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A COMPARATIVE STUDY OF LEGAL SOLUTIONS TO PREVENT BANKRUPTCY OF BUSINESS ENTERPRISES

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ABSTRACT

French law has gone through remarkable developments in solving problems of enterprises. French Legal texts have aslways been very interesting and responsive to help troubled enterprises and new legal facilities have been created in this country including the Law of 1848 and the July 2, 1919 Law, and finally in terms of advanced law, it can be referred to companies rescue law of July 26, 2005. In Iran's commerce law, which is an approved of the 1807 Commerce law of France, despite the abolition of this law in France, and with the advancement of business activities, new laws have been introduced on problematic enterprises but the Iranian legal system has remained unchanged since 1940, and new rules have not been legislated for companies with financial problems and it seems that the legal establishment of a leniency contract in Iran's commerce law is an inefficient means of resolving troubled enterprises. However, there is a slight change in this matter in the reform act of commerce law of 2013. The article seeks to review the French and Iranian laws of resolving enterprise problems before they stop working and go bankrupt.

Key words: *Troubled enterprises, leniency contract, companies rescue law approved in 2005, France - bankruptcy, friendly contract*

INTRODUCTION

Enterprises face different problems during their exploitation period. These problems may take significant dimensions and accelerate the movement of enterprises to bankruptcy. Small and medium-sized enterprises are more likely to face such problems because they are below the standard in terms of capital gain. Another reason for the problems for such companies is the lack of necessary capabilities to deal with these problems. Also, encountering with the threat of bankruptcy for a relatively large enterprise, it can bring serious consequences not only for employment but also for the enterprise‘s economic activities.

The legislator in the French legal system as well as in Iran has developed a set of legal instruments to keep these enterprises in cycle and maintain the economic balance and support the creditors and keep the tools of the workers’ activities. Because the difficulties and problems of enterprises are generally predictable, and, it is possible to prevent the bankruptcy of commercial firms and its adverse effects by predicting, preventing and resolving problems through some reconciliation measures.

Approach and Objectives of Bankruptcy Laws

In modern era, legislators have three important interests in dealing with troubled business people, including protecting creditors and their rights, and supporting a stopped businessman indirectly and providing his interests and ultimately securing public interests. It is an

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important expediency to strengthen the credibility of traders and business companies on the one hand and on the other hand to build confidence in society to realize and facilitate business and credit transactions. Because, in today's trade, due to the abundance of production and supply of goods and services, a significant part of the transactions are carried out on credit and non-cash; basically, although a businessman has significant capital, he cannot make all transactions, including its purchases and sales, in cash, and he has to make transactions on credit. The prerequisites for conducting credit and business transactions in the market and in the field of trade are that traders in this field trust in each other in their business transactions, and this trust is provided when the laws and legal structures of society, especially the bankruptcy legislations, create this confidence in individuals who, if they deal with others credit business and the debtor and the businessman were disturbed by their financial situation and stopped paying their debts, the law intervenes and protects the rights of creditors timely and effectively. (Abdipour, 2014: 9).

Another general interest is that the stopping and bankruptcy of businessmen and companies will disrupt the economic system of the society more or less and will be linked to the economic order. The inability of ordinary people to pay their debts usually creates a personal problem for their creditor, but when the businessman is stopped, given the assumption that his creditors are typically a businessman, they are also in trouble. In fact, in today's economy, it is seen that when businessman's cheques are bounced, several other merchants, who are in a long chain, are subsequently in trouble, and their cheques may also be bounced. Therefore, in the field of trade and economic system of the country, inability of businessmen and businesses to pay their debts have large socio-economic consequences. Therefore, maintaining the general economic order and maintaining the livelihood system requires that the legislator and the government pay serious attention to this matter. In particular, if the suspension of large commercial and business enterprises causes them to be liquidated, it will lead to unemployment and, as a result, it damages to the employment system of the society; therefore, a significant part of the bankruptcy regulations in various legal systems has tried to predict mechanisms to rebuild economic enterprises with financial constraints and prevent bankruptcy and liquidation (ibid., 10)

History and developments of laws in Iranian law

Iran's commerce law has largely been adapted by the 1807 French Commercial law, which has been the basis for Iran's bankruptcy law until today. Despite the widespread changes in commerce law, especially in the subject of bankruptcy and the suspension of companies in French law, there has been no change in commerce law. Consequently, the relevant regulation in Iranian law have found many conflicts with French bankruptcy laws. One of these contradictions is specifying the bankruptcy rules to traders in Iran's law, while the new rules of bankruptcy in the today's modern world has abolished past boundaries and it includes the public, both business and non-business people who are busy with trading in new rules of bankruptcy.

