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The Effectiveness of Corporate Distress Prevention Mechanisms under Moroccan Law: Between Early Risk Anticipation and Late-Stage Crisis Intervention

فعالية آليات الوقاية من صعوبات المقاولة في القانون المغربي: بين الاستباق المبكر للمخاطر والتدخل في مرحلة الأزمة المتأخرة

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Abstract
This article examines the effectiveness of corporate distress prevention mechanisms under Moroccan law in light of Law No. 73-17, which reformed Book V of the Commercial Code. It highlights the shift from a liquidation-centred approach to a preventive framework based on early risk anticipation, internal warning mechanisms, the intervention of the president of the commercial court, the appointment of a special representative, conciliation and the safeguard procedure. The study argues, however, that the practical effectiveness of these mechanisms remains limited by delayed recourse, weak early warning duties, insufficient financial information, and institutional and cultural obstacles. It therefore calls for a more anticipatory model based on continuous corporate risk governance.
Keywords: corporate distress – Moroccan law – Law No. 73-17 – prevention – early warning – conciliation – safeguard procedure – risk governance.

الملخص
يتناول هذا المقال فعالية آليات الوقاية من صعوبات المقاولة في القانون المغربي على ضوء القانون رقم 17-73، الذي أعاد تنظيم الكتاب الخامس من مدونة التجارة. ويبرز المقال انتقال المشرع المغربي من مقاربة قائمة على التصفية إلى مقاربة وقائية تقوم على استباق المخاطر، وآليات الإنذار المبكر، وتدخل رئيس المحكمة التجارية، وتعيين الوكيل الخاص، والمصالحة، ومسطرة الإنقاذ. غير أن الدراسة تخلص إلى أن الفعالية العملية لهذه الآليات ما تزال محدودة بسبب اللجوء المتأخر إليها، وضعف آليات الإنذار، ونقص المعلومات المالية، إضافة إلى بعض العراقيل المؤسساتية والثقافية. لذلك يدعو المقال إلى تبني نموذج أكثر استباقية يقوم على الحكامة المستمرة لمخاطر المقاولة.
الكلمات المفتاحية: صعوبات المقاولة – القانون المغربي – القانون رقم 17-73 – الوقاية – الإنذار المبكر – المصالحة – مسطرة الإنقاذ – حكامة المخاطر.

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Introduction:

Corporate distress is seldom a private misfortune confined to the debtor and its creditors. When a company can no longer honour its commitments, the consequences reach well beyond the parties to the unpaid obligation. Employees face the loss of their livelihoods, suppliers absorb unsettled invoices, lending institutions carry impaired exposures, and the tax authorities and social security bodies record a contraction in their receipts. A failure of any magnitude also erodes the commercial confidence on which credit, contracting and investment ultimately rest. The collapse of an enterprise is, in this sense, a collective event before it is an individual one, and it is this collective dimension that has reshaped the law of business failure over the past half-century, drawing it away from the orderly distribution of a debtor's residual assets and towards a prior, more demanding question: whether the enterprise can be preserved at all.

The trajectory of that reorientation is by now familiar. Classical insolvency law was organised around liquidation and carried a distinctly punitive charge. It presided over the dispossession of the failed trader, the realisation of the estate, the ranking of claims and the settlement of liabilities, treating the survival of the going concern as a contingency rather than an objective. Contemporary systems have reversed these priorities. They regard the continuity of operations, the preservation of employment and the rescue of economically viable activity as ends worth protecting in their own right, and they place the decisive intervention upstream of formal insolvency, in the detection and treatment of difficulties before they crystallise into the cessation of payments. The governing intuition is economic as much as legal: the earlier a difficulty surfaces, the broader the range of remedies that remains open, and the lower the aggregate cost of resolution.

Moroccan law has moved along the same axis. Law No. 73-17, which repealed and replaced Book V of Law No. 15-95 forming the Commercial Code, reconstructed the domestic regime for companies in difficulty around a graduated and explicitly preventive architecture.[1] The reform did not merely refine the rules on judicial reorganisation and liquidation; it placed before them a sequence of preventive devices; internal prevention, external prevention, the court-appointed special representative, conciliation and the safeguard procedure, designed to intercept distress at successively earlier stages.

[1] Law No. 73-17 repealing and replacing Book V of Law No. 15-95 forming the Commercial Code, promulgated by Dahir No. 1-18-26 of 19 April 2018.

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In doing so the Moroccan legislature aligned domestic law with the preventive orientation promoted by international standard-setters, notably the UNCITRAL Legislative Guide on Insolvency Law and the World Bank's Principles for Effective Insolvency and Creditor/Debtor Regimes, both of which treat early intervention and the rescue of viable firms as defining features of a sound insolvency system[2].

