

THE EFFECT OF LIQUIDATION ON THE LEGAL PERSONALITY OF THE PUBLIC SHAREHOLDING COMPANY UNDER COMPULSORY LIQUIDATION

Linda Hamed Malkawi, Al- Balqa Applied University

ABSTRACT

The subject of this research revolves around the effect of liquidation on the legal personality of the public shareholding company under compulsory liquidation. Liquidation is one of the concepts related to commercial companies. It is a system for commercial companies because of the existence of a case of extinction. The Company shall be required to liquidate the shares of the public shareholding company when the company violates the provisions of the law and the statutes, or if the company fails to meet its obligations, the company ceases its business or is subject to loss. The moral character, which is termed a legal personality, so that such companies dealing with others in the real existence acquires rights and obligations died.

Keywords: Liquidation, Legal Personality, Compulsory Liquidation, Public Shareholding Company

INTRODUCTION

The concept of liquidation is one of the concepts associated with commercial companies, which is a special system for these companies due to the state of expiration, in which assets are counted, debts are paid according to priority, and the remained is distributed to partners according to shares, therefore liquidation does not necessarily mean the company's intended bankruptcy because there are cases of voluntary liquidation, and compulsory liquidation does not mean bankruptcy, for example the end of the company's term, the completion of the purpose for which the company was established and the partners' agreement to liquidate it by a decision of the extraordinary corporate body of the company, this does not necessarily mean that the company is in bankruptcy .

In terms of liquidation, public shareholding companies in Jordan are subject to the liquidation provisions stipulated in Chapter 13 of the Jordanian Companies Law within Articles (272-252).

The liquidation process is considered one of the most important issues related to the rights settlement of shareholders, which is the stage that leads to the termination of the company and the cancellation of its legal personality, the company must also fulfill its rights, which are considered to be the guarantee of shareholders' rights, liquidation stages are the collection of the rights of the company and the inventory of its assets, then pay off its debts, after that the partners share what is left and each according to shares, when the company expires, it will inevitably enter the phase of liquidation, before this stage the company exercises business normally, and would concluded contracts with others and established obligations and acquired rights , all of which is a result of acquiring the corporate entity.

The acquisition of a public shareholding company is a corporate entity that entails many advantages which make it ahead of all companies at economic level, especially when this company conceals a group of people, so that it appears as an independent.

Entity with financial responsibility and legal capacity, and the nationality of a specific country, so that members are not asked about any loss that the company may suffer except to a

limited amount of the value of their share, while preserving their right to trade their shares and dispose them as they see fit, which constitutes a financial market that invigorates commercial movement.

RESULTS

The first topic

What is the compulsory liquidation of a public shareholding company under liquidation and the reasons for it?

The discussion in this topic revolves around the concept of liquidation in legal terminology in the first requirement of it, and the compulsory liquidation of the public shareholding company under liquidation and its reasons in the second requirement of it, as follows:

The first requirement: the concept of liquidation in legal convention:

The concept of liquidation is associated with commercial companies, and it is a system for commercial companies due to the availability of a state of their expiration, in which their assets are counted, their debts are paid according to priority, and the remainder of their money is distributed to partners according to their shares, this is what can be described in general terms liquidation and when tracing the meaning of liquidation in the terminology, corporate laws did not address the definition of the legal term for liquidating the company, leaving it to the jurisprudence of commercial law, or on the one hand, the researcher finds that the definitions of this term have varied verbally only, and they are all about one meaning only, we will present these definitions, and try to discuss them, to come out of their entirety with an inclusive and prohibitive definition that fully applies to the meaning of liquidation, and these definitions are presented as follows:

1. It was defined as: a group of legal and material works that aims to define the rights and obligations of the company and what that requires of collecting and fulfilling assets and obligations in preparation for counting net money and taking measures to divide it among the partners.
2. The Jordanian Court of Cassation defined liquidation as “the sum of the business and the measures taken to fulfill the rights of the company, pay off its debts, inventory and its assets with the aim of determining the net funds of the company that are distributed among the partners by way of division” .
3. Some defined it as “the group of works that are required to determine and claim the rights of the company before the partners and others.” It also paid its debts before others ”.
4. It was also defined as “the set of procedures necessary to end the company's operations, pay its debts, collect its money from receivables and convert its assets into cash that can be distributed to partners through division” .
5. It is also known as “the sum of the operations necessary to determine the net funds of the company that are distributed among the partners by way of division” .

