Synergate

Rescue within bankruptcy

This document seeks to give a brief outline of the possibility of rescuing an “insolvent” company (the company has been in a state of cessation of payment for more than 30days, or its liabilities exceed its assets) through the utilization of the bankruptcy rules that came into being in September 2016 (Federal Law no 9). On the basis of this definition most businesses in the UAE would be regarded as insolvent.

Some of the key benefits if the Court accepts the application are:

1) All criminal proceedings relating to bounced cheques will be suspended and all the relevant creditors will be included in the list of creditors and must vote on the restructuring plan. Also all civil cases will be suspended
2) It will bring calm to potential investors and reduces the level of uncertainty.
3) It will give breathing space to secure investment as well as formulate sensible restructuring plan for the creditors

Once bankruptcy has been applied for and the necessary documentation submitted, the next step is for a Court appointed expert to prepare a report on the financial condition of the company determining whether the conditions are met for bankruptcy proceedings to commence and whether the company has sufficient funds to cover the costs of the process.
If the Court accepts the application, a moratorium on creditor action will immediately apply and the Court will place the company under the control of one or more officeholders appointed from the roll of experts. The entry into the bankruptcy process is then made public and the creditors are invited to submit proofs of claims for the purpose of voting on the restructuring.

Following the commencement of bankruptcy the appointed officeholder takes over the management of the company with wide powers for the preservation of assets and the continuation (or otherwise) of the business.
The Officeholder prepares a report on the Company's business to the Court in consultation with the applicant. The report must state whether:
1) In the opinion of the officeholder there is reasonable prospect of restructuring the Company's business
2) A restructuring plan should be prepared for submission to the creditors.
3) There is likelihood of the sale of the whole or part of the company's business as a going concern in the event that the Company goes into liquidation.

Once the court is satisfied with the report it is then provided to the creditors for comment ahead of a hearing attended by the Officeholder, any expert, the applicant, any creditor committee and the creditors. At this hearing the Court will either order the production of a restructuring plan for creditors to vote on or the liquidation of the Company.
If the Court orders a restructuring plan to be put together it will go through the Protective Composition process as described by the law. Once the plan has been reviewed by the Court and permission has been has been granted to convene creditors meeting, the plan is voted on by the creditors. In order for the plan to be approved a majority representing at least two thirds

in value of each class must vote in favor the requested majority approves the plan the dissenting minorities will be bound by the plan.

it is not possible for one voting class to cram another. One of the key benefits of the procedure is the ability to raise debtor in possession (DIP)- style priority funding in order to allow the business to continue trading during the restructuring period which may be secured on unsecured assets or be granted in respect of secured assets either on a priority or subordinated basis(albeit with safeguards included for existing secured creditors).

The restructuring plan can be done over five years and can be extended by three more years subject to the approval of the creditors.

As can be seen from the above summary the law provides an effective rescue mechanism under the protection of the Court. Given that the law is good and offers the benefits highlighted above, the question is why hardly any cases have been brought to the Court? We believe that the answer is a combination of the following factors:

- Ignorance about the law.
- Misunderstanding the law.
- The use of the word bankruptcy. The above procedure is about rescuing a business that is insolvent. The word bankruptcy has the connotation of closure and cessation of trade. As such once it becomes known in the public domain that a particular company has applied for the bankruptcy , the reaction of the market is to avoid dealing with such a company and if they continue to trade, they will insist on cash on delivery . This is perhaps the biggest deterrent to the utilization of such a procedure.
- Lack of local expertise.
- Fear of the unknown.

We believe that in spite of all the above reasons, in a post COVID 19 environment we are going to see a change of attitude towards the use of the bankruptcy law and an increasing utilization of it.

We at Synergate have deep expertise in other jurisdiction (UK) of similar procedures and are working closely with a well-established local firm of lawyers to offer a comprehensive rescue, turnaround, restructuring and refinancing service offering to distressed business enterprises in the UAE overcome their challenges.

For more information please do not hesitate to contact our experts Team.