

Declaring a Debtor Bankrupt in the UAE

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Despite this, declarations of bankruptcy are extremely rare within the UAE. The Commercial Transactions Law (Federal Law 18 of 1993) contains provisions regulating the bankruptcy of companies and other businesses, but does not have a specific definition of “bankruptcy” and merely highlights the situations in which a trader will be regarded as bankrupt. The meaning may be inferred from Article 645 of the law which provides that “a trader who ceases to pay his debts can apply to the court for his adjudication as bankrupt”.

Recently however Al Tamimi & Company successfully represented a claimant (in Commercial Case 393 of 2015 dated 12 August 2015) in obtaining a declaration of bankruptcy and the appointment of a bankruptcy administrator in relation to a defaulting defendant. Furthermore, the Court of First Instance’s judgment in the case appears to be the only recent decision that considers the conditions to be satisfied before a declaration of bankruptcy will be made against a defaulting debtor.

Background

The Claimant obtained a judgment in the sum of AED 85 million against the Defendants (a UAE Company and its subsidiary). The Defendants failed to pay this sum and as a result, on 1 March 2015 the Claimant initiated bankruptcy proceedings with the Dubai Court of First Instance against the UAE Company seeking (i) a declaration that the Defendant is bankrupt; (ii) the appointment of a bankruptcy administrator to oversee the bankruptcy proceedings; (iii) an order that the Defendant’s premises be sealed; (iv) measures to safeguard the Defendant’s assets; (v) an award for costs and fees against the Defendant; and (iv) that a judgment be rendered with immediate enforcement without the requirement of a bond.

Findings of the Court of First Instance

The Claimant argued that the Defendants ceased making payments as a result of several credit issues and the outstanding debt was clearly evidenced by the court judgment. The Claimant submitted photocopies of a statement from another UAE bank which the Defendants held an account with which confirmed that the Defendants had no balance. The Claimant also submitted a statement from the Dubai Financial Market (DFA) which confirmed that there was no record of the Defendant in the DFA’s clearing system.

The Claimant argued that there was no prospect of recovering the judgment debt as the Defendant’s offices/business units were closed and no further assets could be traced.

On 3 June 2015, the court appointed an accounting expert to review the matter. The expert filed his report and confirmed that the Defendant was indebted to the Claimant for an amount of AED 85 million and further concluded that the Defendant ceased making payments due to its bad financial situation.

The Defendant failed to appear either in person or by counsel at any of the hearings despite having been

served with the summons. Therefore, a judgment was entered against the Defendant pursuant to Article 53(1) of the Civil Procedures Law.

The Dubai Court of First Instance accepted the Claimant's contention that the Defendant's debt had been established and held that:

"It is clear to us that the claimant's debt is established by the judgment entered in Commercial Action No 1969-2012 which has become final and res judicata after no timely appeal was filed. The debt is accordingly due and payable. It is further clear to us that the Defendant sought to be adjudicated bankrupt within the meaning of the Federal Commercial Transactions Law. They ceased to pay their debts when due to the Claimant as they were in dire financial straits with no prospect of recovery and return to normal business operations at the level of trust, confidence and standing required to carry on business activities. This consequently puts creditors' claims at risk as indicated by the Claimant's documents and the report of the court appointed expert. The conditions to declare bankruptcy are thus met and we accordingly declare the defendant bankrupt.'

Conclusion

This judgment is significant as it emphasizes what the courts look for before declaring a defaulter bankrupt. The outstanding debt should be clearly and conclusively proved. In this case, there was a judgment obtained against the defaulter from the Court of First Instance confirming the debt. In addition, the report filed by the expert in the case concerning the debt also confirmed the outstanding debt obligation of the Defendant.

The financial instability of the defaulter as well as the non-availability of any kind of assets of the defaulter also has to be established. In this case, the Claimant was successful in establishing that there was no prospect of recovery of the judgment amount as the Defendant had no bank accounts or assets.