

PREVENTIVE SETTLEMENT AS A PREVENTIVE MEANS TO SAFEGUARDING TROUBLED BUSINESSES FROM BANKRUPTCY: AN ANALYSIS OF THE UAE LAW

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Abstract

This study explores the legal framework surrounding the preventive settlement method and its potential to mitigate bankruptcy risks for troubled commercial enterprises. It enables debtors in financial distress to petition the competent court for protection, helping them avoid default and bankruptcy proceedings. The research employs qualitative and analytical approaches, focusing on the UAE Financial Restructuring and Bankruptcy Law No. 51 of 2023 (FRBL) and relevant case law. The findings indicate that preventive settlement procedures facilitate creditors in recovering their dues, which has a positive impact on the national economy. Consequently, the study recommends incorporating Article 57 FRBL, a requirement that mandates the debtor to include a proposal for paying off a portion of their debts in the application for a protective settlement, along with a specified timeline for these payments, as a prerequisite for accepting the settlement application. The study also recommends that the debtor provide evidence of not being convicted of any offenses outlined in FRBL when seeking a preventive settlement. This measure ensures the debtor's good faith in the application process.

Keywords: Preventive Settlement, Business Venture, Financial Turbulence, Bankruptcy.

I. INTRODUCTION

In light of the spread of commercial projects, the commercial project may find itself in a state of cessation or inability to meet its debts. Therefore, it is essential to explore methods for avoiding bankruptcy. The debtor—the owner of the commercial project—may resort to creditors through a reconciliation contract to set deadlines for meeting its debts or waive part of them. Still, some creditors may approve this reconciliation, while others may not. Therefore, the effects of this reconciliation will be limited to its parties; based on this, UAE Federal Decree-Law No. 51 of 2023 regarding the Financial Restructuring and Bankruptcy Law (FRBL) approved a legal system similar to amicable composition, preventive settlement, which serves as a protective mechanism designed to prevent a debtor, whose financial situation has deteriorated and who has ceased making payments on their obligations, from entering into bankruptcy proceedings.¹

The UAE legislator was one of the first legislators at the Arab and international levels to issue a new bankruptcy law, which includes a set of measures aimed at saving commercial projects from the brink of bankruptcy and helping them avoid financial default. This was through the enactment

¹. Most Arab legislations have included many means that enable troubled projects to stabilize and avoid liquidation, such as the Saudi Bankruptcy Law for the World of 2018, the Kuwaiti Reorganization and Bankruptcy Law of 2013, and the Egyptian Restructuring, Protective Composition, and Bankruptcy Law of 2018.

of FRBL.² The preventive settlement method is one legal means created to help commercial enterprises continue their business, meet their debts, and avoid bankruptcy and its effects.³ There is no doubt that preventive settlement procedures help creditors collect their rights, and their positive effects are reflected in the national economy as a whole. This study aims to clarify the UAE's position, the foundations on which this mechanism is based, and its role in reducing bankruptcy for commercial projects.

The study derives its importance from the fact that preventive settlement, as a modern approach, plays a vital role in preventing troubled commercial projects from bankruptcy, and it is the most effective way to maintain and revive commercial projects, thereby contributing to the growth of a country's economy. It also derives its importance from the fact that applying this mechanism in the UAE would enhance the role and performance of commercial projects, especially after the completion and recovery from the COVID-19 pandemic, which had a significant impact on commercial projects and the economies of countries in general. Therefore, the study will examine the regulatory framework of this method and is expected to yield positive results upon its application. The study aims to discuss the legal aspects of the preventive settlement mechanism and the perspective of UAE law, revealing the role of this mechanism in preventing commercial projects from bankruptcy. Its goal is to prevent the bankruptcy of commercial projects and restore them to contribute to the country's economic growth. It also aims to clarify the procedures to be followed when submitting a request for preventive settlement by troubled commercial enterprises. This study examines the extent to which preventive settlement conditions are met for commercial enterprises seeking to agree with creditors to resolve their debts. It examines the necessity of ensuring adequate protection for debtor merchants to avoid bankruptcy while also considering the extent to which creditors are assured of recovering their rights. The problem of the study is also raised by the fact that Article 57 does not require the debtor's proposals to be included in the application for preventive settlement, nor does it specify how much of the debts incurred by them should be paid, nor the term for payment of these debts. Moreover, the UAE legislator does not establish good faith as a prerequisite for accepting an application for a preventive settlement. Such a settlement is granted only to the debtor in good faith whose business was disturbed by circumstances he did not foresee and could not pay. This study will adopt a qualitative analytical approach, based on analysing relevant legal texts, case law, and scholars' perspectives, to address the study's research questions.

II. ESSENCE OF PRIVATE SETTLEMENT

Federal Decree-Law No. 51 of 2023 regulates preventive settlement as an innovative means to save commercial projects on the verge of bankruptcy from defaulting on their debts. This means enabling the commercial project to communicate with creditors to agree on an amicable reconciliation to overcome financial default.⁴ Therefore, the law authorizes this means of taking the merchant's hand so as not to reach the state of cessation of payment. This can only be achieved through a clear legal framework that helps to avoid bankruptcy. Article 1 defines a preventive settlement as:

² The law was issued in issue No. 762, Official Gazette, on 31/10/2023.

³ Mustafa Kamal Taha, *Commercial Papers and Bankruptcy According to the Provisions of the New Trade Law No. 17 of 1999*, Al-Wafa Legal Library, Alexandria, Egypt 2010, p 414

⁴ Samiha Al-Qalyubi, 2019, *Legal Foundations for Regulating Restructuring, Protective Composition and Bankruptcy*, Cairo: Dar Al-Nahda Al-Arabiya, p. 48.

A set of measures is taken at the request of the debtor, creditors, or regulatory authority to help the debtor continue performing its business activity and paying its debts by applying a plan.

The debtor, its Board of Directors, or its managers may be prevented from managing the debtor's assets and business. Such measures shall be ratified and supervised by the Bankruptcy Court, with the assistance of the Trustee, as the case may be.

The definition reveals that a preventive settlement resembles a reconciliation process between the debtor and creditors under judicial supervision. Its purpose is to prevent the debtor, who has ceased making payments, from entering bankruptcy proceedings, provided they can secure the creditors' approval to repay their debts in instalments or to negotiate a reduction. This definition is consistent with the UNCITRAL Legislative Guide on Insolvency Law 2004 (LGIL).⁵ Preventive Settlement is known as a Rescue under English law. Under this jurisdiction, it has been defined as " a main intervention mechanism necessary to avoid companies failing and seek to save them by adopting radical treatment measures that may contribute to returning the company to its previous health condition."⁶

The UAE legislator sought to introduce this provision to protect merchants whose businesses are struggling due to bankruptcy and the significant repercussions beyond their control.⁷ This grant is designed for merchants actively engaged in commercial activities conducted in good faith. It promotes foreign investment to enhance competitiveness within the global market by offering a protective framework for companies.⁸ English law also supports this idea. The House of Lords expressed this in *Powdrill v. Watson*, where rescue culture aims to safeguard initiatives that can be revitalized to fulfill objectives related to societal welfare and the rights of employees, debtors, and creditors. This framework emphasizes the importance of ethical considerations in achieving balanced outcomes for all stakeholders involved.⁹

Introducing this method into UAE law enables debtors who have stopped paying their commercial debts to resort to the judiciary for intervention, thereby helping them escape the financial turmoil they encounter. Therefore, the authors agree that preventive settlement procedures are stand-alone procedures, independent of bankruptcy or restructuring procedures, because they aim to prevent the debtor from falling into bankruptcy procedures and the consequent effects, such as liquidation of their funds and distribution of their proceeds among creditors.¹⁰ The UAE law addresses the rules governing preventive settlement in Articles 56-86 of the FRBL, covering the submission of an application for the opening of preventive settlement procedures, the approval of creditors, and the ratification of the preventive settlement plan, until these procedures are completed. Cabinet Resolution No. 94 of 2024, regarding the executive regulations of the FRBL, also included some provisions regulating specific procedures of this method. However, English law provides that rescue (Preventive Settlement) is a comprehensive set of measures that can be implemented

⁵ See Part Two, Article II(d) of The UNCITRAL Legislative Guide on Insolvency Law 2004.

