

Powers of Comptrollers to Request Bankruptcy Declaration for Commercial Companies and Judicial Oversight

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Abstract

The study aimed to outline the procedure for requesting the disclosure of insolvency applications by the Comptroller General of Companies, along with the conditions to be adhered to when filing such applications. Additionally, it explored the judicial oversight of the control powers exercised when submitting insolvency disclosure requests. Key findings of the study highlighted that the comptroller of companies derives the authority to submit insolvency notices from Article 193 of the Jordanian Companies Act. This article empowers the comptroller to oversee companies' performance and their compliance with the law from the moment of their registration, emphasizing the importance of not being deleted. Noteworthy recommendations include the necessity of imposing additional penalties on companies that fail to cooperate with the comptroller, enhancing their role in both preventive and punitive oversight. Furthermore, the study emphasizes consolidating the principle of comprehensive oversight to promote corporate governance, control, and early detection.

Keywords: *Power of Comptrollers, Bankruptcy Declaration, Commercial Companies, Judicial Oversight.*

Introduction

Regulatory authorities play a pivotal role in ensuring the overall functionality of companies, with the Companies Monitor assuming a significant responsibility in safeguarding the trajectory of commercial enterprises. This encompasses a comprehensive legal and financial oversight role, as it possesses the overarching authority to issue both the birth certificate and death certificate of a company.

The Company Monitor holds a substantial role in enforcing the legal supervisory framework outlined in company law. In an era marked by escalating instances of corporate collapses, insolvencies, board of directors' losses, and their misappropriation of corporate assets, as well as the erosion of shareholder rights, the role of the company monitor has gained paramount importance.

In Jordan, the Company Monitor wields a significant regulatory role, particularly during the stages of corporate distress and insolvency. Consequently, the Jordanian legislator has endowed the Company Monitor with the authority to initiate applications for corporate insolvency. This authority is vested in the Company Monitor based on the powers conferred upon them by company law, as they may become privy to a company's incapacity to settle its outstanding debts. In response, they expedite a thorough examination of the company's records to assess its financial standing and, if the criteria for actual insolvency are met, they may seek a declaration of insolvency (Mansoor, 2021). This exceptional prerogative, bestowed by the Jordanian legislator upon the Company Monitor, is pivotal in the submission of corporate insolvency applications.

Research Problem

Any creditor or the Company Monitor is entitled to submit a request for insolvency before the competent court when faced with a debtor. The law grants the Company Monitor the authority to file for insolvency under specific conditions and prerequisites. The research conundrum centers on the methodology

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employed by the Company Monitor in initiating such submissions, the criteria they entail, their constituent elements, and the court's oversight of the Company Monitor's insolvency petitions.

Research Questions

What are the procedures followed in filing an insolvency application by the Companies Monitor?

What are the conditions that the Companies Monitor must consider when submitting an insolvency application?

What are the aspects of judicial oversight over the powers of monitoring in submitting insolvency applications?

Significance of the Research

The significance of this research stems from the fact that the procedures for filing insolvency applications in Jordan's insolvency law are among the prominent challenges faced by creditors. Therefore, the Jordanian legislator has granted the authority for this application to the Companies Monitor. The importance of the research can be summarized as follows:

Clarification of the procedures followed in filing an insolvency application by the Companies Monitor.

Identification of the conditions that the Companies Monitor must consider when submitting an insolvency application.

Examination of the aspects of judicial oversight over the powers of monitoring in submitting insolvency applications.

Methodology

To address the research problem mentioned above, we will adopt an analytical approach to the procedures for filing insolvency applications by the Companies Monitor in Jordan's insolvency law. The nature of this topic necessitates the analysis of the provisions of the insolvency law and any other relevant texts. This analysis will be conducted in light of jurisprudential studies and judicial decisions issued by the Jordanian judiciary.

Research Structure

Chapter 1: The Concept of Insolvency Application and the Authority of the Companies Monitor to Submit It

Section 1: The Concept of the Companies Monitor

Section 2: The Authority of the Companies Monitor to File for Insolvency

Chapter 2: Limitations Imposed on the Authority of the Companies Monitor to Submit Insolvency Applications and Judicial Oversight

Section 1: Limitations on the Authority of the Companies Monitor to File for Insolvency

Section 2: Judicial Oversight of the Companies Monitor's Jurisdiction to File for Insolvency of Companies

Chapter One

The Concept of Insolvency Application and the Authority of the Companies Monitor to Submit It

There is a pressing need to enact an insolvency law due to the deficiencies plaguing the bankruptcy system, hindering the achievement of its intended outcomes. In reality, this system fails to consider the economic and social developments that have come to affect the Jordanian economy. Consequently, these rules have become impractical, lacking provisions that can effectively address the financial difficulties faced by debtors, reorganize their operations, and restructure their debts, ultimately allowing them to remain in the market and avoid bankruptcy.

