

## CREDITORS IN INSOLVENCY PROCEEDINGS IN JORDANIAN LEGISLATION: THE INSOLVENCY AGENT'S LEGAL REGULATION

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### ABSTRACT

*This paper aims to demonstrate the regulation and approval of the insolvency process in terms of persons to whom the provisions of this Law apply and the stages of insolvency proceedings. In addition, to clarify the means of representation of creditors in insolvency proceedings; and to indicate the extent to which the Jordanian legislator addresses the nature of debts related to the confrontation of insolvency proceedings, placing them with a certain preference that differs from that of insolvency creditors whose debts arose in the debtor before the date of publicity. The paper opted for qualitative analytical approach of research by analyzing all provisions of legislation relating to insolvency proceedings and the legal regulation of insolvency agents will be used in this study to identify, criticize and comment on their contents, implications and objectives. The authors have demonstrated of which being that insolvency creditors consisted of all creditors whose debts had arisen prior to the date of publication of insolvency and whose names were on the creditors' list. In the face of insolvency, the Jordanian legislature had not provided creditors with secured rights, since the insolvency law recognized that secured creditors' rights had a first priority in meeting their claims either from proceeds from the sale of the specified encumbered assets or in public funds, in accordance with the manner in which the encumbered assets were treated.*

**Key words:** insolvency; insolvency agents; creditors; premium rights; secured rights; Jordanian legislation.

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## 1. INTRODUCTION

The 1997 UNCITRAL Model Law on Cross-Border Insolvency was developed with a view to assisting States in developing a modern, coherent and equitable framework for insolvency, with a view to more effective handling of cross-border insolvency proceedings involving severely cash-strapped or insolvency debtors.<sup>1</sup> In 2013, the Guide to Enactment accompanying the Model Law, which provided background and explanatory information with a view to making the law a more effective tool, had been revised. The Commission had adopted the UNCITRAL Model Law on the recognition and enforcement of insolvency provisions of 2018 to assist States in developing a framework of legal provisions for the recognition and enforcement of insolvency-related jurisprudence.<sup>2</sup> It adopted the guide to enactment to provide background and explanatory information on the Model Law.<sup>3</sup>

In 2019, the Commission adopted the UNCITRAL Model Law on Enterprise Group Insolvency, which aims to provide States with modern legislation addressing enterprise group insolvency issues domestically and across borders, and to supplement the UNCITRAL Model Law on Cross-Border Insolvency and Part III of the UNCITRAL Legislative Guide on insolvency. What distinguishes the Model Law on Insolvency of Enterprise Groups from the Model Law on Cross-Border Insolvency is that while the latter deals with insolvency proceedings involving a single debtor, the former focuses on insolvency proceedings involving multiple debtors who are members of the same enterprise group and may be located in one jurisdiction or in different jurisdictions.<sup>4</sup>

Accordingly, the Jordanian legislator in Insolvency Act No. 21 of 2018 regulated a very important issue: the issue of creditors in insolvency proceedings, where we find that it differentiated between the concept of creditors in insolvency and creditors in the face of insolvency proceedings. Each of them has a different legal status.<sup>5</sup> Hence, the importance of this topic arises. The content

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<sup>1</sup> United Nations Commission on International Trade Law: *UNCITRAL Model Law on Cross-Border Insolvency* (1997), 30.05.1997.

<sup>2</sup> Kazim, B.: *The Adequacy of Bankruptcy Rules in Protecting Creditors Across Borders, A Comparative Study*, PhD thesis, Amman: Arab University of Amman, 2012.

<sup>3</sup> United Nations Commission on International Trade Law: *UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments with Guide to Enactment*, Vienna: United Nations, 2019.

<sup>4</sup> United Nations Commission on International Trade Law: *UNCITRAL Model Law on Enterprise Group Insolvency with Guide to Enactment*, Vienna: United Nations, 2020.

<sup>5</sup> Bankruptcy, N.: *Arbitration and Globalization: A Study on Some Problems of International Bankruptcy*, Cairo: Dar Al-Nahda Al-Arabiya, 2003.

of the concepts and legal positions of these categories must be seen in addition to the knowledge of those who represent them, as stated in Jordan's insolvency law.<sup>6</sup>

The study aimed at the statement of insolvency proceedings and the legal regulation of insolvency agents in Jordanian legislation by determining who the insolvency creditors are, and arranging insolvency creditors according to law. As well as, by indicating what the creditors are in the face of insolvency proceedings, the statement of the insolvency agent's legal regulation, the determination of the legal nature of the insolvency agent's work with respect to the debtor, and the liability of the insolvency agent.

Based on the foregoing, the analytical method for analyzing all provisions of legislation relating to insolvency proceedings and the legal regulation of insolvency agents will be used in this study to identify, criticize and comment on their contents, implications and objectives.

On the other hand, the legislator didn't neglect the regulation of all provisions relating to the insolvency agent because of its key role in the administration of insolvency. He is a specialized person with experience in the administration of these proceedings. He also handles the task of administering insolvency funds to their conclusion.<sup>7</sup> The functions and duties of the insolvency agent must be known during the insolvency phase. Accordingly, the authors of this paper will examine who creditors are in the insolvency proceedings and who represents them in these proceedings, as well as the insolvency agent's legal regulation according to the insolvency law.<sup>8</sup>

## 2. CREDITORS IN INSOLVENCY PROCEEDINGS

The Jordanian legislator in Act No. 21 of 2018 regulates the insolvency process and its approval in terms of persons to whom the provisions of this Law apply, the three stages of insolvency proceedings and the provisions of its publicity and the implications thereof. Among these provisions, the Jordanian legislator has regulated the so-called creditors in insolvency proceedings.<sup>9</sup> The creditors in these proceedings are divided into two parts: creditors in insolvency and

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<sup>6</sup> Official Gazette: *Insolvency Law 21*, Jordanian Official Gazette, 2018.

<sup>7</sup> Al-Akeili, A.: *Bankruptcy Provisions and Protective Reconciliation*, Amman: Dar Al-Thaqafa for Publishing and Distribution, 2011.

<sup>8</sup> Shafiq, M.: *Egyptian Commercial Law in Bankruptcy*, Alexandria: Dar Al-Thaqafa Publishing House, 2000.

<sup>9</sup> Insolvency Jordanian Act No. 21, 2018.

creditors in insolvency proceedings.<sup>10</sup> Each of these categories has special provisions governing their business, determining their respective legal positions, as well as their terms and mechanism of formation.<sup>11</sup>

Thus, in article 36 of the Insolvency Act, the Jordanian legislature stipulates:

Creditors for the purposes of this Act shall be divided into: a. the authors of the insolvency are the creditors whose debts originated in the debtor prior to the date of the declaration of insolvency and were included in the list of creditors.

Therefore, we conclude that one of the sections of creditors in insolvency proceedings as provided for in article 36 of the Jordanian Insolvency Law is insolvency creditors, so that we can set out the provisions for insolvency creditors, we need to address what they are by defining them and indicating the order of the distribution of the debt proceeds.<sup>12</sup>

## 2.1. WHO ARE INSOLVENCY CREDITORS?

The Jordanian legislature has made special provisions concerning insolvency creditors. We must clarify the definition of insolvency creditors and the procedure for arranging for them according to the law and its importance in terms of the distribution of the debt proceeds.<sup>13</sup>

### 2.1.1. INSOLVENCY CREDITORS DEFINITION

It should be noted that the primary rule is that it is not the function of the legislator to define this, leaving it to the jurists in order to determine the purposes of the text with respect to the definition. But contrary to this rule, the Jordanian legislator has defined insolvency creditors. Article 36 of the Insolvency Act states that:

Creditors for the purposes of this Act shall be divided into a. insolvency creditors whose debts originated in the debtor prior to the date of the declaration of insolvency and were included in the creditors' list.

