DETERRING MORAL HAZARD: AN ANALYTICAL OVERVIEW OF THE CRIMINAL LAW PROTECTION FOR CREDITORS IN THE UAE

Ibrahim Suleiman Al Qatawneh, Al-Ain University

ABSTRACT

This article provides a critical review of the protection of creditors' interests under criminal law in the United Arab Emirates ('UAE'), particularly in the light of its comprehensive reform of bankruptcy legislation of 2016. The review adopts an analytical doctrinal method, where desk-based research into the blackletter of relevant legal texts is complemented by reasoned doctrinal commentary.

The study reveals the pivotal role deterrence plays for guiding the design of criminal law safeguards against moral hazard by distressed debtors. This approach—which is consistent with a longstanding focus on criminal deterrence in Islamic jurisprudence—provides an important rationale for the adoption of a criminal law framework, not just for the benefit of individual creditors, but also for increasing the reliability of the UAE credit market as a whole.

While the provisions of the 2016 UAE Bankruptcy Law do much to curtail cavalier behaviour by distressed business debtors, the law engenders segmentation in the credit market by failing to prepare similar safeguards for non-business creditors and debtors. The paper ends with a recommendation for addressing this imbalance.

Keywords: Deterrence, Islamic Criminal Law, Bankruptcy, Moral Hazard, United Arab Emirates.

INTRODUCTION

Can criminal law play a role in securing a more reliable credit market? This is the question this article tries to address, through an in-depth study of the criminal law safeguards placed by the United Arab Emirates (UAE) with respect to creditors' interests. What makes the UAE a compelling case study is the fact that-as it happens with many Muslim jurisdictions-criminal legislation draws from earlier foundations in Islamic criminal jurisprudence (Al-Muhairi, 1996). Like Western jurisdictions, criminal law in the Muslim world also pursues a range of goals: deterrence of potential offenders, retribution for the damage suffered by the victim, rehabilitation of offenders, and the mitigation of societal risks from repeat offences by incapacitating offenders (Peters, 2005). At the same time, Western criminal law systems have had a changing relationship to the goal of deterrence, becoming more focused on the goal of rehabilitation of the offender. Even there, however, various commentators have perceptively observed how different historical phases in criminal adjudication reveal recurring swings back to considerations linked with deterrence of potential offenders, both in general (Alschuler, 2003), and in connection specifically with financial crime (Henning, 2015).

In Islamic jurisprudence, deterrence has always been acknowledged as one of the explicit purposes of criminal legislation. Indeed, Islamic jurisprudence holds that the punishment of criminal offences should be pursued with a view to ensuring that it can serve to inform other potential offenders about the consequences of their acts, and so deter them from engaging in them (al-Qayyim, 2002). The acceptability of such a position is increased by the basis of Islamic criminal jurisprudence in the revealed sources of Islamic law, which is viewed as an attestation of their benevolence and balanced character as a matter of principle (Majeed & Liba, 2012). In view of this, the UAE's attempt to institute a comprehensive protection of creditors' interests through criminal law offers an interesting experiment, which could be of interest well beyond the UAE, both for comparative lawyers, as well as for practitioners and scholars from other Muslim jurisdictions.

In this paper, the UAE's bankruptcy legislation will be examined with a view to exemplifying how considerations linked to deterrence of criminal behaviour have informed the Emirati lawmakers' effort at reform. In particular, one might locate the driver for reform in the need for the UAE to establish itself as a reliable location for investors. While bankruptcy was criminally sanctioned prior to the 2016 Bankruptcy Law, through the now-repealed Articles 417–422 of Federal Law No. 3 of 1987 (UAE Criminal Code), a new regime has been put in place, through promulgation of two main legislative documents. Namely: Federal Law No. 9 in 2016 (UAE Bankruptcy Law), and Federal Law No. 8 of 2015 (UAE Commercial Companies Law) (Mallon, 2017).

