

ASSESSING THE EFFECTIVENESS OF THE EGYPT'S RESTRUCTURING REGULATORY FRAMEWORK: PROBLEMS AND PROPOSALS

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Abstract -This article presents a new analysis of the role that the provisions for rescuing commercial enterprises from financial distress play in economic development, which itself is a demand for international financial bodies, notably the World Bank and the Organization for Economic Cooperation and Development, to improve the legal climate for foreign investments in Egypt. The discussion evaluates new solutions and tools that have been used in Egypt, their effectiveness and impact on avoid insolvency in light of the current economic crisis. Therefore, focused on restructuring to save commercial enterprises in accordance with the new Egyptian bankruptcy law to determine the effectiveness of its provisions in achieving the desired goal behind them, which is to help commercial enterprises get out of financial distress instead of declaring their bankrupt and that is through analysis and evaluation of the provisions contained in the new Egyptian Law. The article concludes by identifying seven recommendations that attempt to improve the newly implemented restructuring system in Egypt.

Keywords: Restructuring; Financial distress; Bankruptcy; Investors

INTRODUCTION

The existence of a legal regulation of measures to rescue enterprises from financial distress - especially commercial ones - has become a necessity and an important centerpiece on which the sustainable investment environment arises. Saving national and foreign commercial enterprises from financial distress and working to revive them as an alternative to declaring their bankruptcy and dismantling them for liquidation, will not deprive the national economy of the role of these enterprises in increasing the national products that support the national economy.¹

The increasing need to enhance the investment climate in our Arab countries and to avail markets to investors, makes it necessary to provide a right legal structure, not only to facilitate the process of entering the market for investors but also to ease exit from it, and in a manner that ensures the flow of investment movement within Arab countries. On top of the legal structure that encourages investment comes the presence of a law that regulates the procedures for rescuing distressed enterprises.² It is sure that the investment is higher in countries characterized by highly efficient bankruptcy system.³

¹ Véronique Legrand, Entrepreneur individuel à responsabilité limitée (EIRL) en difficulté, JurisClasseur Notarial Formulaire, fascicule.250, 15 mai 2011, Date de la dernière mise à jour 13 avril 2016, p.6.

² Catherine Kuchta Helling and John Sullivan, Establishing Corporate Governance in Developing, Emerging and Transition Economies, Journal of Finance and Trade, Part II, Issue 508, Egypt, August 2011, p.15.

³ Succurro, M. Bankruptcy systems and economic performance across countries: some empirical evidence. Eur J Law Econ 33, 101-126 (2012).



1. WHO ARE THE FINANCIAL DISTRESS ENTERPRISES?

The financial distress is a phase in which the business reaches a bad economic position because of the inadequacy of the various elements of production and makes it unable to continue its activities efficiently.⁴

In accordance with the insolvency act issued by the United Nations Commission on Trade Law (UNCITRAL) issued in 2005; The main purpose of the insolvency act is to establish an effective legal framework to address debtors' financial distress while achieving a balance between treating the defaulting company's debts as quickly and effectively as possible towards the interests of the various parties directly involved in the financial distress.⁵

The enterprises are distressed if facing difficulties in the market due to high operating and production costs and low profits under fierce competition, but they are salvageable and promoted, as they possess the basic ingredients for success, and these enterprises may be the cause of their faltering and shrinking market share due to economic, social or administrative factors, the most important of which are: The absence of a management capable of achieving successes despite the availability of its components, and the companies achieving regular losses due to the lack of sales to cover the costs as a result of the failure of the company's operational policies, with the inability to pay the debts and their benefits, as well as the old machinery, resort to under-developed technology, and the inflation of unproductive employment, weak production and marketing programs and the inability to develop products with increased competition between companies operating in the same sector.⁶

At the national level, the stumble of commercial enterprises in Egypt recently is due to the successive and rapid increases in the exchange rate of the US dollar, and the borrowing enterprises incurring additional costs, which led to many of them stumbling in paying their debts in foreign currency, and the customs authorities take the exchange rate mainly in Calculate customs duties; due to the successive fluctuations in the exchange rate, enterprises incurred additional unforeseen customs duties, which led to their failure. Tax problems are also among the reasons for the failure of enterprises in Egypt. Whereas the tax authority overestimated the activities of some enterprises and the accompanying old ability of these enterprises to pay the taxes imposed on them; Then, the accumulation of taxes owed by them for many years, which led to the failure of these enterprises eventually.⁷