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<sup>10</sup> Rabie, B.: *Introduction to Insolvency Law*, Amman: Amwaj Publishing and Distribution House, 2018.

<sup>11</sup> Khalil, A.: *Commercial Bankruptcy and Civil Insolvency Provisions*, Alexandria: University Printing and Publishing House, 2004.

<sup>12</sup> Al-Shahawi, Q.: *Theory of the Right to Detention and Insolvency Suit*, Alexandria: Maaref Establishment, 2010.

<sup>13</sup> Ibid.

It would have been preferable for the legislator to leave this definition to the jurisprudence without putting it into legislation so that the jurisprudence could outline the definitions and criticize the gaps to which it might be exposed. However, it would be okay for the legislator to define it, due to the novelty of the provisions of the insolvency law, and the jurisprudence would have had to draw up a reasonable definition to clarify the matter.<sup>14</sup>

From the previous definition, it is noted that the legislator has defined the scope of insolvency creditors and limited them to persons whose debts have arisen to the debtor but not to all persons whose debts have arisen to the debtor.<sup>15</sup> The definition applies to those persons for whom the debts were created prior to the date of promulgation of insolvency. The legislator had set a certain timing by establishing controls for those persons until they entered the scope of the insolvency creditors. The legislator had also relied on another criterion to determine that scope, since such debts had to be included in a particular list, called the creditor's list. If the debt was not included in that list, the debtor did not fall under the insolvency creditors' umbrella.<sup>16</sup>

It must therefore be noted that Jordan's legislator has not neglected those debts that arose after the declaration of insolvency. Rather, it has regulated special provisions and granted them an advanced ranking between debts, hiding those debts from the proceedings imposed by the insolvency law.<sup>17</sup>

Referring to the definition of insolvency creditors, we need to analyze this definition, and several questions arise: what is meant by the list of creditors in the definition? What is meant by the designation in that list?

It should be noted that the list of creditors implies those categories set out by the legislator in the text of the article 37 of the Jordanian Insolvency Law, namely creditors with secured rights, holders of privileged debts, creditors with unsecured debts and creditors with the highest priority status.<sup>18</sup> The list

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<sup>14</sup> Zamzam, A.: *International Bankruptcy between Private International Law and International Trade Law*, Cairo: Dar Al-Nahda Al-Arabiya for Publishing and Distribution, 2011; Achbah R., Fréchet M.: Fostering SME survival through insolvency proceedings: a legitimacy perspective on retrenchment, age, and firm-specific distress, *Small Business Economics*, 1(1) 2024, pp. 1585-1614.

<sup>15</sup> Awad, A.: *Bankruptcy in the New Commercial Law*, Cairo: Dar Al-Nahda Al-Arabiya, 1999.

<sup>16</sup> Shafiq, M.: *Egyptian Commercial Law in Bankruptcy*, Alexandria: Dar Al-Thaqafa Publishing House, 2000.

<sup>17</sup> Taha, M.: *Commercial Law, Commercial Papers and Bankruptcy*, Alexandria: Dar Al-Jamiah for Printing and Publishing, 1998.

<sup>18</sup> Omran, N.: *The Legal System of Cross-Border Bankruptcy, A Comparative Study*, Abu Dhabi: Dar Al-Qada, 2013.

here is intended to contain those categories of creditors contained in the text of article 37. This list is prepared by the insolvency agent and includes a statement of the classification of the debt and the debtor's rank in accordance with the provisions of the law.<sup>19</sup>

We also find that insolvency creditors are the persons for whom debts have been incurred by the debtor,<sup>20</sup> but the question arises as to what the nature of those debts is and whether they have special conditions?

By referring to the text of article 39, certain conditions must be met in order for the debt to be considered the debt of insolvency creditors. The lawmaker's requirement stipulates that the debt arises in the insolvent debtor before the date of this insolvency declaration on the one hand. On the other hand, the debt must be included in the debtors' list.<sup>21</sup> It must be noted here that the intention of inclusion is different in meaning from the term in the law as secured debt holders. The debt is not intended to be secured, but rather to include the debt in the creditor's list, which has already been clarified.<sup>22</sup>

We conclude that insolvency creditors consist of all creditors whose debts had arisen prior to the date on which the insolvency was declared and whose names are on the creditors' list.<sup>23</sup>

## 2.1.2. ARRANGING INSOLVENCY CREDITORS ACCORDING TO THE LAW

Article 37 of the Insolvency Act provides for the division of insolvency creditors into several sections or categories, which states:

Insolvency creditors shall be divided into the following categories: - 1. Creditors with secured rights. 2. Creditors with excellent debts. 3. Creditors with unsecured debts. 4. Top priority creditors.

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<sup>19</sup> Sadiq, H.: *The Law Applicable to International Trade Contracts*, Alexandria: Dar Al-Fikr Al-Jami'I, 2014.

<sup>20</sup> Kazim, B.: *The Adequacy of Bankruptcy Rules in Protecting Creditors Across Borders, A Comparative Study*, PhD thesis, Amman: Arab University of Amman, 2012.

<sup>21</sup> Bankruptcy, N.: *Arbitration and Globalization: A Study on Some Problems of International Bankruptcy*, Cairo: Dar Al-Nahda Al-Arabiya, 2003.

<sup>22</sup> Al-Damour, H.: *Legal Provisions of the Regular Reorganization Plan in the Jordanian Insolvency Law*, master's thesis, Mu'tah: Mu'tah University, 2019.

<sup>23</sup> Al-Arini, M.: *Commercial Law / Commercial Companies*, Alexandria: University Publications House, 2003.

Through this legal text, the Jordanian legislature has provided for and divided the insolvency creditors into four sections, and it has also established this division according to a particular arrangement. This is up to the lawmaker's creation of payment, where some rights' holders are prior to other creditors because of the priority and preference of this debt for debt maturity when distributing the proceeds of the sale of the security.<sup>24</sup>

### 2.1.2.1. Creditors with secured rights

The guaranteed rights are meant as those real guarantees which establish a manifold right to a debtor's or third party's property.<sup>25</sup> So that the creditor, as well as its right to general security, has the authority to focus on that particular money and enable it to trace it in whatever hands, thereby enforcing it and satisfying its right to preference and priority over other creditors.<sup>26</sup>

The Jordanian legislator in the insolvency law made the ranking of this category of debt primary. That is because it is essentially secured and this is up to the lawmaker's protection of those creditors. The right is guaranteed in the insolvency law and they must meet certain conditions in order to be entitled to legal protection.<sup>27</sup> These conditions are the legal pillars of the legal protection of these debts. If one of these pillars is lost, it no longer deserves legal protection. For example, the pillars in the establishment of the insurance mortgage, namely, licenses, shop, cause and form.<sup>28</sup>

The guaranteed rights may be restored to a property, which is either a real estate franchise as a property seller's franchise,<sup>29</sup> so that article 144 of the Jordanian Civil Code provides that:

The price and accessories of the property shall be entitled to a franchise over the sold or discharged property. The franchise shall be registered in the Land Registration Department and shall be arranged from the date of its registration.

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<sup>24</sup> Radwan, F.: *Commercial Companies*, Cairo: Dar Al-Nahda Al-Arabiya, 2001.

