COMPARATIVE GUIDE TO RESTRUCTURING PROCEDURES IN THE UK, US, DIFC, ADGM AND UAE

	UK RESTRUCTURING PLAN ***The Corporate Insolvency and Governance Act 2020***	**UK SCHEME OF ARRANGEMENT** ***Companies Act 2006***	**US CHAPTER 11** ***Chapter 11 of the US Bankruptcy Code***	**DIFC INSOLVENCY LAW – REHABILITATION REGIME** ***DIFC Insolvency Law (DIFC Law No. 1 of 2019) and DIFC Insolvency Regulations 2019***	**ADGM – ADMINISTRATION** ***ADGM Insolvency Regulations 2015***	**ADGM – SCHEME OF ARRANGEMENT** ***Companies Regulations 2020***	**UAE PREVENTIVE COMPOSITION PLAN** ***Federal Law by Decree No. (9) of 2016 on Bankruptcy***
Court Process	In court: two court hearings: ❖ convening hearing: plan proponent applies to court to convene stakeholder meetings ❖ sanction hearing: court has discretion whether to sanction Otherwise, out of court	As per UK restructuring plan	In court: court-supervised process Various court hearings to approve a variety of motions, e.g., "first day" hearing to enable business operations to continue (including DIP financing), "second day" hearings to grant final relief on certain interim orders that were heard at the "first day" hearing, omnibus hearings to address administrative motions, follow-on hearings, sale hearing (if applicable), plan confirmation hearing - number of hearings depends on circumstances / complexity of the case	In court: court-supervised process Directors of a company propose scheme of arrangement of company's affairs to its creditors The company's directors must notify the court in writing that they intend to make a proposal to the creditors under the regime	In court: court-sanctioned process	In court: court-sanctioned process	In court: court supervised process Court based distressed company-led process
Scope	Allows a company to compromise with its creditors (secured and unsecured) and shareholders May – but need not - implement operational changes Flexible options: plan may provide for: ❖ payment of classes of claims; ❖ sale of all or part of the debtor's assets; ❖ exit financing; ❖ capital restructuring including possible issuance of new debt or equity securities; ❖ resolution of corporate issues, including cancellation of shares/ securities and amending constitutional documents; and / or	Similar scope as the new UK restructuring plan	As per the UK restructuring plan, but broader provisions to facilitate greater degree of operational restructuring - see, e.g., below, "Treatment of Contracts"	Similar scope as US Chapter 11	Similar scope as the UK restructuring plan	There is no prescribed scope. A scheme could be an arrangement or compromise about anything that the company and its creditors or shareholders may settle on among themselves	The preventive composition plan ("**PCP**") is similar to the voluntary arrangement schemes under English law and the *procedure de sauvegarde* under French law as it provides a scheme for a solvent debtor to avoid liquidation by agreeing with its creditors to repay all or part of its debts pursuant to a court-approved settlement plan with the assistance of a trustee Similar scope as US Chapter 11

