

BANKRUPTCY OF A ONE-PERSON COMPANY IN ACCORDANCE WITH DECREE LAW NO. 9 OF 2016, AS AMENDED BY DECREE FEDERAL LAW NO. (35) OF 2021

Dr. Fouad Ali Al-Quhali,
Umm Al Quwain University, United Arab Emirates, fuaad_10@yahoo.com

Abstract

We addressed the issue of the bankruptcy of a one-person company by Decree-Law No. 9 of 2016, amended by Federal Decree Law No. (35) of 2021 AD, through two sections. We devoted the first section to researching the conditions for the bankruptcy of a one-person company, as the company must acquire the status of a trader to be declared. Bankruptcy, as well as the one-person company stopping paying its debts, and this stopping being the result of a disturbance in the company's financial position. As for the second section: we discussed the issue of the implications of the ruling declaring the bankruptcy of a one-person company. The researcher reached many results and recommendations, including the permissibility of declaring the bankruptcy of the owner of a one-person company in the event of the company's bankruptcy, if that person's funds interfere with the company's funds difficultly. His dismissal, in addition to his responsibility with his own money for the company's obligations if the owner does not separate his interest from the company's. We also recommend that the UAE legislator regulate the provisions of the one-person company in Decree-Law No. (32) of 2021 regarding commercial companies, as is the case with all other commercial companies.

Keywords - responsibility, commercial, recommendations, including

1. INTRODUCTION

The bankruptcy system is one of the old systems. Its origins go back to Roman law, which considered bankruptcy essentially a penalty taken against the debtor who stopped paying his debts. It should be noted that Roman law did not differentiate between merchants and others in applying the bankruptcy system (Karl Gratzer, 2006). The Emirati legislator has regulated the provisions related to the bankruptcy system in Book Five of the Federal Commercial Transactions Law No. (18) of 1993, which continued to govern and regulate bankruptcy for merchants for nearly thirty-seven years, until Decree Law No. (9) of 2016 AD regarding bankruptcy was issued on 20/ 9/2016 AD, which aims to achieve confidence and credit in the commercial environment on the one hand, and protects the general guarantee for creditors from the actions of the debtor if his financial position is exposed to turmoil on the other hand (Fayez Naeem Radwan, 2013). Some jurists believe that bankruptcy, according to the modern concept, is not only aimed at protecting the merchant and his reputation in the commercial environment; Rather, it aims to protect and support projects and allow them to continue, instead of leaving the market through legal tools, the most important of which are financial reorganization and bankruptcy-protective reconciliation. Despite the recent nature of the bankruptcy decree law, it has been amended several times, the most recent of which was Decree-Law No. 35 of 2021 AD, to modernize the bankruptcy system to fit it with the importance of commercial and economic projects taking place in the United Arab Emirates and to save them from bankruptcy and the resulting negative effects on the economy (Kisswani, N. M., & Bakri, A. A. A., 2023).

There is no doubt that the UAE legislator's approval of natural or legal persons to establish individual projects, by deducting part of the owner's financial responsibility and allocating it to investment, came in response to the national economy's need for such projects. It should be noted that the UAE legislator did not recognize single-person companies in the repealed Companies Law No. (8) of 1984, until Federal Law No. 2 of 2015 was issued on March 25, 2015, regarding commercial companies, which was canceled under Federal Decree Law No. (32). For the year 2021 AD, which regulates the activity of companies within the United Arab Emirates (Mednicoff D., 2012).



2. PROBLEM STATEMENT

3. The problem of the research lies in the fact that the one-person company in the United Arab Emirates is newly established, and there is no legal system of its own, as is the case for joint liability companies, limited partnerships, public and private joint-stock companies, and limited liability companies, in addition to the lack of judicial applications. Issued by the UAE judiciary, through which the issue can be addressed from its various aspects. The problem of the research also revolves around the fact that the bankruptcy of a one-person company does not result in the bankruptcy of the sole partner in this type of company, as the sole partner allocates part of his financial liability to enter into commercial projects, and his responsibility for the company's obligations is limited to the company's capital, and therefore the dealing creditors. With a one-person company, they have no choice but to execute on the company's funds, which are the only general guarantee for their debts, and that guarantee does not extend to the private funds of the only partner in the one-person company.

3 RESEARCH QUESTIONS

In this research, we will attempt to answer the following questions:

- 1- What are the conditions for bankruptcy of a one-person company?
- 2- Is it permissible for the owner of a one-person company to become bankrupt as a result of the company's bankruptcy?
- 3- What are the consequences of the bankruptcy of a one-person company?

4. RESEARCH OBJECTIVE

Through this research, the following objectives can be achieved:

- 1- Identify the conditions for bankruptcy of a one-person company.
- 2- Determining the extent to which the owner of the company may go bankrupt if the company itself becomes bankrupt.
- 3- Statement of the consequences of the bankruptcy of a one-person company.

5. RESEARCH METHODOLOGY

In dealing with the subject of the bankruptcy of a one-person company, the researcher relies on the analytical approach, by studying the legal provisions regulating the bankruptcy of commercial companies stipulated in Decree Law No. (9) of 2016, amended by Federal Decree Law No. 35 of 2021, regarding bankruptcy, and the extent of their suitability and application to a One-person company.

