

# Annex I

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# Format for providing public comments to DIFCA on Consultation Paper No. 8 of 2018

# Insolvency Law

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| Note 1: DIFCA reserves the right to publish, including on its website, any comments you provide. However, if you wish to remain anonymous, you must expressly request at the time of making comments that this should be the case.  Note 2: The second column, ‘comments on proposed policy’ relates to the policy explained in the CP paragraphs specified. The third column, ‘comments on legislation’ refers to the draft legislation reflecting the proposed policy.  Note 3: It is possible that you may not have any comments, either on the proposed policy or draft legislation, or may have comments on one and not the other. You may leave a blank column if you either agree to the proposed position, or you have no concerns relating it.  Note 4: If there are any ambiguities relating to the proposed policy or draft legislation, you may raise those in your comments. |

| **Name of individual / entity providing comments:** |  |
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| No. | Comments on proposed policy | Comments on legislation |
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| The new rehabilitation procedure | | |
| **Q1: Do you agree with our proposal to introduce a further restructuring mechanism with the Proposed Law?** | | |
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| Q2: Do you think that the proposed rehabilitation procedure adequately balances the interests of the debtor whilst providing adequate safeguards for creditors? In particular, please provide any comments on the introduction (a) a cram down mechanism; (b) a moratorium; (c) a nominee supervising the procedure; and (d) priority financing | | |
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| The new administration procedure accessible via rehabilitation only | | |
| **Q3: Do you have any concerns regarding the introduction of a new rehabilitation procedure that displaces management in this way?** | | |
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| Q4: Do you agree that only creditors should apply for the appointment of an administrator and that it should be accessible only within the context of the rehabilitation procedure? | | |
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| Q5: Do you agree that the administrator should be an insolvency practitioner? | | |
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| **Q6: Do you agree with the specific purposes of the administrator being limited to restructuring or investigation?** | | |
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| **Q7: Do you agree that the role should be limited, in particular that the administrator will not require any powers to continue to trade independently of the process? It should be noted that in other regimes where administrators have the ability to continue trading the majority of such instances are in the context of trading companies.** | | |
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| Voluntary winding up procedures | | |
| **Q8:** **Do you consider that these changes will improve the efficiencies and reduce costs in the voluntary liquidation procedure?** | | |
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| **Q9:** **Are there any other changes which you consider would improve how such liquidations are currently administered?** | | |
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| Compulsory winding up procedures | | |
| **Q10: Do you consider that these changes will improve the efficiencies, and reduce costs in the compulsory liquidation procedure?** | | |
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| **Q11: Are there any other changes which you consider would improve how such liquidations are currently administered?** | | |
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| Insolvency offences | | |
| **Q12: Do you think these additions adequately balance responsible management with appropriate levels of sanction for inappropriate or poor management?** | | |
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| **Q13:** **Are there any further changes which you think may encourage responsible behaviour, particularly in periods of distress and the period directly before formal procedures are commenced?** | | |
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| **Q14: Does the corporate governance framework in the DIFC relating to companies approaching insolvency, provide the right combination of high standards and low burdens? If not, how can it be improved? In particular, do you think that for larger more complex entities there should be stronger corporate governance rules and transparency, for example an annual confirmation statement that they have complied with their duties? Do you think shareholders should take a more active role in the stewardship of entities and monitor risks?** | | |
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| UNCITRAL Model Law on cross border insolvency | | |
| **Q15: Do you think the DIFC should adopt the Model Law in this way?** | | |
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| Q16: Do you think that it will improve how Courts in the DIFC operate on cross border cases? | | |
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| Financial collateral | | |
| Q17: Do you agree that these clarifications make the position on financial collateral arrangements and the effect of the Insolvency Law on those kinds of arrangement more understandable? | | |
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| Q18: Do you think any further changes are required to clarify how the proposed law and regulations operate in relation to these arrangements? | | |
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| Miscellaneous enhancements | | |
| Q19: Do you agree with the proposed amendments, regarding the introduction of a bonding system for insolvency practitioners? In particular do you think that it will:   1. provide stakeholders with greater confidence in the work undertaken by insolvency practitioners; 2. provide an effective mechanism to promote responsible behaviour; 3. facilitate the compensation of and ability to investigate cases where insolvency practitioners have acted either dishonestly or fraudulently. In this regard, does it achieve the right balance between cost effective and workable requirements (in terms of putting the bonding arrangements in place and reporting and monitoring requirements; and 4. serve as a useful addition to existing professional indemnity requirements. | | |
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| Q20: Do you think these practical changes will improve the operation of the Proposed Law and Regulations? | | |
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| **Q21: Do you have any other suggestions regarding how the law might be modernised and made more efficient and cost effective?** | | |
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