The practical urgency of the question is not merely doctrinal. Drawing on Info Risk data, Mekouar and Aloui report that Morocco recorded 7,659 business failures in 2024, a rise of some fourteen per cent on the preceding year; very small enterprises accounted for 98.8 per cent of those failures, against 1.1 per cent for small and medium-sized enterprises and 0.1 per cent for large firms. These figures are reproduced here as secondary data reported by those authors rather than as independently verified statistics, but they locate the problem with some precision. It is the very small enterprise that fails, and fails in numbers. That form of business is at once the dominant one in the Moroccan economy and the least equipped to detect and manage financial deterioration. These are the firms for which prevention matters most, and, as this article argues, those for which the existing mechanisms are least likely to operate in time. The gap between the formal availability of preventive procedures and their effective use is where the analysis must concentrate.

Although Law No. 73-17 has formally shifted Moroccan corporate distress law from a liquidation-centred approach to a prevention-oriented framework, the effectiveness of its mechanisms remains uncertain. The central question is therefore whether Moroccan law is genuinely capable of ensuring the early detection and timely treatment of corporate difficulties, or whether its preventive procedures remain constrained by delayed recourse, limited access to reliable financial information, weak internal alert mechanisms and insufficient institutional coordination. The argument proceeds in two stages. The first reconstructs the preventive framework established by Law No. 73-17, setting out its underlying logic and the mechanisms through which it operates (I). The second assesses the effectiveness of those mechanisms, identifying the conditions on which they depend, the structural limits that compromise them, and the reforms that a genuinely anticipatory model would require (II)

I. Corporate Distress Prevention under Moroccan Law:

Corporate distress rarely emerges suddenly. In most cases financial difficulties emerge progressively, manifesting through declining revenues, liquidity shortfalls, rising indebtedness, or operational inefficiencies. If these warning signs are identified and addressed at an early-stage businesses may avoid insolvency and preserve their economic viability. Modern insolvency systems have responded to this reality by shifting their focus from crisis management toward prevention[3].

This preventive orientation reflects a significant evolution in business law. Traditionally, insolvency proceedings were primarily concerned with the liquidation of the debtor's assets and the equitable distribution of proceeds among creditors. Contemporary legal systems, however, have come to recognize that preserving a viable enterprise often serves broader economic and social interests, including employment protection, market stability, and economic growth. As a result, many jurisdictions have developed preventive restructuring mechanisms designed to intervene at an early stage, before financial distress reaches a state of irreversible financial distress[4].

Moroccan law has gradually aligned itself with this evolution. Through successive legislative reforms, particularly the revision of book V of the commercial code by law NO. 73-17, the Moroccan legislator

2 UNCITRAL, Legislative Guide on Insolvency Law (United Nations); World Bank, Principles for Effective Insolvency and Creditor/Debtor Regimes.

3 Mekouar, Fatiha, and Bouchta Aloui. "Legal Mechanisms for Early Warning of Corporate Difficulties in Morocco: Between Myth and Reality." *International Journal of Research in Economics and Finance*, vol. 2, no. 12, 2025, pp. 189–204.

4 Idem.

sought to establish a legal framework capable of detecting business difficulties at an earlier stage and facilitating consensual solutions before insolvency becomes inevitable. This reform reflects a deliberate transition from a curative approach; focused on the treatment of failure to a preventive approach aimed at preserving business continuity[5].

A proper understanding of the Moroccan preventive framework requires examining both the emergence of this preventive philosophy within Moroccan insolvency law and the legal mechanisms established to give it effect. Accordingly, this section first analyses the development of the preventive approach in Moroccan insolvency law before assessing the preventive tools available to distressed businesses.

A- The Emergence of a Preventive Approach:

The preventive turn in Moroccan law is not a stylistic gloss on an otherwise unchanged regime. It reflects a considered choice about the moment at which the law should engage with corporate difficulty and about the interests that engagement is meant to serve. The two subsections that follow set out, first, the paradigm shift from liquidation to prevention and, second, the legislative and, more loosely, constitutional and economic, foundations on which the preventive framework rests.

1- From Liquidation Paradigm to Prevention Philosophy:

The original Book V of the Moroccan Commercial Code, enacted in 1996 and largely modelled on the French law of 25 January 1985[6], reflected a fundamentally creditor-protective, liquidation-oriented paradigm. The statute's architecture centred on the "*redressement judiciaire*" and "*the liquidation judiciaire*", with preventive mechanisms occupying a peripheral and largely theoretical role. This orientation was not peculiar to Morocco; it mirrored the dominant European tradition prior to the paradigm shift inaugurated by the French law of 26 July 2005[7].