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	❖ possible releases and indemnification						
Eligibility	No need to demonstrate insolvency, but does require evidence of actual or likely financial difficulty Open to domestic and foreign companies which can demonstrate sufficient connection with England e.g., English law governed debt or COMI in England If a non-English company uses a plan, obtaining recognition of the proceedings in home jurisdiction will be key, as court orders do not expressly purport to have extra-territorial effect	As per UK restructuring plan	No need to demonstrate insolvency, but must show some kind of "financial distress" and that debtor is not filing just to take advantage of the benefits of the Bankruptcy Code Famously low jurisdictional threshold; includes where debtor has a place of business or property in the US (e.g., cash in a US bank account or location of stock certificate) US courts have long relied on 'property' element of the test to establish broad jurisdiction over foreign companies Court orders expressed to have extra-territorial (global) effect	DIFC company, where the debtor is, or is likely to become, unable to pay its debts and there is a likelihood of a successful rehabilitation plan being agreed Where a foreign company is the subject of insolvency proceedings elsewhere, the DIFC court shall assist that foreign court upon request The DIFC Insolvency Law adopts the UNCITRAL Model Law on Cross-Border Insolvency which among other items allows the recognition of foreign insolvency officials, foreign orders as well as concurrent insolvency proceedings in the DIFC	No need to demonstrate insolvency, but does require evidence of actual or likely financial difficulty Open to companies incorporated (or re-domiciled) in the ADGM, and certain other legal entities with exceptions The ADGM Insolvency Regulations adopt the UNCITRAL Model Law on Cross Border Insolvency	No need to demonstrate insolvency, but does require evidence of actual or likely financial difficulty Open to companies incorporated in the ADGM, and certain other legal entities with exceptions	No need to demonstrate insolvency, but does require evidence of actual or likely financial difficulty e.g. debtor has ceased making payments Open to UAE commercial companies, any person that qualifies as a trader pursuant to UAE law, civil companies/professionals and companies established in free zones (if the free zone does not have specific regulations relating to restructuring)
Control	Typically, the proposal will be launched by the company - although also possible for creditors or shareholders to make a proposal or a counter proposal Management / board stay in control and debtor continues business operations No requirement for appointment of a supervisor / trustee	Typically, the proposal will be launched by the company following extensive commercial negotiations, although an application may be made by: ❖ the company ❖ any creditor or shareholder of the company ❖ a liquidator or ❖ an administrator The directors remain in control of the company, continue to trade and undertake the company's business, unless otherwise provided by the terms of the scheme	Management / board will stay in control and the debtor continues business operations. However, the debtor must seek approval for all decisions and actions not in the ordinary course of business e.g., sale of assets / entry into new financing 120-day "exclusive period" for debtor to propose a plan - subject to extension to a date not beyond 18 months after the petition date. Once exclusivity lapses, any party may propose a competing plan Where fraud or misconduct are alleged, the Bankruptcy Court may appoint a trustee; however, appointment of a trustee is not common Where a case is expected to have large administrative fees,	A rehabilitation plan may only be initiated by the debtor Existing management remain in control (and liable) except where there is evidence of the company or its management, officers or directors being guilty of fraud, dishonesty, incompetence, or mismanagement The rehabilitation regime requires the company to appoint an insolvency practitioner as a rehabilitation nominee who will be responsible for certain company rights and duties The appointment of the insolvency practitioner takes place prior to the notification of the rehabilitation plan	An administrator is appointed to take over and control the management of the distressed company. An administrator may be appointed by: ❖ the debtor company itself ❖ a creditor which holds security over the whole or substantially the whole of the debtor company's assets ❖ the court upon the application of the debtor company, its directors or one or more creditors of the debtor company	Existing management remain in control of the company. An application for a scheme of arrangement may be made by: ❖ the company ❖ any creditor or shareholder of the company ❖ a liquidator or ❖ an administrator	A PCP application can only be made by the debtor The debtor is placed under the control of one or more trustees appointed by the court or named by the debtor and accepted by the court. During a PCP, the debtor continues to manage its business, albeit under the supervision of the trustee The PCP will not be available where the debtor is already subject to restructuring, bankruptcy or liquidation proceedings