The Insolvency Law is of paramount importance, especially concerning the Jordanian economy, companies, and investment entities within Jordan. This importance arises from the economic crises that have impacted large commercial companies and traders. The Insolvency Law offers these companies and traders an opportunity to confront these challenges by providing them with a chance to restructure their commercial operations within a successful and effective legal framework.

Article 5 of the Jordanian Insolvency Law delineates the procedural stages of insolvency, consisting of three phases: the preliminary stage, commencing upon the issuance of the court's declaration of insolvency; the restructuring stage; and the liquidation stage. The focus of this research lies in exploring the powers of the Companies Monitor in insolvency procedures, specifically concerning the submission of insolvency applications, as follows:

Research Section One

The Concept of the Companies Monitor

The term "Companies Monitor," in accordance with Article 2 of the Jordanian Insolvency Law, refers to the Companies Control Department. This entity represents an independent national institution characterized by financial and administrative autonomy. It operates under the jurisdiction of the Minister of Industry and Trade, pursuant to the provisions of the amended Companies Law, Law No. 40 of the year 2002. The Companies Control Department has established its own administrative regulations through Regulation No. 44 of the year 2003, aimed at enhancing the efficiency of its constituent elements and devising visions and programs to ensure independence and transparency.

The operations of this Department are governed by Company Law No. 57 of the year 2006 and its subsequent amendments. This legal framework forms the basis for delineating the roles and responsibilities of the Companies Monitor within the context of insolvency proceedings.

Based on the Jordanian Companies Law, the Companies Control Department is defined as a department affiliated with the Minister of Industry and Trade. The controller is referred to as the company's General Controller, and the companies under its jurisdiction include those established and registered in accordance with the provisions of this law, as well as companies formed under agreements entered into by the government with other countries. The Companies Control Department is a national institution with financial and administrative independence and operates under the provisions of the Jordanian Companies Law. It has its own administrative regulations established under Law No. 44 of 2003. The department is managed by the Companies General Controller, also known as the Director of Companies Registration.

Article 193 of the Jordanian Companies Law specifies the authority of the Companies General Controller in terms of overseeing the performance of companies and their compliance with the law. The article states the following responsibilities for auditors, either collectively or individually: Monitoring the company's operations.

Auditing its accounts in accordance with approved auditing standards, professional requirements, and scientific and technical principles.

Examining the company's financial and administrative systems, its internal financial control systems, and ensuring their suitability for the proper conduct of the company's business and the preservation of its funds.

Verifying the company's assets, ownership, and the legality of its obligations.

Reviewing decisions of the board of directors, the general assembly, and any statements required for their work and verification.

Performing any other duties required by this law, the auditing profession law, and other related regulations.

Auditors shall submit a written report addressed to the general assembly, and they or their delegates shall present the report to the general assembly.

The role of the Companies General Controller as the head and representative of the Companies Control Department in Jordan is an exemplary model. The primary objective of the Companies Control Department is to develop and implement regulatory tools for registered companies as a whole. The oversight imposed by the Companies Control Department can take the form of internal or external control, encompassing both financial and legal aspects. The authority of the department extends to monitoring companies at the time of registration and thereafter.

One of the key responsibilities and functions of the Companies General Controller, particularly relevant to our discussion, is their post-registration supervision of financially distressed companies through a specialized unit. This unit is tasked with addressing cases of financial distress and providing support to these companies. This support may involve the establishment of management committees for such companies and promoting them for potential sale.

The Companies General Controller plays a role in overseeing financially distressed companies, monitoring their insolvency, and ensuring compliance with the provisions of the Jordanian Insolvency Law.

