

Financial deficit of commercial companies and its impact on them

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Abstract:

Today, commercial companies have imposed their economic status in several fields: socially, scientifically, economically, health-wise, etc. Commercial companies, regardless of their legal form or legal nature, contribute to moving huge amounts of capital to and from the public treasury. Any commercial or investment operation is based on capital that is formed through small commercial operations, but it is hindered by some obstacles, financial difficulties, or emergencies that negatively affect the practice of its activity and its continuation.

Keywords: financial deficit, business, default, bankruptcy.

Introduction:

Contrary to its civic counterpart, commercial activity usually includes taking big commercial and financial risks; as well as budgeting big sums of money. Among these commercial activities exists projects that hold a great economic value that require collecting multiple capitals to start. Such projects are impossible for one person to start regardless of their wealth; that is what is called a company.

Given the high importance and risk taken concerning the aforementioned projects (companies) in the national and global economy, they hold the first place in the commercial, industrial, and even rural activity in many countries.

Thus, when these commercial companies contribute in enriching the economy, they sometimes face obstacles, hardships, and emergencies that push them to stop paying their debts and falling apart; therefore, they falter financially, leading them to bankruptcy, which is one of the general leading causes of the demise of every type of commercial companies, for it is an executive procedure that leads to the “commercial death” of a company and its liquidation: selling all its financial situation.

Given the factors discussed, the financial deficits of commercial companies are a significant issue importance tightly related to the significance of the risk

facing the company, for it is a direct reflection of the maladministration and laxity of financial risks, making the company unable to commit to its present and future commitments, based on this, we present the following problem:

What is financial deficit? And what are its effects?

Chapter One: The Definition of Financial Deficit in Relation to Commercial Companies

During their lifespan, most commercial companies face a variety of problems that could lead them to faltering financially, regardless of its causes: be it internal or external, leading to an economic crisis. Considering the importance of the phenomenon of financial faltering, we find that most of the countries have legislations connected to it, as protecting the faltered projects has become a topic of great legal value.¹

Section One: The Significance of Financial Deficit

Due to its connection to the magnitude of risks that commercial companies face, the phenomenon of financial faltering is of great importance as a topic of various studies, due to its effect on projects specifically and economy generally.

Subsection One: The Definition of Financial Deficit:

Opinions and definitions of financial faltering of companies vary according to different hypothesis of economy and religious legislations.

First: The Terminological Definition of Financial Deficit:

It is the occurrence of an incidental action as a result of an obstacle in its way, but it has productive potential that could fix its career and provide assistance during the crisis, if the funds and resources are available. With this, it is different from failure, crushing and collapse.²

Second: The Economical Definition of Financial Deficit:

It is a state of distress that Afficher les suggestions, The economic viability of a project can be affected by the scarcity of raw materials or overproduction due to a saturated market, illegal competition, or debts. Each of the aforementioned

¹ صلاح الدين حسين السيسي، الموسوعة الاقتصادية الدولية: الاقتصاد العالمي والأزمات الاقتصادية الأسباب والتداعيات وسبل المواجهة، الطبعة الأولى، دار الكتاب الحديث، القاهرة، 2014، ص ص 19-21.

² مسعود يونس عطوان عطا، إهماض المشروعات المتعثرة ووقايتها من الإفلاس (دراسة مقارنة بين القانون الوضعي والفقه الإسلامي)، الطبعة الأولى، مكتبة الوفاء القانونية، الإسكندرية، 2010، ص 56.

causes could disrupt the activity. Therefore, economic faltering means that the project is no more profitable, I.e its expenses are more than its revenue.¹

Third: The Financial Definition of a Deficit:

It is the state where the financial flow is not sufficient to cover the current commitments, which means being unable or late to pay debts. Therefore, financial faltering is but a stage that follows economic faltering, as the burdens increase and the level of revenue decreases, it results in the project inability to finance itself and providing the necessary liquidity.²

Based on what is mentioned, we find that faltering is but a slip or a sudden accident that faces the company causing a disruption in its expenses and revenue, which forces the managers to work towards raising the company back from its slip to continue its activity. It can also be defined as the stage of severe financial imbalance that the company reaches, pushing it to declare total bankruptcy, whether it resulted in the company's inability to pay off its debts in the short term, or great accumulative losses.³

Most systems of legislation, unlike the Algerian one, have adopted the term "faltering", especially with the wide spread of international commerce and trade, along with the multi-nationality international companies and their branches.

