

# Briefing Note

17 December 2009

## Dubai World Standstill Request

Provided by Denton Wilde Sapte

### Introduction

ACE has issued two press statements on the situation in Dubai and Nelson Ogunshakin, ACE chief executive, has also give interviews to the world's press.

To aid ACE members we are publishing this briefing note provided by Denton Wilde Sapte.

This first part of this note sets out very high level bullet points which address how the current situation with Dubai World may have adversely affected the position of ACE members who are creditors of that group.

The balance of the note sets out some common questions likely to be received from creditors of Dubai World and the responses to such questions. The information in the responses has been collated using only publicly available information. In addition, it should be noted that the laws and practice of the UAE are subject to change at short notice.

This is outline guidance only and not legal advice. It may not be relied upon by any party. If you have particular queries then please discuss them with your legal adviser or the ACE legal helpline.

### Bullet Points for ACE members

- **It appears prudent to work on the basis that all creditors (including members of ACE) will be affected by the restructuring.**

There has been no statement as to whether Dubai World intends only to restructure its financial creditors (Banks and bondholders) or whether all creditors will be affected. It would be typical for a reorganisation to leave trade creditors unaffected as to do otherwise would damage the underlying business. The Dubai World situation is different as the trade creditors are already being affected and some of Dubai World's underlying businesses are already damaged.

- **No standstill is yet in place**

There is very little information about Dubai World's plans for the restructuring. No plan was presented to the financial creditors at the initial meeting. It seems that Dubai World is simply seeking a minimum six months' "standstill" period. There



are no details of the effect any "standstill" would take and how it would be created.

Any standstill would inevitably prevent a creditor seeking a winding-up of a debtor entity. It would also prevent creditors seizing the assets. It may or may not stop litigation/arbitration to establish liabilities and it may be very important for ACE members to ensure that they can continue with actions to establish what is owed to them.

- **Any standstill that is created may not bind ACE members**

It may be possible for Dubai World to bind bondholders by a vote. But, in the absence of new legislation, a standstill will only bind members of ACE if they agree to it contractually or if there is a court order in Dubai.

- **It is possible that new legislation will be needed for the Dubai World restructuring**

Dubai World is a corporation organised by special decree. This factor, and that fact that so much of the asset base is land interests in the UAE make it possible that new legislation will be brought forward to deal with this situation. If new legislation is brought forward then it may be important for ACE members to lobby UK government bodies to ensure fairness and equality of treatment.

- **The existing UAE insolvency legislation would require all creditors to submit claims and for these to be verified and accepted. A deadline would be set which could be as little as 30 days**

ACE members should consider preparing for this now. Special attention should be paid to uncertified invoices and claims for suspension/breach of contract and how best to convince a UAE court to accept these claims as debts of the borrower entities.

If there is to be an exercise of this nature then we would expect claims will have to be submitted within a short deadline and an assessment made as to their value. While those creditors with certified claims will be as well placed as the unsecured financial creditors, it will be essential for any uncertified or contingent claims to be presented in a timely and persuasive manner.

- **The steps being taken by Dubai World may trigger new contractual rights for ACE members**

ACE members should consider whether the steps taken by Dubai World amount to an insolvency event under the terms of their contracts. This could open up new rights to termination and damages. This may be helpful in light of the above point about proving for unliquidated sums in a bankruptcy.

- **ACE members who have signed agreements giving them less money over staged payments need to consider how those agreements will be affected**

It is possible that the outcome of the restructuring will be that creditors (including ACE members) will get less than 100 per cent of the debt due and that staged payments will be applied. Where an ACE member has already entered into a similar agreement with a Dubai World entity then there is a danger that they will be hit doubly hard. The outcome may depend on the wording of the agreement and this needs special consideration.



- **ACE members should consider seeking representation in the creditor discussions.**

The recent comments of the Head of the Dubai Finance Dept (reported in the FT - see 9 December) confirm the view that this will not be sorted quickly. No restructuring proposal expected before the end of Q1 2010.

A creditors meeting (almost certainly of an informational nature) is scheduled for 21 December, presumably in Dubai. ACE members should seek representation at this meeting and should consider earlier contact with the Deloitte's team.

**What are the applicable insolvency proceedings that can be taken against: (i) Dubai World; (ii) Nakheel World LLC; (iii) Nakheel Holdings – 1 LLC; (iv) Nakheel Holdings – 2 LLC; (v) Nakheel Holdings – 3 LLC; and (vi) Nakheel PJSC?**

It should be noted that there is very little in the way of precedent on bankruptcy and insolvency issues in the Abu Dhabi/Dubai courts. Commercial companies are companies formed under the Federal Law No. 8 of 1984 (as amended) (the **Companies Law**). They are:

joint ventures;  
general partnership companies;  
limited partnership companies;  
public joint stock companies;  
private joint stock companies;  
limited liability companies; and  
partnership companies limited with shares.

