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# SAUDI ARABIAN SAND TRAP: LIV GOLF FILES CHAPTER 11

9.24.2026

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Manufacturing • Customers • Vendors • Supply Chain • Financial • Insolvency Litigation • Commercial and Financial Contracts • Cross-Border

From the June 6, 2022 signing of Phil Michelson to a $200 million multi-year contract with promise for recruiting additional marquee golfers, to a 2022-2025 estimated cash burn of $4.8 billion, to a Chapter 11 filing in New Jersey on September 8, 2026, LIV is now on the verge of liquidation.

Four years ago, LIV Golf promised "Golf, But Louder." Protracted 72-hole tournaments would be swapped for higher octane 54-hole team events with shotgun starts, blaring music and huge payouts for players. Backed by $5 billion of investment from the Saudi Public Investment Fund (PIF), LIV attempted to disrupt the civilized world of golf and position Saudi Arabia as a global entertainment leader. PIF has now indicated it will cease funding, forcing LIV Golf to seek protection in Chapter 11.

LIV's largest creditors are the very golfers it lured away from the PGA. Jon Rahm, Bryson DeChambeau and Dustin Johnson tee off in Chapter 11 with claims of $7.5 million, $5.7 million and $5.5 million, respectively.

## LIV 2.0

The hype of the Chapter 11 is that LIV will launch "LIV 2.0," based upon financing by BC Partners, and by shedding "legacy obligations" (players contracts). LIV 2.0 will be majority owned by golfers, presumably converting their unsecured claims against LIV to equity in LIV 2.0.

The details, and perhaps the reality, are embedded in the DIP financing documents, principally the DIP Milestones, and in the Restructuring Support Agreement (RSA) among the debtors, BC Partners Credit and PIF.

Indeed, PIF (owner of 100% of LIV equity) has provided $50 million of DIP financing with $14 million approved on an interim basis, and $36 million contingent on the DIP Milestones. However, the DIP "milestones" require:

- October 7, 2026 – court order rejecting and voiding player contracts. Players will have the option to walk away as a general unsecured creditors or accept equity in LIV 2.0.
- October 8, 2026 – file a Plan of Reorganization, that mimics the RSA terms.
- October 13, 2026 – finalize binding financing agreements with BC Partners Credit and PIF, and commitments from 50% of players with claims and the value of their claims are equal to or exceed 66.6% of total player contracts (the majority in number and two-thirds in amount requirements for Chapter 11 plan confirmation) to exchange their contract claims against LIV to equity in LIV 2.0. It is projected that players would own 52.5% and BC Partners would own 45% of LIV 2.0.

The RSA provides for exit financing by BC Partners of $300 million, and an additional facility of $30 million to find start-up costs of LIV 2.0.

Failure to meet the DIP Milestones are events of default and would cause:

- Immediate cancellation of remaining funding by PIF
- Termination of the LIV 2.0 RSA
- $300 million exit financing commitment by BC Partners is voided
- End of LIV with only $15 million of funding?

The debtors have indicated that without the BC Partners funding, they will pivot to a liquidation.

For the players, their choices appear to be: (1) remain as general unsecured creditors of LIV Golf (which presumably would have no funding), (2) agree to the LIV 2.0 requirements and swap their contract claims for equity in LIV 2.0, or (3) walk away from their claims with rejected contracts, presumably hoping to re-join the PGA. However, under Section 365 of the U.S. Bankruptcy Code, if a debtor rejects an executory contract, the contract is not automatically terminated. Rather, under Section 365, rejection constitutes a breach of contract only, in this case, entitling the players to a claim for damages, which are deemed general unsecured claims. The players would be required to obtain relief from the Section 362 automatic stay in Chapter 11 to terminate the contracts under the terms of the contracts or applicable law. The debtors could object to termination to preserve obligations owed under the contracts relating to, for example, endorsements, licenses relating to name, image and likeness (NIL) or, intellectual property or confidentiality provisions.

Will the PGA view players as completely free of their contract obligations?

