



The Extent of the Impact of Reducing the Capital of a Limited Liability Company on the Company's Creditors in Jordanian Legislation (A comparative study)

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ABSTRACT

This descriptive study attempted to understand the legal protection of creditors of a limited liability company following the legislative changes to reduce the company capital. Law texts on legal protection for creditors of a limited liability company were analyzed and presented, focusing on the fundamentals of the laws considering the legislative changes to reduce the capital. The Jordanian company law stipulates the division of the company capital into equal shares, and each share had a minimum value of one Jordanian dinar, which is an indivisible amount. The Jordanian Companies Law does not stipulate a maximum number of partners. Paragraph (1) of Article (54) of the Jordanian Companies Law must amended to increase the capital of the limited liability company, and we hope to add texts to the provisions of the limited liability company, stipulating the imposition of a reasonable minimum amount of money for a person to participate in it as a partner and have limited liability.

Keywords: Creditors, Limited Liability Company, Jordanian Companies Law 1997.



1. Introduction

Limited liability companies were first recognized by the German law, and actually, these companies were first existing in Germany in 1892¹. Limited liability companies were also found existing in Alsace and Lorraine in France, following the occupation of Germany in both these regions. Limited liability companies were then fast spreading all over France² and this was mainly factored by the ability of these companies in accommodating the medium-sized projects while also taking the personal and financial aspects into considerations.³ The issuance of French legislation in March 1927 also included the stipulations on limited liability companies.

Limited liability companies have proven to be successful, and such success has led to the popular adoption of this type of company in various nations. Various legislations have accordingly included the stipulations on limited liability companies, as can be exemplified by the Jordanian legislation (1964) and the Egyptian legislation (1954). Another example is the Emirati legislation in its Law No. 8 of 1984, but this law was later repealed and replaced by Law No. 2 of 2015. Law No. 2 of 2015 of Emirati legislation adopts the one-person company principle within the framework of limited liability companies.⁴

Limited liability companies benefit the company partners. Nonetheless, there have been questions and apprehensions concerning the adequateness of legislator assurances in the provisions of company for creditor protection and also for protecting those who deal with these companies, considering that the general guarantee for these parties is often confined to the wealth and funds of the company, while private funds of the shareholders have been unprotected. Hence, this study examined the legal oversights of these companies during the many stages of their establishment until their liquidation. The appropriateness of this oversight was also examined, focusing on the failure of legislator in determining a minimum capital limit, as this matter has been left to be decided by the involved partners. Next, this study proposed several potential solutions to gain the most effective oversight for limited liability companies.⁵

Trade is a form of practicing profession, and trading can be legally performed by both individuals and groups, and groups performing trade in this context are known as

¹ Guinnane, Timothy W. "New Law for New Enterprises: Cooperative Law in Germany, 1867–1889." *Jahrbuch für Wirtschaftsgeschichte/Economic History Yearbook* 61, no. 2 (2020): 377-401.

² Al-Doori, Riyadh Nadhim Hameed, Ali Abbas Rafea, and Ali Salah Kareem. "LEGAL ASPECTS OF THE ACTUAL COMPANY." *Russian Law Journal* 11, no. 3 (2023): 247-271.

³ Al-Akeili, Aziz, *The Mediator in Commercial Companies*, Dar Al-Thaqafa, Jordan, 2016, p. 37.

⁴ Sami, Fawzi Muhammad, *Explanation of Commercial Law, Part 2 in Companies*, Amman 1997, p. 29.

⁵ Malham, Basem Muhammad; Al-Tarawneh, Basem Muhammad, *Commercial Companies, Explanation of Commercial Law*, Dar Wael, Amman, 2012, p. 74.



commercial companies.⁶ The industrial and commercial projects today are very diverse and large in size, making these projects impossible to be managed by one person alone. In fact, such projects, large projects especially, would require combined efforts from various parts of the company, including the administrative, financial, and infrastructure parts, among others, to be successful.⁷

The present study attempted to ascertain the major drawbacks and strengths of limited liability company, and the specific law that should be present in order to improve the legal control over such company, while also safeguarding the company from being used as a camouflage to manipulate the rights of others, or to deceive others by involving the company in deals and contracts that the company cannot handle or afford. Matters on limited liability are included in Article (53/1) of Jordanian Companies Law, covering the rights and obligations of the company. As stated in the article, limited liability company comprises two or more persons, and the partners and the company have separate financial liability.

Study Problem:

The formation of limited liability companies is regarded as a revolutionary step. In fact, for the citizens, limited liability companies greatly facilitate their business. The presence of limited liability companies has resulted in the increase in the number of national companies in the country – these national companies contribute to the economy of the country. Similarly, when Insolvency occurs to these companies, problems will rise, particularly on the creditor guarantee of the one-person company. When a company is declared bankrupt, and the extent of the responsibility of the owner of the capital of the one-person company for its Insolvency, in the event that the Insolvency of the company is due to the bad faith of the owner of the capital.

This study therefore attempted to ascertain the current situation on the legal protection for the limited liability company creditors following the legislative changes, through capital reduction.