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			a judge may appoint a fee examiner to make sure that professional fees and expenses paid by the estate are reasonable, actual, and necessary				
Moratorium	Potential to combine with new stand-alone moratorium (not automatic, and time-limited), although many companies at the top end of the market will likely be ineligible for the moratorium in practice Certain exceptions, including enforcement of financial collateral arrangements	No automatic moratorium to assist in implementing a scheme of arrangement outside of a formal insolvency process	Automatic moratorium (the "automatic stay"), prohibiting creditors and other parties from taking any action, absent court authority, to collect a pre-petition debt The moratorium lasts for the duration of the bankruptcy case until the debts are discharged Limited exceptions, including certain government actions and initiation of post-petition lawsuits on account of post-petition claims Creditors may file a motion to lift the automatic stay, but must show there is good cause (e.g. lack of adequate protection)	Automatic moratorium of 120 days from the date the directors notify the court of the intention to propose a rehabilitation plan Similar to the new UK restructuring plan, certain exceptions, including enforcement of financial collateral arrangements and netting under the DIFC Netting Law	For as long as an administrator is appointed an automatic moratorium (subject to a court order) will be applicable, prohibiting any steps being taken to wind up the company or to enforce security over the company's property or to repossess assets under a hire purchase arrangement. No legal proceedings may be brought against the company except with the consent of the administrator or the court	Unless a scheme of arrangement is carried out together with another insolvency procedure which triggers a moratorium (e.g. an administration), a moratorium will not be automatically applicable	If the court accepts the application, a moratorium on creditor action automatically applies (although the moratorium does not prevent the enforcement of secured claims which can still occur with the court's permission) ***All legal proceedings against the debtor will be suspended only until (i) the ratification of the PCP; or (ii) the lapse of ten months from the date of commencement of the PCP proceedings. The court may extend this period by an additional four months ***Secured creditors may apply to the court to grant them an exception to the suspension of proceedings so they can enforce their rights
Approvals	Class voting ❖ For a class of stakeholders to approve the plan, at least 75% in value, of those voting, must vote in favour ❖ Every creditor or shareholder whose rights are affected by the plan must be permitted to vote (except where the application for a convening hearing is made within 12 weeks of the end of any stand-alone moratorium, in which case creditors in respect of moratorium debts or priority pre-moratorium debts may not participate in the vote, nor be compromised under the plan unless they consent)	Class voting ❖ Each class must vote in favour of the scheme – at least 75% in value and majority in number, of those voting, in each class (an additional approval requirement in comparison to the new UK restructuring plan)	Class voting ❖ Classes that are receiving some - but not full-recovery, are "impaired' and entitled to vote ❖ For a class of claims to approve the plan, at least 2/3 in value and more than 1/2 in number of voting creditors must vote in favour ❖ For a class of equity interests to approve the plan, at least 2/3 in amount of voting interests must vote in favour ❖ Classes that receive a 100-percent recovery are "unimpaired" and are	Class voting ❖ The plan requires both 75% of creditors (or shareholders) in each class that are present and voting to support the plan and the approval of the court ❖ If approved, the arrangement will bind all creditors (or shareholders) who had notice of the meeting and were entitled to vote ❖ Either (A) all classes of creditors have voted to accept the plan (or have been deemed to accept the plan) or (B) at least one class of creditors which would be impaired by the plan approves it	The administrator shall send a copy of the statement of the administrator's proposals to the registrar, to every creditor of the company (other than those that have opted out) and to every member of the company – all creditors to approve the administrator's proposal	Class voting ❖ Each class must vote in favour of the scheme – at least 75% in value ❖ A majority by number of each class of creditor is not required for a scheme of arrangement to be approved	Class voting ❖ Once the court approves the plan, the plan is then put to a creditor vote ❖ Approval from a majority representing at least two thirds in value of **each class** of creditor is required ❖ Dissenting creditors are still bound by the plan if the requisite majority approves the plan