⁶ A. Belcher, 1997 Corporate Rescue, London: Sweet & Maxwell, 12; Vanessa Finch, 2009. Corporate insolvency law, 2nd edn, Cambridge: Cambridge University Press, 156.

⁷ Farid Mashriqi, The Origins of Egyptian Commercial Law, Anglo-Egyptian Library: Cairo, p. 335.

⁸ Faisal Al-Dweik, 2019, *The Legal Regulation of Cross-Border Insolvency Procedures According to The Act 2018: A Comparative Stud*, Masters Dissertation, Al Yarmouk University, Jordan, 7.

⁹ *Powdrill v. Watson* [1995] 2 AC 394, [1995] 2 WLR 312, [1995] 2 All ER 65.

¹⁰ Mustafa Kamal Taha, Commercial Papers and Bankruptcy According to the Provisions of the New Trade Law No. 17 of 1999, Al-Wafa Legal Library, Alexandria, Egypt 2010, p 414.

through formal and informal work mechanisms.¹¹ This is contrary to the UAE approach, which stipulates that such a settlement must undergo specific formal procedures, starting in the court.

III. PREVENTIVE SETTLEMENT PROCEDURES

The procedures for opening a preventive settlement begin with a decision issued by the Bankruptcy Court, in which the debtor applies for this settlement, accompanied by the necessary documents. The issuance of the decision entails several legal effects that affect the debtor's actions and funds. This section outlines the process for deciding to initiate preventive settlement procedures and the legal implications of such a decision.

1. Issuance of the Decision to Start the Preventive Settlement Procedures

The Bankruptcy Court will decide whether to commence the preventive settlement procedures based on an application submitted by the Debtor. Article 14 of FRBL authorizes the initiation of all procedures contained in the law through modern technology, including submitting applications, announcements, notifications, grievances, and objections, as well as attending meetings, voting, and sessions.

Firstly: Applying to the Commencement of Preventive Settlement Procedures:

The new approach of international and national commercial communities has recently focused on encouraging debtors to continue making timely payments of their debts. Therefore, Article 56(1) of the FRBL expressly stipulates that the right to apply to the commencement of preventive settlement procedures to the Bankruptcy Court shall be through the debtor himself whenever their business is viable to pay its debts, as they are the best party who can assess their financial condition and determine the suitability of these procedures to promote their commercial or professional activities.¹² The debtor shall submit their application within sixty days from the cessation of payment or from the date they have information indicating that they cannot pay their debts when due.¹³ This is unless any of the creditors or regulatory authorities have submitted a request to commence the procedures within the period mentioned above.¹⁴

The question that arises is whether it is permissible for the deceased debtor, through their heirs, the one who has ceased practicing business, or the one with diminished legal authority, such as a legal guardian, to continue trading and submit a request to open preventive settlement procedures, thereby benefiting from this method? It can be inferred from Article 21 of FRBL that it is permissible for those parties to submit a request to open procedures within two years following death or the deletion of the merchant's name from the commercial register or loss of legal capacity, taking into account what is stated in Article 16 of the law, which indicates that the debtor may submit a request to open preventive settlement procedures, restructuring or declaring bankruptcy. It is clear from these two texts that if the heirs do not agree to submit the request, it may be submitted by one of them. The bankruptcy court may decide to close the request or accept the opening of procedures according to what it deems to achieve the interests of the creditors of the

¹¹ Vanessa Finch, 2009. Corporate insolvency law, 2nd edn, Cambridge: Cambridge University Press, 243.

¹² Mustafa Kamal Taha, Commercial Papers and Bankruptcy According to the Provisions of the New Trade Law No. 17 of 1999, Al-Wafa Legal Library, Alexandria, Egypt 2010, p 421.

¹³ Article 15 of FRBL.

¹⁴ Supervisory Authority means 1- Central Bank of the United Arab Emirates 2- Securities and Commodities Authority, see Article 2 of the Executive Regulations issued by Cabinet Resolution No. 94 of 2024 for the Financial Restructuring and Bankruptcy Law promulgated by Legislative Decree No. 51 of 2023.

deceased debtor and the heirs.¹⁵ The heirs or their representatives must choose someone to represent them in the proceedings. If this is not possible within ten days of the Bankruptcy Administration's notification, the Bankruptcy Court shall assign one of the heirs to represent them. The court may dismiss the heirs' representative and appoint another heir or someone to represent them legally. If the request is submitted by or against a debtor who lacks legal capacity, the guardian shall represent them.

In general, the debtor requesting a preventive settlement must meet four conditions:

- a. The debtor must be an individual trader or a commercial or professional company.
- b. The debtor must be in a state of default on debts due for payment or expect to be unable to pay them within three months due to an imbalance in their financial position or Instability of their financial situation.¹⁶
- c. The ability of the debtor's business to pay its debts or return its business to profitability if the preventive settlement proposal is approved, and this ability is proven by a technical report prepared by the trustee or expert.¹⁷
- d. The debtor should act in good faith because preventive settlement procedures are only granted to the debtor acting in good faith when their business has been disrupted due to circumstances they did not expect and could not pay. The law intended the preventive settlement to be a reward for good faith and compensation for bad luck. Still, the law does not clarify the meaning of good faith or bad luck, as if the law deliberately made this ambiguity to give the competent court the freedom of discretion. Good faith refers to the absence of fraud or any actions that compromise the integrity and honor of transactions, and this includes behaviors such as concealing funds, neglecting to maintain commercial records, or failing to organize them properly, whereas bad luck pertains to disruptions in a debtor's business caused by factors beyond their control and that were unforeseeable or unavoidable; such as the deterioration of financial circumstances due to a general crisis, natural disaster, or political turmoil.¹⁸ The Dubai Court of Appeal confirmed this in its ruling No. (2812/2018), which states:

The preventive settlement against bankruptcy is an advantage granted only to debtors in good faith who are facing financial difficulties that require assistance to reach settlements with their creditors. If the debtor is in bad faith, it is necessary to withhold the settlement from him. It is not enough to prove before the court that the debtor is in good faith, but evidence must also be provided that he is unlucky. If signs appear from which it is understood that the debtor's intention is tainted or that he has failed to take the measures required by commercial custom to avoid those financial difficulties, it is necessary to reject the settlement.