The Second Chapter

The Authority of the Company's General Controller to file for Insolvency of Companies

Based on the powers granted to the Companies General Controller according to the aforementioned article of the Jordanian Companies Law, the Controller may become aware of a company's inability to pay its due debts. In such a case, they would investigate the company's records to assess its financial situation and determine whether the conditions for actual insolvency are met. The philosophy behind the idea of filing for insolvency, as per Article 6 of the Jordanian Insolvency Law, is that the court cannot initiate insolvency proceedings on its own, unlike the commercial bankruptcy system, which allows Jordanian legislation to grant the court the authority to initiate it independently. The insolvency system is an exclusive one, and its procedures can only be initiated through an application submitted by one of the authorized individuals, who are specified in Article 6 of the Insolvency Law. These individuals include creditors, debtors, or the Companies General Controller if the debtor is a company. Where it is legally permissible for a legal person, or legal person, to be a party to a contract, have a physical presence, and have the right to property. Rights and obligations

As soon as the debtor stops paying its debts, it may apply for insolvency after such cessation or if there is a likelihood of cessation, is known as "imminent insolvency." The law has granted the debtor the right to request insolvency if its insolvency is imminent, in contrast to the application submitted by the Companies General Controller, who can only file for insolvency if the insolvency is actual. The debtor must submit a complete application, and the court must prioritize and review it as a matter of priority, unlike applications submitted by third parties. This priority is explicitly stated in Article 6 and Article 14 of the Insolvency Law, which gives the debtor's application precedence over the application filed by the Companies General Controller for insolvency.

According to the aforementioned legal texts, the applicant for insolvency must have the legal status specified in the law. Therefore, the application cannot be filed by any other person except for the debtor in cases of actual or imminent insolvency, while the Companies General Controller can only apply for insolvency in cases of actual insolvency.

The Second Section

Limitations on the Authority of the Companies General Controller to File for Insolvency and the Court's Supervision

In accordance with the Jordanian Companies Law and the Jordanian Insolvency Law, which grant the Companies General Controller the authority to file for the insolvency of companies in cases of insolvency, the law imposes certain limitations on this authority. In this section, we will discuss the following:

First Subsection

Limitations on the Authority of the Companies General Controller to File for Insolvency

When we refer to the Jordanian Insolvency Law, we find that the Companies General Controller is among those authorized to file for the insolvency of companies. However, the law places certain restrictions on this authority and outlines specific conditions for its exercise. We will explain these limitations as follows:

Condition One: Filing the Application Only in Cases of Actual Insolvency and Not Allowing it in Imminent Insolvency

Legal scholars distinguish between two types of insolvency: imminent (legal) insolvency and actual insolvency. Imminent insolvency is a legal condition that arises when a debtor's debts due to creditors increase to the extent that they need to be declared by a court judgment, rendering the debtor insolvent. Actual insolvency, on the other hand, is a real condition that arises when a debtor's debts, both due and not due, increase to the point where they exceed the debtor's assets, rendering the debtor insolvent.

The Jordanian Insolvency Law distinguishes between these two types of insolvency. It allows the Companies General Controller to file for insolvency only in cases of actual insolvency and does not permit it in cases of imminent insolvency. This means that the Controller can take action only when a company is actually insolvent, and not when it is on the verge of insolvency due to its legal obligations.

The Reality is that the Two Types of Insolvency, Actual and Imminent, Share One Point and Differ in Two Points: The point they share is that both types are associated with the element of increased debts over assets, meaning that if this increase does not occur, insolvency does not occur.

The two points on which they differ are as follows:

The Nature of Debts

In actual insolvency, it is not necessary for the debts that contribute to insolvency to be due for payment. Even if they are not due for payment, the condition of insolvency is met.

In imminent insolvency, it is essential that the debts due for payment exceed the assets.

Legal Consequences

The legal consequences imposed by the law on legal insolvency may not apply to actual insolvency. These consequences may include the suspension of deadlines, the prohibition of the debtor from disposing of their assets, exposure to embezzlement penalties, and the possibility of providing the debtor with an allowance from their reserved revenues.

Legal insolvency can end before actual insolvency. Legal insolvency can end with a court decision when the debtor pays off their debts. However, actual insolvency may persist even after legal insolvency ends, as the debtor may still owe more than their assets can cover.

The Jordanian law distinguishes between two types of insolvency: actual insolvency, where the debtor has stopped or is unable to regularly settle their due debts or when their total obligations exceed the total value of their assets, and imminent insolvency (legal insolvency), where it is expected that the debtor will lose their future ability to pay their debts when they become due within six months, despite their current ability to pay.

In fact, the two types of insolvency, actual and imminent, share one common element but differ in two key aspects:

The common element is that both are linked to the presence of increased debt exceeding assets. In other words, if this increase does not occur, insolvency does not occur.

The differences between them can be summarized as follows:

Actual Insolvency: The debts contributing to actual insolvency do not necessarily have to be due for payment. Even if they are not due for payment but exceed the assets, actual insolvency can be declared.

Imminent (Legal) Insolvency: For imminent insolvency to occur, it is essential that debts due for payment exceed the assets.

