



Insolvency Law 21 of 2018

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Insolvency Law No. 21 (of 2018 entered into force on 11/12/2018 after passing through the constitutional stages It was published in the Official Gazette on 16/05/2018. The issuance of this law had previously held several consultative meetings between stakeholders from the public and private sectors, in the light of which a memorandum of the main policies was drawn up associated with the revision of the “Draft Law on Reorganizing the Business of the Merchant and Provisions for Bankruptcy and Liquidation” of 19 November 2012.

Where the aforementioned policy memorandum identified eight issues included in the draft law that are inconsistent with international best practices related to debtor default and insolvency, and through the memorandum, alternatives were proposed procedures that have been successfully tested in other countries are consistent with international best practices and are also compatible with the requirements of the Jordanian market, and in 2018, the draft law referred to Parliament in 2012 was withdrawn and a draft was drafted new inline with recommendations and consistent with best practices.

The law included a definition of the concept (insolvency), as it was defined as “the debtor’s suspension or inability to pay debts.” regularly owed by him, or when the total financial obligations incurred by him exceed his total funds.”

The insolvency law gives troubled companies, which are unable to meet their financial obligations, the opportunity to rectify their situation Finance and organizing its debt, according to a clear-cut reorganization plan that is approved by creditors, with the suspension of all judicial procedures against the debtor, and giving him the possibility to borrow again in a way that guarantees his assistance in returning his business to maintain its continuity, and if a plan cannot be agreed upon or implemented, the law provides the debtor with the opportunity to exit from the market the least loss to creditors.





Where the importance of the insolvency law comes to the business and investment environment in general and small and medium enterprises

In particular, by balancing the rights of the debtor and the creditor, the debtor is allowed to get out of default and re-entering its economic activity again, if this is possible, while the creditor's chances of collecting money increase a greater percentage of his rights, in a faster time and at a lower cost, and in the end, preserving the business environment and motivating Economic wheel.

Stalled or on the verge of faltering projects can benefit from the benefits of the law, by applying the court may declare its insolvency according to the bases and conditions stipulated by the law, and then the insolvency stages will begin differently and as follows.

preliminary stage; During which the inventory of the insolvency liability, the inventory of creditors, the collection and analysis of information, and the conclusion of a statement are made to the extent of the debtor's ability to continue his economic activity or not.

reorganization stage; It is a stage after the preliminary stage, during which an agreement is reached between the debtor

and its creditors on a reorganization plan under the supervision of the court and with the assistance of the insolvency attorney.

filter stage; If the debtor is found to be unsustainable, which is carried out under the supervision of the court and through procedures

Flexible and fast allow maximization of interest to creditors.



First: The period for filing an insolvency application

The Insolvency Law included a provision (Article 7/A of the Law) that (the debtor and any of the persons in charge of its management, if it is a legal person, even if He did not obtain the consent of the partners and shareholders to file an insolvency declaration within two months from the date of his actual or assumed knowledge that pinching).

The Insolvency Law also included a provision (Article 7/C of the Law) that (C- The persons mentioned in Paragraph (A) of this Article shall be liable personally for the damage resulting from the violation of the provisions of this article, and in this case, the court may issue a decision to prevent the violator from engaging in any activity economical for not less than one year and not more than five years).

By reviewing many decisions issued by courts in Jordan, beginning, appeal, and discrimination during the years 2019 and 2020, the courts considered the two-month period is a period of lapse, the lapse of which results in the forfeiture of the right to file an insolvency declaration for failure to comply with one of the conditions for ruling insolvency, which builds he must state that any suit/request for declaring insolvency is subject to response if it is submitted after the lapse of a period of two months from the date of the actual debtor's knowledge or Supposed to be insolvent.

No, on the other hand, some judges did not consider that this period is the period for the lapse of time since the text in the law did not expressly stipulate that the penalty for missing the default is to prevent him from engaging in any economic activity for some time this date is the fall because the penalty in the lapse of





this period is a penalty not less than one year and not more than five years, in addition to holding him personally liable for any damage resulting from this violation.