Thus, commercial enterprises may enter the default phase without attributing their management to negligence or fraud, and with the complete absence of bad faith, and the matter is only returned to market depression or price volatility due to economic conditions or to impose restrictions on import and export or to change monetary policy; As happened in Egypt at the end of 2016, when the Central Bank made a decision to float the Egyptian pound against foreign currencies, or even unfortunately, which makes these companies worthy of legislative support, and to be taken by their hand to save them from their stumbling block, and to return it to its correct path. To achieve its economic goals, and to continue to exploit its activities efficiently and competently, and to preserve the rights of creditors and other interests related to its survival.⁸

⁴ Marie-Pierre Dumont-Lefrand, Procédure de sauvegarde, *JurisClasseur Commercial*, Date du fascicule, 31 janvier 2006, Date de la dernière mise à jour: 15 février 2017, Fasc. 2152, p.10.

⁵ The Legislative Guide to Insolvency Law, United Nations Commission on Commercial Law (UNCITRAL), New York, 2005, p.1.

⁶ Ashraf Tohami, Distressed Companies (The mean - The aim), *Journal of Economics and Accounting*, Issue 652, Egypt, January 2014, p.27.

⁷ Osama Hosni Mohamed, Legal Aspects of Bad Debts, a working paper submitted to the third scientific conference of Egyptian jurists entitled "Legal Aspects of Banking Operations", Egyptian Society for Political Economy, Statistics and Legislation, Egypt, December 19-20, 2002, p.5.

⁸ Hussein Al-Mahi, *Bankruptcy*, Dar Al-Nahda Al-Arabiya, Fourth Edition, Egypt, 2017, p.27.



2. DISADVANTAGES OF THE REPEALED EGYPTIAN BANKRUPTCY LAW

Recently, the problems raised by the practical reality of implementing the bankruptcy system in Egypt and all Arab countries have surfaced, especially the problem of the length and complexity of bankruptcy procedures, and the punitive culture towards stalled projects, in a way that harms the interests of the commercial enterprise and its creditors.⁹

The Organization for Economic Cooperation and Development (OECD) expressed this in its report issued by Egypt on the business climate development strategy in 2010 that Egypt's bankruptcy system does not consider any international standards approved in this regard, and it needs to be seriously amended to improve the legal climate for foreign investments.¹⁰

3. RESTRUCTURING OF COMMERCIAL ENTERPRISES

In February 2018, Egypt issued the Restructuring, Preventive Composition and Bankruptcy Law No. 11 of 2018, which came into effect on March 19, 2018. The Bankruptcy Law replaced Chapter 5 of the Trade Law No. 17 of 1997. The recent organization of the Egyptian legislature to conduct restructuring shows the relative change in its traditional view of bankruptcy by distancing itself from the abuse and defamation of the debtor's trade or management of the debtor's business, and by focusing more on the reorganization of enterprise to save it from the difficulties it faces.

3.1 The Concept of Restructuring of Commercial Enterprises

The Egyptian legislator briefly defined restructuring as "The procedures that assist the trader to get out of the financial and administrative turmoil", and some defined it as the design and development of innovative financial tools and mechanisms, and the formulation of creative solutions to enterprise financing problems. That is, the financial restructuring of enterprises is based on innovating new solutions to finance it, such as: preparing new financing formulas that suit enterprise conditions, as well as devising new investment mechanisms that reduce the costs of enterprise and increase its profits, such as: exploiting the intellectual property rights that enterprise owns, And dependence in enterprise management on modern technology.

The Egyptian legislator aims at restructuring commercial enterprises following Article (18) of new Bankruptcy law, to develop a plan for reorganizing the financial and administrative business of the trader, including how to exit from the stage of financial distress and repay his debts, with a sign of the proposed financing sources. The legislator believes that this goal can be achieved in several ways, including reevaluating the assets, restructuring the debts, including state debts, capital increase, increasing the internal cash flow, decreasing expenditure, and applying an administrative restructure if was necessary.

3.2 Application for Restructuring and its Legal Impact

All businesses have the right to apply to the bankruptcy department of the competent court to open the restructuring procedure if the legal requirements required by the legislator are met. In accordance with Article (2) of new Bankruptcy law, it is qualitatively competent to consider the application for the opening of the restructuring procedure of the First Instance Circuits of the Economic Courts, within the circuit of which the commercial domicile of the debtor or the headquarters of the company lies, shall have jurisdiction to hear the lawsuits that may arise out of the implementation of the provisions of this present law. If such headquarters is found outside Egypt, the court within whose jurisdiction the local administrative center is situated, shall have jurisdiction.

