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# Revival Of The Stumbled Companies In Iraqi And Egyptian Law (A Comparative Study)

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## Abstract

The creditors' interest requires the full recovery of their money as soon as possible. But the interests of the national economy require that commercial companies remain in place despite their financial inability to guarantee their financing of the national market with the required goods and to preserve the positions of their workers. For these reasons, many countries have adopted procedures and mechanisms that would prevent the stumbling commercial companies from stopping payments, ensuring the continuity of their activity. The phenomenon of commercial companies experiencing difficulties during their progress is a natural feature of the economy; also, weak and strong companies can face many difficulties that lead them to enter the stage of faltering; and since that was the case, the phenomenon of commercial companies stumbling is not limited to a particular country or a particular economic system, and the companies' entering the stage of stumbling entails taking all appropriate measures to establish these companies from their stumble and help them to rise again and get them out of this situation in order to continue the activity for which they were established.

Did the Iraqi and Egyptian legislators put in place a similar system to prevent commercial companies from stopping paying their debts? What are the monitoring and intervention mechanisms adopted by the aforementioned legislators to protect it and ensure the continuity of its activity? What are the faltering companies doing and what is the revival?

**Keywords:** Companies, Stumbled, Revival, Iraqi law, Egyptian law, Exoneration, Debts.

## Introduction

### 1-Presentation of the study:

Commercial companies are considered the cornerstone of the national economy, regardless of whether they are public or private, owned by the state. Therefore, it is necessary to maintain the continuity of their economic activity and even work to develop them to advance the national economy as a whole, and from this, the state has the duty to save them as soon as there are indications of their financial failure. Exposing it to economic difficulties may lead it to stop paying its debts and, in the end, declare bankruptcy.

### 2- The problem of the study:

This study revolves around clarifying the material ways to save the faltering company by finding a legal formula and effective legislation for the Iraqi and Egyptian legislators. Through its practical application,

the stumbling company can be restructured and preserved.

### 3. The significance of the study

Companies generally go through economic difficulties that may prevent them from repaying some of their debts and from achieving the economic goals and objectives for which they were founded, so they become in a state of economic stumbling that requires judicial intervention to liquidate them. Since this liquidation may cause severe damage to the national economy, as well as to society as a result of unemployment that may result from laying off employees of the company and wasting the money of its shareholders; Fiqh and law have created administrative and financial solutions to rescue troubled companies.

### 4- Study Approach:

In this study, we will follow the descriptive and analytical approach to the content of corporate legal articles by analyzing the legal texts that we provide in this research, as well as the comparative approach between Iraqi law and Egyptian law and the laws of other Arab and foreign countries whenever necessary.

### 5- The structure of the study:

The research consists of an introduction, a first topic entitled the concept of faltering companies, a second topic entitled the concept of companies failing, and a conclusion represented by the results and suggestions.

## 1. Troubled companies' concept

### Booting and partitioning:

The company is based on the idea of a contract between two or more people to invest the money that they provide in the form of shares or shares to form the company's capital, to share the profits and losses that may result from this investment. If the company's contract is similar to other contracts in terms of the terms of its contract and the conditions of its validity, but it is distinguished from other contracts in terms of its conclusion because it entails the birth of a new legal person enjoying a legal entity independent of its constituent partners.

And if the idea of the contract is in line with the principle of the dominion of will under which commercial companies appeared, it has become a subject of criticism in light of the legislative intervention to regulate these companies from their inception until their liquidation to the extent that there is a tendency that now sees the commercial company as a kind of legal system and not the contract [(1)], and on This basis. We will divide this topic into two demands. We dealt with the definition of the company and its nature in the first requirement, and the types of companies in the second requirement.

### 1.1. Definition of the company and its legal nature

The idea of the company is based on combining individual efforts side by side so that the partners' efforts join forces in investing the shares provided by them, as well as their cooperation in bearing the consequences of investing the shares in a particular project. The requirement is divided into two branches. In the first section, we dealt with the company's definition, and we explained in the second section the legal nature of the company.

### 1.1.1. Company Definition

**First** - Defining the company in the language:

The company, its origin is (as a partnership), and the company and the company: mixing, and the partner: he is the participant and he is the one who enters with others in his work, and the combination of the partner is partners and partners [(2)].

