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"THE EXTENSION OF CORPORATES BANKRUPTCY
(A comparative study between the Lebanese and French laws)"

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List of abbreviations

I.	Bull Civ	Bulletin Civil.
II.	Cass com	Cassation commerciale.
III.	Cass crim	Cassation criminelle.
IV.	CA	Cour d’appel.
V.	Gaz Pal	Gazette du Palais.
VI.	JCP	Jurisclasseur périodique.
VII.	RJ Com	Revue Juridique Commerciale.
VIII.	Rev Lamy	Revue Lamy.
IX.	Rev Soc	Revue des Sociétés.
X.	R T com	Revue Trimestrielle commerciale.
XI.	TGI	Tribunal de Grande Instance.

Introduction

Lebanon was a French colony between 1920 and 1943, this what explains the big influence of the French culture and heritage on many fields in Lebanon. One of these fields is the Lebanese legal system that is very similar to the French one since the majority of the laws were written originally in French by French legislators and law experts and then translated to Arabic.

In specific, the Lebanese Commercial Code regulates the bankruptcy law which is the same one as the old French bankruptcy law that remained applied in France until 1967. The importance of this study is to compare both legal systems in order to discover the similarities and the differences between them regarding a very specific point which is the extension of corporates bankruptcy.

Accordingly, companies are still subject to bankruptcy under the Lebanese law, a term that designates restructuring or judicial liquidation under the French law nowadays.

However, a bankruptcy procedure can be applied to a group formed by a number of companies. Hence the importance of the choice of the legal structure of the company in order to limit the bankruptcy's consequences as much as possible. In principle the assets of the directors or partners in limited liability companies and private limited companies are protected from the prosecution of corporate creditors insofar as the directors or partners are only liable for the company's debts up to the amount of their contributions. However, some legal proceedings remain inherent to the functions of the latter[1].

At the meantime, the majority of the large companies are running their business activities under the corporate form where the private patrimony of the officer is separated from the one that is necessary for his activity.

The grouping of companies or the bundling of companies is a common practice in the business world that tends to compensate between the losses in some entities and profits gained in others within the same group. It is therefore the leverage effect that attracts large companies to form a group through the acquisitions of other companies.

[1] Stéphanie Pitz, 'Peut-on concevoir la « faillite » d'un groupe de sociétés ?' (thesis, University of Strasbourg 2002).

This practice increases the complexity of the relations between the different legal entities of a group of companies, especially in terms of mutual legal and financial obligations.

'Nowadays, the group has become a legal reality because the legislations related to group of companies are progressing'[2].

The French parliament has regulated the groups of companies for the first time in the law of May 15, 2001 on the new economic regulations.

Later on, the notion of groups of companies has developed in the various branches of law in France.

According to labor case law, whenever the various companies of a group constitute an economic and business unit due to the concentration of their management, they should be considered as a single enterprise. Therefore, the company that is in charge of the management of the group will be considered as the employer and not the company that recruited and remunerates the employee. Similarly, the Labor Code[3] and the collective agreements regulate the notion of "movement" of employees between different companies of the same group.

From a tax point of view, the tax regime[4] in France offers an exemption of tax on dividends received by parent companies that participate in the capital of its subsidiaries; the profits, taxed once at the level of the subsidiaries, are not taxed again at the level of the participating company. Furthermore, since 1988, the French Finance Law has created a 95% tax consolidation regime for subsidiaries allowing a parent company to take over the losses maid by a subsidiary. Thus, the tax authorities oblige each company in the group to reveal its own annual financial statements as a proof of its financial autonomy. Similarly, mother companies that exercise exclusive or joint control over the other companies of the group are obliged to disclose the consolidated accounts that include all the accounts of the companies of the group.

Moreover, Banking Law allows a company to "proceed with cash transactions with companies that have direct or indirect capital ties with it, giving one of the related companies

[2] Fernand Derrida, 'L'application du droit des entreprises en difficulté dans les sociétés' (Actes du colloque, Strasbourg, 28 février, 1er mars 2002).
[3] Article L. 122-14-8 du Code du travail.
[4] Article 216 du Code General des taxes.

effective control over other companies”[5]. As a result, a wealthy company is allowed to offer loans to another company in the group under more advantageous conditions than those offered by banks or the financial market. However, the law prohibits the merger of accounts between companies of the same group.

The criminal chamber of the Court of Cassation has defined the criteria of a group of companies through the Rozenblum decision[6]. In this case, Mr. Rozenblum, a company chief and director of several other companies, was accused of transferring funds from one company for the benefit of another company of the same group. According to the Court of Cassation:
The existence of a group of companies requires the meeting of three cumulative conditions: a strong structure based on non-artificial foundations, presenting a common economic, social or financial interest, as well as a clear policy for all of its companies. Accordingly, if these conditions are met, the abuse of corporate assets can be justified by the common interest of the group[7].

It is important to know that the French insolvency law has defined the required conditions for the extension of the bankruptcy within the group of companies[8]. There is an extension of the collective procedure when the control of a company by another company is proven. In fact, the French Commercial Code has previously defined the concept of control[9]: ‘Control may be a majority shareholding in the capital, or the possibility of appointing managers, or more generally any means of exercising a dominant influence on the management or operation of the company’.

By the same token, despite that each company of the group has its own independent legal personality, the group’s business activity increases, from one side, the economic interaction between the companies, and from the other side, reduces this legal separation. In fact, directors tend to consider that all the companies have the same assets which can be used freely according to economic needs. Consequently, the bankruptcy will affect firstly the companies of the group, but may also engage the liability of the group directors.

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[5] Article L.511-7-3 du Code monétaire et financier Français.
[6] Cass crim 4 february 1985, D 1985, III, 478.
[7] Cass crim (n 6) (emphasis added).
[8] Article L. 621-2 Alinéas 2 et 3 du Code des entreprises en difficulté.
[9] Articles L. 233-3 et L. 233-16 du Code de commerce Français.

For many years, the managing partners of general partnerships and limited partnerships were the only ones affected by their corporates bankruptcy, since they are indefinitely and jointly liable for the company's debts under the French and Lebanese laws. However, for a long period of time, this was not the case for the directors of public limited companies and the managers of limited liability companies who were not liable in case their companies got bankrupted. The separation between their legal personality and that of the company offered them this immunity.

By the beginning of the 20th century, the reforms of company law[10] mitigated the principle of the non-liability of directors of public limited companies and managers of limited liability companies. These reforms helped the French jurisdictions to extend the companies bankruptcy to the managers of limited liability companies and to the directors of public limited companies who fraudulently diverted the mechanisms of company law for their own benefit.

Therefore, the extension of bankruptcy affects not only the fictitious company or the legal persons whose assets were confused, but also the abusive manager or director of the company. It is important to mention that the French Jurisdictions applied first the extension of the bankruptcy to the other companies of the same group before it was regulated by the law[11].
Whereas in Lebanon the solution is until now only found in case law.
While the extension of the bankruptcy's effects to the assets of the directors of companies that have committed serious mismanagement, is regulated by the Lebanese and French legal systems.

In principle, each company belonging to the same group is subject to receivership or liquidation proceedings, each proceeding being autonomous and independent. Accordingly, the extension of the proceedings falls under the competence of the court that was initially seized[12].
However, the opening of a single procedure remains possible in certain legislative and jurisprudential cases. This implies that a legal entity will be subject to the same collective proceedings opened against another legal entity belonging to the same group.
As a result, the same solution coming from a single procedure will be applied to the various natural or legal persons condemned.

[10] Loi du 7 mars 1925 ; Loi du 16 novembre 1940 ; Décret-Loi du 9 aôut 1953.
[11] Article L. 621-2 du Code des entreprises en difficulté en France.
[12] Article L. 621-5 al 1er du Code de Commerce Français.

