

Dubai Financial Support Fund to spearhead restructuring of Dubai World

The Government of Dubai issued a press release on 25 November 2009 confirming that, through its Supreme Fiscal Committee (SFC), it has authorised the Dubai Financial Support Fund (DFSF) to spearhead the restructuring of Dubai World with immediate effect. Aidan Birkett, Managing Director of Corporate Finance at Deloitte, has been appointed as Chief Restructuring Officer (CRO) to *"oversee the restructuring process and ensure the continuity of Dubai World's operation"*.

It is understood that as a first step Dubai World intends to ask all providers of financing to both Dubai World and its subsidiary, Nakheel PJSC, to agree to a "standstill" and extend maturities until at least 30 May 2010.

What are the SFC and the DFSF?

The SFC was established in October 2007 and has responsibility for overseeing Dubai's fiscal policies. The DFSF is an independent legal entity which was established in 2009 with the specific purpose of providing financial support and liquidity to strategic and development projects in Dubai. The legislation relating to both entities deals mainly with their constitution, objectives and powers. What the legislation does not do is create a separate insolvency regime applicable to those projects and entities in respect of which the DFSF provides support. There is no equivalent of, for example, US Chapter 11 or UK administration procedures in the UAE which are relevant to the restructuring of Dubai World or Nakheel.

What can creditors expect?

We expect that Dubai World will seek to convene a meeting of all or, at the very least, a substantial group of its financial creditors in order to explain its position and ask the creditors to agree to a standstill period. During this creditors' meeting Dubai World, the CRO and potentially other advisers, will put forward initial proposals outlining how they intend to formulate and, if agreed, implement the restructuring plan.

What is a standstill?

A standstill is effectively a contractual arrangement between a debtor company and its participating creditors. Typically during this time, the creditors will be asked:

- not to press for repayment of the amounts due to them;
- to continue to allow utilisation of existing credit lines and facilities (at least at the exposure levels existing at the commencement of the standstill);
- not to issue proceedings against the debtor; and
- not to try and improve their individual positions by obtaining/enforcing security.

In return, the debtor company will usually agree not to do anything/omit to do anything which could result in the deterioration of the creditor's position such as:

- incur new borrowing;

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- offer security interests to non-participating creditors; and
 - transfer assets or value away from the company.

To decide whether the restructuring proposals are realistic, the creditors will need information – much of which will not be in the public domain. In order to obtain such information, creditors and their advisers will be asked to give confidentiality undertakings. In addition, it is not practicable for all lenders to be involved in the restructuring process on a daily basis. As such, coordinators and steering committees are commonly appointed to help facilitate the restructuring process.

The purpose of a standstill period

A standstill period is intended to achieve "breathing space" and stability. It reassures creditors that an attempt to achieve a consensual restructuring by provision of information will not be de-railed by enforcement action and that the other creditors are willing to proceed on a coordinated basis. Standstill arrangements form the cornerstone of the Insolvency International Principles which set out a global approach to multi-creditor workouts.

Given the absence of an automatic moratorium within the UAE bankruptcy regime along the lines of those encountered in other jurisdictions such as the US and UK, obtaining creditors' agreement to the standstill is key. It is an important detail that a creditor can only be bound into a voluntary standstill by its own agreement. Minorities are not bound into a standstill by the collective vote of the majority (although a standstill agreement, once agreed upon, can provide for majority voting in future).

How Denton Wilde Sapte can help

Denton Wilde Sapte has one of the largest teams of restructuring and insolvency specialists of any international law firm, with lawyers working throughout our Middle East offices and in London, Paris, Russia and the CIS. Our team is consistently recognised as a market leader and has experience in acting for all types of stakeholders dealing with all aspects of international corporate restructuring techniques, including standstills.

In the event that you may have exposure to Dubai World and require advice and assistance in relation to the standstill process and what this means to you as a creditor, please contact:

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