It is: that the thing is between two or more people to do a joint action, and it is said: I participated in so-and-so in the thing if I became his partner, and it is said that we participated in the sense of our sharing [(3)].

**Second** - Defining the company in legislation:

The Iraqi Companies Law No. 21 of 1997, as amended, defines the company in the first paragraph of Article (4) as: "A contract in which two or more persons are obligated to each of them contribute to an economic project by providing a share of money or work in order to share the profits arising therefrom. or loss. [4]"

The company is defined in the Egyptian Civil Code No. (131) of 1948 in Article 505 thereof as: "A contract whereby two or more persons are obligated to contribute to each of them in a financial project, by providing a share of money or work, in order to share what may arise from this. The project is either profitable or lost [5].

Article (1832) of the French Law of 2018 on the Civil Code defines the company by saying: "The company is established by two or more persons who agree by contract to assign to the joint venture the goods or their manufacture with the aim of sharing the profit or benefiting from the savings that may result—provided by law, by the act of the will of one person. The partners undertake to contribute to the losses". [6]

We can define a company as: "The participation of two or more people in a project that produces or manufactures certain commodities, benefits from its profits, and contributes to its losses."

### 1.1.2. The legal nature of the company

The company has a legal personality independent of the personality of the partners, and it can practice the economic activity for which it was founded. However, there is a question about the basis of the legal personality of the company, is it the contract between the partners, or the idea that modern jurisprudence began to advocate, which is the idea of the system?

In order to answer this question, jurisprudence addressed this through the two ideas of the contract and the legal system, and we will address them respectively:

**First** - the idea of the contract:

The traditional jurisprudence sees that the criterion by which the source of the obligations arising between the partners in the company is determined is the contract that brings the company to life in a previous stage, and automatically entails rights and duties; As it creates a legal person on the one hand and arranges contractual effects represented in rights and duties, and the company is the new legal situation that establishes the rights of the partners and entails on their obligations that did not exist before this contract, and that the company's contract is what gives the partners their new legal capacity.[7] The dominance of the principle of the authority of the will and freedom of contract helped spread and flourish at the time, and as a result, the will had to do whatever it wanted with contracts and stipulations as long as they did not conflict with public order and morals. It is noted that the Iraqi and Egyptian legislators adopted this idea, which is the idea that the company is a contract.

### Idea Rating:

1- The company's contract is not based on conflict and conflict between contractual interests, as is the case in other contracts as a general rule; Since the rights of the two parties to the contract are obligations on each of them, the interests are neither one nor united, and on the contrary, the behavior established for the company requires that the interests be one and united, focused on achieving one goal, which is profit. [8]

2- The union of interests required by the company makes it possible to open the door to amending the provisions of the contract by a contractual majority, contrary to what is the case in the rest of the contracts; It may not be amended except by unanimity in implementation of the principle of the authority of the will, since a person is only bound by his own will and within the limits he wants and in the manner he chooses [9].

This is in addition to the fact that the act established for the company does not result in anything but obligations on its parties and entitles them to rights. Rather, it goes beyond all of that, resulting in the emergence of a new legal entity, as the company's contract entails the emergence of a new legal personality, which is the company that controls the will of the partners [10]. However, this idea dominated the minds for a period of time as a result of the spread of the principle of the authority of the will, but it began to fade, and jurisprudence began to question it, especially after the emergence of socialist philosophy, the emergence of defects in the capitalist system, and the succession of economic crises, which forced the legislator to intervene to address the defects resulting from Economic freedom with peremptory legal texts [11].

### B- The idea of the system:

After the criticism directed at the previous idea, that is, the idea of the contract; A part of modern jurisprudence has denied the contractual character of the act established for the company and considered it a legal system that allows circumvention around a specific goal and subject the rights and interests of those gathered to achieve the desired profit. They are an authority entrusted with the task of achieving the common goal of profit. Appreciation of the idea of the system: **Despite the validity of this idea**: the intervention of the legislator is not limited to companies, but rather it is a general intervention that extends to all legal actions that reach a degree of importance, and sales contracts on real estate are the best evidence of this, which is required by the legislator of formalities and procedures for a month. Without it, the contract is subject to invalidation [12].