¹⁵ Article 16(1) of FRBL provides: An ordinary creditor or a group of ordinary creditors may submit an application to initiate Bankruptcy Proceedings in the event that the debtor defaults on any or more debts owed to them, provided that this debt is unconditional, undisputed and payable. In addition, the value of the debt shall not be less than the amount determined by the Executive Regulations of this Law on the date of submitting the application, provided that the applicant has previously served a notice to the debtor of the necessity to pay off the debt owed by the latter, not later than (30) thirty days from the date of the notice and the debtor has not taken the necessary measures to repay such debt.

¹⁶ According to Article 1 of FRBL: Instability of the Debtor's Financial Position: The debtor's failure or expected failure to pay off its due debts within three months as a result of an instability of its financial position or experiencing financial

¹⁷ See Article 1 of FRBL.

¹⁸ Fayez Radwan, 2022, Commercial Law, Part Two, Commercial Contracts and Bankruptcy According to the New Commercial Law No. 19 of 1999, Third Edition, p. 600.

The executive regulations of FRBL stipulate that the value of the debts for which a request to open preventive settlement procedures is to be submitted shall not be less than three hundred thousand UAE dirhams (AED) if the debtor is a natural person and not less than five hundred thousand AED if the debtor is a legal person, but if the debtor is subject to a regulatory body, the value of the debt that they have stopped paying or will be unable to pay shall not be less than five million AED.¹⁹

Article 56(1) of FRBL provides the cases in which the debtor may submit a request to open preventive settlement procedures. According to this Article, the debtor may apply settlement procedures if their business is capable of continuity in the following cases:

- a. If he has defaulted or some reasons make it expect or fear inability to repay all or any of its debts when they fall due.
- b. If its creditors had previously disapproved a proposal for a preventive settlement or a plan, or the Bankruptcy Court had decided not to ratify any of them, even if the same was made for other debts of the debtor, for which the application was not submitted after three months have passed from the date of the creditors' meeting or the Bankruptcy Court's decision.
- c. If a decision or judgment has previously been issued by the Bankruptcy Court to terminate the preventive settlement proceedings or to terminate the proceedings, even if the same was made for other debts of the debtor, for which the application was not submitted after three months have passed from the date of the Bankruptcy Court's decision or judgment.
- d. If a final judgment has previously been issued declaring the debtor bankrupt after its rehabilitation in accordance with the provisions of this Law.

Conversely, a debtor cannot submit a request to initiate preventive settlement procedures if the debt in question is currently undergoing restructuring or bankruptcy processes and is still pending before the bankruptcy court. However, as an exception, the debtor may submit a request to initiate preventive settlement procedures at any time, provided it is accompanied by evidence of prior approval from the required majority of creditors for the proposed preventive settlement.²⁰ In addition to the above, if the debtor is subject to a supervisory authority, they may request the opening of preventive settlement procedures, provided that the Bankruptcy Department notifies the supervisory authority and the Financial Restructuring and Bankruptcy Unit (FRBU) of the request within ten days of its submission.²¹ Then, the Unit and the supervisory authority may submit whatever they deem appropriate defenses and documents regarding the request to the Bankruptcy Department, to which the request for preventive settlement procedures was submitted within ten days of the date specified by them.²² Based on Article 22 of FRBL, the debtor must submit a request to the bankruptcy court to open preventive settlement procedures, explaining the reasons for the request. The debtor must also attach to the request to open procedures several documents mentioned in the article above, which are as follows:

1. A statement that includes a brief description of the debtor's economic and financial situation, information about its property, detailed data about its employees, and a statement of the value of the debtor's dues owed, if any.

¹⁹ Article 5 of the Executive Regulations of FRBL No. 51 of 2023 issued pursuant to Cabinet Resolution No. 94 of 2024.

²⁰ Article 56(2) of FRBL.

²¹ The establishment of the FRBU enhances procedural efficiency for stakeholders by creating legal entities that enable professionals to deliver their legal services. This development streamlines processes and conserves both time and effort. Safaa Al-Oumosh, 2017, Fate of institutions facing economic difficulties, PHD University of Tunis Al-Manara, 33.

²² Article 28(3) of FRBL.

2. A copy of the debtor's commercial or industrial license and commercial register.
3. A copy of the commercial books or financial statements concerning the debtor's business for the three (3) fiscal years preceding the application submission date.
4. A statement of the cases filed by and against the debtor and the estimated amount for each. This statement shall not constitute an acknowledgment by the debtor of the validity of these debts.
5. A statement of all cases, execution proceedings, or other proceedings to be halted due to the issuance of the decision to initiate the proceeding in accordance with this Law or based on the Bankruptcy Court's decision.
6. A report including particular information stipulated in the law.²³

The applicant is required to nominate a Trustee to undertake the responsibilities of a bankruptcy Trustee in accordance with the provisions of this law. Additionally, the applicant must provide a statement indicating whether the debtor can manage their property and wishes to do so, along with any supporting documents. Alternatively, if the interests of the creditors necessitate the appointment of a Trustee for management, the applicant must include justifications and supporting evidence for this decision. In addition, he should include a statement outlining any precautionary measures deemed necessary to protect the interests of creditors, along with an assessment of whether these measures require immediate attention.²⁴ This should be supported by justification and relevant evidence. Furthermore, the statement should address whether the debtor, for whom an application for a preventive settlement is submitted, requires financing during the period from the issuance of the decision to initiate proceedings until the approval of the preventive settlement or plan. A detailed statement of the estimated total value of the required funding during this period should be provided if financing is necessary. This should include its intended purposes, duration, guarantees, potential implications for the preventive settlement or plan, and the rights of secured creditors and other creditors.²⁵

However, if the applicant is a representative of the legal person, the application shall be accompanied by a copy of the decision of the competent authority in the company authorizing them to submit an application to initiate the proceedings and a copy of the company's incorporation documents, articles of association, and any amendments thereto. The applicant must provide any additional information, data, or documents that support the application's contents; otherwise, the Bankruptcy Department may request it. If the applicant is unable to provide any of the required data, information, or documents outlined in Article 22 of FBRL, they must include justifications

²³ According to Article 22 of FBRL, the report should include the following facts:

- a. The debtor's cash flow expectations and profit and loss expectations for the one-year period following the submission of the application.
- b. A statement of the names of known creditors and debtors, their electronic and physical addresses, their telephone numbers, the value of their rights or debts, the guarantees provided, and the ranking of these creditors and debtors.
- c. A detailed statement of the debtor's property and the approximate value of each of such property on the date of submitting the application, as well as a statement of any guarantees or rights of third parties arising therefrom.
- d. A statement of real estate dispositions or dispositions of movable and immovable property based on the debtor's records and commercial books, as well as the value of each disposition, its date, and the person to whom it was disposed of, within (3) three years before the date of submitting the application, accompanied by a statement from the competent authorities regarding the dispositions of movable or immovable property that have been recorded in the registers of those authorities.

²⁴ B. G. Carruthers and T. C. Halliday, 1998, *Rescuing Business: The Making of Corporate Bankruptcy in England and the United States*, Oxford: Clarendon Press, 155.