<sup>25</sup> Yamalki, A.: *Commercial Law, Companies, (a comparative study)*, Amman: House of Culture for Publishing and Distribution, 2017.

<sup>26</sup> Al-Akaili, A.: *Explanation of Commercial Law, Commercial Companies*, Amman: Dar Al-Thaqafa Library for Publishing and Distribution, 2002.

<sup>27</sup> Al-Qalyubi, S.: *Commercial Companies, The General Theory of Companies*, Cairo: Dar Al-Nahda Al-Arabiya, 2021.

<sup>28</sup> Al-Qadi, T.: *The Idea of Reserve Guarantee in Commercial Papers (Study in Positiv Law and Islamic Jurisprudence)*, Cairo: Center for Arab Studies for Publishing and Distribution, 2022.

<sup>29</sup> Al-Sanhoury, A.: *Mediator in Explaining Civil Law*, Beirut: AlHalabi Human Rights Publications, 2000.

On the property franchise rights as a shared property franchise,<sup>30</sup> Article 1447 of the Jordanian Civil Code stipulates that:

If the partners share a franchise, they shall be entitled to return any of the others to the right of division as required by its rate. The franchise arising from the division must be registered and its rank determined from the date of its registration.

Secured rights on a property may include mortgage rights. Whether the mortgage is official or possessory, the real estate secured rights share the property of being subject to the provisions of the insurance mortgage provided for in the Civil Code to the extent that they are not inconsistent with the nature of these rights.<sup>31</sup> Therefore, the private real estate secured right differs from the mortgage only by source rights. Whereas a right guaranteed by law is subject to the will of individuals and secured rights on the property of the right of jurisdiction. The right of jurisdiction is defined as a right that resembles a formal mortgage, but the agreement arises at the judge's command and the jurisdiction has all the advantages of the mortgaged creditor. Jurisdiction resembles a formal mortgage, in a way that the act does not require the acquisition of the object from the debtor's hand to that of the jurisdiction creditor. It is also specific to real estate.<sup>32</sup>

However, by reference to the Jordanian insolvency law, the legislator defined the holder of the secured right as:

The secured right holder considers every creditor with a real right effective against others against the debtor's assets falling under the insolvency, including the mortgage of movable and immovable property and any other type of real security under the legislation in force.

The secured creditor usually enjoys priority over the proceeds of the sale of those assets by contract and the value of its secured claim. And the secured claim is a claim supported by a security interest that is taken as a guarantee of a debt and enforceable in the event of the debtor's default and satisfies such a claim as the payment of unsecured public creditors.<sup>33</sup>

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<sup>30</sup> Al-Far, A.: *Provisions of Obligation (Effects of the Right in Civil Law)*, Amman: House of Culture for Publishing and Distribution, 2016.

<sup>31</sup> Radwan, F.: *Commercial Companies*, Cairo: Dar Al-Nahda Al-Arabiya, 2001.

<sup>32</sup> Sami, F.: *Commercial Companies*, Amman: House of Culture for Publishing and Distribution, 2022.

<sup>33</sup> Al-Zoubi, H.: *Management and Financial Analysis*, Amman: Dar Al-Fikr for Printing, Publishing and Distribution, 2000; Linna, T.: Business Sustainability and Insolvency Proceedings - The EU Perspective, *Journal of Sustainability Research*, 2(2) 2020, pp. 1-28.



### 2.1.2.2. Creditors with privileged rights

Originally, franchise rights fall into three categories: general franchise rights that are returned to all of the debtor's assets from movable and real estate, privilege rights transferred and mortgages transferred, and private real estate concession rights and mortgage rights.<sup>34</sup> This is based on the general origin of the franchise rights, but the legislator in the insolvency law has identified the holders of privileged rights exclusively for the purposes of applying the insolvency law. In doing so, the legislator has derogated from the general rules of public and private franchise rights by taking a new path and creditors are identified as the holders of the privileged rights for the purposes of the insolvency law, which are only the cases to which the privileged debt transaction applies to only those mentioned in general rules.<sup>35</sup>

Jordan's insolvency law regards certain debts as privileged according to the insolvency law and gives them a particular arrangement accordingly. Article 4 of the same law stipulates that:

Taking into account the provisions of article 38, paragraph 5, of this Law, the following debts shall be considered privileged for the purposes of the provisions of this Law and in the following order: - 1. The debtor's wages and benefits arising from termination of employment contracts and up to a maximum of three months' wages. 2. Maintenance of the wife, children, parents and relatives owed by the debtor to natural persons prior to the declaration of insolvency. 3. Claims for compensation arising out of the debtor's wrongful act prior to the declaration of insolvency. Notwithstanding any other legislation, debts other than those set out in this article are not considered privileged.

Through this provision, the Jordanian legislature has derogated from the general rules on privilege rights, particularly in those cases mentioned in the text, and affirms this in the third paragraph of that article.<sup>36</sup>

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<sup>34</sup> Khalil, A.: *Commercial Bankruptcy and Civil Insolvency Provisions*, Alexandria: University Printing and Publishing House, 2004; Arltová, M., Smrčka, L., Louda, L., Mateos-Planas, X.: An attempt to compare the efficiency of insolvency proceedings in various countries in the world, *Journal of International Studies*, 9(2) 2016, pp. 25-47.

<sup>35</sup> Rabie, B.: *Introduction to Insolvency Law*, Amman: Amwaj Publishing and Distribution House, 2018; Crhová, Z., Fišerová, Z., Paseková, M.: Corporate Insolvency Proceedings: A Case of Visegrad Four, *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis*, 64 (1) 2016, pp. 235-243.

<sup>36</sup> Al-Shahawi, Q.: *Theory of the Right to Detention and Insolvency Suit*, Alexandria: Maaref Establishment, 2010.

The first franchisees in insolvency are those working for the insolvent and their rights to the wages on which they depend for their livelihood.<sup>37</sup> In the case of insolvency, the Jordanian legislator requires the insolvency agent to pay the workers' wages in the equivalent of three months of amounts owed and to pay any other expenses, including insolvency expenses.<sup>38</sup>

Following workers' wages, there are maintenance rights for the wife, children, parents and relatives owed by the debtor to natural persons prior to the disclosure of insolvency. In our view, however, the legislator has equalized these rights and placed them at the same level with workers' wages.<sup>39</sup>

A part of the jurisprudence considers that Jordanian legislation should have merged rights that have absolute priority with privileged debts for fear of ambiguity and controversy over the priority of applying the text. Particularly that the law gives precedence to the cases mentioned in the text of article 4 of the insolvency law in requiring the right, while at the same time giving absolute priority to the payment of debts to creditors. The legislator should have merged and arranged in accordance with the priorities established by the jurisprudence, legislation and the judiciary.<sup>40</sup>

We find that the Jordanian legislature has made workers' rights, maintenance and the right to claim for damaging acts as a third rank of concession rights contained in the insolvency law, provided that the right to the debtor arises prior to the declaration of insolvency in the interests of justice. It is not logical to deprive the injured person of the value of its compensation owed to the insolvent debtor because of the debtor's insolvency because there is no relationship between insolvency and the affected creditor.<sup>41</sup>

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<sup>37</sup> Al-Akeili, A.: *Bankruptcy Provisions and Protective Reconciliation*, Amman: Dar Al-Thaqafa for Publishing and Distribution, 2011; Jakubecki, A.: Opening of Insolvency Proceedings pursuant to Council Regulation (EC) No 1346/2000 of 29 May 2000 on Insolvency Proceedings, *Comparative Law Review*, 15(1) 2013, pp. 221-243.

