



Review of Potential and Disputed Claims in the Financial Restructuring



Introduction

One of the fundamental objectives of modern bankruptcy laws—including the Saudi Bankruptcy Law—is to regulate the chaos of individual claims against a distressed debtor. This highlights the importance of suspending claims for a specified period and conducting a centralized review of claims through entities responsible for implementing bankruptcy regulations.

There are three main bankruptcy procedures:

- Protective Settlement
- Financial Restructuring
- Liquidation

This article focuses on the Financial Restructuring procedure, which involves a comprehensive review of the debtor's financial situation. The aim is to reorganize the debtor's financial affairs under the supervision of a licensed bankruptcy trustee to ensure a fair process.

The Financial Restructuring procedure offers several advantages, including:

- Creditors are allowed to submit their claims within a period not exceeding 90 days from the opening of the procedure, with a maximum period of 60 days in the case of financial restructuring for small debtors.
- The procedure covers any debt owed by the debtor that arose before the issuance of the judgment opening the financial restructuring procedure. This includes both due and future debts, confirmed or contingent debts, and debts with a fixed or indeterminate value.
- Claims Are Not Limited to Business-Related Debts as creditors can submit claims for any fixed debts owed by the debtor, regardless of whether they are directly related to the debtor's business activities.

- The bankruptcy trustee is required to verify and assess the claims, preparing a list that includes recommendations for each claim. The recommendation may be to accept or reject the claim, or to refer it to an expert for further evaluation of technical aspects.
- If a claim is rejected or referred to an expert, the trustee must notify the claimant to uphold the principle of due process. The creditor then has the right to appear before the court to request the inclusion of their claim in the final list.

The issue under examination in this paper is identifying the types of uncertain, incomplete, unmatured, and unquantified claims that can be submitted in the Financial Restructuring procedure, the options available to creditors in this regard, and the obligations of the bankruptcy trustee in handling such claims.

Types of Claims That Can be Submitted in the Financial Restructuring Procedure

The Bankruptcy Law has broadly defined the types of claims that can be submitted in the Financial Restructuring procedure. However, the law imposes two key restrictions:

1. The claim must be a financial right:
 - Non-financial claims are not accepted, such as demands for contract termination, eviction of leased property, or delivery of a sold item, even if they impact the financial rights of the parties.
 - A creditor with such a claim against the debtor has the following options:
 - Wait until the moratorium period ends, then file the case before the appropriate forum, whether a court or an arbitration panel.
 - Resume the case if it was previously filed but was suspended due to the effects of the moratorium.
 - Request the court to lift the moratorium specifically for their case.

2. The claim must have arisen before the opening of the procedure. This requirement applies regardless of whether the debt originated from a legal act or a factual event.

For financial claims, straightforward, fixed, matured, and quantified claims generally do not pose any issues. However, other types of claims may present challenges, including:

- **Unquantified Claims:** These arise when a claimant seeks compensation for an obligation that could not be specifically performed, without an agreed or judicially determined compensation amount. In such cases, the law requires the claimant to provide an estimated value of the debt, and the bankruptcy trustee must verify the actual value of the claim. This involves assessing the elements of damage suffered by the claimant based on the alleged civil liability, whether contractual or tortious.
- **Future (Unmatured) Claims:** a maturity period refers to a definite future timeframe, legally, judicially, or contractually determined, for the fulfillment of an obligation. Deferral refers to the postponement of delivering the consideration to a specified future date.
- **Contingent Claims:** a contingent claim is one that depends on a future event that is uncertain to occur. For a claim to be considered contingent, the condition must meet the following criteria:
 - It must be uncertain and not yet fulfilled at the time of the obligation's creation—if the condition already existed when the obligation arose, the obligation would be considered definitive rather than contingent.
 - It must be possible—an obligation cannot be contingent on an impossible event.
 - It must be lawful—the condition must not violate Sharia or public policy.
- **Potential Claims:** although a contingent claim is inherently a potential claim, as it depends on an uncertain future event, the legislator has taken a broad approach in defining potential claims. The wording of Article 63(1) of the Bankruptcy Law explicitly includes anything with current or future financial value, thereby encompassing all forms of

uncertainty in claims. Some examples of Potential Claims that may arise in various situations, includes:

- Unsettled Damages in Contractual or Tort Liability: This occurs when the extent of damage caused by the debtor's contractual or tortious liability is not yet determined. For example, if the debtor's fault resulted in a bodily injury to the claimant, but the claimant has not yet fully recovered, the full extent of material and moral damages remains uncertain.
- Recourse Claims Based on Unjust Enrichment (*In Rem Verso*): This applies when a claimant seeks compensation from the debtor after having paid a debt on their behalf. For instance, if a guarantor pays off a debt owed by the debtor and later claims reimbursement from them without a contractual relationship, the claim is based on unjust enrichment. However, if the validity of the guarantor's payment is still under legal dispute, the claim remains unsettled.
- Claims Based on a Judgment Under Appeal: If the claimant's demand is supported by a judgment against the debtor, but the judgment is still subject to appeal, the claim remains uncertain until the final ruling is issued.

