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Judicial Settlement as a Preventive Mechanism against the Financial Distress of Joint-Stock Companies under Algerian Law

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Abstract:
A joint-stock company is regarded as the ideal model of capital companies due to the legal implications arising from its financial nature. It is also considered the largest type of company in terms of the volume of shares issued to form its capital through either public or private subscription. Given the importance of this type of company in establishing the economic infrastructure of states, upon which economic investment and its continuity toward sustainable development subsequently depend, it has become imperative for the Algerian legislator to provide a legal mechanism capable of rescuing joint-stock companies from financial distress whenever it occurs and preventing them from reaching bankruptcy, which ultimately leads to their dissolution.

Judicial settlement is considered the legal mechanism proposed to protect joint-stock companies from bankruptcy resulting from temporary financial distress. This raises the following questions: To what extent is the judicial settlement mechanism effective in ensuring the continuation of the activities of a financially distressed joint-stock company? Can the judicial settlement system be applied to all types of financial distress affecting joint-stock companies, or is it limited to a specific type of financial distress that can only be addressed through judicial settlement? These questions are examined in this article entitled: "Judicial Settlement as a Preventive Mechanism Against the Financial Distress of Joint-Stock Companies under Algerian Law."

Keywords: Joint-stock company, financial distress, judicial settlement, restructuring, effectiveness.

Introduction

A joint-stock company is one of the capital companies recognized under Algerian law, founded on financial consideration and primarily intended to invest in large-scale commercial projects. This makes it an effective contributor to national economic development and social stability through the substantial employment opportunities it provides. The significance of a joint-stock company lies in the fact that it constitutes a financial source for the public treasury through the taxes and fees imposed upon it, serves as a provider of employment opportunities for job seekers, and represents a fundamental component of the state's economic infrastructure. Furthermore, with its evolution into a multinational company, a joint-stock company inevitably contributes to shaping the balance of international power through the ideological influence it exerts in favor of the states for which it operates and whose principles it supports.

Accordingly, if modern economies seek to attach great importance to the strategic management of joint-stock companies and regard them as a fundamental economic base capable of ensuring sustainable national development, then the legislation of such states must necessarily establish legal and judicial mechanisms that enable joint-stock companies to overcome the temporary financial distress they may encounter during the course of their activities. This can be achieved by introducing preventive legal mechanisms that protect them from any financial difficulties that may threaten their existence and ultimately lead to their dissolution.

While there is a general consensus that the financial distress of a joint-stock company negatively affects the economy of the state, given the significant contribution of such companies to both the national economy and public finances, there is also broad agreement on the necessity of establishing effective legal mechanisms capable of addressing any financial distress experienced by joint-stock companies.

For this reason, the Algerian legislator, like legislators in many countries around the world, has established a legal framework governing the incorporation and proper management of joint-stock companies. It has also adopted the judicial settlement system as a preventive mechanism to ensure the continuity of a joint-stock company's activities when it experiences financial distress during the conduct of its business.

The judicial settlement system has been widely applied to numerous joint-stock companies affected by financial distress arising from various circumstances. This system has enabled such companies to resume their commercial activities after settling creditors' rights through a judicial composition that resulted in the payment of all outstanding debts. This strategic alternative, which has become an urgent necessity for rescuing joint-stock companies from bankruptcy a coercive measure and an exceptional solution compared with restoring a company's normal commercial activities raises the following questions: To what extent is the judicial settlement mechanism effective in ensuring the continuation of the activities of a financially distressed joint-stock company? Can the judicial settlement system be applied to all types of financial distress affecting joint-stock companies, or is it limited to a specific type of financial distress that can only be addressed through judicial settlement?

To further address the above research problem, the following subsidiary questions are proposed:

- Does the Algerian legislator prescribe specific conditions for applying the judicial settlement mechanism to a financially distressed joint-stock company?
- Is judicial settlement applied only once when a joint-stock company experiences financial distress, or is it a judicial mechanism from which the company may benefit whenever financial distress arises and circumstances require it?
- Can a judgment granting judicial settlement be reviewed after its issuance if developments arising during its implementation demonstrate that the joint-stock company may recover from financial distress before the effects of the judicial composition have been fully exhausted?

