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Financial restructuring procedures for distressed companies—A comparative study

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Abstract: The distress of commercial companies is considered one of the most critical stages leading to the liquidation and termination of the business. This danger increases in the context of poor management, stagnation, and the occurrence of crises and external circumstances that affect the company's ability to cope. Rules regarding financial restructuring of distressed commercial companies may be regarded as the most prominent legal framework adopted by Emirati, Kuwaiti and French legislators to address the instability and distress of commercial enterprises and to provide solutions to mitigate the risk of bankruptcy and liquidation. It is a preventive measure aimed at reaching an agreement between the debtor and creditors to resolve the disturbances or difficulties faced by the company, which may affect its obligations to others. Therefore, financial restructuring is considered a mean of prevention and rescue for commercial companies, and the success of this rescue is linked to the debtor's cooperation and seriousness in overcoming such issue.

Keywords: bankruptcy; commercial companies; creditor; debt; debtor; distress companies; financial restructuring; legislation; management; restructuring procedures

1. Introduction

Economic revitalization and thus a continuous economic progress in any country depends, mainly, on the role of commercial companies. The developing investment environment fundamentally relies on the existence of an effective legal system aimed at protecting and rescuing distressed commercial companies from bankruptcy. This system contributes to supporting both the local and international economy, thereby enhancing investor confidence in continuing to increase investments in the country. However, the financial position of some commercial companies may become unstable due to local or global crises, leading to an inability to meet their obligations to creditors and repay their debts. Consequently, they may cease their commercial activities, resulting in the declaration of the company's bankruptcy and its liquidation.

The worldwide financial crisis of 2008 played a fundamental role in highlighting the necessity for “a financial reorganization and corporate restructuring”, driving efforts to restructuring bankruptcy legislation. One of the major consequences of the international financial crisis was “the widespread insolvency of noteworthy corporations and the interruption of numerous international and domestic projects”, which severely impacted national economies. In response, many countries undertook “comprehensive amendments to their bankruptcy legislation, seeking to establish a more balanced legal framework that protects both the rights of creditors and the interests of debtors”. International and

financial institutions have been at” the forefront of these reforms, issuing key principles to regulate bankruptcy procedures and safeguard creditors’ rights, such as the World Bank’s guidelines on insolvency and debtor-creditor systems” (Al-Kharabshah, 2008).

Recent legislative developments such as in the United Arab Emirates, Kuwait, and France ... have incorporated provisions for financial reform “as part of their updated bankruptcy “legal frameworks” (Victor, 2009).

Given the serious effects of companies’ bankruptcy, as well as the importance of these companies in enhancing the national economy, the Emirati legislator has hastened to organize certain mechanisms and procedures aimed at reducing the incidence of distress among commercial companies. The Emirati Federal Decree-Law No. (51) issued in 2023, established the Law on Financial Restructuring and Bankruptcy (2023), to maintain the stability of the national economy by ensuring the continuous operation of companies, avoiding their liquidation, and protecting the rights of creditors. The Emirati legislator has enclosed the process of financial restructuring with a specific and detailed legal framework of substantive and procedural provisions. In the second chapter of the Law on Financial Restructuring for Distressed Commercial Companies: the legislator addresses the request to initiate financial restructuring procedures in the first section and the effect of the issuance of the decision on financial restructuring procedures in the second section. Thus, this process has delineated clearly the process of financial restructuring for distressed commercial companies, unlike what was stated in Federal Decree-Law No. (9) of 2016 regarding previous bankruptcies, which combined the bankruptcy process with the financial restructuring process (Ghannam and Al-Tayer, 2017).

This research aims to study the legal aspects of financial restructuring and rescuing distressed companies as one of the means established by Emirati Law No. (51) of 2023, which enacts the Law on Financial Restructuring and Bankruptcy (2023), to back companies in facing the financial difficulties they encounter.

The research problematic lies in determining the adequacy of the new legal provisions to rescue distressed commercial companies, avoiding their bankruptcy and liquidation, through the initiation of financial restructuring procedures and the effects of initiating these legal procedures. The research will rely on an analytical and comparative approach by presenting the legal texts related to the procedures for financial restructuring of distressed commercial companies under Emirati Law No. (51) of 2023, followed by an analysis to clarify their primary purpose. The comparative approach will involve comparing Emirati legislation with the Kuwaiti legislation and the French legislation regarding the initiation of financial restructuring procedures for distressed companies.

2. Definition of financial restructuring

2.1. The legislative definition of financial restructuring for distressed companies

Article (1) of the Emirati Law No. (51) of 2023 states as follows: “set of measures aimed at helping the debtor keep on performing its business activity and

paying off its debts through the application of a preventive settlement or plan.” Accordingly, financial restructuring is the mechanism that aims to help the distressed trader overcome their financial or administrative turmoil while simultaneously encouraging them to address their crisis at an early stage. This may contribute to the continuity of the economic project and maximize its economic benefit for both the debtor and a group of creditors; this is achieved through a request submitted by the debtor to the bankruptcy administration to initiate restructuring procedures

The restructuring plan aims to reorganize the trader’s financial and administrative operations, which includes how they can emerge from a phase of financial and administrative turmoil and settle their debts through various means, including: Assisting them in finding sources of financing, increasing incoming cash flows while reducing outgoing cash flows, increasing the debtor’s capital, reassessing certain assets, restructuring some debts—whether commercial debts or debts owed to the state—or implementing administrative restructuring according to Article 108 (10) of the Emirati Law No. (51) of 2023). It appears that the primary purpose of restructuring is to ensure the project’s continuity as an active and productive economic entity, rather than liquidating any of its assets, which benefits the debtor, the creditors, and the economic environment as a whole.

On the other hand, the Kuwaiti legislator did not address the definition of financial restructuring in the Bankruptcy Law, but Article (1) of the Kuwaiti Law No. 71, 2020 defines restructuring as follows: “Procedures aimed at reaching an agreement between the debtor and creditors on a restructuring plan, with the assistance of the restructuring trustee and the supervision of the bankruptcy judge in accordance with the provisions of the law”. According to this definition, we conclude that it addresses the concept of restructuring from a specific perspective, namely the agreement between the debtor and creditors on a restructuring plan, without describing the purpose or the conditions that must be met to initiate restructuring procedures.

The Emirati legislator defined restructuring in Article (1) of the same law as follows: “Procedures undertaken at the request of the debtor, creditors, or the regulatory authority aimed at assisting the debtor in continuing their business activities and fulfilling their debts through the implementation of a restructuring plan. The debtor, their board of directors, or managers may be restricted from managing their assets and affairs. These procedures are approved and supervised by the bankruptcy Court with the assistance of the restructuring trustee, as appropriate.”

