

DEVELOPMENTS IN THE UAE



Authored by: Peter Smith - Charles Russell Speechlys Dubai

The rising strength of the United Arab Emirates as a commercial powerhouse has continued as the Covid-19 pandemic recedes. The UAE was a key business hub prior to 2020, but the flow of money and talent into the country has increased since then, driven by numerous factors including the UAE's business-friendly climate, its stable political regime, and the access to fair and transparent justice mechanisms.

Of particular interest to international fraud and insolvency practitioners has been the rise of the UAE as a cryptocurrency hotspot: the Emirate of Dubai issued its first law governing digital assets and formed a Virtual Asset Regulatory Authority in March 2022, which subsequently issued one of its first licences to Binance, reportedly the world's largest cryptocurrency exchange. The UAE has also been selected to lead the 'Agile Nations' network of seven countries (including the UK, Canada, Denmark, Italy, Singapore and Japan) with a declared

focus on digital assets and their regulation, and the development of the metaverse.



Abraaj and NMC

The UAE's various insolvency schemes are being bedded down, following the introduction of the UAE Bankruptcy Law (Federal Decree Law No. 19 of 2016) and the UAE Insolvency Law (Federal Decree Law No. 19 of 2019)¹. These 'onshore' laws supplement the civil and commercial laws applied in the financial free zones of the Abu Dhabi Global Market and the Dubai International

Financial Centre, who have their own insolvency regimes drawn from the common law (the ADGM Insolvency Regulations 2015 and DIFC Law No. 1 of 2019 respectively).

Covid-19, supply and demand side shocks and changes in family enterprises (the bedrock of the GCC private economy) have kept insolvency practitioners busy. The most prominent contentious insolvency of recent years has been that of the Abraaj group, once believed to be the world's largest private equity group with over US\$ 13 billion of assets and offices globally. In 2019, limited partners who had invested in Abraaj's funds, most notably the Bill and Melinda Gates Foundation, complained that their investments were being fraudulently deployed other than in accordance with their agreed terms. The group holding company and its investment management arm are being wound-up in the Cayman Islands, but the effects (and other insolvencies) have been felt in the UAE:

¹ The UAE laws refer to 'corporate bankruptcy' and 'personal insolvency', a reversal of the usual terms.

in January 2022, the Dubai Financial Services Authority fined the former CEO, Arif Naqvi, a record US\$ 135.6 million, and its former COO, Waqar Siddiqui, a further US\$ 1.2 million over their roles in Abraaj's demise. Criminal proceedings are also underway in several jurisdictions.

The collapse, administration and recent exit from administration of the NMC group is also notable. In 2018, NMC – principally a collection of health-related businesses in the UAE – was worth over US\$ 11 billion and was included in the FTSE 100 after listing on the London Stock Exchange in 2012. Syndicates of banks had fuelled NMC's growth and, following allegations of financial mismanagement including an understating of group debt by over US\$ 4 billion, the group filed for bankruptcy. With the support of the management, owners and creditors, in late 2020, 36 group companies incorporated around the UAE were recognised as going concerns and were re-registered in the ADGM so that the ADGM Court could manage their administration under ADGM insolvency law. The ADGM was recognised as providing specialist and experienced legal and company administration services, rendering judgments and orders easily enforceable elsewhere in the UAE and abroad. After a debt restructuring, the companies attracted over US\$ 325 million of investment and exceeded their annual revenue targets, following which, in March 2022, they left administration under the guise of a new holding company.

insolvency proceedings, including other proceedings within the UAE under the UAE Bankruptcy Law, with reference to the UNCITRAL Model Law on Cross-Border Insolvency. The UAE Federal laws do not, however, contain corresponding provisions and the UAE do not have a national version of the Model Law.

The DIFC Court of First Instance considered these issues in the case of *In the matter of an application by Salem Mohamed Ballama Altamimi and others* [2021] CFI 085, 4 March 2022, where Justice Sir Jeremy Cooke refused to stay claims worth hundreds of millions of US dollars in the DIFC Courts by inter alia a collection of banks against corporate debtors (known as the KBBO group) who had defaulted under various loans, and their personal and corporate guarantors.

The individual defendants had challenged the Courts' jurisdiction, alleging their signatures had been forged on loan agreements and guarantees, and sought relief from the Dubai Courts, thereby triggering a referral to the Joint Judicial Committee established by Dubai Decree 19 of 2016 to decide on intra-Dubai jurisdictional disputes, which delayed the DIFC debt claim proceedings. However, at the same time the KBBO group had entered a restructuring process under the Federal Bankruptcy Law, with an amin (akin to a trustee) appointed by the Abu Dhabi Courts.

In declining an application (amongst others) by the amin to recognise the Abu Dhabi bankruptcy and insolvency proceedings as foreign proceedings under DIFC insolvency law and stay all proceedings in the DIFC against the debtors, Justice Cooke found that DIFC insolvency law only applied to corporate insolvencies (not those of individuals) and that the DIFC had jurisdiction to recognise and assist non-DIFC proceedings in other forums in the UAE, but that it would not automatically recognise a foreign proceeding merely because it related in a general sense to insolvency.

The abolition of the DIFC-LCIA and the growth of DIAC

There have been few developments of note for fraud litigators, save that the Dubai dispute resolution community has been dealing with the fall-out following the abolition of the DIFC-LCIA Arbitration Centre in September 2021 by Dubai Decree 34 of 2021, and the management of all arbitrations initiated since that date by the Dubai International Arbitration Centre (“DIAC”).

In March 2022, new institutional rules for the conduct of DIAC arbitrations were released, coming into effect very shortly afterwards. The new rules were the first update since 2007 and the amendments largely brought the rules into line with international best practice, for instance allowing the consolidation of claims, the joinder of third parties, express provision for third party funding, providing an express procedure of expedited and emergency arbitration, and setting out the tribunal's powers to order interim measures.

Perhaps most interestingly to fraud practitioners, the default seat of arbitration under DIAC's rules was switched from the Dubai to the DIFC Courts, and the 2022 rules confirmed that tribunals had the power to award parties their legal fees, ending uncertainty under the 2007 rules.



The KBBO litigation

Cross-border judicial co-operation on insolvency within the UAE has not all been plain sailing, however. The DIFC and ADGM insolvency laws sets out the assistance which their jurisdictional courts can give to “foreign”

