



THE NEW BANKRUPTCY CODE 2016 – UNITED ARAB EMIRATES

MINAL KAUL

ASSOCIATE – BANKING AND FINANCE

STA LAW FIRM



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- ❑ Wider applicability

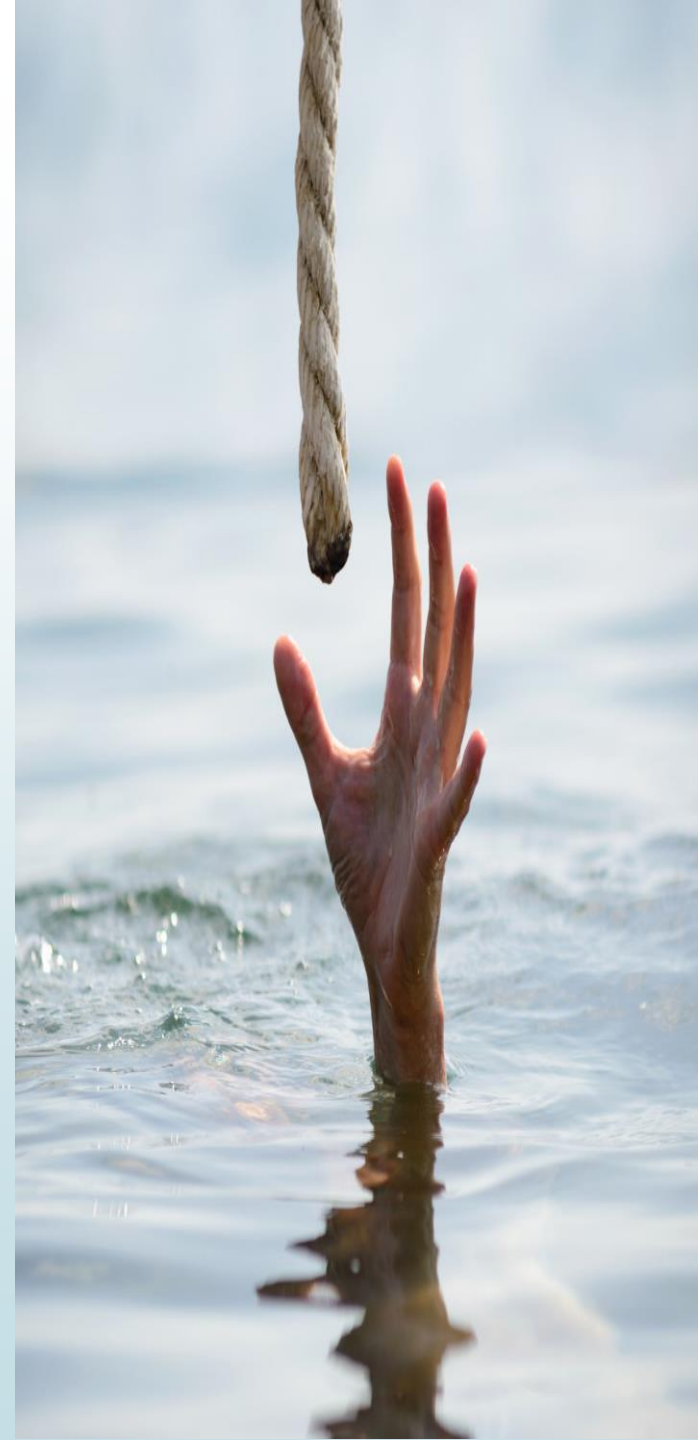
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NOTABLE CHANGES FROM THE OLD BANKRUPTCY LAW

- ❖ Repealed chapter – V of Commercial Transaction Law
- ❖ Wider applicability
 - ❑ Companies under UAE Commercial Companies Law
 - ❑ Companies and establishments under free zones (except DIFC & ADGM)
 - ❑ Sole establishments
 - ❑ Civil companies undertaking professional activities
 - ❑ Companies owned by federal or local government (who expressly submit to the provisions of this law);



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SALIENT FEATURES

❖ Financial Restructuring Committee

- ❑ Established under cabinet resolution to supervise restructuring process of licensed financial institutions.
- ❑ Maintain approved list of Bankruptcy experts.
- ❑ Maintain a register of Bankruptcy Judgments.
- ❑ Prospective role of restructuring committee for out-of-court structuring and settlement.



PROCESS TO ASSIST DEBTORS IN FINANCIAL DISTRESS

❖ Preventive Composition (Section 3, Articles 5-66)

- ❑ Debtors who are not insolvent but in financial distress and where the debtor are not in default for more than 30 days.
- ❑ Submission of preventive composition application to court along with necessary documents including nomination of trustee.
- ❑ Determination of amount of money or bank guarantee to be furnished by the Debtor.
- ❑ Appointment of expert by the court to determine if the debtor can meet the condition for preventive composition.
- ❑ Acceptance or Rejection of Preventive Composition application.
- ❑ Appointment of trustee and supervisor :-
- ❑ Duties of trustees.
 - Inventories of the properties of the Debtor;
 - Record of all the creditors and their claim amount;
 - Undertake actions on behalf of Debtor;
 - Publish the decision on initiating the composition procedure in local newspaper with invitation to creditors to file their claim within 20 days.
 - Preparing the Preventive Composition Scheme.



