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LEGAL FRAMEWORK FOR CORPORATE RESTRUCTURING AND GOVERNANCE

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ABSTRACT

Governance has emerged as a central concern for both developed and developing countries, driven by global transformations and recurring economic crises over recent decades. In response, increasing attention has been directed toward governance frameworks as essential tools for creating an effective economic environment capable of confronting future challenges—an outcome that can only be achieved through the implementation of clear procedures and regulations. This study seeks to examine governance by exploring its conceptual foundations and practical mechanisms, while also highlighting its core principles and its role in corporate restructuring. Through an analysis of both the theoretical and procedural dimensions of governance, the research emphasizes its critical importance in promoting transparency, accountability, and sustainable organizational.

KEYWORDS

Governance, Corporate Restructuring, Economic Climate

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Introduction

The world is navigating a highly turbulent economic climate marked by intense competition among companies vying for a larger share of the global market. This is particularly evident amid rapid scientific and technological advancements across industries, which have exposed commercial enterprises to complex financial challenges as they strive to meet obligations to creditors. In this environment, commercial risks and corporate financial distress have surged, forcing some companies to declare bankruptcy or undergo liquidation—outcomes that negatively impact national economies and creditors, including financial institutions.

Conversely, in some countries, distressed companies continue operating today thanks to flexible financial restructuring and bankruptcy laws. These legal frameworks, adopted by such nations, have shielded struggling firms from creditor claims and avoided the rush to liquidate assets for debt recovery. For instance, during the 2008 global financial crisis, U.S. mortgage giants *Fannie Mae* and *Freddie Mac*, alongside *Lehman Brothers* and *AIG*, faced historic collapses. However, U.S. government intervention, enabled by its corporate restructuring legal framework, rescued these entities (Al-Hamli, 2016).

Parallel to this, **corporate governance** has emerged as a critical concept in economic discourse, gaining prominence after the economic collapses in East Asia, Latin America, and Russia during the 1990s, as well as recent global financial crises, particularly in the U.S. and Europe (Center, 2015). Corporate governance principles aim to regulate relationships between a company's board of directors and shareholders while safeguarding the interests of creditors, stakeholders, and other parties. These principles ensure operational integrity and sustainability, achievable only by embedding them into legal systems governing finance and business.

Against this backdrop, this study examines the following central question: *To what extent do the legal rules and procedures for restructuring public joint-stock companies reflect corporate governance principles?*

Subsidiary Questions:

- What constitutes the restructuring of distressed companies, and what legal procedures govern corporate restructuring?
- How significant is corporate restructuring in enhancing governance, and which governance principles are embodied in restructuring rules and procedures?

To address these questions, the study will first define corporate restructuring and outline its legal procedures (Section I). It will then analyze the role of restructuring frameworks in operationalizing governance principles (Section II).

Chapter One: The Nature of Corporate Restructuring

In recent years, the scope of interest in the concept of governance has expanded across many advanced and emerging economies, particularly following the economic crises experienced by countries worldwide. In the face of these challenges, which increasingly threaten the global economy, it became necessary to explore the meaning of this term and its procedures.

Subsection One: The Concept of Corporate Restructuring

From an economic perspective, corporate restructuring is defined as a deliberate process of altering the formal relationships between organizational components. This refers to the set of strategies, plans, programs, and policies developed by management or relevant authorities to reduce costs and improve operational efficiency. This stage may involve practical decisions, such as closing certain units, liquidating others, or merging them. In extreme cases, the supervisory management overseeing the restructuring may ultimately resort to a full merger of the company as a solution to save it from liquidation. The primary focus of restructuring lies in safeguarding the interests of shareholders and the company's creditors (Babiker, 2016).

From a legal perspective, the Jordanian Companies Law No. (22) of 1997 and its amendments does not address the restructuring of distressed companies, except for what is stated in Article (114/d) regarding the restructuring of a company's capital through reduction or increase during an extraordinary general assembly meeting. Additionally, Article (168) addresses the dissolution of the board of directors if the company faces adverse financial or administrative conditions that negatively impact the rights of its shareholders or third parties.

