

The Impact of the Devaluation Management of the National Currency Against the US Dollar on the Rights of Contractors in Lebanese Law

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ABSTRACT

The article investigates the impact of national currency devaluation management against the US dollar relative to contractor rights. It demonstrates the source of the problem imposed on Lebanon by banking conditions and policies and provides legal solutions to a problem that many contractors still face. This includes an examination of the judicial approach used by Lebanon's judicial bodies to solve legal issues arising from the devaluation of the national currency. According to the article, practice in Lebanon has revealed institutional confusion in determining the value of the national currency in relation to the dollar. To address the issue of assigning the value of the national flag to the dollar, a unified legal system must be established.

KEYWORDS

Evaluation management, Lebanese Law, National currency, Rights of contractors, US dollar

1 INTRODUCTION

Lebanon has a financial crisis (Abdel Samad, 2021) and is being called upon to develop human resource to promote its economy, (Arora & Panchal, 2021; Mouallem & Analoui, 2014; Fahed-Sreih, 2012). This crisis had an impact on banks in the public and private sectors, and they are now required to take decisions to end this crisis and reduce it, (Galli, 2020; Ghayad & Hamdan, 2021). Lebanon recently realized the relationship between economic decision-making and the impact of risk management (Galli & Battiloro, 2019). It is recognized in jurisprudence and legally that the Lebanon adopted, more than two decades ago, a financial policy with the goal of fixing the exchange rate for the Lebanese currency (*Regimes de change fixe*) relative to the US dollar (Azhar, 2022; Azar, 2021). The aim was to ensure financial stability and national economic productivity given the dollarization of the Lebanese economy, in the absence of appropriate necessary financial policies. For the past four decades, Lebanon has gone through several political and economic upheavals that have had a significant negative impact on people's lives. The World Bank currently states that the country is currently in the worst situation since the end of its civil war (World Bank, 2021). Because of its dire consequences and continuing effects, the Lebanon crisis has aroused the interest of international

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political actors. This crisis is the result of years of mismanagement of the state's economy, political differences, sectarian conflicts, and so on. The people of Lebanon bear witness to the devastation caused by this crisis, (Siddique, 2022; Khoury, 2021). The severe economic and financial crisis that Lebanon is going through has led to a record rise in the price of the US dollar against the Lebanese pound; this has caused a major imbalance in the rights and obligations of citizens. The legal conditions in terms of obligations concluded in the US dollar have been shaken, especially with the presence of several dollar prices against an official rate of 1515 Lebanese pounds (LBP). The bank rate is 3,900 LBP, but the market price exceeded 8,000 LBP. And the market price exceeded 30,000 LBP. The situation is further complicated by the fact that for Lebanese students studying outside Lebanese lands, the price of a student dollar is 1515 LBP, in addition to the price of an exchange platform (which is determined by Law 193 of 10/16/2020, Sayrafa Basic Decision No. 13324, Circular No. 15, dated 10/5/2021). The problem of the study revolves around the impact of the devaluation of the national currency against the United States dollar on the rights of contractors. It aims to achieve the goals of finding solutions in the area of low value depreciation for a dollar. The motive of the study was based on personal and objective motives that led to the selection of the topic.