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	❖ However, an application can be made to exclude classes of creditors / shareholders from voting where the court is satisfied that "none of the members of that class has a genuine economic interest in the company"		automatically presumed to accept the plan ❖ Classes that do not receive any recovery at all are deemed to automatically reject the plan ❖ Administrative and priority creditors do not vote	❖ No creditor is worse off than the creditor would have been in a winding-up of the company, and the holder of any claims junior to any dissenting class will not be paid out any amount before the debtor pays the dissenting class in full			
Cross-Class Cram-Down	Cross-class cram-down possible: plan may be confirmed by the court even where one or more dissenting classes, provided: ❖ the court is satisfied that none of the members of the dissenting class would be any worse off than they would be in the event of the "relevant alternative"; and ❖ at least one class of creditors or shareholders that would receive a payment, or have a genuine economic interest in the company, in the event of a relevant alternative, have voted in favour of the plan The court may decline to exercise its discretion to sanction the plan if it does not consider it "just and equitable" Potential to engage the English courts in determining valuation disputes akin to those seen in Chapter 11 proceedings The restructuring plan does not include the concept of an "absolute priority" rule (a key principle of the US Chapter 11 process)	Schemes of arrangement are not eligible for cross-class cram down – each class of creditors voting must vote in favour of the scheme	Cross-class cram-down possible: plan may be confirmed by the court even where one or more dissenting classes (provided at least one class of impaired creditors votes in favour, and subject to safeguards) Plan must be "fair and equitable" and not "discriminate unfairly' ❖ A plan is fair and equitable to a class so long as the class receives the full present value of its claim, or no junior class receives anything on account of its claims (the "absolute priority rule") ❖ The "unfair discrimination" test prevents creditors (and interest holders) with similar legal rights from receiving materially different treatment under a plan absent a compelling justification	Cross-class cram-down possible: plan may be confirmed by the court even where one or more dissenting classes (provided at least one class of impaired creditors votes in favour, and subject to safeguards) Typically, the plan needs 75% of creditors in each class to support the plan and the court to approve it, however, in certain circumstances, as long as: ❖ one class of creditors affected by the plan approves it; ❖ no creditor is worse off than in liquidation; and ❖ no junior creditor gets paid before senior creditors are paid, the court may still approve the plan	Cross-class cram down not applicable: requirement to establish a creditor's committee which passes resolutions (by majority in value of those voting)	Cross-class cram down not applicable: the scheme will bind the debtor company and all of its creditors which were entitled to vote on the scheme of arrangement, including dissenting creditors	No cram down provisions Where the relevant threshold is achieved, the dissenting minority of creditors and all unsecured creditors will be bound by the composition whether they participate or take part in the vote for the adoption of the PCP It is not possible for one voting class to 'cram down' another Secured creditors will only be bound by the PCP if they relinquish their security rights and expressly vote in favour of it Secured creditors may only vote on the PCP if the PCP affects their security interest
Treatment of Contracts	No specific regime for treatment of contracts, but:	No specific regime for treatment of contracts - in relation to company contracts, the default position is that a	Debtor has flexibility to assume, assume and assign, or reject all unexpired leases and executory contracts with court	Protection against contractual termination in respect of insolvency clauses and other terms (noting that the court can order relief from moratorium for	No specific regime for treatment of contracts - there are restrictions in relation to hire purchase contracts prohibiting:	No specific regime for treatment of contracts - there are restrictions in relation to hire purchase contracts prohibiting:	A decision to commence the PCP shall not result in the termination or cancellation of any ongoing contract between the debtor and a counterparty

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	❖ company may compromise non-financial contracts within its plan ❖ new rules will restrict reliance on *ipso facto* clauses in contracts for the supply of goods and services	scheme will not interfere with the contracts of the company	approval, subject to certain limitations In general, executory contracts are contracts where material obligations remain to be performed on both sides Debtor must continue to perform post-petition, unless it rejects relevant agreement Reliance on *ipso facto* clauses restricted in all contracts	specific creditors in limited circumstances) Restriction on creditors exercising set-off (subject to limitations)	❖ the exercise of any repossession rights; and ❖ lessors accessing the premises	❖ the exercise of any repossession rights; and ❖ lessors accessing the premises	Such counterparty shall perform its contractual obligations, unless, prior to the decision to commence the PCP, the counterparty receives a judgement entitling it not to execute the contract as a result of the debtor's failure to perform its obligations The initiation of a PCP will not constitute an event of default under any existing financing agreement. Any agreement to the contrary will be void The trustee may terminate a valid contract to which the debtor is a party if the trustee is satisfied that the contract termination is necessary for the debtor to continue its business or that such termination is in favour of the creditors and the termination will not cause gross harm to the counterparty
Court Approval / Challenges	Court expected to consider (among other things): ❖ whether plan complies with the Corporate Insolvency and Governance Act 2020 ❖ jurisdiction ❖ class composition ❖ voting / approvals - including whether plan satisfies requirements for "cram-down", if applicable ❖ whether classes were fairly represented by those who voted ❖ whether the plan is "just and equitable"	Court expected to consider (among other things): ❖ whether the scheme complies with the law ❖ jurisdiction ❖ class composition ❖ fairness and reasonableness of the process; and ❖ the majority of creditors supporting the scheme not oppressing the (dissenting) minority	Court will consider (among other things): ❖ whether plan complies with the US Bankruptcy Code - injunction, exculpation, and release provisions - classification of claims and equity - assumption or rejection of unexpired leases and executory contracts ❖ jurisdiction ❖ whether plan has been proposed in "good faith" ❖ proper disclosure	Court will consider (among other things): ❖ whether the plan complies with the law and the debtor proposed the plan in good faith ❖ the arrangement is not "unfairly prejudicial" to the general body of creditors as a whole ❖ voting / approvals - including whether plan satisfies requirements for "cram-down", if applicable ❖ no creditor is worse off than it would have been in a winding-up of the company ❖ the holder of any claims junior to any dissenting class will not be paid out any amount before the debtor pays the dissenting class in full	Creditors to approve the appointed administrator's proposal by a resolution of the appointed creditors' committee	Court will consider (among other things): ❖ whether the scheme of arrangement complies with the Companies Regulations 2020 ❖ voting / approvals	Court will consider (among other things): ❖ whether the applicant is already subject to existing debt restructuring or PCP proceedings ❖ whether the applicant is acting in bad faith or if the application is an abuse of process ❖ whether the debtor is convicted of a bankruptcy-related crime ❖ whether the PCP is inappropriate given the circumstances ❖ whether the necessary deposit payments have been made