However, the existence of one of the following conditions is mandatory in order to apply the extension of the bankruptcy to a group of companies: either the confusion of patrimonies, or the fictitious nature of one the companies of the group, or the effective management of a company by another company belonging to the same group of companies. It should also be noted that in all these cases, the extension of the procedure to another company belonging to the same group is considered as big threat for the creditors of the company initially declared as bankrupt, because they will be in concurrence with the creditors of the other companies in the group.

For instance, the extension of bankruptcy obliges a company to bear all or part of the debts of another company in the group. Thus, the creditors can firstly benefit from the extension of the bankruptcy in the case of confusion of the patrimonies between companies of the same group, or in the case of fictitiousness of one of them, and secondly to condemn the natural or legal person who is managing the company.

These two proceedings lead to two different results. In the first case, there is initially a company going through a bankruptcy procedure that is going to be extended to the personal assets of its manager or director, despite the fact that the two proceedings remain separate. While in the second case, there is a single procedure opened against one company and is going to be extended to the other companies of the same group, even though each company has its own separated legal personality. Accordingly, the presence of a single procedure will lead to the consolidation of the assets and liabilities of the other companies of the group, and the creditors of the company that firstly underwent the bankruptcy procedure will compete with the creditors of the other companies members of the same group.

It is known that the companies have more assets and are more solvent than their directors. That's why the extension of the bankruptcy is most of the time applied to the companies of the group and rarely to their directors. However, the risk of confusion of the corporate patrimony with the personal patrimony of the director is way higher in a group of general partnerships than in a group of limited liability companies. Keeping in mind that 'the functioning of a group of companies does not necessarily imply a fraudulent use of the legal person'[13].

[13] Jean-Pierre Sortais, 'A propos de certaines questions de responsabilité suscitées par les groupes de sociétés' (1977) RJ Com 128.

Furthermore, the Lebanese[14] and French[15] laws have allowed their local jurisdictions to extend the proceedings to the legal person that is playing the role of the director of the bankrupt company. 'This extension of bankruptcy is applied when an individual controls several companies and diverts the assets of one of them not only to his personal benefit but also to the benefit of another company'.[16]

It is important here to distinguish between the action to extend the bankruptcy and the action to extend the liabilities. The debtors can resort to the first action whenever there is an abuse of the legal personality of one of the companies in the group. This action is often described as a 'true extension'[17]. While the second action requires a serious fault of the company's directors.

Nevertheless, these two types of actions are very similar whether the extension of the bankruptcy proceedings is applied to the legal entities of the group or to the personal assets of its directors.

To what extent will the bankruptcy of the company be extended to the companies of the same group, on the one hand, and to its partners and social agents on the other hand?

In the following, our analysis will be divided into two parts. Firstly, the horizontal extension of corporate bankruptcy (Part I), devoted to the extension of bankruptcy to companies of the same group. And secondly, the vertical extension of corporate bankruptcy (Part II), devoted to the extension of bankruptcy to partners and agents of the company.

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[14] Article 167 al 2 du Code de commerce Libanais.
[15] Article L. 624-3 du Code de commerce Français.
[16] Jacques Béguin, 'Les extensions de passif en droit commercial' (thesis, University of Rennes 1965).
[17] Marcel Beaubrun, 'La confusion des patrimoines au regard des procédures collectives de liquidation du passif ', (1980) RJ Com 41.

Part I: The horizontal extension of corporates bankruptcy.

Does the influence of the parent company jeopardize the legal and patrimonial autonomy of the other companies of the group?

The French jurisdictions have assumed that the group does not have a legal personality[18]. As a result, the group cannot be subject to receivership or bankruptcy proceedings. Therefore, a separate proceeding must be opened for each company of the same group.

Each company of the group has an autonomous patrimony[19] and constitutes an autonomous legal person. This means that each company is responsible for its own liabilities and not for the liabilities of the other companies of the group.

However, a company might commit two types of abusive acts, either by establishing a fictitious company, or by confusing its patrimony with the one of another company of the group.

It is clear why such practices are prohibited by the courts. In such cases, the creditors of the insolvent company have the right to bring an action to extend the bankruptcy to the other companies of the group (Chapter 1).

The extension of bankruptcy to a group of companies is a risky process despite being applied in very limited cases (Chapter 2).

[18] Cass com 3 November 1988, Rev Soc 1989, 289.
[19] Article 1842 du Code Civil Français.

Chapter 1: The reasons for the extension of bankruptcy to group of companies

The extension of bankruptcy is originally a praetorian solution applied to the group of companies in two different situations: if there is a confusion of patrimonies of at least two or more companies in the group, or if the fictitious nature of one of these companies has been proven.

Therefore, the fictitiousness and confusion of patrimonies are two similar notions but not the same one. There are some nuances that enable us to distinguish between these two notions since they derive from different factual situations. However, the doctrine is not unanimous regarding if the fictitiousness of a company should be considered as a reason to extend the bankruptcy to the other companies of the group or not.

It will be important to study the reasons for the bankruptcy of companies (Section 1), before proceeding to the confrontation of the reasons for the extension (Section 2).

Section 1: The reasons for the extension of corporate bankruptcy

According to French and Lebanese jurisdictions, if the group's managers use the assets of the group's companies in a way that puts the autonomy of the legal personality of each one of these corporates in jeopardy, all the companies in the group will be considered as constituting a single asset.

Similarly, the presence of a mere front company in the group with no economic or legal reality, established only for fraudulent purposes, is considered as another reason for extending the bankruptcy to the other companies in the group.

It is important to mention that the Lebanese and French jurisdictions apply the same criteria for the extension of the bankruptcy of a company to the other companies of the group, knowing that there is only one judgement[20] rendered by a Lebanese Court of First Instance ruling on this issue.

The confusion of patrimonies between the group's companies (I) and the fictitiousness of a company (II) are two similar concepts that might occur in a group of companies misleading sometimes the case law and the doctrine to confuse them, despite that they are two entirely different situations.

I. The confusion of patrimonies between the group's companies:

The confusion of patrimonies between the group's companies is a jurisprudential notion in Lebanon and formerly in France before being regulated by the law[21]. This notion relies on 'the general principles of abuse of legal personality, and appearance or simulation'[22]. In case the confusion of patrimonies is proven, the third parties are given a greater pledge for the payment of their debts.

Therefore, if there is a confusion of patrimonies between two or more companies, the court that initiated the bankruptcy proceedings against one of the companies should declare that these companies share the same assets and liabilities.

As a result, the confusion of patrimonies between the group's companies implies that the legal individualization of each one of these companies is not respected.

However, case law states that 'although three companies with identical corporate objects had common directors or partners, although their treasury was centralized in the same place and they established constant commercial relations with the same clients, the confusion of their assets and liabilities is not justified as long as they maintained an independent activity, their own assets and liabilities and no abnormal financial flow existed between them'[23].

[20] TGI Beirut (1) 10 march 2014, Al Adel 2014.II. 904.
[21] Article L. 621-2 du code des entreprises en difficulté.
[22] Bernard Soinne, *Traité des procédures collectives* (LITEC, 2nd edn, 1995) para 511.
[23] Cass com 11 may 1993, D 1993.IV.133.

There are two main causes of the confusion of corporate patrimonies: the confusion of accounts (A), and abnormal financial flows (B).

A. The confusion of accounts:

According to the French Court of Cassation, 'a general disorder of the accounts and a situation of inseparable imbrication between two companies implicates a confusion of patrimonies'.[24]

Acquiring goods without paying the price from another company operating in the same building, and transferring funds from company's account to a personal bank account, cannot be considered as a confusion of patrimonies.