Study objectives:

The objectives that this study attempted to achieve were as below:

1. To determine the actual situation regarding the legal protection to the creditors of a one-person company in the Jordanian law, in the event the company faces Insolvency.
2. To clarify the guarantees of the personal creditor to the one-person company owner.

⁶ Lefebvre, Vivien. "Performance, working capital management, and the liability of smallness: A question of opportunity costs?" *Journal of Small Business Management* 60, no. 3 (2022): 704-733.

⁷ Sami, Fawzi Muhammad, *Commercial Companies, General and Special Provisions (Comparative Study)*, 1st ed., Dar Al Thaqafa for Publishing and Distribution, Amman, 2009, p. 74.



3. To define the legal status of partner(s) in a limited liability company.

Importance of the study:

Investigating and understanding the legal protection of creditors of a limited liability company following the changes in the legislation in this matter would shed light on the magnitude of the legal accountability of the company owner pertaining to debt, as stipulated in Federal Law (2) of 2015 which covers matters on limited liability company within the context of commercial companies. In Egypt, it is Law No. (4) of 2018⁸ that addresses similar matter. Specifically, the law comprises amendments to the provisions of the law of joint-stock companies, limited partnerships by shares. For limited liability companies, the stipulations can be viewed in Law No. 59 of 1981. Clearly, the provisions for limited liability company in the Egyptian law are concise but in a scattered manner. Nonetheless, the provisions effectively safeguard the creditors of a one-person company in the event of debt.

Study methodology:

As this study explored and compared the legal texts in terms of the basics, legislation and procedures with the actual practice and with the Arab legislation, the descriptive, analytical and comparative approach was the most appropriate to be applied in this study. Some important outcomes were highlighted, and several recommendations were brought forth to address the study problem.

2. Legal organization in a limited liability company

The legislation of Jordan was adapted from the French Companies Law 1965. Meanwhile in Egypt, regulations of companies were based on the Jordanian Law No. 22 of 1997. In the Companies Law, it was stated that commercial companies can be in a form of joint-stock companies and partnerships,⁹ and the law allows simple companies, private companies, public companies and limited liability companies to select the most appropriate company form for their interests and engage in the types of activities that they desire. However, if the legislator necessitates the company to employ certain form in executing certain commercial activities, the company has to abide. One of the main aims of most legal system is to provide a stable legal protection, and this can be achieved through having a unified personal financial responsibility and the non-possibility of division or separation – such stipulations allow investors or traders to ascertain their responsibilities in their involvement in the company. Guided by these stipulations, these investors or traders would establish a company with a person or a

⁸ Law No. 4 of 2018 amending some provisions of the Law on Joint Stock Companies, Limited Partnerships and Limited Liability Companies issued by Law No. 159 of 1981, Official Gazette, Issue No. 2018 dated January 16, 2018.

⁹ Al-Doori, Riyadh Nadhim Hameed, Ali Abbas Rafea, and Ali Salah Kareem. "LEGAL ASPECTS OF THE ACTUAL COMPANY." Russian Law Journal 11, no. 3 (2023): 247-271.



group of individuals, or become part of an existing company, or become a shareholder or a partner in a limited liability company.¹⁰

The emergence of commercial companies could be traced back to the start of civilization, and today, these companies are considered as main pillar of a country's economy. These company also have a deep impact on the social life of people, which means that the power of these companies is implicated to the social authority as well. Relevantly, several foundations of legal protection for limited liability company have been established such as Article (53) which stipulates that a limited liability company may be comprised of two individuals or a group. Obtaining approval to register a limited liability company comprising of one individual is permissible. For a limited liability company owned by more than one person; should one of the partners die, then, the company share of the deceased is to be transferred to the legal heir of the deceased, and such provision is applicable to the legatee with any share or group of shares within the company.¹¹ Additionally, the company partner is not liable for the obligations, debts and losses of the company except for the amount of his shares. In fact, the financial liabilities of companies are regarded a company with material financial obligations and debts that arise based on them.

Limited liability company partners are not considered as traders. Notably, employees are not allowed to trade, and so, they can join the company as partners instead. A limited liability company is not confined to just doing business even though it is considered as a business, and people take part in this type of company owing to its limited liability, that is, the liability faced by the company partner is limited to just the extent of their shares in the company. It focuses on finding the responsibilities of responsible partners and non-responsible partners in the laws and regulations enacted by Jordanian legislators to regulate the establishment of limited liability companies within the Jordanian company law.¹²

As mentioned by the Jordanian Court of Cassation, some Arab laws and some relevant jurists, pertaining to limited liability companies and their characteristics; the liability of partners is confined to their shares in the capital with light accounting and simple regulations of preparation. Limited liability company is a modern type of company, comprising a combination of the individual company and the capital company along with its simple and blended nature.¹³

¹⁰ Al-Mahasen, Osama Nael, A Brief Introduction to Commercial Companies and Bankruptcy, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2008, p. 38.

¹¹ Al-Arini, Muhammad Farid, Commercial Companies, New University House for Publishing, Alexandria, 2009, p. 74.

¹² Al-Talahamah, Khaled Ibrahim - A Brief Introduction to Commercial Law - Juhayna Publishing and Distribution - Jordan 2003 - p. 164.

