

Criminal Liability for Board of Director's Members in Public Shareholding Companies in Jordanian Companies Law

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Abstract

This study dealt with criminal liability for board of director's members of public shareholding companies in Jordanian Companies Law, in addition to Jordanian criminal code. Criminal liability of legal person has been clarified through this study; also boards of director's crimes were determined by a number of results. The most important of these is the fact that criminal liability applied to the legal person is exactly the same for the natural person, taking into consideration the nature of legal person and the corresponding criminal penalties.

Importance of study

The study importance of the theory side according to Jordanian legislator that its results will help in determining the defects contained in Jordanian companies law and working to overcome them through legislative reform that serves the commercial companies and shareholders. In practice, this study is important for courts as the body that works to enforce the law and deliver rights to its owners.

Problem of study

The problem is that Jordanian legislator didn't determine board of director's terms of reference frankly, but in general or absolute terms. The question: are companies law texts were enough to deal with different issues related to companies activates its various bodies, and particular the board of directors.

Aims of study

This study aims to:

- 1- Clarifying the criminal liability of legal person in general and determining the crimes committed by company board of directors members.
- 2- Does Company asked about crimes committed by natural person on behalf of or for the company's benefit?
- 3- Does board of directors members asked about crimes they commit while doing business?

Introduction:

The Board of Directors members of Public Shareholding Company shall be asked about their mistakes in company management or their breach of imposed obligations against company or shareholders, if chairman of board of directors or any member thereof commit acts constituting a crime or violation of penal law rules¹.

In this regard, most of legislations governing activities of companies, including Jordanian companies law and company's law and investment, that achieving their objectives and ensuring the interests of it, its shareholders and clients rights².

Based on above, the two researchers will study and clarify the criminal responsibility of legal person in general, then identify the crimes committed by board of directors members in public shareholding companies in three fields, the first is preliminary, which the criminal liability of legal person will be discussed and personal responsibility of the person of crimes that he commits on behalf of or for company interest, the second section will be to determine the responsibility of the board of directors members in public shareholding company in criminal side about violating provisions relating to subscription of shares, bonds and circulation. In third section we will present criminal liability of board of directors members of public shareholding company arising from concealment of company's financial position as follows.

¹ Al-Qalioubi, Samiha, (1989), commercial companies, dar Al-Nahda Al Arabiya, Cairo, p. 660. Eid, Edward, (1970), commercial law, Al- Najwa press, Beirut, p. 568. Taha, Mustafa Kemal 1987, commercial law, university dar, Cairo, p. 470. Nasrallah Mortada, (1989), commercial companies, Al-ershad Press, Baghdad, p 258.

² Tarawneh, Adel, (1988), duties and responsibilities of directors of public shareholding company, master thesis, university of jordan, Amman, p. 203

First topic: criminal responsibility declaration of legal person in Jordanian Penal Code

It is understood that the will of law to establish criminal responsibility is that this responsibility can only be fulfilled in the natural living person (natural person)¹.

However, in reference to Article (74 /2) of Jordanian Penal Code, it may be noted that the Jordanian criminal legislator also recognized criminal responsibility for legal person resulting from actions issued in his name regardless of responsibility of natural person who manages or represents him. article texted that (legal person, except government department, official institution or public, shall be held criminally responsible for acts of his boss , any member of his administration , directors , any of his representatives or employees when such acts come in his name or in one of his means as a legal person².

Such recognition of direct criminal responsibility of legal person is contained in Article (36) of Jordanian Penal Code, which investigates the precautionary measures that may be imposed against legal person, which states that: (Any trade union , company , association and any legal body other than public administrations may be suspended if its managers, members of its administration, representatives or workers commit any crime or intentional misdemeanor in its name punishable by at least two years of imprisonment). The aforementioned bodies may also be dissolved as a precautionary measure in accordance with the provisions of Article 37 of the same law, which confirms that Jordanian criminal legislator recognized criminal responsibility of criminal person directly if acts committed were in his personal name³ .

However, such an approach did not negate responsibility of natural person who contributed to commission of crime attributable to legal person directly, it emphasizing the joint responsibility of legal person and his legal representative, as well as anyone who contributed to bringing elements of criminal behavior into existence, so as to expect punishment commensurate with their respective roles in committed crime. In this regard, Article 442 of Jordanian Penal Code states that (If crime is committed in the name of a company or for its benefit, this company is targeted for precautionary measures as responsible persons who contribute to act, facilitate or allow it intentionally).

