

# Newsletter

Eighth Edition, May 2021

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Welcome to the Eighth edition of our Newsletter. In this edition, we will discuss the meaning of insolvency and its effects under the Jordanian legislation, in accordance with Insolvency Law No.21/2018 (the “**Law**”). The Law was passed in the face of numerous declines of small, medium, and large enterprises. Whereby, we will look into the most prominent provisions of this law, such as the following:

- The meaning of imminent and actual insolvency
- The causes behind insolvency
- The scope of application of the Insolvency Law
- The means of filing for insolvency
- The effects of publicizing insolvency

*–“There is no doubt that a case of insolvency is neither a secretive matter nor can it be kept undisclosed. This is due to the rules of the Jordanian Insolvency Law, which the creditor or the Controller of the Companies Control Department can use to check whether actual insolvency applies to the debtor.”*

*–“[In which] the Jordanian Insolvency Law has been heavily influenced by international provisions and legislation; namely the [United Nations. Commission on International Trade Law] UNCITRAL Legislative Guide on Insolvency Law.”*



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We have previously discussed in earlier newsletters the role of legislative tools and their effect on the country's economic growth, as well as on the activity of individuals and establishments. This means that the current legislation must be [regularly] reviewed; hence keeping those legislative tools that are suitable, amending those that prevent the enhancement of the economy, and/or creating new legislation to respond to what is necessary. Among the new legislations that have been recently issued is the Insolvency Law No. 21 for the Year 2018; which has been created to the benefit of distressed companies, by way of following a set of rules and steps contained therein.

In this regard, it must be noted that the Insolvency Law overturned the regulatory framework of “*bankruptcy and protective composition from bankruptcy*”, stipulated in the Jordanian Commercial Law [Law No. 12 for the Year 1966], as well as the annulment of the Company Liquidation Regulation No.122 for the Year 2017. That denotes the importance of the Insolvency Law.

The first response to the new legislation materialized into confusion and questions over what was included in the provisions, rather than accepting or rejecting them. Especially in light of the widespread consensus on the Law's contribution to attempt to help recover businesses

from the distressed phase to resuming activities in the normal and desirable pace.

Hence, we dedicated one of our newsletters to address some of the ambiguities that surround the Law; this is done through demonstrating the [two] different types of insolvency: imminent and actual. After that, we will look into the main reasons that lead to insolvency, the scope of the application for insolvency, the method of filing for insolvency, and finally, we will demonstrate the most prominent effects of publicizing insolvency.

#### **Firstly: The meaning of imminent and actual insolvency**

For insolvency, there are two types that have been mentioned in the Insolvency Law; those are actual insolvency and imminent insolvency. Upon examining the names of both types, the main difference between them becomes clear. Whereby, the first one refers to insolvency that actually took place; and the second one, refers to insolvency that is on the verge of taking place.

#### **Regarding actual insolvency:**

- 1) The debtor has either stopped or is no longer capable of “*settling his insolvency debts owed, regularly*”; or
- 2) Where the total value of [debtor's] liabilities



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exceeds the total value of money/assets.<sup>1</sup>

3 There is no doubt that a case of insolvency is neither a secretive matter nor can it be kept undisclosed. This is due to the rules of the Jordanian Insolvency Law, which the creditor or the Controller of the Companies Control Department can use to check whether actual insolvency applies on the debtor, such as:<sup>2</sup>

- 1) The inability of any of the debtor's creditors to collect their rights despite the initiation of enforcement procedures on the debtor's assets.
- 2) Executive seizure of all of the debtor's monies.
- 3) The debtor disposing of his monies or selling it in bad faith.
- 4) The closure of the debtor's main facility (the legal person) or the domicile of the debtor (the natural person) becomes unknown.
- 5) The issuance of a court decision to recognize foreign insolvency proceedings.

On the other hand, **imminent insolvency** arises where it is expected that *"the debtor will no longer be capable of meeting their future liabilities in a span of 6-months, despite being able to meet them now"*. Wherein, it is possible

for the debtor to be able to pay and repay his /her debts, during the current time; however, this ability is expected to cease in a short span, which is set to 6 months.

As such, it is crucial for the debtor and creditor to pause and comprehend each one of the imminent and actual insolvency. In which the creditor will be able to verify the debtor's insolvency and thus can determine the procedures required in the case of the insolvency of the debtor. As well as the ability of the debtor to be aware of their financial situation and their ability to pay and meet their due liabilities.

#### **Second: The Reasons that Lead to Insolvency**

No one is immune from insolvency, and it can apply to a natural or a legal person, as well as to small, medium, and large enterprises.<sup>3</sup> However, this does not mean that insolvency is a momentary or immediate occurrence. On the contrary, it is a situation which results out of various reasons; some of which are legal, financial, or administrative. Therefore, we will demonstrate through our knowledge and practice below a set of situations in which insolvency applies on a company:

- A company's continual losses, either by losing

<sup>1</sup> Article (2) of the Jordanian Insolvency Law No. 21/2018.