It is noted on the advanced jurisprudential definitions that:

1. Its focus on considering that the liquidation is one of the stages it is going through when any of the reasons for its termination are fulfilled, and by its end it terminates the legal or legal personality of the company.
2. Determine the financial position of the company, whether addressing partners or others, and distribute net funds to the partners.
3. A statement of the truth and role of the liquidator, who is supervising the liquidation, being the legal representative of the company until its expiration and its dissolution.

It is a reproach for the previous definitions that they neglected to mention the most important thing in the liquidation, which are the legal results of the liquidation of the company

and the reasons for it. Therefore, this definition is not inclusive and prohibitive in that Dr. Hammond Shaman has suggested in his work that the liquidation be defined as:

"Carrying out all ongoing and necessary operations resulting from the dissolution or nullification of the company and its temporary management with the knowledge of the liquidator to settle all relationships and rights transfer its assets and pay off its debts."

He considers this definition accommodates all the cases that require liquidation stipulated by the law and the agreement. .

Through this definition, the doctor referred to the reasons for the liquidation and to the liquidator, and referring to the results of the liquidation by saying, "to settle all relationships and rights, transfer their assets and pay off their debts, and the settlement of relations between the partners themselves, which includes the total of operations that extend since the dissolution of the company to the division of its net funds, which are the procedures and actions taken to fulfill the rights and pay the debts of the company to be settled and convert its assets into liquid funds in preparation for distributing the net to the partners .

The second requirement: the compulsory liquidation of the public shareholding company under liquidation and its reasons.

The researcher in this topic will talk about compulsory liquidation by clarifying the concept of compulsory liquidation, its cases and procedures, and the powers of the compulsory liquidator during liquidation, in two requests the first of which is devoted to talking about the meaning of compulsory liquidation of the public shareholding company upon liquidation, while the second requirement discusses its cases and its procedures and the powers of the compulsory liquidator during liquidation, as follows:

First section: compulsory liquidation of the public shareholding company

Company laws usually stipulate the compulsory liquidation of the joint-stock company for general reasons, such as the company's decision to liquidate it, or its committing serious violations of the law or its system, or its failure to initiate its business within a certain period from the date of its registration, or the decrease in the number of its shareholders below the minimum required. The law for its formation or the company is unable to fulfill its debts. ”.

Compulsory liquidation is based on the law and in terms of its implementation is decided by the judiciary, and Article 252 of the Jordanian Companies Law states that: -

A- The public shareholding company shall be liquidated either voluntarily by a decision of its extraordinary general assembly or compulsory liquidation by a final decision of the court. The company shall not be dissolved until after completing the liquidation procedures in accordance with the provisions of this law.

Accordingly, what is meant by compulsory liquidation is the sum of the operations necessary to determine the net funds of the company that are distributed among the partners by way of division, by a final decision of the court, and the company is not dissolved until after completing the procedures of its liquidation according to the provisions of this law, which is the liquidation that takes place by force and by virtue of the court's judgment ,the court decides to liquidate the company if any of these cases are true, and they are:

- 1- If the company commits serious violations of the law or its articles of association.
- 2- If the company is unable to fulfill its obligations.
- 3- If its business is suspended for a year without a justified or legitimate reason.
- 4- If the company's total losses exceed (75%) of its capital.

Second section: methods of compulsory liquidation of a public shareholding company upon its liquidation.

The first case: the company's violation of the provisions of the law and the statute

Article (266) of the Jordanian Companies Law stipulates that: -

A. The request for compulsory liquidation shall be submitted to the court with a list of lawsuits from the civil public attorney, the observer or a representative, and the court to decide liquidation in any of the following cases:

1. If the company commits serious violations of the law or its articles of association.

Article 90 / A of the Jordanian Companies Law stipulates that: -

The public shareholding company consists of a number of founders not less than two subscribing to it for shares that can be listed in the stock market and for trading and transfer in accordance with the provisions of this law and any other legislation in force.

