

Cabinet of Ministers Resolution No. (4) of 2018

Concerning the Formation of the Financial Restructuring Committee

The Cabinet of Ministers:

- Having reviewed the Constitution,
- And Federal Law No. (1) of 1972 concerning the competencies of Ministries and the powers of Ministers, and its amendments.
- And Federal Decree-Law No. (5) of 2011 regarding the organization of boards of directors, trustees, and committees in the Federal Government.
- And Federal Law No. (7) of 2012 regarding the regulation of the profession of expertise before judicial authorities,
- And Federal Decree-Law No. (9) of 2016 on Bankruptcy,
- And based on the proposal of the Minister of Finance and the approval of the Cabinet of Ministers,

Has decided:

Definitions

Article (1)

For the purposes of implementing the provisions of this Resolution, the following words and phrases shall have the meanings assigned to each of them, unless the context otherwise requires:

The State	: The United Arab Emirates.
The Ministry	: The Ministry of Finance.
The Minister	: The Minister of Finance.
The Emirate	: Any of the member Emirates of the federation.
The Committee	: The Financial Restructuring Committee formed in accordance with the provisions of this Resolution.
The Competent Supervisory Authority	: The federal or local government supervisory authority designated by a resolution from the Cabinet of Ministers.
The Competent Authority	: The relevant local government entity.
The Financial Institution	: Banks and other institutions licensed by the Competent Supervisory Authority to provide financial services in accordance with the legislation in force in the State.
The Debtor	: The applicant for financial restructuring in accordance with the provisions of this Resolution.

Article (2)

Formation of the Financial Restructuring Committee

1. The Committee shall be formed of (9) nine members, chaired by the Undersecretary of the Ministry, with membership of representatives from the following entities:
 - a. Ministry of Finance.
 - b. Ministry of Economy.
 - c. Ministry of Justice.
 - d. The Central Bank.
 - e. The Securities and Commodities Authority.
 - f. Government of Abu Dhabi.
 - g. Government of Dubai.
 - h. Government of Sharjah.
2. Each of the entities referred to in Clause (1) of this Article shall nominate its representative for membership in the Committee from among those with experience and specialization, and a resolution shall be issued by the Minister accepting their membership.
3. The Committee shall select from among its members a Deputy Chairman at its first meeting, who shall replace the Chairman in the event of his absence or if his position becomes vacant for any reason.
4. The term of membership in the Committee is (3) three years, renewable for similar periods, in accordance with the procedures mentioned in Clause (2) of this Article.
5. If the term of membership in the Committee expires and new members have not been appointed, the members whose term has expired shall continue to perform their duties until the Committee is reconstituted in accordance with the provisions of this Article.
6. If the position of any member of the Committee becomes vacant for any reason, this shall not affect the Committee's continuation of its duties, provided that the number of its members is not less than (7) seven. A member shall be appointed to replace the member whose position became vacant for the remainder of his term, in accordance with the provisions of Clause (2) of this Article.

Article (3)

Secretariat of the Committee

1. The Committee shall have a secretariat, and the Ministry shall supervise all its administrative, financial, and technical affairs.
2. The Minister shall issue the necessary resolutions to name an employee of the Ministry to assume the duties of the Committee's secretary, and to name one or more employees to assist the secretary in performing his duties, and shall specify their competencies and tasks in his resolution.
3. The Ministry shall open one or more bank accounts in which the fees of the financial restructuring experts are deposited, and this account shall be subject to the supervision of the Chairman of the Committee or his authorized representative.

Article (4)

Committee Meetings

1. The Committee shall hold its meetings at the invitation of its Chairman, or his Deputy in his absence, at least once every (4) four months or whenever necessary. The agenda for the meeting shall be attached to the invitation.
2. The quorum for the Committee's meetings shall be met by the attendance of the majority of the members, provided that the Chairman or his Deputy is among them.
3. Each member shall have one vote, and the Committee's resolutions shall be issued by a majority of the votes of the members present. In the event of a tie, the side with which the chairman of the meeting voted shall prevail.
4. The Chairman of the Committee, or his Deputy in his absence, may invite whomever he deems appropriate to attend its meetings and participate in its discussions without having the right to vote.
5. The deliberations and resolutions of the Committee shall be recorded in minutes and signed by the chairman of the meeting and the members present.
6. The Committee's resolutions may be passed by circulation on urgent matters as determined by the Chairman of the Committee.

Article (5)

Competencies of the Committee

The Committee shall undertake the following competencies:

1. Supervising the administration of financial restructuring procedures for financial institutions to facilitate reaching a consensual agreement between the debtor and its creditors, with the assistance of one or more experts appointed by the Committee for this purpose, in accordance with the conditions and procedures stipulated in this Resolution.
2. Approving the list of experts in financial restructuring and bankruptcy affairs to carry out any of the tasks assigned to them in accordance with the provisions of the Bankruptcy Law, in coordination with the Ministry of Justice or the local authority in Emirates with a local judiciary.