To answer the main research problem and the above questions, this study adopts the analytical method and is structured into two main sections. The first section examines the concepts of judicial settlement and financial distress in relation to joint-stock companies by defining the judicial settlement system, distinguishing it from amicable settlement and bankruptcy, examining the conditions and procedures governing a joint-stock company's eligibility for judicial settlement in cases of financial distress, and defining financial distress and identifying its forms in joint-stock companies. The second section analyzes the consequences of applying the judicial settlement system to financially distressed joint-stock companies and evaluates the effectiveness of its legal provisions. The study concludes with a conclusion presenting the main findings and recommendations, as outlined below:

Section One: Conceptual Framework of Judicial Settlement and Financial Distress
First Branch: The Concept of Judicial Settlement
Second Branch: The Meaning and Causes of Financial Distress in Joint-Stock Companies
Section Two: The Consequences of Applying the Judicial Settlement System to Financially Distressed Joint-Stock Companies and Its Effectiveness
First Branch: The Consequences of a Joint-Stock Company's Benefiting from Judicial Settlement
Second Branch: The Effectiveness of the Legal Provisions Governing the Judicial Settlement System in Addressing the Financial Distress of Joint-Stock Companies
Conclusion

Section One: Conceptual Framework of Judicial Settlement and Financial Distress

Before examining in detail the legal provisions governing the judicial settlement system applicable to joint-stock companies affected by financial distress, it is necessary to clarify the concepts of both the judicial settlement system and the cases of financial distress that may affect a joint-stock company. These issues are discussed in the following two branches.

First Branch: The Concept of Judicial Settlement

Defining the concept of judicial settlement requires first examining its doctrinal definition in order to clarify its academic meaning and distinguish it from related concepts that may overlap with it in meaning or purpose. This is discussed as follows.

First: Definition of Judicial Settlement and Its Distinction from Related Concepts

Judicial settlement is a legal mechanism that allows the conclusion of a settlement agreement between a debtor and a creditor in commercial transactions before a court, which approves the agreement.[1] Are there doctrinal definitions that more precisely define the academic meaning of the judicial settlement system and distinguish it from related concepts that overlap with it in meaning or purpose? This issue is examined in the following points.

1. Doctrinal Definition of Judicial Settlement

Judicial settlement has been defined as the procedure available to a trader who has ceased paying his debts, where the trader's business is capable of continuing through a settlement with his creditors.[2] It has also been defined as an agreement concluded between the debtor and his creditors and approved by the court, under which the debtor undertakes to repay his debts, either in whole or in part, immediately or within specified time limits, after which he is discharged

[1] The composition agreement or composition contract is defined by the Algerian legislator as: "An agreement between the debtor and his creditors, whereby the latter agree to grant time for the payment of debts or to reduce part thereof." See: Article 317(4) of the Algerian Commercial Code.

[2] See: Mostafa Kamal Taha, Commercial Law (Commercial Papers, Commercial Contracts, Banking Operations, Bankruptcy), University Publications House, Beirut, 1999, p. 506.

from his obligations toward them and the proceedings are terminated[1]. Judicial settlement has likewise been defined as a legal system aimed at restoring a debtor engaged in commercial activity, whether a natural or legal person, to the management of his business after the necessary safeguards have been observed and implemented with the assistance of a judicial trustee.[2] Based on the foregoing definitions, judicial settlement may be defined as a settlement agreement concluded between the debtor and the body of creditors, approved by the majority of the creditors, ratified by the court, and implemented under judicial supervision.

The following general characteristics of judicial settlement may also be identified:

- Judicial settlement is a preventive mechanism against bankruptcy. A debtor benefiting from the judicial settlement system may continue managing his commercial business with the assistance of a judicial trustee, who facilitates the settlement between the debtor and the creditors.
- Judicial settlement is a collective procedure conducted between the debtor and the majority of the creditors, who vote in favor of approving the judicial settlement for the benefit of their debtor.
- Judicial settlement is a commercial legal system provided for under the Commercial Code and governed by its provisions. It was established for the benefit of an honest but unfortunate trader.