Reconstructing a bankrupt state is important in many respects, the word reconstructing by the meaning of rebuilding and refurbishing is a new phenomenon. Reconstructing is a phenomenon under the title bankruptcy may help both the businessman and the creditors, especially if the reconstructing takes place before the bankruptcy order is issued. In this matter, there is also a fundamental difference between the new legal solutions and how to deal

with a problematic company in Iranian law. In Iran's law, there is still no solution to prevent suspension and protect the enterprise before bankruptcy is issued. Therefore, the content of friendly leniency contract which should be confirmed and certified by the judicial authority that is before the issuance of a moratorium and bankruptcy order, is not known while the French Rescue law of 2005 which will be discussed in the forthcoming discussions, it provides a detailed and logical approach for the management of a company that is in a financial crisis or will be in future, it can request the creation of a new system from Court of stakeholders secretly that would help the company to get out of troubles before bankruptcy (Kaviani, 2014).
In France, preventing corporate troubles has seen remarkable changes, and it is appropriate to mention various eras of these changes here.

The emergence of the first preventive procedures in France

The history of preventing enterprise's problems is rooted in the first royal rulings of the Renaissance, the Decree of Colbert in 1673. The headings XI, X, IX of this decree refer to these items. This decree deals with bankruptcy law, especially the terms of opening a bankruptcy procedure, inability in payment, and penalties. Nevertheless, it should be added that the debtor could receive a security deposit from the king and receive a 6-month sentence for cases where he has not stopped paying as a result of his error.
Another aspect of this subject is also rooted in a friendly leniency contract in 1848, which included a contract between the debtor and some of its creditors in order to obtain time limits for paying debts. This friendly leniency contract was abolished in 1870. The next law was formulated on July 2, 1919 in the settlement of disputes through a Reglement Transactional contract between traders and creditors, it was also aimed at protecting the traders who were the warriors at war, and after a short time this practice was also abolished.
Based on the decree of July 25, 1937, laws were passed to protect unlucky indebted traders and scammers who were well-intentioned. This decree has created a new perspective on corporate problems. In fact, it was acknowledged that these problems may arise as a result of bad economic conditions and fluctuations, and not merely because of maladministration by the enterprise's director. Although there were deficiencies in this law, this was not enough. Apart from this, it should be noted that negotiations between creditors and debtors were carried out without the presence of a judge and thus opened the way for fraud (JAQUEMONT, 2011).
Following these preemptive efforts, the decree of 20 May 1995 on bankruptcy and judicial insolvency cases was issued. It was necessary to spend time and decrees such as n0 67-820 dated September 23, 1967 issue a law for companies and enterprises that have not yet reached the stage of payment suspensions. The decree was designed to allow enterprises that were thought to cause a serious disruption to national or regional economies by their disposal and they were allowed to find solutions to their recovery. On one hand, it was necessary for corporate executives to engage in a preemptive prediction in order not to face payment suspensions and, on the other hand, they were able to prevent judicial insolvency. In this law, the debtor was given a three-month time limit, which may have been extended another month, to prepare a rescue plan for the company along with a legal representative. By issuing this plan, it has been submitted to the court for its approval and confirmation, if it is useful, to save the enterprise. However, this decree has had problem, since it can only be implemented in relatively large and important enterprises, and the solution raised in the decree also issues, in most cases, a plan for debt settlement and judicial insolvency. (LYAZAMI, 2013).

