
Insolvency and Liquidation **Legal Framework in Jordan**

A. Court System

B. Infrastructure of Experts

C. Role of the Regulator

D. Conclusion on Areas for Improvement and Issues to be Researched:

Annex: Relevant Articles from the Companies Law No. 22 of 1997 and its Amendments

Prepared by YUSUR Group for Insolvency Solutions (YGIS)

Alliance of New Vision for Corporate Renewal & Turnaround Management & Zalloum & Laswi Law Firm

Dr. Rashad Othman

P.O. Box 614 Amman 11812 Jordan Telefax: +962 6 5561006 / www.newvision.com

Attorneys: Azzam Zalloum & Rasha Laswi

P.O. Box 941781 Amman 11194 Jordan Telefax: +962 6 5653785 / www.zllawfirm.com

A. Court System:

Court Jurisdiction:

There are no courts that are specialized in liquidation and bankruptcy cases. The Courts of First Instance preside over liquidation and bankruptcy claims filed thereto and is determined pursuant to the location of the company to be liquidated.

Appointment Procedures:

There are no specialized judges in liquidation and bankruptcy cases. The liquidation proceedings are filed with the Court of First Instance, and the Chief Judge of the court appoints a judge of the Court of First Instance to preside over the case.

Remuneration:

The judge responsible for the liquidation case does not receive any additional remuneration or compensation for liquidation and bankruptcy cases. A judge receives only his monthly salary pursuant to his level in which he was appointed and additional personal or technical allowances based on his basic salary.

Qualifications:

Judges hold are appointed upon passing the judicial competition held by the Ministry of Justice annually for personnel holding at least a B.Sc. degree in law and attorneys interested in having a judicial career.

Standards of Performance:

These are general standards that all judges are subject to. The performance of a judge is subject to evaluation by the Judicial Counsel in view of annual reports prepared by the Judicial Inspection Directorate of the Ministry of Justice. Therefore, there are no special standards that the judges presiding over liquidation and bankruptcy subjected thereto. The performance of judges is subject to general standards for performance evaluation irrespective of the nature of the case presented to them.

Judges Training:

The Ministry of Justice and the Judicial Counsel organize specialized courses periodically in relation to various legal subjects, some of which are training courses relating to liquidation and bankruptcy held periodically, but at spanned and irregular times.

Duration of Proceedings:

In principle, liquidation cases are of urgent nature. However, in practice, liquidation cases may undergo a long period of time. The liquidation proceedings, the decision of the court to liquidate a company and the appointment of a liquidator thereto to handle the liquidation procedures do not take a long time. Nevertheless, the liquidation procedures, determining and settling the rights and obligations of the company and its liquidation usually undergo a longer period of time.

Pursuant to the general provisions of liquidation provided under the Jordanian Companies Law No. (22) of 1997 and its amendments, if the liquidation is not concluded within one year from the procedures effective starting date, the liquidator should write a written statement to the court or the companies controller (depending on the type of liquidation) stating the matters related to the liquidation and the reached stage of the liquidation case.

Moreover, Article 258 of the Companies Law requires that, in all cases, the liquidation term shall not exceed three years except for extraordinary reasons determined by the Companies General Controller for voluntary liquidation and the court for compulsory liquidation. Despite that, in practice, many liquidation and bankruptcy cases exceed the three-year period mentioned above specifically in respect of determining the assets, debts and obligations of the liquidated company.

B. Infrastructure of Experts:

In view of the fact that there are no specialized courts, nor specialized and/or dedicated judges for liquidation cases, this situation extends to other matters related to the liquidation of companies. Therefore, no experts and/or evaluators and/or accountants specialized in liquidation cases are available within the accurate meaning of specialty.

It is evident from the provisions of the Jordanian Companies law relating to liquidation of companies and from current practice that the liquidation judge and the liquidator are the main parties of the liquidation procedure. The role of attorneys, evaluators and accountants in the liquidation procedures is limited compared to the role of the liquidator for example.

The attorneys represent the parties of the liquidation proceedings, and their role is limited to the proceedings before the liquidation judge. They do not interfere in the liquidation procedures except as a result of legal issues or problems arising out of or in connection to the liquidation proceedings, whereby the attorneys shall object or appeal on behalf of the aggrieved party due to a certain procedure of the liquidation proceedings.

