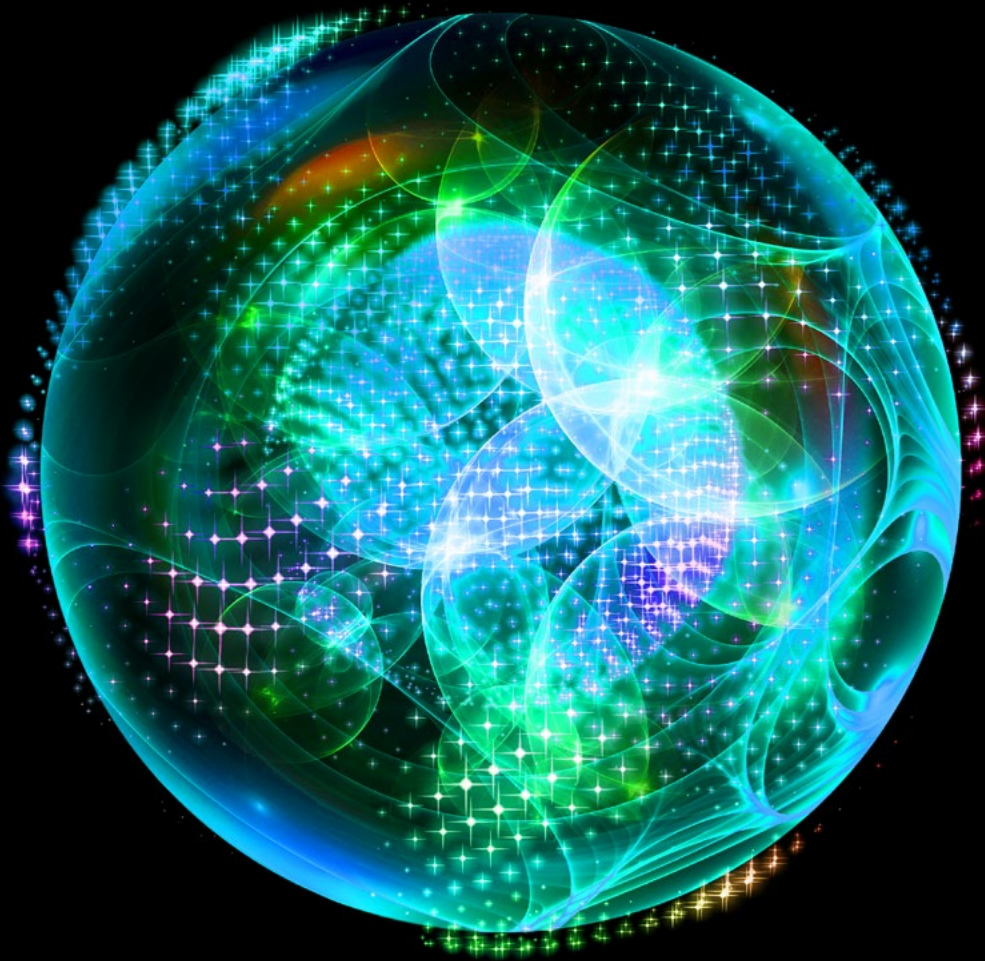


Deloitte.



The KBBO Group

The first successfully completed large-scale restructuring under the UAE Bankruptcy Law

In 2016, the United Arab Emirates (UAE) introduced new bankruptcy laws, which saw the latest amendments in 2021. These laws were implemented with the primary objective of offering both businesses and individuals a structured framework to address financial distress, providing an opportunity for restructuring rather than immediate liquidation.

Alongside the chairman, Mr. Salem Ballama, two Deloitte Turnaround & Restructuring Partners, Paul Leggett and David Stark, were appointed as Bankruptcy Trustees to the KBBO Group in October 2021. Established in 2008, the KBBO Group represents a conglomerate of businesses and investments headquartered in the UAE, with operations spanning the wider MENA region.

The KBBO Group comprises three key verticals: **Emirates Hospital Group (EHG)**, which includes a set of companies and businesses operating hospitals and clinics; **Consumer Products Group (CPG)**, a retail and consumer-focused group holding various brands, including Freshly Frozen Foods; and **Investments**, an investment group formed within the KBBO Group to hold interests in a diverse range of sectors across multiple geographies.

