



# HAWKAMAH JUDICIAL COLLOQUIUM

An Initiative of the Forum for INSOLVENCY REFORMS in MENA (FIRM)

*In partnership with*

**DIFC Courts, Dubai Judicial Institute, The Abu Dhabi Council for Economic Development, The Abu Dhabi Judicial Department, INSOL International, The World Bank Group and The International Finance Corporation**

*with the support of*

**LATHAM & WATKINS LLP**

## AGENDA

**Venue: Day1-DIFC Conference Centre, Dubai  
:Day 2-Lecture Room 1 & 2, Gate Village 2, DIFC**

**Dates: December 13 – 14, 2011**

## PROGRAMME OUTLINE

### **Day 1: Lessons Learned in the First Wave of MENA Restructurings—What Will the Next Wave Look Like?**

**08:30am – 09:00am - Breakfast and Registration**

**09:00am – 09:45am - Welcome and Keynote Address**

- **H.E Ahmed Mahmoud AlHammadi**, Assistant Under Secretary Ministry of Finance, UAE
- **Dr. Nasser Saidi**, Executive Director Hawkamah and Chief Economist DIFC Authority

**09:45am – 10:15am - One Country—Two Insolvency Systems: Comparing UAE & DIFC Insolvency Law**

**Moderator:**

- **Essam Al Tamimi**, Al Tamimi & Co

**Panelists:**

- **Dr. Jamal Alsumaiti**, Dubai Judicial Institute
- **John Houghton**, Latham & Watkins LLP
- **Ahmad Anani**, Latham & Watkins LLP

The objective of this session is to compare the insolvency laws of the UAE and DIFC and identify the best practices of each jurisdiction. Panelists will discuss the different challenges faced by lawyers, practitioners and judges in each jurisdiction and how to maximize judicial efficiency based on lessons learned across both jurisdictions.

**10:15am – 10:45am - Pioneering Restructurings in the UAE: Dubai World Case Study & Restructuring Under Decree 57**

		<p><b>Moderator:</b></p> <ul style="list-style-type: none"> <li>• <b>Justice Sir David Steel</b>, DIFC Courts</li> </ul> <p><b>Panelists:</b></p> <ul style="list-style-type: none"> <li>• <b>Dr. Khaled Aswad</b>, Dubai Judicial Institute</li> <li>• <b>Bryant Edwards</b>, Latham &amp; Watkins LLP</li> <li>• <b>Aaron Bielenberg</b>, Latham &amp; Watkins LLP</li> <li>• <b>Charles Noel-Johnson</b>, Moelis &amp; Co</li> </ul> <p><b>Topics:</b></p> <ul style="list-style-type: none"> <li>• What were the key factors that contributed to the extraordinary result of achieving 100% creditor consent in the Dubai World restructuring?</li> <li>• What are the key restructuring tools created under Decree 57?</li> <li>• How does Decree 57 alter the negotiating dynamic from those that exist for UAE and DIFC organized companies?</li> <li>• Should Decree 57 be made available to companies other than Dubai World and its subsidiaries?</li> </ul>
<b>10:45am – 11:15am</b>	-	<b>Question &amp; Answer Session</b>
<b>11:15am – 11:30am</b>	-	<b>Coffee Break</b>
<b>11:30am – 12:00pm</b>	-	<b>Shari’a Restructuring Issues</b>
		<p><b>Moderator: Craig Nethercott</b>, Latham &amp; Watkins LLP</p> <p><b>Panelists:</b></p> <ul style="list-style-type: none"> <li>• <b>Andrew White</b>, International Islamic Law &amp; Finance Centre</li> <li>• <b>Dr. Sohail Zubairi</b>, Dar Al Sharia</li> </ul> <p><b>Topics:</b></p> <ul style="list-style-type: none"> <li>• Survey of restructuring of Shari’a compliant debts and institutions</li> <li>• What are the unique issues that arise in restructuring of Shari’a-compliant debts and institutions?</li> <li>• Do traditional strategies apply in such restructurings?</li> </ul>
<b>12:00pm – 12:30pm</b>	-	<b>Restructuring without Borders: Where Laws of Multiple Jurisdictions Apply</b>
		<p><b>Moderator:</b></p> <ul style="list-style-type: none"> <li>• <b>Gordon Stewart</b>, INSOL International</li> </ul> <p><b>Panelists:</b></p> <ul style="list-style-type: none"> <li>• <b>Bruno Navarro</b>, Abu Dhabi Commercial Bank</li> <li>• <b>Mitchell Seider</b>, Latham &amp; Watkins LLP</li> </ul>