In the tradition of Islamic jurisprudence-which forms the historical background of the Emirati legal system (Al-Muhairi, 1996)-imprisonment of debtors was also meant to act as a threat to deter speculative employment of loaned funds. This is still the basic position that has subsequently been transposed in the criminal laws of the Emirati federation. However, the combined provisions found in the UAE Criminal Code and the UAE Bankruptcy Law today have to confront a more articulate landscape, one informed by the expansion of strategies that debtors may resort to, to cross red lines with impunity as they might be facing financial hardship.

In view of this, our study is an attempt to advance understanding into how the new Emirati laws might deter moral hazard-highly speculative behaviour premised on delaying or avoiding the consequences of bankruptcy-by distressed debtors. Hence, the study undertakes a critical examination of the gaps the new laws now close-thereby establishing or reinforcing means of deterrence against potential harms to creditors' interests-as well as any extant criticalities that might need addressing in future legislative amendments. The motivation for this kind of inquiry is twofold. First, recurring financial crises create a tight environment in which opportunities for debtors to harm creditors are multiplied. Secondly, there remain areas in which the law is ambiguous, and which could be addressed for the sake of strengthening investor protection. Finally, in order to examine the new Emirati criminal framework vis-à-vis debtors approaching bankruptcy, this study adopts an analytical doctrinal method, which involves laying out the legal texts with accompanying doctrinal commentary. The purpose of such a study is both to offer an overview, and also to identity extant loopholes in the existing protective regime.

In order to provide a solid basis for the inquiry that follows, it is useful to recall some general notions on the general structure of Emirati criminal legislation. Alongside special legislation like the UAE Bankruptcy Law, the basic reference point for criminal lawyers in the UAE is the UAE Criminal Code. This consists of two types of rules. The first are general provisions applicable to all instances of crime, and to all attendant penalties. They fashion the

UAE Criminal Code into an overarching framework of reference, to which all other criminal offences in other pieces of legislation are subject (Aldurra, 2013). Examples of such general provisions would include rules on the location and timing of a criminal offence, on different types of crimes and penalties, and on allowable exceptions. They also distinguish different kinds of criminal offence that will attract a penalty against an individual. Among those introductory provisions, the opening article of the UAE Criminal Code, Article 1, also contains an explicit reference to Islamic jurisprudence as a source of principles in matters of punishment. The second set of rules in the Criminal Code specifically matches penalties to different criminal offences (El-Dakkak, 2014). The UAE Criminal Code consists of a total of 434 articles, arranged in two books. The first book, which carries general provisions, is subdivided into nine chapters. The second book specifies crimes and their attendant penalties in eight chapters covering such topics as: national security offences, crimes associated with a violation of justice, public office crimes, family offences and public hazards, and religious and ritual crimes, among others. Alongside the letter of the Code, judicial practices also play a role in orienting the interpretation of the law (El-Dakkak, 2014). While bankruptcy crimes were originally regulated in the second part of the UAE Criminal Code, the need to broaden coverage of possible forms of moral hazard by debtors has suggested the enactment of a special law, namely the UAE Bankruptcy Law of 2016, which therefore replaces the earlier regime of sanctions for bankruptcy found in the UAE Criminal Code and the UAE Commercial Transactions Law (Ladapo & Taha, 2017).

In order to provide a principled review of the criminal law protection of creditors in the UAE legal system, Section 1 begins by examining more closely the different possible ends that lawmakers might have envisaged by attaching criminal sanctions to unlawful acts performed by the insolvent debtor. As it will be seen, in accordance with the roots of UAE criminal law in Islamic law, deterrence plays a significant role amongst the policy considerations worked into the approach followed by UAE lawmakers. Section 2 then proceeds to review the main forms of conduct on the part of the debtor, which would attract criminal sanctions in the current UAE regime. Section 3 examines the extent to which the existing legal framework creates sufficient legal safeguards to deter moral hazard by debtors and thereby strengthens trust in the credit market. The conclusion sums up our main findings and recommendations from earlier sections, and suggests some corrections or adjustments that could be done to improve the clarity and effectiveness of the current legislation.