However, the **Insurance Business Regulation Law No. (33) of 1999** and its amendments defined **corporate restructuring** as:

« The management of a company and the organization of its financially distressed affairs through negotiation with all its creditors, for the purpose of determining the company's indebtedness and scheduling the repayment of these debts. This is achieved by developing a restructuring plan approved by a neutral committee that replaces the board of directors to accomplish this objective, based on a decision by the Insurance Authority's board of directors. According to Article (8/A) of the Insurance Business Regulation Law, this board consists of the Minister of Industry and Trade as Chairman, the Director General as Vice Chairman, and five Jordanian nationals with expertise and specialization in the financial and economic sectors. »

Similarly, the **UNCITRAL Legislative Guide on Insolvency Law** defined restructuring as:

"A process that assists the debtor in rehabilitating their business. Under this guide, the 'debtor' refers to a natural or legal person engaged in commercial activities that meet the conditions required to initiate insolvency proceedings. Restructuring, as outlined in this guide, is carried out through several measures, including debt forgiveness, debt rescheduling, or debt-to-equity conversion"(UNCITRAL, 2021). *The guide regulates the insolvency of debtors engaged in commercial activities, whether the debtor is a natural person or a commercial company, with the process overseen by a court or an administrative authority* (Al-Kharabsheh, 2008).

Additionally, the **Jordanian Draft Law on Reorganization, Bankruptcy, and Liquidation of 2011** regulates corporate restructuring in detail through **Chapter One** titled "Reorganization," spanning Articles (3) to (15). The concept of restructuring, as outlined in **Article (8)** of the draft law, is defined as: *"The development of a comprehensive action program specifying the following:*

1. *Identifying the financial, operational, administrative, and legal situations of the company, along with the procedures to be followed to address these situations.*
2. *A list of the company's rights and obligations, including records of the names and addresses of creditors and debtors, as well as the rights of employees.*
3. *A timetable for implementing the plan, specifying the responsible parties and the expected duration of implementation, which shall not exceed two years."*

Based on the above, it can be stated that **corporate restructuring** involves the appointment of an **administrative or judicial authority** by the relevant regulatory bodies, upon request from the concerned parties of the company, to address its **financial distress**. This authority undertakes the resolution of the company's financial, legal, and administrative conditions **with the aim of ensuring its continuity**, safeguarding the rights of creditors and shareholders in the company's capital, and **avoiding its entry into liquidation**—whether voluntary or compulsory.

Section Two: Legal Procedures for Corporate Restructuring

Jordanian legislation, including the **Companies Law**, **Insurance Business Regulation Law**, and **Banking Law**, has referenced certain legal procedures for corporate restructuring. In parallel, the **Jordanian Draft Law on Reorganization, Liquidation, and Bankruptcy of 2011**, issued by the Companies Control Department, comprehensively regulates restructuring procedures.

Efforts to reform Jordan's legal framework for bankruptcy began in 2009 when the **Companies Control Department** at the Ministry of Industry and Trade—in collaboration with government entities, private sector representatives, chambers of commerce and industry, banks, judges, lawyers, and university professors—drafted the **"Commercial Insolvency Law Project of 2009."** This draft was submitted to the Prime Minister's Office. Upon referral to the Ministerial Legal Committee, the committee recommended further review to determine whether a standalone law was necessary or if amendments to the Companies Law would suffice to incorporate provisions for restructuring distressed companies and regulating judicial settlements of their debts (Integrity, 2014).

In 2012, the Companies Control Department, in partnership with the **International Finance Corporation (IFC)**, prepared a revised draft of the law. This draft underwent multiple reviews by the **Legislation and Opinion Bureau**, with further amendments introduced during discussions in the Ministerial Legal Committee.