A New Approach to Prevent the Problems of Enterprises in France

The idea of preventing corporate troubles comes from the 1979 Sedro Report. In this report, Sedroo said that there is no appropriate mechanism in France's legal system to create awareness about corporate problems. Government of M. Raymond Bar introduced n^{0} 974 bill in 1979 to create prevention measures for enterprises. In 1983, the French Minister of Justice, Robert Badinetre, introduced the motives set out in the July 4th bill. His emphasis was on the lack of preventive measures in the law of July 13th, 1967, and the decree of September 23, 1967.

Following these statements, and after some time, the law of March 1st, 1984 and its executive instructions, on March 1st, 1985 created a comprehensive preventive system that covers all the basic issues involved in payment suspensions.

This law itself represents the legislator's determination to implement a complete and gradual mechanism for problematic enterprises. This law created three types of preventive mechanisms:

Prevention of Accounting and Financial Notification

Transparency is one of the cornerstones of enterprise through which the balance between the company's bases is assured. The emergence of this can be seen in improving notification in stock companies and financial markets. French law has also imposed the-job assignments on corporate executives with the aim of providing the best possible access for shareholders to information. Applying this mechanism, which can be seen in clear and transparent terms in recent laws, also seems not to be enough on their own. Searching for balance of authorities through transparency is not enough, but in addition to transparency, information that is provided to the market should also be understandable, so that each shareholder is able to understand this information. By reviewing more precisely, transparency assignments can be classified into two categories. The first category is an assignment that is made merely as a form of transparency through the information provided by the managers. In the second category is the laws applied by the shareholders to gain financial information from the company (Poorrashid, 2014).

The use of measures that identifies the problems of enterprises at their very beginning and also organize a true and correct notification to fully understand these financial problems. This type of prevention brings responsibility to corporate executives and leads them to take the responsibility of their future job prospects. As some experts have emphasized, the responsibility to prevent, means predicting and predicting means preventing, because knowing the threats of the enterprise causes the managers to avoid these problems (SUDREAU, 1975).

In this regard, the legislator has been strengthening the accounting assignments for enterprises so that their managers become aware of their existence when problems occur and they can make immediate decisions for the enterprise. The purpose and the subject of accounting notification is to inform the third parties about the status of the enterprises and, in particular, its current or potential partners.

In Iran's law, stock companies are required to provide annual audited financial statements, interim financial statements, board reports that have a significant impact on the price of securities and investors' decisions in accordance with the executive guidelines prepared by the Stock Exchange. Even the legislator, in Article 43 of the Stock Exchange Law of 2006, emphasized that the responsibility of compensating the damages on investors caused by the

negligence, violation or impairment of the information provided in the initial supply process would be on the publisher, investment supply company, examiners and legal advisers. In addition to providing compensation of civil damages caused by perpetrators, according to Article 49 of the Act, imprisonment ranges from one month to six months, or cash fine of one to three times of the profit or loss incurred, or both are the punishment of those who violate the legal requirements related to information disclosure. Crimes specified in this law include failure to provide a part or all of the information, or important documents required by law to be provided for the organization or for the exchange, violations of suppliers and reviewers of documents, information, statements of registration or declarations of underwriting contract in performing of the assigned duties and the general abuse of any information, documentary evidence or counterfeit reports relating to securities.

It is clear that the new law has paid much attention to the transparency of the securities market and did not exclude the initial market, thus it has covered one of the defects of its past laws and regulations. In the new law, the main supervisor of the securities market notification process is the securities and stock market organization, which is responsible for drafting the regulations and their proper implementation, and all institutions involved in the capital market are required to provide information for the designated authorities according to the by-laws and instructions prepared by the organization (Poorrashid, 2014).