		<p><b>Topics</b></p> <ul style="list-style-type: none"> <li>• When will a jurisdiction recognise the insolvency laws of another jurisdiction? For example, what if a company goes into insolvency in one jurisdiction and has assets in another jurisdiction?</li> <li>• The role of: the UNCITRAL Model Law, localised recognition procedures (e.g., the European Insolvency Regulation) and comity between nations.</li> <li>• The battle between territorialism and (modified) universalism.</li> <li>• Forum shopping: what is it and is it a Good Thing or a Bad Thing?</li> <li>• The long arm reach of US Chapter 11.</li> <li>• What happens when the insolvency laws of different jurisdictions clash?</li> <li>• The cross-border recognition position in MENA.</li> </ul>
<b>12:30pm – 13:00pm</b>	-	<b>Question &amp; Answer Session</b>
<b>13:00pm – 14:00pm</b>	-	<b>Lunch</b>
<b>14:00pm – 14:30pm</b>	-	<b>Sharia Restructuring Outside MENA: East Cameron Partners Case Study &amp; English Litigation</b>
		<p><b>Moderator:</b></p> <ul style="list-style-type: none"> <li>• <b>Andrew White</b>, International Islamic Law &amp; Finance Centre</li> </ul> <p><b>Panelists:</b></p> <ul style="list-style-type: none"> <li>• <b>Christopher Langdon</b>, Latham &amp; Watkins LLP</li> <li>• <b>Adam Goldberg</b>, Latham &amp; Watkins LLP</li> </ul> <p><b>Topics</b></p> <ul style="list-style-type: none"> <li>• How have U.S. Bankruptcy Courts addressed restructuring of Shari’a instruments in chapter 11?</li> <li>• How have courts in England ruled on recent challenges to the enforceability of Shari’a instruments?</li> <li>• What issues do these cases raise for Shari’a financings and obligors under Shari’a financings?</li> </ul>
<b>14:30pm – 15:00pm</b>	-	<b>The Road Ahead in MENA: Expectations for the Next Wave of Restructurings</b>
		<p><b>Moderator:</b></p> <ul style="list-style-type: none"> <li>• <b>Christopher Hall</b>, Latham &amp; Watkins LLP</li> </ul> <p><b>Panelists:</b></p>

	<ul style="list-style-type: none"> <li>• <b>Andres F. Martinez</b>, World Bank Group</li> <li>• <b>Islam Zughayer</b>, Berenson &amp; Co.</li> <li>• <b>Christopher Langdon</b>, Latham &amp; Watkins LLP</li> </ul> <p><b>Topics</b></p> <ul style="list-style-type: none"> <li>• What are the emerging trends in ongoing restructurings in MENA?</li> <li>• What have been the best and worst responses to the last wave of MENA restructurings?</li> <li>• What should we expect in the regional insolvency reform processes?</li> <li>• How does the UAE’s experience serve as a model for the region?</li> <li>• What impact did the last wave of MENA restructurings have on the availability of capital to companies in the region?</li> <li>• How have laws and regulations governing conduct of companies and directors outside of an insolvency process impacted restructuring negotiations across the regions?</li> </ul>
<b>15:00pm – 15:30pm</b>	- <b>Question &amp; Answer Session</b>
<b>15:30pm – 15:50pm</b>	- <b>The Forum on Insolvency Reform in MENA (FIRM): Technical Assistance on Insolvency Reform</b>
	<p><b>Moderator:</b></p> <ul style="list-style-type: none"> <li>• <b>Dr. Nasser Saidi</b>, Executive Director, Hawkamah and Chief Economist DIFC Authority</li> </ul> <p><b>Panelists:</b></p> <ul style="list-style-type: none"> <li>• <b>Andres F. Martinez</b>, World Bank Group</li> <li>• <b>Gordon Stewart</b>, INSOL International</li> </ul>
<b>15:50pm – 16:10pm</b>	- <b>Closing Discussion: Wrap up session</b>
	<p><b>Chair: Dr. Nasser Saidi, Executive Director Hawkamah</b></p> <p><b>Panelists:</b></p> <ul style="list-style-type: none"> <li>• <b>Justice Sir David Steel</b>, DIFC Courts</li> <li>• <b>D.J. Baker</b>, Latham &amp; Watkins LLP</li> </ul>

