

# Client Alert

Bankruptcy and Insolvency Litigation

**JANUARY 31, 2024**

For more information, contact:

Zaid Al-Farisi  
+966 11 466 9415  
[zalfarisi@kslaw.com](mailto:zalfarisi@kslaw.com)

Michael Rainey  
+971 4 377 9986  
[mrainey@kslaw.com](mailto:mrainey@kslaw.com)

Patrick Schumann  
+44 20 7551 2158  
[pschumann@kslaw.com](mailto:pschumann@kslaw.com)

Arthur J. Steinberg  
+1 212 556 2158  
[asteinberg@kslaw.com](mailto:asteinberg@kslaw.com)

Jonathan Jordan  
+1 404 572 3568  
[jjordan@kslaw.com](mailto:jjordan@kslaw.com)

## King & Spalding

Riyadh  
Kingdom Centre  
20th Floor  
King Fahad Road  
P.O. Box 14702  
Riyadh 11434  
Saudi Arabia  
Tel. +966 11 466 9400

Dubai  
Al Fattan Currency House  
Tower 2, Level 24  
Dubai International Finance  
Centre  
P.O. Box 506547  
Dubai, UAE  
Tel. +971 4 377 9900

## Sharp Teeth: Civil and Criminal Liability for Officers and Directors of Insolvent Saudi and UAE Companies

The recent detention of a restructuring professional in the United Arab Emirates serves as a stark reminder that directors and officers of insolvent or distressed companies can face personal liability for their actions or failure to act. A manager or professional stepping into a management role of a distressed company would be well-advised to know the landscape of civil and criminal liability for missteps while attempting to rehabilitate the company.

### D&O PENALTIES UNDER THE SAUDI BANKRUPTCY LAW

The Saudi Bankruptcy Law adopted by Royal Decree No. M/50 in February 2018 includes a chapter dedicated to revocable transactions and civil and criminal penalties. Chapter 13, Article 200, broadly proscribes misuse of bankruptcy assets, engaging in the debtor's business for purposes of defrauding creditors, continuing the debtor's business in circumstances where liquidation is inevitable, using arbitrary methods to delay or avoid liquidation (including the sale of goods below market to generate cash), concluding transactions for unfair or no consideration, and paying debts of any creditor in a manner detrimental to the rights of other creditors (i.e., preferential payments) as a violation of the Bankruptcy Law. Article 200 also includes a catch-all, "abusing any of the bankruptcy procedures," which gives commercial courts discretion to find other acts improper.

Article 201 further prohibits offenses generally related to fraud or misleading the court or creditors. Article 201(a) through (h) forbid embezzling or concealing the debtor's assets; concealing, destroying or altering books and records; maintaining misleading or fictitious accounts; inflating liabilities with fraudulent transactions; submitting misleading or incorrect information to the bankruptcy court, trustee, or Bankruptcy Commission; pledging or disposing of assets in violation of the



Bankruptcy Law or any court order; settling with a creditor or disposing of assets in violation of a plan; or abusing powers for personal gain or benefit.

Article 205 provides that when imposing penalties set forth in Article 203, a court may invalidate any prohibited transaction, claw back a debtor's assets, and compensate an aggrieved person.

Articles 203 through 209 put teeth in the bankruptcy crimes provisions. Article 203 provides for imprisonment for up to five years, and a fine not exceeding 5 million Saudi riyals, or both for violations of Articles 200 and 201. A court may also prohibit any person found liable under these statutes from directly or indirectly managing any for-profit company; nullifying the person's vote on management candidates; or owning any shares of a for-profit company that provide for a management role (for up to a five-year period). Article 207 provides generally that a violator of the Bankruptcy Law and Implementing Regulations shall be subject to a fine of up to 500,000 Saudi riyals, while Article 208 allows the Public Prosecution office to investigate and prosecute offenses under the Law. Finally, Article 209 provides that anyone committing a prohibited act within three years after serving his sentence shall be deemed a recidivist, and further penalties shall be doubled.

#### COURT PROCEDURES

Articles 203(2) provides that judgments rendered under Chapter 13 may be entered by the Commercial Court. Under Article 204, the Commercial Court must notify the Bankruptcy Commission immediately after any such decision. (The Bankruptcy Commission's authority under Bankruptcy Law Article 9 does not extend to passing judgments on penalties and imprisonment.)

