

# International Corporate Rescue



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## Keeping up with the Trend: The New Dubai International Financial Centre Insolvency Law

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### Synopsis

The latest in the series of insolvency regime reformations in the Middle East is the new Dubai International Financial Centre ('DIFC') insolvency law; DIFC Law 1 of 2019 (the 'New Law'). The New Law repeals and replaces the DIFC Insolvency Law 3 of 2013 (the 'Old Law') and applies in the jurisdiction of the DIFC, meaning that it applies to all DIFC incorporated entities.

The reformation of the insolvency regime by the DIFC has been motivated by the need to provide more efficient and practical insolvency and restructuring mechanisms to debtors as well as creditors. As compared to the Old Law, the New Law provides significant additional restructuring options. It offers a formal restructuring procedure as a rescue tool to debtors, provides a mechanism for binding non-consenting creditors and generally promotes a more structured and effective system for businesses in financial distress.

While offering additional protection and tools to debtors willing to rescue their businesses by way of restructuring, the New Law ensures that these protections and tools are balanced with the rights offered to creditors to recover their debts.

Together with the Insolvency Regulations, the New Insolvency Law is expected to increase investor confidence in the jurisdiction and bolster trade and investment in the UAE by bringing the DIFC in line with international best practice in cases of insolvency.

In this article, we have provided a summary of the key enhancements and refinements introduced by the New Law.

### What new is being offered?

#### *Rehabilitation*

The New Law provides for a court-supervised debtor in possession regime called 'rehabilitation'. Rehabilitation allows a debtor an opportunity to rescue its business by proposing a rehabilitation plan to its creditors and shareholders. A debtor can apply for rehabilitation if it is, or is likely to become, unable to pay its debts and if there is reasonable probability of it agreeing an arrangement

with its creditors and shareholders. Immediately prior to notifying the court of its intention to propose a rehabilitation plan to its creditors, the debtor must appoint one or more rehabilitation nominee(s), who will have the authority to perform such functions as the court may order, from time to time, on application by the debtor.

One important feature of the New Law is that from the time that a debtor notifies the court of its intention to propose a rehabilitation plan to its creditors, an automatic moratorium is instantaneously applied to all its creditors (secured and unsecured) for a period of 120 days. Amongst other things, the automatic moratorium affords debtors certain protections against termination of contracts. With the intention of creating a balance between the protections afforded to debtors and creditors, the New Law allows creditors to apply to the court seeking relief from the moratorium.

For the purposes of voting on the rehabilitation plan, the New Law provides that the creditors and shareholders will be categorised into different classes with the court's consultation. In order to be implemented, the plan needs to be approved by at least 75% of the creditors or the shareholders in each class as well as the court. This allows for binding the minority dissenting creditors and shareholders in each class to the rehabilitation plan.

The New Law grants courts the overruling power to sanction the rehabilitation plan provided that: (a) at least one class of creditors affected by it has accepted the plan; (b) all creditors are receiving at least as much value as they would have if the debtor was wound-up; and (c) a junior creditor in a class of creditors does not get paid before a senior dissenting creditor in that class.

Another substantial relief that the New Law provides to debtors during the rehabilitation process is the ability to take on court sanctioned new financing (secured or unsecured).

#### *Court appointed administrator*

If there is evidence of mismanagement and misconduct, one or more creditors can make an application to the court for the appointment of an independent administrator to manage the affairs of the debtor during the rehabilitation process. The administrator may be

appointed for one of the following purposes: (a) approving the rehabilitation plan; (b) facilitating a company voluntary arrangement; (c) approving a scheme of arrangement under the DIFC Companies Law (DIFC Law 5 of 2018); or (d) investigating any misconduct and mismanagement by the debtor and its management. In doing so, the court may grant the administrator all necessary powers, including those set forth in Schedule 2 of the New Law, to enable the administrator to rehabilitate the debtor.

### *Cross-border insolvency*

Another important feature of the New Law is the adoption of the United Nations Commissions on International Trade Law ('UNCITRAL') Model Law. The aim of the UNCITRAL Model Law is to ensure that insolvency officials from one jurisdiction will be recognised in another and that jurisdictions will provide the necessary co-operation to facilitate the insolvency process in the principal jurisdiction. This will essentially ensure the mutual co-operation and co-ordination of cross-border insolvency proceedings.

The provisions of the UNCITRAL Model Law adopted provide, among other things, (a) access of foreign representatives and creditors to the courts of the DIFC; (b) notification to known creditors that do not have an address in the DIFC; (c) recognition of foreign proceedings and relief; and (d) co-operation with foreign courts and foreign representatives.

It is noteworthy that in the event that an action provided by the UNCITRAL Model Law is contrary to the public policy of the DIFC or is in conflict with an obligation of the DIFC arising out of any treaty or other agreement, the DIFC courts may refuse to implement it.

