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INSOLVENCY LEGISLATIVE FRAMEWORK ANALYSIS

Guidance for Development of a New Insolvency Law in Jordan

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INSOLVENCY LEGISLATIVE FRAMEWORK ANALYSIS

GUIDANCE FOR DEVELOPMENT OF A NEW INSOLVENCY LAW IN JORDAN

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INTRODUCTION

SABEQ is assisting the Companies Control Department to develop a new Insolvency[1] Law. Jordan currently has liquidation and financial restructuring ("Composition") proceedings that are provided for in the Companies Law and Commercial Code. These provisions are seen as inadequate as Jordan seeks to modernize its commercial law framework and procedures as part of an effort to increase private sector growth and lending and investment.

WHY IS INSOLVENCY LAW IMPORTANT?

Laws that enable insolvent firms to be placed into insolvency are an important part of the framework for investment and lending. A modern insolvency law:

- Eliminates the chaos that would result from creditors competing to quickly grab assets of insolvent companies
- Maximizes proceeds received by creditors, shareholders, employees, etc. at minimum time and expense
- Set priorities of claims to ensure predictability
- Rehabilitates viable businesses and liquidates unviable businesses
- Can allow debtors to stay in business or get a fresh start, i.e. freedom from a mountain of debts

The economy benefits from an insolvency law as banks are more willing to lend when they have faster and higher recovery of debts, assets are reallocated to more efficient owners, and the economy becomes more dynamic and grows faster as entrepreneurs are allowed to take risks, and try again if they fail.

CURRENT INSOLVENCY LAW IN JORDAN

As discussed below, Jordan's insolvency laws meet some of the standards for a modern insolvency law, as defined in the UNCITRAL Legislative Guide on Insolvency Law ("UNCITRAL Guide") and the World Bank Principles and Guidelines for Effective Insolvency and Creditor Rights Systems ("World Bank Principles"). But in Jordan there is no one piece of legislation that governs the doctrine of insolvency in its broader sense. The rules regulating insolvency, bankruptcy and liquidation are scattered over various laws and regulations, although the Commercial Code and the Companies Law are the main bodies of legislation.

Insolvent "merchants" are subject to either a liquidation proceeding or a composition under the Jordanian Commercial Code. A composition is a voluntary debt restructuring. But it is not established which provisions from the Commercial Code would apply to companies as well as to individual merchants, as the dividing line between those provisions applicable to companies in the Commercial Code versus the Companies Law is not clear.

The Companies Law provides for voluntary and involuntary liquidation procedures for the various types of companies.

According to the World Bank Doing Business Report 2008, Jordan's Insolvency law and procedures lag most countries in the region and are far from OECD countries. Jordan ranks

[1] This paper refers to "insolvency" to describe the process in which a business cannot meet its debt obligations and some actions are taken to either liquidate its assets, restructure its debts, or reorganize the debtor to enable payment of debts. This process is often referred to internationally as "bankruptcy."

10th out of 17 Middle East and North African countries in the Doing Business indicators for "Closing a Business.

Table 1: Doing Business Insolvency Indicators

	Jordan	Region	OECD
Time (years)	4.3	3.7	1.3
Cost (% of estate)	9	13.9	7.5
Recovery rate (cents on the dollar)	27.8	25.8	74.1

CONSULTATION PROCESS

During June 2008, the Companies Control Department (CCD) organized a series of roundtables with Government of Jordan ministries and agencies, business associations, banks. Commercial lawyers, and judges. During these roundtables the participants discussed the issues set forth in this paper. The minutes of the roundtables are set forth in Appendix 1.

A questionnaire was posted on the CCD website and the Young Entrepreneurs Association also disseminated the questionnaire to stakeholders and obtained 20 responses. A summary of the responses is attached as Appendix 2.

This paper analyzes 17 legislative, policy, and institutional issues relating to development of a new Jordanian Insolvency law. For each issue, we discuss the current law and practice in Jordan and summarize international laws, practices and institutions; then we summarize discussions with Jordanian stakeholders and set forth analysis and recommendations.

ANALYSIS OF ISSUES

There are a number of important issues regarding policies, procedures and institutions that need to be determined by the stakeholders before the experts can begin drafting the law. 17 of the most important issues are discussed in detail below. In addition, the UNCITRAL Guide has a list of 18 common features of an effective and efficient insolvency law that should be considered by drafters, and the list is reproduced in Appendix 3 (most of these issues are covered in the 17 issues discussed in this paper).

Our analysis sets forth current law and practice in Jordan, international laws and practices, and guidance for drafting a new Jordanian insolvency law. The international laws and practices sections merely summarize various countries' legal provisions and practices and the guidelines set forth in the UNCITRAL Guide and World Bank Principles[2]. The texts of the laws and guidelines are available from the SABEQ Project. The guidance summarizes the Jordanian stakeholders' opinions on the issues and international best practices.

[2] The World Bank Principles cover a wide range of legal and institutional aspects of commercial laws related to insolvency, while the UNCITRAL Legislative Guide focuses on the key elements of an effective insolvency law and sets forth detailed recommendations that provide specific guidance on the content of an insolvency law.

Summary of Important Issues re Insolvency Law

Legislation

1. Should Jordan have a new consolidated Insolvency law or amend current laws?
2. What other laws need to be amended?

Principles Guiding the Law

3. What are the most important policy priorities?
4. Which creditors' claims should have highest priority?
5. Should Jordan have restructuring/reorganization as an option and what characteristics should it have?
6. How should a debtor be treated after completing an insolvency proceeding (e.g. discharge of debts, loss of political rights, etc.)?

Scope of the Law

7. Which types of debtors should be subject to insolvency proceedings?
8. What should the criteria be for commencing an insolvency proceeding?
9. Who should have standing to file an insolvency case?

Procedures in the Law

10. Should there be an automatic stay against all claims and what characteristics should it have?
11. Should creditors vote on liquidation and restructuring/reorganization plans?
12. What methods and procedures should be used to liquidate assets?
13. What procedures should be used to combat various types of fraud in insolvency proceedings?

Implementing and Supporting Institutions

14. How much of the decision making and administration should be done by courts versus administrators (receivers, liquidators, trustees) and parties?
15. What institutions will be needed to support the insolvency law?
16. Should Jordan have specialized insolvency courts/divisions, commercial courts/divisions, or specialized judges?
17. How should trustees/receivers be appointed and supervised?

LEGISLATION

1. Should Jordan have a new consolidated Insolvency law or amend current laws?

Current Law and Practice in Jordan

The rules regulating civil insolvency, bankruptcy and liquidation, are scattered over various laws and regulations; the Commercial Code and the Companies Law are considered the main bodies of legislation for Bankruptcy and Liquidation, respectively, while the Civil Code regulates the civil insolvency. Moreover, the Jordanian Legislation provides for special rules for bankruptcy for certain types of companies, based on their commercial activities, such as banks and insurance companies.

International Laws and Practices

Some insolvency laws provide for a unitary proceeding with a single procedure for commencement that will lead to either liquidation or reorganization depending on the circumstances of the case. Other laws provide for two distinct proceedings – either liquidation or reorganization, with possibilities for conversion between the two proceedings.

According to the UNCITRAL Guide, a single commencement procedure may be preferable because at the time of commencement it is often impossible to determine whether the debtor

is sufficiently viable to be suitable for reorganization, and having two distinct proceedings may result in delay, increased expense, and inefficiency, particularly if conversion proceedings are cumbersome.

Germany, Indonesia, and Bosnia & Herzegovina have single unified laws. The United States has a Bankruptcy Code at the federal level that has chapters for business and consumer liquidation, business reorganization, consumer debt restructuring, municipalities, and family farmers. France enacted a "New Bankruptcy Law" in 2005 that is included as Book VI of the Commercial Code. Egypt and Lebanon do not have consolidated laws.

Guidance for Jordan Insolvency Law Revisions

During the roundtable meetings, there was a consensus that Jordan should have a new insolvency law that supersedes the current provisions in the Commercial Code, Companies Law, and Civil Code regarding insolvency of commercial enterprises There was some support for continuing to separate provisions for insolvency of merchants and companies and also for having different procedures for small and large businesses. But most participants appeared to favor one single consolidated law for all types of businesses. As discussed above and in section 7, some countries have separate provisions for natural persons (including merchants) and legal persons, but most countries do not make this distinction.

The lack of a consolidated law is causing problems in Jordan, as some key provisions are inconsistent between laws, with no apparent policy reasons. In some cases there is confusion as to which law should apply. Thus, we recommend that the drafters attempt to consolidate the provisions as much as possible regardless of size or type of business. If the drafters attempt to differentiate between size or type of business, it could chill lending and skew incentives. For example, growing companies might have a disincentive to increase size or individual merchants might have an incentive or disincentive to register as legal person.

2. What other laws need to be amended?

Current Law and Practice in Jordan

The research revealed that there are conflicting provisions in the various laws and regulations that affect the system of Insolvency; for example, the priorities of claims for distributing the bankrupt estate are set differently in the Commercial Code and the Companies Law. These priorities are also different from the general rules under the Civil Code, and vary to a great extent from the special rules provided for certain types of debts by virtue of special laws such as the employees claims under the Labor Law.

Bankruptcy and Liquidation case procedures are currently governed under the ordinary rules of civil procedures, and are not given any kind of priority over other cases, which may result in unnecessarily prolonging the procedures. Also, the current legal environment does not favor lending, as the execution rules on secured debts are not clear and there are some uncertainty as to whether mortgage deeds may be executed through the Land Department, or only through the Execution Department. In general, security laws are not very practical, particularly when it concerns pledging movable properties as security for a debt, considering that the current laws would require actual possession by the creditor for the validity of the pledge.

International Laws and Practices

The World Bank Principles stress that countries need an integrated and harmonized commercial law system to facilitate broad access to credit at affordable rates with a wide range of credit projects. Thus, a key objective should be to integrate the insolvency law with the country's broader legal system. As the UNCITRAL Guide says, an insolvency law needs

to be harmonized with other substantive and procedural laws and in some cases it will modify those laws. Relevant substantive laws may include labor laws that provide certain protections to employees, laws that limit the availability of set-off and netting, tax laws regarding enforcement of claims, laws that limit debt-for-equity conversions and laws that impose foreign exchange and foreign investment controls that could affect the content of a reorganization plan As insolvency laws are highly procedural in nature, the civil procedure law and court rules and administration must be taken into account. The relationship between insolvency law and other laws should be clear and, where possible, references to the other laws should be included in the insolvency law.

The World Bank Principles also recommend that countries have a credit information system supported by a legal framework that ensures that laws proscribing libel and privacy violations do not constrain good faith credit reporting. In addition the Principles recommend a legal framework that encourages corporate workouts and restructurings outside of the insolvency system. Such a legal framework would enable access to reliable financial information, lending to distressed enterprises, restructuring through various means such as asset sales and debt rescheduling, and write offs, and favorable or neutral tax treatment for losses or write-offs relating to restructuring.

The UNCITRAL Legislative Guide states that insolvency law should recognize rights and claims arising under other domestic and foreign laws, including security interests. The Guide also recommends enactment of the UNCITRAL Model Law on Cross-Border Insolvency[3].

In Bosnia, the law states that unless the Bankruptcy Law states otherwise, the governing provisions of the Law on Civil Procedure are applicable in bankruptcy proceedings. After the Bosnian Law was drafted and implemented, it became clear that amendments to the Law on Execution and Civil Procedure Code were required.

In Indonesia, the insolvency law provides that an employment relationship may be terminated by either the employer (the debtor) or the appointed receiver, subject to the provisions of the prevailing labor laws, provided that at least a 45 days notice is sent before the termination.

Guidance for Jordan Insolvency Law Revisions

Once a new insolvency law is enacted, the Government will need to repeal the provisions of the Civil Code, Commercial Code, and Companies Law that deal with insolvency of businesses.

It was mentioned during the roundtables that Jordan needs to establish a better legal framework for securing debts with movable property as collateral, particularly non-possessory security interests. In addition, Jordan needs to establish a central registry for pledging movable property collateral (“pledge registry”).

Participants in the banks roundtable agreed that Jordan also needs to enact a Law on Credit Reporting, which has been drafted.

It was suggested during the roundtables that modifications to Central Bank Regulations may be needed to enable reorganizations, including regulations that require banks to write off delinquent accounts after three months of default. Thus, if Jordan decides to include reorganization in the new insolvency law, the drafters will need to analyze the CBJ rules and regulations to ensure that they are not an obstacle to reorganization.

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[3] The UNCITRAL Model Law on Cross-Border Insolvency can be obtained from the SABEQ Project or from http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency/1997Model.html (in Arabic and English).

In addition, regulations might be needed to enable bankruptcy trustees and CCD to better link with the Department of Income Tax and the Social Security Corporation.

The drafters should examine the Labor Code to determine which provisions may need to be amended.

Finally, the drafters and the Government should consider adopting provisions in the UNCITRAL Model Law on Cross-Border Insolvency, as this law is becoming an international standard for handling cross border insolvencies.

UNCITRAL Model Law on Cross-Border Insolvency

The Model Law has been adopted in 16 countries, including the U.S. and U.K., and would:

- allow a person administering a foreign insolvency proceeding to seek a temporary stay of proceedings in Jordan against assets of an insolvent debtor
- permit a foreign representative to commence an insolvency proceeding in Jordan where the debtor is subject to a foreign proceeding, and participate in a Jordanian insolvency proceeding in relation to that debtor
- allow foreign creditors the same rights as Jordanian creditors regarding the commencement of and participation in insolvency proceedings in Jordan
- provide a legislative framework for cooperation and coordination between courts and insolvency practitioners of different jurisdictions.

PRINCIPLES GUIDING THE LAW

3. What are the most important policy priorities?

Current Law and Practice in Jordan

Based on the text of the law, the following priorities appear to have been the most important to the drafters of the Companies Law and Commercial Law provisions relating to insolvency.