¹³ Abdul Qader, Nariman, General Provisions for Limited Liability Companies and One-Person Companies, Dar Al Nahda Al Arabiya, Second Edition, 1992, p. 102



2.1 Company capital

The determination of capital for limited liability in Jordan is provided in Article 2 of the Jordanian law; the article specifies one (1) dinar as the minimum capital of the company, which means that the company can already be formed merely with one dinar, which amounts to one share. However, the provision seems illogical because as a general rule, the minimum number of partners for this company is two, unless, it is a one-person company. Also, as the minimum number of one dinar is indivisible, increasing the minimum capital would be reasonable – it should also be noted that the term "shares" is in plural form. Hence, the provision contradicts with the intended requirement in Article (54/A) of the Companies Law in Jordan. Accordingly, previous article reported the law amendment where the minimum capital of the limited liability company was to be at least thirty thousand dinars. The minimum capital requirement is to preserve the general guarantee of the creditors. As such, the creditors' recourse to the company is impractical as it damages the rights of creditors.¹⁴

The minimum capital requirement of one dinar makes the capital itself inadequate as a guarantee to the creditors.¹⁵ For this reason, it has become very common for banks and financial companies to request additional guarantees from limited liability companies. Among the additional guarantees include personal guarantees, like personal guarantees from the company partner and mortgage of the partner's transportable or non-transportable properties. Notably, entities that have expansive experience in credit assessment usually do not regard the company's capital amount as good enough guarantee for the creditors, hence, the requirement for additional guarantees.¹⁶ Contrariwise, the Jordanian law did not establish a limit for the company's capital as protection of creditor rights, because the increase in the capital of company will increase the rights guarantee of the creditors. Furthermore, when there is no maximum limit for the capital, the capital can be freely increased.¹⁷

Considering the above discussion, this study concluded the importance of setting the capital in a one-person limited liability company. This is to prevent the formation of large company of this type. Hence, the legislator should determine that limited liability company should be of either small size or of medium size, to address this issue.¹⁸ In Jordan, the current law did not establish a minimum capital for a one-person limited liability company. This owes to the fact that Jordan has economic relationship with

¹⁴ Article (54/A) of the Jordanian Companies Law No. (22) of 1997

¹⁵ Yehya, Omar Natiq. "The Legal Position of the Interim Director of Company." *Journal of Namibian Studies: History Politics Culture* 33 (2023): 181-194.

¹⁶ Nassar, Thaeer, *The Responsibility of the Partner, Manager, or Board of Directors in a Limited Liability Company and Its Role as a Guarantee for Creditors in Jordanian Legislation*, University of Jordan, 2013, p. 66.

¹⁷ Sami, Fawzi Muhammad, *Commercial Companies, General and Special Provisions*, Sixth Edition: Dar Al Thaqafa, (2012), p. 189

¹⁸ Haileyesus, Israel Woldekidan. "Regulation of Ordinary Partnership under Ethiopian Law: A Comparative Analysis of Selected Legal Issues with the French Civil Partnership and the Thai Ordinary Partnership Regimes." *Comparative Law Review* 27, no. 1 (2021): 219-233.



various international and global financial and economic institutions, which means that Jordan needs to have a flexible legislation that could adapt to the national investors while keeping abreast with the company-related global legislation. In fact, decreasing the limited liability company's capital and providing simple procedures for limited liability company establishment will allow family businesses to spread faster.

Indeed, the decision of Jordanian legislator to decrease the minimum capital requirement would encourage the investment into and the establishment of limited liability companies. Somehow, this decision could be detrimental to the one general guarantee of creditors, that is, the capital. This situation has resulted in the fear that limited liability company would be become a method to defraud the rights of creditors, or at least, this situation would encourage those managing this company to engage in risky activities based on their limited liability, which could reduce the creditors' guarantee while the company could be at risk of Insolvency.¹⁹

Appositely, the Companies Control Department only allows registration of a number of limited liability companies with a minimum capital based on their purpose. Import and export companies are among the companies bound by this requirement. In particular, import and export companies must have a capital of 5,000 dinars or higher. Employment offices are also bound by similar requirement whereby the required capital must be of 30,000 dinars or more. For construction contracting companies, which are also bound by this requirement, their capital must be 10,000 dinars at least. For recruitment offices involving workers in homes, who are not citizens of Jordan, the required capital is 50,000 dinars at least. Clearly, for different types of business for this type of company (limited liability company), the set minimum capital is different – it is in accordance with the specific purpose of the business itself. The establishment of a minimum capital for this type of company would give confidence to the creditors in dealing with this company. As guarantee to creditors, partners may not decrease the capital at any time, because, decreasing the capital to an amount lower than the mandatory limit will give these partners a chance to evade the law. It is thus important to abide by this restriction to prevent the company from becoming void.²⁰

For creditors, capital is their general guarantee. As such, capital cannot be recovered in any case until the company liquidizes, and so, creditor has the right to demand the company to preserve its capital after acknowledging the company as a guarantee for its capital. Secondly, the principle of stability must be embraced, and this includes capital preservation which, in the system of commercial companies, follows three axes namely the method used in capital formation, maintaining the capital, and observing the legitimacy of decreasing the capital.²¹ It is hence mandatory to preserve the capital of

¹⁹ Yamalki, Akram, *Commercial Law, Commercial Companies, Comparative Study*, 1st ed., Dar Al Thaqafa for Publishing and Distribution, Jordan, 2008, p. 82.

