

Dubai World: A new insolvency regime



By Ashley Painter and Chris Harrison

Last November, Dubai World asked its creditors for a six month 'standstill' on its debt repayments, including US\$4.1 billion due under a sukuk issued by its subsidiary, Nakheel. On 14 December 2009, the Dubai Government announced that it had secured US\$10 billion from the Abu Dhabi Government, part of which would be used to repay the sukuk. On the same day, the Ruler of Dubai issued Decree No. 57 of 2009 "Establishing a Tribunal to decide the Disputes Related to the Settlement of the Financial Position of Dubai World and its Subsidiaries" (Decree 57).

What is Decree 57? Largely based on the DIFC Insolvency Law and Regulations, Decree 57 provides a legal framework designed to deal specifically with the settlement of disputes related to Dubai World and its subsidiaries (each, a Corporation). Most notably, Decree 57 establishes a tribunal to deal with such disputes, composed of three prominent judges including the Chief Justice and Deputy Chief Justice of the DIFC Courts – Sir Anthony Evans, Michael Hwang and Sir John Chadwick (the Tribunal).

Powers of the Tribunal: The jurisdiction of the Tribunal is very broad. It is able to hear and decide any demand or claim submitted against a Corporation, including any demand to dissolve or liquidate a Corporation. The Courts of Dubai and the DIFC are prohibited from doing the same. Further, the Tribunal may issue interim orders and decisions (including injunctions) to any person. All proceedings before it will be open to the public and its decisions are final, irrevocable and not subject to any appeal or review.

Key processes: Decree 57 includes procedures which allow a Corporation to propose and enter into voluntary arrangements with its creditors (a Voluntary Arrangement). A Corporation may notify the Tribunal of its intention to propose a Voluntary Arrangement, following which the Tribunal convenes and an automatic moratorium applies to all creditors – this impacts proceedings

initiated in any court or tribunal before the notification.

Creditors must submit proofs of claim within 60 days after the notification and the Corporation is given 120 days (which may be extended upon application of the Corporation) in which it has the exclusive right to propose a Voluntary Arrangement to its creditors. It is also authorised to continue managing its own affairs.

When the Voluntary Arrangement is ready to be proposed to creditors, the Corporation shall propose notice and voting procedures to the Tribunal. This will separately classify secured creditors, unsecured creditors and equity interest holders for voting purposes. Creditors are invited to approve these procedures which, in turn, may be approved, rejected, or approved as modified by the Tribunal.

Winding up: Only the Tribunal can start the winding up of a Corporation. If a Voluntary Arrangement does not gain approval of the required majority of each class of creditors, the Tribunal must immediately take steps to wind up that Corporation, in accordance with the DIFC Insolvency Law. However, the Tribunal may decline to initiate the winding up if it finds that it is in the interests of that Corporation and its creditors to do so.

What now? Many parties will welcome the arrival of Decree 57, yet it raises a number of questions including the exact scope of the Tribunal's jurisdiction and the precise application of this new law. Due to its limited application, many lawyers and their commercial clients would also welcome a review of the UAE insolvency regime as a whole so that similar modern insolvency practices would be available to distressed institutions generally. For now, creditors should be assessing their existing relationships and maintaining an open dialogue with Dubai World and monitoring whether a Voluntary Arrangement is proposed to the Tribunal.

Clyde & Co

Dubai Office: City Tower 2, Suite 102, Sheikh Zayed Road
 PO Box 7001, Dubai, United Arab Emirates

Tel: (971) 4 331 1102

Fax: (971) 4 331 9920

Email: ashley.painter@clydeco.ae

chris.harrison@clydeco.ae

www.clydeco.com