In fact, the absence of bookkeeping is a decisive indicator of the confusion of patrimonies.

'The confusion of patrimonies between two companies cannot be avoided by the relocation of one of it. The patrimony of the latter will remain confused with the one of another company of the same group'[25].
As a result, the jurisdictions will decide to liquidate both companies and a general common body of creditors will be formed.

Moreover, 'the detection of an abnormal financial flow in the accounting of a company constitute a confusion of patrimonies. In other words, the jurisdictions consider that there is a confusion of patrimonies when an irregular transaction such as a large cash advance from one company to another was not clarified due to accounting deficiencies'[26].

[24] Cass com 24 octobre 1995, https://www.legifrance.gouv.fr/juri/id/JURITEXT000007271935 accessed 21 April 2023.
[25] Daniel Tricot,'La confusion des patrimoines et les procédures collectives'(1997) 16 Rapport de la Cour de Cassation, La documentation française.
[26] Béguin (n 16).

B. The abnormal monetary flows:

The presence of abnormal financial flows also implies the existence of a confusion of assets between the companies of the group.

However, for a long period of time, the jurisdictions used to confuse in their decisions between the abuse of corporate assets and the confusion of patrimonies[27].

Nowadays, in order to establish the presence of a confusion of patrimonies, the courts[28] only check the existence of abnormal financial relations without looking for the substantial nature of the monetary flows. The jurisdictions only have to verify if there are abnormal and durable financial relationships between the companies.

Despite that this case law appeared as an innovative solution, the confusion of patrimonies and the fictitiousness of a company remain the main reasons for applying the extension of bankruptcy.

II. The fictitiousness of a company within the group:

A fictitious company is a company without a legal personality distinct from that of the other companies in the group. In such case, the bankruptcy procedure will be extended from another company in the group to the fictitious one.

Proving the fictitious nature of a company is not an easy process, this what explains the absence of an abundant jurisprudence related to this issue.

[27] Cass com 3 May 1994, D 1994, 129.
[28] Cass com 3 April 2002, https://www.legifrance.gouv.fr/juri/id/JURITEXT000007452283/ accessed 21 April 2023.

A. The concept of fictitiousness:

A fictitious company is a front company with no real existence. 'The fictitiousness is a combination of fraud and simulation, which consist in creating a false appearance in order to hide the real activity of another natural or legal person'[29].

As mentioned before, the fictitiousness is rarely retained by the jurisprudence as a reason for the extension of bankruptcy, since it is very hard to prove it.

B. The fictitiousness according to case law:

The company cannot be considered as fictitious if its structures are not manipulated by the partners, and if the general assemblies are held regularly.

Accordingly, the fictitiousness of a company in the group is not established if the general assemblies and the meetings of the boards of directors of the group were regularly held.

However, after proving the fictitiousness of a company placed in bankruptcy and converted into liquidation, the French Court of Cassation has extended the bankruptcy to one of the partners considered as the master of the business.[30]

This solution protects at the same time the security of the company's set-ups and the partners.

The confusion of patrimonies and fictitiousness are rarely applied by the jurisdictions. Despite being similar, these two concepts remain autonomous.

Section 2: The confrontation of the reasons for the extension

The confusion of patrimonies and the fictitiousness, which are two related concepts, seem to constitute a single reason for the extension of bankruptcy. Despite being related, they are two

[29] Deen Gibirila, 'L'extension d'une procédure collective', (2000) Rev Lamy 3.
[30] Cass com 19 February 2002, D 2002, 1071.

autonomous concepts with different characteristics. That's why a comparison must be made between the two concepts (I) and between their effects (II).

I. The comparison between both concepts:

A minority opinion assimilates the fictitiousness of a company to the confusion of patrimonies as a single reason for the extension of bankruptcy[31].

Despite their similarities, the confusion of patrimonies between two companies and fictitiousness of a company should not be confused since they derive from different factual situations. According to the case law, these are the only two reasons for the extension of bankruptcy.

The distinction between both concepts is not easy. However, 'it can be done by checking the intention and the behavior of the partners and the managers[32]. The absence of affectio societatis[33] among the partners indicates that the company is fictitious and that another company in the group is managing its assets'.

Accordingly, the fictitiousness of a company implies a confusion of patrimonies. However, the opposite is not true. In fact, the confusion of patrimonies can exist only between two non-fictitious companies.

A fictitious company does not have a private patrimony, whereas the confusion of patrimonies happens between two or more companies operating as if they have a common patrimony, while each one of it has an independent patrimony.

Furthermore, the French Court of Cassation[34] considered that fictitious companies are null and void but not non-existent. Consequently, a null company is treated as a dissolved company, its legal personality lasts only for the purposes of liquidation.

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[31] Pitz, (n 1) 21.
[32] Thierry Gauthier, *Les dirigeants et les groupes de sociétés*, (LITEC 2000) 459.
[33] The real intention to associate.
[34] Cass com 16 june 1992, D 1993, 508.

The comparison between both concepts shows the difference between them and leads us to make a comparison between their effects (II).

II. The comparison between their effects:

The confusion of patrimonies and the fictitiousness have a common effect (A), and at the same time each one of them has its specific effects (B).

A. The common effects:

The extension of the bankruptcy is applied to a company if its patrimony is not separated from the ones of the other companies in the group.

Therefore, the bankruptcy will be extended to a solvent company that merges its assets with those of a bankrupt company member of the same group.

The bankruptcy will also be extended to the legal person manipulating the fictitious company.

Despite their differences, the case law related to the confusion of patrimonies and the fictitiousness lead to identical solutions.

It's important to mention that there is only one competent jurisdiction for ruling on the bankruptcy procedure opened against the group of companies.

Therefore, one of the effects of the decision to extend the bankruptcy is the creation of a general body of creditors. Consequently, only one solution is going to be decided regarding the entire group, because the court cannot order to liquidate one company and to maintain the activity of another one in the same group.

In parallel, each one of these two causes has its specific effects that distinguish it from the other and prove its autonomy (B).

B. The specific effects of each cause of extension:

The courts decisions regarding the confusion of patrimonies are not the same as those relating to the fictitious nature of the company.

In case of confusion of patrimonies, the legal person of each company in the group is maintained during the bankruptcy procedure. However, the court will ask for the liquidation of the fictitious company. As a result, the creditors of the fictitious company will become the creditors of the company that still exists and to which will be also attached the assets of the fictitious company, since the latter cannot hold any liabilities or debts.

Several examples clarify our thoughts:[35]

1. By virtue of the persistence of the legal personality of the companies in case of confusion of patrimonies between the companies of the group, when the bankruptcy is going to be extended to all the companies that form the group, only the debts of the guaranteed company are covered. Whereas, it is not the case for the debts of the other companies.

However, a guarantee cannot be given to a fictitious company, since the latter is going to be liquidated after being affected by the extension of the bankruptcy procedure.

2. The persistence of the legal personality of the companies in case of confusion of patrimonies between the group's companies give the right to the partners to ask for the payment of the unpaid portion of the share capital. In this case, the general body of creditors is not allowed to block this action.

On the other hand, the partners do not have the right to ask for the payment of the remaining part of the share capital if the company is fictitious.

[35] Pitz, (n 1) 23-24.

3. The compensation can be done between the creditor's claim on a company and the debt owed by this company to another company in the group affected by the extension of the bankruptcy procedure due to the confusion of patrimonies between the group's companies.[36]

This procedure is also applicable if there is a fictitious company in the group.

The confusion of assets and the fictitiousness are the reasons for the extension of bankruptcy. Despite being similar, each one of them has its own specificities that confirm their autonomy.

However, both hypotheses remain rarely applied by the jurisdictions.

On the other hand, the directors of the group of companies have to manage the group in the best possible way in order to avoid the risk of the extension of the bankruptcy.

