

Federal Decree-Law No. (23) of 2019
Amending Certain Provisions of the Federal Decree-Law No. (9) of 2016
on Bankruptcy

We, Khalifa Bin Zayed Al Nahyan, Ruler of United Arab Emirates,

- Pursuant to the perusal of the Constitution,
- Federal Law No. (1) of 1972 on the Competencies of the Ministries and Powers of the Ministers and its amendments,
- Federal Decree-Law No. (9) of 2016 on Bankruptcy,
- Based on the proposal of the Minister of Finance and the approval of the Cabinet,

Issued the following Decree-Law:

Article One

The provisions of the following Articles of the Federal Decree-Law No. (9) of 2016 shall be replaced by the following provisions:

Article (4) Paragraph (1), Article (24), Article (29) Paragraph (1), Article (32) Paragraph (2), Article (42) Paragraphs (3+4), Article (43) Paragraph (1), Article (45) Paragraph (1), Article (46) Paragraphs (1+2), Article (47) Paragraph (1), Article (49) Paragraph (5), Article (69), Article (73), Article (74), Article (78), Article (79), Article (82) Paragraphs (1+2), Article (89), Article (91) Paragraph (1), Article (98) Paragraphs (3+4), Article (103) Paragraphs (3+4), Article (104) Paragraphs (1+2), Article (106), Article (107) Paragraph (1), Article (108) Paragraph (5), Article (112), Article (114) Paragraph (2), Article (130), Article (135) Paragraph (1), Article (137) Paragraph (6), Article (162) Paragraph (2), Article (184) (Preamble), Article (185) Paragraph (1), Article (186), Article (189) Paragraph (1).

Paragraph (1) Article (4):

1. To supervise the administration of the financial reorganization of establishments licensed by the Competent Supervisory Authority, in order to facilitate amicable agreements between the Debtor and its creditors with the assistance of one or more expert(s) appointed by the Committee for this

purpose in accordance with the procedures stipulated in the Cabinet's Resolution referred to in Paragraph (2) of Article (3) of this Law.

Article (24)

1. The trustee shall prepare a register of all the known creditors of the Debtor, and shall provide a copy of such register, having up-to-date entries, to the Court.
2. The trustee shall enter the following into the register:
 - a. The address of each creditor, the amount of each creditor's claim and the due dates thereof.
 - b. Identify any creditors secured by means of mortgage, the details of the security held by each creditor and an estimate as to the likely value of each security upon foreclosure.
 - c. Identify any privileged creditor along with the details of the nature of their privilege.
 - d. Any set-off application in accordance with the provisions of Section Five of Chapter Five of this Law.
 - e. Any other details the trustee may consider necessary to perform the trustee's duties.

Paragraph (1) Article (29):

1. The Court may appoint one or more controllers from among the creditors who request such appointment, to supervise the implementation of the Protective Composition Procedure. Where there are candidate creditors of ordinary debts, debts secured by a mortgage, or privileged creditors, at least one controller must be appointed for each group.

Paragraph (2) Article (32):

2. As an exception to Paragraph 1 of this Article, the creditors of the debts secured by mortgage may exercise their foreclosure rights if their debts are due, upon approval of the Court. The Court shall decide whether to grant such approval within ten (10) Business Days from the date a creditor files an application with the Court. Determination of the application for approval shall not require notice or exchange of submissions. Before granting approval, the Court shall ensure that there is no collusion between the Debtor and the creditor of the debts secured by mortgage, and shall verify the priority of the secured creditor where there is more than one secured creditor with respect to the same asset.

Paragraph (3), (4) Article (42):

3. The Invitation to the meeting referred to in Paragraph 2 of this Article shall be published in two widely distributed local daily newspapers, one in Arabic and the other in English. The invitation shall set out the place and time of the meeting. In addition, the Court may instruct the trustee to send the invitation by any other methods of communication including electronic methods.
4. The meeting shall be held within fifteen (15) Business Days from the date of publication of the invitation or as determined by the Court in its discretion, provided the decision is in the interest of the Protective Composition. Electronic methods are permissible to organize the meeting, to discuss and to vote on the plan in order to facilitate attendance to any of the creditors if such is compliant with the procedures as per the trustee's recommendation.