2 RELATED WORKS

We should note Ghalayini's article ("The Impact of Dollarization on the Efficiency of Monetary in Lebanon"), in which the author concludes that monetary policy and the exchange rate system have a large impact on the domestic economy. In his paper he investigates the impact of nominal effective exchange rate movements on prices in order to assess the monetary policy efficiency in Lebanon. He employs a structural vector auto-regression (VAR) model to examine the degree of consumer price index response to nominal effective exchange rate changes. The VAR method is also used to investigate exchange rate pass-through. He finds that: (1) the impact of the exchange rate on prices fades after eight months, but is most noticeable in the first quarter of the year, and (2) the estimated pass-through is higher than in other emerging dollarized countries. All of this implies a loosening of the peg of the Lebanese currency to the US dollar. But, since the Lebanese economy is a highly dollarized economy, floating the Lebanese exchange rate would not be possible without lowering the dollarization level of the economy. For this reason, the paper provides strategies to de-dollarize. (Ghalayini, 2012). In another article, White ("Dollarization for Lebanon") cited a recent headline in the *Washington Post*: "The Lights Go Out in Lebanon as Financial Collapse Accelerates." The headline specifically refers to worsening power outages, but it also refers to Lebanon's ongoing "economic implosion." This breakdown is largely the result of chaos in Lebanon's monetary and banking systems. The Lebanese pound (also known as the lira) has lost more than 80% of its value on the black market since October 2019, with US dollars most recently trading at a rate of around 1 to LBP 8100. There is a black market because the Banque du Liban (Lebanon's central bank) maintains an official exchange rate of LBP 1507.5 per USD, (White, 2020). Papazian in his paper titled: "Trust, freedom, and wealth creation: a political economy of dollarization in Lebanon" reveals that despite declining inflation rates and high real returns on Lebanese Pound denominated assets, dollarization ratios have remained persistently high. The paper proposes a political economy-based interpretation of persistently high rates of dollarization, concluding that the latter appear to be a market-imposed monetary condition, a necessary reaction to the state's unfree and co-opted nature. Indeed, one could argue that currency substitution provides domestic consumers with the necessary safeguards against local wealth-destroying policies. While proponents of dollarization see it as the least bad alternative to macroeconomic mismanagement, Papazian believes it is the worst alternative to learning the tools and techniques of domestic wealth creation. Money is the ultimate symbol of social trust, which would be seriously weakened by dollarization (Papazian, 2009). Bitar in his article titled "The unique dollarization case of Lebanon: Economic Systems" conducts a thorough examination of Lebanon's unique dollarization case. Bitar describes this as a heavily dollarized economy with recurring public

deficits and monetary financing of the public debt, as well as contained inflation and a de facto fixed exchange rate that has lasted for more than 20 years. What distinguishes Lebanon's case is the high level of foreign currency liquidity in the banking system as a result of abundant capital inflows over the last three decades, as well as the high levels of the central bank's gross international reserves, which contrast with its low and sometimes negative net international reserves. Bitar sheds light on a number of previously unexplored areas of international finance and monetary economics, most notably the difference between gross and net international reserves and their relative fiscal costs, as well as a synthetic classification of sterilization techniques. He explains the monetary "freezing" mechanism that has helped to contain inflation in Lebanon, despite the country's recurring public deficits being financed monetarily. He also assesses the outcomes of Lebanon's monetary and exchange rate policies over the last two decades and makes a number of policy recommendations based on previous research, (Bitar, 2021). Martelino in his paper: IV Currency Substitution and Dollarization examines currency substitution and dollarization in Lebanon from 1964 to 1993, with a focus on the period following the start of the civil war. The origins and extent of Lebanese currency substitution and dollarization are investigated to provide a more accurate picture of the public's asset portfolio response since the start of the war. This is followed by an examination of capital flight and repatriation, as well as the factors that influence them. Finally, the advantages and disadvantages of pursuing a policy of de-dollarization of the Lebanese economy, as well as the requirements for accomplishing such a goal, are discussed, (Martelino et al, 1995). Hakim and Neaime in their article titled "Profitability and Risk Management in Banking: A Comparative Analysis of Egypt and Lebanon" investigate banking profitability and risk management in two prominent MENA countries, Egypt and Lebanon, where banks operate under market-oriented economic regimes. Their study spans the 1990s, which saw banking sector reforms aimed at creating a more efficient financial system. They investigate the impact of liquidity, credit, and capital on bank profitability in each country's banking sector, taking into account differences in the structure of the banking system and monetary changes in Egypt and Lebanon. They draw conclusions about the strength of risk management practices and the enforcement of banking regulations based on our findings, (Hakim & Neaime, 2005).