The French lawmaker introduced the concept of "rescue" in the 2005 Rescue Law, a mechanism designed to ease the reaching of a consensual agreement between a debtor and its creditors, outside of formal judicial proceedings. This process serves as a preliminary step before initiating protective reconciliation, financial restructuring, or bankruptcy proceedings. The objective is to encourage negotiation and prevent insolvency. However, this method is restricted to financial institutions licensed by regulatory bodies, such as the Central Exchange and the Securities and Commodities Authority. These licensed entities may submit a request for financial reform to the Financial Reorganization Committee, which is mandated by law. The Committee appoints experts in restructuring processes who provide technical advice,

potentially persuading creditors to grant the debtor relief, such as rescheduling debts, thereby averting bankruptcy (Khasawneh, 2018).

Financial reorganization itself is defined by the French legislature as "a set of measures undertaken by a company to address the difficulties leading to its default." These measures may include extending the terms of short-term debt, granting a grace period, reducing interest rates, or converting debt into equity "(Al-Kharabshah, 2008). The UNCITRAL Legislative Guide to Insolvency further defines financial reform as a mean of proceeding whose final aim is to allow the debtor to reach a solution to its financial problems and restart its regular corporate operations.

In contrast, the Emirati legislator, prior to the enactment of Bankruptcy Law No. (9) of 2016, did not adopt a rescue mechanism analogous to that of the French system as once a project's financial situation deteriorated to the point of default, it could not seek reconciliation. However, with the introduction of the new law, the Emirati approach now incorporates financial restructuring, aligning it more closely with international practices, as seen in the French model. Both the Emirati and French legislations now define financial restructuring as a legal mechanism within their respective laws, outlining similar procedures and conditions under which it may be employed.

We may observe that the definitions provided in the Emirati Law No. (51) of 2023 regarding the definition of financial restructuring are more comprehensive and detailed than those in the Kuwaiti Law No. (71) of 2020. This is because the Kuwaiti legislator only addressed the meaning of restructuring without describing the purpose behind it or the conditions that must be met to initiate restructuring procedures. Additionally, the Kuwaiti legislator did not include the definition of financial restructuring in the law.

2.2. The doctrinal definition of financial restructuring for distressed companies

Previously, legal doctrine preceded legislation in clarifying the concept of restructuring, with some defining restructuring as follows: "That legal or financial procedure undertaken by the distressed company, which involves changing is authorized ..." (Al-Dhaheri, 2022) by either increasing or decreasing the authorized capital while increasing or decreasing the subscribed capital at the same time, provided that the reduction procedures are completed first, followed by the completion of the increase procedures, whether related to the authorized capital or the subscribed capital, with the aim of revitalizing the company from distress and ensuring its continuity and survival" (Al-Qalioubi, 2022).

Additionally, some legal scholars defined restructuring as follows: "A set of plans, programs, and policies aimed at reorganizing the trader's operations and improving the efficiency of their project; so, they can overcome the challenges they face, emerge from a state of financial and administrative turmoil, avoid bankruptcy, and continue their economic activities" (Al-Suwaidi, 2023).

It is evident from the previous definitions that financial restructuring for distressed companies is confined to two concepts: one legal and the other administrative. This may be attributed to the comprehensive legislative treatment of

this topic, which collectively aims to enable the administrative authority to attempt to rescue distressed companies so they can reintegrate into the commercial and economic environment.

2.3. Definition of distress

Neither Emirati law nor Kuwaiti law addresses the definition of the word distress; however, some legal scholars define it as follows: “A stage in which a project or commercial company reaches a poor economic position due to deficiencies affecting various production elements, rendering the project unable to continue operating efficiently” (Al-Zoubi, 2000). We note that there is financial distress and economic distress, and there is a difference between them. Financial distress refers to the company’s inability to meet its obligations, whether short-term or long-term, while economic distress refers to the company’s inability to cover its expenses.

The inability to meet its financial obligations characterize a distressed company. This, is mainly, due to high fixed costs, and sensitive revenues with respect to economic downturns: this may lead to operational distress as an increase in the cost of borrowings and is impacting on the company’s financial situation.

Economic distress is a wide phenomenon in which most of the operating companies are affected. Economic recession, wars and geo-political confrontations and technological shifts are some of the factors that may cause economic distress. Some of these factors are temporary, while others may be permanent. The permanent factors may alter the business landscape altogether. Economic distress often leads to financial distress. The financial distress can be further classified into as a relative or absolute insolvency. When the value of liabilities exceeds the value of assets, such a situation gives rise to absolute insolvency. Emphasis is laid by some authors on the distinction between insolvency and reluctance to pay. Financially distressed firms have a difficulty in fulfilling the financial commitments to the creditors due from a stagnant or declining revenue till bad management and lack of confidence (Khaliq et al., 2014).

Usually, distressed companies are at risk of defaulting on their debts or already having defaulted. creditors. The inability to repay the debts or behold the financial commitments does not render the company worthless. Value is typically tied to the company’s assets. (Al-Meida and Philippon, 2006). While a mature company still derives a significant part of its value from growth investments, the declining company obtains almost no value from its new investments and basically lives off its existing assets. In many cases the company loses value from their growth investments due to investment return rates being even below the cost of capital of the company. In that case, the company’s net present value as a going concern is less than the total value of its assets. This means that the business is no longer viable or, as the academic literature defines it, it has become economically distressed. In this situation, the assets are not at their highest value use, and it would be more beneficial for the company to close its operations and divest its assets. (Crystal and Mokal, 2006).

This situation is not to be confused with financial distress. A firm may be able to earn profits, but at the same time, it may also be financially distressed. Difficulties

in meeting liabilities such as interest payments or other contractual obligations when they arise are the correct definition of illiquidity. Financial distress can have serious consequences, which are normally categorized as direct and indirect costs. The inability of firms to make payments for their debts normally forces them to liquidate their assets at lower prices to make payments for the debt. In this scenario, it is very unlikely that there is any value left for the equity holders. A company in economic distress will eventually, if nothing changes, end up in financial distress. Distress may also be as follows:

a) Potential distress: All firms are subject to potential distress. Firms in declining operations and bad management will eventually end up in distress

b) Realized distress: Firms already in distress may be worth less than their outstanding debt. Their equity still retains value; perhaps the firm will be brought out of distress, it will be turned around, or there will be an equity bailout.

Commercial companies in financial distress means the following: the stage at which a company reaches a state of financial turmoil, bringing it very close to levels of distress that may lead to the declaration of bankruptcy. This turmoil can involve an inability to meet obligations to others or incurring consecutive losses year after year, forcing the company to suspend its activities intermittently. Financial distress often occurs as a result of simultaneous financial and economic distress (Faydh Allah, 2022).