3. Approving the conditions and procedures for registration in the list of experts prepared by the Committee in accordance with the provisions of this Resolution.
4. Determining a schedule of fees for the experts who are appointed and any costs they incur due to the financial restructuring procedures.
5. Establishing and organizing a register of persons against whom judicial rulings have been issued, whether imposing any restrictions ordered by the court or loss of their capacity in accordance with the provisions of the Bankruptcy Law, and determining its form, the data contained therein, the persons entitled to view it and the conditions for that, and other related provisions.
6. Submitting periodic reports to the Minister on its work, achievements, and proposals.
7. Forming one or more sub-committees from among its members to carry out some of the tasks that fall within its competencies, in which case the sub-committee must submit reports on the results of its work to the Committee for approval.
8. Organizing and sponsoring initiatives that would raise the level of public awareness of the Bankruptcy Law and understanding of its objectives.

Article (6)

Conditions for Financial Restructuring

Any financial institution may submit an application to the Committee for financial restructuring, in accordance with the following conditions:

1. The financial institution must be facing current or anticipated financial difficulties.
2. The financial institution must not be deemed to have ceased payment of its debts or to be in a state of insolvency, according to the definition of cessation of payment and the definition of insolvency as stipulated in the Bankruptcy Law, for a period exceeding thirty consecutive days.
3. The financial institution must not be subject to preventive composition or bankruptcy procedures.
4. It must not have been subject to financial restructuring procedures during the year preceding the submission of the application.
5. The applicant must provide the Committee with the following:
 - a. Proof of authorization to submit the financial restructuring application for the financial institution.
 - b. A memorandum containing a brief description of the financial position of the financial institution, in addition to detailed information about its financial rights and obligations, and its employees.
 - c. A copy of the financial institution's commercial license, its memorandum of association, and its articles of association.

d. An estimate of the financing needs to meet the financial institution's obligations during the twelve-month period following the submission of the application, and how to meet the financing it may need in cases where financing is requested.

6. Any other conditions or documents requested by the Committee.

Deciding on the Application

Article (7)

1. The Committee shall study the financial restructuring application and its attached data, and issue its decision to accept or reject it within a period not exceeding (15) fifteen working days from the date of its receipt. Its decision in this regard shall be final, provided that its decision is reasoned in case of rejection.

2. The Committee may postpone its decision on the application if it requires the applicant to provide additional information about the financial and economic situation of the financial institution within a specified period.

3. In its decision to accept the application, the Committee shall determine an estimated amount to cover the expert's fees and expenses and how it is to be paid. The Committee may decide that a percentage of these costs must be paid as an advance payment within a specified period before commencing the financial restructuring procedures.

4. The Committee shall notify the applicant in writing of its decision within a period not exceeding (5) five working days from the date of its issuance.

Article (8)

1. The debtor's obligation to request the opening of proceedings in accordance with the provisions of Chapter Four of the Bankruptcy Law shall be suspended for the duration of the financial restructuring procedures if the debtor ceases to pay its debts on their due date for a period exceeding (30) consecutive days as a result of the instability of its financial position or if it becomes insolvent after the Committee issues its decision to accept the financial restructuring application in accordance with the provisions of this Resolution.

2. The provisions of Clause (1) of this Article shall not prevent, nor shall the Committee's decision to accept the financial restructuring application prevent, any of the debtor's creditors from exercising their right to submit an application to the competent court for financial restructuring or declaration of the debtor's bankruptcy in accordance with the provisions of Chapter Four of the Bankruptcy Law. The financial restructuring procedures shall be considered automatically terminated upon the court's acceptance of the application.

Article (9)

Appointment of the Expert

1. In the event of accepting the financial restructuring application, the Committee shall appoint one or more experts from among the experts registered with it in accordance with the provisions of this Resolution.
2. The debtor may, in the financial restructuring application, name one or more of the experts referred to in Clause (1) of this Article, provided that the Committee has the authority to decide on approving or rejecting the appointment of the named experts.
3. It is required that the expert appointed in accordance with the provisions of this Resolution not be a creditor of the debtor, subject to its control, or its chairman, and that he has not received from it during the twenty-four months preceding the submission of the financial restructuring application any wage or remuneration related to the nature of his profession or expertise, and that he is not related to it by kinship up to the fourth degree.
4. The Committee shall inform the selected expert of its decision and the preliminary fees it estimates for the work he will undertake.
5. The expert, upon accepting the appointment decision, must disclose in writing to the Committee any potential conflict of interest that may affect his performance of the tasks assigned to him as a result of the financial restructuring procedures. He must express his readiness to assume his mission, provide the necessary time and effort to perform his role, accept the fees decided by the Committee, and inform the Committee of any conditions related to his acceptance of the appointment.
6. If the procedures for appointing the expert are completed in accordance with the provisions of this Article, the Committee shall notify all concerned parties.
7. The Committee may, on its own initiative or at the request of the debtor, appoint any expert from outside the list of experts referred to in Clause (1) of this Article if specialized experts in the required field are not available on the list of experts.
8. The Committee may change the expert at the expert's request, on its own initiative, or at the request of the debtor if it finds that this serves the interest of the financial restructuring procedures, provided that it settles the rights of the expert. Its decision in this regard shall be final.
9. The expert may, for justified reasons approved by the Committee, request the appointment of one or more experts with specialization to carry out specific matters.