3 PROPOSED METHODOLOGY

This research aims to highlight the impact of the devaluation management of the national currency against the US dollar on the rights of contractors. This research was based on the extrapolative approach of defining the elements of the topic, within the framework of the relevant legal texts. It also uses the analytical approach through the analysis of the legal texts provided in this area. We used a method similar to the method used by Zlatan Meskic et al. in their article entitled "Transnational Consumer Protection in E-Commerce: Lessons Learned from the European Union and the United States" (Meskic et al, 2022; Albakjaji et al, 2020). Which we used a normative method to identify text that can respond to the problematic. The reality that resulted from the crisis of the devaluation of the national currency at the end of the eighties and the beginning of the nineties of the last century prompted most of the citizens of Lebanon to conclude their contracts in US dollars, believing that they would be safe from the recurrence of the fall of the national currency against the US dollar. However, what happened after October 17, 2019, the deterioration of the value of the Lebanese pound prompted the monetary authorities in Lebanon to intervene in determining the price of the dollar. This led to the existence of several prices for it against the pound after the Bank of Lebanon was unable to intervene in the exchange market, which raises several questions, namely: (1) Should the debtor pay in US dollars or Lebanese pounds? (2) And in the event that the Lebanese pound is paid, what is the rate that must be approved to discharge him? (3) What is the criterion or the control to determine the price of the dollar? (4) Who is the authority or authority that determines the exchange rate of the dollar against the pound in light of a free economic system and in light of the laws in force and the circulars issued by the *Banque du Liban* in order to curb the collapse of the Lebanese pound?

To answer these questions, our study will be divided into several parts, section 1 titled: “The currency to be paid by the debtor”, Section 2 discuss the legal trading or the official price of the US dollar, section 3 studies the position of Lebanese Jurisprudence.

4 RESULTS AND DISCUSSION

4. 1 The Currency to be Paid by the Debtor

Article 767 of criminal law stipulates that “whoever refuses to accept national money at the value specified for it shall be punished with a fine of one thousand to ten thousand pounds.” Article 192 of code of money and credit “applies the penalties stipulated in Articles 319 of the Penal Code to anyone who refuses to accept the Lebanese currency and under the conditions specified in Articles 7 and 8.” Article 7 stipulates cash and credit for “banknotes whose value is equal to one pound and above for unlimited purchasing power in the territory of the Lebanese Republic.” Accordingly, pursuant to the aforementioned articles, the debtor, regardless of the amount of cash he owes, whose value is equal to one pound or more.(Zuhdi, 1995). In addition, Article 301 CE states: “When the debt is an amount of cash, it must be repaid from the country’s currency and in the normal time. When dealing with paper currency is not compulsory, the contractors remain free to stipulate payment in a certain coin or foreign currency”, (Maurice, 2007). This is identical to the French text: “*Lorsque la dette est une somme d’argent, elle doit être acquittée dans la monnaie du pays. En période normale et lorsque de cours forcé n’a pas été établi pour la monnaie fiduciaire, le parties sont libres de stipuler que le paiement aura lieu en espèce métallique déterminée es ou en monnaie étrangère*”. As we have noted, this article deals in its two paragraphs with the issue of the settlement currency. The first paragraph states a general rule that is the following: If the subject of the obligation is an amount of money, whether it is foreign or Lebanese money, then the payment must be in the country’s currency, that is, with Lebanese monetary instruments, (this rule is stable in France, without any explicit stipulation). This rule is dictated by considering the legal trading system that forces everyone to accept Lebanese monetary instruments. The first paragraph is an application of it within the scope of commitment. The second deals with national monetary sovereignty. The Lebanese currency is always the payment currency, whatever the situation and whatever the currency of the monetary obligation is (Abdullah, 1994). For the latest jurisprudence of the Lebanese courts, it is necessary to refer to the decision issued by the Head of the Implementation Department in Beirut (Faisal Mekki, 2020). In line with the French jurisprudence regarding contracts written in foreign currency, this decision distinguishes between the use of foreign currency as the currency of a debt account for “*clauses valeurs monnaies étrangères*” and between its use as the currency of payment of clauses “*espèces étrangères*”. In the first case, “*monnaie de compte*”, the clause is correct and enforceable as it can be described as a determination of the debt according to a moving index, which is in the contracted foreign currency. As for the second case, “*monnaie de paiement*”, the jurisprudence considered these clauses invalid and absolutely null, because the fulfillment in internal contracts must take place in the national currency. Every agreement, whose subject matter is the payment in foreign currency, is absolutely null and void unless the debtor agrees to it. Here, the head of the Implementation Department saw that, by returning to the Lebanese legislative system, Article 301 has obligations and contracts that require payment in the national currency, when the debt is an amount of money. Also, article 192 of the Money and Credit Law punishes anyone who refuses to accept payment in the Lebanese currency. Article Seven of the same law gives unlimited validity in the territory of the Lebanese Republic to banknotes whose value is equal to five hundred Lebanese pounds and above. The aforementioned decision adds that these texts are related to the general protection system of the Lebanese currency, which has comprehensive enforcement power. Thus, it is not possible to impose the acceptance of payment in foreign currency on anyone. More than that, it is not possible to refuse to pay in this currency. If it is true that the aforementioned legal texts and jurisprudence have answered the question