[36] Cass com, 9 may 1995, D 1966, 322.

Chapter 2: The assessment of the risks of extension of bankruptcy to a group of companies

The group managers tend to avoid the risk of extension of bankruptcy to all the companies in the group.

For this reason, the managers resort to certain contractual techniques that are helpful for avoiding the extension of bankruptcy risk while establishing the group's strategy.

In fact, the law grants the groups of companies a certain flexibility that varies depending on whether the companies are solvent or in the observation period.

However, the managers apply almost the same management strategies to the group regardless if its companies are solvent or threatened by the extension of bankruptcy.

First we are going to illustrate the organization of the group of companies (Section 1), before moving to the management of the observation period (Section 2).

Section 1: The organization of the group of companies.

The creation of a group of companies affects the patrimonies of the companies.

Despite that the creation of a group increases the interaction between the parent company and its subsidiaries, and at the same time, between the sister companies, the parent company is obliged to respect the autonomy of the legal personality of each one of its subsidiaries.

The centralization of the group's treasury (I), and the conclusion of assistance agreements (II), are two contractual techniques that protect the group of companies from the extension of bankruptcy.

I. The advantages of centralizing the group's treasury:

The centralization of the group's treasury is advantageous for the solvent companies (A), and for the companies threatened by the extension of bankruptcy (B).

A. The advantages of centralization for solvent companies:

The legal and patrimonial autonomy of each company explain the prohibition of the merger between the accounts of the different companies in the group.

Nonetheless, the law in France has envisaged an exception: a company is entitled to "carry out cash transactions with companies that have direct or indirect capital links with it, giving one of the linked companies effective control over the others.[37]

However, the Lebanese legal system does not provide such an exception.

The centralization of the treasury, has become a very common technique in many groups of companies due to its economic advantages.

It helps the groups to maximize their profits and to share them easier between their companies, in addition to a quick transfer of funds to the companies in need of liquidity.

Usually, the group's treasury is centralized in an account belonging to the parent company. Consequently, the parent company needs to obtain a preapproval from the other companies in order to be able to manage this central account and make the needed money transfers for the management of the group from their accounts.

Hence, the centralization of treasury and the confusion of patrimonies seems to be two identical situations.

[37] Article L. 511-7-3 du Code monétaire et financier Français.

However, in case of centralization of the group's treasury, each company in the group remain holding a clear and organized accounting system proving the source of every financial operation done between the group's companies. While the absence of accounting is a reason for the confusion of patrimonies.

The centralization of treasury is also a weapon to fight against the extension of bankruptcy.

B. The advantages of centralizing the treasury for the companies in case of bankruptcy extension:

The treasury centralization clauses in addition to all the other contracts signed by the company will be maintained due to the continuation of the ongoing contracts concluded by the bankrupt company before the launching of the bankruptcy proceedings.

However, according to the Lebanese law[38], these clauses may be considered as non-invocable and then cancelled if they were concluded during the suspicious period that might be extended to 18 months prior the declaration of the company's insolvency by the court.

On the other hand, the Lebanese law[39] offers the possibility to cancel these clauses if they are concluded in fraud of the rights of the company's creditors, in a way that would have aggravated its insolvency.

Therefore, the centralization of the group's treasury is a protective strategy for the groups in case of bankruptcy extension.

Moreover, the conventions on assistance are also a mechanism that helps the group to mitigate the risk of bankruptcy extension. (II)

[38] Article 508 du code de commerce Libanais.
[39] Article 278 du Code des Obligations et des Contrats Libanais.

II. The conventions on assistance:

Nowadays, the conventions on assistance are a widespread practice in the business world. These conventions are concluded between the subsidiaries and the parent company in order to collaborate in many different fields: IT, finance, economy, legal advisory...

The conventions on assistance allow the circulation of liquidity in the group without distributing the dividends. Each company will be remunerated based on its annual turnover.[40]

However, later on if a subsidiary becomes insolvent, the lack of economic utility of these conventions is a sort of mismanagement. As a result, the legal person who committed the fraudulent act will be sanctioned.

The management of the observation period by the group protects the companies from the extension of the bankruptcy (Section2).

Section 2: The management of the observation period by the group

According to the French law, the judgment opening the bankruptcy procedure announces the beginning of the observation period.

The management of the observation period by the group is only regulated by French law that tries to help the insolvent trader or company as much as possible. However, the Lebanese laws that are related to bankruptcy still sanction the insolvent trader or the company adopting the French law solution prior the reform of 1967.

Despite that the judgment opening the collective procedure might not affect all the companies of the group, the latter remain under the risk of the extension of the bankruptcy procedure. The solvent companies in the group might either battle against the extension of the bankruptcy (I), or take over the bankrupt company (II).

[40] Pitz, (n 1) 28.

I. The battle against the extension of bankruptcy:

The battle against the extension of bankruptcy requires the use of certain methods (A), and on the other hand, the treatment of distressed companies (B).

A. The methods to avoid the extension of bankruptcy:

During the observation period, the extension of the bankruptcy procedure remains a threat to the group's companies, regardless if it is going to be applied to all of them or only to a certain number of them.[41]

Furthermore, during the observation period, the group's management must choose a partner or majority shareholder from the company in receivership that will be given the authority to change the managers of the company. This person must act in a way to avoid the risk of extension of the collective procedure to the other companies.

Thus, this risk will be amplified if this person exceeds his prerogatives as a shareholder or partner while taking in charge the management of the company under observation.

B. The liquidation of distressed subsidiaries:

The groups of companies try to avoid the risk of bankruptcy extension in order to preserve their reputation in the market.[42]

That's why the group is obliged to take some severe measures that might lead to the liquidation of the distressed subsidiary in some situations.

[41] ibid 29.
[42] ibid 30.

Thus, despite that abandoning one of the group's subsidiaries is not an easy choice, it might be the safest measure that can be taken in order to protect the group from the risk of the bankruptcy extension.

Nevertheless, the groups of companies can opt for to a completely opposite choice to the one we have already explained, which is the takeover of the bankrupt company. (II)

II. The takeover of a distressed company by the group:

The group of companies might decide to take over the distressed company that is under the risk of bankruptcy.[43]

Despite that this choice certainly increases the risk of extending the bankruptcy to the other companies in the group, this strategy proves to the market that the group has a very stable financial situation that allows it to cover all the deficit resulting from the debts of one of its subsidiaries.

Based on the previous discussions, there are two basis of the extension of the bankruptcy to a group of companies: the confusion of patrimonies of two or more companies, and the fictitiousness of one of the companies of the group. These two hypotheses are the basis for the horizontal extension of the bankruptcy of companies.

On the other hand, there are other bases for the extension of bankruptcy. It is an extension respectively to the partners and to the company directors. This is the vertical extension of corporate bankruptcy that will be discussed in the second part of this thesis.

[43] ibid 31.

Part II: The vertical extension of corporates bankruptcy

The separation between the legal personality of the company and the ones of its partners and managers implies that the latter are only going to be sanctioned in case they have committed a personal fault.

However, the Lebanese[44] and French[45] laws have foreseen some hypotheses in which the company directors and partners are personally financially responsible for the company's debts.

In such cases the bankruptcy of the company will surely have effects on the partners and the managers.

In the following, we are going to discuss the effects of the bankruptcy of the partnership on the partners (Chapter 1), and the effects of the bankruptcy of the company on the corporate officers (Chapter 2).

[44] Article 167 al 2 du Code de commerce Libanais.
[45] Articles L. 624-3 et L. 624-5 du Code de commerce français.

Chapter 1: The effects of the bankruptcy of the company on the partners

The bankruptcy of a company creates some obligations to the partners and to the partnership. These obligations vary according to the legal status of the partners, and the legal nature of the company.

