**Full Length Research paper**

**Reconciliation for bankruptcy protection in Jordanian commercial law**

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This research paper aims to clarify commercial Law Legislations according to Reconciliation for Bankruptcy Protection. In addition, the study intends to provide an understanding of the impact of bankruptcy on business entrepreneurs and the reconciliation to bankruptcy according to commercial Law in Jordan. The researcher relies on the analytical methodology in researching and analyzing the legal texts related to this subject and therefore, he has concluded that Reconciliation for bankruptcy protection in Jordanian commercial Law is the ideal course of action to maintain both the continuity of commercial enterprises and flow of trade which in turn, would assist in helping merchants overcome their emergency crisis, and in preserving creditors’ rights.

**Keywords:** Reconciliation, Bankruptcy, Protection, Jordanian Commercial Law

**INTRODUCTION**

Commerce and trade are considered key economic activities and is the cornerstone in human life. It is based on trust and faith between merchants, creditors and debtors. It is a complicated process; where each party counts on the other to fulfill their debts and obligations. Therefore, the legislative authorities place a regulating legal system in order to protect the national commerce and industry, and to preserve the rights of creditors and debtors.

One of the most important legal systems is bankruptcy, which is considered a main debt issue; because of its financial and social influence on the merchants’ life, activities, and their different projects. In addition, a bankruptcy system aims to help merchants who stop paying a commercial debt for reasons beyond their control and to arrive at a settlement with creditors.\(^1\)

Taking into consideration the complicated nature of commerce dealerships, where merchants are both creditors and debtors at the same time, which means if he stops paying to a creditor he might cause him financial problems. Therefore, a bankruptcy system was exclusively established for merchants to protect commerce and trade from intruders and reckless people.

Going forward, and for the reasons above, the Jordanian legislator addressed bankruptcy and ADR to bankruptcy in details through Laws of Trade, which are considered as an acceptable and fair solution for creditors and merchants with genuine intentions. Those who are unable to meet up to paying debts would be released from bankruptcy fears through legal means to face the economic crisis. By dedicating a separate chapter in the Trade Law designated to Alternatives to bankruptcy, which aims to enable traders avoid declaration of bankruptcy via mutual agreements with their creditors and under the full supervision of the judiciary establishments that accumulates all the benefits of installments of payment and peaceful settlement. The difference between the trade law and civil law is that the former considers a person who abstains from paying his/her debit as bankrupt, while the later labels them as insolvent.\(^2\)

The components of the bankruptcy system permit the merchant who stops paying his/her debts to propose an agreement of settlement with their creditors to the Court at the First Instance.
Under article 291, Part 12 of the Jordanian Trade Law 1966 the courts stipulated a mandatory condition which requires the petitioner to submit their legal, accounting books and records for the previous three years, or from the date they started trading, the reasons behind their proposal with detailed payments structure to the creditors. Article 292 compelled the Court of First Instance to appeal to the Department of the Public Prosecutor, considered the representative of the social body, for their opinion on the proposal, to insure that the accusations are not fake or manipulated. The same article also required the court to deny the proposal if the previous records above - article 291 - were not provided, or to reject the proposal based on the article 292 sections (B, C, D) of the Jordanian Trade Law. This study discusses the legal articles that were addressed by the Jordanian legislator relevant to composition of bankruptcy and their impacts. (3)

Study Importance

The importance of this study stems from recognizing the standing of the Jordanian legislator regarding the alternatives to bankruptcy and its economic and social effects, by clarifying the main rules of bankruptcy declaration. The emergence of this phenomenon during the last few years has resulted in many problems threatening merchants and the continuity of their business in the market place, in addition to the reflections it had on the general economic situation. Moreover, the importance of this study lies in setting the role that ADR might play in helping and protecting different commercial projects, mainly larger organizations as well as merchants.

Study Objectives

This study aims to fulfill the following objectives:
1- Defining both bankruptcy and alternatives to bankruptcy.
2- Recognizing the standing of the Jordanian legislator of ADR in relation to bankruptcy and alternative.
3- The impacts of bankruptcy and ADR according to the Jordanian Trade Law.

