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A New Legal Framework For Nakheel, Limitless Claims

Law360, New York (January 12, 2010) -- Last week Sheikh Mohammed Bin Rashid Al Maktoum, Ruler of Dubai, issued Decree No. 57 for 2009 Establishing a Tribunal to decide the Disputes Related to the Settlement of the Financial Position of Dubai World and its Subsidiaries (the "Decree").

The Decree establishes a tribunal (the "Tribunal") comprising three members — Sir Anthony Evans, Michael Hwang and Sir John Chadwick — to hear and decide all demands and claims submitted against Dubai World and/or its subsidiaries including Nakheel PJSC and Limitless, and any of their directors or employees.

The Decree is effective immediately and applies broadly to virtually all demands and claims against Dubai World companies.

The Decree specifies that neither the Dubai Courts nor the Dubai International Financial Centre ("DIFC") Courts have jurisdiction over these demands and claims.

The Decree also establishes The Law Related to the Settlement of the Financial Position of Dubai World and its Subsidiaries ("Dubai World Insolvency Law").

The Dubai World Insolvency Law imports and modifies certain portions of the DIFC Insolvency Law of 2009 and the DIFC Insolvency Regulations (based primarily on English insolvency law) for application to Dubai World and its subsidiaries, and makes clear that the Tribunal is solely responsible for applying the new law to Dubai World.

The Decree does not by its terms have any impact on pending or contemplated arbitration proceedings against Dubai World, or Nakheel, Limitless, or any other subsidiaries. In our view, arbitrations or other alternative dispute resolution proceedings provided by contracts with these companies may be taken forward.

Any arbitration awards rendered however, must be presented to the Tribunal, rather than the Dubai courts for confirmation or nullification under Dubai law. This position could change if Dubai World or a subsidiary seeks the protection of the Dubai World Insolvency Law.

Under that law, the Tribunal is empowered to issue a Moratorium, which would freeze, at least temporarily, all proceedings against the insolvent company, including arbitration proceedings.

The members of the Tribunal are eminent jurists and arbitrators of international standing with deep experience in resolving complex international disputes, including in relation to insolvency.

The Tribunal will have its seat and hold hearings in the DIFC. The Tribunal will decide the demands and claims presented to it by virtue of its applicable laws in Dubai, the Dubai World Insolvency Law "commercial custom," "principles of justice" and "rules of righteousness and equity."

The hearings will be in the English language and generally will be open to the public.

The decisions and orders of the Tribunal will be final and irrevocable, and will not be subject to appeal or review. Further, the Decree compels Dubai execution judges to execute the decisions and orders of the Tribunal without hindrance.

The establishment of the Tribunal and the Dubai World Insolvency Law, coupled with the announcement by the Dubai Supreme Fiscal Committee ("DSFC") that the Government of Abu Dhabi has provided \$10 billion in assistance earmarked for Dubai World, are perhaps the most welcome developments for the Dubai engineering and construction community in the last year.

The DSFC announcement states that after providing for the repayment of the Nakheel sukuk that matured on Dec. 14, 2009, and the provision of operating capital to Dubai World through April 30, 2010, the remaining portion of the \$10 billion will be applied to paying Dubai World's contractors and creditors.

Thus it now appears there is a fund of money available to settle the claims of Dubai World contractors, including Nakheel's and Limitless's contractors.

Moreover, there now exists an internationally renowned tribunal to whom to present the claims, and a clear legal framework within which to resolve them should Dubai World,

Nakheel, Limitless, or another subsidiary prove to be insolvent.

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