# DUBAI WORLD RESTRUCTURING – DECREE NO. 57

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On 13 December 2009, the Dubai Government issued Decree No. 57 for 2009, in response to the widely publicized concerns over Dubai World's debt position. The decree established a tribunal seated within the Dubai International Financial Centre, tasked with hearing and deciding claims against Dubai World, its subsidiaries and any person related to the settlement of the financial obligations of those organizations (Dubai World). The Decree also created an entirely new insolvency law which will be exclusively applicable to Dubai World.

**Why was Decree No. 57 issued?**

Dubai World is a corporation established by a special decree issued by the Ruler of Dubai, and consequently has a unique legal status. Due to its status as a decree corporation, Dubai World may not seek protection from its creditors under the existing provisions of Part 5 of Law No. 18 of 1993 (the UAE Commercial Transactions Law) which governs many other companies and traders throughout the UAE. A new legislation was needed to fill this gap; hence Decree No. 57 was issued.

Decree No. 57 draws heavily from the insolvency laws of England and the United States. In particular, Decree No. 57 introduces two common law principles which are worthy to note: (a) the power to issue injunctions. Whilst it is possible to obtain forms of interim relief through the Dubai Courts, such relief is granted in very limited circumstances; and (b) the application of the principle of equity.

**The Tribunal and its Composition**

Decree No. 57 establishes a three judge tribunal (the Tribunal) which has a number of features similar to common law courts than to civil law such as Dubai Courts. The Tribunal will have its seat and hold its hearings in the Dubai International Financial Centre. The powers and processes of the tribunal are derived, in the main, from the DIFC Court Law. All proceedings before the Tribunal will be conducted in English and will be open to public and to the press, unless the Tribunal decides otherwise for considerations relating to the conduct of justice or to protect the confidentiality of information. The Tribunal will issue its decisions and orders by the majority votes of its members. The decisions of the Tribunal will be final, irrevocable and not subject to appeal or review and can be enforced through an execution judge in the Dubai Courts. It is also clear that such enforcement is intended to be an automatic process and the execution judge cannot take any action that will hinder enforcement. The registrar of the DIFC Courts will act as the registrar of the Tribunal.

**The New Insolvency Law**

Decree No. 57 has created an entirely new insolvency law which will only have application to Dubai World. Decree No. 57 has adopted the insolvency laws of the DIFC as the basic legal framework for its law, but has made a number of significant amendments to the DIFC Insolvency Laws. These specific amendments are set out in the schedule to the Decree No. 57 (the Schedule). The Schedule includes the following:

## Voluntary Arrangement and Automatic moratorium

Dubai World would have the absolute right to notify the Tribunal in writing of its intention to make a proposal to its creditors for a voluntary arrangement, following which the Tribunal will convene an automatic moratorium that will apply to all creditors. This automatic moratorium will apply to all creditors of Dubai World, whether secured or unsecured and their assets wherever located until proceedings with the Tribunal are concluded or such earlier time as ordered by the Tribunal.

## Applicable Time periods

Once notice has been given Dubai World has an exclusive period of 120 days within which to propose a voluntary arrangement and can request an extension of an additional 180 days. There is also a right to ask the Tribunal to grant it further periods of time of up to 90 days at a time. Only after such period(s) have expired may a creditor put forward its proposal.

## Creditor claims

Dubai World has control over the selection of the various possible classes of creditor subject to the approval of the Tribunal. The Schedule contains different voting rights as compared to those that are mentioned in the DIFC Insolvency Law. The usual DIFC Insolvency Law 75 per cent by value majority has been reduced to two thirds and provided that at least one impaired class of creditors has voted to accept the voluntary arrangement it appears that all creditors will be bound (once the voluntary arrangement is sanctioned by the Tribunal) regardless of whether they took part in the approval process. Upon Dubai World's request the Tribunal may establish procedures for the submission of proofs of claim. Unless the Tribunal extend the time limit all creditors must submit their proofs within 60 days of Dubai World notifying the Tribunal of their intention to make a proposal to the creditors for a voluntary arrangement. If a proof is not submitted within the time limit the claim shall be forever barred and extinguished.

## Possible Winding-up

**Dubai World can only be wound up on the order of the Tribunal if a proposed Voluntary Arrangement has been rejected by the creditors under the provisions of Decree No. 57. If the voluntary arrangement is rejected the Tribunal may wind up Dubai World unless the Tribunal finds that it is in the interests of Dubai World and its creditors for the Tribunal to decline to do so. The Schedule makes clear that only the Tribunal has the right to wind up Dubai World.**

## Raising Additional Funds

During the course of re-structuring, the Tribunal will have the ability to permit the Dubai World to obtain additional credit, whether secured or unsecured and incur additional debt provided there is adequate protection to the existing holder of the security interest.

## Contracts and Unexpired Leases

The Schedule contains extensive provisions allowing Dubai World, subject to the Tribunal's approval, to assume or reject contracts and unexpired leases. Furthermore, in general no counterparty to a contract or lease may amend or terminate such contract or lease on the basis of the Dubai World contracting party's insolvency proceedings except where such counterparty is excused by the applicable law of the contract or lease or where the contract is a loan.

## Additional point of note

Dubai World and its directors are excluded from the DIFC's Insolvency Law's provisions on "Wrongful Trading" this is usually a key concern to the board of a company which is or is likely to become insolvent

### Conclusion

Decree 57 may well be seen by creditors of Dubai World as a long-awaited move towards providing an orderly approach to its possible restructuring, although it remains to be seen how the familiar characteristics of English and US insolvency law and a complex jurisdictional mix of other laws applicable to Dubai World will work out in practice. The introduction of a more transparent system, albeit untested, based on internationally recognized and tested legal principals judged by a well-regarded judiciary is however a step in the right direction.