The limitations of this approach were empirically manifest. Studies of Moroccan commercial court activity in the early 2000s consistently demonstrated that enterprises entering redressement judiciaire were, in the overwhelming majority of cases, irretrievably insolvent.[8] The statutory promise of enterprise preservation was, in practice, a juridical fiction: courts confirmed rehabilitation plans that were economically unviable, creditors suffered substantial haircuts without achieving long-term recovery, and employment was ultimately lost despite procedural delay. The formal opening of a collective procedure had become, in effect, a prelude to liquidation dressed in the language of rescue.

Recognition of these pathologies animated the 2018 reform. The legislature's declared objective was to shift the temporal locus of legal intervention, encouraging debtors to engage with preventive tools before financial difficulties became irreversible, and equipping those tools with sufficient procedural authority to constitute a credible alternative to judicial procedures. The explanatory memorandum accompanying Law No. 73-17 explicitly invoked the principle of anticipation as the organising concept

5 M. L. Rhalib, "La nouvelle procédure de conciliation : Une attractivité nouvelle pour la prévention externe des difficultés des entreprises marocaines," *Revue des études multidisciplinaires en sciences économiques et sociales*, no. 9 (2018).

6 Loi française n° 85-98 du 25 janvier 1985 relative au redressement et à la liquidation judiciaires des entreprises, JORF du 26 janvier 1985. For the comparative influence on Moroccan law, see Abdelaziz Sqalli, 'Le droit marocain des entreprises en difficulté : influences françaises et spécificités nationales' (2003) Revue Juridique Politique et Économique du Maroc 112, 114–117.

7 Loi française n° 2005-845 du 26 juillet 2005 de sauvegarde des entreprises, JORF n° 173 du 27 juillet 2005. See Françoise Pérochon, Entreprises en difficulté (11th edn, LGDJ, Paris, 2022), 1–15.

8 Ministère de la Justice, Rapport annuel sur les juridictions commerciales (Ministère de la Justice, Rabat, 2015), cited in Fadlallah and Berrada Gouzi (n 5) 46. See also Mohammed El Mernissi, 'L'efficacité du droit des entreprises en difficulté au Maroc' (2016) 23 Revue Marocaine d'Administration Locale et de Développement 78, 82.

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of the reform, signalling a conscious effort to displace the culture of late-stage intervention that had characterised the pre-reform era[9].

2- Constitutional and Legislative Foundations:

The preventive turn in Moroccan insolvency law did not emerge in a legislative vacuum. It was supported by broader constitutional and policy commitments. The Moroccan Constitution of 2011 enshrines the freedom of enterprise and the protection of property rights as fundamental guarantees,[10]creating a constitutional backdrop against which purely liquidation-oriented insolvency law suits uneasily. More directly, the Charter for Enterprise Reform and the National Pact for Industrial Emergence articulated an economic policy commitment to reducing business mortality and improving the resilience of the enterprise sector.[11]

At the legislative level, the preventive architecture is constructed primarily through Title I of Book V of the Commercial Code, as restructured by the 2018 reform. Articles 546 to 569 of the Commercial Code govern the confidential preventive procedures, while Articles 570 to 609 establish the safeguard procedure as a judicial, collective preventive mechanism.[12] The 2018 reform also introduced significant amendments to the conditions for opening judicial rehabilitation and liquidation procedures, notably by modifying the definition of the state of cessation of payments and tightening the procedural gateway to collective procedures, thereby at least in theory channelling more cases towards the preventive track.[13]

Institutionally, corporate distress proceedings in Morocco fall within the jurisdiction of specialised commercial courts, originally established by Law No. 53-95. While Morocco initially had eight commercial courts, recent amendments to the judicial map increased their number to ten, notably through the creation of commercial courts in Laâyoune and Dakhla. These courts are intended to provide specialised judicial expertise in commercial matters, including preventive and collective proceedings. However, their effectiveness continues to depend on the consistency of judicial practice, the availability of specialised resources, and the ability of the courts to handle corporate distress cases in a timely and economically informed manner[14].

B. Preventive Mechanisms Available to Companies in Financial Difficulty:

Having established the philosophy and foundations of the preventive framework, the analysis turns to the mechanisms through which prevention is operationalised. Book V offers a calibrated set of devices that differ in their degree of judicial involvement and in the confidentiality they afford. The first

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9 Exposé des motifs, Projet de loi n° 73-17 modifiant et complétant le livre V du Code de commerce, présenté au Parlement en octobre 2017, 3–5.

10 Constitution du Royaume du Maroc du 29 juillet 2011, Bulletin Officiel n° 5964 bis du 30 juillet 2011, art. 35 (liberté d'entreprendre et libre concurrence).