- terminating the operation of a delinquent merchant, whether as individual or a company;
- securing the debts of the Government, liquidators and then the workers;
- penalizing the bankrupt merchant, whether fraudulent or otherwise for leading the business into bankruptcy.

International Laws and Practices

UNCITRAL recommends that several key objectives should be considered by drafters of an insolvency law:

- provide certainty in the market; maximize asset value
- balance liquidation and reorganization
- ensure equitable treatment of similarly situated creditors
- quick and efficient resolution
- preserve the estate to allow equitable distribution to creditors

- ensure transparency and predictability
- recognize existing creditors rights and establish clear rules for priority of claims.

The World Bank Principles provide guidance on policy priorities, as summarized in the text box below.

In general, common-law countries tend to favor secured creditors in their insolvency laws, while civil law countries and countries with socialist legal traditions favor taxes and labor. This might be a reason for the fact that common law countries resolve insolvency cases in an average 2.7 years, while civil law countries take an average of 3.7 years.[4] But as with most areas of commercial law, the common and civil law systems are converging. For example, the U.S., Canada, and France have evolved hybrid systems of laws that are broadly pro-debtor with significant pro-creditor exceptions.

In France, the State imposes court-administered insolvency procedures in bankruptcy with the explicit objective of preserving the firm as a going concern and maintaining employment. The first article of the French Bankruptcy Code states that the objectives of the law are: "safeguarding the business, maintaining the firm's operations and discharging liabilities." The law provides that courts should explore reorganization prior to instituting liquidation procedures. But the judge can immediately liquidate financially distressed firms if he considers it impossible for them to continue their operations. Nearly 90% of French bankruptcy filings end up in liquidations.

The first article of the German Insolvency Law states: "The insolvency proceedings shall serve the purpose of collective satisfaction of a debtor's creditors by liquidation of the debtor's assets and by distribution of the proceeds, or by reaching an arrangement in an insolvency plan, particularly in order to maintain the enterprise. Honest debtors shall be given the opportunity to achieve discharge of residual debt."

U.S. insolvency law attempts to balance two goals: the equitable distribution of a troubled company's assets through the equal sharing of losses by creditors of equal rank, and the restructuring or rehabilitation of a business to preserve jobs and to maximize the return to creditors and, if possible, the debtor's shareholders. Thus, the federal bankruptcy laws prevent creditors from dismembering the assets of a debtor, while providing the opportunity for a fresh start. The law encourages reorganization when the "going-concern value" of an enterprise exceeds the "liquidation value" of the enterprise,

The Bosnia Law on Bankruptcy states that its purpose is to 1) satisfy the creditors collectively through liquidation or 2) to reorganize the debtor to define "the legal status of the debtor and its relations with the creditors, and especially for the purpose of maintaining its business operations."

Sweden's bankruptcy system is exclusively an auction system. Auction of bankrupt firms is mandatory, and the highest bidder decides whether to keep the firm intact or use its assets piecemeal. The procedure is swift—the average sale takes place within two months of filing—low cost, and highly transparent. Creditors are paid according to absolute priority, and payment must be in the form of cash generated by the auction.

The U.K insolvency law focuses on protection for secured creditors. Unlike other systems, the U.K. system does not impose an automatic stay of debt during the proceedings, and administrative receivers have broad discretion to take whatever actions they determine will best protect the favored interest group.

[4] World Bank, Doing Business 2004.

World Bank Principles: Key Objectives and Policies

Effective insolvency systems should aim to:

- Integrate with a country's broader legal and commercial systems
- Maximize the value of a firm's assets and recoveries by creditors
- Provide for both the efficient liquidation of nonviable businesses and those where liquidation is likely to produce a greater return to creditors, and the reorganization of viable businesses
- Strike a careful balance between liquidation and reorganization, allowing for easy conversion of proceedings from one procedure to another
- Provide for equitable treatment of similarly situated creditors, including similarly situated foreign and domestic creditors
- Provide for timely, efficient and impartial resolution of insolvencies
- Prevent the improper use of the insolvency system
- Prevent the premature dismemberment of a debtor's assets by individual creditors seeking quick judgments.
- Provide a transparent procedure that contains, and consistently applies, clear risk allocation rules and incentives for gathering and dispensing information Recognize existing creditor rights and respect the priority of claims with a predictable and established process.
- Establish a framework for cross-border insolvencies, with recognition of foreign proceedings

Guidance for Jordan Insolvency Law Revisions

It was clear from the roundtable discussions that participants in general feel that Jordan's law needs to provide for an efficient way to deal with insolvent companies, include the possibility of reorganization in addition to liquidation, provide for equitable distribution of proceeds to creditors, and protect employees by prioritizing their claims and seeking reorganization when possible. Jordan's law will need to balance economic efficiency and social considerations, like preserving jobs and providing a safety net for displaced workers.

We recommend that the drafters also ensure that whatever policies are incorporated in the law, the procedures maintain efficiency in administration of the case. Thus, time limits should be imposed for procedures like a decision between reorganization and liquidation, submission of claims, and challenging actions of the trustee. Other provisions could provide incentives for quick resolution of the case (e.g. trustee's fees payable upon plan confirmation or distribution of proceeds of asset sales).

4. Which creditors' claims should have the highest priority?

Current Law and Practice in Jordan

Under Jordanian Law, setting the priorities of claims is not straightforward: the order of priorities of claims differ between the Commercial Code, the Companies Law, the Labor Law and the more general rules under the Civil Code. Under the Commercial Code, it is not clear how the distribution is made, and it appears to depend on the method for resolving the bankruptcy case, however, the Commercial Code does provide for a special status for secured creditors, and it appears to give them priority over other creditors. Yet, it is not clear whether the secured creditors will have priority over government claims for example, and it is not clear how the rest of the creditors settle their debts. The assumption is that the general rules should apply in this case, keeping in mind that the Labor Law provides for a priority of workers claims over other claims. The answer provided in Table 2 below, is based on the order provided under the Companies Law.

Employees Wage Claims

One of the most difficult policy issues in Jordan and many countries is how to treat workers' claims. The World Bank Principles comment:

"In liquidation, where the fate of the enterprise is terminal, one cannot reasonably make a case for preserving jobs…There is typically an implicit commitment between workers and the firm. If the worker continues to work effectively, the firm will continue employment and pay wages... [But] if the firm's financial fortunes decline precipitously, the workers, as well as the firm's shareholders, bear some of the risk… Many legal systems recognize these implicit commitments… [and] in insolvency proceedings a payment due to workers for work already performed has seniority over other unsecured creditors…"

The Principles also discuss other issues regarding workers: 1) they may have limited job mobility and prospects; 2) their pension benefits may derive from the ongoing operation of the business; 3) there may be a weak social safety net for unemployed workers. These issues could lead to unfairness and social unrest and raise difficult policy questions for the design of an insolvency law: Should employees claims have priority over other creditors supplying essential inputs to a business? If so, businesses that are labor-intensive will represent a higher credit risk than capital-intensive businesses, which may penalize job creation.

International Laws and Practices

The World Bank Principles provide that secured creditors should have a priority claim in their collateral and distributions to secured creditors should be made as promptly as possible. Next expenses and costs of administration should be paid. All remaining creditors should be treated equally as general unsecured creditors unless there are compelling reasons to justify giving priority status to a particular class of claims. Government interests should not be given priority over private rights[5]. Careful consideration should be given to balancing the rights of employees with those of other creditors, particularly in reorganization. Equity owners should not be paid until all creditors have been fully repaid.

The UNCITRAL Guide provides that the insolvency law should specify the classes of creditors and their priority. Secured claims should be satisfied from the secured asset and claims superior in priority to secured claims should be minimized. The UNCITRAL Guide recommends that the law provide for a priority lien (ahead of unsecured and administrative claims but behind secured claims) as an incentive for post-commencement finance to be obtained by the trustee to continue operation of the business or preserve or enhance the value of the estate. The Guide recommends the following ranking:

1. Secured claims from the secured asset
2. Administrative costs and expenses
3. Claims with priority
4. Ordinary unsecured claims (includes wages)
5. Deferred claims or claims subordinated under the law
6. Debtor (owners)

The Bosnian Law provides that wages have second priority (after administrative expenses) for up to eight months of minimum wage.

[5] Tax claims could be unsecured or in many countries they may be secured by a tax lien recorded on property by government. In addition, tax claims could be for taxes and other payments held in trust by the debtor for the government, e.g. sales taxes, VAT, withheld employee income taxes, or social fund contributions.

Table 2: Priority of Claims

	Number in priority				
Country	**Secured Creditors (up to value of collateral)**	**Administrative Claims (expenses of insolvency proceeding)**	**Employee Wages**	**Taxes or other obligations to the state**	**Suppliers and other unsecured creditors**
Jordan	4	1	2	3	5
Bosnia	3	1	2, up to eight months minimum wage	4	4
Egypt	3	1	N/A – perhaps under labor law	2 (only up to two years prior to declaring bankruptcy)	
France	3	2	1, up to two months	4	4
Germany	1	2	3	3	3
Indonesia	3	1	4	2	4
Lebanon	3	1	N/A – perhaps under labor law	2	4
United States	1	2	3	4	5

Note that most of these countries have more types of claims, so the numbered priorities are not actual – rather they reflect the relative priorities of the listed types of claims.

Guidance for Jordan Insolvency Law Revisions

Most roundtable participants believed that it is most important to prioritize employees' wage claims, insolvency case administrative expenses, and secured creditors' collateral rights. There were varying opinions on what the ranking of these three categories of claims should be. Nonetheless, most of the participants agreed to take the social aspect into account when the priorities are determined. The banks were clear that their security interests should have a priority.

Placing employees' wage claims as first priority could have severe negative consequences. The Government would likely have to pay for many insolvency proceedings, as there often would not be sufficient funds for case administration after payment of wage claims. Lending

would likely become more expensive, including higher interest rates, and more difficult to obtain. There could be other unintended consequences.

Administrative claims' priority position is based on the fact that these expenses are necessary to preserve and administer the insolvency estate. The expenses can be controlled by rules and/or court and creditors' supervision (see for example Appendix 4 regarding trustees fees).

Thus, we recommend that the drafters place administrative claims first, followed by either secured claims or wage claims up to a limited amount. The wage claim limitation could be based on scope, time, or amount. For example the French law provides for priority of unpaid wages incurred in the two months prior to the insolvency case filing and the Bosnian law provides for priority payment of wage claims up to eight months of minimum wages.[6] Unsecured claims, including unsecured Government claims, should always be lowest priority (with equity owners only receiving any proceeds left after payment of all creditors' claims).

5. Should Jordan have restructuring/reorganization as an option and what characteristics should it have?

Current Law and Practice in Jordan

The Commercial Code provides for "Composition" procedures, which may be considered as one form of reorganization, where the delinquent merchant has a chance to approach the Court to reach a settlement with his creditors, and avoid declaring bankruptcy. However, the risk of Composition, is that it may lead to declaring bankruptcy, if the creditors did not approve the proposal, or if the Court is not convinced. The Companies Law provides for certain mechanisms for capital restructuring, if the company is sustaining losses, and provides the Controller with the right to interfere and form a committee to manage the company, if certain circumstances occur. The Banking Law and the Deposit Insurance Law provide for an option for the liquidator (DIC) to enter into arrangements to sell the assets and liabilities of a delinquent bank to another, without deferring to applicable laws.

All these examples constitute one form or another of reorganization or restructuring, but none of the Laws provide for a true reorganization mechanism, within the meaning of the World Bank recommendations and as commonly known in the world. A more elaborate example for reorganization under Jordanian Law is found in the Insurance Regulatory Act, where it provides for the option of reorganizing and restructuring the company, where "the Board may upon the recommendation of the Director General dissolve the board of directors of the Company and form a neutral committee of experience and competence to reorganize the Company, and appoint a head for the committee and a deputy thereof, for a period not exceeding one year as of the date the decision was issued, provided that the Company shall bear the fees of the committee as determined by the Board. The committee shall submit a monthly report to the Director General about the progress of procedures relevant to rehabilitation or whenever requested to do so. For this purpose, rehabilitation shall include managing the Company and regulating its difficult financial situation through negotiating with its creditors for the purpose of determining the debts of the Company and the manner of settlement by approving the rehabilitation plan."

[6] The drafters should note that there are other alternatives for protecting workers that may be more economically rational. These include: establishing wage protection funds (France, Korea and other countries withhold 0.2% to 0.25% of wages to maintain wage protection funds that are used in the event of bankruptcy), establishing unemployment insurance, strengthening employees rights to improving the pension system, streamlining employees remedies for collecting unpaid wages, establishing an early warning mechanism for wage disputes that will correct problems related to wage and social security premium arrears at the earliest opportunity, and providing government relief to those suffering hardship due to lost wages and social security premiums owed by bankrupt enterprises.

International Laws and Practices

The World Bank Principles provide that an insolvency law should provide for liquidation and rehabilitation of businesses. Liquidation should be used for nonviable businesses and where liquidation will provide a higher return to creditors than rehabilitation. Viable businesses should be rehabilitated. The system should allow for easy conversion of proceedings from one procedure to the other. There are three preferred approaches for management: 1) an independent trustee; 2) the current management; or 3) current management supervised by a trustee (the UNCITRAL Guide contains these same alternative approaches). The law should provide for efficient administration, a structure that encourages fair negotiation of a commercial plan, procedures for creditors to vote on plans weighted according to the amount of each creditor's claim, supervision of plan implementation, and procedures to amend the plan or revoke it when procured by fraud.

The UNCITRAL guide contains detailed recommendations for the provisions of the insolvency law relating to reorganization. These recommendations include proposal of a plan within a fixed time period accompanied by a disclosure statement. The plan should identify each class of creditors and their treatment, the terms and conditions of the plan and how the plan will be implemented. The disclosure statement should provide financial and non-financial information on the debtor and analysis of the plan and the option of liquidation. The law should establish the process for creditors voting and court confirmation of the plan. The law should also provide a mechanism for supervising implementation of the plan and for conversion of reorganization proceedings to liquidation. The UNCITRAL Guide also recommends that insolvency laws provide for expedited reorganization proceedings to confirm voluntary debt restructuring plans resulting from negotiations with and acceptance by each affected class of creditors.

