

Cabinet Resolution No. (4) of 2018
Forming the Financial Restructuring Committee

The Cabinet,

- Having reviewed:
- The Constitution; and
- Federal Law No. (1) of 1972 Regarding the Competencies of Ministries and Powers of the Ministers, as Amended; and
- Federal Decree-Law No. (5) of 2011 Regarding the Organization of the Boards of Directors, Boards of Trustees and Committees in the Federal Government; and
- Federal Law No. (7) of 2012 Regulating the Expertise Profession before the Judicial Authorities; and
- Federal Decree Law No. (9) of 2016 on Bankruptcy; and,
- Based on the proposal of the Ministry of Finance and the approval of the Cabinet,

Hereby resolves as follows:

Article (1)

Definitions

For applying the provisions of this Resolution, the following words and expressions shall have the meaning assigned thereto respectively, unless the context requires otherwise:

State	: The United Arab Emirates.
Ministry	: The Ministry of Finance.
Minister	: The Minister of Finance.
Emirate	: Any of the member emirates of the Federation.
Committee	: The Financial Restructuring Committee formed according to the provisions of this Resolution.

- Competent Supervisory Body** : The local or federal government body nominated by a resolution to be issued by the Cabinet.
- Competent Authority** : The local government body concerned.
- Financial Institution** : Banks and other institutions licensed by the competent supervisory body for providing the financial services according to the legislation in force in the State.
- Debtor** : The applicant of Financial Restructuring according to the provisions of this Resolution.
- Bankruptcy Law** : Federal Decree-Law No. (9) of 2016 Concerning Bankruptcy.

Article (2)

Formation of the Financial Restructuring Committee

1. The Committee shall be composed of nine (9) members under chairmanship of the Deputy Minister and with the membership of the representatives of the following entities:
 - a. The Ministry of Finance;
 - b. The Ministry of Economic;
 - c. The Ministry of Justice;
 - d. The Central Bank;
 - e. The Securities and Commodities Authority;
 - f. The Government of Abu Dhabi
 - g. The Government of Dubai
 - h. The Government of Sharjah
2. Each entity referred to in Item (1) of this Article shall nominate its experienced and competent representative for the membership of the Committee. The Minister shall issue a resolution for approving their membership in the Committee.

3. The Committee shall select from among its members, a Vice-Chairman at its first meeting to act on behalf of the chairman in his absence or in the event of vacancy in chairmanship for any reason whatsoever.
4. The term of company's membership shall be (3) three years and may be renewed for other similar terms according to the procedures referred to in Item (2) of this Article.
5. If the term of the membership expires and no new members have been appointed, in such case, the members whose memberships expired shall continue to carry out their tasks until the Committee is reformed.
6. If a vacancy occurs in the membership of the Committee for any reason, it shall not affect the continuity of the Committee's work, provided that the members thereof shall be at least (7) seven members. The appointment of the member shall be made by replacing the member whose position became vacant for the remaining period of its membership according to the provisions of Item (2) of this Article.

Article (3)

Secretariat of the Committee

1. The Committee shall have a Secretariat, whose administrative, financial, and technical affairs shall be supervised by The Ministry.
2. The Minister shall issue the resolutions required for the appointment of one of the Ministry's employee to carry out the Committee Secretary's functions, and the appointment of one or more employee(s) to assist the Committee Secretary in his functions, and their competences and functions shall be determined in the Minister's resolution.
3. The Ministry shall open one or more bank account(s) in which the fees of the Financial Restructuring experts shall be deposited. Such account shall be subject to the supervision of the Chairman of the Committee or his delegate in this regard.

Article (4)

Committee Meetings

1. The Committee shall hold its meetings at least once each (4) four years or as needed upon the call of its Chairman or the Vice-Chairman in the absence thereof, and such call shall be accompanied with the agenda of the meeting.
2. The quorum for the Committee's meetings shall be constituted by the majority of the members, provided that the Chairmen or Vice-Chairman shall be amongst the attendees.
3. Each member shall have one vote, and the decisions of the Committee shall be made by a majority vote of the present members. In the case of equal votes, the Chairman of the Committee shall have the casting vote.
4. The Chairman of the Committee, or Vice-Chairman in his absence, may call any person who deems appropriate to attend its meeting and participate in its discussions, but shall not have the right to vote.
5. The deliberations and decisions of the Committee shall be recorded in minutes signed by the Chairman of the meeting and the members present.
6. The decisions of the Committee may be adopted by circulation in respect to the necessary issues determined by the Chairman of the Committee.

