LEGISLATION WATCH / MIDDLE EAST

U.A.E. Set to Welcome New Insolvency Regime

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The Council of Ministers of the United Arab Emirates (U.A.E) approved a draft federal insolvency law in July 2015. Although there are still some regulatory hurdles (the approval and ratification of the Federal National Council and Supreme Council and approval by the U.A.E. President), the approval by the Council of Ministers is a significant step towards the introduction of long awaited comprehensive insolvency law reform in the U.A.E.

The absence of a consolidated regime for resolving failing businesses in the U.A.E has long been viewed as a significant disincentive to doing business in the U.A.E. The existing insolvency regime, which is broadly spread across three pieces of legislation (the Civil Code, the Commercial Transactions Law and the Commercial Companies Law), provides a formal court-supervised process for settling creditor claims and for liquidation. However, these laws have been thought to be unclear and inconsistent and have been largely untested. Distressed U.A.E. companies have historically opted for private restructurings and negotiations instead of a court-supervised process. Liquidation is also the default option under the court led process, where the company is unable to agree a restructuring with its creditors. One additional challenge worth noting in the U.A.E. is the rather broad potential criminal consequences for directors and managers in an insolvency scenario, which again discourages businesses from restructuring through a court-supervised process.

The objective of the new draft insolvency law is to regulate accumulated debts, ease the restructuring of companies, support troubled businesses, mitigate bankruptcy risk and ensure a safe and attractive business environment for the U.A.E. The new draft law is yet to be made publicly available, but key features of the new law are expected to include, suspending actions by creditors and making provision for interim funding during the insolvency process, decriminalizing the issuance of bounced cheques and introducing an insolvency procedure where two-thirds of the creditors can approve a restructuring proposal. The draft law has been making its way through the legislative process for several years now.

It suffices to note that companies incorporated in the free trade zones that are self-legislating financial centers—the Dubai International Financial Center (DIFC) and the Abu Dhabi Global Market (ADGM)—have their own insolvency laws which are generally well developed and such companies are not subject to the federal insolvency laws of the U.A.E.