<sup>38</sup> Zamzam, A.: *International Bankruptcy between Private International Law and International Trade Law*, Cairo: Dar Al-Nahda Al-Arabiya for Publishing and Distribution, 2011.

<sup>39</sup> Awad, A.: *Bankruptcy in the New Commercial Law*, Cairo: Dar Al-Nahda Al-Arabiya, 1999; Walters, A., Smith, A.: Bankruptcy tourism' under the EC regulation on insolvency proceedings: A view from England and Wales, *International Insolvency Review*, 19(3) 2010, pp. 181-208.

<sup>40</sup> Shafiq, M.: *Egyptian Commercial Law in Bankruptcy*, Alexandria: Dar Al-Thaqafa Publishing House, 2000.

<sup>41</sup> Al-Zoubi, H.: *Management and Financial Analysis*, Amman: Dar Al-Fikr for Printing, Publishing and Distribution, 2000; Smrčka, L., Čámská, D., Arltová, M., Pláček, J.: Characteristics of Insolvency Proceedings of Enterprises with Virtual Address, *Politická ekonomie*, 65(3) 2017, pp. 287-300.

It is also noted that the legislator mentions in paragraph (b) of article 4, notwithstanding what is stated in any other legislation, no claim other than the debts set forth in this article shall be considered as privileged debts. This means that the legislator has adopted a new approach to the concession rights established in the General Rules and considers these categories only the concessionaires and has disrupted any provision in any other legislation for the purposes of the application of insolvency provisions.<sup>42</sup>

### **2.1.2.3. Creditors of unsecured debts**

Of the categories under insolvency creditors, the category of creditors with unsecured debts is the one with ordinary debts on which there is no established right to protect, and whose owners have no special security or privilege.<sup>43</sup> And the unsecured creditor is any creditor that does not possess any security interest. The insolvent debtor was terminating the ongoing contract, and if the creditor used its right to file a claim for compensation, its claim would be considered an unsecured debt.<sup>44</sup>

### **2.1.2.4. Lowest priority creditors**

In the insolvency law, Jordanian legislator has created a new term in the legal arena, the lowest priority creditors, so what does it meant? Creditors who meet their right at a late stage or in a lower order than other rights holders are named lower creditors as priority. These are: whoever qualifies for insolvency and the latter's rank among creditors.<sup>45</sup> In order to express that such debts are less important than secured debts, privileged debts and ordinary debts, the legislator has given them this lower rank as security for the debtor because of bad faith

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<sup>42</sup> Sami, F.: *Commercial Companies*, Amman: House of Culture for Publishing and Distribution, 2022.

<sup>43</sup> Radwan, F.: *Commercial Companies*, Cairo: Dar Al-Nahda Al-Arabiya, 2001; Mevorach, I., Walters, A.: The Characterization of Pre-insolvency Proceedings in Private International Law, *European Business Organization Law Review*, 21(4) 2020, pp. 855–894.

<sup>44</sup> Al-Far, A.: *Provisions of Obligation (Effects of the Right in Civil Law)*, Amman: House of Culture for Publishing and Distribution, 2016; Menjucq, M.: EC-Regulation No 1346/2000 on Insolvency Proceedings and Groups of Companies. *European Company and Financial Law Review*, 5(2) 2008, pp. 135-147.

<sup>45</sup> Al-Sanhoury, A.: *Mediator in Explaining Civil Law*, Beirut: AlHalabi Human Rights Publications, 2000; McCormack, G.: Universalism in Insolvency Proceedings and the Common Law, *Oxford Journal of Legal Studies*, 32(2) 2012, pp. 325–347.

and as a punishment.<sup>46</sup> The insolvency law refers to lower-priority creditors in accordance with article 41, which states:

The following debts shall be considered priority of any other debts: 1. Payments of loans or facilities guaranteed to the debtor by a relevant person. 2. Interest and delays on debts prior to the date of publication of insolvency. 3. Fines payable by the debtor under the legislation in force. 4. Debts that the debtor agreed with the creditor to consider as lower priority debt.

Debts are also considered to be lower-ranking those provided for in article 32 (c) of the Jordanian Insolvency Law, which states:

The other party's right to recover its payment to the debtor shall be deemed to be a debt in the face of insolvency proceedings unless that party has acted in bad faith. In this case, its debt is considered to be a lower priority.

The second is the importance of the order in which the legislature came up with. We must see the importance of this arrangement, its significance and what the legislature's main objective is in this instance.<sup>47</sup>

In considering the provisions of the insolvency law, article 26 reads:

a. Subject to article 28, paragraph (a), of this Act, the settlement of the case shall be in accordance with the following priorities: - 1. Secured debts are paid from a collector that follows the guarantee after the payment of expenses between them. 2. Privileged debts in accordance with the provisions of this Law. 3. Unsecured debts. 4. The lowest priority debts in accordance with the provisions of this Law. No amount may be paid to any of the creditors unless the debts of the higher priority category have been paid in full and the debts have been paid on a priority basis in the same category. If the entire debts of a category of creditors or one of the debts within the same category cannot be paid, the amount shall be divided by the creditors of that category or the debt within the category pro rata.

Through this text, we conclude that the legislator has preferred debt, which means that these debts are differentiated and of different ranking, rights that vary in rank for the reasons intended by the legislator.<sup>48</sup> And preference may be given because of the place of the right, if several rights are crowded out, and

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<sup>46</sup> Al-Qalyubi, S.: *Commercial Companies, The General Theory of Companies*, Cairo: Dar Al-Nahda Al-Arabiya, 2021.

<sup>47</sup> Al-Qadi, T.: *The Idea of Reserve Guarantee in Commercial Papers (Study in Positiv Law and Islamic Jurisprudence)*, Cairo: Center for Arab Studies for Publishing and Distribution, 2022.

<sup>48</sup> Yamalki, A.: *Commercial Law, Companies, (a comparative study)*, Amman: House of Culture for Publishing and Distribution, 2017; McCormack, G.: *Jurisdictional competition and*

some are related to guaranteed money and others are related to inviolability, this is the case because of secured debt. As in the competing of a guaranteed right and an ordinary unsecured right, or the mortgaged right, a competing right between such rights puts us in front of a genuine competing that requires a preference for one over the other.<sup>49</sup>

The legislator of the insolvency law has preferential ranks for creditors in obtaining their rights to prevent payment of any amount to any category of creditor unless the debts of the higher priority category have been paid.<sup>50</sup> Nevertheless, the legislator has formulated a policy in case of inability to pay the entire claim of a category of creditors or a debtor within the same category, which is clear to the general rules of division, namely the pro rata.<sup>51</sup>

This arrangement by the legislator is an arrangement in which creditors compete and the legislator does so well so as not to create real problems in the distribution of the debt proceeds.<sup>52</sup>

## 2.2. CREDITORS IN THE FACE OF INSOLVENCY PROCEEDINGS

The Jordanian legislator in the insolvency law could be said to have created two sections of creditors in the insolvency law and to have special provisions for each category of creditors. In the sense that it has created limits and connection between the two categories of creditors in order to apply the insolvency law provisions to these categories.<sup>53</sup> We must therefore address the concept of creditors in the face of insolvency proceedings in terms of the concept and how they are formed. We must also look for the lawmaker's reasons for granting these creditors the advantage of not being subject to insolvency proceedings and giving them initial debt repayment.<sup>54</sup>

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forum shopping in insolvency proceedings. *The Cambridge Law Journal*, 68(1) 2009, pp. 169-197.