The notion "bankruptcy" is disappearing from the legal language: as an example, in the French legislation since 1985, as the article L620-1 of the French commercial law.⁴

For a better understanding of the term faltering, it is a mandatory to try understand the words closest in meaning to it:

- 1- Bankruptcy:** It is defined as the legal verdict that a courthouse supervising the insolvent company's financial affairs. Thus, bankruptcy is a momentary state that occurs during a double crisis of solvency and liquidity, while faltering is a gradual process of deterioration in resources that, in case of the absence of correctional procedures, could potentially lead to bankruptcy.⁵

¹ لشمخي حمزة، الجزراوي إبراهيم، الإدارة المالية الحديثة، الطبعة الأولى، دار صفاء للنشر والتوزيع، عمان، 1998 ص 80.

² براز الوليد، ضرورة التحول من قانون الإفلاس إلى إنقاذ المشروعات المتعثرة، الطبعة الأولى، بيت الأفكار، الجزائر، 2023، ص 138.

³ مسعود يونس عطوان عطا، مرجع سابق، ص 56.

⁴ Article L620-1 code commerce français, Modifié par Ordonnance n°2021-1193 du 15 septembre 2021 - art. 11.

⁵ Nathalie Crutzen, Didier van Caillie, **L'ENCHAÎNEMENT DES FACTEURS DE DÉFAILLANCE DE L'ENTREPRISE : UNE RÉCONCILIATION DES APPROCHES ORGANISATIONNELLES ET FINANCIÈRES**, <https://shs.hal.science/halshs-00543111>, 22-07-2023, 06h35.

2- Insolvency: When a company becomes insolvent, it has a slow solvency, I.e The failure of a project to fulfill its obligations.¹ This is known as the executive insolvency, whereas legal insolvency refers the assets of the projects losing their true value compared to the competitors, meaning the total value of the external commitments is higher than that of the rights of the projects threatening its continuity. This is why executive insolvency is considered the true introduction to financial failure.

3- Financial Failure: The term failure is not accurate, considering it is a descriptive term of the financial state that establishments face, for it is considered a general term that merges financial and legal concepts of the state of bankruptcy and insolvency in establishments; The difference lies between faltering and failing, as the former precedes the latter but not necessarily lead to it.²

A project can be saved from its faltering through intervening before it to face the hardships that threaten it and avoiding failure. Thus, faltering is connected to the stoppage of paying debts in due dates or the decrease in the revenue of the stocks, where failure is total stoppage of paying debts or naming a project as bankrupt, consequentially, the stoppage of its activity.

Based on what is previously mentioned, it is possible to say that all these terms are almost identical, for they all explain the stage that precedes bankruptcy and liquidation.

Subsection Two: Reasons for financial shortfall

The faltering of a company is a result of a myriad of causes that some or all may appear. As the types and the causes of faltering, they are often divided to: administrative, financial, and economic causes. Therefore, it is important to know the source of the hardship that leads to faltering, for the effects that these hardships leave and the ways to overcome them differ in accordance to this asset.

First: The internal reasons for a deficit

The disruption of the financial and economic situation of commercial companies is not connected only to the external circumstances that surround it, but there is a variety of causes that grow The internal factors within the company, often related to administrative incompetence, that contribute to deficits:³

¹ ربحان الشريف، التعثر المالي المراحل الأسباب والطرق وإجراءات المعالجة، مجلة التواصل، جامعة باجي مختار، عناية، العدد 16 جوان 2007، ص 28.

² نفس المرجع، ص 29.

³ مسعود يونس عطوان عطا، مرجع سابق، ص 58.

- The mismanagement or absence of surveillance over the administration, or disputes among the partners, which leads to debts and withdrawals from checking and Savings deposits.
- The ineffective oversight, lack of management experience, and absence of qualified individuals.
- The company's legal structure being unsuitable to its size and value, for example: we find that joint fund companies are correspondent to the large projects of activities that surpass the domain of the country, and the limited-responsibility companies with small to medium sized projects.¹
- The inventory being too large for the number of the company's businesses, the salaries of the employees being too high, the general expenses of the company compared to competition, the expensive nature of the lines of production of the company are all factors that affect the revenue negatively.
- The loss of cash liquidity of the company and its inability to pay off debt to its variable creditors, therefore the accumulation of debts will affect its work results.
- The expensive financial policy connects to the users and the financial expenses, and the laxity of the variable and constant expenses all lead to unequal and unjust distribution of the added value.
- Strong competition and the inability of the company to stand in such competitive environment.
- The lack of the studies of feasibility and the maladministration of the project, the devolving of the product and the repetitive nature of it. The misinformation about the necessary date and financial knowledge needed to make the correct decisions at the right time.²
- It could be caused by executive and productive causes, like the quick paced technological development, such as companies would be outperformed, or due to a problem in the production process.³