According to the previous article, if the number of partners in the public shareholding company falls below the minimum required for any reason, whether by inheritance or by buying shares by one of the partners or others, this leads to a meeting of the company's shares in the hands of one or two partners, and thus the company is considered Dissolved by rule of law.

Although the meeting of the shares of the partners in the hands of one partner leads to the dissolution of the company, because it should be noted that there is no need for liquidation because the remaining partner takes upon himself to pay the debts of the company, and the liquidation will not reach the stage of dividing the company's assets among several partners.

The second case: the inability of the company to fulfill its obligations

Article (266 / A / 2) of the Jordanian Companies Law stipulates that:

A. The request for compulsory liquidation shall be submitted to the court with a list of lawsuits from the civil public attorney or a representative, and the court may decide on liquidation in any of the following cases:

2. If the company is unable to fulfill its obligations.

The company's inability to fulfill its obligations is one of the cases in which the Jordanian Companies Law considers its existence a reason to request the liquidation of public shareholding companies for compulsory liquidation, and it is one of the rational reasons imposed by the economic balance, and in order to achieve the public interest, and for this the law grants the court the authority to liquidate public shareholding companies a liquidation that is justified Interest in these companies to achieve the general economic interest and to be keen on organizing and increasing their activity. A company that is unable to fulfill its obligations imposed on it is sentenced to compulsory liquidation due to its inability to continue its business and contribute to economic activity.

This deficit is called bankruptcy, when the company stops paying its commercial debts, it declares its bankruptcy and expires accordingly, as it enters into the liquidation stage to settle its debts, and its assets are sold and distributed to creditors, dividing the liabilities, whether they are from money companies or companies of persons .

Third case: The company stops its operations without a legitimate reason

The basic principle is for the company to be established in order to carry out certain and specific activities, otherwise its existence is unnecessary, and accordingly, if the shareholding company stops its business without a legitimate reason, it is sentenced to compulsory liquidation due to its inability to continue and contribute to the general economic activity ., and this absolute authority the companies established by the Jordanian Companies Law for compulsory liquidation are interfering with maintaining the economic balance. If the company stops its business without

a legitimate reason, then the company is liquidated by the force of law, as Article 277 / A of the Jordanian Companies Law stipulates that: -

- A. If a public joint stock company, a private joint stock company, a limited partnership by shares, or a limited liability company does not initiate its business within one year from the date of its registration, or it has stopped working for a period of no less than a year without a legitimate reason or a legitimate justification, and it is proven after being informed of it, in writing and a one-time announcement by the observer in a local daily newspaper of her cessation of work or her failure to provide any data proving her work and correcting her conditions within thirty days from the date of publishing the announcement, the minister, upon the observer's placement, cancels her registration and announces this deletion in the Official newspaper and in two daily newspapers two localities for one time, and the liability of the founders or partners remains as if the company has not been canceled, and this procedure does not affect the court's authority to liquidate the company whose registration was removed from the registry.

The fourth case: the company exposed to a loss

When the company is exposed to a loss that seriously affects the company's capital, which is considered to be the tool that drives the company's commercial activity, rather it is the real driver of the company's activities and its commercial business, and it is one of the general objective pillars in its establishment and continuation, noting that the company's capital may not be cash in its entirety but it may be movables or other assets.

In the event that this company suffers a loss that affects its ability to practice commercial activities and make a profit, then this will be a major reason for the compulsory liquidation of the public shareholding company, because if the company is focused on continuing its activity, it will be exposed to a greater loss and consequently the consumption of its capital, and it is known that the general rule states however, the company is liquidated by force of law for the loss of all its funds.

The second topic: The effect of the liquidation on the corporate entity of the company

A person is granted a natural personality from birth, and enjoys full rights and duties since acquiring this natural personality, but what is the case with companies and institutions whose character is predominantly dealing with money, or the language of stocks? In fact, these companies enjoy what is known as the corporate personality of the company, which is termed as the legal personality, so that such companies can deal with others within a real existence that acquires rights and fulfills obligations.