Thus, the partners in a general partnership, and the active partners in a limited partnership or a partnership limited by shares are indefinitely and jointly liable for all of the partnership's debts, and the bankruptcy of these partnerships surely has effects on their legal status.

Firstly, we are going to discuss the common effect of the bankruptcy of all partnerships which is the reconstitution of capital (Section 1), and secondly, the effect of partnership bankruptcy on the legal status of partners (Section 2).

Section 1: The reconstitution of capital

The reconstitution of capital is the common effect of bankruptcy of all legal forms of corporates, except for joint ventures.

However, this effect relies on certain factors that are not always met when a partnership is declared bankrupt.

Therefore, corporates bankruptcy obliges the partners to pay their contributions. (I)

Additionally, corporates bankruptcy leads to the cancellation of irregular reductions of capital (II), and to the restitution of fictitious dividends. (III)

I. The payment of contributions:

The company's creditors are entitled, following the declaration of the corporate's bankruptcy, ta ask for the realization the exclusive pledge on the contributions that constitute the company's capital.

'The pledge must be established in its entirety since it constitutes a security for the creditors whose interest takes precedence over any other consideration'[46].

The partners, are themselves bankrupt since they personally and indefinitely liable for the company's debts. The payment is going to be done through the money of dividend.

The current partners existing at the date of the judgment declaring the company's bankruptcy are obliged to pay their contributions. However, according to the Lebanese law[47], the previous shareholders in joint-stock companies might also be liable for the payment of their contributions.

Moreover, the assignee of the body of creditors does not have to prove the necessity to continue the payment of the remaining contributions. This means that any counterproof brought by the partners will not be admitted by the court, so that they don't have any other option than paying their contributions.

However, the payments exceeding the needs of the bankruptcy will be reimbursed after the scheme of composition or the liquidation in Lebanon, and after the receivership or the liquidation in France.

The cancellation of irregular reductions of capital is one of the effects of the reconstitution of capital. (II)

[46] Emile Tyan, *Droit commercial,* vol 2 (les Presses de l'Imprimerie Saint Paul Jounieh 1970) 1079.
[47] Article 119 du Code de Commerce Libanais.

II. The cancellation of irregular reductions of capital:

It is important to say that 'the solutions that are applied to this issue vary from a case to another'.[48]

An irregular decision to reduce the capital taken before the cessation of payments of the company, as well as a regular decision but taken after the cessation of payments, will be unenforceable against all the company's creditors, whether they are prior or subsequent to the decision.

Consequently, in such cases, the assignee of the body of creditors should sue the partners for payment of the amount of their shares as they were prior to the reduction.

The restitution of payment of fictitious dividends is the last effect of capital's reconstitution (III).

III. The restitution of payment of fictitious dividends:

In principal, the restitution of fictitious dividends is not obligatory, unless the shareholders' bad faith or gross negligence that is equivalent to fraud is proven.[49]

However, if the company was bankrupt, the assignee of the body of creditors can ask the shareholders to restitute their fictitious dividends in order to the reconstitute the capital.

Furthermore, the bankruptcy of the company has an effect on the legal status of the partners (Section 2).

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[48] Jean Percerou, Marc Desserteaux: *Faillites & Banqueroutes et Liquidations Judiciaires* (2nd edn, Rousseau 1938) 1661 (emphasis added).

[49] Art 108 Alinéa 1 du Code de Commerce Libanais.

Section 2: Effect of corporate bankruptcy on the legal status of the partners

The bankruptcy of the company causes the personal bankruptcy respectively of, the partners in partnerships, and the active partners in limited partnerships or in partnerships limited by shares[50], since all of the latter are personally and indefinitely liable for their companies' debts.

Therefore, it might appear as if there was a confusion between the legal personality of the company and the one of each partner, but in fact, in this situation they are separated.

According to the Lebanese[51] and French[52] laws: the bankruptcy of the partnership entails the individual bankruptcies of all the partners because they acquire the legal status of a merchant and are considered as carrying on business under a business name.

We are going to discuss the extension of bankruptcy to partners who are indefinitely and jointly liable for company's debts (I), before moving to the effects of the bankruptcy of the company and the partners (II).

I. The extension of bankruptcy to partners who are indefinitely and jointly liable for company's debts:

Firstly, we are going to determine the scope of application of this extension (A), and secondly, we are going to identify the procedure for declaring the partners' bankruptcy (B).

A. The scope of application of the extension:

The extension of bankruptcy is applied to all partners in general partnerships, and to all active partners in limited partnerships.

[50] Articles 53; 226, 229; 526 Alinéa 2; 665 du Code de Commerce Libanais.
[51] Article 53 du Code de Commerce Libanais.
[52] Article L. 221-1 du Code de Commerce Français.

Therefore, the partners' bankruptcy should follow the general partnership's bankruptcy regardless if it was already dissolved or not.

Similarly, partners in de facto partnerships are indefinitely and jointly liable for their partnership's debts.

In the following we will introduce the procedure for declaring the partners' bankruptcy (B).

B. The procedure for declaring the partners' bankruptcy:

In principle, the judgment declaring the bankruptcy of the company declares at the same time the bankruptcy of the partner.[53]

However, the bankruptcy of a partner might be delayed and declared in a separate judgment in case his name was not mentioned in the list of partners that must be filled with the declaration of cessation of payments, or in case of a material error made by the court by omitting to mention his name in the declaratory judgment.

Furthermore, if the bankruptcy action was already filed against the company, the competent court to declare the general partnership's bankruptcy is the same court competent to declare the partners' bankruptcy.[54]

However, 'according to the principle of unity of bankruptcy, if the bankruptcy proceedings against the partnership are not yet opened, the court of the place of the partner's personal business activity will have jurisdiction'.[55]

In the following, we shall move to the effects of the bankruptcy of the company and the partners (II).

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[53] Article 494 du Code de Commerce Libanais.

[54] Article 665 Alinéa 2 du Code de Commerce Libanais.

[55] Charles Houpin, Henry Bosvieux : *Traité Général Théorique et Pratique Des Sociétés Civiles et Commerciales et des Associations*, Vol 1 (7th edn, Sirey 1935) 2125.

II. The effects of the bankruptcy of the company and the partners:

The principle of the unity of bankruptcy means that in case of extension of bankruptcy, there is going to be a common bankruptcy procedure for the general partnership and the partners.

However, the French jurisdictions have considered that there are distinct bankruptcy procedures for the general partnership and for each partner alone.[56]

On the other hand, the Lebanese legislator has avoided this ambiguity by using the terms 'the declaration of the bankruptcy of the general partnership' and the 'declaration of the bankruptcy of the partners', then added, 'the general body of creditors of each is differently constituted'.[57]

First, we are going to see the effects of the general partnership's bankruptcy on the partners (A), and second, conversely, the effects of the partners' bankruptcy on the general partnership (B).

A. The effects of the general partnership's bankruptcy on the partners:

There are several consequences of the general partnership's bankruptcy on the partners:

The bankrupt general partnership has separated debtors from the ones of the bankrupt partners.[58]

Furthermore, the dates of cessation of payments of each partner are surely before the date of cessation of payments of the general partnership. Therefore, there will be different dates of cessation of payments and not the same date in all bankruptcy proceedings.[59]

Each one of the bankruptcies will be followed by the creation of a general body of creditors specific to it. However, the court will nominate only one person as an assignee of the body of

[56] Houpin, Bosvieux, (n 54) 2125.
[57] Article 665 Alinéa 2 du Code de Commerce Libanais.
[58] Percerou, Desserteaux, (n 47) 1672.
[59] Tyan, (n 45) 1087.

creditors of the company and of each one of the bankrupt partners in order to secure a better administration of each one of the bankruptcy proceedings.