What is Reorganization?

The UNCITRAL Legislative Guide on Insolvency defines reorganization as "a proceeding whose ultimate purpose is to allow the debtor to overcome its financial difficulties and resume or continue normal commercial operations (even though in some cases it may include a reduction in the scope of the business, its sale as a going concern to another company or its eventual liquidation)."

There are a variety of types of reorganization:

Simple composition – agreement to pay creditors a percentage of claims, usually over time

Financial restructuring – debts are reduced, re-financed, converted to equity, etc.

Organizational/Operational reorganization – units may be restructured, sold as ongoing businesses, or liquidated; management could be replaced

Market reorganization – business could change focus to profitable business lines; could include increased capitalization or lending, acquisition or merger

Reorganization is designed to rehabilitate an insolvent company that has a chance to be turned around instead of liquidated. Creditors are entitled to recover their claims only in accordance with a reorganization plan that has been approved by the court. Often the debtor's existing management will be replaced or will operate under the auspices of a trustee.

Jordan currently has composition procedures that are designed to permit insolvent merchants to rehabilitate themselves from financial difficulties. Composition, however, is limited to financial restructuring based on agreements between the debtor and creditors. Composition may not be attractive to debtors as the court notifies the prosecutor of the filing and can reject the debtor's application and declare the debtor bankrupt. There is no trustee.

The U.S. allows the debtor and creditors significant flexibility in developing a reorganization

plan, which can be financial reorganization (re-adjustment and conversion of debts), organizational reorganization (splitting up the debtor), operational reorganization (closing unprofitable units), sale of an ongoing business, or other methods. In most cases, the debtor continues to manage most aspects of the reorganization case as a "debtor-in-possession, and there is no trustee. In the U.S., the debtor has the exclusive right to file a reorganization plan within 18 months of filing for bankruptcy protection. Following that "exclusive," 18-month period, creditors are free to submit their own plans for reorganizing the company.

Indonesian debtors can propose a reconciliation plan prior to the court hearing on verification of claims. The trustee and creditors committee give opinions on the plan and it is accepted if approved by more than half of the creditors present representing at least half of the total claims. Then it is rejected or ratified by the court[7]. If it is ratified, the insolvency case is dismissed and the creditors are paid according to the reconciliation plan. The Indonesian law also includes composition, similar to Jordan, in which the debtor submits a plan of action for payment of debts. A composition is administered by a trustee. The composition plan must be approved of by more than half of creditors with acknowledged claims who jointly represent at least two-thirds of the amount of all claims. If the plan is rejected the case goes to liquidation. In addition, upon the request of a creditor or the trustee, the court can order the continuation of company operations.

France has provisions for judicial reorganization that include a trustee to either manage the business or to assist current management. During the case, while the parties are trying to develop a reorganization plan, interested buyers can submit offers for purchase of the business. The trustee organizes a bank creditors' committee and trade creditors' committee to vote on the proposed plan. The judge may also designate up to five "controllers" selected from among the creditors. The controllers act as a "watchdog" over the trustee and creditors' committees.

France also has procedures to provide early warning of financial difficulties and amicable procedures to avoid liquidation. One option is a "safeguard procedure," that allows a debtor to request a court-appointed administrator to reorganize the debtor's business at an early stage of financial difficulties. The administrator and debtor negotiate reorganization measures with the creditors through a bank creditors' committee and trade creditors' committee to develop a reorganization plan There is an automatic stay in place during the safeguard procedure. Another option is the *mandataire ad hoc* process under which the debtor can request the appointment of a mediator by a court to help the debtor restructure its debts. Another such process is the conciliation procedure, a four month process under which a court-appointed conciliator negotiates agreements with the debtor's main creditors and develops a plan for reorganizing the business. The agreements need not include all creditors and the debtor can keep agreements confidential so that suppliers, clients, and competitors do not know about the debtor's financial difficulties. There is no automatic stay during the conciliation procedure, but the court can grant a stay.

Table 3: Reorganization

Country	Reorganization proceedings available?	Who administers?	Creditors must agree on plan?	Convertible to liquidation?
Jordan – General	Yes – in the form of debt restructuring	The Court	Yes	Yes – to bankruptcy

[7] We should note that this appears to be a potentially lengthy process, especially considering the rights to appeal court orders.

- Specific examples	Yes – for insurance companies	The Insurance commission	No	As an alternative
	Banks & Insurance companies – merger or acquisition	Insurance Commission – Central Bank	No	As an alternative
Bosnia	Yes	Trustee under court and creditor supervision	Yes	Yes
Egypt	Yes – in the form of debt restructuring	Proceedings conducted under supervision of the Judge, and the trustee follows up on administration	Yes	Yes
France	Yes	Trustee, who is supervised by court with creditors input	Yes	Yes
Germany	Yes	Trustee	Yes	Yes
Indonesia	No, but composition available	N/A	N/A	Yes, composition convertible to liquidation
Lebanon – General	Yes – debt restructuring	The Court	Yes	Yes – to bankruptcy
- Specific examples	Yes – Banks	A special committee headed by the Governor	No	N/A
United States	Yes	Debtor, unless fraud (then trustee)	Yes	Yes

Guidance for Jordan Insolvency Law Revisions

It appeared that all roundtable participants agreed that a new Jordanian insolvency law should allow reorganization and restructuring. Some participants urged that the law include procedures to ensure that such cases are administered quickly and efficiently.

Specific recommendations from roundtable participants regarding reorganization included:

- Providing for means to study the reasons for the debtor's insolvency to aid in determining whether to proceed with a reorganization or liquidation.
- Devising a cooperation strategy between the public and private sector to launch a common unit or body that carry out the reorganizing process.
- Differentiating between small and large business in terms of the procedures required for Reorganization.
- Minimizing the number of required court hearings (simplified procedures)
- Taking into consideration the company's feasibility study.
- Giving the creditors the option to decide whether to reorganize or liquidate the business.
- Supporting this process as not to be financially costly.
- Providing the administrators with flexible authorities.

We recommend that creditors be given sufficient input on the decision as to reorganization or liquidation and on the reorganization plan. It appears that trustees would be the most effective in managing the reorganization, with major decisions reviewed by the creditors and courts.

The law should also provide for – and perhaps encourage – means to prepare reorganization plans prior to an insolvency case being filed. One option is prepackaged insolvency cases, which are plans prepared by a debtor in cooperation with its creditors before an insolvency case is filed. It can shorten the insolvency process to save time and money and allow the debtor to begin turning around its business more quickly. Other methods for pre-bankruptcy reorganization include debt workouts, which can take the form of negotiation or mediation between the debtor and creditors. There are many models for such workouts – in some cases the resulting agreements are enforceable under contract and enforcement law, and in other cases the state acts as mediator or even purchases the debt prior to workout (the latter is normally used only during financial and banking crises).

6. How should a debtor be treated after completing an insolvency proceeding?

This issue primarily applies to individual debtors, since after a liquidation proceeding a business (legal person) will be wound up and after a reorganization proceeding it will continue in business.

Current Law and Practice in Jordan

Under Jordanian Law, a bankrupt debtor, particularly if a merchant, is deprived of all political rights for a period of 10 years, after which the debtor may achieve reclamation. This period may be shorter, if the debtor proves that he/she has settled all their debts and complied with certain provisions in the law. Because of this penalty, the bankrupt debtor may not be able to hold public office, political positions or exercise his/her political rights. Most likely, such debtor will not be able to freely conduct business.

International Laws and Practices

The UNCITRAL Guide says that the insolvency law may specify that the discharge may not apply until after the expiration of a specified period of time following commencement during which the debtor must cooperate with the trustee and where the debtor has not engaged in any fraudulent activities. Debts exempted from discharge should be kept to a minimum.

The Bosnian Law provides that after the insolvency proceedings are closed, creditors may proceed against individual debtors to collect debts listed in the table of claims and not satisfied through the insolvency proceeding.

The German Law provides for discharge of individual debtors based on a debtor's request, which should be joined with his request to open the insolvency proceedings or within two weeks of notice of such right by the court. But the debtor must pledge his wage claims to a trustee for a period of six years. The trustee distributes the collected money among the creditors once in a year. After six years the court will grant the discharge of debts unless the debtor has engaged in specified wrongful acts.

In Indonesia, the debtor is not discharged from future debts: the creditors re-possess the right of enforcement against the debtor for any portion of the verified debt not paid during the insolvency proceeding. The Indonesian insolvency law excludes certain property from the insolvency estate, i.e. the debtor retains ownership of it: property, including animals, "badly needed" by the debtor to earn a living; bed and appliances; 30 days food supply; and salaries, pensions and other income as required by other laws or approved by the judge. The debtor's spouse also can retain his or her property. But during an Indonesian insolvency case, the debtor is prohibited from leaving his domicile without court permission.

U.S. law provides for discharge of individual debtors after a liquidation proceeding or through an approved consumer reorganization plan. Legal person debts are not discharged except as provided for in an approved reorganization plan. U.S. law also provides for several exclusions and exemptions of property from the insolvency estate. There are many exemptions, including a residence up to $15,000 and an automobile up to $2,500. Exclusions include certain retirement and education funds.

Table 4: Treatment of Debtor post-insolvency

Country	Immediately discharged from all remaining debts	Discharged after period of "good behavior" (years)	Negative report to credit bureau	Other punishment
Jordan	No	Yes (10)	No credit bureau	Loss of Political rights
Bosnia	No	No	No credit bureau	
Egypt	No	Yes (3) for Non-fraudulent	N/A	Possibility to prevent from travel, loss of political, professional and commercial rights
France	Yes, unless debtor committed fraud or other insolvency within 3 years	N/A	Yes	

Germany	No	Yes (6)	Yes	
Indonesia	No	No, unless all creditors are paid in full		
Lebanon	No	Yes (10) for merchants and (5) for companies	No	Loss of Political rights
United States	Yes	N/A	Yes	

Guidance for Jordan Insolvency Law Revisions

There was a consensus among roundtable participants that merchants who engaged in fraudulent or negligent behavior regarding the insolvency proceeding should be deprived of their political rights. Several participants thought that deprivation of political rights should be eliminated as it is either too harsh or not a deterrent or punishment, and there are in any event social and economic consequences that insolvent merchants face in Jordan. Several other participants agreed that the time for deprivation should be reduced drastically from 10 years to three years. Several participants agreed that Jordan needs a mechanism for credit reporting (e.g. a credit bureau) so that bankruptcy debtors suffer the consequences of impaired access to credit.

The drafters might also consider allowing debtors to be discharged based on certain good behavior over a period of time, e.g. cooperation and no fraud in the insolvency case plus no default on post-bankruptcy debts. This could incentivize proper behavior by debtors. The drafters should also consider exempting certain property from an insolvency estate, e.g. a residence up to a certain value, necessities like furniture up to a certain value, etc.

SCOPE OF THE LAW

7. Which debtors should be subject to Insolvency proceedings (e.g. businesses, banks, insurance companies, municipalities, consumers)?

Current Law and Practice in Jordan

The law covers "merchants," which has been deemed to include all commercial entities. Insolvency of banks is covered by the Deposit Insurance Law and Banking Law. Insolvency of insurance companies is covered by the Insurance Regulatory Act.

International Laws and Practices

The World Bank Principles state that insolvency proceedings should apply to all enterprises or corporate entities, including state-owned enterprises. Exceptions should be limited, clearly defined, and should be dealt with through a separate law or through special provisions in the insolvency law.

The UNCITRAL Guide states that the law should include "all debtors that engage in economic activities, whether natural or legal persons, including state-owned enterprises" but not including governmental organizations. The Guide further states that highly regulated organizations such as banks, insurance companies, utility companies, and stock or commodity brokers may be exempted from the insolvency law. Such exemption is justified on the basis of the detailed regulatory legal regimes to which these businesses are often subjected outside the insolvency context. In case of insolvency of such debtors, their

regulatory regimes can include insolvency provisions or special rules can be included in the general insolvency law.

With regard to natural persons, the UNCITRAL Guide states:

> "Many States include natural person debtors involved in economic activity within the scope of their commercial insolvency laws. The experience of other States suggests that although business activities conducted by natural persons form part of economic activity, those cases often are best dealt with under the regime for insolvency of natural persons because ultimately the proprietor of a personal business will conduct his or her activities through a structure that does not enjoy any limits on liability, leaving them personally liable, without limitation, for the debts of the business. These cases also raise difficult issues of discharge, including the length of time required to expire before the debtor can be discharged and the obligations that can be discharged or exempted from discharge. Debts that cannot be discharged often involve personal matters such as settlements in divorce proceedings or child support obligations."

In addition, the UNCITRAL Guide states that the law should take into account the manner in which economic activity is generally conducted in the country. "In many States, for example, economic activity is conducted almost exclusively by individuals and to exclude them from the insolvency law would significantly limit its operation and effectiveness. In others, insolvency of natural persons engaged in economic activity is specifically addressed by the personal insolvency law and they are excluded from the commercial insolvency regime."

Most countries apply Insolvency laws to all types of business entities, including sole-proprietorships. But banks and insurance companies are usually exempted from the Insolvency laws and proceedings for insolvent banks and insurance companies are governed by separate statutes and rules. The UNCITRAL Model Law on Cross-Border Insolvency, and the European Community Insolvency Regulation exclude banks from their application. Banks have special treatment for two main reasons. First, the health of the banking system is of vital importance to each country's economy particularly to the payments system. Second, financial problems at one bank may lead to problems at other banks and precipitate a systemic banking crisis with runs by depositors spreading from bank to bank. In the case of insurance companies, the main reason for having a separate procedure is to honor insurance contracts and protect insured individuals and businesses. Thus the insurance regulator administers the case to ensure continuation of coverage on the same terms that previously existed between the insurance company and its insured and assume control of a troubled insurer if necessary and avoid liquidation.

