

# THE PERSISTENCE OF THE DEBTOR'S CIVIL RIGHTS UPON INSOLVENCY UNDER THE SAUDI BANKRUPTCY LAW (AN ANALYTICAL STUDY)

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**Abstract:** There is no doubt that protecting the insolvent debtor is an issue of practical importance in the economic sphere, insofar as it helps prevent commercial enterprises from collapsing. Modern statutes allow the preparation of rescue plans as soon as early signs of financial strain appear. The Saudi Bankruptcy Law prescribes the procedures to be followed vis-à-vis creditors and debtors and lays down practical mechanisms that clearly safeguard the debtor's rights, attaching multiple legal effects that attest to the legislator's seriousness in giving effect to such protection. Among these mechanisms is protecting the debtor by preserving his ability to exercise his civil rights during insolvency. This paper seeks to shed light on that mechanism.

**Keywords:** protection; debtor; civil rights; bankruptcy.

## INTRODUCTION:

Modern legal systems have sketched out mechanisms to rescue commercial enterprises from collapse and bankruptcy by instituting frameworks that enable debtor - rescue plans as soon as early indications of economic difficulty arise - whether for corporate undertakings or individual merchants.

The Kingdom of Saudi Arabia has paid close attention to commercial legislation and market stability, including means to protect the rights of creditors and debtors and to administer those rights so that each party receives its due without prejudicing the other.

Among these means is protecting the debtor by preserving his ability to exercise civil rights during insolvency.

This orientation is consistent with sectoral regulatory practice in the Kingdom that emphasizes prevention and oversight to protect public health and resources - "focus[ing] on safeguarding life, property and the environment" (Alasmari & Zurib, 2025).

This study aims to present this mechanism and demonstrate its protective effect. We have entitled it: The Persistence of the Debtor's Civil Rights upon Insolvency under the Saudi Bankruptcy Law (An Analytical Study).

### Significance of the Study:

1. Addressing a protective mechanism that secures the debtor's right to continue exercising his civil rights - rather than being barred from them - constitutes an effective rights-preserving tool.
2. This mechanism pertains to public policy; it may not be violated, and parties may not contract out of it under any circumstances.

### Research Objectives:

1. To foreground this mechanism, present it to relevant stakeholders, and then clarify its role in safeguarding the insolvent debtor's rights.
2. To set out the effects of this mechanism on rights-protection; presenting those effects gives stakeholders a clear indication of the seriousness of the protection afforded.

### Research Problem:

Bankruptcy regimes and statutes primarily aim to protect the creditor, which at times leads to neglect of

the rights of the other party - the debtor.

The Saudi Bankruptcy Law has sought to remedy this by delineating practical mechanisms that protect the debtor, including preserving his right to exercise civil rights despite pending bankruptcy procedures. Notwithstanding its importance, this mechanism is not expressly articulated in the text of the Law, nor has it been gathered in a single context that surfaces and clarifies it; nor has it previously been subjected to study and analysis.

#### **Previous Studies:**

Based on the sources consulted, we did not find a standalone study devoted specifically to this mechanism.

## **RESEARCH METHODOLOGY**

This study adopts an **inductive** reading of the Saudi Bankruptcy Law and the related implementing regulations, together with an **analytical** method to infer rules pertinent to this mechanism from the relevant legal texts.

#### **Scope of the Study**

The study comprises a preliminary section, two chapters, and a conclusion, as follows:

Preliminary: **Defining the Terms in the Research Title (four demands)**

##### **Demand One:**

##### **Definition of Protection in Saudi Law:**

We did not find a special statutory definition of protection in Saudi law; the term is used by legal scholars and its meaning varies with the right protected (civil, criminal, moral, etc). Cornu's Dictionary of Legal Terms defines protection as "a precaution based on safeguarding a person or property against risks, and ensuring their security and safety through legal or material means". (Cornu, 1418).

For the purposes of the Bankruptcy Law, protection may be expressed as preventing creditors or others from unlawfully infringing the debtor's rights or assets in accordance with the Law's provisions and procedures. (Kingdom of Saudi Arabia, 1439 /2018).

##### **Demand Two:**

##### **Definition of Debtor in Saudi Law:**

In legal doctrine, a debtor is "one who must perform the obligation or pay compensation". (Badawi, 1424).

The Saudi Bankruptcy Law defines the debtor as a person in whose liability a debt is established, and defines debt as a financial obligation fixed in the debtor's liability. (Kingdom of Saudi Arabia, 1439 /2018).

##### **Demand Three:**

##### **Definition of Bankruptcy in Saudi Law:**

The Law defines a bankrupt as a debtor whose debts have absorbed all of his assets. (Kingdom of Saudi Arabia, 1439 /2018).

##### **Demand Four:**

##### **Definition of Civil Rights in Saudi Usage:**

Some contemporary writers define civil rights as "those relating to a person's property and status".

More broadly, they may be expressed as rights recognized by the legal system through which an individual pursues his private interests - such as financial transactions and matters of personal status.