The Purpose of Criminal Law Protection of Creditors in the UAE: Review and Critique

It is advisable to begin from first principles, by delimiting well the two categories involved-debtors and creditors. A debtor is a legal or physical person who owes money to another party (Bragg, 2020; Chen, 2019). Instead, a creditor is the legal or physical person who lent money or extended credit to the debtor. In the UAE, the new Bankruptcy Law has put in place various processes to manage the financial crises of small, medium, and large businesses (Dejani, 2018). Obviously, creditors also enjoy protection under civil law; still, criminal law safeguards in favour of creditors date back to the initial version of the UAE Criminal Code of 1987. With time, however, those initial provisions required updating. The reason for this is that practice has revealed a growing array of strategies that debtors might use, to evade paying their debts without incurring sanctions. This trend, which has been exacerbated by recent financial crises, simultaneously empties out the potential for criminal legislation to deter potential

offenders. Lawmakers in the UAE have therefore attempted to catch up with such strategies, which ultimately undermine the protection of creditors. This legislative development was also called for, to mitigate the risk of financial distress to creditors based in the UAE-which could have arisen from increased defaults by their debtors (Naemmour, 2019).

The UAE Criminal Code does not specifically lay out what the purpose ought to be, of protecting creditors under criminal law. That is, it refrains from naming explicitly the form of harm they might suffer. Equally, the Emirati federal judiciary has remained silent on this topic. The gap has been filled by doctrinal elaboration from legal scholars. For example, Ahmed (1972) has suggested an initial possibility, in terms of the use of criminal law to secure the rights of creditors, as recognised by the UAE legal system. In addition, Donoher (2012) has suggested viewing the Criminal Code as a "*weapon*" in the hands of the state-in other words an instance of its monopoly on violence. While such monopoly might acquire a different significance depending on the occasions in which it is deployed, Donoher (2012) continues that the Criminal Code finds its raison detre in the protection of UAE citizens' safety and peace: this would explain why, for example, below certain thresholds, debtors might be allowed to retain some of their property, despite owing money to creditors. It could also offer a partial justification for resorting to criminal law in cases of debt default, as a way to prevent creditors from indulging in the private use of force to obtain payments.

Still, there are important limits to these doctrinal statements. First, they tend to flatten the question of affording criminal law protection to creditors on the mere letter of legal provisions, without providing additional insight into the underlying substantive concerns or procedural conditions. In this way, they fall short of specifying the exact purpose of protecting creditors' rights through criminal law. Second-and related to this-they refrain from conceptualising the specific type of harm suffered by creditors, through the illegitimate appropriation of money, possessions, or properties belonging to them by their debtors. The importance of conceptualising the purpose of criminal protection becomes clearer through an example. Let us imagine a case in which the creditor is confronted with an illegitimate possessor, other than the debtor, of assets that are owed to him or her. In this case, should the creditor only have redress against the third party under the general provisions of criminal law, or should the debtor also be held to account when his or her actions undermined the creditor by involving a third party? It is cases like these that receive a more solid answer, we believe, when clarity can be found on the purpose of criminal protection of creditors' prerogatives.

This leads us to a third and final critique of extant doctrinal suggestions concerning the purpose of protecting creditors through criminal law-they do not make much progress in revealing the underlying intent underpinning legislative intervention. Here, there are three conceptual possibilities-which are not exclusive of one another. First, the criminal law protection of creditors provides a set of substantive legal rules with the goal of preserving the funds, interests, and rights of creditors. The second possibility is that those rules have the purpose of sanctioning illegal acts that may undermine those interests in whole or in part. Third, criminal law protection might also serve as a deterrent, which helps avert those occurrences that might deprive the creditor of his or her rights, regardless of whether they are brought about directly by the debtor. These three possibilities help retrieve a more evident purpose behind the penalties prescribed by the law in the face of unlawful acts harming creditors.