11 . Pacte National pour l'Emergence Industrielle 2009-2015, Ministère de l'Industrie, du Commerce et des Nouvelles Technologies (Rabat, 2009). See also Charte de la PME, Loi n° 53-00 formant charte de la petite et moyenne entreprise, Dahir n° 1-02-188 du 23 juillet 2002, Bulletin Officiel n° 5036.

12 Code de commerce (Maroc), Livre V, Titre I (art. 546–569, procédures préventives amiables) and Titre II, Chapitre I (art. 570–609, procédure de sauvegarde), as amended by Loi n° 73-17.

13 Kettani, Nadia. "La réforme du droit des entreprises en difficulté par la loi 73-17 : avancées et zones d'ombre." *Revue Marocaine de Droit des Affaires*, vol. 7, 2019, pp. 31–38.

14 Maroc, *Loi n° 53-95 instituant des juridictions de commerce*, promulguée par le Dahir n° 1-97-65 du 4 chaoual 1417 (12 février 1997), telle que modifiée par le Décret n° 2-22-62 du 25 février 2022 portant augmentation du nombre des tribunaux de commerce et fixation de leur ressort territorial, *Bulletin officiel* n° 4482 du 15 mai 1997 et n° 7079 du 4 avril 2022.

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subsection examines the confidential procedures, the special representative, closely modelled on the ad hoc mandate, and conciliation; which allow a debtor to address difficulties discreetly and by agreement. The second examines the safeguard procedure, a mechanism that remains preventive in its purpose yet judicial in its form, and the early warning duties that are meant to bring difficulties to light before any procedure is opened.

1- Confidential Preventive Procedures: Ad Hoc Mandate and Conciliation:

External prevention introduces a measured judicial presence while preserving the confidentiality that distinguishes preventive treatment from collective proceedings. Article 549 gives the president of the commercial court a central role at this stage. Where facts of a legal, economic, financial or social character are such as to compromise the continuity of operations, the president may summon the company director to consider the measures appropriate to redress the situation.[15] The president's function is facilitative rather than adjudicative. It is meant to prompt a timely response without exposing the enterprise to the publicity and rigidity of a formal procedure, and its effectiveness has long been understood to turn on the quality of the information that reaches the court and on the readiness of the director to engage[16].

Where the situation calls for structured but still confidential assistance, Article 550 permits the appointment of a special representative charged with helping the debtor identify and implement corrective measures.[17] This mechanism is closely related to the ad hoc mandate familiar from comparative practice: it places a neutral intermediary at the debtor's side, without divesting management or opening a collective procedure, and it leaves the negotiation of solutions to the parties.[18] The special representative embodies the preventive ideal in its least intrusive form expert support deployed early, discreetly and consensually, but for the same reason its success rests entirely on the debtor's willingness to seek it and on the cooperation of those whose concessions the corrective plan requires.

Conciliation, governed by Articles 551 to 559, is the principal confidential procedure of the preventive stage.[19] Its conditions of access are narrower than those of external prevention, and the difference repays attention. Under Article 551, conciliation is available to an enterprise that is not in cessation of payments but faces economic or financial difficulties, or financing needs that cannot be covered by funding appropriate to its capacity. The legal difficulty expressly contemplated for external prevention under Article 549 does not reappear among the conditions for conciliation. That silence need not be deliberate, yet it may be read as a limitation, or at least an ambiguity, in the design of the procedure: a company whose troubles are primarily legal in origin may find the president's general preventive power open to it while the structured machinery of conciliation is not. The procedure operates under the authority of the president of the commercial court, who, on the debtor's petition, appoints a conciliator to broker an agreement between the debtor and its principal creditors.[20]

15 Moroccan Commercial Code, art. 549.

16 A. Barjani, "Le rôle du président dans la prévention de la cessation des paiements," 2004.

17 Moroccan Commercial Code, art. 550.

18 A. Choukri-Sbaai, L'intermédiaire dans les procédures de prévention des difficultés des entreprises, 2000.

19 M. L. Rhalib, "La nouvelle procédure de conciliation : Une attractivité nouvelle pour la prévention externe des difficultés des entreprises marocaines," Revue des études multidisciplinaires en sciences économiques et sociales, no. 9, 2018.

20 Moroccan Commercial Code, art. 558.

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The procedure is negotiated, not imposed. The conciliator holds no coercive power; the task is to broker an amicable agreement that reschedules the enterprise's commitments while keeping its activity alive. To open the space such negotiation requires, the president may order a temporary stay of proceedings, holding creditor pressure in abeyance for a limited period. Once an agreement is reached it may be approved by the court, which gives it a degree of legal security and, throughout its implementation, suspends individual enforcement actions against the debtor. The structure is deliberately light: it leaves the substance of the settlement to the parties and confines the court to supervision and protection.

