

Law No. 73-17 reforming Book V of the Commercial Code (Businesses in Difficulty)

Reference: Dahir No. 1-18-26 of 2 Shaaban 1439 (19 April 2018) promulgating Law No. 73-17 repealing and replacing Book V of Law No. 15-95 enacting the Commercial Code

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Practice areas: Commercial law and debt recovery, Business law, Corporate law

Law 73-17 entirely rewrote Book V of the Commercial Code. It governs the prevention of difficulties (internal alert, external prevention, conciliation) and their treatment (safeguard, judicial reorganisation, judicial liquidation), sets the time limit for declaring cessation of payments and specifies the roles of the trustee (syndic), the supervising judge and the creditors.

Prevention of difficulties

- Internal prevention: the statutory auditor or any shareholder alerts the head of the business to facts likely to jeopardise its operations.
- External prevention: the president of the court summons the head of the business where it appears from records and documents that the business is experiencing difficulties.
- Conciliation: a conciliator is appointed to facilitate an agreement with the main creditors; once approved by the court, the agreement suspends individual enforcement actions for the duration of its performance.

Safeguard, reorganisation and liquidation

- Safeguard proceedings are opened at the request of the head of a business that has not ceased payments but is facing difficulties it cannot overcome on its own.
- Judicial reorganisation requires cessation of payments; it results in a continuation plan or a sale plan.
- Judicial liquidation is ordered where the situation is irretrievably compromised.
- The head of the business must declare cessation of payments within thirty days thereafter, failing which personal sanctions apply.

Effects of the opening judgment

- Individual enforcement actions are stayed and payment of debts arising before the judgment is prohibited.
- Creditors file their claims with the trustee within the time limit set by the judgment, failing which they are time-barred.
- Ongoing contracts may be continued by the trustee; employees enjoy a preferential right for their wage claims.

- Directors may be ordered to make good the shortfall in assets, be barred from commercial activity or be prosecuted for fraudulent bankruptcy.

Key articles

DECLARATION OF CESSATION OF PAYMENTS

The head of the business must apply for the opening of proceedings for the treatment of difficulties no later than thirty days after the date of cessation of payments, that is, the date on which the business is no longer able to pay its debts as they fall due.

Points to watch

- Late declaration of cessation of payments is the leading cause of directors being held personally liable: have the date of the situation established by an expert.
- A creditor that does not file its claim within the time limit loses the right to be paid in the proceedings: monitor publications in the Official Bulletin.
- Conciliation remains confidential and protects the business's credit standing: it is often preferable to open proceedings.

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