

Insolvency Law Toward Commercial Transactions in Jordan

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Abstract

The study aims to explain the extent of the impact of the rules contained in the insolvency law on the Jordanian legal reality, and are they negative or positive effects? Our study also aims to explain the provisions of the insolvency law and its legal nature and explain what this law provides in terms of continuity of activity. It is necessary to address the Jordanian reality based on loan contracts from banks and financial companies and checks and their impact on insolvency rules, and to what extent the commercial reality has been affected by the new provisions of the insolvency law, and the alternative solutions that can be applied to get rid of the negative effects of this law. The study used the descriptive and analytical approach to demonstrate the strengths and weaknesses of insolvency law in regulating commercial transactions that require speed and credit. The problem of the study arises in explaining the suitability of the new legal provisions that merged the insolvency and bankruptcy system with the legal reality in Jordan, such as imprisoning the debtor and creating new terms and conditions that may violate the guarantee of payment, as given. The legislator has many deadlines for payment, which has caused confusion in the commercial reality that depends on credit and does not give a deadline to the debtor.

Keywords: Insolvency, Commercial transactions, Bankruptcy, Jordan

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1. Introduction

The Hashemite Kingdom of Jordan, like many countries, is going through economic conditions as a result of accumulations and crises that directly contributed to the faltering of many Jordanian companies and merchants. These crises, which contributed to the deterioration of economic conditions, may be regional political crises, which led to a decline in commercial activity in general, and the halt of many of commercial enterprises to insolvency. In addition to this, the Corona pandemic 2020 made the situation more complicated, as it directly caused a reduction in financial returns in Jordan, which was reflected in trading on the one hand and the cessation of projects from work, which affected the rest of the standards of commercial work, and resulted in faltering operations to fulfill the financial obligations of debtors in the face of creditors. Many of them stopped paying commercial debts.

It should be noted that the Jordanian Insolvency Law No. (21 of 2018) has an impact on its interaction with commercial life, through its application in terms of persons to the merchant and non-trader, as it combined the provisions of bankruptcy and insolvency. The insolvency law may aim to create national provisions and provisions related to the implementation of a foreign insolvency ruling, to encourage investment and deal with commercial disputes at the national and international levels, efficiently, especially those that stimulate investment activity in Jordan.

In this way, the Jordanian legislator used the new insolvency law, which explained its concept, forms and characteristics, in addition to the procedures for declaring it, the means and legal procedures that faltering economic projects or those that are about to falter can resort to when declaring their insolvency, and the procedures for implementing foreign insolvency rulings, by submitting a reorganization plan, to put their affairs in order. Economic and continuing to practice the activity instead of liquidation, and paying what is due, and insolvency system No. ((8 of 2019) was issued, to facilitate the application of the provisions of the law, and to cancel the implementation of the legal articles that talk about bankruptcy and bankruptcy-protective settlement stipulated in the Jordanian Trade Law. Company Liquidation Regulation No. (122) of 2017 has also been cancelled.

2. Legal Framework for Insolvency

Insolvency is considered an important legal topic because of its connection to all variables of economic, financial, social and health life. On the credit side, we find that the relationship between the creditor and the debtor may be affected by circumstances beyond the control and intention of the debtor when concluding the contract and when implementing it as well. To avoid this, the legislator has enacted a number of means to protect the implementation of obligations. Various, including the precautionary means that the legislator aims to keep the debtor's liability as it is, and also examples of this are the precautionary seizure that the debtor's creditors may demand when filing a lawsuit or before, and the insolvency law has characteristics that distinguish it from the bankruptcy law, so the place of the insolvency law is the civil law that applies to non-traders.

The issue of insolvency is one of the vital issues in the economic system of any country, as it can greatly affect individuals, companies, and the economy in general. In order to deal with this issue and provide mechanisms for protection and orderly liquidation of debts, the insolvency law was adopted, as the insolvency law aims to regulate the operations of Insolvency and liquidation in the event that individuals or companies are unable to pay their outstanding debts. This law is considered a legal framework that provides legal protection for debtors and creditors and helps rebuild the financial and economic life of distressed individuals and companies.

