

THE LEGAL ACTIONS OF THE DEBTOR IN HIS MONEY IN THE GCC BANKRUPTCY LEGISLATION

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ABSTRACT

The Gulf Cooperation Council (GCC) countries have issued flexible bankruptcy rules in the last decade. This study is focused on the bankruptcy systems in the GCC countries, as it sets special rules for the debtor's actions in his money Protection of creditors.,The study aimed to identify the legal system of the debtor's actions, analyze and interpret the legal rules concerning the debtor's actions before and after the issuance of bankruptcy, using a comparative descriptive analytical approach.

The results of the study indicated that there are rules concerning the obligatory invalidity of the debtor's actions after the issuance of the bankruptcy judgment. With the difference in the actions before the month of bankruptcy between the determination of the period of suspicion of such acts or not to specify the duration, and that the legislation agreed to achieve a balance between the debtor and creditors.

KEYWORDS: Legal Actions, Debtor's Money, Bankruptcy & GCC countries

INTRODUCTION

A declaration of bankruptcy is a declaration of bankruptcy publicly. In order to declare bankruptcy, the GCC legislation required a ruling by the competent commercial court; this provision has implications for the debtor in his property and may be inflicted on his person, depriving the debtor from exercising some of the rights that were guaranteed to him before the bankruptcy month. He shall lift his hand from his property and hand over such funds to a court-appointed secretary, who shall replace the bankrupt in its administration, disposal and liquidation under the supervision of the judiciary. Debtor's funds are defined in the Kuwaiti bankruptcy law 2019 as movable and immovable property owned by the debtor. The debtor's funds do not include funds that may not be seized in accordance with the Code of Civil and Commercial Procedure, the Civil Service Law and Regulations, the Social Insurance Law, the Private Sector Labor Law, or the Labor Law in the oil business sector or any other law.

The debtor's funds are defined in the UAE Bankruptcy Law 2016 in its first article: the elements that enter into the positive side of the financial debtor of the debtor on the date of the opening decision or during any of the procedures stipulated in this decree law.

Legal action is defined as jurisprudence as the act in which the will is directed to effect a certain legal effect on the debtor's property by creating, transferring, changing or expiring it. Legal actions are divided into disposition, management and conservation work (1)

Mansoura : New .Lessons in the Introduction to Legal Sciences (Theory of Truth) .(2000) .Fathi Abdel Rahim, A ⁽¹⁾
.Evacuation Library

FIRST: LEGAL ACTIONS TAKEN BY THE BANKRUPT AFTER THE ISSUANCE OF BANKRUPTCY JUDGMENT IN HIS FUNDS

Article 533/1 of the draft unified Arab commercial law states that once a bankruptcy decision is issued, the bankrupt shall be prohibited from managing and disposing of its funds. The actions taken by the bankrupt on the day of the issuance of the bankruptcy month judgment shall be deemed to have taken place after its issuance⁽²⁾

Article 127 of the Kuwaiti Bankruptcy Law 2019 stipulates that: "Once the judgment of bankruptcy has been issued, the bankrupt shall be free to dispose of its funds and business and to administer it. All actions taken by the bankrupt on the date of issuance of the said judgment shall be deemed to have taken place after the issuance of the judgment. It shall be considered as if no action has been taken to the contrary. Conservative to protect the rights of creditors⁽³⁾. The UAE bankruptcy law of 2016 was silent, but it is understood from article 126 of the law, which states: "If the court rules on the bankruptcy and liquidation of the debtor, the trustee shall appoint a trustee to assume the functions of bankruptcy proceedings and liquidate the debtor's property, unless it requires the continuation of the work of any trustee," or an observer appointed during restructuring or protective reconciliation⁽⁴⁾."

The Saudi legislator in article 71 of the bankruptcy system of 2018 granted the court the right to invalidate any act of the debtor in any of the assets of the bankruptcy outside the scope of his normal business. The court may rule on the invalidity of the debtor's act upon the request of the injured and the recovery of the assets, taking into account the rights of third parties (good faith)⁽¹⁾.

