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The Effects of Annulment or Rescission on the Judicial Settlement Agreement

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Abstract:
This study examines the legal effects arising from the termination of a judicial settlement agreement, whether through the reopening of bankruptcy proceedings or through the consequences resulting from its rescission or annulment. It explains how bankruptcy proceedings resume, including the debtor's dispossession, the reconstitution of the body of creditors, and the possibility of declaring bankruptcy for a second time. The study also clarifies the limits of the retroactive effect of the termination of the judicial settlement, the continuation of certain guarantees granted to creditors, and the protection of prior transactions and bona fide third parties. Finally, it highlights the legislator's effort to strike a balance between safeguarding creditors' rights and preserving the stability of legal transactions.

Introduction

The judicial settlement system is not merely a mechanism that grants an insolvent trader an opportunity to overcome financial difficulties; rather, it constitutes a critical stage through which the legislator seeks to preserve economic activity while ensuring that creditors' rights are not prejudiced. However, this objective may not be achieved in all cases, as circumstances may arise that render the continuation of the settlement impossible, either because the debtor has failed to fulfill the obligations undertaken or due to the discovery of facts affecting the validity of the settlement from its inception. In such cases, the judicial settlement is terminated, giving rise to legal consequences that place the parties in a legal position different from that which existed before the conclusion of the settlement.

The termination of a judicial settlement results in the reactivation of a number of legal rules that had been suspended during the period in which the settlement was in force. Bankruptcy proceedings resume their legal course, the bankruptcy trustee regains his powers, and the body of creditors is reconstituted in a manner that safeguards their collective interests. The effects of such termination may also extend to the declaration of the debtor's bankruptcy for a second time, provided that the legal requirements are satisfied. This demonstrates that the termination of a judicial settlement is not merely the cessation of an existing agreement but rather a turning point that rearranges the legal positions of all the parties involved.

Conversely, the legislator did not allow the effects of the termination of the judicial settlement to extend indiscriminately to all prior legal acts. Instead, emphasis was placed on preserving the stability of legal transactions and protecting rights acquired by bona fide third parties. Accordingly, the principle of the non-retroactive effect of rescission or annulment was adopted within specific limits, while maintaining certain guarantees afforded to creditors. This reflects the legislator's intention to strike a balance between the need to protect commercial credit and the necessity of maintaining confidence in legal transactions without exposing them to instability whenever a judicial settlement comes to an end.

Research Problem

To what extent does the termination of a judicial settlement reactivate the legal effects of bankruptcy, and how successful has the legislator been in reconciling the protection of the rights of the body of creditors with the preservation of the stability of legal transactions concluded prior to the rescission or annulment of the settlement?

Research Hypothesis

This study is based on the hypothesis that the termination of a judicial settlement is not limited to bringing its future effects to an end; rather, it entails the reactivation of the rules governing bankruptcy and the legal consequences arising therefrom, while preserving certain legal positions that were lawfully established prior to the rescission or annulment, thereby achieving a balance between the interests of creditors and the requirements of transactional stability.

Research Methodology

This study adopts the analytical method by examining and analyzing the legal provisions governing the termination of judicial settlements and their legal implications. It also employs the comparative method, where appropriate, to highlight the similarities and differences between Algerian legislation and selected comparative legal systems. In addition, doctrinal opinions and judicial precedents are utilized to interpret the relevant legal provisions and illustrate their practical application.

Structure of the Study

Given the nature of the subject, the study is divided into two main sections:

Section One: Reopening Bankruptcy Proceedings

First Requirement: Dispossession of the Bankrupt from the Administration of His Assets.

- First: Prohibiting creditors from pursuing individual enforcement proceedings
- Second: The bankruptcy trustee's resumption of his duties.

Second Requirement: Reconstitution of the Body of Creditors.

Third Requirement: Declaration of the Debtor's Bankruptcy for a Second Time.

Section Two: Legal Effects Arising from the Termination of the Judicial Settlement

First Requirement: Absence of the Retroactive Effect of the Termination of the Judicial Settlement.

- First: Continuation of the security established in favor of the body of creditors.

Second Requirement: Validity of Legal Transactions Concluded Prior to Rescission or Annulment.

- First: Protection of bona fide third parties.
- Second: Exceptions to the validity of legal transactions concluded prior to rescission or annulment.

Section One: Reopening Bankruptcy Proceedings

Upon the rescission or annulment of the judicial settlement, the bankruptcy proceedings are reopened, and the bankrupt debtor is once again deprived of the right to manage and dispose of his assets. The debtor remains restricted in dealing with his property, and any dispositions he undertakes cannot be invoked against the creditors whose claims arose prior to the confirmation of the settlement. Such acts include, for example, mortgaging or selling his immovable property, or disposing of his assets, since these actions affect the body of creditors and may prevent the debtor from fulfilling the obligations agreed upon as a condition for granting the settlement. This also results in the reconstitution of the body of creditors. If the debtor fails to perform the obligations stipulated in the settlement concluded with the creditors, he is deemed to have ceased paying his new debts owed to the new creditors in the reopened bankruptcy proceedings.

First Requirement: Dispossession of the Bankrupt from the Administration of His Assets

The principle of dispossession is one of the fundamental principles governing the bankruptcy system. It is clearly reflected in the deprivation of the bankrupt, from the date of the bankruptcy judgment, of the right to administer all assets that are due and all assets that subsequently devolve upon him. This principle is provided for under Article 216 of the Egyptian Commercial Code and Article 443 of the French Commercial Code[1]. It is well established that dispossession is not confined to the administration of the bankrupt's assets but also extends to their disposition and to litigation concerning them. The bankrupt is deprived of the right to administer, dispose of, and litigate concerning his assets from the date of the judgment declaring bankruptcy, without the need for any additional procedure, such as registration or publication. This is evident from the wording of Article 216 of the Commercial Code[2]. Accordingly, the relevant date for the application of the principle of dispossession is the date on which the bankruptcy judgment is issued. From that date onward, the acts of the bankrupt debtor are unenforceable against the body of creditors, which comes into existence by operation of law immediately upon the issuance of the bankruptcy judgment. Consequently, legal acts performed by the bankrupt after the issuance of the judgment cannot be invoked against the body of creditors, whereas acts performed before the judgment remain enforceable against them, subject to the possibility of avoiding transactions concluded during the suspect period.

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[1] Salmani Al-Fadil, Bankruptcy in Algerian Legislation, Doctoral Thesis in Legal Sciences, Tizi Ouzou, Algeria, 2017, p. 220.