Legal Consequences: The legal consequences imposed by the law on legal insolvency may not apply to actual insolvency. These consequences may include the suspension of deadlines, prohibiting the debtor from disposing of their assets, exposing them to embezzlement penalties, and allowing for the provision of a living allowance from their reserved revenues. Therefore, legal insolvency is a more stringent condition than actual insolvency.

Legal insolvency can end before actual insolvency, as it may end with a court decision when the debtor pays off their debts. However, actual insolvency may persist even after legal insolvency ends if the debtor still owes more than their assets can cover.

Jordanian law distinguishes between two types of insolvency: actual insolvency, which occurs when the debtor has stopped or is unable to regularly settle their due debts or when their total obligations exceed the total value of their assets, and imminent insolvency (legal insolvency), which is a situation where it is expected that the debtor will lose their future ability to pay their debts when they become due within six months, despite their current ability to pay.

The Jordanian legislator, when establishing a legal framework for insolvency, imposed strict restrictions on the debtor, and this is in the interest of the law. The application of the insolvency concept entails significant legal consequences for the insolvent debtor. Therefore, it is not sufficient for insolvency to occur in a realistic manner, meaning that the debtor's assets are insufficient to cover their debts, whether current or future. Instead, the debts must be in the current state only. This type of insolvency is considered more severe than the other type. Due to the severity of this insolvency, it is referred to as "imminent" or "legal" insolvency. The purpose of distinguishing it is to differentiate it from actual insolvency and to apply specific legal provisions and consequences.

Second Condition: The Debtor Must be a Company

The second condition is that the debtor must be a legal entity, meaning a company. The Jordanian legislator stipulated in the Insolvency Law that the application for insolvency by the company's general controller is only accepted concerning legal entities, excluding applications for insolvency of natural individuals.

The Civil Law of Jordan, in Article 582, defines a company in general as follows: "A contract in which two or more persons undertake to contribute to a financial project by providing a share of capital or work for the purpose of investing in that project and sharing the resulting profit or loss." It is evident from this definition that the Jordanian legislator regards a company as a contract and a contract is considered an agreement between two or more parties to create a legal effect, whether it involves establishing, transferring, modifying, or terminating an obligation. In the case of a company contract, the legal effect arising from the mutual agreement of the partners is the establishment of a legal obligation to contribute to the financial project. The desired objective of establishing this obligation is the sharing of profits, and since trade involves the potential for profit and loss and carries an element of risk, it is natural for partners to share in bearing the potential losses arising from this financial project. The Jordanian legislator did not provide a specific definition of a company in the Jordanian Companies Law.

Regardless of the specific definition of a company, the Jordanian Insolvency Law stipulates that the debtor must be a company, regardless of the type of company, whether it is a capital company or a personal company. In other words, the person required to declare insolvency by the company's general controller must be one of the legal entities falling under the provisions of Article 1/3 of the Jordanian Insolvency Law. The Insolvency Law applies to all types of civil entities engaged in economic activities, whether they belong to the private sector or are state-owned, especially state-owned entities that compete in the market as economic or distinct commercial entities seeking to achieve the same economic and commercial interests pursued by privately owned entities. It does not intend to include governments, municipalities, insurance companies, or banks.

Third Condition: The Period of Time

The third condition is the time frame within which the company's general controller must submit an insolvency application, which is two months from the actual or presumed knowledge of actual insolvency, excluding imminent insolvency. This is derived from the text of Article 7 of the Jordanian Insolvency Law.

In light of the above, the company's general controller must take into consideration the aforementioned conditions and restrictions when exercising their powers to apply for the insolvency of companies. These conditions are part of their general powers in monitoring the operations of companies in Jordan, from their registration to their deregistration, in accordance with the provisions of Jordanian law.

Second Section:

Judicial Supervision Over the Authority of the Company Controller to Apply for the Insolvency of Companies

Article 2 of the Jordanian Insolvency Law defines the court as follows: "The court shall be the court of first instance within whose territorial jurisdiction the debtor's principal place of business is located." From this text, it is clear that the Jordanian legislator made the competent court for insolvency applications, both in terms of type and location, the court of first instance in its judicial capacity. This is a qualitative jurisdiction, and it also specifies the competent court in terms of location, which is the court within whose jurisdiction the debtor's principal place of business is located. The rationale for granting jurisdiction to the court at the place of the debtor's principal place of business is related to public policy, whether the jurisdiction is qualitative or territorial.

