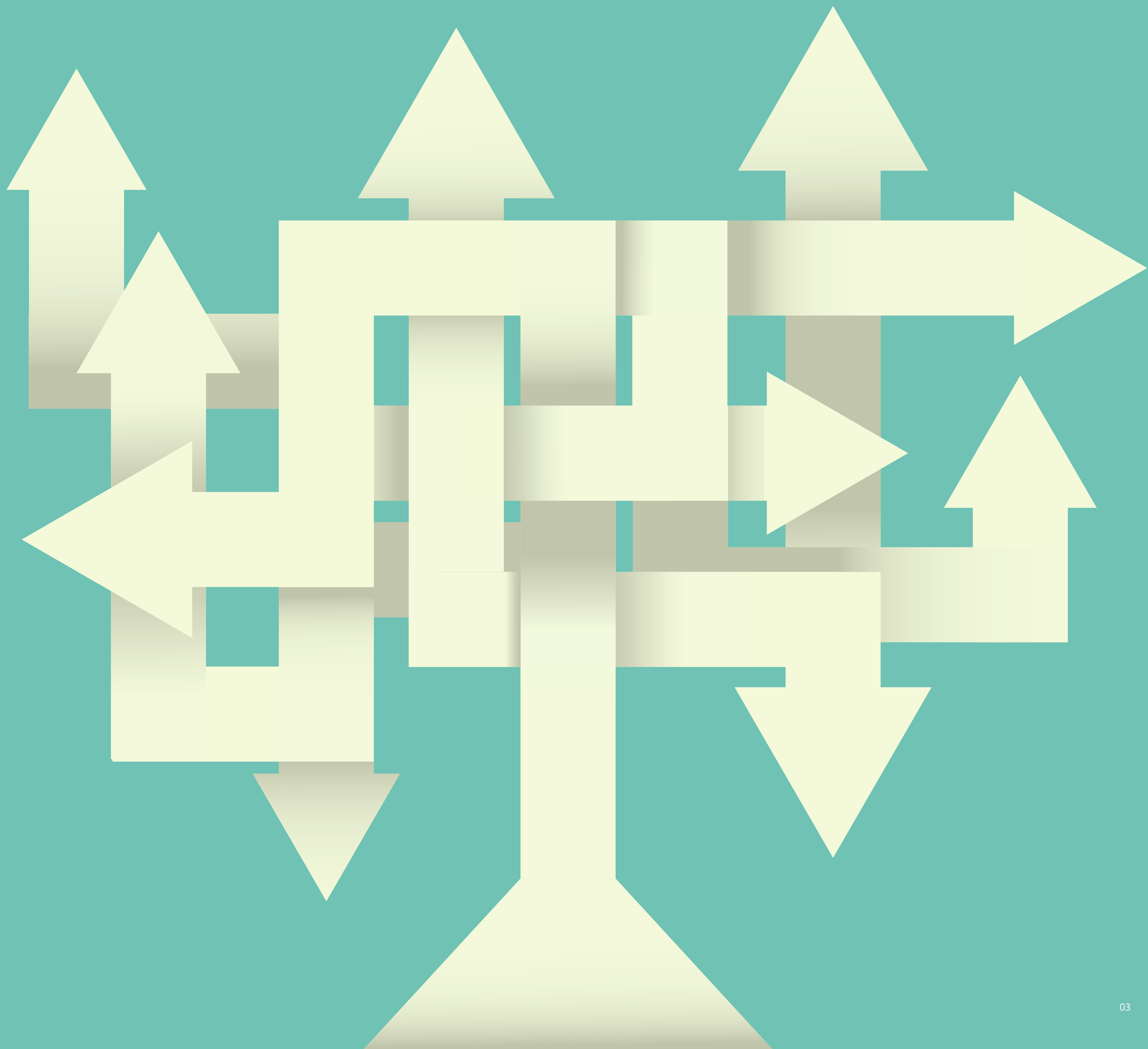
Deloitte | A Middle East Point of View - Summer 2025 | Restructuring and insolvency

Rethinking failure: Why restructuring and insolvency can drive innovation in the UAE market



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As the restructuring and insolvency landscape in the UAE continues to evolve, there is a growing need to shift the perception of insolvency from a last resort to a strategic business tool. The region's legislative and regulatory frameworks have matured significantly, with recent high-profile cases—such as KBBO and Emirates Hospitals Group along with JBF RAK and Drake and Scull International—demonstrating the effectiveness of insolvency processes in achieving positive outcomes for stakeholders and the broader community.

