

FINANCIAL RESTRUCTURING COMMITTEE ESTABLISHED IN THE UAE

OVERVIEW

Cabinet Resolution No. 4 of 2018 regarding forming the Financial Restructuring Committee was published in the Federal Official Gazette Issue 627 on 28 February 2018 and came into force on 1 March 2018 (the Resolution).

The Resolution establishes the FRC and sets out the terms of its membership and its function.

The FRC will primarily be responsible for:

- overseeing the implementation of the federal UAE bankruptcy law and managing the various registers contemplated under that law; and
- supervising out-of-court restructuring processes for licensed financial institutions.

The Resolution represents another step forward in the ongoing modernisation of the bankruptcy procedures available for onshore UAE companies and financial institutions. In particular, the introduction of an out-of-court restructuring process for licensed financial institutions is a novel development in the UAE and may prove a useful mechanism for restructuring the financial indebtedness of those institutions outside of a formal insolvency process.

BACKGROUND

The New UAE Bankruptcy Law was published on 29 September 2016 and entered into force at the end of December 2016 (the UAE Bankruptcy Law).

Section 2 of the UAE Bankruptcy Law contemplated the issuance of a Cabinet Resolution to establish a "Financial Restructuring Committee" with a remit to monitor the implementation of the UAE Bankruptcy Law and to oversee the financial restructuring procedures concerning regulated financial institutions.

The Resolution establishes the FRC and sets out its membership, scope and function. We understand that the inaugural meeting of the FRC is expected to take place imminently.

- The UAE takes a further step forward in the reform of its insolvency regime through the establishment of the Financial Restructuring Committee (the FRC).
- This milestone decision allows financial institutions an out-of-court restructuring option which may help break deadlock situations and avoid more formal court-based proceedings.
- This briefing details the role of the FRC and how it is expected to function, and analyses the benefits to UAE restructuring practices.

THE FINANCIAL RESTRUCTURING COMMITTEE

What is the role of the FRC?

The FRC will have the following functions:

1. supervising the management of out-of-court restructurings of financial institutions
2. approving and managing the roll of experts who will oversee bankruptcy processes
3. maintaining the registers of disqualified directors and bankrupt companies contemplated under the UAE Bankruptcy Law
4. reporting back to the Minister of Finance on the work of the FRC
5. raising public awareness of the UAE Bankruptcy Law.

It is not clear from the text of the Resolution whether the various registers will be searchable by the public.

Who will sit on the FRC?

The FRC is expected to comprise nine members, being representatives of each of the Ministry of Finance, the Ministry of Economy, the Ministry of Justice, the Central Bank, the Securities and Commodities Authority, and the Governments of Abu Dhabi, Dubai and Sharjah.

RESTRUCTURING OF FINANCIAL INSTITUTIONS

The Resolution also sets out a procedure for out-of-court financial restructurings of licensed financial institutions. These restructurings will take place outside a formal insolvency process but with the support of an insolvency expert, and will be overseen by the FRC. The scope of what could constitute a financial institution is not precisely specified, but is likely to include commercial and investment banks, and potentially also other financial institutions such as insurance companies. It could potentially also extend to onshore branches of non-UAE financial institutions.

When can a financial institution apply for a financial restructuring?

The Resolution provides that a financial institution may apply to the FRC for an out-of-court restructuring if it:

- is in financial distress but is not yet insolvent for the purposes of the UAE Bankruptcy Law
- is not in a preventative composition or bankruptcy process under the UAE Bankruptcy Law; and
- has not been subject to a financial restructuring in the preceding year.

In order to apply for a restructuring process, a financial institution must submit certain information to the FRC, including an assessment of the institution's funding needs for the next 12 months. The institution may also nominate an expert from the roll of experts to oversee its financial restructuring.

What are the consequences of the FRC accepting an application for a financial restructuring?

Expert will be appointed to supervise the restructuring

Once it accepts an application, the FRC will appoint an expert to oversee the financial restructuring. The expert will be on the roll of experts, unless the FRC feels that none of the experts on the roll are sufficiently specialised in the required field. The expert could be the expert nominated by the institution as part of its application, or another expert. The expert will need to confirm that it is willing to accept the appointment and the fees determined by the FRC, as well as any conditions to his appointment.

Debtor will continue to manage business

The debtor will continue to manage the business throughout the financial restructuring.

