

Briefing Note

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Dubai World and its subsidiaries – latest developments

Briefing document provided by Denton Wilde Sapte & Co

On 14 December 2009, the same day on which payments under Dubai World's subsidiary Nakheel's 2009 Sukuk fell due, the Government of Dubai announced that received support from the Government of Abu Dhabi and the Central bank to pay the US\$4.1 billion due. It has also secured funding of an additional US\$5.9 billion that it will use for "interest expenses and working capital [of Dubai World] through April 30, 2010 – conditioned on the company being successful in negotiating a standstill". The press release said that an aim of the Government would be to apply some of these funds to satisfy trade creditors and contractors in the Emirate of Dubai.

The Government of Dubai also announced a new legal framework "based upon internationally accepted standards for transparency and creditor protection" that would "be available should Dubai World and its subsidiaries be unable to achieve an acceptable restructuring of its remaining obligations".

The basis of the new legal framework is Decree No. 57 for 2009 Establishing a Tribunal to Decide the Disputes Related to the Settlement of the Financial Position of Dubai World and its Subsidiaries (the **Decree**). The key features of the Decree are as follows:

- The creation of a new tribunal chaired by the Chief Justice and two other judges of the DIFC Court, all of whom are common law judges of international repute. The tribunal is to have exclusive powers in relation to demands and claims against the Dubai World Group and in respect of its liquidation or restructuring. The Decree appears to be a Dubai law and not a DIFC law, although the Decree makes clear that the proceedings are to be seated in and supported by the facilities of the DIFC Court.
- The tribunal will apply provisions set out and referred to in the Decree, which in effect create a new ad hoc insolvency regime for the Dubai World Group. The regime draws heavily from the DIFC Insolvency Law rather than the provisions of the existing UAE insolvency laws. The new regime has a facility for an automatic moratorium to be created without the consent of creditors and for the debtor corporations to be able to put forward their own voluntary arrangement plan. If the debtor corporation elects to do so, then it may invoke an exclusive period during which it may put forward a voluntary arrangement to the exclusion of any creditor-led proposals. There are extensive provisions to protect the assets of the debtor corporations including a prohibition on any creditor exercising set-off rights against them.



- While the intention of Dubai World is clearly to come to an agreed restructuring with its creditors, this may not be possible. In this case, any debtor corporation within the Dubai World Group will be able to invoke the provisions of the new regime. Upon doing so, the debtor corporation will have 120 days in which to present its plan to the creditors. The debtor corporation would then have a further 180 days to attempt to agree the plan with its creditors. If the debtor corporation cannot reach agreement with its creditors during this 180-day period, the period can be extended by application to the tribunal for a further 90 days. Importantly, the debtor corporation retains its exclusive right to formulate and put forward voluntary arrangement plans throughout this entire period.
- Any voluntary arrangement plan will need to be approved by a two-thirds majority by value of each affected class of creditors. Subject to the approval of the tribunal, the debtor corporation has control over the definition of the various possible classes of creditors and the voting mechanisms by which the creditors or classes of creditors may vote on the approval of the debtor corporation's voluntary arrangement plan.
- Upon the expiry of this exclusivity period, the creditors of the debtor corporation may submit their own voluntary arrangement plans. There are no time limits specified for the agreement of these alternative plans, and competing plans may be submitted by different interested creditors. A proposed plan may still be passed in certain circumstances even where certain classes vote against it.
- Any plan approved by the creditors must be submitted to the tribunal for final approval to ensure that it is not "unfairly prejudicial" to any creditor or class of creditors, and also to ensure that it does not run contrary to principles of good faith.
- The members of the Dubai World Group can only be wound up by the tribunal, and only where a voluntary arrangement plan has failed and the tribunal finds that it is in the interests of the corporation and its creditors to proceed with the winding up.
- There are provisions allowing both unsecured, junior and senior secured borrowings to be made by members of the Dubai World Group during the period when a voluntary arrangement plan is being considered. Secured debt must be authorised by the tribunal, which will require there to be adequate protection for the existing secured lenders in certain situations. The members can obtain unsecured debt at any time.
- The tribunal can determine a procedure for the submission of proofs of debt and a deadline after which no further claims may be advanced.
- The Decree incorporates only part of the provisions of DIFC insolvency law which relate to wrongful trading, preferences and other creditor protections. In particular, there is doubt about the date from which a transaction may be questioned as a preference.

There is no doubt that the Decree is an unusual step and has been implemented in a novel way. Given, however, that insolvency regimes across the MENA region have been the subject of some criticism, the importation of international concepts and processes will be welcomed by many. Some creditors may choose to question the status of the Decree given the pre-existing UAE insolvency laws which, to some interested parties, might provide other remedies that are or may be no longer available.