⁹ Abdul Rahman Al-Sayed Karaman, Commercial Papers, Bankruptcy and Protective Settlement - According to the Legal Regulations in the Kingdom of Saudi Arabia, Al-Shaqry Library for Publishing and Distribution, Kingdom of Saudi Arabia, 2012, p.301.

¹⁰ Organization for Economic Cooperation and Development, BUSINESS CLIMATE DEVELOPMENT STRATEGY, Phase 1 Policy Assessment, EGYPT, April 2010, P.36. Available at: <https://www.oecd.org/globalrelations/46341549.pdf>



Regarding the court competent to review the application for restructuring of commercial enterprises, it is noted that the Egyptian legislator in the new Law has made the specific jurisdiction of the first instance circles in the economic courts, which contradicts Article No. 6 of the Law on the Establishment of Economic Courts No. 120 of 2008.

Wherefore, it is appropriate to support jurisprudence and judiciary on granting jurisdiction to the appellate circuits in the economic courts to resolving disputes and requests that arise from the application of the provisions of the new bankruptcy law, being a procedural case aimed at proving the debtor's deteriorating financial condition;¹¹ And it is considered among the non-appreciable lawsuits, such as the bank account submission lawsuit¹² and Trademark delisting lawsuit.¹³

In all cases, the merchant must submit a request for restructuring his enterprise, explaining the reasons for the financial disruption of his enterprise, the date of the disruption, the actions he has taken to avoid or remedy its effects, and the actions he deems necessary for his exit, and to attach the enhanced documentation of the data contained therein.¹⁴

The application for restructuring has two legal effects:

A. If the court has received a request for the merchant's bankruptcy or a request for conciliation to prevent bankruptcy, then it must suspend consideration of these requests until the completion of the decision on the request for restructuring. This is a clear sign from the legislator that the restructuring procedure that includes saving the enterprise from its financial stumbling block, since the success of this procedure means the return of the enterprise to commercial life, in support of the economic development of the State.

B. The debtor may not apply for a new restructuring of his enterprise until three months after the previous application has been terminated or preserved, and it appears that the Egyptian legislator has considered that the three-month period is sufficient to make a change in the status of the applicant debtor who has been terminated or saved.

4. CONDITIONS FOR THE OPENING OF THE RESTRUCTURING PROCEDURE

we find that there are several conditions that must be met for the competent court to rule on the opening of restructuring procedures, namely:

4.1 The Applicant should be a trader whose capital is not less than one million

Egyptian Pounds

The Egyptian legislator is taken for granting the restructuring to commercial enterprises, particularly individual ones, ignoring contemporary developments on economic development, which have made the State's economic structure based on the shoulders of commercial and professional activities.¹⁵

4.2 The Trader not committed Fraud

The restructuring procedure is considered one of the benefits approved by law for the trader who faces difficulties in continuing his activities and needs to extend a helping hand to him to overcome these pitfalls. Therefore, this advantage should only be granted to those who deserve it from among the commercial enterprises, so that it does not become an administrator in the hands of

¹¹ Abd al-Rahman al-Sayyid Qurman, Commercial Papers, Bankruptcy and Protective Settlement - According to the Legal Regulations in the Kingdom of Saudi Arabia, Al-Shaqry Library for Publishing and Distribution, KSA, 2012, p.299.

¹² The Egyptian Court of Cassation, Commercial Department, Appeal No. 4204 of 83 Judicial Year, dated November 27, 2014; Egyptian Court of Cassation, Commercial Department, Appeal No. 3105 for the year 82 judiciary, on May 8, 2014.

¹³ The Egyptian Court of Cassation, Commercial Department, Appeal No. 4536 of the Judicial Year 80, dated March 27, 2012.

¹⁴ Article 19.

¹⁵ Nabil Ibrahim Saad, Civil Bankruptcy as a tool for accomplished Justice, Journal of Law for Legal and Economic Research, Faculty of Law, University of Alexandria, December 2012, p. 1341; Ahmed Muhammad Mahrez, The Crisis of Discrimination between Civil Companies and Commercial Companies, and the Idea of the Economic Enterprise, Journal of Contemporary Egypt, Volume 88, Issue 448, October 1997, pp.140-209



dishonest merchants, to evade some debts and postpone others, and other facilities that result from the opening of the procedure,¹⁶ and it is logical that the legislator does not extend a helping hand to the Trader. Who reached the stage of financial distress through his deliberate actions, or the fraudulent trader who resorted to deceptive actions with the intention of creating fake credit.¹⁷

4.3 Disruption of the Business

The legislator in the new bankruptcy law required the applicant for restructuring to prove with documents the reasons for the financial distress, the date on which it began, the procedures taken in order to avoid the turmoil or manage its consequences and the proposed measures to exit same.¹⁸ It is left to the competent court to assess the reasons given by the restructuring applicant, which has led to financial disruption, and may use the documents that the restructuring applicant is obliged to provide.