On **November 14, 2012**, the Council of Ministers approved the final version of the **"Law on Reorganization of Business Affairs, Bankruptcy, and Liquidation of 2012"** along with its explanatory memorandum. The draft was referred to the House of Representatives on **November 22, 2012**, which subsequently transferred it to the House's Legal Committee during its session on **February 13, 2013**. Later, the draft was forwarded to the **House's Economy and Investment Committee**, where it remains under review and study (Integrity, 2014).

The draft law introduced innovative reform concepts absent in current legislation, most notably **reorganization** and **judicial settlement**. It consolidated bankruptcy provisions from the **Commercial Code**, **mandatory liquidation**, and **voluntary liquidation** rules under the Companies Law into a single unified law (Integrity, 2014).

The draft organized the rules and procedures for corporate restructuring in **Chapter One**, titled **"Reorganization"** (Articles 4 to 15). It outlined key rules and procedures necessary for reorganization, including:

1. **Submission of Restructuring Plan**:
   - The company must, within one year of experiencing financial distress, submit a request and a comprehensive restructuring plan to the competent court, provided specific conditions are met. The court, upon formal acceptance of the request, appoints an expert to study the proposal and submit a report.
2. **Court Decision and Stay of Proceedings**:
   - A court decision to formally accept the reorganization request results in a stay of all lawsuits and claims against the company related to its commercial activities before any judicial authority, pending the court's final decision on approving the restructuring plan.

3. **Creditor Voting and Court Approval**:

o If the court approves the reorganization request, the expert is tasked with convening creditors to vote on the plan. The court ratifies the plan if approved by creditors representing **over 60% of total debts**, including both secured and unsecured creditors. The court appoints a supervisor to oversee implementation, and its decision is final and unappealable.

4. **Binding Nature of the Plan**:

o The plan becomes binding upon approval by **60% of creditors** and court ratification, applying to all creditors—including those who abstained from voting, dissented, or hold secured claims.

5. **Plan Amendments and Termination**:

o During implementation, the court may approve amendments to the plan upon request by the implementer or supervisor, provided the extension does not exceed **one additional year**. The court may also approve termination or changes to the plan's implementer/supervisor upon request by creditors representing **at least 50% of total debts** (regardless of security status) or by the board of directors.

6. **Termination of the Plan**:

o The reorganization plan terminates if:

- The plan period expires without full implementation;
- The company breaches the plan;
- The board engages in fraudulent or prohibited acts;
- The court issues a termination decision independently or based on the supervisor's recommendation.

The **UNCITRAL Legislative Guide on Insolvency Law** was issued to encourage states to adopt effective national frameworks for corporate insolvency(UNCITRAL, 2021). Many countries, including the UAE through **Federal Decree-Law No. (9) of 2016 on Bankruptcy**, have adopted corporate restructuring systems in line with UNCITRAL's guidance to protect local economies by ensuring business continuity—a policy that indirectly fosters international trade growth and stability (Decree-Law, 2016).

Chapter Two: The Role of Corporate Restructuring Systems in Embodying Governance

The proper application of governance principles fosters a stable operational environment characterized by financial and economic stability, granting companies a competitive edge in attracting clients and capital. This section explores the role and significance of governance in corporate restructuring.

Section One: Governance in Restructuring Rules and Procedures

Corporate governance frameworks regulate the relationships between a company's management, board of directors, shareholders, and other stakeholders. They establish not only the structure for defining and achieving corporate objectives but also the standards for monitoring performance. Effective corporate governance incentivizes the board and management to pursue goals aligned with the company's and shareholders' interests, while fostering the confidence needed to attract investments and expand operations. Significant international efforts have been made to develop corporate governance principles (OECD, 2003), which include obligations for decision-makers when the entity is solvent.