It is possible to note that Jordanian legislator recognized the principle of direct liability for legal person; at the same time he did not deny that responsibility for same incident from natural person who committed criminal act in his name. The legislator stipulated that individual has done act with availability of awareness elements and will to achieve its result.

This ruling was confirmed by Jordanian Court of Cassation in one of its decisions where it ruled (that Article 74/1 of Penal Code establishes a rule in which the basis of responsibility is established. Anyone who commits an act knowingly and willingly will be punished by penalty prescribed by law. Legislator intended to put an end to jurisprudential debate on whether legal personality has a will like human or not. Is unhuman asked penalty, so he mentioned a special text for punishment when elements of liability were available on grounds that they had a legal existence and were functioning as such, therefore it had to bear all legal effects)⁶.

In fact, the basis on which jurisprudence and judiciary relied on criminal responsibility of legal person indirectly or in concert with natural person is that this legal person is responsible for actions of his representatives, because it acquires certain benefit from committed criminal conduct, in addition this person is more able to meet these commitments than natural person.

In order to ask legal person about committed acts in his name, three conditions must be met as follow⁷:

- 1- The actor must be authorized by the legal person.
- 2- Performed act shall be among the authorized acts.
- 3- Perpetrator shall commit this act while exercising his work and through means set by legal person.
On other hand, it is recognized that general penal code contains provisions of a broad scope which acts of board of directors members fall under it such as, embezzlement and forgery, however, the need remains to criminalize a number of acts committed by Board of Directors members that are characterized by privacy and independence from those crimes provided in general penal code, because of the nature of played role by chairman and Board of Directors members in managing public shareholding company, this demand existence of special provisions defining crimes of Board of Directors members of public shareholding companies leads to close the way for perpetrators to escape of punishment, exploiting the generality of provisions provided in Penal Code.
- 4- Penalties No. 178/85, published by Adalah
- 5- Saleh, Nael Abdul Rahman, op. Cit., P. 159.

¹ Najm, Muhammad Subhi, (1996), Penal Code / General Section, Dar Al-Thaqafa Publishing House, Amman, p. 283.)

² Article 74, paragraph 3, of Penal Code provides that (legal persons shall be sentenced only to fines and forfeiture. If the law provides for an original penalty other than a fine, penalty shall be replaced by a fine and given to legal persons within the limits specified in Articles 22 to 24 of this Article Law)

³ Saleh, Nael Abdul Rahman, (1990), Economic Crimes in Jordanian Law, Dar Al Fikr Publishing and Distribution, Amman, p. 151.)

Through reading contained texts in Jordanian Companies Law¹ companies System², we find that Jordanian legislator paid great attention to Board of Directors members Penalty responsibility of public shareholding company in a serious attempt to establish a kind of balance between the two considerations each of them is important, the first is that criminalization and punishment should not be excessive, which leads to reluctance of company managers to take decisions for fear of being responsible, the second consideration is that the approach followed by Jordanian legislator should not be lenient, which could endanger investors' money and their rights. In this research, Jordanian legislator's approach will be addressed in defining the general framework of criminal responsibility for Board of Directors members of public shareholding company in Jordanian Companies Law and the Companies system, it is noted that Jordanian legislator has set forth Article 278 of Jordanian Companies Law No. (22) Of 1997 in Chapter Fifteen under the heading "Penalties" Some of acts were criminalized, any person who commits any of the following acts shall be punished by imprisonment for one to three years and a fine not less than one thousand dinars and not more than ten thousand dinars in the following cases:

- 1- Issuing shares, certificates thereof, handing them over to their owners or presenting them for trading before ratification of company's articles of association and approving their establishment or allowing it to increase their authorized capital before announcing this in the official gazette.
- 2- To make fictitious subscriptions to shares or to accept subscriptions in a fictional or unrealistic form to companies those are not existing or not real.
- 3- Issuing loan bonds and offering them for trading before their time in a manner contrary to provisions of this law.
- 4- The organization of budget of any company and accounts of its profits and losses in a manner inconsistent with reality, include the report of its board of directors, auditors report incorrect data, give incorrect information to public body or mute information and clarifications required by law in order to hide the real state of company from shareholders or related parties.
- 5- The distribution of fake profits or not identical to real state of company.

