



# Creditors Rights FRP Proposal



## Preparing, Voting, Ratifying FRP Proposal, What Creditors should Monitor

Saudi Bankruptcy Law grants creditors a range of procedural and substantive rights to oversee the Financial Restructuring Proposal (FRP) at every stage, including preparation, voting, and ratification of the proposal. These rights are designed to prevent debtor manipulation, mitigate potential abuses, and facilitate the smooth implementation of the FRP plan, ultimately enhancing the procedure's chances of success.

### Preparing FRP Proposal

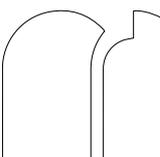
The FRP proposal is primarily prepared by the debtor, with the assistance of the bankruptcy trustee, within the timeline set by the court when initiating the procedure. As the party most familiar with its financial, business, and economic situation, the debtor is in the best position in determining the necessary type of restructuring—whether equity restructuring, debt restructuring, or a combination of both. In the case of debt restructuring, the debtor must decide on the most suitable approach, such as an extension of repayment terms, a reduction of debt, or a debt-for-equity swap.

Bankruptcy trustee assistance would be to ensure the compliance of the FRP Proposal with the Bankruptcy Law and Implementing Regulation and to ensure its integrity. Additionally, the trustee must submit a report to the court assessing whether the proposal is likely to be accepted by creditors and if it is enforceable. The trustee may also request the court to include a clause in the proposal allowing for the exchange of a security provided to a secured creditor if necessary for the proposal's implementation. However, this clause must ensure that the creditor receives an alternative security equivalent to the original security<sup>1</sup>.

Creditors do not have a role in the phase of preparing FRP proposal. However, if a Committee of Creditors is formed, it is entitled to provide its opinion in the phase of preparing the FRP Proposal or when preparing a proposal to modify the FRP plan<sup>2</sup>. A Creditors' Committee may be formed by a court decision if deemed appropriate, either upon the request of the

<sup>1</sup> Paragraph 4, Article 75 Saudi Bankruptcy Law.

<sup>2</sup> Paragraph 1/c Article 26 Implementing Regulation.



bankruptcy trustee, a group of creditors holding at least 50% of the total debt, or at the court's own initiative<sup>3</sup>. It is worth noting that the Creditors' Committee does not include all creditors, and its decisions are made by a simple majority, with each member having an equal vote rather than a weighted vote based on the value of their debt. While the committee's opinion on the FRP proposal is neither an actual vote nor binding, it serves as a valuable opportunity to gauge the proposal's likelihood of receiving approval in the formal vote. Additionally, it allows for the identification of creditor concerns and potential areas for improvement in the proposal.

### Voting FRP Proposal

For a creditor to have the right to vote on the FRP proposal, two conditions must be met; the creditor must have an accepted claim listed in the official list of claims approved by the court, and the proposal must affect the creditor's legal or contractual rights<sup>4</sup>.

Filing a claim within the timeline set by the trustee is crucial for creditors to avoid the risk of losing their voting rights, although the proposal may impact their legal or contractual rights. However, creditors should also carefully assess their prospects of recovering their claims outside the FRP through other legal avenues before deciding on their course of action<sup>5</sup>.

The debtor must notify creditors whose claims are approved in the list of creditors ratified by the court at least 21 days before the FRP proposal voting date, specifying the date and time of the vote. Along with this notification, the debtor must also provide a copy of the proposal<sup>6</sup>.

Although the debtor is responsible for sending the voting meeting notification, the meeting itself is led by the bankruptcy trustee. The meeting may be held in person or virtually, provided that the chosen venue ensures active participation and allows for accurate vote recording<sup>7</sup>. The bankruptcy trustee must prepare minutes of the voting meeting, detailing the calculation

---

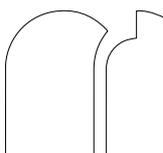
<sup>3</sup> Paragraph 1 Article 24 Implementing Regulation.

<sup>4</sup> Paragraph 1 Article 76 Saudi Bankruptcy Law.