²⁵ See paragraphs 7, 8, 9, and 10 of Article 22 of FBRL.

for such omissions in their application.²⁶ The debtor is required to submit additional documents when seeking to initiate preventive settlement procedures, which must include the following:²⁷

1. Data, information, and documentation demonstrating compliance with the necessary conditions to request the opening of preventive settlement procedures.
 2. A concise explanation of the preventive settlement proposal, outlining its conditions, the implementation strategy, any guarantees for execution, if applicable, and the proposed timeline for implementation.
 3. A summary of the contracts and agreements intended to be executed between the debtor and the creditors to implement the preventive settlement proposal.
 4. A classification of creditors.
 5. If a creditors' committee is established according to the classification of creditors, the debtor must provide a list of the committee members, including the name of each category's representative, their email and physical addresses, telephone numbers, and documentation confirming the appointment of these members and their representatives, along with the scope of their authority as granted by the creditors.
 6. Procedures for convening a creditors' meeting to discuss the preventive settlement proposal, including details on the voting process and the eligibility criteria for participants entitled to vote.
- It is noted that Article 57 of FRBL does not impose any legal restrictions on the acceptance of the bankruptcy court, unlike the provisions of the protective settlement and bankruptcy that were included in the repealed Commercial Transactions Law of 1993 (CTL), which stipulated that the debtor's proposals in the protective settlement include the payment of at least 50% of the debts and a deadline for payment of these debts not exceeding three years from the date of the court's approval of the settlement.²⁸ Except requests submitted by the regulatory authorities, the debtor and the creditor, if either of them submits a request to open the procedures, must deposit with the treasury of the bankruptcy court an amount of money or an approved and disbursable bank guarantee at a rate of 5% of the debtor's total debts or assets on the date of submitting the request or the total debts of the creditor submitting the request, to cover the expenses and costs of the initial procedures to adjudicate the request. The head of the bankruptcy department may decide to deposit a smaller amount. The deposit of the amount or guarantee referred to in this article may be postponed if the debtor is the applicant and does not have the necessary liquidity to deposit on the date of submitting the request, or if the initial procedures require any financial costs.²⁹

Secondly: Considering the Request to Start the Preventive Settlement Procedures

Upon submission of the request to initiate preventive settlement procedures to the Bankruptcy Department of the Bankruptcy Court, the Department will notify the creditors listed in the request within ten days of submission. Each creditor must respond to the request within ten days of receiving this notification. Simultaneously, the bankruptcy department will inform both the FRBU and the supervisory authority if the debtor is under the supervision of a supervisory authority during this period. Each entity must provide any relevant input within ten days of its notification.³⁰ Upon the expiration of the time frame specified in this law, the bankruptcy court to which the request for opening preventive settlement procedures was submitted must decide within ten days

²⁶ This is provided in paragraphs 11 and 12 of Article 22 of FRBL.

²⁷ Article 57 of FRBL.

²⁸ This approach was adopted in Article 873(1) of the repealed UAE Commercial Transactions Law of 1993.

²⁹ Article 8 of the Executive Regulations of the Financial Restructuring and Bankruptcy Law.

³⁰ See Paragraphs 2 and 3 of Article 28 of FRBL.

from the date of this expiration, in accordance with the provisions of Article 31. The court may either reject or accept the request, allowing it to subsequently initiate the process for creditors to approve the preventive settlement proposal and its ratification.

a. Rejecting the preventive settlement request:

If the bankruptcy court determines that the request fails to meet the legal requirements, it must deny the request for opening the procedures entirely. In accordance with Article 33 and other relevant provisions of the Financial Reorganization and Bankruptcy Law, the bankruptcy court must issue a ruling to reject the request to initiate preventive settlement procedures under the following circumstances:

1. It shall be established that the debtor is not subject to the provisions of FRBL, specifically, that the debtor is neither an individual trader nor a commercial or civil entity.
2. The application may be rejected if the debtor fails to submit the documents, data, and information mandated by Article 22 of FRBL or if such submissions do not comply with the prescribed conditions and lack a legally acceptable justification for the court.
3. It must be demonstrated that the debtor is not in default or that the information, documents, and data submitted to the court do not indicate any imminent inability to fulfill financial obligations when they are due.
4. If the court determines that the debtor's business is unsustainable and their financial circumstances are significantly poor and irreparable, this will be grounds for dismissal.
5. The application may be rejected if the creditors have previously denied a proposal for a preventive settlement or a restructuring plan or if the bankruptcy court has refused to approve any such proposals—even regarding debts other than those currently submitted for review—provided that three months have not elapsed since the creditors' meeting or the bankruptcy court's decision.
6. If the bankruptcy court has previously issued a decision or ruling to terminate the preventive settlement or restructuring procedures, irrespective of whether this pertains to different debts of the debtor, and three months have not passed since the issuance of said decision or ruling, the application may be dismissed.
7. Should it become evident that the application submitted by the debtor was intended solely to obstruct creditors and impede their claims, creditors and any parties harmed by the application may seek compensation, provided that a liability lawsuit is filed with the bankruptcy court.
8. If a final ruling has previously been issued declaring the debtor bankrupt, such a ruling shall remain in effect unless the debtor's reputation has been restored in accordance with the stipulations provided in Articles 285 and subsequent sections of the FRBL.
9. The application may be deemed insufficient if the debtor has not either deposited the requisite amount or provided the necessary bank guarantee to cover the expenses and costs associated with the initial procedures for adjudicating the application.

If the court decides to reject the request for preventive settlement procedures, the debtor will revert to their prior status before the request was submitted and will resume their commercial or professional activities with complete autonomy. Concurrently, each debtor's creditor will regain their complete rights against the debtor, which includes the ability to file lawsuits and enforce claims on the debtor's assets individually. Additionally, creditors may request the initiation of bankruptcy proceedings when all legal conditions for such a request are satisfied. The debtor may also be subjected to bankruptcy proceedings initiated by the court on its own initiative or at the request of the relevant supervisory authority, if applicable. The researcher argues that to ensure the seriousness of the request, in instances where the court denies the request, the debtor should

be penalized with a fine of no less than fifty thousand dirhams if it is determined that they have intentionally created a facade of financial distress or misleadingly suggested its existence to gain the advantages associated with preventive settlement.

b. Accepting the Preventive Settlement Application:

The bankruptcy court must accept the application to initiate preventive settlement procedures once it confirms that all legal criteria are satisfied. Upon approval of the application, the court must issue a ruling to commence these procedures, specifying a temporary date for the cessation of payments. If the ruling does not specify a specific date on which the debtor ceased payments, the date of the ruling will be considered the temporary date for the cessation of payments. In any case, the date for stopping payments cannot be set more than two years before the issuance of the ruling to open procedures.³¹ Whether the bankruptcy court accepts or rejects the application to initiate preventive settlement procedures, the bankruptcy administration must announce the decision in accordance with Article 35 of FRBL. This includes notifying the relevant parties, requesting that the stock exchanges disclose the decision if the debtor is listed, and instructing the debtor to publish it on their website—unless the court limits the communication to one of these methods. The decision must be announced within ten days of its issuance. However, the court may satisfy this requirement by simply registering the decision in the bankruptcy and commercial registers. The decision to initiate preventive settlement procedures has significant legal implications, which will be explored in the next heading.

2. Implications of Initiating Preventive Settlement Procedures

The decision to initiate preventive settlement procedures has several implications, including being designed to assist the debtor in maintaining their operations and fulfilling their obligations, rather than liquidating assets to repay creditors. These implications include the debtor's ability to continue managing their business and finances, the suspension of legal claims against them, the option to terminate contracts before the issuance of the decision, and the potential to secure new financing, which we will explore in the following sections.

a. The Debtor's Continuation of Business and Financial Management

The issuance of the decision to open preventive settlement procedures entails the debtor managing their commercial or professional activity and retaining all the usual actions required by their business.³² which is confirmed by Article 58(1) of the Financial Reorganization and Bankruptcy Law, which explicitly states that the debtor has the right to continue, by himself or through any of his employees, and during the entire preventive settlement procedures, to manage his business and funds in a usual manner and to exercise all the actions required to manage his activity in a manner that does not harm the interests of the creditors, unless the bankruptcy court decides otherwise.