<sup>49</sup> Al-Akaili, A.: *Explanation of Commercial Law, Commercial Companies*, Amman: Dar Al-Thaqafa Library for Publishing and Distribution, 2002.

<sup>50</sup> Jakubecki, A.: Opening of Insolvency Proceedings pursuant to Council Regulation (EC) No 1346/2000 of 29 May 2000 on Insolvency Proceedings, *Comparative Law Review*, 15(1) 2013, pp. 221-243.

<sup>51</sup> Radwan, F.: *Commercial Companies*, Cairo: Dar Al-Nahda Al-Arabiya, 2001.

<sup>52</sup> Al-Arini, M.: *Commercial Law / Commercial Companies*, Alexandria: University Publications House, 2003.

<sup>53</sup> Bankruptcy, N.: *Arbitration and Globalization: A Study on Some Problems of International Bankruptcy*, Cairo: Dar Al-Nahda Al-Arabiya, 2003.

<sup>54</sup> Al-Damour, H.: *Legal Provisions of the Regular Reorganization Plan in the Jordanian Insolvency Law*, master's thesis, Mu'tah: Mu'tah University, 2019.

## 2.2.1. WHO CREDITORS ARE IN THE FACE OF INSOLVENCY PROCEEDINGS

The insolvency law addresses creditors in the face of insolvency proceedings by providing in article 36 that:

Creditors shall be divided for the purposes of this Law into creditors in the face of insolvency proceedings, creditors whose debts arose after the date of termination of insolvency.

Through this provision, we conclude that creditors against insolvency proceedings are any person who has arisen with a debt in the debtor after the date on which the insolvency is made public. And that, in the sense of a breach, every debt that occurs before the insolvency is made is not considered a creditor against insolvency proceedings.<sup>55</sup>

These creditors consist of a group of persons who have developed debts on the debtor after the insolvency has been declared and are referred to as “creditors” in the face of insolvency proceedings.<sup>56</sup>

The Jordanian legislator has addressed the nature of these debts in relation to the confrontation of insolvency proceedings, placing them with a certain preference that differs from that of insolvency creditors whose debts arose on the debtor prior to the date of publicity. Article 38 of the Jordanian legislation stipulates:

A. Creditors' debts in the face of insolvency proceedings are not subject to the procedures provided for in this Law, cover the absolute priorities of repayment of their debts in the event of insolvency as they accrue and are provided only with secured debts within the limits of the sale of security.

B. The following claims are considered debts against insolvency: 1. Expenses of insolvency proceedings, including fees, judicial expenses, insolvency agent's fees, expenses approved by the creditor committee and insolvency counsel's fees. 2. Expenses arising from the performance of the insolvency agent's duties in accordance with the provisions of this Law. 3. Maintenance of the wife, children, parents and relatives owed by the debtor to natural persons after the declaration of insolvency. 4. Financial and commercial facilities granted to the debtor after the declaration of insolvency with the consent of the insolvency agent under the provisions of this Law. 5.

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<sup>55</sup> Kazim, B.: *The Adequacy of Bankruptcy Rules in Protecting Creditors Across Borders, A Comparative Study*, PhD thesis, Amman: Arab University of Amman, 2012.

<sup>56</sup> Sadiq, H.: *The Law Applicable to International Trade Contracts*, Alexandria: Dar Al-Fikr Al-Jami'I, 2014.

Amounts owed by the debtor under contracts being executed and approved by the insolvency agent after the date of disclosure of insolvency. 6. Other obligations arising after the declaration of insolvency in the context of extrapolation of economic activity provided for in paragraphs (f) and (g) of articles 17 and 18 of this Law.

Thus, through this provision, the Jordanian legislator has made creditors against insolvency priority holders. These creditors have not been subject to the procedures provided for in the insolvency law, granting such debts absolute priority, but have made an exception to the progression of these debts, namely, the holders of secured debts and within the limits of the sale of security.<sup>57</sup> But it is questioned here why creditors in the face of insolvency proceedings have been provided by the legislator to the rest of the creditors, with the exception of the secured debtors?

#### 2.2.2. REASONS FOR GRANTING CREDITORS IN THE FACE OF INSOLVENCY THE ADVANTAGE OF PROGRESS AND NOT BEING SUBJECT TO INSOLVENCY PROCEEDINGS

The Jordanian legislator did not provide insolvency creditors with secured rights, because the insolvency law recognizes that the rights of secured creditors have a first priority in meeting their claims either from proceeds from the sale of the specified mortgaged assets or in public funds, in accordance with the manner in which the mortgaged assets are treated.<sup>58</sup>

However, the Jordanian legislator has placed debts arising after the end of insolvency at the forefront of payment except by text, namely secured debts, because the secured creditor is unlike the unsecured creditor.<sup>59</sup> While generally not contributing directly or indirectly to the general costs of insolvency proceedings, the secured creditor may nevertheless be required to contribute to other costs related to direct reconciliation. For example, an insolvency agent's agreement on the mortgaged money to preserve it would be reasonable to recover such expenses as administrative expenses from the amount normally paid as a first priority.<sup>60</sup>

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<sup>57</sup> Taha, M.: *Commercial Law, Commercial Papers and Bankruptcy*, Alexandria: Dar Al-Jamiah for Printing and Publishing, 1998.

<sup>58</sup> Shafiq, M.: *Egyptian Commercial Law in Bankruptcy*, Alexandria: Dar Al-Thaqafa Publishing House, 2000.

<sup>59</sup> Awad, A.: *Bankruptcy in the New Commercial Law*, Cairo: Dar Al-Nahda Al-Arabiya, 1999.

<sup>60</sup> Zamzam, A.: *International Bankruptcy between Private International Law and International Trade Law*, Cairo: Dar Al-Nahda Al-Arabiya for Publishing and Distribution, 2011.

The presentation by the legislator of insolvency creditors' debts in the face of insolvency proceedings is often due to the fact that administrative expenses relating to bankruptcy proceedings have priority over unsecured claims and generally give such priority to ensuring proper repayment of parties operating in favor of the insolvency cycle.<sup>61</sup> In addition, these debts are often the result of the disbursement of their amounts in order to collect the debts of insolvency creditors, preserve the proceeds of insolvency and assist the insolvent debtor to continue its economic activity.<sup>62</sup>

### 2.3. MEANS OF CREDITOR REPRESENTATION IN INSOLVENCY PROCEEDINGS

The formation of creditor representatives in the insolvency law is not difficult or requires a pre-arrangement or relationship between creditors once the insolvency has been made public.<sup>63</sup> It plays a significant role in the management of insolvency proceedings in order to find a solution that secures creditors' rights, whether through insolvency agent proceedings, or by inviting creditors during insolvency proceedings to meet to discuss in insolvency proceedings. The Jordanian legislature has created two types of bodies to represent creditors according to their priorities.<sup>64</sup>

#### 2.3.1. THE GENERAL BODY OF CREDITORS

Article 43 of the Insolvency Act states:

Creditors shall be represented during insolvency proceedings: a. the general body of creditors consisting of insolvency creditors included in the list of creditors prepared by the insolvency agent under the provisions of this Law.

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<sup>61</sup> Al-Akeili, A.: *Bankruptcy Provisions and Protective Reconciliation*, Amman: Dar Al-Thaqafa for Publishing and Distribution, 2011.

<sup>62</sup> Al-Shahawi, Q.: *Theory of the Right to Detention and Insolvency Suit*, Alexandria: Maaref Establishment, 2010.

<sup>63</sup> Rabie, B.: *Introduction to Insolvency Law*, Amman: Amwaj Publishing and Distribution House, 2018.