Insolvency law is known as the legal system that regulates liquidation and settlement processes in the event of insolvency and is considered a mechanism for legal protection for debtors and creditors in the event of the debtor's inability to pay his debts. Insolvency law usually includes procedures for determining the state of insolvency, liquidation of debts, and distribution of assets and debts among the parties concerned.

Insolvency and commercial bankruptcy agree in two matters: - Both laws are means that force the debtor to pay his debts, and they aim to liquidate the debtor's funds to distribute them to creditors. Accordingly, we find that the insolvency system guaranteed protection for the debtor and his creditors and made the due equality between them real and realistic.

The Jordanian Civil Law included it within the provisions of the Civil Law, and the Civil Law gave great importance to the bankrupt merchant in commercial law. Accordingly, the Jordanian legislator was very keen to create a new and effective legal system to address the problems of the debtor's financial distress in order to achieve parity between the need to address the financial problems of the creditors. And for all parties that have an interest in the debtor's facility, and accordingly, the new insolvency law came in line with and responds to the requirements of the Jordanian economic sector by adopting a new legal system to address the insolvency of the debtor, whether a natural or legal person, and to encourage him to reform his financial conditions and enable and assist him to get out of the financial crisis that Exposure to it and providing effective means and methods for cooperating with the insolvent debtor and giving the insolvent debtor the opportunity to reset his business through a clear reorganization plan carried out with the approval of the creditors or through a liquidation plan.

The insolvency law came to facilitate the entry and exit process, which will contribute to improving Jordan's ranking in the work progress report, and the insolvency law contributes to organizing liquidation procedures within liquidation procedures within a specific period of time so that it does not remain for a long period of time. The Jordanian legislator defined insolvency in Article 2 of the Jordanian Insolvency Law No. (21) of 2018 as: "The debtor stops or is unable to repay the debts owed to him on a regular basis or when the total obligations incurred on him exceed the total value of his funds," as mentioned in the previously referred to law. That the debtor is the natural person or legal person who practices commercial work or who is one of the owners of professions registered and licensed according to the relevant laws or the person to whom the provisions of the insolvency law are applied and who has declared his insolvency or is about to do so.

In a decision issued by the Amman Court of Appeal No. 18175/2019, it defined what is meant by insolvency as follows: "When the debtor stops paying his debts owed regularly or the total obligations incurred on him exceed the total value of his funds in the event of actual insolvency or a situation in which it is expected that the debtor will lose future ability." He must pay his debts due within six months, despite his current ability to pay them in the event of imminent insolvency.

As for Egyptian Law No. 131 of 1998, it stated that: "The debtor is allowed to officially declare his insolvency if the assets owned are sufficient to repay the debts." On the other hand, UAE Federal Law No. (19) of 2019, it defines insolvency as: "Facing current or expected financial difficulties that render the debtor unable to settle his debts." The definition of insolvency was also stated in the Legislative Guide (UNCITRAL) for insolvency law, where insolvency is defined as: "When the debtor is generally unable to pay his debts when they fall due or when the value of his financial obligations exceeds the value of his assets."

Based on the above, the researcher believes that insolvency is a term used to describe the state of inability to pay debts or specific financial obligations and refers to the situation in which a person finds himself unable to meet his due financial obligations, due to a lack of financial liquidity, weak profits, or unexpected circumstances that effect on the ability to repay debts.