Second topic: Board of Directors Members Penal Responsibility for violating the provisions related to shares and titles subscription and circulation

The Jordanian legislator has organized the provisions related to the crimes of shares and titles subscription and issuance in the Jordanian Companies Law number (22) of 1997, and stipulated some forms including the following:

1. Issuing shares or their certificates, delivering them to their owners or offering them for circulation before the Company's statutes ratification, approval of its establishment or authorizing the increase of its declared capital before publication in the official gazette³.
2. Conducting simulated shares subscription or accepting imaginary or unreal subscription for inexistent or unreal companies⁴.
3. Issuing loan titles and offer them to circulation before their due term thus violating the provisions of this Law (The Law)⁵.

Accordingly and based on the precedent provisions, where the Jordanian Legislator approaches the difference between shares and titles, each of both researchers will deal with an independent branch within the following demand:

First demand: Crimes related to shares and their issuance:

By extrapolating both paragraphs (1) and (2) of Article (278) of Jordanian Companies Law, we find two crimes forms related to shares and their issuance⁶. The first of both is the shares issuance crime or their circulation before completing the procedures specified by Law, but the second is the crime of performing imaginary shares subscription.

First branch: Shares issuance crime or their circulation before Completing the procedures specified by Law text:

This crime has two niches, material and moral, that we will analyze as follows:

¹ The Jordanian Companies Law and its amendments no. (22) Of 1997, published on page 2038 of Official Gazette No 4204 dated 15/5/1997.

² Companies Law No (77) for 2008 year issued under Article (287) of Companies Law No. (22) Of 1997.

³ (Article 278/A/1 of Jordanian Companies Law)

⁴ (Article 278/A/1 of Jordanian Companies Law)

⁵ (Article 278/A/3 of Jordanian Companies Law)

⁶ (Al-Hamawi Jamal and Odeh Ahmad, (2004), the penal responsibility of the commercial companies, analytical comparative study, Dar Wael, edition1, Amman, 98 and the following)

Material Niche:

Since the legal text speaks about issuing shares before the company statutes ratification, which is the company establishment phase, before the existence of the elected board of directors in this period, although this crime is related to the founders of the public shareholding company, but the text also include accountability of board of directors' members in the public shareholding company in case of increasing the company's capital, where the increase is conducted by issuing new shares for subscription according to the same provisions of subscription to the capital of the company under establishment after obtaining the approval of the company's board of directors thereon according to the conditions and controls specified by the legislator in Article (113) of Jordanian Companies Law. This is done in several ways such as offering shares for subscription by the shareholders themselves or others, provided that the company has published its capital increase in the official gazette before offering the capital increase shares as required by the legislator.

Based on the precedent, the material niche of this crime is realized in case of issuing company's capital increase shares and their circulation before the publication thereof in the official gazette.

By analyzing the first paragraph of Article (278), this crime is one of the risk crimes in which the legislator is satisfied with abstract behavior without the need to the occurrence of a certain result such as the consequence of the behavior represented by the issuance act is the occurrence of real subscription, the crime is considered complete once the act of issuance has been carried out regardless of the position of the interlocutors.

Moral Niche:

As it is known, in order that the crime niches are met, the moral niche must be available in one of both forms either the crime intention is available so the crime is intentional, or the penal error is available so the crime is unintentional.

Given the criminalization text in the companies' law and the companies' statutes related to the members of the company's board of directors, it turns out therein that the contained crimes may intentionally occur when the criminal will turns to the criminal behavior expecting the result thereof, and the will of that outcome is inevitable and necessary for the behavior or he expected it and accepted the occurrence of the risk. When the criminal desires the behavior and doesn't want the result he expected or his duty and ability were to expect it falls within the unintentional crimes¹.

In the crimes that the legislator requires the availability of the crime intention, he is satisfied in most cases by the general intention, which is fulfilled by the availability of both elements the knowledge and will². This is what applies to the share issuance crime, as required by the legislator, only the general intention should be available without the existence of a special intention therein³. This means that the member of the Board of Directors who issues the shares and titles or deliver them to their owners must know the existence of procedures he has failed to do. These procedures are represented by the publication of the company's capital increase in the official gazette, so that his will is directed to deliver those shares or circulating them, which does not require the special criminal intention.