Two features give conciliation much of its practical appeal. The first is confidentiality, which allows a company to renegotiate its position without the reputational damage that accompanies public insolvency and which is, for many directors, the precondition of any early recourse at all. The second is the priority that Article 558 confers on creditors who advance new money to support the enterprise during conciliation, a protection intended to overcome the natural reluctance to finance a firm in difficulty.[21] By improving the position of rescue financing, the provision addresses one of the recurrent obstacles to consensual restructuring and aligns Moroccan law with the comparative tendency to privilege fresh funding as a condition of successful rescue.[22]

The limits of conciliation, however, are inseparable from its strengths. The difficulties that justify opening the procedure are defined in broad and somewhat indeterminate terms, leaving considerable room for appreciation as to when recourse is warranted; and the texts are not precise as to the documents that must accompany the petition, which complicates the early and informed assessment of the enterprise's situation. More fundamentally, the procedure is doubly dependent on goodwill. It depends on the good faith of the debtor, who alone decides whether and when to seek it, and on the cooperation of creditors, whose concessions cannot be compelled. Where either is wanting, conciliation produces no agreement and the enterprise continues to deteriorate. Each of these features carries the same risk: that recourse will come too late, once the difficulties have advanced beyond the reach of a consensual solution. Conciliation, in short, is a well-designed instrument that performs only when it is invoked early and met with cooperation, conditions that the procedure itself cannot guarantee.

2. Judicial Prevention Mechanisms: The Safeguard Procedure and Early Warning Duties:

The safeguard procedure occupies a distinctive position at this stage. It is preventive in purpose yet judicial in form: open only to an enterprise that has not yet ceased payments, but supervised by the court from the moment it begins. The two governing provisions answer different questions and should be kept apart. Article 560 defines the purpose of the safeguard procedure, namely enabling the enterprise to overcome its difficulties, continue its activity, preserve employment and clear its liabilities.[23] Article 561 then fixes its preventive threshold: the procedure may be opened only where the enterprise is not yet in cessation of payments but faces difficulties it cannot overcome and which may lead to cessation of payments in the near future.[24] The distinction matters. The first article tells us what safeguard is for; the second tells us when it may be used. It is the second that places the procedure firmly on the preventive side of the line dividing rescue from insolvency.[25]

21 Moroccan Commercial Code, art. 558.

22 A. Jacquemont, Droit des entreprises en difficulté : La procédure de conciliation, les procédures collectives de sauvegarde, redressement et liquidation judiciaire, 5th ed., 2007.

23 Moroccan Commercial Code, art. 560.

24 Moroccan Commercial Code, art. 561.

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Access to safeguard is conditioned on preparation. Article 562 requires the debtor's petition to be accompanied by a draft safeguard plan setting out the measures envisaged for the recovery of the enterprise.[26] The requirement is more demanding than it first appears. It presupposes that the debtor can produce reliable financial information and form a coherent view of its own prospects before the deterioration has become unmanageable. The instrument thus rewards the prepared debtor and offers little to the one who has let the situation drift, which is to say that it favours precisely the early, informed self-assessment that the firms most exposed to failure are least able to perform.

Once the petition is filed, the court does not act on the debtor's representations alone. Article 563 allows the court to inform itself as to the situation of the enterprise and, where appropriate, to be assisted by an expert in evaluating its difficulties and the viability of the proposed measures.[27] The subsequent provisions, Articles 567 to 573, govern the preparation, adoption, implementation and possible termination of the safeguard plan, structuring the period during which the enterprise, under judicial supervision, seeks to give effect to its recovery.[28] The plan is the operative core of the procedure: it organises the rescheduling of liabilities and the measures of reorganisation, and its eventual success or failure determines whether the enterprise emerges restored or passes into reorganisation or liquidation.

Safeguard is therefore best understood as a hinge between prevention and judicial crisis intervention. It retains the preventive premise; action before cessation of payments, while importing the apparatus of the court, with the publicity, formality and supervision that this entails. Its placement at this threshold also explains its ambivalence in practice. For a director willing to act early, safeguard offers the protection of the court while the enterprise is still viable; for one who fears the exposure of judicial involvement, it may appear a step too close to insolvency, to be deferred until events overtake the choice. The same proximity that gives safeguard its rescue potential thus also discourages its timely use.