Obligation to file for bankruptcy proceedings suspended

Once the FRC has accepted an application for a financial restructuring, any obligation on the financial institution to file for bankruptcy under the provisions of the New Bankruptcy Law (for example because the insolvency tests are satisfied) will be suspended.

However, creditors of the financial institution will still be able to petition for the institution's bankruptcy throughout the financial restructuring process, and, if any such application is successful, the out-of-court financial restructuring will terminate immediately.

What is the role of the expert in a financial restructuring?

The expert appointed to oversee the restructuring of a financial institution will:

1. assess the economic and financial status of the debtor
2. facilitate a consensual agreement between the debtor and its creditors and contractors
3. provide the debtor with proposals to continue its business and retain its employees
4. submit monthly reports to the FRC to keep it informed of progress; and
5. undertake any other tasks assigned by the FRC.

There is nothing in the Resolution to suggest that the expert will be vested with any specific powers in connection with this role.

When will the financial restructuring terminate?

The financial restructuring process will terminate if consensual agreement is reached between the debtor and its creditors.

In addition, the FRC can terminate the financial restructuring if:

- the debtor fails to pay the requisite fees and expenses
- the expert concludes that a consensual agreement between the debtor and its creditors cannot be reached; or

WHO ARE THE EXPERTS?

- Experts can be natural or legal persons. This could therefore include accountancy firms. They can apply to be on the roll of experts by submitting an application to the secretariat of the FRC.
- The FRC is empowered to require experts to pass specialised courses in the field of restructuring and bankruptcy in order to be registered on the roll of experts.
- A summary of the experts' credentials will be recorded in an electronic register.
- Both the Resolution and the UAE Bankruptcy Law set out circumstances when an expert cannot act in respect of a particular restructuring (for example, due to a conflict of interest or because it is a creditor of the debtor).

- the debtor so requests, in which case the FRC must be satisfied that the reasons for the application for the restructuring procedure have ceased to exist.

CONCLUDING THOUGHTS

The Resolution and the establishment of the FRC represent another milestone in the ongoing development of the UAE's insolvency regime.

In particular, the introduction of an out of court process for the restructuring of licensed financial institutions is a novel approach in the UAE, and will be welcomed. Experience from other jurisdictions suggests that the involvement of an official mediator in a financial restructuring process can help break deadlock situations and avoid more formal, court-based proceedings.

It remains to be seen whether the UAE will also propose a more formal bank resolution regime (akin to those seen in other jurisdictions) to provide a specialised framework for dealing with the insolvency of complex financial institutions, or whether the out-of-court process envisaged for financial institutions may be made available for other entities. Other potential areas for reform include the personal bankruptcy regime and cross-border insolvency co-operation arrangements.

Ultimately, the success of the Resolution and the UAE Bankruptcy Law will depend on how they are applied in practice, which will, in turn, rely on the wider infrastructure that will sit behind the regime, such as training for the judiciary, a strong roll of accredited insolvency experts and a publicly accessible central register of insolvency proceedings and disqualified directors.

PROCEEDINGS OF THE FRC

Membership	<p>The FRC is expected to comprise nine members, being representatives of each of the Ministry of Finance, the Ministry of Economy, the Ministry of Justice, the Central Bank, the Securities and Commodities Authority, and the Governments of Abu Dhabi, Dubai and Sharjah. A minimum of seven members is required at all times</p> <p>The Chair of the FRC will be the Deputy Minister, and the Vice Chair will be appointed by the FRC's members at its inaugural meeting</p> <p>The membership of the FRC will be approved in a further resolution of the Cabinet</p>
Term	<p>Each member will be appointed for an initial term of three years, or such longer period as is required to appoint a replacement representative</p> <p>The appointment may be renewed by Cabinet Resolution</p>
Meetings	<p>As often as needed, but at least once every four months</p>
Quorum	<p>A majority of members including the Chair and Vice Chair</p>
Voting	<p>One vote per member. Resolutions passed by a majority, subject to the Chair's casting vote</p>
Resolutions	<p>Meetings will be minuted and resolutions may be circulated more widely at the FRC's discretion</p>
Administration	<p>The FRC will have a secretariat function to manage its administrative, financial and technical affairs</p> <p>The FRC will also have a bank account in which to deposit fees of the experts appointed to assist the FRC</p>
Advisers	<p>The FRC may invite advisers to attend the meetings on a non-voting basis. These are expected to be legal and financial advisers with expertise in the matters relevant to the FRC</p>

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