2. Distinguishing Judicial Settlement from Related Concepts

The concept of judicial settlement overlaps with the concepts of amicable settlement and bankruptcy. Accordingly, the differences between judicial settlement and each of these concepts are discussed as follows.

A. Distinguishing Judicial Settlement from Amicable Settlement: Judicial settlement differs from amicable settlement in that the former is concluded with the approval of the majority of the body of creditors, whereas the latter requires the unanimous consent of all creditors. Furthermore, judicial settlement constitutes a judicial composition, whereby the court approves the terms of the settlement agreement, while an amicable settlement is an out-of-court agreement concluded between the debtor and the body of creditors. In addition, judicial settlement is carried out in accordance with specific procedures prescribed by the Commercial Code, which will be discussed later, whereas amicable settlement is not subject to the same procedural requirements.

B. Distinguishing Judicial Settlement from Bankruptcy: Judicial settlement differs from bankruptcy in that its purpose is to enable the debtor to continue managing his commercial business by facilitating the repayment of debts owed to the body of creditors and overcoming financial distress. Bankruptcy, on the other hand, aims to terminate the bankrupt debtor's commercial activity through the liquidation of the company's assets and the judicial settlement of its debts. Judicial settlement and bankruptcy also differ in terms of their legal conditions and procedures.

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[1] See: Ali Jamal El-Din Awad, Commercial Law: Commercial Contracts, Commercial Papers, Banking Operations, Dar Al-Nahda Al-Arabiya, Egypt, 1989, p. 501.

[2] See: Rached Rached, Commercial Papers, Bankruptcy, and Judicial Settlement under Algerian Commercial Law, National Office for University Publications, Algeria, 4th ed., 2004, p. [page number not provided].

Second: Conditions and Procedures for Concluding a Judicial Settlement in Favor of a Joint-Stock Company

The Algerian legislator has made the application of the judicial settlement system, and consequently the benefit of a financially distressed joint-stock company from it, subject to specific legal conditions and procedures, which are explained below.

1. Conditions for a Joint-Stock Company to Benefit from the Judicial Settlement System

According to the general conditions established by the Algerian legislator for applying the judicial settlement system between the debtor and the body of creditors, a joint-stock company may benefit from judicial settlement upon fulfilling the following conditions:

A. The Joint-Stock Company Must Have Ceased Paying Its Debts

Article 215 of the Algerian Commercial Code requires that a debtor seeking to benefit from the judicial settlement system must be in a state of cessation of payment of commercial debts arising from the exercise of commercial activity. The debtor must also file a declaration of this situation within 15 days of the occurrence of the cessation of payments.

Accordingly, once a financially distressed joint-stock company ceases to pay its due and undisputed commercial debts even if only a single debt is involved it is required to declare its state of cessation of payments before the territorially competent court and submit an application for judicial settlement pursuant to Article 217 of the Algerian Commercial Code. It is advisable for the company to initiate this application before the competent court prior to any legal action being brought against it by its creditors, so as not to lose its status as a debtor acting in good faith.

The court may also, on its own initiative, commence judicial settlement proceedings after hearing the debtor joint-stock company, in accordance with Article 216(2) of the Algerian Commercial Code.

As a consequence of the declaration submitted by the financially distressed joint-stock company, the court issues an expedited decision either approving the closure of the schedule of debts or confirming the existence of a dispute between the joint-stock company and its creditors.[1]

Accordingly, the mere cessation by a joint-stock company of the payment of its debts does not constitute an effective cessation of payments unless it is confirmed by an expedited judicial decision. This is expressly provided for in Article 225 of the Algerian Commercial Code, which states: "Neither bankruptcy nor judicial settlement shall result from the mere cessation of payments unless a judicial ruling declaring such cessation has been issued."[2]

The rationale behind this requirement established by the Algerian legislator is that a debtor's cessation of payment of commercial debts does not necessarily indicate financial insolvency. In other words, a joint-stock company's failure to pay its debts does not always imply that it

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[1] See: Article 314 of the Algerian Commercial Code, op. cit.