Some countries have provisions for insolvency of individual non-merchants (consumers).

In the U.S., insolvency proceedings for businesses, individuals, municipalities, and state-owned corporations are governed by the federal Bankruptcy Code and are administered by special Insolvency courts. However, banks and bank-like entities (credit unions, for example), both domestic and foreign (if it has a branch or agency in the U.S.), and insurance companies, both domestic and foreign, are ineligible to proceed under the Bankruptcy Code. Commercial bank insolvencies are governed by the Federal Deposit Insurance Act and are administered by the FDIC – they are primarily administrative proceedings with little court involvement. Insurance company insolvencies are handled under state law.

Bosnia allows insolvency proceedings against the property of a legal entity and the property of an individual debtor who is a general partner. Cases may be opened against State Owned Enterprises, but in Republica Srpska (one of the entitites in Bosnia) the state must approve the opening.

In Germany, insolvency cases can be commenced against all natural persons and generally against all legal entities. But government entities are exempt from Insolvency proceedings: the Federal Republic of Germany itself, its States (Länder) and also corporations under public law supervised by a German State (Land), if the law of that State exempts such corporation from insolvency proceedings. All German States have exempted their local government entities (municipalities and counties) from Insolvency proceedings.

In France, all types of businesses are subject to some type of insolvency proceeding under the Insolvency Law. This includes incorporated businesses, persons registered as professionals, farmers, and any other person exercising an independent professional activity.

In the U.K., all institutions, including businesses, banks, insurance companies, and utilities, are covered by the Insolvency Code.

Table 5: Debtors and Applicability of Insolvency Proceedings

Country	Business entities subject to Insolvency Laws	Separate Laws for Banks and Insurance Companies	Other entities subject to separate insolvency laws	Provisions for consumer Insolvency?
Jordan	All	Yes	No / however, Jordan Securities Commission must observe the liquidation of financial services companies	No
Bosnia	All	Yes	Public entities except property of state and municipalities, arms producers with Min of Defense ok. SOEs in Republica Srbska require Govt. approval	No
Egypt	All	Not clear from available laws	Not clear from available laws	No
France	Yes	Yes, for banks	Not clear from available laws	Yes
Germany	All	Yes	Governments and public corporations if exempted by Federal State	Yes

			("Land")	
Indonesia	All	No	No	
Lebanon	All	No/ however, delinquent banks are subject to special rules	N/A	No
United States	Yes	Yes	Municipalities	Yes

Guidance for Jordan Insolvency Law Revisions

During the roundtables there was consensus that the law should cover all business entities, including sole-proprietors (merchants), general and limited partnerships, and shareholding companies. There was also general agreement that banks should continue to be exempt from the insolvency law and covered by their own procedures. There was some disagreement about the case of insurance companies, with some participants stating that their were special circumstances that justified a new law and others stating that there was no reason for them to have their own law.

We recommend that the law cover all types of companies, except banks and insurance companies. The reasons for exempting banks and insurance companies are discussed above in the International Laws and Practices section. The reasons for exempting banks were also elaborated by the roundtable participants. In the interest of simplicity and to avoid unintended consequences, all other business entities should be covered by one consolidated law.

8. What should the criteria be for commencing an Insolvency proceeding?

Current Law and Practice in Jordan

The test for Bankruptcy as specified in Article (316) of the Commercial Codes consists of two parts:

a. the delinquent debtor must be a merchant, including companies;

b. the merchant stopped paying commercial debts or uses illegitimate means to support his financial credentials.

It is worth noting that suspending payment of debts in this context means failing to pay due debts even if the merchant is solvent, or even if his assets exceed his obligations but cannot dispose of them due to their nature being real property or because such assets are somehow encumbered. Such meaning excludes the casual failure to pay due to exigent circumstances, which do not result in impairing the financial status of a merchant

As for the criteria for commencing liquidation procedures under the Companies Law, they differ according to whether the liquidation is voluntary or forced. The decision to voluntarily liquidate a company is within the competence of the extraordinary ordinary general assembly of a company, except for general partnerships. In general partnerships, the decision is taken by the partners if the Company stopped carrying out its business and the authorized partner must notify the Controller of that status within 30 days from the date when the company stopped carrying out its business. The extraordinary general assembly of a Limited Liability Company or a Private Shareholding Company shall explore the possibility of voluntary liquidating the company if the losses exceed half of the registered capital, unless they decide to continue with the operations of the company after rectifying its status. Similarly, the decision to voluntarily liquidate a Public Limited Company is within the competence of the

extraordinary general assembly; the reasons for arriving at such a decision include the expiration of the term of the company, the fulfillment of its objectives, and any other reason provided for in its Articles and Memorandum of Association. It is worth noting that the liquidation procedures are supposed to be set out in a special regulation to be issued pursuant to the provisions of the Companies Law, but to date, no such regulation has been issued.

As for Forced Liquidation in the case of Partnerships, the Controller shall have the right to issue a decision to force the liquidation of the Company in the event that it stopped carrying out its business and failed to rectify its status upon notice from the Controller. As for Limited Liability Companies and Private Shareholding Companies, it shall be forced to liquidate in the event that its losses exceeded half of its registered capital and failed to rectify its status by a proper corporate action. The Controller in such a case shall refer the matter to the Court[8] to initiate the liquidation procedures.

The Public Limited Company shall be liquidated, whether under voluntarily or forced liquidation, upon a Court final decision. The petition to liquidate the Company must be filed at the Court by either the Controller or the Public Defender; the Company must be liquidated in the following cases:

- if it committed grave violations to the law of its Articles and Memorandum of Association;
- if it failed to perform on its obligations;
- if it stopped operating for a full one year without due justification; or
- if its losses exceeded 75% of its subscribed capital, unless the General Assembly decided to increase its capital.

One issue that the Roundtable participants discussed was how to handle insolvent debtors whose assets and sources of revenue are less than the costs of administering insolvency proceedings. It is important to wind up the affairs of these debtors and to enable investigations of investigations of these insolvent companies to ensure that they did not hide assets.

The UNCITRAL Guide states that approaches can include denial of the application or commencement of the proceedings with other mechanisms for payment of the trustee. Such mechanisms for payment can include a surcharge on creditors to pay for the administration of estates, establishing a public office or utilizing an existing office; establishing a fund out of which the costs may be met; or appointing a listed insolvency professional on the basis of a roster or rotation system. In the latter mechanism, the insolvency representative will be paid a prescribed stipend by the State or the costs will be borne directly by the insolvency representative and cross-subsidized by their clients generally (i.e. trustees fees can be adjusted to take into account unpaid or underpaid work).

International Laws and Practices

The World Bank Principles state that commencement criteria and presumptions about insolvency should be clearly defined in the law. The Principles say that the preferred test to commence an insolvency proceeding is the debtor's inability to pay debts as they mature. The test could include the debtor's assets exceeding the fair market value of its assets. The UNCITRAL Guide says that the test should be "the debtor is generally unable to pay its debts as they mature or its liabilities exceed the value of its assets."

France has different tests for different types of proceedings. A debtor may seek a Conciliation Procedure when it has established or foreseeable "legal, economic, or financial

[8] *The Law does not specify the competent court.*

difficulties" or cessation of payments of debt[9] for 45 days or less. To make this determination, the judge can obtain information about the debtor from banks and other financial institutions and may appoint an expert. A debtor may request a Safeguard Procedure when it "justifies being in difficulties that it is not able to surmount, whose nature is to cause cessation of payments." A Judicial Reorganization Procedure may be initiated by a debtor, the court, creditors, or the public prosecutor, "it being impossible for them to face up to due debts with their available assets." A Judicial Liquidation Procedure may be commenced by a debtor, the court, creditors, or the public prosecutor when the debtor "is in cessation of payments and whose rescue is manifestly impossible." In all voluntary procedures a debtor must initiate the case within 45 days following its cessation of payments of debt.

In Germany, the test is: debtor is unable to meet its mature obligations to pay, or imminent liquidity (voluntary case only) or over-indebtedness (company only). In Indonesia the test is "debtor having two or more creditors and failing to pay at least one debt which has matured and became payable."

Table 6: Commencing Insolvency Proceedings

Country	Can initiate case when debts exceed assets	Can initiate case when not making payments when due (number of days delinquent)	Can initiate case when potential for future insolvency	Specific provisions for pre-Insolvency debt workout or restructuring
Jordan	Yes	Yes	No	Yes
Bosnia	No	Yes	Yes	No
Egypt	Yes (liquidating companies)	Yes	No	Yes – composition
France	Yes	Yes	Yes	Yes
Germany	No	Yes	Yes	Yes
Indonesia	Yes	Yes	Yes	Yes
Lebanon	Yes	Yes	No	Yes
United States	Yes	Yes	Yes	No

Guidance for Jordan Insolvency Law Revisions

During the roundtables, not all groups expressed opinions regarding when debtors should be eligible for insolvency proceedings. But those that discussed eligibility in detail pointed out some important issues. Some participants stated that the test for insolvency (i.e. eligibility for insolvency proceedings) should include factors beyond the debtor's failure to make payments when due. Many participants agreed that in determining whether to accept or open an insolvency proceeding, the court should consider the reasons for the debtor's failure to make payments when due and the circumstances regarding the debtor business. The commercial lawyers group stated that the inconsistency between the Companies Law and Commercial Code and the lack of clarity in the law are causing problems. Some judicial

[9] The Supreme Court of France held in 1998 that cessation of payments only applies to payments that have been demanded by creditors.

decisions have ruled that involuntary liquidation is only available when the debtor company fails to pay debts due to the company's poor financial status (as opposed to a failure to pay that is merely one-time or occasional).

We recommend one test for all types and sizes of entities. It shouldn't be overly complicated like the current Companies Law tests and could be based on the Commercial Code test of "the merchant stopped paying commercial debts or uses illegitimate means to support his financial credentials." This simple test could be elaborated on to differentiate between serious financial difficulty and occasional inability to pay, by for example requiring that payments are more than 30 days past due or more than one creditor has unpaid debts. The simple test could be used for voluntary insolvency filings with the additional test for involuntary filings.

9. Who should have standing to file an insolvency case?

Current Law and Practice in Jordan

Under the Commercial Code, the delinquent merchant, whether individual or company, may initiate Composition proceedings, which may lead to bankruptcy. The debtor may also initiate bankruptcy proceedings, as may the creditors. In certain circumstances, the Court may declare bankruptcy on its own initiative.

In the case of voluntary liquidation, the General Assembly takes the decision to commence the liquidation procedures, except for banks and insurance companies. As for forced liquidation, the Controller and the Public Defender may approach the Court with a petition to liquidate the company. Banks and insurance companies may not take a decision to liquidate the company, and that right is reserved to the Central Bank and the Insurance Commission respectively.

International Laws and Practices

The World Bank Principles state that both debtors and creditors should be entitled to apply for insolvency proceedings. The UNCITRAL Recommendations state that the debtor and any of its creditors should be able to apply for commencement of insolvency proceedings.

In Indonesia a creditor can file if its petition establishes that there is another creditor and a debt is in default. There are provisions for other parties to file, as set forth in Table 7.

Table 7: Standing to File Insolvency Case

Country	Debtor	Creditor	Court	Other
Jordan	Yes	Yes	Yes	Public Defender Controller Central Bank for Banks Insurance Commission for Insurance companies
Bosnia	Yes	Yes	No	No
Egypt	Yes	Yes	Yes	Public prosecution
France	Yes	Yes	Yes	Public Prosecutor
Germany	Yes	Yes	No	
Indonesia	Yes	Yes	No	Public prosecutors when protecting "public interest"; Central Bank for banks; Capital Market Supervisory

				Board for entities it regulates; MoF for insurance companies and certain SOEs
Lebanon	Yes	Yes	Yes	N/A
United States	Yes	Yes	No	

Guidance for Jordan Insolvency Law Revisions

There was little discussion of this issue during the roundtables. Jordan could base the new law on the previous law, which allows the debtor, creditor and Companies Controller Department to file an insolvency case.

PROCEDURES IN THE LAW

10. Should there be an automatic stay against all claims and what characteristics should it have?

Current Law and Practice in Jordan

Initiating Composition proceedings results in an automatic stay of all claims whether secured (under general security)or not, as no creditor may initiate any claim against a merchant who filed for Composition, or execute a deed or a judgment or place a mortgage against the debtor's assets. Declaring Bankruptcy also suspends the proceedings in an already filed claim. However, proceedings for executing a secured debt, as in mortgage are not suspended, and may be pursued by the creditor himself. A company under voluntary liquidation may request the court to declare a stay of court proceedings for claims that may get filed after the liquidation case is filed. In the event of an involuntary liquidation, the court must stay all claims or proceedings whether brought by or against the company for a period of three months, unless the liquidator decides otherwise. Further, during an involuntary liquidation the court must stay all procedural or executory transactions against the company. The stay is for three months when based on a request of a secured debtor and related to the security asset.

International Laws and Practices

The World Bank Principles provide for a stay against all actions by creditors and disposition of the debtor's assets upon filing of an application. The stay should include secured creditors to enable higher recovery of assets by sale of the entire business or use of the assets in a reorganization. But it should be of limited duration and secured creditors should be entitled to a court order for relief from the stay when their interests are not protected or the assets are not needed in the insolvency proceeding.

The UNCITRAL Guide states that upon commencement of insolvency proceedings there should be an automatic stay against all actions of proceedings concerning the debtor's assets, including enforcement of security interests or transfer of assets. The Guide provides for a creditor to obtain relief from the stay in specified circumstances, and a fixed time period for expiration of the stay against secured creditors. The Guide includes a recommendation that if they are subject to the stay, secured creditors should be granted protection (cash payments, additional security interests, or some other means) of the value of its security. The Guide further provides that the law should specify that during the time between filing an application for insolvency proceedings and order for commencement of the proceedings the court may order a stay when necessary to preserve the value of the debtor's assets or the interests of creditors.