Problematic Issues

Commerce is one of the most important pillars required for national economy development and re-enforcement. It is a highly competitive and a risky profession, because merchants will encounter economic crisis or conditions that are out of their control, which in turn will cause fluctuations in their financial status that might hinder them from fulfilling for their financial obligations, resulting in their bankruptcy despite the fact that the merchant has all intentions of paying for their merchandise and has no wrongful or criminal purposes to deceive the legal system.

On the other hand, many countries have recently changed the route into issuing laws and ADR to bankruptcy insuring stabilizing the trade and supporting merchants with bona fide intentions to overcome financial obstacles they face and to protect them from declaring bankruptcy.

Many questions circulated around the concept of Alternatives to bankruptcy in the Jordanian Trade Law, the law’s opinion on that specific matter and clarifying the influence it has. Based on that, the main question of this study is: What is the standing of the Jordanian Trade Law regarding the Alternative Dispute Resolutions to bankruptcy?

STUDY METHODOLOGY

The researcher relies on the analytical methodology in researching and analyzing the legal texts related to this subject and recording the writers’ opinions in legal references whenever applied to the Jordanian environment.

The first topic: Bankruptcy

First Requirement: The concept of bankruptcy

The Romanian law is considered as the historical source for the bankruptcy system. Physical punishment was executed on debtors who do not honor their financial obligations, such as enslaving or even killing debtor regardless whether they were merchants or otherwise. After that, amendments were made in Judge (Alpreitor’s) era in 367 B.C, where executions were performed on the bankrupt’s money instead of his body. These amendments influenced countries like Italy and France; in the year 1673, Louis XIV organized the rules of bankruptcy, which were implemented only on the bankrupt who betrayed his creditors trust. (4) In 1807, Napoleon established a strict law that did not differentiate between good or bad debtors’ intentions, this law was extremely harsh. Therefore, it was adjusted in 1838. In Jordan, the law was limited to be executed only on the merchant. In 1966 the execution of the Jordanian Trade Law was put into action. The Ottoman laws were cancelled according to article 479/A of the law. (5)

Linguistic meaning of Bankruptcy: originated from the verb bankrupt. It is said someone is bankrupt, which means he transitioned from someone who had money to someone who has pennies. (6)

Bankruptcy Idiom: The case that the debt that is on someone is more than their money, or they do not even have any money. (7)

Bankruptcy in legal terms: If the merchant fails to pay his commercial obligations on due dates, this failure...
reveals the collapse of his credit, regardless of whether the debtor's money has increased or decreased or has been said to be solvent or insolvent. It also implies the liquidation of all his assets, selling them and distributing the money that has been collected between creditors fairly, which is made public by virtue of a judgment of the competent court. (8)

The Jordanian Trade Law defines bankruptcy as the case in which the merchant stops paying his/her commercial debts as they become due. (9)

Based on the previous definitions, it is conclude that the linguistic definition is broader and more comprehensive than the legal definition, which considers the merchant bankrupt when he stops paying off his debts because their debts exceed the money they have, or the merchant does not currently have enough money under his belt to pay off the debt. From a legal point of view, the person is said to be bankrupt even if they had money but did not fulfill their debt payments. As a result, we notice a remarkable difference between the linguistic and the legal definitions.

The bankruptcy system aims to reinforce ongoing commercial dealings as well as preserving creditors' interests and rights. In addition, the legal system intends to achieve equality between the two.

The second requirement: Types of Bankruptcy

Bankruptcy occurs due to a number of reasons; some are out of the merchants' control, others may be due to the merchants' negligence, in other cases fraud or manipulation are the causes, all of which harm the creditors in a number of ways. Bankruptcy is therefore divided into three main types: (10)

- Simple bankruptcy: When a merchant ceases payment of his debts not due to negligence or fraud, but for reasons beyond their control; such as wars, economic crisis or the inability to compete fiercely against other competitors. In other words, this type of bankruptcy occurs without debtors’ bad intention or misses behavior.

- Shortening Bankruptcy: When a merchant ceases paying off his debts due to deception or criminal intent; for instance, when he/she squander on their personal expenses which does not commensurate with the volume of their trade and revenue. This type is considered a crime; and consequently entails a criminal penalty.

- Fraudulent Bankruptcy: Which is represented by committing an intentional fraud and deception by merchants; and thereof harming creditors by manipulating commercial records, smuggling part of the money, or deceiving their creditors by pretending that they are in debt while they are actually not, this type is also considered a crime and entails a criminal penalty based on several elements, represented by: material evidence, criminal intent, and the judicial element; which refers to criminal bankruptcy legal provisions stated in the trade law.

