

THE NEW INSOLVENCY REGIME IN THE UAE

Client Alert

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The UAE has pioneered a new insolvency regime for individuals or natural persons with the issuance of the stand-alone Insolvency Law No. 19 of 2019 (**Insolvency Law**), which has come to effect as of 30 November 2019.

The Insolvency Law is intended to provide sufficient protections to natural or civil persons who are facing financial distress and are unable to settle their debts, unlike the UAE Bankruptcy Law which regulates commercial companies and individuals considered as traders under the Commercial Transactions Code.

This development is aligned with international best practice as only a few countries, particularly the mature and developed economies, have established legal and regulatory frameworks in support of personal insolvency cases.

Voluntary settlement

The Insolvency Law introduces the voluntary settlement process, which in a way is the equivalent of "Preventive Composition" under the UAE Bankruptcy Law (and its amendments). A request for voluntary settlement can only be submitted by the debtor, and is only possible so long as the debtor is not yet "insolvent" (i.e. the debtor has not stopped paying its debts as they fall due for a period exceeding 50 consecutive business days).

What does this mean for the debtor?

The voluntary settlement process is intended to protect the debtor from insolvency by putting in place a settlement plan, while enabling the debtor to continue to have control over managing its estate and to carry out its activities during the settlement process. It is worth noting that upon requesting voluntary settlement, the debtor's debts do not become due and payable nor are payments for debts accelerated.



What does this mean for the creditors?

The voluntary settlement process allows the creditors to be actively involved in approving the settlement plan. On the other hand, it prohibits creditors from individually filing for enforcement against the assets of the debtor or request for the insolvency and liquidation of the debtor. Secured creditors can request from the court to enforce their security for payment of any due and payable debts without having to take part in the voluntary settlement process.

Insolvency and Liquidation

The Insolvency Law provides streamlined insolvency procedures, which can either be initiated by the court (if it rejects or orders the voluntary settlement plan to be void), the insolvent debtor or the creditors with claims amounting to AED 200,000 or more.

What does insolvency mean for the debtor?

Once the court issues an order to commence the insolvency proceedings, all debts, whether secured or not, become due and payable. The debtor is prohibited from administering or transacting over any of its assets, securing any new debts or providing any guarantees or securities, or obtaining any new financing for a period of 3 years from the issuance of the insolvency judgment.

Moreover, the court may order, upon its discretion or based on the request of the debtor, the suspension of all criminal proceedings pertaining to any bounced cheques issued by the debtor and the suspension of all enforcement and legal claims filed against the debtor.

What does liquidation mean for the creditors?

Proceeds of the liquidation of assets are distributed to creditors pursuant to their ranking (i.e. secured creditors, preferred creditors and ordinary unsecured creditors in that order).

Secured and preferred creditors with due and payable debts may obtain the court's approval to independently enforce their security against the assets of the debtor. Otherwise, secured creditors will be paid out of the proceeds of the liquidation of the assets subject to their security. Any debts of secured creditors in excess of the liquidation proceeds of the secured assets are treated as unsecured debt.



What's next?

The issuance of the Insolvency Law is certainly a positive development which ultimately aims to boost confidence in retail lending and promote a more secure lending environment with sufficient protections to debtors. As the Insolvency Law is fairly new, there are a number of matters that will still need to be clarified through the actual implementation of the law by the UAE courts and the issuance of supplementary resolutions. We will continue to follow up closely on this matter and provide you with updates as and when they are issued.

For further information, please feel free to contact one of the lawyers below or your usual Baker McKenzie contact.

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