

Expert Guide

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Restructuring and Insolvency in the UAE: Legal Framework

By James Bowden

The legal framework governing insolvency in the UAE is primarily set out in UAE Federal Law No. 18 of 1993 promulgating the Code of Commercial Practice (the “Commercial Code”), and it has remained essentially unchanged since then. The insolvency regime set out in the Commercial Code is still largely untested in practice, because debtors and creditors tend to opt for commercially agreed solutions outside of the courts, as the court process is lengthy and cumbersome. There is an ongoing attempt to overhaul the insolvency regime in the UAE to make it more accessible, modern and efficient. This much talked about initiative is the development of a new insolvency law for the UAE which is expected to replace the existing legislation as and when it comes into force. The new legislation is expected to introduce substantial changes, including the establishment of a specialised tribunal to hear and oversee insolvency proceedings. A draft of the law has not been released publicly at the time of writing, as it has only been circulated for comment to the UAE Ministry of Finance. Our expectation is that it will be at least another 1-2 years before it is finalised and comes into force, possibly longer. Interestingly, there has been much written about the new law and conferences on the changes it will usher in have become popular in recent months. It should be borne in mind that the draft law is still at an early stage, and feedback will be provided by the Ministry of Finance as well as from each Emirate before the law is finalised, so discussions on the law and its effect are, necessarily at this stage, purely speculative.

The primary challenge with this area in the UAE is the trepidation around how the UAE courts would apply and administer the provisions of the Commercial Code relating to insolvency in each case, and how long it would take for such proceedings to take their course. The regime in the Commercial Code is aimed at preventing individual proceedings against the debtor, verifying creditor claims, prioritising them and then encouraging agreement on a settlement plan among creditors. It is a time consuming process, especially so if the creditors do not agree on the settlement plan (and in

such case liquidation of the debtor is the only option prescribed, under the supervision of a court or creditor appointed trustee). As a consequence, creditors and debtors have historically preferred to keep the negotiation and settlement process outside of the courts to the extent possible.

Some anticipated benefits of the new law that practitioners are optimistic about are improved transparency and accessibility of the UAE’s insolvency regime, which, it is hoped, will also be more attractive for struggling debtors by offering an effective debtor protection mechanism. A struggling debtor will generally be more inclined to voluntarily subject itself to a statutory restructuring regime if the regime is aimed at continuity of business (under protection from creditors), so that debtors will not wait “until it is too late” (i.e., beyond saving through an effective protected restructuring) before seeking protection.



One additional challenge worth noting in the UAE is a fear of potential criminal consequences for managers or directors in an insolvency scenario, as the UAE Criminal Code provides that such individuals are subject to potential criminal liability punishable by fines and imprisonment when any of a broad spectrum of acts or oversights are committed preceding or during a bankruptcy proceeding. There is a general perception that it is better to avoid the risk of criminal liability by avoiding the bankruptcy judgment in the first place. There is also a cultural aversion to submitting to insolvency proceedings or to declaring bankruptcy which cannot be overlooked, as there is a stigma associating business failure with personal failure.

There is currently no expectation that these criminal consequences will be changed, but if struggling debtors take advantage of voluntarily applying for protection relatively early on, the pressures that give rise to poor (potentially criminal) decisions could be alleviated.

What to Expect

In our view it is unlikely that there will be significant developments in this practice area in the UAE in the next 3-5 years. The possible exception to this that we are aware of is the new insolvency law noted above which is currently still in draft. It is hoped that the new law will create a more accessible, predictable and transparent insolvency regime, including a component aimed at creditor-protected compositions or restructurings. Once the new law comes into force, there is no certainty that it will be well used, as parties in the UAE may continue to prefer to negotiate settlements out of court regardless of the prevailing legislation; however, at this stage the content and impact of the new law is purely speculation.

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