Among these, the deterrence rationale is particularly useful to appreciate why it is important to protect creditors under criminal law. Beyond upholding their prerogatives as

individuals, a case can be made that moral hazard on the part of debtors can cause deterioration in the market for funds available for investment-whenever the legal system does not provide clear limitations to what a debtor might be able to do with impunity in case of distress. For this reason, criminal sanctions place evident boundaries to harmful conduct, thereby deterring potential offenders and engendering greater confidence between lenders and borrowers of funds. The protection of creditors under criminal law will thereby reinforce trust in Emirati traders on the part of foreign investors, by increasing assurance that foreign creditors' assets will not go missing-as is the norm in developed economies like Austria, for example, which provide creditors with the right to satisfy their claims on the assets of the debtor (Trettnak & Deinhardstein, 2018). Moreover, protection from debtor's abuse and fraud removes a significant barrier to the participation of UAE businesses in the world market, since UAE creditors also tend to be traders and investment owners. Strengthening their position vis-à-vis debtors would therefore strengthen a group that is likely to be a dynamic force on global markets.

In view of the foregoing, it is possible to conclude that the criminal law protection of creditors can be understood as the legal right to recoup the creditor's dues from the debtor according to the law. Moreover, deterrence plays a crucial role in justifying criminal sanctions with a view to discourage potential infringements. The debtor-creditor relationship is a complex legal, economic, and financial construction that assigns obligations and provides rights to the creditor. Whenever the debtor deprives the creditor of his or her dues through cheating or fraud, the creditor should be provided with means of redress against such harm. Moreover, those means of redress should aim at upholding the creditors' entitlements in full. This idea also finds support by the World Bank, as a remedy against the lack of full information on the debtor's credit risk and on the conditions that could make recovery, restructuring or enforcement of debt more arduous (World Bank, 2015).

The Case for Deterrence

Criminal law protection of creditors' rights is likely to help effectively to reduce the cases of smuggling or wasting money by debtors, as well as incentivising profitability with loaned funds. For this reason, the law will sanction fraudulent behaviour by debtors, whenever that would undermine the security of creditors and their assets. We submit this is the central focus of the criminal law protection of creditors. Otherwise, lacking the pressure coming from criminal sanctions, debtors might be induced unduly to delay or refrain settling their debts. This sort of situation creates a climate of mistrust between creditors and debtors that can have negative spillovers on credit provision. For instance, traders might refrain from entering economic transactions of various kinds (on grounds of being less able to command credit), which would ultimately damage economic growth. Another negative spillover would be restraint on the part of foreign investors in entering the UAE market, which would keep the UAE on the periphery of the world economy.

The lack of criminal law protection for creditors might skew debtors' perception of acceptable ways of 'stretching' creditors' prerogatives (moral hazard), and therefore enhance the scope for violations in creditors' rights. For instance, debtors might refuse or delay payments in situations that might border on fraud or wasting of loaned assets. It is in order to deter cases of negligent or reckless risk-taking by distressed debtors that Emirati lawmakers have opted for a specific offence of negligent bankruptcy that carries a penalty of two-year imprisonment (Art.

201/6 of the UAE Bankruptcy Law). In comparative perspective, the 1969 Iraqi Criminal Code equally envisaged this deterrence rationale, when it opted for extending bankruptcy proceedings not only to insolvent debtors, but also to those who might otherwise have sought to conceal part of their assets (Iraqi Ministry of Justice, 1969): by attracting the same consequences as outright bankruptcy, the strategy of concealment was being made less enticing-a change that makes sense from a deterrence perspective.

Considerations such as these help appreciate the potential for deterrence in the criminal law protection of debtors-discouraging cavalier attitudes towards payment delays or refusals. Hence, general and private deterrence are particularly prominent reasons underpinning the norms that will be examined below.