The preventive value of safeguard, like that of conciliation, ultimately depends on what precedes it: the timely surfacing of difficulties through the internal early warning duties. Articles 547 and 548 charge the internal actors of the enterprise in particular the statutory auditor, where one exists, together with shareholders and the company director, with detecting and signalling facts capable of compromising the continuity of operations, so that corrective measures may be considered before the situation deteriorates.[29] These duties are the true point of entry to the preventive system, since no procedure can be opened in time if the difficulty is never brought to light. Their effectiveness, examined in the next Part, is the decisive variable on which the entire preventive edifice depends.

II. Assessing the Effectiveness of Preventive Mechanisms:

The preceding Part reconstructed a framework that is, on its face, coherent and ambitious: a graduated set of devices that escort the enterprise from internal vigilance through confidential negotiation to judicial safeguard, reserving collective proceedings for genuine insolvency. The question that remains is whether this architecture performs in practice the function it performs on paper. Answering it requires distinguishing the design of the mechanisms from the conditions of their operation. This Part first identifies the structural limits that compromise the current framework (A) and then sketches the

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25 F. Roussel Galle, "La procédure de sauvegarde : Quand et pourquoi se mettre sous la protection de la justice," 2006.

26 Moroccan Commercial Code, art. 562.

27 Moroccan Commercial Code, art. 563.

28 Moroccan Commercial Code, arts. 567–573.

29 Moroccan Commercial Code, arts. 547–548; see also Law No. 17-95 on public limited companies and Law No. 9-88 on the accounting obligations of traders.

contours of a more effective model, one that would move Moroccan law from procedural prevention towards continuous corporate risk governance (B).

A. *The Limits of the Current Preventive Framework:*

The limits of the Moroccan preventive framework are not, for the most part, defects in the drafting of individual procedures. They are conditions of effectiveness that the law presupposes but cannot itself supply: the willingness of the debtor to act early, the availability of reliable information, the diligence of internal monitors, and the institutional capacity to coordinate a response. Where these conditions are absent, even well-designed procedures fail to engage, and the tiered scheme slides towards its terminal stages. The analysis proceeds in two steps. It considers first the linked problems of delayed recourse and weak internal alerts, which govern the moment at which difficulties surface (1), and then the constraints on external prevention, together with the institutional and cultural obstacles that surround it (2).

1- Delayed Recourse and Weak Internal Alert Mechanisms:

Two failures gather at the entrance to the preventive system, and they are connected. Recourse tends to come too late, and the internal signals that ought to prompt it in time are faint. The first defect is one of timing, the second one of detection; each feeds the other, since a difficulty that is never signalled cannot be treated early, and a system that treats difficulties only late gives internal actors little reason to signal them promptly. Taken together they explain why so many enterprises reach the preventive procedures already beyond the threshold that would have made those procedures useful.

The first and most consequential limit is delayed recourse. The whole preventive logic rests on a temporal premise: prevention works only while the enterprise has not yet ceased payments, for it is cessation of payments that marks the passage from prevention to insolvency and opens the door to judicial reorganisation and liquidation[30]. The Code itself draws the line. Safeguard is barred once payments have ceased under Article 561, while the rules on judicial reorganisation and the treatment of cessation of payments. Articles 575 to 578, together with the conversion mechanism of Article 564, govern the enterprise once it has crossed into insolvency.[31] Beyond that line the preventive devices fall away and the collective treatment of an insolvent enterprise takes over. The difficulty is that the decision to invoke prevention rests with actors who have every short-term incentive to defer it, and the law offers no reliable trigger that operates independently of their inertia. The predictable result is that many enterprises reach the preventive procedures only when they are no longer eligible for them.

This brings the analysis to the weakness of the internal alert mechanisms, on which the timely surfacing of difficulties depends. Articles 547 and 548 assign the detection and signalling of difficulties to the internal actors of the enterprise, principally the statutory auditor, the shareholders and the director.[32] In the larger company equipped with a competent auditor, this arrangement may function as intended. In the firms that dominate the Moroccan economy it frequently does not. A great many small companies are not required to appoint, and do not appoint, a statutory auditor, so that the actor best placed to identify deterioration is simply absent.[33] Where the duty falls back on shareholders, it encounters a familiar difficulty: shareholders often lack the financial expertise to read the warning signs and enjoy

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30 Abdeljalil El Hammoumi, Droit des difficultés des entreprises : La prévention des difficultés, le redressement judiciaire, la liquidation judiciaire, 3rd ed., 2008.

31 Moroccan Commercial Code, arts. 561, 564 and 575–578.

32 Moroccan Commercial Code, arts. 547–548; see also Law No. 17-95 on public limited companies and Law No. 9-88 on the accounting obligations of traders.