Second: The External Causes of Deficit:

These are the causes that are out of the company's domain, and they are considered less stressful than the internal ones; however, one external reason could storm the company away from existence, as the company is effected by its external environment. These causes are:

¹ Yves Guyon, **Droit des affaires Entreprises en difficultés - Redressement judiciaire – Faillite, 9eme édition, economica, paris,2003, p54.**

² نسرين بن قدار، أهمية البعد الأخلاقي في ترشيد القرارات المالية كآلية للحد من مخاطر التعثر المالي للمؤسسات الاقتصادية: دراسة استقصائية لعينة من شركات المساهمة الجزائرية، أطروحة دكتوراه تخصص مالية المؤسسة، كلية العلوم الاقتصادية والتجارية وعلوم التسيير، قسم العلوم التجارية، جامعة محمد البشير الإبراهيمي، برج بوعرييج، السنة الجامعية 2021-2022، ص ص 61-62.

³ عبيدات محمد، فايز الجولاني، أسباب تعثر المشروعات الصناعية في الأردن، مجلة دراسات العلوم الإنسانية الأردنية، الأردن، المجلد 20، العدد 3، 1993، ص

- The decrease of the demand in the market for the products of the company, which could be because the taste of the consumers is changing, and the company being unable to renew and diversify its products.
- A problem in the dealing with the governmental agencies, for example: problems with the customs during importation and the administrative tax problems, which could be another cause of the company being late to executing its programs.
- The increased prices of the necessary tools and materials for the production and moving power, leading to bearing extra production expenses by the company which could potentially cause it to falter.¹
- The phenomenon of globalization and its great effect on the failure of multiple companies, due to the dominance of the giant companies on the markets of various developing countries.
- The intervention of the government in some cases to monitor the market through enacting laws that control the mandatory price of a product, which effects the revenue of the company. In many cases, this was the cause of faltering of many companies and their bankruptcy, for in the case of lifting the restriction on the price of the raw material that is used for a given product of the company, the expenses of production are automatically increased, which takes away their competitive pricing, and therefore, their stagnation in the market.²
- The shrinkage in local liquidity of the market, and the decrease of the speed of cashflow, resulting in disruptions in any stage of the cashflow, leading to suffocations in the economic activity, which effects the ability of the company to fulfilling its commitments towards others.³
- The change in economic and political circumstances in the society.
- Natural disasters such as, earthquakes, floods, diseases or wars.
- Dangers such as, fires, theft, riots, strikes, acts of violence, or vandalism.

Section Two: The Stages of Financial Deficit:

Commercial companies go through a group of stages before they reach the stage of faltering and then bankruptcy, for faltering does not occur abruptly, but it happens in the last stage as a result of various preceding stages, which might develop to bankruptcy, as every stage is effected by how dangerous the causes and the factors leading to failure, except there are no one scenario that all projects heading towards faltering could follow, but it differs from a project

¹تركي محمود مصطفى القاضي، الشركات المتعثرة في القانون العراقي والقانون المصري، مجلة الباحث العربي، جامعة الدول العربية، القاهرة، المجلد 2، العدد 2، 2021-10-15، ص 95.

²بزاز الوليد، مرجع سابق، ص 147.

³Yves Guyon, op.cit, p55.

to another. Thus, we will try to address all shared stage among the faltering projects, as they present in the following:¹

Firstly: Stage one: Occurrence of an Incidental Secondary Matter:

This stage is considered the starting point of faltering for the company, so companies could occasionally face liquidity problems where financial faltering shows through a group of indicators that managers of said companies spot. This includes weak capital, the increase in size of competition and costs, corruption, and fatal errors in management. Losses in this stage are generally economic where return on assets are less than numbers of the company, and it is recommended to diagnose these difficulties and problems in this stage in order to re-plan and increase monetary flow.

One of the flaws that can be found in this stage is grouping executive and monitoring authorities together, and to avoid this case it is mandatory to encourage and push joint stock companies to direct themselves towards modern management regulations that separate monitoring from management, and this according to the legal acts 642 of the Algerian commerce laws and what follows them.² The analysis of this primary stage of faltering is considered a hectic and difficult matter, and this is due to the signs and symptoms that characterize it not being monetary; thus, they are difficult to quantify.