This is the **first high profile** onshore bankruptcy case to receive a positive vote and is widely regarded in the market as a great opportunity to thoroughly stress-test the UAE Bankruptcy Law. As a result, the successful restructuring of the KBBO Group will represent a **significant milestone in the UAE's onshore bankruptcy regime**, demonstrating that the legal framework can be effectively utilised to provide a solution supported by all diverse stakeholder groups. The prevention of liquidation, particularly in the case of the Emirates Hospital Group, has ensured continued public access to medical care, preserved over 2,000 jobs, and benefitted the local economy through the ongoing operations of hospitals and clinics.

However, like any legal framework, the relatively new UAE Bankruptcy Law requires development in certain areas and has challenges that need to be addressed. Nevertheless, the UAE Government and legal authorities have been proactively working to update and refine the Bankruptcy Laws to align more closely with international standards and practices. We anticipate that there will be amendments to the UAE Bankruptcy Law in the near future.

In this paper, the Deloitte trustees discuss some of the practical considerations and key takeaways from our hands-on experience as the Deloitte appointed trustees of the KBBO Group, focusing on four main areas:

1. Moratorium
2. Claims adjudication
3. Security review
4. Voting process

Given the success of the KBBO restructuring, we expect the UAE Bankruptcy Law to be widely utilised in the years to come. We highlight why companies, bankers and their lawyers, should be encouraged to consider using the tools available under the legal framework, particularly to avoid some of the challenges of achieving consensual out-of-court restructurings and as an alternative to a liquidation process to drive greater value preservation.

1. Moratorium

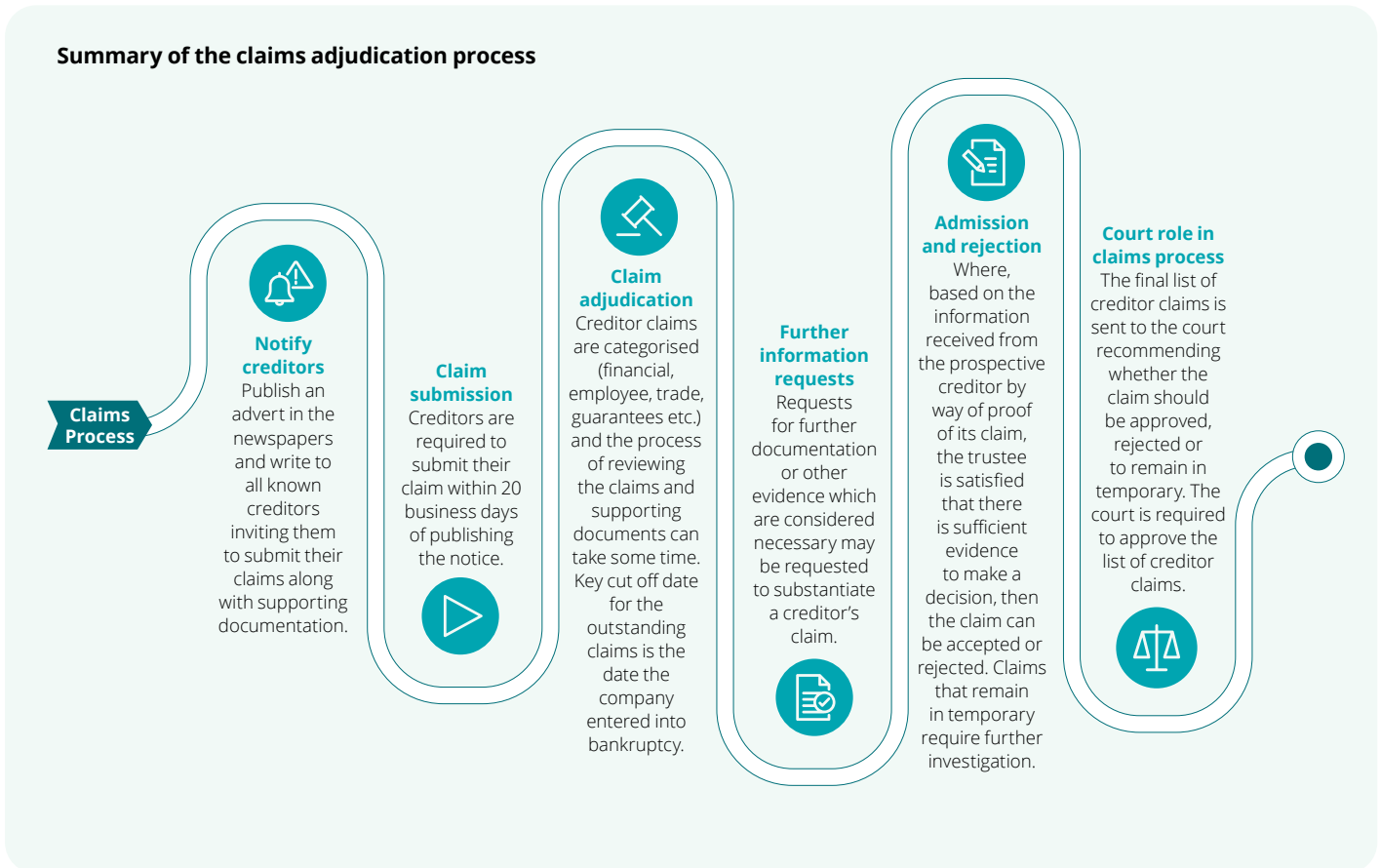
One of the advantages of utilising the Bankruptcy Law is that creditor claims are frozen as of the date of the bankruptcy appointment, and a moratorium is put in place, suspending any legal action against companies and individuals (debtors) included in the bankruptcy proceedings. The moratorium is designed to provide breathing space for debtors, allowing them to formulate a viable financial recovery plan without the immediate threat of legal actions from creditors. Consequently, this enables the debtor, along with the trustees, to focus on determining the feasibility of establishing a viable restructuring option, engaging in negotiations with key stakeholders, and implementing a financial recovery strategy without the immediate pressure of impending legal actions.