The third requirement: Characteristics of Bankruptcy

First: this system in associated only with merchants as it is for a commercial origin, and it was initiated to handle commercial environmental complications. If any person, other than a merchant, fails to pay their debts he/she may create various financial hardships to their creditors, but will not negatively influence the general economic situation. (11) But when the merchant fails to pay debts they may create a real crisis that harms other merchants as well as the common good. (12)

Second: insolvent merchant declaration of bankruptcy cannot take place without adjudication. Therefore, bankruptcy is considered as a judicial action that includes custody of the debtor's money, subject to the control of the Court of First Instance. This action is not only limited to cash funds, but it includes all what an insolvent merchant owns. (13)

Third: bankruptcy is a collective action associated with the existence of a group of creditors who are related to each other by unity of destiny and mutual interests. The Jordanian legislator provides them a mechanism of impeachment in the bankrupt actions from the payment default date until the date of the verdict.

Fourth: Bankruptcy is punitive; in that it not only affects the interests of creditors, but also damages the public interest, leading to disorder in the merchants' community. Article 316 of the Jordanian Trade Law defines bankruptcy as: when the merchant has ceased paying his commercial debt or does not support their financial trust, and thus falls into the area of embezzlement and fraudulent bankruptcy, by performing a material or legal act that would deprive the creditors of the recovery of their money. Considering it as a criminal intent when the merchant stops paying, being fully aware of his conduct, such as when concealing, misappropriation or embezzlement of funds harm creditors' interests. (14)

Fourth Requirement: Effects of Bankruptcy

Bankruptcy has numerous effects on debtors as well as creditors.

1- For the debtor
The bankrupt shall be prevented from leaving the country for a specified period of time, renewable by a decision of the court, and at the request of the bankruptcy judge, the public prosecutor, the secretary of the bankruptcy or the observer. However, the court may cancel the decision as it sees fit.

The legislator of the Jordanian commercial Law has determined criminal penalties for bankruptcy by fraud or default. According to the provisions of Article 588, a bankrupt may not be a member of the local council,
chambers of commerce, industry or trade unions, or/and the board of directors of any company. He is not permitted to work in a bank or a commercial agency, exporting, importing or brokering in the sale or purchase of securities, auctioning or acting on behalf of others in the management of assets, unless he is given legal rehabilitation on the basis of articles 712 and 774 of the same law.

2- For creditors

After the issuing of a bankruptcy judgment, ordinary creditors or creditors of public franchises are not permitted to institute individual claims or take any other bankruptcy proceedings. All individual claims made against them, as well as the execution proceedings they began before the bankruptcy rule shall be suspended. For creditors and beneficiaries with a special privilege, who have jurisdiction over debtor's funds, they may start or continue to pursue individual proceedings against the trustee, as well as exercise the execution or continuation of claims against the funds on which they are insured.

The second topic: Reconciliation for Bankruptcy Protection

The Reconciliation for Bankruptcy Protection is the mechanism according to which creditors agree to grant an adequate term to the merchant (i.e., the debtor), whether an individual or a company facing financial adversity and hardship preventing them from paying their debts, in order to rectify the imbalance in their financial situation, so that they can restore balance and fulfill their rights.

Based on that, alternative resolution to bankruptcy is a good option for both debtors and creditors; it can save the debtor from bankruptcy, and at the same time protects the creditors' rights. Moreover, it is a wise decision to avoid entering into the muddled confusion of the bankruptcy procedure. Although the merchant is generally rigorous and vigilant, he may face economic crises that disrupt his business and lead to suspension from paying. As long as his debts are not for reasons of carelessness, deception, fraud, or poor management, an alternative resolution to bankruptcy is highly recommended.

Therefore, the law is evidently concerned with the issue of bankruptcy, that is to keep a debtor with a good intention but with a bad luck in business, and to enable him/her to avoid declaring bankruptcy, also, to preserve his/her cash and the creditors' rights, so that he can repay his debts and improve his financial position.