Paragraph (1) Article (43):

1. Upon the suggestion of a group of creditors or by the Court's accord after consulting the trustee, the Court may issue a decision to establish one or more committees of creditors who represent different categories of creditors, including one committee or more of the holding ordinary debts, and one or more committees of creditors holding secured debts by mortgage, and one or more committees of privileged creditors. The Court may also form one or more committees of bond and sukuk holders, for the purpose of discussing the Protective Composition Plan and proposing any amendments thereto at the meetings organized under Article (42) of this Law.

Paragraph (1) Article (45):

1. The voting rights on the draft Protective Composition Plan shall be limited to the ordinary creditors and the privileged creditors whose debts have been finally accepted.

Paragraph (1), (2) Article (46):

1. The Court may permit the creditor who has debts secured by mortgage to vote on the Protective Composition Plan with the same value of his secured debt, without affecting the right of security, in case the plan affects his secured rights, the creditors who have debts secured by mortgage are not allowed to vote in any other case other than those mentioned in this Paragraph unless they waive those securities in advance. Such waiver shall be recorded in the minutes of the meeting.
2. If the creditor who has debts secured by mortgage votes on the Protective Composition Plan without being authorized by the Court or without expressly waiving its security, such voting shall be deemed a waiver of that security.

Paragraph (1) Article (47):

1. The draft Protective Composition Plan shall be approved by the majority vote of the creditors whose debts are finally accepted, or provisionally accepted and permitted to vote, provided that such majority holds in the aggregate at least two thirds of the accepted value of the total debts.

Paragraph (5) Article (49):

5. The Protective Composition Plan shall not affect the priority rights of creditors who has secured debt by mortgage, or privileged creditors as provided for in this Law.

Article (69):

1. A creditor, or creditors, holding a debt in an amount of not less than one hundred thousand UAE dirhams (AED 100,000) may apply to the Court to commence the procedures pursuant to this Chapter, if the creditor has previously given the Debtor a notice in writing demanding payment of the due debt and the Debtor failed to pay the same within (30) thirty successive Business Days from the date of such notice.
2. The creditor who has secured debts by mortgage has the right to submit an application according to Paragraph (1) of this Article, if the required amount is part of the difference in the value of the due secured debt, and the value of the security does not cover the total amount of the secured debt by mortgage when commencing the procedures.
3. The Cabinet may, upon recommendation of the Minister, issue a decision amending the amount of the debt threshold referred to in Paragraph 1 of this Article.

Article (73):

1. The application submitted by the Debtor or the Competent Supervisory Authority to the Court shall set out the reasons for the application.
2. The debtor may specify if the application was for restructuring, or to commence the declaration of bankruptcy and liquidation, and he shall state his justifications in the application.
3. The application shall be accompanied by the following documents:
 - a. A memorandum including a brief description of the Debtor's economic and financial position and information about the Debtor's Assets, in addition to a detailed account of the Debtor's employees.
 - b. A certified copy of the commercial, industrial or professional license of the Debtor and the Debtor's commercial register issued by the competent authority in the Emirate.

- c. A copy of the accounting books or financial statements relating to the Debtor's Business for the year preceding the application.
 - d. A report including the following:
 1. The Debtor's cash flow and profit and loss projections for the twelve months following the filing of the application.
 2. Statement of the names of the known creditors and debtors with their addresses, the amounts of their respective entitlements or debts and the securities provided, if any.
 3. Detailed statement of the Debtor's movable and immovable Assets, and the estimated value of each asset as at the date of filing the application, and a statement of any securities or rights of third parties over the Assets.
 - e. The Debtor's nomination of a trustee, to be appointed to undertake the procedures pursuant to the provisions of this Law.
 - f. Where the applicant is a corporate entity, the application shall be accompanied by a copy of the resolution of the company's competent authority authorizing the applicant to file the commencement application and copies of the incorporation documents of the company and any amendments thereto, as filed with the competent authority in the Emirate.
 - g. Any other documents supporting the filing of the application.
 - h. A report issued by the competent Credit Bureau Authority in the State.
4. If the applicant fails to submit any of the details or documents required pursuant to Paragraph 3 of this Article, the applicant shall specify the reasons in the application.
 5. If the Court considers that the documents submitted are insufficient to determine the application, it may grant the applicant an extension to provide the Court with any additional details or documents in support of the application.