Jordanian legislator has determined the sanction for this crime in the form of detention for a period ranging from one to three years and a fine from one to ten thousand dinars⁴. According to the general rules, the Court of First Instance as penal shall be the competent to consider this crime as a described misdemeanor.

Second branch: The crime of conducting imaginary shares subscriptions:

The legislator indicated the criminalization of imaginary shares subscriptions in Article 278/A/2, which provided for punishment of the author of (conducting simulated shares subscriptions or accepting imaginary or unreal subscriptions for inexistent or unreal companies).

For the embodiment of some crimes privacy committed in the field of companies, the legislator didn't leave this crime or others subject to the provisions of the General Penal Law under the description of fraud and others as it enjoys a kind of privacy requiring to be provided for with a special text in the Companies Law, and in the light thereof, we will highlight the material and moral niches of this crime as follows:

¹ See Najem, Muhammad Subhi, op. Cit., P. 289 et seq

² The Jordanian legislator defined the general intent in Article 63 of the Jordanian Penal Code No. (16) of 1960 and called it, the intention to commit the crime according to the law

³ In addition to the commission of a criminal act, the special purpose requires the will and knowledge of its elements towards the perpetrator's will to achieve an objective or an event that is outside the elements of that act. (1982), The Mediator in the Penal Code, Dar al-Nahda al-Arabiya, Cairo, p. 528.

⁴ These penalties shall apply to the person involved in the crime and the instigator pursuant to paragraph b of Article 278 of the Jordanian Trade Law, and this is considered a departure from the general rules since the penalty of the meddler and the instigator is less than the original penalty. See Articles 80 and 81 of the Penal Code Jordan.

Material niche:

The criminal behavior is represented in this crime by the members responsible for the subscription process in conducting imaginary subscriptions to a company without effective existence in reality, where the subscriber performs the subscription process without having the intention to fulfill his obligation. But, this subscription aims to make others believe that there is a company to motivate them for subscribing to shares without having an effective company in reality¹.

The responsibility of the Board of Directors' members is highlighted in the form included by the material niche in this crime represented by accepting the subscription to the increase in the capital of this company originally nonexistent.

Moral niche:

As we have mentioned above, that most of crimes for which Board of Directors members are criminally liable are among the attended crimes, which require direction of offender's will to act and unlawful result of the criminalized conduct punishable by law. These crimes converge on the idea of lying and deceit and they are close to idea of fraudulent methods in Article (417) of Jordanian Penal Code for fraud crime, if companies want to attract capital or increase it, it should not be by lies or fraud, in addition, there must be reassurance among savers on their money and confidence in company's activity. If board of director's members of company declares a threat to this reassurance or a false activity, legislator must intervene with punishment².

In this crime, legislator requires general purpose with its both elements will and knowledge, where perpetrator must know that he is making a fictional or fictitious subscription, as well as his knowledge that company is not real on ground, and to turn his will to achieve subscription result without such a desire will have any defects. Thus, legislator did not require the special purpose of such a crime. If subscription is through a third person as a pseudonym, this does not result in the perpetration of this crime, as long as subscription has been made available to him in accordance with conditions of legal subscription validity.

What can be seen in discussion of this crime is that the legislator did not put a precise framework for its provisions, which came somewhat confused and ambiguous, especially limited criminalization of fictitious subscription for companies that are not real, without including fictitious subscription for existing companies, thus making it impossible to assume responsibility in such cases, therefore, in order for text to be correct and to be able to deal with such cases, it must be amended to include all companies, whether real or fictitious, pursuant to the principle of no crime and no penalty other than in law.

Sanction

With the availability of all niches and elements of this crime referred to above, legislator punished them with a penalty of imprisonment from one to three years, a fine not less than one thousand dinars and not more than ten thousand dinars. The Court of First Instance shall be competent as a penal court.