3. Nature of financial restructuring

Legal nature of financial restructuring for distressed companies

The legal nature of financial restructuring for distressed companies refers to the search for a classification of the term concerning a debtor who is struggling to pay debts and introducing it within one of the legal categories. Understanding the legal classification on which any action is based helps us determine the legal consequences arising from that action, as these consequences vary according to the legal nature or classification.

The new Emirati law seeks to prioritize the public interest of investor, workers over the private interest of creditors, without undermining it, thereby preserving the national economy of the country. The financial restructuring procedures are carried out through the establishment of a Financial Restructuring and Bankruptcy Unit. Article (1) stated in the first paragraph that "A unit called the "Financial Restructuring and Bankruptcy Unit" shall be established within the ministry of finance, consisting of a sufficient number of employees with expertise and specialization in financial, legal, or economic matters. The second Paragraph of the Financial Restructuring Law states that the unit shall have an administrative team to assist it in performing its tasks, appointed or designated by a decision of the minister. The unit may also seek the assistance of experts and specialists as it sees fit to aid in its work. Regarding the financial allocations for experts and auditors, the legislator has stipulated them in the same law under Article (6), paragraph (4) (Ghanem and Al-Tayer, 2018).

As for the Kuwaiti Bankruptcy law Article (11) states that a Committee or more, called the Bankruptcy Committee (Ghannam and Al-Tayer, 2018), shall be

formed by a decision of the minister of finance, consisting of at least three members who are authorized to perform the duties of trustees under this law. The Committee may also include additional members with expertise in financial, legal, or economic matters. The decision forming the Committee shall specify its chairperson, vice-chairperson, duration, and operating system, along with the executive and procedural rules that enable it to exercise its competencies, as well as the remuneration allocated to its members. The Committee shall have “an administrative team to assist it in fulfilling its tasks, appointed or designated by a decision of the minister” (Ghanem, 2020).

The Committee may seek the assistance of experts and specialists as it sees fit to aid in its work, and such assistance shall be compensated only upon the minister’s approval. The Ministry of Finance shall allocate the necessary financial provisions for the Committee (Hussein, 2018).

According to the aforementioned, the new law establishes a Financial Restructuring and Bankruptcy Unit within the judiciary, supervised by a senior judge from the Court of Appeals. The objective of this unit is to manage bankruptcy cases, restructure and oversee them, and plays an auxiliary role regarding the Bankruptcy Court (“Financial Restructuring and Bankruptcy Unit”) (Malakawi, 2016).

Therefore, it must be noted that this is an important step towards enhancing the resolution of these procedures. The Unit is responsible for processing applications under the system, notifying the parties of Court decisions, and ensuring that the required information and documentation are complete before submission to the Bankruptcy Court. More, it oversees the management of the debtor’s affairs during the proceedings, facilitates creditors’ meetings, summons relevant parties for inquiries, and performs other tasks assigned by the judicial authorities or stipulated by law (Mohamed, 2017).

The French legislator has historically sought to regulate the challenges faced by troubled companies, shifting from a punitive approach to one focused on prevention and rehabilitation. This shift began with Law No. 67-563 of 1967, which provided a legal framework for the regulation, liquidation, and bankruptcy of companies. The trend toward company rescue continued with the enactment of Law No. 84-148 of 1984, which emphasized the prevention and amicable resolution of corporate difficulties. This law introduced the concept of internal notification, designed to alert management to the company’s financial troubles and highlight the necessity to adopt preventive measures through early information sharing.

Subsequent legislation reinforced this approach, including Law No. 85-99 of 1985, which addressed judicial liquidation. This law sought to balance the interests of creditors with efforts to rescue struggling companies, focusing not on punitive measures but on providing pathways for recovery. It also required creditor involvement in the restructuring process, ensuring their participation in formulating a financial reorganization plan. The French Rescue Law of 2005 further advanced this trend, introducing mechanisms for rescuing distressed companies, such as the establishment of creditor Committees, the development of reorganization plans, and creditor voting on such plans (Lyazami, 2013).

It is evident from the above mentioned that financial restructuring for distressed companies is, in essence, an exceptional method specific to these cases, as outlined

in the Emirati law, Kuwaiti law and French law. This system encompasses all forms of conducting commercial activities and seeks to reconcile two conflicting interests: public credit on one hand and the interests of creditors on the other. This is achieved by ensuring the continuity of the debtor facing financial difficulties as long as there are serious opportunities for their rescue. Thus, financial restructuring is a legal procedure in its own right, characterized by its unique features, and it complements other assistance measures, such as restructuring and preventive settlements, forming additional preventive and remedial means against the risks that may lead a distressed company to bankruptcy and subsequently to liquidation (Quassem 2019).

4. Procedures for financial restructuring of distressed companies

4.1. Initiation of financial restructuring procedures

The Emirati policymakers organized the financial restructuring of distressed commercial companies in Chapter Two of the Emirati Law No. (51) of 2023. Therefore, the legislator addressed two procedures: in the first section, the request to initiate financial restructuring procedures has been tackled, and the second section dealt with the effects resulting from such decision. Both Kuwaiti and French legal frameworks have also provided for the regulation of financial reorganization mechanisms.

Request to initiate financial restructuring procedures

The request to initiate financial restructuring procedures is submitted to the Court by the debtor, the creditors, or the regulatory authority. This request must meet certain conditions, which the Court examines carefully before issuing its ruling to either accept or reject the request. If the Court finds that the debtor's operations are sustainable, it will announce the initiation of the submitted request (Rasha, 2021). The Emirati legislator specified these conditions in Article (87) of the Financial Restructuring Law that stipulates: "... If the debtor is in default of payment, or state of financial insolvency or the debtor's creditors have previously rejected the restructuring plan, or if the bankruptcy Court has issued a decision rejecting the approval of the restructuring plan—even if this pertains to other debts of the debtor for which no request has been submitted—the request may only be made after the delay of three (3) months from the date of the creditors' meeting or the issuance of the aforementioned Court decision. If a decision or ruling has previously been issued by the Bankruptcy Court to terminate the financial restructuring procedures—even if this pertains to other debts of the debtor for which no request has been submitted—the request may only be submitted after the lapse of three (3) months from the date of the issuance of the aforementioned bankruptcy Court decision or ruling. The request to initiate restructuring procedures may not be submitted if a final judgment has previously been issued declaring the debtor bankrupt, unless the debtor has been rehabilitated in accordance with the provisions of this law. However, the legislator has exempted from paragraphs (c, d, e) of the same previous article that the request may be submitted at any time if accompanied by proof of the required majority's approval of the restructuring plan for which the request has been submitted. It

appears that both the Kuwaiti and Emirati rule makers adopted the same position as stated in Article 97, paragraph (6) (Victor, 2009).