<sup>2</sup> The indications have been copied from Article (10) of the Jordanian Insolvency Law No.21/ 2018.

<sup>3</sup> It should be noted that there is a group of regulations and exceptions which govern the applicability of the Insolvency Law on a natural or legal person.



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its main clients, or due to a decrease in the demand of the products or services offered by the company.

- A company's weakness or inability to secure financing.
- An existing seizure on the company's monies or account, or any kind of restrictions preventing it from dealing with its money.

### Third: The Scope of the Application of Insolvency

The provisions of the Insolvency Law are applied on anyone carrying out economic activity, such as companies, traders whom solely own establishments and professionals that are licensed and registered to work. Whereas the provisions clearly dictate that, it does not apply on a group of categories, such as:<sup>4</sup>

- Banks and insurance companies;
- Associations and clubs, which can be subjected to the provisions of the Insolvency Law with the approval of the Cabinet.
- Ministries, governmental departments, public establishments, and municipalities;
- A natural person subject to the provisions of the civil law, except for those registered and licensed

to work.<sup>5</sup>

### Fourth: Filing for Insolvency

The mechanism in which one files for insolvency varies according to the individual that is applying for insolvency, and the type of insolvency one intends to file for. With regards to actual insolvency, each of the creditor, the debtor or the Controller [of the Companies Control Department] have the right to file for insolvency, on the following basis:<sup>6</sup>

- 1) **Application filed by the debtor:** it is an application filed by the debtors themselves,<sup>7</sup> whether they are a natural person or a managing person - without the requirement to obtain approval from the shareholders or the partners - in the case of a legal person; which must be filed within 2 months from the date of actual or assumed discovery of insolvency. In the case the application is not submitted within that period, the aforementioned persons will be responsible for the incurred damage. Additionally, the court may exercise its authority to prohibit the debtor from carrying on business activity for a period of up to 5 years.
- 2) **Applications filed by others:** it is an application filed either by the Controller if the debtor

<sup>4</sup> Article (3) of the Insolvency Law No.21/ 2018 referred to the bodies which are subject to the provisions of the Article.

<sup>5</sup> It should be noted that the Civil Law No.43/ 1976 regulates special provisions that allow for the seizure of the insolvent debtor's monies, which applies to both natural and legal persons.

<sup>6</sup> Articles (7) and (8) from the Jordanian Insolvency Law No.21/ 2018.

<sup>7</sup> The economic activity has to have been taking place for a minimum of 3 years, for the application to be accepted.



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is a company and/or by the creditor. However, proof of the specific unconditional amount due must be attached to the application (in other words, during actual insolvency)<sup>8</sup>.

As for what pertains to filing for an imminent insolvency application, it is not permitted for any individual to file said application except for the debtor/s themselves. This is due to the fact that the debtor, at that point, remains capable of meeting their liabilities and carrying out business activity. There is no limitation period in this case, as opposed to the 2-month period in the case of actual insolvency.

In all cases, if the specialized court found that the application filed by either the debtor, creditor, or the Controller, meets the necessary requirements stipulated in the Insolvency Law; then the court will issue a decision to publicize the insolvency. This decision is subject to appeal for a period of up to 10 days from the date of the issuance of the decision or notification, as applicable.<sup>10</sup>

#### **Fifth: The Effects of Publicizing Insolvency**

The Law attempted to grant the effective application of its provisions, through the stipulated advantages the insolvent debtor enjoys

towards others, in the case in which the insolvency has been publicized.

Whereby, the aim of the legal provisions is to promote economic activity and to suspend any judicial procedures that may hinder the reorganization process. It should be noted that those effects will only last for a specified period of time, which is until a decision is issued approving the plan to reorganize the economic activity; on the one hand. On the other hand, the Law has granted the insolvency agent the right to file a revocatory action or request not to enforce the disposition in the case in which the debtor is using any of their monies in bad faith throughout the year preceding the date of publicizing the insolvency. For example, a gift, settling the debts of an unsecured creditor, or issuing assurances for a previous unsecured debt; in which the transaction “*resulted in damages, or granted an unjustified preferential transaction for any of the debtor’s creditors.*”<sup>9</sup>

Concluding, we will demonstrate [below] the most prominent effects of insolvency relating to the judicial, contractual, or arbitral procedures.

<sup>8</sup> Article (10) of the Jordanian Insolvency Law No.21/ 2018.

<sup>9</sup> Articles (33) and (34) of the Jordanian Insolvency Law No.21/2018.

<sup>10</sup> Article (11) and (15) of the Jordanian Insolvency Law No.21/2018.