Provision of a settlement contract with the debtor is a key requirement in the ADR to bankruptcy system. It should be under the qualified court and the supervision of the judicial system. From the point of view of this, the merchant is considered a debtor and not in the case of legal bankruptcy even if there is actual bankruptcy, since the goal is to protect him from bankruptcy. (15)

The second requirement: The bankruptcy protection in Jordanian commercial law and the implications thereof

The Jordanian legislator systemized and formulated bankruptcy in the Trade Law No. 12 for the year 1966, in the first part of the fourth book through the provisions of articles 290-315. According to the article 290, the merchant may submit an application to the qualified court within the first ten days before ceasing payments of his debts, in which he seeks to conclude a bankruptcy settlement with his creditors in order to avoid a declaration of bankruptcy. Article 291, paragraph (1) of the same law declares that the merchant shall attach compulsory commercial records to his application. As stated earlier, the system was developed to save merchants with good intentions, and accordingly this law necessitated the availability of objective, formal and other compulsory terms for the holding of the settlement under the supervision of the judiciary, and the necessity of ratification by the competent court. These terms will be discussed in the following paragraphs.

First: The objective conditions

1- The applicant must be a merchant: Article 9 of the Jordanian commercial Law provides that a request for settlement may be submitted by individuals or companies whose professions are to carry out commercial business.

2- The financial work of the debtor is turbulent. This is explicitly stated in Article 290 of the Jordanian Trade Law, whereby the debtor can submit his proposal, once he is in a state of turmoil, is burdened with debts and cannot continue business or within the first ten days after he ceases to make payments towards his debts. The debtor shall not be entitled to request a settlement if he is in a state of relief and can pay debts and meet obligations.

3- Good intention and bad luck of the merchant: The Jordanian trade law does not expressly indicate the good intention or bad luck of the merchant, but it was extracted from the text of the article 291 paragraph (1) and article 292. The merchant should not be convicted of embezzlement, fraud, theft, fraudulent bankruptcy, in the event of bankruptcy, or by a prior conciliation contract, and has not fulfilled its obligations with success, has fled after the closure of all his shops or lack of a part of his wealth in a fraudulent manner. (16)

Bad luck refers to force majeure, other persons’ acts, or any conditions that are beyond the debtor’s will; such as economic turmoil related to price volatility, war in the country, or restrictions on import and export. In such cases, the debtor is entitled to request conciliation and his request shall be accepted.
Second: Formal conditions

Formal conditions are represented by the procedures specified in the trade law to come to ADR to bankruptcy. They are quick actions so that they may lower debtors’ expenditures. Formal terms are divided into conciliation request terms; where the debtor is a merchant, providing data that clarify the acceptance of conciliation, including compulsory accounts and records of at least three years, the terms of the conciliation, reasons for conciliation request, and the average payments to creditors. Based on the provision of article 291, sections 2-3, payments shall not be less than 30% if the time limit to pay is assigned to one year, 50% if the term is 18 months and 75% if the time limit is three years. (17)

Third: Conditions relating to the correction

According to Article 300 of the Jordanian Trade law, a meeting chaired by the judge shall be attended by the creditors on a specific day. The report of the session shall be read at the beginning, and then the debtor shall submit his final proposals. Upon completion of these deliberations, and after the adoption of the final conciliation, it will be submitted to creditors for a vote.

Ordinary creditors whose debts are accepted may be voted in final or temporary form. While creditors of a mortgage, real estate and non-real estate insurance may not participate in the voting except in the event of the waiver of their insurance, because of the difference of interests between them and the ordinary creditors. (18)

The legislator did not stipulate in Article 302 paragraph (1) of the Jordanian Trade Law the consensus of all creditors, because it is difficult to achieve. However, the approval of the majority is required, or the numerical approval (half of the creditors present at the meeting plus one). Or the approval in terms of the value of creditors to be in possession of three quarters of the debts that have been accepted permanently or temporarily, in order to protect the arbitrariness of some creditors to others, as stipulated in Article 386 paragraph 1, a. (19)

Based on the provision of article (295) Paragraph (1-2) of the Jordanian Trade Law, the request for conciliation requires the liquidation of the debtor's funds to enable him to pursue his business activity; and thus restrict his control of the management of his enterprise by realizing what he owns and owes, to enable him to submit a report to the creditors to vote for the acceptance of the conciliation or declining it, also the invalidity of free conduct, donations, borrowing, insurance, mortgage, reconciliation and arbitration, and the cancelation of future debts, whether ordinary or guaranteed.

