

# Legal Provisions Governing the State of Seizure of Insolvent Funds in Jordan's New Insolvency Law

Nasr Al-Balawi<sup>a</sup>, <sup>a</sup>Assistant Professor / College of Law / University of Jadara,  
Email: [nbalawi@jadara.edu.jo](mailto:nbalawi@jadara.edu.jo), [nasir-balawi@hotmail.com](mailto:nasir-balawi@hotmail.com)

The Jordanian legislator has established a new legal system to deal with the financial distress of debtors by issuing insolvency law number 21 (2018), which aims to strike a balance between the need to address the debtors' financial distress in the shortest possible period of time, and the interests of the various parties directly concerned with that financial distress. Those parties include creditors and anyone who has an interest with the debtor. This law came about in order to fulfil the requirements of the Jordanian economic sector, which needed the creation of a legislative system to address debtor's insolvency. In carrying out this research, the author used the descriptive analytical method by studying and analysing legal texts, and by referring to the new insolvency law. This law aims to achieve balance when the debtor stops or is unable to pay the debts owed, or when the total obligations incurred by them exceed the total value of their money. The study concludes that declaring insolvency means that creditors may resort to obtaining the protection that this insolvency brings them, whether in relation to the debtor's disposal of funds, or by preventing creditors from racing to gain advantages for their rights. As for the most important findings of the study, the Jordanian legislator should stipulate in the insolvency law that the concession rights are not enforced, as it is not permissible to protest against creditors who have previous rights in the insolvency lawsuit filed with the competent court with any jurisdiction that falls on the debtor's property after that.

**Key words:** *Creditor, Financial Distress, Insolvent Debtor, Insolvency Law, Jordan.*

## **Introduction**

The great convergence between commercial and civil relations in human life is the main reason for creating a legal system that effectively strengthens and enhances the idea of credit. When the debtor cannot pay their debts or obligations, some legal systems provide an effective legal mechanism to address the issue of collective fulfilment of the remaining claims of the debtor's assets. This is so that that legal mechanism takes into account the interests of the parties affected by the proceedings. Those parties include the debtor, the owner and manager of the debtor, creditors, who can be secured to varying degrees, and respected persons including civil companies, government-owned companies, merchants, owners of individual institutions, and registered professionals authorised to operate under the provisions of the legislation in force. In general, the mechanism must strike a balance not only between the various stakeholders' interests, but also between those interests and social and political considerations that have an impact on the economic and social goals of insolvency proceedings.

The Jordanian legislator has created a new legal system represented in the insolvency law no. 21 (2018) to deal with the debtors' financial distress, in order to achieve a balance between the need to address the debtors' financial distress within the shortest possible period of time, and the interests of the various parties directly concerned with that financial distress. These include creditors and other parties that have an interest in the debtor. This research therefore deals with the extent of the ability of the new Jordanian insolvency law to find a legal mechanism capable of balancing the interest of the creditor and the insolvent debtor and providing legal guarantees to the parties involved with the insolvency lawsuit.

## **Concept of Seizure and Insolvency**

The seizure is legally defined as “putting money under the hands of the judiciary to prevent its owner from performing any legal or material action that would take out this money or its fruits from the secured creditor’s barrier” (Wali, 1993). It is further defined as acting in a manner that harms the right of the barrier (Abu Al-Wafa, 2007). As for insolvency, Article (2) of the Jordanian Insolvency Law No. (21) in the year 2018 defined insolvency as “the debtor stops or fails to pay the debts due to hi regularly or when the total obligations incurred on him exceed the total value of his money”.

As for legal jurisprudence, Morqus defined the seizure as, “the debtor’s condition, whose debts exceed his money, and relies on him from all the debts of the debtor, the status of which is deferred” (Morqus, 2019). According to Al-Jubouri (2003), the seizure is “A legal system whereby a debtor is prevented from paying a debt that exceeds his debts over his money, and

a court ruling for his seizure is issued upon the request submitted by the debtor himself or his creditor, convinced by the competent court”.

The researcher concludes, as a result, that if the debts owed by the debtor exceed their money, then they are considered insolvent.