6. RESEARCH PLAN

The research topic will be addressed - the bankruptcy of a one-person company through two sections. In the first section, we will discuss the conditions for the bankruptcy of a one-person company. As for the second section, we will devote it to the effects of the bankruptcy of a one-person company.

6.1 Conditions for the bankruptcy of a one-person company

Bankruptcy is a collective system applied to a merchant who has stopped paying his business debts and whose financial position is troubled or hopeless. Some have defined it as "a collective action in contrast to the system of non-fulfillment in the civil law called insolvency, which is based on each creditor individually exercising his claim against his debtor to satisfy his rights." Article 139 of Decree-Law No. (9) of 2016 stipulates that "the On the bankruptcy of companies, in addition to the provisions of the articles stipulated in this section, the provisions of Articles (172) and (173) of section Five of this Decree-Law shall apply (Muhammad Al-Farsi, 2017). Accordingly, the provisions contained in section Four, which is devoted to restructuring and bankruptcy, as well as the conditions for declaring bankruptcy, shall apply. It applies to legal persons, as well as natural persons who acquire the status of a trader, in addition to its application to professional companies and free zone companies (Samiha Al-Qalioubi, 2003). For the bankruptcy of a one-person company to be declared, two conditions must be met. The first condition: is that the one-person company acquires the status



of a trader (first requirement) The second condition is that it stops paying its debts (a second requirement). This is explained as follows:

6.1.1 The one-person company acquires the status of a trader

The federal legislator regulated commercial companies in Decree No. (32) of 2021 AD, as Article 9 of the Companies Law under the title “Forms of Companies” stipulates that: “1. The company must take one of the following forms:

- A- Solidarity Company.
- B- Simple recommendation company.
- T- The limited liability company.
- D- Public joint stock company.

2. Every company that does not take one of the forms referred to in the previous clause is considered invalid, and the persons who contracted in its name shall be personally and jointly liable for the obligations arising from this contract.”

It is clear from the previous text that commercial companies legally recognized in the country must take one of five forms: joint liability companies, limited partnership companies, limited liability companies, public joint stock companies, and private joint stock companies. According to El-Gamal, M. A. (2000), this enumeration contained in the text is exclusive and specific, and therefore every commercial company that does not take one of these forms is considered invalid, and is not recognized by law as a legal company, and everyone who contracts in its name is personally responsible for its obligations. The one-person company is not a new form of commercial company; Because a one-person company either takes the form of a limited liability company by Article 72 of the law, or it takes the form of a private joint stock company by Article 255, and therefore it is not a new form. Article (72/1) of the Federal Companies Law stipulates that “one citizen or legal person may establish and own a limited liability company, and the owner of the company’s capital shall not be liable for its obligations, except to the extent of the capital stated in its articles of incorporation, and the provisions of the limited liability company shall apply to him.” The limited liability contained in this law does not conflict with its nature.” It is clear from the previous text that a one-person company is a commercial company with limited liability, owned by one citizen, whether natural or legal, and whose responsibility for the company’s obligations is up to the amount of capital specified in its articles of incorporation (Tucker, A., 2010).

It is worth noting that the federal legislator did not establish special provisions regulating this type of company, and in this context, we recommend that the Emirati legislator regulate the provisions of a one-person company in Federal Companies Law No. 2 of 2015, as many comparative legislations have done. Every company that carries out a commercial activity or takes one of the forms stipulated in the Commercial Companies Law is considered a merchant, even if the activity it carries out is civil,” according to the text of Article (11/2) of the Decree Law on Commercial Transactions. It is worth mentioning that a one-person company acquires legal personality. From the date of its registration in the Commercial Register, Article 21/1, stipulates that: “1- From the date of its registration in the Commercial Register with the competent authority, the company acquires a legal personality by the provisions of this law and the decisions issued under it. The UAE legislator stipulated that the federal bankruptcy law applies to commercial companies regulated by the legislator in Companies Decree No. (32) of 2021 AD (Ibrahim bin Daoud, 2018).

According to Kraakman, R., Armour, J., Davies, P., Enriques, L., Hansmann, H., Hertig, G., ... & Rock, E. (2017), Since the one-person company is a limited liability company or a private joint-stock company, the one-person company may be bankrupted in general, although we prefer that the legislator explicitly stipulate that the one-person company may be bankrupt, even if the type of activity it carries out is a civil activity. To the above, if the one-person company is established and has the general and specific objective elements and acquires legal personality; It is permissible to declare its bankruptcy, and the Federal Supreme Court ruled by saying: “It is established in the jurisprudence of this court that a company contract can only be established if the basic elements for



its formation are met, and that it is concluded between two or more partners, each of whom contributes to an economic project aiming for profit, and each partner provides his share in The capital must be represented either in a sum of money, or it may be a share in kind or work, and there must be an intention to participate in an activity with a consequence, with each partner contributing to this liability by sharing the profits and losses. If the company fulfills these elements and the formal conditions required by the law, it can acquire legal personality. Every company under the text of Article Six of the Federal Companies Law No. (8) of 1984 amended by Federal Laws No. (13) of 1988 and (4) of 1990 - that does not take one of the forms referred to in Article Five of the same law is considered invalid".

