

Client Alert

Finance & Restructuring

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Comparative Overview of Saudi and US Bankruptcy Laws

Saudi Arabia's bankruptcy framework has undergone significant modernization in recent years, drawing heavily from the US Bankruptcy Code while incorporating unique features tailored to the Kingdom's regulatory and business environment. For professionals familiar with both jurisdictions, understanding the key similarities and distinctions is crucial for navigating insolvency cases in Saudi Arabia.

SOURCES OF SAUDI BANKRUPTCY LAW

The Kingdom of Saudi Arabia (**KSA**) formalized its current bankruptcy framework with the **Bankruptcy Law**, issued by royal decree on February 14, 2018. This law, along with its **Implementing Regulations**, the **Rules Governing Bankruptcy Procedures in Commercial Courts**, and publications by the **KSA Bankruptcy Commission**, forms the basis for insolvency proceedings. Commercial Courts in Jeddah, Riyadh, and Dammam oversee bankruptcy cases, though their rulings do not follow common law principles like *stare decisis*.

CORE INSOLVENCY PROCEDURES

Much like the US system, Saudi bankruptcy law recognizes restructuring and liquidation processes. In addition, the Saudi bankruptcy law provides for:

- **Protective Settlement:** A collective mediation process facilitating settlement agreements between debtors and creditors.
- **Administrative Liquidation:** Reserved for cases where asset sales will not cover liquidation expenses.

The law also includes a "**Small Debtor**" chapter specifically designed for businesses with debts below SAR 2 million (approximately \$533,000).

FINANCIAL RESTRUCTURING PROCEDURE (FRP)

Saudi Arabia's **Financial Restructuring Procedure (FRP)** enables debtors to stabilize operations while negotiating with creditors. The FRP process has the following features:

- **Debtor Control with Trustee Oversight:** The FRP allows debtor management to stay in control, but requires trustee supervision over key financial decisions.
- **Claims Determination:** The trustee oversees a claims determination and contract rejection process.
- **Moratorium Period:** Debt collection is suspended for **six months**, extendable to **twelve months**. It also extends to guarantors.
- **Credit and Asset Sales:** New financing can be secured, though **debtor-in-possession (DIP) financing remains largely untested** in Saudi courts. Asset sales are possible with court approval, with secured creditors receiving proceeds based on lien priority.

A restructuring plan requires approval from either **all creditor classes (2/3 of claims per class)** or **one accepting class if over 50% of total voting claims vote in favor**. A ratified plan must ensure **fair treatment of creditors based on priority**.

LIQUIDATION IN SAUDI BANKRUPTCY LAW

Saudi liquidation follows a standard hierarchy, allocating proceeds in the following order:

1. Bankruptcy costs and expenses
2. Secured creditor claims (to the extent covered by - in rem - security)
3. Post-commencement financing
4. 30 days of employee wages
5. Family expenses per court order or regulatory provision
6. Operating expenses
7. Outstanding employee wages
8. Unsecured debt
9. Tax and government dues

Trustees assume full control, displacing debtor management to oversee asset sales.

KEY DIFFERENCES BETWEEN SAUDI AND US BANKRUPTCY SYSTEMS

While the Saudi bankruptcy code has similarities with the **US Bankruptcy Code**, Saudi Arabia's system deviates in several notable areas:

- **Trustee Oversight:** Unlike the US, where trustees have limited roles in Chapter 11 cases, Saudi trustees **influence C-suite decisions** post-filing.
- **Automatic Stay Duration:** The stay under an FRP does not exceed **twelve months**, while in US cases, protection can last significantly longer.
- **Impact of Missed Claims Deadline:** While US creditors failing to file by the **bar date** may forfeit their claims entirely, Saudi creditors who miss deadlines can **still recover**, though they lose voting rights.

- **Plan Lengths:** In large Saudi FRPs, **long repayment plans (eight years or more)** appear more common than in the US.
- **Trustee Role Post-Confirmation:** Trustees remain active after a plan is approved.
- **DIP Financing:** Unlike in the US, Saudi DIP financing is **still evolving and largely untested**.
- **Priority Standards:** Absolute priority rules apply flexibly, as evidenced in **Arkad Engineering & Construction Co.**, where appellate judges **adjusted creditor rankings based on fairness** rather than strict legal hierarchy.

CONCLUSION

Saudi Arabia's bankruptcy system continues to develop as courts refine procedures through case law and regulatory updates. While its structure largely mirrors US bankruptcy principles, the presence of **strong trustee oversight, evolving financing mechanisms, and a flexible priority rule** means businesses operating in the Kingdom must adjust their strategies accordingly.

For practitioners navigating cross-border insolvency cases, staying informed about **judicial interpretations and regulatory refinements** in Saudi Arabia is essential for effective legal and financial planning.

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