In this regard, this topic will be divided into two requirements. The first deals with the foundations of the acquisition of the corporate personality and the legal status of the company. The second requirement deals with the results of the company's continued acquisition of the corporate personality under liquidation.

The first requirement: the foundations for acquiring the corporate entity and the legal status for it

The company is defined as: a legal person formed through the existence of a contract, and this legal person is separate from the natural personality of the partners in this company, and by reading Article (583) of the Jordanian Civil Law, it stipulates:

- A. The company is considered personal and judgmental once it is formed.
 B. This personality is not invoked against others except after completing the registration and publication procedures stipulated by law. ”.

It is clear to us from the previous text that the company acquires the moral personality once it is formed, and it may protest and represent through this character in front of others by completing all registration and publication procedures within the limits of the law, and after that

the company has acquired full capacity through the moral personality to deal with others within Rights and duties.

As for the Jordanian Companies Law, he referred to the establishment of the company within the text of Article (4): “The company is established in the Kingdom and registered in it according to this law.

From the aforementioned, the researcher indicates that the legal or corporate personality, if it is true, is acquired by the company as soon as it is established and registered, i.e. the formation procedures are completed in accordance with the provisions of the law, and thus the company becomes a legal person and acquires the Jordanian nationality, and this personality is not protested except by the mere publication and the real purpose that Behind the publication until legal action is achieved, and until everyone is aware of the existence of such a legal person. The identification of the foundations of the company’s consideration is that it has acquired the legal personality. The real legal status of such a personality must be examined in light of the liquidation of such companies.

The continuation of the corporate personality of the company in light of the liquidation embodies the most important foundations from the legal point of view, so that this personality remains throughout the liquidation period, and this is what Article (254 / a) of the Jordanian Companies Law went to, stating:

A. The company that is decided to liquidate shall cease to carry out its business from the date of the issuance of the general assembly’s decision in the case of voluntary liquidation, and from the date of the court’s decision in the case of compulsory liquidation. The legal personality of the company continues, and the liquidator represents it until it is dissolved after the completion of its liquidation.

The researcher believes that it is good for the legislator to do the text of Article (254 / A), whereby the legal personality of the company is preserved in light of the liquidation, and the bankruptcy or expiration of the company and placing it under liquidation does not result in the termination of the legal personality, but rather the legal personality remains throughout the liquidation period, and this personality ends when the end of the work and procedures required by the liquidation, and the purpose behind it that the idea of the continuity of the company in the legal personality during the liquidation is the existence of a financial liability of the company independent of the responsibilities of the partners, and the existence of a financial balance dedicated to the liquidation, and so that the liquidator can settle the financial matters of the company between the debts and assets of the company to reach the final financial position of the company under liquidation.

The second requirement: the results of the company’s continued acquisition of a legal entity under liquidation

The company enjoys, while under liquidation, all the rights acquired for it, just like a natural person, and it continues to acquire its rights, and the burden of bearing the obligations is placed upon it, and the company continues to acquire its moral personality that it acquired upon its incorporation, given that if such rights and obligations were stopped under the settlement, they would be lost. Much together for the company over others, and vice versa for the loss of the rights and obligations of others on the company, not to mention that the liquidator cannot carry out the tasks entrusted to him, since the company’s survival of the corporate entity helps the liquidator in carrying out the duties that are incumbent upon him and collecting what the company has a debt owed by others, opened a special account in the name of the company under liquidation, and settled the debts owed by the company to determine the final status of

liquidation, and among the effects that the company's acquisition of its corporate personality has are the following:

Nationality of the company:

Once the company has registered and completed all registration procedures, a nationality is independent of the nationality of the people of the company and those in charge of it. The natural individual, and it has the duties that it owes to the slightest discrimination with respect to the natural person due to the nature of humanity.

This is what Article (4) of the Jordanian Companies Law went to when it stipulated: "A company is established in the court and registered in it according to this law, and every company after its incorporation and registration in that manner is personally considered as a Jordanian national and its main center is in the court".

