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Legal Mechanisms for Early Warning of Corporate Difficulties in Morocco: Between Myth and Reality

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Abstract. Under Law No. 73-17 on the prevention of business difficulties, the Moroccan legislator aims to align the national legal framework with international standards, particularly those promoted by the World Bank and UNCITRAL on corporate insolvency. The reform's main objective is to strengthen preventive mechanisms and, when prevention is no longer sufficient, to ensure effective collective proceedings that safeguard viable firms and preserve value for creditors. Given the sharp rise in business failures, with 7,659 bankruptcies in 2024 (a 14 percent increase according to Info Risk), early warning systems deserve close attention. Very small entreprises account for 98.8 percent of these failures, compared with 1.1 percent for small and medium-sized enterprises and 0.1 percent for large firms. This pattern supports the study's central argument: early vigilance is the most effective remedy against economic imbalance, since prompt detection of warning signs can prevent reversible difficulties from escalating into irreversible crises. A preventive approach, supported by efficient collective proceedings, forms the cornerstone of a coherent framework for managing corporate distress in Morocco.
Keywords: *Distressed companies; Early warning tools; Internal alert External alert; Special representative; Conciliation, Alert initiation; Alert process; Powers of the president of the commercial court; Auditor's alert; Shareholder alert.*

1. Introduction

Law serves a social purpose that is constantly evolving and must adapt to changing economic and cultural contexts. Business law is no exception, as shown by recent reforms addressing companies in difficulty. Just as science teaches that change is the only constant, law must evolve while preserving its fundamental principles to remain relevant in today's complex economic environment.

The 2018 reform introduced a comprehensive modernization of the legal framework governing the prevention and management of companies in difficulty. Moroccan legislation now moves beyond the traditional objective of protecting creditors affected by debtor insolvency and embraces a preventive approach that prioritizes the early detection of warning signs to avoid insolvency. This shift is embodied in Law No. 73-17, which amended Book V of the Commercial Code and was published in the Official Gazette on 23 April 2018.

This legislation considerably enriches the legal corpus, often referred to in legal doctrine as a toolbox, by introducing intermediate mechanisms that bridge preventive and remedial procedures. The reform represents a major step toward modernizing the Moroccan business environment and demonstrates the legislator's commitment to aligning the legal framework with the evolving needs of the national economy

(Rhalib, 2018).

A new legal architecture for companies in difficulty has been established, aiming to balance the interests of all stakeholders while protecting the rights of each. Although certain limitations remain, the procedures now available to economic actors possess undeniable value.

Given the challenges faced by companies, it is essential to implement mechanisms capable of managing and mitigating crises effectively. Early warning systems now play a vital role by allowing the timely identification of difficulties and promoting a preventive approach centred on internal stakeholders such as statutory auditors and shareholders. An external mechanism under the authority of the president of the commercial court complements this internal vigilance by offering an independent assessment of the situation.

For the first time in Moroccan law, Law No. 73-17 introduces conciliation and safeguard procedures. These amicable mechanisms apply at an advanced stage, when a company's decline becomes visible but without interrupting its operations. This approach echoes comparative legal developments that emphasize judicial protection as a strategic choice for business continuity rather than a sign of failure (Roussel Galle, 2006). Although no legal measure can entirely prevent crises, this framework offers business leaders and commercial courts a guiding instrument that provides a second chance for companies in difficulty.

Furthermore, the debtor's good faith, timely intervention, solidarity among economic actors, and the expertise of all stakeholders constitute the essential foundations for a successful rescue process. This context raises a fundamental question: what proactive measures can be adopted to anticipate the difficulties faced by companies and address them before they become insurmountable obstacles?

To answer this question, the present study undertakes a detailed examination of the existing early warning mechanisms for companies in difficulty in Morocco. The objective is to determine whether the legislator should introduce new reforms to strengthen the preventive legal framework or whether the current provisions risk losing their effectiveness if they fail to reflect the economic, financial, and social realities of the country.

Accordingly, the analysis will focus on two approaches: first, the legal tools based on a liberal preventive rationale (I); and second, those inspired by an interventionist approach (II).

2. Legal tools for liberal early warning: Parties entitled to the internal right of alert

Just as medical terminology promotes the use of alternative medicine to avoid surgical intervention, the legislator has introduced a wide array of so-called "soft" techniques aimed at preserving the health of companies and preventing their slide into remedial procedures, the outcomes of which are often uncertain. At the core of the internal early warning system stands the principle of sounding the alarm. Its purpose is to alert a debtor who may not perceive the early signals of dysfunction within the organization. When difficulties, whether visible or emerging, can be clearly identified, the internal warning mechanism seeks to establish a structured dialogue between oversight bodies and the company director. This dialogue enables coordinated action and timely intervention before the window for effective response closes. The sustainability of a company depends in large part on its capacity to react swiftly and wisely to events that may hinder its socio-economic development (Crucifix and Dernis, 1992)

