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INSOLVENCY, BANKRUPTCY & LIQUIDATION;

REGULATORY FRAMEWORK REVIEW

July 14, 2008

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INSOLVENCY, BANKRUPTCY & LIQUIDATION;

REGULATORY FRAMEWORK REVIEW

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EXECUTIVE SUMMARY:

There is no one piece of legislation in Jordan that governs the doctrine of Bankruptcy in its broader sense. The rules regulating insolvency, bankruptcy and liquidation, are scattered over various laws and regulations; the Commercial Code and the Companies Law are considered the main bodies of legislation for Bankruptcy and Liquidation, respectively. Moreover, the Jordanian Legislation provides for special rules for bankruptcy for certain types of companies, based on their commercial activities, such as banks and insurance companies.

The concept of “Bankruptcy” per se is limited to merchants, as specifically defined under the Commercial Code; such definition extends to include commercial companies, by virtue of the provisions of the Companies Law and the Commercial Code, which grant such companies merchant status within the meaning of the Commercial Code. Whereas, “Insolvency” in its narrow sense is used in connection with natural persons (debtors), and the rules governing insolvency are included under the Civil Code. “Liquidation” is the term used to describe the set of procedures for the dissolution of a company, whether voluntary or forced by the court. The bankruptcy proceedings are judicial in nature; whether in terms of declaring composition or actual bankruptcy. Similarly, liquidation is declared by and is performed under the supervision of the Court.

Bankruptcy dictates that a merchant is deprived from certain political rights, until the merchant had obtained reclamation as specified in the Law. The Jordanian Legislation grants special status to secured creditors and provides the spouse of a bankrupt merchant with certain rights and safeguards. The Legislation also acknowledges fraudulent and negligent bankruptcy and considers such acts as economic crimes under the Law governing Economic Crimes, with specific penalties ascribed to such crimes under the Penal Code.

This memo will shed light on bankruptcy, insolvency and liquidation under Jordanian Law through walking the steps of a delinquent merchant, up to settlement and distribution of its assets, in the event of an individual merchant, or liquidation in the event of a company, highlighting any special provisions concerning a given type of activities. This Memo will also address the concept of Insolvency within the meaning of the Civil Code.

I. INSOLVENCY WITHIN THE MEANING OF THE CIVIL CODE

Insolvency is briefly addressed in the Civil Code, which provides creditors with the right to pursue legal actions on behalf of their debtors to enforce the latter's rights and collect its debts, except those related to the debtor's persona. The Law sets preconditions for such actions to be valid, particularly that the debtor had failed to pursue such rights and that his negligence would result in insolvency. Also, the creditor must join the debtor in such actions.

The Civil Code provides for the interdiction of the debtor's money upon a request made from the debtor or his creditors, when his due debts exceed his possessions. Once interdicted, all undue debts shall become due and that all actions concerning his possessions shall not have effect vis-à-vis his creditors as of the date of filing the interdiction petition with the court. The creditors may request the sequestration of the debtor's assets except those items that may not be subject to sequestration such as his personal belongings.

The interdiction shall be terminated by a court decision upon the request of a concerned person in any of the following cases:

- if the possessions were divided between the debtors;
- if it was proven that the debtor's debts are no longer exceeding his possessions;
- if the debtor has paid the due debts which were due not as a result of the interdiction; in such a case, the debtor may claim the grace period for pay dates originally granted under remaining debts; or
- the lapse of three years from the date of issuing the interdiction decision.

The Civil Code does not provide for the actual declaration of insolvency/ bankruptcy, nor does it outline the proceedings thereof. It merely states that upon declaring insolvency, all debts become accelerated and the debtor cannot claim any grace periods granted in connection with such debts.

II. BANKRUPTCY

Bankruptcy is a system created specifically for merchants, and is mainly regulated under the Commercial Code, which dedicates a whole section of 186 Articles to that subject. Article (316) of the Commercial Code sets out the test for Bankruptcy; a Merchant is considered in a state of bankruptcy when he fails to pay its commercial debts or can only support its financial credentials through illegitimate means.

A. DEFINITION OF A MERCHANT; MERCHANTS VS. COMPANIES

Article (9) of the Commercial Code defines a “Merchant” as a person who took commercial dealings up as a profession, including companies that carry out commercial activities.

Based on this definition, it is clear that commercial companies are subject to the provisions governing Bankruptcy under the Commercial Code.¹ Also, Article (257) of the Companies Law states that the rules of Bankruptcy under the Commercial Code shall apply to Companies, persons, and Board Members, who are mentioned under the Companies Law.

However, such provisions, more often than not, set out certain rules that relate to the merchant as a natural person, and it is not clear how such rules apply to companies. Moreover, it is not clear whether the bankruptcy of a shareholder affects the status of the company or vice versa except for Partnerships. Although the Law does not explain who those “persons” are, nor does it explain the ramifications of such application, this provision if read with preceding paragraphs, it may be interpreted to strictly apply in the case of negligent or fraudulent bankruptcy, and where the Court decides, upon the request of the creditor² to declare the bankruptcy of the officer(s) of the company. In such a case, the bankrupt officer will be regarded the same status as a merchant, including such rights relating to the merchant’s persona, and will be deprived from the same rights and liberties as would the merchant.