The Various Instances of Criminal Offence against Creditors under UAE Law

Having seen the general principles underpinning the criminal law protection of creditors in the UAE, this section turns to reviewing the main types of offences contemplated by the UAE Bankruptcy Law and, in some isolated cases, still in the UAE Criminal Code and the UAE Law on Civil Transactions. The offences discussed further below criminalise certain acts, when those are perpetrated by the debtor towards the creditor. In each case, they exemplify aspects of the debtor's conduct that the legal system subjects to criminal penalties, on grounds of the damage suffered by the creditor.

Misappropriation of Mortgaged Movable Property

Federal Law No. 20 of 2016 concerning the mortgaging of movable properties as security for debts (UAE Mortgage Law) has brought an important novelty to debt financing. According to Kirton and Watson (2018), the mentioned law brings a welcome change for creditors, both inside and outside the UAE, by ushering in the possibility of receiving credit secured by moveable assets. It specifically makes it possible to mortgage assets, without the creditor having to take physical possession, and with the mortgage holding through any subsequent transactions involving the mortgaged assets-upon registration in the UAE Movable Collateral Registry.

In view of this, let us consider more closely the case of a debtor receiving either a sum of money or goods on credit from his or her creditor. We can further imagine the debtor providing moveable collateral to obtain this form of credit. However, the UAE Mortgage Law does not require that the debtor transfer possession of the mortgaged assets. This means, therefore, that debtors might be inclined to both mortgage a moveable asset, and at the same time to dispose of it (say, by selling it on to earn additional funds) by taking unfair advantage of their enduring possession. This is the one case where fraudulent behaviour by the debtor is sanctioned in the UAE Criminal Code, at Article 406. That article reads as follows:

> *"Shall be sentenced to the penalty prescribed in the preceding article, whoever embezzles, or attempt to do so, a movable property that he pledged as bailment for a debt owed by him or by others."*
>
> *"The owner appointed guardian on his movables, seized by judicial or administrative order, shall be subject to the same penalty should he embezzle any of it (UAE Ministry of Justice, 2019)."*

Interestingly, the use of the term 'embezzle' might lead one to argue that this offence is a form of fraud, and yet it features in the section of the UAE Criminal Code devoted to breaches of

trust-this indicates that the UAE lawmakers were more concerned with preventing breaches of trust between users and providers of funds, rather than on the fraudulent element that might be present in the debtor's actions.[1]

Regardless of terminological nuance, this provision applies to moveable assets belonging to the debtor him-/herself or to a third party, and which were mortgaged to allow the debtor to obtain credit. The mere attempt to dispose of mortgaged assets-even when not successful-will be punishable under Article 406 of the UAE Criminal Code. The penalties for this sort of offence range up to a maximum of two years of imprisonment, or to a fine equal to AED 20,000.

By punishing this sort of behaviour, the UAE legal system seeks to deter debtors' attempts to misappropriate mortgaged assets-which distressed debtors might be tempted to do-in order to circumvent their creditor's efforts to recoup sums owed to him or her. In order to discourage this sort of behaviour, the foregoing provisions do not just apply to debtors who act in a private capacity, but also to the behaviour of debtors acting on behalf of a business.

Concealment or Destruction of Commercial Books Attesting to Illegal Operations

Commercial books provide a track record of debtors' and creditors' financial transactions during the tax year. In this sense, they both capture financial transactions systematically, as well as affording the basis for the determination of businesses' fiscal liability (Fourtin, 2013).

Whenever debtors act in a business capacity, it is customary that they keep a track record of their obligations vis-à-vis third parties in their books. Correct bookkeeping allows creditors to obtain information on their debtors' business through legal means. Instead, whenever a debtor conceals or destroys these documents, such a move makes it substantially harder to track and prove a debtor's obligations towards his or her creditors. In the worst-case scenario, concealing or destroying[2] commercial books may make it materially harder for the creditor to prove the existence of the obligation. Other aspects of the debt that may be proven through the debtor's commercial books are the amount and the temporal extension of a particular credit (Fourtin, 2013).