related to the currency to be paid by the debtor, these texts remain far from answering the question raised at the present time regarding any exchange rate for the dollar against the Lebanese pound that must be approved by the debtor to absolve him.

4.2 Legal Trading or the Official Price of the US Dollar

Article 2 of the Money and Credit Law promulgated on August 1, 1963 states the following: “The law determines the value of the Lebanese pound in pure gold.” It is clear from this article that it did not specify the price of the lira, but rather the basis on which the price of this price must be determined. However, Article 229 of the same law provides for transitional precautionary measures, stating the following: Pending a new price for the Lebanese pound in gold, in agreement with the International Monetary Fund, and pending confirmation of this price according to a law and in accordance with Article Two, the Minister of Finance takes the following transitional measures that come into effect on the dates he specifies. “The Lebanese pound is adopted, with respect to the US dollar set at 0.888671 grams of pure gold. A real cutoff price that is closest to the free market price is the legal transitional price of the Lebanese pound”.

In implementation of this article, the Minister of Finance issued on December 30, 1964 Resolution No. 4800/1, which stipulated in Article 1 the following: “The legal transitional rate of the Lebanese pound is determined in relation to the US dollar, at a rate of three pounds and eight piasters per US dollar”. Thus, the legal transitional price of the Lebanese pound was determined, but this price did not last for long, as developments took place that toppled it and turned the situation upside down, according to the following events: The US dollar, as we know, remained for a long time the only convertible currency into gold on the basis of 888.671 grams of pure gold, as pledged by the United States of America at the Bretton Woods conference. The holder of this cash could get its equivalent in gold from the US Central Bank. This system remained in effect until 1968. However, starting from that date, the United States effectively stopped converting the dollar into gold after its gold reserves decreased to ten billion dollars, a limit which it considered at the time a red line that could not be crossed, and officially sanctioned by its president, Nixon, on August 15, 1971 (Nadim, 1992 ; Galli, 2019). On December 18, 1971, it reduced the legal price of the dollar from 888,671 grams to 818,513 grams. This was also followed by a new reduction on February 13, 1973 to 736,657 grams. Then, on March 16, 1973, a meeting was held between the ten major industrialized countries in Paris, in which the fixed price principle was abolished. Since its history, all the currencies of the world have entered the stage of the variable price that is determined by the market of supply and demand. Starting from 1975, gold was not to be mentioned in the global monetary system. Thus, the Bretton Woods Accords had finally collapsed, of which only the International Monetary Fund (IMF) and the World Bank remained. There is no doubt that these developments had an impact on the transitional price of the Lebanese pound, which fell with the fall of the legal price of the dollar, that Article 229 included in cash and credit. On February 22, 1973, the Lebanese government rushed to refer to the parliament an expedited bill that would authorize it to set a new legal transitional price for the Lebanese pound. Then, on October 5, 1973, the law was issued by decree number 6105, giving the government the power to set this price. However, the government did not use this power, and it is well that it did not. How is it possible to set a fixed gold price in a monetary world that has abandoned gold and has become all in motion? Thus, the Lebanese pound remained without a legal price, neither final nor transitional, and its price today is only determined by the purchasing power that is governed by supply and demand. After the end of the Lebanese war between 1975 and 1990, the security, political and financial situation in the country had stabilized and a certain price was set for the dollar against the Lebanese pound. This was done through the intervention of the Central Bank of Lebanon by injecting foreign currencies and setting a ceiling of supply and demand. However, the current and continuing economic and financial collapse since 2019 has led to the decline of the price of the dollar and a record rise in its value against the Lebanese pound, and we are facing varied pricing as mentioned above. This has raised the following question: which price of the dollar against the pound