Therefore, we find that the aforementioned article governs the mechanism for submitting a request for financial restructuring and does not require that the debtor's default in payment result from the insolvency of their financial position. It specifically mentions the insolvency of the debtor's financial position as an independent condition that authorizes the debtor or creditors to request the begin after the delay of three years, while the Emirati legislator limits it by stating that the debtor must be rehabilitated in accordance with the provisions of the law.

The Court's role does not end with merely accepting the request and announcing the initiation of the procedure, as it must ensure compliance with the stipulated conditions. For this purpose, a trustee is appointed to oversee the management of the debtor's activities, and the Financial Restructuring and Bankruptcy Unit also monitors the debtor's financial transactions. Thus, we find that the Decree-Law has established a dual oversight mechanism for the actions and activities of the debtor in the financial restructuring of distressed companies, consisting of both the Trustee and the Unit.

The UAE legislator did not specify the nature of the debt that the debtor has stopped paying, whether it is commercial or civil. The debt must be commercial for the merchant debtor so that the creditor can submit a request to open the procedures. We see the addition of another case, such as the case mentioned in the first paragraph of Article (650.) of the repealed Commercial Transactions Law No. 18 of 1993 stipulates that "every commercial or civil creditor may, as soon as he requests a ruling declaring the bankruptcy of his merchant debtor, provided that the creditor submits evidence that the debtor has stopped paying his commercial debt". This represents the permissibility of submitting a request to open bankruptcy or restructuring procedures if the debt claimed by the creditor is a civil one in the event of payment, if the debt is proved. The merchant debtor stopped paying another commercial debt to another creditor, meaning that the creditor with a civil debt proves the debtor's cessation of paying a commercial debt first, then proves the rest of the conditions required for the civil debt, and the Dubai Court of Cassation held that the creditor's debt must be commercial in the event of payment, The amount is known and free of serious disputes until the request to open bankruptcy or restructuring procedures is accepted. (Dubai Court of Cassation, 2018).

Both the Emirati and Kuwaiti legislators stipulated that the request to initiate financial restructuring procedures must be accompanied by the necessary data and attachments to complete the submitted request. The Emirati legislator stated in Article (88) that:

- 1) The data, information, and documents evidencing the fulfillment of the necessary conditions for submitting the request to initiate restructuring procedures.
- 2) Brief explanation of the restructuring plan, outlining its conditions, how it is implemented, any guarantees for its execution, and the timeline for implementation.
- 3) Summary of the contracts and agreements proposed to be signed between the debtor and creditors for implementing the restructuring plan.

- 4) Classification of Creditors
- 5) In the case of forming a creditors' Committee according to the classification of creditors, a list of the members of that Committee must be attached, including the name of the representative for each category of creditors, along with their email and physical addresses and phone numbers. More, documents evidencing the appointment of these members and representatives, as well as the limits of their authorization from the creditors, should be provided.
- 6) Procedures for calling a creditors' meeting to discuss the restructuring plan and voting procedures, including who has the right to vote.
- 7) In the event of preliminary approval from some creditors for the restructuring plan, a list of these creditors must be submitted according to their classification, along with the amount of the debtor's debts to them, the guarantees provided, and their percentage relative to the total debts of the debtor (Federal Decree-Law No. (51) of 2023). Requests submitted by the regulatory authority are exempt from providing the data, information, and documents referred to in paragraphs (4) and (1) of this article. The above was stated in Article (98) of Kuwaiti Bankruptcy Law No 71 of 2020 in addition to the documents specified in Article (20), the most important of which are a brief explanation of the financial restructuring plan and a summary of the contracts and agreements necessary to be signed between the debtor and creditors to implement the financial restructuring plan (Rasha, 2021).

Under French law, the financial restructuring procedure is available to natural persons who act in good faith and face a clear and irremediable inability to meet their financial obligations, whether those debts are due immediately or in the future. A debtor may file a petition before the Over-Indebtedness Committee seeking a short delay of enforcement actions against its assets. In support of the petition, the debtor is required to disclose details of its assets and liabilities to the Committee, which will then conduct a preliminary investigation and hold hearings. The Committee must issue a decision on whether to accept the case within three months.

If the petition is approved, creditors' rights of recourse are automatically suspended, and the debtor's obligations to make payments are deferred for a maximum period of one year. The debtor is required to collaborate with major creditors to develop a debt avoidance plan, which must be approved by both the debtor and the creditors. The financial restructuring plan must not extend beyond eight years.

If the debt settlement process fails, upon the debtor's request, the Committee may impose either standard measures: such as the rescheduling of all debt payments or extraordinary measures: such as suspending the obligation to repay debts. In cases where the debtor's financial situation worsens during the implementation of the plan or if the debtor faces an irreparable financial crisis, the Committee may recommend one of the following options:

- A debt relief procedure without liquidation
- A debt relief procedure with liquidation, provided the debtor has sufficient assets to cover the proceedings.

In both scenarios, all recourse rights of creditors are suspended, ultimately leading to the full discharge of the debtor's non-professional debts (Mackenzie, 2016).

A central concept of French insolvency law is the cessation of payment, which occurs when a commercial entity is unable to meet its due debts due to insufficient cash or liquidity. If the company fails to pay its debts within 45 days of the cessation of payment, it must submit a petition for an amicable financial reorganization procedure. This procedure may be initiated solely by the debtors by demonstrating that they are facing difficulties beyond their capacity to resolve without external assistance (Alexandre and Guillaume, 2024).

More, the judgment opening these proceedings will trigger a 6-month observation period, which may be renewed once and exceptionally twice (i.e., for a maximum period of 18 months). This observation period will give the debtor the breathing space necessary to prepare and submit to the Court a restructuring plan ("safeguard plan") that will provide the measures necessary for the continuation and reorganization of the operations of the debtor and the restructuring of its debt. The plan needs to be approved by the Court.

In rehabilitation proceedings, if the debtor is unable to prepare a viable restructuring plan, the Court can order the sale of the business as a going concern in a so-called "sale-of business plan" ("plan de cession"). If recovery is manifestly impossible: a judicial liquidation proceeding must be opened, either *ab initio* or during the course of judicial rehabilitation proceedings. If the business cannot be sold the assets will be sold piecemeal. (Adams and Cartwright, 2019).

Therefore, it must be noted that there are shortcomings in this system, as both laws require the debtor to provide numerous data in addition to what has been previously mentioned above. The most important of these include a report that contains forecasts of the debtor's cash flow and profit and loss projections for the year following the submission of the request, a detailed statement of the debtor's assets and the approximate value of each of these assets at the time of submitting the request, a statement of any guarantees or rights of third parties that may arise from them, as well as a declaration of whether the debtor applying for financial restructuring will need to obtain financing or not. This may result in the debtor being unable to provide the required data for the Bankruptcy Court to rule on the request for financial restructuring. Under French law, the procedure is exclusively available to the debtor, and it provides a more streamlined process compared to other legal systems, with the primary objective of ensuring the continuity of the commercial entity. The law also allows for extended timelines for filing the petition, in contrast to the more restrictive timeframes set forth under the UAE and Kuwaiti legal frameworks.