4.4 Engaged in trade for the last two years

The legislator's view that the trader who deserves the aid of the restructuring procedure was the trader who had been in the commercial environment for at least two years. A low-experience or poorly fortune trader whose financial and economic condition have been rapidly shaking, and conditions have not shown that he has managed his enterprise for at least two years, cannot help; he is left to face his fate, either by benefiting from a mediation procedure or by declaring his bankruptcy and by leaving the business environment.

We think that the Egyptian legislator is criticized for his requirement to open the restructuring procedure that his applicant has practiced trade continuously during the two years preceding the submission of the application from two points:

A. The legislator had refused to extend a helping hand to the novice trader, whose enterprise may be exposed to stumbling blocks due to his lack of experience or circumstances Emergency.¹⁹

B. This condition does not comply with the new principles governing investment in Egypt.²⁰

There is no doubt that the abolition of the requirement to engage in trade continuously during the two years preceding the request for restructuring opens the door for emerging companies that may face difficulties due to lack of experience or lack of success to benefit from this procedure, and it represents legal support for emerging companies; In line with the State's orientations regarding the new investment law.

5. THOSE IN CHARGE OF RESTRUCTURING

According to the new Egyptian Bankruptcy and Restructuring Law, the restructuring of commercial enterprises that has financial distress is conducted with the concerted efforts of the restructuring committee and associates.

5.1 The Restructuring Committee

A committee named by the legislator in the new Law (Restructuring Committee) comes on top of those in charge of restructuring procedures. According to Article 13 a table is created to be attached to the lists of experts in economic courts called 'the bankruptcy management experts' table', consisting of a sufficient number of offices and companies specialized in the field of restructuring and asset management will be listed, as well as experts from the ministries of finance, investment, commerce, industry, manpower, the Central Bank of Egypt, the General Authority for Investment, the Egyptian Financial Supervisory Authority, the Egyptian Stock

¹⁶ Hussein Al-Mahi, Bankruptcy, op.cit, pp.133-134.

¹⁷ Khalil Victor Tadros, Amicable and Judicial Methods to Save distressed enterprises from Bankruptcy, A Comparative Study in the Light of French Law No. 845-2005, Dar Al-Nahda Al-Arabiya, Egypt, 2008, p.103.

¹⁸ Article 19.

¹⁹ Mukhtar Bariri, Commercial Transactions Law - Bankruptcy, Dar Al-Nahda Al-Arabiya, Egypt, 2008, p.63.

²⁰ Article 2/2 of the Egyptian Investment Law, No.72 of 2017.



Exchange, the General Federation of Chambers of Commerce, the Egyptian Federation of Industries, bankruptcy trustees, valuation experts and others whenever necessary.

The Egyptian legislator should have added a text that enables the Restructuring Committee to access all data and information from the concerned entities related to the restructured enterprise, and in a framework of confidentiality, this would help the Committee to develop a real vision of the financial distress and administrative status of the enterprise for determine the extent to which the enterprise can be saved, and to prepare the appropriate plan for restructuring it, to ensure the success of its implementation.

5.2 Associates

The term ‘assistant’ is given to the person responsible for assisting the trader in evaluating his financial and administrative positions, and following up the execution of the restructuring plan,²¹ and appointing an assistant to assist the enterprise in respect of which the restructuring procedure was opened is a matter permissible for the competent judge, and it is at the request of any party from the parties to the procedure, and the assistant shall be appointed from among the trustees or experts registered in the bankruptcy management experts’ roster, or from others chosen by the parties, provided that the fees of the assistant are determined in accordance with what the parties have agreed upon, and in case this is not possible, the judge shall determine his fees.²²

The designated assistant is obliged to undertake all the necessary tasks for the implementation of the restructuring plan, the most important²³ of which are: (1) to assist the enterprise in assessing its financial and administrative situation, (2) to provide technical advice and support to the enterprise, (3) to establish a mechanism for the implementation of the restructuring plan procedures, (4) to assist the enterprise in making a friendly settlement with its creditors, and (5) to prepare a report every 3 months, and present it to the competent judge and the parties concerned with the restructuring procedure, informing them of the progress of the restructuring procedures and the extent to which the enterprise is committed; This would motivate the enterprise to implement its commitments in the restructuring plan, knowing that any breach of the plan adopted by it would lead to a decision to terminate the restructuring procedures.