[2] See: Mohamed El-Sayed El-Fiqi, Commercial Law: Bankruptcy, Commercial Contracts, Banking Operations, Halabi Legal Publications, Lebanon, 2010, p. 48.

lacks the financial resources necessary to satisfy those debts; rather, the company may cease payment despite having sufficient financial assets.[1]

In this regard, legal scholars point out that adopting the concept of cessation of payments aims to preserve the stability of commercial transactions and strengthen the credit system upon which they are based. This objective is achieved by requiring commercial debtors to fulfill their obligations when they fall due, regardless of whether they are in a state of financial solvency or financial difficulty.[2]

Likewise, the continued payment by a joint-stock company of its due debts, despite experiencing financial distress, does not constitute a cessation of payments.

It should also be noted that the joint-stock company must have ceased paying a debt that is commercial either by its nature or by virtue of its commercial character, provided that the debt is due and payable, certain, and free from dispute.

The burden of establishing the cessation of payments rests with the court, which determines its existence at the first hearing. Under Article 247(3) of the Algerian Commercial Code, the court may not set the date of cessation of payments more than 18 months prior to the judgment.

The court may, within the limits prescribed by Article 247 of the Algerian Commercial Code, revise the date of cessation of payments by means of a subsequent decision following the judgment ordering judicial settlement.

This means that, once the schedule of debts of the financially distressed joint-stock company has been definitively closed, the court may no longer alter the date of cessation of payments, which then becomes final and binding upon the body of creditors.[3]

B. No Criminal Judgment Declaring the Joint-Stock Company Guilty of Fraudulent or Negligent Bankruptcy

The judicial settlement system requires that the commercial debtor act in good faith in order to benefit from its provisions.

Accordingly, a criminal judgment against a financially distressed joint-stock company declaring it guilty of fraudulent bankruptcy or negligent bankruptcy constitutes a bar to benefiting from the judicial settlement system. Such a judgment demonstrates that the company has failed to comply with the obligations imposed by the Commercial Code, including maintaining creditors' confidence in commercial credit transactions, keeping commercial books in a proper and regular manner, complying with commercial registration requirements, and paying taxes and fees due to the public treasury.

In this regard, some scholars consider that a person found guilty of either fraudulent or negligent bankruptcy is deemed to have acted dishonestly by resorting to fraudulent practices and deceptive schemes concerning the company's capital, recording fictitious entries in its accounting books, concealing part of its assets in bad faith, or deliberately transferring it’s real

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[1] See: Ahmed Mahrez, The Bankruptcy System under Algerian Law, 2nd ed., publisher not specified, Algeria, 1980, p. 26.

[2] See: Ali Al-Baroudi, Commercial Papers and Bankruptcy, University Publications House, Egypt, 2002, pp. 258–259.

[3] See: Baligh Abdel Nour Hatem, "The Concept of Cessation of Payments in the Bankruptcy System," Damascus University Journal of Economic and Legal Sciences, Vol. 27, No. 1, 2011, p. 532.

property to other estates. Criminal bankruptcy, therefore, reflects the situation of a trader who has ceased paying due debts as a result of acts intentionally committed to prejudice creditors.[1]

C. Good Faith of the Financially Distressed Joint-Stock Company and Its Misfortune

For a financially distressed joint-stock company to benefit from the judicial settlement system, it must demonstrate good faith in all of its dealings and establish that the financial distress it has experienced resulted from misfortune and circumstances beyond its control.

Misfortune, in this context, means that the commercial debtor has ceased paying debts that have become due for reasons beyond its control, which it could neither foresee nor avoid.[2]

2. Procedures for Concluding a Judicial Settlement Agreement

In addition to the legal conditions required by the Algerian legislator for a financially distressed joint-stock company to benefit from the judicial settlement system, the law also prescribes procedural requirements that must be observed for the judicial settlement to be valid. These include deliberation by the body of creditors in a general meeting and approval of the judicial settlement agreement by a numerical majority, as explained below.