The question that arises is whether it is permissible for a one-person company to go bankrupt during the period of incorporation or liquidation. To answer this question, we differentiate between two hypotheses: the first: the bankruptcy of the one-person company in the establishment stage, and the second hypothesis: the bankruptcy of the one-person company in the liquidation stage. The details of that are as follows:

- The bankruptcy of a one-person company in the incorporation stage: There is no explicit provision in the Federal Bankruptcy Law for the bankruptcy of a one-person company or other companies in the incorporation stage, but by extrapolating the texts of the decree law regarding companies, specifically Article (21/2), which states that “ During the incorporation period, the company shall have a legal personality to the extent necessary for its incorporation, and the company shall abide by the actions of the founders about the procedures and requirements of incorporation during that period, provided that its incorporation is completed by the provisions of this law. It turns out that the previous text applies to all forms of commercial companies, including the one-person company, that the company during the period of incorporation acquires legal personality, but to the extent necessary for its establishment, and as long as the company has legal personality in the period of incorporation, and the company has already been established, it also acquires legal personality (Sherif Ghanem, 2016). The merchant during that period, therefore it may be declared bankrupt if it stops paying its commercial debts that arose during the establishment stage.
- Bankruptcy of a one-person company during the liquidation stage: As for the bankruptcy of a one-person company during the liquidation period, we have previously said that a one-person company acquires legal personality from the date of registration in the commercial registry, until the date of its cancellation. Article (21/3) of the Commercial Companies Decree stipulates that “when a company is dissolved, it is considered to be in the liquidation stage, and during the liquidation period it maintains its legal personality to the extent necessary for the liquidation work, and the phrase “under liquidation” must be added to the company’s name, written clearly.” When the liquidation period ends, the legal personality of the company disappears, the manager’s capacity to represent the company ends, and another person (the liquidator) takes his place. The company’s assets become owned by the sole partner in the one-person company, and the company is destroyed forever. Since the one-person company continues to maintain its legal personality during the liquidation stage, it may therefore be declared bankrupt at this stage (Hani Samir Abdel Razeq, 2008).

6.1.2 The one-person company stops paying debts

It is not sufficient to declare the bankruptcy of a one-person company to acquire the status of a merchant, as the company must stop paying its debts, and this cessation must be the result of a disturbance in the company’s financial position. Accordingly, we will discuss the concept of stopping payment (first) and the quality that must be present in the company. Religion (Second) and this is explained as follows:

6.1.2.1 The concept of stopping payment

According to the traditional theory, what is meant by the concept of expectation of payment is to stop paying the debt on its due date, and here it differs from insolvency, in which the extent of the debtor’s insolvency or not cannot be determined except by conducting long procedures, and therefore it is not permissible to declare the bankruptcy of the merchant debtor even if he is



insolvent. As long as he still pays his debts. According to modern theory, stop payment means the debtor's inability to pay one or more debts due, resulting from a hopeless financial position that makes it impossible to continue his trade normally (Muhammad Mustafa Abdel-Sadiq, 2011). In Article 1 of Decree-Law No. 9 of 2016, the federal legislator defined the concept of cessation as the inability of the debtor to fulfill any debt owed by him. Although the legislator defined the concept of stopping payment, it did not explain the reason behind this stopping of debt. Is it due to the disruption of the company's financial position or to another reason? We believe that the federal legislator did well when he stipulated in Article (68) of the same law the reason for stopping payment, as it stipulated that "the debtor must come forward... if he stops paying his debts on their due dates for a period exceeding 30 consecutive working days." As a result of a disturbance in his financial position, or if he was in a state of financial debt." In doing so, the federal legislator has kept pace with modern trends in the concept of stopping payment, where the merchant's financial position must be taken into account.

The question that arises here is: Is it permissible to declare bankruptcy for a one-person company if it stops paying debts due to an emergency that prevents it from repaying the debt? The concept of stopping payment according to the modern concept achieves greater protection for economic projects, so bankruptcy is not declared except after confirming the disruption of the merchant's financial position (Frédéric Zenati, 1999). However, if the reason for stopping payment of debts is a temporary reason, in which the company is unable to fulfill the debt, or if there are profits for the company that will be achieved after a period, then the company may not be declared bankrupt. Applications of this have been provided in the judgment of the Dubai Court of Cassation: "It is established that even if the debtor's refusal to pay his commercial debts due without having legitimate reasons is considered a presumption to his disadvantage, he is not considered to have stopped paying in the aforementioned sense, as it may be The reference for this abstention is an excuse that occurred to him despite his ability to pay, or that it is due to a dispute over the debt in terms of its validity, its amount, its due date, or its expiration for any reason of expiration, and the inclusion of what is considered a cessation in the meaning referred to among the issues of law that the trial court must examine. By itself, it is subject to the supervision of the Court of Cassation, given that the state of cessation of payment is one of the conditions required by law to declare the debtor's bankruptcy.