The commitment of the assistant to all the work required by the purpose of his appointment is a personal commitment, and he may not delegate someone else to perform it, and he may ask a personal responsibility for a breach of one of them, in accordance with the general rules of negligence, and the bankruptcy judge on his own initiative may replace the appointed assistant with another, or upon any request, from the parties to the restructuring plan.²⁴

6. IMPLICATIONS OF THE OPENING OF THE RESTRUCTURING PROCEDURE

The opening of the restructuring procedure has several legal implications, namely the following:

6.1 Starting the Task of the Restructuring Committee

The competent judge shall form a committee for restructuring the enterprise requesting the opening of the procedure from the list of bankruptcy management experts, and the Committee shall within three months from the date of submitting the request to submit a report to the competent judge, provided that the report includes its opinion on the causes of business disturbance The commercial enterprise, the feasibility of restructuring and the proposed plan, and that period may be extended for another three months with the permission of the judge, meaning that the maximum period for the Committee to submit the report is 6 months from the date of submitting the request,²⁵ then the competent judge shall approve the proposed plan from the Committee to restructure the enterprise after the approval of all concerned parties. With the plan

²¹ Article 2.

²² Article 21.

²³ Article 22.

²⁴ Article 23.

²⁵ Article 20.



on it, and his assessment that the proposed plan²⁶ is suitable for the rise of the commercial enterprise from the difficulties that were incurred by it.

In fact, it must be drawn to the attention of the Egyptian legislator that the time granted to the Restructuring Committee - given its vital role in the restructuring process - may not be sufficient to accomplish the tasks required of it. This is for two things:

A. In accordance with Article 20 of the new Law, is the period given to the Restructuring Committee to report on the reasons for the disruption of the implementation of the business and the feasibility of the restructuring and the proposed plan does not exceed six months from the date of application, and the legislator has neglected to deduct 60 days from that period may be deducted In accordance with Article 4/b to complete and prepare the documents of applications, prepare a memorandum of application sought by the bankruptcy department and to take mediation proceedings in accordance with Article 5, so that the remaining period before the Committee is approximately 30 days to complete the tasks required of it, as well as another 3 months with the permission of the competent judge.

B. The period available before the Restructuring Committee, which, from the legislator's point of view, is a maximum of 6 months, may not be commensurate with the size of the tasks required of the Commission, especially if the Committee's work is focused on a large business that needs to know the causes of its financial distress, the feasibility of restructuring it, and the preparation of the appropriate plan to get rid of its pitfalls, long time beyond the time specified by the Law.

This matter can be dealt with from the researcher's point of view by amending Article No. 20 of the new law so that the period granted to the restructuring committee begins from the date of the bankruptcy judge's decision to form the Committee and not from the date of submitting the request for restructuring to the bankruptcy administration, and to amend the period granted to the Committee From 3 months to 6 months, it may be extended for a similar period only with the permission of the competent judge; Thus, the latter will have a flexible period to which the Committee is obligated according to the size of the enterprise to be restructured, starting from a day and not exceeding a year, to obtain the report of the restructuring committee. Thus, the Committee will have a relatively sufficient period of time to perform the tasks required of it efficiently and competently, to represent a guarantee of the accuracy of preparing the restructuring plan, increasing the likelihood of its implementation, and saving distressed commercial enterprises.

6.2 Continuation of the Applicant in Managing the Commercial Enterprise

According to Article No. 24 of Egyptian Bankruptcy law, the trader continues to manage its business during the implementation of the restructuring plan and remains responsible for any obligations or contracts entered into before and after the ratification of the plan as long as they do not violate such plan.

The substance of this text is the essence of the difference between the restructuring procedure and the bankruptcy declaration procedure. If the latter - as expressed by one of the jurists involved in developing the current trade law - a system aimed at placing the bankrupt debtor's funds under blanket liquidation in favor of his creditors, and for equitable distribution of its price among creditors according to the amount and nature²⁷ of each of theme's debt, and as a deterrent to the trader who failed to manage His money or disposal²⁸ of it; the matter that necessitated his stubbornness in managing his money and disposing of it to put an end to this failure, lest he be driven into behaviors that harm the rights of his creditors, or the desire to escape from his missteps leads him to do actions that are not in his interest; Where the legislator has granted other persons -

²⁶ Article 21.