It is essential first to undertake a thorough analysis of the main actors involved in the right of alert, considering it from its liberal foundations, before examining the modalities of its implementation.

a. The statutory auditor: Coordinator of the internal alert process

- *The Scope of the statutory auditor's intervention: Toward an expanded role*

The internal alert procedure primarily targets the company director, who is responsible for taking the necessary steps to address the company's situation. However, since the director may not always be able to assess emerging difficulties accurately or to act alone, the legislator has involved certain stakeholders in the alert process. The scope of this mechanism remains relatively limited, as it depends on the company's structure and size, which in principle must include a statutory auditor (Saint-Alary-Houin, 2016). The appointment of the auditor may be mandatory or discretionary, depending on the legal form and the company's activity level.

Under Moroccan law, the appointment of a statutory auditor is compulsory for public limited companies and partnerships limited by shares, regardless of their size, in accordance with Law No. 17-95 governing public limited companies and Law No. 5-96 regulating partnerships limited by shares (Law No. 5-96, 1997). Companies making public offerings are subject to stricter rules, as they must appoint two statutory auditors (Law No. 17-95, 1996).

For limited liability companies, general partnerships, and limited partnerships, the appointment of a statutory auditor remains optional unless annual revenue excluding taxes exceeds fifty million dirhams at the close of the fiscal year (Law No. 5-96, 1997), in which case the appointment becomes mandatory. Similarly, economic interest groupings must appoint one or more statutory auditors as soon as they issue non-convertible bonds to their members (Law No. 13-97, 1999).

This situation raises a pertinent question about the legislator's decision to limit the obligation to appoint statutory auditors to commercial companies and economic interest groupings, given the essential role that such oversight plays in all entities. This issue is particularly significant for small and medium sized enterprises, which are often the most vulnerable to economic fluctuations. Although the associated costs can represent a constraint for these businesses, the absence of a statutory auditor may seriously weaken the preventive framework necessary for their long-term stability.

Commercial companies that are not legally required to appoint a statutory auditor may still choose to do so voluntarily if the shareholders decide accordingly. In general, and limited partnerships, partners may also request the appointment of a statutory auditor from the president of the commercial court, who rules on the matter in summary proceedings (Law No. 5-96, 1997). This right also extends to economic interest groupings and limited liability companies, provided that shareholders representing at least one quarter of the share capital make the request (Law No. 5-96, 1997).

Regardless of how the statutory auditor is appointed, the primary objective remains the initiation of the alert procedure within the company. The statutory auditor thus occupies a pivotal position, responsible for triggering the alert process as soon as the relevant signs of difficulty become apparent.

- *An in-depth analysis of the criteria for triggering alerts by the statutory auditor*

The criteria for triggering the alert procedure are framed broadly, which makes assessment demanding. Those entrusted with this responsibility must therefore develop a rigorous understanding of its scope, since any error may harm the company and its stakeholders (Toh, 2015). Article 547 of the Commercial Code provides that the statutory auditor informs the head of the company of any facts likely to compromise the continuity of operations. The legislator deliberately avoided drawing an exhaustive list of such factors, leaving auditors to exercise prudent and informed judgment when assessing the nature and gravity of the facts that may threaten the going concern.

This open wording reflects the legislator's intention to grant statutory auditors a degree of discretion. Such flexibility allows each situation to be evaluated in light of its specific context, thereby maintaining a balance between vigilance and measured intervention while avoiding rigid oversight that could restrict professional judgment. Legal doctrine supports this interpretation, noting that threats to the going concern rarely arise from a single incident (Choukri-Sbaai, 2000; Guyon, 1999; Jacquemont, 2007). They usually result from a series of interrelated events within the company's operations that, taken together, require diligent vigilance and a thorough assessment of the company's capacity to continue functioning.

In practice, the first warning signals are often financial: insufficient equity, excessive debt, delayed salary payments, withdrawal of supplier credit, or inadequate financing methods. These indicators facilitate the timely identification of risks and support preventive action (Manuel des normes d'audit légal et contractuel, 2009). However, non-financial factors may also jeopardise the going concern. Social tensions, recurring conflicts, or the death of a key manager may destabilise operations, while legal issues such as failure to perform essential contracts or to file financial statements, as well as internal management dysfunctions, can have equally harmful effects. If these issues remain unaddressed, they may escalate into a crisis that directly endangers the company's survival and calls for an appropriate response by the statutory auditor.

The Moroccan text (Commercial Code, art 546) uses the plural term "facts," which may suggest that several indicators must appear before the auditor intervenes. In reality, a single fact of sufficient gravity may justify an alert, as waiting for multiple signs can delay action. What matters most is not the number of indicators but the seriousness of the threat to the going concern.