Under the UAE Bankruptcy Law (Federal Decree-Law No. 51 of 2023), as well as the DIFC Insolvency Law (DIFC Law No. 1 of 2019) and the ADGM Insolvency Regulations (2022), a range of restructuring and insolvency options are available to companies in financial distress. Terms like "bankruptcy" and "administration" should no longer be viewed as inherently negative. Instead, they should be recognized as powerful mechanisms that enable businesses to reset, recover, and refocus—often preserving more value for creditors and stakeholders than out-of-court arrangements or, in the worst-case, liquidation.

Directors' duties: A reminder of responsibility

When signs of financial distress emerge, directors must remember that they cannot simply walk away from their obligations. The potential accountability of company management has been reaffirmed in the 2023 UAE Bankruptcy Law, specifically Article 246. Directors have fiduciary duties, and a failure to act responsibly can lead to serious consequences, including civil and criminal liability, as well as disqualification from serving as a director in future.

Some of the common pitfalls include:

- **Breach of fiduciary duties**
  Directors are obligated to act in the best interests of the company and exercise due care (Article 22 of Federal Law No. 32 of 2021, the "Commercial Companies Law"). Misuse of company assets or acting in situations involving conflicts of interest (Article 86) may expose directors to personal liability.

- **Negligent trading (Article 270 of the Bankruptcy Law)**
  Failure to keep accurate and sufficient commercial books and records can result in criminal liability. Maintaining proper financial records is not only best practice—it is a legal requirement. Additionally, if a director of an insolvent business pays certain creditors in preference to others, disposes of assets at a significant discount, or recklessly spends the funds, they may be held criminally liable.

- **Fraudulent activities (Article 271 of the Bankruptcy Law)**
  A director who continues to trade while knowing a business is insolvent—particularly when this further degrades the net asset position with the intent to cause loss to creditors—may be held personally liable.

Why insolvency should be considered

There are many situations in which entering into a formal restructuring or insolvency process may be beneficial or even necessary. These include:

- **Liquidity pressures:** Strained cashflows, unpaid tax liabilities (including Value Added Tax and the newly introduced corporate tax), and unsustainable debt servicing costs may require formal restructuring tools to reach an optimal outcome.

- **Diverse and challenging creditors:** Where negotiations with creditors are failing or proving overly time-consuming, insolvency can provide a legal structure to ensure all creditors are treated fairly and equitably.

- **Shareholder disputes:** In cases when shareholder disagreements become intractable, an insolvency process can offer a legal framework for resolution.

- **Governance issues or suspected fraud**: Where governance has broken down or fraud is suspected, appointing an independent court-appointed trustee or liquidator can protect the interests of stakeholders.

- **Moratorium benefits**: Most formal insolvency processes include a moratorium, which protects against creditor actions and legal enforcement, providing breathing space to develop a restructuring or settlement plan approved by the majority of creditors.

- **Fair treatment of creditors**: A formal process ensures creditor claims are frozen and assessed by an independent party, ensuring transparency and equitable treatment.

- **Recycling of capital**: Restructuring a distressed business enables the redeployment of capital, assets, and resources that might otherwise remain trapped in an unviable business—unlocking the value and supporting broader economic efficiency and growth.

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A practical checklist for businesses facing financial distress (and their advisors)

If a business or client is showing signs of financial distress, consider the following immediate steps:

✓ Act early	Take action as soon as financial distress becomes apparent. Delay can diminish the value of the business and limit options.
✓ Understand director duties	Ensure compliance with fiduciary duties. Avoid trading while insolvent and seek advice early to understand the protection available.
✓ Engage restructuring and insolvency experts	Consult with a turnaround and restructuring team that includes Arabic-speaking insolvency professionals. Deep sector expertise and ability to act as trustee, administrator, or liquidator (registered in the DIFC, ADGM, and onshore jurisdictions) allows for guidance to clients through tailored solutions.
✓ Start lender conversations early	Proactive engagement with lenders and other stakeholders can pave the way for a collaborative solution and prevent legal escalation.
✓ Consider a contingency plan	Collaborate with advisors to develop contingency plans that preserve value and provide options that mitigate against reputational risk and stakeholder impact. A team working alongside financiers, legal advisors, and management to navigate even the most complex situations is ideal.
✓ Use the insolvency process positively	A well-planned insolvency process can offer structure, fairness, and a path to recovery, not just for the company, but for all involved stakeholders.

Restructuring and insolvency is not about failure; it's about creating opportunities for recovery and renewal. In a region that is both dynamic and maturing, leveraging the tools available under the relatively new UAE insolvency laws can lead to the best possible outcomes for businesses and their stakeholders.

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