Taking into consideration that the debtor who has been issued a decision to open preventive settlement procedures to conduct his business is conditional on not harming the interests of the creditors if it is proven that an action taken by the debtor harms the creditors, such as selling his goods for less than their market price, such actions shall not be enforceable against the creditors. As for actions that fall outside the scope of the debtor's regular business, such as selling the headquarters of his establishment or renewing factory machinery, he may not carry them out at all

³¹ Article 32 of FRBL.

³² Mustafa Kamal Taha, Commercial Papers and Bankruptcy According to the Provisions of the New Trade Law No. 17 of 1999, Al-Wafa Legal Library, Alexandria, Egypt 2010, p 424.

except after obtaining the approval of the bankruptcy court and if he carries out any of them, the court may invalidate them.

b. Suspension of Judicial Claims

According to Article 1 of FRBL, the suspension of judicial claims refers to the cessation of any lawsuit or enforcement procedure initiated against the debtor concerning their financial obligations or debts. The suspension of judicial claims encompasses all litigation and enforcement actions against the debtor, except those related to labor rights. Personal status claims, particularly those related to a wife's dowry, maintenance during the waiting period, and maintenance for children and dependents, are exempt from the general suspension rule, except for estate-related matters, which remain subject to the suspension provisions.

The UAE law establishes the rule for suspending judicial claims to facilitate the parties involved in preventive settlement procedures—the debtor and their creditors—to reach a viable settlement agreement. This is intended to encourage creditors to vote favorably on the proposal and secure its endorsement by the bankruptcy court.³³ Under Article 59(1) of FRBL, the opening of preventive settlement procedures triggers a suspension of judicial claims against the debtor for three months from the date of the decision's issuance. At the debtor's request, the bankruptcy court may extend the suspension period one or more times for intervals not exceeding one month each, with an overall maximum suspension period of six months.

As stipulated in Article 59(3) of FRBL, the debtor must diligently work towards securing creditor approval for the protective settlement proposal during the suspension period. Furthermore, the debtor must provide creditors with all relevant information, data, and documentation that facilitates informed decisions regarding the proposal and respond promptly to any inquiries made by the creditors. The suspension of claims terminates either upon the bankruptcy court's approval of the protective settlement proposal, the court's issuance of a decision to terminate the procedures without such a plan, or when the designated period specified by the court expires.

It is essential to note that the decision to initiate preventive settlement procedures will only suspend judicial claims against the debtor. In contrast, any judicial claims that the debtor files against third parties will remain valid, as these claims benefit the debtor and its creditors.³⁴ The suspension of the mentioned judicial claims is confined to judicial and executive procedures and does not extend to precautionary measures. This includes actions such as interrupting the prescription or the invocation of non-fulfillment of a commercial paper, as these are not included in the provisions of Article 59(1) of FRBL. Furthermore, such precautionary measures do not impede the debtor's ability to continue their commercial or professional activities.

The question arises as to whether the cessation of judicial claims includes the rights of debt owners secured by a mortgage or lien. The authors contend that Article 59 of the FRBL, which pertains to the cessation of claims filed against the debtor, is definitive. This finality poses a concern, particularly for creditors whose debts are secured by a mortgage or lien, as it may harm their rights. Notably, Article 70 of the same law denies these creditors the right to vote on proposals for a preventive settlement unless they relinquish their guarantees in advance. Consequently, this

³³ Ian F. Fletcher, 2004, *UK Corporate Rescue: Recent Developments — Changes to Administrative Receivership, Administration, and Company Voluntary Arrangements — The Insolvency Act 2000, The White Paper 2001, and the Enterprise Act 2002*, 5 *European Business Organization Law Review*, 118.

³⁴ Mustafa Kamal Taha, *Commercial Papers and Bankruptcy According to the Provisions of the New Trade Law No. 17 of 1999*, Al-Wafa Legal Library, Alexandria, Egypt 2010, p 425.

situation effectively compels them to pursue their right to claim delayed interest from the proceeds of the sale of the guarantor's assets. Article 61(1) of the FRBL expressly states that:

The issuance of the decision to initiate preventive settlement proceedings shall not result in the maturity of the debts nor the cessation of the interests, and any provision to the contrary in the contracts concluded with the debtor shall be deemed null and void.

According to this Article, the issuance of a decision to initiate preventive settlement does not lead to the forfeiture of the maturities of all ordinary and secured debts held by the debtor, nor does it suspend the interest on ordinary debts for creditors, in contrast to the implications associated with the issuance of the decision to initiate insolvency procedures, which will lead to the maturation of debts and the cessation of interest accrual.³⁵

c. The Potential for the Termination of Prior Contracts

The principle derived from Article 61 (2) of FRBL emphasizes the continued validity of contracts entered into with the debtor after the issuance of the decision to commence preventive settlement procedures. Such contracts should not be terminated or rescinded, even if the contractual terms suggest otherwise. Conversely, the contracting party must also maintain its obligations under the contract if the debtor continues to fulfill its obligations after the decision to initiate the preventive settlement procedures.

Notwithstanding those above, if the Debtor fails to fulfill any of its contractual obligations following the issuance of the decision to initiate Protective Settlement Proceedings, the Bankruptcy Court may, upon the request of the Contracting Party, and as an exception to the general rule regarding the cessation of claims, order the termination of the contract.³⁶ Additionally, the court may grant the Debtor's request for rescission of the contract if it is deemed necessary for the Debtor to continue its business operations or to protect the interests of creditors, provided that such rescission does not significantly detriment the interests of the Contracting Party involved with the Debtor.³⁷

d. Permissibility of Obtaining New Financing

After the decision to initiate preventive settlement procedures has been issued, the debtor may borrow or obtain banking facilities, with or without guarantees, in accordance with what is outlined in the application for opening the proceedings or in any subsequent application submitted to the Bankruptcy Department before a decision is rendered.³⁸ Additionally, the debtor can borrow or obtain banking facilities if included in the preventive settlement proposal or approved by the required majority, unless the Bankruptcy Court rules otherwise. The lender or provider of banking facilities must be informed that the prospective debtor is undergoing protective settlement procedures.

In other cases, the debtor may not obtain loans or credit facilities from banks or financial institutions, except after obtaining permission from the Bankruptcy Court, which has decided to commence the preventive settlement procedures, as borrowing is considered an unusual

³⁵ Article 158 of FRBL.

³⁶ Article 61(3) of FRBL.

³⁷ Article 61(4) of FRBL.

³⁸ Article 61(4) of FRBL.

management act. It follows that the Bankruptcy Court may, at the request of the debtor and after taking the opinion of the FRBU if the debtor is subject to a regulatory authority, authorize the debtor to subject itself to settlement procedures. Preventive by obtaining new financing in which the creditor has priority over any ordinary debt existing in the debtor's liability on the date of the decision to commence the proceedings, whenever such financing is necessary for the continuity of the debtor's business and does not prejudice the common interest of the creditors or the preventive settlement procedures.