3. Scope of Application of Insolvency Law

The Jordanian legislator issued Insolvency Law No 21 of 2018 with the aim of abolishing the distinction between the concepts of bankruptcy and insolvency, and based on this law, its provisions are applied to all persons who engage in economic activities and face financial hardship or inability to pay their debts, whether they are merchants subject to the trade law or others, they are subject to civil law. Thus, once a person is exposed to this financial hardship, he is obligated to comply with the provisions of the insolvency law, and this means that the scope of application of this law includes a wide range of categories and is not limited to a specific category of merchants only.¹

Commercial and civil companies, in particular commercial companies, are considered among the most important institutions that participate in commercial and economic activities, and it is possible that these companies will face financial difficulties that may lead to their default and inability to pay all or some of their debts. Therefore, the Insolvency Law was issued to regulate this issue and provide solutions to overcome financial distress.²

Insolvency law includes various commercial companies, such as joint liability companies, simple partnerships, limited partnerships, and private joint stock companies. The law aims to provide mechanisms and procedures to help these companies overcome the financial difficulties they face and achieve restructuring or settlement of their debts. Insolvency law is a legal tool aimed at protecting companies. Enabling it to restore its stability and business continuity. According to the Jordanian Trade Law, merchants are the owners of sole proprietorships who conduct business in their personal name and for their own account. This definition also includes companies that choose business as their main activity regardless of the nature of the business they conduct. All limited and regular joint stock companies are subject to the obligations imposed on Merchants in accordance with the law, even if its actions are of a civil nature.³

Trade is generally based on the principle of credit and trust that merchants exchange among themselves. Typically, most transactions between merchants take place on a fixed date. Consequently, someone may face financial difficulties that may prevent him from fulfilling his financial obligations, which may cause disruption and weakness of business operations, unless these situations are regulated to protect the rights and gains of merchants.⁴ Accordingly, the Jordanian legislator considered it necessary to list these companies and organize them within a clear legal framework in order to protect the rights and interests of merchants and ensure the proper continuity of commercial operations.

Before the issuance of Insolvency Law No. 21 of 2018, procedures related to insolvency followed civil and commercial laws. Bankruptcy provisions were applied to merchants in accordance with the Commercial Law, while insolvency provisions were applied to non-traders in accordance with the Civil Law. The specific criterion for determining the category to which the law applies was whether the debtor is a merchant or not. With the issuance of the new insolvency law and the abolition of bankruptcy provisions, the standard used to determine the law that applies to the debtor changed. Insolvency law no longer applies exclusively to merchants, and civil law does not apply exclusively to non-traders. Rather, the insolvency law can apply to merchants as well as to non-traders according to specific criteria.⁵

Based on the above, it can be seen that the problem arises that the law equates in regulating insolvency between the ordinary person and the merchant person, and since the nature of the law requires speed in procedures due to the characteristics of commercial law of speed and credit. Likewise, commercial transactions require a special nature. Insolvency procedures for merchants must be organized according to independent legal texts. A non-trader has a different personality from a trader and the specific mechanisms required for a trader in terms of commercial procedures and transactions. Here, it is considered that the Jordanian legislator, according to the insolvency law, has confused the merchant with the legal person, and the resulting effects lead to the disruption of commercial business.⁶

The Court of Cassation confirmed in its ruling that before the court decides to impose an interdiction on the defendant, it must take into account all the circumstances surrounding the debtor, whether they are private or general. The court considers the debtor's future sources of income, his responsibility for the reasons that led to his insolvency, and the interests of the debtor. Legitimate creditors, and the special circumstances of the debtor may go back to the past and relate to his responsibility for the causes that led to the loss, or they may be related

¹ Alwahshat, Z., & Friehtat, M. (2022). The Legal Implications of the Judgment Declaring Insolvency in Accordance with the Jordanian Insolvency Law No. 21 of 2018. *J. Legal Ethical & Regul. Issues*, 25, 1.

² Saeed, Fahd Saeed Falah (2013), Legal Regulation of Insolvency, Master's Thesis, Middle East University, Amman, p. 67.

³ Tolba, Anwar (2001), The Mediator in Civil Law, (Part 5), Modern University Office, Cairo, p. 6.

⁴ Smith, E. E. (2007, January). Commercial and Insolvency Law. In Proceedings of the ASIL Annual Meeting (Vol. 101, pp. 357-360). Cambridge University Press.

⁵ Abu-eid, A. Q. M. (2021). The role of the insolvency agent in insolvency proceedings According to the Jordanian Insolvency Law. *Review of International Geographical Education Online*, 11(8).