Attorneys receive their fees directly from their clients according to the agreed upon retainer's fees or contract. Attorneys fees are not calculated as part of the liquidation expenses except for the legal fees as ordered by the liquidation judge to the interest of the winning party in the liquidation case, provided that such fees shall not exceed JD 500.

As for experts, evaluators and accountants, their services may be used if necessitated by the liquidation proceedings (e.g. estimating the value of the company assets, conducting an audit of the accounts and entries of the company subject to liquidation). The liquidation judge estimates their effort and orders the payment of their fees to be calculated as part of the closing liquidation expenses.

The matter is different for the liquidator and the liquidation judge. The liquidator plays the main role in the liquidation proceedings and assumes many responsibilities and functions. Upon a judge's decision to liquidate a company, the liquidator becomes the sole representative of the company until its dissolution after the completion of its liquidation and undertakes the supervision of all matters related to the company including maintaining its funds, assets and inventory and collection of its rights and settlement of its debts.

The liquidator is required to: keep records and books for the company's accounts as applicable for all liquidation works; call company creditors and debtors to verify their claims and to hear their suggestions; and observe the court instructions and decisions related to creditors and debtors in supervising the company assets and distributing the same to its creditors.

The liquidation judge presides over the liquidation proceedings and is responsible for appointing the liquidator, determining his authorities, instructing him to provide a guarantee and supervising over the liquidator performance and the liquidation proceedings conducted by the liquidator. The liquidation judge decides on any issue that may arise during liquidation proceedings according to request of the liquidator or any of the debtors, creditors or stakeholders. The liquidation judge has the right to extend the liquidation duration if needed. Accordingly, the liquidation judge is the one to determine the liquidation proceedings and issue the company dissolution decision upon the completion of liquidation proceedings. The court decision is subject to appeal.

C. Role of Regulator:

The review of the provisions of the Jordanian Laws related to liquidation and bankruptcy, demonstrates that the Jordanian Legislator did not organize the liquidation provisions in a consolidated law that governs all issues related to companies liquidation.

Under the provisions of the Jordanian Companies Law, the legislator organizes the provisions related to companies liquidation, but do not provide unified provisions for the companies. These provisions differentiate in terms of procedures and provisions between the liquidation of partnerships and companies and refers in some instances to the provisions of the commercial law related to bankruptcy concerning companies, persons and the members of the board.

The Jordanian legislator also organized liquidation provisions related to several laws that organize the business of certain sectors including but not limited to, Banks Law, Insurance Business Organization Law, Deposits Security Corporation Law, Financial Paper Law and Financial Leasing Law.

D. Conclusion on Areas for Improvement and Issues to be Researched:

In conclusion, a major area to address and improve bankruptcy and insolvency laws in Jordan and liquidation matters is to conduct a comprehensive due diligence process to evaluate the prevailing system and make recommendations compatible with international standards. We at YUSUR are ready to join hands to perform necessary effort and present herein some comments that we hope would be a good food for thought. It is important to:

- Unify the currently effective laws into one effective law under the unified umbrella of the Companies Law that addresses special needs for special types of companies (e.g. banks and insurance companies) to avoid contradiction and exclusion of courts.
- Encourage all concerned parties (i.e. the international organizations, Government and private sector) to join efforts towards improving the insolvency, bankruptcy, and liquidation legal framework in Jordan to ensure that these efforts collectively result in providing a solid legal framework for corporate governance and insolvency.
- Provide a specialized judicial system and ensure proper and specialized training to all concerned parties (i.e. judges, liquidators, specialized private sector firms, lawyers, accountants and various experts).
- Increase efficiency of the mechanisms to enforce both secured and unsecured credit claims.
- Allow for a reorganization mechanism and introduce "Turnaround Management" as a new concept to help companies get back to normal operations or to a reasonable ending including recruitment and appointment of a Chief Restructuring Officer "CRO" to assist the judge in finding the best solutions for the stakeholders and not only the creditors. This also requires introducing new insolvency bylaws for insolvent companies to preserve or maximize the value of assets before considering liquidation.
- Provide for and encourage consensual arrangements. This could include tax incentives and debt rescheduling.
- Increase transparency, disclosure and board accountability legal requirements to increase compliance and responsibility.
- Allow creditors and stakeholders to actively participate in the legal process and to have committees, meetings and voting rights.
- Address treatment of fraudulent acts and/or preferential treatments.
- Minimize priority rights and establish a balance between the public and private rights.