The Companies Law clearly stipulates that a General Partnership lapses upon declaring its bankruptcy, which necessarily results in the bankruptcy of the partners, and conversely with declaring the bankruptcy of one of the partners unless the remaining partners decide to carry on the activities in accordance with the provisions of the articles of association of the Partnership, whereas, the bankruptcy of one of the partners in a Limited Partnership does not result in the bankruptcy or termination of the Limited Partnership.³

B. COMPOSITION; PREVENTIVE RECONCILIATION

The Commercial Code provides merchants with an exit mechanism to rectify their financial status and avoid bankruptcy; such mechanism is known as Composition.

¹ The Companies Law explicitly excluded Civil Companies (organized by individuals from the same profession) from the application of Bankruptcy rules and proceedings under the Commercial Code – Article (7) of the Companies Law. Also Mutual Funds, and other financial companies, although incorporated as Public Limited Companies, are subject to special rules under the Securities Law.

² Although the Law does not specifically state that, it is construed from the principles of litigation; i.e. the Court cannot bring a claim against a Party on its own initiative.

³ Please refer to Annex (2) to this Memo

▪ Elements/ Requirements for Composition

Article (290) of the Commercial Code provides that a delinquent merchant, prior to suspending the payment of his debts or within a 10 day period thereafter, may present the Court of First Instance in the district of his main office with a petition to invite his creditors in order to extend a composition proposal to them.

In support of such petition, the merchant must provide the court with its duly organized commercial books, for at least the past three years and details of his activities indicating the details of his creditors and the amount owed to each one of them. The merchant shall also explain the reasons supporting his petition and the proposal for composition, listing the guarantees that he is willing to offer his creditors. Article (291) sets out the parameters for such reconciliation in terms of the proposed average settlement amounts and payment terms.

It is worth noting that the Court must consult with the Public Prosecution, being the representative of the public at large, in its chambers and prior to commencing proceedings and inviting creditors, to determine whether such proposal is based on fraudulent pretenses. The Court must reject the merchant's request in the event that the merchant failed to present duly organized books, or was previously found guilty in a criminal action for fraudulent or negligent bankruptcy, or failed to perform its duties under a previous composition.⁴ If the Court accepts the request, it shall issue a final decision, not subject to any challenge, inviting creditors to appear before an appointed judge to assess the reconciliation proposal.

▪ Proceedings and consequences of Composition

Proceedings for achieving composition are detailed in Articles (290–315) of the Commercial Code;⁵ the main features of such proceedings can be summarized as follows:

- the competent court for initiating reconciliation proceedings is the Court of First Instance, where the main office of the merchant is located;
- the Public Prosecution is engaged by the Court in such proceedings to safeguard the public interests, and detect fraudulent actions;
- if the Court rejects the request for reconciliation, it shall proceed to declaring the bankruptcy of the merchant on its own initiative;
- the Courts decision approving the merchant's petition for composition is not subject to any kind of appeal or challenge;
- during the time period starting from the date of the petition, up until the judgment by the Court certifying the composition has become final "*res judicata*",

⁴ See Decision of the Court of Cassation No. 2698/1999 dated May 11, 2000.

⁵ Unofficial English translation of the Bankruptcy Section of the Commercial Code is attached to this Memo.

- no creditor may commence or pursue any legal action to execute an instrument held by the creditor prior to the date of the judgment, or to obtain any liens, pledges or any kind of securities on the debtors assets, and any such actions will be voided;
- regular unsecured debts shall become immediately due, and the interest will be suspended vis-à-vis creditors;
- Statutory periods shall be suspended ;
- Any amounts due in taxes, even if secured, shall not be subject to the provisions detailed above;
- during proceedings, the merchant shall continue to administer his business under the supervision of the authorized person⁶ and the appointed judge;
- actions by the debtor during the course of the proceedings, such as grants and guarantees shall have no effect vis-à-vis the creditors;
- certain actions by the debtor may be approved by the appointed judge only if it has a clear benefit to the debtor;
- the debtor or his legal representative must be personally present in the proceedings; the debtor may not issue a power of attorney for any person unless it was impossible for him to be present and the appointed judge is convinced of such impossibility;
- the majority of the creditors who participated in voting must approve the composition, provided that they represent at least $\frac{3}{4}$ of the unsecured debts;
 - secured creditors may be part of this majority if they waive their rights to securities or parts thereof and participating in this procedure without explicit waiver amounts to implicit waiver;
 - the waiver shall be deemed revoked if the composition was not achieved or was voided;
 - the debts of spouses and relatives up to the fourth degree may not be used to calculate this majority;
- the Court may provisionally certify the composition and allow for objections;
- if the Court refuses to certify the composition, it shall declare bankruptcy on its own initiative;
- the debtor may not dispose of any assets before performing all his duties under the composition, unless the composition clearly allows for that;
- all judgments concerning composition must be published, subject to the same requirements for publishing bankruptcy judgments;
- a certified composition shall have effect vis-à-vis all creditors;

⁶ *It is not clear, who authorizes this person, or what the parameters of his authorities are.*

- a debtor may be subject to criminal actions if he conceals a significant part of his assets, or fraudulently fails to mention any of his creditors, or committed any fraudulent actions. In such a case, the appointed judge shall refer the matter to the Court, which declares the merchant's bankruptcy, without prejudice to any other penalties under the Penal Code;
- the Court may declare the composition void upon the request of a creditor during a period of three years after issuing the certified composition, **only** on grounds of fraudulent estimation of the merchant's debts or concealment of a significant part of his assets, otherwise, a certified composition may not be voided.