## 1.2. Types of commercial companies

Companies are divided in principle into civil companies and commercial companies, and there is an objective criterion set by jurists to differentiate between the two types of companies, and this criterion is the purpose of establishing the company. Of a civil nature, they are called civil companies, and what concerns us from this division are the commercial companies in question, and we will address this requirement in two branches.

### 1.2.1. Types of commercial companies in Iraqi law:

Article (6) of the Iraqi Companies Law No. (21) of 1997, as amended, stipulates four types of companies, and exclusively, (mixed or private joint-stock company, mixed or private limited company, joint liability company, and individual project), and we will address them, respectively:

**First** - the mixed or private joint-stock company:

The first paragraph of Article (6) of the amended Iraqi Companies Law No. (21) of 1997 defines a mixed or private joint-stock company as: by the nominal value of the shares they have subscribed to.

This company is the ideal model for money companies; It includes all the precise legal provisions relating to companies; The liability of its partners is also limited to the limits of their shares, in addition to the fact that its tax system is subject to special rules [13].

**Second-** Mixed or Private Limited Company:

The second paragraph of Article (6) of the Iraqi Companies Law defines a mixed or private limited company as: "A company consisting of a number of persons not less than two and not more than twenty-five who subscribe in shares and are responsible for the company's debts to the extent of the nominal value of the shares they have subscribed for with it".

This company is symbolized at the global level by (LL.M.), and this name came from the nature of the company's work, as it is limited to the number of its people and limited to its debts; because the responsibility of the members is limited to the share capital of the company only [14].

This company combines properties between the companies of funds and companies of persons; It is close in its characteristics to the joint liability company in the person companies, and the joint-stock company in terms of legal provisions or some of them [15].

**Third** - the joint liability company:

The third paragraph of the same article (6) above of the Companies Law defines a joint liability company as: "A company consisting of a number of natural persons, not less than two, and not more than ten, each of whom has a share in it, and they are jointly liable for personal and unlimited liability. for all obligations of the company. It is clear from this text that the partners in this company are joint and jointly liable for the company's debts. In this company, it is stipulated that the partners are natural and not legal persons; because the legal person lacks personal consideration, which is one of the foundations for establishing a joint liability company [15].

**Fourth** - The Sole Proprietorship Company:

The fourth paragraph of Article (6) of the aforementioned Sole Proprietorship defines the Sole Proprietorship as: "A company consisting of one natural person who is the owner of one share in it and is personally liable, and unlimited for all the obligations of the company."

It is noted that the individual project agrees with both the limited company and the joint liability company in that its capital must be paid before the issuance of the certificate of incorporation, and this is what Article (35) of the Iraqi Companies Law stipulates: Personal, unlimited for the company's debts, and he is also jointly liable in the joint liability company." The individual project also agrees with both the joint liability company and the simple company in the permissibility of seizing the realized profits, and conversely, that it is not permissible to seize the share in it except for the excellent debt, and this is what was stipulated in the second paragraph of Article (72) of the Iraqi Companies Law saying: A joint liability company, a sole proprietorship, and a simple company unless the debt is excellent, and its realized profits may be seized [16].

### 1.2.2. Types of commercial companies in Egyptian law

The Egyptian legislator identified three types of companies in Law No. (159) of 1981 promulgating the Law of Joint Stock Companies, Partnerships Limited by Shares, and Limited Liability Companies. Other not provided by law, otherwise the company is void [17]; Because it is related to the public order, even if the company contract is valid between the partners, it does not establish the company as a legal person [18]. We will address these types of companies in succession:

**First** - joint-stock companies:

A joint-stock company is defined in Article (2) of Egyptian Law No. (159) of 1981 promulgating the Law of Joint Stock Companies, Partnerships Limited by Shares, and Limited Liability Companies by saying: "A joint-stock company is a company whose capital is divided into shares of equal value that can be traded in the manner specified in the law. The responsibility of the shareholder is limited to paying the value of the shares he has subscribed for, and he is not responsible for the company's debts except within the limits of the shares he has subscribed for.