²⁷ Mahmoud Samir Al-Sharkawy, New provisions in the new trade law, the second scientific conference of Egyptian jurists entitled "Practical Problems Arising from the Application of the New Trade Law," organized by the Egyptian Society for Political Economy, Statistics and Legislation, Egypt, June 1-2, 2000, p. 18.

²⁸ Nadia Moawad, Commercial Bankruptcy According to the Commercial Transactions Law of the United Arab Emirates, without a publishing house, 2013, p. 180.



the administration of the bankruptcy - the authority to manage his money and take the necessary precautionary measures to preserve it, in preparation for deciding the fate of the bankruptcy, either by reconciling the debtor with the creditors, or by moving it to its natural end and liquidating his money and distributing it to the creditors.

As for the restructuring procedure as a mechanism to save and protect distressed commercial enterprises from the declaration of bankruptcy and liquidation, and the philosophy that is based on it, which aims to help the enterprise to overcome its crises to ensure the continuation of its activities and to preserve the job opportunities it provides, as well as to settle the claims of its creditors; makes it justifiable and possible that the applicant for restructuring will remain at the head of the enterprise, whether he is the trader who owns the individual enterprise or the manager of the legal person, especially if the competent court considers that the current administration is more capable than others to reorganize the enterprise, and follow-up in exploiting its activities, being aware of the reality of the enterprise's position and the extent of the difficulties it has faced; Thus, the applicant for restructuring continues to manage his enterprise after the issuance of the ruling for the opening of the restructuring procedure, and all his normal actions required by the enterprise's commercial activities are correct, as long as they are carried out under the supervision of the appointed assistant who provides advice and technical support to the enterprise.

In spite of this, the competent judge may therefore decide to grant the restructuring committee the authority to control the material and moral assets of the restructured enterprise and to operate it in a manner that ensures its preservation, promotion, and efficient use of the enterprise to maximize the return possible for the enterprise's advancement, but this will be implemented depending on the inclusion of this restructuring plan, and the agreement of all parties concerned with the plan. Following Article 21 of the new Act, a restructuring plan shall be adopted by the judge bankruptcy only if it is approved by all parties.

But will the applicant agree to leave the management of his enterprise assets to the restructuring committee?

It may be difficult for a restructuring applicant to agree to leave the management of his enterprise to others, even if that is in the interest of the enterprise's restructuring plan, especially since that is the principle in the restructuring procedure that does not include any automatic fraud on the hands of the applicant for the restructuring of managing his money; however, the applicant for restructuring may agree to leave the management of his enterprise to the restructuring committee under pressure from several things, including:

- Creditors refused to approve the restructuring plan until the enterprise asset management was left to management other than the current one.
- That the bankruptcy judge's decision to form a restructuring committee guarantees its jurisdiction to manage assets during the implementation of the restructuring plan; It is expected if the request for restructuring was submitted to the competent court after the enterprise passed the stage of simple default and reached the stage of emergency or permanent default.
- The applicant for restructuring may find it in his interest to leave management to other specialists in resolving enterprise pitfalls; So that the chances of saving the enterprises increase, and the escape secures itself from the risk of bankruptcy.

According to Article 24 of the new Law, whether the applicant for restructuring continues to manage his enterprise throughout the restructuring period or leaves it to the restructuring committee in accordance with the agreement contained in the restructuring plan, he will be responsible for all previous or subsequent obligations or contracts on the date of the approval of the restructuring plan. It does not contradict the plan, and we believe that this text needs clarification regarding the legal liability arising from the actions and behaviors of the restructured enterprise.

There is no doubt that the restructuring applicant will be legally responsible for all the obligations and contracts prior to the date of the adoption of the restructuring plan by the competent court. Regarding subsequent obligations and contracts on the date of adoption of the restructuring plan, two things must be distinguished:



A. In the event that a restructuring plan is approved while allowing the applicant to restructure in the practice of the usual management of the enterprise activity, he will be legally responsible for all the legal commitment and undertakings that he makes in the framework of implementing the restructuring plan.