C. DECLARING BANKRUPTCY

As stated above, Bankruptcy is a system created for delinquent merchants, which aims at and results in the liquidation of a merchant's assets.

▪ Elements/ Requirements for declaring Bankruptcy

The test for Bankruptcy as specified in Article (316) of the Commercial Codes consists of two parts:

- a. the delinquent must be a merchant, including companies;
- b. the merchant stopped paying commercial debts or uses illegitimate means to support his financial credentials.

It is worth noting that suspending payment of debts in this context means failing to pay due debts even if the merchant is solvent, or even if his assets exceed his obligations but cannot dispose of them due to their nature being real property or because such assets are somehow encumbered. Such meaning excludes the casual failure to pay due to exigent circumstances, which do not result in impairing the financial status of a merchant.⁷

▪ Proceedings for declaring bankruptcy

Proceedings for declaring Bankruptcy are detailed in Articles (317–324) of the Commercial Code;⁸ the main features of such proceedings can be summarized as follows:

- the competent court for declaring bankruptcy is the Court of First Instance where the main office of the merchant is located;
- the Court judgment declaring bankruptcy shall be executed in an expedited manner;

⁷ See Decision of the Court of Cassation No. 4152/2003 dated May 19, 2004

⁸ Unofficial English translation of the Bankruptcy Section of the Commercial Code is attached to this Memo.

- the Court that declared bankruptcy shall have jurisdiction over any disputes resulting from bankruptcy rules;
- the bankruptcy proceedings may be initiated by:
 - the merchant himself provided that he initiates such proceedings within 20 days from the date he stopped paying his debts under liability for negligent bankruptcy;
 - by a statement presented by one or more of the creditors, in such a case the hearing must be scheduled within three days from the date of such filing;
- in urgent circumstances, where the merchant is at flight risk or closed his business or concealed a significant portion of his assets, the creditors may have their case heard at the Court chambers, i.e. *ex parte*;
- the Court may take precautionary measures to safeguard the rights of the creditors upon the request of the Public Prosecution⁹, or upon its own initiative, and the Court may declare bankruptcy on its own initiative as well;
- a retired or deceased merchant may be declared bankrupt within a year after his retirement or death, as the case may be, if he had stopped paying his debts before death or retirement. The heirs of a deceased merchant may not request declaring his bankruptcy;
- the Court judgment declaring bankruptcy must specify the date where the merchant stopped paying his debts;
- the Court judgment must be published and posted in the Court hallway, in the stock exchange and at the merchant's place of business. It should also be recorded in the Commercial Register and notified to the Public Prosecution;
- all Court decisions whether substantive or procedural relating to declaring bankruptcy may be challenged as prescribed in the law;
- any challenges by the bankrupt debtor does not have any suspending effect over the execution of the judgment.

▪ **Direct consequences for declaring bankruptcy**

The direct consequences for declaring bankruptcy are detailed in Articles (325–337) of the Commercial Code, and mainly include the following:

- the names of all merchants who are declared bankrupt, and did not reclaim their status are posted at the doors of all Courthouses and in the hallways of the stock exchange premises, except for merchants who are deceased at the time of such declaration. In any case, the name of the deceased merchant gets struck out after six month from the date of his death;

⁹ *The extent of the involvement of the Public Prosecution is not clear in the Bankruptcy proceedings.*

- all political and professional rights of the bankrupt merchant are forfeited until he manages to reclaim his status;
- the bankrupt merchant shall relinquish his rights to administer his business to the receivers, and may not initiate any legal proceedings except as a joined party in proceedings initiated by the receivers. Such relinquishment does not extend to such rights strictly related to his persona or in his capacity as a provider to his family or related to an intellectual interest. However, he should allow the receivers to join the proceedings if it will result in a monetary judgment to his benefit;
- In all cases, the bankrupt merchant may take precautionary measures to safeguard his rights¹⁰;
- The judge may allow for provisions from profits or dividends that the bankrupt merchant may be entitled to in order to support his family;
- Declaring bankruptcy results in stay of proceedings initiated by individual creditors, whether secured or not;
- Declaring bankruptcy results in halting interest vis-à-vis unsecured creditors, whereas the secured creditors may only claim interest from money resulting from the sale of security assets;
- Declaring bankruptcy results in accelerating all debts vis-à-vis the debtor only but not his guarantors;
- If the bankrupt merchant owns real estate, the bankruptcy declaration must be duly recorded with the land department by the receivers and the property is considered mortgaged to the benefit of the creditors;
 - It is worth noting that a secured creditor may proceed to execute independently from the receiver to the extent necessary to satisfy his debt;¹¹
- certain actions by the bankrupt merchant shall be deemed void vis-à-vis the creditors, including:
 - grants, except small personal gifts;
 - payment of immature debts;
 - payment of due debts by way other than cash payments;
 - creation of securities for previous debts;
- claims for voiding such actions shall lapse upon the passage of 18 months from the date of declaring bankruptcy.