The notion of going concern underpins this entire framework. It refers to a company's ability to operate in ordinary conditions and to meet its financial and operational obligations (Commercial Code, art 546). Assessing this continuity requires a comprehensive understanding of the circumstances that may endanger it and calls for proactive and balanced judgment by the statutory auditor. Although the Commercial Code does not provide a precise definition of the going concern, the concept is firmly rooted in accounting doctrine and in the Moroccan accounting manual (Manuel comptable marocain, section 530).

In practice, the going concern principle is a fundamental accounting standard that is essential to maintaining the balance of the accounting system. It assumes that a company prepares its financial statements with the intention of continuing its regular activities (Ordre des experts comptables, 1998). Consequently, financial statements are prepared on this basis, under the presumption that the company will continue to trade and that its accounts will be audited accordingly.

Conversely, when a company ceases operations, whether partially or entirely, it must abandon the assumption of continuing normal business activities and instead consider alternative scenarios such as restructuring or liquidation.

The going concern therefore has paramount importance not only for the preparation of financial statements but also for strategic decision making regarding the management and viability of the enterprise.

From a doctrinal perspective, the going concern has inspired extensive reflection. According to comparative doctrine, it implies that the enterprise intends to maintain its activities without any plan to reduce them and without any intention to liquidate its assets (Chaput, 1986). Another author adds that the going concern may be threatened or compromised when the director has decided on an amicable liquidation or has caused a significant reduction, whether voluntary or involuntary, in the enterprise's activity (Jacquemont, 2007).

In Morocco, doctrine aligns with this perspective derived from French doctrine, emphasising that, unless otherwise stated in the notes to the financial statements, the accounts are prepared under the going concern assumption (Barjani, 2004).

Thus, these doctrinal reflections converge on the view that the going concern is a fundamental principle guiding not only the preparation of accounting documents but also the strategic management of enterprises to ensure their long-term viability. However, the statutory auditor should first establish a causal link between the identified difficulties and the company's going concern before initiating an alert procedure. This preliminary step is crucial, as it ensures that an appropriate and timely response can be taken when necessary.

Although the statutory auditor plays a central role in the internal alert procedure, this responsibility may in certain cases be shared with shareholders. While their involvement can strengthen the alert process, it may also complicate decision making and slow responses to urgent issues. Therefore, effective cooperation between the auditor and shareholders is essential to ensure thorough risk assessment and proactive management of the company's difficulties.

b. Shareholders: An undervalued role in the liberal alert system

- *Shareholders entitled to exercise the right of alert*

Motivated by a concern for the survival and development of the company, the legislator has granted shareholders a right of alert. This right empowers them to exercise active and vigilant oversight through early intervention to prevent difficulties that may jeopardise the going concern.

In accordance with Article 547 of the Commercial Code, each shareholder may initiate an alert procedure, a prerogative also available to the statutory auditor. The provision refers to any shareholder, which is best understood as covering shareholders of limited liability companies, general partnerships, and limited partnerships. This focus is justified by the potential absence of a statutory auditor in these entities, particularly where the legal thresholds for appointment are not met. By contrast, shareholders of public limited companies and partnerships limited by shares appear to be excluded, since the appointment of a statutory auditor is mandatory in these forms, rendering a shareholder alert redundant or, in practice, channelled through existing oversight mechanisms.

Under Law No. 17 95, shareholders retain a right of alert that operates alongside their right to information. They may submit written questions to management twice per financial year about any situation that could threaten the going concern (Law No. 17-95, art 157). By contrast, the alert procedure does not apply to partners in civil partnerships, which fall outside collective procedures and therefore outside the alert mechanisms of the Commercial Code (Bachlouch, 2012).

A shareholder's position within the company does not affect the ability to initiate an alert. The article grants this right to any shareholder, regardless of the number of shares held. The obligation to resort to the alert procedure therefore applies equally to minority and majority shareholders.

The legislative text does not specify whether a shareholder may exercise this right individually or jointly. This silence allows collective action, which may be appropriate when shareholders share a common view of the seriousness of the events that threaten the going concern and the need to trigger the alert promptly (Bachlouch, 2012).

- *Reassessing the criteria for shareholder-initiated alerts*

In accordance with Article 547 of the Commercial Code, shareholders, alongside the statutory auditor,

must promptly notify the company director when they become aware of facts likely to compromise the continuity of operations. Although some legal uncertainty remains as to scope, the events that should trigger shareholder attention largely mirror those considered by the statutory auditor, since both aim to preserve the going concern. The statutory auditor's role is to scrutinise circumstances that may threaten the going concern and to report them as part of oversight duties. Shareholders, for their part, are responsible for considering and adopting appropriate measures in response, given their obligation to protect the company's interests, including the safeguarding of their capital contributions (Karman, 1995; Sawadogo, 2006).