In view of this, Article 197/1 of the UAE Bankruptcy Law deems this conduct to be fraudulent in the event of bankruptcy, and attaches to it a penalty of imprisonment of up to five years. Fraudulent bankruptcy is that situation in which the debtor intentionally harms his or her creditors with the intention to withhold any payments owed to them (Malik, 1992).

Albrecht et al. (2011) observe how, in US bankruptcy cases, the concealment of debtors' books is a common fraudulent scheme. In this sense, the UAE legal system follows widespread practice in criminalising the concealment or destruction of a decisive form of prof against the debtor. Clearly, this is also a safeguard that's only in place vis-à-vis debtors acting in a business capacity, since they alone are under an obligation to keep commercial books.

Embezzlement of Assets to Harm Creditors

Article 197/2 of the UAE Bankruptcy Law sanctions with imprisonment of up to five years the embezzlement of assets by the debtor, with the intent to cause harm to the creditor. Crowell (2018) suggests that the word *"embezzlement*" raises three possible sets of questions: whether assets are being rightfully disposed of by the person who does so; whether the intent of the person disposing of any assets diverges from the purpose for which they have been entrusted

to him or her; and whether such intent might be inferred from (and proven through) the circumstances of the acts of disposal. In light of this, it is useful to clarify that, for the purposes of Article 197/2 of the UAE Bankruptcy Law; "*embezzlement*" does not refer to misappropriation of assets owned by others without their consent. Instead, this offence is limited to the debtor's disposal of his or her assets to subtract them from creditors' interventions. This can include such behaviour as smuggling, spending, transferring, or surrendering it to others (Malik, 1992).

Concealment of Assets

Another possible move that distressed debtors might undertake is to conceal their assets. This can be done by either trying to hide their existence, or by claiming that they do not belong to them (Abdel-Fattah, 1999). This, to prevent creditors from recouping their dues against those assets. Article 197/2 of the UAE Bankruptcy Law punishes this conduct with up to five years' imprisonment, as well as qualifying the debtor's insolvency as an instance of fraudulent bankruptcy.

This offence is a useful complement to the previous one, and covers all acts by the debtor to hide his or her properties and so avoid paying his or her debts. Crowell (2018) shares anecdotal evidence of a bankrupt debtor in the United States, who tried to hide *"$350,000 in cash, a country chalet, a 1932 Ford hot rod, and a 50-item weapon collection"*. This type of behaviour is particularly hurtful to the business credit market, as it amounts to a misrepresentation of a debtor's state of distress.

Representation of Fictitious Revenue or Debt and Acts of Speculation

Representing fictitious revenues is another type of conduct debtors might undertake to ward off creditors. This can involve such acts as backdating invoices, or even simulating a trail of payments in their favour (Putra, 2010). At other times, a debtor might disclaim that he or she owes any outstanding payments to the creditor (Warda, 2011). Article 197/3 of the UAE Bankruptcy Law contemplates this specific case, and additionally qualifies the debtors' bankruptcy as fraudulent when such acts are found. Additionally, Article 197/3 punishes with imprisonment of up to five years the debtor acting in a business capacity, who files for bankruptcy by representing that his or her assets are weighed down by many debts, when that is not the case. It is worth noting that this rule does not extent to the debtor acting in a personal capacity, for whom it remains an option to claim default on debts by representing a condition of excessive debt exposure. While any such representations will not be effective towards creditors in civil law terms, they will not carry criminal consequences.

Article 201/6 of the UAE Bankruptcy Law also states that a debtor acting in a business capacity is deemed bankrupt by default, when he is found spending large amounts of money in speculative activities-including gambling and fraud-to the detriment of his or her creditors. This is particularly significant, especially since distressed debtors might engage in such behaviour to such an extent as to cause significant damage to their creditors' interests.