D. BANKRUPTCY PROCEEDINGS / ADMINISTRATION OF ASSETS

The Bankruptcy proceedings are detailed in Articles (238–282) of the Commercial Code; particularly, the said provisions address the following:

¹⁰ The Law does not provide for the nature of such measures or provide any examples thereof.

¹¹ Decision of the Court of Cassation No. 3682/2005 dated April 20, 2006.

▪ **Bankruptcy Panel**

- a receiver appointed by the Court shall be entrusted with the administration of the bankrupt merchant's assets, such receiver may not be related to the merchant up to the fourth degree;
- the appointed judge may at any time appoint two observers from the creditors upon self nomination;
- decisions made by the appointed judge may be challenged with the Court in an expedited manner and the Court's decisions in this regard are final and not subject to any further appeal.

▪ **Administering the Bankruptcy Assets:**

- the Court may summon and arrest the bankrupt merchant and in no way the merchant may leave his place of domicile without Court's approval;
- all assets of the bankrupt merchant must be placed under seal, except for personal belongings, perishable items, and other things that may be valuable for investment in the merchant's business, to the extent allowed by the appointed judge;
- merchant's books must be surrendered to the receivers, who must put together the financial statements of the bankrupt merchant, had he failed to provide the same;
- the bankrupt merchant may have the right to be heard, and in the event that the merchant is deceased, such right is transferred to his spouse, children and legal heirs;
- once the seals are lifted, the receivers must do a complete inventory of all assets in the presence of the appointed judge;
- receivers may reach a settlement with the creditors;
- the law provides for time limits for creditors to provide their debt instruments, with special consideration to creditors from outside the Kingdom;
- receivers must verify the debt instruments with the help of the observers and the debtor is provided with an opportunity to explain and a final list of such debts is organized and published in the papers. Upon publication, the debtor and the creditors may object to such list;
- debt instruments duly issued by a commercial company shall not be subject to verification.

E. RESOLVING BANKRUPTCY CASES

Articles (383–426) of the Commercial Code define the various ways of solving a bankruptcy case; such ways are:

- **Simple Reconciliation**; which is called for by the appointed judge within three days from declaring the list of debts. The debtor must be heard by

the reconciliation panel, which is presided over by the appointed judge. The reconciliation contract must be approved (voted for) by creditors comprising the majority and hold 2/3 of the verified debts whether in a final or provisional manner. Secured creditors may only vote to the extent they waive their rights to securities. The contract must be signed in the same session, otherwise it will be deemed void. The contract may be objected to, and if the Court accepts the objection the contract shall be deemed null and void. However, after certification, the contract may not be challenged, and shall have effect towards all creditors, whether mentioned in the merchant's financial statements or not. It is worth noting that the contract shall have no effect vis-à-vis secured creditors who did not waive their rights to their securities. Once the contract is certified, the effects of bankruptcy stated above shall lapse, except for the suspension of political rights. After certification, the contract may only be voided if the bankrupt merchant was found guilty with fraudulent bankruptcy or for findings of fraudulent behaviors by the bankrupt merchant, provided that proceedings to void the contract are initiated within 5 years from the date that the fraud has been discovered.

- **Creditors Union**; if creditors fail to reach the simple reconciliation, they become in a state of union, and have the option to maintain the same receivers or replacing them. The creditors union shall have the right to decide whether to accept reconciliation. Receivers shall start selling the movable assets of the merchant including the place of business under the supervision of the appointed judge, and without the need to include the bankrupt merchant in such sale. Also, sale of real estate shall take place within 8 days upon the directions of the appointed judge and through the execution department in the jurisdiction where the property is located. The money resulting from such sale shall be distributed among the creditors proportionately to their debts. The union shall be dismantled upon completing the distribution of assets. At this point the appointed judge presents the Court with the creditors decision regarding considering the merchant discharged with an assessment of the distribution of the bankrupt assets, based on which the Court shall issue its decision regarding considering the merchant discharged. Such discharge (release) may not be extended to a fraudulent merchant or a merchant who was found guilty with perjury, theft, mistrust or embezzlement.

- **Reconciliation through Debtor Partial or Full Assignment (Abandonment) of his Assets**; this form of reconciliation is subject to the same conditions of the simple reconciliation, however, the rules for selling and distributing the assets are the same as in the case of a union, while the remaining assets shall revert back to the debtor to the extent that they exceed the debts.

- **Closing Bankruptcy due to Lack of Assets**; this particular option may take place at any point during the proceedings, prior to certifying the

reconciliation contract or forming the creditors union. If during such time, the proceedings were suspended for lack of assets, the Court may decide as per the report of the appointed judge, to close the bankruptcy. In such a case, each creditor shall have the right to pursue his rights individually.