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			❖ voting / approvals - including whether plan satisfies requirements for "cram-down", if applicable ❖ whether plan is feasible ❖ whether plan is in the "best interests of creditors"				
Post-petition financing	No formal provision for post-petition financing. New funding must comply with permissions under existing debt documentation (unless of course approval for new funding is granted under the plan itself) However, we understand the Government is considering the introduction of additional debtor-in-possession financing provisions in due course	No formal provision for post-petition financing - typically, the company will look to its existing lenders to provide additional funding	Debtor-in-possession ("**DIP**") financing is possible and used to fund operations during Chapter 11 Court may grant a DIP lender a priming lien – a lien that would be superior to pre-existing liens - if other lienholders consent or debtor can show (a) other lienholders are adequately protected and (b) DIP financing was not available on more favourable terms (e.g., on an unsecured or junior lien basis)	DIP financing is possible Court can permit new priority funding during the rehabilitation process which can be unsecured or secured with security over previous unsecured assets, on a junior basis to existing security, or on a senior or *pari passu* basis with existing security (the latter in certain circumstances such as if adequate protection for the secured parties exists) The new funding takes priority over other unsecured debt, but the regime ensures protection of existing secured creditors 'Roll up' of existing debt is possible	DIP financing is possible, similar to US Chapter 11 An administrator may obtain unsecured credit and incur unsecured debt in the ordinary course of business, and any such credit or debt shall be payable as an expense of the administration 'Roll up' of existing debt is possible	No formal provision for post-petition financing	DIP priority financing is permitted which may be secured or unsecured ***The Amendment Law (defined below) confirms that the debtor may apply to the court to obtain new financing (secured or unsecured) during an Emergency Financial Crisis (defined below)
Costs	Costs potentially lower than in Chapter 11	Costs potentially lower than in Chapter 11	Administrative fees and expenses of Chapter 11 can be significant and lead to significant drain on the estate	Costs lower than in Chapter 11	Costs lower than in Chapter 11	Costs lower than in Chapter 11	Costs lower than in Chapter 11
Disclosure / Publicity	The company must provide a detailed explanatory statement in respect of the plan The court will require a similar level of disclosure to a scheme of arrangement including, e.g., fees – and in addition, enhanced valuation evidence (as compared to a scheme)	An application must be made to court by issuing a claim form with a witness statement exhibiting the draft scheme circular Increased disclosure obligations depending on the scenario	Increased disclosure obligations and scrutiny (by stakeholders, the US Trustee, Bankruptcy Court and, in some cases, the media) Each filing entity must file details of assets, liabilities, creditors, executory contracts, unexpired leases etc. and statement of financial affairs. These are cumbersome and time-consuming, but allow the	Rehabilitation nominee must file a statement with the court confirming that the proposed plan is reasonably likely to succeed, that the company has sufficient funds available during the moratorium and stating whether the debtor plans to convene creditor and shareholder meetings	Increased disclosure obligations regarding the appointment of an administrator and the company's statement of affairs Administrator to send a notice of his/her appointment to the company and publish a notice of his/her appointment on the registrar's website or in an English language newspaper	The company must provide a detailed explanatory statement in respect of the scheme of arrangement Increased disclosure obligations depending on the scenario, e.g. if a company is merging, a draft of the proposed terms of the scheme must be drawn up and adopted by the directors or equivalent office holders - the	The application for PCP filed with the court shall be detailed and provide information on the debtor, including an overview of its financial situation, assets, cashflow projections for the upcoming twelve (12) months, employees, creditors and debtors, copies of financial books and statements, proposals for preventive composition and selection of a trustee to carry out the procedure

