

Work comes from Dubai World woes

Dubai World's restructuring is no ordinary matter, with many law firms across the Middle East affected in some way. Firms are either directly involved in advising creditors or the debtors on the restructuring issue, or are indirectly tested as local restructuring & insolvency laws face serious review

Shockwaves were felt around the world's financial markets in November 2009, with the US\$26bn restructuring of the government-owned company Dubai World, owner of some of Dubai's prime real-estate and construction developments. As a key source of work for some of the region's law firms, the restructure surprised many. But another surprise was forthcoming – the silence of the big law firms involved.

At the top of the list is Clifford Chance, who is advising Dubai World on the current restructuring but declined to comment on the matter. In 2006 the firm advised Dubai World and its subsidiary Nakheel on a US\$3.5bn sukuk – now at the centre of the restructuring affair as the sukuk was due in December 2009.

of different members of the Dubai World group" and Ashurst for "a group currently forming among holders, which accounts for over 25% of the nominal value of certificates."

Allen & Overy is said to be working for the commercial banks Nakheel owes but also declined to confirm its involvement. The firm recently advised the Dubai government on its inaugural sukuk issue. Local firm Al Tamimi also declined to comment on the current matter, citing a conflict of interest. It is not known whether this is in reference to the firm's former partner Abdul Wahid Al Ulama, who is the vice chairman of Dubai Natural Resources World, or whether the local firm is representing parties on the restructure.

According to a lawyer from a

"The restructuring of Dubai World ... should result in a renewed effort to structure Islamic products from a genuine Shariah base, given the potential enforceability of issues if this is not done"

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Dubai World has previously said that Nakheel's sukuk had US\$6bn in debt to be paid. "We were delighted to work with Dubai World and Nakheel on what is a landmark transaction for many reasons, not just because of its size," said Robin Abraham, Clifford Chance's partner leading the Dubai team at the time of the deal.

On the other side of this restructuring are Ashurst and Denton Wilde Sapte. Both have confirmed they are advising bondholders and creditors – Dentons for "a number of creditors

prominent Omani firm, work from the restructure will increase as exposure to Dubai World stretches across the Gulf. The lawyer (who declined to be named) said his firm has been receiving calls and instructions from Omani banks looking to assess their position. "HSBC and Standard Chartered have a considerable presence in Oman as well; in fact their Dubai office deals with a lot of Omani project companies. Indirectly there may be an effect in respect to the project financings," the lawyer said.



One major reason why firms are remaining quiet may be the politics surrounding the restructuring. "This is a very sensitive issue – you're talking about a company (Nakheel) that the Dubai government owns as its major shareholder. The issue is highly politically charged and has garnered worldwide attention," said a high-profile lawyer working in the region.

"It's affected sharemarkets around the world and the reputations of a lot of important institutions and governments are on the line," the source added "You can be very sure that the law firms would be extremely circumspect in making any comment about this."

Silver lining: restructuring insolvency laws

Beyond political issues, Dubai World's restructuring could bring in more business for the region's firms, since it is the first time that Dubai restructuring laws and Islamic finance have faced serious tests. "It will generate a fair amount of finance-based work for law firms in the region and also in London and New York," said the head of Denton Wilde Sapte's restructuring and insolvency practice, Mark Andrews.

Earlier in 2009 Middle East lawyers were struggling to find any precedent cases to test the UAE's insolvency & restructuring laws. The UAE has no Chapter 11-style system for bankruptcy petitions and some have called for reform to existing insolvency laws. A report released earlier in 2009 scored the UAE at only 74 out of 155, on a scale measuring the strength of insolvency regimes. Some lawyers in the region

expect the scale of Dubai World's restructuring could eventually lead to these long-awaited developments.

"Particularly given the magnitude of the amounts at stake, restructuring of Dubai World will stress the nascent governing legal infrastructure," said Oliver Agha of Agha & Shamsi, an Islamic finance firm. "It may result in initiatives to develop or fill in gaps in the law that are highlighted once major restructurings like this test the existing legal framework."

"This is not the first restructuring exercise in the Gulf, but it is the biggest," said Denton Wilde Sapte's Andrews, which is representing creditors of Dubai World. "It will test the local business culture very severely." However, the likelihood that Dubai World will reach the litigation stage test is complicated by the uniqueness of the circumstances.

Dubai World may be exempt from action since it is state-owned and could



Oliver Agha
Islamic finance

be subject to sovereign immunity. Actions against the Dubai government (and, perhaps, its entities) are not permitted without the Ruler of Dubai's consent. Although at press time reports indicated that some creditors may be mobilising into action, the complexities of the case may deter them – for now.

"Creditors are naturally keen to understand their legal position, as these matters can be quite complicated," said Philip Abbott, a partner at Simmons & Simmons. "Each creditor will have their own motivations in terms of a restructuring process, but I would expect parties will attempt for consensus rather than litigation."

There's also the issue of the various laws the companies in question may be subjected to. For example, Nakheel is incorporated in the Jebel Ali Free Zone and is subject to those laws; but its controversial sukuk which is due in mid-December is listed in the Dubai International Finance Centre (DIFC) and is governed by English laws. Dubai World is subject to UAE laws, since it is incorporated as a UAE public company.

At least Nakheel's sukuk won't be subject to the laws governing Dubai World. "The choice of law contained in a finance document will only be relevant to that document," Abbott said. "It would not be relevant to a corporate or debt restructuring where the laws of the UAE or free zones in which members of the Dubai World group are incorporated will be relevant." Regardless of what happens with Dubai World, he added that it's largely up to the government as to whether the laws can be developed.

"The UAE has restructuring & insolvency laws; the issue is that all laws are open to interpretation and the lack of any major corporate insolvency in the UAE means there is uncertainty in the law," he said.

"Most commentators agree the legal system would benefit from some clarity and improvement in the law. Whether this happens and the speed at which it happens will very much depend on the degree of government support for such a process. The laws would have to be changed at a UAE federal level, all Emirates would need to approve." ALB

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