Despite the shared interest of statutory auditors and shareholders in preserving the company's going concern, a fundamental distinction exists in how they perceive and interpret information (Chaput, 1986). The statutory auditor conducts a rigorous and impartial analysis grounded in technical financial verification and compliance with accounting standards. By contrast, shareholders approach the same information from a more subjective standpoint, influenced by their personal and financial stakes, which are tied to profitability and long-term success. This divergence reflects their distinct roles within the company: the auditor exercises external oversight, whereas shareholders remain closely involved in daily management and strategic direction.

According to Professor Paul Le Cannu, "The shareholder is not limited by the facts they may have observed; they may express concerns about anything that threatens the continuity of operations, regardless of the source of the information." (Le Cannu, 1988) In light of this, shareholders, although not involved in the company's daily management, may face difficulties in identifying facts that could affect the going concern. Yet their lack of direct managerial involvement does not prevent access to critical information, including through relationships with external partners such as suppliers, customers, and financial institutions. In addition, shareholders hold a right to information regarding the company's management, which allows them to consult the accounting documents made available at the registered office twice per financial year (Law No. 5-96, art 11).

Be that as it may, whatever sources shareholders use to identify relevant facts, the real challenge lies in evaluating them, particularly when they concern financial matters. Shareholders may reasonably seek the assistance of an advisor to review the accounting documents thoroughly. That said, the right to information should be exercised only when genuinely warranted. The primary aim of the shareholder alert is the pursuit of the corporate interest (Law No. 5-96, arts 11, 26, 81). Nevertheless, there are situations in which the corporate interest converges with the personal interests of shareholders, especially when profitability and the going concern directly affect their own financial position (Merle, 1992).

On this basis, the legislator appears to have deliberately excluded employee representatives, including the works council and staff delegates, from the internal alert process. Although this choice may seem surprising given their role in managing social tensions, it can be read as an effort to avoid conflicts between decision making bodies and employee representatives. Involving them could introduce competing perspectives, increase the likelihood of disagreement, and cause delay, all of which may hinder the prompt implementation of an effective preventive strategy. The underlying aim is to protect the corporate interest and to safeguard the company's going concern (El Hammoumi, 2008).

c. Deployment of legal tools for liberal early warning mechanisms

- *Early Warning Mechanisms: The Role of the Statutory Auditor*

Under Moroccan law, the statutory auditor's early warning procedure unfolds through a structured process designed to inform successive stakeholders the company's governing bodies, shareholders, and, where

necessary, the president of the competent commercial court (Commercial Code, art 546).

In public limited companies, the statutory auditor first notifies the directors of any facts likely to compromise the going concern. This initial stage, both preventive and corrective, is subject to strict formal and temporal requirements. Under Article 547 of the Commercial Code, the notification must be sent within eight days by registered letter with acknowledgment of receipt. Its purpose is to alert the directors to early signs of difficulty and to enable the auditor to participate proactively in identifying suitable solutions (Drissi Alami Machichi, 2006).

The directors must respond within fifteen days, examining the reported facts and proposing corrective measures. Yet Moroccan law remains silent on the form of this reply, which may raise uncertainty regarding the auditor's liability if no written record exists (Commercial Code, art 546). When the response is satisfactory, the procedure remains internal and confidential, and management must promptly implement the agreed measures. If the reply is missing or unsatisfactory, the auditor must prepare a special report for the general assembly of shareholders.

At this second stage, the statutory auditor presents the report to the shareholders, who bear collective responsibility for determining the company's course of action. The law leaves the content and timing of this report to the auditor's discretion, allowing adaptation to the company's circumstances. Although Article 547 does not explicitly mention urgency, the auditor must act quickly if no meeting is convened despite clear warning signs. Under Law No. 17-95 (Law No. 17-95, art 116), the auditor may request or convene a general assembly to deliberate on necessary measures.

This escalation, while ensuring transparency, carries inherent risks: sharing sensitive information with shareholders can compromise confidentiality or harm the company's reputation, making prudence essential. If the measures adopted by the assembly prove insufficient to preserve the going concern, the auditor must alert the president of the competent commercial court, who may initiate appropriate proceedings.

For other commercial entities, the alert procedure generally mirrors that applied to public limited companies (Commercial Code, art 546), with adjustments reflecting structural differences. In family-owned companies, confidentiality is often harder to maintain, as information circulates informally among partners. Harmonising the stages of the alert mechanism for general partnerships, limited partnerships, and limited liability companies with those of public limited companies would enhance consistency and legal certainty.

The situation of economic interest groups remains more complex. The legislator has excluded them from the scope of the internal alert mechanism, creating a legal vacuum that continues to provoke debate (El Hammoumi, 2008; Choukri-Sbaai, 2000; Cherkaoui, 2010). Professor Abdeljalil El Hammoumi argues that applying the alert procedure to these groups depends on their qualification as merchants (El Hammoumi, 2008), which requires a commercial corporate purpose.

Professor Hassania Cherkaoui considers that an alert procedure should exist only where a statutory auditor is appointed, an obligation arising solely when the group issues bonds (Cherkaoui, 2010).