²⁰ Nassar, Thaeer, *The Responsibility of the Partner, Manager, or Board of Directors in a Limited Liability Company and Its Role as a Guarantee for Creditors in Jordanian Legislation*, University of Jordan, 2013, p. 69.

²¹ Malham, Basem Muhammad; Al-Tarawneh, Basem Muhammad, *Commercial Companies, Explanation of Commercial Law*, Dar Wael, Amman, 2012, p 76.



the company, and returning this capital to the partners is not allowed under any circumstances, because, whoever loans to this company becomes a guarantee of the capital.²² In this regard, it is not permissible for the partner to distribute profits that are subtracted from the capital, except for if the profits are perceived as untrue and unreal, and creditors of the company's may demand their return even if it was done in good faith, because taking something in good faith does not make it the right reason to keep it."

2.2 Public subscription and issuance of bonds and shares

As stipulated in Article (54) (b) of the "Companies Law," it is not permissible for a limited liability company to issue shares or increase its capital.²³ In particular, the article prohibits a limited liability company to provide or increase its shares in the form of capital or subscription (borrower). However, the Companies Law states that under special circumstances, shares become transferrable. Such principle brings the company and its partners closer. Nonetheless, limited liability originates from a personal company, and its shares cannot be transferred, based on the limited liability in terms of work method, and the company's transfer of shares is the content stipulated in its system or law.

The Jordanian Companies Law, specifically Articles 72, 73 and 74, provides somewhat flexible method to assign, sell, and transfer shares between partners and third parties, while taking into account the personal consideration by not executing this step similar to that in capital companies.²⁴ Limited liability company often involves small and medium-sized economic projects with specific partners that lack trust among one another, while legislators have awareness and trust among one another. It is not uncommon for limited liability companies to have weak capital or poor credit for having partners of limited liability, and for these reasons, issuing shares or convertible bonds are prohibited.²⁵

As stated in the Jordanian legislation, shares and bonds issued by joint stock companies can be traded. Such permission is factored by the fact that joint stock companies have strong financial position. Not only that, dealers of stock and bond would be able to ascertain the financial positions of these companies through the published content, prior to dealing with these companies. It should be noted that joint stock companies and limited liability companies have different financial position. In this regard, limited

²² Lefebvre, Vivien. "Performance, working capital management, and the liability of smallness: A question of opportunity costs?" *Journal of Small Business Management* 60, no. 3 (2022): 704-733.

²³ Flammer, Caroline. "Green bonds: effectiveness and implications for public policy." *Environmental and Energy Policy and the Economy* 1, no. 1 (2020): 95-128.

²⁴ Maggiori, Matteo, Brent Neiman, and Jesse Schreger. "International currencies and capital allocation." *Journal of Political Economy* 128, no. 6 (2020): 2019-2066.

²⁵ Sami, Fawzi Muhammad, *Commercial Companies, General and Special Provisions*, Sixth Edition: Dar Al Thaqafa, (2012), p. 134.



liability companies often have weak credit. Furthermore, the legislation does not require limited liability companies to have any general financial system, and the situation is different for joint stock companies.

2.3 Restriction on the transfer of partners' shares

The Jordanian Companies Law, specifically in paragraph (a) of Article (54), requires that the capital of a limited liability company is in Jordanian dinars, and that the capital of the company must not be lower than the minimum capital set by the system. Some terms and conditions were provided in the article. The capital is divided into equivalent shares and each share should have a value of at least one (1) dinar. The minimum share value is indivisible, but only if the share belongs to more than one individual, for some reason. For companies with more than one owner (company comprising of partners); one partner must be selected to become the representative of all the partners. Agreement must be reached pertaining to this matter (selection of one partner to represent all partners) within 24 days following the date of participation in the shares. Also, the chosen partner should agree to be appointed by the director of the company or by a representative of the company's board of directors.²⁶

Hence, similar to a personal company, the right of a limited liability company partner in shares disposal goes only up to the prohibition limit with the accord of the partners. Should a partner die, his/her heir will take over, as the will is unconditional. In other words, a limited liability company will not be dissolved by death, and neither will it be dissolved by Insolvency, or forfeiture of one of the partners, especially if the company has linkage to a joint stock company.

3. Legal Challenges Facing a One-Person Company

One-person company often faces issues, and among the common ones relates to the company being a contract.²⁷ A contract naturally involves two parties at least. On the other hand, a one-person company is a company that comprises just one partner. This clearly conflicts with the definition of company as provided in the Companies Law 1997 and the Jordanian Civil Law 1976 as well.

The objective and formal pillars that must be available to establish a one-person company differ to be compatible with the presence of one partner in this company. Not only that, the management and the capital and financial liability presentation of a one-person company are also different. This situation has led to the lack of a legal regulation for dealing with all the issues associated with this type of company. The legal provisions on limited liability companies with two or more partners and the legal provisions regulating private joint-stock companies are not able to address all the issues associated

²⁶ Malham, Basem Muhammad; Al-Tarawneh, Basem Muhammad, Commercial Companies, Explanation of Commercial Law, Dar Wael, Amman, 2012.p 132.