The statutory provisions governing bankruptcy and insolvency proceedings to which a UAE commercial company would be subject are set forth in the UAE Commercial Code (the **Commercial Code**) and the Companies Law. It should be noted that Dubai World has been established as a corporation by special decree and as such does not fall within any of the categories above. However, the insolvency procedures set out below should still apply to a corporation formed by special decree.

#### **Bankruptcy pursuant to the Commercial Code**

Articles 645-900 of the Commercial Code provide detailed rules on the bankruptcy of an individual (although these provisions would need to be read in conjunction with the provisions of any special laws). However, these provisions also apply to companies and branches of foreign companies established in the UAE (Article 801).

A declaration of bankruptcy will be made by a court where an entity is unable to pay its debts "because its financial affairs are upset and its credit undermined" (Article 645(1) of the Commercial Code). An application for bankruptcy can be made:

at the insolvent debtor's request;  
at a creditor's request;  
at the request of the prosecution services; or  
on the court's own initiative.

In the court's judgement declaring the debtor bankrupt, or in a subsequent judgement relating to the bankruptcy proceedings, the court will appoint a trustee in bankruptcy to manage the bankrupt's estate (Article 668(1)). Article 670(1) provides that the trustee is responsible for administering and preserving the assets of the bankrupt.



The judge supervising a bankruptcy will invite the creditors to attend the deliberations on a deed of arrangement with the bankrupt (Article 764(1)). This is another step in the course of bankruptcy proceedings. This will happen where there is more than one creditor whose debts have been provisionally or finally accepted. A deed of arrangement can only be enacted with the consent of the majority of the creditors in number and who are owed two-thirds of the verified debts (Article 767). A creditor who is absent from the meeting will be deemed to reject the arrangement (Article 767(2)). In our view, notwithstanding Article 767(2), the deed of arrangement will bind such a creditor if there is still a majority of creditors who are owed two-thirds of the verified debts voting for the deed of arrangement.

Secured in rem creditors appear not to be able to vote unless they relinquish their security rights (Article 769). A deed of arrangement will not apply to creditors with a mortgage or a lien unless they have assigned such rights nor shall it apply to ordinary creditors where debts have arisen during the period of bankruptcy proceedings (Article 775(2)).

Under Article 806 the court may (of its own accord or at the request of the company) postpone the declaration of bankruptcy for up to a year if there is a likelihood of support for the company's financial position or if the economic interest of the country so requires. In this case, the court will order such steps to be taken as it sees fit to preserve the company's assets. This is of particular relevance to Dubai World.

Articles 831 to 877 of the Commercial Code contain a section on deeds of arrangement, which are court-sanctioned arrangements with creditors that are distinct from the deed of arrangement noted above in relation to bankruptcy proceedings. An application for this type of arrangement can only be made by the company (or the businessman where the relevant business is being run by an individual) and only if its affairs are so disturbed that this leads to a suspension of payments (Article 831). Any application to court must be made within 20 days of the cessation of payments and must be sanctioned by an extraordinary general meeting of the company (Articles 831 and 833). The proposed settlement must not be for less than 50% of the debt and the period for payment must not be more than three years from the date of ratification of the arrangement (Article 837). The deed of arrangement can only be concluded with the consent of a majority in number of the creditors whose debts have been finally or provisionally accepted by the court, provided that they own two thirds of the debt (Article 861(1)). Article 769 relating to secured in rem creditors also applies to this form of arrangement. Once ratified by the court, the arrangement shall apply to all creditors whose debts are deemed to be ordinary debts in accordance with the conditions of bankruptcy, even if they did not take part in or approve the proceedings (Article 867).

### **Liquidation of a commercial company pursuant to the Companies Law**

Article 281 provides that the liquidation of a commercial company occurs immediately upon its dissolution. These provisions are in addition to those found in the Commercial Code as discussed above. A commercial company can be dissolved for various reasons:

expiry of the period specified in the memorandum and articles of association unless this period is renewed;

exhaustion of the objects of incorporating the company;

depletion of all or most of the company assets which makes the beneficial investment of the remainder possible;

amalgamation; or

the unanimous approval of the partners to terminate its duration unless the company's memorandum provides that a specified majority shall suffice.

Article 285 provides (in respect of a public or private joint stock company):



"If the losses of a joint stock company amount to half the capital, the board of directors must call an extraordinary general assembly to convene and decide whether the company should continue or be dissolved before the duration specified in the articles.

If the board of directors fails to call the extraordinary general assembly to convene or it was not possible for the assembly to adopt a resolution on this matter, any interested party may initiate court proceedings requesting the dissolution of the company."

A limited liability company can be dissolved pursuant to Articles 287 and 288, which provide respectively:

"If the withdrawal, death, interdiction, bankruptcy or insolvency involves all the general partners in a partnership limited with shares, the company must be dissolved unless its articles provide that it may be converted into another type of company."