6.1.2.2 Characteristics of Religion

For the cessation of payment resulting from the disruption of the debtor's financial position - for a one-person company - to apply to the provisions of the Bankruptcy Law, the debt must be commercial, payable, and undisputed. This is explained as follows:

- The debt must be commercial: Article 1 of the Decree-Law states, in its definition of the debtor's debt, that it is "the debts owed by the debtor at the date of issuance of the court's decision to open the proceedings by the provisions of Part Three or Four of this Decree-Law or those arising from an obligation owed by the debtor before Decision to open proceedings. It is clear from the previous text that the legislator, in his definition of the debtor's debt, is - the debt owed - and did not specify whether the debt was commercial or civil, and without regard to the source of this debt, whether its source was contractual or non-contractual (Ahmed Makhoul, 2013). We believe that the federal legislator, through his definition of the debtor's debt, wanted the debt to be commercial for individuals or commercial companies, and civil for professional civil companies to which the provisions of Decree Law No. 6 of 2016 apply. Despite this, some jurisprudence believes that the debt must be commercial for the bankruptcy of the merchant or company to be declared, and therefore it is not permissible to declare the bankruptcy of the debtor with a civil debt, because the goal of this is to provide confidence and credit in commercial transactions, and this was the situation according to the law. Federal business transactions in the repealed texts address the subject of bankruptcy (Hassan Al-Mahi, 2017).
- The debt must be payable and undisputed: The debt must be payable, but if the debt is not payable, the one-person company may not be declared bankrupt, even if the company's financial position is unstable. The Federal Decree-Law referred to the nature of the debt upon payment at the



beginning of Article One, where the debtor's debts were defined as the debts owed by the debtor on the date of issuance of the court's decision to open procedures by Part Four related to restructuring and bankruptcy (Zeina Ghanem Al-Saffar, 2012). Likewise, Article 68, obliges the debtor to file a request to declare bankruptcy if he stops paying a debt due for payment beyond its due date for 30 days. The debt must also be undisputed in its quality. It is not permissible to declare the bankruptcy of a one-person company unless the debt is free of dispute. Some believe that the dispute must be serious and not delayed. In application of this, the Dubai Court of Cassation ruled in a recent ruling, saying, "It is an established principle that the debt that declares bankruptcy when it stops paying must be a commercial debt that is currently being paid, has a known amount, and is free of serious disputes, and that the trial court must, when deciding on the bankruptcy application, To review all disputes raised by the debtor regarding the availability of these conditions to assess their seriousness, without this being considered an investigation of the bankruptcy debts, but rather verifying the description and reality of this debt (Samiha Al-Qalioubi, 2003).

6.2 The effect of declaring bankruptcy of a one-person company

We have previously indicated that the ruling declaring the bankruptcy of a one-person company can only be issued if two conditions are met: The first must have a characteristic of the debtor, which is that he be a merchant. As for the second condition, he must stop paying the debt, and it must be the result of a disturbance in his financial position, and it continues. This suspension occurs until a bankruptcy declaration ruling is issued. Article (139) of Decree-Law No. 9 of 2016 stipulates that "in addition to the provisions of the articles stipulated in this section, the provisions of Articles 172 and 173 of Part Five of this Decree-Law shall apply to the bankruptcy of companies (Karima Karim, 2014)." The questions that arise here: Does the bankruptcy of a one-person company lead to the bankruptcy of its owner? Can the owner of a one-person company be asked about his funds about the company's debts? If the assets of the company declared bankrupt are less than 20%, is it permissible to oblige the owner of the one-person company (its manager) to pay all or part of the company's debts? If the company's financial position is likely to recover, is it permissible to postpone declaring its bankruptcy? To do so, we will answer these questions by examining the impact of declaring the bankruptcy of a one-person company on its owner (a first requirement), and the responsibility of the manager of the one-person company in the event of a decrease in its assets upon declaring its bankruptcy, and the extent to which it is permissible to postpone its bankruptcy (a second requirement). This is explained as follows:

6.2.1 The effect of declaring bankruptcy of a one-person company on its owner

We have previously defined a one-person company as a type of limited liability company, or private joint stock company, which is established by one person, whether natural or legal, who is responsible for the company's obligations within the limits of his share in the capital (Mahmoud Mukhtar, 2013). The owner of a one-person company does not acquire the status of a merchant, as is the case in companies that are based on personal consideration, where the merchant bears the risks resulting from doing business. The question that arises here is: Does the bankruptcy of a one-person company lead to the bankruptcy of its owner? (First) Can the owner of a one-person company be asked about the company's debts with his funds? (Secondly), this is explained as follows:

- First - Bankruptcy of the owner of a one-person company due to the bankruptcy of the company: Given that the financial liability of the one-person company is independent of the financial liability of its owner, it is not permissible to declare the bankruptcy of the owner of the company as a general rule, but there is an exception stipulated in Decree-Law No. 9 of 2016 AD, the details of which are as follows:

The rule: In contrast to companies that are based on personal consideration, such as a joint liability company, or a limited partnership, if its bankruptcy is declared, the bankruptcy of the joint partners is declared by force of law, because the partners in general partnership companies, as well as the limited partnership, acquire the status of a merchant, and therefore, declaring the company's bankruptcy leads to... To the bankruptcy of the partners, by Article 40 of the Federal Companies Law, stipulates that the joint partner acquires the status of a merchant and that the bankruptcy of the company results in the bankruptcy of all joint partners by force of law. The owner of a one-



person company does not acquire the status of a merchant, and therefore declaring the company bankrupt does not lead to the bankruptcy of its owner. The approval of the Federal Companies Law for a one-person company is an acknowledgment of the principle that it is permissible to have multiple financial liabilities for one person, so he has a financial liability allocated to trade (the company's financial liability) and another financial liability to which the company's debts do not extend. Where each financial liability is separated from the other, and there is no connection or connection between them. Hence, a creditor of one financial liability cannot enforce the money included in another financial liability, and this is the legal basis on which the company is based. This limited liability of the partner in this company results in another consequence, which is that the partner in it does not acquire the status of a merchant, and therefore it is not permissible to declare bankruptcy if the company stops paying its commercial debts (Mustafa Kamal, 2007).

Exception: Article (80) of the Decree Law stipulates that "the court may decide to include any natural or legal person in the procedures stipulated in this section by conditions that provide appropriate and sufficient protection for creditors if that person's funds intersect with the debtor's funds in a way that is difficult to separate." Or if the court considers that it would not be practical or cost-effective to open separate proceedings about such persons."

The owner of a one-person company may appeal the court's decision to enter before the competent court of appeal. This appeal does not result in stopping the bankruptcy procedures, and if the decision is issued in the appeal, it will be final, by the text of the second paragraph of Article (80) of the Decree-Law. We believe that when the federal legislator stipulated that ruling, they wanted to protect the group of creditors, as the capital of a one-person company is the only general guarantee for creditors, especially since the capital of this type of company is weak, and therefore the legislator permitted its owner to enter bankruptcy procedures if his money Mixed with company funds. According to the text of the second paragraph of Article (142) of the Decree Law on Bankruptcy, the court may issue a single ruling declaring the owner bankrupt, even if it does not have jurisdiction to declare his bankruptcy (Muhammad Al-Sayyid, 2011).

- Second - The personal responsibility of the owner of the one-person company: The one-person company is characterized by limiting the responsibility of its owner to the amount of the capital specified in the articles of incorporation, and this responsibility for one partner is stipulated in Article 71 of the Companies Law when defining the company, as it stipulates that "... and the owner of the capital shall not be liable. The company is entitled to meet its obligations except to the extent of the capital stipulated in its articles of incorporation. The consequence of this limited liability is that as long as one partner has provided his share when establishing the company, he may not be required to pay any other amounts thereafter, and the company's creditors have nothing but the company's financial liability to recover their rights from. If the company's assets are not sufficient to pay the debts, the creditor bears the loss. This means that it is not permissible to direct a legal claim against a partner for a debt to the company, otherwise, the court will rule to reject the lawsuit because it was filed wrongfully. It cannot be argued that the company did not renew its commercial license, and is therefore dissolved, and therefore any of the partners can be claimed for the company's debts with his own money. Failure to renew the license does not mean the dissolution of the company and the cessation of implementing its legal provisions (Nariman Abdel, 1992).

If the owner of a one-person company guarantees the payment of the company's debts to others, he is obligated to do so, and the Dubai Court of Cassation ruled by saying, "Although the partners in the limited liability company are only liable within the limits of their shares in the capital, they and the other guarantors are obligated to pay the debts and loans that it borrows." By guaranteeing them by the guarantee contract that they conclude with the creditor, where the basis of their responsibility is the guarantee contract and not their relationship with the company as partners in it." Given that the UAE legislator has not established a system specific to a one-person company, the provisions related to the limited liability company apply to it, according to Article (71/2) of the Federal Companies Law, which states that "...the provisions of the limited liability company contained in this law apply to it." The law does not conflict with its nature." Accordingly, the sole partner in a one-person company is personally liable for his funds in many cases, including:



1. If the partner does not provide his share in the company, he is personally responsible for paying it, and the person who has standing to claim the partner who did not provide the share is the manager of the limited liability company and not the company's creditors, given that the creditors have a general guarantee over the company's funds only and not over the partners' receivables. This is what the Dubai Court of Cassation ruled.

2. The responsibility of the owner of a one-person company is considered a personal responsibility, if he exploits the company, by contracting in its name to achieve special benefits, and the judiciary considers that these actions issued by the partner represent fraud or at least a serious mistake. The partner is asked for the damages resulting from him, not He can cling to his limited liability, and this is what was ruled by the Dubai Court of Cassation.

3. Article 72 of the Companies Law requires that the limited liability company of the partners have a name derived from its purpose or the name of one or more of the partners. It also required that the name end with the phrase "Limited Liability Company and write the abbreviation indicating that LLC." The same is true in a one-person company. In the same direction, Article 13 of the law stipulates that all contracts, receipts, correspondence, and application forms issued by the company must bear its name, legal form, registration number, and address.