In the U.S., the stay is automatic upon filing of an insolvency case, and creditors can be punished for violation of the stay. Secured creditors must petition the court for relief from the stay and it will be granted unless it is necessary for reorganization and the creditor is granted "adequate protection" (payments or other consideration).

In Bosnia, the stay commences upon the court order to open the bankruptcy, but expires after the preliminary proceeding is finished and the main proceeding commences.[10] But the court can order the stay to continue after preliminary proceedings with measures for protection of secured creditor

There is a stay in Indonesia, commencing with the court order opening the insolvency proceeding. The stay applies to secured creditors for a period of up to 90 days. During the stay period the trustee may use the secured creditors' collateral to continue the business of the debtor, as long as the secured creditors' interests are "reasonably protected." A secured creditor may file a petition with the trustee to lift or amend the stay to allow them to repossess the collateral. If that petition is rejected the secured creditor can petition the court for relief from the stay.

Table 8: Automatic Stay

Country	Stay automatic on filing	Stay after court order opening case	Stay includes secured creditors	Secured creditors can obtain relief from stay
Jordan	Yes	Yes	Yes – only general securities	Secured creditors can elect to pursue procedures independently
Bosnia	No	Yes	Yes, during the preliminary proceeding	Not necessary – stay expires after preliminary proceeding
Egypt	No	Yes	No	No
France	No	Yes	Yes	Yes
Germany	Yes	Yes	Yes, for six months	Yes
Indonesia	No	Yes	Yes, for up to 90 days	
Lebanon	No	Yes	Yes – general securities	N/A

[10] The preliminary proceedings describe the period from the date of filing of the bankruptcy petition until the date of opening of bankruptcy. During this period of time the court evaluates the petition, collects from the petitioner the funds necessary to pay for the proceedings and appoints a temporary trustee. The trustee determines whether the debtor is insolvent and whether sufficient funds are available to pay for a full bankruptcy proceeding.

United States	Yes	Court doesn't order opening	Yes	Yes

Guidance for Jordan Insolvency Law Revisions

This appears to be a fairly uncontroversial issue in Jordan. Several roundtable participants expressed the opinion that there should be an automatic stay of creditors' action during an insolvency proceeding and there was no opposition to having a stay. The banks stated that they should be able to execute on collateral during the insolvency proceeding (in other words the stay would not apply to collateral rights). But in a reorganization a grace period (in which a stay applies to such execution on collateral) should be mandated if the property is necessary for reorganization.

Thus the only issues for the drafters are procedural: should the stay be automatic on filing, should it apply to secured creditors collateral rights; if it does apply to secured creditors should they be able to obtain a court order for relief from the stay or should there be a grace period to allow the trustee to try to reorganize the business or liquidate an ongoing business or its units?

11. Should creditors vote on liquidation and restructuring/reorganization plans and other decisions?

Current Law and Practice in Jordan

For Composition to be valid, the majority of the creditors who participated in voting must approve the composition, where such majority must represent at least ¾ the unsecured debts. The appointment of trustees and the removal of receivers are decided by the judge, who may decide to remove the receivers upon a complaint filed by the creditors. As for voluntary liquidation, any arrangement between the liquidator and the creditors shall be binding on both the creditors and the company if approved by the general assembly of the company and creditors representing ¾ the debts of the company,

International Laws and Practices

The World Bank Principles state that creditor interests should be protected by enabling them to monitor and participate in insolvency proceedings. The preferred mechanism is a creditors committee, which should have its duties, rules, voting, and meetings specified in the law. The committee should be consulted on key decisions including selection of the trustee, and should have the right to information from the debtor.

French law provides for creditors' committees that provide creditors with an active role in the elaboration of a restructuring plan. There are two committees: one for all creditors and the other for main suppliers. The creation of such committees is mandatory for large companies (i.e. companies with at least 150 employees or a turnover of at least €2 million), but is also available to smaller companies.

The German law provides for a creditors assembly and creditors committee that enable creditors to oversee all major decisions and acts of the trustee. Some decisions and acts must be approved or can be challenged by the assembly; and others can be approved or challenged by the committee. If the debtor's employees are creditors in the insolvency proceeding the committee must include a representative of the employees and members are remunerated. The court can dismiss members of the committee for "an important reason." Bosnia has a similar system.

Table 9: Voting

Country	Creditors vote on reorganization vs. liquidation	Creditors vote on reorganization plans	Creditors vote on liquidation plans	Creditors Committees oversee trustees
Jordan	Yes – vote on composition vs. bankruptcy	N/A	Yes – any arrangement between liquidator and creditors	Yes – judge may appoint observers. creditors may complain about the receivers to the judge
Bosnia	Yes	Yes	Yes	Yes
Egypt	Yes	N/A	Not clear	Yes
France	No	Yes	No	Yes
Germany	Yes	Yes	Yes	Yes, but court appoints and can dismiss trustees or reverse decisions
Indonesia	Yes - vote on reconciliation or composition vs. liquidation	Yes	Yes	Yes
Lebanon	Yes – vote on composition vs. bankruptcy	N/A	N/A	Yes – judge may appoint observers. Creditors may request the termination of the receiver
United States	No, but can bring motion to convert	Yes	No	No, but have powers to challenge acts

Guidance for Jordan Insolvency Law Revisions

Several participants, particularly representatives of the banks, believe that creditors should make major decisions like whether the debtor should be reorganized or liquidated. Some roundtable participants stated that the courts should have most of the authority to administer cases and oversee the trustee's acts and decision.

We recommend that the drafters give creditors the rights to review all acts of the trustees and vote on major decisions and actions, including whether to liquidate or reorganize and voting on a reorganization or liquidation plan. Nonetheless, given the judges' opinion that courts have been the most efficient part of the insolvency proceeding, we recommend that the drafters conduct further investigation and analysis to determine whether the courts can efficiently and quickly administer all aspects of cases, including overseeing the acts of the trustee.

12. What methods and procedures should be used to liquidate assets?

Current Law and Practice in Jordan

Under the Commercial Code, if the bankrupt merchant owns property, the declaration of bankruptcy must be recorded in the Lands Register. The assets of the bankrupt merchant may be sold through direct sales or in auction through the execution department, based on the judge's decision, after addressing the method with the debtor. As for liquidating companies, the Court may allow the liquidator to sell the assets of the company, whether being voluntarily liquidated or not, if the Court deems that the sale is in the interest of the company, the Law does not provide for the method of sale, whether direct sale or through auctions. The Insurance Commission may sell the assets and liabilities of an insurance company, under liquidation, to another company or sell the assets in an auction. Similarly, the Deposit Insurance Company may take similar measures for banks under liquidation.

International Laws and Practices

The UNCITRAL Guide provides that the law should require adequate notice to creditors of any disposal conducted outside the ordinary course of business and notification of public auctions to be given in a manner that will ensure notice to interested parties. The law should specify methods of sale that will maximize the price obtained for assets and permit both public auctions and private sales.

In Bosnia, the law requires the trustee to liquidate the property in accordance with the directives of the "assembly of creditors or the creditors' committee on the conditions and manner of sale" However, the law requires specific procedures for selling immovable property, namely the sales procedures under the Law on Enforcement of Judgments.

In France, the court designates a liquidator who must, within one month of his appointment, provide a report on the debtor's financial situation. This report is intended to assist the court in determining whether a simplified liquidation procedure should be commenced. The simplified liquidation process is intended to accelerate the liquidation of small companies[11] that do not own immovable property. Under the simplified liquidation process the liquidator conducts private sales of assets during a three month period and assets remaining at the end of six months are sold at public auction. Liquidation proceedings, including distribution to creditors, must be completed within one year from opening of the proceedings.

In Indonesia, the trustee begins an inventory of the insolvency estate no later than two days after his appointment. He then lists the debts, and the public has free access to the inventory and debts list, while the court sets a deadline for creditors' claims to be filed. The trustee verifies or disputes the claims. The court resolves claims disputes. The trustee sells the assets by public auction or private sale if ordered by the court and distributes the proceeds to creditors with verified claims in order of priority.

In the United States, the trustee can conduct sales of property by auction or private sale. Public sales usually are conducted through an auctioneer hired by the trustee. Before

[11] 5 employees or less and 750,000 Euros or less in revenue during the six month period prior to the filing of insolvency proceedings.

proceeding with a public sale the trustee or debtor-in -possession will first obtain permission from the court to hire the auctioneer to conduct the sale. Further court approval is usually not needed once the court approves the method of sale. Private sales normally begin with the trustee making a decision to sell certain assets to an identified buyer for a certain purchase price. Then the trustee will send a notice of intent to sell the assets to all creditors and parties in interest, including those persons and entities that have already expressed an interest in the assets or otherwise might be interested in them. By rule, creditors and other parties in interest must be given at least 20 days notice before a sale can be approved, although the time period may be shortened for cause. Creditors and interested parties may submit higher bids or objections to the sale.

Table 10: Liquidation Methods and Procedures

Country	Methods of sale	Can auction one asset at a time	Can auction ongoing business or units of it	Trustee has discretion to use any method	Court conducts auction
Jordan	Auction or private sale	Yes subject to the approval of the court, real-property under exceptional circumstances	Yes	No – Court decides the method.	Yes – Execution Department
Bosnia	Auction or private sale for moveable property; auction for immovable property.	Yes	Yes	Yes private sale or auction for moveable property, subject to creditors agreement. No – only auction for immovable property.	No – trustee conducts sale
Egypt	Auction or private sale	yes	Yes – under certain circumstances	Yes – unless appointment letter dictates method	No (not clear whether through the Execution Dept. or not)
France	Auction, private sale, sale of entire business	Yes	Yes	No, court makes determination	No, but court makes decision on sale
Germany	Not specified in law but auction or private sale	Yes	Yes	Yes, but creditors must consent to transactions “of particular	No

	can be used			importance to the insolvency proceedings"	
Indonesia	Auction or private sale	No	Yes	Yes, with court order	No
Lebanon	Auction or private sale	Yes subject to the approval of the court, real-estate under exceptional circumstances.	Yes	No – Court decides the method either through private sale or auction.	Yes – Execution Department
United States	Auction or private sale				

Guidance for Jordan Insolvency Law Revisions

This issue was not discussed in detail during the roundtable meetings. But many participants agreed that all procedures need to be faster and more efficient in the new insolvency law. We recommend that the drafters give the trustee flexibility in terms of methods of sale, with creditors (through a creditors committee) given a mechanism to develop, approve or oppose liquidation plans.

13. What procedures should be used to combat various types of fraud in insolvency proceedings?

This section discusses the effect of fraudulent acts of the debtor, creditors, and others that affect the insolvency estate, whether intentional or negligent. This section also discusses preference, which could be intentional, negligent or in good faith. There are various types of fraud and preferences in insolvency cases and various degrees of culpability. Thus, they need to be handled differently. In general the types of fraud and preferences include:

- Fraudulent conveyances by the debtor – transfers made to put assets out of the reach of creditors
- Fraudulent claims by creditors – claims not supported by consideration or evidence
- Preferential transfers of assets before the insolvency proceeding – transfers that provide benefits to certain creditors while the debtor was insolvent or shortly before an insolvency proceeding

Current Law and Practice in Jordan

Under the Commercial Code, once the delinquent merchant has filed for Composition, the Court must engage the Public Prosecution to verify that the filing is not fraudulent. In Bankruptcy proceedings, if the receiver or any creditor, or the Public Prosecution claimed fraudulent bankruptcy, the matter shall be referred to the Criminal Court. Typically, under Jordanian Law, a judgment in a criminal case is used as evidence to assert a civil claim and the civil claim will be put on hold pending the outcome of the criminal proceedings. Moreover, under Jordanian Law, both fraudulent bankruptcy and negligent bankruptcy are considered economic crimes and are subject to penalties under the Penal Code. Such penalties are extended to the officers of a company, if they were engaged in the fraudulent bankruptcy or their actions led to negligent bankruptcy.

International Laws and Practices

The World Bank Principles state that certain transactions by the debtor should be void or voidable: post-filing transactions that are not in the ordinary course of business or approved by the court; pre-filing transactions that were fraudulent or preferential (e.g. to related parties), transfers made when the business was insolvent or rendered it insolvent; transfers within a short period prior to filing unless they are proven to be non-fraudulent or preferential.

The UNCITRAL Guide states that the insolvency law should permit the imposition of sanctions for the debtor's failure to comply with its obligations under the law. The Guide also recommends provisions to avoid transactions involving the debtor or assets of the estate that either reduce the value of the estate or cause creditors to be treated unfairly. These include: transactions to put assets out of reach of creditors; transfers that were a gift or for less than adequate value that occurred when the debtor was insolvent or resulted in insolvency; or transactions where the creditor received more than its pro rata share while the debtor was insolvent. The law should provide that such transactions entered into within a specified "suspect period" before the insolvency proceeding are avoided unless specified defenses are proven (e.g. the transaction was in the ordinary course of business). The proceedings should be part of the bankruptcy proceeding and costs of conducting avoidance proceedings should be an administrative expenses.

In Bosnia, the trustee can avoid transactions providing payment or granting security to a creditor if they are: 1) made within six months before the petition for insolvency is filed if the debtor was insolvent and the creditor was aware or grossly negligent in being unaware; 2) made after the petition was filed and the creditor was aware of the debtor's insolvency or grossly negligent in being unaware; 3) made within one month prior to the insolvency case petition if it was not made in the ordinary course of business; 4) made within three months prior to the insolvency case if the debtor was insolvent; 5) made within four years prior to the insolvency case if there was inadequate consideration for the transaction; 6) made within five years prior to the insolvency case with intent to harm a creditor; or 7) transactions before the insolvency case opening that "undermine the equitable satisfaction of creditors" or prefer certain creditors.

