King & Spalding

Client Alert

Financial Restructuring

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The 2024 UAE Financial Restructuring and Bankruptcy Law: What is New?

On 31 October 2023, Federal Law Decree No. (51) concerning Financial Restructuring and Bankruptcy (the **New Law**) was published in the UAE Federal Gazette. The New Law comes into force on 1 May 2024 and will repeal the 2016 Law on Bankruptcy (the **Old Law**).

Similar to the Old Law, the New Law does not apply in the ADGM or the DFIC freezones (which have their own insolvency regimes).

The New Law is expected to lead to more successful restructurings in the UAE.

The Implementing Regulations, which are expected to provide further guidance on the practical implementation of the New Law, remain pending.

This Client Alert highlights the key features of the New Law.

KEY FEATURE ONE: THREE PROCEDURES

Similar to the Old Law, the New Law provides for three processes. We have set out below the key highlights with respect to each process:

PREVENTATIVE SETTLEMENT

- Intended for lighter touch restructurings which can be completed within a short period of time (*see Moratorium below*).
- This is a new process, replacing the "preventative composition" procedure under the Old Law.
- There is no requirement that a debtor must file within a prescribed period (a feature of the preventative composition procedure under the Old Law which provided that an application must be made within 30 days of a debtor ceasing to make payments).
- Only the debtor is entitled to make an application to enter into the preventative settlement procedure.

- The debtor remains in operational control, managing its business affairs throughout the proceedings.
- The procedure is supervised by the Bankruptcy Court (a further development under the new regime (*see below*)).

RESTRUCTURING

- Intended for more complex restructurings which will take time to implement (*see Moratorium below*).
- There is no requirement to file within a prescribed period. An application may be made within 60 days from the date of "*cessation of payment*". Failure to submit the application within the prescribed period, however, does not result in the rejection of the application. The term "*cessation of payment*" is now defined.
- The debtor or any of its creditors may open restructuring proceedings.
- The debtor remains in control.
- The procedure is supervised by a court-appointed trustee.
- The proposed restructuring plan may include the sale of the entire business of the debtor as an "existing and practicing activity". This is akin to a pre-pack under English law.

BANKRUPTCY/LIQUIDATION

- The debtor or any of its creditors may open such proceedings.
- The court-appointed trustee takes control of the management of the business and its liquidation.

KEY FEATURE TWO: THE MORATORIUM

Following the commencement of the relevant proceedings a moratorium comes into effect:

PREVENTATIVE SETTLEMENT

- A three-month automatic stay on creditor claims (commencing on the date of the decision to open the proceeding).
- One or more extensions are available to the debtor (with the permission of the Bankruptcy Court), provided that the total moratorium period does not exceed six months.
- The debtor is required to deal with any employee claims outside of the moratorium. This poses potential challenges for larger companies, such as construction firms.

RESTRUCTURING

- The moratorium period commences on the date the decision is made to open the proceedings and ends on the date the restructuring plan is ratified by the Bankruptcy Court.
- Although there is no time limit on the moratorium, the restructuring plan must be submitted within six months of the commencement of the proceeding. The Bankruptcy Court may grant one or more extensions beyond six months, provided that any such extension is with the consent of the required majority of creditors (*see below for definition of required majority*).
- If a restructuring plan is not submitted within the prescribed period, the Bankruptcy Court may terminate the proceedings.

- Similar to a moratorium under the preventative settlement, any employment lawsuits must be dealt with during this period.

KEY FEATURE THREE: VOTING

- The New Law currently provides for one class of creditors for voting purposes, comprising privileged creditors (e.g. government dues), unsecured creditors (including unsecured portion of a secured debt), and secured creditors if authorised by the Bankruptcy Court (e.g. if the rights of those secured creditors are affected by the plan). While the New Law refers to creditor classification, there is no reference to cross-class cramdowns. Further guidance on creditor classes and their treatment for voting purposes is anticipated in the Implementing Regulations.
- The meeting quorum to approve a plan requires creditors representing 50% of the approved claims for voting purposes to attend (the **Required Amount**).
- In order for a plan to be approved creditors holding 66 $^{2}/_{3}$% of the Required Amount must vote in favor of the plan (therefore in theory a plan could be approved by creditors holding 33% of the approved claims).
- Additionally, any plan approved by the required majority must meet the new fairness standards (defined by the New Law) and be ratified by the Bankruptcy Court.

KEY FEATURE FOUR: RATIFICATION OF A RESTRUCTURING PLAN WHICH HAS NOT BEEN APPROVED BY THE REQUIRED MAJORITY

The Bankruptcy Court has the right to approve a restructuring plan which has not been approved by the required majority. This is not the case for a preventative settlement process.

KEY FEATURE FIVE: NEW FINANCING

The Bankruptcy Court has the authority to approve new financings which:

- rank above other unsecured debt;
- are secured against unencumbered assets (if any);
- are secured against encumbered assets (and therefore constitute second ranking security); and/or
- are secured as first ranking security over encumbered assets **(with the consent of the beneficiary of the existing first ranking security).**

KEY FEATURE SIX: CAPACITY

Capacity of the Bankruptcy Court stands as a pivotal and frequently discussed topic under the New Law.

The New Law is sophisticated. It aims to ensure swift and efficient access while safeguarding the rights of debtors and creditors under a predicable regime. Addressing these concerns, amongst others:

- The New Law establishes a Bankruptcy Court dedicated to hearing restructuring and bankruptcy matters.
- Under the New Law the Bankruptcy Court has broad discretion to determine matters such as:
  - Making the decision whether to accept a restructuring or a bankruptcy application (i.e. does the creditor meet the required threshold to be able to commence the applicable proceeding?).

  - Ratifying a restructuring plan which has not been approved by the required majority.
  - Appointment of trustees.
  - Determining trustees' powers in respect of specific issues.
  - Decisions with respect to a debtor borrowing new monies.
  - Determining which creditors have the right to vote on plans.
  - Making decisions to amend plans before being sent back for a further vote (e.g. in the event grounds of fairness have not been met).
- The Bankruptcy Court's broad discretion underscores the significance of building capacity within the court, and ensuring enhanced expertise in exercising such discretion over time.
- The Bankruptcy Court will be supported by:
  - Experts/auditors paid for by the competent judicial authority. This is distinct from trustees appointed to oversee the restructuring and bankruptcy procedures.
  - The bankruptcy administration within the Bankruptcy Court to be led by a judge of no lower rank than an appeal court judge, tasked with responsibilities such as reviewing the pace of various procedures, aligning with the objective of expediting implementation of procedures under the New Law.
  - The Bankruptcy Unit (being the old Financial Restructuring Committee) will sit within the Ministry of Justice, tasked with matters such as approving roster of experts and establishing and organising a bankruptcy register.