- **Simplified procedures**; if it is evident from the financial statements presented by the bankrupt merchant or through independent information that the assets do not increase the amount of JD 250 and it became evident that the average for distribution may not exceed 10%, the Court may on its own initiative, or upon the request of the creditors, decide to apply the simplified procedures, which differ from the ordinary procedures through shorter time frames, no need for placing seals, no observers, the appointed judge shall decide on any disputes, but his judgments are subject to appeal, and the money shall be distributed for one time only.

▪ Rights of Certain Groups of People

Articles (427–453) of the Commercial Code outline specific rights of certain groups of people vis-à-vis the bankruptcy; particularly, such provisions grant rights to the following groups:

- i. **creditors of multiple debtors**; a creditor holding a debt instrument signed, endorsed or jointly guaranteed by multiple bankrupt debtors shall have the right to participate in the distribution with each group of creditors.
- ii. **owners of assets placed with the debtor**; such owners shall claim their property back and the appointed judge shall decide on allowing such recovery.
- iii. **creditors with securities over movable assets**; such creditors shall only be mentioned in the group of creditors by way of reminder.
- iv. **creditors with securities over immovable assets**; if such creditors were not able to recover all their debt from the price of the property, they may participate with the distribution of the rest of assets proportionately to their remaining debts, provided that such debts are verified.
- v. **spouses of bankrupt merchants**; the wife¹² of a bankrupt merchant shall have the right to recover all belongings which she used to own prior to the marriage or which she had received by way of gift or inheritance during the marriage.

¹² Although the provision is extended to the wife of the bankrupt merchant, most probably it also applies to the spouse of the bankrupt merchant, being the husband if the merchant was a woman.

▪ **Criminal aspects of Bankruptcy**

The Commercial Code and the Jordanian Legislation in general recognizes the criminal aspects of Bankruptcy and consider the same as economic crimes subject to ascribed penalties under the Penal Code.

A criminal action shall be brought before the competent criminal court by the receivers, creditor(s) or the Public Prosecution. Merchants who are found guilty with fraudulent or negligent bankruptcy shall be sentenced to 2 years in prison at a maximum and temporary hard labor.¹³ In the event that the bankrupt merchant is a company, the penalty shall be extended to any person who participated in the management of the company or worked for it, and committed the crimes specified under the Penal Code.¹⁴ It is worth noting that a merchant found guilty of fraudulent bankruptcy may not benefit from any reconciliation, whereas the merchant found guilty with negligent bankruptcy may still benefit from reconciliation.¹⁵

▪ **Reclamation**

The grounds and rules for reclamation are covered under Articles (466–476) of the Commercial Code; upon the lapse of a ten year period, the bankrupt debtor is granted his reclamation as a matter of law. Similarly, the bankrupt merchant who had paid all his dues is subject to the same rules. As for the bankrupt partner in a General Partnership, he must prove that he had paid his share of the due amounts to receive reclamation. Special consideration is granted to the bankrupt merchant with good will, as he can receive his reclamation during the proceedings, and reclamation may be granted to a deceased bankrupt merchant as well.

Reclamation petition must be filed with the Public Prosecution in the same jurisdiction as the Court that heard the Bankruptcy case. If the petition is denied, the bankrupt merchant may file another petition after the passage of a one year period from the date of rejection. Reclamation proceedings are open for objections by creditors, and a merchant who was found guilty of fraudulent bankruptcy may not be granted reclamation, unless they received criminal reclamation.

▪ **Exclusions/ Special proceedings**

Under special laws, certain types of Companies are excluded from the application of the Bankruptcy rules and proceedings under the Commercial Code, particularly the following companies have their own proceedings:

¹³ See Article (438) of the Penal Code

¹⁴ See Article (440) of the Penal Code

¹⁵ The Law does not provide clear definition for the two types of criminal bankruptcy, but it can be construed that fraudulent bankruptcy necessarily involved bad intent, whereas the latter is failure to take proper action.

- i. **Civil Companies**; pursuant to Article (7) of the Companies Law, the rules for bankruptcy and liquidation of such companies shall be as detailed in its Articles and Memorandum of Association.
- ii. **Banks**; Article (84) of the Banking Law explicitly excludes the application of the Commercial Code to Banks, but does not provide alternative set of rules or proceedings.
- iii. **Insurance Companies**; Article (66) of the Law Regulating Insurance Activities explicitly excludes the application of the Commercial Code to Insurance Companies, but does not provide alternative set of rules or proceedings.

III. LIQUIDATION

Liquidation is a system created for companies whether in the form of partnerships, limited liability companies, private shareholding companies or public shareholding companies. The Companies Law provides the main rules for the two types of liquidation procedures; voluntary liquidation and forced liquidation.

F. INITIATING LIQUIDATION PROCEDURES

▪ Voluntary Liquidation;

The decision to voluntarily liquidate a company is within the competence of the extraordinary ordinary general assembly of a company, except for general partnerships, as the decision is taken by the partners if the Company stopped carrying out its business and the authorized partner must notify the Controller of that status within 30 days from the date when the company stopped carrying out its business. The extraordinary general assembly of a Limited Liability Company or a Private Shareholding Company shall explore the possibility of voluntary liquidating the company if the losses exceed half of the registered capital, unless they decide to continue with the operations of the company after rectifying its status. Similarly, the decision to voluntarily liquidate a Public Limited Company is within the competence of the extraordinary general assembly; the reasons for arriving at such a decision include the expiration of the term of the company, the fulfillment of its objectives, and any other reason provided for in its Articles and Memorandum of Association. It is worth noting that the liquidation procedures are supposed to be set out in a special regulation to be issued pursuant to the provisions of the Companies Law, but to date, no such regulation has been issued.