"A limited liability company shall not be dissolved upon the withdrawal or death of a partner or the decree of a judgement of his interdiction, bankruptcy or insolvency unless otherwise provided in the company memorandum."

Dissolution of a commercial company is not effective as against third parties until it has been registered in the Commercial Register and published in two Arabic language newspapers.

#### **What is the corporate structure of Dubai World? What assets does it have and where are those assets?**

Dubai World is a holding company whose investments are structured through five business segments, which are run through subsidiary companies. The five business segments are as follows:

transport and logistics;  
dry-docks and maritime;  
urban development;  
investment and financial services; and  
energy and natural resources.

A group structure chart is set out at Appendix A to this note, which shows how these business sectors are divided between the various companies in the Dubai World group. The group is structured with one main holding company at the top. Immediately beneath this holding company sit a series of sub-holding companies which then hold the various operating subsidiaries for the different business segments detailed above. The structure chart has been compiled from publicly available information and so may not be entirely current, however it does provide a helpful overview of the basic group structure.

The table below sets out some of the material assets held by each of the sub-holding companies within the Dubai World group.

<b>Sub-Holding Company</b>	<b>Description of Assets/Portfolio Companies</b>
DP World	One of the largest marine terminal operators in the world with 49 terminals and 12 new developments across 31 countries. DP World's flagship facility is the Jebel Ali facility in Dubai, which has been voted "Best Sea Port in the Middle East" for 15 consecutive years. The DP World portfolio includes P&O Maritime Services.



Sub-Holding Company	Description of Assets/Portfolio Companies
Drydocks World	Drydocks World is a leading player in international ship repair, conversion, new building and other marine-related activities. The Drydocks World portfolio includes Platinum Yachts FZCO (a company that specialises in the conversion and repairing of yachts) and Platinum Yachts Management (a one-stop shop for yacht services).
Leisurecorp	Leisurecorp specialises in the development of premium golf and lifestyle destinations. The company's portfolio includes Jumeirah Golf Estates in Dubai, Turnberry in Scotland, Pearl Valley Golf Estates in South Africa, an interest in Snowmass ski resort near Aspen in the USA, a minority interest in Troon Golf (a luxury-brand golf management, development and marketing company) and an investment in GPS Industries Inc. (a company specialising in GPS and Wi-Fi multimedia for managers of golf facilities and resorts).
Energy and Natural Resources World	Energy and Natural Resources World was incorporated to build a portfolio of strategic long-term investments in natural resources. The company has entered into a strategic joint venture in the oil and gas sector that has producing assets and proven reserves in Russia and Nigeria.
Economic Zones World	Economic Zones World develops and operates free zones, technology, logistics and industrial parks. The Economic Zones World portfolio includes the Jebel Ali Free Zone in Dubai, Gazeley (one of Europe's leading developers and providers of sustainable logistics and industrial spaces), Techno Park (a research and development business and industrial park in Dubai) and Daz Auto Zone (a proposed autocar free zone in Dubai).
Nakheel	Nakheel is Dubai World's flagship property developer. Its projects include Palm Jumeirah, Palm Deira, Palm Jebel Ali and The World as well as the Dragon Mart and Ibn Battuta Shopping Malls in Dubai.
Istithmar World	Istithmar World holds Dubai World's investments and financial services businesses. Istithmar World's portfolio includes Istithmar World Capital (a private equity and alternative investment house which has invested in entities such as Arcapita, Bumrungrad Hospital Public Company Ltd and Cirque du Soleil), Istithmar World Ventures (a venture and growth capital investment firm which has invested in entities such as Imdaad, Nakheel Travel and Dubai World Security) and Istithmar World Aviation Holdings (an investment company specialising in aviation and aerospace which has investments in entities such as Dubai Aerospace Enterprise, IWA Executive Jets and Daallo Airlines).
Dubai Maritime City	Dubai Maritime City will be a purpose-built hub for maritime business and commerce and will include a maritime centre, harbour offices, harbour residences, a campus for maritime training and research and a marina.



Sub-Holding Company	Description of Assets/Portfolio Companies
Limitless	A real estate developer that has projects in the UAE, Malaysia, Vietnam, Saudi Arabia, Jordan and Russia. It also has proposed projects in Europe, Africa, the Middle East, Asia and the Far East.
Dubai Multi Commodities Centre	Proposed as a global centre for excellence in the commodities business, this free zone incorporates a number of infrastructure projects such as Jumeirah Lakes Towers, the Dubai Diamond Exchange, the Dubai Pearl Exchange and the Dubai Cotton Centre.
Dubai World Africa	Dubai World Africa focuses on the acquisition, development and management of prime assets on the African continent and the Indian Ocean Islands. Dubai World Africa's portfolio includes the Victoria & Albert Waterfront in South Africa, the Singita Lebombo Lodge and various game reserves.