4. Article (299/2) of the Commercial Companies Decree stipulates that "if the owner of a one-person company liquidates it in bad faith, or ceases its activity before the expiry of its term, or before achieving the purpose stipulated in its articles of incorporation, he shall be responsible for its obligations with his funds."

It is clear from the previous text that the owner of a one-person company is responsible for his own money if he liquidates it in bad faith. Bad faith means any action that harms creditors. If a partner enters into commercial projects and is unable to fulfill his obligations, and he deliberately resorts to liquidating the company to escape responsibility, then he has bad faith, which entails his responsibility. In this context, we recommend that the Emirati legislator add a new case to the previous cases in which the owner of a one-person company is responsible for his own money, which is the case where the owner of the company does not separate his interest from the interest of the company (since the principle is that the owner of a one-person company deals in the name of the company and not in his name). This means that the manager deals and signs all the transactions he carries out with others in the name and address of the company so that the company is committed to the consequences of those actions. Therefore, if the company manager signs one of his works in his name, there is evidence that he is working for his account, not For the company's account, this manager is personally responsible for those actions with his funds without the company being asked about the result of those actions. However, this presumption is simple and others can prove the opposite by all means of proof to reach the company's responsibility.

6.2.2 The responsibility of the manager of the one-person company in the event of a deficiency: Its assets and the extent to which its bankruptcy may be postponed

In this requirement, we address the responsibility of the manager of a one-person company in the event of a decrease in its assets (first), and the extent to which it is permissible to postpone declaring the company's bankruptcy (second), and explain this as follows:

First - The responsibility of the manager of the one-person company in the event of a decrease in its assets: Since there are no administrative bodies that manage a single-person company, as is the case with a limited liability company or a public joint-stock company, as these companies are managed by a board of directors, a general assembly (), and supervisory bodies, it is natural for their owner to be assigned management duties or The task of managing the company is entrusted to another third-party manager under an independent agreement. This is a logical matter that does not conflict with the nature of that type of company, according to the text of Article (71/2) of Federal Companies Decree No. 32 of 2021 AD. Article (83) of the Federal Companies Decree stipulates that "the limited liability company shall be managed by one or more managers by what the partners decide in the articles of incorporation. These managers shall be chosen from among the partners or from others. If the managers are not appointed in the company's articles of incorporation or in An independent contract appointed by the general assembly of partners..." According to the second paragraph of the



previous article, a one-person company is bound by the actions of the director, if the latter acts by the powers granted to him in the company's articles of incorporation or its bylaws, provided that it is accompanied by a statement of the capacity in which He deals with it.

Article 144 of the Decree Law stipulates that: "If the court rules to declare the company bankrupt, and the company's funds are not sufficient to pay at least twenty percent (20%) of its debts, it may oblige the members of the board of directors or managers, or any of them, to pay The remainder of the company's debts or part thereof, each within the limits of his responsibility for those debts, if it is proven that any of them committed any of the acts mentioned in clauses (a), (b), and (c) of Article (147) of this Decree-Law. The meaning of this text is that for the manager of a single-person company to be responsible for that deficiency, he must be one of the people entrusted with the management of the company. In addition, the manager of the one-person company may have committed a mistake that led to a deficit in the company's assets such that the company's funds are not sufficient to pay at least 20% of its debts. Given that the one-person company is managed by a manager, the legislator has enabled the creditors to have recourse against this manager with a claim to make up the shortfall in assets. This lawsuit is filed if the company is subject to bankruptcy proceedings, and its goal is for the manager to bear this shortfall in the company's assets, resulting from A mistake he made while managing the company. The federal legislator has granted the ability to file a lawsuit against the board of directors or the director of the company, to the shareholder, and others, if they carry out actions that harm the interests of the company or shareholders.

Second - The extent to which it is permissible to postpone the declaration of the bankruptcy of a one-person company: Article (141/2) stipulates that the court may, on its own initiative, or upon the request of the civil company or the competent regulatory authority, postpone the declaration of the bankruptcy of that company for a period not exceeding one year if it is possible to support its financial position, and the interest of national conservatism necessitated that..." The meaning of the previous text is that the UAE legislator gave an opportunity to distressed companies that have stopped paying debts, or that are facing a temporary disturbance in their financial position, including a one-person company, to request a one-month postponement. Bankruptcy, as the cessation of paying the debt may be the result of an emergency that can be overcome.

The Emirati judiciary has adopted this trend through many rulings, as the Dubai Court of Appeal ruled in one of the cases by saying, "Declaration of bankruptcy is a penalty imposed by the legislator on every merchant who is proven to have stopped paying some of his outstanding commercial debts, regardless of their number, whenever his cessation occurred." About a troubled financial position and severe distress, in which his credit is shaken, and the rights of his creditors are exposed to a real or likely danger. Although the debtor's refusal to pay is considered a presumption that it is not in his interest, he may not be considered suspended in the sense mentioned above, as the reason for this refusal may be an excuse. Complimentary about his ability to pay.