### **The Provision of the Insolvent Debtor in Light of the New Jordanian Insolvency Law**

This section deals with the legal provisions governing the case of the insolvent debtor under the new Jordanian insolvency law, and clarifies these provisions, as follows:

#### ***Insolvency Declaration Procedures***

Article (6) of the new Jordanian insolvency law stipulates that, “the debtor, any of its creditors, and the observer if the debtor is a company, to submit to the court a request to declare the insolvency, provided that the procedures stipulated in this law are given and priority is given to deciding the request submitted by the debtor.” The request for declaration of insolvency submitted by the debtor is heard in the event of actual insolvency and imminent insolvency, while the request submitted by the observer and creditors of the debtor is not heard, except in the event of actual insolvency. Whereas, Article (7) of the same law states that the debtor and any of the persons who manage it if it is a legal person, even if they do not obtain the approval of the partners and shareholders to submit an application to declare the insolvency within a period of two, from the date of their actual or supposed insolvency. The period stipulated in paragraph (A) of this article does not apply to a request for the declaration of imminent insolvency. The persons mentioned in Paragraph (a) of this Article shall be personally responsible for the damage resulting from the violation of the provisions of this Article. In this case, the court may issue a decision prohibiting the violator from engaging in any economic activity for a period of not less than one year and not exceeding five years.

In considering that seizure to the debtor is acceptable under Jordanian law, it is permissible for the judge to do this without condition, since it is natural that the court, when using its discretionary authority, takes into account all the circumstances that caused the debtor insolvency, as well as the legitimate interests of the creditors and every circumstance that would affect the financial condition of the debtor, and to balance conflicting interests (Article 8 of the Jordanian Insolvency Law, 2018).

An declaration of insolvency is a means that creditors may resort to in order to obtain the protection that this insolvency brings to them, whether in relation to the debtor’s disposition of their money, or by preventing creditors from competing to gain benefits for their rights.

The declaration of insolvency must be requested from the court by the debtor or one of the creditors. However, the court may not declare insolvency on its own or at the request of the Public Prosecution, as in bankruptcy (Al-Sanhouri, 1982).

Jurisprudence justifies allowing the insolvent debtor to declare the insolvency themselves so that the effects of the declaration may represent advantages for the debtor. For example, they may seek the declaration of insolvency to extend the time limits of the current debts to enable them to fulfil them, or to obtain an expense from their revenues if the creditors have signed seizure to it (Al-Sharqawi, 1995).

It is clear from Article (6) of the new Jordanian insolvency law that the application for the declaration of insolvency is submitted to the court to issue a ruling on the debtor's insolvency, and the competent court is the one that the debtor's home belongs to. The aforementioned article is the competent court. Therefore, it is due to the general rules in the value and spatial jurisdiction stipulated in the Jordanian Law of Conciliation (Article (3) of the Magistrate Courts Law No. (15) of 1952) and the Jordanian Civil Procedure Law to know this court ( Articles (36 to 46) of the Civil Procedure Law No. (24) for the year 1988).

Article (16) of the new Jordanian insolvency law publicly organised the insolvency declaration, stipulating:

A-1 - The decision to declare insolvency is published in the Official Gazette with the debtor's data and the restrictions on his powers to manage and dispose of his funds, and specify the name of the insolvency agent with a request from creditors to submit their claims, and the decision to publicize is effective from the date of this publication.

A-2- The court obliges the debtor or the insolvency agent to announce the decision to declare the insolvency by publishing an advertisement in a local daily newspaper or a newspaper issued in any other country in which the debtor has economic activity and in any other way the court deems appropriate.

B- The decision to declare the insolvency shall be recorded in the company's register with the Companies Control Department, in the insolvency registry, and in any record of the debtor's funds.

C- The insolvency decision is published on the debtor's website.

Including the judgment of insolvency in the public record is to alert creditors to the debtor's financial position, give them the opportunity to be aware of the debtor's financial position before dealing with them, and enable other creditors to participate in implementation

procedures for insolvency funds that may be One of them had started it, so that equality between them can be achieved in order to fulfill their rights (Al-Jamal,1998). The decision of insolvency is recorded by a procedure taken by the clerk of the court, that is, without the need for a request from anyone, on the same day the judgment is issued, in the insolvency record of the court that issued the ruling, which is the court of the debtor's home.