[2] The effect of depriving the bankrupt of the right to manage, dispose of, and litigate regarding his assets begins directly from the date of the issuance of the judgment declaring his bankruptcy, without the need to take any additional measures such as publication of the bankruptcy declaration or its announcement in the Official Gazette. This follows directly from the provisions of Article 216 of the Algerian Commercial Code, which states that "the issuance of the bankruptcy judgment is sufficient to initiate its legal effects on all concerned parties."

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The question therefore arises: To what extent can a distinction be drawn between the enforceability of the bankrupt debtor's legal acts performed before and after the judgment declaring bankruptcy under the principle of dispossession?

Scholarly opinion has differed in answering this question. One view holds that the decisive criterion for determining the unenforceability of the bankrupt's acts against the body of creditors is the day on which the bankruptcy judgment is issued. Accordingly, acts performed before the day of the judgment are enforceable against the creditors, whereas acts carried out during that same day are not enforceable, regardless of the precise moment at which the judgment was rendered. It is evident that this view broadens the temporal scope of the principle of dispossession by extending it to every moment of the day on which the bankruptcy judgment is issued. Although this approach seeks to provide greater protection for the body of creditors, it may prejudice bona fide third parties who concluded transactions with the bankrupt before the judgment was actually rendered, without knowledge of the pending bankruptcy proceedings or the possibility that the debtor might be declared bankrupt. In contrast, legal acts concluded prior to the issuance of the judgment remain enforceable against the body of creditors, unlike those performed thereafter. Accordingly, this solution is the one that is most consistent with the explicit wording of Article 216 of the Commercial Code.[3]

The judgment declaring the judicial settlement null and void or ordering its rescission results in the termination of its legal effects without the need for a new judgment declaring bankruptcy. Bankruptcy proceedings are therefore reopened, the bankrupt debtor is once again deprived of the right to administer and dispose of his assets, the body of creditors is reconstituted, and the bankruptcy trustee resumes the performance of his duties. The trustee may also affix seals to the bankrupt's assets. Debts that have already been verified and admitted are not subject to re-verification, and there is no basis for modifying the date of cessation of payments, while preserving the right to reject claims that have already been satisfied.

As for creditors whose claims arose after the confirmation of the judicial settlement, they are invited to submit their claims for verification. This is expressly confirmed by Article 343 of the Algerian Commercial Code[4]. Once the aforementioned procedures have been completed, all former and new creditors are summoned through the legally prescribed procedures. Deliberations are then held on whether to grant the bankrupt a new judicial settlement if the previous settlement has been terminated by rescission. However, if the settlement has been annulled, the conclusion of a new settlement is not permitted.

First: Prohibition of Creditors from Pursuing Individual Proceedings

The primary objective of bankruptcy law is to ensure the collective liquidation of the bankrupt debtor's assets so that creditors are treated equally and share in the bankruptcy estate proportionately to the amount of their respective claims, without competition among them. If

[3] Article 216 of the Commercial Code, which provides that “the judgment declaring bankruptcy results, immediately upon its issuance, in the removal of the bankrupt’s authority.”

[4] Article 343 of the Algerian Commercial Code provides that: “If the settlement is annulled or rescinded, the judicial administrator shall immediately inventory the securities, shares, and documents based on the previous list and with the assistance of the judge who placed the seals in accordance with Article 258, and shall prepare a list and supplementary balance sheet…”

each creditor were allowed to institute a separate action to recover his claim and, upon obtaining a judgment, proceed individually with its enforcement, the bankrupt debtor would become the target of numerous lawsuits and enforcement measures. Such a situation would undermine the objective of the bankruptcy system by encouraging competition among creditors over the debtor's assets.

On this basis, the Algerian legislator expressly established this rule in Article 245 of the Algerian Commercial Code[5]. This provision clearly limits individual actions and proceedings to ordinary creditors, whose competition would undermine the principle of equality, which constitutes the fundamental objective of bankruptcy law. Bankruptcy law seeks to protect the members of the body of creditors from one another by centralizing the administration and management of the bankruptcy estate in the hands of the judicial administrator (bankruptcy trustee), under the supervision of the delegated judge. In this manner, the consequences of bankruptcy are distributed fairly among all creditors, preventing financially stronger creditors from obtaining full satisfaction of their claims while leaving others without recovery. Moreover, certain categories of creditors are exempt from this rule. The wording of Article 245 of the Algerian Commercial Code is clear and unequivocal in indicating that the rule under consideration applies only to creditors who are members of the body of creditors, since competition among them would undermine the principle of equality, as previously noted on several occasions.

It should also be observed that, with respect to ordinary creditors, the suspension is not limited merely to the institution of new legal actions. Rather, the issuance of a bankruptcy judgment also suspends any pending individual action, prohibits its continuation, and precludes the initiation or continuation of any enforcement proceedings. This serves to uphold the principle of equality among creditors, as previously explained.

Second: Resumption of the Bankruptcy Trustee's Duties

Following the issuance of Ordinance No. 96-23 of 9 July 1996, the bankruptcy trustee became known as the judicial administrator. Article 4 of Ordinance No. 96-23[6] provides that the judicial administrator is appointed by the judgment ordering judicial reorganization or declaring bankruptcy from among the persons registered on the list prepared by the National Committee. This Committee consists of a judge from the Supreme Court as Chair, a judge from the Court of Appeal, a trial judge from the court, a judge from the Court of Accounts, a representative of the General Inspectorate of Finance, a professor of law, economics, or management, two experts in the economic and social fields, and three judicial administrators. The Minister of Justice

[5] Article 245 of the Algerian Commercial Code clearly and conclusively indicates that the persons concerned by the rule under discussion are the creditors who are members of the body of creditors, namely “ordinary creditors and creditors holding general preferential rights.” The same article expressly provides: “…all enforcement procedures shall be suspended from the date of the judgment, whether concerning movable or immovable property, by creditors whose claims are not secured by a special privilege, a possessory pledge, or a mortgage over such assets…”

[6] Ordinance No. 96-23 dated 9 July 1996 introduced substantial reforms to the provisions of bankruptcy and judicial settlement in Algeria, most notably changing the designation of the bankruptcy trustee to “judicial administrator.”

determines, on an annual basis, the list of judicial administrators prepared by the National Committee.