▪ Forced (Involuntary) Liquidation;

In the case of Partnerships, the Controller shall have the right to issue a decision to force the liquidation of the Company in the event that it

stopped carrying out its business and failed to rectify its status upon notice from the Controller. As for Limited Liability Companies and Private Shareholding Companies, it shall be forced to liquidate in the event that its losses exceeded half of its registered capital and failed to rectify its status by a proper corporate action. The Controller in such a case shall refer the matter to the Court¹⁶ to initiate the liquidation procedures.

The Public Limited Company shall be liquidated whether voluntarily or forced liquidation upon a Court final decision. The petition to liquidate the Company must be filed at the Court by either the Controller or the Public Defender; the Company must be liquidated in the following cases:

- if it committed grave violations to the law of its Articles and Memorandum of Association;
- if it failed to perform on its obligations;
- if it stopped operating for a full one year without due justification; or
- if its losses exceeded 75% of its subscribed capital, unless the General Assembly decided to increase its capital.

G. LIQUIDATION PROCEDURES

The Companies Law provides for liquidation procedures for the various types of companies, including General Partnerships, Limited Liability Companies, Private Shareholding Companies and Public Limited Companies. The Law also states that the Liquidation Procedures for Public Limited Companies shall be detailed in a regulation issued pursuant to the provisions of the Companies Law; no such regulation has been issued to date.

- i. **General Partnership**; the Liquidator is appointed by the partners in the event of voluntary liquidation, and by the court in the case of involuntary (forced) liquidation. Proceedings commence by publishing the liquidation decision in the local papers and preparing a list of the company's assets and identifying its rights and obligations vis-à-vis third parties. The liquidator may not dispose of such rights or assets except with the permission of the partners or the Court, as the case may be. The Company shall maintain its legal entity until the liquidation procedures are complete.
- ii. **Public and Private Limited Company¹⁷**; the Company shall be liquidated upon a final decisions of the Court by the appointed liquidator, and the Company maintains its legal entity until liquidation procedures are complete, but its operations shall be suspended. The party that declared

¹⁶ The Law does not specify the competent court.

¹⁷ The Law applies the liquidation procedures of public limited companies to private limited companies.

the liquidation must notify the Jordan Securities Commission, the Company Controller, the Securities Depository Center and the Stock Exchange; the Controller shall publish the decision in the Official Gazette and local news papers. If the liquidation proceedings are not completed within one year, the Liquidator shall notify the Controller, and in all cases, proceedings shall not exceed three years. In the event of voluntary liquidation, the General Assembly of the Company appoints the liquidator.

- iii. **Branches of Foreign Companies;** the Companies Law stipulates that the branches of foreign companies operating in Jordan shall be subject to the same liquidation procedures under the Law.¹⁸
- iv. **Special proceedings for various types of Companies;** the Jordanian legislation provides for special liquidation procedures for certain types of companies under their special laws; particularly banks and insurance companies. Banks are liquidated upon the decision of the Central bank and the liquidation procedures are carried out under the supervision of the Deposit Insurance Corporation, while the insurance companies are liquidated by the Board of the Insurance Regulatory Commission.

H. BANKS

Banks may not be liquidated voluntarily upon the decision of the General assembly, except after obtaining a written approval from the Central Bank of Jordan.

The Banks may be subject to involuntary (forced) liquidation upon a decision from the Central Bank, in the following cases:

1. the bank has committed one or more violations, which may entail squandering of its assets or damage to its depositors' rights;
2. If the bank has become unable to meet the demand on its deposits or to fulfill any of its obligations;
3. If the total losses of the bank has exceeded 75 percent of its subscribed capital; or
4. If a decision is issued revoking its license.

The liquidation decision shall be published in the Official Gazette and in two daily newspapers within no more than seven days of the date on which the decision is issued.

Although, the liquidation of Banks is not subject to the liquidation procedures under Companies Law, the provisions of the Companies Law still apply in the absence of a specific provision of the law of deposit Insurance Corporation.

¹⁸ Jordan is Party to several bilateral agreements acknowledging bankruptcy judgment and liquidations of companies in the other party's jurisdiction.

When the Central Bank issues a decision to liquidate a Bank, the Deposit Insurance Corporation (DIC) shall be the liquidator by law, and is considered the sole, legal representative, of any bank under liquidation. Furthermore, the bank's Board of Directors, General Manager, and General Assembly of shareholders shall lose all duties and authorities assigned to any of them as of this point.

The DIC shall publish the liquidation decision in at least two daily local newspapers, within three days from the date on which it receives the decision. Copies of this announcement shall be placed on each branch and office belonging to the bank. Moreover, the announcement shall be republished in the same manner after the lapse of 14 days from the date of the publication of the first announcement.