Second demand: The crime of issuing loan bonds in violation of law:

The legislator legislated the criminalization of issuing bonds in violation of law in Article 278 / A / 3 of Jordanian Companies Law by punishing him (Issuing the loan bonds and offering them for trading before its time in a way violate the provisions of this law), The commercial legislator defined a reference in Article (116) of the Companies Law by saying:(The bonds are negotiable securities which may be issued to public shareholding company, private joint stock company or to any authorized companies by the securities law to issue bonds in accordance with provisions of this law and the securities law for obtaining a loan under which company undertakes to repay the loan and its interest according to terms of issue). We will clarify this crime niches and elements through two branches as follow:

First branch: niche material elements

Because of the importance of decision which leads company to borrow³ Jordanian legislator stipulated in companies Law Article (117) that Board of Directors of the Company shall take a decision to approve the issuance of the loan by at least two thirds of board members, legislator also stipulated in the following paragraph the approval of extraordinary general authority of the company in case that such bonds are convertible to shares. In this way, the elements of material niche of this crime, which is positive behavior, can be inferred as the act of issuance. The public shareholding company issues bonds and offers them to trade prematurely in violation of the rule of law, without obtaining the approval of Board of Directors by a two-thirds majority or without the

¹ Hamawi and Awda, op. Cit., P. 102

² The jounde, Hassan Ahmed, (1989), Criminal Law for Commercial Transactions, Dar al-Nahda al-Arabiya, Cairo, p.

³ Sami, Fawzi, (1999), Commercial Companies General and Special Provisions, House of Culture for Publishing and Distribution, I 1, p. 406.

approval of Extraordinary General authority in case that loans are convertible into shares, It is also possible to have a material niche in case of presentation of these bonds before the completion of required procedures to follow by law.

It can be said in the light of Article text 278 / A / 3 of companies law that this crime is also a crime of free conduct, which does not require the legislator to achieve a result, as only the possibility of damage, where it is not required that the act of issuing bonds to receive an effective subscription and regardless on the position of persons addressing this text.

Second branch: moral niche

This crime also comes as part of the crimes intended and through the text of article 278 / A / 3, which requires the availability of general purpose of both the two elements will and knowledge, that is, the legislator does not require the availability of purpose to establish the moral niche. Accordingly, the members of Board of Directors must be aware that the issuance of bonds is a loan issue and was issued prior to the approval of the Board of Directors by a legal majority or without the approval of the extraordinary general authority of the convertible bonds, or offer these bonds before the completion of required procedures by the law 'as well as must be proven direction of their will to the act of issuing such bonds in violation of provisions of law referred to previously. Any defect in the elements of moral niche leads to the failure of crime.

Sanction:

With the availability of the above-mentioned crime niches, the punishment stipulated in Article 278 shall be applied in one to three years' imprisonment and a fine of one thousand to ten thousand Dinars. The competent court in light of penalty is the Court of First Instance.

Third demand: The Board of Directors members arising responsibility for Company's financial position Concealment:

The company financial position is important to demonstrate the company's ability to achieve the goals for which it was established. Therefore, the announcement of the company's true financial position is a very important issue for company and its shareholders and others alike, This, of course, would position the company and its administrative apparatus on the company true position and provide an opportunity to deal with company's crisis and difficulties if it intervened before it was too late to correct its direction to the right direction.

For these reasons, Jordanian legislator has criminalized these acts related to the concealment of company financial position. He has organized two kinds of these crimes which can be highlighted by extrapolating the text of Article 278 / A / 4 of the Jordanian Companies Law. The first crime relates to the organization of the company's budget and profit accounts contrary to reality, the second crime is the distribution of unrealized profits.

We will analyze the pillars of these crimes through two demands as follows:

First demand: The crime of organizing company's budget and its profits and losses accounts in a manner contrary to reality.

Article text 278 / A / 4 of Companies Law for this crime by saying that any person who commits any of the following acts shall be liable to imprisonment for one to three years and a fine not less than one thousand dinars and not more than ten thousand dinars, budget organization of any company and its profits and losses accounts are not in conformity with reality , the report of its board of directors or auditors' report contains inaccurate data , giving incorrect information to public body or conceal information and clarifications required by law in order to conceal the true state of company from shareholders or related parties.