In France, the insolvency case judge can order the "personal bankruptcy" of persons engaging in certain wrongful acts relating to the insolvency, including directors, managers and third parties. The wrongful acts include "trading at a deficit in an abusive manner," diverting assets or fraudulently increasing debts, carrying out business activities in violation of law, payments to creditors that prejudice the rights of other creditors, and improper accounting practices. Instead of personal bankruptcy, a court may order that the individual is prohibited from being involved in the direction, management, administration or control of any business. Personal bankruptcy or the prohibition will be for a period of up to 15 years as determined by the court. Managers of legal entities can be held liable for debts of the entity if they undertake certain specified wrongful acts.

Indonesia provides for annulment of pre-insolvency proceeding transfers by the debtor in the event that the debtor and transferee realized or should have realized that the transfer would adversely affect creditors. The debtor is presumed to have known that a gift would damage creditors if it is made within one year prior to the insolvency proceeding. Demand for payment from transferees is made by the insolvency trustee, but if payment is refused, it appears that the trustee must file a separate lawsuit. The Indonesian insolvency law also provides for incarceration of a debtor who hides assets, fails to provide information to the trustee, or fails to appear at the hearing to verify debts and claims.

The U.S. provides for specific procedures to avoid fraudulent conveyances and preferential transfers. The law provides authority and procedures for trustees or debtors in possession to recover the transferred funds, property or proceeds. Claims can be investigated by the

trustee or other creditors and both can take action to reject fraudulent or false claims. All of these actions can be taken within the insolvency proceeding and the trustee has authority to pursue legal actions in other courts when necessary.

Table 11: Actions Regarding Fraud

Country	Refer fraud cases to prosecutor	Can adjudicate some types of fraud within insolvency case	All fraud claims by the insolvency estate require a separate civil case
Jordan	Yes	No – refer to criminal court	No
Bosnia	No	Yes – can avoid preferences	No
Egypt	Yes	No	No
France	Yes, criminal bankruptcy prosecuted in criminal court	Yes	No
Germany	Yes, when criminal fraud	Yes – can recover preferences and fraudulent transfers	No
Indonesia	Yes	No	Yes
Lebanon	Yes	No – refer to criminal court	No
United States	Yes, when criminal fraud	Yes	No

Guidance for Jordan Insolvency Law Revisions

During the roundtables, many participants expressed concern about fraud by the debtor before or during the proceedings. Fraud was discussed in the context of punishing the debtor (including taking away political rights) as summarized above in section 6. In addition, participants expressed concerns about various fraudulent practices, including: conspiracies between business owners and employees to falsify employment contracts to maximize priority wage claims; and false alimony claims. The former could be remedied by providing the trustee with the authority to investigate the legitimacy of wage claims by checking on payment of social security taxes. The commercial lawyers group recommended that the new law include provisions dealing with fraudulent liquidation.

We recommend that the drafters provide courts and trustees with the power to recover property and funds owed to the insolvency estate because of the various acts and transfers discussed in this section. These provisions should allow the court and trustees to proceed within the insolvency case rather than having to file separate actions that could slow administration of the insolvency case. A procedure within the insolvency case might not be possible when criminal fraud is involved, but should be possible for other cases such as preferential transfers.

IMPLEMENTING AND SUPPORTING INSTITUTIONS

14. How much of the decision making and administration should be done by courts versus administrators (receivers, liquidators, trustees) and parties?

Current Law and Practice in Jordan

In Composition, the Court oversees and administers the proceedings. Whereas, in Bankruptcy, the receiver(s), who are appointed by the Court administer the bankruptcy estate, and the judge may appoint observers from among the creditors. The appointed judge observes the proceedings and the Court decides all disputes resulting in relation with the administration of the bankrupt estate. In liquidation cases, once the liquidation decision is issued by the Court, the liquidator administers the proceedings, and disputes arising in connection with liquidation are decided by the Court. While liquidating a bank, the liquidator must provide the Central Bank with periodic monthly reports regarding the progress of liquidation.

International Laws and Practices

The World Bank Principles say that "insolvency proceedings should be overseen and impartially disposed of by an independent court and assigned, where practical, to judges with specialized insolvency expertise." The court should also have powers to efficiently render decisions without assuming a governance or management role for the debtor, which should go to the trustee or debtor. It is important to have adequate and objective criteria for judicial selection and appointment, adequate judicial training, and procedures to ensure judicial performance.

The UNCITRAL Guide states that the law should facilitate the active participation of creditors through a creditors committee, a special representative, or other mechanism. The law should specify the issues that creditors should vote on (which should include approval of a reorganization plan), and establish voting eligibility and procedures.

The largest European economies have fairly diverse approaches to oversight of insolvency cases. French bankruptcy courts are given control of the bankruptcy process and are not mandated to sell the assets to the highest bidder. Creditors merely provide advice, and their approval is not required by the court in selecting a reorganization plan. The UK has court-administered bankruptcy procedures, but secured creditors can veto them and enforce the default provisions as specified in the debt contract. In the UK's principal bankruptcy procedure used for small firms, administrative receivership, secured lenders have full discretion to foreclose on their collateral whenever they wish, with little interference by the courts. In Germany, creditors vote on most important decisions, but the court oversees trustees and makes many of the ultimate decisions.

In the United States, a creditors committee is appointed by the U.S. trustee in reorganization cases. It normally consists of unsecured creditors who hold the seven largest unsecured claims against the debtor. Among other things, the committee: consults with the debtor in possession or trustee on administration of the case; investigates the debtor's conduct and operation of the business; and participates in formulating a plan. A creditors' committee may with the court's approval, hire an attorney or other professionals to assist in the performance of the committee's duties.

In Bosnia, creditors control the proceedings by voting on all major issues. The bankruptcy trustee administers the case under the direction of the creditors. The bankruptcy judge primarily serves as a neutral arbiter, settling questions that arise. Creditors are organized in an assembly in which they collectively decide the debtor's fate (liquidation or reorganization) and approves major decisions in administering the debtor, if such power has not been delegated to the creditors' committee. Due to its large size and somewhat complex voting

procedures, the creditors' assembly may not be the most efficient body for guiding the actions of the trustee. To solve this potential problem, the law allows the creditors' assembly to establish a creditors' committee to fulfill many of its functions. In order to ensure a diversity of views on the committee, the law dictates the composition of the committee, requiring at least one secured creditor, one worker (or former worker) and one creditor with a smaller claim, to sit on the committee.

In Indonesia, the trustee administers the estate, and only needs approval obtaining a secured loan. There are creditors meetings, including a first meeting to be held within 30 days of the court's decision on insolvency. But the creditors' powers are unclear, except that they form a creditors committee based on the majority vote of creditors and it has the right to inspect books and documents, and to advise the trustee on lawsuits.

Table 12: Case Administration

Country	Court administers all aspects of case and resolves all disputes	Administrator administers all aspects of case but court hears disputes	Is there a creditors committee? What are the creditors committee's powers?
Jordan	No – receiver administers the bankrupt estate and liquidator conducts the liquidation procedures.	Yes , but certain decisions by receivers and liquidators must be approved by the court	Yes – they can approve the composition proposal, request to appoint observers, challenge the actions or receivers and liquidators
Bosnia	No	Yes	Yes – the creditors assembly appoints a creditors committee and creditors vote on all major decisions
Egypt	No – receiver administers the bankrupt estate and liquidator conducts the liquidation procedures.	Yes , but certain decisions by receivers and liquidators must be approved by the court	Yes – they can approve the composition proposal, request to appoint observers, challenge the actions or receivers and liquidators
France	No	No	Yes – voting on reorganization plans and some oversight of trustee
Germany	Yes	Yes	Yes – creditors vote on all major decisions through a creditors assembly and creditors

			committee
Indonesia	No	Yes, but certain trustees decisions must be approved by the court	Yes. Inspecting documents and advising the trustee on lawsuits.
Lebanon	No	Yes, but certain decisions by receivers and liquidators must be approved by the court	Yes – they can approve the composition proposal, request to appoint observers, challenge the actions or receivers and liquidators
United States	No	Yes	Yes – investigates the debtor and participates in development of reorganization plan

Guidance for Jordan Insolvency Law Revisions

As discussed above in section 11, there was not a consensus on the extent of the court's role. There did appear to be agreement that trustees should have a big role in administration of the insolvency estate, and some participants urged that trustees be given authority to be flexible in making decisions in administering the estate. Some participants suggested that a special body be created for administration of cases, or that cases involving companies could be administered through the CCD.

15. What institutions will be needed to support the insolvency law?

Current Law and Practice in Jordan

Currently, the Court is the major institution that administers the Bankruptcy proceedings. The system requires the existence of liquidators and receivers, who must be knowledgeable with these kind of proceedings, and with the specific business of the bankrupt business, or the operation of the company under liquidation. The Banking Law assigns the Deposit Insurance Corporation (DIC) as the sole liquidator for Banks, as the Insurance Commission is considered the only liquidator for Insurance Companies pursuant to the provisions of the Insurance Regulatory Act.

International Laws and Practices

The World Bank Principles and UNCITRAL Guide provide for appointment of insolvency trustees.

All surveyed countries have trustees, though there are varying approaches on the relative powers of administration and oversight given to trustees, creditors and courts. Some countries require trustees to be licensed, e.g. Bosnia, while others rely on judges or creditors to determine whether trustees are sufficiently competent and trustworthy. More advanced economies have spawned industries that support insolvency cases, including specialized financial analysts and advisors, liquidators and auctioneers, lenders specializing in lending to companies in reorganization, buyers of distressed companies and assets, and appraisers of distressed assets.

Guidance for Jordan Insolvency Law Revisions

Roundtable participants appeared to be of the opinion that Jordan has the capacity to develop the necessary institutions to support efficient liquidation and reorganization. However, professional trustees will be needed and judges, trustees, and creditors will need further training. Specific issues like licensing of trustees were not discussed. Some participants mentioned the need to educate creditors and the public on insolvency.

As trustees will be one of the keys to efficient insolvency proceedings, we recommend that the working group analyze potential demand for trustees and consider methods to ensure that they are competent and trustworthy. This could include licensing, testing, and training and education requirements, as well as supervision by courts, a supervisory agency, or a professional association.

16. Should Jordan have specialized insolvency courts/divisions, commercial courts/divisions, or specialized judges?

Current Law and Practice in Jordan

Currently, there are no specialized courts in Jordan. The competent court for Bankruptcy proceedings and liquidation proceedings is the Court of First Instance in the place of domicile/business of the merchant/company. The Ministry of Justice is devising a plan for creating specialized chambers for certain matters, including Bankruptcy.

International Laws and Practices

German insolvency cases are administered in general Local Courts. A body elected by the judges in each court called a "Präsidium" determines which judges will hear insolvency cases. Insolvency judges must have at least one year of experience and most of the judges assigned to hear Insolvency cases have several years of experience with general civil and criminal cases. Judges who are newly being assigned to Insolvency matters will usually attend an introductory seminar for a week at the German Judges Academy.

The United States has specialized federal bankruptcy courts, with judges appointed by the U.S. Court of Appeals. They are usually appointed after a career as an insolvency lawyer.

Bosnia has commercial courts, and in most courts one of the judges is assigned all insolvency cases (and some courts only have one judge).

Table 13: Insolvency Court Specialization

Country	Specialized insolvency courts	Specialized commercial courts	Specialized judges
Jordan	No	No	Yes - to some extent
Bosnia	No	Yes	Yes – but not officially
Egypt	No	Specialized circuits within the jurisdiction of every court of first instance	Yes – serve as such for a period of time
France	No	Yes	Yes – pursuant to a decree of the Council of State

Germany	No	No	Some
Indonesia	No	Yes	
Lebanon	No	Yes	Yes – specialized chambers
United States	Yes	Some specialized courts including bankruptcy and tax	Yes, bankruptcy judges are appointed to 14 year terms by U.S. Court of Appeals

Guidance for Jordan Insolvency Law Revisions

There was consensus among roundtable participants that Jordan should have specialized insolvency judges. Judges explained that the Judicial Council and Ministry of Justice are establishing specialized commercial and civil chambers within the courts.

17. How should trustees/receivers be appointed and supervised?

Current Law and Practice in Jordan

Under the Commercial Code, the Court appoints the receiver in the same order declaring bankruptcy, while in forced liquidation procedures the Court appoints the liquidator in an order prior to placing the company under liquidation. With regard to banks, the Central Bank appoints the liquidator, and the Board of the Insurance Commission appoints the liquidator for insurance companies.

International Laws and Practices

The UNCITRAL Guide sets forth several recommendations for legislative provisions relating to trustees, including qualification, conflicts of interest, appointment, remuneration, and duties and functions. Approaches to appointment can include appointment by the court, by an independent appointing authority, on the basis of a recommendation by creditors or the creditors committee, by the debtor, or by the operation of insolvency law where the insolvency representative is a government or administrative agency or official. Another part of the Guide implies that another approach is random appointment from a panel.

The World Bank Principles state that insolvency representatives should be held to director and officer standards of accountability and should be subject to removal for incompetence, negligence, fraud, or other misconduct.

In Indonesia, the trustee is proposed to the court by the debtor or creditor who files the petition for bankruptcy. The trustee must have no conflict of interest with the debtor or creditor, and cannot handle more than three insolvency cases. The trustee submits a report concerning the estate and the trustee's actions every three months. The report is available to the public.

In Germany, the law states that "the insolvency court shall designate an independent individual suited to the case at hand, particularly experienced in business affairs and independent of the creditors and of the debtor as insolvency administrator." But "during the first meeting of creditors subsequent to the designation of the insolvency administrator the creditors may elect a different person to replace him."

In the United States, the trustee is appointed by the regional office of the United States Trustee. After bankruptcy papers are filed, the debtor gets a notice of appointment of trustee

from the court. The trustee is randomly chosen by the regional United States Trustee, so that the debtor or a bankruptcy attorney cannot pick specific trustees, and so that trustees will have a chance of getting a case with considerable assets, since a good part of the trustee's pay is based on a commission of the debtor's assets that can be sold in a Chapter 7 (liquidation) case, or a percentage of the payments made in a Chapter 13 (consumer debt restructuring) case.