- *Settlement and Submission of Annual Accounts*

Having accounting offices for traders (natural or juridical persons) under Article 12-123 of the Commercial law of France and its subsequent articles a as well as some non-commercial companies (construction, services, etc.) is mandatory. However, natural persons are exempted from having these offices due to less business volumes than the level defined in the General Law on Taxes (see paragraph 1 of Article L-526-13 of the Commercial Law of France). Since the enactment of the law on March 1st, 1984, this assignment has also been imposed on all juridical persons (non-traders), the private law, which conduct an economic activity in the form of non-commercial companies, associations, agricultural cooperative companies, if two conditions out of following three conditions for these companies are assured:

1. Having More than 50 workers
2. Having more than 3100000 Euro trading volume
3. Having more than 1,500,000 Euros balance sheet

The associations are included in these assignments regardless of the mentioned limit in terms of receiving one or more donations above the limit specified in this decree from the government and local governments. Associations and foundations that receive annual assistance more than the specified limit contained in this decree (according to Article 1-4 of law n0 87-571 dated May 23, 1987), shall be subject to those objectives. Since the approval of the law n0 2011-525 in May 17, 2011, which simplifies and amends the above rules, some traders can only provide a simple and concise statement of their annual accounts, only if the volume of their trades does not exceed the amount specified in the decree (See Article L-123-16 of the Commercial Law of France).

- *Submission of Annual Accounts*

Some enterprises are subject to submit their annual accounts to the court and these accounts must be submitted to the court in the following months of the approval and confirmation of these offices in the general assemblies of the company members so that the third parties can learn about the financial status of the company. This assignment is on the hands of limited liability companies, joint stock companies, and general partnership. Failure to do these assignments is accompanied by a grade 5 enforcement penalty (SILVA, 2011).

Trader's natural persons are not subject to the submission of accounts. However, since the approval of law of June 15, 2010, those merchants who operate as limited liability and single-person company i.e. they have specified the properties related to their careers to a special asset, are also specifically subject to submit their annual accounts (Article L-526-14 of the Commercial Law of France).

- *Preparing and Setting up Predictive Bills*

Those enterprises which are subject to these assignments in addition to the task of preparing and adjusting annual accounts, which allow them to be aware of the past enterprise status, they also have a task for providing predictive accounts and due to their existence, future status of the enterprise and in particular, possible issues will be noticed. Business companies and non-business men with private natural and juridical persons who engage in an economic activity are subject to this duty. But it should be said that because of the requirement of this assignment, the situation is such that this assignment is limited to very important companies i.e. companies with at least 300 employees and the volume of their business regardless of their paid taxes is € 18 million or more.

While annual bills are published due to their submission to the court office and as a result, third parties are aware of its content but the predictive accounts are confidential. These bills will not be published. Instead, these types of invoices must be sent to certain organizations or individuals, and these individuals and organizations are committed to keep privacy obligations. The enterprise committee, the account inspector, and the supervisory and surveillance council (if any) are parts of these entities and organizations. The shareholders of the company are only aware of the content of these accounts when the annual general assembly of the enterprise is held and the channel of this information is also a report that the account inspector is required to set. In fact, it will be the responsibility of the account inspector to set forth his observations in a written report for the attention of the board of directors and submit it to the enterprise committee and present it in the next meeting of the general assembly (Article 225-240 of the Commercial law of France).

Prevention through Alert Notification

- *Alert Notification by the Auditing Inspector*

This kind of notification, because of its nature, may limit the continuation of the exploitation of the enterprise. An account inspector who is present in some companies (due to his appointment or his optional appointment in law) is obliged to notify managers about incidents and events that threaten the continuity of the enterprise's activities. The legislator has not listed the issues that make it difficult for the enterprise to continue operating. These cases may appear in the context of accounts, or they are seen in events such as losing a key customer, or failing to meet company debts.

The procedure of alert notification is implemented in four stages:

Step 1: The account inspector informs the chairman of the board about the risk events which may endanger the continuity of enterprise's operation through a recommendation letter which is accompanied by a request to receive a receipt. The Chairman of the Board of Directors shall respond to this recommendation within 15 days from the date of receipt of the information. If a satisfactory answer is received, the alert procedure will be stopped there.

Second step: If you do not receive an answer or receive an answer that cannot ensure continuity of the enterprise's activity, the account inspector will invite the board to discuss and consult with these organizations about announced and highlighted events. A copy of this invitation must be submitted to the chair of the commercial court. On the other hand, the account inspector should be invited to this meeting. The description of the discussion in the relevant management organization in the board of directors should be sent to the head of the Commercial Court and the labor Union, or in the absence of this committee, to the elected representatives of the staff.