The new financing may be secured by a mortgage on any of the debtor's unmortgaged or mortgaged assets. In the case of mortgaged assets, this new mortgage will rank subordinate to the existing mortgage or mortgages associated with those assets. Additionally, the latest financing can be secured by mortgaging any of the debtor's already mortgaged assets at the identical rank level as the existing mortgage on the assets to be mortgaged, or it may rank ahead of it. In such instances, approval from prior-ranking mortgage creditors is required.³⁹

It is essential to note that the preventive settlement procedures remain unaffected by the death of the individual merchant debtor, provided such an event occurs after the decision to initiate these procedures has been issued. These processes will continue to advance with the heirs or their legal representatives.

IV. PREVENTIVE SETTLEMENT PLAN

The preventive settlement plan involves a series of intricate procedural steps. Initially, the debtor must draft the preventive settlement proposal, followed by discussions with creditors, who will vote on its approval. Once they signify their agreement, the bankruptcy court must ratify the proposal, making it binding on the debtor and effective for the relevant creditors.

a. Drafting the Debtor's Protective Settlement Proposal

As the primary stakeholder in preventive settlement procedures, the debtor plays a crucial role, with the settlement plan primarily focused on their actions. Thus, the FRBL places the duty of creating the preventive settlement proposal on the debtor. The debtor must include a summary of this proposal when submitting the application to initiate settlement procedures. Furthermore, they must file a copy of the settlement proposal with the Bankruptcy Department, accompanied by the summary, within three months from the date of the decision to commence these procedures. Article 66 of FRBL clarifies that the proposal for a protective settlement submitted by the debtor must include the following:

1. The debtor's plan to carry out its activity.
2. A list of the names of known creditors and debtors, their electronic and physical addresses, their telephone numbers, the value of their rights or debts, and the guarantees provided therefor, if any, updated until the date of submitting the preventive settlement proposal.
3. Ranking of categories of creditors, the amounts owed to each of them, the guarantees provided against each debt, and their value.
4. Confirm the viability of the debtor's business.
5. Terms and conditions for settling any obligations.
6. Any good performance in connection with the proposal must be provided by the debtor, if any.
7. Any offer to purchase all or part of the debtor's property based on an existing and ongoing activity, or in parts, if any.
8. Grace periods and payment discounts.

³⁹ Article 62(5) of FRBL.

9. The extent to which debt can be converted into shares or stocks in the capital of any company or project.
10. The extent to which it is possible to consolidate, create, redeem, sell or replace any guarantees if the same is necessary to perform the preventive settlement proposal, subject to the approval of the holders of the secured debts.
11. Propose a period or periods for repaying the entire debt.
12. The extent of the debtor's need for financing during the performance period of the proposal, as well as the purposes and guarantees of such financing.
13. The mechanism for following up on creditors and the controller, if appointed, to perform the proposal and the reports submitted regarding its performance, and the dates and contents of submitting those reports.
14. Any other matters that the debtor deems instrumental concerning the preventive settlement proposal and considers necessary to be included in the proposal.
15. The rights obtained by creditors in accordance with the proposal of a protective settlement compared to those they can obtain in the event of bankruptcy.

It is noted on this list the extent of transparency and flexibility that must characterize the proposal of preventive settlement prepared by the debtor, as this proposal is supposed to draw a clear picture of the financial position of the debtor and include effective practical solutions that ensure the achievement of the objective of the proposal, which is the continuity of the debtor's business and the payment of his debts. The debtor shall pay in kind or cash, or part of it in kind or cash, and drop the rest or schedule the rest to discharge the debtor of all or part of the debt. The debtor, under FRBL, must submit a copy of the proposal for preventive settlement to the FRBU, along with a summary of the proposal, within three months from the date the decision to commence proceedings is issued. Approval by the required majority is necessary for any extension that causes the filing period for a protective settlement to exceed six months.⁴⁰

If the debtor is under the supervision of a regulatory authority, it must notify the FRBU within the specified timeframe. Additionally, the debtor must inform the creditors' committee representative and all committee members about the proposal for a preventive settlement, along with its accompanying documents. At the same time, the representative of the creditors' committee and each member must notify the class of creditors they represent about the proposal and its attachments by the end of the day after receiving the plan and its annexes. If the debtor does not submit a proposal for a protective settlement within the specified timeframe, the Bankruptcy Court may terminate the preventive settlement procedures. If the debtor is under a regulatory authority, this can occur upon application by one of the creditors or the FRBU. The court must decide on this application within ten days of its submission.⁴¹

b. Creditors' Approval of the Protective Settlement Proposal

Creditors endorse the proposed protective settlement through a voting process held during a meeting organized by the debtor. In this context, clarifying the procedures for the debtor's meeting with creditors is essential, where the protective settlement proposal and the associated voting mechanism will be discussed. Creditors shall be invited to participate in the discussion of the proposed preventive settlement and to cast their votes in accordance with a notification detailing the date and location of the meeting. This notification must comply with the procedures outlined in the proposed preventive settlement. It is essential that the meeting be held at least ten days after

⁴⁰ Article 67 FRBL.

⁴¹ Article 67(3) FRBL.

the invitation is issued and within a maximum of thirty days from the date the representative of the Creditors Committee, along with other Committee members, is informed of the settlement proposal and its attachments. Additionally, the debtor must send the same invitation to the FRBU within the specified timeframe if the debtor is under a regulatory authority and the supervisory authority, as applicable.

Typically, the debtor presides over the meeting with creditors; however, with the approval of the necessary majority, a chairperson may be selected from among the creditors or other parties. If the debtor neglects to convene this meeting, the bankruptcy court may, upon a request from any creditor or the FRBU, summon the creditors to the meeting if the debtor is subject to a regulatory authority. In this scenario, the meeting will be chaired by the head of the Bankruptcy Department or a designated representative, who will undertake all duties that the debtor would have performed in this regard.⁴²

Under Article 71 of FRBL, the debtor must thoroughly outline the terms of the preventive settlement proposal during the meetings convened for this purpose, as well as any amendments that have been received. Additionally, the debtor must invite the creditors to participate in other meetings to review and vote on these amendments.

The right to vote on the proposal for a protective settlement is restricted to ordinary creditors whose debts have been definitively accepted. However, for creditors whose debts have been received with certainty, the bankruptcy court may grant them the right to vote on the proposal, provided that the court establishes the conditions and limitations for granting such permission. The general rule for creditors with secured debts is that they cannot vote on the protective settlement proposal, as they have mortgages or privileges that secure the repayment of their debts, along with any accrued interest, if applicable.⁴³ The Bankruptcy Court may permit a secured creditor to vote on the settlement proposal based on the value of their secured debt without compromising their security rights if the proposal impacts these rights. However, creditors with secured debts may only vote on a protective settlement proposal if they voluntarily waive their guarantees beforehand, and this waiver is officially recorded in the minutes of the session. The court will address any disputes concerning voting eligibility and the presiding officer of the meeting within ten days of receiving an application related to the bankruptcy.⁴⁴

According to Article 72 of FRBL, a proposal for a protective settlement must receive the approval of creditors to be deemed valid. This approval is considered achieved if a meeting is attended by creditors holding at least half of the total debts and the proposal is endorsed by creditors representing two-thirds of the debts present at that meeting. Should a second meeting be scheduled to vote on this proposal, it will be rejected if the required majority does not approve the protective settlement at that postponed meeting.⁴⁵ To ensure clarity regarding the voting meeting proceedings on the preventive settlement proposal, Article 73 of FRBL mandates the preparation of a record detailing what transpired during the voting session. The debtor must sign this record, the creditors present with the right to vote, and the representative of the Creditors Committee. If any creditor declines to sign, their name and reason must be documented in the minutes. In cases where meetings are conducted through modern communication methods, an observer must be present. If an observer has not been appointed, a representative from the Creditors Committee or the FRBU

⁴² Article 69(4) FRBL.

