

New Kuwait Bankruptcy Law

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Law 71 of 2020 promulgating the bankruptcy law ('Bankruptcy Law') was published in the Official Gazette on 25 October 2020. It was approved by the

Kuwait Parliament on 29 September 2020 and is aimed at increasing protection for troubled businesses and provides two new options to affected entities before they are forced to declare bankruptcy.

The Bankruptcy Law requires that the Minister of Commerce and Industry issue the Executive Regulation and Resolutions to apply the provisions of the Bankruptcy Law within six months of its publication in the Official Gazette. The Bankruptcy Law comes into force three months from the date such Executive Regulations are issued.

Historically, most corporate insolvencies in Kuwait have been resolved through consensual restructuring of the debtor company's liabilities, since market participants were reluctant to rely on legislation that was largely untested.

The Bankruptcy Law is a major step forward and is influenced by features of a number of insolvency law regimes in other jurisdictions, as well as international insolvency law trends.

In general terms, the Bankruptcy Law streamlines and modernises Kuwait insolvency law and places a new emphasis on the early restructuring of indebtedness for distressed companies. A number of its features seek to destigmatise business failure and, therefore, it is to be hoped that it will serve as a catalyst for cultural change in the region that will ultimately lead to the promotion of a more robust legal framework for entrepreneurs and an improved climate for investors. Much will depend however, on how the Bankruptcy Law is used in practice and the willingness and ability of businesses and practitioners alike to adapt to take advantage of the legislative changes.

The new law does not treat failure to pay debt as a criminal offence, unless it is fraudulent. It also allows bankruptcy to be avoided either by a settlement with creditors or a restructuring plan.

Scope of application

With the exception of joint venture companies and collective investment schemes, the Bankruptcy Law specifies the persons to whom the provisions of the law apply (which includes every natural person, trader, Kuwaiti companies and branches of foreign companies). The Bankruptcy Law gives the Central Bank of Kuwait and the Capital Markets Authority the right to set out rules governing preventive settlement

procedures, restructuring and bankruptcy for stock exchanges, clearing agencies, central depository entities, central brokers, banks and insurance companies, in a manner that may deviate from the Bankruptcy Law in accordance with the requirements of the nature of these entities.

The Bankruptcy Law provides for a Financial Restructuring Committee ('Committee') to be formed. The Committee's role is to oversee the management of restructuring procedures in order to facilitate consensual restructuring arrangements between a debtor and its creditors (where necessary) with the help of one or more Committee appointed experts. The Committee will also maintain a register of insolvencies, authorise expert fees and maintain an approved list of insolvency experts whose role is to assist the courts

in assessing the grounds for, and implementing of, the chosen insolvency procedure (as described in more detail below).

Specialised bankruptcy court

For first time in Kuwait, a new specialised bankruptcy court has been established and the Bankruptcy Law provides that the judgments issued by the bankruptcy court shall be enforceable without declaration, and it is not permissible to dispute the judgments, and it is not permissible to suspend their implementation except in accordance with a ruling issued by the Court of Appeal.

The Bankruptcy Law states that the bankruptcy administration, within five working days from the date of the bankruptcy judge's decision, shall start the liquidation procedures, reject or accept the judgment, publish the decision and announce it, notify the concerned parties about it and disclose it on the Kuwait Stock Exchange if the debtor is listed, and instruct the debtor to disclose it on its website unless the bankruptcy judge decides that the other methods are sufficient.

Preventive settlement and financial restructuring

The Bankruptcy Law adopted the preventive settlement option to avoid insolvency by a debtor company in order to allow the discharge of debtor company's debts through an arrangement with the creditors called preventive settlement.

The bankruptcy court, based on a request by one of the affected creditors during the period following the decision to ratify the preventive settlement proposal and before the proposal is fully implemented, may order the termination of the preventive settlement procedures in the event of the conditions mentioned in the law being realised.

The preventive settlement proposal approved by the bankruptcy judge shall be enforceable against all the creditors including the creditors who rejected the proposal and those who did not attend the meeting re: voting on the proposal. The bankruptcy administration shall announce, publish, disclose and notify the commercial register in accordance with Article 31 of this law of every decision issued to ratify the preventive settlement proposal or to reject the proposal, suspend the ratification, terminate the procedures, open the restructuring procedures or declare bankruptcy within five working days from the date of issuance of the decision.

Penalties

The Bankruptcy Law increases the debtor's penalty from three years to five years and the fine from 30,000 (US\$98,000) to 100,000 Kuwait Dinars (US\$327,000) or one of these two penalties in the event of concealing the books or misappropriating part of the company's money. The chairman and members of the company's board of directors, its directors, the auditors of its accounts, and those in charge of liquidating shall be punished with imprisonment for a period not exceeding five years, and a fine not exceeding one hundred thousand Kuwaiti Dinars or either of these two penalties, if after the issuance of a final decision to open the bankruptcy procedures, they concealed the company's books or embezzled any of the bankrupt company's money.

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