²⁷ Diamantis, Mihailis E. "Algorithms acting badly: a solution from corporate law." Geo. Wash. L. Rev. 89 (2021): 801.



with limited liability companies and private joint-stock companies with one partner or one shareholder.²⁸

3.1 Establishment of a one-person company

A one-person company is a company that is legally run by one party. This company has only one partner; it is a legal act by one party. Hence, general and special objective elements are required by this type of company, alongside other necessary formal elements to form a company in general – in this regard, the special nature of a one-person company is considered. As such, the one and only partner of this one-person company must possess commercial capacity, while the business setting of this company must be lawful and does not contradict the order and morals of the public.²⁹ Also, the company needs to be clear about its purpose and goal to be accomplished by this one and only partner. Notably, a one-person company does not have the element of multiple partners, because the company is grounded upon the presence of one partner – this one partner may be a natural or legal person, within the bounds set by the legislator.

The Jordanian Companies Law in Articles (53/B and 65/A) shows no restriction against the formation of a one-person company by a natural or legal individual, providing that there is restriction by the legislator on the range of companies that can be formed by a single partner. Similarly, a sole shareholder can own every share of the public joint-stock company, as long as the company does not have mixed financial liabilities.³⁰

In the formation of a company, the partners are the ones providing the shares. Shares can be in the form of cash or can be in-kind shares, and shares can be movable or immovable. In essence, shares add to the capital of the company, and the profits and losses made by the company would be shared with the shareholders. For a one-person company formation, the sole partner would provide the cash and the in-kind shares. The in-kind shares are estimated to be added into the capital of the company. However, the partner must be perceived as accountable should there be any overstatement in the estimation of the in-kind shares in the company, in case there is increase in the value of the in-kind shares in the sole partner's private funds – this is for protecting those who deal with him.³¹

The intent to participate element does not exist in one-person company because this element illustrates a company that has more than one partner. Nonetheless, this element actually shows the accruing public interest towards the company as a legal entity.

²⁸ Nassar, Thaeer, *The Responsibility of the Partner, Manager, or Board of Directors in a Limited Liability Company and Its Role as a Guarantee for Creditors in Jordanian Legislation*, University of Jordan, 2013.

²⁹ Radwan, Fayeze Naeem, *Individual Projects with Limited Liability*, Al-Jalaa Library, 1990, p. 37.

³⁰ Elias, Nassif, *Encyclopedia of Commercial Companies - One-Person Company (Part Five)*. 2nd ed. Cairo: Al-Halabi Legal Publications, 2013, p. 84.

³¹ Al-Qalyubi, Samiha, *Commercial Companies*. 7th ed. Cairo: Al-Nahda Al-Arabiya, 2016, p. 73.



Somehow, the element of intention to participate seems vague, because the benefit that accrues to a one-person company is no different than the interest of the sole partner. As for the formal elements, namely the procedures to be followed in the company establishment; no issue arises.³² In one-person company formation, the procedures are bound by the provisions of limited liability company and a private joint-stock company, with the nature of this company under consideration.³³

A one-person company dissolves or ends when the partner dies or when the partner disappears which causes disruption to the work of the company (owing to the absence of the partner). Relevantly, the French law of 1985 prohibits any natural person from establishing more than one one-person company, and the law also prohibits a one-person company from establishing another one-person company.³⁴

3.2 Management of a one-person company

A one-person company is usually managed by a manager who may also be the company partner. The manager of the company may also be from outside the company. It is common for a public joint-stock company to be managed by more than one entity, for instance, the company may be managed by both general manager and board of directors.³⁵ Relevantly, Article 133 requires that members of board of directors are also the company shareholder, while Article 153/A requires that board of directors select a competent person as general manager and the powers of this manager is determined by board of directors as well. Articles (60/A and 72/B bis) of the Jordanian Companies Law indirectly requires appointing a natural person as the director. Contrariwise, the German Law in Article 6 explicitly requires a limited liability company, whether a one-person company or multi-partner company, to be managed by one or several directors who are of natural persons. Similarly, the French Law of 1966 in Article 49 requires appointing natural person(s) as the company director(s) of a single-person company. Likewise, the English Companies Law of 1985, in Article 282 specifically, requires appointing a natural person as director a private joint-stock company that is of a limited liability company.

Articles 60/A and 72/A in Jordanian companies law requires that a company manager serves the company for four years, that is, the term of appointment should be four years in duration, irrespective of whether or not the manager is the sole partner of the company. For one-person company; the sole partner is the representative of the company as a whole, and so, the sole partner can decide on the term of the manager.

³² Al-Haidari, Hiwa Ibrahim, *The One-Person Limited Liability Company - A Comparative Study*, Al-Halabi Legal Publications, Beirut - Lebanon, 2010, p. 102

³³ Gilmour, Paul Michael. "Lifting the veil on beneficial ownership: Challenges of implementing the UK's registers of beneficial owners." *Journal of Money Laundering Control* 23, no. 4 (2020): 717-734.

³⁴ French Civil Code of 1985.