### *Other enhancements*

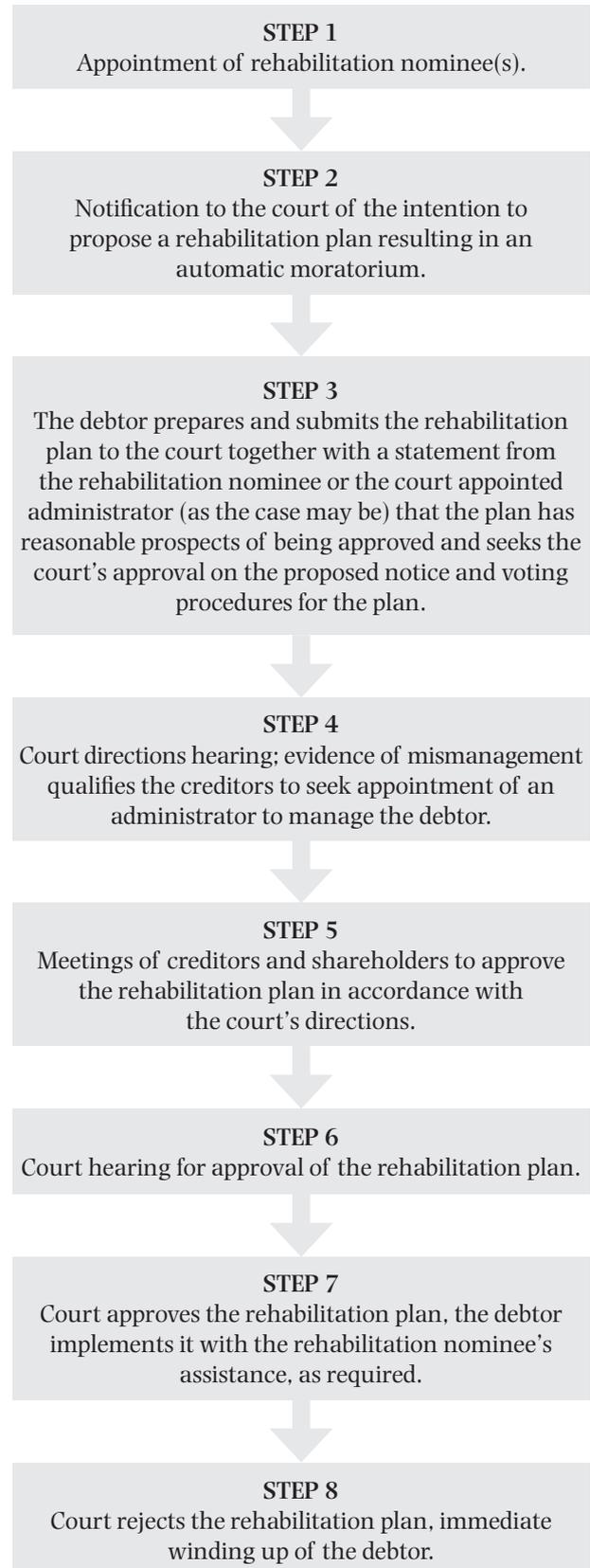
The New Law amongst other things: (a) improves the voluntary and compulsory winding up procedures offered by the Old Law by simplifying the process for nominating and appointing a liquidator in a creditors' voluntary winding up, streamlining the appointment process for the appointment of a liquidation committee in a compulsory winding up, and by clarifying the process for dissolving a company; (b) provides additional provisions governing unlawful trading and the reuse of company names; and (c) creates an offence of misconduct in the course of winding up.

### **Conclusion**

The New Law introduces many welcomed features which should place the DIFC at the forefront of jurisdictions with developed and sophisticated insolvency

regimes and is certainly a step forward in maintaining the UAE's position as a world leading trade hub.

### **Rehabilitation: Step by Step**



## **International Corporate Rescue**

*International Corporate Rescue* addresses the most relevant issues in the topical area of insolvency and corporate rescue law and practice. The journal encompasses within its scope banking and financial services, company and insolvency law from an international perspective. It is broad enough to cover industry perspectives, yet specialized enough to provide in-depth analysis to practitioners facing these issues on a day-to-day basis. The coverage and analysis published in the journal is truly international and reaches the key jurisdictions where there is corporate rescue activity within core regions of North and South America, UK, Europe Austral Asia and Asia.

Alongside its regular features – Editorial, US Corner, Economists’ Outlook and Case Review Section – each issue of *International Corporate Rescue* brings superbly authoritative articles on the most pertinent international business issues written by the leading experts in the field.

*International Corporate Rescue* has been relied on by practitioners and lawyers throughout the world and is designed to help:

- Better understanding of the practical implications of insolvency and business failure – and the risk of operating in certain markets.
- Keeping the reader up to date with relevant developments in international business and trade, legislation, regulation and litigation.
- Identify and assess potential problems and avoid costly mistakes.

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