Nevertheless, when a statutory auditor is appointed, the alert mechanism should logically apply even without an explicit legal mandate. The auditor's supervisory role enables early identification of risks and activation of preventive measures, particularly when financial imbalance threatens the entity's viability. In such cases, the alert should be addressed to the directors of the companies forming the group, ensuring coordinated action across the network.

Regardless of legal form, the statutory auditor's role remains pivotal. Their mission extends beyond technical control to encompass a broader duty of vigilance and advice. By identifying warning signs and fostering dialogue between management and stakeholders, the auditor helps preserve stability and prevent crises from escalating into insolvency.

- *Liability of the Statutory Auditor for Failure to Alert*

Law No. 17 95 defines the statutory auditor's liability in auditing and overseeing the company's accounts. Under Article 180, the auditor incurs dual liability to the company and to third parties for damage caused by errors or omissions committed in the course of duties.

Within the alert procedure, liability may arise in two situations. First, the auditor fails to alert with due diligence despite facts that threaten the going concern, including failing to report matters essential to management or to address obstacles encountered during oversight (Du Pontavice, 1985; Guyon, 1987; Lienhard, 1996). Second, the auditor initiates an alert without justified cause, causing harm to the company (Saint-Alary-Houin, 2016). Although Moroccan legislation does not expressly provide sanctions for premature alerts, the auditor may still be liable. Where the alert is triggered with malicious intent, for example to harm the company or to pursue personal interests, the conduct may constitute gross misconduct akin to fraud and may also expose the auditor to criminal proceedings under general law for disseminating false information.

The auditor must therefore act with prudence and rigour. The link between the disclosed facts and the intervention can be scrutinised, and evidentiary issues may arise regarding intent and the validity of the alert (Chaput, 1986). The procedure requires respect for the spirit of the law and adaptation to concrete circumstances. The auditor should ensure that the reported facts genuinely threaten the going concern and, in the absence of strict legislative directives, rely on professional judgement and experience. Appointment, even on a voluntary basis, does not relieve the auditor of the duty to alert (El Hammoumi, 2008; Choukri-Sbaai, 2000).

- *From optional to legal: The evolution of the shareholder early warning procedure*

The mandatory character of the alert procedure under Moroccan law is reflected in strict formalities. Shareholders must notify the company's director by registered letter with acknowledgement of receipt within eight days, specifying their status, number of shares held, and the facts that could affect the company's going concern. This step serves as a request for clarification, allowing the shareholder to seek reassurance from management. In practice, it often takes place informally, as the director is generally aware of the situation (Choukri-Sbaai, 2000; Gibirila, 2009; Le Corre, 2008).

According to Professor Paul Le Cannu, the director's duty to respond extends beyond addressing shareholders' concerns to dispelling rumours. He observes that "one of the most valuable functions of the shareholder alert is the opportunity it provides to the directors to reassure concerned shareholders about the company's interests." The directors must therefore give due consideration to alerts initiated by shareholders (Le Cannu, 1988).

Although Article 547 does not prescribe the form of the response, silence or delay may heighten concerns about the seriousness of the threat to the going concern. If the shareholder deems the proposed corrective measures satisfactory, the procedure may conclude at this stage. Otherwise, the shareholder may continue the process by informing the other shareholders, fostering collective decision making in managing the crisis.

At this stage, the legal framework clarifies the shareholder's remit. If we adhere to Article 547 of the Commercial Code, the shareholder's role is primarily to inform the director of facts likely to jeopardise the going concern. If the director fails to convene a general assembly, the alerting shareholder may be left without an internal remedy.

In that situation, the shareholder may petition the president of the court, ruling in summary proceedings, to appoint a representative responsible for convening the general assembly and setting its agenda (Law No. 5-96, art 71(4)). This pathway does not, however, resolve every case. Where the decisions adopted by the assembly do not remedy the situation and the company remains in a precarious position, the shareholder has no further direct recourse.

Unlike the statutory auditor, who may alert the president of the commercial court in confirmed crises, shareholders are not granted such a mechanism under Article 547. The provision focuses on the obligation to notify the president through the statutory auditor or the director in critical situations, without expressly giving shareholders a channel beyond the general assembly.

3. Legal tools for early interventionist alerts: toward new coordination between internal and external alerts

Moroccan law strengthens external prevention by entrusting the president of the commercial court with an early warning mission, expanding judicial oversight of business solvency and the going concern. This duty of vigilance anchors proactive crisis management and supports economic stability. The president's intervention functions chiefly as a psychological lever rather than an immediate constraint (Le Cannu, 1988), which confirms the preventive and non-coercive nature of the role within early warning mechanisms.

a. The right of alert granted to the president of the commercial court: A myth still far from judicial reality in Morocco

- *Companies subject to external early warning measures*

The external alert procedure is triggered before the president of the commercial court when a business, without being insolvent, faces difficulties, in the terms of the first paragraph of Article 549 of the Commercial Code. Under Article 546, the term business covers individual traders and commercial companies. The president's external early warning jurisdiction therefore extends to these entities regardless of size.