Article (74):

1. An application submitted to the Court by a creditor of the Debtor shall be accompanied by the following documents:
 - a. A copy of the notice referred to in Paragraph 1 of Article 69 of this Law.
 - b. Any statements relating to the debt, including the amount of the debt and any available security.
 - c. The creditor nomination of a trustee, to be appointed to undertake the procedures pursuant to the provisions of this Law.
2. The creditor may specify if the application was for restructuring, or to commence the declaration of bankruptcy and liquidation, and he shall state his justifications in the application.

Article (78):

1. The Court shall determine the application, without pleadings or arguments, within a period not exceeding five (5) Business Days from either the date the application is filed fulfilling all requirements or the date the expert's report is filed, as the case may be.
2. If the Court finds that the conditions required under this Chapter for commencement of the bankruptcy procedures are met, the Court shall accept the application and order the commencement of the procedures.
3. The Court may determine in its decision, its approval to the possibility of Debtor's restructuring and commencing the preparation of the restructuring plan according to the Debtor, the competent authority or the creditor's submission in the application according to Paragraph (2) of Article (73) and Paragraph (2) of Article (74) of this Law.

Article (79):

The Court shall dismiss the application where there is a failure to submit the documents and details required in Articles (73) and (74) of this Law, or if the same are submitted incomplete without an acceptable reason therefor; notwithstanding any shortcomings in the application, the Court in its discretion may decide to accept the application on conditions considered proper by the Court and subject to the interests of the Debtor and the creditors.

Paragraph (1), (2) Article (82):

1. If the Court decides to accept the application submitted pursuant to the provisions of this Chapter, it shall appoint a trustee from among the experts nominated pursuant to Paragraph 3 (e) of Article 73 or Paragraph 1 (c) of Article (74) of this Law, or a natural or juridical person registered in the Experts' Panel, or another expert, if the Court does not find an expert with the required expertise on the Panel.
2. The Court may of its own accord or upon request of the Debtor or any creditor or the controller, appoint more than one trustee provided that the number of the trustees appointed at any given time shall not exceed three (3).

Article (89):

1. The trustee shall prepare a register in which all the creditors of the Debtor known to the trustee shall be entered, and the trustee shall submit a copy of the updated register to the Court.
2. The trustee shall enter into the register:
 - a. The address of every creditor, the amount of each creditor's claim and the due date thereof.

- b. The identification of the creditors who hold secured debts by mortgage, and privileged creditors, with details of securities allocated for each creditor and the estimated amount of such securities in case of foreclosure.
- c. Any set-off application submitted pursuant to the provisions of Section Five of Chapter Five of this Law.
- d. Any other details that may be considered necessary by the trustee for the performance of its duties.

Paragraph (1) Article (91):

1. All creditors, even those who hold debts not yet due or secured debts by mortgage or privileged debts or debts which are not established by final judgments, shall deliver to the trustee within the timeframe specified in the invitation issued pursuant to Article (88), a statement of their debts, their due dates, any security and the amounts denominated in the National Currency on the basis of the Exchange Rate prevailing at the date of the decision supporting documents.

Paragraph (3), (4) Article (98):

3. The Court may decide the following:
 - a. To proceed with the restructuring and instruct the trustee to prepare a plan for the restructuring of the Debtor's Business pursuant to Section Seven of this Chapter; or
 - b. to reject the submitted application according to this Chapter, in this case, the Court may issue a judgment to Declaration of bankruptcy and liquidation of the Debtor's Assets pursuant to the provisions of Section Twelve of this Chapter.
4. The Court shall not decide to prepare a Restructuring Plan for the Debtor's Business unless it is clear to the Court that the Debtor has the ability and capability to continue the business and it appears to the Court, based on the documents and details available, and upon hearing the trustee's statement that it is possible for the Debtor's business to be profitable again within a reasonable period of time, given the volume and nature of the Debtor's Business and the amount of the Debtor's indebtedness.

