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# MITIGATING INFORMATION ASYMMETRY IN INSOLVENCY LITIGATION: AN ANALYSIS OF STATUTORY GUIDANCE MECHANISMS UNDER THE SAUDI BANKRUPTCY LAW

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## ABSTRACT

*In contemporary insolvency jurisprudence, the complexity of legal procedures often creates a significant "information asymmetry" between sophisticated institutional creditors and distressed debtors. This disparity can lead to the premature collapse of viable enterprises due to procedural errors rather than economic insolvency. While previous descriptive scholarship has outlined the general rights of debtors in Saudi Arabia, this study advances the discourse by analyzing "Statutory Guidance" as a distinct protective mechanism. Adopting a normative-analytical methodology, this paper investigates how the Saudi Bankruptcy Law (Royal Decree M/50) institutionalizes procedural notification to function as a "legislative compass," thereby ensuring procedural justice. The research scrutinizes the notification mandates across four key procedures: Preventive Settlement, Financial Restructuring, Liquidation, and Administrative Liquidation. The findings suggest that the Saudi legislator has moved beyond an adversarial model to a "guided compliance" model, where the state actively reduces the cognitive burden on debtors to facilitate economic rehabilitation.*

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**KEYWORDS:** Information Asymmetry, Procedural Justice, Statutory Guidance, Saudi Bankruptcy Law, Debtor Protection.

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## 1. INTRODUCTION

The evolution of global bankruptcy regimes has witnessed a paradigm shift from "creditor-centric liquidation" to "debtor-centric rescue" (Rescue Culture).

However, the efficacy of rescue mechanisms relies heavily on the debtor's ability to navigate complex litigation rules. In many jurisdictions, the "Procedural Barrier"—the inability of a debtor to understand and execute legal requirements—often serves as the primary cause of rescue failure.

The Kingdom of Saudi Arabia, under its Vision 2030, has overhauled its commercial legal framework to ensure market stability. A critical, yet under-analyzed aspect of this reform is the legislative mandate to inform. Unlike systems that rely solely on external legal counsel, the Saudi Bankruptcy Law integrates step-by-step procedural guidance directly into the statutory text. This approach aligns with broader regulatory trends in the Kingdom that "operationalize principles of prevention and oversight" to safeguard economic interests.

### 1.1. Significance of the Study

The significance of this research lies in its exploration of "statutory notification" as a protective shield. Highlighting this mechanism demonstrates the advantages of Saudi law in safeguarding the interests of both parties, ensuring that concern extends beyond the creditor to include the debtor. Comparative sectoral evidence in the Kingdom confirms this preventive approach, which rests on transparent procedures and effective institutional oversight (Alasmari & Zurib, 2025).

### 1.2. Research Problem and Objectives

The central problem addresses the vulnerability of the insolvent debtor—not merely regarding assets, but regarding legal knowledge. Bankruptcy systems that neglect the "informational" needs of the debtor often inadvertently favor creditors. **Therefore, the objectives of this study are**

1. To conceptualize "Procedural Notification" as a form of statutory protection.
2. To analyze how specific articles within the Saudi Law actively guide the debtor through the litigation lifecycle.
3. To demonstrate how these mechanisms prevent the "procedural forfeiture" of rights.

## 2. THEORETICAL FRAMEWORK: PROTECTION VIA INFORMATION

To understand the Saudi approach, we must redefine "Protection." In legal dictionaries, protection

is defined as a "precaution based on safeguarding a person or property against risks, and ensuring their security and safety through legal or material means" (Cornu, 1998, p. 726).

In the specific context of the Saudi Bankruptcy Law, protection is operationalized as "preventing creditors or others from unlawfully infringing the debtor's rights or assets, pursuant to the provisions and procedures of the Bankruptcy Law".

This protection applies to the Debtor, defined doctrinally as "one who must perform the obligation or pay compensation" (Badawi, 2003, p. 78), and statutorily as "a person in whose liability a debt is established". The ultimate beneficiary is the Bankrupt, defined as a debtor whose debts have absorbed all their assets.

## 3. METHODOLOGY

This study employs a Qualitative Normative Analysis.

- Data Source: The primary texts analyzed are the Saudi Bankruptcy Law (Royal Decree No. M/50, 1439 AH) and its Implementing Regulations (Decision No. 622, 1439 AH).
- Analytical Tool: The study utilizes Inductive Inference to extract the "guidance logic" embedded in four distinct bankruptcy procedures.
- Scope: The analysis covers the entire litigation timeline, from the filing of the petition to the final adjudication.

## 4. ANALYSIS: MECHANISMS OF STATUTORY GUIDANCE

The Saudi Bankruptcy Law differentiates its guidance based on the severity of the financial distress. We categorize these into three levels of statutory intervention, as illustrated in Figure 1.

