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CONSENSUAL RESOLUTION MECHANISMS: SAFEGUARDING DEBTORS THROUGH PREVENTIVE SETTLEMENT AND FINANCIAL RESTRUCTURING IN SAUDI JURISPRUDENCE

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ABSTRACT

In the contemporary economic landscape, the legal protection of the insolvent debtor has shifted from a peripheral concern to a central tenet of commercial stability, primarily to avert the systemic risks associated with enterprise collapse. This study investigates the legislative intent of the Saudi legislator in safeguarding debtor rights through specific consensual mechanisms. By employing an inductive and analytical methodology, the research explores how the concept of Settlement (Sulh) though not always explicitly labeled as such is operationalized within the Preventive Settlement and Financial Restructuring procedures of the Saudi Bankruptcy Law. The findings reveal that these mechanisms offer a statutory shield, allowing debtors to retain management control or operate under supervision while negotiating debt discharge. This approach balances creditor rights with the imperative of business continuity, reflecting a sophisticated integration of Islamic jurisprudence principles regarding Sulh with modern insolvency practices.

KEYWORDS: Insolvency Law, Debtor-in-Possession, Corporate Rescue, Sulh (Settlement), Saudi Bankruptcy Law, Financial Restructuring.

1. INTRODUCTION

The evolution of modern legal systems has increasingly favored the "rescue culture" over traditional liquidation models. Legal frameworks globally are now designed to intervene at the earliest signs of financial distress, offering mechanisms to rehabilitate commercial entities rather than dismantling them. This shift acknowledges that the premature exit of viable enterprises from the market is economically detrimental.

In this context, the Kingdom of Saudi Arabia has enacted comprehensive legislation to regulate commercial stability. The Saudi legal philosophy is predicated on a dual-protection mandate: safeguarding the rights of creditors while simultaneously extending robust protections to debtors. This legislative vision is not merely about debt collection; it is about establishing a balanced ecosystem where rights are adjudicated without prejudice to either party. A critical component of this framework is the requirement to inform the debtor of litigation rules and procedures, a measure that operationalizes principles of prevention and oversight to protect property and economic interests (Alasmari & Zurib, 2025).

Despite the significance of these measures, the specific mechanism of "Settlement" (Sulh) embedded within bankruptcy procedures remains under-analyzed. While the law outlines procedures for Preventive Settlement and Financial Restructuring, the underlying protective philosophy rooted in consensual resolution requires deeper academic scrutiny.

1.1. Significance of the Study

The academic and practical value of this research is multidimensional

- **Legal Grounding:** It elucidates the legal basis of settlement as a protective shield for debtors, validating its status as a right rather than a mere procedural option.
- **Legislative Neutrality:** It demonstrates the Saudi legislator's commitment to justice by proving that the law does not solely favor creditors, thereby reinforcing the neutrality of the commercial legal system.
- **Economic Stability:** By securing rights and obligations through consensual mechanisms, the study highlights how the law buttresses the fundamental pillars of the national economy.

1.2. Research Problem

Historically, bankruptcy regimes have been

criticized for a "creditor-centric" bias, often neglecting the rights of the distressed debtor in the pursuit of asset liquidation. The Saudi Bankruptcy Law addresses this imbalance by introducing practical measures that allow debtors to initiate settlement. However, a significant gap exists in the literature: this settlement mechanism is not explicitly categorized under a single coherent theoretical framework within the statutory text, nor has it been the subject of systematic independent analysis.

1.3. Research Objectives

This study aims to

1. **Conceptualize the Mechanism:** Define and foreground the role of settlement in protecting the insolvent debtor.
2. **Analyze Legal Effects:** Detail the specific statutory protections that arise when these settlement mechanisms are activated, demonstrating the legislator's seriousness in affording this protection.

2. METHODOLOGY

The study adopts a dual methodological approach

1. **Inductive Method** To survey and track the specific provisions within the Saudi Bankruptcy Law and its Implementing Regulations that pertain to settlement and debtor rights.
2. **Analytical Method** To interpret these legal texts and infer the underlying rules and protective scopes governing the settlement mechanism.

3. CONCEPTUAL FRAMEWORK: LEGAL DEFINITIONS AND SCOPE

To understand the protective nature of the law, it is essential to define the core terminologies as they are understood within the Saudi legal and jurisprudential context.

3.1. The Concept of "Protection"

Saudi legislation does not provide a monolithic technical definition of "protection" (Himaya); rather, the term is fluid, varying according to the nature of the right whether civil, criminal, or moral.

- **Lexical Definition:** Protection is defined as a precautionary measure based on safeguarding a person or property against risk and ensuring security through legal or material means.
- **Statutory Context:** For the purposes of the Bankruptcy Law, this study defines protection as the legal immunity granting the debtor the ability to prevent creditors or third parties

from unlawfully infringing upon their rights or assets, strictly in accordance with the Law's procedural provisions.

3.2. The Definition of "Debtor"

The legal subject of this protection is the debtor.