Information on trustees' fees for various countries is attached as Appendix 4.

Table 14: Trustees/Receivers/Liquidators

Country	Court's sole discretion in appointment	Creditors appoint	Court supervises	Creditors supervise
Jordan	Yes – except for banks and insurance companies, and voluntary liquidation for other companies	No	Yes	Yes
Bosnia	Yes	No	Yes, along with the creditors	Yes, along with the court
Egypt	Yes	No	Yes	Yes
France	Yes	No	Yes	Yes
Germany	Yes, but creditors can elect a replacement		Yes	No, but creditors vote on major decisions
Indonesia	No	Yes – petitioner proposes to court		
Lebanon	Yes	No	Yes	Yes
United States	No - appointed by regional office of the United States Trustee	No		

Guidance for Jordan Insolvency Law Revisions

This issue was not discussed in detail during the roundtable meetings. We recommend that trustees be chosen randomly or chosen by judges with creditors having the ability to object to the choice. As stated in section 15 above, we recommend that the working group consider methods to ensure that trustees are competent and trustworthy. This could include

licensing, testing, and training and education requirements, as well as supervision by courts, a supervisory agency, or a professional association.

APPENDIX 1

MINUTES OF ROUNDTABLES, JUNE 2008

First Roundtable - Government

Kempinski Hotel – Amman

7/6/2008

Banks and Insurance Companies

The Central Bank representative emphasized the exclusion of Banks from any amendments that will occur in relation to bankruptcy laws or in proposing a new law relating to Bankruptcy, considering that the liquidation of banks is regulated under the Banking Law and the Deposit Insurance Corporation (DIC) is entrusted with the liquidation. However, the Representative encouraged the effort to enact a unified Bankruptcy Law, excluding Banks.

The same position was adopted by the insurance companies, through the representatives of the Insurance Commission. The representatives of the DIC upheld the position of the Central Bank Representative. All three entities highlighted the insurance and banking procedures, which totally differ from any other company, as banks and insurance companies are not governed by the companies law pre or during liquidation, therefore, any unified law with regard to Bankruptcy will only lead to unnecessary legal complications.

البنوك وشركات التأمين

أكد ممثل البنك المركزي على إستثناء البنوك من أي تعديل سيطرأ على أي تشريع يتعلق بالإفلاس أوإيجاد قانون موحد للإفلاس حيث أن البنوك يتم تصفيتها من خلال قانون البنوك ومؤسسة ضمان الودائع، مؤكداً أهمية إيجاد تشريع موحد يضم جميع المسائل المتعلقة بالإفلاس خارج إطار البنوك.

وكذلك إتجه ممثلوا شركات التأمين على الإبقاء على التشريعات الخاصة بالتأمين نظراً لخصوصية هذه الشركات.

وأكد ممثلوا مؤسسة ضمان الودائع على موقف ممثل البنك المركزي فيما يخص البنوك. وأكدوا على أن كلاً من البنوك وشركات التأمين لا يشتركان منذ صدور قرار التصفية أو حتى قبل ذلك مع أي شركة في أي نص من النصوص القانونية المتعلقة بالشركات الأخرى وعليه فإن أي توحيد للقوانين المتعلقة بالإفلاس مع قوانين البنوك والتأمين ستؤدي بلا شك الى متاهات تشريعية عديدة.

CCD Representative

The Representative of the Companies Controller Directorate mentioned that the CCD has established a unit for stumbling companies to be reorganized from administrative, financial and legal aspects.

This unit consists of legal and administrative personnel. Considering that the companies are required to submit annual financial statements and administrative resolutions, the CCD monitors and evaluates their performance, and in case any indicators for financial or administrative stumbling are detected, the file gets referred to this unit to take appropriate procedures, such as removing the current management and having the company administered by a special committee until its performance becomes better, at which point, a new management may be elected, as happened in the case of Amman Surgical Hospital.

The Ministry of Industry & Trade (MIT) is working on establishing a consultation regulation with the concerned entities and then what results shall be submitted to the Prime Ministry. This step shall be an integral part of the administrative structure of the ministry. In other words whenever the MIT intends to regulate any general policy that might affect any private or public entity then a consultation session shall be held in this regard with the concerned parties (similar to this session).

General Discussion

- **The concept of Bankruptcy**

The participants stated that it would be better not to refer to bankruptcy in its broader sense, which includes individual merchants, companies, and the insolvency of natural persons, as it would be better to keep a separate legislation for civil

دائرة مراقبة الشركات

بين أن دائرة مراقبة الشركات قد استحدثت دائرة متخصصة للشركات المتعثرة من ناحية إدارية وقانونية. ونجحت في إعادة هيكلة بعضها.

تتكون هذه الدائرة من قانونيين وإداريين وحيث أن بعض الشركات ملزمة بتقديم بيانات مالية سنوية وقرارات إدارية فهذه مسائل يتم دراستها ومتابعتها فإن وجدت أي إشارات لتعثر مالي و/أو إداري من خلال لجان التدقيق والتحقيق فيتم إتخاذ الإجراءات اللاحقة.

لا بد من الإشارة الى أن هذه الوحدة يحال اليها ملفات الشركات ذات المؤشرات الخطيرة أوالتي يبدو أنها ستتعثر إدارياً أوماليا.

من الإجراءات التي قد يتم إتخاذها هي عزل الإدارة الحالية للشركة وتوليها من قبل لجنة إدارة[12] الى أن تصطلح الأوضاع من الأمثلة على هذه ويتم إنتخاب هيئة مديرين جديدة للشركة. الإجراءات ما اتخذ بخصوص مستشفى عمان الجراحي.

كما تتجه وزارة التجارة والصناعة الى إيجاد نظام تشاور مع الجهات المعنية ثم يتم عرض ما تم التوصل اليه على رئاسة الوزراء. لتصبح هذه العملية جزء من هيكلية الوزارة أي عند وضع الوزارة لسياسة عامة تؤثر في أي جهة خاصة أوعامة فلا بد من أن يتم عقد جلسات تشاور حول هذا الموضوع (كما يحصل في مثل هذه الإجتماعات)

مناقشة عامة

- **تحديد مفهوم الإفلاس**

رأى الحضور عدم التوجه الى مفهوم الإفلاس بمعناه الواسع المتمثل بشمل كلاً من التجار الأفراد والشركات وحالات الإعسار تحت مسمى واحد. فالأفضل الإبقاء على تشريع خاص بالإعسار المدني.

[12] - سنداً لنص المادة (167، 168) من قانون الشركات

insolvency.

- **Definition of Bankruptcy**

As for the definition of bankruptcy, the participants pointed out that the fact that the merchant stopped to pay shall not be the only reason for declaring the bankruptcy and there shall be prior remedies, including precautionary measures and understanding the reasons for stopping the payments, the circumstances that surround such a case, etc…

- **The concept of "Reorganization"**

- Reorganizing the debts; a loan for 15 years, 5% interest may be altered into a 20 years loan, 4.5% interest instead.
- Financial reorganization through obtaining new loans to cover the old ones in new and better conditions for the new loans.
- Spin offs or demerging parts of the business.
- reorganizing the administration.
- introducing new partners
- converting employee debts into shares in the company.

- **Is there a need for a new legislation?**

- There is a need for a modern law that follows the developments, rather than simply amending existing laws.
- Consider the characteristics of each company and its business.
- a clear reference for investors
- The proposed companies' law enabled the transfer of a stumbled company to another or its merger.

- **Reasons for enacting the law**

1. guaranteeing the equitable distribution of proceeds for debtors, especially after decreasing the minimum capital of the limited liability company to be JD 1000.
2. Maintain the employees' jobs
3. Maintain the company's business.

- **تعريف الإفلاس**

أبدا المشاركون لآراءهم في أن مجرد التوقف عن الدفع يجب أن لا يكون مبرر لإشهار الإفلاس ويجب أن يكون هنالك علاجات قبل بأن يشمل القانون إجراءات (وقائية / تمهيدية) تبين فيها أسباب التوقف عن الدفع، الظروف المحيطة...

- **المقصود بإعادة الهيكلة**

- إعادة هيكلة الديون؛ مثلاً عوضاً من أن يكون الدين لمدة 15 سنة بفائدة قدرها 5% يصبح دين لمدة 20 سنة بفائدة 4.5%
- إعادة هيكلة مالية من خلال الحصول على قروض جديدة لتغطية القروض القديمة ولكن بشروط أفضل للقرض الجديد.
- بيع بعض أجزاء من العمل.
- تغيير الإدارة.
- إدخال شركاء جدد.
- تحويل ديون العمال الى إسهم في الشركة.

- **هل هنالك حاجة الى قانون جديد؟**

- إيجاد قانون يواكب التطورات أفضل من تعديل القانون القديم.
- مراعاة خصوصية بعض الشركات والأعمال.
- وضوح المرجعية للمستثمرين.
- مشروع قانون الشركات الجديد أتاح إعادة بيع أوتملك الشركة المتعثرة من قبل شركات أخرى اوالعمل على دمجها.

- **الأسباب الموجبة للقانون**

1. توزيع العائدات بعدالة لا سيما بعد تخفيض الحد الأدنى لرأسمال الشركة ليصبح 1000 دينار وفقاً لمشروع قانون الشركات.
2. الحفاظ على وظائف العاملين.
3. استمرار عمل الشركة.

- **How important is it to protect the creditors versus protecting and sustaining the business?**

Courts shall be given a discretionary authority to balance the facts for each case separately and decide which side is more important to be protected.

Or the creditors shall decide the feasibility of keeping the company's business after submitting an economical feasibility study, pointing out the company's problems and suggested remedies.

- **ما أهمية حماية الدائنين مقابل حماية الشركة والحفاظ على إستمراريتها ؟**

أن يتم إعطاء المحاكم السلطة التقديرية لموازنة كل حالة على حدى. أو أن يقرر الدائنون جدوى إستمرار عمل الشركة من عدمه وذلك بعد تقديم دراسة جدوى إقتصادية واضحة مع بيان مشكلاتها والعلاجات المقترحة.

- **Political rights:**

The participants agreed that merchants found guilty with fraudulent or negligent bankruptcy shall be deprived from their political rights. Whereas a bankrupt merchant for other reasons shall not be deprived of such rights or at least minimize the period for reclamation, as in neighboring countries to be three instead of ten years as the case is in Jordan. Another indirect punishment was referred to, which may limit the bankrupt merchant from pursuing any financial procedure or obtaining future loans but this is not an additional bankruptcy punishment, it is simply a procedural process that may affect the bankrupt merchant in his future transactions. A temporary law was legislated entitled the “Law of Credit Information" upon which a company or more shall be registered by the Central Bank to investigate and collect information of the concerned person. These companies shall be entitled to sell such information to any entity upon the approval of the concerned person. Up until this point, no company was licensed and after submitting the temporary law to the members of the parliament it was suspended until some amendments are introduced to issue a valid law. One of these amendments is that the licensing shall be granted for only one company to handle the collection of information.

- الحقوق **السياسية:**

اتفق الحضور على حرمان المفلس إحتياليا ً أوتقصيرياً من الحقوق السياسية أما إفلاس التاجر لغير ذلك فذهب الإتجاة الى عدم حرمانه من الحقوق الساسية أوتقليل هذه المدة تماشيا ً مع الدول الأخرى التي تتراوح مدة الحرمان فيها الى ثلاث سنوات بدلاً من 10 سنوات كما هوالحال في الأردن.

وتمت الإشارة الى نوع آخر من العقوبة غير المباشرة التي ستعطل أعمال المفلس عند قيامه بأي إجراءات مالية أوإقتراض مستقبلاً لكنها أقرب ما تكون الى معاملة إجرائية منها عقوبة على الإفلاس. حيث تم سن قانون مؤقت يسمى معلومات الإئتمان تؤسس بموجبة شركة اوأكثر يرخصها البنك المركزي لتلقي وتحري معلوما ت عن الشخص المعني ولهذه الشركات بيع هذه المعلومات الى أي جهة ولكن بعد الحصول على موافقة صاحب العلاقة. والى هذه اللحظة لم يتم ترخيص أي شركة من الشركات وبعد عرض القانون المؤقت على مجلس النواب قرر وقف العمل به وإجراء تعديلات قبل أن يتم جعله قانونا ً دائما ً ومن هذه التعديلات الترخيص لشركة واحدة فقط لتتولى هذه الشؤون.

The Hypothetical Case

Options if the merchant was a limited liability company:

- Capitalize the debts.
- Reorganizing the debts.
- Reorganize the loans upon the feasibility study.
- Increase the capital (by the same partners or after introducing new ones)

Statistics

since 1964 till now according to the information that were supplied to the CCD by the competent courts with regard to bankrupt companies:

The number of cancelled companies; voluntary or forced liquidation:

- Foreign-non operating company 38
- partnership companies 25.000
- limited liability companies 967
- common investment company 2
- not for profit companies 4
- civil companies 11
- Private Shareholding Company 1
- Public Limited Company 42
- Exempt Company 32

the number of companies that has been declared bankrupt:

- partnership companies 6
- limited partnership company 1
- limited liability company 2

حل القضية الافتراضية

إن كانت شركة ذات مسؤولية محدودة:

- رسملة الديون.
- إعادة جدولة الديون.
- إعادة هيكلة القرض بناء على دراسة جدوى.
- زيادة رأس المال (من قبل نفس الشركاء أوبعد إدخال شركاء جدد).

إحصائيات

منذ عام 1964 – حتى الآن وفقاً لما تم تزويد دائرة مراقبة الشركات فيه من المحاكم المختصة فيما يتعلق بالإفلاس:

عدد الشركات التي شطبت (تصفية إختيارية أوإجبارية):

- شركات أجنبية غير عاملة 38
- شركات تضامن 25,000
- ذات مسؤولية محدودة 967
- الاستثمار المشترك 2
- شركات لا تهدف الى تحقيق الربح 4
- شركات مدنية 11
- شركة مساهمة خاصة 1
- شركة مساهمة عامة 42
- شركة معفاة 32

عدد الشركات التي تم إشهار إفلاسها:

- تضامن 6
- توصية بسيطة 1
- ذات مسؤولية محدودة 2

Second Roundtable – Business Associations

Kempinski Hotel – Amman

9/6/2008

- **General discussion:**

One of the participants spoke of their actual experience in voluntary liquidation, which started in February, 2008 and is still ongoing till this day.

