

Turning around Omani companies

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Restructuring and insolvency in Oman

Royal Decree No. 53 of 2019 promulgating the Bankruptcy Law ('Bankruptcy Law') aims to provide greater comfort to investors and creditors alike by creating a secure and transparent legal framework for corporate and individual insolvencies in Oman. The Bankruptcy Law introduces a new concept of reorganisation that has not previously provided for in earlier legislation but which is prevalent in restructuring legislation in various other jurisdictions.

Reorganisation

A reorganisation mechanism has been introduced into law to assist companies navigate financial obligations without resorting to liquidation and total failure of the business. Reorganisations are implemented by way of a court filed plan of action that contains specific details on how the debtor intends to repay creditors, the period over which the plan will be implemented and further details on the schedule of payments that are proposed to be made during the period over which the restructuring plan is valid. In order that the debtor fully adheres to the settlement reached with creditors, the Bankruptcy Law provides that the plan will be overseen and supervised by a restructuring committee consisting of an approved panel of experts.

Article 8 of the Bankruptcy Law states a timeline for preparation of the restructuring plan, the required documentation and the reasons for submitting the application which will generally be a statement outlining that the debtor is unable to meet its debts as they fall due. In circumstances where the debtor is a corporate entity, the corporate entity will be required to obtain approval from the majority of its shareholders before the application is capable of being filed with the court.

The application will then be submitted and reviewed by the department in charge of supervision and control of commercial establishments at the Ministry of Commerce, Industry and Investment Promotion ('MOCIIP').

MOCIIP will hold settlement and mediation meetings with the relevant parties to the application and appoint an expert to develop a restructuring plan. MOCIIP, in conjunction with the expert, will prepare a report within three months following the date of appointment after which it will then provide a view on the financial viability of the business and the process for satisfying the debtor's financial obligations. The expert must then submit the report to the MOCIIP. If all parties agree to the plan, it must be implemented within five years following the date of filing.

It is important to recognise that the creditors must agree to the plan; following agreement between the debtor and the creditors (and other interested parties), the restructuring plan will be formalised and submitted to the court to bind the debtor and creditors. If the parties are not able to reach a settlement, the application will be deemed rejected and the applicant (which could be the debtor or any of the

creditors) is entitled to file an appeal within 15 days following the rejection. The court is then under an obligation to rule on the appeal within a further seven days.

Throughout the period in which the plan is being drawn up and finalised, the debtor must continue to operate the business as a going concern and shall continue to remain liable in respect of its contractual and other obligations, all the while not implementing any material transactions, such as the disposal of material assets, without approval from the court. Following signature and filing of the restructuring plan, the parties to the plan are not permitted to bring legal proceedings in relation to any of the matters covered by the plan unless the debtor or creditor has failed to meet its obligations under the plan.

Bankruptcy

The Bankruptcy Law now prescribes a more formalised bankruptcy process than was previously the case under the commercial law of Oman. It is now possible for a debtor to file a petition to the court applying for bankruptcy at any time during the debtor's existence. Creditors are also permitted to apply to the court to place a debtor into bankruptcy provided they are able to prove an undisputed commercial debt, although the Bankruptcy Law does not make clear whether there is a specific financial threshold that must be met prior to a creditor submitting a court petition to place a debtor into bankruptcy.

If the court determines that the debtor is, in fact, unable to meet its debts as they fall due, it has the power to appoint a bankruptcy trustee to administer the debtor's assets. The bankruptcy trustee is a person appointed from the panel of experts held by the court and is bound by court rules. The bankruptcy trustee's responsibility is to manage and safeguard the debtor's assets and to prepare a report to enable the bankruptcy judge to rule on the bankruptcy proceedings; in effect representing the creditors. A court appointed supervisor, effectively a creditor representative, is tasked with supervising the bankruptcy trustee and assisting the bankruptcy judge in scrutinising the ongoing financial position of the debtor and verifying debts that remain payable by the debtor. Following validation of the financial obligations of the debtor, the bankruptcy trustee must then submit a schedule of debts and creditors to the court. This list is made public in the Official Gazette and existing and other non-listed creditors are permitted to view the list and raise specific objections within ten days following publication of the list. Typical objections include quantum of the creditor's claim or details of the security placed over the debtor's assets.

Legal proceedings in relation to bankrupt companies are expressed by the Bankruptcy Law to end following the two year period after the debtor has been declared bankrupt by the court, although if the size of the bankrupt's estate is not sufficient to repay all creditors in full, the proceedings could continue beyond the initial two year period to enable additional time for a settlement to be reached with all creditors.

In certain situations and, following the formation of the creditors committee, the bankruptcy trustee is capable of being replaced by a creditors' committee which, with the consent of the bankruptcy judge, will become responsible for administering the debtor's estate. Replacement of the bankruptcy trustee in such circumstances could arise if there is more than one creditor or if creditors hold a combination of secured and unsecured debt.

Specific provisions relating to corporate bankruptcies

In circumstances where a company has been liquidated and removed from the commercial register held by MOCIIP, a creditor is still permitted to seek repayment of a debt during the two year period following the finalisation of the liquidation of the debtor.

Directors or authorised managers who are unable to prove they acted responsibly during their period of management are capable of being held liable on a joint and several basis if the debtor does not hold sufficient assets to cover at least 20 per cent of the debtor's debts.

With the consent of the bankruptcy court, the debtor's assets may be sold (including by way of public auction) to generate funds to satisfy creditor claims.

Penalties

The Bankruptcy Law provides for a range of penalties that apply to those involved in the bankruptcy proceedings. Debtors that omit creditors, claims or intentionally conceal assets from the restructuring plan filed with the court will be subjected to imprisonment for up to three years and/or a fine of up to OMR 5,000. The supervisor appointed by the creditors committee can be held liable to a fine of up to OMR 2,000 and/or imprisonment of up to one year if the supervisor is shown to have filed incorrect information to the court or has acted in a way that is detrimental to or designed to inflict harm on the debtor or any creditor of the debtor.

Application of the law

Given the new regime brought about by the Bankruptcy Law, it is expected that the practical application of the law will likely settle after a period of time particularly once it has become clear to creditors and other interested parties that their individual interests are capable of being protected by the application of the law. One area that the market will be closely monitoring is how the restructuring regime in Oman is capable of dovetailing with the equivalent regime in other jurisdictions where the Omani entity or members of its group have a presence. In these circumstances, it is possible (although not desirable) that concurrent restructuring plans are capable of being filed and it will be important for Oman based creditors to form part of the settlement arrangements being managed in the debtor's home jurisdiction.

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