



A Guide to the UAE's  
New Bankruptcy Law

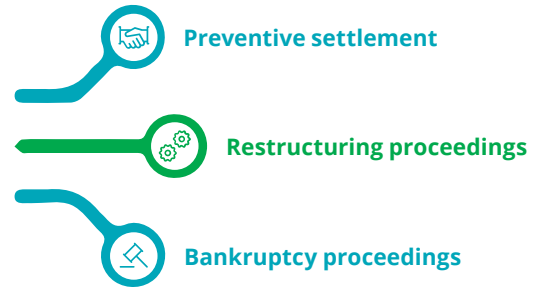


# A Guide to the UAE's New Bankruptcy Law

The UAE's insolvency laws represent a significant step forward in providing a legal framework for addressing financial distress and options for insolvency. These laws are relatively new, having undergone significant reforms in recent years. As a result, they remain largely untested and continue to be refined through practical application and evolving judicial interpretation.



On 1 May 2024 the new Bankruptcy Law (Federal Law Decree No. (51) of 2023) was introduced, replacing the previous Bankruptcy Law (The Federal Decree Law No. (9) of 2016 on Bankruptcy). Businesses and individuals facing financial difficulties now have the following options to manage their insolvency and restructure their debts:



Key factors in deciding which procedure to use include stakeholder interests, the financial position of the debtor, the age of the debt (where under the new law a debtor is deemed to be insolvent if there is failure to pay any of their debts within 10 days after the due date specified in the demand, even if the assets are sufficient to pay its debts), the ability to rescue the company as a going concern and availability of new money financing.

The **preventive settlement** enables a business facing financial difficulties to reach a settlement plan with its creditors and is comparable to chapter 11 proceedings in the United States. This procedure has several advantages, including allowing the debtor to retain control and continue operations of the business (provided that it does not harm the interests of creditors) while negotiating with its creditors. A moratorium (an automatic stay, with the exception of employee claims) is initiated once the process starts, protecting the debtor against any legal enforcement actions taken by creditors and any negative stigma that may be associated with formal restructuring and bankruptcy proceedings. A key requirement to pursue this option is that the applicant debtor may submit an application to the Bankruptcy Administration within 60 days from the date of cessation of payment (the debtor's failure to pay any debt 10 days after the due date).

From experience, preventive settlement is a process that is rarely used. Achieving an out-of-court consensus with creditors is often very challenging, as debtors already struggling financially may lack the expertise to navigate the process successfully within a tight timeframe, especially with a diverse group of creditors having varying interests and priorities. Therefore, many debtors may find it easier to opt for restructuring or a liquidation process which are now discussed.

The **restructuring proceedings** involve a court-driven process where the current and forecasted financial position of an insolvent business with a viable business model is assessed. The objective is to prepare a restructuring plan, to be approved by the creditors, to preserve the business' value and maintain employment. Management remains in control during this period, but a court-appointed trustee oversees the process. This provides a structured framework for dealing with creditors collectively, aiming to maximise recovery compared to a liquidation scenario. Similarly, to the preventive settlement procedure, the debtor is protected by a 'moratorium' against any legal enforcement actions taken by creditors, with the exception of employee claims. The applicant debtor may submit an application to the Bankruptcy Administration within 60 days from the date of cessation of payment (the debtor's failure to pay any debt 10 days after the due date).



During the restructuring process, new finance may be raised to stabilise the business, terms and payment of outstanding debts may be negotiated with creditors and operational changes may be made to improve efficiency and profitability. The debtor must submit the restructuring plan within three months from the date of the restructuring proceedings decision, extendable for a similar period if required. The majority of creditors must vote on the plan, with approval conditions being:



Creditors holding more than half of the debts as a minimum must attend the meeting during which the voting will take place



Creditors holding two-thirds of the debts represented at the meeting must approve the plan

Other legal jurisdictions with more sophisticated insolvency laws may create separate groupings of creditors under a proposed restructuring plan, such as a scheme of arrangement under Section 26A of the UK Companies Act 2006. In these cases, diverse creditor groups may be offered varying terms, such as different recovery returns or repayment timeframes. If a class of creditors is deemed to have no economic interest in the outcome ("out of the money"), the court may decide that their votes are not necessary for the approval process. Overall, this makes the approval process fundamentally easier to achieve compared to the UAE Bankruptcy Law, where creditor grouping does not ordinarily occur and to fulfil both of the voting criteria presents a key challenge.



