



## **PROTECTING THE DEBTOR FROM CREDITORS' LESION (GHABN) UNDER THE SAUDI BANKRUPTCY LAW (AN ANALYTICAL STUDY)**

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### **ABSTRACT**

There is no doubt that protecting the insolvent debtor is of great importance in economic life, as it helps prevent commercial enterprises from collapsing. To that end, legislation has been enacted that allows the preparation of rescue plans as soon as early signs of economic difficulty appear. The Saudi Bankruptcy Law sets out the procedures to be followed for both creditor and debtor, and it lays down practical mechanisms that clearly safeguard the debtor's rights, attaching multiple legal effects that attest to the seriousness of this protection. Among these mechanisms is closing off avenues by which creditors might employ lesion (Ghabn) against the debtor in any of the bankruptcy procedures. This paper seeks to shed light on that mechanism.

*Keywords: Protection; Debtor; Lesion; Bankruptcy.*

### **INTRODUCTION**

Modern legal systems have sought to delineate pathways for rescuing commercial enterprises from collapse and bankruptcy by establishing frameworks that permit the preparation of rescue plans as soon as early signs of economic strain appear - whether in commercial undertakings or for individual merchants.

The Kingdom of Saudi Arabia has paid close attention to legislation governing commerce and its stability, including means of protecting creditors and debtors' rights and giving each party its due without prejudice to the other.



Among these means is protecting the debtor from creditor transactions characterized by lesion at any stage of the bankruptcy procedures. This study aims to present this mechanism and demonstrate its protective effect.

We have entitled it: Protecting the Debtor from Creditors' Lesion under the Saudi Bankruptcy Law (An Analytical Study).

## **SIGNIFICANCE OF THE STUDY**

The importance of this topic lies in several considerations, most notably:

- Addressing a protective mechanism that shields the debtor from any creditor conduct involving lesion and pairing it with suitable sanctions fosters honesty, probity, and respect for the law in economic activity-hence it is a mechanism capable of protecting rights.
- This mechanism belongs to matters of public policy, and may not be violated nor may agreements be made to contravene it under any circumstances.

## **RESEARCH OBJECTIVES**

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

## **RESEARCH PROBLEM**

Bankruptcy systems 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 to protect the debtor, including protection against creditor conduct that involves deception and lesion.

Notwithstanding its importance, this mechanism is not expressly articulated in the text of the Law, nor has it been brought together in a single framework that highlights and clarifies it; nor



## PREVIOUS STUDIES

In the literature surveyed, we did not find any standalone study specifically addressing this mechanism.

## RESEARCH METHODOLOGY

This study adopts an inductive reading of the provisions of the Saudi Bankruptcy Law and the related regulations, together with an analytical method that infers the 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:

### DEFINING THE TERMS IN THE RESEARCH TITLE

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

We did not find a dedicated technical definition of *protection* in Saudi legislation; the term is used by legal scholars, and its meaning varies with the protected right (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 purposes of the Bankruptcy Law, protection may be expressed as: *preventing creditors or others from unlawfully infringing the debtor's rights or assets, pursuant to the provisions and procedures of the Bankruptcy Law*. (Kingdom of Saudi Arabia, 1439/2018).

#### *Definition of Bankruptcy 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 debt as *a financial obligation fixed in the debtor's liability*. (Kingdom of Saudi



### *Definition of Bankruptcy in Saudi Law*

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

### *Definition of Lesion (Ghabn) in Saudi Law*

Saudi legislation, so far as we have seen, does not provide a special definition of lesion (ghabn); recourse is made to juristic definitions in legal doctrine. It has been defined as “lack of equivalence between the two considerations in commutative contracts”; or “the absence of balance between what a contracting party gives and what he receives at the time of concluding the contract”; or “disparity and absence of balance between obligations conferred in favor of one party and obligations imposed on the other in contracts for value.” (Al-Rashdan, 1431 AH; Al-Sanhouri, 2004; Nakhla, 2007; Majma‘ al-Lugha al-‘Arabiyya, 1999).