⁶ Orabi, G. A. (2023). The regulation for the settlement of insolvency: analysis of the Federal Insolvency Law No. 19 of 2019. *International Journal of Economics and Business Research*, 26(2), 201-223.

to the present, such as the interests of legitimate creditors that may require declaring the debtor insolvent, or they may be related to the future, such as the debtor's future sources of income.¹

Based on that, we see that the previous ruling reflects the principles of justice and flexibility in dealing with cases of insolvency and debts, as the ruling stresses the necessity of taking all the circumstances surrounding the debtor into account before making a decision to impose a quarantine on him and considering the debtor's future sources of income and his responsibility for the reasons that led to his death. Its insolvency and the legitimate interests of creditors. This ruling reflects a legal philosophy that aims to achieve a balance between the rights of creditors and the just interests of the debtor. Therefore, this ruling considered balanced and fair, as it allows the court to take into account all circumstances related to the debtor and helps it make an appropriate decision that achieves justice for all. This ruling reflects, also the development in the judicial approach to dealing with insolvency cases, where the focus is on resolving the problem in a comprehensive manner that achieves the legitimate interests of all parties involved.²

The state of insolvency arises pursuant to a judicial ruling based on the provisions of Article (375) of the Jordanian Civil Law. The state of insolvency is preceded by the debtor's cessation of paying his commercial debts. Accordingly, the difference between insolvency and the inability to fulfill debts is that the inability to fulfill debts may be due to an emergency reason. A person's abstention from paying his debts does not mean that he is insolvent, and abstention may be temporary due to the lack of access to his money or financial hardship for a specific period that will disappear with time, since the debtor has the ability to pay his debts and fulfill them at a later time, or the debtor's abstention from paying his debts due to the presence of a dispute. Between the creditor and the debtor in the origin of the right, and that fulfillment is withheld even though the ability to fulfill it, and therefore we can say that stopping payment does not mean insolvency, but rather it may be a situation that befalls the debtor because of a reason. This situation may be a warning of the beginning of his insolvency, or it may be an emergency situation that will end soon.³

4. Challenges Facing Insolvency Law

Some scholars⁴ in Jordan believe that there are 4 main challenges. The first lies in the nomenclature, as the new law was called the insolvency law, which led to confusion between insolvency in its civil sense and insolvency in its commercial sense. Whereas the other challenge associated with the designation "insolvency" is explaining the bankruptcy provision contained in other legislation that sets provisions on the case of bankruptcy, as is the case in the Penal Code for the crime of fraudulent bankruptcy, the Control Law regarding the rehabilitation of a bankrupt arbitrator, and other legislation in which the name bankruptcy is mentioned.

They pointed out that the second challenge lies in formality, as the law came with many procedures that must be followed at each stage of the tripartite insolvency, and these procedures were characterized by some complexity and overlap. As for the third challenge imposed by the law, it lies in rectifying the situation, as the new insolvency law provided an opportunity for the insolvent person to rectify his situation by submitting a proposed project demonstrating his ability to do so, which requires the introduction of expertise in this field to study the economic feasibility and the necessity of having controls on experience so that it is not a means of evasion, the one who is insolvent of his obligations.⁵

Finally, the fourth challenge is represented by the "international dimension", as it is possible for an individual or institution to be surprised by the presence of a seizure on his funds, for example, and when he investigates the matter, he finds that the matter is related to the implementation of the decisions of foreign courts, and therefore, he is asked to correct his situation before these courts, and to challenge It relates to how to protect the Jordanian individual or institution from the cost of travel and power of attorney in a foreign country to protect his rights and the existence of guarantees that protect him from the arbitrariness of foreign courts in applying insolvency provisions.⁶

Based on the above, bankruptcy is limited to merchants and commercial projects only, but includes all people and projects that aim to achieve material profits through the practice of economic activities. Regarding the conditions for economic insolvency, several conditions must be met for the possibility of a ruling declaring

¹ Judgment of the Court of Cassation Rights No. 1930 of 2018, Qastat website / dated 11/14/2021

² Masalha, T. M. H. (2020). Reorganization: An insolvency procedure preventing liquidation in accordance with the provisions of the Jordanian Insolvency Law: A Comparative Study. *Int'l Rev. L.*, 118.