In the face of these judicial applications, the issue of the period for applying is extremely important, since it entails the forfeiture of the debtor's right to request publicity.

As a result, the debtor remains in default and insolvency without benefiting from the protection provided by law in terms of the possibility of reorganizing his business its continuation and other procedures may enable him to continue his activity if his application is accepted in insolvency.

Currently, the Court of Cassation is looking into this issue so that if it decides to consider the two months as a period of lapse, the text of Article (7) (may need to be repeated) Considered by the legislature so that it would be better to amend the description of this period so that it is not a period of lapse.

Second: Small and medium enterprises

In general, the insolvency law adopted the vision of the UNCITRAL Model Insolvency Guide, which did not distinguish between institutions and enterprises.

Large economic enterprises, small and medium enterprises, and enterprises, large enterprises are often subjected to long and complex procedures

It reflects the extent of the size of the project, and it is allowed to reschedule debts and restructure the activity by the plan that is developed for this purpose. And that's it entails incurring costs and burdens to achieve the desired goal of declaring the insolvency of institutions and companies.





In terms of small and medium enterprises, applying the same procedures that apply to large enterprises, may result in incurring these costs

Institutions have high costs and complicated procedures that lead to the reluctance of these institutions to resort to the law and deprive them of benefiting from the benefits and the protection provided by law to troubled institutions.

Insolvency legislation often includes provisions that address the insolvency of small and medium-sized enterprises and enterprises, including simplified procedures and shorter periods commensurate with the nature and size of economic activity, which encourages them to apply for insolvency to face the financial default that Faces it and ensure the speed of procedures and reduce costs.

Noting that small and medium enterprises constitute more than 90% of the total enterprises operating in various sectors the economy absorbs about 60% of the labor force, and contributes to 50% of the GDP.

Third: Challenges facing the application of the law

The insolvency law aims to help the defaulting debtor to overcome the financial situation to which he is exposed and to enable him to return to regularity.

In commercial activity, Karma aims to achieve a balance between the interests of creditors and the troubled debtor. And insolvency is not a liquidation of activity

The economy is going through stages that allow the reorganization of the activity before the liquidation of the activity, so that if there is a possibility of finding solutions





For the debtor to recover from the faltering situation, this avoids his entry into liquidation and termination of the activity, which entails maintaining
On the economic establishment, employment, and continuity of activity.

And that it is necessary to distinguish between the concept of liquidation contained in the Insolvency Law and the liquidation contained in the Companies Law, and that It is tangible that many law enforcers are confused by these concepts, which leads to the need to raise awareness between the relationship between the insolvency law and other legislation.

Emphasizing the importance of the role of the judiciary in protecting the national economy, and striving to maintain the sustainability of projects Economically viable value-added in a manner that ensures the preservation of the rights of the debtor and creditors and limits the Unemployment increase.

The necessity of educating the business sector about the provisions of the insolvency law and its applications and the developments that occur to it, including the decisions issued by the courts in this regard.

Giving sufficient opportunity to implement the provisions and provisions of the insolvency law before it is legislatively reviewed or any amendments are presented to it, especially since there are applications for declaring insolvency that has been accepted by the courts.

The need to raise awareness among the authorities concerned with the application of the insolvency law, including lawyers, judges, as well as institutions
economy and companies to ensure the optimal application of the law in a way that reflects the achievement of the desired goal.





Creating special legislation that regulates the work of start-ups and small and medium enterprises, and provides a stimulating environment for entrepreneurs,
So that this legislation includes rules that make it easier for entrepreneurs to enter the market if and others that make it easier for them to get out of the market
The market in the event of the failure of the project and the least losses.
Strengthening the concepts of corporate governance, given that the rules of corporate governance play a major role in maintaining business continuity
Companies avoid defaulting and raise their market value.