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			bankruptcy court to assess the full picture of a debtor's estate	Requirement for nominee to advertise moratorium in an appointed publication We expect the court to require a similar level of disclosure to the new UK restructuring plan - including, e.g., fees - and likely enhanced valuation evidence	distributed in the United Arab Emirates and available in the Abu Dhabi Global Market Each administration application must contain a statement on the company's financial position, specifying the company's assets and liabilities, details of any security known or believed to be held by creditors of the company, details of any insolvency proceedings etc	draft terms must be published on the company website	
Timing	No express timeline provided; recent new plans have mirrored that of schemes of arrangement Unlike in Chapter 11, the company (or other plan proponent) cannot commence proceedings without having prepared a plan in advance	A straightforward scheme of arrangement that does not involve a reduction of capital, could be completed in about two months from the date of the company's first application to court. Schemes that include a reduction of capital or other additional requirements can take considerably longer	Varies widely, and depends on whether the Chapter 11 is: ❖ traditional or "free-fall" - i.e., debtor enters proceedings without an agreed path to emergence ❖ pre-arranged - i.e., debtor has negotiated plan with certain creditors pre-filing, or ❖ pre-packaged- i.e., debtor has solicited and obtained acceptances of plan pre-filing Pre-arranged / pre-packaged cases are more certain than traditional, "free-fall" Chapter 11 cases, given that certain creditors are already on board with debtor's plan	No express timeline provided	The appointment of an administrator of a company shall be automatically terminated one year after it takes effect. The court may by order extend the administrator's term of office for a specified period	No express timeline provided; we expect it to mirror that of a UK scheme of arrangement though it may take longer	The law provides that the duration of the PCP should not exceed three years (the term may be extended with the approval of the majority creditors holding an aggregate of at least two thirds of the value of the outstanding debts) ***The settlement period offered by the debtor to its creditors should not exceed twelve months during an Emergency Financial Crisis
Certainty	New procedure – limited testing	Tried and tested procedure A company can also enter into "lock-up agreements" with creditors designed to give the company certainty earlier in the process	Tried and tested procedure with extensive case law	New procedure - untested	Limited application	Untested	New procedure - untested

*** The UAE Cabinet made an announcement that it will make further amendments (the "**Amendment Law**") to the Federal Law by Decree No. (9) of 2016 on Bankruptcy (the "**UAE Bankruptcy Law**"). The Amendment Law follows the previous amendment to the UAE Bankruptcy Law (Federal Law No. (23) of 2019). The Amendment Law is yet to be published in the Official Gazette and its effective date has not been confirmed. The Amendment Law seeks to address periods during an 'Emergency Financial Crisis' which is defined under the Amendment Law as a general situation that affects trade or investment in a country, such as a pandemic, natural or environmental disaster, war, etc.

Gibson Dunn's Middle East practice focuses on regional and global multijurisdictional transactions and disputes whilst also acting on matters relating to financial and investment regulation. Our lawyers, a number of whom have spent many years in the region, have the experience and expertise to handle the most complex and innovative deals and disputes across different sectors, disciplines and jurisdictions throughout the Middle East and Africa.

Our corporate team is a market leader in MENA mergers and acquisitions as well as private equity transactions, having been instructed on many of the region's highest-profile buy-side and sell-side transactions for corporates, sovereigns and the most active regional private equity funds. In addition, we have a vibrant finance practice, representing both lenders and borrowers, covering the full range of financial products including acquisition finance, structured finance, asset-based finance and Islamic finance. We have the region's leading fund formation practice, successfully raising capital for our clients in a difficult fundraising environment.

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