It is worth noting that the joint-stock company is one of the largest money companies, and it is owned by its shareholders, it is characterized by the ease of shareholders buying and selling shares in it, and the percentage of ownership of each person is determined by the number of shares owned by this person, and the shareholder in the company can be a person, company or organization, and it is sufficient That the investor owns one share until he becomes a shareholder and a partial owner of it in the joint-stock company, and it is responsible for its debts and actions as it is a money company, and the employees or the shareholders are not responsible for the debts and the works issued by it [19].

Joint-stock companies in Egypt can be divided into two types, public joint-stock companies, and private joint-stock companies:

1- Public joint-stock companies:

These companies consist of several shareholders, often their numbers are large and they do not know each other, and their capital is divided into shares of equal value and tradable and listed in the stock market by public subscription presented to the public in the form of advertisements or any other method [(20)].

2- Private joint-stock companies:

These companies are often between people with close ties, so they can be from one family, for example, it is called a private company, and it is like a public shareholding company whose capital is divided into shares of equal value; But it is not offered in the stock market by public subscription. If the company wants to offer its shares, it puts them up by private subscription, i.e. it puts them between the existing shareholders in the company only and by agreement among them as if it was a family agreement for example [(21)].

**Second**- Partnerships limited by shares:

A partnership limited by shares as defined in Article (3) of Egyptian Law No. 159 of 1981 promulgating the Law of Joint Stock Companies, Partnerships Limited by Shares, and Limited Liability Companies by saying: "A partnership limited by shares is a company whose capital consists of one or more shares owned by one or more joint partners. And shares of equal value in which one or more shareholders subscribe, and they can be traded in the manner specified in the law. The shareholder's responsibility is limited to paying the value of the shares he has subscribed for, and he is not liable for the company's debts except within the limits of what he subscribed to from their name, and the company has a trading name that derives from the purpose of It is not permissible for the company to take the names of the partners or the name of one of them as its address." This company in Egypt includes two groups of partners [(22)]:

**The first** - General partners who take the same legal status as the general partners in the partnership company in terms of the personal consideration of these partners, and their responsibility is personal and joint responsibility for the company's debts.

**Second** - Shareholders that take the form of fully tradable shares; As in the case of a joint-stock company, their liability is limited to the extent they contributed to the head of the company.

**Third** - Limited Liability Companies:

The Limited Liability Company was defined in Article (4) of Egyptian Law No. 159 of 1981 promulgating the Law of Joint Stock Companies, Partnerships Limited by Shares, and Limited Liability Companies by saying: "A limited liability company is a company in which the number of partners does not exceed fifty partners. Of them, he is liable only to the extent of his share. The company may not be established, its capital may be increased, or it may be borrowed for its account through public subscription, and it may not issue tradable shares or bonds, and the transfer of the partners' shares in it is subject to the recovery of the partners following the.

This company is of a mixed nature, as it combines some of the characteristics of people's companies in terms of the limited number of partners in it, and its subjection to the redemption system because its shares are not negotiable unless the partner announces his desire to concede to the partners; It also combines some of the characteristics of money companies in terms of the company not being affected by the death, bankruptcy, insolvency or interdiction of one of the partners [(23)].

## 2. The concept of corporate insolvency

### Booting and partitioning:

The problem of stumbling is one of the most important economic issues that occupy the minds of many sectors because of the extreme danger it poses. It is a reflection and direct result of mismanagement or poor control of the risks facing its financial side, which makes it able to fulfill its current and future obligations.

## 2.1. Definition of corporate default and its causes

Troubled companies mean that they are companies that are no longer able to meet their financial obligations towards others and continue to decline day after day and for multiple periods, and all of this is due to a number of internal and objective factors, and we will address this requirement in two branches. The second section is the reasons for the failure of companies.

### 2.1.1. Definition of corporate insolvency

The term stumbling is characterized by novelty and ambiguity at the same time, whether in the field of law, or in the field of financial and economic studies, and stumbling in the terminological concept has many definitions that differ according to the angle from which it is viewed; There are economic, financial, and legal definitions:

A - Stumbling in the economic concept: it is that the company's income is not sufficient to cover its expenses, so the rate of return on investment in that company is less than the cost of capital, so the company is considered stumbling [(24)].

B - stumbled in the financial concept: This term may be used as a synonym for the concept of legal bankruptcy, or financial insolvency, or to describe the stage that precedes bankruptcy in the economic project [(25)].

