



KEY PROVISIONS ON THE NEW FINANCIAL RESTRUCTURING AND BANKRUPTCY LAW

On October 31, 2023, the United Arab Emirates (UAE) approved [Federal Decree-Law No. 51 of 2023 concerning Financial Restructuring and Bankruptcy](#), thereby replacing [Federal Decree-Law No. 9 of 2016 on Bankruptcy](#). It applies to companies governed by the provisions of the Commercial Companies Law, any individual operating as a trader, and licensed civil companies of a professional nature. The New Law establishes a framework to assist financially distressed companies in the UAE, offering various mechanisms to prevent bankruptcy and liquidation, including consensual out-of-court financial restructuring, composition procedures, financial restructuring, the potential to secure new loans under terms set by the law, and conversion to declaration of bankruptcy and liquidation of the debtor's assets.

Significant Provisions

A. Bankruptcy Department & Restructuring and Bankruptcy Unit

Federal and local courts, as per the rules outlined in the Civil Procedure Law, will handle disputes arising from the application of this law and decide on related applications. The competent judicial authority has the discretion to designate specific courts with jurisdiction over such disputes, establishing dedicated Bankruptcy Courts for this purpose within the identified courts or divisions. These specialized courts will exclusively handle matters related to the application and interpretation of the Financial and Bankruptcy Law.

The establishment of the "Financial Restructuring and Bankruptcy Unit" within the Ministry is outlined in Article 12, comprising skilled personnel in financial, legal, or economic fields. The unit is tasked with various functions, including coordinating with regulatory authorities and Bankruptcy Courts for managing financial restructuring and bankruptcy proceedings. Additionally, it provides opinions on applications related to proceedings, settlement proposals, plans, compositions, and debtor's assets liquidation and distribution plans for companies under regulatory authority.

B. Filing of Preventive Settlement Proposal

Following the decision to start bankruptcy proceedings, the debtor must submit a copy of the preventive settlement proposal, along with a summary, to the Bankruptcy Department within (3) three months. The Bankruptcy Court can grant extensions, based on the debtor's request and consultation with the Unit, but any extension beyond (6) six months needs approval from the required majority.

C. Replacing the Preventive Composition

The Old Law's "Preventive Composition" mechanism has been replaced by the more accessible and user-friendly "Preventive Settlement". Unlike the previous preventative composition procedure, this new regime enables debtors to continue managing their businesses without the necessity of appointing a trustee. The debtor retains operational control, navigating settlement terms with creditors while conducting regular business operations throughout the proceedings.



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D. Clarified Definitions

The New Law brings clarity to the application of various key terms like "debtor", "creditor", and "related party".

E. Unenforceable Debtor's Depositions

During the six months leading up to the date when a decision is made to initiate bankruptcy proceedings, certain actions taken by the debtor may not be used against creditors. Creditors cannot enforce the disposition if the debtor, subject to a decision to initiate bankruptcy proceedings over its debts, engages in any of the acts outlined in Art. 148, Clause 1 of the New Law within the (2) two years leading up to the cessation of payment date, specifically when these arrangements involve the debtor, an insider, or a related party.

Conclusion

The new law has been implemented as of May 1st, 2024. All bankruptcy proceedings occurring after this date must adhere to the regulations outlined in the New Law. With a focus on protecting creditors' rights and aiding debtors in meeting obligations, the law emphasizes proactive measures to prevent business liquidation and bankruptcy. The proceedings are intended to be conducted with fairness, equity, promptness, and efficiency. Furthermore, the law strives to ensure the just distribution of assets to creditors, treating those with similar claims on an equal footing.

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