Secondly: Stage two: Poor Monetary Liquidity:

At this stage, the company is in a critical condition, and this is because of its managers' lack of care for the incidental secondary matters, and their failure to find a solution to pull the company out of this state. The main reason for poor management is failure to predict and evaluate the difficulties and dangers that surround the company.³

This stage is linked with production and marketing problems that result in negative factors, and incompetence of the company's management in facing and fulfilling immediate monetary needs produce difficulties transforming assets into liquidity to pay outstanding debts. Additionally, this leads to the

¹ عزت هاني عزت أبو شهاب، مدى فعالية تنبؤ فشل شركات المساهمة المدرجة في بورصة عمان، مذكرة لنيل شهادة ماجستير تخصص المحاسبة، جامعة الشرق الأوسط، عمان، الأردن، 2018، ص 24.

² بزاز الوليد، مرجع سابق، ص 149.

³ طعيبة محمد سمير، دور وأهمية آليات الدعم في الحد من تعثر المؤسسات الصغيرة والمتوسطة دراسة تحليلية لفعالية بعض آليات الدعم في الجزائر، أطروحة مقدمة لنيل شهادة الدكتوراه، شعبة التسيير، تخصص مالى ومحاسبة، كلية العلوم الاقتصادية والعلوم التجارية وعلوم التسيير، قسم علوم التسيير، جامعة عمار ثلجي بالآغواط، 2020-2021، ص 57.

continuation of this stage for months which forces the company to resort to loans to fulfill immediate monetary needs.¹

Thirdly: Third Stage: Temporary Financial Distress:

It is at this stage that the situation increases in difficulty and danger and this is when the commercial company suffers financial faltering, so the company is on its way towards collapsing due to it not possessing sufficient liquidity to pay its debts and finish its operations under the lack of solutions to improve its financial state. This stage is called financial distress because it expresses the decrease in the earning power of the commercial company that would occur at a certain point.²

So, the project would be forced to sell its bonds at a relatively higher rate of return than the interest rate that a bond carrier can accept to invest their money in other establishments similar to this company in its activity. At this stage, the company becomes financially distressed; additionally, when the company reaches this point, its management resorts to financial methods to maintain the continuation and the growth of the commercial company in case it does not acquire necessary funding despite the low chance of continuation.³

Fourthly: Fourth Stage: Permanent Financial Distress:

This stage reflects the total failure of the company where it is considered a turning or changing point for it. So, faltering becomes a daily motif for the company, and it would be in the beginning of the end of its activity. Consequently, it cannot avoid this stage unless it acquires additional financing sources. For the company, this period is characterized by the value of total liabilities being superior to the value of the commercial company's assets. This is what causes total financial default which results in the risk of bankruptcy.⁴

Some of the most important indicators that reflect the possibility that a company will be exposed to bankruptcy are as follows:⁵

- The incapacity of the company for competition.
- The dysfunction of the company's capital structure, and this occurs when its material means are not fit for the amount of its obligations.
- The decrease of profit in the company.

¹نسرین بن قدور، ص 63.

²تركي محمود مصطفى القاضي، مرجع سابق، ص 95.

³نسرین بن قدور، مرجع سابق، ص 64.

⁴طعيبة محمد سمير، مرجع سابق، ص 58.

⁵تركي محمود مصطفى القاضي، مرجع سابق، ص 96.

- The accumulation of debts for the company especially bank debts.
- Tardiness in preparing final accounts which affects assessing the state of the company.

Fifthly: Stage Five: Announcement and Confirmation of default:

This stage is considered the last of the company's life, for it reaches what can be called actual collapse that expresses financial distress, after the passing of all indicators due to the succession of a storm of events, the final fate of the company becomes bankruptcy, where judicial procedures are commenced immediately, either by the managers of the company through reporting its incapacity for repair, or by the creditors through presenting a demand for bankruptcy of the company.¹

The company is thought to be bankrupt from the economic aspect when its resources are not sufficient which means a decrease in liquidity, and this is what is called faltering.

Chapter Two: The Consequent Effects of Financial Deficit on Commercial Companies:

Through what was previously mentioned, we find that financial deficit is the result of one of the aforementioned causes or some of them, so this phenomenon is a natural one that could occur to the company throughout its activity. The deficit of commercial companies entails some aspects that could cause disruption in the relationships between different economic agents. Whether it is social or economic², the disappearance of a commercial company from economic life cannot pass without it leaving an effect.