<sup>5</sup> Richard E. Lear, Proof of Claim: To File or Not to File., Holland & Knight Newsletter, February 2009.

<sup>6</sup> Paragraph 1 Article 77 Saudi Bankruptcy Law, Paragraph 2 Article 45 Implementing Regulation.

<sup>7</sup> Article 8 of Rules of Meeting Management in Bankruptcy Procedure issued by Minister of Commerce and Investment decision N. 13 dated 18/1/1441 H.



of votes, the weight of each vote, and the final voting result. Additionally, the trustee must notify creditors of the voting outcome and submit the results to the bankruptcy court<sup>8</sup>.

Creditors should verify with the bankruptcy trustee to ensure there are no errors in the calculation of the voting results. In particular, they should carefully review the following:

1. The accuracy of counting votes and the weight of each vote;
2. Whether the percentage needed to conclude that a class of creditors has accepted the proposal (2/3 of the value of voters' debts);
3. Whether the percentage needed of non-affiliated creditors – if they exist - have voted in favor of the proposal (more than 50%)<sup>9</sup>.

Creditors should promptly notify the bankruptcy trustee of any errors in the voting results to prevent the submission of incorrect result to the court.

### Ratifying FRP proposal

If the proposal was voted positively, the trustee must submit a request to the court for ratification. The trustee is also required to notify creditors of this request and inform them of the court session date at which the proposal will be considered for ratification.

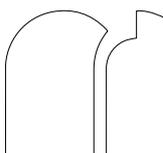
The court will ratify the proposal after ensuring that it is fair and has been accepted by all classes of creditors and shareholders. However, the court may impose a cramdown and approve the proposal despite objections from certain creditor classes if the following conditions are met:

1. The proposal is fair.
2. The proposal has been accepted by at least one class of creditors.
3. The proposal has been voted affirmatively by cross-classes percentage of 50% of value of voters' debts.
4. If the court is convinced that the proposal would be in favor of the majority of creditors<sup>10</sup>.

<sup>8</sup> Paragraph 1, Article 12 of Rules of Meeting Management in Bankruptcy Procedure and paragraph 4 Article 79 Saudi Bankruptcy Law.

<sup>9</sup> Paragraph 2, Article 79 Saudi Bankruptcy Law.

<sup>10</sup> Paragraph 2, Article 80 Saudi Bankruptcy Law.



This wide discretion of bankruptcy court in considering ratifying FRP proposal requires that creditors exercise a kind of checks and balances. This ensures the process is not abused by the debtor or misrepresented by the trustee regarding the proposal's impact on both creditors and the debtor.

A creditor who voted the proposal negatively, may attend the proposal ratification session and object to the proposal ratification on the ground that the proposal is not fair and is harmful to his interests<sup>11</sup>. Some possible grounds for objection include:

1. The debtor or the trustee did not respect the due process when inviting creditors to vote or during voting, especially if no appropriate notification has been sent, if the notification is not accompanied by a copy of the proposal, if the voting venue does not allow for active participation of voters or recording accurately their votes, if there is any mistake or wrongful action in collecting or counting votes or if creditors were not notified of the voting result<sup>12</sup>.
2. If the proposal does not contain proper classification of creditors. The implementing regulation implies that the proposal classifies creditors based on the following criteria; a) the nature and similarity of their rights and b) the impact of the proposal on their rights<sup>13</sup>. Some strategies used to classify creditors can also take the form of manufacturing an impairment regarding some creditors in order to guarantee that the creditor would vote to accept the proposal<sup>14</sup>. For example, the proposal could pay creditor nearly his claim, but not entirely, in full to ensure he would vote in favor of the proposal. This strategy is known as artificial impairment. The creditor should observe whether the classification of creditors is done properly and object to the court if there is any wrongful classification of creditors.
3. Whether the proposal include a complete and clear financial disclosure that would allow the creditors to assess the financial and economic situation of the debtor and assess the other alternatives the creditors may have comparing to the impairment

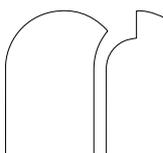
---

<sup>11</sup> Paragraph 4, Article 80 of Saudi Bankruptcy Law.