The first high profile onshore bankruptcy case to receive a positive vote and is widely regarded in the market as a great opportunity to thoroughly stress-test the UAE Bankruptcy Law, is the **KBBO** Group. This is the first time two Deloitte turnaround and restructuring partners were appointed as bankruptcy trustees to work alongside a UAE trustee by the court. As a result, the successful restructuring of the **KBBO** Group (which includes the Emirates Hospital Group) will represent a significant milestone in the UAE's onshore bankruptcy regime, demonstrating that the legal framework can be used effectively to provide a solution supported by all diverse stakeholder groups. The prevention of liquidation has ensured continued public access to medical care, preserved over 2,000 jobs and benefitted the local economy through the ongoing operations of hospitals and clinics.



Notwithstanding the success of the **KBBO** Group, there are a number of challenges given it is a relatively new legal framework which remains untested in certain aspects. Creditors and their legal advisors may feel uncertain about how the laws will be interpreted and applied in various situations. Ensuring consistent enforcement and compliance with the bankruptcy laws across the different court systems within the UAE, such as the free zones and the different Emirates, continues to present a challenge (for example, the enforcing of legal attachments through the different courts over assets). Furthermore, where it is a cross-border insolvency case with assets and creditors located worldwide, such as the **KBBO** where UK recognition was successfully achieved, there might be various challenges in getting other countries to recognise the UAE bankruptcy proceedings. This is partly due to differences in legal systems and a lack of familiarity with the UAE restructuring process, given the new bankruptcy law does not adopt the UNCITRAL model on cross-border insolvency. As a result, freezing orders issued across multiple jurisdictions may present a risk, constraining the trustees in their ability to take control, for the benefit of the creditors, of worldwide assets of the estates.







The **bankruptcy proceedings**, otherwise known as “insolvent liquidation,” are used when the debtor is unable to be rescued as a going concern and there is no realistic prospect of restoring solvency through restructuring. In this scenario, the business ceases operations and winds down its affairs in an orderly manner. The court appoints a liquidator who undertakes all tasks necessary to liquidate the entity, including realising all available assets, investigating potential antecedent transactions and distributing to creditors according to the law's priority of creditors. This process aims to ensure fairness and transparency while addressing all stakeholders' interests.

Debtors facing severe financial distress may prefer liquidation as it provides a more immediate and certain outcome compared to the potentially prolonged and uncertain outcomes that preventive settlement and restructuring proceedings might have. The legal framework for liquidation makes it easier for debtors to navigate the process and achieve closure, which could be viewed as the most straightforward and definitive resolution to insolvency issues. However, whilst liquidation might provide a more immediate and certain outcome, this perspective can often be counterproductive where creditors might typically prefer to realise value from the sale of a trading business through an accelerated mergers and acquisitions (M&A) process rather than in a breakup scenario, potentially leading to a higher overall recovery for creditors.





While the new Bankruptcy Law shares many similarities with the previous Bankruptcy Law (The Federal Decree Law No. (9) of 2016 on Bankruptcy), significant developments include:

01

A debtor is deemed insolvent upon failing to pay any debt 10 days after the period specified in the demand, even if the debtor's assets are sufficient to pay its debts.

02

The debtor may submit an application to the bankruptcy administration within 60 days from the date of cessation of payment (the debtor's failure to pay any debt 10 days after the due date).

03

The moratorium excludes legal actions and claims by employees. In addition, for preventive settlement, the moratorium is for a period of three months, which is a key consideration in more complex cases where a longer period of protection against legal enforcement and action may be required to allow a debtor the required time to conclude the terms and agreement of the settlement plan with its creditors. An extension can be requested one month at a time and shall not exceed a six-month period.

04

Establishing a new Bankruptcy Administration Unit to support a new bankruptcy court. This unit reviews all applications, notifications, objections, and grievances and presents them to the court for it to take the appropriate action.

05

A trustee may be entrusted with managing the debtor's assets and business and shall have the same powers as the directors, chairman and CEO. Powers requiring shareholder authority are delegated to the court.

06

Creditors who miss the prescribed time to submit supporting documents for their debt may request the trustee to be included in the list of creditors. The law remains silent on the cut-off date for submission of claims and if the debt is approved, the creditor may be eligible for subsequent distributions.

