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Rescue And Revive: The New Bankruptcy Law in the UAE

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The much awaited new bankruptcy law in the UAE is a complete legal framework meant to assist financially troubled companies to avoid collapse. It took effect on December 29, 2016 after being decreed by President Sheikh Khalifa. It is part of the global wave of insolvency reform referred to as the "rescue culture" and has received much cheer from local and international markets. Although it has yet to be tested in practice by the courts, it is a move in the right direction.

The old law offered few options other than liquidation to companies that faced insolvency and was increasingly regarded as outdated. The new law expressly repeals UAE's extant insolvency regime which was set out in Chapter V of the Commercial Transactions Law, and introduces several progressive provisions.

The ambit of the new law is wide, covering companies registered under the Commercial Companies Law, free zone companies, sole establishments, professional civil businesses, and is not limited solely to "commercial traders". While government-owned companies may "opt-in", some carve-outs remain for self-legislating free zone companies such as Dubai International Financial Centre (DIFC) and Abu Dhabi Global Market (ADGM). Further, unlike the 2011 Draft, no provision addresses individuals acting in private capacity. There is word out that the UAE may introduce bankruptcy regimes for individuals and banks/financial institutions, but no formal proposal for the same has been announced as yet.

Under the new bankruptcy law in Dubai, the Committee of Financial Restructuring (CFR) is established, which will maintain an approved list of insolvency experts and a register of insolvencies; and oversee restructurings that occur outside the court system. Furthermore, a court will appoint a trustee to manage the processes of restructuring and insolvency if required.

The proceedings brought under the new bankruptcy law involve three main procedures for businesses in financial difficulty:

1. **Protective Composition:** for rescuing businesses that are not yet insolvent; this is a court led procedure which involves a debtor submitting a request for composition of bankruptcy to the court. This assists business that are facing financial difficulties. Under this protective composition procedure, the court will assist the debtor to reach an agreement with its creditors under a composition plan with supervision from the court. A settlement agreement with a payment plan is to be reached between the parties. However, this will not be approved by the court if the debtor has ceased to pay its debts for a period of more than 30 days. The debtor then has three years from the date of the courts' approval to which the agreement reached must be implemented.

2. **Insolvency with Restructuring:** for insolvent debtors who are capable of rescue by restructuring. The debtor or creditor must submit a request for the commencement of insolvency. The debtor may apply under this procedure if they have failed to pay debts for longer than 30 days. Creditors may not start insolvency proceedings against a debtor unless they are owed 100,000 AED or more. The debtor must agree to adopt the restructuring proposed. Any agreement reached under this procedure must be implemented within 5 years of the date of its approval by the courts.

3. **Insolvency and Liquidation:** this is applied where the first two options do not work or where the debtor acts in bad faith. This procedure involves an order of the court to wind up the business if it is found that it is acting in bad faith. If a liquidation is ordered, preferential creditors such as employees who have not been paid their wages, and governmental bodies will rank higher than other creditors.

The new comprehensive bankruptcy law in Dubai also replaces several bankruptcy-related crimes enlisted in the UAE's Penal Code. Under the old regime, a defaulting debtor was required to apply to be declared bankrupt within 30 days. Failure to do so invited fines and potential imprisonment. This encouraged many business owners to expedite bankruptcy, or even abscond, rather than try to restructure their businesses. A significant change is the de-criminalization of non-declaration. Now, a failure to declare bankruptcy can disqualify the debtor, but it is not a criminal offence. In addition, the new law prevents creditors from bringing criminal charges against executives of insolvent companies for bounced cheques while a court-mandated restructuring is underway.

"UAE's measures in developing support systems required for courts to implement the new insolvency law will largely determine its success or failure," says partner Franco Grilli from Fichte & Co. "If all goes well, the new law should tick most checklists when it comes to assessing the ease of Doing Business in the UAE. Looking ahead, the UAE may see its World Bank rankings rise on this front," he concludes on a positive note.