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Cut to the Chase

UAE Bankruptcy Law

WHAT is the New Bankruptcy Law of the UAE?

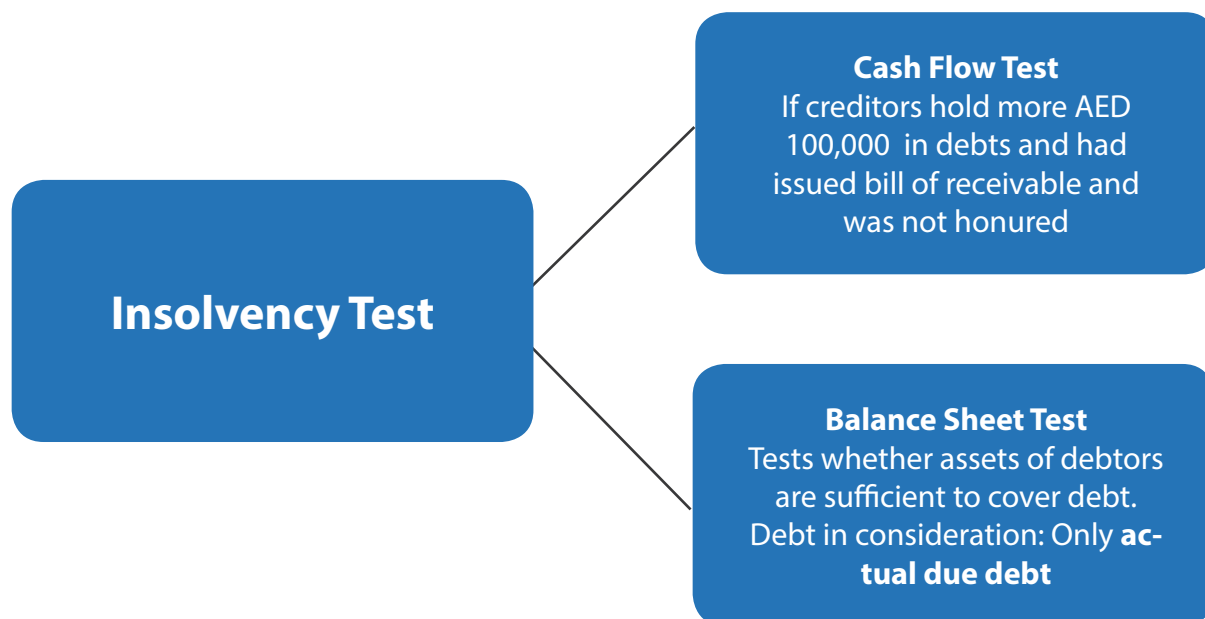
- The New UAE Bankruptcy law, Federal Decree Law No. 9/2016, implemented on 29th December 2016 with an objective to modernize and streamline the bankruptcy procedures available onshore for UAE companies in line with international Standards. It applies to companies established according to UAE commercial companies' law, corporate entities, individual trading companies with certain exceptions to governmental bodies and companies in free zones. In addition, the law applies to licensed civil companies engaged in professional services.

Key Changes and Bankruptcy Filing Process

Regulatory Changes Key Points	When to File for Bankruptcy
Establishment of Committee of Financial Restructuring to administrate insolvency process and act as an oversight body	Cessation of Payments for more than 30 Days Creditor may also petition for company's bankruptcy if statutory demand for payment of above AED 100,000 served and remained unpaid for 30 days.
The new law promotes rescue culture, and offers 3 ways for filing insolvency but processes are supervised by Court of Law	Court upon request of the public prosecutor proving the debtor is on condition of accounts receivable
Proceedings related to bounced cheque will be suspended when the court accepts Protective Composition scheme or with insolvency-Rescue plan.	If debtor fails to repay debt for over 30 business days, is not a crime under the new law, as it was in previous law.

HOW insolvency is determined?

- The Cash flow test for insolvency has been redefined and balance sheet insolvency test has been introduced (which is based on German over indebtedness test whereby a debtor's assets do not cover its current liabilities)



HOW bankruptcy proceedings are laid out?

The new law offers 3 mechanisms to assist companies facing financial difficulties.

Insolvency with restructuring: Process overseen by courts, company's debts are restructured with creditor approval.

Protective Composition: Debtor-led court sponsored process, facilitates the rescue of business facing financial difficulty

- But it requires approval of unsecured creditors (majority in number and 2/3 in value) and this must occur within 3 years of court's approval
- However it is not permissible for creditors to Protective composition on behalf of debtor

Insolvency and Liquidation: If the restructuring plan and protective composition plan are not approved by creditors or court, then the can order to wind up the business. The court will appoint individual official overlooking bankruptcy process, and liquidation process does not cover 20% of debts, then court might order members of the board to pay part of all company's debt.

WHAT directors need to know?

- Fraudulent conduct leading to the bankruptcy of a company can result in up to 5 years imprisonment and fines up to AED 1 Million
- In addition to this, the law introduced disqualification regime, whereby directors found guilty of the bankruptcy of linked offences may be disqualified from playing any role in to the administration of the company

WHAT'S the priority Debts upon liquidation?

- Secured creditors to the extent of their security. Reasonable fees and expenses incurred in the sale of relevant assets
- Costs and expenses incurred in respect of the liquidation process, any unpaid end of service like gratuity, wages, salaries of employees and not exceeding 3 months of salary.
- Judgement fees, amount due to governmental bodies, fees and costs arising in connection with provision of goods and services to continue the business of the debtor

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