Selling Assets below Market

Another possible offence that debtors might commit is to engage in *"fire sales"* of their remaining assets to ward off creditors and delay bankruptcy proceedings and debt restructuring. Sales to pay off debt only work when they occur at a profit or-at least-at face value, if only to transform properties into liquid assets.

However, *"fire sales"* at below market prices only attract criminal sanctions if they are accompanied by intent to harm the creditors. In that case, Article 199/3 of the UAE Bankruptcy Law determines that a debtor is to be deemed bankrupt, and that he or she might be subject to imprisonment for up to two years or a fine of up to AED 60,000. The extent to which 'fire sale' assets fall below the market price isn't of primary concern. What matters is the debtor's conduct, and the aim to harm creditors. This is another instance where the goal of deterrence against conduct that potentially increases creditors' losses can be noticed quite clearly (Baroudi, 2008).

Prohibition to Increase Debt Exposure to Harm Creditors

Article 199/3 of the UAE Bankruptcy Law criminalises those acts undertaken by a debtor, which increase his or her exposure, such as borrowing funds or issuing securities. These acts harm creditors by delaying the time in which it will become evident that the debtor is insolvent and bankruptcy proceedings might be initiated. This offence applies to debtors acting in a business capacity, and it aims to deter behaviour by the debtor that would delay a declaration of bankruptcy and, with it, a transparent process for paying off creditors (Al-Sayed, 2010).

Prohibition against Preferential Treatment of Creditors

Article 199/2 of the UAE Bankruptcy Law also reins in another potentially harmful act by a distressed debtor. Namely: the preferential payment of a particular creditor (e.g. someone particularly active in claiming his or her dues), which distracts funds from the orderly satisfaction of other outstanding creditors in bankruptcy proceedings. The aim of such a provision is to secure certain minimal conditions of fairness that, if unfulfilled, would destabilise the credit market in the long run. This is another instance where the protection of creditors under criminal law deters behaviour that would undermine more largely trust in the market for the supply of credit.

The same rationale underpins Article 200/4 of the UAE Bankruptcy Law, which can be regarded as a catchall prohibition, proscribing the preferential treatment of one creditor over others after the declaration of bankruptcy. In this case, the offence is phrased more broadly than simply paying one debtor over others, and includes other advantages (e.g. agreeing to set aside a particular asset as collateral for one particular credit). For this type of offence, which again aims to promote the fair treatment of all creditors, the Bankruptcy Law establishes a penalty of imprisonment up to one year or a fine of up to AED 30,000.

Provision of Services in the Interest of Others without Payment

Another occasion in which debtors might harm creditors comes up whenever they are asked to provide services to the benefit of third parties, and they do so without asking for a suitable remuneration. This is precisely the situation envisaged by Article 200/2 of the UAE

Bankruptcy Law. For example, a debtor may not commit to procure large supplies or to provide maintenance work to third parties without suitable payment. Therefore, when a debtor acts on such commitments, he or she will be deemed fraudulently bankrupt, and will be punishable by imprisonment for a period not exceeding one year, or subject to a fine of up to AED 10,000.

Protection from Debtors' Untraceability through Changes of Residence

Article 409 of the UAE Law on Civil Transactions criminalises debtors' changes of residential address, when they occur unbeknownst to creditors. This is in order to curtail debtors' attempts to have creditors lose their traces. Still, the named provision falls short of fulfilling its objective, because it does not name a deadline by which debtors ought to notify creditors of a change in residence. A conservative interpretation of this rule might deem a change of residence akin to a criminal offence from the start, when creditors aren't informed immediately. It would have been wiser to, perhaps, state a clear timescale for notification, for example one week from the change in address. Even though this norm is found in the Law on Civil Transactions, it carries the same penalty as for fraud, and it therefore belongs in a review of criminal law protection of creditors' interests.

