

EASING FINANCIAL PRESSURES DURING COVID-19

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The UAE Cabinet recently announced its approval of amendments to Federal Law No 9 of 2016 ("Bankruptcy Law") that aim to ease the enhanced financial pressures on businesses given the Covid-19 pandemic. The Federal Decree Law amending the Bankruptcy Law ("Amendment Law") should give debtors much needed support during the pandemic and alleviate concerns that directors and managers of debtor companies may have about certain personal liabilities imposed by the Bankruptcy Law.

"The amendments should alleviate concerns that directors and managers of debtor companies may have about certain personal liabilities imposed by the Bankruptcy Law."

EMERGENCY FINANCIAL CRISIS

The Amendment Law introduces the concept of an Emergency Financial Crisis which is defined as *"a general situation that affects trade or investment in the State such as the outbreak of an epidemic, a natural or environmental disaster, war or others..."*

The cause and duration of an Emergency Financial Crisis is to be determined by a Cabinet resolution.

SUSPENSION OF BANKRUPTCY PROCEEDINGS

The Amendment Law suspends:

- Obligations by debtors to open bankruptcy procedures under Article 68 of the Bankruptcy Law where debts remain unpaid for 30 consecutive working days. The suspension will remain in place until the end of an Emergency Financial Crisis provided that the debtor has proven that the turbulence of its financial position or its indebtedness results from an Emergency Financial Crisis;

- Any applications filed by creditors for the commencement of bankruptcy procedures during an Emergency Financial Crisis; and
- Any bankruptcy proceedings commenced before the start of the Emergency Financial Crisis by modifying time periods (by up to double the time usually allowed under the Bankruptcy Law) and modifying certain contractual obligations.

CREDITOR SETTLEMENT PROCESS

If a debtor has proven that the turbulence of its financial position or its indebtedness results from an Emergency Financial Crisis:

- no precautionary measures can be taken by creditors against any of the debtor's assets that are deemed necessary for the debtor to continue its business during the Emergency Financial Crisis; and
- the debtor can seek a period of up to 40 business days grace to negotiate with its creditors and reach an agreement for the settlement of its debts.

Provided that (1) the debtor reaches an agreement with creditors who hold at least two thirds of the debtor's debt; and (2) the agreement will result in the repayment of the debtor debts within 12 months, the Court can approve the settlement agreement. A court approved settlement agreement will be binding and enforceable on all creditors including those who failed to engage in negotiations and vote on the settlement, unless a successful objection to the settlement is made or the court finds that the settlement is inconsistent with the principle of good faith.

If a settlement cannot be achieved, the court will allow bankruptcy procedures to be initiated and will amend the bankruptcy process as it thinks fit if the debtor has proven that its financial defaults have been caused by an Emergency Financial Crisis.

DIRECTORS AND MANAGERS

The Amendment Law provides some comfort for directors and managers of company debtors in that personal liabilities will not arise if during an Emergency Financial Crisis:

- assets of the debtor are sold to pay unpaid wages and salaries (but not allowances and bonuses);
- company accounts are kept up to date to record losses arising from the Emergency Financial Crisis; and
- directors/managers can demonstrate that they have acted in a cautious manner and in good faith in taking steps to preserve the business and assets of the debtor company.

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NEW FINANCING

If a debtor has successfully applied for the suspension of its obligations to open bankruptcy procedures, the court can permit that debtor to obtain new financing on the basis that:

- the new financing will have priority over outstanding unsecured debt of the debtor;
- unless the new financing is being provided by a licenced financial institution, security for the new financing can be over already secured assets where the value of the relevant asset exceeds the value of the existing debt. In these circumstances, the new security will rank behind the existing security unless the existing creditor agrees to the contrary; and

- where the new financing is being provided by a licenced financial institution, security can be taken over already secured assets even if the asset value does not exceed the value of the existing debt. This is subject to the new financing being no more than 30% of the value of the relevant asset.

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