Thus, the corporate assets will be reserved exclusively for the creditors grouped in the general body of creditors of the general partnership's bankruptcy.

While each general body of creditors created following the personal bankruptcy of each partner will group together both the personal creditors of each partner and the creditors of the partnership.

The assignee of the body of creditors, on behalf of the creditors of the partnership, will be allowed to ask for the payment of their entire rights in the corporate bankruptcy, and simultaneously in each one of the bankruptcies of each one of the partners, where they will be in competition with the personal creditors of each partner.[60]

Lastly, the judgment declaring the general corporates' bankruptcy mentions that from now on the partners will lose their professional rights. This sanction figures only in the Lebanese legal system[61], and is only applicable to natural persons and not to legal persons. The latter will be forbidden from running any business or being a partner or managing any company for a period of ten years starting from the date of the judgement declaring their bankruptcy. It is important to mention that the same sanction existed in the French law prior to the reform of 1967.

In contrast, there is going to be only one bankruptcy procedure in case of confusion of patrimonies between the company and the partners.[62]

Lastly, we are going to illustrate the effects of the partners' bankruptcy on the general partnership.

[60] ibid 1087.
[61] Article 500 du Code de Commerce Libanais.
[62] CA Paris 6 July 1966, R T com 1966, 1008; Cass Com 9 October 1967, R T com 1968, 129.

B. The effects of the partners' bankruptcy on the general partnership:

In principle, the bankruptcy of one of the partners who is jointly and indefinitely liable for the partnership's debts leads to the dissolution of the general partnership.[63]

On the other hand, the bankruptcy of a partner may lead to the bankruptcy of the general partnership in case of confusion of assets.[64]

We are going to explain in the following chapter how the bankruptcy can also affect corporate officers (Chapter 2).

[63] Cass com 20 February 1962, R T com 1962, 752 ; CA Paris (n 61) 1020.
[64] Cass com (n 61).

Chapter 2: The effects of the bankruptcy on the corporate officers

Despite that the separation of patrimonies and the autonomy of the legal personalities of the company and the ones of the corporate officers, the latter remain liable for the debts of the bankrupt company in some cases.

First, we will illustrate the various liabilities arising from the bankruptcy (Section 1), and second, we will explain the scope of the liability (Section 2).

Section 1: The various liabilities arising from the bankruptcy

It is important to distinguish between the liabilities for acts committed prior to and independent of the bankruptcy (I), and the liability arising from the bankruptcy. (II)

I. The liability for acts committed prior to and independent of the bankruptcy:

The managers of companies who have committed a prejudice during the execution of their functions are sanctioned by applying the ordinary law.[65]

While there are special rules in the Lebanese[66] and French[67] legal systems that are going to be applied to the managers of public limited companies and limited liability companies who have committed fraudulent acts or in case of mismanagement. The latter may be liable to the company, the shareholders, and the creditors who have suffered a prejudice, beside the risk of bankruptcy that threatens the company due their wrongful conduct.

On the other hand, there is the liability arising from the bankruptcy. (II)

[65] Tyan, (n 45) 1091.
[66] Articles 166 et 167 Alinéa 1 du Code de Commerce Libanais.
[67] Article 25 Alinéas 2 et 3 de la Loi du 7 mars 1925 relative aux sociétés à responsabilité limitée ; Article 4 de la Loi du 16 novembre 1940 relative aux sociétés anonymes

II. The liability arising from the bankruptcy:

The Lebanese and French laws have established a special regime for the liability of persons who have participated directly or indirectly in the management of a bankrupt company.

However, according to the Lebanese law, this regime is also applied to the managers of partnerships limited by shares[68] who are responsible for 'all the obligations imposed on the directors of public limited companies'.[69]

Consequently, they are obliged to pay the debts of the company in case of mismanagement.[70]

Later on, the Lebanese Court of Cassation[71] has extended this liability to the managers of limited liability companies, despite that the law is silent regarding this issue.

Who then are the persons liable for the company's debts?

A. The persons liable for the company's debts:

'The directors and all other persons benefiting from a management or control mandate are considered liable'.[72]

According to the French[73] and Lebanese laws, the following persons might be held liable:

The members of the Board of Directors including the Chairman of the Board of Directors[74]. The Chief Executive Officer, and any director having a role in the management[75]. And the

[68] Article 234 du Code de Commerce Libanais.
[69] Article 235 du Code de Commerce Libanais.
[70] Article 167 Alinéa 2 du Code de Commerce Libanais.
[71] Cass com (4) 8 February 2018, Al Adel 2018.II.761.
[72] Article 167 Alinéa 2 du Code de Commerce Libanais.
[73] Article 25 Alinéas 2 et 3 de la Loi du 7 mars 1925 relative aux sociétés à responsabilité limitée ; Article 4 de la Loi du 16 novembre 1940 relative aux sociétés anonymes
[74] Article 167 Alinéa 3 du Code de Commerce Libanais.
[75] Article 167 Alinéa 2 du Code de Commerce Libanais.

supervisory commissioners who were firstly declared liable by the Lebanese jurisdictions[76] before being clearly held liable in the latest reform of the Lebanese Commercial Code in 2020.[77]

In fact, this liability is applicable to both legal officers and de facto officers. This liability is applicable to all corporate officers whether they exercise their functions regularly or not such as a manager who remains in his position even after the expiration of his mandate[78], or is unduly exercising his functions[79].

Therefore, the same solution is going to be applied in case the de facto manager is a partner or a third party outside the partnership.[80]

Furthermore, there is a presumption of liability applied to the manager acting as a figurehead. The status of figurehead cannot be opposed to the general body of creditors in case of bankruptcy in order to escape the responsibilities linked to apparent functions.[81]

The manager which had allowed this situation to continue, is considered as committing a fault due to his over confidence and his lack of supervision.[82]

This liability has an individual aspect (B).

B. The individual aspect of the liability:

It is important to realize that all members of the board of directors are not automatically held liable[83]. Thus, each member of the board of directors should prove that he or she has not committed any mismanagement in order not to be sanctioned.

[76] TGI (1) Beirut 25 November 2009, Al Adel 2010.I.283.
[77] Article 167 Alinéa 2 nouveau du Code de Commerce Libanais.
[78] CA Rennes 2 July 1957, R T com 1957, 723 ; Cass com 6 February 1962, R T com 1962, 751 ; Jean Escarra, Edouard Escarra, Jean RAULT, *Les Sociétés Commerciales* (4th edn, Sirey 1950) 1658.
[79] CA Beirut 8 July 1965, R J 1965.II.521.
[80] CA Paris 25 January 1968, R T com 1968, 399.
[81] Cass com 24 March 1965, Bull Civ 1965.II.206.
[82] CA Amiens 19 January 1965, R T com 1965, 177 ; Cass com 10 March 1965, R T com 1965, 651.
[83] Article 167 du Code de Commerce Libanais.

Therefore, the liability may be either individual and specific to one of the directors or managers, or to all of them[84] depending on each case.

In the following, we will discuss the legal basis for this liability (C).