Only statutory auditors and experts specializing in the fields of real estate, agriculture, commerce, industry, and maritime affairs, who possess at least five years of professional experience in their respective fields, may be registered on the list of judicial administrators. Nevertheless, pursuant to Article 8 of the same Ordinance, the courts may, by way of exception, appoint judicial administrators from among persons possessing special qualifications without requiring them to be registered on the official list of judicial administrators, provided that they have not been prohibited from practicing any of the professions referred to in Article 6 above.

The judicial administrator acts, on the one hand, as the representative of the bankrupt debtor and, on the other, as the representative of the body of creditors. The jurisdiction of judicial administrators extends throughout the entire national territory. In the performance of their duties, they may not simultaneously administer both judicial reorganization and bankruptcy proceedings, nor may they acquire any share or interest in the debtor's assets.[7]

Pursuant to Article 258 of the Algerian Commercial Code, the bankruptcy court orders the affixing of seals to the safes, lockers, registers, documents, movable property, and negotiable instruments belonging to the debtor. Where the bankrupt is a legal person composed of partners who are jointly and severally liable, the seals are affixed to the assets of each such partner. If the assets are located outside the territorial jurisdiction of the bankruptcy court, a notice is sent to the judge of the court within whose jurisdiction the debtor's assets are situated. Where the debtor has absconded or has concealed all or part of his assets, [8]the delegated judge may, prior to the issuance of the bankruptcy judgment, order the affixing of seals either ex officio or upon the request of one of the creditors.[9]

After excluding the items exempt from the affixing of seals, or those from which the seals are removed in accordance with Articles 260 and 261 of the Algerian Commercial Code, the bankruptcy trustee prepares an inventory of those items, as previously discussed in relation to the trustee's duties. The valuation of the assets is carried out in the presence of the delegated judge, who signs the inventory report. Where the debtor is a legal person, the judgment declaring bankruptcy or ordering judicial reorganization prohibits the partners or shareholders from transferring the shares or interests constituting their rights in the company without the authorization of the delegated judge.

The inventory of the bankrupt's assets is conducted after the bankruptcy trustee submits, within three (3) days, a request for the removal of the seals in order to commence the inventory procedures. The inventory is carried out in the presence of the debtor or after summoning him by registered letter. The bankruptcy trustee first verifies the existence of the items exempt from sealing as well as any perishable items that have been removed because they are liable to rapid deterioration. The trustee then prepares the inventory in two original copies, one of which is

[7] Article 2 of Ordinance No. 96-23 dated 9 July 1996, concerning the regulation of the profession of judicial administrators, Official Gazette of the People’s Democratic Republic of Algeria, No. 43, p. 4.

[8] See: Article 258, paragraph 2, of the Algerian Commercial Code, previous reference.

[9] See: Article 258, paragraph 3, of the Algerian Commercial Code, previous reference

immediately deposited with the registry of the court, while the other remains in the trustee's possession.[10]

In the performance of his duties, the bankruptcy trustee may seek the assistance of any expert or other person deemed suitably qualified. If the debtor dies before the inventory has been prepared or completed, the inventory is prepared or completed in the presence of the deceased's successors in title[11]. The Public Prosecution may attend the inventory proceedings or request access, at any time,[12] to the documents, registers, and records relating to the bankruptcy or judicial reorganization proceedings.[13]

Upon completion of the inventory in bankruptcy proceedings, the goods, cash, instruments evidencing rights, registers, documents, and movable property are delivered to the bankruptcy trustee, who assumes custody thereof by signing an acknowledgment entered at the foot of the inventory record.

The closing of the books and the preparation of the balance sheet are carried out after the completion of the inventory procedures. The bankruptcy trustee summons the debtor in order to close and examine his commercial books. If the debtor fails to appear, he is summoned by registered letter to submit his books within 48 hours.[14]

If the debtor does not prepare his balance sheet, the bankruptcy trustee shall immediately prepare it using the accounting books, documents, information, and records available to him, and shall promptly deposit it with the court registry during the month in which the judgment declaring bankruptcy or ordering judicial reorganization was issued.[15]

The bankruptcy trustee is also responsible for preparing a brief statement regarding the debtor's apparent situation, his financial position, and the reasons and circumstances that led to such situation. It should be noted that the debtor is required to submit the balance sheet before the judgment declaring his bankruptcy if he is the one who notified the competent court of his cessation of payments within fifteen (15) days from the date of such cessation.

If the debtor fails to submit the balance sheet, the judicial administrator must prepare it immediately. This is what is provided for under Article 256 of the Algerian Commercial Code.

Second Requirement: Reconstitution of the Body of Creditors

The reconstitution of the body of creditors is considered one of the most significant steps in judicial settlement procedures under Algerian law. This body is responsible for representing the collective interests of creditors during the judicial reorganization stage, ensuring their participation in making decisive decisions concerning the future of the debtor. This procedure constitutes a fundamental step in promoting transparency and protecting rights. It is established by the Algerian legislator under Law No. 03-01 relating to bankruptcy and judicial reorganization[16]. Pursuant to Article 216 of the Algerian Commercial Code, the supervising

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[10] See: Article 262 of the same Code.
[11] See: Article 263 of the same Code.
[12] See: Article 265 of the same Code.
[13] See: Article 266 of the same Code.
[14] See: Article 253 of the Algerian Commercial Code, previous reference.
[15] See: Article 256 of the same Code.
[16] See: Article 216 of Ordinance No. 75-59 dated 26 September 1975, Algerian Commercial Code, as amended and supplemented, previous reference.

judge appoints, simultaneously with the opening of judicial reorganization proceedings, a committee of creditors comprising representatives of the various categories of creditors (ordinary creditors and secured creditors).

A representative of the workers may also be appointed where justified. This committee is referred to as the "body of creditors." [17]The legislator has allowed the possibility of reconstituting this body when new circumstances arise or when a defect is identified in the initial representation of creditors. This is known as the "reconstitution of the body of creditors" upon the reopening of bankruptcy proceedings.

The body of creditors is reconstituted in certain cases, such as the discovery of new debts that were not previously declared, the emergence of creditors who did not participate in the original formation, or the existence of a suspicion of conflict of interest. The reconstitution requires the issuance of a reasoned order by the judge based on the request of the debtor, one of the creditors, or the bankruptcy trustee. The same principles applicable to the initial formation must be observed in the new formation, including fair proportional representation of the different categories.[18]

Among the most important functions of the body of creditors are reviewing the judicial settlement proposal, suggesting amendments, accepting or rejecting the plan, and monitoring the debtor's actions during the reorganization period. The decisions of the body are sometimes considered consultative; however, they may become binding when accompanied by the approval of the required numerical and financial majority in accordance with the law.