### ***The Effects of Declaring Insolvency***

The debtor's insolvency declaration has two types of effects. That is, effects for the debtor, and effects for claims made against the debtor. This is indicated in the following:

#### ***Effects of Insolvency Declaration on the Debtor***

The declaration of insolvency aims to protect creditors from harm as a result of the debtor's actions, through the handcuffing of the debtor's disposal of their money. It is decided that the debtor's actions will not be enforced on their creditors since the declaration of insolvency, and this is confirmed by the text of Article (21) of the new Jordanian insolvency law. It states:

“A- No lawsuit against the debtor is heard after the insolvency is declared, and any person claiming a debt must register his claim in accordance with the procedures set forth in this law.

B- Courts and competent arbitration tribunals continue to hear cases brought against the debtor pending the issuance of judgments in them.

C- Notwithstanding what is stated in Paragraph (B) of this Article, the insolvency agent may request the court refer any lawsuit pending before another court, whether the debtor is a plaintiff or defendant to it. If the value or nature of the claim in that lawsuit substantially affects the course of insolvency procedures and in all cases if the value of the lawsuit exceeds (20%) of the debtor's total debts.

However, the failure of the debtor's actions after registering the insolvency claim against their creditors does not mean that they are deprived of disposing of their money in absolute terms. They still have the right to dispose of these funds, provided that they are not harmed. That is, on the condition that they behave at the same price and benefits creditors from this consideration. The Jordanian legislator has arranged for the debtor's actions not to be effective from the registration of the summons to the case (Al-Jubouri, 2003), and not from the date of the judgment declaring the insolvency. an increase in him in the protection of creditors if this act, whether it was a compensation or donation, would diminish their rights such as gift or sale, or increase their obligations, such as the loan. This ruling includes any fulfilment of the debt after this date even if the payment of a debt is due to be paid (Sultan,

2019). In a case where the conduct does not run out, the debtor is prohibited from donating and bargaining even if it changes favouritism and its only condition is that the debt be surrounded by the debtor's money.

### ***Effects of Insolvency in Relation to Claims against the Debtor***

The first effect of the insolvency declaration is the achievement of effective equality between creditors. This equality is achieved by considering all creditors' debts due for performance, i.e. the fall of the maturities of debts that have not yet been resolved. This achieves equality among all of them by requiring their rights to the debtor's money, without waiting for debt deadlines (Al-Jamal, 1998).

In fact, the judge originally has discretionary power to give the debtor a soft look when certain conditions are met. That discretionary power is based upon justifications that they see require it. The judge has to keep the term, even though their fall came by force of law, or to extend the term of the debt, or to grant a time limit in respect to a debt that is already original and payable. This applies when three conditions are met (Al-Jubouri,2003), as follows:

1. The debtor requests the judge, according to a summons submitted to them, to keep the term, to extend it, or to give it a term for a debt payable.
2. That the application falls against the stakeholders' creditors (the owners of debts that the debtor requests to postpone).
3. That the request be based on reasonable justifications arising from the circumstances of the debtor and their urgent need for postponement (debt postponement), so that the judge is convinced, and that the judge is convinced of those justifications and the circumstances surrounding the debtor that require compassion, and the judge must be convinced that postponement and its motives guarantee creditors their rights and interests towards the debtor. However, there is a problem facing the judge, which is that postponing the debt will lead to harm to the creditor whose debt has been postponed. This is the case especially when there are multiple creditors, which will lead to those who pay their debts towards the debtor, and the creditor remains the deferred debtor, so the judge must take precautions for that.

As of the date of registration of the insolvency claim, no concession on the real estate of the debtor in the face of fixed creditors shall be executed on the date of their debts before this registration, and therefore the debtor's agreement with one of the creditors to arrange an in-kind insurance for his benefit, such as the official or possessory mortgage, is not enforceable. Ensure equality in the collection of debts between previous creditors and their rights to register the summons to the suit (Sultan, 2019).

Article (138) of the new Jordanian insolvency law stipulates that:

“A The court is competent to consider insolvency proceedings in response to requests submitted by litigants, and it has the right of its own motion to examine any issues or request related to the insolvency proceedings if it deems them necessary.

B - The court is competent to consider any issues related to the application of the provisions of this coli and any claims or requests that affect edema Issue, especially in the following: -

- 1- Executive issues.
- 2- Any conservative measures related to insolvency funds.
- 3- Claims of non-enforcement of the debtor.
- 4- Claims related to the liability of the debtor and the persons who manage it and its auditors.
- 5- Claims related to accepting or objecting to creditors' debts.
- 6- The lawsuit filed to amend or terminate the contracts currently being implemented and work contracts in accordance with the provisions of this law.