#### **Chapter One:**

##### **The Criterion Governing Civil Rights in Saudi Law:**

A review of the various bankruptcy procedures set out in the Law shows that the most impactful on the debtor - depriving him of certain rights - are: liquidation for ordinary debtors, liquidation for small debtors, and administrative liquidation.

In these procedures, the debtor's hand is stayed (i.e., he is fully divested of authority over business operations), and the trustee or the Bankruptcy Commission takes his place; the debtor thus becomes akin to a person lacking capacity. By contrast, in preventive settlement (for ordinary and small Saudi law pays close attention to rights in general. For example, the Basic Law provides that the state shall ensure the necessary protection for human rights. This indicates that civil rights do not, as a rule, lapse, save in narrow circumstances and for specific reasons; they lie at the core of human rights that the Law protects, and protecting the individual's rights ultimately protects human dignity.

A review of the bankruptcy provisions reveals a pronounced concern not to impinge upon the debtor's civil rights, except in limited ways. Any restriction that does occur is tied to avoiding prejudice to creditors - for example, restricting dispositions of property during certain procedures - while leaving other civil rights intact, such as family-related rights.

## **Chapter Two:**

### **Rules on the Persistence of the Insolvent Debtor's Civil Rights in Saudi Law:**

We survey the bankruptcy procedures and identify where, if anywhere, the debtor's civil rights are narrowed:

#### **1) Preventive Settlement**

The court considers the debtor's petition to open the procedure and sets a date for creditors to vote on the proposal; the debtor publishes the ruling opening the procedure. Upon opening, the debtor continues to manage his business; debts do not fall due merely because of opening, nor do sale prices in contracts whose payment dates have not yet arrived.

Contracts to which the debtor is a party are deemed to continue regardless of the opening. Accordingly, this procedure does not infringe the debtor's civil rights; his dispositions - including contracting, paying dues, and carrying on business - are valid and produce their legal effects. (Kingdom of Saudi Arabia, 1439 /2018).

Small-debtor preventive settlement follows the same approach on this point.

#### **2) Financial Restructuring**

When the court opens the procedure, it appoints a trustee, who publishes the opening, supervises the debtor's activity, inventories the estate's assets, prepares the list of creditors' claims, oversees asset sales, supervises the procedure, and brings it to a close. Despite this oversight, the debtor continues to manage the business under the trustee's supervision.

The debtor must obtain authorization from the trustee for many dispositions; these restrictions serve creditor protection. At the same time, the Law exempts certain assets from execution to protect the debtor's and dependents' living needs - allowing the debtor to retain what suffices for ordinary maintenance. These exempt assets lie within the debtor's civil rights that cannot be touched. (Kingdom of Saudi Arabia, 1439 /2018; see also Muḥammad & Idrīs, 2020).

Small-debtor financial restructuring follows the same approach on this point.

#### **3) Liquidation**

Here the narrowing is greater. Upon opening and appointing the trustee, the debtor's hand is stayed (ghul al-yad); the trustee takes the debtor's place, liquidates assets after the creditors' vote, distributes proceeds to creditors, and returns any remainder to the debtor; the trustee then petitions the court to terminate the procedure.

This restricts a civil right of the debtor—disposition over his property - since the stay covers all acts (legal or factual) affecting the estate. The restriction serves creditor protection, preventing concealment, dissipation, or unlawful preferences. Consequently, the debtor may not, post-opening, perform any legal disposition with respect to assets subject to creditors' rights - whether management acts (lease, loan, sale), renunciation of rights, or acknowledgment of debts. The stay also encompasses liability for harmful acts and litigation concerning assets included in the estate, subject to exceptions where litigation benefits creditors. Importantly, the stay does not extend to assets outside the general security for creditors (e.g., purely personal effects, property of others in the debtor's possession such as the spouse's property) or to necessary living expenses of the debtor and those he supports - which remain outside execution and thus within civil rights that cannot be infringed. (Kingdom of Saudi Arabia, 1439 /2018; 'Akīlī, 2011; Muḥammad & Idrīs, 2020).

Small-debtor liquidation follows the same approach on this point.

#### **4) Administrative Liquidation**

The court opens the procedure and appoints the Bankruptcy Commission to administer it; the debtor's hand is stayed upon appointment. The Commission announces the opening, sells assets, and issues the decision terminating the procedure.

As with liquidation, this procedure restricts the debtor's dispositions over property included in the estate; the same rules on the scope and exceptions of the stay apply. (Kingdom of Saudi Arabia, 1439 /2018).

Synthesis. Protecting the debtor's rights in the Bankruptcy Law includes preserving his civil rights during proceedings.

Those rights do not lapse upon opening any procedure; restrictions exist only narrowly, primarily on property dispositions within the estate in liquidation and administrative liquidation, calibrated to protect creditors. Dispositions that do not harm creditors generally remain within the debtor's civil autonomy.

## **CONCLUSION:**

### **Findings:**

1. This class of mechanisms protects the debtor's rights during bankruptcy procedures.
2. The Saudi legislator is keen to protect the debtor's ability to exercise civil rights, which is not inherently tied to the mere opening of bankruptcy proceedings.

### **Recommendations:**

We recommend expressly stating this right at the opening of any bankruptcy procedure so that no avenue remains for prejudicing the debtor.

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