- **Doctrinal Definition** A debtor is understood generally as the entity obligated to perform a duty or pay compensation.
- **Statutory Definition** The Saudi Bankruptcy Law precisely defines the Debtor as "a person in whose liability a debt is established." Concurrently, Debt is defined as "a financial obligation fixed in the debtor's liability".

3.3. The Concept of "Settlement" (Sulh)

While the current Bankruptcy Law does not explicitly utilize the standalone term Sulh as a procedure title, the mechanisms of Preventive Settlement and Financial Restructuring are functionally species of this genus.

- **Jurisprudential Basis** This alignment is supported by Islamic jurisprudence, specifically the Maliki definition, which describes Sulh as "a relinquishment of a right or claim, for consideration, to end a dispute or prevent its occurrence". This theoretical underpinning is critical, as it frames the bankruptcy procedures not as battles, but as negotiated relinquishments for the sake of resolution.

3.4. Procedural Definitions

The study focuses on two specific statutory manifestations of settlement

- **Preventive Settlement** Defined as a procedure facilitating an agreement between the debtor and creditors to settle debts, wherein the debtor explicitly retains management of the business.
- **Financial Restructuring** Defined as a procedure facilitating an agreement to reorganize financial affairs under the supervision of a financial restructuring trustee.

4. ANALYSIS OF DEBTOR PROTECTION VIA PREVENTIVE SETTLEMENT

The Preventive Settlement procedure, outlined in Chapter Three of the Saudi Bankruptcy Law, represents the highest degree of debtor autonomy and protection. It is designed for early intervention, allowing the debtor to preemptively address financial distress before it becomes terminal.

4.1. The Mechanism of Protection

The essence of protection in this procedure lies in the "Debtor-in-Possession" model. The debtor submits an optional plan to the commercial court. Upon meeting statutory conditions and notably, subject to the approval of the requisite creditor voting quorum the settlement is ratified.

4.2. Legal Effects and Debtor Autonomy

The pivotal protective feature here is that the debtor's authority to manage the business is not stayed during the procedure. This is a profound departure from traditional bankruptcy where a trustee immediately seizes control.

- **Contractual Nature** The procedure effectively functions as a contract between the debtor and the general body of creditors. Its purpose is to terminate an existing dispute or avert an anticipated one regarding financial claims through mutual consent.
- **Operational Continuity** The settlement allows for rescheduling debts, debt remission, or other relief measures. Once approved, this plan becomes binding on all creditors, including the dissenting minority. Crucially, creditors are legally barred from interfering with the debtor's management of the enterprise.

By utilizing this mechanism, the debtor safeguards themselves against liquidation while maintaining the dignity and operational control of their commercial entity.

5. ANALYSIS OF DEBTOR PROTECTION VIA FINANCIAL RESTRUCTURING

Financial Restructuring, detailed in Chapter Four of the Law, offers a second tier of protection. This mechanism is applicable when the financial distress is perhaps more acute, or when a third party (creditor or competent authority) initiates the action, though the debtor may also file for it.

5.1. The Supervisory Model

Unlike Preventive Settlement, this procedure introduces a layer of oversight. The court appoints a Financial Restructuring Trustee to supervise the debtor's activity. Additionally, the court may appoint a supporting expert and a supervising judge for execution.

5.2. The Nature of Protective Settlement

Despite the presence of a trustee, the protection of the debtor remains substantial.

- **Retention of Management** The law stipulates that the debtor continues to manage the business during the procedure under the trustee's supervision. The debtor's authority is only stayed in specific, exceptional cases.
- **Binding Agreement** Similar to preventive settlement, the goal is to reach a consensual plan. Once the requisite creditor classes vote to approve the plan and the court ratifies it, it binds all creditors.

5.3. Immunity from Interference

The protective effect is realized when creditors are precluded from interfering with the management of the business once the plan is approved. All operations proceed under the trustee's oversight, ensuring that the debtor is protected from individual creditor enforcement actions while working toward debt satisfaction. This mechanism validates the concept that the debtor protects themselves through settlement (Sulh) even within a supervised restructuring framework.

6. CONCLUSION AND RECOMMENDATIONS

6.1. Findings

The analytical review of the Saudi Bankruptcy Law yields the following conclusions

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1. **Preemptive Protection** The Saudi legislature has designed a class of mechanisms that protects the debtor's rights before the initiation of harsh liquidation procedures that would otherwise strip the debtor of asset management.
2. **Institutionalized Sulh** The legislator has shown a keenness to integrate the concept of settlement into formal statutory procedures. By enabling the debtor to conclude agreements in Preventive Settlement and Financial Restructuring, the law provides a strategic advantage aimed at preempting legal complications and preventing the forfeiture of rights.

6.2. Recommendations

Based on the protective potential of these mechanisms, the study recommends

- **Enhanced Dissemination** There is an urgent need to raise awareness regarding these specific settlement mechanisms.
- **Digital Integration** Utilizing digital platforms to present these legal options to distressed merchants is essential to facilitate their use and ensure that debtors can access these protections in a timely manner.