Financial default is defined as that stage in which the company has reached a state of financial turmoil, making it very close to the stages or levels of default that can be graded to the level of declaring its bankruptcy, whether this disorder means the inability to pay obligations to others, or the realization of losses. Consecutive year after year, which makes the company obliged to stop its activity from time to time [(26)].

Financial default often occurs as a result of the two problems together, and then we are faced with two concepts of financial hardship.

**The first concept** - technical financial hardship: It is represented in the situation in which the company is unable to pay its obligations even though the total assets it has exceeds the total of its receivables, and then the company is going through a severe liquidity crisis related to the generation of cash flows, perhaps as a result of weak have profitability [(27)].

**The second concept** - real financial hardship: It is represented in the situation in which the company is unable to pay its obligations at a time when its assets and assets are less than the total due, and here the company is close to bankruptcy [(28)].

C- Stumbling in the legal concept: In fact, there is no specific definition of the concept of companies stumbling, neither in successive laws nor in Arab laws, except that some jurists have defined stumbling as a casual case of shortcomings in the various production elements of the project or company, facing either of them Unusual circumstances that affect the results of their work and prevent them from achieving their goals, despite the existence of productive potentials through which they can reform and advance their careers. We can define default as: "A deficit that afflicts the company, making it unable to fulfill its obligations when the assets in its possession are insufficient to cover its obligations towards others, due to the company's exposure to successive losses, which leads it to a state of bankruptcy or close to it."[(29)]

### 2.1.2. Reasons for the company's stumble and its signs

**First** - the reasons for the company's failure

The causes of stumbling are many and varied, and they are many and heterogeneous types, but they have a great impact on the emergence of symptoms of stumbling, and they are of two types, internal causes, and internal causes:

A- Internal causes of stumbling:

1- The legal form of the company is inappropriate to its size or importance; Where we note, for example, that the form of the limited liability company fits with medium and small projects, while the shape of the joint-stock company is proportional to major projects with activities that transgress the scope of the state [30].

2- Poor management, weak control over the administrative apparatus, or a sharp dispute between partners, which leads to resorting to borrowing and starting to withdraw from current accounts or reserves and accepting the payment of the company's forward debt while sacrificing the opponent's difference [31].

3- Poor profitability as a result of the large inventory compared to the company's turnover, the high salaries of employees, or the company's general expenses compared to its counterparts in competing companies, the inability of the company's management to properly analyze the financial statements of the company, the lack of administrative competencies necessary to run the company's activity, and its weakness in taking the necessary decisions and actions in the event of default [31].

B- External causes of stumbling:

The external causes of stumbling are less stressful than the internal ones, but the presence of one of these reasons below may hamper the company's existence, the most important of which are the following:

1- Changes related to economic activities, which affect the economic performance of various projects, the rise in the prices of raw materials and production requirements, and energy prices and driving forces, which leads to the loading of production costs structure with additional burdens on companies, and then their failure [32].

2- Increasing the sovereign burdens of taxes and fees at rates that are not in line with the companies' surpluses, which raises the cost of the product and the difficulty of its disposal, the contraction of local liquidity in the market, and the decrease in the speed of money circulation [33].

**Second** - signs of stumbling:

The French legislator has set criteria for detecting troubling conditions, which are the non-spontaneous progress of projects in the direction of achieving their purposes, and thus lead the company to the stage of stopping payment [34].

The Suidreau Committee, which was prepared in 1975, approved valid and real criteria for detecting the signs of default. This committee has also established measures to prevent the economic crisis resulting from the failure of companies, and these measures are applied to the defaulting company before the suspension of payment is registered. As for the signs approved by the committee, they are the non-renewal of the maturity of debts, and the increasing number of protests against non-payment (Protesto) [35], non-payment, or non-payment of taxes.

And the Accountants international study group has proposed several criteria with a deeper perspective in order to detect defaults and these criteria [36]:

1 - Defective relations regarding account settlement between partners, such as reducing or postponing interest.

2- The slow increase in the capital reserve cycle.

3- Dependency of the capital on the group of companies.

## 2.2. Dealing with bad corporate debt

Debt is one of the main reasons for companies to fail. To ensure the best chances

of success for the company to be restructured, there must be means for treatment, such as relieving the company of its debts, rescheduling it, or capitalizing it. We will deal with these means in three branches. And in the second branch, rescheduling the company's debts, and in the third branch, capitalizing on the company's debts.