**<u>What is the PGA doing?</u>**

No doubt concerned about potential tortious interference claims against it for interfering with LIV contracts with players, the PGA does not appear to be actively recruiting LIV Golf players. Following LIV Golf's Chapter 11 bankruptcy filing, the PGA appears to maintain a hands-off approach, forcing players to navigate significant hurdles if they wish to return.

The PGA Tour's Official Position

- No Active Recruitment or "Bailouts":

  The PGA Tour is understandably not engaging, despite reports that agents representing several LIV players contacted both the PGA Tour and the DP World Tour to test the waters after LIV's financial collapse.

- The Return Pathway is Closed:

  Earlier this year, the PGA Tour offered a limited-time "Returning Member Program" that allowed a path back. While Brooks Koepka successfully used it to return in January, golfers Jon Rahm, Bryson DeChambeau, and Cameron Smith rejected PGA overtures to stay with LIV. PGA Tour CEO Brian Rolapp recently confirmed that there are no current plans to reopen this program.

  The "Koepka Precedent" is costly: Brooks Koepka had to forfeit all player equity shares for five years, withdraw from the $100 million FedEx Cup bonus eligibility, and make a $5 million charitable donation at the PGA's request. The PGA expects any future returning players to face similarly heavy financial penalties.

- Strict Disciplinary Penalties Remain:

  Any player attempting to rejoin the PGA Tour still faces standard disciplinary protocols, which include an automatic one-year ban from the U.S. circuit upon leaving LIV.

- The "Divorce Paper" Requirement: Before the PGA Tour will even evaluate a player's request to return, the player must legally prove they are completely free from their contractual obligations to LIV. This is why the upcoming Chapter 11 hearing on LIV's Motion to Reject Contracts on October 7 is so critical.

  The DP World Tour (European Circuit) appears to be the most viable alternative pathway for LIV golfers. Players can "earn" their way back to the PGA by playing the DP World Tour, where if they finish in the "Race to Dubai" top 10, could qualify them for the PGA.

**LIV Cross-Border Implications**

As part of LIV Golf's "first day" motions, the debtors filed a motion for authority to seek cross-border recognition of the Chapter 11 proceeding in the UK and in Jersey. Affiliates LIV Golf Ltd. and LIV Golf Events Ltd are UK registered entities, that oversee the golf circuit outside the U.S. Affiliates LIV Golf Investments Ltd and LIV Golf Holdings Ltd are organized under the laws of Jersey. Specifically, the debtors seek orders appointing LIV Golf's Chief Restructuring Officer, David Orlofsky, as the Debtors' estates foreign representative for the UK debtors, and appointing Andrew M. Farlane and Alastair Beveridge as joint administrators for the Jersey debtors.

According to the Debtors' Motion:

> Upon Court appointment as the Foreign Representative, Mr. Orlofsky intends to apply to the High Court of Justice, Business and Property Courts of England and Wales, Insolvency and Companies List (ChD) (the UK Court) for recognition of the Chapter 11 case of each UK debtor under the Cross-Border Insolvency Regulations 2006 (CBIR) such applications, the "UK Proceeding"). The purpose of the UK Proceeding is to request that the UK Court recognize the Chapter 11 case of each UK debtor as a "foreign main proceeding" or, alternatively, "foreign non-main proceeding" under the provisions of the CBIR to, among other things, protect the UK debtors' assets in England and Wales.
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> The UNCITRAL Model Law on Cross-Border Insolvency (1997) (Model Law) has the force of law in Great Britain by virtue of regulation 2(1) of the CBIR. Article 2(j) of Schedule 1 to the CBIR defines a "foreign representative" as a "person or body, including one appointed on an interim basis, authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding." Schedule 1 to the CBIR, Article 2(j).
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> As the Model Law is not enacted in Jersey, the Jersey debtors have filed with the Royal Court of Jersey applications for administration pursuant to Part 20B of the Companies (Jersey) Law 1991.

LIV was never able to self-sustain its operating costs by major broadcast agreements, substantial ticket sales or long-term corporate sponsorships. Perhaps LIV was a massive business miscalculation that could not match the prestige of the PGA Tour. Golf, But Louder did not sell. Will LIV 2.0 be any different?