Despite the importance of the body of creditors, its practical application in Algeria still faces several challenges, including weak actual representation due to the failure to notify all creditors of their rights or weak coordination between judicial and economic authorities. In addition, there is an absence of certain procedural guarantees ensuring the independence of the body. Therefore, it is recommended to reconsider the mechanisms of notification and creditor participation, simplify the procedures relating to the formation of the body, and guarantee the right to challenge its composition.[19]

The new formation constitutes an important tool for restoring balance in cases of procedural or substantive defects and ensures the effectiveness of judicial proceedings within the context of bankruptcy.

It can be concluded that the effectiveness of the body of creditors within the Algerian system depends on three pillars: first, transparency in the declaration and notification of debts; second, fairness in the representation of different categories; and third, effective judicial supervision that balances the interests of creditors with the debtor's right to economic recovery.

From comparative experiences, it can be observed that certain systems, such as the French and American systems, grant the body of creditors a central role in approving the final plan while

[17] Saidanī Mohamed, Bankruptcy and Judicial Settlement Procedures in Algerian Law, Dar Houma, Algeria, 2020, p. 241.

[18] Ben Dahmane Abdelkader, "The Legal Organization of the Body of Creditors in Algerian Legislation," Algerian Journal of Law, No. 12, 2021, p. 179.

[19] Abdel Hamid Al-Shawarbi, Commercial Law – Bankruptcy and Judicial Settlement, Dar Al-Nahda Al-Arabiya, Cairo, 2010, p. 245.

strengthening its legal and institutional independence. However, the Algerian system still requires further structural amendments to ensure the effectiveness of this formation.

The reconstitution of the body of creditors represents a sensitive stage in judicial proceedings and may constitute either a rescue mechanism or an additional complication, depending on the manner in which it is managed. Activating this procedure requires legal and administrative competence, awareness of the rights of the parties, and readiness to implement the principles of participatory justice.

In light of the foregoing, the Algerian legislator should work on strengthening the legal and logistical framework for the reconstitution of the body of creditors in order to achieve the objectives sought by the judicial settlement and the purpose behind establishing the body of creditors.[20]

Third Requirement: Declaration of the Debtor's Bankruptcy for a Second Time

The debtor's inability to perform the terms of the settlement concluded with the creditors places him in a state of cessation of payment of his new debts owed to the new creditors in the bankruptcy proceedings. Consequently, these creditors request the declaration of his bankruptcy in order to recover their claims, which results in the debtor being deprived of the right to manage and dispose of his assets. The former creditors do not have the right to request the declaration of the debtor's bankruptcy for a second time, in application of the principle of the unity of bankruptcy. Therefore, whoever requests the rescission of the settlement concluded between the debtor and the body of creditors and the reopening of bankruptcy proceedings must take into consideration the procedures that were completed before the settlement.

This leads to the combination of the first bankruptcy proceedings relating to the former creditors with the second bankruptcy proceedings relating to the new creditors, resulting in competition between the two categories of creditors over the new bankruptcy estate. As for the former creditors, they are included in these proceedings with all their claims if they have not received any part thereof. However, if they have recovered part of their claims, they are entitled only to the remaining portion. Nevertheless, they acquire priority and preference over the new creditors[21]. Accordingly, they recover their rights from the proceeds of the sale of the mortgaged immovable properties with priority over the other new creditors, since the date of registration of their rights precedes the date of registration of the new creditors' rights.[22]

As for the new creditors, they enter the bankruptcy proceedings with all their claims. Accordingly, the body of creditors in these proceedings consists of both former and new creditors. However, this procedure is considered a serious matter due to its contradiction with the objective and nature of protecting and guaranteeing creditors' rights. [23]Therefore, it requires the judicial administrator to obtain a decision from the body of creditors. The authorization must be issued in the presence of the delegated judge and approved by the majority of creditors.

[20] Hamad Sabri, Bankruptcy and Judicial Settlement in Comparative Legislation, Dar Al-Fikr Al-Jami'i, Alexandria, 2012, p. 211.

[21] Aziz Al-Akili, previous reference, p. 299.

[22] Said Bouchair, Commercial Law – Bankruptcy and Judicial Settlement, University Publications Office, Algeria, 2011, p. 221.

[23] Tarek Abdel Raouf, Saleh Rizk, The Legal Organization of Bankruptcy, 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo, 2007, p. 230.

This majority is achieved by the approval of three-quarters of creditors in number and three-quarters in value. The determining factor is not the number of creditors attending the meeting, but rather the number of creditors whose claims have been verified.

Accordingly, the decision to continue the bankrupt's business is taken with the continuation of the participation of ordinary creditors, as well as mortgage creditors and holders of special preferential rights, without resulting in the loss of their guarantees. If the assets of the bankruptcy estate are insufficient to satisfy the debts, these new creditors may claim the remaining amount of their claims from the creditors who approved the continuation of the bankrupt's business, excluding those who objected. They recover such amounts from their personal assets, not on a joint and several basis, but each according to the proportion of his claim in the bankruptcy estate.

If the debtor fails to perform the terms of the settlement as voted upon or agreed between him and his creditors, such failure may result from the agreed reduction of debts, their postponement, or the debtor's waiver of his own assets. However, such waiver may not affect the nature and characteristics of the debts, nor may it violate the principle of equality with other creditors. It may not also include a condition requiring the payment of shares to certain creditors, such as granting some creditors a larger share than others.

If the debtor fails to implement the debt reduction agreement, under which creditors waive a certain percentage of their claims and the debtor pays the remaining amount either in a single payment or in installments according to the agreement, the debtor becomes liable to have his bankruptcy declared due to his failure to comply with the agreed reduction, postponement, or waiver of debts.

However, if the creditors have waived the original maturity date in exchange for postponing the payment of debts, in accordance with Article 333 of the Algerian Commercial Code[24], which permits installment payment of debts, this period is not a judicial period but rather a contractual period granted by creditors to the debtor in consideration of the interests of both parties. This is also provided for under Article 671 of the Egyptian Commercial Code[25]. If the debtor fails to comply with this agreement, he is considered to have breached his obligations toward his creditors, and therefore becomes subject to a second declaration of bankruptcy due to his failure to fulfill the terms of the agreed settlement.

Likewise, if the settlement was accepted on the basis of the debtor's relinquishment of all or part of his assets and he fails to fulfill this obligation, his contractual commitments become a matter of distrust among all his creditors. This may lead them to bring an action for the declaration of his bankruptcy for a second time, as he is no longer considered worthy of the trust placed in him.