Financial Restructuring Procedures

Article (10)

1. The financial restructuring procedures shall commence from the date the Committee's decision to appoint the expert is issued.
2. The expert must notify the Committee within (10) working days from the date of his appointment of the period during which he expects to complete the financial restructuring procedures.

3. The Committee shall issue a decision determining the duration for the completion of the financial restructuring procedures, and it may, for justified reasons, extend this period on its own initiative or at the request of the expert.

Article (11)

The expert appointed in accordance with the provisions of this Resolution shall undertake the following tasks:

1. Assessing the economic and financial situation of the debtor.
2. Facilitating the reaching of a consensual agreement between the debtor, its creditors, and any of its contracting parties.
3. Providing suggestions to the debtor with the aim of continuing its business and retaining its employees.
4. Submitting monthly reports to inform the Committee on the progress of the financial reorganization procedures.
5. Any other tasks assigned by the Committee.

Article (12)

The Debtor's Right to Manage His Business

The appointment of the expert in accordance with the provisions of this Decision shall not affect the debtor's right to manage his business, nor shall it exempt him from any legal or contractual obligations arising from the practice of his business.

Article (13)

Termination of Financial Reorganization Procedures

Without prejudice to the provisions of Clause (3) of Article (10) of this Decision:

1. The financial reorganization procedures shall be terminated if an agreement is reached between the debtor and his creditors regarding the financial reorganization.
2. The Committee may decide to terminate the financial reorganization procedures in any of the following cases:
 - a. Failure of the applicant to pay the fees and expenses determined by the Committee.
 - b. If the expert concludes that it is not possible to reach an agreement between the debtor and his creditors.
 - c. At the request of the debtor, provided that the Committee verifies that the reasons that led him to request the financial reorganization have ceased to exist.
3. The Committee shall notify the applicant for financial reorganization in writing of any decision related to the termination of the financial reorganization procedures.

Article (14)

Confidentiality of Information

All information and data related to the financial reorganization procedures shall be considered confidential, and it is not permissible for the expert or any other person to disclose them to anyone other than the parties concerned with these procedures.

Registration in the List of Experts

Article (15)

A natural or legal person may apply for registration in the list of experts established by the Committee in accordance with the form prepared by the Committee for this purpose, and the application shall be submitted to the Secretariat of the Committee.

Article (16)

The application referred to in Article (15) of this Decision must be accompanied by the supporting documents in accordance with the conditions specified in the registration form for the list of experts, and the Committee may verify the validity of those documents.

Article (17)

The Secretary of the Committee shall refer the application for registration in the list of experts to the Committee to decide on it within a period not exceeding (14) fourteen working days after verifying that the application has met the submission requirements.

Article (18)

The registration fees for the list of experts referred to in Article (15) of this Decision shall be collected in accordance with the aforementioned Federal Law No. (7) of 2012.

Article (19)

The Committee may decide on specific procedures or require passing specialized professional courses in the field of financial reorganization and bankruptcy before registration in the list of experts.

Article (20)

If the Committee rejects the application to register the expert in the list of experts or removes his registration from it, its decision must be reasoned, and in all cases, its decision issued in this regard shall be final.

Article (21)

The experts whose registration has been approved shall be included in the list of experts, and a summary of the information of the experts included in this list shall be made available on the electronic pages specified by the Committee.

Article (22)

The Committee shall provide the Ministry of Justice, and the local authorities in each emirate with a local judiciary, with the list of experts established by it, which authorizes them to carry out the tasks specified in the Bankruptcy Law.

General Provisions

Article (23)

Any provision that violates or contradicts the provisions of this Decision is hereby repealed.

Article (24)

This Decision shall be published in the Official Gazette and shall come into force on the day following the date of its publication.

Mohammed bin Rashid Al Maktoum

Prime Minister

Issued by us:

Date: 18 / Jumada al-Awwal / 1439 H

Corresponding to 4 / February / 2018 AD