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Every term and condition contained in a contract in which the debtor is party to becomes null and void, if it gives the other party the right to terminate the contract or if it allows for automatic termination in the event of declaring the debtor's insolvency or similar procedures.

Filing lawsuits against the debtor: *"No proceedings will take place against the debtor following an insolvency publication, and any creditor claiming a debt must file a request with the insolvency agent."*

Ongoing judicial and arbitral procedures will proceed until a decision is reached. It is permitted for the transfer of said cases to the court that is looking into the declaration (Publication) request, but on the basis of a request from the insolvency agent.

It is prohibited to seize any of the debtor's monies as well as seizing it to pay any debt regardless of its origin or its nature. The limitation period for said prohibition is 6 months, starting from the date of declaration (Publication) or till the approval of the reorganization plan, whichever is earlier.

### **The Most Prominent Effects of Publicizing Insolvency**

Executing the debtor's monies is not permitted in accordance with the provisions of the inadmissibility of seizure. In addition, implementation procedures, which commenced prior to the declaration (publication) of the insolvency, will be halted; therefore, the onus will be on the creditor to lodge a claim with the insolvency agent. As such, the agent will place the creditor in the list of creditors.

The Insolvency declaration (Publication) does not authorize a landlord to terminate an ongoing lease contract. However, the agent or the debtor will have the right to terminate a lease, before the date of termination, if it would serve a purpose in the insolvency proceedings. In that case, the debtor would have to pay rent dues up to the eviction date.

Any mediation or arbitration agreements, in which the debtor is privy to, will not be affected by the insolvency publication. However, said agreements can be invalidated by way of a court order, should the court deem that they negatively affect the insolvency proceedings.

Employment contracts will remain valid and are not affected by the insolvency declaration (Publication). However, it is permitted for the agent or the debtor [under the supervision of the agent] to file a request to amend or end employment contracts before the court. A decision will be issued by the court after hearing the opinion of the employee or of his/her representative.



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If you would like to discuss further any aspects of this Newsletter, please feel free to get in touch with one of our lawyers, using the contact details in the Contributors section below.

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Warm regards,

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## ABOUT HAMMOURI & PARTNERS ATTORNEYS AT-LAW

Hammouri & Partners Attorneys at-Law, is a Jordanian multi-practice law firm, founded over two decades ago (established in 1994) by Professor Mohammad Hammouri. Professor Hammouri is the Chairman of the board of Hammouri & Partners Attorneys at-Law, a litigator as well as an arbitrator, a former Minister of Culture and National Heritage and a former Minister of Higher Education, who wrote a plethora of books, primarily on constitutional rights. Professor Mohammad Hammouri also founded the first School of Law in the Hashemite Kingdom of Jordan at The University of Jordan, in which he was its first dean. Today, the firm is managed by Dr. Tariq Hammouri, an academic, attorney and a former Minister of Industry, Trade and Supply. Dr. Hammouri is both an experienced attorney and arbitrator, an expert in the Corporate sector, Commercial Transactions, Financial Markets, Banking, International Trade and negotiations. He is an Associate Professor at the School of Law, University of Jordan and (formerly) the Dean of the School of Law.

Hammouri & Partners team consists of 25 attorneys and a number of other professionals working in the firm's specialized departments, providing professional legal services at a local, regional and international level.

The firm's legal services cover numerous areas of practice, including the following: Corporate and Commercial Law (whether that is corporate set-up or drafting of all types of commercial agreements), Intellectual Property law, Banking and Finance Law (the Firm advises local and international banks regarding all Banking Transactions and Regulatory Compliance). Additionally, the Firm's Litigation and Arbitration department has the capabilities and competence to represent parties in the most complex and novel legal matters, as it encompasses expertise in several areas of law, whether it is before courts or arbitral tribunals. Hammouri & Partners Attorneys at-Law was one of the first firms in Jordan to establish a specialized International department to cater for the needs and requirements of international clients on an array of tasks with an international element, such as those regarding bilateral and International Trade negotiations, projects, contracts and others.

In addition, Hammouri & Partners provides legal advice and consultation to various industries such as those of Construction & Infrastructure, Manufacturing, Engineering, Trade, Insurance and Energy, as some of its clients are major energy, healthcare, information technology and telecoms companies.

Hammouri & Partners Attorneys at-Law provides its broad services throughout Jordan as well as worldwide, through established collaborations with reputable law firms in the MENA region, in Europe, the United Kingdom and the USA. Hammouri & Partners' proven capability on the above areas of law has earned the firm international acclaim by the most reputable legal directories. The International Financial Law Review (IFLR 1000), the Legal 500 and the Chambers and Partners Global , all highlight Hammouri & Partners as a leading law firm in the Jordanian legal services industry.



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