Article (72-1) of the Bahrain Reorganization and Bankruptcy Law states that the bankruptcy trustee may apply to the court for annulment of any act of the debtor or any obligation incurred by the debtor retroactively, if the debtor has made such an act or incurred by the intention of circumventing its present or future creditors or intent to harm them in obtaining their claims⁽²⁾.

The Bankruptcy Law of the Sultanate of Oman explicitly prohibits the debtor from conducting specific legal acts following the issuance of the following bankruptcy judgment:

- Conducting any mortgage, concession or jurisdiction rights over his property
- To fulfill its obligations or fulfill its rights with third parties, unless it is a holder of a commercial paper, it may pay its value, if the maturity date is resolved unless the bankruptcy secretary opposes it.
- Any clearing of obligations and rights unless there is an interdependence between them

However, the Gulf legislation agreed to allow the bankrupt debtor to do some of the acts and actions that are represented in(3):

- The precautionary measures, such as the signature of the provisional attachments, as they do not represent any

(2)League of Arab States, L.O.A.S .(2000) .Model Project of the Unified Arab Commercial Law .Cairo: Arab Center for Judicial and Legal Research.

(3)Preventive Settlement, Restructuring and Bankruptcy Act 2019 promulgated by Decree No. 79

(4)UAE Federal Decree No. 9 of 2016 on Bankruptcy

⁽¹⁾Saudi bankruptcy system issued on 04/09/2018

⁽²⁾the Bahrain Reorganization and Bankruptcy Law No. (22) of 2018

(3)Abdeen, A .(2008) .A Comparative Study Jurisprudence and Positive Law .Cairo: Dar Al-Fikr University.

harm to the creditor. The Commercial Law expressly stipulates in Article (533/3), which corresponds to Article (109) of the Omani Law, "The bankruptcy of the bankrupt debtor shall not prevent the management and disposal of its property from taking the necessary measures to safeguard its rights."

- Legal works related to funds that do not raise the bankrupt's hands.
- Acts relating to funds managed by the bankrupt as a representative of others, such as the management of funds of minors.
- Acts and actions related to the daily life of the bankrupt.

The actions issued by the bankrupt before the bankruptcy.

SECOND: THE ACTIONS ISSUED BY THE BANKRUPT BEFORE THE BANKRUPTCY

Article 11 of the Bahrain Bankruptcy Law states that the debtor shall continue to manage its business and operate its business. "The filing of bankruptcy proceedings or the approval of the opening of bankruptcy proceedings shall not prevent the debtor from continuing to manage its business, conduct its business, use its funds and conduct the necessary transactions if that is in the normal course of business, unless the court decides otherwise". Article 8 of the Jordanian Bankruptcy Law 2011 stipulates that the debtor may not take any action that affects the interests of creditors, including sale that is not related to the normal practice of his business, donation, gift, borrowing, lending, any free business, bail, any mortgage, insurance or any similar actions without prior court approval are null and void. Article 16 of the Bahrain Bankruptcy Law of 2018 granted the bankruptcy court, at the request of the creditor, discretionary authority to take interim measures before approving the opening of bankruptcy proceedings by imposing temporary restrictions on the debtor in the conduct of its business, conducting its business, conducting acts or limiting its powers ". Article 72/1 of the same Act stipulates that the bankruptcy trustee shall apply to the court for annulment of any act of the debtor or any obligation incurred by the debtor retroactively, if the debtor has done so or has assumed that obligation with the intention of circumventing its present or future creditors or intent to cause harm in getting their claims ".

It is clear from the previous legislation that all legal acts issued before the bankruptcy verdict are correct, but nonetheless, the commercial regulations were suspicious of such actions with the difference in the rules prescribed, Bearing in mind that, it is in front of a debtor who may be in a hopeless financial position, he may resort to all legitimate and illegal means such as selling his money cheaply, transferring it visually, resorting to high interest loans, subjecting his money to a privilege or donating to others to any other means inflicted. Serious damage to creditors and therefore put all actions before bankruptcy. The report on the validity of such acts is restricted by a specific period called the period of suspicion or suspicion and may extend to that period, such as the unified Arab Model Law for Commercial Law in Article (505) of which corresponds to 561 of the Egyptian Commercial Law 1999.