³ Article (375) of the Jordanian Civil Code

⁴ Forum in Yarmouk: The new insolvency law needs further clarification. *Irbid*, April 24 (Petra) - Participants in the symposium on "The New Insolvency Law between Theory and Practice," organized by the Faculty of Law at Yarmouk University. Available in; https://www.petra.gov.jo/Include/InnerPage.jsp?ID=2091&lang=ar&name=EducationAndTradeUnions_news Accessed 7 March 2024

⁵ Al-Arnaout, I. (2020). International Cooperation in Cross-Border-Insolvency Cases according to the Jordanian Law: A Comparative Study. *Dirasat: Shari'a and Law Sciences*, 47(4), 131-150.

⁶ Forum in Yarmouk: The new insolvency law needs further clarification. *Irbid*, April 24 (Petra) - Participants in the symposium on "The New Insolvency Law between Theory and Practice," organized by the Faculty of Law at Yarmouk University. Available in; https://www.petra.gov.jo/Include/InnerPage.jsp?ID=2091&lang=ar&name=EducationAndTradeUnions_news Accessed 7 March 2024

the insolvency of the insolvent debtor, including the conditions for the debtor to stop or be unable to pay the debts owed to him regularly, or to exceed the total obligations incurred on him and the total value of his money and to engage in economic activity. 1

In addition, the philosophy on which the new insolvency law was based and its influence on the UNCITRAL Model Insolvency Law, pointing out that the law includes many legal problems that arise in practical application. Also, some researcher², spoke about the mechanisms for writing off debts during insolvency procedures, reviewing the most prominent developments related to writing off debts during the reorganization and rescheduling phase, pointing out the importance of assisting the insolvent debtor and alerting him to the presence of some problems that could arise during the practical practice of writing off debts.³

5. Discussion and Conclusion

The Jordanian legislator specified who is called (the insolvent debtor) and the provisions that apply to them. The Jordanian legislator pointed out that the insolvent debtor may be any person carrying out a commercial activity, including a legal person (such as civil companies and government-owned companies). The Jordanian legislator pointed out that the insolvent debtor may include merchants, institution owners, and professionals registered in professional unions and authorized to work under current legislation.⁴

The Jordanian insolvency law specifies persons who cannot be considered insolvent, such as: banks, insurance companies, associations, clubs, ministries, public administrations, and public institutions. This is unless the Council of Ministers decides to consider it as such. Under the Jordanian insolvency law, persons who debtors cannot be considered insolvent, and may include Natural persons whose affairs are governed by civil law. Under the Jordanian insolvency law, it may include persons who cannot be considered insolvent debtors. Moreover, under the repealed provisions, if a merchant stop paying debt installments due to a limited amount of cash, a bankruptcy case may be filed against the merchant. Under the new insolvency law, a bankruptcy petition cannot be filed in such a situation.⁵

It is also noted that in the Jordanian insolvency law, the persons entitled to submit an insolvency application are debtors, creditors, and the officer of the Companies Control Department only. Under the provisions of the repealed Trade Law, those entitled to file a bankruptcy petition are the creditor, the debtor, the court, and the public prosecution.

Thus, this study recommends amending the criteria adopted by the Jordanian legislator to identify insolvent debtors. These standards must include more categories, such as: banks and insurance companies. These criteria should be more specific. For example, the provisions of the insolvency law should highlight and allow government-affiliated companies to be insolvent debtors. The Jordanian legislator must grant the court the power to officially declare the debtor as insolvent himself. This right should not be limited to debtors, creditors and the employee acting on behalf of the companies' surveillance department only.

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⁴ Al-Shnikat, M. M. (2020). The Meaning and Declaration of Commercial and Civil Insolvency under the Provisions of the Jordanian Insolvency Law No. 21 of 2018. *J. Pol. & L.*, 13, 161.

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