The question that arises here is who submits a request to postpone the declaration of bankruptcy of a one-person company? The previous article specified three parties that can request a postponement of the bankruptcy declaration. The first part is the court that hears the bankruptcy case, as it may decide on its own to postpone the bankruptcy declaration of the one-person company. The owner of a one-person debtor company may also request a postponement from the court, and finally, the authorities that carry out the process of monitoring companies, as is the case with the Securities and Commodities Authority, may request a postponement of the declaration of bankruptcy of a public joint-stock company. As for the one-person company, the competent authority to request postponement of the company's bankruptcy is the Department of Economic Development in each emirate, by the provisions of Article (43) and Article (73) of the Federal Decree Law regarding commercial companies related to incorporation procedures.

To postpone the declaration of bankruptcy of a one-person company, several conditions must be met:

- The first condition: is that it is likely to support the company's financial position. It is clear from the previous text that the request to postpone the bankruptcy of a one-person company must be submitted accompanied by proof of the improvement of the company's financial position during the period specified by the law, and the goal of this is to preserve the national economy, by not



leaving emerging companies that are facing financial difficulties so that they can continue to operate. Restructuring from outside the country, as these companies are now able, within the period specified by the law, to avoid declaring bankruptcy, which would have negative effects on the interests of the debtor on the one hand, and the general guarantee of the rights of creditors on the other hand. In summary: If postponing the company's bankruptcy does not result in any improvement in its financial position, then the bankruptcy declaration may not be postponed. In application of this, the Dubai Court of Appeal says, "The company whose bankruptcy proceedings are requested to be opened is a limited liability company registered and registered with the Technology and Media Free Zone Authority." It works in the field of developing digital signs, and since 2015 until now it has faced major financial difficulties as a result of financial distress and credit problems, which made it unable to renew its license and to pay the debts of the creditors it was dealing with, with no possibility of recovery and return to normal commercial operations at the level of trust and credibility. Its creditors have filed lawsuits against it with a seizure of its assets, accounts, and the personal accounts of its owner who submitted the application, which led to its poor situation and the impossibility of fulfilling its debts, which prompted it to apply."

- The second condition - is that bankruptcy be postponed for a period not exceeding one year: This means that the legislator stipulates that the bankruptcy of companies, including one-person companies, be postponed for a period not exceeding one year, if that postponement will lead to an improvement in their financial position, and we in turn believe that the period specified by the legislator To postpone the declaration of bankruptcy of companies is suitable for the joint-stock company, which needs a long time to overcome the financial difficulties it faces, given the huge size of its capital. However, it is not appropriate for a one-person company, which naturally has weak capital, and therefore does not need this period for its financial position to improve. Accordingly, we recommend that the federal legislator amend the text of the previous article so that the period for postponing the declaration of bankruptcy of a one-person company becomes six months. We also suggest that the minimum capital be set for a one-person company, as it represents the general guarantee for the company's creditors in the event of its bankruptcy.

7 CONCLUSION

The researcher dealt with the topic - of the bankruptcy of a one-person company by Decree Law No. 9 of 2016, through two sections. We devoted the first section to researching the conditions for the bankruptcy of a one-person company, as the company must acquire the status of a merchant for its bankruptcy to be declared, and also for the one-person company to cease. from paying its debts, and this cessation may result from a disturbance in the company's financial position. As for the second section, we discussed the issue of the implications of the ruling declaring the bankruptcy of a one-person company, and since this type of company is based on the idea of dividing financial liability, where its owner deducts part of his financial liability to establish an economic project, his responsibility for the company's obligations and debts is limited liability. The amount of capital it provided, and therefore its owner may not be declared bankrupt if a one-person company is declared bankrupt, except in certain cases. The researcher reached several results and recommendations, which are stated as follows.

8 RESULTS

- The one-person company is not a new form of commercial company; Because a one-person company either takes the form of a limited liability company by Article 72 of the law, or it takes the form of a private joint stock company by Article 255, and therefore it is not a new form.
- The UAE legislator's recognition of natural or legal persons establishing individual projects, by deducting part of the owner's financial liability and allocating it to investment, came in response to the national economy's need for such projects.
- The federal legislator did not regulate the bankruptcy of a one-person company, nor did the federal legislator explicitly stipulate that the owner of a one-person company may be bankrupted, whether he is in his capacity as a manager or owner of the company.

- The one-person company acquires legal personality during the founding period, but to the extent necessary for its establishment. As long as the company has a legal personality during the founding period, and the company has already been established, it may be declared bankrupt if it stops paying its commercial debts that arose during the founding stage.


9 RECOMMENDATIONS

- We recommend that the UAE legislator regulate the provisions of the one-person company in Decree Law No. (32) of 2021 regarding federal commercial companies, as is the case for all other commercial companies.
- We propose to amend the text of Article (141/2) of Decree Law No. 9 of 2016 AD, so that the period specified for the request to postpone the one-person company is six months instead of a year, as this period is considered sufficient to provide proof of the recovery of the company's financial position to avoid declaring bankruptcy.
- We suggest that the minimum capital be set for a one-person company, as it represents the general guarantee for the company's creditors in the event of its bankruptcy.
- Article (299/2) of Decree Law No. (32) of 2021 regarding federal commercial companies stipulates that "If a partner, in bad faith, liquidates the company, or stops its activity before the end of its term, or before achieving the purpose stated in its articles of incorporation, the responsible for its obligations with his funds."