One of the challenges faced by the KBBO Group is the relatively new legal framework, which remains untested in certain aspects. This has led creditors and their legal advisors to feel uncertain about how the laws would be interpreted and applied in various situations. Consequently, they have continued with their legal action against the Group. Ensuring consistent enforcement and compliance with the Bankruptcy Laws across the different court systems within the UAE, such as the freezones and the different Emirates, has presented a challenge. As a result, the trustees have invested a significant amount of time and resources in having attachments removed from numerous bank accounts across the Group, and defending against legal actions, which might have been avoidable if the law was applied more consistently.

Furthermore, the KBBO Group is a cross-border insolvency case with assets and creditors located worldwide, and there have been various challenges in getting other countries to recognise the UAE Bankruptcy proceedings. This is partly due to differences in legal systems and a lack of familiarity with the UAE restructuring process, as opposed to a liquidation procedure. As a result, freezing orders have been issued across multiple jurisdictions, constraining the trustees in their ability to take control, for the benefit of the creditors, of worldwide assets of the estates.

2. Claims adjudication

One of the key mandates of the trustee is to review creditor claims, and below we summarise the key steps and requirements around creditor claims review:



The Bankruptcy Law imposes tight timeframes for the submission of outstanding claims as of the date of the bankruptcy appointment. The trustee must, within five business days of their appointment, publicise their appointment and request creditors to submit their claims for evaluation within a timeframe not exceeding 20 business days from the publication of the notice.

During this period, the trustee reviews all claims submitted by creditors, making recommendations regarding whether each claim should be accepted, temporarily accepted or rejected for voting purposes. Afterward, the trustee has 10 business days to present the list of creditors to the court, along with suggestions on whether the claims should be approved, rejected or remain in the temporary category. They also have three business days to publish this list, which can be extended with court approval.

Creditors can object to the court's decision by submitting their objections and requesting a review of the list. The court then issues an order regarding the claims accepted for voting purposes.