LITERATURE REVIEW

Al-Atin (2013) conducted a study entitled: The composition of Bankruptcy in the Law, and the position of Islamic Jurisprudence towards it, which aims to clarify the perspective of the Jordanian law and Islamic jurisprudence on the subject of bankruptcy, in order to protect the merchant from falling into bankruptcy, as it was stated in Trade Law No. (12) of 1966. The Islamic jurisprudence also refers to reconciliation in its general sense, which is the peaceful settlement of disputes without distinguishing between civil and commercial debt, which means that there is no protective settlement of bankruptcy in its narrow legal sense. But The Islamic jurisprudence facilitates the insolvent debtor's debt, and relieves the burden of debt, by postponement until a time of ease.

Al Fahid (2010) conducted a study entitled: The Composition of Bankruptcy in the Saudi System, to identify the target segment of merchants, which gives them a way to avoid bankruptcy, and to adopt the conditions and procedures required to benefit from the composition of the bankruptcy in the Saudi system. The researcher used the inductive descriptive method, and concluded that the issue of the composition of bankruptcy is one of the important issues that preserve the economic entity and the wheel of trade from economic collapses. It is concerned with the debtor as well. The bankruptcy system is independent of the composition of the bankruptcy system to give it some special advantages and the adoption of criminal penalties for violators of the provisions of the debtor and others.

CONCLUSION

Reconciliation for Bankruptcy Protection is a system independent of bankruptcy to prevent merchants from falling into it. It is one of the most important topics for maintaining economic entity and the continual wheel of trade. It is a means of finding the most appropriate ways to maintain trade and to help merchant overcome his/her emergency crisis. The Jordanian legislator singled out a separate chapter in the Jordanian Trade Law and left a good intention assessment in the merchant's actions to the supervisors of the request for conciliation without setting a standard for this purpose. The purpose thereof is to prevent merchants from falling into bankruptcy, by postponing some of their debts and releasing them from others, and to clarify its terms and provisions and the implications thereof, and to consider decisions on the issue of reconciliation of a verdict by a competent court and a judicial control.

RECOMMENDATIONS

- Promoting and increasing awareness of merchants and those who apply the conditions of reconciliation to the subject matter of the study and its honorable objectives.
- Reconciliation for Bankruptcy Protection should be determined based on the size of the project, its investments
and its economic importance, so that judges and creditors would not be overwhelmed by its long procedures, while the size of the project is disproportionate.

- Adding a separate article to the law, explaining the causes for rejecting the components of the bankruptcy application submitted by the merchant.
- Adding a separate article to crack down and penalize debtors who conspire with deceiving creditors in order to vote for special benefits, thus provoking loss and financial devastation to the interests of other creditors.

Footnotes

(3) Mohamed Bahgat Abdullah Kayed, (1999), Bankruptcy and Repentance, Dar Alnhdah Alarabia, p. 10.
(5) Mustafa, Lectures in Jordanian Trade Law, p. 56.
(8) Explanatory Memorandum of the Project, The Palestinian Trade Law, the Chamber of Fatwa and Legislation p. 546.
(9) Article (316) of the Jordanian Trade Law No. 12 of 1968: ("In the event of bankruptcy, every trader shall cease to pay his commercial debts and any trader who does not support his financial trust except by means which clearly proves to be illegal).
(10) Dallol, Safa Salhi, (2010), Bankruptcy and The Composition of Bankruptcy, University College of Applied Sciences, P. 8.
(11) Husni Al Masri, (1987), Commercial Law, Bankruptcy, the major publishing houses in Cairo, I, P. 6.
(12) The explanatory note to Decree Law No. 42 of 1988 on the liquidation of the situation arising from the transactions of shares in the term issued in Kuwait, "The cessation of some dealers in the stock market to meet their obligations and accompanied by the intertwining of transactions and claims among a large number of dealers in that market caused the crisis Which was characterized by the crisis in the stock market and given the serious impact that the crisis on the national economy and business activity in Kuwait.
(16) Article 292 of the Jordanian Trade Law.
(17) Article 291 Paragraphs (2-3), Jordanian Trade Law.
(18) Article 302, Jordanian Trade Law.