<sup>64</sup> Khalil, A.: *Commercial Bankruptcy and Civil Insolvency Provisions*, Alexandria: University Printing and Publishing House, 2004.



### **2.3.1.1. Concept of the Plenary of Creditors**

Through this research, the notion of a general creditors' body depends on the list of debtors but provided that the debt is on the list prepared by the insolvency agent.<sup>65</sup>

This is the group that is legally constituted as soon as the list is issued by the creditor's insolvency agent. The composition of this public body is made up of all creditors, whether their rights are secured or not, and ordinary creditors, who do not have private insurance to secure the fulfilment of their debts. It also includes creditors in the face of insolvency.<sup>66</sup>

### **2.3.1.2. Functions of the Plenary of Creditors**

The Jordanian legislature has not explicitly provided for the functions of the General Creditors' Authority, but these functions can be inferred through the legal texts governing the formation of the General Creditors' Authority. From the text of article 44, paragraph (b) we conclude: Based on the insolvency agent's wish to convene the plenary of creditors to perform certain tasks, including the conduct of insolvency proceedings, the insolvency proceedings consist of several tasks, namely that the reorganization plan be discussed and expressed by the insolvency body and then voted on either by acceptance or rejection in accordance with procedures established by the insolvency law.<sup>67</sup>

### **2.3.1.3. The Legal Nature of the Plenary of Creditors**

Far from arguing the jurisprudence about the legal nature of the protection of creditors in bankruptcy law, it can be said that the legal nature of the General Creditors Authority is that it is an independent legal person represented by its members and infers this legal personality from the text of article 43 Paragraph (a) of the insolvency law. Although not explicitly stipulated, this group is represented before the insolvency agent and the judiciary and recognized as independent of the insolvent's debts. That nature entails its rights and duties.<sup>68</sup>

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<sup>65</sup> Al-Zoubi, H.: *Management and Financial Analysis*, Amman: Dar Al-Fikr for Printing, Publishing and Distribution, 2000.

<sup>66</sup> Sami, F.: *Commercial Companies*, Amman: House of Culture for Publishing and Distribution, 2022.

<sup>67</sup> Radwan, F.: *Commercial Companies*, Cairo: Dar Al-Nahda Al-Arabiya, 2001.

<sup>68</sup> Al-Far, A.: *Provisions of Obligation (Effects of the Right in Civil Law)*, Amman: House of Culture for Publishing and Distribution, 2016..

#### 2.3.1.4. Plenary of Creditors Meetings

The Jordanian legislator in the insolvency law has set out the manner and timing of the meetings of the plenary. The jurisdiction to convene the meeting shall be convened by the court on its own initiative or at the insolvency agent's request. The court shall declare the date, suspension and location of the meeting by the plenary of creditors and its agenda at least one week before the meeting.<sup>69</sup>

The presiding officer shall be the insolvency agent unless the judge decides to preside over the meeting himself in accordance with certain restrictions.<sup>70</sup>

As regards the quorum of the meeting, it is lawful in the presence of creditors representing at least 50% of the total debt. If the quorum is not completed within one hour of the meeting's start time, the meeting shall be postponed to another date within five days of the due date of the first meeting and the creditors who did not attend shall be re-informed.<sup>71</sup>

The second meeting is legal in the presence of creditors representing an original or agency (35%) of the debts at least. At least three creditors should be present. The insolvency creditors that constitute the insolvency creditors plenary have the right to vote on their decision. The Jordanian legislature has denied some creditors the decisions of the insolvency creditors. Those are the lowest priority creditors and the debtor's partners if the debtor is a legal person and creditors with disputed debts.<sup>72</sup>

#### 2.3.2. CREDITOR COMMITTEE

The Creditors' Committee consists of no less than three and no more than five creditors with the right to vote. There must be at least one representative of creditors with privileged debts and a representative of creditors with unsecured debts, as a condition of their formation. In addition, the legislator has authorized the introduction of a representative of secured right holders, provided that they do not constitute the majority of the votes.<sup>73</sup>

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<sup>69</sup> Al-Sanhoury, A.: *Mediator in Explaining Civil Law*, Beirut: AlHalabi Human Rights Publications, 2000.

<sup>70</sup> Al-Qalyubi, S.: *Commercial Companies, The General Theory of Companies*, Cairo: Dar Al-Nahda Al-Arabiya, 2021.

<sup>71</sup> Al-Qadi, T.: *The Idea of Reserve Guarantee in Commercial Papers (Study in Positiv Law and Islamic Jurisprudence)*, Cairo: Center for Arab Studies for Publishing and Distribution, 2022.

<sup>72</sup> Yamalki, A.: *Commercial Law, Companies, (a comparative study)*, Amman: House of Culture for Publishing and Distribution, 2017.

<sup>73</sup> Al-Akaili, A.: *Explanation of Commercial Law, Commercial Companies*, Amman: Dar Al-Thaqafa Library for Publishing and Distribution, 2002.

The text is a refuge in the functions and duties of the creditors' committee, unlike the functions of the General Creditors Authority. The text of article 48 (b) of the Jordanian Insolvency Law has created several tasks for the creditors' committee, including oversight of the work of the insolvency agent and control of the conduct of insolvency proceedings. One of its functions is to advise the insolvency agent on matters relating to insolvency proceedings on its own initiative or at the insolvency agent's request and to institute proceedings and take provisional action to ensure the proper management and disposition of insolvency funds during insolvency proceedings, as well as to review the court on any matter relating to the work of the insolvency agent and the submission of objections.<sup>74</sup>

The Commission's functions are diverse, including oversight of the work of the insolvency agent, oversight of the conduct of proceedings, consultancy, advice to the insolvency agent on insolvency proceedings and legal functions of bringing proceedings, taking legal and provisional proceedings, reviewing courts and making objections.<sup>75</sup>

Also, the legal nature of the creditors' committee is only an independent legal person of a special nature defined by law with certain members with specific competence and existing objectives for maintaining insolvency proceedings and are subject to a special legal regime designed to conduct insolvency proceedings collectively in order to prevail over the principle of equality between representatives of the general creditor body.<sup>76</sup>

In the provisions of the insolvency law, the Jordanian legislator is not liable to the General Creditors' Authority and the Creditors' Committee for breaches of their mandated duties which cause harm to others or are of interest, and whether such liability is lawful based on a breach of a legal duty liability, or it is a default liability, the provision does not specify. The legislator is obliged to specify such liability and the conditions for its performance and to require the person who caused the damage to compensate for the injured stakeholders.<sup>77</sup>

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<sup>74</sup> Radwan, F.: *Commercial Companies*, Cairo: Dar Al-Nahda Al-Arabiya, 2001.

<sup>75</sup> Al-Arini, M.: *Commercial Law / Commercial Companies*, Alexandria: University Publications House, 2003.

<sup>76</sup> Al-Damour, H.: *Legal Provisions of the Regular Reorganization Plan in the Jordanian Insolvency Law*, master's thesis, Mu'tah: Mu'tah University, 2019.

<sup>77</sup> Bankruptcy, N.: *Arbitration and Globalization: A Study on Some Problems of International Bankruptcy*, Cairo: Dar Al-Nahda Al-Arabiya, 2003.

