

Unique provisions dealing with the Covid 19 under the new bankruptcy law in the UAE

Summary- The UAE Cabinet has approved a further amendment (Amendment Law) to Federal Law No 9 of 2016 (the Corporate Bankruptcy Law). The Amendment Law No. 1 of 2020 follows the previous amendment of the Corporate Bankruptcy Federal Law No. 23 of 2019 to be effective once published in the official gazette.

A. Key Amendments specifically include: i. extend the 'stay' on judicial proceedings under either Protective Composition Proceedings (PCP); or Restructuring-in-Bankruptcy (RIB) proceedings up to 14 months from the Commencement Order setting up the bankruptcy proceedings; and ii. introduce unique provisions under Part 4 of Chapter 5 allowing to defer the debtor's obligation to file for bankruptcy in case of an 'Emergency Financial Crisis'. (EFC). This last issue shall be further considered here below.

B. Definition of an EFC An EFC is defined as "a public condition that affects trade or investment in the state such as the outbreak of epidemic, natural or environmental disaster, war or other which cause and duration shall be determined by Cabinet resolution"

C. Suspension to file for bankruptcy as a result of an EFC In such a case, the debtor will no longer be under an obligation to file for RIB or formal bankruptcy procedures under Part 4. Such obligations will instead be suspended for a period of time equal to the duration of the EFC and the Court may refuse to open the bankruptcy proceedings if the debtor is able to show that its current financial condition results from an EFC.

D. The following provisions apply to debtors subject to this new process:

(i) Disposing debtor's assets During an EFC, the management must act carefully and in good faith with the view to protecting the debtor's assets necessary for the business continuation. It is under the obligation to update the debtor's accounts with the losses incurred due to the EFC. Disposal of a debtor's assets is however allowed in order to pay pending basic salaries to the employees only.

(ii) Creditor's filing for bankruptcy The overriding right of the creditors, holding a debt of more than AED 100,00, to start bankruptcy proceedings against a debtor who has failed to settle outstanding payment/s within 30 days is not affected by the Amendment Law. However, the creditor's application will not be considered by the Court until the end of the EFC period.

(iii) Restriction of precautionary measures No precautionary measures may be considered by the Court against the debtor's assets which are necessary for their business operations during the EFC. Conversely, assets that are not necessary for the running of the debtor's activities may be subject to precautionary measures (e.g. mortgage on land or premises). Notably, secured creditors may apply to the Court for an enforcement order if and when the secured assets are not important to the debtor to continue its business.

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