It is worth noting that this norm, by speaking of the address of physical residence, is addressed primarily to debtors acting in a personal capacity. It might also apply to debtors acting in a business capacity, whenever a change in their personal residence address might occur with the goal to elude creditors of prevent them from attacking certain assets, and so forego the payment of debts.

Extortion of Settlements or Debt Restructuring by Means of Fraud

Article 197/4 of the UAE Bankruptcy Law punishes the debtor acting in a business capacity with imprisonment of up to five years, when it is ascertained that he or she induced the settlement or restructuring of debts through fraudulent means. However, since its promulgation, it seems that this particular offence has not yet formed the focus of judicial proceedings in the UAE.

Disparities in the Deterrence of Moral Hazard by Debtors

In light of the previous analysis of legislation, a useful criterion-for assessing the robustness and efficacy of the criminal protection of creditors-has to do with the difference in legislative treatment between debtors acting in a personal capacity, and debtors acting in a business capacity. This, in turn, is mirrored in the distinction between lenders providing personal credit, and lenders providing business credit. If one looks at the foregoing provisions through this lens, then significant imbalances come to the surface. Indeed, most of the time it is only business creditors that are the beneficiaries of criminal law safeguards against debtor abuse. Apart from the prohibition against misappropriating mortgaged assets, and against changing residential address without informing creditors, the bulk of acts that debtors might undertake for harming creditors are only proscribed to debtors acting in a business capacity. However, if one considers the goal of deterrence, it seems reasonable to provide a comparable level of security to the credit market by closing the gap between personal and business lending.

On this basis, it would be advisable to ensure that the following acts might also carry criminal sanctions, even when undertaken against providers of personal credit, with the intention of causing harm to their interests:

1. Concealing of material and immaterial assets to prevent creditors' satisfaction;
2. Destruction, in whole or in part, of assets to subtract them from creditors;
3. Transferral, in whole or in part, of assets to the debtor's ascendants, descendants, spouses, or relatives to the fourth degree-including by means of sale or donation;
4. Endorsement of fictitious debts to impede, delay, or impair the right of creditors to obtain fulfilment of their dues;
5. The fictitious inflation of debt exposure, which decreases the prorate fulfilment of outstanding debts that multiple creditors might obtain through judicial proceedings.
6. Spending large amounts of money on gambling, or other speculative transactions, whilst receiving creditors' demands for payment;
7. Undertaking any other acts that reduce the amount of assets creditors might attack;
8. Attempts to have the debt cancelled, when these entail illegal means;
9. Any other detrimental acts that undermine the rights of creditors to seize the debtor's assets.

This, we submit, would enhance deterrence against moral hazard by debtors, without leaving a gap for debtors representing to act outside of a business purpose. The foregoing provisions, which mirror similar ones already found in the UAE Bankruptcy Law, could feature as part of an amendment to the UAE Criminal Code.

CONCLUSION

This article has undertaken a comprehensive review of the legislation put in place by the UAE to deter hazardous conduct on the part of distressed debtors, to the detriment of his or her creditors. A key guiding principle of the foregoing analysis is consideration of the extent to which the relatively new Emirati legislation on bankruptcy-along with other provisions scattered in other legislative sources-addresses the goal of deterrence of moral hazard by debtors, particularly at those junctures when they might be under pressure to attempt brazen moves, by laying out an appropriate range of sanctions. This, we have argued, helps reinforce trust in the credit market, which is particularly important in a developing economy like the UAE.

Our main conclusion is that, while many of the reviewed norms do fulfil the goal of deterrence, an important flaw remains in connection to moral hazard by debtors on personal- rather than business-loans. And yet, given that it seems unreasonable to have a tightly supervised business credit market alongside a more lax personal credit market, one significant recommendation issuing from our analysis is to upgrade the Criminal Code by introducing a number of offences against fraudulent debtors, even when those act in a non-business capacity.

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