## Day 2: Judges & Insolvency Professionals Roundtables (By Invitation Only)

<b>08:30am – 09:00am</b>	-	<b>Breakfast and Registration</b>
<b>09:00am – 09:20am</b>	-	<b>Welcome and Introduction</b>
		<ul style="list-style-type: none"> <li><b>Dr. Nasser Saidi</b>, DIFC &amp; Hawkamah</li> <li><b>H.E Justice Ali Al Madhani</b>, DIFC Courts</li> </ul>
<b>09:20am – 10:10am</b>	-	<b>Dubai Decree 57 Mock Court Session: “First Day” Rescue Financing &amp; Post-Arrangement Hearing</b>
		<p><b>Mock Court Judges:</b></p> <ul style="list-style-type: none"> <li><b>Justice Sir David Steel</b>, DIFC Courts</li> <li><b>Justice Frank Clarke</b>, The High Court of Ireland</li> </ul> <p><b>Mock Court Advocates:</b></p> <ul style="list-style-type: none"> <li><b>D.J. Baker</b>, Latham &amp; Watkins LLP</li> <li><b>Mitchell Seider</b>, Latham &amp; Watkins LLP</li> <li><b>Laurence Cohen</b>, Latham &amp; Watkins LLP</li> </ul> <p>The objective of this session will be to provide an example of how the a “first day” hearing under Dubai Decree No. 57 for 2009 might unfold. The “first day” hearing is an expedited hearing that occurs as soon as possible following the filing of a new proceeding under Decree 57.</p> <p>In this hypothetical case, the Company’s business may be severely disrupted by a lengthy court proceeding, and the Company is in need of both new financing and a comprehensive debt restructuring as soon as possible to maximize value for its creditors. To meet these goals, the Company has proposed an arrangement to its creditors and solicited their votes through a meeting of creditors before initiating the Decree 57 proceeding. Upon filing the Decree 57 proceeding, the Company requested expedited approval of (1) new financing with priority and security ranking ahead of all existing debts (i.e., “priming” rescue / DIP financing) and (2) approval of an arrangement without the consent of secured creditors as a class (i.e., “cram down”). The hypothetical secured creditors will object.</p> <p>Background materials for this mock court session, including a hypothetical fact pattern, position papers for each party and a selection of precedents upon which the parties may rely, will be distributed to all attendees prior to the colloquium.</p>
<b>10:10am – 10:45am</b>	-	<b>Break out panels on First Day Hearing</b>
		<p><b>Moderators:</b></p> <ul style="list-style-type: none"> <li><b>Justice Sir David Steel</b>, DIFC Courts</li> <li><b>Justice Frank Clarke</b>, The High Court of Ireland</li> </ul>

		Participants will be divided into panels to consider what questions the participants would ask of litigants, whether the legal and evidentiary standards were met and how the participants would rule on the second mock court session if they were sitting on the Tribunal. A representative of each panel will then present the panel's questions, evidentiary findings, legal conclusions and ultimate rulings on both matters presented.
<b>10:45am – 11:00am</b>	-	<b>Coffee Break</b>
<b>11:00am – 11:40am</b>	-	<b>Restructure or Liquidate: The Role of Judges in Overseeing Restructurings</b>
		<p><b>Moderator:</b></p> <ul style="list-style-type: none"> <li>• <b>Justice Sir David Steel</b>, DIFC Courts</li> </ul> <p><b>Panelists:</b></p> <ul style="list-style-type: none"> <li>• <b>Justice Frank Clarke</b>, The High Court of Ireland</li> <li>• <b>Mitchell Seider</b>, Latham &amp; Watkins LLP</li> <li>• <b>Gordon Stewart</b>, INSOL International</li> </ul> <p><b>Topics</b></p> <ul style="list-style-type: none"> <li>• The role of insolvency in a sophisticated and rapidly growing economy.</li> <li>• Real world consequences of judicial involvement in evolving situations.</li> <li>• What circumstances justify approval of a restructuring without consent of all creditors?</li> <li>• What types of restructuring transactions should be available?</li> <li>• Should courts interpret insolvency laws to permit restructuring where there is ambiguity?</li> <li>• When and how should courts influence restructuring negotiations?</li> </ul>
<b>11:40am – 12:00pm</b>	-	<b>Question &amp; Answer Session</b>
<b>12:00pm – 13:00pm</b>	-	<b>Shari'a-Compliant Restructuring Round Tables: How to Restructure Shari'a-Compliant Debts and Institutions</b>
		<p><b>Moderator:</b></p> <ul style="list-style-type: none"> <li>• <b>Andrew White</b>, Director of International Islamic Law &amp; Finance Centre</li> </ul> <p><b>Topics</b></p> <ul style="list-style-type: none"> <li>• Should courts permit restructuring of Shari'a-compliant debts without consent of all parties?</li> <li>• What are the unique issues that courts should consider and how should those issues be addressed?</li> </ul>