### 2.2.1. Company debt relief

It is noticed that sometimes the troubled company seeks to reduce the size of its indebtedness, so it works to convince some of its creditors to release it from the debts that they owe, either in whole or in part. What is discharge? In order to know the nature of discharge, the researcher must define it, and clarify its pillars, and its types.

**First**- Definition of Discharge:

A - Discharge linguistically: it is to disclaim, purify and distance oneself from the thing (37), and absolution means innocence from the debt (38).

b- Discharge idiomatically: It is the creditor's relinquishment of his right without consideration, as it is an inevitably voluntary act (39).

C- Legal Discharge: The Iraqi legislator did not define discharge in the Iraqi Civil Law No. (40) for the year 1951, but it stipulated in Article (420) that: "If the debtor is acquitted of the debtor, the debt forfeits" (40).

In the same direction, Article (371) of the Egyptian Civil Code stipulates that: "The obligation lapses if the creditor voluntarily releases his debtor…" (41).

Article (1350) of the French Law of 2018 on the Civil Code defines discharge by saying: "The dispensation of debts is the contract by which the creditor separates the debtor from his obligation" (42).

And since the release is carried out by the creditor's unilateral will, it is distinguished by this from other similar actions such as renewal and reconciliation. Whereas the discharge in which the debtor is released from his debt and is considered as having fulfilled (43).

**Second** - Types of Release: Release is divided into two parts:

A-Discharge Drop:

This can be done by dropping all or part of the debt. Where the creditor can discharge his debtor from some or all of his debt by giving the debtor an easy look by postponing part of the debt and clearing him of the rest of the debt (44). We believe that this type of discharge is what is meant in the field of saving the troubled company from debts, as it relieves it of the burdens and obligations placed upon it and it stands as a stumbling block in its field of work.

b- Clearance of interpolation:

This is an acknowledgment by the creditor that he fulfilled his right and received it from the debtor, and this type of release is considered one of the types of acknowledgment, and this acknowledgment came in Article (1536) of the Judicial Judgment Code of 1876 saying: Exemption from forfeiting is to absolve one of the other by forfeiting the entirety of his right that is with the other, or by deducting an amount of it from his liability, and it is the release discussed in this conciliation book. This is distinguished from the discharge of forfeiture in that the latter is concerned with debts. Also, the release of forfeiture is a source of right in the sense that the creditor becomes bound by what he has done when he discharges his debtor from the debt (45).

### 2.2.2. Company debt rescheduling

The management of the troubled company may fail to convince the creditors to reach an amicable settlement, especially if the creditor is one of the banks, which will often end with the bank rescheduling the debt. Therefore, we must define debt rescheduling and then look into its procedures in comparative law.

**First** - Definition of debt rescheduling: it means debt rescheduling, the official postponement of debt service, and the

application of new easy deadlines for the deferred amount [46].

It is recognized that the troubled company will not be able to repay the debts on the due dates given the financial and marketing turmoil it suffers from. Rescheduling the company's debts is a solution to save the company by postponing its maturity dates. However, rescheduling the debts of the troubled companies must be consistent with the nature and activity of the company. These companies and their circumstances and size, require the search for an appropriate solution to the financial capabilities of the troubled company as well as the lenders who intend to reschedule these debts [47].

However, the application of debt rescheduling is often limited to the external debts of countries. Its application at the level of joint-stock companies can cause some difficulties. Rare is the legislation that organizes this method to save the troubled company, including the American legislation in the amended American Bankruptcy Law of 1978, which is called the (Chapter Eleven) [48].

**Second** - Debt scheduling procedures:

Article (566) of the repealed Iraqi Trade Law No. (149) of 1970 states: "1- Every merchant who stops paying his commercial debt is considered in a state of bankruptcy and his bankruptcy is declared by a judgment issued accordingly. 2- A judgment declaring bankruptcy creates a state of bankruptcy, and without This provision does not have any effect on stopping payment unless the law stipulates otherwise [49].