Through the text, the researcher affirms that the company, once the incorporation and registration procedures are completed, is considered a legal person with Jordanian nationality, and thus it has rights, and it has to fulfill the same duties in this regard as the natural person, and this has been confirmed in the Jordanian Civil Law within the text of Article (12) It states:

1. The law of the country to which they belong according to their nationality applies to the civil status of persons and their eligibility, and nevertheless in the financial transactions that take place in the Hashemite Kingdom of Jordan and have their effects in it if one of the parties is a foreigner who lacks the capacity, and the lack of capacity is due to an invisibility that is not easy for the other party to identify, this reason does not affect eligibility.
2. As for the legal system for foreign ruling persons such as companies, associations, institutions and others, the law of the country in which these persons have taken their administrative position as the de facto head shall be governed by, if it commences its main activities in the Hashemite Kingdom of Jordan, then the Jordanian law is the one that applies. The nationality acquired upon incorporation, and to the extent that it helps with liquidation, this also facilitates determining what law is applicable.

The Company's name:

When establishing companies, a name is used to distinguish this company from others or a commercial address, and this name is often derived from the nature of this company's work, and in light of the liquidation procedures, the company remains with this name, but the thing that changes here is that the legislator has required adding the phrase (under liquidation After the name of the company on any letter or papers used by the company in front of others, and this is confirmed by Article (254 / c) of the Jordanian Companies Law : "The liquidator must add the phrase (under liquidation) to the name of the company in all its papers and correspondence".

Company domicile:

The company's acquisition of the corporate personality implies that it has its own residence, which is usually known as its head office, and based on the provisions of the law, the company's domicile is the one that determines the nationality of that company, and the company remains throughout the liquidation period enjoying its corporate personality, and therefore the company remains conservative in its homeland To assist in determining the jurisdiction of the court, and determining that court in the event of judicial disputes ., and that the company's domicile for the company under liquidation is extremely important in determining the nationality of the company, and thus to determine the applicable law.

Company Eligibility:

The eligibility of the company is one of the important matters that occur by the results of the company's acquisition of the corporate personality, and the company remains under liquidation and enjoys this capacity as necessary for the business of liquidation, this company is

under liquidation, not to mention that it has the right to claim its rights with others, and all of that to the extent that falls within the scope of liquidation, and the company cannot buy and sell, and otherwise from legal acts under liquidation except by the liquidator on the condition that all these actions are Within the liquidation, and not exceeding these limits, not as is the case under the normal situation of the company before entering the liquidation stage .

The Jordanian Companies Law has gone to prohibit the company under liquidation from carrying out some business, and considering it void within the text of Article (255 / A) is considered void:

1. Every disbursement of the funds of the public shareholding company under liquidation, its rights, and any trading of its shares and the transfer of its ownership.
2. Any change or amendment in the obligations of the chairman and members of the board of directors of the company under liquidation or in the obligations of others towards it.
3. Any seizure of the company's funds and assets, and any other disposal or execution that takes place on those funds and assets after the issuance of the decision to liquidate the company.
4. All mortgage or insurance contracts on the company's funds, assets, and contracts, or for other procedures that entail obligations or privileges on the company's funds and assets, if they are made during the three months preceding the decision to liquidate the company, unless it is proven that the company is able to fulfill all its debts after the end of the liquidation This nullity only applies to the amount that exceeds what was paid to the company under those contracts at the time of its establishment, or after that with the legal interest on it.
5. Every transfer of the company's funds under liquidation and its goodness or assignment of it, or any disposal of it by fraudulent way of favoring some of the company's creditors over others” .Through the previous text, the researcher finds that the Jordanian legislator has decided to nullify any of these dispositions in the funds of the public shareholding company, which is under liquidation.

The company's financial liability:

The company's acquisition of the corporate personality and its stability during the liquidation period shall result in the maintenance of the financial responsibility of the company that is the owner of its money without competition from the partners, and it is not permissible to dispose of such funds except through the legal representative of this liquidation, and the owner of the management of the company's funds and matters, namely the liquidator.

The company's financial liability is the partners' shares in the company's capital, in addition to the shares and all movables and funds of the company collected through the company's work, which is a collection from the company's creditors, and what is termed the positive trend, and the negative trend in the financial liability is the debts that the company owes.