Section One: The Legal Effects of Financial Deficit of a Commercial Company:

The first legal effect that shows on the company is default which is a core condition to apply the system of bankruptcy, so when we say bankruptcy we automatically think of "default." Additionally, default poses a problem since it is one of the core conditions for the application of bankruptcy through its content and posing its standards, and this reflects on reporting the existence of a commercial company in bankruptcy.

Subsection One: Default as a Cause of Commercial Company Bankruptcy

Despite the importance of the default system in most legislations including the Algerian one, which is considered an objective condition to apply the

¹ طعيبة محمد سمير، مرجع سابق، ص 59.

² صلاح حسين، التطورات والمتغيرات الاقتصادية الدولية: دعم وتنمية المشروعات الصغيرة حل مشاكل البطالة والفقر، الطبعة الأولى، دار الكتاب الحديث، الجزائر، 2018، ص 6.

bankruptcy system, there is no specific definition for the default, so the judicial system and jurisprudence ensured in assigning a definition for the idea of cessation.

As for the Algerian legislator and by legislation 215 of the Algerian commerce law, stipulates that a trader that stops paying his debts at the time of their deadline, even if he has the capability of payment it is possible to declare his bankruptcy,¹ for this law stipulates the following: “It is obligatory for every trader or legal person that is under private law even if he is not a trader, if he ceases to pay, to provide a report within fifteen days in order to start procedures of judicial resolution or bankruptcy”

So, from the text of this legislation and others that follow from commerce law, we find that the Algerian legislator did not provide a definition or standards of default. Additionally, through analyzing the legislation 215 of the A C L we notice that the legislator took the traditional meaning of default, thus we can describe this state as a legislative stagnation concerning the bankruptcy system.

Subsection Two: Default Regulations:

To understand the truth about the financial state of a commercial company, It is necessary to rely on certain regulations and standards in order to identify the truth about default, for it is mandatory to know the conditions of the debt for which default has been proceeded with, and to identify the date of default and to prove default.

Firstly: Conditions of the Debt Ceased to be Paid:

The debt must be a specific amount of money and due for payment:

The debt which the company has refused to pay must be a specific monetary amount. As an example, if the obligation of the project, that is being requested to declare bankruptcy, is to perform an act, such as to deliver something or perform a certain service, then there is no need to declare its bankruptcy. If it fails to attain these obligations, then they are converted to a sum of money in order to discuss the declaration of bankruptcy because of not paying. So, the failure to attain the non-monetary obligation does not necessitate a bankruptcy declaration.²

¹ طباع نجاة، توائي نصيرة، نظام التوقف عن الدفع: بين قواعد الإفلاس ونظام الإنقاذ، المجلة الأكاديمية للبحث القانوني، المجلد 11، العدد 2، 2020-08-31، ص163.

² الصادق عبد القادر، مرجع سابق، ص 294.

The sum that the company ceased to pay should be specific. It cannot be partially specific; as in it is not acceptable for part of the amount to be specific and another part unspecified, and then to declare bankruptcy for part for the specified amount. Adding to that, the sum should not be determinable, such as a debt with an unknown sum, until an account settlement which entails hiring an expert to determine its value. The debt must be evaluated with precision to leave no room for dispute on its value.¹

The debt that the company ceased to pay must be of determined value. This means that unless the debt is due, the creditors of the company cannot request a bankruptcy, postponed debts are included in this obligation. As long as the deadline and the condition of the debt are not met, the company is not considered in the state of default.

²Secondly: The Debt Must Be Definite and Free of Any Dispute:

Among the conditions concerning debt that ceased to be paid is that it must be definite and free of any dispute, but when we refer to legal texts, we find that the legislator did not stipulate this condition in the commerce law texts, so it is considered a condition required by jurisprudence and the judicial system. Thus, the assessment of this condition and its importance is a matter for the court where the bankruptcy request is filed where it decides to accept or refuse the request, and this after verifying that there is no dispute concerning the debt. If a dispute is revealed, the court would refuse the request because of the condition not being met. If there is no dispute found, the court would accept the request.³

If the debt can be divided which means that a part of it is under dispute and the other is definite. The bankruptcy request for the company can be requested concerning the definite part of the debt as a justification for bankruptcy.⁴ The Egyptian Court of Cassation supported this stating what follows: "It is a condition in the debt that leads to declaration of bankruptcy due to default to be free from disputes. It is obligatory for the court, when presenting its verdict about the bankruptcy request, to examine all the disputes that the debtor raises

¹ نفس المرجع السابق، ص 295.