A. Deliberation by the Creditors in a General Meeting

The organization of creditors into a general meeting facilitates the determination and classification of their claims according to priority and seniority. It also ensures equality and transparency among creditors in asserting their claims.

This is provided for in Article 317 of the Algerian Commercial Code, which states:

> "Where the debtor has been admitted to judicial settlement, the supervising judge shall summon the creditors whose claims have been admitted within the period prescribed in Article 314, by means of a notice published in newspapers or sent individually by the bankruptcy trustee. If a composition is proposed, the notice shall indicate that the meeting is also intended to conclude a composition between the debtor and the creditors."

This principle is also expressly affirmed in Article 349 of the same Code, which provides:

> "Upon the declaration of bankruptcy or the conversion of judicial settlement into bankruptcy, the body of creditors shall be constituted."

B. Approval of the Judicial Settlement by the Numerical Majority of the Body of Creditors

Approval of the judicial settlement by the numerical majority of the body of creditors is a highly significant procedural requirement, as the voting process reflects the consent of the majority of creditors to the composition and to the legal consequences arising from the judicial settlement system.

This is provided for in Article 318 of the Algerian Commercial Code, which states:

> "A composition shall be concluded only with the approval of the numerical majority of creditors whose claims have been finally or provisionally admitted, provided that they represent two-thirds of the total amount of the debts. The claims of creditors who do not participate in the vote shall nevertheless be counted in determining the required majority in number and in the amount of the debts. Voting by correspondence shall not be permitted."

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[1] See: Sheikh Khaled bin Masoud Al-Rashoud, journal published by the Ministry of Islamic Affairs and Endowments, Riyadh, No. 11, 2013.

[2] See: Aziz Al-Akili, Explanation of Commercial Law in Bankruptcy and Preventive Composition: A Comparative Study, International Scientific Publishing and Distribution House, Amman, 2003, p. 329.

Second Branch: The Meaning and Causes of Financial Distress in a Joint-Stock Company

Under Algerian law, a joint-stock company is one of the commercial companies founded on financial consideration and is therefore susceptible to financial distress. Financial distress is, in general, an economic concept that has its own academic definitions within the field of economics. Some of these definitions, together with the causes of financial distress in the context of joint-stock companies, are discussed below.

First: Definition of Financial Distress

Financial distress has been defined as a state of financial imbalance affecting a commercial company as a result of the inadequacy of its resources and capabilities to meet its obligations within a short period of time.[1]

It has also been defined as the stage at which an enterprise experiences serious financial difficulties that bring it very close to the point of being declared bankrupt, whether such difficulties consist of its inability to meet its obligations toward third parties or the accumulation of successive losses that compel it to suspend its activities from time to time.[2]

Financial distress has likewise been defined as a situation in which a company suffers from a liquidity crisis that renders it unable to meet its current or short-term obligations, despite possessing fixed assets that cannot readily be converted into liquid funds to enable the payment of its debts. Moreover, the financial distress of a company is not an immediate or instantaneous outcome; rather, it is a condition that precedes financial failure through successive stages without necessarily leading to it.[3]

Accordingly, a comprehensive definition of the financial distress of a joint-stock company may be formulated as the temporary financial inability of a joint-stock company to pay its due debts, which does not amount to bankruptcy and may be attributable to a variety of causes.

It should also be noted in this regard that there is a distinction between the financial distress of a joint-stock company and its financial failure. Financial distress is temporary in nature, whereas financial failure is complete.

Second: Causes of Financial Distress in a Joint-Stock Company

The financial distress of a joint-stock company does not occur suddenly; rather, it develops through several stages and is, in all cases, associated with one or more common causes that inevitably lead to its occurrence. A careful examination of the causes of financial distress affecting joint-stock companies reveals that some are of a legal nature, others arise from political circumstances and force majeure, while others are economic in nature. These causes are explained as follows.