On the other hand, it appears that the request to initiate financial restructuring procedures is submitted to the Court by three parties: either the debtor, the creditors, or the regulatory authority. This is aimed at rescuing commercial companies from financial distress and rectifying their situation to ensure their continuity.

4.2. Effects of issuing a decision to initiate financial restructuring procedures

4.2.1. In terms of managing the debtor's affairs and assets

Regarding this issue, it is important to distinguish between various situations that might affect the management of the debtor's assets as mentioned below.

Management of the Debtor's Affairs and Assets

The issuance of a decision to approve the initiation of financial restructuring procedures result in the debtor's continued management of their assets automatically after the approval decision, known as "*Debtor in Possession*", without the need to submit a request to the bankruptcy Court or obtain the creditors' approval. The debtor remains responsible for any obligations or contracts arising from previous or subsequent actions, provided this does not conflict with the interests of the creditors (Malakawi, 2016). Article (89), paragraph (1) of the Emirati law states that the debtor continues to manage their business after the issuance of the decision to initiate restructuring procedures under the supervision of the trustee and is allowed to perform all actions necessary for their commercial activities, provided that these activities do not harm the interests of the creditors, unless the bankruptcy Court decides otherwise (Emirati Law No. (51) of 2023). The Kuwaiti legislator has followed the same trend to ensure the continuity of the debtor's operations, as stated in Article (99) of the Kuwaiti Bankruptcy Law No 71 of 2020.

The legislator has allowed the trustee to request any information or documents regarding the debtor's debts, activities, or assets, and has the right to take all necessary actions to monitor the debtor's financial transactions and verify the proper management of the debtor's assets and activities (Al-Qalioubi, 2022). The Emirati legislator stated in Article (89) paragraph (2) that the trustee may request from the debtor, creditors, or the unit—if the debtor is subject to a regulatory authority or bankruptcy management or a supervisor, as appropriate—any information or documents available to them regarding the debtor's debts, activities, or assets. The trustee has the authority to take all necessary actions to monitor the debtor's financial transactions and verify the proper management of the debtor's assets and activities (Emirati Law No. (51) of 2023). Moreover, the Kuwaiti and Emirati rule makers stated that the trustee may request from the debtor, creditors, the Bankruptcy Committee, the Bankruptcy Administration, the supervisor, or the inspector to provide him with any information (Law No. (71) of 2020, Article 99 of the Emirati Law No. (51) of 2023).

The executive regulation of Emirati law specifies the actions that the debtor must submit to the trustee's approval before proceeding with them. The debtor may dispose of his money before the decision to open restructuring procedures is issued, as he is going through a financial crisis that may lead to the disruption of his business, and he wants to confront that crisis. Therefore, these actions may cause harm to him and the creditors, which violates the principle of equality between creditors, and therefore the UAE legislator adopted the idea of non-enforcement of the debtor's actions prior to the opening of procedures in order to protect creditors rights. However, the legislator established two cases for such actions, which are actions that are not legally or obligatorily enforceable: actions that are not legally

enforceable, and the difference between them is that the first is not enforceable without the need for a court ruling, while the second is enforceable unless a court ruling is issued that it is not enforceable. (Fares, 2020).

Alternatively, In French Law, the approval of the restructuring plan is only for financial creditors defined as members of the Committee of Credit Institutions, the Committee of Bond, and note holders, which are involved in the (AFS) proceeding, which refers to an Action for Foreclosure of a Seizure. It is a legal process used to challenge the validity of property or assets during the enforcement of a court judgment, typically when the seizure is deemed improper or unlawful. The affected party can file this action to contest the seizure and potentially have it annulled. Unlike in traditional safeguard proceedings, no committee of suppliers is created. The other creditors, which are not financial creditors (including public creditors, such as the tax or social security administration and suppliers), are not directly impacted by the AFS. Their debt is not automatically stayed and continues to be due and payable according to their contractual or legal terms. As the AFS proceeding is by nature an accelerated procedure, very tight deadlines are imposed. The plan must first be voted on by the creditors within a minimum period of (8) days following its submission to them by the debtor, and (ii) be sanctioned by the Court (after the approval by the creditors) within 1 month (renewable once) following the opening of the AFS proceeding. If no plan is approved by the creditors and sanctioned by the Court within these deadlines, the Court orders to terminate the procedure and cannot impose a rescheduling of the debts. (Walter, A. (2017).

Prohibition of the Debtor from Managing its Assets

The Emirati lawmaker has authorized the bankruptcy Court, either on its own initiative or at the request of the trustee, a creditor, or the Unit of bankruptcy, within a legally specified timeframe, to prohibit the debtor from managing their assets and affairs. The legislator stated in Article (90), paragraph (1) that the Bankruptcy Court may, on its own initiative or upon a justified request from the trustee, a creditor, or the unit—if the debtor is subject to a regulatory authority—decide within ten (10) days from the date of submitting the request to restrict the debtor or the board of directors or managers from managing their assets and affairs, and entrust that management to the trustee. In this case, the trustee shall have all the powers of the debtor and the board of directors and executive management, unless the Court decides otherwise.

On the other hand, the Kuwaiti law states that the bankruptcy judge may, upon a justified request submitted by the trustee, a creditor, or the Bankruptcy Committee—as appropriate—decide within ten days from the date of submitting the request to prohibit the debtor, their board of directors, or managers from managing their assets and affairs and entrust that management to the trustee. In this case, the trustee shall have all the powers of the debtor and the executive board of directors and the general assembly, concerning actions that require the approval of the general assembly, unless the bankruptcy judge decides otherwise (Article 101 of the Law No. (71) of 2020).

The intent of the previous article is that the opportunity for the debtor to continue managing their assets and affairs after the decision to initiate financial

restructuring procedures is not guaranteed. It does not restrict the creditors, the trustee, or the bankruptcy administration from requesting the appointment of a guardian to manage the debtor's assets during the financial restructuring under certain conditions that would justify depriving the debtor of managing their affairs. Such conditions may include severe mismanagement or negligence on the part of the debtor or their board of directors during the management of the assets, such as deficiencies in understanding the company's cash flow by the management, unjustified expansion in the company's investment activities, or any type of fraud or manipulation by the debtor or their management during the implementation of the financial restructuring plan or before the commencement of this plan (Victor, 2009).