Before highlighting governance features within restructuring rules and procedures, we start from the premise that a company facing financial distress—thereby falling into the category of financially troubled entities requiring restructuring to avoid liquidation or bankruptcy—reflects administrative and organizational flaws in its operations. Such indicators suggest a failure to adhere to governance principles, leading to financial instability. However, companies compliant with governance standards may still face financial crises due to global economic shocks indirectly impacting their financial health.

The above does not preclude aligning restructuring rules and procedures with governance principles. As evident in the **Jordanian Draft Law on Reorganization, Bankruptcy, and Liquidation of 2011** and the **UNCITRAL Legislative Guide**, restructuring systems primarily emphasize **disclosure and transparency**. For instance, requiring a company to submit a restructuring request to regulatory authorities, accompanied by a detailed report on its financial status and reasons for the request, constitutes a disclosure of its financial distress. From a lender's perspective (e.g., financial institutions), recognizing a borrower's financial difficulties and imminent insolvency drives efforts to maximize the debtor's asset value to recover debts. Creditor support for restructuring or liquidation plans depends on the quality of available information. To restructure a company's finances, lenders must assess the feasibility of extending repayment terms, rescheduling debt, deferring interest payments, providing new financing, or converting debt to equity. All these efforts rely on **transparency** (Bank, 2005).

Transparency enhances decision-making confidence and encourages restructuring agreements. This option is often preferable, as it typically yields higher creditor returns compared to direct liquidation through legal proceedings. It also spares creditors additional costs, administrative complexities, and uncertainties associated with liquidation. The author argues that embedding disclosure and transparency in restructuring systems extends and reinforces these principles across all corporate stages—from establishment and management to potential collapse or insolvency.

Restructuring procedures mandate **judicial-led negotiations** overseen by a competent court. The court appoints an economic expert to supervise the preparation and execution of a restructuring plan. Central to this plan is convening all stakeholders affected by the company's financial distress—primarily creditors—to reach practical agreements on debt rescheduling, debt-to-equity conversions (via capital increases), and other solutions that actively protect third-party rights and interests, thereby embodying governance principles (UNCITRAL, 2021).

Restructuring rules and procedures also reflect the **oversight role** of regulatory bodies, such as the **Companies Control Department** or the court issuing restructuring decisions. The court's supervisory role extends to monitoring plan implementation, requiring the appointed expert to submit periodic reports on the company's progress and issuing appropriate rulings—such as terminating restructuring for liquidation, replacing the trustee (responsible for executing the plan) in cases of misconduct, or halting proceedings if the company demonstrates recovery before full plan completion. These measures illustrate the integration of **accountability** into the system. However, the researcher advocates enhancing oversight by empowering regulatory bodies (e.g., the Companies Control Department) to subject financially distressed companies (based on accounting indicators) to mandatory restructuring, rather than limiting activation to voluntary requests. This approach would maximize the system's benefits for corporate continuity and growth.

Section Two: The Importance of Restructuring in Enhancing Governance Objectives

The significance of the restructuring system lies in its ability to allow debtors to reorganize their debts, restructure financial obligations, secure new loans under favorable terms, and protect them from criminal prosecution. It decriminalizes financial obligations for insolvent individuals, prevents creditors from hastily liquidating debtor assets, and ensures swift resolution of proceedings.

Applying restructuring mechanisms to financially distressed companies positively impacts the broader economy by reintegrating insolvent entities into the market, thereby supporting economic growth. It enhances a country's competitiveness in ease of doing business, elevates governance and transparency standards, and attracts investors—particularly foreign ones—who prioritize markets with advanced legal frameworks that mitigate business risks. Such laws incentivize economic actors to innovate, boost productivity, and foster a business environment characterized by transparency, governance, and fairness (Debbas, 2016).

From an economic perspective, restructuring and bankruptcy laws hold profound importance. They encourage productivity, innovation, and equitable treatment of distressed companies by providing a clear risk management framework. This system prevents rash bankruptcy declarations, offers creditors avenues to recover funds, and grants debtors breathing room to recover. Collectively, these measures strengthen investor confidence, attract foreign investment, protect SMEs, improve the local economy's global competitiveness ranking, and ultimately drive sustainable economic growth.