The DIC must also publish within 30 days of the issuance of the liquidation decision in at least two daily local newspapers, -an announcement requesting that deposit holders submit their claims to the Corporation, or to the bank whose liquidation has been decided, or to any other party specified by the DIC.

This announcement shall be republished in the same manner after the lapse of 14 days from the date of the publication of the first announcement. And it shall also be republished every six months after the issuance of the liquidation decision until three years have lapsed from the date of the issuance of the liquidation decision.

The DIC shall then pay the insurance sum due to an insured deposit holder within 30 days from the date on which the deposit holder submits his claim and the DIC shall legally subrogate deposit holders within the limits of the sums which it paid to them. From this stage on, the companies' law provisions with regard to the liquidation of companies shall be applied to the liquidated bank.

It is worth noting that the liquidator may enter into arrangements with other banks to sell all or a substantial part of the Bank's assets and its obligations to another bank, without deferring to applicable laws. Moreover, the DIC, as the liquidator may sell the assets of the Bank in an auction, also without deferring to other applicable laws and regulations.

I. ISLAMIC BANKS¹⁹

When the Central Bank decides to liquidate an Islamic bank pursuant to the provisions of the banking law, the DIC shall assume the liquidation according to the liquidation provisions provided for in the law of the said corporation to the extent that these provisions are not in conflict with the provisions contained in the Banking Law particularly applicable to Islamic banks.

¹⁹ *Islamic Banks have voluntary membership with the DIC, unlike other banks.*

Notwithstanding the provisions of any other legislation, the obligations and debts due from an Islamic bank under liquidation shall be settled as follows:

1. The entitlements of depositors in the mutual fund accounts shall be settled in accordance with their respective terms. The entitlements of owners of *muqharadha* bonds, investment portfolios, or investment funds, shall be settled in accordance with the terms pertaining respectively to each issue thereof. It is provided however that, beforehand, such entitlements shall be charged with their respective shares of the expenses and disbursements of the liquidator, and subsequently charged with their respective liabilities. Upon covering all the expenses and losses incurred by the investments for which risks the investment risk fund has been set up to cover, the balance remaining shall revert to the *Zakat* Fund.
2. The entitlements of depositors in specified investment accounts and of the holders of specified *muqhardha* bonds shall each attach to its respective specific project. Such entitlements shall be subject to the outcome of their respective projects on the basis of "gains against losses," provided that, beforehand, the related expenses and liquidator's costs shall be deducted therefrom.
3. Without prejudice to the provisions of items (1) and (2) of this paragraph, the liabilities and debts due from an Islamic bank under liquidation shall be paid in the following order:
 - a. The balance of expenses and disbursements incurred by the liquidator in the liquidation process.
 - b. The entitlements of the officers and employees of the Islamic bank in terms of salaries, remunerations, and any other labor compensation provided for in the Labor Law.
 - c. Any taxes and duties payable to the Government.
 - d. The entitlements of the depositors in the credit accounts.
 - e. The entitlements of the creditors and any other funds deposited with the bank for purposes other than investment and sharing in the profits accruing therefrom.
 - f. The entitlements of the investors in mutual fund accounts.

Provided that the provisions of mentioned above terms have been observed, the rights of shareholders in an Islamic bank under liquidation shall be liquidated by distributing the remaining funds among the shareholders proportionately with the shares owned by each.

J. INSURANCE COMPANIES

The Board of Directors of the Insurance Commission shall be the only competent authority to issue a decision to liquidate an insurance Company, the provisions of the Insurance Regulatory Law and the regulations and instructions issued pursuant thereto, shall apply to the liquidation of insurance companies.

The Law states that the insurance company may be liquidated voluntarily upon a decision by the extraordinary general assembly after obtaining a prior approval from the Board upon the recommendation of the Director General, but the Law does not provide for the grounds for forced involuntary liquidation.

The liquidation procedures shall only start after the Company is notified of the approval of the Board. As of the date of the issuance of a decision to liquidate the Company, the board of directors of the Company, the general manager, the general assembly, and any administrative committee formed to manage the Company shall lose all duties and authorities as assigned pursuant to the legislation in force and pursuant to the memorandum and articles of association of the Company and the bylaws thereof.

The Board upon the recommendation of the Director General shall appoint a Liquidator or more for the Company, who shall manage the operations of the Company, protect the properties and assets thereof, and represent the Company until its liquidation.

The liquidator's authorities and duties are detailed in the Insurance Regulatory law and the provisions of bankruptcy stated in other legislations in force, shall not be applied on the insurance Company.

The liquidator, subject to the written approval of the Board of the Insurance Commission, may reach an agreement with another insurance company or companies to purchase all or a substantial part of the assets, rights and obligations of the company, or to sell all such assets and rights in a public auction, following to special rules set by the liquidator and without deferring to any other laws.

K. CIVIL COMPANIES

The civil company may be liquidated for many reasons some including death, insanity, and the bankruptcy or the interdiction of one of the partners. The liquidation takes place upon the partners' unanimous decision or the issuance of a Court judgment in this regard.