We may observe that the Emirati legislator granted the bankruptcy Court the authority to act on its own initiative or upon a justified request submitted by the aforementioned parties in the case of prohibiting the debtor from managing their assets and affairs. In contrast, the Kuwaiti legislator granted this authority only to the trustee, a creditor, or the Bankruptcy Committee, without allowing the Court to act on its own initiative. We also note that the Kuwaiti legislator expanded the scope of the trustee's powers in the event of prohibiting the debtor from managing their assets, as it added the powers of the debtor's general assembly to the trustee's responsibilities concerning actions that require the approval of the general assembly.

Suspension of the Temporary Trustee from Managing the Debtor's Affairs and Assets

The temporary trustee is appointed by the Bankruptcy Court for a specified period, and their role is only temporary until a decision is made to initiate financial restructuring procedures. The Emirati legislator stipulated in the Financial Restructuring Law that If the Bankruptcy Court has appointed a temporary trustee to manage the debtor's affairs and assets, the temporary trustee shall cease managing the debtor's assets and affairs and hand them over to the debtor within ten (10) days from the date of the decision to initiate restructuring procedures unless the Court decides otherwise (Article 91 of the Emirati Law No. (51) of 2023). This solution is similar to the Kuwaiti Bankruptcy Law in Article (100).

Suspension and Termination of Claims

When a decision to initiate financial restructuring procedures is issued, it results in the suspension of claims against the debtor and the issuance of a certificate regarding that decision. The Emirati legislator stipulated in the Financial Restructuring Law that It follows that the issuance of a decision to initiate restructuring procedures results in the suspension of claims starting from the day after the date of issuance of this decision until the date of ratification of the restructuring plan. The bankruptcy administration must provide the debtor, upon their request, with a certificate confirming the suspension of these claims. (Article 92 of the Emirati Law No. (51) of 2023) The aforementioned article is similar to the Kuwaiti law in Article (102) (Shammari and Sadiq, 2020).

The Decree-Law establishes the suspension of claims in any lawsuit or enforcement action against the debtor related to their assets or debts starting from the day after the date of issuance of this decision until the date of ratification of the restructuring plan. It requires the bankruptcy administration to provide the debtor, upon their request, with a certificate confirming the suspension of these claims. The

period of suspension of claims ends upon the occurrence of one of the following conditions:

- 1) The bankruptcy Court ratifies the restructuring plan.
- 2) The Bankruptcy Court issues a decision to terminate the restructuring procedures. However, certain lawsuits are exempt from this suspension, including labor lawsuits and personal status lawsuits, except for inheritance claims (Al-Suwaidi, 2023).

The registration of a request for a financial restructuring procedure in the Court results in the suspension of claims against the debtor. Suspension of claims means suspending the right to take or complete any action or lawsuit against the debtor, his assets, or the guarantor of the debtor's debt within a specified period in accordance with the provisions of the law. The importance of suspending claims lies in giving the debtor a new opportunity to arrange the internal affairs of the commercial company and suspending enforcement procedures against his assets. Which may be the cause of its depletion and financial faltering. Filing successive lawsuits and enforcement requests against the faltering company leads to a worsening of its financial situation and increased pressure on it, which may lead to accelerating its bankruptcy. Therefore, suspending the claims contributes to stopping the financial bleeding and gives the company an opportunity to restore itself to its previous position.

Suspending claims also creates a stable environment for the debtor's management to work on developing and implementing a reorganization plan without interference and external pressure from one of the creditors. Suspending claims also ensures fair treatment for all creditors. All claims are dealt with uniformly in accordance with the reorganization procedures. Suspension of claims also facilitates the negotiation process between the debtor and creditors to reach an agreement on debt restructuring. (Gilson, 2008).

As for the termination of the period of suspension of claims against the debtor, The Emirati legislator stipulated in the Financial Restructuring Law that the period of suspension of claims ends upon the occurrence of any of the following circumstances:

- 1) The ratification of the restructuring plan by the Bankruptcy Court.
- 2) The issuance of a decision by the Bankruptcy Court to terminate the restructuring procedures (Article 93 of the Emirati Law No. (51) of 2023), which is similar to Article 103 of Kuwaiti Law.

After opening the procedure and appointing the trustee, the debtor is obligated to submit a detailed list of his valid contracts to the trustee and report which of them he wishes to continue. The trustee may issue a decision within a specific period, and this period shall be calculated from the beginning of the opening of the procedure. The Court may issue a decision in any contract of the debtor if its termination is necessary to implement the proposal after ratifying it and protect the interests of the majority of creditors. (Malkawi, 2014).

4.2.2. In terms of preparing the debt list

Duties of the Trustee

The trustee gets the authority to fulfill the required duties as soon as the announcement of the appointment decision is issued by the bankruptcy administration; the latter provides the trustee with all information related to the debtor, facilitating the trustee's ability to carry out their obligations.

The Emirati legislator stated in Article (95), paragraph (1) of the Law No(51) of 2023 that the bankruptcy administration shall notify the trustee of the decision issued for their appointment within ten (10) days from the date of issuance, and it shall provide them with all information available regarding the debtor. The trustee, within ten (10) days from the date of their appointment decision, shall do the following:

- 1) Publish a summary of the decision to initiate the procedures, which shall include a call for creditors to submit their claims and supporting documents, and to deliver them to the trustee within a period not exceeding thirty (30) days from the date of the announcement.
- 2) Notify all creditors whose electronic addresses are known to provide their claims and supporting documents within thirty (30) days from the date of the announcement of the summary of the decision to initiate the procedures; if there is incomplete information available from the bankruptcy administration, it is the debtor's obligation to inform the trustee of it within a period determined by the trustee. Paragraph (2) stipulates that the debtor must provide the trustee with any additional details not notified to the bankruptcy administration, whether regarding their creditors, the amounts of debts, the details of any contracts in execution, and any pending or ongoing legal proceedings in which the debtor is a party, within the timeframe specified by the trustee (Emirati Law No. (51) of 2023) which is corresponding to Article (105) in Kuwaiti Bankruptcy Law.

The legislator has clearly defined the role and duties of the trustee, as the debtor may not be able to provide some of the data until the bankruptcy Court rules on the request for financial restructuring. For example, how can the debtor accurately determine the amount of financing needed for the approval of the financial restructuring plan? And what is the total estimated value of the financing needed during this period? And its purposes, duration, guarantees, and the extent of its impact on the financial restructuring plan and on the rights of creditors whose debts are secured, especially since the list of creditors was not compiled when submitting the request to initiate financial restructuring procedures (Al-Shammari and Sadiq, 2020).