can be adopted in the contractual obligations previously concluded? Which will be held, and who is the authority that determines the price of the dollar, and the validity and legality of the so-called official rate determined by the Central Bank of Lebanon at 1.515 Lebanese pounds per US dollar?

As we mentioned above, the legislator linked the determination of the exchange rate of the pound to a law issued by the legislative authority, and the text of the second article came together with Article 229 of the Currency and Credit Law explicitly in terms of restricting it by the authorized authority to determine the exchange rate of the pound. Article (2) is clear in stating that the value of the pound is determined according to a law, and this matter was confirmed by consultation No. 881/1985 issued by the Legislation and Consultation Commission dated in October 9, 1985, which stated the following: "It should be noted here that setting a new legal price for the pound requires the intervention of the legislator, as stipulated in Articles 2 and 229 of the Currency and Credit Law and Article 1 of the law published in Decree No. 6105/1973, since setting the price of the pound falls within the legislative scope and not within the regulation department." Here, the central question arises about the authority of the Central Bank to set an official rate for the US dollar. That is, is the Central Bank the authority authorized to set an official price for the dollar, and more than that, is there an official price for foreign currencies in Lebanon? The answer to this is definitely negative. The value of the Lebanese pound is relative to gold and to foreign currencies. Consequently, the value of the US dollar in relation to foreign currencies is determined by the House of Representatives or in certain cases by a mandate from the Council of Representatives to the Council of Ministers. In the year 1973 the law published in Decree 105 was issued. It gave the government (or the Minister of Finance with a mandate from the government) the power to set a new legal transitional rate for the pound within six months, after consulting the Banque du Liban, pending the determination of the value of the Lebanese pound in gold, on the basis of which a valuation would be restored. The assets of the Banque du Liban are gold and foreign currencies. However, the six-month period elapsed without the government exercising that authority, and it did not set a new transitional price for the pound, so there is, to date, no determination of the legal price of the pound. In light of this situation, the exchange rate of the Lebanese pound against foreign currencies is determined by the market of supply and demand only, and not by the Central Bank, as it had been previously doing, bypassing its powers and the provisions of explicit laws in this regard. Accordingly, based on the aforementioned policies, the debtor in foreign currency is legally obligated to pay in the same contracted currency. Payment in the national currency is made according to the actual exchange market rate determined by the supply and demand link alone, until a law is issued by the House of Representatives to determine the exchange rate of the national currency or to authorize the government with the authority to determine this price.

4.3 The Position of Lebanese Jurisprudence

In light of the multiple exchange rates of the Lebanese pound on the one hand and the legislative inability to determine a real and actual exchange rate for the national currency on the other hand, the main obstacle faced by the courts is the absence of the real exchange rate of the Lebanese pound, i.e. the exchange rate that expresses the actual value of the Lebanese pound against the US dollar. Regarding the rulings issued recently by the competent Lebanese courts, we find that there are several trends and criteria adopted by the rulings in determining or adopting the exchange rate of the pound against the US dollar.