Article (5)

Functions of The Committee

The Committee shall have the following functions:

1. Supervising the management of the procedures of Financial Restructuring of the financial institutions in order to facilitate reaching a consensual agreement between the debtor and his creditor with the support of one or more expert(s) assigned by the Committee in this regard according to the requirements and procedures set forth in this Resolution.
2. Approving the roster of experts of Financial Restructuring and Bankruptcy affairs for carrying out the work assigned thereto according to the provisions of

Bankruptcy Law, in coordination with the Ministry of Justice or the Local Authority in the Emirates having local jurisdiction.

3. Approving the requirements and procedures for the registration in the experts' roster drawn up by the Committee in accordance with the provisions of this Resolution.
4. Setting a schedule of the fees of the appointed experts and any expenses borne by the latter due to the procedures of the Financial Restructuring.
5. Establishing and organizing a register of the persons for whom court rulings are issued, whether for imposing any restrictions ordered by the court or losing their legal competence pursuant to the provisions of the Bankruptcy Law, and determining its form, the data included therein the persons that have the right to access thereto, its requirements and other relevant judgments.
6. Submitting periodic reports to the Minister on its work, achievements, and proposals.
7. Forming one or more sub-committee(s) from its members to carry out some duties falling within its competence. In such case, the sub-committee shall submit reports on the results of its work to the Committee for approval.
8. Organizing and sponsoring the initiatives intended to raise public awareness about the Bankruptcy Law and understanding its objectives.

Article (6)

Requirements for Financial Restructuring

Any financial institution may submit an application for Financial Restructuring to the Committee, according to the following requirements:

1. In case the financial institution faces current or projected financial difficulties.
2. The financial institution shall not be in a status of debt payment cessation or in a financial state of indebtedness, in accordance with the definition of the cessation of payment and the definition of the financial indebtedness set out in the Bankruptcy Law for a period exceeding thirty consecutive days.

3. The financial institution shall not be subject to preventive composition or bankruptcy procedures.
4. The financial institution has not been subject to Financial Restructuring Procedures during the year preceding the application.
5. The applicant shall provide the Committee with the following:
 - a. A proof of his authorization to submit an application for the Financial Restructuring of the financial institution.
 - b. A statement containing a brief description of the financial position of the institution, as well as detailed information about its financial rights and obligations and its employees.
 - c. A copy of the commercial license of the financial institution, its Memorandum and Articles of association.
 - d. An assessment of the funding needs to meet the financial institution's obligations within the (12) months following the submission of the application and the method of the repayment of the funding it may need in cases the funding is required.
6. Any other requirements or documents required by the Committee.

Article (7)

Deciding on the Application

1. The Committee shall examine the application for Financial Reconstructing and the statements attached thereto. The decision shall be made for approval or rejection no later than fifteen (15) working days from the date of its receipt, and its decision issued in this regard shall be final, provided that its decision is substantiated in case the application is rejected.
2. The Committee may postpone its decision on the application if the applicant is required, within a specified time limit, to provide additional information on the financial and economic status of the financial institution.
3. The Committee shall include in the application approval decision an estimated amount to cover the costs and expenses of the expert and the method of payment.

The Committee may decide to pay a proportion of such costs as a down payment within a specified period before the commencement of the Financial Restructuring Procedures.

4. The Committee shall notify the applicant, in writing, of its decision no later than (5) five working days from the date of its issuance.

Article (8)

1. The obligation of the debtor to the request of initiating the procedures in accordance with the provisions of Part IV of the Bankruptcy Law shall be suspended for the duration of the Financial Restructuring if the debtor fails to pay its debts in due time for a period exceeding (30) consecutive days as a result of the disturbance of its financial position or in case it becomes in a financial state of indebtedness after the decision of the Committee to accept the application for the Financial Restructuring, in accordance with the provisions of this Resolution.
2. The provisions of Item (1) of this Article and the decision of the Committee to approve the application for Financial Restructuring shall not prevent any of debtor's creditors to exercise his right to submit an application to the competent court for Financial Restructuring and the Bankruptcy of the debtor in accordance with the provisions of Part IV of the Bankruptcy Law. The Financial Restructuring shall be automatically terminated upon admission of the application by the court.

Article (9)

Appointment of the Expert

1. The Committee shall appoint one or more expert(s) from among the experts registered with it in accordance with the provisions of this Resolution if it approves the application for Financial Restructuring.
2. The debtor may designate in the application for Financial Restructuring one or more expert(s) referred to in Item (1) of this Article, provided that the committee shall have the power to decide either to approve or reject the appointment of the designated experts.