C. The legal basis for this liability:

Although the previously mentioned persons seem to be held liable automatically[85] with no need to seek proof of their fault, and despite that this liability might appear as an objective liability based on the risks theory[86] because the law[87] seems to be presuming the existence of mismanagement, in fact, this liability is based on a presumption of fault that can be declined if proof to the contrary is provided.[88]

However, there are some cases where there is no mismanagement at all. For example, when there are unfortunate circumstances causing an impossibility for the company's officer to perform his or her duties.[89] Or if the director has protested against a decision of the board of directors which was the reason the bankruptcy of the company, provided that this protest was recorded in the minutes of the deliberations of the board of directors meeting.[90]

On the other hand, the jurisdictions have characterized many different types of mismanagement such as the absence of control[91] or a lack of supervision of the company's activities[92], or if the administrators have kept an unproductive staff for a long period of time[93], or have increased the

[84] Article 170 du Code de Commerce Libanais.
[85] Cass com 24 February 1965, R T com 1965, 651.
[86] Pierre Bourel, 'L'obligation au passif social des dirigeants de sociétés anonymes et à responsabilité limitée en cas d'insuffisance d'actif ', 1960 R T com 789.
[87] Article 167 Alinéa 2 du Code de Commerce Libanais.
[88] Cass com 14 October 1968, Bull com 1968, 264; Cass com 19 March 1969, R T com 1969, 584.
[89] CA Paris (n 79) 398.
[90] Article 170 du Code de Commerce Libanais.
[91] CA Aix 3 February 1966, R T com 1966, 124.
[92] CA Besançon 24 October 1962, R. T. com. 1963, 645; CA Amiens (n 81); Cass com 10 February 1965, R T com 1965, 651; Cass com (n 80); CA Aix 28 November 1967, R T com 1969, 192; Cass com 4 March 1968, R T com 1969, 191.
[93] CA Poitiers 18 January 1967, R T com 1967, 577 ; CA Amiens 3 October 1967, R T com 1968, 399.

deficit by reducing the margin of profit[94], or the filing of false balance sheets or even after the legal deadline.[95]

In fact, this action is incurred when the value of the assets is not sufficient to fully repay the debts of the company.

However, the judgment does not aim to declare the bankruptcy of the convicted persons but only condemns them to pay certain amounts of money for the general body of creditors.[96]

Finally, we should determine the scope of this liability (Section 2).

Section 2: The scope of liability

In principle, the directors of a bankrupt public limited company and the managers of a bankrupt limited liability company are not liable for the payment of their company's debts. However, they will be liable until the amount of their contribution in case they are partners in their companies at the same time.

Nevertheless, despite the principle of the non-liability of the directors and managers of public limited companies and limited liability companies, the old French law[97], even before the reform related to limited liability companies [98], as well as the Lebanese law[99], have foreseen some situations in which the latter have committed some abuses while executing their functions, and as a result, they will be obliged to pay all or part of the company's debts if the value of the company's assets is not enough to cover its debts.[100]

[94] Cass com 12 June 1967, R T com 1968, 143.
[95] Cass com 14 June 1967, R T com 1968, 141.
[96] Cass com 27 October 1964, R T com 1965, 179.
[97] Article 25 Alinéas 2 et 3 de la Loi du 7 mars 1925 relative aux sociétés à responsabilité limitée ; Article 4 de la Loi du 16 novembre 1940 relative aux sociétés anonymes.
[98] Article 25 alinéa 2 du Décret-Loi du 9 août 1953 a repris la loi du 7 mars 1925 relative aux sociétés à responsabilité limitée.
[99] Article 19 du Décret-Loi n 35 du 5 août 1967 relatif aux sociétés à responsabilité limitée.
[100] Daniel Veaux, 'La renaissance de la responsabilité personnelle dans les sociétés commerciales' (thesis, University of Rennes 1947) ; ESCARRA (n 77) 417 ; Francis Lefaivre, 'La responsabilité des administrateurs de sociétés anonymes en cas de faillite' (1951) Gaz Pal I, 14 ; Fernand Verbyst, 'La nouvelle responsabilité civile des

For instance, some persons might create a limited liability company or a public limited company for the sole purpose of evading the law because the latter were merely fronts behind which a single person was running his or her own business and disposed of the company's capital as if it were his or her property, thinking in such a way the risk of personal bankruptcy could be avoided.[101]

Later on, a lot of case law decisions in France have clarified this issue[102]. Moreover, the Lebanese jurisdictions[103] have adopted the same solution as the French Court of Cassation.

It is important to say that this liability is applicable even without declaring the manager bankrupt, because it is not an extension of the corporate bankruptcy, but in fact, it is a liability imposed on the managers as a sanction for mismanagement[104]. The managers will be condemned for damages caused by a breach of their obligations[105]. The French Court of Cassation has confirmed this solution later on[106].

The liability of directors of public limited companies and managers of limited liability companies is an aggravated liability and should not be confused with the rules of tort law[107]. Therefore, since this liability is not related to the rules of tort law, this implies that, in order to be held liable, there is no need to prove a fault committed by the company's officers, a loss suffered by the creditors, and a causal link between these two elements.

In fact, the French law considers that there is a presumption of fault in favor of corporate creditors in case the company is bankrupt[108]. Accordingly, the faults retained by the jurisdictions are those that were the main reason for the company's insolvency[109].

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administrateurs et gérants de sociétés' (1955) Gaz Pal II, 34 ; Robert Plaisant, 'Les effets civils de la faillite des sociétés envers leurs dirigeants' (1957) Le Tableau juridique et fiscal, 17 ; Francis Delaisi, 'La contribution au passif social des dirigeants de sociétés' (1958) Revue des syndics et administrateurs judiciaires, 73.

[101] Raymond Legais, 'L'extension de la faillite sociale' (1957) Gaz Pal, 290.

[102] Bourel (n 85) 788.

[103] TGI (1) Beirut 3 April 2013, Al Adel 2018.II.898.; TGI (1) Beirut 25 February 2015, Al Adel 2018.II.901; Cass com (n 70).

[104] CA Paris 2 December 1953, JCP 1954.IV.55.

[105] CA Lyon 7 November 1955, JCP 1956, II.9170.

[106] Cass com 4 January 1960, Bull Civ 1960, 5.

[107] Anciens articles 1382 et 1383 et nouveaux articles 1240 et 1241 du Code Civil Français ; Articles 122 et 123 du Code des obligations et des contrats libanais.

[108] Loi du 16 novembre 1940 relative aux sociétés anonymes ; Décret-Loi du 9 août 1953.

[109] Cass com 17 July 1956, Rev Soc 1956, 693.

However, the French jurisdictions have also presumed other acts committed by the managers and officers as faults such as the lack of supervision of employees[110], or if the manager did not consult his or her co-partners following the loss of three quarters of the company's capital[111], or even if he or she has not filed the balance sheet in due time[112].

However, the liability action based on a presumed fault aims at condemning the manager or the administrator to the payment of the company's debts. The latter must prove that they have shown the diligence of a careful and efficient professional while managing the company in order to rebut this simple presumption. Nevertheless, the jurisdictions don't accept easily their proofs, this what explains the absence of any decision exonerating them totally.

Lastly, it is important to mention that the law states that 'the bankruptcy must show the insufficiency of assets'[113] in order to cause a prejudice against the creditors. As a result, this liability action cannot be brought against the managers and the administrators if the value of the company's assets is sufficient to pay the creditors.

[110] CA Paris 8 March 1958, D 1958, 342; CA Paris 11 Mars 1959, Rev Soc 1959, 933; CA Nancy 3 December 1959, Rev Soc 1960, 639.

[111] Trib com Marseille 1st December 1955, Rev Soc 1956, 114.

[112] Trib com Valenciennes 7 April 1959, Gaz Pal 1959, 934.

[113] Loi du 16 novembre 1940 relative aux sociétés anonymes. ; DL du 9 août 1953.

Conclusion

The extension of bankruptcy is applied either horizontally to companies of the same group, or vertically to the partners and corporate officers of a bankrupt company.

Regarding the horizontal extension of bankruptcy to the companies of the same group, each company within the same group has an autonomous legal person. While the bankruptcy of a company will be extended to the other companies of the group in case there is a confusion of patrimonies between them, or when the fictitiousness of a company in the group is proven.