⁴³ Article 70 FRBL.

⁴⁴ Article 70(3) FRBL.

⁴⁵ Article 1 FRBL.

must attend, mainly if the manager is subject to a regulatory authority. The minutes may be deemed sufficient with the signatures of the debtor, the controller, the representative of the Creditors Committee, or the unit representative, depending on the context.

c. Attestation of the Proposal for Preventive Settlement by the Bankruptcy Court

If the creditors consent to the proposal for a protective settlement, it will not be binding on the debtor. It will only take effect against the creditors following its ratification by the Bankruptcy Court. Furthermore, the court must notify the bankruptcy department and the parties involved in the proposal before deciding to ratify or reject it.

Regardless of whether the proposal for a protective settlement is approved or rejected by the creditors, the debtor is required, in accordance with Article 74 of FRBL, to notify the Bankruptcy Department, the Controller, and the FRBU within ten days from the date of the decision. This notification is necessary if the debtor is under the oversight of a regulatory authority and the relevant supervisory body. It should include documentation of the notifications sent to attend the meetings, evidence of attendance, and voting. If the proposal for a protective settlement is approved, the debtor has the right to submit an application for the ratification of the settlement plan to the Bankruptcy Department within the specified notification period. If the debtor fails to do so, the representative of the creditors' committee, a representative of any specific category of creditors, or creditors holding 25% of the debtor's total debts may notify the Bankruptcy Department. Upon receiving such notification, the Bankruptcy Department is required to inform all creditors within 10 days, providing them with all relevant attachments. If the proposal for a protective settlement is declined, the Bankruptcy Court shall, within ten days of notifying the Bankruptcy Department, issue a determination to terminate the preventive settlement proceedings and close the application.

If the proposal for a preventive settlement is denied, the Bankruptcy Court, upon the request of either the debtor or the FRBU, may commence restructuring or bankruptcy proceedings. This course of action can be pursued if the debtor falls under the jurisdiction of a regulatory or supervisory authority or if it is deemed appropriate by creditors, taking into account the debtor's specific circumstances and the interests of the involved creditors.⁴⁶

In considering the ratification of the Protective Settlement Proposal, the Bankruptcy Court holds broad discretion to either approve or reject the settlement proposal. As outlined in Article 75 of the FRBL, the Bankruptcy Court is required to ratify the settlement proposal within 10 days of receiving notification from the Bankruptcy Department regarding the creditors' approval of the Protective Settlement Proposal and its accompanying documents, provided that it verifies that the following conditions are satisfied:

1. The proposal for a protective settlement must secure the approval of the requisite majority.
2. The proposal for a preventive settlement must adhere to the following standards of justice:
 - Creditors should be provided with adequate information and time to review the proposal for a protective settlement.
 - This process shall not undermine the creditor meeting procedures and voting outlined in the protective settlement proposal submitted to the Bankruptcy Department before initiating the preventive settlement proceedings.

Consideration must be given to the existing rights of creditors, particularly those holding mortgage and lien rights, to ensure equality among stakeholders with similar claims, especially regarding the allocation of losses and the distribution of new rights.

⁴⁶ Article 64(6) FRBL.

The Bankruptcy Court will refuse to ratify the Protective Settlement proposal or suspend its ratification if it fails to secure the approval of the required majority, does not align with the required criteria of justice, or if the procedures for convening the meeting or the voting protocols are deemed invalid. Should an amended proposal be presented, it will be submitted again to the Bankruptcy Department for ratification. If the amended Protective Settlement proposal receives the necessary majority approval, the Bankruptcy Court will endorse it. Conversely, if the creditors reject it, the Court will rule against the proposed ratification.⁴⁷ Article 78(1) of the FRBL stipulates that the preventive settlement plan approved by the Bankruptcy Court shall be binding on all creditors included in it, including those who rejected the settlement proposal and those who did not attend the meeting to vote on the proposal.

It is important to note that the Bankruptcy Department is required to declare, notify, and record any decision made by the Bankruptcy Court regarding the ratification of the preventive settlement proposal, the rejection of the proposal, the suspension of ratification, the termination of procedures, the initiation of restructuring procedures, or the declaration of bankruptcy. This must be done within ten days from the date the decision is issued, in accordance with Article 35 of FRBL. The Bankruptcy Court can fulfill this requirement by simply registering the decision in both the Bankruptcy Register and the Commercial Register.

V. COMPLETION OF PREVENTIVE SETTLEMENT PROCEDURES

The debtor shall execute the protective settlement proposal approved by the Bankruptcy Court to secure a ruling from the same court for the full implementation of the settlement and the conclusion of the relevant procedures. However, during the implementation phase, unforeseen circumstances may arise that necessitate the court issuing a decision to terminate the settlement procedures before the proposal is fully implemented.

a. Completion of Procedures Following the Successful Implementation of the Proposal

Once the bankruptcy court ratifies a proposed protective settlement that has received the necessary approval from the majority of creditors, it becomes effective for all creditors involved in the settlement process. This decision is binding on the debtor, who must begin implementing all settlement provisions. The preventive settlement proposal functions like a reconciliation contract between the debtor and the participating creditors. Consequently, the debtor must adhere to the terms of the settlement proposal while continuing its commercial or professional activities. During the debtor's implementation of the settlement proposal, they are shielded from the risk of bankruptcy proceedings being initiated.⁴⁸

According to Article 80 of FRBL, during the implementation of the preventive settlement proposal, the debtor may invite creditors to discuss any amendments they consider necessary at any time. In such cases, the debtor must notify creditors of the proposed amendments, along with their justifications, at least ten days before the scheduled meeting. If the required majority approves the amended preventive settlement proposal, the debtor must inform the bankruptcy department of this proposal, along with the minutes of the meetings, evidence of attendance and voting, and request its ratification. The Bankruptcy Court is then required to ratify the amended proposal within ten days of the notification to the Bankruptcy Department, provided it is demonstrated that the proposal has received the necessary majority approval and satisfies the standards of fairness

⁴⁷ Article 64(6) FRBL.

⁴⁸ Mustafa Kamal Taha, Commercial Papers and Bankruptcy According to the Provisions of the New Trade Law No. 17 of 1999, Al-Wafa Legal Library, Alexandria, Egypt 2010, p 431.

outlined in Article 75(2) of the Law. If these conditions are not met, the court may refuse to ratify the proposal or suspend the ratification process.

If the debtor successfully implements the preventive settlement proposal approved by the creditors and attested by the Bankruptcy Court, they must, in accordance with Article 79/1 of FRBL, notify the Bankruptcy Department within ten days of completing the implementation. This notification must include a statement of settled debts, the method of settlement, and a document that evidences the settlement. Subsequently, the Bankruptcy Court will issue a decision to finalize the implementation of the proposal for protective settlement and complete the preventive settlement procedures within ten days of receiving the notification from the Bankruptcy Department.