We draw niches and elements of this crime in two separate branches through the text above as follows:

First branch: material niche of crime:

The Jordanian legislator ordered public shareholding company to organize its budget and statement of its profits and losses, so that the partners or shareholders can access them to know the true reality of the company. The Jordanian legislator has identified this crime in a set of documents that constitute the company's annual budget, profit and loss accounts and reports issued by Board of Directors. The annual budget is the document that shows the final outcome of the company's activity at the end of each financial year. It includes two items for the inventory of assets and liabilities, the first of which is allocated to the statement of company's assets, the second is allocated to the statement of liabilities of company to restrict its property, rights and debts, It is also (budget) the document through which shareholders can know the book value of their shares and the company ability to pay their debts for creditors^{1 21}.

¹ Al-Bassam, Ahmad, commercial companies in Iraqi Law, Baghdad, p. 323.

The second document mentioned in text is the profit and loss account, which is a financial statement that the board of directors must include in its annual report on the company's activity. The data that are recorded in the profit section include everything that comes into the company's possession during the financial year, the company earns from its business during the fiscal year from profits or from interest it receives from its shares and bonds, The amounts recorded in profit section must be valuable and entered into the company's possession on a final way, so it is not permissible to record in this section the interest of the company debts which has not been settled yet¹. depending on Articles (140-143) of Jordanian Companies Law, which regulate the general budget , profit and loss accounts of company, the Board of Directors of Public Shareholding Company shall prepare accounts and statements and show to the general authority within a period not exceeding three months from the end of the company financial year:

- 1- The Company's annual general budget, statement of profit and loss, statement of cash flows and clarifications in relation to the previous financial year, all of which are certified by the Company's auditors.
- 2 - The annual report of the Board of Directors on the company's work during the past year and its future projections for the coming year.

In accordance with Article (143), the Board of Directors shall publish the company's general budget, profit and loss accounts and a compendium of the annual report and the report of the auditors within a period not exceeding thirty days from the date of convening the General authority.

In accordance with the provisions of Article (142) of Jordanian Companies Law, the Board of Directors shall prepare a report every six months, including the financial position of the company, the results of its operations, profit and loss accounts, cash flow statement and clarifications related to the financial statements approved by the auditors of the company within sixty days from the end of the period.

Accordingly, the previous provisions have set out the controls that the Board of Directors must comply with when regulating the company's budget, calculating its profits and losses, and the reports to be submitted.

The material niche of this crime is realized when the Board of Directors prepares the budget , profit and loss account or reports submitted with the company financial position and the results of its operations in a manner contrary to reality, as if the board of directors tried to increase the expenses , reduce the value of revenues , shows that company is making profits in the event of loss or other acts the members of Board of Directors aimed to hide the real state of company to continue to work for their own benefit and to make money at the expense of company and its shareholders² .

It is worth mentioning the text of Article 161 (A) (B) of the Jordanian Companies Law which states that the discharge issued by the General authority cannot be invoked unless it is preceded by the company's annual statement of accounts and auditors report³.

Second branch: moral niche:

This crime is one of the intended crimes in which the general purpose of knowledge and the will must be met; the Board of Directors members must know that the budget, profit and loss accounts and reports submitted by the Board of Directors of all types do not reflect the true financial status of the company, or contains false data, fails to provide substantial data or has been kept secret about the information and explanations required by law.

However, until the moral niche of this crime has been completed, the legislator has not satisfied by the general purpose only, but also requires the special purpose as well as the general purpose⁴ of The disappearance of the status of the company real financial position from the shareholders or related, in order to cheat on those people, and this is clear from the text⁵

However, if the Board of Directors has another motive, it does not matter in this crime, such as the motive for tax evasion, mitigate or achieve the interests of the company^{6 27}

Sanction.

As it clear from the text of Article 278 / A / 4 of the Companies Law, the legislator punished on this crime with imprisonment for a period of not less than one year and not more than three years and a fine not less than one

¹ Al-Akeili, Aziz, (2012), the mediator in commercial companies' comparative juristic jurisprudence, Dar al-Thaqafa for publication and distribution, I 2, Amman, p. 355).

² Al-Hamawi, and Awda, op. Cit., P. 116.

³ Auji, Mustafa, (without a year printed), criminal responsibility in the economic institution, Nofal Foundation, Beirut, p. 479.

⁴ Look at that Najem, Mohamed Sobhi, op. Cit., P. 300.