PREPARING THE PREVENTIVE COMPOSITION SCHEME

- ❖ Submission of preventive composition scheme draft (the **PC Scheme**) to the court within 45 days of the publication.
- ❖ The PC Scheme draft shall include *inter alia* possibility of debtors business to regenerate profits, terms and conditions of settlement of liability, suspension/termination of activities of debtor, grace period & payment deduction.
- ❖ The Court shall within 10 days review and verify the PC Scheme.
- ❖ Invite the creditors meeting to discuss and vote on PC Scheme by newspaper publication.
- ❖ At the meeting, the PC Scheme shall be approved by majority of creditors, who hold minimum 2/3rd of total unsecured debts.
- ❖ Approval and implementation of PC Scheme.
- ❖ Registration of the PC Scheme in the commercial or professional register of the debtor and publication thereof.

N.B. The PS Scheme shall be implemented within three years from the date of approval by the court which may extend for another three years by consent of majority of creditors holding 2/3rd of the debts.



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NULLIFICATION, RECESSION AND TERMINATION OF SCHEME

GROUND (Articles 58-66)

- ❖ Application for annulment may be filed if investigation initiated for crime/s under the Law.
- ❖ PC Scheme null and void if debtor convicted of crimes under the Law.
- ❖ PC Scheme may be rescinded if the debtor fails to satisfy the conditions of the Scheme.
- ❖ Upon the aforesaid annulment and rescission of the PC Scheme, the Court may terminate the preventive composition procedures and declare bankruptcy and liquidation of properties.
- ❖ The court may also terminate the preventive composition procedure and declare bankruptcy of debtor if the debtor is in default of payment for over 30 days.



BANKRUPTCY PROCEDURES

- ❖ Who can initiate Bankruptcy procedures:
 - ❑ Debtor who ceases re-payment of debts for over 30 days due to financial instability.
 - ❑ Unsecured creditors or group of creditors holding debt of at least AED 100,000/- where the debtor has failed to repay debt within 30 days from date of notice.

- ❖ Appointment of experts by the court to decide on the Bankruptcy application.

- ❖ Appointment of trustee and supervisors.
 - ❑ Duties of trustee;
 - ❑ Trustee report;
 - ❑ decision thereof;



INITIATION OF RE-STRUCTURING PROCEDURE

PREPARATION OF RESTRUCTURING SCHEME

- ❖ Submission of Restructuring Scheme draft (the Restructuring Scheme) to the court within 90 days.
- ❖ The Restructuring Scheme draft shall include *inter alia* possibility of des business to regenerate profits, terms and conditions of settlement of liability, suspension/termination of activities of debtor, grace period & payment deduction.
- ❖ The Court shall within 10 days review and verify the Restructuring Scheme.
- ❖ Upon the satisfaction of court, the trustee shall invite creditor meeting to discuss and vote on Restructuring Scheme.
- ❖ Invite the creditors meeting to discuss and vote on Restructuring Scheme by publication via newspapers.
- ❖ At the meeting, the Restructuring Scheme shall be approved by majority of creditors, who hold minimum 2/3rd of total unsecured debts. – (Type of Creditors).
- ❖ Approval and implementation of Restructuring Scheme.
- ❖ Registration of the Restructuring Scheme in the commercial or professional register of the debtor and publication thereof.

N.B. The PS Scheme shall be implemented within three years from the date of approval by the court which may extend for another three years by consent of majority of creditors holding 2/3rd of the debts.



DECLARING BANKRUPTCY & LIQUIDATION OF PROPERTIES OF DEBTOR

❖ The Court may deliver judgment in the following cases:
(Chapter 12, Articles 124-138)

- ❑ Court terminates preventive composition procedure;
- ❑ Debtor acts in bad faith by procrastinating or evading obligations;
- ❑ Restructuring procedures in-appropriate or report by expert or by trustee stating restructuring is impossible.
- ❑ Majority in voting under re-structuring scheme not fulfilled.
- ❑ Rejection of re-structuring scheme by the court.
- ❑ Annulment or Recession of restructuring scheme by the court.



IMPORTANT PROVISIONS

- ❖ Responsibility and liability of the directors/managers towards the losses of the company – Article 144;
- ❖ Obtaining new finances – Article 181;
- ❖ Order of priority of debt upon Bankruptcy – Article 185-189;

RIGHTS AND ENTITLEMENTS OF SECURED CREDITORS

- ❖ Enforcement Proceeding
 - ❑ Prior to PC Scheme or Restructuring Scheme (Article 32)
 - ❑ Entitled to take action first upon bankruptcy judgment (Article 186)
- ❖ Priority of debts (Article 186)





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