_The cessation by the debtor of payment of his new debts is provided for by the Algerian legislator through reference to Article 215 of the Algerian Commercial Code, which uses the expression "cessation of payment of debts," whether such debts are old or new. This represents the general meaning of non-payment or refusal to pay. Therefore, any trader who refrains from,

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[24] Hamad Mahyou, Commercial Law – Bankruptcy and Judicial Settlement, University Publications Office, Algeria, 2005, p. 24.

[25] Rached Rached, previous reference, p. 332.

refuses, or becomes unable to fulfill his debts becomes liable to have his bankruptcy declared for a second time after ceasing to pay his debts owed to his new creditors. It is not required, for the declaration of bankruptcy for a second time, that the debtor be unable to pay all of his debts; it is sufficient that he ceases payment of a single debt. The debtor may refuse to pay some debts while paying others. Once the court establishes that the debtor has ceased payment in the sense required for the declaration of bankruptcy, the necessary conditions are fulfilled.

_In conclusion, the declaration of a debtor's bankruptcy for a second time is one of the delicate issues in comparative legislation, as it raises questions relating to the extent of the legitimacy of repeated bankruptcy, its effects on the financial rights of the debtor and creditors, and the balance between protecting the market and encouraging economic initiative. The purpose of declaring the debtor bankrupt for a second time primarily lies in protecting confidence in commercial transactions and preventing the debtor from misusing the legal protection granted by bankruptcy.[26] When the debtor is declared bankrupt for the first time, he is granted an opportunity to reorganize his financial situation either through judicial settlement or through regulated liquidation. However, the debtor's return to bankruptcy for a second time indicates persistent failure or repeated financial mismanagement, which requires stricter supervision and the application of more severe legal sanctions.

The renewed declaration of bankruptcy constitutes a means of protecting the commercial environment from the risks associated with unreliable debtors. It aims to prevent the recurrence of losses suffered by other creditors.[27] Furthermore, the reopening of bankruptcy proceedings allows the judiciary and supervisory authorities to reassess the debtor's financial situation in light of new information and determine the extent to which manipulation or commercial fraud exists. In certain legal systems, such as French law, repeated bankruptcy is considered an aggravating circumstance that may lead to reducing the debtor's opportunities to benefit from judicial settlement or even depriving him of the right to practice...

Section Two: Effects Arising from the Termination of the Judicial Settlement

If one of the contracting parties fails to fulfill his obligation, the other contracting party, after serving notice of default, may demand the performance of the contract or its rescission. Accordingly, the bankruptcy proceedings are considered to remain in existence as if the judicial settlement had never commenced, which results in the absence of the retroactive effect of the judicial settlement. However, if a judgment is issued annulling or rescinding the settlement, the bankruptcy proceedings are reopened once again.

First Requirement: Absence of the Retroactive Effect of the Termination of the Judicial Settlement

If the general rule applicable to rescission and annulment provides that their effects extend to the past, then applying this rule would mean that the settlement is considered as if it had never existed. Consequently, the mortgage established in favor of the body of creditors would continue and regain its existence, serving the interests of the former creditors. However, the legislator feared that applying this rule would result in considering the acts performed by the

[26] Article 4 of the Saudi Bankruptcy Regulation, issued by Royal Decree No. (M/50) dated 28/05/1439 AH.

[27] Belhashemi Reda, The Legal System of Commercial Bankruptcy in Algeria, Dar Khalif, Algeria, 2021, p. 213.

debtor during the period between the confirmation of the settlement and its annulment or rescission as unenforceable against the body of creditors.

Therefore, the Algerian legislator provided in Article 345 of the Commercial Codethat the acts carried out by the debtor during this period remain valid unless they involve fraud. Accordingly, these acts are valid and enforceable, and may not be challenged except through the actio pauliana (creditors' avoidance action). Thus, the body of creditors in the reopened bankruptcy proceedings consists of two categories of creditors: former creditors and new creditors. If the former creditors have not received any of the benefits granted to them under the settlement agreement, they may participate in the new bankruptcy proceedings with all of their claims.

First: Continuation of the Mortgage Established in Favor of the Body of Creditors

This effect was established by the Algerian legislator under Article 335, paragraphs one and two, of the Algerian Commercial Code, which provides as follows: "The mortgage established[28] in favor of the body of creditors for payment shall remain, and the effects of the registration of the mortgage shall be limited to the amount determined by the court in the judgment approving the settlement."

The expression "mortgage" has traditionally been used to refer to the contract as a source of the mortgage right, as well as to the real right itself created by this contract. Therefore, its characteristics will be examined first as a contract and then as a subsequent real right.

Civil legislation has clearly expressed this characterization. Under the Algerian Civil Code, Article 882 provides that: "A legal mortgage shall only be established by virtue of an official contract, and it shall be registered as a real estate mortgage and guarantee the payment of a specific debt." This provision indicates that the mortgage is created on the basis of an agreement; however, it does not produce its legal effects unless it is registered in the land register, reflecting the real nature of the mortgage, which is linked to the property itself rather than to the person of the debtor.

Furthermore, Article 885 of the same Code provides that: "A legal mortgage shall have no effect between the contracting parties or against third parties except from the date of its registration in the land register." This confirms that the real nature of this right is not complete except through real estate registration.

Similarly, Article 1048 of the Egyptian Civil Code provides that: "A legal mortgage is a contract by which the creditor acquires, over an immovable property allocated for the payment of his

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[28] In the absence of a specific definition of the mortgage in the Algerian Civil Code, reference should be made to the general definition of possessory pledge, which the Algerian legislator adopted as a general concept applicable to all types of pledges, including real estate pledges. The Algerian legislator defined the possessory pledge in Article 948 of the Civil Code as follows: "A possessory pledge is a contract by which a person, as security for a debt owed by him or another, undertakes to deliver to the creditor or to a third party designated by the contracting parties an object over which the creditor acquires a real right enabling him to retain the object until the debt is satisfied, and to have priority over ordinary creditors and creditors subsequent to him in rank in obtaining his right from the price of the object, regardless of whose possession it is in."

The Egyptian Civil Code defines it in Article 1096 as follows: "A possessory pledge is a contract by which a person, as security for a debt owed by him or another, undertakes to deliver to the creditor or to a third party designated by the contracting parties an object over which the pledge creates a real right enabling the creditor to retain the object until the debt is satisfied and to have priority over ordinary creditors and creditors subsequent to him in rank in obtaining his right from the price of that object, regardless of whose possession it is in."

debt, a real right enabling him to obtain priority over ordinary creditors and creditors ranking after him in the satisfaction of his claim from the price of that property, regardless of whose possession it is in."[29] This provision essentially corresponds with the Algerian position, as it clarifies that the mortgage does not merely grant priority in payment but also includes the possibility of following the mortgaged property in the hands of third parties.