A point of continuous discussion has been that the law is clear that creditors must submit their claims within the specified time period in order to vote on the restructuring plan, but remains silent on whether creditors who submit claims after the prescribed time period may be eligible for distribution purposes (albeit they cannot vote). We believe, in the interests of fairness, that all valid creditors should be eligible for distributions from the assets, even if they submit their claims late, for instance due to missing the advertisements or requiring more time to compile the information to calculate the claim's quantum and gather the required supporting documents.

There is also an argument that the timelines may need to be revisited. In the case of KBBO, the trustees received claims in excess of AED 12 billion, often supported by complex derivatives or guarantee arrangements, related to the 31 different entities/ individuals covered by the filing. For creditors to compile and submit this within 20 business days, or risk missing out on voting, represents a significant challenge. For a trustee to review and properly test, challenge and validate within 10 business days is an even greater one.

Key timeframes to be considered (quoting specific articles under the law)



Article 88

- The court shall notify the trustee of the appointment by no later than the business day following the issuance of the decision.
- The trustee shall, within five business days from the date of receiving notice of the appointment, publish a summary of the decision to commence the procedures in two widely distributed daily newspapers, one in Arabic and the other in English.
- The publication shall invite the creditors to submit their claims and supporting documents to the trustee within 20 business days from the publication date.
- Notify all the creditors with known addresses to provide their claims and supporting documents within 20 business days from the date of publication of the summary of the decision to commence the procedures.

Article 93

- The trustee shall deposit the list of creditors with the court within ten business days from the date of expiry of the term specified for the creditors to submit their claims.
- When necessary, the said term may be extended once for a similar term by decision of the court.
- The trustee shall, within three business days of depositing the list with the court, publish a list of debts with a statement of the amounts considered acceptable for each debt, in two widely distributed local daily newspapers, in Arabic and in English.

Article 94

- Under **Article 94**, creditors may file a grievance within seven business days and court has ten business days to rule.

Claim documentation

Summarised below is the type of documentation that, in our view, creditors are recommended to provide the trustee in support of their outstanding claims as of the date of the bankruptcy. Creditors are required to submit this within 20 business days following the publishing of the notice.

Financial creditors

- Proof of debt detailing the total claim, including the outstanding interest as of the date of the bankruptcy
- Facility agreements
- Common terms agreements and any variations to these agreements
- Detailed statement of accounts up until the date of bankruptcy
- Default notices
- Any court judgements from related jurisdictions
- Bank guarantees – providing proof that they are liquidated/or remain valid and unliquidated
- Transfer of debt certificates (if applicable)
- Guarantee documentation
- Security documentation
- Any other supporting documentation between the creditor and debtor in support of the claim

Trade and other creditors

- Purchase order details
- Invoices
- Signed delivery notes or acknowledgements confirming goods/ services were provided before the date of bankruptcy
- Any retention of title details and related invoices e.g., all monies etc.
- Leases and disclaimers
- Any legal opinions or court orders
- Any other supporting documentation between the creditor and debtor in support of the claim

Ongoing trading suppliers

Additionally, there may be ongoing trading suppliers that are required to continue supplying goods or services, which are critical to ensuring the ongoing trading operations of the business, known as 'creditors of necessity'. These suppliers are still required to file a claim and provide the supporting documentation listed above to the trustee for any outstanding amounts as of the date of bankruptcy. It is important to note the balances will continue to change following any payments made to these suppliers given the ongoing business relationship. This may affect their voting rights and eventual settlements in due course, as a successful restructuring will enable the business to continue trading, maximising the return to creditors.