Moreover, the Court may issue a liquidation judgment upon the request of any of the partners as a result of another partner's abstaining from performing his duties to the detriment of the company.

In principle the partners may liquidate the company according in a manner that they agree to, however, any of the concerned persons may submit a request to the Court to appoint a liquidator or more to conduct the liquidation and allotment procedures.

The manager or managers of the company shall be considered its liquidator(s) before any third party until a liquidator is appointed.

The liquidator shall perform all the duties related to the liquidation process and the company's possessions shall be divided after paying the due obligations and keeping the needed funds for undue or litigated debts to the partners in conformity with his /her share in the capital.

L. RAMIFICATION OF PLACING A COMPANY UNDER LIQUIDATION

▪ Voluntary Liquidation

- All the following actions shall be considered null and void:
 - Any disposal of the properties and rights of a Public Shareholding Company under liquidation, and any trading of its shares and transfer of ownership;
 - Any change or modification of the obligations of the chairman and members of the Board of Directors of the Company under liquidation, or of the obligations of others towards the Company;
 - Any impounding of the properties and assets of the Company, and any other disposition or execution made on such property or assets, after the issuance of the Company liquidation decision;
 - All mortgage contracts or insurance policies on the Company properties and assets, and contracts and other procedures that give rise to obligations or preference on the companies properties and assets, should these be affected during the three months preceding the issuing of the Company liquidation decision, unless it is proved that the Company is capable of settling all its debts after finalizing the liquidation. The nullification shall not be applicable except to the amount which exceeds the amounts paid to the Company, as per those contracts, when concluded or thereafter, in addition to the lawful interest therein;
 - Any transfer of the property and assets of the Company under liquidation or any assignment thereof, or disposition of same in a fraudulent manner to give preference to some creditors of the Company over others.

- A creditor of the Company loses his right to the properties and assets of the Company which he has attached, and in any other actions taken in that regard, unless the attachment or the action was executed prior to the commencement of Company liquidation procedures.
- Should the Execution Officer be notified of the Public Shareholding Company liquidation decision, prior to the sale of its attached properties or assets, or prior to finalizing the transaction of execution thereon, he shall be obliged to hand over those properties and assets to the liquidator including what was received from the Company. The execution fees and expenses shall be considered a privileged debt on those properties and assets.
- The Court shall permit the liquidator to sell the assets of a Public Shareholding Company under liquidation, whether the liquidation is voluntary or mandatory, if the Court is satisfied that the Company interest necessitates that.

▪ Involuntary (Forced) Liquidation

- The Court shall be deemed to have commenced the liquidation of the Company as of the date of submitting the liquidation pleading thereof. The Court may adjourn the hearing, dismiss the claim or order the liquidation, along with the payment of the costs and expenses by the person responsible for the cause of liquidation.
- The Court may, upon considering the Company liquidation and prior to the issuing the liquidation decision, appoint a liquidator. It shall also determine his powers and obligate him to submit a guarantee to the Court. The Court may also appoint more than one liquidator, and it may dismiss or replace them, and it shall notify the Controller of these instructions.
- The Court may, upon the recommendation of the person requesting the liquidation, suspend the progress in any case that was filed or the procedures that were realized against the company whose liquidation is requested before the Courts, provided that the hearing of any new case or judicial procedures is prohibited if same were filed against the company or realized against its after the liquidation case is filed .
- The issuance of the compulsory liquidation decision will result in the following
 - Suspension of any authorization or signatory power issued by any entity in the Company. The granting of any authorization or signatory power required by liquidation procedures is limited to the liquidator;
 - Suspension of the calculation of any interest due to the company debts unless the interest of these debts is secured with proper mortgages or securities;
 - Suspension of the calculation of the passing of the preclusive time for hearing a case dealing with any rights or due or valid claims to the Company for a period of six months as of the date of issuing the liquidation decision;
 - Suspension of proceeding with any case and judicial procedures instigated by the Company or against it for a three-month period, unless the liquidator decides to proceed with same before the end of that period, in accordance with the provisions of paragraph (c) of this Article;
 - Suspension of proceeding with any procedural or executory transactions against the Company, unless it was pursuant to the request of a mortgagee and related to the mortgaged property itself. In this case these transactions shall be halted or their acceptance shall be denied for a three-month period as of the date of the issuance of the liquidation decision;

M. ABATEMENT OF THE PERIODS AGREED UPON WITH THE COMPANY DEBTORS TO SETTLE THEIR OBLIGATIONS.

N. ORDER FOR SETTLING OUTSTANDING DEBTS

The liquidator shall settle the Company debts in accordance with the following order, after deducting liquidation expenses, including the remuneration of the liquidator, and any violation of this order shall be considered null and void:

- a. Amounts due to the Company employees.
- b. Amounts due to the Public Treasury and the municipalities.
- c. Rents due to the owner of any real estate leased to the Company.
- d. Other amounts due in accordance with the order of their priority in accordance with the Laws in force²⁰.

O. OTHER CORPORATE PROCEEDINGS

The Companies Law provides for other actions discretionary for the Controller, including canceling the registration of the company or suspending its operations. However, such actions shall in no way affect the liquidation procedures.

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