This extension is justified by the central economic role of commercial companies and sole proprietorships, which fall under the authority of the court president. The prerogatives of the president have thus been significantly broadened. However, Law No. 73-17 expressly excludes sole proprietorships engaged in civil activities and private legal entities, including civil companies and associations, from the scope of external prevention.

These exclusions raise a legitimate question. Management control failures are often observed in these structures (Bouchta, 2018), which may increase the risk of unforeseen crises. Their exclusion can be viewed as a regulatory gap that may weaken the overall effectiveness of the external prevention regime.

Effective intervention by the president depends on access to diverse and reliable sources of information. To assess the company's position and the relevance of an alert, the president should have comprehensive data on financial health, operations, and prospects for the going concern. This enables informed decisions that protect the company's interests while preserving the president's role as mediator and guardian of

economic stability. Such prevention requires transparency and cooperation among economic actors so that the president can act with the rigour and precision needed to anticipate crises and intervene proactively.

- *The investigative role of the president of the commercial court in external prevention*

The president of the commercial court may gather information on a company's difficulties either through the statutory auditor or directly from the company's director. The statutory auditor's duty to provide such information is paramount, as it naturally extends the internal early warning mechanism (Commercial Code, art 547). A practical question arises as to timing: should referral to the president occur immediately after the final internal stage fails, or should the auditor first await the director's action and intervene only once inaction becomes clear?

Article 548 of the Commercial Code does not answer this question or prescribe a timeline. Given the preventive nature of the procedure and the need to respond swiftly to risks threatening the going concern, the statutory auditor should notify the president without undue delay. Postponement may hinder effective preventive measures and aggravate the company's position. In confirmed crises, prompt referral is therefore appropriate to secure a rapid and proportionate response.

The director's information obligation (Commercial Code, art 548), under Article 548 serves to alert management to difficulties and to prompt corrective action while preserving confidentiality. Moroccan law is silent on sanctions for failure to notify the president, which leaves an accountability gap should the director neglect this duty. The legal text does not provide other stakeholders, such as employees or suppliers, with a direct channel to transmit information to the president. This absence narrows the scope of external prevention and may reduce effectiveness where the director is negligent.

The president of the commercial court has wide prerogatives to obtain information needed to assess a company's position. The law permits requests to the statutory auditor, employee representatives, public authorities, credit institutions, financial bodies, and any other relevant parties to secure precise data on the company's economic and financial situation.

This framework allows proactive action by drawing on diverse sources, which strengthens the president's role in crisis management and the prevention of corporate distress. Its effectiveness depends on access to information, so stakeholder transparency is essential.

The commercial court registry is a particularly reliable resource. Through careful administration of the commercial register and data digitisation, it provides swift access to information on a company's structure and operations. By applying clear selection criteria, it can flag entities showing signs of distress so that the president can intervene promptly when necessary (Motemps, 2004).

Large companies, with substantial resources and internal financial management (Choukri-Sbaai, 2000), are not the primary focus of this monitoring. The emphasis falls on small and medium sized enterprises, often led by a single director and more vulnerable because of limited controls. In such cases, managerial isolation and scarce resources make the president's intervention especially important. Using information from the registry and other external sources, the president can act early and propose measures tailored to these businesses.Once relevant information is collected, it may be transmitted automatically to the president, allowing continuous, real-time monitoring of companies within the jurisdiction. The president may also request, at intervals and on the basis of established criteria, a list from the registry of companies exhibiting indicators of serious financial distress.

b. Difficulties likely to trigger the activation of the external prevention system

Assessing when to initiate an external early warning is complex. Premature activation can erode confidence among economic partners and create more obstacles than opportunities for resolving difficulties, while delay reduces the prospects of effective remediation. Acknowledging this balance, the legislator adopted a broad and flexible definition of the triggering elements, covering "any act, document or procedure through which a company, while not in cessation of payments, faces legal, economic, financial or social difficulties, or has needs that cannot be covered by financing appropriate to the company's capacity" (Commercial Code, art 549). The legislative text therefore specifies the criteria yet preserves discretion for the president of the commercial court.

The president of the commercial court cannot rely on informal information alone, since the law requires that evidence of difficulty arise from an "act, document or procedure." The challenge is therefore to identify robust mechanisms through which these criteria can be observed and assessed.

A primary indicator is the failure to file annual financial statements. Law No. 17-95 requires public limited companies, including those offering shares to the public, and other commercial forms to deposit two copies of the balance sheet, together with the statutory auditors' report, at the commercial court registry within thirty days of approval by the annual general meeting (Bachlouch, 2012). Law No. 5-96 extends this obligation to limited partnerships, simple limited partnerships, and limited liability companies (Law No. 21-05, 2006). Paragraph 2 of Article 95 states: "Commercial companies are required to submit, to the court registry, within thirty days following approval by the general meeting, two copies of the balance sheet, accompanied by two copies of the auditors' report, where applicable."