First Direction

It is the dominant trend in which depends on the exchange rate of 1515 as stated in the decision issued by the Department Judge Antoine Nehmeh, as he considered that the official price approved to date is 1515 LL, considering that the legislator has exchanged the price of the student dollar, i.e. Lebanese students abroad at 1515 LBP. The same is true for the one dollar, and it came literally in the aforementioned decision. Moreover, the Student Dollar Law has set the transfer ceiling at an amount of ten thousand US dollars, which is carried out from a dollar account or a foreign currency account

based on the official exchange rate of 1515. “It is established in the entirety of the above legal data that Parliament, according to several laws, sets the exchange rate of the lira against the dollar at an amount of 1515 LL. The aforementioned decision considered that the platform price is 3900 LL. It cannot be adopted as a legally acceptable price because it has been determined concerning cash withdrawals from accounts in US dollars and within certain ceilings, as well as from the price of the “Sayrafa” exchange platform (mainly available to religious traders wishing to import goods from abroad), it applies to it what applies to the platform price specified in 3900 LBP as it is limited to certain persons (Head of the Department of Execution of the separate Judge Antoine Nehme, Decision No. 146/2021 Basis 49/2021 dated 06/28/2021).

Second Direction

After the acceleration of the collapse of the Lebanese currency and the occurrence of a direct imbalance in the legal balance of the obligations specified in contracts, especially in commercial transactions, some provisions have recently moved towards adopting an exchange rate for the pound against the dollar, which is not the official rate (1515) L.L. This is as close as possible to the parallel market price, or what is known as the black market. So, in effect, it was the black market which determined what the rate would be. This reliance on the parallel or black market price constitutes an exception to constitutional principles in force, and is also an exception to banking legal texts, in particular to Article 229 of the Monetary and Credit Law. However, it is necessary to consider the daily exchange rate traded through this extra-legal exchange platform as the exchange rate closest to the rate of the free financial market, which was considered by Article 229 referred to above as a criterion for determining the price. As a result of all that was stated above, and because of the nature of the relationship that exists between professional traders who are accustomed to dealing in foreign currency in their internal and external commercial dealings (ie in terms of import and export) and their dealings in foreign currencies with each other and with the consumer in recent times, especially after Lifting the support by the Central Bank, and because of the fall of what is known as the exchange rate stabilization system, the debtor-trader is obligated to pay his debt at the daily exchange rate announced via the Sayrafa electronic platform on the actual payment date, being the exchange rate closest to the actual real national currency rate. (Resolution No. 62/2021 dated 10/26/2021, *ibid.*)

Third Direction

Given the discrepancy between the official exchange rate and the actual rate of the Lebanese pound against the US dollar, a ruling was issued on 10/26/2020. The exchange rate of 8000 LBP to the dollar was adopted, i.e. the rate approved in banks and within a certain ceiling for withdrawals, according to Circular No. 151 issued by the Banque du Liban, to oblige one of the debtor to pay the fees of a lawyer, which is specified in foreign currency in a fee agreement and refuses to pay it at the official price, 1515/L.L. This is for the sake of justice and equity 17. (Beirut’s appeal, decision number 678/2020, based on 7/2019, dated 10/26/2021). Given the discrepancy between the official exchange rate and the actual rate of the Lebanese pound against the US dollar, a ruling was issued on 10/26/2020. The exchange rate of 8000 LBP to the dollar was adopted, i.e. the rate approved in banks and within a certain ceiling for withdrawals, according to Circular No. 151 issued by the *Banque du Liban*. However, debtors are obliged to pay lawyers’ fees according to specified agreements that do not have to follow the official price of 1515 LBP. This is for the sake of justice and equity (Beirut’s appeal, decision number 678/2020, based on 7/2019, dated 10/26/2021).

5 CONCLUSION AND FUTURE WORK

In the face of this confusion, the abovementioned judicial rulings have attempted to meet the demands justice and fairness and the protection of balance in mutual obligations. They are designed to preserve equality, balance, and parallelism in obligations and the binding force of contract, and to uphold the

principle of good faith in contracting (Article 221 Obligations and Contracts), as well as recognizing the necessity of equality of mutual benefits and rights. Proceeding from what has been previously stated, we suggest that the Lebanese legislators issue a law according to which the exchange rate of the national currency is determined, or authorize the government, according to law, with the authority to determine this price. Otherwise, the debtor in foreign currency is legally obligated to pay in the same contracted currency without any other. Future work may focus on the institution in charge for the exchange rate in Lebanon.

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