07

Secured creditors may execute proceedings against assets after obtaining court permission and the trustee can sell the secured assets without the need to follow the execution procedures. In addition, the assets shall not be sold or transferred at less than their market value during the two-month period preceding the sale or transfer of ownership by 10% or more.

08

The priority of debts in an insolvent liquidation scenario rank *pari passu* to one another. These include trustees' and experts' fees, amounts owing to employees capped at three times salary, legal fees and other costs incurred during the process.



The recent amendments to the UAE Bankruptcy Law mark a significant step forward, yet there remains room for further enhancement. One area worth considering is the incorporation of provisions for an accelerated M&A process for trading businesses and assets disposals, a practice widely used in other legal jurisdictions with more sophisticated insolvency laws. This approach offers several advantages, leading to quicker resolutions of financial distress and providing significant benefits such as business continuity, employment preservation and valuation maximisation involving the negotiation of a sale before the formal onset of bankruptcy. This process can include a competitive bidding phase prior to the insolvency filing, where assets are typically sold at market value without the discounts usually associated with distress sales under a liquidation scenario. By adopting this process into the UAE Bankruptcy Law, it would be possible to maximise asset realisations, benefiting all stakeholders, including creditors, employees and shareholders.

# Key contacts

Our team of insolvency specialists has extensive practical experience with the UAE Bankruptcy Law. We are uniquely positioned to support creditors and debtors in their use of the Bankruptcy Law to provide successful restructuring solutions.

If you have any questions regarding this document or are seeking advice of any kind, please reach out to the following contacts:

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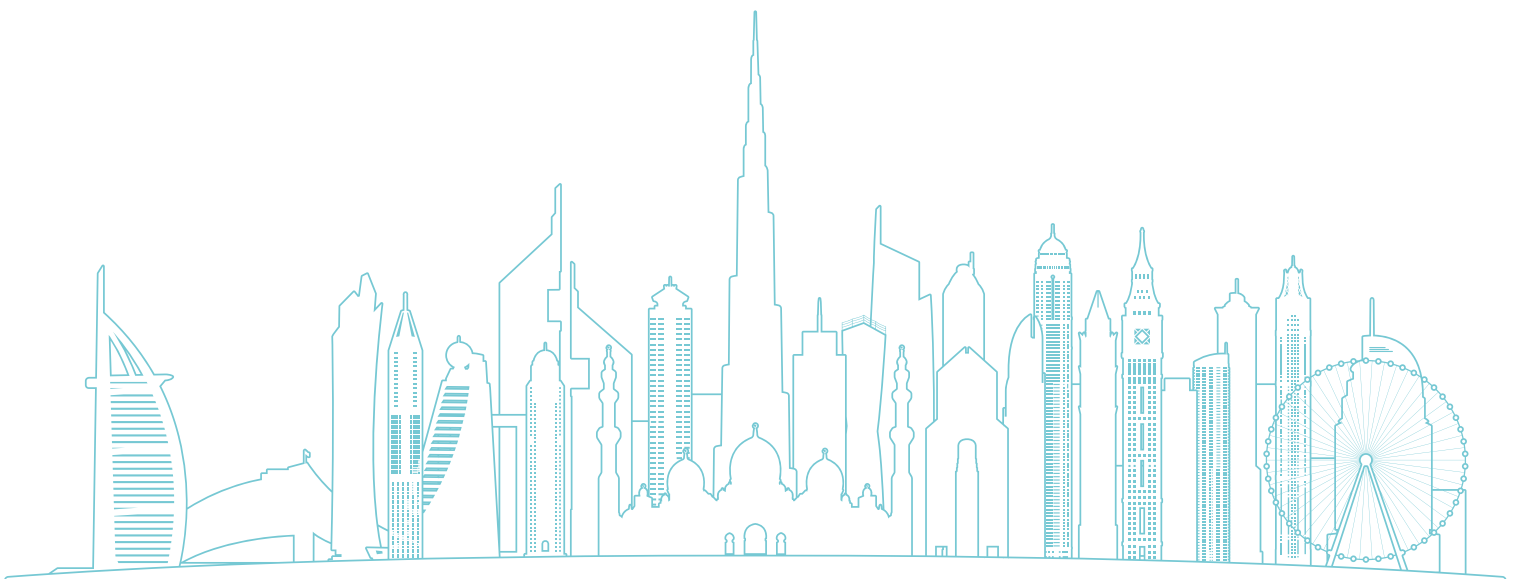
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