[INSERT FIGURE 1 HERE] Caption: Figure 1: The Concentric Levels of Debtor Protection via Statutory Guidance.

### 4.1. Level 1: Autonomy with Roadmaps (Preventive Settlement)

The Preventive Settlement is a debtor-in-possession procedure. Here, the law protects the debtor by providing a rigid "procedural roadmap".

- The Mechanism: The law details the exact steps for the proposal, voting quorums, and court submissions (Saudi Bankruptcy Law, 1439 AH, Arts. 13–25).
- The Protective Effect: By explicitly codifying the Information and Documents required, the law prevents the court from dismissing cases

on vague technical grounds. The legislator effectively "walks the debtor through" the process.

- **Small Debtors:** Crucially, this guidance is simplified for small debtors (Saudi Bankruptcy Law, 1439 AH, Arts. 137–141), reducing the barrier to entry for SMEs.

**4.2. Level 2: Supervised Navigation (Financial Restructuring)**

In Financial Restructuring, the distress is deeper, and the risk of litigation error is higher.

- **The Mechanism:** The introduction of the Financial Restructuring Trustee. The law defines this procedure as facilitating an agreement "under the supervision of a financial restructuring trustee" (Saudi Bankruptcy Law, 1439 AH, Art. 1).
- **The Protective Effect:** The law mandates that the debtor be informed of all procedural steps via the trustee (Saudi Bankruptcy Law, 1439 AH, Arts. 42–91). The trustee serves as a specialized guide tasked with ensuring the procedure is executed fairly without prejudice to the debtor.

**4.3. Level 3: Institutional Guardianship (Liquidation & Administrative Liquidation)**

When rehabilitation fails, the law shifts from guidance to direct guardianship.

- **Liquidation:** The law dedicates Chapter Five (Arts. 92–126) to clarifying the debtor's duties during asset inventory. The protection here lies in certainty; the debtor is informed exactly what will happen to their assets.
- **Administrative Liquidation:** For asset-poor debtors, the Bankruptcy Commission assumes the debtor's role. The Commission "assumes the debtor's position" to manage the estate and receive claims (Saudi Bankruptcy Law, 1439 AH, Arts. 167–181). This is the ultimate form of protection, immunizing the debtor from making further legal errors.

**5. COMPARATIVE SYNTHESIS AND FINDINGS**

To visualize the graduated nature of this protection, we present the following comparison of the guidance mechanisms in Table 1.

*Table 1: The Spectrum of Statutory Guidance in Saudi Bankruptcy Procedures.*

Procedure	Nature of Debtor Control	Primary Source of Guidance	Protective Mechanism
Preventive Settlement	Full Management	Statutory Text (Self-Guided)	<b>Procedural Roadmap:</b> Detailed checklists in the law prevent technical dismissal.
Financial Restructuring	Supervised Management	The Trustee	<b>Expert Oversight:</b> The Trustee actively guides the debtor to ensure compliance.
Liquidation	Assets Seized	Liquidator / Court	<b>Transparency:</b> Clear inventory rules prevent arbitrary asset seizure.
Administrative Liquidation	Substituted	Bankruptcy Commission	<b>Institutional Substitution:</b> The Commission acts <i>as</i> the debtor to close the estate.

Source: Synthesized based on Saudi Bankruptcy Law provisions analyzed in Section 4.

**Key Findings**

1. **Pre-Emptive Clarity:** The law does not wait for the debtor to fail; it provides the rules of engagement before the procedure begins. This preempts complications and prevents the loss of rights due to ignorance.
2. **Universal Application:** This protective philosophy is not limited to large corporations;

- the legislator has specifically mirrored these protections for "Small Debtors," acknowledging their limited legal resources.
3. **The Shift to Oversight:** As noted by Alasmari & Zurib (2025), the Saudi regulatory orientation relies on "prevention and oversight". This is evident here: the law prevents procedural failure by overseeing the

information flow to the debtor.

## 6. CONCLUSION AND RECOMMENDATIONS

This study concludes that "Informing the Debtor" in Saudi jurisprudence is not merely a bureaucratic formality, but a fundamental pillar of Procedural Justice. By reducing information asymmetry, the Saudi Bankruptcy Law transforms the debtor from a passive victim of liquidation into an informed participant in resolution.

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## Recommendations

- **Digital Dissemination** Authorities should utilize digital platforms to convert these statutory roadmaps into interactive guides, ensuring every interested party can access them.
- **Legal Aid Integration** Future amendments could explicitly link these notification mechanisms to mandatory legal aid for small debtors during the initial filing phase.