C- The court shall not be competent to hear cases brought by the debtor except in the cases stipulated in Paragraph (C) of Article (21) of this law.

However, any creditor has the right to obtain, if in his possession, a judgment against them or if this right is fixed in an official document, on a concession of debtor property, without the need for the debtor's consent. Obtaining it after the insolvency declaration is a breach of the equality of creditors, which is something that the insolvency declaration aims to avoid (Al-Sharqawi, 1995).

### ***Reasons for the Termination of Insolvency Proceedings***

The seizure shall end with a judgment issued by the court to which the debtor's home belongs, upon the request of the concerned party who has an interest in this termination, in the following cases:

**First:** If the seized property is divided between creditors.

**Second:** If it is proven that the debtor's debts do not exceed their money, and debt here means what was due to be paid at the time of the debt to the debtor, and what was postponed and then resolved according to the ruling with the stone. Therefore, it is certain that the termination of the seizure will not harm any of the creditors whose debts are due at the time of the report (Al-Sanhouri, 1982). If the debtor pays their debts that prevented the seizure from having an effect on its solutions, and this includes the debts that were the case at the time of the quarantine, as well as those that were due for expiry by the due date, and not because of the judgment of the insolvency month, and it is not sufficient for this purpose that

his money reach the point of fulfilling this debt, but it must be paid off actually, and in this case, the deadlines for the debts that took place in the seizure return to what it was before (Al-Jubouri, 2003).

Article (111) of the Jordanian insolvency law states: “A- If new funds appear to the debtor within a basket period from the date of the end of the insolvency proceedings, or what appears to demonstrate that the debtor has subjected to non-enforcement procedures under this law, or the responsibility of the person who manages the debtor or its companies has been fulfilled, then any creditor may request the return of the insolvency proceedings to me.”

B- The expiry of the legal person, the cancellation of the debtor, or the cancellation of their registration shall not prevent re-proceeding the insolvency proceedings so that it can be re-registered.

C. It is permissible to return to insolvency proceedings if there are sufficient funds or reasons to claim against others to cover the expenses of the procedures and to provide reimbursable amounts of at least (5%) to creditors with excellent debts.

D. Restarting the insolvency procedures is limited to recovering and selling money and taking the necessary measures with a view to distributing the returns to creditors in accordance with the priority rules stipulated in this law.

E - The court appoints the insolvency agent itself unless it decides otherwise. The insolvency agent must prepare a new distribution list and carry out the tasks stipulated in Paragraph (d) of this period.

**Third:** Reservation ends with the force of law if three years have passed from the date of the issuance of the seizure pursuant to paragraph (c) of Article (124) of the new Jordanian insolvency law to fulfil their rights (Al-Far, 2008). As for the procedures for ending the seizure of a bankrupt debtor, in this regard, the same procedures for the rulings on signing a seizure are followed.

## Conclusion

Through this research, it became clear that the legal provisions governing the case of seizure of the insolvent debtor in the new Jordanian insolvency law No. 21, 2018, achieve benefits, including extending the dates of the current debts to enable debtors to pay them, or obtaining an expense from their revenue if creditors have booked them. Likewise, if the debtor owes debt in excess of their monies, they are considered insolvent. As for the negatives that take on the new insolvency law, the discretionary power granted to a judge, which I consider to be restricted by the text of the law, that human rights matters or financial claims must be within fixed rules and specific conditions, unlike criminal cases in which the judge has discretionary power by weighting evidence of another.



One of the most important findings of the research is that if the debts owed by the debtor pay more than their money, then they are considered insolvent. The insolvency declaration is also a means that creditors may resort to in obtaining protection, whether in relation to the debtor's disposition of their funds or by preventing creditors from racing to gain benefits for their rights. Creditors aim to declare the debtor's insolvency to protect them from the harmful actions of the debtor, by removing the debtor's hand from disposing of their money, where it has been decided that the debtor's actions would not apply to his creditors, since their insolvency is made public.

At the end of the study, and based on what was discussed in it in terms of issues and legal analysis, the researcher recommends that the Jordanian legislator place a jurisdiction for the competent court that hears the claim of insolvency, suggesting that it be the court of first instance. The Jordanian legislator also recommended that the insolvency law provide for non-enforcement of the concession rights, as it is not permissible to protest against creditors who have previous rights to register the insolvency claim in any jurisdiction that falls on the debtor's properties after this registration.



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