<sup>12</sup> Paragraph A, Article 35 of Saudi Bankruptcy Law.

<sup>13</sup> Paragraph Q, Article 16 Implementing Regulation.

<sup>14</sup> Ben Rosenblum & Mark G. Douglas, First Impression: The Sixth Circuit Weigh in on Artificial Impairment under a Chapter 11 Plan, Jones Day Publication, March/April 2016.



provided for in the FRP Proposal<sup>15</sup>. The Implementing Regulation provided for a set of information that must be included in the proposal that cover all aspects regarding the debtor current and future financial situation including his assets, debts, pending and potential claims initiated by and against the debtor and pending and potential cross border insolvency procedure<sup>16</sup>.

A clear and complete financial disclosure would allow the creditors to assess the following:

- a. Whether the proposed solutions respect the best interest of creditor rule. The debtor should adopt the debt restructure approaches that would enable him to achieve his goal with the minimal impact on creditors.
  - b. It would help creditors to assess the other alternatives to recover their debts by applying a hypothetical liquidation analysis<sup>17</sup> and compare the liquidation value of their rights with the impairment provided for in the FRP Proposal.
4. Whether the proposal maintains a fair balance between preserving creditors' existing rights, the distribution of impairment, and the new rights, benefits, or securities granted to different creditors<sup>18</sup>.
  5. A creditor may object to the court if there is wrong, illegal or absence of disclosure of affiliated creditors. The absence of the proper disclosure of affiliated creditors would affect the result of voting process and undermine non-affiliated creditors votes.
  6. A creditor may also object to the court if there is any attempt to fabricate illegitimate creditors. This could occur if the debtor engages in fraudulent arrangements with third parties by creating fictitious debts, recognizing non-existent claims, or inflating the value of certain debts to secure their inclusion in the list of claims. Such actions would allow these parties to vote on the proposal, thereby manipulating the voting process and harming legitimate creditors. It is important to note that this practice constitutes a criminal offense under bankruptcy law<sup>19</sup>.

---

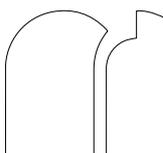
<sup>15</sup> Paragraph B, Article 35 Of Saudi Bankruptcy Law.

<sup>16</sup> Paragraph P, Article 16 Implementing Regulation.

<sup>17</sup> A simplified Approach to the Best Interest Test in Complex Bankruptcies, American Bankruptcy Institute Journal, April 2003.

<sup>18</sup> Paragraph C, Article 35 of Saudi Bankruptcy Law.

<sup>19</sup> Paragraphs A & B, Article 202 of Saudi Bankruptcy Law.





The creditor may bring this issue to the court's attention if such misconduct occurs. By reviewing the approved list of creditors, the creditor can identify any suspicious claims that may indicate fraudulent activity. Under the Bankruptcy Law and its Implementing Regulations, creditors have the right to examine the list of claims, enabling them to detect and challenge any irregularities<sup>20</sup>.

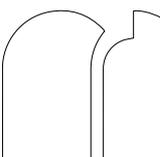
In conclusion, creditors' active involvement in the FRP proposal process is not only essential for safeguarding their rights but also plays a crucial role in upholding the integrity of the process and enhancing the likelihood of a successful financial restructuring.

Dr. Mostafa Abdelghaffar

[m.abdelghaffar@mrf.sa](mailto:m.abdelghaffar@mrf.sa)

---

<sup>20</sup> Paragraph 4, Article 68 of Saudi Bankruptcy Law, Article 10 Implementing regulation.



ماجد الرشيد  
محامون ومستشارون  
MAJED ALRASHEED LAW FIRM



800 303 1000

info@mrf.sa

7069 Al Sahafa District, Riyadh 13315 - 2416, KSA

www.mrf.sa