Article (9) of Egyptian Law No. (11) of 2018 regarding the issuance of the law regulating restructuring, protective settlement, and bankruptcy stipulates that: "If a settlement of the dispute is reached, a settlement agreement shall be drawn up to be signed by all parties, in which the details of the agreement and the procedures taken shall be set out. Mediation and the bankruptcy judge issues a decision approving the settlement and terminating the application, and this agreement shall have the force of an executive bond."

Perhaps the most important thing that draws attention to the above two texts is that the current or expected economic or financial difficulties are a criterion for submitting a request for reorganization, without defining and specifying this term, although it is the main criterion in determining the extent to which the company benefits from the opportunity of restructuring, and this criterion that the legislators came with Iraqi and Egyptian about the disturbance of the financial position of the debtor, which leads to the cessation of payment of commercial debts, which justifies the request for a declaration of bankruptcy or a protective composition from bankruptcy. The project has reached an advanced stage of financial turmoil, which justifies a request for a protective composition from bankruptcy or even a request for bankruptcy. In any case, it is noted that the criterion of current or expected economic or financial difficulties is broad; So that it may include the inability of the project to sell or distribute its products, and for all this, the new draft law must specify precisely what is meant by the current or expected economic or financial difficulties [50].

It is worth noting that the Financial Restructuring and Bankruptcy Committee studies the submitted application based on the information provided and has wide discretion in that, it may accept the application or reject it without subjecting its decision to any method of appeal, this committee consists of people with experience in the field of economics Bankruptcy and therefore are best able to assess the debtor's circumstances and make a decision based on them. Appealing the committee's decision before the judiciary will prolong the request for reorganization, which may lead, during the judicial appeal, to the student's bankruptcy, and consequently, the impossibility of conducting reorganization, as time plays an important role in bankruptcy issues. The Financial Restructuring and

Bankruptcy Commission will notify the applicant in writing, not by e-mail, of the acceptance or rejection of his application [51].

### 2.2.3. Capitalization of the company's debt

Debt capitalization is an arrangement by which the shareholder converts debt into equity, that is, it is the process by which looking at the shares issued by the company takes the form of a discharge from the current debt[ 52], and therefore the term capitalization can be spent, and many terms that are It means capital and in its concept the economic basis, so it is said the capital budget, capital expenditure, and capital assets, and so it means everything related to wealth and property, and therefore we conclude after all this that what is mentioned in the financial and accounting literature is based on what came in economic thought first, and what the law legislated secondly[53].

Negotiations conducted by the Management Committee, which is entrusted with the task of restructuring the company with its creditors, may result in the capitalization of the debts owed by the company or any part of it. debts, which leads to an increase in the company's capital [54].

The debts whose amount can be transferred to the company's capital include all debts of any kind, including the debts owed by the company under a loan voucher [55], provided that these debts are free of dispute and payable [56].

## Conclusion:

After we finished our modest research, we reached a set of conclusions and recommendations, the most important of which are:

### First - the results:

1- The company is based on the idea of a contract between two or more persons to invest their money which they present in the form of shares or shares to form the company's capital, with their intention to share the profits and losses that may result from this investment.

2- The concept of reviving troubled companies is concerned with finding out the causes of companies' failure and trying to remedy that failure, by taking technical and legal measures commensurate with the size of the company and facing the seriousness of the obstacles faced by that company leading to its bankruptcy.

3- The discharge is divided into two parts, the discharge of forfeiture, and this is by the forfeiture of all or part of the debt; Where the creditor can discharge his debtor from some or all of his debt by giving the debtor an easy look by deferring part of the debt and releasing him from the rest of the debt, or for the creditor to drop the entire debt from the debtor, and release the fulfillment.

### Second - suggestions:

1- We hope the Iraqi legislator will enact a new law on bankruptcy and protective composition for companies, similar to the Egyptian law regulating restructuring, protective composition, and bankruptcy, No. (11) of 2018.

2- We suggest the Iraqi legislator organize the mechanism for the acquisition of troubled companies by major companies, through specialized commercial courts that study the conditions of troubled companies and decide on acquisition requests that take into account the conditions of the troubled company, and issue judgments commensurate with the financial and economic difficulties these companies are going through. and be available to consider such cases.

3- The necessity for Iraqi and Egyptian joint-stock companies to study and evaluate capitalization operations, as it is one of the important financing patterns to obtain the financial resources necessary for the company's needs.

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