33 Fatiha Mekouar and Bouchta Aloui, “Legal Mechanisms for Early Warning of Corporate Difficulties in Morocco: Between Myth and Reality,” International Journal of Research in Economics and Finance, vol. 2, no. 12, 2025, pp. 189–204.

only limited access to the financial information that would allow them to act. Employee representatives, who in comparative systems contribute to early detection, are not fully integrated into the Moroccan alert mechanism. And in every case the procedure depends on the willingness of internal actors to raise an alarm that may embarrass management and unsettle the firm a willingness that cannot be assumed. The alert, meant to be the system's first line of defence, is in practice its weakest link.[34]

2- External Prevention, Institutional Constraints and Cultural Obstacles

Where internal detection falters, the external safeguards are meant to compensate. They do so only imperfectly. The president of the commercial court can act on no more than the court is told, and the wider setting in which prevention must operate its professional culture, its accounting practices, its judicial resources, tends to work against early intervention rather than for it. The weaknesses examined here are therefore less legal than institutional, and they are the harder to remedy for that reason.

External prevention is exposed to constraints of a related kind. The president of the commercial court is given a genuine preventive role under Article 549, reinforced by the information-gathering function that surrounds conciliation under Article 552.[35] Yet the president can act only on what is known to the court, and the quality of that knowledge is uneven. Effective external prevention depends on the timely transmission of information, on the cooperation of the debtor once summoned, on the reliability of registry data, on the resources available to the court, and on access to the expertise needed to assess a company's situation. Where information is incomplete or arrives late, where the debtor is evasive, or where the court lacks the means to investigate, the president's preventive function is reduced to a formality. The mechanism is sound in conception but starved, in practice, of the inputs it requires.

Underlying these specific weaknesses is a set of institutional, practical and cultural obstacles. There remains a limited culture of prevention, in which recourse to a procedure even a confidential one is read as an admission of failure rather than as prudent management, so that directors delay until concealment is no longer possible. The fear of reputational damage reinforces this delay. Weak accounting transparency deprives both internal and external actors of the timely and trustworthy information on which any early diagnosis must rest. Restructuring expertise is scarce, among advisers as among the professionals who staff the procedures. Judicial resources are limited, constraining the capacity of courts to monitor and support enterprises in difficulty. And a significant part of Book V continues to operate only after distress has crystallised: the rules governing the suspect period, the extension of liability to directors for management fault and insufficiency of assets, and the sanctions attaching to fraudulent bankruptcy found, among others, in Articles 680, 712 to 715, 738, 740, 745 and 754 to 756 take effect once the enterprise has already failed.[36] These provisions are necessary, but their prominence is telling: a framework that devotes such detail to the consequences of insolvency, while leaving the triggers of prevention to the discretion and goodwill of internal actors, reveals where its practical weight still lies.[37] The tension announced at the outset between early risk anticipation and late-stage crisis intervention is thus not merely conceptual; it is inscribed in the very balance of the legislation.

34 Ordre des Experts-Comptables, Manuel des normes d'audit légal et contractuel : Titre 7 – Le commissaire aux comptes et la prévention des difficultés d'entreprise, 2009 ; CNCC, Le commissaire aux comptes et la continuité d'exploitation, 1998.

35 Moroccan Commercial Code, art. 552.

36 Moroccan Commercial Code, arts. 680, 712–715, 738, 740, 745 and 754–756.

37 M. Drissi Alami Machichi, Droit commercial fondamental au Maroc, 2006.

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B. *Towards a More Effective Prevention Model:*

If the limits of the current scheme are preconditions the law assumes but does not itself create, then reform must be directed at those preconditions rather than at the procedures alone. The object is not to multiply preventive devices Law No. 73-17 already supplies a complete set but to ensure that difficulties are detected and acted upon while the devices can still do their work. The reforms sketched below fall into two groups. The first would sharpen early detection and equip the courts to act on it (1); the second would gather these measures into a single organising idea, the passage from prevention conceived as a procedure to prevention exercised as a continuous function of corporate governance (2).

1- *Strengthening Early Detection and Judicial Prevention Capacity:*

Detection and capacity are complementary. Information generated inside the enterprise but with nowhere to go is as unproductive as a court prepared to act that hears nothing. Reform must therefore work on both sides at once: improving the signals that emerge from within the firm, and building, within the commercial courts, the means to receive and respond to them.