³⁵ Gilmour, Paul Michael. "Lifting the veil on beneficial ownership: Challenges of implementing the UK's registers of beneficial owners." *Journal of Money Laundering Control* 23, no. 4 (2020): 717-734.



Not only that, the sole partner can also dismiss the manager at any time prior to the completion of the four-year term of service. The manager, upon the untimely and the unjustified dismissal, has the right to demand compensation for the resulting damage, as provided in Article 864 of the Jordanian Civil Code. Likewise, the manager of the company has the right to resign from his position, but the resignation has to be justified and occur at the right time. Contrariwise, resigning without justified reasons and at an inappropriate time is considered as rights abuse and the company can demand for compensation for the damaged the manager may have caused, as provided in Article 866/1 of the Jordanian Civil Code.

Within specified limits, manager of company shall have full powers of managing the company.³⁶ Article 60/B accordingly states that the company is bound by the actions and behaviors of the director towards third parties in good faith, notwithstanding the restriction(s) stipulated within the bylaws of the company or its related articles. In dealing with third parties, the Jordanian legislator assumes good faith with the company, unless confirmed otherwise. Relevantly, Article 60/C of Jordanian Companies Law states that the third parties do not have to verify any constraint on the director's powers. The company director should therefore prepare the annual budget and final accounts of the company, with the inclusion of legally audited profit and loss account and some necessary clarifications. The annual report on the work, achievements and projects of the company must also be prepared by the director, and this report is to be sent to the Companies Controller, alongside some relevant recommendations, for the first three months of the new fiscal year of the company, as stipulated in Articles 62 and 75.³⁷

The prohibition in Articles 63/A and 74/B (bis) seems to be inapplicable to the limited liability company and private joint-stock company manager if the manager is the sole partner and is allowed to be employed in another company with identical or opposing objectives to the company's business or to execute a business that is identical to that of the company, whether for his own account or for that of others, with or without recompense, or to be managing other similar or competing company in terms of business objectives. In fact, the prohibition is avertable through the endorsement of the general assembly by 75% of the shares that make up the capital of the company (limited liability company) and also with the endorsement of board of directors in the private joint-stock company. For one-person company, the manager is the full owner of the capital, and so, the majority becomes available. As for private joint-stock company of this kind (one-person company), board of directors would be represented by the sole shareholder, and hence, the approval is attained. It should also be noted that competition does not exist in a one-person company, and for this reason, prohibition of such is not necessary.

³⁶ Al-Naimi, Sahar Rashid, Determining Responsibility for Forming or Participating in a Company, Dar Al-Thaqafa, Amman 2009, p. 164.

³⁷ Mahrez, Ahmed Mohamed, The Mediator in Commercial Companies, 8th ed., Al-Maaref Establishment, Alexandria, 2004.P 152.



On the other hand, if the manager of one-person company is not the sole partner, then, he is required to obtain approval from the sole partner before carrying out the aforementioned tasks.³⁸ Failing to do so, the manager would be given thirty (30) days (from the date on which the actions were performed) by the Companies Controller to correct his actions,³⁹ or, he will be faced with a fine of between one thousand dinars and ten thousand dinars, and he also has pay for to the damage(s) he has caused to the company. For the same violation, manager of limited liability company may lose his job if he continues to violate such prohibition, and may be subject to a fine of one thousand dinars maximum (for a private joint-stock company), as stipulated in Articles 63/b and 74/c for repetitive violation. Furthermore, company manager who is also the sole partner shall be liable towards third parties. If the manager is not the sole partner of the company, then, he is also liable towards sole partner in addition to the third parties. These two stipulations are for the violation of the provisions in the Companies Law and the regulations issued pursuant thereto, and the company's articles of association and bylaws (Articles 61 and 73 repeated).⁴⁰

4. Legal liability of a partner in a limited liability company

Company capital reduction is a decision by the general assembly of the company, backed by the approval by relevant authorities, whereby the nominal capital of the company is decreased by some amount.⁴¹ However, creditors of the company can object this decision if the reduction would adversely impact their interests.⁴² As stated in Article 68/A of the Companies Law, a limited liability company may decrease its capital if the capital increase is more than what is needed by the company because either the founders have misestimated the cost of project development (the actual cost happens to be lower than the estimated cost) which justifies the capital reduction,⁴³ or the demand of the company's services works and products has gone down, or there is a sudden increase in the prices of some of the company's assets. Somehow, from a legal perspective, company capital reduction owing to the excess of its needs is regarded as

³⁸ Al-Naimi, Sahar Rashid, *Determining Responsibility for Forming or Participating in a Company*, Dar Al-Thaqafa, Amman 2009, p.171.

³⁹ Aspan, Henry. "The Role of Notaries in the Registration of the Establishment of Commanditaire Vennootschap (CV) through the Business Entity Administration System." *Scholars International Journal of Law, Crime and Justice* 3, no. 12 (2020): 463-467.

⁴⁰ Malham, Basem Muhammad; Al-Tarawneh, Basem Muhammad, *Commercial Companies, Explanation of Commercial Law*, Dar Wael, Amman, 2012.p 133.

⁴¹ Chesterman, Simon. "Artificial intelligence and the limits of legal personality." *International & Comparative Law Quarterly* 69, no. 4 (2020): 819-844.