Paragraph (3), (4) Article (103):

3. The invitation to the meeting referred to in Paragraph 2 of this Article shall be published in two widely distributed local daily newspapers, one in Arabic and the other in English. The invitation shall specify the place, date and time of the meeting. The Court may in addition instruct the trustee

to send the invitation to the meeting by all available methods of communication including notification by electronic methods.

4. The meeting shall be held not less than three (3) and not more than fifteen (15) Business Days after the date of publishing the invitation, as the Court may consider appropriate and proper in the interest of the Restructuring Procedure. Electronic methods may be used to organize the meeting and to discuss the draft plan or vote on it, in order to facilitate attendance to any of the creditors if such is compliant with the procedures as per the trustee's recommendation.

Paragraph (1), (2) Article (104):

1. Upon the suggestion of a group of creditors or by the Court's accord after consulting the trustee, the Court may issue a decision to establish one or more committees of creditors who represent different categories of creditors, including one committee or more of the holding ordinary debts, and one or more committees of creditors holding secured debts by mortgage, and one or more committees of privileged creditors. The Court may also form one or more committees of bond and sukuk holders, for the purpose of discussing the Protective Composition Plan and proposing any amendments -if needed- and voting on it thereto at the meetings organized under Article (103) of this Law.
2. A committee may select a representative from among the creditors or their legal or financial consultants and may specify the matters delegated to such representative pursuant to this Law, including delegation on behalf of the creditors in the committee to vote on the Restructuring Plan.

Article (106):

1. The right to vote on the draft Restructuring Plan shall be limited to the ordinary creditors and the privileged creditors whose debts are finally accepted.
2. The Court may permit the creditor who has debts secured by mortgage to vote on the Protective Composition Plan with the same value of his secured debt, without affecting the right of security, in case the plan affects his secured rights, the creditors who have debts secured by mortgage are not allowed to vote in any other case other than those mentioned in this Paragraph unless they waive those securities in advance. Such waiver shall be recorded in the minutes of the meeting, the waived security shall be redeemed.
3. As an exception to the provisions of Paragraph 1 of this Article, the Court may, upon the recommendation of the trustee, permit the creditors whose debts are provisionally accepted to vote on the draft Restructuring Plan. The Court shall specify in its decision the terms and conditions of such permission.

Paragraph (1) Article (107):

1. The Restructuring Plan draft shall be approved by a majority vote of the creditors whose debts are finally accepted or provisionally accepted and permitted to vote, provided that such majority holds in the aggregate at least two thirds of the accepted value of the total debts.

Paragraph (5) Article (108):

5. The Restructuring Plan shall not affect the priority rights established for secured debts by mortgage or the privileged debts as provided in this Law.

Article (112)

1. If any of the Debtor's Assets are essential to the continuation of the Debtor's Business, the Court may decide of its own accord, or upon the request of any creditor or any Interested Party, that such Assets shall not be disposed without creditors approval, the Court may tie it with the condition of obtaining a special approval from it, for a specified period that shall not exceed the term of implementation of the Restructuring Plan. If such Assets were the subject of a security, the Court may decide to replace the security in accordance with the provisions of this Law.
2. Any Interested Party may apply to the Court seeking the nullification of any act that may have been committed in violation of the provisions of Paragraph 1 of this Article, within three (3) years from either the date of issuance of the Court's decision or the date of ratification of the Restructuring Plan, whichever is later.

Paragraph (2) Article (114):

2. The trustee shall:
 - a. Monitor the progress of the plan and report any default in its implementation to the Court; and
 - b. Submit a report to the Court on the progress of the implementation of the plan every three (3) months and provide every creditor with a copy of the report.
 - c. Cooperate with creditors and provide them with any information they request if available and related to their interests in accordance with the provisions of this Law.

Article (130):

The trustee shall make a final audit of the creditors' claims but shall not make or complete such audit if the trustee finds that the proceeds of the sale of the Debtor's Assets will be all spent for legal fees or for payment of the debts secured by mortgage.

Paragraph (1) Article (135):

1. Upon issuance of a judgment declaring the bankruptcy of the Debtor and the liquidation of the Debtor's Assets, the time limits of all debts of the bankrupt Debtor, whether they were ordinary debts, secured debts by mortgage or **privileged debts**, shall lapse.