The Philosophy of the Bankruptcy Law in Allowing Potential Claimants to File

The Bankruptcy Law's philosophy behind allowing potential claimants to submit their claims in the Financial Restructuring procedure is rooted in the fact that this procedure involves a comprehensive financial restructuring of the debtor. It is not only concerned with listing the fixed, matured, and finalized debts, but also includes potential, future, contingent, and unquantified debts for the following reasons:

- Providing Creditors with a Full Financial Picture: by disclosing all types of debts, creditors can assess the debtor's financial position before voting on the financial restructuring

proposal. This enables them to predict the viability of the business, its assets, and liabilities, helping them decide whether accepting debt reductions, impairments, or write-offs would be more beneficial than liquidation and asset sales. Unlike Protective Settlement, where the debtor's financial disclosure is based mainly on their documents and financial statements, the Financial Restructuring procedure requires actual verification of debts and an inventory of assets.

- Ensuring the Integrity of the Process and Enhancing the Success of the Proposal: including potential, unmatured, or contingent claims in the restructuring plan helps the debtor avoid being overwhelmed by unexpected legal judgments or enforcement orders once the moratorium period ends. If these claims later become final and enforceable, they could jeopardize the debtor's ability to implement the restructuring plan. However, including them in the proposal does not mean the debtor acknowledges them (if disputed), agrees to accelerate them (if deferred), or waives any conditions (if contingent). Instead, it is a precautionary measure in case these claims become legally binding debts, which could impact the debtor's solvency and ability to implement the restructuring plan.
- Categorizing Potential Claimants Fairly: if the debtor chooses to include potential claims in the restructuring plan, they can classify these creditors into one or multiple class of creditors, ensuring that their participation does not unfairly impact the classification of creditors. This prevents potential claimants from having equal voting rights with those holding fixed, matured, and finalized claims.

Creditor's Strategic Options for Potential or Disputed Claims

If a creditor fails to submit their claim within the specified period announced by the trustee, they will be excluded from voting on the financial restructuring proposal. However, the creditor may still petition the court—before the vote—to prove that they attempted to submit the claim but it was not received by the trustee due to circumstances beyond their control or that the debtor or trustee wrongfully excluded their claim from the list of creditors.

Losing the right to vote does not affect the creditor's substantive rights against the debtor. Failure to submit a claim does not constitute a waiver of their rights, as creditors are not obligated to file their claims within the financial restructuring procedure. Instead, they may pursue their claim separately before the competent dispute resolution forum.

Some argue that filing a claim within bankruptcy proceedings can significantly impact a creditor's strategy in pursuing litigation, as bankruptcy courts operate within strict procedural frameworks, including limited evidence, predefined deadlines, and collective claim assessments. This may affect how much time and attention is devoted to analyzing and assessing individual claims.

Key Considerations When Submitting a Claim in the Financial Restructuring Procedure

When a claim is submitted and included in the list of creditors during the financial restructuring procedure, the following points should be noted:

- Submitting a claim does not automatically entitle the creditor to enforce payment from the debtor.
- Even if a claim is submitted, the debtor is not required to incorporate it into the financial restructuring proposal.
- The right to vote on the financial restructuring proposal—under Article 66(1) of the Bankruptcy Law—is reserved only for creditors whose claims are accepted in the claims list and whose rights are affected by the proposal, either legally or contractually.

Additionally, a creditor should proactively submit their claim during the financial restructuring procedure to avoid the risk that the debtor may include the claim in the proposal and may impair or reschedule the claim without the creditor having the right to vote, simply because he did not file his claim in time.

It is important to note that once the financial restructuring plan is approved, it becomes binding on the debtor, creditors, and owners, as per Article 37 of the Bankruptcy Law, which applies to the financial restructuring procedure.

By submitting their claim in the financial restructuring procedure, a creditor seeks to secure a position and exercise their rights, including:

- **Voting on the Proposal:** if the financial restructuring proposal affects the creditor's rights in any way, they will have the right to vote on it.
- **Candidacy for the Creditors' Committee:** if a creditors' committee is formed, the creditor may run for membership, provided their claim is accepted in the claims list, as stipulated in Article 24(3)(a) of the Implementing Regulations of the Bankruptcy Law. This committee plays a critical role in overseeing the procedure, influencing key decisions, and monitoring the performance of both the trustee and the debtor.
- **Pursuing Debt Recovery through Legal Remedies:** if the creditor's claim is not included in the claims list (e.g., if it is rejected by the court) or if the debtor does not include it in the restructuring proposal, the creditor retains the right to pursue their claim through all available legal remedies and initiate enforcement actions once the moratorium period ends.