⁵ Paragraph (4) of item (A) of Article 278 of Jordanian Companies Law.

⁶ Since the motive is not considered of crime elements unless the legislator states that frankly, article 67 of the Jordanian Penal Code No. 16 of 1960 states in the second paragraph that "the motive shall not be an element of criminalization except in the cases specified by law"

thousand dinars and not more than ten thousand dinars. The jurisdiction to consider this crime is held by the Criminal Court of First Instance.

The second demand: the crime of distribution fake profits:

The crime of distributing fake profits is one of the crimes that are intended to hide the bad financial position of company, so the distribution of profits purport other people without the truth, which leads them to deal with it believing they make profits and then surprise otherwise, on one hand it will lead to dissipation of company capital, as it will not distribute dividends only if the profits actually achieved, if no profits are realized, distribution will be done through the deduction of capital or to reduce origin of existing assets of company, which deprives company of a part of its resources, so it consumes and collapses finally.

Therefore, this distribution is considered a prepayment of share that consist the capital of company, which affects the pay of obligations on time, either by prevention or by decreasing the pay ratio.

This performance affects capital market. It will encourage a large number of savers to join it depending on false boom of company, as well as the satisfaction of the lenders - wealthy and banks - to provide loans and open credits for this company¹.

For the above considerations, the Jordanian legislator was keen to criminalize these acts, which are the distribution of fake profits, and punished who committed it in Article 278 / A / 5 of the Jordanian Companies Law.

The researchers will address both niches material and moral in the following two branches:

First branch: material niche:

The material niche of this crime is related to fake profits based on the provisions of law, and the criminal behavior is the distribution of these profits.

Firstly: fake profit:

As we have mentioned, this crime to be committed, it must be a matter of fake profits not achieved by company. The question that arises here is when do these profits consider fake in Jordanian legislation? The Jordanian legislator has defined the net profit concept of a public shareholding company as "the difference between the total revenue achieved in any financial year and the total expenditure and depreciation in that year on the other hand before the deduction of provision for income and social services taxes².

However, the net profit is not distributed to shareholders, since a percentage of it must be deducted. The wise and good judgment requires deduction of a part of net profits and not distribute to shareholders to form reserve capital held by company to face losses that may be incurred in future, to ensure lower limit of shareholders' profits, or to strengthen company's financial position³. The legislator has organized three types of this reserve as follows:

1. Compulsory reserves (statutory):

Article 186 / A / B of Companies Law regulates the provisions of this reserve, which required the deduction of 10% of company's annual net profit for the compulsory reserve account. No dividends may be distributed to shareholders until such deduction.

Accordingly, the statutory reserve may not be distributed as dividends to shareholders and should be deducted of achieved net profit by company. The reason is that this reserve is treated as capital in this respect, because it is used to meet the capital deficiency due to losses incurred by company. Capital cannot be increased from this reserve.

As the capital can not be distributed to shareholders, the statutory reserve takes the same judgment. Accordingly, if the company does not achieve net profits after deducting the statutory reserve, the distributed profits are considered as fake profits. The crime here is formed and Board of Director members will be pursued with the completion of its legal elements.

2. Optional reserve:

It is also called the free reserve. There is no mandatory provision made for this type of reserve in Companies Law or Companies system. It remains optional for the Company itself to decide through the General authority the creation of such reserves. A certain percentage of the annual deduction from the Company's profits for the purpose of forming this type of reserve, So that the company does not continue to deduct a financial percentage of profits and therefore there is little left to distribute to shareholders⁴, In this regard, the Jordanian Companies

¹ Al-joude, Hassan, op. Cit. 246, et seq.

² Article 189 of Jordanian Companies Law.

³ Aqili, Aziz, previous reference, p. 359.

⁴ Sami, Fawzi, op. Cit., P. 514.

Law set the rate of 20% deducted from the net profit for that year for the voluntary reserve account¹.

3. Special reserve:

The legislator authorized this kind of reserve. The General Authority may decide on to deduct up to 20% of its net profits for that year under the Companies Law of Jordan, a special provision for emergency purposes or expansion to strengthen the company's financial position and faces the risks it may face².

These are the types of deductions from net profits organized by Jordanian legislator.

Accordingly, distributable net profits to shareholders represent the difference between the Company's assets and rights after deducting the organized deductions by law and Company's system.