Third step: In the event of failure to comply with these regulations or in cases where the account inspector declares that, despite the decisions taken, the issue of continuity of exploitation has seriously encountered with problems, he shall request the formation of a meeting of the general assembly to deal with the issues. The account inspector will prepare a special report and present it to the assembly. The text of this report shall be sent to the labor union and, in the absence of such an institution, will be submitted to elected representatives of the personnel.

Fourth step: After the general assembly meeting, if the account inspector acknowledges that the decisions made do not ensure the continuity of the enterprise's activity, then he will inform the chairman of the commercial court about the actions he is carrying out (Brunouw, 2003).

- *Alert Notification by the Labor Union and Shareholders*

The Labor law has granted the right to alert staff representatives in some enterprises. This announcement is not a responsibility of these representatives. According to the text of the relevant law, it can be said that the alert notification is about the occurrence or existence of events which can seriously affect the firm's economic situation due to their nature (Article L-2332-78 of the Labor law). The criteria for launching an alert are far beyond the scope of application of the alert issued by the account inspector. The events announced cannot face the company's continued livelihoods with a problem.

In the first stage, the labor union issues an application to provide the employer with explanations. In the next step, in case of failure to receive satisfactory answers, the enterprise's labor union will set up an alert notification and, if necessary, it will be assisted by an accountancy expert recruited by the firm in setting up this report. If the report is prepared, it will be sent to the members of board of directors or Supervisory Council and in the absence of these institutions, it will be issued to the members of the company.

Alert notification by stakeholders and partners of enterprise. Members of limited liability companies and shareholders have the right to alert management about those events that threaten the company's life. In limited liability companies, non-manager members have the right to do so regardless of the number and quantity of shares. In stock corporations, the shareholders who have 5% of the capital of the company individually or totally, as well as shareholder associations, also the companies in the stock market which follow a regulated market, they will be entitled to this right. Managers have one-month deadline for answering

questions and these responses are transferred to the account's inspection (Abu ataa and Pourrashid, 2016).

- *Alert Notification by the Head of the Court of Justice*

Business companies, economic groups, individual, commercial or non-industrial enterprises are subject to a judicial alert. The procedure of announcing the alert made by the head of the court will be an invitation to a meeting to take special measures in this regard. (Measures like increasing capital depend on the work). Such a meeting has no definite format and cannot be imposed on the manager to do it. The secret of the success of this meeting should be in its confidentiality (the third parties will not be informed), as well as the judge's mental power.

Following this meeting or in cases where the enterprise is not present in the meeting, the head of the court has the ability to communicate and correspond with some people who have relations with the enterprise. (Including an account inspection), and thus obtains information that would allow him to have accurate information about the debtor's financial status. The content of this information may lead the court chairman to consider other procedures, such as collective prevention or otherwise. The adoption of each of these procedures will be based on the severity of the problems experienced by the enterprise (SILVA, 2011).

The head of the court may examine the status of the company through a lawyer or specialized representative under Article L-611-3 of the French Commercial law. Even the debtor can offer a specialized agent. The court of competent jurisdiction for cases where the debtor carries out a commercial or non-industrial activity is commercial court to determine the representative. In other cases, the County Court will be the competent authority to determine the representative. Since the approval of the law of July 26, 2005, the task of appointing a specialized representative is an independent mechanism. It will not be subject to a contract review procedure as well as the consent of the enterprise. The task of this specialist is to assist the enterprise's administrator in seeking solutions for the problems of the enterprise. His duty is appointed by the head of the court. This mission ends by issuing a decision and voting that will be as the result of debtor's request (Cozian, 2007).

Prevention Method under the Companies Rescue Law

The French legislator has been working on reforms to improve the rules for troubled enterprises, so they have made numerous bills in this matter. But it is in 2004 that a bill was presented to parliaments by the Council of Ministers. The council sought to bring about changes in the system and the pattern of collective pursuit in France, and in particular, it predicts a new procedure called rescue of enterprises and added it to the legal bill. The rescue of enterprises was finally approved on July 26, 2005, and its executive directive was issued on December 28, 2005. It was implemented on January 1, 2006, and the law has given new impetus to businesses.