Advanced economies highlight the strategic value of restructuring and bankruptcy laws in enriching legal and regulatory infrastructure tied to economic governance and rights protection. However, in many countries, including Jordan, insolvency law proposals—such as the 2009 draft—remain stalled in bureaucratic processes for years without urgent prioritization.

The severe losses suffered by Jordanian distressed companies, including those listed on regional markets like the **Amman Financial Market**, after the 2008 global financial crisis, severely impacted shareholders and creditors. Many public shareholding companies sought restructuring to safeguard stakeholder rights and resume operations. Yet, the absence of a formal insolvency law hindered these efforts.

Given the regional push to attract foreign and domestic investments, combat poverty and unemployment, and enhance economic competitiveness through business-friendly environments, governments must prioritize enacting legal frameworks for bankruptcy, liquidation, and corporate restructuring. These frameworks must ensure transparency, governance, and fairness, engaging legislative, executive, and other stakeholders (Debbas, 2016).

The researcher concludes that the legal system for corporate restructuring is intrinsically linked to governance principles and objectives. By examining how governance principles are reflected in restructuring rules and procedures, the outcomes of implementing such a system become clear:

- **Protecting creditor interests and ensuring corporate continuity.**
- **Contributing to national economic growth and sustainability.**
- **Preserving employment and curbing unemployment.**
- **Providing a regulatory and legislative environment that incentivizes low-risk capital investment.**
- **Attracting foreign investments to stimulate economic activity.**

These outcomes align directly with the goals of governance, which seeks to embed these principles across commercial laws and regulations.

Conclusion:

The points addressed in this study aimed to arrive at a set of findings and recommendations, as follows:

Findings:

1. **Corporate restructuring** involves the intervention of external administrative or judicial authorities to address a company's financial distress, based on a request from the company's board of directors accompanied by reports detailing its financial difficulties.
2. The procedures for corporate restructuring, as outlined in the **Jordanian Draft Law on Reorganization, Liquidation, and Bankruptcy of 2011** and the **UNCITRAL Legislative Guide on Insolvency Law**, entail submitting a restructuring request to the Companies Control Department. The request is then referred to the court, which decides on approving the reorganization. A court-appointed economic expert studies the case, develops a restructuring plan, and requires approval by **60% of the company's creditors**, with a two-year timeframe for implementation.
3. The significance of corporate restructuring lies in **protecting creditors' rights** and stakeholders' interests, rescuing the company from mandatory or voluntary liquidation, and ensuring its continuity and contribution to national productivity—goals aligned with governance principles.
4. Restructuring rules and procedures embody key governance principles. For example, financial reports disclosing the company's distressed status reflect **transparency and disclosure** by the board of directors, while oversight by administrative or judicial authorities enforces **external supervision** over the company. Whereas, Algeria continues to experience a weak flow of investment funds (mabrouki, 2023, p.585).

Recommendations:

Based on the above, we propose the following recommendations:

1. **Strengthen restructuring procedures** by empowering regulatory bodies, such as the **Companies Control Department**, to subject financially distressed companies (identified through periodic financial reports) to mandatory restructuring, rather than limiting activation to voluntary requests. This would reinforce **external oversight** of corporate governance. By relying on modern technological means, most importantly digitization . Its a modern educational trend based primarily on information and communication technology techniques and the following electronic portals and platforms, the aim of which is to produce science and knowledge as required by stage variables and this saves time and effort. (Boutarfa Rochdi, Zedira Khammar, 2024, p.3).

Given the critical role of corporate restructuring laws in resolving distressed companies and their positive economic impact, we urge the **executive authority** to prioritize reviewing and enacting comprehensive legislation on reorganization, liquidation, and bankruptcy.

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