The first set of measures concerns detection. The alert duties of statutory auditors could be strengthened and their timing and consequences clarified, so that an auditor who identifies a threat to continuity is bound to act at a defined point and according to a defined sequence, rather than at large.[38] Because so many vulnerable companies operate without an auditor at all, accounting and audit support should be extended to them, whether through proportionate obligations or through assisted schemes, so that the absence of a monitor does not entail the absence of monitoring. Shareholder information rights deserve reinforcement, for an alert that depends on shareholders presupposes that shareholders can see what they are meant to detect. The cautious integration of employee representatives into the alert mechanism, under appropriate confidentiality safeguards, would add a further source of early information without exposing the enterprise to premature publicity. And all of this would be served by the development of standardised early warning indicators financial and operational signals whose appearance triggers attention which would substitute objective markers for the subjective judgement on which detection now largely rests.[39]

The second set concerns the capacity of the courts. Dedicated prevention units within the commercial courts could concentrate expertise, monitor signals and engage enterprises before difficulties harden, giving the president's preventive role the support it currently lacks. Fuller use of the commercial register, complemented by digital monitoring systems capable of flagging distress signals from filings and other data, would supply the courts with the timely information whose absence presently disables external prevention. Measures of this kind would convert prevention from a procedure that waits to be invoked into a function that observes continuously; a shift developed in the subsection that follows.

2- *From Procedural Prevention to Continuous Corporate Risk Governance:*

The measures considered so far share a premise, and stating it plainly yields the central proposal of this article. Prevention will remain intermittent for as long as it is organised around discrete procedures that must be invoked. It becomes effective only when it is reconceived as an ongoing function sustained by coordination among the actors who hold the relevant information, and exercised continuously rather than in reaction to crisis. The reforms of detection and capacity examined above are, on this view, means to a larger end: the embedding of anticipation in the ordinary governance of the enterprise and its institutional environment.

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38 S. Bachlouch, La prévention et le règlement amiable des difficultés des entreprises en droit comparé franco-marocain, doctoral dissertation, Université Paris Est-Créteil, 2012.

39 F. Crucifix and A. Dernis, Symptômes de défaillance et stratégie de redressement de l'entreprise, Maxima, 1992.

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A final set of reforms concerns coordination and competence. Effective prevention requires the alignment of actors who at present operate in isolation: courts, tax authorities, social security bodies, banks, auditors and professional advisers each hold fragments of the picture, and a framework for sharing and acting on that information would allow difficulties to be seen whole and addressed early. Specialised training for the judges, trustees, conciliators and special representatives who operate the procedures would raise the quality of intervention across the system. And the protection of rescue financing under Article 558 could be strengthened further, since the willingness to fund a firm in difficulty is among the decisive determinants of whether prevention succeeds.[40]

This is the reorientation towards which the whole argument points. The deficiency of the current model is that prevention is conceived as a set of procedures to be triggered, rather than as a continuous function to be exercised; it waits for an actor to act, at a moment that, for the reasons examined above, tends to arrive too late. The reform that the analysis suggests is therefore a shift from procedural prevention to continuous corporate risk governance — an arrangement in which the monitoring of enterprise health is ongoing, distributed among informed actors and supported by institutional infrastructure, so that the formal procedures of Book V are entered not as a belated response to crisis but as the natural continuation of a process of vigilance already under way. Only on that footing can the preventive promise of Law No. 73-17 be made effective rather than merely formal.

Conclusion:

Law No. 73-17 effected a real and deliberate change in the orientation of Moroccan corporate distress law. By repealing and replacing Book V, the legislature displaced liquidation from the centre of the regime and built in its place a tiered scheme of prevention, in which internal and external prevention, the special representative, conciliation and safeguard precede, and are meant to forestall, the collective treatment of insolvency. Measured against the international standards it sought to approach, the reform is, in its design, a competent and modern instrument.

The argument of this article has been that design is not, by itself, effectiveness. The Moroccan preventive mechanisms work only under conditions that the law presupposes but does not guarantee: early disclosure by a debtor with every incentive to delay, financial information that small enterprises often cannot produce, internal monitors who may be absent or unwilling, and an institutional apparatus equipped to coordinate a timely response. Where these conditions hold, the framework can deliver the rescue it promises. Where they fail as they characteristically do for the very small enterprises that make up most of the Moroccan economy, the graduated structure does not so much operate as collapse, depositing the enterprise directly into judicial reorganisation or liquidation. The recurring tension between early risk anticipation and late-stage crisis intervention is thus resolved, in practice, too often in favour of the latter.

The path beyond this impasse does not lie in further procedures. It lies in transforming prevention from something the law offers into something the enterprise and its institutional environment continuously do a move from procedural prevention to continuous corporate risk governance, in which detection is constant, information flows among the actors who need it, and the formal procedures are reached, when they are reached at all, in time to matter. Whether Moroccan law will take that step is, ultimately, less a question of legislative technique than of the informational and institutional culture in which the technique must operate. The decisive question raised by Law No. 73-17 is therefore not whether Morocco has the right preventive procedures, but whether it can build the conditions under which those procedures are used before it is too late to use them.

40 World Bank, Principles for Effective Insolvency and Creditor/Debtor Regimes.

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