	<ul style="list-style-type: none"> <li>• How do restructurings impact the cross-border market for Shari’a-compliant debts?</li> <li>• How can courts apply uniform principles to restructuring of Shari’a-compliant debts and institutions?</li> </ul> <p>Representative of each roundtable to report on best practices identified by their group.</p>
<b>13:00pm – 14:00pm</b>	<b>- Lunch</b>
<b>14:00pm – 14:40pm</b>	<b>- Cross Border Insolvency Issues – Round Tables</b>
	<p><b>Moderator:</b></p> <ul style="list-style-type: none"> <li>• <b>John Houghton</b>, Latham &amp; Watkins LLP</li> </ul> <p><b>Topics:</b></p> <ul style="list-style-type: none"> <li>• Do existing laws in MENA empower courts to request or provide assistance to foreign courts administering a cross-border restructuring?</li> <li>• How can cross-border cooperation be implemented and applied in MENA jurisdictions? Can the UNCITRAL Model Law on Cross Border Insolvency be applied by MENA courts?</li> <li>• How should judges exercise discretion in the context of multiple proceedings in respect of the same group of companies?</li> <li>• When should judges seek the views of foreign courts?</li> </ul> <p>Representative of each roundtable to report on best practices identified by their group.</p>
<b>14:40pm – 15:15pm</b>	<b>- The Future of MENA Restructuring: Implementing Current Laws and Identifying Areas for Reform</b>
	<p><b>Moderator:</b></p> <ul style="list-style-type: none"> <li>• <b>Mr. Peter Casey</b>, Dubai Financial Services Authority</li> </ul> <p><b>Panelists:</b></p> <ul style="list-style-type: none"> <li>• <b>Andres F. Martinez</b>, World Bank Group</li> <li>• <b>Caroline Reckler</b>, Latham &amp; Watkins LLP</li> <li>• <b>Adam Goldberg</b>, Latham &amp; Watkins LLP</li> <li>• <b>Neil Hayward</b>, PricewaterhouseCoopers</li> </ul> <p><b>Topics</b></p> <ul style="list-style-type: none"> <li>• What tools and concepts are available from MENA jurisdictions that should be applied broadly across jurisdictions in the region?</li> <li>• What tools and concepts are available from global jurisdictions that can be applied under existing MENA laws?</li> <li>• How can courts organize themselves to promote judicial</li> </ul>

		<p>expertise in insolvency restructuring?</p> <ul style="list-style-type: none"> <li>• What are the key areas for which reform would be most productive?</li> <li>• What are the prospects of harmonizing insolvency and restructuring laws in MENA?</li> </ul>
<b>15:15pm – 16:00pm</b>	-	<b>Concluding Remarks</b>
		<p><b>Moderator:</b></p> <ul style="list-style-type: none"> <li>• <b>Dr. Nasser Saidi</b>, DIFC &amp; Hawkamah</li> </ul> <p><b>Panelists:</b></p> <ul style="list-style-type: none"> <li>• <b>Justice Sir David Steel</b>, DIFC Courts</li> <li>• <b>Gordon Stewart</b>, INSOL International</li> <li>• <b>Mitchell Seider</b>, Latham &amp; Watkins LLP</li> <li>• <b>Andres F. Martinez</b>, World Bank Group</li> <li>• <b>Counselor Georges Okais</b>, Abu Dhabi Judicial Department</li> </ul>
<b>16:00pm – 16:20pm</b>	-	<b>Coffee Break</b>
<b>16:30pm – 17:30pm</b>	-	<b>FIRM Meeting – Next Steps</b>