### 3. LEGAL REGULATION OF THE INSOLVENCY AGENT

In view of the importance of the role of the insolvency agent from the first step until the conclusion of the insolvency proceedings, and the tasks and responsibilities assigned to him for the protection of creditors' rights, the Jordanian legislator has set forth, under the Insolvency Act No. 21 of 2018, the mechanism for the appointment of the insolvency agent, the assessment of his remuneration, the removal and the conditions for the licensing and functions of the insolvency agent.<sup>78</sup>

#### 3.1. THE INSOLVENCY AGENT'S CONCEPT AND LEGAL NATURE OF ITS WORK

The Jordanian legislature has set out the concept of an insolvency agent and defined him in direct terms. He also clarified the legal nature of the insolvency agent for the creditor and the debtor.<sup>79</sup>

##### 3.1.1. CONCEPT OF INSOLVENCY AGENT

With reference to article II of the Insolvency Act No. 21 of 2018, the insolvency agent is defined as:

The natural or legal person authorized to perform the business of the insolvency agent provided for in this Act.

By examining this explicit provision, which specified that an insolvency agent might be a natural or legal person, i.e. not only an agent for the insolvency of a natural person, a good act when the legal person was added.<sup>80</sup>

##### 3.1.2. THE LEGAL NATURE OF THE INSOLVENCY AGENT'S WORK FOR CREDITORS

The insolvency agent's legal status towards creditors manifests itself through actions in which the agent claims a special right, limited to the creditor com-

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<sup>78</sup> Kazim, B.: *The Adequacy of Bankruptcy Rules in Protecting Creditors Across Borders, A Comparative Study*, PhD thesis, Amman: Arab University of Amman, 2012.

<sup>79</sup> Sadiq, H.: *The Law Applicable to International Trade Contracts*, Alexandria: Dar Al-Fikr Al-Jami'I, 2014.

<sup>80</sup> Omran, N.: *The Legal System of Cross-Border Bankruptcy, A Comparative Study*, Abu Dhabi: Dar Al-Qada, 2013.

munity only and, for example, in the event of a claim for non-effectiveness of the insolvent debtor's conduct through article 34/a. That is, through this article and its reflection, this procedure is determined in the interest of creditors and not in the interest of the insolvent debtor, and we find that the agent acts on behalf of creditors in each case in relation to the proceeds' funds.<sup>81</sup>

The insolvency agent is considered to be a judicial agent of the creditor community only, not of the debtor, because he or she does not perform his or her business on behalf of the debtor, nor is the insolvency agent acting in the debtor's interest but replaces him in legal solutions in the financial case that he or she was unable to administer and dispose of by law and by virtue of the disclosure of his or her insolvency.<sup>82</sup>

### 3.1.3. THE LEGAL NATURE OF THE INSOLVENCY AGENT'S WORK FOR THE DEBTORS

We have mentioned the legal nature of the insolvency agent's work for creditors and the consequence of this relationship through the agent's actions against creditors. The insolvency agent replaces the insolvent debtor with legal solutions in the financial position that the debtor has failed to pay, manage and dispose of by law under the insolvency publicity provision.<sup>83</sup>

### 3.2. APPOINTMENT AND REMOVAL OF INSOLVENCY AGENT

We will address the mechanism for appointing an insolvency agent, as set out in modern insolvency law, how the agent's remuneration is assessed, who is authorized to issue the appointment decision and set the basis for this work, and how the insolvency agent is removed.<sup>84</sup>

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<sup>81</sup> Taha, M.: *Commercial Law, Commercial Papers and Bankruptcy*, Alexandria: Dar Al-Jamiah for Printing and Publishing, 1998.

<sup>82</sup> Shafiq, M.: *Egyptian Commercial Law in Bankruptcy*, Alexandria: Dar Al-Thaqafa Publishing House, 2000.

<sup>83</sup> Zamzam, A.: *International Bankruptcy between Private International Law and International Trade Law*, Cairo: Dar Al-Nahda Al-Arabiya for Publishing and Distribution, 2011.

<sup>84</sup> Al-Akeili, A.: *Bankruptcy Provisions and Protective Reconciliation*, Amman: Dar Al-Thaqafa for Publishing and Distribution, 2011.

### 3.2.1. APPOINTMENT OF INSOLVENCY AGENT AND ASSESSMENT OF HIS REMUNERATION

By referring to the legal texts of Jordanian Insolvency Law No. 21 of 2018. Article 50, paragraph 1, of this law stipulates that:

The court shall appoint an insolvency agent from among the licensed persons in accordance with the provisions of this law.

That is, it appoints the insolvency agent in the same judgment in which the insolvency notice will be issued. Through this article, we find that the competent authority in the appointment of the insolvency agent is the court and that the appointment time is the same as the insolvency debtor's insolvency. This time is commensurate with the disclosure of insolvency of the need to undertake the necessary actions to preserve and manage the insolvent debtor's assets after they have been disassociated once the insolvency has been declared.<sup>85</sup> And through the extrapolation of the text of section 238 of the bankruptcy law, which includes the appointment of the bankruptcy agent, they are consistent with article 50/a of the insolvency law for the appointee and suspension competent authority.

Article 50, paragraph (a) (2), of the Jordanian Insolvency Law stipulates that the court, when selecting the insolvency agent, shall take into account that the insolvency agent is appropriate for the conduct of the insolvency proceedings and is experienced in the nature of the economic activity in question. The court shall seek the opinion of creditors or any competent regulator prior to appointment.

With regard to the assessment of the insolvency agent's remuneration, article 53 of the Jordanian Insolvency Law stipulates that: on the basis of estimating the remuneration of insolvency agents where these bases set the remuneration and we find that they give creditors the right to participate in determining the remuneration and allow the objection to these fees and their value under a system issued for this purpose. The article refers to the criteria for estimating an agent's fees. After extrapolating this article, the legislator did well to estimate the fees of insolvency agents in advance and to control these matters in all their aspects, and the effect of all the estimate of fees in advance in proportion to commercial matters was quick in terminating cases and extrapolating legal status.

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<sup>85</sup> Al-Shahawi, Q.: *Theory of the Right to Detention and Insolvency Suit*, Alexandria: Maaref Establishment, 2010.

### 3.2.2. REMOVAL OF INSOLVENCY AGENT

With regard to the removal of the insolvency agent, the Jordanian legislator has made this power available to the court. The legislator has authorized the court on its own initiative or at the request of the creditors' committee or creditors representing at least 10% of the total debt or at the request of the debtor to isolate the insolvency agent if he/she falls short of his/her duties.<sup>86</sup> However, on the basis of which the decision is taken, article 54 (b) of the Jordanian Insolvency Law states:

The court shall not hear the statements of the insolvency agent and those of the creditors' committee if the application is made by the debtor prior to the issuance of the insolvency decision.

Paragraph (c) of the same article above grants the insolvency agent the right to submit his/her resignation for justified reasons or if his/her stay is not in the interest of creditors. If the resignation is unjustified, the agent shall receive a fine or other consequences as provided for in the provision under this Law.

However, in the event that the insolvency agent is removed or resigns, the court immediately appoints a new insolvency agent. In this case, the insolvency agent whose appointment expired will continue to perform his/her duties until the new insolvency agent assumes office unless the court decides otherwise.<sup>87</sup>

If we want to compare the removal of an insolvency agent in relation to the removal of a bankruptcy agent in the abolished bankruptcy law, we will find that it falls under the jurisdiction of the court.<sup>88</sup> The court is authorized, at the request of the assigned judge, to decide to remove the bankruptcy agent or to decrease the number of bankruptcy agents if there is more than one agent, if it finds that such removal or decrease is in the creditor's interest.<sup>89</sup> The assigned judge may propose the removal of the agent on his or her own initiative or at the request of the bankrupt or creditors. In the event that the assigned judge does not consider the bankrupt or creditor's application for removal of the agent within eight days from the date of submission of a valuable application to the court, in which case the court shall hear in the deliberation room the as-

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<sup>86</sup> Rabie, B.: *Introduction to Insolvency Law*, Amman: Amwaj Publishing and Distribution House, 2018.