It is essential to note that the Bankruptcy Court may, before issuing such a decision, seek the opinion of the appointed controller and the FRBU, especially if the debtor is subject to oversight by a regulatory authority regarding the completion of the preventive settlement. After the Bankruptcy Court issues its decision to finalize the proposal and conclude the preventive settlement process, creditors who contest the validity of the information submitted by the debtor concerning the settlement of their debts may appeal the decision. Should a creditor's grievance be upheld, the debtor will be required to adhere to the protective settlement proposal, and the proposal will not be enforced against the creditor.⁴⁹ The issuance of the Bankruptcy Court's decision to finalize the implementation of the preventive settlement proposal will result in the conclusion of the settlement proceedings, thereby allowing the debtor to resume their commercial or professional activities without any restrictions.

b. Finalize Steps Before Implementing the Proposal

The Bankruptcy Court cannot unilaterally terminate the protective settlement procedures before the settlement proposal has been fully implemented. To initiate such a termination, an application must be submitted to the court by either one of the creditors or the debtor themselves. The creditors mentioned herein are those to whom the proposal for a protective settlement applies. Creditors whose debts are secured by a mortgage or lien and who are not included in the settlement proposal do not have the right to request the termination of the procedures, as their interests are no longer relevant. Referring to Article 81 of the FRBL, it is established that the bankruptcy court may, upon a request from one of the creditors, rule on the termination of settlement procedures during the period following the ratification of the proposal for preventive settlement and before its full implementation. This termination may be granted if any of the following conditions are met:

1. A criminal case may be filed against the debtor for any of the offenses outlined in this Law, specifically in Articles 266 and subsequent sections. In such instances, it is necessary to submit an application for the termination of proceedings within six months from the date of filing the lawsuit. This lawsuit must be initiated after the ratification of the proposal for a preventive settlement and before its complete implementation; otherwise, the request will be deemed inadmissible. The authors assert that it is sufficient to allow for the application to terminate proceedings if a judgment is rendered convicting the debtor of one of the crimes specified in the law above, in alignment with fundamental principles of criminal law, notably the presumption of innocence until proven guilty. This principle is reaffirmed in the following context:
2. A judgment convicting the debtor of any crime outlined in this Law must be issued after the proposal for preventive settlement is ratified and before its complete implementation.
3. Should the debtor fail to fulfill the terms of the protective settlement proposal, it will be considered a breach of its obligations as outlined in the proposal. This includes actions that

⁴⁹ Article 79(3) FRBL.

contradict these obligations, such as unjustifiably transferring its business to a less significant location or assigning part of its assets to others without demonstrating any progress in implementing the settlement proposal.

4. In the event of the debtor's death and if it becomes evident that implementing the preventive settlement proposal is unfeasible, it should be noted that the proposal is not inherently tied to the individual debtor, especially if they are a sole trader. Consequently, the debtor's death does not automatically terminate the procedures; the process may continue if its heirs are willing to assume responsibility for its execution.

5. If circumstances arise after the ratification date of the proposal for a protective settlement that could make the debtor's actions unsustainable or impact the debtor's ability to implement the proposal, such that it is unlikely the debtor will be able to carry out the terms of its proposal.

6. If the debtor declines to provide the necessary information, data, and documents that are required of them.

7. If the debtor makes a significant misstep in managing their funds or business during the period following the decision to initiate preventive settlement procedures, resulting in a doubling of their debts.

8. If, at the time of applying to initiate preventive settlement procedures or thereafter, the debtor engages in fraudulent behavior or presents misleading information, this poses a significant concern. Such actions may provide a valid basis for any creditor to request the termination of the protective settlement procedures. As a result, the bankruptcy court may decide to terminate the proceedings before the settlement proposal is fully implemented. As previously mentioned, the Bankruptcy Court may choose to terminate the preventive settlement procedures upon an application submitted by the debtor after the ratification of the protective settlement proposal and before its complete implementation. This may occur if it becomes apparent that the conditions for initiating the protective settlement procedures are no longer met, if the debtor is unable to execute the proposal, or if the debtor has initiated restructuring or bankruptcy procedures. Furthermore, if the debtor files a request to terminate the preventive settlement procedures, the Bankruptcy Department is required to notify the creditors, the FRBL (if the debtor is subject to a regulatory authority), and the appropriate controller of the debtor's application within ten days of receipt. The Bankruptcy Court is then obligated to decide to approve or reject the application within ten days of its submission.⁵⁰

In all circumstances, if the Bankruptcy Court determines to terminate the preventive settlement procedures for any reason, it may concurrently, upon the application submitted by the Debtor,⁵¹ The Supervisory Authority, or the creditors entitled to file an application for the initiation of proceedings under this Law, decides to commence restructuring or bankruptcy proceedings. The Bankruptcy Department shall, within ten days of the Bankruptcy Court's decision, terminate the preventive settlement procedures, announce this decision, provide notifications, and register it in accordance with Article 35 of the law. The Bankruptcy Court may fulfill this requirement by registering the decision in both the Bankruptcy Register and the Commercial Register as an official means of publicity.

The actions taken following the ratification of the preventive settlement proposal and before the issuance of the decision to terminate the settlement procedures, especially before the complete implementation of the settlement proposal, result in the suspension of all terms of the settlement

⁵⁰ Article 83(2) FRBL.

⁵¹ Article 84 FRBL.

proposal. Consequently, any transactions involving the debtor's funds executed after the issuance of this decision will be considered null and void against creditors. However, any actions taken by the debtor before the issuance of this decision, in accordance with the terms of the settlement proposal, remain valid and enforceable against the debtor. Such actions cannot be contested for non-enforcement except in accordance with the procedures outlined in the Civil Transactions Law concerning claims of non-enforcement of the disposition. In this regard, Article 86 of FRBL further clarifies that the termination of protective settlement procedures does not obligate creditors to repay debts received before the issuance of the judgment or termination decision, provided those amounts are deducted from the total value of their debts.

VI. CONCLUSION:

The preventive settlement method is a legal mechanism designed to assist commercial enterprises in maintaining their operations, fulfilling their financial obligations, and avoiding bankruptcy procedures, thereby mitigating the adverse effects of such proceedings. The study found that the FRBL does not define the concepts of good faith or misfortune; instead, it allows the competent court discretion in interpreting these terms. Consequently, the authors recommend that the law clarify the definitions of good faith and bad luck. Additionally, the applicant-debtor should demonstrate both good faith and bad luck, providing supporting evidence. By seeking a preventive settlement, the debtor asserts that they meet all necessary conditions, including those of good faith and bad luck; thus, they need to substantiate their claims.

The study also revealed that Article 57 does not encompass specific requirements that must be submitted by the debtor seeking a protective settlement. Specifically, it lacked a stipulation for the debtor's commitment to pay a portion of the debts incurred, which could be included among the referenced items to demonstrate their seriousness in pursuing the preventive settlement process. Thus, the study recommends reformulating Article 57 to incorporate, within the debtor's proposals submitted in the application for protective settlement, an explicit obligation for the debtor to repay a portion of the debts incurred. Additionally, the recommendations should include stipulations regarding the timeline for repaying these debts. The study further recommends including a provision stipulating that the court shall impose a fine on the merchant if it is determined that the debtor has intentionally fabricated or misrepresented a state of financial distress. This measure aims to underscore the seriousness of the request.