A period called the period of suspicion has been set to start from the date the court appointed a date to stop paying before the issuance of the bankruptcy judgment. The court, which is competent to deal with the bankruptcy proceedings, may refer to more than two years preceding the date of the issuance of the bankruptcy. The Gulf legislation considered the penalty of the previous actions of the debtor, obligatory invalidity, which is the conditions of the following.⁽¹⁾

¹⁾ Matar Al-Harbi, S.(2014).Protection from the bankruptcy .riadh: Library of Law and Economics.

- The debtor shall come in accordance with Article 542 of the Model Law on Commercial Law and Article 121 of the Omani Bankruptcy Law Any of the following actions:
 - Granting donations of any kind except for small gifts on which custom is made.
 - Fulfillment of debt before the expiry of the term. The establishment of payment for the fulfillment of a commercial paper is not due in the provision of payment before the term.
 - All that is determined on the bankruptcy of the debtor to guarantee a debt prior to the declaration of bankruptcy.
 - Legislation has not stipulated that the judgment of obligatory invalidity must prove bad faith or collusion with the contractor or that the latter is aware of the financial condition of the debtor or its dysfunctional work((1).
- The action shall take place after the date of cessation of payment and before the judgment of bankruptcy.

Article (543) of the Model Law on Unified Arab Commercial Law, which corresponds to Article 121 of the Omani Law with the silence of Saudi and Emirati law "All actions of the bankrupt by the debtor may be judged not to be effective against the group of creditors, if the conduct is detrimental to it and the other party knows at the time of the conduct of the bankruptcy to cease payment". It is concluded from the preceding article that the conditions of the invalidity judgment:

- The legal disposition shall take place during the period of suspicion, after the date of cessation of payment and before the verdict of bankruptcy.
- There is evidence that the contractor with the bankrupt knows that he stopped paying.
- Damage to the group of creditors.

In its consideration of a nullity request, the court shall have wide discretion; it may rule on nullity or reject the verdict without being subject to the control of the Court of Cassation(2).

Invalidity Suit

The annulment of acts obligatory or permissible shall be through an action independent of the creditors' group's claim, which shall be handled by the bankruptcy trustee, as the invalidity of the actions issued by the debtor in the period of suspicion is decided in favor of the creditors' group, According to Article 547 of the Model Law on Arab Commercial Law, the bankruptcy trustee alone may request that the debtor's actions in respect of the creditor group not run out. The Secretary of the Bankruptcy in the Gulf Regulations shall be a person licensed by the Authority to carry out the activity of an investment adviser or a custodian or registered with the Authority in the register of auditors to perform the functions set forth in this Law concerning restructuring or bankruptcy (3).

⁽¹⁾Shamsan, A.R. (1989) .The theory of the heroes' actions bankrupt during the period of suspicion .Egypt: Ain Shams University

⁽²⁾Ali Maher, W. (2017) .The provisions of commercial companies in the UAE .Egypt: Center for Arab Studies.

⁽³⁾Khater, M. (2018) .Trade Law commented on the latest provisions of cassation .Egypt: Dar Mahmoud.

Effects of Invalidity

A nullity shall result in the non-enforcement of the acts against the creditors' group, thus restoring the status quo ante before the disposition. We find that the commercial regulations - Article (546) of the Arab Commercial Project and Article (700) of the UAE Commercial Transactions Law and Article 211 of the Saudi Bankruptcy Law 2018 - went to invalidate the disposition and its impact and recover any assets and funds of the debtor.

CONCLUSIONS

The study deals with the judgment of the debtor's actions in the GCC bankruptcy legislation where creditors enjoy legal protection against the actions of the bankrupt debtor. The bankrupt debtor may not, after a judgment of bankruptcy, dispose of his property, before the bankruptcy, there are binding legal rules for the protection of creditors from the actions of the bankrupt debtor for a specified period.

RECOMMENDATIONS

Establishing websites specialized in bankruptcy cases issued by Arab courts, holding regional and national conferences and workshops on the actions of the bankrupt debtor.

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