## **THE CRITERION OF MATERIAL LESION IN TRANSACTIONS UNDER SAUDI LAW**

In light of the foregoing definitions, the criterion for lesion in Saudi law can be summarized as follows: (Al-Rashdan, 1431; Al-Sanhouri, 2004; Nakhla, 2007)

- Lesion is conceivable only in commutative contracts; it is not conceivable in gratuitous contracts, because the nature of commutative exchanges lends itself to the possibility of lesion for one party, whereas a donor gives without receiving a counter-performance, making the principle of equivalence inapplicable.
- Lesion is assessed at the time of contract formation. If lack of equivalence exists at that time, lesion is present; if equivalence existed then but was disturbed later, there is no lesion.
- Lesion cannot be eliminated entirely in transactions; perfect equivalence of counter-obligations is rare. A degree of tolerable lesion consistent with the profit-seeking purpose



of exchange must therefore be accepted. A sale for a price that is not grossly excessive does not affect validity (i.e., *minor lesion*). Once the lack of equivalence exceeds a certain threshold, the lesion becomes gross, and the disadvantaged party is deemed lesioned.

## **PROTECTING THE DEBTOR FROM CREDITORS' LESION IN BANKRUPTCY PROCEDURES UNDER SAUDI LAW**

Comparative legal opinion treats bankruptcy rules as mandatory because they implicate economic public policy; honesty, probity, and respect for regulations in economic activity are essential elements of lawful competition and, consequently, of the stability of the state's economic, social, and political order. (Qarman, 1441; Al-Sanhouri, 2004).

Accordingly, diverse legal systems prescribe criminal sanctions for certain offenses that contravene probity or constitute fraudulent manipulation harmful to others. The Saudi Bankruptcy Law dedicates a separate chapter to rules on penalties and avoidable transactions. (Kingdom of Saudi Arabia, 1439 /2018).

With respect to creditors' lesion of the debtor, the Law expressly criminalizes such conduct. Article 202 provides: "*A violation of the Law shall be deemed to have been committed by any creditor - or anyone claiming that status - who, prior to the opening of any bankruptcy procedure, commits one or more of the following acts and thereby causes its opening, or who commits it during the pendency of the procedure, resulting in harm to the rights of any party, including creditors:*

*(a) submitting a claim against the debtor with intent to defraud, including inflating its value ...*" (Kingdom of Saudi Arabia, 1439 /2018, art. 202).

This provision clearly identifies a form of lesion inflicted on the debtor by a creditor: where a creditor submits a claim and inflates its amount, the act entails gross lesion to the debtor because equivalence between values is eliminated - thus the concept of lesion is realized.

The provision conditions lesion upon the presence of intent to defraud, thereby establishing the element of exploitation; lesion that occurs without exploitation does not affect the contract.



To protect the debtor in such cases, the Law criminalizes this conduct expressly and affords the debtor the right to seek nullity of the transaction or its effects arising from the lesion, restitution of assets, or damages. (Kingdom of Saudi Arabia, 1439 /2018).

Furthermore, the text expands the temporal scope of proscribed acts: a creditor's act is a violation if done before the opening of any procedure and leading to its opening, or if done during the pendency of the procedure; in both scenarios, the same rule applies.

The Saudi system's protection of the debtor from creditors' lesion thus appears clearly in the explicit criminalization of the act and the attendant nullity and sanctions.

## CONCLUSION

### *Findings*

- This class of protective mechanisms safeguards the debtor's rights after the commencement of each of the prescribed procedures.
- The foregoing shows the Saudi legislator's keenness to protect the debtor from any creditor act that entails gross lesion, criminalizing such conduct and attaching appropriate penalties - so this mechanism is clearly manifest across all bankruptcy procedures.

### *Recommendations*

We recommend reviewing the lesion-indicative transactions identified in the Law and proposing any new patterns that creditors might use to exploit debtors, so they can be anticipated and deterred.

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