B. In the event that the restructuring plan is approved while exempting the applicant for restructuring from management, and giving the authority to manage the enterprise during the implementation of the restructuring plan for the restructuring committee, the applicant will not be responsible except for the obligations and contracts that the restructuring committee makes in the framework of implementing the restructuring plan. The approved restructuring and the powers granted to it to save the enterprise, as for the obligations and contracts issued by the Committee during the restructuring period, which constitute a departure from the usual management of the enterprise activity, and a violation of the provisions stipulated in the restructuring plan; The members of the Committee are asked about it jointly unless the mistake is attributed to a specific member, and he is asked personally about his mistake that constituted a violation of the restructuring plan.

In this regard, we believe that it was necessary for the Egyptian legislator to put a provision authorizing the competent court to temporarily prohibit the debtor from disposing of the enterprise funds that the court deems necessary for its continuation, as well as invalidating any amendment to the terms of the contracts in force before Adopting a restructuring plan would reduce the rights of the applicant or increase his obligations; In a way that contributes to the effectiveness of the restructuring procedure, and it is also necessary to emphasize that the court's approval of the restructuring plan does not result in the cancellation or termination of existing contracts, nor the extinguishment of debt terms unless it is agreed upon within the framework of the restructuring plan.

6.3 Not to Harm the Interests of Creditors

If the Egyptian legislator left the restructuring applicant free to choose between continuing to manage the enterprise activities or leaving the task to the restructuring committee for the duration of the implementation of the plan; however, it is established that this administration should be limited to the usual conduct of the enterprise's activities, and that it aims to preserve the rights of the enterprise and increase the efficiency of production, and not to harm the interests of the creditors.

The trader shall not take actions that harm the interests of the creditors such as the selling of his assets in a manner that is unrelated to the usual conduct of his commercial activities, making donations, borrowing, or giving loans or any gratuitous works, or guarantees or sureties, or pledge or any security interest or any other similar activity over his assets in a manner that violates the restructuring plan.²⁹

However, the disposition remains enforceable and productive of its effect, even if it affects the interests of the creditors or is one of the actions prohibited by the legislator, If it is proven that it came within the framework of implementing the restructuring plan agreed upon and approved by the court, and under the supervision of the assistant appointed to follow up the implementation of the plan; one of the provisions of the approved restructuring plan may include obtaining a loan from a bank to finance the enterprise, despite the fact that this legal behavior is prohibited for enterprise management.

The Egyptian legislator is taken into account that he did not establish special protections for the workers and employees of the enterprise as the French legislator³⁰ did as the weak party within the restructuring procedures, did not mention from near or far any of them any role in the proposed plan for restructuring the enterprise, nor did he make provisions for the possibility of laying off some of them as part of the implementation of the plan, and how to compensate them.

²⁹ Article 25.

³⁰ Article L626-2 de code de commerce.



To avoid this passivity in the new Egyptian Law, the legislature could add a provision requiring consultation with workers' representatives before applying for restructuring the enterprise and involving them in the formulation of a restructuring plan; Their view is of the utmost importance in assessing the interest of the enterprise and in ensuring that their legitimate interests are not harmed, and this can be limited to labor-intensive³¹ investment enterprises, in which the number of workers is not less than 500 Egyptians; according to the constant in the employer's social insurance form, the cost of direct wages increases by 30% of the total cost of operating the enterprise. Among the important issues that the legislator overlooked in the new bankruptcy law is preference for the new creditor who financed the troubled enterprise during restructuring. The restructuring plan may include allowing the enterprise owner to obtain new financing within the framework of implementing the restructuring plan. Therefore, it was necessary to stipulate that the new debt shall have priority over all existing ordinary debts in the enterprise's portfolio on the date of the beginning of the restructuring procedure, or to allow the new debt to be guaranteed by the mortgage; This is to encourage financial and banking institutions to finance distressed commercial enterprises for which the restructuring procedure is being undertaken.

6.4 Cessation of Individual Lawsuits

According to Article 29 of the new Law, after ratification of the restructure plan, no court action may be initiated between the trader and any of the signatory creditors in relation to such plan or the progress thereof or bringing individual lawsuits or taking judicial proceedings. The prescription periods pertaining to the lawsuits, claims and debts shall cease until the restructuring plan is completed.

If it is clear that the aim is to protect the enterprise during the restructuring period and to prevent creditors from chasing it to meet their debts so that it can recover economically, two issues must be considered:

- A. The suspension of prosecutions is limited to creditors who sign the restructuring plan.
- B. The cessation is limited to judicial proceedings and individual lawsuits related to the restructuring plan or to proceed with it, or individual prosecutions against enterprise real estate and its movables with the aim of fulfilling a debt included in the plan.