The role of the trustee in preparing the creditors' register is legally defined and falls within the scope of their duties. They are required to prepare a register after their appointment, listing all known creditors, and submit this version to the bankruptcy administration. There are specific requirements that the trustee must consider when preparing this register (Ghanem, 2020), as stated by the Financial Restructuring Law such as the postal and email addresses of each creditor, the amount of their claim, and the due date. He also has the task of identifying creditors with secured debts through a mortgage or lien, along with details of the guarantees established for each of them and the estimated value of these guarantees in the event of enforcement. Furthermore, the trustee will check if there is any set-off request submitted in accordance with the provisions of this law. Finally, the trustee may ask

for any other data that he deems necessary to perform his duties (Article 96 of Emirati Law No. (51) of 2023). This is as well corresponding to Article (106) of the Kuwaiti Bankruptcy Law.

The Emirati legislator granted the trustee the right to request data or information related to the debtor's assets or activities from any person who possesses such information. However, the trustee must maintain the confidentiality of this information. In the event that the parties refuse to cooperate with the trustee, the Emirati legislator has permitted the trustee to refer the matter to the bankruptcy Court to take the necessary action according to the Financial Restructuring Law: every person with information regarding the debtor's assets or activities must provide the trustee with this information within ten (10) days from the date of the request, including any documents and accounts related to the debtor. However, the trustee must refrain from disclosing any information outside the framework of the procedures outlined in this law, except regarding information that must be disclosed pursuant to laws or regulations. Finally, if any person refuses to provide the trustee with the requested information, the trustee may refer the matter to the bankruptcy Court to determine the importance of the information that can be requested and to order its provision to the trustee" (Article 97 of the Emirati Law No. (51) of 2023). The aforementioned above is similar to the Kuwaiti process as established in Article 107 of the Kuwaiti Bankruptcy Law.

As previously mentioned in the text of Article (95) of the Emirati law, the trustee has an active role in notifying creditors to submit the required documents to secure their debts from the debtor. However, there are specific legal conditions for this submission by the creditors. The Emirati legislator stated in Article (98) that:

"1) All creditors, even if their debts are not yet due or are secured by a mortgage, or are not established by final judgments, must submit to the trustee, within the time frame specified in the notice addressed to them in accordance with Article (95) of this law, documents of their debts accompanied by a statement of these debts and their guarantees, if any, along with their due dates and amounts valued in UAE dirhams based on the exchange rate prevailing on the day the decision to initiate the procedures was issued.

2) The trustee may request the creditor to complete their documents or to provide clarifications about the debt by specifying its amount or characteristics. He may also request the verification of any claims by an independent auditor or the creditor's auditor." (Emirati Law No. (51) of 2023) corresponding to Article (108) of the Kuwaiti Bankruptcy Law."

In parallel with French Law, the Court appoints a representative of creditors (chosen from the register of representatives of creditors). The representative of creditors has a duty to receive and verify the lodgment of claims by the creditors. In the context of drafting a safeguard or rehabilitation plan, the representative of creditors is responsible for consulting with creditors on the proposed rescheduling and/or writing off the debtor's debt.

More generally, the representative of creditors represents and defends the collective interest of all creditors. However, in cases where an individual creditor is prejudiced, the representative of creditors has no authority, and only the individual creditor may initiate the related proceedings. (Qarman, A. 2018).

Claims of the Debtor's Guarantors or Third Parties

A creditor who receives a payment from the debtor's guarantors or third parties must deduct the amount and inform the trustee. The legislator also allowed any guarantors of the debtor or third parties to present to the trustee what they have paid in fulfillment of the debtor's debt (Al-Areeni and Abdul Aal, 2021), in accordance with the provisions of Article (99) the creditor who receives an advance payment from the debtor's guarantors or third parties must deduct what they have received resulting from any claim they present to the trustee. Any of the debtor's guarantors or third parties may present their claims to the trustee up to the amount they have paid in fulfillment of the debtor's debt. Provisions of the Emirati Law No. (51) of 2023 are similar to the provisions of Article (109) of the Kuwaiti Bankruptcy Law.

Under French law, creditor payments are determined based on the debtor's available assets and the classification of each creditor. Creditors are categorized into distinct subclasses, including guarantors of the debtor—further subdivided into categories based on the nature of their securities, guarantees, or legal liens—and ordinary creditors. The classification of liens is highly intricate and must be assessed on a case-by-case basis, requiring careful evaluation to determine the priority and scope of each creditor's claim (Alexandre, Guillaume, 2024).

Verification of Debts and Contesting Them

The legislator has imposed on the trustee the obligation to verify the debts within the legally specified timeframe, and he has the right to seek assistance from the Unit or the debtor. After completing the verification of these debts, the trustee must deposit the list of debts with the bankruptcy administration. The trustee may accept or reject the grounds for contesting the debt, and then the trustee will announce the list, indicating the amounts that have been accepted or rejected. Government debts are considered accepted without the need for the trustee's verification (Mohamed, 2017). The Emirati legislator stated in Article (100) that the trustee must verify the debts within thirty (30) days from the date of the expiration of the period specified in paragraph (1), clause (b) of Article (95) of this law. They may seek assistance from the Unit if the debtor is subject to a regulatory authority or from the debtor. After completing the verification of the debts, the trustee must deposit with the bankruptcy administration a list of debts that includes the names of the creditors and the amount owed to each as of the date of initiating the procedures, along with supporting documents and the grounds for contesting the debt, as well as the trustee's opinion regarding acceptance or rejection. The list should also include the names of creditors who hold specific securities on the debtor's assets and the amount owed to each as of the date of initiating the procedures, along with a statement of the securities provided for each and their estimated value at the time of the proceedings. More, the trustee shall, within ten (10) days following the deposit of the list of debts, announce the list and specify the amounts that they deem acceptable for each debt and those that they consider rejected. Debts owed to the government resulting from the imposition of taxes or fees of various kinds, or related to the settlement of transactions in the securities markets, are considered accepted debts without the need for the trustee's verification, even if they are subject to dispute by the debtor or others. The value of these debts will be adjusted based on any final

rulings issued regarding them (Emirati Law No. (51) of 2023). The Kuwaiti legislator has stipulated the above in Article (110), except for debts owed to the government related to the settlement of transactions in the securities markets.

We may consider that the Kuwaiti legislator has included the settlement of transactions in the securities markets with the debts owed to the government, making it more comprehensive and general, as stipulated by the Emirati legislator.

After completing the verification of the debts, the Emirati legislator granted the right to contest the debts listed in the creditors' register before the bankruptcy Court within a legally specified period (Ghannam and Al-Tayer, 2017). The legislator stated in Article (101) that the debtor and any creditor, even if their name is not mentioned in the creditors' register, may contest the debts listed in the register before the bankruptcy administration within ten (10) days from the date of the announcement of the register, and the Bankruptcy Court is competent to adjudicate the contest (Emirati Law No. (51) of 2023). The Kuwaiti legislator has stipulated the same mechanism in Article (111).