⁴² Juwaihah, Maan, *The Legal System for Reducing the Capital of Private Equity Companies, A Comparative Study*, PhD Thesis, University of Mosul 2005, p. 96.

⁴³ Juwaihah, Maan, *The Legal System for Reducing the Capital of Private Equity Companies, A Comparative Study*, PhD Thesis, University of Mosul 2005, p. 96.



a partial liquidation of the company, and for this situation, creditors have the right to object such reduction.⁴⁴

Limited liability company may also reduce its capital owing to exposure to losses which causes imbalance of the company assets with the amount of capital, leading to budget imbalance – such imbalance must be rectified. Capital reduction to an amount proportional to the actual assets of the company will solve this problem. It should be noted that reduction because of loss is actually not a real reduction, but an accounting reduction, and for this reason, it does not affect the return to the partners at all.⁴⁵ Furthermore, company capital reduction resulting from the exposure to losses demonstrates the reality of the financial competencies and the rebuilding of balance between the assets and liabilities in the budget. Loss-related reductions include optional reduction and mandatory reduction.⁴⁶

The Jordanian Companies Law in Article 78/A does not allow inviting the limited liability company auditor to the extraordinary general assembly meetings as it does to the public shareholding company. This situation is perceived as a deficiency that needs to be addressed because auditor may discover losses or mismanagement by the company's board of directors or directors, while performing their auditing tasks.

4.1 Creditor guarantees

Creditor guarantees are regarded as a general insurance. By way of this insurance, creditor is able to gain his rights owed by his debtor. In this regard, the money of the debtor becomes a guarantee for fulfilling his debt. All creditors are considered equal unless one of them is permitted to precede based on the law provisions.

Owing to the general rules, the notion of general guarantee becomes broader than its idea in the corporate law domain. Hence, for creditors, the notion of general guarantee carries two concepts namely the concept of a general nature that is bound by the general rules in civil law, and the concept of a special nature that is governed by special rules stated within the corporate law. Owing to its general nature, the general guarantee is applicable in the domain of practical application, in order that any deficiency or gap affecting the general guarantee in the commercial law can be addressed.⁴⁷

From the moment they were established to the moment of they were liquidated, companies would be dealing with various situations. All these situations have a direct impact on the general guarantee of the creditors. The non-payment of the shares that

⁴⁴ Al-Arini, Muhammad Farid, Commercial Companies, Dar Al-Jamia Al-Jadida for Publishing, Alexandria, 2009. Atwi, Fawzi, (2005) Commercial Companies in Positive Laws and Islamic Law, First Edition: Al-Halabi Legal Publications, Beirut.

⁴⁵ Juwaihian, Maan, The Legal System for Reducing the Capital of Private Equity Companies, A Comparative Study, PhD Thesis, University of Mosul 2005, p. 100.

⁴⁶ Juwaihian, Maan, The Legal System for Reducing the Capital of Private Equity Companies, A Comparative Study, PhD Thesis, University of Mosul 2005, p102.

⁴⁷ Al-Haidari, Hiwa Ibrahim, The One-Person Limited Liability Company - A Comparative Study, Al-Halabi Legal Publications, Beirut, Lebanon, 2010.



form the capital of the company, overstatement in the approximation of the in-kind shares of partners during or after company establishment, capital reduction, mismanagement and negligence, exposure of company to larger losses, funds wastage and smuggling, also have impact on the general guarantee of the creditors. The aforementioned situations led to the legislator looking into the capability of creditors in defending their rights to protect the general guarantee of the company as a debtor.

There are various procedures and rules for protecting the rights and privileges of the creditors, and it is the interest of these creditors to protect the funds of their company. Creditor can challenge the acts of debtor that are deemed harmful to the rights of the creditor, by invalidating the actions or by not imposing these actions against him. This allows the creditors to preserve the general guarantee on the company's funds without having their rights fulfilment challenged, i.e. from the personal creditors of the partner, because the financial status of the company is independent from the personal status of this partner. Notably, the personal creditors of the partner are not able to exercise their rights from him by directly executing his funds that he had provided to the company. This owes to the fact that transfer of ownership of these funds is to the company, which means that these funds beyond the scope of the general guarantee specified for the creditors.⁴⁸

During company liquidation for Insolvency, creditors also can exercise their rights so that the company is prevented from potentially squandering the funds that are still available.⁴⁹ These funds are the general guarantee to the rights of the creditors, and the guarantee prevents the funds from being disposed by others. The funds disposal usually occurs during the period of interest in the two years after the Insolvency was ruled out, and creditors can demand nullification of such disposal if it jeopardizes their general guarantee.⁵⁰

4.2 The importance of general guarantee for creditors

The assets of debtor are considered as debt guarantor. According to the general rules, the assets of debtor allow and constitute the formation of limited liability company, this is just an exception to 87 general guarantee. In other words, given that 88 liability is a general rule of guarantee, the limited liability company is considered to have a weaker guarantee. In this case, the guarantees of the 89 partners are almost weak, and they are a supplement to some partners. Since a one-person limited liability company comprises just one partner,⁵¹ there have been apprehensions and uncertainties with regard to the

⁴⁸ Taha, Mustafa Kamal, *Fundamentals of Commercial Law: A Comparative Study*, 2nd ed., Cairo: Al-Halabi Legal Publications, 2012, p. 137.

