

**JANUARY 19, 2022**

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A Trustee's First Duty: Maximizing the Value of an Insolvency Estate

The foremost duty of a bankruptcy trustee is to maximize the value of the debtor's assets for the benefit of its stakeholders. Numerous provisions of Saudi Arabia's current bankruptcy law (the "**Bankruptcy Law**") underscore the importance of this duty. Bankruptcy Law Article 5(c) announces one of the principal aims of the bankruptcy procedures, the maximization of the debtor's assets. In the context of Financial Reorganization Procedures ("**FRP**"), Article 50(3) requires the trustee to "exercise the necessary duty of care to safeguard the interest of Creditors." Additionally, the Code of Professional Conduct promulgated by the Saudi Bankruptcy Commission directs trustees to use competence and due diligence in performing their duties. Taken together, these provisions of the law and regulations impose a duty on trustees to use due care to maximize the value of a debtor's assets.

Many debtors enter insolvency proceedings with a hot mess of disordered records, decentralized property, and uncooperative players. While debtor's management is obliged to act as an honest steward of estate assets, it is fundamentally the trustee's duty to bring order out of chaos, preserve the debtor's strategic options, oversee major management decisions, and ensure that the debtor's property is handled in a way that generates the best possible return to creditors.

The facts of each case will be different, and each liquidation or rehabilitative strategy will require focused thought. But here are a few basic ways a trustee can maximize the value of the bankruptcy estate:

Determine Whether Financing is an Option. Often the most immediate concern is to meet payroll and keep the business running. Bankruptcy financing can mean the difference between the operation of a business as a going concern and a liquidation sale for scrap. Pre-insolvency bank lenders may be motivated to invest funds to keep the business operating and avoid the loss of value a liquidation sale would occasion. Keeping the doors open will also often preserve the debtor's options for a reorganization proposal that pays creditors from proceeds of operations.



This may require retaining financial advisors and attorneys with specialized restructuring experience. But the financing option only works if the moratorium available under the Bankruptcy Law is respected by all Saudi courts, specifically the enforcement courts. The current practice of freezing debtor bank accounts upon the issuance of enforcement awards (which runs contrary to the principles of the creditor moratorium) is blocking debtors from accessing much needed working capital. Trustees should therefore first ensure the debtor has accounts that are not subject to blocking orders or are effectively protected by commercial court order.

Investigate Claims Against Third Parties. Chapter Thirteen of the Bankruptcy Law provides a wide array of claims against parties who have abused the debtor by transferring its assets for less than what they were worth, misusing corporate powers, acting negligently, or preferring favored creditors over others. Under Bankruptcy Law Articles 203 and 205, penalties range from fines and imprisonment for guilty parties to recovery of transferred assets and payment of compensation. Recovery (also called “**clawback**”) lawsuits can provide a source of assets for the debtor where the debtor’s assets have been transferred away in sweetheart deals to insiders or third parties. This litigation may prove expensive, especially where the debtor’s business is idle and it receives no income. In these cases, law firms that will take a trustee’s case on a contingency fee basis, or litigation funding companies that advance litigation costs in return for a stake in the recovery, can prove helpful.

Scrub the List of Claims. While maximizing assets increases the size of the estate’s pie, a trustee should also carefully scrutinize the claims the pie must feed. Often, creditors will overstate amounts owed by the debtor, sometimes intentionally, and other times because the creditors and debtor have an honest disagreement as to the amounts owed. While Bankruptcy Law Article 202 makes filing a false bankruptcy claim a criminal offense, it is up to the trustee to ensure the list of claims is accurate. In large cases, hiring a financial advisor or auditor can ensure that the claims list is “scrubbed” in an efficient, effective manner.

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