Specific procedures for rendering judgments under Articles 200 or 201 are not enumerated in the Law or Implementing Regulations. However, Article 28 of "Information and Documents Rules Provided for in the Bankruptcy Law and Implementing Regulations Thereof" states that any request for a fine under the catch-all Article 207 "shall be accompanied with a report describing the incident subject of violation, the cause of violation, and a proof evidencing the occurrence of such incident." While this Article expressly applies only to Bankruptcy Law Article 207, its format can serve as a template for a motion for penalties for violations of Articles 200-201.

#### CORPORATE LAWS – FAILURE TO PULL THE TRIGGER

Both Articles 201 and 202 begin with the preface, "Without prejudice to the provisions of relevant laws," indicating that the Bankruptcy Law does not preempt non-bankruptcy statutes and regulations. To underscore the point, Article 203(1), which lists penalties, begins, "Without prejudice to any harsher penalty provided for in any other law...".

One such statute is Saudi Companies Law Articles 132 and 182. Article 132 requires a board of a joint stock company to announce losses exceeding 50 percent of the company's capital within 60 days, and hold a shareholder meeting within 180 days to consider remedial measures or dissolution. Article 182 requires a manager of a limited liability company to call a partner meeting to consider remedial measures or dissolution within 60 days of when the manager learns that losses have reached 50 percent of the company's capital. Other civil and criminal provisions of course regulate a director's or manager's conduct as a fiduciary. Management may become personally liable for the debts of a company for failing to comply with Articles 132 and 182. In one case approximately four years ago, a manager of a limited liability company was found personally liable for the debts of the company in a scenario where the company's debts had exceeded five-fold the capital, and the requirements of Article 181 of the Companies Law (the equivalent of Article 182 at the time) were not complied with.



### WHO IS IN THE CROSSHAIRS?

The Saudi Bankruptcy Law does not specifically define the spectrum of officers or managers who might be subject to Chapter 13 claims. But Article 200 refers to “any natural person debtor, or any of the debtor’s managers, or any member in his board of directors or board of managers, or any of his officials, or any person who participated in the establishment or management thereof.” For Article 201, any “person” is liable for violating that article. Thus, the Bankruptcy Law casts a broad net for anyone participating in the management of a distressed company.

### BEYOND THE KINGDOM – THE MARKA CASE AND UAE REFORM

The Saudi statutory prohibitions are mirrored, in different ways, through civil and criminal proceedings in the United Arab Emirates. In 2021, the Dubai Court of First Instance held managers and directors of Marka PJSC and its subsidiaries personally liable for over AED 448 million (approximately USD \$122.3 million) of company debts under Article 144 of the UAE Bankruptcy Law, which permits a court to assess personal liability against directors or managers whose company assets are insufficient to satisfy 20 percent of the company’s debts. Finding that Marka’s officers and directors had essentially walked off the job, leaving behind a financial and accounting mess, the court froze the directors’ and managers’ personal bank accounts, investment securities, real estate and other personal assets. (An article describing this judicial wake-up call can be found [here](#).)

The *Marka* case sent shock waves through the restructuring community, and the statute was quickly amended to require, in addition to the 20 percent loss threshold, the commission of a violation of Bankruptcy Law Article 147, which prohibits acts of mis- or non-feasance relating to company books, disposal of assets, or preferential payments. In other words, an element of intent has been included in addition to the 20% threshold; meeting the threshold in and of itself is not evidence of guilt.

### CONCLUSIONS

Save for the *Marka* case, as a practical matter, courts in the GCC have generally been reluctant to enforce Chapter 13 type penalties against directors and officers personally, and usually (though not always), a sensible, ethical manager and/or restructuring professional should not be caught up with personal liability under Chapter 13 and equivalent provisions in other GGC countries. However, bankruptcy laws across the GCC are still relatively new, and we expect courts will take a closer look at directors’ and officers’ personal liability should the right fact pattern arise. This is particularly the case for actions taken by directors and officers with the specific intent to deprive creditors of assets.



---

**ABOUT KING & SPALDING**

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,300 lawyers in 23 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising." View our [Privacy Notice](#).

ABU DHABI	CHARLOTTE	FRANKFURT	LOS ANGELES	PARIS	SINGAPORE
ATLANTA	CHICAGO	GENEVA	MIAMI	RIYADH	TOKYO
AUSTIN	DENVER	HOUSTON	NEW YORK	SAN FRANCISCO	WASHINGTON, D.C.
BRUSSELS	DUBAI	LONDON	NORTHERN VIRGINIA	SILICON VALLEY	

---