The Trustee's Position on Contingent or Disputed Claims

1. **Claims Subject to a Condition or Due in the Future but Proven Against the Debtor**
 - The trustee should recommend acceptance of such claims while clearly stating their conditional or deferred nature in the rationale for the recommendation.
2. **Unliquidated Claims with an Estimated Value Submitted by the Creditor**
 - The trustee must verify the actual value of the claim and review the creditor's estimate. If necessary, the matter may be referred to an expert for valuation.
 - If the claim is denominated in a foreign currency, it must be converted to Saudi Riyals (SAR) based on the exchange rate at the initiation date of the procedure.
3. **Disputed Claims Pending Before a Court or Arbitration Panel Without a Final Judgment**

- The trustee must assess the claim independently and recommend either acceptance or rejection, relying on the evidence and documents provided by the creditor.
 - This does not infringe on the jurisdiction of other forums, as the creditor voluntarily submitted their claim within the bankruptcy procedure. U.S. bankruptcy courts follow a similar practice, where the trustee evaluates claims even if litigation is ongoing.
 - If technical expertise is required to clarify certain aspects of the dispute, the trustee may recommend consulting an expert, provided this does not unreasonably delay the restructuring process.
4. Claims Requiring Extended Investigation or Advanced Litigation Stage
- If clarifying the factual elements of a claim requires excessive time beyond reasonable procedural limits, or if the litigation/arbitration is already at an advanced stage, the trustee may recommend accepting the claim as a contingent claim solely for voting purposes, pending final resolution of the dispute.
5. Contingent Claims with Uncertain Factual Elements or Legal Disputes
- If a claim remains factually uncertain or is subject to a legal dispute that may affect the creditor's rights, the trustee should include it in the claims list as a contingent claim, eligible for voting in the financial restructuring procedure.

Exclusion of Contingent Claims

Some may argue that only finalized and established claims should be included in the claims list, which could be reasonable in liquidation proceedings, as inclusion directly grants creditors the right to distribution from the bankruptcy estate. However, the situation in financial restructuring is different, and excluding contingent claims could have significant consequences:

1. Weakening the Success of the Financial Restructuring Plan: if contingent claims are not addressed in the restructuring proposal and the debtor's financial position is not clearly assessed, these claims may eventually become enforceable judgments. If enforcement is sought against debtor's assets, it could disrupt cash flows critical to executing the plan and fulfilling obligations to creditors within the agreed timelines.
2. Contradicting the Bankruptcy Law: excluding contingent claims contradicts Article 63(1) of the Bankruptcy Law, which explicitly acknowledges such claims. The legislator does not include redundant provisions, meaning that the law intended for contingent, potential, and future claims to be part of the restructuring process. It is unrealistic to assume that the legislator meant for trustees to evaluate and verify these claims only after their conditions are met or their payment is confirmed, as this would be impractical within the strict timelines for claim submission and court approval.

Including contingent claims in the financial restructuring process does not mean that the trustee should be lenient in accepting claims that lack supporting evidence—even if acknowledged by the debtor. This is because:

- A debtor may collude with certain claimants to include fraudulent claims without supporting documentation.
- Such fraudulent claims could be used to manipulate voting outcomes or push through a proposal that other creditors would otherwise reject.

The trustee should carefully assess potential fraudulent claims that:

- Appear inflated beyond their actual value.
- Are artificially structured with the debtor to grant preferential treatment, such as increasing debt value or securing guarantees at the expense of other creditors.

If there is suspicion of fraudulent claims, the trustee must:

1. Assess the legitimacy of the claim under Articles 201(d) and 202(a) of the Bankruptcy Law.
2. Report the matter to the competent authorities under Article 206.
3. Refer suspected violations to the Public Prosecution for investigation under Article 208.

The philosophy of financial restructuring requires:

- A comprehensive financial assessment of the debtor to ensure clarity, predictability, and credibility in the restructuring process.
- Avoiding unforeseen claims that could jeopardize the plan's success after its approval.
- Recognizing contingent, potential, and future claims for voting purposes, provided they are backed by credible evidence.
- Preventing the misuse of restructuring procedures to manipulate the voting process or prejudice the rights of other creditors.

Thus, while contingent claims must be considered, strict fraud prevention measures are essential to protect the integrity of the restructuring process.

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