² بارودي مختار، قلفاط شكري، التوقف عن الدفع كأساس لإفلاس الشركات التجارية في التشريع الجزائري (دراسة مقارنة)، المجلة الأكاديمية للبحوث

القانونية والسياسية، جامعة الأغواط، المجلد 5، العدد 2، 2021-09-01، ص 520.

³ إلياس ناصيف، موسوعة الوسيط في القانون التجاري، الصلح الوافي والإفلاس¹، الجزء السادس، بدون طبعة، المؤسسة الحديثة للكتاب، لبنان، 2008، ص

112.

⁴ نفس المرجع، ص 105.

about the validity of the debt to evaluate how serious it is, and its verdict will be based on this evaluation”¹

The debt not containing any dispute is not proven unless it is with a final judgment. The debt is not considered free from disputes if a judgment that is subject to opposition or appeal is issued. Bankruptcy is considered a method of enforcement and it does not occur unless the debt is defined and free from any dispute.

3 – The Debt Must Be Commercial:

As a support for the principle of trust and credit in commercial transactions, the legislator considered the bankruptcy system as a penalization for not paying one of their commercial debts, and it is confirmed by legislation 215 of the commercial law concerning contracts and transaction that they make in their trade which includes debts from inherently commercial and accessory transactions.²

We find that the Algerian legislator rules the declaration of bankruptcy on legal persons that are subject to private law even if they do not possess a commercial nature such as associations if they stop paying their debt, and through this, it is permissible to declare their bankruptcy by their civil debts.³ Concerning the persons with proven commercial nature including commercial companies, their bankruptcy is declared if the matter is related to non-payment of a commercial debt. By looking at legislation 216 of the Algerian Commerce Law, we find the statement “no matter the nature of the debt.”⁴ Thus, we understand that a creditor of a civil debt asked the company’s bankruptcy, but when examining the text, we find that it is complimentary to the previously mentioned legislation in that the nature of the debt does not matter concerning being summoned to court. The verdict on bankruptcy requires a substantial condition, and it is the default of a commercial debt.

Thus, under the consideration of non-payment of a civil debt as a reason to declare bankruptcy, most traders would be threatened with the loss of their trades and work, and this affects commercial and economic life.⁵

¹ علي جمال الدين عوض، الإفلاس في قانون التجارة الجديد، الطبعة الثانية، دار النهضة العربية، القاهرة، بدون سنة نشر، ص 59.

² طباع نجاة، تواتي نصيرة، مرجع سابق، ص 166.

³ راشد راشد، الأوراق التجارية، الإفلاس والتسوية القضائية في القانون التجاري الجزائري، الطبعة السادسة، ديوان المطبوعات الجامعية، الجزائر، 2006، ص 228.

⁴ تنص المادة 216 من القانون التجاري الجزائري على أنه: " يمكن أن تفتح كذلك التسوية القضائية أو الإفلاس بناء على تكليف بالحضور كيفما كانت طبيعة دينه. "...

⁵ الصادق عبد القادر، مرجع سابق، ص 297.

Secondly: The deadline:

Determining the date of default is the responsibility of the court specialized in bankruptcy and judicial settlement depending on what is extracted such as the circumstances of the case and the evidence presented.¹ Determining this date according to legislation 222 of the Algerian Commerce Law is considered one of the main matters that are required in default, and it stipulates what follows:

“In the first sitting that the default becomes proven to the court, for it is the one that determines its date, and it rules for settlement or bankruptcy.”

In the article 247 of the A C L, the legislator declares it the authority of the court to determine the date of the default.² Dating the default 18 month prior to the verdict of bankruptcy or settlement is ruled is impossible.

The date of the default must be included in the verdict of declaring bankruptcy, and in this case, it is considered the same date of default.³

The text of the article 248 of the A C L authorises the court to edit the date before closing the list of debts, according to a subsequent decision of the verdict or judicial settlement. However, when the list is permanently closed, it is not acceptable to edit the date of the default.⁴

The legislator has also added the duration of six months that precedes the date of the default regarding the actions without compensation that are the topic of the article 2/247 of the Algerian Commerce Law.

Article 2/247 of the A C L is concerned with the actions without compensation. It gives the legislator the right to add a duration of six months that precedes the date of the default.

Thirdly: Proving the default:

Referencing the Algerian legislator, we find that it did not specify cases where the default's date could be determined, or if it could be proven at all. This refers us to article 30 of the Algerian Commerce Law⁵, which enables the prosecutor, considering the burden of the proof falls on him, to use all the available physical evidence to deduct a default.

