
6 June 2018

CLIENT UPDATE: WHITE PAPER ON CREDITOR'S RIGHTS

In light of the judgment in **Al Gosaibi v Al Sanea** and developments at **Abraaj Capital** and **MF Global**, DWF together with industry experts from Alvarez and Marsal Middle East and Rethink ME Ltd., held an interactive panel session on Tuesday to discuss creditor's rights.

RECOMMENDATIONS

The panel provided a number of practical recommendations to the audience on the best course of action for investors and creditors when investments are at risk:

Consensual restructuring

The panel agreed that stability is key, especially from an investor perspective. The ideal outcome is for creditors and investors to agree to a restructuring, as opposed to each individual creditor and investor "going after the firm" in an attempt to recoup their investment. It is always better to have a restructured and trading business than a non-trading one (the London Approach).

Investor representation

The panel was unanimous that investors need to ensure they are represented at steering committees. This allows investors the opportunity to negotiate with other investors and come up with a collective strategy on how to best protect and/or recover their investments.

Investors should aim for reconciliation whilst preparing for if negotiations do not work. In essence, investors should hope for the best but prepare for the worst.

KEY DISCUSSION POINTS

Recent developments

The session discussed significant recent developments concerning creditors' rights:

Abraaj Capital

Abraaj Capital, a private equity fund with operations in Dubai, recently made headlines following allegations of co-mingling and mismanagement. Whilst Abraaj has taken steps to try to calm investors nerves, including appointing investigators to review the business operations of its healthcare fund, this has not been successful. This became clear when the Kuwait Pension Fund – an unsecured creditor - filed a petition against Abraaj's holding company in the Cayman Islands on 22 May 2018. Abraaj is holding talks with creditors to try find a resolution.

Al Gosaibi v Al Sanea

The legal war over the debts of Saudi businesses Ahmad Hamad al-Gosaibi & Bros Co. and the Saad Group (owned by Al Sanea) as a result of fraud allegations, has lasted for almost a decade. Al Gosaibi was previously awarded a \$2.5bn default judgment against Mr Al Sanea.

The Cayman Island court has recently ruled that Al Gosaibi was aware of the fraudulent borrowing of money and the parties' claims and counterclaims were dismissed. This technically means that funds are available for the payment to Al Sanea's creditors. However, Al Gosaibi has said that they are going to challenge the decision.

MF Global

MF Global Inc., a commodity brokerage firm, filed for bankruptcy in October 2011 after it made significant losses stemming from high risk bets on European sovereign bonds. Trustees were appointed over its business affairs. MF Global achieved the near unthinkable when investors made a near full recovery on their investments.

Regulator's role in case of default

The role and significance of the Regulator was also discussed during the session. The Regulator – which in the case of Dubai based firms is the Dubai Financial Services Authority (DFSA) – has an important role to play in regulating financial business practices and addressing solvency concerns of its authorised firms. The Regulator, typically seen to be working behind the scenes, is essentially a neutral party who should at all times act in the best interest of all stakeholders involved. Some of the DFSA's powers under the Regulatory Law, No. 1 of 2004 include appointing managers where a firm experiences solvency issues, or to wind down operations of a firm for the protection of customers. It can also appear at hearings and provide submissions to the DIFC Court on how it considers assets should be preserved and/or distributed.

PRESENTERS

1. Moderator: **James Fox**, Partner and Head of Dispute Resolution Middle East, DWF (Middle East) LLP.
2. Panellist: **Umera Ali**, Global Head Islamic Finance and Head of Banking & Finance Middle East, DWF (Middle East) LLP, provided a legal perspective on the topic based on her experience as a banking & finance lawyer with an extensive background in restructuring.
3. Panellist: **Neil Hayward**, Managing Director, Alvarez and Marsal Middle East provided insights into the issues from a financial restructuring perspective based on his expertise and involvement in investigations and restructuring of companies.
4. Panellist: **Gail Goring**, Director - Regulatory and Compliance, Rethink ME Ltd shared her thoughts with the audience from a regulatory point of view based on her in-depth experience working for the Cayman Islands regulator.

If you are affected by or would like to discuss issues relating to Abraaj Capital please contact James Fox (james.fox@dwf.law) or Umera Ali (umera.ali@dwf.law).

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We accept no responsibility for loss to any person acting or refraining from acting because of material contained in this summary.

Contacts

James Fox

Partner and Head of Dispute Resolution
Middle East, DWF (Middle East) LLP.

T +971 4 524 5620

M +971 50 457 0449

E james.fox@dwf.law

Umera Ali

Global Head Islamic Finance and Head of
Banking & Finance Middle East, DWF
(Middle East) LLP.

T +971 4 524 5602

M +971 52 385 9126

E umera.ali@dwf.law