⁴⁹ Handitya, Binov. "Redesign The Relevance Of Justice In Debtor Protection Related To Parate Executions Performed By Separate Creditors In Liability Agreements." *Jurnal Akta* 8, no. 4 (2021): 222-229.

⁵⁰ Elias, Nassif, *Encyclopedia of Commercial Companies - One-Person Company (Part Five)*. 2nd ed. Cairo: Al-Halabi Legal Publications, 2013, p. 247.

⁵¹ Al-Akeili, Aziz, *The Mediator in Commercial Companies*, Dar Al-Thaqafa, Jordan, 2016.P.187.



general guarantees for such company. Owner of one-person company is the manager, controller, and also the decision maker of the company, with freedom, while his liability is restricted to investment funds. It is thus necessary for the legislator to balance the privileges he grants these sole owners, as guarantee to the creditors.⁵²

The legal directives of EU on sole proprietorships or ownerships can be referred. The directives function as regulator to one-person companies while also providing the creditors with various guarantees. Although the company has 94 employees, the purpose of these directives to unify the legal rules of the European Member States remains debatable. However, the directives are not mandatory for countries/regions, as they are mainly to protect traders who own a one-person company, and this shows the acumen of the European directives in achieving the balance needed.⁵³

4.3 Highlights of the guarantees

National legislators are the ones with the responsibility to provide legal guarantees to protect the rights of creditors of a limited liability company. Furthermore, to achieve the goal of company law, that is, to achieve a prosperous economy, it is crucial to provide legal working environment so that there is balance between the rights of individual company owners and creditors.⁵⁴

In the case of negligence, mismanagement or fraud, exclusive partners are the ones shouldering the unlimited liability. Notably, for one-person company, the responsibilities of partners for their investments in the companies become the major attribute. It is necessary that legislator provides actual guarantee that the company provides to the distributor. There needs to be a specific law governing this type of limited liability so that partners could apply the principles in the Anglo-Saxon system to take accountability with their own money. Piercing the veil of the company or neglecting the company When a partner in a one-person company commits fraud or deception of those dealing with the company or creditors, or when the company goes bankrupt due to his deliberate implementation of administrative management, one of the crimes of concealing the limited liability of the person - the partners of the company are excluded. Facts about the status of the company. Responsibility of owner of one-person company towards the company's debts owing to mismanagement with his own money, will encourage creditors to deal with the company.⁵⁵

⁵² Sami, Fawzi Muhammad, *Commercial Companies, General and Special Provisions (Comparative Study)*, 1st ed., Dar Al Thaqafa for Publishing and Distribution, Amman, 2009.P.152.

⁵³ Abu Zaid, Radwan, *Commercial Companies, Part 1, Personal Companies and Limited Liability Companies*, Dar Al Fikr Al Arabi, Cairo, 1988.P.91.

⁵⁴ Al-Arini, Muhammad Farid, *Commercial Companies*, New University Publishing House, Alexandria, 2009.P.272.

⁵⁵ Al-Talahamah, Khaled Ibrahim, *A Brief Introduction to Commercial Law*, Juhayna Publishing and Distribution, Jordan 2003.P.173.



5. Conclusion

This study attempted to illustrate the impact of reducing the capital of a limited joint stock company on the creditors of the company, following the amendments in the legislation, in terms of the extent of the impact. Some legal loopholes in the Jordanian Companies Law were ascertained. Furthermore, several key results alongside their recommendations are as laid down below:

Result 1

The study found that, except for not allowing limited liability companies to conduct business, the exceptions are: banks, financial companies, insurance companies, and franchises, and there are no other restrictions on these. The company's goal makes it a gateway to other economic activities.

Recommendation 1

Limited liability companies are not allowed to do business in banks and financial companies: insurance and franchise companies have no other restrictions on the objectives of the company, and in this way, the door is opened to all other economic activities without limitation, which explains the great demand for this type of company. For this type of company, the legal procedures should be controlled to limit the income.

Result 2

For limited liability company, the Jordanian Companies Law provides no specification on the maximum number of partners, and the capital of the company is divided into equivalent shares. The smallest value of share as stipulated in the law is one (1) Jordanian dinar. The problem with this amount is that it is indivisible.

Recommendation 2

Paragraph (1) of Article (54) of the Jordanian Companies Law must be amended by increasing the capital of the limited liability company. Also, hope adding texts to the provisions of the limited liability company, stipulating the imposition of a reasonable minimum amount of money for a person to participate in as a partner and have limited liability, such as the minimum being ten thousand Jordanian dinars or any amounts agreed upon after a comprehensive study by the committees prepared for this purpose.

Result 3

As can be referred in Article 53 of the Jordanian Companies Law, there is no clear and explicit stipulations on the liability of the authorized partner who has the power to authorization in a limited liability company.

Recommendation 3

The responsibility of the authorized partner with the power to endorse needs to be determined, especially when he (Authorized partner) engages in acts that are injurious to other partners. Damage compensations, including compensations of damages that exceed the limits of his share in the company, need to be determined. Authorized partner must demonstrate keenness towards preserving the interest of the company.



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