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[1] See: Hala Bassam Abdullah Al-Ghussein, The Use of Financial Ratios to Predict Corporate Financial Distress: An Applied Study on the Construction Sector in Gaza, Master's Thesis in Business Administration, Faculty of Commerce, Islamic University of Gaza, June 2004, p. 22.

[2] See: Sherif Reihan, "Financial Distress: Stages, Causes, Methods, and Treatment Procedures," Journal of Social and Human Sciences, No. 16, June 2007, p. 30.

[3] See: Hazem Mahfouz Mohamed Nuweiji, "The Impact of Financial Distress on the Level of Accounting Conservatism in Financial Statements: An Applied Study on Non-Financial Companies Listed on the Egyptian Stock Exchange during the Period 2013–2015," Journal of Financial and Commercial Studies, No. 3, 2016, p. 13.

1. Legal Causes That May Lead to the Financial Distress of a Joint-Stock Company

In many cases, legislative measures may be enacted with the objective of restructuring a joint-stock company by transferring it from the public sector to the private sector. An example is the El Hadjar Complex, which was unable to adapt to the new restructuring process that transformed it from the public economic sector to the private economic sector, thereby resulting in its financial distress.

Similarly, legal provisions may be enacted to increase the tax base, thereby imposing a heavier tax burden on joint-stock companies. Financial distress may also result from legislation abolishing economic activities that had previously been lawfully conducted, such as the enactment of a law prohibiting the export of ferrous scrap. Such legislation may eliminate one of the subsidiary activities of a joint-stock company where its principal business depends on several complementary subsidiary activities, including the export of ferrous scrap.

2. Political Causes That May Lead to the Financial Distress of a Joint-Stock Company

Political circumstances may also result in the financial distress of a joint-stock company. For example, the occurrence of a political crisis may suspend the activities of a joint-stock company because it belongs to a state that has entered into a dispute with the state in which a branch of the parent company operates. Such circumstances may place the company in a difficult position and lead to temporary financial distress, which usually ceases once the political crisis comes to an end.

3. Economic Causes of Financial Distress

Economic factors are considered the most common causes of financial distress affecting joint-stock companies worldwide. These causes include the following:[1]

- Poor strategic planning in the management of the joint-stock company and its business operations.
- Exposure to intense competition resulting from competing companies' use of advanced production technologies that the joint-stock company does not possess or is unable to acquire.
- Failure to establish effective credit policies enabling the joint-stock company to recover its receivables from third parties in a timely manner.
- Failure to maintain commercial books regularly, thereby preventing the proper recording of the company's assets and liabilities.
- International financial crises and the sudden increase in the cost of the inputs required for the joint-stock company's operations.
- The emergence of economic alliances and conglomerates of joint-stock companies that dominate the supply and demand market.
- The withdrawal of certain shareholders and the removal of their shares from the joint-stock company.

[1] See: Ezzat Hani Ezzat Abu Shahab, The Effectiveness of the Kida Model in Predicting Financial Failure in Joint-Stock Companies Listed on the Amman Stock Exchange, Middle East University, Faculty of Business, Jordan, June 2018, p. 20.

4. Security-Related Causes of the Financial Distress of a Joint-Stock Company

Security disturbances within a state, such as protests, wars, or fires, may also cause a joint-stock company to experience financial distress. If such security conditions are resolved promptly, financially distressed joint-stock companies operating in those states may be able to recover.

Section Two: The Consequences of Applying the Judicial Settlement System to a Financially Distressed Joint-Stock Company and Its Effectiveness

The application of the judicial settlement system to a joint-stock company experiencing financial distress gives rise to a number of legal consequences. These consequences, as well as the extent of their effectiveness, are discussed below.

First Branch: The Consequences of a Joint-Stock Company's Benefiting from Judicial Settlement

When a joint-stock company benefits from a judicial settlement concluded by the majority of the body of creditors, a number of legal effects arise in its favor. These effects are intended to remedy the company's financial distress and restore it to normal business operations. They include the following:

First: Compliance by the Joint-Stock Company with the Terms of the Judicial Settlement under Judicial Supervision

The first consequence of admitting a financially distressed joint-stock company into the judicial settlement system is its strict obligation to comply with the terms of the judicial composition in relation to all creditors on an equal basis. The company must also refrain from entering into legal transactions that would unjustifiably dissipate its assets, such as making donations or gifts to third parties.