¹ بارودي مختار، قلفاط شكري، مرجع سابق، ص 522.

² المادة 247 من القانون التجاري الجزائري

³ أنظر المادة 222 الفقرة الثانية من القانون التجاري الجزائري.

⁴ أنظر المادة 233 من ق ت ج.

⁵ تنص المادة 30 من القانون التجاري الجزائري على أنه: " يثبت كل عقد تجاري: 1 بسندات رسمية، 2 بسندات عرفية-3 بفاتورة مقبولة، -4 بالرسائل، -5

بدفاتر الطرفين، -6 بالإثبات بالبينة أو بأية وسيلة أخرى إذا رأت المحكمة وجوب قبولها."

As for the compared legislations, it is similar to the Algerian one, for the incidents that could be used as proof of default are not determined. This matter is the subject of the discretionary authority of the court.¹

The legislator has referred to some of the business and actions that the judge could use in the article 562, paragraph 3 of the Egyptian Commerce Law², that reads:

“In order to determine the date of the default, the court could use any word or deed of the debtor that reveals a disruption in his business, or his intentions in continuing his activity using means that illegal and harmful to his creditors, especially the debtors attemptsto flee, commit suicide, hiding money, selling it as a loss, contract loans with exorbitant conditions, or engage in reckless speculation.

Subsection Two: The Economic effects of Financial Deficit on a Commercial Company:

The financial distress of a commercial company looms over the national economy. There are many aspects to the effect of financial distress that are divided into the partial level and the total level.

First: On the Partial Level:

Financial distress of financial companies effects its core on various levels that include the owners and those who deal with it in any way, especially those who are financially and commercially included with it.

The distress of a commercial company effects them by taking away the company’s ability to pay back their debts. Though many legislations that are concerned with the bankruptcy are found in constitutions of different countries, aiming to protects the creditors, protecting their money, and helping them retrieve it. However, whenever doubt in the company’s ability to pay back is present, a lot of disruption occurs during the process of economic decision-making.

For example, we find that the debts made from distressed banks affects the activity of the bank negatively. Bankruptcy increases the debt provisions of a given company, and it might reach the limit after the distribution of the

¹الصادق عبد القادر، مرجع سابق، ص 298.

²قانون رقم 17 لسنة 1999 المتضمن قانون التجارة المصري، المؤرخ في 17 ماي 1999، الجريدة الرسمية العدد (19) مكرر، المعدل والمتمم بالقانون 156 لسنة 2004، العدد 28 مكرر، الصادر في 14 يوليو 2004.

revenue on the partners. They might resort to debt, in an attempt to diverge away from the crisis of liquidity of the company.

The bankruptcy of a company has many economic repercussions on the owners, which harms their interest, as this financial distress that faces the company and leads it to bankruptcy and liquidation, as well as the profit lost in cause of the discontinuation of the activit of the project. The potential of distress through the revenue of the stocks affects the partners and the stock holders.

Second: In general:

As the commercial companies are considered the pillar of economy nationally and internationally, their distress effects directly the growth of the economy, especially the giant commercial companies. Studies have proven that when the giant companies, like the joint stock companies, face bankruptcy, it shocks the national economy as a whole. Thus, it causes a group of negative effects that are:

1. Effects on the National Economy:

The turbulence of the investment climate is one of the strongest effects that harm the economy, as the increase in size of distressed debts is proof of the decrease of the revenue of the investment in the commercial company. Thus, it effects the development of the investment and providing jobs.¹

Distress effects the national income and the revenue of the general budget, through stopping some of the most crucial sovereign resources, receding sum of taxes that are transferred to the government, and increasing in the levels of idle capacity. It is also harming the trade balance, as it negatively effects the national production, which leads to resorting to debts to close the gap between supply and demand. This causes an imbalance in the trade balance, tipping it against the national economy, causing to a deficit in the trade balance.²

2. Effects on the Financial Level:

The financial effects of commercial company deficits are:³

- o Setting aside a portion of total revenue to create a debt reserve for future debt repayments.
- o Suspension of the interest of said debts.
- o The expenses of following the process debt collection, which requires surveillance and vigilance.

¹لشمخي حمزة، الجزراوي إبراهيم، مرجع سابق، ص 90.

²<https://www.slideserve.com/rahim-koch/non-performing-loans-management> 02-08-2023,10h20.

³عبد الله يحي جمال الدين مكناس، مرجع سابق، ص 43.

- o The legal costs and fees associated with processing distressed debt, along with the lost opportunities resulting from freezing the company's funds, should not be overlooked.