It is clear to all of us that the financial liability is of the utmost importance in light of the liquidation process because of its identification of financial positions, and given that the main objective on which the financial liability of the company under liquidation is based is as follows:

1. The company remains acquiring its right to own its funds, and these funds are not commonly shared among the partners.
2. A person who does not deal with the company cannot return with his money from debts on the partners 'funds, since the financial liability of the partners is separate from the financial liability of the public shareholding company, and only the funds of the company are made for others according to the liquidation procedures, and according to the arrangement of these debts.
3. The bankruptcy of the partner in the company does not mean the bankruptcy of the company, and vice versa, the bankruptcy of the company does not necessarily entail the bankruptcy of the partners.

The representative of the company:

Each company has one or more natural persons managing such company; Because this type of company cannot conduct business without the presence of such natural persons, which is what has been termed the company's board of directors, all in light of the natural funds for the existence of this company, but when the company enters the stage of liquidation, here the role of this board is terminated, i.e. The board of directors and the suspension of the company's manager from managing it, so a person is appointed to manage this company, and a legal representative is appointed for it, namely the liquidator, based on a decision by the court having jurisdiction. Review all courts, and consider all lawsuits filed by the company or against the company. This is what was confirmed by the Jordanian Companies Law through the text of Article (253), which states: "If a decision is issued to liquidate the public shareholding company, and a liquidator is required for it, the liquidator shall supervise the company's usual business and preserve its funds and assets".

Also through the text of Article (254 / A), which states: "The company that has been decided to liquidate shall cease to practice its business from the date of the issuance of the decision of the General Assembly in the case of voluntary liquidation and from the date of the court's decision in the case of compulsory liquidation, and the legal personality of the company continues and is represented by the liquidator until Annulling it after completing its liquidation.

DISCUSSION

This study aimed to shed light on the liability of the liquidator of the public joint-stock company from the civil side of the liability, without discussing the penal aspect of such responsibility in light of compulsory liquidation, it is known that the legal person ceases to exist as in the case of a natural person, and there are cases that govern this lapse of the legal person, including the compulsory liquidation.

There may be a termination of the existence of the public shareholding company based on a court decision, due to the existence of a state of compulsory termination of the company specified under the Jordanian Companies Law No. (22) of 1997 and its amendments, which defined the cases of termination of the public shareholding company in accordance with the provisions of the law. The Jordanian legislator has dealt with within the provisions of the Jordanian Civil Law No. (43) of 1976 the cases of termination of the public shareholding company, and thus the civil law has dealt with the deficiency, if any in the provisions of the private law, which is the Companies Law, so that civil law is resorted to when there are no provisions in the companies law .

Based on the foregoing, if the decision is issued to liquidate a public shareholding company, then the liquidation procedures will begin, which necessitates the procedures for determining the legal centers of the relationship between the shareholders and the company, or the company and others who deal with the company, this is considered one of the duties of the liquidator, as must achieve balance and justice between the parties who are bound by the company with any obligations, rights and non-discrimination in those rights and obligations, or the primacy of one party over the other.

It becomes clear that the liquidator of the public shareholding company carries out work according to the provisions of the law, based on the Companies Law and the laws regulating the work of the liquidator, and the liquidation procedures under the supervision of the competent court and the control of corporations department.

MATERIALS AND METHODS

To achieve the objectives of the study, the researcher used the descriptive analytical method, by describing the legal texts that the researcher dealt with, and analyzing the topics included in the study, by examining previous studies to reach what serves this study in a more detailed and accurate manner, and the study methodology refers to the texts relevant legislation, and relying on judicial rulings clarifying some issues related to the study and applying them upon.

CONCLUSIONS

It included the most prominent results, which are:

1. The definitions that defined the liquidation neglected to mention the most important thing in the liquidation, which are the legal consequences of the liquidation of the company and the reasons for it.
2. That the company acquires the corporate personality as soon as it is formed, and it may protest and represent through this personality in front of others by completing all registration and publication procedures within the limits of the law, and after that the company will have acquired full capacity through the moral personality to deal with others within the rights and duties.
3. That the company, once the incorporation and registration procedures are completed, is considered a legal person enjoying Jordanian nationality, and thus it has the rights, and it has to fulfill the same duties in this respect as the natural person

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