first prominent entities to proceed under the insolvency procedures were the massively indebted conglomerates owned by the Algosaibi family ("AHAB") and Maan AlSanea ("Saad Group"), whose affairs were intertwined, and who together defaulted on the combined debts of approximately USD22 billion in 2009.

In October 2021, just over two and a half years since AHAB filed for financial restructuring, the Saudi Commercial Court issued its final decision approving the restructuring plan, which reportedly promises creditors around 26 cents in the dollar on debt claims totaling about USD 7.3 billion.

More recently, in May 2023, the Saudi Commercial Court of Appeal issued its final judgment regarding approved creditors in the liquidation of Maan AlSanea's estate. Whilst the distribution of funds from the estate will take time, these judgments at least bring certainty to creditors who have been chasing their debts for some 14 years.

New legal frameworks require time for proper examination and interpretation. For instance, initial confusion arose over enforcing bank guarantees during corporate insolvency, as the Bankruptcy

Law did not explicitly address whether the moratorium that protected ‘guarantors’ extended to claims against banks. To clarify this, the Saudi Arabian Monetary Authority (“SAMA”) issued a December 2020 circular instructing banks to honor guarantees regardless of corporate insolvency, as the guarantee represents a separate debt between the bank and the beneficiary of the guarantee.

The Civil Transactions Law

The CTL codifies Shariah principles in the KSA, specifically addressing the transfer of creditors’ rights. Traditionally, the KSA courts prohibited the sale of receivables based on a particular Shariah interpretation, despite differing views among scholars. The CTL now explicitly allows debt sales, stating that creditors can transfer their rights without requiring debtor consent, only notification.

This shift, potentially transformative for the secondary debt market, raises questions about practical implementation, especially in distressed debt and non-performing loans (“NPL”). The absence of provisions in the Bankruptcy Law detailing the impact of approved creditor transfers to third parties adds complexity. As cases emerge, engaging with officeholders and the Saudi courts will likely be crucial for registering purchasers as new approved creditors, and paving the way for normalized NPL trading in the KSA.

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We look forward to attending the SCCA24 Conference.

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