However, the extension of the bankruptcy to a group of companies is a risky process. Hence the importance of having a well-organized treasury of the group. Moreover, the group has to manage the observation period by trying to avoid the extension of the bankruptcy, and by taking over the insolvent company.

On the other hand, regarding the vertical extension of the bankruptcy of a company to its partners and officers, there is a separation between the legal personality of the company and the legal personalities of the partners and the corporate officers. Consequently, the latter will only be sanctioned if they have committed a personal fault.

Following the bankruptcy of the company, the partners must participate in the reconstitution of the capital through the payment of their contributions. Furthermore, the irregular reductions of the capital must be cancelled, in addition to the restitution of payment of the fictitious dividends.

Certainly, the corporate's bankruptcy will also affect the legal status of the partners. Thus, the bankruptcy will be extended to the partners who are indefinitely and jointly liable for the company's debts. Inversely, the partners' bankruptcy will have some effects on the company.

Similarly, company's bankruptcy will have effects on corporate officers. Therefore, several liabilities will arise from the company's bankruptcy, one of it is prior and independent to the bankruptcy, while the other one derives from the company's bankruptcy and will be applied not only to the managers of general partnerships, but will be extended to the managers of limited liability companies, and to the directors of public limited companies.

Accordingly, the horizontal extension of the bankruptcy of a company to the other companies in the group is a true extension of the bankruptcy to the group of companies. Whereas the vertical extension of the bankruptcy of the company to the partners and officers is applicable in general partnerships and limited partnerships, while in the context of public limited companies or limited liability companies it is an action for liability brought against the partners and officers who have committed mismanagement and not a true extension of the bankruptcy to them.

To wrap up, a reform of the Lebanese bankruptcy law is needed, firstly, in order to follow the new perspective adopted by the new bankruptcy legislations such as the French one, and to enact a regulation for the problem of the extension of the bankruptcy in all its aspects, and secondly, in order to match with the development of the business activities and the economic crises on the national and the international scales.

Lastly, it is important to note that in this thesis the trans-border extension of corporates bankruptcy related to multinational groups of companies that have branches and subsidiaries in many different countries was not discussed. However, it is a very important topic that opens the door for asking many questions regarding the applicable law during the bankruptcy proceedings especially that every country has its own bankruptcy law that might be very different from the ones of the other countries such as the Lebanese and French bankruptcy laws, in addition to the determination of the competent jurisdiction in such case.

Another problematic related to the extension of bankruptcy is important to be discussed, it's when the group has some subsidiaries in countries adopting the Romano-Germanic legal system where the laws are codified, and some other subsidiaries in countries adopting the Common Law system where their legal systems are based on case law and precedents.

It would be very interesting to discuss such legal issues arising from the trans-border extension of corporates bankruptcy in another legal study treating the same legal problematic that we have already discussed in this thesis but from a private international law perspective and not only from a corporate law perspective.

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Abstract

The Lebanese and French Business laws have established a special legal regime related to companies' bankruptcy in which special laws are applied to each bankrupted company regardless of its structure.

The problematic becomes more complex when it's about bankruptcy extension. In this case, we distinguish between the bankruptcy extension applied to companies of the same group (Horizontal extension), and the one applied to the partners and to the officers of the bankrupt company (Vertical extension).

Regarding the horizontal extension of corporates bankruptcy to the companies of the same group, the bankruptcy of a company will be extended to the other companies of the group in case there is a confusion of patrimonies between them, or when the fictitiousness of a company in the group is proven.

While the vertical extension of corporates bankruptcy is applied to, the partners depending on their legal status and the legal nature of the company, and to the corporate officers that are liable for the debts of the bankrupt company in some cases despite the separation of patrimonies and the autonomy of their legal personality and the one of the company.

The purpose of this thesis is to discuss the issue of extension of bankruptcy in its both dimensions from the French and Lebanese laws perspectives showing their similarities and their differences in this field.

Lastly, it is important to mention that I have already written on that topic in a previous master thesis in French[114]. I have chosen the same topic, firstly, because the extension of corporates bankruptcy is a very important topic meanwhile due to the economic crises around the world and specifically in my country Lebanon, and secondly, in order to create the first legal reference written in English regarding the extension of corporates bankruptcy because all the references related to this topic are written either in Arabic or French while the business language and all the contracts and corporates documents are nowadays written in English.

[114] Jean-Benoit Elias, 'Léxtension de la faillite des sociétés' (thesis Université Saint Esprit de Kaslik 2020).

However, this thesis is not the same one as the previously mentioned thesis that is written in French (125 pages). Despite that it is the same topic, we have dealt with it from a different perspective providing with different arguments that lead to a different conclusion and helped us to highlight on new ideas that are related to this topic but were not discussed in this thesis.

Zusammenfassung

Das libanesische und das französische Wirtschaftsrecht haben ein spezielles Rechtssystem für den Konkurs von Unternehmen geschaffen, bei dem für jedes in Konkurs gegangene Unternehmen unabhängig von seiner Struktur besondere Gesetze gelten.

Die Problematik wird noch komplexer, wenn es um die Verlängerung des Konkurses geht. In diesem Fall wird unterschieden zwischen der Ausweitung des Konkurses auf Unternehmen derselben Gruppe (horizontale Ausweitung) und der Ausweitung auf die Gesellschafter und leitenden Angestellten des insolventen Unternehmens (vertikale Ausweitung).

Bei der horizontalen Ausdehnung des Unternehmenskonkurses auf die Unternehmen derselben Gruppe wird der Konkurs eines Unternehmens auf die anderen Unternehmen der Gruppe ausgedehnt, wenn eine Vermögensvermischung zwischen ihnen vorliegt oder wenn die Fiktivität eines Unternehmens der Gruppe nachgewiesen wird.

Die vertikale Ausdehnung des Konkurses von Kapitalgesellschaften wird auf die Gesellschafter, je nach ihrer Rechtsstellung und der Rechtsnatur der Gesellschaft, und auf die leitenden Angestellten angewandt, die in einigen Fällen trotz der Trennung des Vermögens und der Autonomie ihrer Rechtspersönlichkeit von der der Gesellschaft für die Schulden der in Konkurs gegangenen Gesellschaft haften.

Das Ziel dieser Arbeit ist es, die Frage der Ausdehnung des Konkurses in seinen beiden Dimensionen aus der Sicht des französischen und des libanesischen Rechts zu erörtern und ihre Gemeinsamkeiten und Unterschiede in diesem Bereich aufzuzeigen.

Abschließend ist es wichtig zu erwähnen, dass ich dieses Thema bereits in einer früheren Masterarbeit in französischer[115] Sprache behandelt habe. Ich habe dasselbe Thema gewählt, erstens, weil die Ausweitung des Firmenkonkurses aufgrund der Wirtschaftskrisen auf der

[115] ibid 113.

ganzen Welt und speziell in meinem Land Libanon ein sehr wichtiges Thema ist, und zweitens, um die erste juristische Referenz in englischer Sprache bezüglich der Ausweitung des Firmenkonkurses zu erstellen, da alle Referenzen zu diesem Thema entweder in Arabisch oder Französisch geschrieben sind, während die Geschäftssprache und alle Verträge und Firmendokumente heutzutage in Englisch geschrieben sind.

Diese Arbeit ist jedoch nicht dieselbe wie die zuvor erwähnte Arbeit, die in französischer Sprache verfasst ist (125 Seiten). Obwohl es sich um dasselbe Thema handelt, haben wir es aus einer anderen Perspektive behandelt und andere Argumente angeführt, die zu einer anderen Schlussfolgerung führen und uns geholfen haben, neue Ideen hervorzuheben, die mit diesem Thema in Zusammenhang stehen, aber in dieser Arbeit nicht behandelt wurden.