Under French legislation, Article 2393 of the French Civil Code defines the legal mortgage as a real right over immovable property that guarantees the creditor the recovery of his debt from the proceeds of its sale with priority over other creditors. This right is known as hypothèque,[30] and its registration in the land register is also required for it to become enforceable.

It is therefore clear from the foregoing that the real nature of the legal mortgage constitutes a structural element of this system, as it provides the creditor with strong protection that allows him not only to rely on a personal action against the debtor but also to directly enforce against the mortgaged property. This makes it more secure than personal guarantees and justifies its widespread use in real estate transactions and bank financing.

Second Requirement: Enforceability of Legal Acts Prior to Rescission or Annulment

The rule of the retroactive effect of rescission or annulment means that the contract is considered as if it had never existed from the moment of its conclusion. Consequently, its legal effects cease, and the contracting parties are restored to their original positions. However, this effect is not applied absolutely; rather, an exception is made for bona fide third parties who have acquired a right based on the contract before its rescission or annulment, as their legal position is protected in order to preserve the stability of transactions.

The issue of the enforceability of legal acts that preceded the judgment of rescission or annulment of a contract is considered one of the most prominent legal issues arising in the field of obligations, due to the apparent conflict it raises between the principle of the retroactive effect of judgments terminating a contract, on the one hand, and the requirements of transactional stability and the protection of bona fide third parties, on the other hand.

The general principle in contracts is that a judgment annulling or rescinding a contract restores the contracting parties to the position they occupied before the conclusion of the contract. This

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[29] Civil legislation has clearly expressed this characterization. Under the Algerian Civil Code, Article 882 provides: "A legal mortgage shall only exist by virtue of an official contract, and it shall be registered as a real estate mortgage and guarantee the payment of a specific debt." This provision indicates that the mortgage arises based on an agreement; however, it produces its legal effects only after registration in the land register, reflecting the real nature of the mortgage associated with the property rather than the person of the debtor. Furthermore, Article 885 of the same Code provides: "A legal mortgage shall have no effect between the contracting parties or against third parties except from the time of its registration in the land register." This confirms that the real nature of this right is completed only through real estate registration. Similarly, Article 1048 of the Egyptian Civil Code provides: "A legal mortgage is a contract by which the creditor acquires over an immovable property allocated for the payment of his debt a real right enabling him to obtain priority over ordinary creditors and creditors subsequent to him in rank in satisfying his right from the price of that property, regardless of whose possession it is in."

[30] The term "Hypothèque" in French means a real estate mortgage or a real security interest over immovable property. It is a legal system that enables the creditor to secure his debt through a real right over property owned by the debtor, while the property remains in the debtor's possession. However, if the debtor fails to fulfill the debt, the creditor may recover his claim through the public sale of the property and obtain payment from the sale proceeds.

implies the cancellation of all effects resulting from it with retroactive effect. However, this effect cannot be applied absolutely in all cases, especially when one of the contracting parties has acted on the basis of the contract before the issuance of the judgment, which may result in the creation of legal rights in favor of third parties, such as a person who purchased property from one of the contracting parties or mortgaged it based on that contract.

Within this framework, civil laws have regulated this interaction. The Algerian Civil Code provides in Article 102 that annulment restores the contracting parties to the situation preceding the conclusion of the contract, with the possibility of compensation if such restoration is impossible[31]. Although this provision expressly establishes the retroactive effect of annulment, the previous article provides that if the contract is rescinded, the contracting parties shall be restored to the position in which they were before the contract, and if this is impossible, the party shall be obliged to pay compensation. Furthermore, Article 101 provides that annulment produces the same effects as rescission, which confirms the unity of the legal effects between the two cases.[32]

In Egyptian legislation, this principle is established under Article 160 of the Egyptian Civil Code, which provides that rescission restores the contracting parties to the position they were in before the conclusion of the contract, and where restitution is impossible, compensation shall be awarded. This reflects the Egyptian legislator's adherence to the retroactive effect as a general principle in the rescission and annulment of contracts.

Under French law, Article 1229 of the French Civil Code, following the 2016 amendment, reaffirmed that rescission produces retroactive effects, as it restores the contracting parties to their original positions. This is consistent with the general philosophy of contractual justice upon which the French civil law system is based.[33]

In Germany, the German legislator has adopted the approach of restoring the previous legal situation of the contract upon its termination. However, this effect is not applied absolutely, as certain cases are excluded, most notably bona fide third parties who acquired rights based on the contract before its rescission or annulment. Their legal position may not be affected.

Moreover, in time-based contracts or contracts involving continuous performance, such as lease contracts, the rule may apply only with prospective effect, depending on the circumstances of the contract and the judge's assessment. Article 346 of the German Civil Code (BGB) [34]establishes the same principle, whereby rescission imposes on each party the obligation to return what they have received, representing a clear application of the retroactive effect.

Legal scholars in various legal systems consider this rule as one of the essential guarantees for achieving contractual justice, as it prevents one party from obtaining benefits from a contract that has been annulled or rescinded. However, its application remains subject to the discretion of the judge, who takes into account the nature of the contract and the possibility of restoring

[31] Article 102 of the Algerian Civil Code, previous reference.

[32] Articles 101 and 102 of the Algerian Civil Code, Official Gazette of the People's Democratic Republic of Algeria, No. 12, 1975.

[33] Code civil français, Article 1229, Ordinance No. 2016-131 dated 10 February 2016.

[34] BGB – Rückgewähr bei Rücktritt § 346.

the situation to its previous state without causing harm to either party or undermining the stability of transactions.

First: Protection of Bona Fide Third Parties

However, the legislator did not overlook the realities of practical life and the necessity it imposes to protect third parties who have dealt with one of the contracting parties in good faith. In such a case, third parties cannot be held responsible for the consequences of a contractual relationship to which they were not parties. This explains the tendency of legal scholars and courts to recognize the principle of the enforceability of legal acts preceding rescission or annulment whenever the conditions of protection are fulfilled, particularly the requirement of good faith.