We propose to amend the text of the previous article so that a new case is added to the previous cases, in which the owner of a one-person company is responsible for his own money, which is the case when the owner of the company does not separate his interest from the interest of the company.

References

- [1] *Abd al-Rahman Qarman, The Responsibility of Board Members for the Debts of a Bankrupt Company, Dar al-Nahda al-Arabiya, without date of publication.*
- [2] *Ahmed Makhlof: The innovation in the new Saudi arbitration system issued by Royal Decree No. 34, dated 5/24/1433 AH, second issue, Rabi' al-Thani 1434, February 2013.*
- [3] *Ali Jamal al-Din Awad: Bankruptcy in the New Trade Law, 2nd edition, Dar al-Nahda al-Arabiya, Cairo, without a year of publication.*
- [4] *Company." Al-Halabi Legal Publications, Beirut, 2010.*
- [5] *El-Gamal, M. A. (2000). A basic guide to contemporary Islamic banking and finance (Vol. 1). Houston, TX: Rice university.*
- [6] *Fayez Naeem Radwan, Bankruptcy according to the provisions of commercial transactions, Bright Horizons Publishers, 2013.*
- [7] *Frédéric Zenati, "Législation Française et communautaire en matière de droit privé". Rev. Trim. De dr.civ. 1999.*
- [8] *Hani Samir Abdel Razek, The Responsibility of the Board of Directors of a Joint Stock Company in the Case of the Company's Bankruptcy, Dar Al-Haqqaniya for Legal Publications, Cairo, 2008.*
- [9] *Hassan Al-Mahi: Bankruptcy, fourth edition, Dar Al-Nahda Al-Arabiya, 2017.*
- [10] *Hiwa Ibrahim Al-Haidari: "One Person Limited Liability*
- [11] *Ibrahim bin Daoud (2018), Explanation of the bankruptcy law of the United Arab Emirates according to Law No. 9 of 2016, Dar Al-Hafiz, first edition, 2018.*
- [12] *Karima Karim: "One Person Limited Liability Company." New University House, Alexandria 2014.*
- [13] *Karl Gratzner, Insolvent, Thus a Swindler? The Insolvency Law and Imprisonment for Debt in Sweden, XIV International Economic History Congress 3-4, 2006.*
- [14] *Kisswani, N. M., & Bakri, A. A. A. (2023). The role of corporate governance in the sustainability of small and medium enterprises in the United Arab Emirates using limited liability company as a model'. International Journal of Private Law, 11(1), 29-51.*

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- [15] Kraakman, R., Armour, J., Davies, P., Enriques, L., Hansmann, H., Hertig, G., ... & Rock, E. (2017). *The anatomy of corporate law: A comparative and functional approach*. Oxford university press.
- [16] Mahmoud Mukhtar Ahmed Bariri: *The legal personality of commercial companies, the conditions for its acquisition and the limits of invoking it*, Dar Al Nahda Al Arabiya, 2013.
- [17] Mednicoff, D. (2012). *The legal regulation of migrant workers, politics and identity in Qatar and the United Arab Emirates*. *Migrant labor in the Persian Gulf*, 41-58.
- [18] Muhammad Al-Sayyid Al-Feki: *Commercial Law, Bankruptcy, Bank Operations*, 1st edition, Al-Halabi Publications, Beirut, 2011.
- [19] Muhammad bin Abdullah Al-Farsi: *The period of uncertainty in bankruptcy*, Dar Al-Nahda Al-Arabiya, Cairo, 2017, p. 12.
- [20] Muhammad Mustafa Abdel-Sadiq, *Commercial Papers and Bankruptcy in Arab Legislation*, Dar Al-Fikr and Law, 2011.
- [21] Mustafa Kamal Taha, Dr. Wael Anwar Bunduq, *The Origins of Bankruptcy*, Dar Al-Fikr University, Alexandria, 2007.
- [22] Nariman Abdel Qader: *General provisions for the limited liability company and the one-person company - a comparative study* - Dar Al-Nahda Al-Arabiya, Cairo, 1992.
- [23] Samiha Al-Qalioubi: *Al-Mawjiz fi Rulings on Bankruptcy*, Dar Al-Nahda Al-Arabiyyah, 2003.
- [24] Sherif Ghanem Dr., Dr. Ahmed Shaaban Al Tayer: *Al-Wajeez Explanation of Bankruptcy Provisions According to Decree Law No. 9 of 2016*, first edition, University Library.
- [25] Tucker, A. (2010). *Flawed assumptions: A corporate law analysis of free speech and corporate personhood in Citizens United*. *Case W. Res. L. Rev.*, 61, 497.
- [26] Zeina Ghanem Al-Saffar: *Bankruptcy Provisions According to the Federal Commercial Transactions Law*, First Edition, University Library, 2012.