This consequence may be inferred from the legal effects that arise when the judicial settlement system fails to rescue the financially distressed joint-stock company.

Second: Rescheduling the Repayment of the Joint-Stock Company's Debts and Allowing It to Continue Managing Its Assets

One of the principal consequences of a financially distressed joint-stock company's benefiting from the judicial settlement system is the rescheduling of its debts by establishing new repayment dates agreed upon with the body of creditors in a manner that serves the purpose of the judicial composition.

This is provided for in Article 246 of the Algerian Commercial Code, which states:

"A judgment declaring bankruptcy or ordering judicial settlement shall render debts that are not yet due immediately payable with respect to the debtor."

The rescheduling of the repayment dates of the joint-stock company's debts does not mean that the repayment periods are completely extinguished, as some scholars have suggested. Rather, it means that the repayment schedule is reorganized by fixing new maturity dates that are appropriate to the financial condition of the distressed joint-stock company and that facilitate its recovery.

Moreover, the rescheduling applies only to the debts owed by the company and does not affect the company's financial claims against third parties. Such claims remain due according to their original terms, and the company retains the right to pursue their recovery.

The joint-stock company also retains the right to continue managing its assets pursuant to Article 277 of the Algerian Commercial Code, which provides:

"In the case of judicial settlement, the debtor may, with the assistance of the bankruptcy trustee and the authorization of the supervising judge, continue operating his commercial and industrial enterprise."

Third: Suspension of Individual Actions and Enforcement Proceedings

Another important consequence of a financially distressed joint-stock company's benefiting from judicial settlement is the suspension of individual legal actions and enforcement proceedings.

This effect is derived from Article 245 of the Algerian Commercial Code, which provides:

"A judgment declaring bankruptcy or ordering judicial settlement shall result in the suspension of all individual actions brought by members of the body of creditors. Accordingly, from the date of the judgment, all enforcement measures, whether against movable or immovable property, initiated by creditors shall be suspended ..."

The purpose of this legal effect is to ensure equality among the body of creditors in asserting their claims and enforcing their rights against the assets of the joint-stock company.

Second Branch: The Effectiveness of the Legal Provisions Governing the Judicial Settlement System in Addressing the Financial Distress of Joint-Stock Companies

The Algerian legislator introduced the judicial settlement system as an exceptional preventive mechanism for the benefit of joint-stock companies, given their significant role in the country's economic and social development. A joint-stock company may benefit from this system only by complying with strict procedures that, at the same time, safeguard the rights of the body of creditors, who constitute the most important party in the judicial settlement system.

An examination of the rules governing the application of the judicial settlement system under Algerian law reveals that this system is not effective in all cases of financial distress affecting joint-stock companies. Its effectiveness is therefore not absolute, but rather depends on the joint-stock company's compliance with the conditions and requirements of judicial settlement throughout the period of its implementation.

The effectiveness of the judicial settlement system in addressing the financial distress of joint-stock companies may be explained as follows:

First: The Possibility of Rescinding the Judicial Composition Agreement from Which the Joint-Stock Company Benefited

This legal rule is provided for in Article 340 of the Algerian Commercial Code, which permits the rescission of the judicial settlement granted to a financially distressed joint-stock company whenever one of the creditors proves that the company has failed to fulfill all of its obligations toward that creditor.

Such a legal measure may expose the joint-stock company to inevitable bankruptcy, ultimately resulting in its dissolution.

Accordingly, the judicial settlement system under Algerian law is a strict legal mechanism. It produces positive outcomes for joint-stock companies that fully comply with all of its conditions and procedures by enabling them to overcome financial distress and resume their normal business activities. Conversely, it has adverse consequences for companies that fail to observe its requirements, as the judicial settlement system ultimately brings their commercial existence to an end.