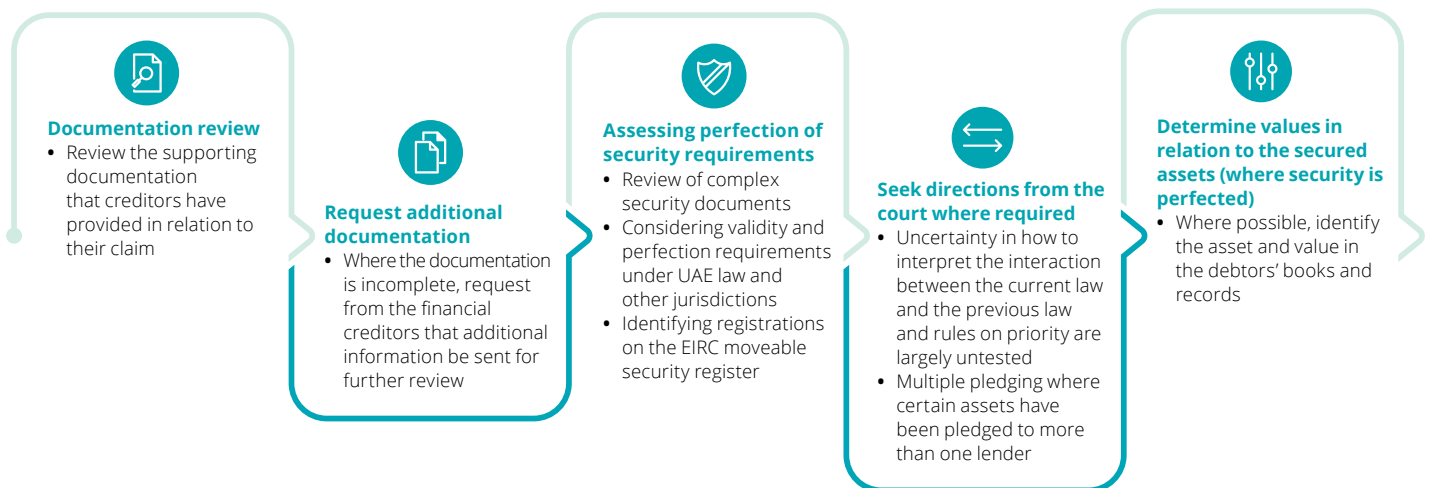
3. Security review

One of the key elements in the claim adjudication process is to review and establish a creditor's security position and its value. Given the complexity involved in determining security interests, some of the key challenges that may be encountered include:

- Verifying the validity of the security
- Dealing with cases where the same asset has been pledged as security for multiple creditors, leading to competing interests
- Determining a value of a secured asset where valid security exists

Security review process

An overview of the review process has been set out below:



Determining the enforceability, perfection and ranking of historical security interest in the UAE is a complex exercise, particularly when compared to other legal jurisdictions that have more established insolvency and security-related laws. In the recent years, the UAE has introduced several new laws that remain relatively untested, resulting in an inherent degree of uncertainty.

In this regard, we highlight key aspects of the UAE law, along with various limitations that financial institutions and their advisors should be aware of when considering the perfection and ranking of their security interests over different types of assets in the UAE.

1. Moveable Assets Mortgage Law

The current regime, as set out in Federal Law No. 4 of 2020 came into effect on 1 June 2020, replacing Federal Law No. 20 of 2016. It outlines the legal requirements for securing moveable assets, which includes both fixed assets such as plant and equipment and current assets such as receivables and bank accounts.

2. Registration with the applicable government register

The current platform for registrations is with the Emirates Integrated Registries Company (EIRC), formerly known as the Emirates Moveable Collateral Registry (EMCR).

EIRC registrations cover security interests over moveable property, including bank accounts, equipment, receivables and rights under certain contracts.. It is important to note that the register does not include security interests over immovable property and certain other assets where separate regimes may apply.

Under the current regime, the priority of security interests is determined in accordance with the date and time of perfection, with earlier registered security interests taking precedence over those registered later.

Disputes regarding the validity of competing registrations may arise between parties due to a lack of sufficient detail in certain security interest descriptions on the register. Our **top tips** that lenders are encouraged to consider in relation to their security interests over moveable assets:

Given that the priority of security interests is determined by the date and time of completion, conduct searches on the EIRC to identify earlier registrations of security interests by other lenders.

- Ensure that security documents include a detailed description of the assets, allowing for the clear identification of the collateral.
- Register security interests over moveable property on the EIRC immediately after executing the lending and security documents.
- Double-check the accuracy of the information entered into the EIRC to avoid typographical errors.
- Issue security notices to relevant counterparties under the contract, where required by law.
- Obtain acknowledgements from relevant counterparties who have received security notices for evidential purposes.
- Note that promissory notes and security cheques do not create security interests.
- Verify the rules governing certain other assets where separate regimes may apply.