3. The size of the domestic national debt:

The financial struggles of commercial companies can lead to an increase in the national debt, which is composed of unpaid debts owed by entities associated with these distressed companies, like banks, the public authorities, and the social organizations... etc.

Statistics show that small and medium companies are more prone to bankruptcy than larger companies. Even though the total of its individual debt is much less than larger companies, in fact, they have a larger share of the debt.¹

4. Serious offense:

The nature of the relationship between bankrupt companies and the development of gross crime is inverse. If the number of bankrupt companies increases, A reduction in government corruption can lead to a decrease in bankruptcies. Companies can contribute to reducing crime.

To clear the picture, we give an example of the aforementioned studied that was run, which considered a great The rate of bankruptcies among two U.S. companies.

The WorldCom Company's bankruptcy in 2001-2002 was the second largest bankruptcy in U.S. history. communication company, along with Enron: a large American energy company. Experts have concluded that the bankruptcy of these two companies has lost the American Economy between 37 to 42 Billion dollars in the first year from the gross crime alone.²

Experts also explain the the tax revenue is effected by the distress of commercial companies, due to the company stopping its activity and making profit.

Subsection Two: The Social Ramifications of Commercial Company Financial Difficulties

Commercial companies often face financial difficulties dangerous phenomenon that negatively effects the different aspect of society, not only the economy. The social responsibility of the company is demonstrated by its social effect. When a project becomes distressed; it fails, which leads to unemployment.

¹طعيبة محمد سمير، مرجع سابق، ص 66.

²Carol Graham, Robert Litan, and Sandip Sukhtankar, **The Bigger They Are, The Harder They Fall: An Estimate of the Costs of the Crisis in Corporate Governance**, Working Paper Economic Studies/Governance Studies Programs the Brookings Institution, August 30, 2002, p 6.

This latter is a social and economic issue that the government attempts to limit through developing programs.

We also find that the bankruptcy of large companies leads to laying off employees in large numbers, contrary to medium and small companies, where the number is smaller. One of the examples is the “Andresen” Company: a tax company located in San Francisco, California, U.S.A. It has many offices in different American countries and South Africa. The company faced bankruptcy that caused laying off more than 85,000 employees, of which 28,000 in the United States alone.¹

If bankruptcy of large companies leads to laying off great numbers of employees, this does not mean the small and medium ones do not have an effect on unemployment rates. The rate of bankruptcy among small and medium companies is greater than in large companies. Therefore, they also cause the loss of jobs.

The loss of jobs effects the standard of living negatively in society. The income of families is decreased, so they can't afford their basic needs. The distress could cause the social problems to grow, such as crime and violence. To face the financial hardships without a job, they could resort to negative behavior to deal with the problem. As the distress of companies potentially leads to separating families and the devolving of social values.²

Based on what is discussed previously, we find that the financial distress of commercial companies effects the standard of living and social relationships, as it could affect education, for when families face financial distress, they might have to budget the tuition expenses. Therefore, the distress of companies is a dangerous phenomenon that threatens the stability of society.

Conclusion:

An analysis of commercial company financial deficits can highlight the most significant financial hardships that companies could face were discussed, due to the importance of commercial companies. The latter is considered establishments. The strength of a country's economy can be influenced by the variety of challenges a company faces. These challenges can threaten a company's survival and destabilize the economy. Financial deficit of commercial companies is among the most frequent hardships that companies face and is. Given the significance and risk associated with this topic, we propose the following recommendations:

¹Jerry W. Markham, «A financial history of modern U. S corporate scandals from Enron to reform», M.E, Sharpe, New York, 2006, p. 16.

²عبد الله يحيى جمال الدين مكناس، مرجع سابق، ص 41.

- The necessity of enacting a complete law, specifically made to process and save companies from distress, and the urgency to work on protecting them from bankruptcy.
- Benefitting from the experience of other developed countries in protecting the commercial companies from hardships, and saving them from distress by warning them, in support of the different economic fields. Following the French legislation experience, which replaced it with the system of judicial liquidation, and the Tunisian legislation that created a system that saves the distressed companies.
- The Algerian legislator should keep pace with the economic life, through adopting an effective system of bankruptcy, which completes and supports the legal system in the country, and it goes with it to provide security and stability in the market, supporting the stability and growth, especially in the legal relationships connected to commercial companies. For this reason, most investments look for legal security as a priority. Thus, the legislator should let go of the traditional concept of default, and should instead adopt the modern concept that is based on tightening the concept of default, which protects the distressed companies.