7. TERMINATE THE RESTRUCTURING PROCEDURES

The end of the restructuring procedure can be due to reasons related to saving the restructuring request in the first place, or reasons related to the implementation of the plan itself; where the competent judge orders to save the application submitted to him to restructure the commercial enterprise in the following cases:³²

1. If a restructuring plan cannot be agreed upon.
2. If the trader does not attach the information and documents which requested to submit within the specified period.
3. If the trader fails to pay the costs and expenses necessary for the restructuring procedures, including the assistant's fees, or if it is revealed that his assets are not enough to cover such costs and expenses.
4. The extinction of the reasons that forced the trader to submit a restructuring application.
5. If the restructuring procedures are not suitable to the trader, as per the data and documents submitted with the application or based on the report prepared by the restructuring committee.
6. If the totality of the heirs does not agree on the restructuring.

The judge shall terminate the restructuring plan upon the completion of its execution or if such execution is not possible or if it is violated for any reason upon the request of any party thereof.³³

³¹ Article 11 of Prime Minister Decision No. 2310 of 2017 of the issuance of the executive regulations for the new investment law No. 72 of 2017.

³² Article 27.

³³ Article 28.



In all cases, the execution of the restructuring plan should take no longer than five years,³⁴ and this period may be insufficient to restructure large enterprises, and the text in the new Egyptian Law did not clarify the date on which from it begins the calculation of 5 years; Therefore, the text of Article (20) should have been supplemented by adding the phrase ‘[...] starting from the date it was approved by the competent judge’.

CONCLUSION

At the end of the study, we can conclude that the recommendations are:

- Urging the Egyptian legislator to abolish Law No. 34 of 1976 of the commercial registry and enacting new legislation adopting the modern trend of the registration system in the commercial registry by entrusting a judicial body with the task of supervising the commercial registry. Especially in light of the existence of the Law establishing economic courts in Egypt since 2008, which made these courts exclusively competent in the disputes and lawsuits of bankruptcy and preventive conciliation.
- For the Registry of Economic Courts to have duplication of tasks, from the judicial point of view he is the secretary of the court he follows, and from the economic point of view, he is responsible for the function of the legal month of commercial records; Thus, he will be able to provide the president of the economic court to which he is affiliated with all the economic, legal and judicial information on companies registered with the court.
- Amending the new bankruptcy law so that it considers the distinction between the different stages of the failure of commercial companies, and to add provisions related to mechanisms to prevent default; Because of its role in maintaining the continuity of the activities of commercial companies, which leads to the improvement of the investment climate in the country and its economic interest.
- Amending Article 15 of the Law on Regulating Restructuring, Protective Compromise, and Bankruptcy, and deleting the phrase ‘and practiced trade continuously during the two years preceding the submission of the application’, so as to leave the opportunity for a bona fide and unlucky novice trader to benefit from the rescue measures introduced in the new Law; To be able to continue presenting his commercial activities, in light of the discretionary authority of the competent court.
- The Egyptian legislature should be in line with recent legislative trends on allowing professional enterprises to benefit from the mediation and restructuring procedures set out in the new Egyptian restructuring, protective reconciliation, and bankruptcy regulation law; Believing that the economic development of the State in our contemporary world is based on the need for both commercial and professional activities, by adding an article that states: ‘Craft and agricultural enterprises, private morale and natural persons engaged in independent professional activities may benefit from the mediation and restructuring procedures set forth in the law’, and add to Article 2 on the jurisdiction the words ‘the ordinary courts shall be competent to consider mediation procedures and restructure professional enterprises.
- The Egyptian legislature should be add a new article that would enable the restructuring committee to access all data and information from relevant stakeholders related to the restructured enterprise, in a framework of confidentiality; It would help the Commission to develop a real vision of the administrative, financial and economic status of the enterprise, and prepare a restructuring plan commensurate with the enterprise’s reality; thus, it would be more successful.
- The Egyptian judiciary to expand its interpretation of the concept of financial distress as a condition for opening the restructuring procedure, and not to limit it to financial difficulties in compliance with the text, but to include under the cloak of the text economic and legal difficulties, to allow the largest number of distressed commercial enterprises, as long as the court sees fit. The competent person is that the door to rescue is still open to the applicant for

³⁴ Article 20.



restructuring, and there is an opportunity to rise from his stumbling block and perform his role in serving the national economy effectively.

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