Filing at the registry is a pivotal channel for communicating financial information to the president. The practical question is whether the information available is sufficiently reliable and complete to enable accurate assessment. In public limited companies, the presence of a statutory auditor offers assurance as to the reliability of financial data. In other entities without this safeguard, the president may seek supplementary information, including an expert accountant's opinion, to refine the analysis and obtain a more nuanced view of the company's position.

The legislator treats losses recorded in the annual financial statements as indicators of financial distress. Where a loss reduces net equity to below one quarter of the share capital, management must convene an extraordinary general meeting within three months of approving the financial statements that reflect the loss. The meeting must consider the possibility of early dissolution in accordance with the applicable legal provisions (Law No. 17-95, arts 356, 357(3); Law No. 5-96, art 86). In this respect, the annual financial statements are a vital instrument, providing a faithful and accurate picture of the company's financial condition.

From a broader perspective, further indicators may warrant the president's attention, particularly those linked to the ordinary general meeting, which must approve the annual financial statements. The law provides that "the ordinary general meeting shall be convened at least once a year within six months following the close of the financial year" (Law No. 17-95, art 115). Any request to defer this meeting may therefore signal potential difficulty, whether due to the director's inability to prepare the financial statements within the prescribed timeframe or to the statutory auditor's refusal to issue certification.

Companies granted an extension are recorded in the commercial court registry, enabling the president to prioritise cases for review. The legislator also imposes sanctions on directors who fail to convene the ordinary general meeting within the statutory deadline or the extended period following the close of the

financial year (Law No. 17-95, art 388).

The criteria for initiating an external early warning are not exhaustive. The court registrar must promptly and regularly transmit any information indicating a risk that the company may cease operations. After reviewing the file, the president may, where circumstances require, initiate the external early warning procedure based on the information gathered.

c. Implementation of the interventionist early warning system

- *Convening of the company director*

The president of the commercial court, in accordance with the law, "immediately summons the company's director to their office, either on their own initiative or at the request of the latter, indicating the nature of the difficulties likely to jeopardise the going concern." (Commercial Code, art 549) The legislative text does not prescribe the precise form of the summons. It is therefore reasonable to consider that the court registrar organises it under Articles 37 and following of the Code of Civil Procedure. The convening must be conducted with strict confidentiality to foster trust and to allow the director to understand both the challenges faced and the president's intentions. For this reason, the matter is recorded only under a registry number, without disclosing the company's identity.

While the formality of the convening is important, its outcome is more significant. A practical question is whether penalties apply when a director fails to respond. Moroccan law does not address this expressly, but non-attendance can seriously damage the director's professional reputation and may weigh against them in later inquiries into financial liability within collective proceedings. Such non-cooperation may also be viewed as mismanagement or negligence, undermining credibility in subsequent legal actions (Le Corre, 2008; Saint-Alary-Houin, 2016).

The meeting is conducted solely by the president of the commercial court, with no third parties present. After hearing the director and explaining the reasons for the convening, the president may, where appropriate, review the recovery solutions proposed by the director. Lacking coercive authority, the president cannot compel immediate solutions. The role remains consultative and preventive, outside coercive judicial proceedings (Bachlouch, 2012).

The duration of the meeting depends on the circumstances, so no general rule can be stated. Although Article 549 of the Commercial Code does not address this point, practice requires drawing up a report to record the company's difficulties and to enable follow up over time. If no immediate solution emerges, the president may reconvene the director. In the interim, the president may conduct a detailed inquiry into the company's economic and financial situation, using the investigative powers granted by law (Commercial Code, art 552).

Where immediate recovery measures are feasible and implemented, the president of the commercial court may close the file without further action (Choukri-Sbaai, 2000). If rehabilitation requires third party involvement, the president may appoint a special representative to restore financial stability or address the identified difficulties.

- *The appointment of a special representative: A preventive tool in need of reform*

The special representative, described by Denis Voinot as both a "friend of the court" and a "friend of the company," supports the director without interfering in internal management. Appointed by the president of the commercial court within a defined period and on the director's proposal, the representative intervenes where challenges to the going concern can be addressed through third party involvement. The

mandate is tailored to the company's specific difficulties, enabling targeted action suited to the needs of the distressed enterprise (Commercial Code, art 550)

Article 550 of the Commercial Code is silent on the representative's status. Moroccan legal doctrine, though not entirely consistent, offers guidance: the role may be performed by a legal adviser, a statutory auditor, or an experienced business professional able to negotiate with banks and suppliers. The essential criterion is expertise sufficient to help the company overcome temporary difficulties and to maintain constructive relationships with key partners (Bachlouch, 2012).