<sup>87</sup> Khalil, A.: *Commercial Bankruptcy and Civil Insolvency Provisions*, Alexandria: University Printing and Publishing House, 2004.

<sup>88</sup> Al-Zoubi, H.: *Management and Financial Analysis*, Amman: Dar Al-Fikr for Printing, Publishing and Distribution, 2000.

<sup>89</sup> Radwan, F.: *Commercial Companies*, Cairo: Dar Al-Nahda Al-Arabiya, 2001.

signed judge's report and the explanations of the bankruptcy agent and decide on the order for removal in public hearing.<sup>90</sup>

### 3.3. CONDITIONS FOR LICENSING INSOLVENCY AGENT

In view of the agent's vital role in the administration and conduct of insolvency and the replacement of the debtor after the issuance of the insolvency notice judgement,<sup>91</sup> the legislator has stipulated several conditions that must be met by the agent and since the insolvency law provision established the conditions and licensing of insolvency agents for the natural and legal person through articles 13-19 of the insolvency agent's licensing provision. These conditions include:

1-To be Jordanian

2-To be 30 years old at the date of submission of the application.

3-Not to have been sentenced to conviction or misdemeanor with honor and decency.

4-He/She shouldn't be related to the debtor or have a business relationship with the debtor or any relationship affecting his/her impartiality. Here, a relevant meaning must be clarified, since the legislator has not defined the person relevant to the debtor, but by reference to the Legislative Guide on Insolvency Law the term has been defined as follows: "Interested party: Any party whose rights, obligations or interests are affected by the insolvency proceeding or by certain matters in insolvency proceedings, including the debtor, insolvency representative, creditor, shareholder, creditor committee, government authority or any other person affected.

We also find that article 6 identifies persons relevant to the debtor as: a: a natural person: spouse, relatives up to the fourth degree and persons whose nature of work requires access to the debtor's financial situation, including the chief financial officer, the internal auditor and the external auditor. For the purposes of this Act, a marital union is deemed to exist, even if the marriage takes place after the conclusion of the act or the termination of the marital union during the year preceding the act. b: Legal person: - Ally of

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<sup>90</sup> Sami, F.: *Commercial Companies*, Amman: House of Culture for Publishing and Distribution, 2022; Jokubauskas, R., Swierczynski, M.: The coordination of main and secondary insolvency proceedings in European Union insolvency law, *International Comparative Jurisprudence*, 8(1) 2022, pp. 1-12.

<sup>91</sup> Al-Far, A.: *Provisions of Obligation (Effects of the Right in Civil Law)*, Amman: House of Culture for Publishing and Distribution, 2016.



a legal person who controls or is controlled by another legal person, by that person or by a third legal person. - Members of the Board of Directors and senior executive management of the legal person. - Members of the Board of Directors or the Board of Directors and senior executive management of the legal person's ally. - Anyone who owns a percentage (5%) or more of the shares of the Public Shareholding Company or any of the allied companies. Relatives and partners of the parties referred to in items (1), (2), (3) and (4). - Savings funds for employees of the legal person. - Joint ventures, establishments and associations of the legal person with any other entity. - Companies whose members of the Board of Directors, Board of Directors or Senior Executive Management and relatives have the direct or indirect ability to exert an effective influence on their business and decisions. - A person who has access to internal information concerning the financial situation of the debtor ex officio or post, including the Chairman and members of the Board of Directors, the Director General, the Chief Financial Officer, the internal auditor, the external auditor, the representative of the legal person and relatives of the entities referred to up to the third degree. - Any natural person who is liable in his/her own funds for the debtor's obligations.

5-To have a university degree in economics, business administration or law and to have at least five years of experience in his/her field of work, and to be licensed to perform the business of an insolvency agent.

6-When choosing an insolvency agent, the court must take into account that he/she can administer insolvency proceedings and is experienced in the nature of the economic activity. The court must take the opinion of creditors or any competent regulator prior to appointment. However, it can be said that the priority is to appoint lawyers who are well- experienced, highly competent and well-comprehending of legal proceedings and with legal knowledge and expertise.

The provisions require him/her to meet several conditions through the text of article 14, paragraph (b), of the Provisions, where the company must provide the guarantees set forth in the said article and the company must work as an insolvency agent at least from the licensed natural persons. However, in the event that the number of agents is below the minimum, they shall correct the matter within thirty days from the date of the incident, as provided for in article 19/c.<sup>92</sup>

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<sup>92</sup> Al-Qadi, T.: *The Idea of Reserve Guarantee in Commercial Papers (Study in Positiv Law and Islamic Jurisprudence)*, Cairo: Center for Arab Studies for Publishing and Distribution, 2022.

The license application is submitted to the unit “which is the agents’ licensing unit established under this provision” where the application according to the approved form is signed by the applicant or who’s authorized to sign if he is a legal person. The applicant attaches to the application documents proving the fulfillment of the licensing requirements of law and order. A licensing examination is held for the applicant agents and is organized through the unit. And the Committee shall determine the applications by meeting the required conditions, issue its license decision and shall not be effective until the oath has been performed and fees and any other conditions included in the license decision have been met.<sup>93</sup> After licensing, the agent shall inform the Committee in the event that he/she loses any of the conditions of the license or the licensing of any of the agents who have been licensed on the basis of qualifications. Applications for renewal of licenses shall also be submitted to the Unit through which it is verified that the insolvency agents are bound by the licensing conditions and requirements.<sup>94</sup>

Article 20 of the Provisions states that the duration of the insolvency agent’s license shall be two years from the date of entry of the insolvency agent into the insolvency agent’s registry, with the request for renewal to be submitted 60 days prior to its expiration.

#### 4. CONCLUSION

The legal regulation of insolvency creditors is hugely different from that of creditors in the face of insolvency proceedings. In addition to defining the duties and functions of the insolvency agent, the Jordanian legislator has fully and in detail addressed the conditions of the insolvency agent’s license. Thus, the insolvency agent’s liability to the parties of the dispute is sometimes contractual and, in other cases, default in accordance with the agent’s liability to the insolvent debtor, group of creditors or others.

Indeed, the insolvency law introduced the concept of foreign insolvency and granted the foreign agent the right to perform insolvency proceedings. The legal nature of the creditors’ committee is only an independent legal person of a special nature defined by law with certain members with specific competence and existing objectives for the preservation of insolvency proceedings, and subject to a special legal provision designed to conduct insolvency proceedings

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<sup>93</sup> Al-Akaili, A.: *Explanation of Commercial Law, Commercial Companies*, Amman: Dar Al-Thaqafa Library for Publishing and Distribution, 2002.

<sup>94</sup> Yamalki, A.: *Commercial Law, Companies, (a comparative study)*, Amman: House of Culture for Publishing and Distribution, 2017; Olabarrieta, U., San-Jose, L., Araujo, A.: The lemon market of insolvency proceedings in Spain in the new normal: Information, asymmetry, and adverse selection problems, *Cogent Business and Management*, 10(3) 2023, pp. 1-16.

collectively in order to prevail over the principle of equality between representatives of the general creditor body.

The Jordanian legislator must therefore address the liability of the General Creditors Authority and the Creditors' Committee in the event of a breach of their mandated duties by explicitly stipulating it, and address the liability of the insolvency agent in a more detailed and clarified manner.

## LITERATURE

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