Second: The Liability of the Guarantors Who Guaranteed the Joint-Stock Company under the Judicial Settlement Agreement

The rescission of the judicial settlement agreement results in the calling upon the guarantors who guaranteed the joint-stock company at the time the judicial composition was concluded before the court, thereby rendering them liable alongside the company's own financial liability. This measure adversely affects the company's reputation in the business community and may ultimately lead to its inevitable disappearance from commercial life.

Third: The Inability of the Joint-Stock Company to Benefit from a New Judicial Settlement Agreement Following the Rescission of the First

Once the initial judicial settlement agreement has been rescinded, the joint-stock company is no longer entitled to benefit from a new judicial settlement agreement. The rescission of the first agreement reflects the court's firm conviction that the company is no longer suitable for a further judicial composition capable of remedying any future financial distress, even if such distress is minor.

Accordingly, the existence of this legal rule means that a joint-stock company is afforded only one opportunity to benefit from the judicial settlement system and must thereafter avoid any circumstances that could justify the rescission of that settlement.

Conclusion

The present study on "Judicial Settlement as a Preventive Mechanism Against the Financial Distress of Joint-Stock Companies under Algerian Law" has led to the following findings and recommendations:

- Financial distress is a negative phenomenon in the life of a joint-stock company. It may result from known or unforeseen circumstances and crises, placing the company in an unstable position and rendering it temporarily unable to pay its due debts. In such cases, the company may benefit from the judicial settlement system, which remains an optional remedy that the company may request from the competent court and which enables it to continue managing its capital and commercial activities.
- The judicial settlement system applies to commercial debtors acting in good faith, whether they are natural or legal persons. Accordingly, a joint-stock company falls within the scope of the judicial settlement system under Algerian law by virtue of its status as a commercial trader.
- The liabilities of the guarantors remain suspended throughout the period during which the judicial settlement is in force. Should the judicial settlement be converted into bankruptcy proceedings, the guarantors become liable, and the body of creditors is entitled to pursue them for payment of their claims and to invoke any security rights granted in their favor.
- Joint-stock companies should adopt one of the modern mathematical models developed for predicting corporate financial distress, as such models may help prevent companies from reaching the stage where judicial settlement becomes necessary.

- The judicial settlement system suspends bankruptcy proceedings against the joint-stock company, provides creditors with assurances that their claims will be satisfied in accordance with the judicial composition agreement, and spares them the lengthy procedures associated with recovering debts through bankruptcy proceedings.
- The judicial settlement system constitutes an effective mechanism for rescuing joint-stock companies from temporary financial distress. Consequently, it helps prevent the dismissal of employees and contributes to maintaining social stability within the state.
- Judicial settlement allows for the rescheduling of debt repayment through the extension of payment periods. However, if the judicial composition fails following the application of judicial settlement, the rescheduling is cancelled and the debts immediately become due and payable.
- The judicial settlement system grants the judiciary temporary supervisory authority over the implementation of the terms of the judicial composition and restricts the powers of the managers of the joint-stock company from undertaking any act that may prejudice the terms of the settlement agreement, such as making gifts or donations. This facilitates the company's recovery and provides it with an opportunity to resume its normal economic activities.
- A financially distressed joint-stock company benefiting from judicial settlement may not request a new judicial composition while the existing preventive composition is being implemented, so as to avoid undermining the partial discharge of debts granted under the settlement.
- The statutory time limits governing judicial settlement do not reflect the particular nature of commercial matters, which require expeditious procedures. Such time limits may further complicate and aggravate the financial distress of a joint-stock company. Accordingly, it is recommended that the Algerian legislator shorten the statutory periods applicable to litigation and the issuance of judicial decisions, taking into account the speed that characterizes commercial transactions.
- It is further recommended that the Algerian legislator establish a Guarantee Fund for the Financial Distress of Joint-Stock Companies, financed by the State, to provide loans to financially distressed joint-stock companies as a means of mitigating the consequences of financial distress. Practical experience has shown that, although distressed companies may seek financing from banks, banks may decline such requests due to insufficient guarantees. Such a fund would therefore provide an effective solution for rescuing these companies and restoring them to their normal business activities.

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