COVID-19 – THE UAE GOVERNMENT'S SUPPORT IN RESPONSE TO THE PANDEMIC AND PRACTICAL STEPS FOR BORROWERS

On 15 March 2020, the UAE Ministry of Human Resources and Emiratisation (MOHRE) released guidance for employers on how to conduct their response to the outbreak of the COVID-19 virus.

Such guidance ensures compliance with government legislation enacted to enhance the protection of workers, particularly the Federal Law No. 8 1980 on the Regulation of Labour Relations, which mandates the safe working conditions of employees in the private sector. In response to MOHRE guidance, employers across the UAE have implemented policies such as employee self-isolation, working-from-home arrangements and the closure of offices and other businesses.

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This has resulted in significant business slowdown and financial difficulty for many companies. As a result, many companies find themselves in an actual or potential default scenario under their financing documentation.

In response to the strain caused by these policies, the UAE government and local governmental authorities, such as the Dubai World Trade Centre Authority, have implemented various relief programmes for the private sector. Schemes that have proven popular include the deferment of licence fees in the UAE Freezones, the temporary freezing of rent payments and the Targeted Economic Support Scheme (TESS).

The Mechanics of TESS

The UAE Central Bank first published its guidelines on TESS on 19 April 2020. The focus of the guidelines are to enhance economic relief programmes for financial institutions to provide to customers and the assistance offered by the UAE government to such financial institutions in support of this cause. In order to do this, the UAE Central Bank originally provided a liquidity relief fund for banks of AED50 billion. In exchange for drawing from this capital, banks were obliged to implement relief efforts to their customers, including but not limited to:

- The postponement of interest payments and/or loan principal payments to banks for a period of up to 6 months;
- The more rapid processing of applications to banks from individuals, SMEs and corporations;
- The acceleration of the opening of bank accounts to a maximum of 2 days and the removal of a minimum capital of AED10 million.

The principle mechanics of TESS are to alleviate financial pressure on the financial institutions themselves in order to encourage deferments and/or payment holidays of loan repayments to customers. This is a markedly different focus for support compared to other nations, such as the UK, where governmental support schemes are directed towards financial support of individuals, taxpayers and borrowers.

The market reaction to TESS

As of mid-May 2020 approximately 77% of the AED50 billion facility for TESS has been drawn down by financial institutions. Since the inception of the scheme, the measures have proven extremely popular with banks and we expect the positive benefits will flow down to their customers, the borrowers themselves.

The borrower’s perspective

In the current environment, securing access to funding is important for many businesses as they navigate the cashflow issues raised by Covid-19. Many businesses are imposing pay freezes and headcount and salary reductions as a way to anticipate and cushion the impact of the pandemic.

We have received a number of enquiries from UAE borrowers on how they can approach the issues. Set out below are some of the patterns we see emerging in our discussions:

1. Check existing facilities

Do you have undrawn capacity under your facilities? Do you have unutilised tranches or accordion rights to increase the facility which can offer headroom during the pandemic?

2. Should you utilise the headroom?

We are seeing a number of borrowers looking to drawdown in order to make supply chain payments. For example, in March, there was a greater demand for rice worldwide as consumers bolstered stock. This led to a number of grain and commodity traders draw on existing working capital facilities to meet additional supply chain payments. We have also seen instances where drawings have been made as a preventative

measure at the beginning of the pandemic because the borrower felt that funding would not be available due to further deterioration of their operations, subsequently triggering defaults and drawstops. Here the issue was whether the drawdown should be made in light of a potential event of default on the borrower's financial covenants. The borrower was concerned with how the club of banks would react to a drawdown of funds that would sit on the balance sheet and a subsequent EoD waiver request following that drawdown.

3. Consider your covenants

One of the primary concerns in any downturn are the financial covenants. However, check what other provisions in the loan documents might be triggered during the pandemic. For example, a company supplying offshore drilling rigs to oil majors will likely see its revenue fall as offshore projects are cancelled or postponed. Is there a trigger if the borrower stops its offshore rig business and concentrates on another part of the business for example? Will any provisions be triggered if the borrower changes his line of business, both as a whole or in part, to adapt to the pandemic? For example, we have seen a manufacture of aircraft parts shift its business to the manufacture of N95 facemasks in the UAE. It was therefore necessary to investigate whether had triggered any provisions in that borrower's loan documents

4. Waive and relax

Assuming a breach has occurred or will imminently occur, the borrower needs to be proactive and approach the lender with a waiver request and, if appropriate, a relaxation of the offending clauses. In some cases a covenant holiday may also be appropriate. We have seen requests for financial covenant deferrals for up to Q2 of 2021, but each request will turn of the facts of each case. Our observations so far are that banks are generally receptive to these requests, especially in light of additional funding via the TESS scheme, but the process is still quite involved. Borrowers will need to have all financial and other information to hand (such as best and worst case projections) and it is likely that banks will require additional fees, enhanced and more regular reporting and information covenants in return. However, in line with many other countries including the UK, there is evidence that banks are being asked to treat Covid-19 breaches (as opposed to issues which are borrower specific) sympathetically.

5. Start early

Credit committees are extremely busy with the number of covenant tests in June and are faced with logistical challenges, such as working from home. As such there will be a queue of proposals to take to credit committee. The main advice is to speak to your relationship banker is good time to ensure your request has best chance of success.

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