

Formation of the Financial Restructuring Committee: Introducing Better Market Stability and Bankruptcy Searches to the UAE

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The UAE Cabinet issued Resolution (“Resolution”) no. 4 of 2018 Forming the Financial Restructuring Committee (“FRC”) pursuant to UAE Federal Law No. 9 of 2016 (“Bankruptcy Law”).

In this article, we will highlight the important developments brought by the Resolution, especially in respect of Financial Restructuring of Financial Institutions and the introduction of bankruptcy searches to the UAE.

The Resolution was published in the UAE Federal Official Gazette 627 dated 28 February 2018 and it came into effect on the following day (the “Effective Date”). Issued pursuant to Chapter 2 of the Bankruptcy Law, the Resolution regulates the governance, authority and functions of the FRC.

Structure of the FRC and Governance

The FRC is composed of 9 members, representing a number of Ministries (Finance, Economy and Justice), Emirates (Abu Dhabi, Dubai and Sharjah) and authorities (the UAE Central Bank and the Securities and Commodities Authority), including the Chairman, the Deputy Minister of Finance. The FRC would meet by invitation of the Chairman or the Deputy Chairman and at least once every 4 months. It will also have its own secretariat and may set up sub-committees to carry out specific tasks or functions.

Main Functions of the FRC

A. The Resolution sets out the main functions of the FRC as follows: Supervising financial restructuring (“Financial Restructuring”) procedures of financial institutions

This function is perhaps the most important task given to the FRC under the Resolution. According to the Resolution, Banks and financial institutions licensed in the UAE (“Financial Institutions”) that are facing current or projected financial difficulties may submit an application to the FRC, requesting its assistance with the financial restructuring of such institution. The Financial Restructuring is a procedure that comes before the preventative composition and bankruptcy procedures prescribed in the Bankruptcy Law. It is a special procedure to protect Financial Institutions given their size, importance and effect on the national economy.

If the application is accepted, the FRC appoints an expert who will:

- Assess the economic and financial status of the Financial Institution.
- Facilitate a consensual agreement between the Financial Institution and its creditors and any of its contractors.
- Provide the Financial Institution with proposals in order to continue its business and retain its employees.
- Submit monthly reports to keep the FRC informed of the progress of financial restructuring procedure.
- Any other tasks assigned by the FRC.

According to the Resolution, during Financial Restructuring, the obligation of Financial Institutions to file bankruptcy pursuant to Part IV of the Bankruptcy Law shall be suspended.

The status of the Financial Institution must not be contrary to any of the following categories, to submit an application for Financial Restructuring:

- The Financial Institution shall not be in breach of the bankruptcy tests set out in the Bankruptcy Law. This is similar to the preconditions of a debtor entering into a preventative composition.
- The Financial Institution shall not be subject to preventative composition or bankruptcy procedures.
- The Financial Institution has not been subject to Financial Restructuring during the year preceding the date of application.

B. Establishing and organizing a registry of the persons who are subject to bankruptcy court rulings pursuant to the provisions of the Bankruptcy Law.

Another very important development brought by the Resolution is that the FRC shall create and maintain a registry of individuals and entities that are subject to restrictions or legal incapacity ordered by the court, pursuant to the provisions of the Bankruptcy Law. The FRC will also determine the requirements, form, data, and the persons having the right to access the registry.

If the registry becomes publicly available it will introduce bankruptcy searches to the UAE for the first time. This will help lenders and financial institutions to better assess the financial status of their borrowers. However, it is not clear whether the registry will include individuals and entities that are still under financial restructuring, preventative composition or bankruptcy procedures. According to the Resolution, we understand that the registry will only contain those individuals and entities that were declared bankrupt already.

Other functions of the FRC

1. Registering and approving the list of financial restructuring and bankruptcy experts.
The FRC will set out the requirements for the registration of experts that will be appointed pursuant to the Bankruptcy Law and the Resolution. The FRC will also supervise the Experts in relation the work assigned to them in accordance with the provisions of Bankruptcy Law, in coordination with the UAE Ministry of Justice or the local authorities in the Emirates having jurisdiction.
2. Setting a schedule of the fees and expenses of the appointed Experts.
As per the Resolution, the Expert’s fees and expenses are to be borne by the Financial Institution. Those

- fees and expenses are to be regulated by the FRC.
3. Submitting periodic reports to the Minister of Finance on its work, achievements and proposals.
 4. Forming one or more sub-committee(s) from its members to carry out specific duties falling within the FRC's functions.
 5. Organizing and sponsoring initiatives intended to raise public awareness about the Bankruptcy Law and understanding its objectives.

Conclusion

The Bankruptcy Law and the Resolution have introduced substantial and welcome changes in the market for protecting and providing assistance to Financial Institutions that are in financial difficulties and introducing the bankruptcy register, which may provide lenders and other market players with better information on borrowers and financial institutions providing them with greater comfort in their dealings.

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