Approval of the Final Undisputed Debt List and Temporary Debts

The Bankruptcy Court approves a final list of undisputed debts after the contest period for the debts listed in the creditors' register has elapsed, which is ten (10) days from the date of the announcement of the register. The Emirati legislator stated in Article (102) that the bankruptcy Court shall, after the expiration of the period specified in Article (101) of this law, approve a final list of undisputed debts, and the trustee shall endorse the accompanying statement of the documents related to these debts, indicating their acceptance and the value of the debt that has been accepted (Emirati Law No. (51) of 2023). The Kuwaiti legislator has also stipulated such a process in Article (112).

As for the approval of the list of creditors whose debts are temporarily accepted, the legislator has allowed the bankruptcy Court to decide on the temporary acceptance of the debt at an estimated amount, unless there is a criminal case. The Bankruptcy Court approves the list of creditors and notifies the trustee of that approval (Ghannam and Al-Tayer, 2017). The Financial Restructuring Law states that the bankruptcy Court may, before ruling on the contest or the appeal filed against the judgment issued in this regard, decide to provisionally accept the debt at an estimated amount, unless a criminal case has been filed regarding it. Also, the bankruptcy Court approves the list of creditors whose debts have been temporarily accepted and notifies the bankruptcy administration of this (Article (103) of the Emirati Law No. (51) of 2023) and Article (113) of the Kuwaiti Bankruptcy Law.

Disputes Related to Debt Guarantees and Safeguarding the Share of the Temporarily Accepted Debt

The legislator permitted the acceptance of disputes related to debt guarantees on a temporary basis, referring to it as an ordinary debt, as stated by the Emirati legislator in Article (104) that If the dispute is related to debt guarantees, it must be accepted temporarily as an ordinary debt (Emirati Law No. (51) of 2023). This corresponds to Article (114) of the Kuwaiti Bankruptcy Law.

As for the temporarily accepted debt, it is preserved in the proceeds from the sale of the debtor's assets. If the Court decides not to recognize the temporarily

accepted debt or to allocate the debt, the preserved share may be returned to the general security of the creditors. Both the Emirati and Kuwaiti legislator stated that: the share of the temporarily accepted debt shall be preserved from the proceeds of the sale of the debtor's assets and during any distribution to the creditors in accordance with the provisions of this law. If the bankruptcy Court decides not to recognize the temporarily accepted debt or if it is allocated, the preserved share will be returned in proportion to the general security of the creditors as indicated in (Article (105) of the Emirati Law No. (51) of 2023 and Article 115 of the Kuwaiti Law No 71 of 2020).

Modification of the Debt List

Regarding the issue of modifying the debt list, the legislator has allowed a creditor who has not submitted the debt supporting documents to submit a request to the trustee for their acceptance and inclusion in the proceedings. If the trustee approves this request, the documents must be notified to the Bankruptcy Court, and the debt list will be amended and re-announced. Subsequently, the creditor will receive his due in the subsequent distributions upon acceptance of the debt (Ghannam and Al-Tayer, 2017).

In the event that the trustee rejects the creditor's request or does not respond within the legally specified timeframe of thirty days, the creditor may resort to submitting a request to the bankruptcy Court and provide the supporting documents for the debt. The role of the Court is to either accept or reject the request.

The Court plays, as well, an active role in directing the trustee to provide a report on the impact of this debt on the financial restructuring plan. In this case, the procedures remain ongoing to ensure that neither the debtor nor the creditors seeking their rights are harmed. (Faydh Allah, 2022) Both the Emirati and Kuwaiti Lawmakers stated that:

“1) A creditor who has not submitted the supporting documents for his debts within the deadlines specified in paragraph (1), clause (b) of Article (95) of this law may submit a request to the trustee for their acceptance and enclosing in the proceedings. The trustee's approval of this request has to be ratified by the Bankruptcy Court. If ratified by the Court, the debt list will be amended, and re-published. The creditor will receive their debt from subsequent distributions following the acceptance of their debt.

2) If the trustee rejects the creditor's request or does not respond within ten (10) days from the date of submission, the creditor may submit a request to the Bankruptcy Court for the acceptance of the supporting documents related to the debt (s). The Court will, then, issue a decision to either accept or reject the request within ten (10) days from the date of submission. If the Court orders the acceptance of the debt, the debt list will be amended accordingly.

3) The Bankruptcy Court may direct the trustee to submit a report on the impact of the new debt (s) on the proposed plan and submit it for ratification. In all cases, the procedures outlined in this chapter shall not be suspended.” (Article (106) Emirati Law No. (51) of 2023 and Article (116) of the Kuwaiti Law No 71 of 2020).”

From the above-mentioned, we may find that the financial restructuring process aims to establish a suitable plan for reorganizing the debtor's financial and administrative matters, detailing how they can emerge from a state of financial and administrative turmoil and reach a stage allowing the settlement of their debts. This ensures that the debtor—a commercial company—repays the debts and continues to operate in the business sector by adjusting their legal status while safeguarding the rights of creditors and third parties to prevent them from any harm or infringement. We have outlined the initial phase of financial restructuring through the request to initiate restructuring procedures and the effects of the issuance of the initiation decision in both Emirati and Kuwaiti laws.

Therefore, the preliminary phase of financial reorganization has been delineated through the filing of a request for the initiation of restructuring proceedings. In addition, the legal implications of the issuance of the opening order, under both UAE and Kuwaiti legislation, have been outlined while providing clarifications on pertinent aspects under French law.

5. Conclusion

The existence of legislations such as the new Emirati Law on Financial Restructuring and Bankruptcy, the Kuwaiti Bankruptcy Law, and the French Insolvency Law may be considered as significant indicators of serious efforts developed by the states in view of the achievement of economic progress and the enhancement of its position within the framework of international and local business. These legislations address essential issues in the field of commercial companies, such as debtor distress, the process of financial restructuring of their operations, and offers practical, applicable solutions. The law protects all parties involved, whether the debtors or the creditors, and increases the debtor's ability to repay their debts without causing the loss of their company or business. This has a positive impact on individuals in particular and on society and the economy in general.

The financial restructuring process regulated by bankruptcy laws is a type of exceptional solution aimed at achieving two main objectives which include assisting the distressed debtor that arise from the financial crisis, paving the way for the economic community to benefit from the essential role they play. Moreover, the rights of stakeholders during the initiation of financial restructuring procedures are protected.

This study focused on assessing the effectiveness of the financial restructuring rules under the Emirati, Kuwaiti, and French laws by examining the legal nature of financial restructuring, the request to initiate procedures, and the effects of the decision to open the procedures. This is aimed at balancing the need to give commercial companies with disrupted financial positions a new opportunity to reorganize their finances and rectify their legal status while simultaneously considering the interests and rights of creditors and thus maintaining a durable development of the countries' economy.

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