Paragraph (6) Article (137)

6. The creditor whose debt is secured by mortgage shall be paid the proceeds of the sale of the Assets securing his debt. If the value of the encumbered Assets is insufficient to pay the full amount of the debt secured by mortgage or **privileged**, the outstanding balance of the debt shall be ranked as an ordinary debt.

Paragraph (2) Article (162):

2. As an exception to Paragraph 1 of this Article, the creditors who hold secured debts by mortgage, or the privileged creditors may file and continue with claims and may foreclose their securities if their debts are due, upon obtaining the permission of the Court. The Court shall determine whether to grant permission within ten (10) Business Days from the application date. The Court's determination of the application shall not require any notices or an exchange of submissions. On granting permission, the Court shall ensure that there is no collusion between the Debtor and the secured creditor and verify the priority rank of the secured creditor where there is more than one secured creditor over the same Asset.

Article (184) Article's Introduction:

Taking into consideration the special provisions related to the priority of the Debtor whose debt is secured by mortgage on the multiple security Assets, the following debts shall be payable when they are due, in the order set forth below:

Paragraph (1) Article (185):

1. If the Court makes a declaration of bankruptcy and liquidation of the Debtor's Assets pursuant to the provisions of Chapter Four of this Law, the holders of secured debts by mortgage shall rank in priority to holders of **privileged** debts and the ordinary creditors in the amount of their respective securities, Followed in priority by the privileged creditors as per the priority rank according to the provisions of this Law.

Article (186):

In the case of failure of the trustee to proceed with the sale of the Assets encumbered with security within one (1) month of the date of the judgment declaring bankruptcy and liquidation of the Debtor's Assets, the creditors who has secured debts by mortgage may apply to the Court for permission to foreclose on their securities even if they have not yet been accepted. The Court shall determine the application for such permission, within ten (10) Business Days from the date the application is filed.

Paragraph (1) Article (189):

1. The following debt categories shall be considered privileged debts which shall be settled prior the ordinary and shall be paid in the following order:
 - a. Any court costs or fees including the trustee's and expert's fees and any expenses disbursed for serving the common interest of the creditors in reserving and liquidating the Debtor's Assets.
 - b. The outstanding end-of-service gratuity, wages and salaries of the Debtor's employees, staff and servants which are payable on a regular basis (excluding any allowances, bonuses or other casual payments or any other benefits, whether they are in cash or in kind), provided that the total thereof shall not exceed the wage or salary for (3) three months maximum. The Court may allow the trustee to pay the wages and salaries payable to the Debtor's employees, staff and servants for a period not exceeding (30) thirty days from the funds of the Debtor's Assets available in the Debtor's possession.
 - c. The alimony debt payable by the Debtor pursuant to a judgment issued by a competent court.
 - d. The amounts payable to government authorities.
 - e. Remuneration agreed on between the Debtor and any expert he assigns as of the commencement of procedures, including legal consultations' remuneration. The Court may

- estimate such remuneration by its own accord or according to a grievance submitted by any of the creditors, whereby the submission of grievance shall not result in suspending the procedures, and the Court shall rule in the grievance within (5) five Business Days from its submission date, and Court's decision will be considered definitive.
- f. Any fees, costs or expenses arising after the date of the decision to commence the procedures, for the purpose of securing commodities and services for the Debtor or for continuation of performance of any contract for the benefit of the Debtor's Business or the Debtor's Assets or any fees, costs or expenses arising from the continuation of the Debtor's Business after the date of commencement of the procedures in accordance with the provisions of this Law.

Article Two

A new article will be added numbered (230) to the provisions of Law No. (9) of 2016 mentioned above, stating the following:

Article (230) repeated:

The Cabinet may issue necessary decisions to execute the provisions of this Law including amending any stipulated time limits, according to a proposal from the Minister.

Article Three

This Law shall be published in the Official Gazette and shall enter into effect on the next day of publication thereof.

Khalifa Bin Zayed Al Nahyan

The President of the United Arab Emirates

Issued by us at the Presidential Palace in Abu Dhabi

On: 5/Muharram/1441 Hijri

Corresponding to: 4/September/2019