By returning to the texts relating to distributing fake profits crime, we note that criminal behavior of this crime is a result of the distribution of fake profits.

By checking the contained word (distribution) in the text we note that some of jurisprudence explanations³ don't consider distribution has achieved as soon as a decision has been issued by general authority, but there is a need for a real distribution of profits. This view is based on the fact that the legislator requires this distribution explicitly, which is not consistent with the researchers' point of view. the broad explanation of the word "distribution" shows that there is distributable profits, if we take the word (distribution) in the narrow sense, which means the delivery of each shareholder's right of profits, and since such a delivery is not a decision of the General Assembly only and not the decision of the board of directors, it entails that the General Authority is to be asked about the act of distribution criminally.

To counter such a result to logic, the date of committing distributing fake profits crime⁴ is the date of preparation budget, profit and loss account and include unrealized profits, from this date the Board of director has decided that the company has made profits and the shareholders has the right and appeared with a strong position in front of others.

Second branch: the moral niche of fake profits distribution crime:

It is clear from reading the text Article 278 / A / 5 of Companies Law that the crime of distribution fake profits is a deliberate crime, the general purpose by its two elements will and knowledge is enough, it means that the board of directors is aware of this fake profits and the extent of its violation of reality, in addition to their will to distribute those profits to shareholders⁵.

Regarding to special purpose it is not necessary in this crime, because the legislator did not mention it in text frankly, nor does the nature of the crime itself require the existence of this kind of criminal intent. The intent of fraud here is not envisaged by the general authority in this case, they expect that company will improve in order to avoid liquidation in coming years.

Regarding to motivation, it is also of no importance whatever noble, such as that the Board of Directors members did not seek to distribute the profits for any personal benefit, or claim that the distribution of such profits will improve the image of company to others economically, so they can get credit facilities used by company to develop its economic status.

Sanction:

The legislator sanction for this crime with imprisonment for a period of one to three years and a fine of not less than one thousand dinars and not more than ten thousand dinars⁶, the Court of First Instance is competent to judge in this crime.

Finally, it should be noted here that the Jordanian legislator gave urgency to the competent courts whether in criminal or corporate lawsuits arising from the application of the Companies Law⁷.

Conclusion:

The declaration of company Board of Directors responsibility, which is committed intentionally from the penal point of view, is a precautionary procedure to preserve the company's profits, continuity, the rights of shareholders and the rights of third parties from dealers and creditors.

Charging the company with criminal liability and precautionary sanctions make shareholders choose a good directors who are experienced, honest and well-managed, so that the company does not face sanctions that may expose it to closure.

¹ Article 178 / A of the Jordanian Trade Law.

² Article 178 / B of the Jordanian Companies Law.

³ Eid, Edward, (1970), Commercial Companies, University House, Cairo, p. 324

⁴ Article (3) of Jordanian Penal Code No. (16) 1960 stipulates that the crime shall be considered complete if the acts of its execution are carried out without regard to the time of result.

⁵ Al-Hamawi, Jamal and Awda, op. Cit. P. 121.

⁶ Article 278 / A / 5 of the Jordanian Companies Law.

⁷ Article 284 / A of the Jordanian Companies Law.

Results and Recommendations:

1. Criminal liability shall be imposed on the moral person as a natural person, taking into account the nature of moral person and the corresponding criminal sanctions.
2. The Board of Directors members shall be criminally liable for their actions and their violation of Companies Law intentionally.
3. The absence of criminal responsibility against Board of Directors members by exercising their work in a manner that does not involve criminal intent would encourage persons to accept membership in these boards. In fact, they will be charged criminally if they involve in a crime intentionally.
4. All crimes that mentioned in article 278 (A) shall be based on terms of moral niche depending on availability of general purpose without special purpose, except the crime of organizing company's budget and profits and losses in a manner contrary to reality, legislator requires special purpose be available alongside general purpose frankly.
5. The legislator's approach in the crime of making fake shares subscription of shares was inaccurate by putting general framework for the provisions of this crime. The criminalization was limited to the fake subscriptions of unreal companies. This text should have been circulated to accommodate the fake subscriptions of existing companies, so that the board of director's members can be asked accountability for making such fake subscriptions in existing companies.

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