Under French civil law, the legislator has expressly adopted this approach. Article 1178 provides that an annulable contract continues to produce its effects until it is annulled, and that annulment cannot be invoked against a bona fide third party who acquired rights based on this contract before the issuance of the judgment.[35] This constitutes a recognition of the principle of legal stability, particularly in the commercial environment, which requires speed in transactions and confidence in apparent legal situations.

In the same context, the Tunisian legislator has followed a similar approach by granting protection to a bona fide possessor of movable property, even if the source of possession was a contract that was subsequently annulled. This can be inferred from Article 489 of the Code of Obligations and Contracts, as the legislator distinguishes between the internal effects of the contract, which disappear retroactively, and the external effects relating to third parties, in which the criterion of good faith is taken into consideration.[36]

The general trend in comparative laws confirms that the purpose of a contract is not limited solely to regulating the relationship between its parties, but extends to its legal and social environment[37]. This requires a certain balance between the requirements of contractual justice and the necessities of legal security. The non-enforceability of prior legal acts may cause serious harm to third parties, especially when they have acquired their rights through a purely lawful manner without knowledge of the original dispute or the cause of annulment or rescission.

Therefore, the principle of the enforceability of legal acts preceding annulment or rescission does not constitute an exception to the rule; rather, it represents a natural response to the requirements of justice and the protection of legitimate expectations. Based on the foregoing, it can be stated that modern legal systems have adopted a flexible and balanced approach in dealing with the effects of rescission or annulment, whereby legal acts carried out by one of the contracting parties remain valid and continue to produce their effects toward bona fide third parties. This reflects an evolution in the perception of the contract as a regulatory instrument whose effects are not limited to its parties alone but extend to society as a whole.

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[35] Paragraph (1): If one of the parties withdraws from the contract in a valid manner, he must return what he has received in performance, as well as deliver what he has obtained as benefits resulting from it.

[36] Paragraph (2): Instead of restitution or delivery, compensation for value must be paid in the following cases: If restitution or delivery is impossible due to the nature of the thing received.

[37] Code civil français, Article 1178.

Article 489 of the Tunisian Code of Obligations and Contracts, previous reference.

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Distinguishing the Type and Timing of the Legal Act
The distinction between the type and timing of the legal act constitutes a central element in assessing the legality and enforceability of legal acts undertaken by the debtor, particularly in cases preceding the rescission of contracts or the opening of bankruptcy proceedings. The Algerian legislator has attached particular importance to this distinction, given its direct effects on the position of creditors and on the stability of financial transactions and contracts.

Second: Exceptions to the Enforceability of Legal Acts Prior to Rescission or Annulment
As a general rule, legal acts concluded by the debtor are enforceable against third parties, including creditors, provided that they satisfy their substantive and formal requirements. However, this rule is not absolute; rather, it is subject to exceptions in certain cases, particularly when the purpose of the act is to prejudice the rights of creditors or circumvent the general security established by law to protect their interests.

Within this context, the role of the judiciary and legislation appears in invalidating or rendering certain acts unenforceable despite their formal validity. The following are the main forms of exceptions that prevent the enforceability of legal acts:

- Gratuitous acts during the suspect period:

Gratuitous acts carried out by the debtor, such as gifts or releases from debts, are considered unenforceable against the body of creditors if they are concluded during the suspect period. This is because they do not provide any fair consideration and lead to the weakening of the debtor's financial assets without a clear economic justification.[38]

- Acts aimed at giving preference to one creditor over another:

If the debtor concludes an act that gives preference to a particular creditor at the expense of the other creditors, such as paying a debt that has not yet fallen due or granting a special security to one creditor without others, such an act shall not be enforceable if it was carried out during the suspect period or with the intention of harming the remaining creditors, in accordance with the principle of equality among creditors.[39]

- Acts tainted by collusion or bad faith:

If the creditor proves that the debtor concluded the act in collusion with a third party, or that the third party was aware that the act would result in harming the interests of creditors, the act shall be considered unenforceable against them, even if it was carried out for consideration.[40]

- Acts subsequent to the opening of bankruptcy or judicial settlement proceedings:

Under the law, the debtor is prohibited from carrying out financial acts after the opening of bankruptcy or judicial settlement proceedings, unless they are authorized by the delegated judge

[38] "The effects of a contract are not limited to the sphere of its direct parties but extend to its legal and social environment, which requires the achievement of a precise balance between considerations of contractual justice and the requirements of legal stability and security in society."
See: Abdel Razzaq Al-Sanhouri, Al-Wasit fi Sharh Al-Qanun Al-Madani, Vol. 1, Dar Al-Nahda Al-Arabiya, Cairo, 1998, p. 124.

[39] Article 216 of Ordinance No. 96-27 relating to bankruptcy, provides that gratuitous acts carried out by the debtor during the suspect period are considered unenforceable.

[40] Article 215 of the same Ordinance, allows challenging acts that give preference to a particular creditor if they were carried out before the judgment of bankruptcy or judicial settlement.

or carried out in accordance with what is permitted by law. Any act performed in violation of this rule shall be automatically considered unenforceable.[41]

- Simulated acts or acts lacking genuine consideration:

Acts that are intended merely to create an unreal appearance, such as a formal transfer of property or a fictitious sale, are considered unenforceable against third parties. The same applies to acts carried out without genuine consideration or for an undervalued consideration that conceals an intention to evade obligations or engage in manipulation.[42]

- Acts contrary to law or public order:

If an act violates mandatory legal[43] provisions or aims to circumvent the legal protection granted to creditors, it shall be considered void or unenforceable, depending on the circumstances, even if its form appears legally valid.[44]

Conclusion:

This study reveals that the termination of the judicial settlement does not merely represent the end of a legal procedure; rather, it constitutes a stage that produces significant effects that reshape the legal positions of the debtor and creditors. Once the settlement ceases to exist, the bankruptcy proceedings return to their course, and the competent bodies resume exercising their powers in a manner that ensures the protection of creditors' interests in accordance with the rules established by law. At the same time, the legislator has not overlooked the importance of maintaining transactional stability, as he has sought to avoid affecting the rights acquired by bona fide third parties before the termination of the settlement, in order to achieve a balance between protecting commercial credit and ensuring legal security.

Results:

- The study demonstrated that the termination of the judicial settlement leads to the restoration of the application of bankruptcy provisions and the revival of their legal effects.
- It was found that the reopening of bankruptcy proceedings requires depriving the debtor of the right to manage his assets, the return of the bankruptcy trustee to the exercise of his duties, and the reorganization of the body of creditors.
- It became clear that the legislator did not establish an absolute retroactive effect for the rescission or annulment of the settlement, taking into consideration the stability of legal relations and the protection of acquired rights.
- The study confirmed that the protection of bona fide third parties represents one of the fundamental guarantees that strengthens confidence in commercial transactions.