In this way, the company's rescue law and its executive directive, which sought to pursue the same demands in the law of June 10, 1994, emphasizes the preventive resolution of the enterprise's problems.

The changes resulting from the rescue law of July 26, 2005, have sought to identify problems better, and to prevent and initiate a collective pursuit scheme, or in the worst case, to avoid judicial redress. The law relies on the importance of financial and accounting information, a way of discovering problems. Similarly, when the directors of the enterprise fail to submit their annual accounts, the court chairman can issue an order to the mangers to provide that report

within a short time, and a guarantee will be requested. Also, the sensitivity of enterprise managers toward enterprise issues and the establishment of responsibility for them is one of the things emphasized in this law. In this regard, this law has paid particular attention to improve notification tools and litigation in commercial courts. The law also provides assignments for different organizations. The main purpose of these assignments is to establish responsibility for the enterprise's organs to prevent enterprise problems (PETEL, 2005).

The enterprise rescue law has also made important amendments to the procedures of alert announcements by account inspectors, labor unions and company members. The purpose of these reforms is to accelerate the implementation of this procedure through the application of the following three ideas:

1. Early informing the head of the court about the problems faced by the enterprises
2. Holding a general assembly meeting (in case of necessity) before the due date if the enterprise's problem continues (if the problem continues).
3. Notifying the representatives about the process of the implementation of the regulations and the procedure for announcing the alert.

The aforementioned cases have already been discussed appropriately, which are not repeated, but in this law, the friendly procedure allows the debtor to request appointment of a specialized representative, that is, a person who easily negotiates with creditors while he follows the principle of confidentiality and secrecy in this area. It should be noted that the most significant reform of prevention in this law should be the creation of a new procedure that allows the debtor to have time limits to solve problems with creditors and, in particular, provides an opportunity that the time limits are given to pay off debts and a compromise contract will eventually be signed. The feature of this procedure is that it allows the debtor who has suspended the payment at least 45 days to ensure balance between the interests of the debtor and his creditors by applying this procedure. In 2005, the French legislator also referred explicitly to the role and specialized (representative) and role of the peace officer to maintain maximum transparency for peace processes. In the end, it should be said that the enterprises rescue law pursued with the same purpose to improve the peace process offers the parties to adopt a method that allows them to do their negotiations tangibly and securely. (GROS, 2005).

The rules and procedures for rescuing enterprises created under the Rescue law of 2005 are an early judicial restoration procedure, a pattern inspired by Chapter XI of the American Federal Law. The procedure allows the debtor on the brink of payment suspension to remain immune from prosecution and to have time to reorganize the enterprise through rescue agreed by the creditors present within the committees. This regeneration procedure has been implemented in most European countries. One objective is to facilitate the reorganization of enterprises to maintain their lives, their employment and settle debts, and this is a part of the process of Europeanization of bankruptcy law.

CONCLUSION

French legislator makes it necessary to reconcile previous rights with the demands and business requirements and generally requires compliance of laws with contemporary status. A major transition from the repressive and cleansing bankruptcy law to the rights of troubled enterprises has been achieved with the aim of rescuing enterprises and its employment. The

French legislator has been convinced that he will prepare a series of regulations to save the enterprise, maintain employment and pay debts to creditors. The rules and procedures of bankruptcy and its adverse effects have led the legislator to make a major reform. From now on, the prevention and identification of problems are on the agenda, rather than solving the debtor's problems and in this regard, various laws have been approved that the enterprise rescue law of July 26, 2005, and the subsequent regulations exemplify the dynamics of French laws in this field. Although Iran's Commercial Law was adapted by the French law of 1807, our Commercial Law has not changed in this respect since 1940, and the only entity amended in commercial law is the leniency contract which is adopted by French law. Prevention processes which exist through notification and transparency in Iranian law are very scattered and general. On the other hand, contrary to the French Rescue law, which is a precise and dynamic mechanism for financially-struggling companies, it tries to prevent stopping and litigating them with the use of different methods, in Iranian commercial laws, such procedures are not observed, but they are present incompletely in several laws including the law on the elimination of barriers to competitive production, the aid to relieve the company's debts which is very inadequate and inefficient.
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