3. The expert who is appointed in accordance with the provisions of this Resolution shall not be a creditor of the debtor, subject to his control or head thereof, has not received from him during the twenty-four months prior to submitting the Financial Restructuring application a remuneration or bonus related to the nature of his profession or his experience, and shall not be related to him up to fourth degree.
4. The Committee shall inform the chosen expert of its decision and the initial fees it estimates for the assignment he is required to perform.
5. The expert shall, in the event of the acceptance of the decision of his appointment, disclose to the Committee, in writing, any potential conflict of interests that may affect his performance of the assignment entrusted to him as a result of the Financial Restructuring Procedures, and he shall express that he is willing to take up his task, provide the time and effort required to carry out his role, accept the fees determined by the Committee and inform the Committee of any conditions relating to his acceptance of the appointment.
6. In the event that the procedures for appointing the expert are completed in accordance with the provisions of this Article, the Committee shall notify all parties concerned.
7. The Committee may, either of its own volition or upon the request of the debtor, appoint an expert from out of the roster of experts referred to in Item (1) of this Article, in the absence of the experts specialized in the required field in the roster of experts.
8. The Committee may replace the expert, upon the request of the expert, of its own volition or upon the request of the debtor, if it finds that it shall be in the interest of the Financial Restructuring Procedures, provided that it shall determine the rights of the expert, and its decision shall be final.
9. For justified reasons approved by the Committee, the expert may request the appointment of one or more specialist expert(s) to deal with specific matters.

Article (10)

Financial Restructuring Procedures

1. The Financial Restructuring Procedures shall commence from the date on which the Committee's decision to appoint the expert is made.
2. The expert shall inform the Committee within (10) working days from the date of his appointment of the period in which the Financial Restructuring Procedures are expected to be completed.
3. The Committee shall make a decision determining the period of the completion of the Financial Restructuring Procedures and may, for justified reasons, extend the period on its own or upon the request of the expert.

Article (11)

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

1. Assess the economic and financial status of the debtor.
2. Facilitate a consensual agreement between the debtor and its creditors and any of its contractors.
3. Provide the debtor with the proposals in order to continue his business and retain his employees.
4. Submit monthly reports to keep the Committee informed of the progress of Financial Restructuring Procedures.
5. Any other tasks assigned thereto by the Committee.

Article (12)

Debtor's Right to Manage its Business

The appointment of an expert in accordance with the provisions of this Resolution shall not affect the right of the debtor to manage his own business, and the same shall not relieve him from any legal or contractual obligations arising from the practice of his business.

Article (13)

Termination of Financial Restructuring Procedures

Subject to the provisions of Item (3) of Article (10) of this Resolution:

1. The Financial Restructuring Procedures shall be terminated if an agreement regarding Financial Restructuring between the debtor and its creditors is reached.
2. The Committee may decide to terminate the Financial Restructuring in any of the following cases:
 - a. The applicant non-payment of the fees and expenses determined by the Committee.
 - b. If the expert concludes that an agreement cannot be reached between the debtor and its creditor.
 - c. Upon the request of the debtor, provided that the Committee shall ensure that the reasons for the application for the Financial Restructuring have ceased to exist.
3. The Committee shall inform the applicant for Financial Restructuring, in writing, of any decision regarding the termination of the Financial Restructuring Procedures.

Article (14)

Confidentiality of Information

All information and data related to the Financial Restructuring Procedures shall be considered confidential and shall not be disclosed by the expert or any other person to anybody other than the parties concerned with such procedures.

Article (15)

Registration in the Roster of Experts

A natural or legal person may apply for registration in the roster of experts created by the Committee in accordance with the form prepared by the Committee for this purpose. The application shall be deposited with the secretariat of the Committee.

Article (16)

The documents supporting the application shall be attached to the application referred to in Article (15) of this Resolution in accordance with the requirements set forth in the Registration Form in the Experts Roster. The Committee may verify the authenticity of such documents.

Article (17)

The Secretary of the Committee shall submit the application for registration in the roster of experts to the Committee in order to make a decision thereon no later than fourteen (14) working days after verifying that the application fulfills the requirements for submission.

Article (18)

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

Article (19)

The Committee may set certain procedures or requirement for passing specialized courses in the field of Financial Restructuring and Bankruptcy before the registration in the roster of experts.

Article (20)

If the Committee rejects the application for the registration of the expert in the roster of experts or writes off its registration therefrom, its decision shall be reasoned, and in all cases, the decision in this regard shall be final.

Article (21)

The experts, whose registration is approved, shall be registered in the roster of experts. A summary of the experts' information included in this roster shall be provided on the electronic pages determined by the Committee.

Article (22)

The Committee shall provide the Ministry of Justice and local authorities in each emirate having local jurisdiction with its roster of experts, which allows them to perform the functions set forth in the Bankruptcy Law.

Article (23)

General Provisions

Any provision that contradicts or in conflict with the provisions of this Resolution shall be repealed.

Article (24)

This Resolution shall be published in the Official Gazette and shall enter into force from the day following its issuance.

Mohammed bin Rashid Al-Maktoum

Prime Minister

Issued by Us

On: 18 Jumada Al-Awwal 1439 A.H.

Corresponding to: 4 February 2018 AD