[41] Article 246 of the Algerian Civil Code, provides for the possibility of invalidating an act if fraud or collusion between the parties is established.

[42] Article 219 of Ordinance No. 96-27, provides that acts carried out after the opening of bankruptcy proceedings are not enforceable unless authorized by the judge.

[43] Article 188 of the Civil Code, establishes the principle of general security and allows creditors to challenge acts that weaken the debtor's financial assets.

[44] Article 98 of the Civil Code, provides that a contract is void if its subject matter or cause is unlawful or contrary to public order.

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- The study revealed that the legal regulation of the termination of the settlement seeks to achieve a balance between protecting creditors and preserving the stability of economic activity.

Recommendations:

- Reviewing certain legal provisions relating to the termination of the judicial settlement in order to achieve greater clarity and reduce differences in interpretation during application.
- Strengthening the role of the judiciary in unifying principles relating to the effects of rescission and annulment in order to achieve legal security.
- Developing legal mechanisms that encourage the rescue of distressed enterprises before reaching the stage of bankruptcy.
- Providing more effective protection for creditors without violating the rights of third parties who have dealt with the debtor in good faith.
- Benefiting from comparative legislative experiences in order to modernize the provisions of Algerian law in line with modern developments in the field of addressing corporate difficulties.

Footnotes:

1. Salmani Al-Fadil, Bankruptcy in Algerian Legislation, Doctoral Thesis in Legal Sciences, Tizi Ouzou, Algeria, 2017, p. 220.
2. The effect of depriving the bankrupt of the right to manage, dispose of, and litigate regarding his assets begins directly from the date of the issuance of the judgment declaring his bankruptcy, without the need to take any additional measures such as publication of the bankruptcy declaration or its announcement in the Official Gazette. This follows directly from the provisions of Article 216 of the Algerian Commercial Code, which states that "the issuance of the bankruptcy judgment is sufficient to initiate its legal effects on all concerned parties."
3. Article 216 of the Commercial Code, which provides that "the judgment declaring bankruptcy results, immediately upon its issuance, in the removal of the bankrupt's authority."
4. Article 343 of the Algerian Commercial Code provides that: "If the settlement is annulled or rescinded, the judicial administrator shall immediately inventory the securities, shares, and documents based on the previous list and with the assistance of the judge who placed the seals in accordance with Article 258, and shall prepare a list and supplementary balance sheet…"
5. Article 245 of the Algerian Commercial Code clearly and conclusively indicates that the persons concerned by the rule under discussion are the creditors who are members of the body of creditors, namely "ordinary creditors and creditors holding general preferential rights." The same article expressly provides: "…all enforcement procedures shall be suspended from the date of the judgment, whether concerning movable or immovable property, by creditors whose claims are not secured by a special privilege, a possessory pledge, or a mortgage over such assets…"
6. Ordinance No. 96-23 dated 9 July 1996 introduced substantial reforms to the provisions of bankruptcy and judicial settlement in Algeria, most notably changing the designation of the bankruptcy trustee to "judicial administrator."

7. Article 2 of Ordinance No. 96-23 dated 9 July 1996, concerning the regulation of the profession of judicial administrators, Official Gazette of the People's Democratic Republic of Algeria, No. 43, p. 4.
8. See: Article 258, paragraph 2, of the Algerian Commercial Code, previous reference.
9. See: Article 258, paragraph 3, of the Algerian Commercial Code, previous reference.
10. See: Article 262 of the same Code.
11. See: Article 263 of the same Code.
12. See: Article 265 of the same Code.
13. See: Article 266 of the same Code.
14. See: Article 253 of the Algerian Commercial Code, previous reference.
15. See: Article 256 of the same Code.
16. See: Article 216 of Ordinance No. 75-59 dated 26 September 1975, Algerian Commercial Code, as amended and supplemented, previous reference.
17. Saidanī Mohamed, Bankruptcy and Judicial Settlement Procedures in Algerian Law, Dar Houma, Algeria, 2020, p. 241.
18. Ben Dahmane Abdelkader, "The Legal Organization of the Body of Creditors in Algerian Legislation," Algerian Journal of Law, No. 12, 2021, p. 179.
19. Abdel Hamid Al-Shawarbi, Commercial Law – Bankruptcy and Judicial Settlement, Dar Al-Nahda Al-Arabiya, Cairo, 2010, p. 245.
20. Hamad Sabri, Bankruptcy and Judicial Settlement in Comparative Legislation, Dar Al-Fikr Al-Jami'i, Alexandria, 2012, p. 211.
21. Aziz Al-Akili, previous reference, p. 299.
22. Said Bouchair, Commercial Law – Bankruptcy and Judicial Settlement, University Publications Office, Algeria, 2011, p. 221.

23. Tarek Abdel Raouf, Saleh Rizk, The Legal Organization of Bankruptcy, 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo, 2007, p. 230.
24. Hamad Mahyou, Commercial Law – Bankruptcy and Judicial Settlement, University Publications Office, Algeria, 2005, p. 24.
25. Rached Rached, previous reference, p. 332.
26. Article 4 of the Saudi Bankruptcy Regulation, issued by Royal Decree No. (M/50) dated 28/05/1439 AH.
27. Belhashemi Reda, The Legal System of Commercial Bankruptcy in Algeria, Dar Khalif, Algeria, 2021, p. 213.
28. In the absence of a specific definition of the mortgage in the Algerian Civil Code, reference should be made to the general definition of possessory pledge, which the Algerian legislator adopted as a general concept applicable to all types of pledges, including real estate pledges. The Algerian legislator defined the possessory pledge in Article 948 of the Civil Code as follows: "A possessory pledge is a contract by which a person, as security for a debt owed by him or another, undertakes to deliver to the creditor or to a third party designated by the contracting parties an object over which the creditor acquires a real right enabling him to retain the object until the debt is satisfied, and to have priority over ordinary creditors and creditors

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31. Article 102 of the Algerian Civil Code, previous reference.
32. Articles 101 and 102 of the Algerian Civil Code, Official Gazette of the People's Democratic Republic of Algeria, No. 12, 1975.
33. Code civil français, Article 1229, Ordinance No. 2016-131 dated 10 February 2016.
34. BGB – Rückgewähr bei Rücktritt § 346.
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37. Code civil français, Article 1178.
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