The scope of intervention is also left undefined by the Code. Since the mission arises from the president's involvement, it is reasonable to confine it to companies subject to the president's alert. If the mission does not succeed, the special representative must report to the president, who may then decide on appropriate measures.

- *The appointment of a conciliator: the final step in the interventionist early warning system*

The reform introduced by Law No. 73-17 goes beyond procedural revision. It forms part of a structural modernisation that aims to enhance the efficiency and attractiveness of conciliation while meeting the essential requirement of foresight, a central pillar of the reform.

The legislator establishes conciliation as a mechanism to facilitate negotiation and the conclusion of an agreement between the debtor and principal creditors, under the authority of the president of the commercial court and with the guidance of a conciliator.

Regarded as the cornerstone of rescuing distressed companies, conciliation is available to any economic entity that is not insolvent but is facing an economic or financial crisis or has unmet financing needs that cannot be covered by funding appropriate to its capacity (Commercial Code, art 551).

The legislator intentionally refrains from defining the precise nature of the difficulties that justify recourse to conciliation. The new law also appears to exclude legal difficulty, a choice that raises questions. Nor does it specify the degree of certainty required: must the difficulty be clearly established, or is credible anticipation sufficient? In practice, this silence confers broad discretion on the president of the commercial court.

From this perspective, the lack of definition likely signals a departure from the earlier special mandate framework, which required a difficulty capable of jeopardising the going concern. The legal threshold now appears lower, focusing on whether the company cannot finance its current operating cycle, irrespective of the specific nature of the difficulties encountered (Rhalib, 2018).

Referral to the president of the commercial court, as a non-contentions procedure, is ordinarily initiated by a petition from the company's director. The petition should set out the difficulties encountered, the financing needs, and the strategies considered to address them (Vidal, 2009).

It is regrettable that the legislator gives no guidance on the documents that should accompany the petition, particularly those needed for a complete and objective assessment of the company's position. This omission deprives the president of potentially crucial information for informed decision making and creates a legal gap that may weaken the effectiveness of conciliation.

By virtue of office, the president may access the information referred to in Article 552 of Law No. 73-17 and may appoint an expert to conduct an in-depth analysis of the company's economic, social, and financial position. These investigative powers are significant, since they allow the president to supplement the file where the petition lacks sufficient supporting material (Commercial Code, art 552(2)).

If, on the basis of investigations or the director's petition, the president of the commercial court considers that the company's difficulties, though short of insolvency, can be resolved through conciliation, the procedure is opened and a conciliator is appointed for a period not exceeding three months, renewable once at the conciliator's request (Commercial Code, art 553).

The director may propose a candidate for conciliator, but the proposal does not bind the president, and the law sets no selection criteria. This discretion underscores the president's central role in implementing conciliation.

It falls to the president to define the precise scope of the conciliator's mission, whose purpose is to resolve financial or economic difficulties by facilitating an agreement between the debtor and creditors (Commercial Code, art 554). The Code's wording is deliberately succinct, stating that the conciliator shall "resolve financial or economic difficulties and seek the conclusion of an agreement with the creditors," which allows the president to tailor objectives to the circumstances of each case.

This brevity leaves open the addressee of the conciliator's proposals, whether the director, the creditors, or the president. Care is therefore needed to avoid an overly interventionist posture that could erode the director's autonomy and the appeal of the procedure. The conciliator's role is that of a facilitator, not a supervisor of management; interference in operational decisions would constrain the director's freedom of action and weaken the trust on which conciliation depends (Rey, 2003).

4. Conclusion

Preventing business difficulties in Morocco must be rethought in light of the country's economic and social realities. The effectiveness of the legislative framework depends on its adaptation to the local business environment and its capacity to address the real challenges faced by enterprises. Article 547 of the Commercial Code highlights both the relevance and the limits of the internal alert system. Entrusting this mechanism solely to statutory auditors excludes many smaller companies most exposed to financial risk. Extending the appointment of auditors to a wider range of entities and clarifying the timing and scope of their alerts would enhance prevention while maintaining managerial autonomy. Shareholders also remain insufficiently involved, largely due to their restricted access to financial information. Reforming disclosure rules could strengthen their supervisory role. Likewise, involving employee representatives, under strict confidentiality safeguards, would improve the early detection of social tensions likely to threaten the company's stability.

Externally, the effectiveness of the court-led alert system requires structured mechanisms, skilled staff, and modern information tools to detect and manage risks. Prevention units within commercial courts, supported by social security bodies, the Public Treasury, and professional advisers, could enable faster and more coordinated intervention.

Ultimately, the State must promote a genuine culture of anticipation. By creating regional advisory and prevention networks, providing support to businesses, and ensuring coherent implementation of laws, it can foster an environment where prevention becomes the foundation of economic resilience and sustainable enterprise.

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