The first condition monitored by the competent court for insolvency applications is to ensure that the application is submitted by the authorized person. According to the provisions of the Insolvency Law, the application can be submitted by one of the persons allowed to apply for insolvency, as per Article 6: the creditor in the case of actual insolvency only, the debtor in the case of actual or imminent insolvency, or the company controller. The Court of Appeals in Amman decided that the Insolvency Law, in Articles 14 and 6, distinguishes between insolvency applications submitted by debtors and those submitted by creditors or company controllers. The law does not require the consolidation of creditors' requests in the first case, while it does require consolidation if the request is submitted by creditors or company controllers and mandates notification of the debtor after verifying the conditions, allowing the debtor to object.

When a company controller submits an insolvency application for the company, the court must ensure that the company is in a state of actual insolvency. According to Article 10 of the Insolvency Law, the court must verify when the debtor is in actual insolvency. If the court finds that the company controller's insolvency application meets the conditions, it will notify the debtor, along with the attached documents, within a period of fifteen days from the date of submission, as stipulated in Article 11 of the Insolvency Law. The debtor has the right to object to the company controller's insolvency application within ten days from the day following the date of notification, provided that the objection includes the necessary statements to prove payments. If the debtor does not object, and the court determines that the conditions stipulated in this law are met, it will issue its decision to declare insolvency within fifteen days from the end of the period granted to the debtor.

Furthermore, the competent court also exercises its oversight by ensuring that the application for insolvency submitted by the company controller is filed within the specified period, which is two months from the date of actual knowledge of the insolvency. Thus, the company controller must submit the insolvency application to the competent court within two months from the date of becoming aware of the insolvency to obtain an insolvency decision. The court also verifies the attachments to the application. If it finds that the application complies with the conditions stipulated in Articles 6-8 of the Insolvency Law and the result confirms that the debtor is actually insolvent, the court issues its insolvency decision.

If the court finds that the data provided in the application violates the provisions of Article 8 of this law, it grants a fifteen-day period to complete it. If the required information is not provided within this period, the application is rejected.

In the event that the debtor objects to the company controller's insolvency application, the court must schedule a date for considering the application and objection. This period should not exceed fifteen days from the date of submitting the objection to the application. The court calls the debtor and the creditors who have submitted the insolvency application for the trial. The court may hear the statements of any of the parties without the presence of the other party if it deems it appropriate. The court may appoint one or more experts, either on its own initiative or upon the request of one of the parties, to provide their opinion on whether the grounds for insolvency exist. The court may also take precautionary measures to preserve the value of the insolvency estate and protect the rights of all parties, or it may limit the debtor's powers in conducting its economic activities. The court issues its decision on the application, with precision and as an urgent matter, within ten days from the date of the last session, or within fifteen days from the date of the debtor's objection if no sessions are scheduled.

Conclusion

In conclusion, this research, titled "The Authority of Company Controllers in Initiating Company Insolvency Proceedings and the Subsequent Judicial Oversight," has explored the definition and powers of company controllers regarding their ability to request insolvency proceedings for commercial entities. We have also discussed the limitations imposed on their authority to submit such requests and the role of the judiciary in overseeing these applications. Based on the findings of this study, we can summarize the key points as follows:

Findings

Company controllers are individuals authorized under Jordanian insolvency law to submit insolvency applications.

Jordanian law restricts the right to request insolvency proceedings to debtors, creditors, and company controllers. This is in contrast to bankruptcy proceedings under Jordan's Commercial Law, where the right to request insolvency extended to debtors, creditors, the court, and the prosecution in debtor-related lawsuits.

Jordanian law specifies that insolvency applications submitted by company controllers can only pertain to actual insolvency cases, excluding potential ones. Additionally, the debtor must be a registered company.

Company controllers derive their authority to submit insolvency applications from Article 193 of Jordan's Companies Law, which grants them the power to oversee a company's compliance with legal regulations from the moment of its registration until its removal from the registry.

The competent insolvency court exercises its oversight role by ensuring that insolvency applications submitted by company controllers adhere to specified timelines, that the company is genuinely insolvent, and that all necessary information is provided within the application.

Recommendations

In light of these findings, we recommend the following:

The Jordanian Companies Law should explicitly require companies to provide company controllers with copies of all notes and correspondence exchanged between the company and its auditors. This ensures that insolvency applications are complete with all required information, and it allows company controllers to be confident that the company is genuinely insolvent.

Consider implementing stricter penalties for companies that fail to cooperate with company controllers. This will enhance the preventive and punitive roles of company controllers, promote comprehensive oversight, strengthen corporate governance, and detect companies facing insolvency at an earlier stage.

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