4. The voting process

Upon receiving approval from the court that the restructuring plan(s) can be sent to creditors, **Article 106(1)** of the Bankruptcy Act requires that the right to vote on the restructuring plan is limited to ordinary and preferential creditors whose debts are finally accepted. Additionally, **Article 106(2)** states that a secured creditor may not vote in respect of the restructuring plans unless:

1. The secured creditor waives their security; or
2. The court permits the secured creditor to vote on the basis that the restructuring plan affects the secured rights of that creditor.

An added complexity, as seen in the case of KBBO, was dealing with creditors who are partially secured creditors, where the following scenarios may apply:

- The determined value for any deemed valid and ascertainable security was based on the net book value recorded in the relevant companies’ books and records as of 27 July 2021, which marked the commencement of bankruptcy.
- When a creditor was both secured and unsecured, they were entitled to only one vote which bound both the secured and unsecured portions. The unsecured portion, in accordance with **Article 107(1)** of the Bankruptcy Law, was valued to exclude the secured value determined as at the date of the bankruptcy.
- If a creditor that is both secured and unsecured voted against the plan, the relevant amount of the creditor’s claim considered to be secured would be deducted from that creditor’s total claim, and the unsecured portion would be bound by the restructuring plan on approval.
- Any fully or partially secured creditor that did not vote in favour of the relevant restructuring plan may be entitled to make an application to the court seeking an order permitting enforcement or substitution of security as directed by the court, in relation to the secured asset, which may present a risk.

In order for the restructuring plans to pass, **Article 107(1)** requires approval by both:

- A majority in number of the approved creditors holding Final Accepted Claims (i.e., over 50% in number)
- A two-thirds majority by value of those Final Accepted Claims (i.e., over 66.67% in value)

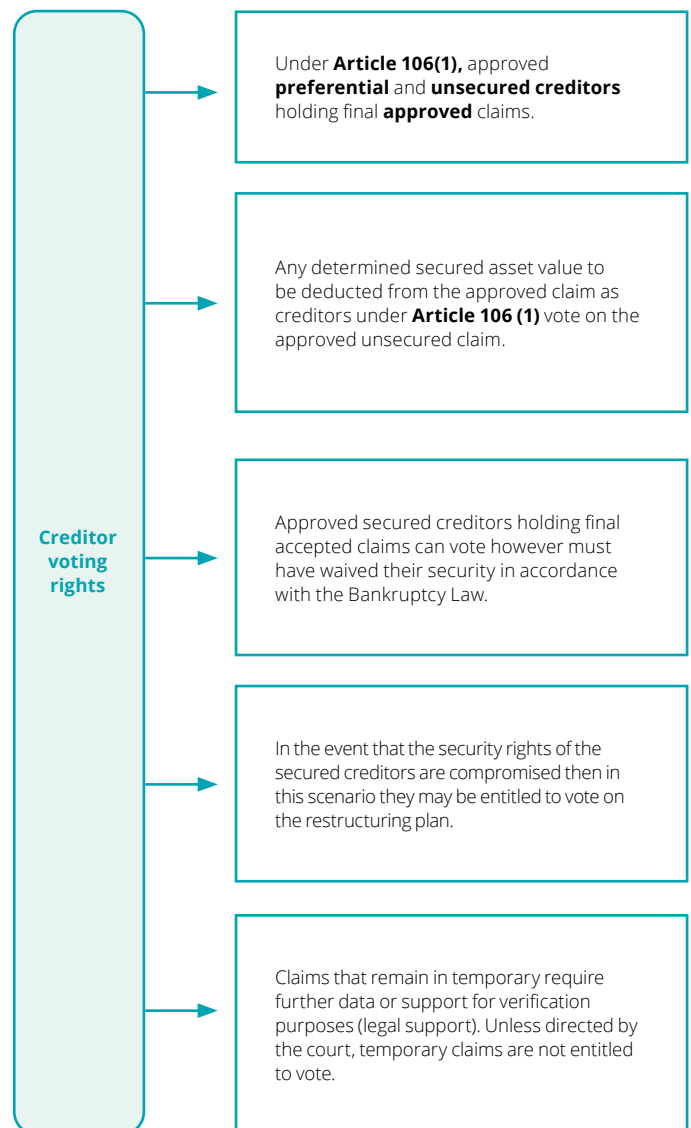
Other legal jurisdictions with more sophisticated insolvency laws may create separate groupings of creditors under a proposed restructuring plan, such as a Company Voluntary Arrangement (CVA) in the UK. In these cases, diverse creditor groups may be offered varying terms, such as different recovery returns or repayment timeframes. This approach can have the advantage of potentially gaining more support from certain creditor groups that find the terms more favourable, increasing the likelihood of the restructuring plan being approved by creditors. In some cases, the approval of one creditor group might be sufficient to pass the CVA, even if another creditor group reject it, given that only one of the voting criteria is required to be met (75% in value of debt to vote

in favour). Overall, this makes the approval process fundamentally easier to achieve compared to the UAE Bankruptcy Law, where creditor grouping does not ordinarily occur and to fulfil both of the voting criteria, presents a key challenge where the creditor pool may be diverse in nature and significant in number. This could make it difficult to obtain the necessary approvals for a feasible restructuring plan to be implemented.

As previously mentioned, voting is limited to creditors who submitted early in the process.

A significant portion of our work involved months of diligent negotiations and collaboration with creditors, along with their advisors. This was critical to successfully fulfil both of the voting criteria and gain approval from the majority of creditors of the KBBO Group and entities to be restructured under the UAE Bankruptcy Law.

Creditor voting rights summarising who is eligible to vote



Why utilise the UAE Bankruptcy Law?

Based on our experience with the KBBO Group, we emphasise why the restructuring community should consider utilising the UAE Bankruptcy Law as an effective route for addressing challenging restructuring situations where achieving a consensual arrangement is difficult.

Moratorium: The moratorium protects debtors from individual creditor action and legal enforcement, providing breathing space for debtors to work with the trustee in preparing a restructuring plan likely to gain creditor approval.

Creditor claims: Claims are frozen as of the date of the bankruptcy appointment, and a structured process allows for the trustee to adjudicate on the outstanding amounts, and allows creditors to be treated fairly, where the trustee acts independently and on behalf of all creditors.

Opportunity to financially restructure: The law offers businesses in financial distress the opportunity to restructure rather than facing immediate liquidation, which is destructive in value. It serves as an alternative to consensual out-of-court arrangements, where there is no legal moratorium and ultimately requires 100% approval of all creditors (cram down) potentially resulting in unsustainable terms.

Restructuring plan: A court process allows the trustee, on behalf of the debtors, to be given the opportunity to formally negotiate with creditors and propose a restructuring plan. This plan may allow the debtor to recapitalise its balance sheet to align debt service with commitments, along with an asset disposal plan to maximise the return to all creditors.

New money financing: The law enables the the raising of rescue finance with trustee assistance and court approval, allowing the business to continue as a going concern while finalising the restructuring plan with the creditors. This is particularly evident in Emirates Hospital Group, which included the successful raising of AED 150 million super senior new money, which allowed operations to be sustained and was a major achievement under the Bankruptcy Law.

Creditor committees: In cases where there are multiple creditors, the court has encouraged the implementation of a committee of creditors, therefore allowing a transparent process where creditors may be given the opportunity to actively participate in the bankruptcy proceedings and express their views and concerns. This should result in a restructuring proposal being better aligned to creditors needs.

Positive effect on the economy: A viable business can continue as a going concern, and in the case of the Emirates Hospital Group, it preserved jobs and benefitted the local economy through continued operations.

Legal framework: The success of the KBBO restructuring demonstrates that the UAE Bankruptcy Law provides a robust legal framework to increase the likelihood of successful financial restructuring. Individuals and businesses should be encouraged to seek advice early on and utilise the law. In addition, increased use of 'in court' solutions can enhance the UAE's reputation in the global business community and facilitate cross-border business transactions. Furthermore, a functioning bankruptcy process is a key requirement in ease of doing business that ultimately supports Foreign Direct Investment.

Our contacts

Our team of insolvency specialists have extensive practical experience with the UAE Bankruptcy Law. Having successfully led the first high profile onshore bankruptcy case in the UAE, we are uniquely positioned to support creditors and debtors in their use of the Bankruptcy Law to provide successful restructuring solutions.

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