The participant highlighted the following issues:

1. The absence of a unified law that contains all the procedures related to liquidation.
2. The burden placed on the company to approach more than one competent authority.
3. No fixed timeframe for the whole procedure.
4. Lack of awareness and the absence of special and facilitated handling that differs from the ordinary procedures (give such cases priority at the other government departments.
5. The CCD does not provide any illustration, details or required documents for the liquidation process.
6. Procedural complications and delay in the Income Tax Department and the Social Security Corporation.

Response by the Representative of the Companies' Control Directorate (CCD):

The Representative noted that it is the duty of the liquidator who is appointed by the company to handle all the issued mentioned above. It is assumed that such liquidated is a specialized person or a lawyer, who is familiar with the required procedures of the voluntary liquidation mentioned in the general terms within the companies' law provisions.

- **مناقشة عامة:**

تم طرح تجربة شخصية من أحد الحضور حول تصفية إختيارية بدأت في شباط من هذا العام الى تاريخه.

حيث تم تسليط الضوء على عدة أمور:

1. عدم وجود قانون واحد يحوي جميع الإجراءات المتعلقة بالتصفية.
2. وجود أكثر من جهة من الواجب مراجعتها.
3. لا إطار زمني معين للمعاملة.
4. قلة الوعي وعدم إيجاد تسهيلات أومعاملة خاصة للتصفية الإختيارية عن بقية المعاملات الروتينية لدى الدوائر الحكومية المختلفة.
5. دائرة مراقبة الشركات لم تزودهم بالإجراءات التفصيلية اللازمة لغايات التصفية أوالوثائق المطلوبة.
6. التعقيدات الإجرائية والتأخير في كل من ضريبة الدخل ومؤسسة الضمان الإجتماعي.

تعليق ممثل دائرة مراقبة الشركات عن هذه التجربة:

أشار ممثل دائرة مراقبة الشركات الى أن من مهام المصفي الذي تم تعيينه من الشركة الراغبة بإجراء التصفية الإختيارية أن يتولى جميع الأمور المشار إليها سابقاً حيث أنه من المعتاد أن يكون شخص متخصص أومحامي أي على دراية بإجراءات التصفية الإختيارية اي الأحكام العامة الواردة في قانون الشركات.

ووضح أن الإجراءات التفصيلية موضحة في منشورات متوافرة في دائرة مراقبة الشركات عند الطلب. وبين ممثل دائرة الشركات أن المدة اللازمة لتصفية شركة قد لا تتجاوز الشهرين إن كانت

تحتفظ بميزانيات وسجلات معدة حسب الأصول ولا يوجد نزاعات قضائية متعلقة بها في المحاكم. كما تم التطرق الى أهمية الرقم الوطني للمنشأة ودوره في تسهيل المعاملات المتعلقة بالشركة لدى كافة الدوائر.

He also pointed out that detailed brochures are always available at the Companies' Control Department upon the request. He also mentioned that the period required for a voluntary liquidation typically, should not exceed two months if the concerned company has duly filed balance sheets and records, in absence of other disputes. He also noted the importance of the Companies' National ID and its role in facilitating procedures in the governmental authorities.

- **إعادة الهيكلة:**

- **Reorganization process:**

أشاد الحضور بفكرة إعادة الهيكلة لتشجيع الإستثمار في الأردن ولدعم المشاريع الصغيرة. ورأوا أن هذه هي السياسة الصحيحة التي يجب أن يتم إتباعها في الأردن عوضاً عن إيقاف الأعمال لمجرد تراكم الديون على الشركة إذا وجدت مؤشرات تدل على إمكانية نجاح الشركة في المستقبل.

The participants encouraged the idea of reorganizing stumbling companies to promote investment in Jordan and to support small businesses. Agreeing that this is the right policy which shall be adopted by Jordan instead of suspending the business as a result of the accumulation of the Companies' debts if indicators for future success were detected.

كما تمت الإشارة الى وجوب دراسة أسباب الخسائر والتعثر في هذه الشركات من ناحية إدارية، مالية أم أنها أسباب تعود الى الشركاء مؤكدين أن معرفة أسباب التعثر سيؤدي الى علاجها وتجنبها مستقبلياً.

The participants noted the importance of conducting a study to identify the reasons that led to the companies' financial or administrative stumbling in order to avoid such stumbling in the future.

أما فيما يتعلق بقدرة القطاعات في الأردن على إعادة الهيكلة فقد تم الاجماع على أن الأردن تتمتع بكفاءات عالية من المتخصصين والمستشاريين الماليين والإداريين والقانونين القادرين على القيام بهذه الإجراءات.

As for the capability of the Jordanian business community to foster the reorganization process, it was agreed that Jordan enjoys the availability of a very well qualified financial, administrative and legal experts and consultants.

توصيات تتعلق بإعادة الهيكلة في الأردن:

1. تأسيس خطة تعاون فيما بين القطاع العام والخاص لتكوين وحدة أوجهاز مشترك للقيام بعمليات إعادة الهيكلة.
2. التفرقة في الإجراءات فيما بين الشركات الكبرى وتلك الصغيرة والمتوسطة الحجم.
3. تقليل عدد جلسات المحاكم.
4. الإعتماد على دراسة جدوى لأعمال الشركة.
5. إعطاء الدائنين حق الخيار في تقرير المضي في إعادة الهيكلة أوالتصفية.
6. دعم هذه العملية كي لا تكون مكلفة إقتصادياً.
7. إعطاء صلاحيات مرنة للقائمين على عملية إعادة الهيكلة.

Recommendations concerning the Reorganization in Jordan:

1. Devising a cooperation strategy between the public and private sector to launch a common unit or body that carry out the reorganizing process.
2. Differentiating between small and large business in terms of the procedures required for Reorganization.
3. Minimizing the number of required courts' hearings (simplified procedures)
4. Taking into consideration the company's

feasibility study.
5. Giving the creditors the option to decide whether to Reorganize or liquidate the business.
6. Supporting this process as not to be financially costly.
7. Providing the administrators with flexible authorities.

- **Political rights:**

The participants agreed that the merchants found guilty with fraudulent or negligent bankruptcy shall be deprived from their political rights. Whereas a bankrupt merchant for other reasons shall not be deprived of such rights or at least minimize the period for reclamation, as in neighboring countries to be three instead of ten years as the case is in Jordan

- **Reasons for enacting the law:**

1. Social considerations; preserving jobs

2. Reorganize the Company's business in order to keep its business upon its feasibility study.

- **General recommendations:**

1. Linking the Department of Income Tax and the Social Security Corporation with the Companies' Control Department, to facilitate the Companies' procedures.
2. Coordinating the efforts of the trade chamber and the Companies' Control Department.
3. Raising awareness among merchants and companies of the characteristics and importance of capital companies versus persons companies and individual merchant.
4. Conducting a study on the companies' liquidation or bankruptcy causes and come up with remedies necessary to avoid them in the future.
5. Clarifying the role of the Public Prosecution with regard to the bankruptcy and liquidation process.
6. convincing banks, through providing them

- **الحقوق السياسية:**

اتفق الحضور على حرمان المفلس إحتياليا ً أوتقصيرياً من الحقوق السياسية أما إفلاس التاجر لغير ذلك فذهب الإتجاة الى عدم حرمانه من الحقوق الساسية أوتقليل هذه المدة تماشيا ً مع الدول الأخرى التي تتراوح مدة الحرمان فيها الى ثلاث سنوات بدلاً من 10 سنوات كما هوالحال في الأردن.

- **الاسباب الموجبة لإيجاد قانون:**

1. الإعتبارات الإجتماعية من حماية وظائف العاملين.
2. إعادة هيكلة الشركة على نحويضمن إستمرار أعمالها بناء على دراسة جدوى.

- **توصيات عامة:**

1. ربط دائرة ضريبة الدخل ومؤسسة الضمان الإجتماعي مع دائرة مراقبة الشركات لتسهيل الإجراءات المتعلقة بالشركات.
2. التنسيق بين غرفة التجارة ودائرة مراقبة الشركات.
3. توعية التجار الأفراد وشركات الأشخاص بخصائص وأهمية شركات الاموال.
4. إجراء دراسة حول أسباب تصفية/ إفلاس الشركات وتحليل هذه الأسباب وإيجاد حلول لها لتلافيها مستقبلاً.
5. توضيح دور النيابة العامة في الإفلاس ودورها في عملية التصفية.
6. اقناع البنوك بتغيير سياسة ضمان قروض الشركات بكفالات شحصية من أعضاء مجلس الإدارة.

with certain safeguards to move away from the practice of requesting personal guarantees from the company's officers for the company's debts.

Third Roundtable – Banks Association

Banks Association – Amman

11/6/2008

- The priority for Secured Creditors in the Liquidation and Bankruptcy Proceedings:

- **أولوية الديون المرتهنه في التصفية والإفلاس :**

The participants discussed the priorities of the secured debts with respect to the Companies pointing out that the Commercial Code grants the secured creditor the right to execute directly independently from the receiver unlike the case of liquidation where the secured creditor shall adhere to the provision of the Companies' Law, which distributes the priorities as follows:

ناقش المشاركون أولويات الديون المرتهنة بالنسبة للشركات موضحين أن قانون التجارة يعطي حق للدائن المرتهن لأن ينفذ على المال المرهون لضمان دينه دون اللجوء الى وكيل التفليسة على خلاف التصفية في قانون الشركات بالمادة (256) التي توزع الأولوية على النحوالتالي:

1. Amounts due to the Company employees.
2. Amounts due to the Public Treasury and the municipalities.
3. Rents due to the owner of any real estate leased to the Company.
4. Other amounts due in accordance with the order of their priority in accordance with the Laws in force.

1. المبالغ المستحقة للعاملين في الشركة.
2. المبالغ المستحقة للخزينة العامة والبلديات.
3. بدلات الإيجار المستحقة لمالك أي عقار مؤجر للشركة.
4. المبالغ الأخرى المستحقة حسب ترتيب امتيازاتها وفق القوانين المعمول بها.

And as such, the status of the secured creditor in the case of the bankrupt merchant is much better than their status in case of the liquidation of the company.

وعليه فإن حالة الدائن المرتهن عند إفلاس المدين تكون أفضل من حالته بالتصفية.

Particularly that debtors may intentionally not submit duly file their financial statements to the CCD or not elect a new board of directors to be forced into liquidation. Or in many cases, decide to voluntarily liquidate the company.

خاصة أن بعض المدينين قد يقومون بالتصفية بقصد الإحتيال على دائنيهم من خلال عدم تقديم البيانات والميزانيات للمدقق أوعدم إنتخاب هيئة مديرين جديدة فكل هذه الأمور ستؤدي الى التصفية الإجبارية للشركة. أو في عدة أحوال تطلب الهيئة العامة للشركة تصفيتها اختياريا.

كما تمت الإشارة الى أن المصفيين يستفيدون من طول مدة التصفية وقد يماطلون في إجراءاتها لإستمرار حصولهم على الأجر مقابل القيام بإجراءات التصفية.

Furthermore liquidators exploit the liquidation process and extend it to increase the period in which they receive remunerations for carrying out the liquidation of the company.

- **Banks lending policies:**

- **سياسة البنوك في الإقراض:**

1. false labor contracts:

Conspiring between the business owner and the employees, whereby the business owners submit false employment contracts, which enjoy the priority that over secured debts to escape from paying the banks' debts discourages the banks from lending without having a mortgage for property that is significantly higher in value from the debt. Also, alimony claims may sometimes be falsified.

1. عقود العمل الصورية :

نتيجة لتواطؤ أصحاب الشركة والعمال بإبراز عقود عمل صورية ترتب لهم حقوق ذات أولوية عامة من الدرجة الأولى أي أنها تتقدم على الديون المضمونة برهونات وتجاوز هذه المبالغ لديون الشركة للبنك من أجل التهرب من دفع الديون.

إضافة الى مطالبات النفقة من قبل الزوجة والأبناء جميع هذه العوامل أدت الى توجه البنوك الى عدم قبول تقديم قروض ما لم تكن مضمونه برهن عقاري تزيد قيمته بشكل كبير عن قيمة الدين المضمون.

2. Loans' collaterals (property and personal guarantees).

2. الكفالة الشخصية والعقارية للقروض:

The banks representatives agreed that banks prefer having a guarantee in the form of real property, which that is owned by a natural person (shareholder or an officer of the company) rather than a guarantee that is owned by the company in addition to the preference of personal guarantee.

وأشار ممثلي البنوك الى تفضيل أن تكون العقارات مملوكة لأشخاص بدلاً من أن تكون مملوكة للشركة وهوما يعرف بالضمانه الشخصية للعقار بالإضافة الى ضمان الدين ضمانة شخصية.

Therefore the banks have conservative policies in granting loans to SME's and young entrepreneurs, due to the high risk involved.

لذلك فالبنك يتحفظ بشكل كبير قبل أن يمنح الرواد الشباب قروضاً لمشاريعهم وذلك لإرتفاع نسبة المخاطرة بشكل كبير.

تفضل البنوك أن تكون القروض التي تمنحها لعملائها مضمونة بعقار ولا يتم ذلك إلا بعد دراسة القرض من قبل الدائرة العقارية وتقديم شروحاتها حول العقار الضامن للدين وذلك لدراسة القيمة السوقية للعقار أن كانت تساوي أوتزيد عن قيمة القرض. كما أن الإتجاه قد ذهب الى عدم إعطاء أي قرض بضمانة أرض مملوكة على الشيوع وذلك للإشكاليات القانونية وصعوبة التعامل

فيها.

Banks conduct their own due diligence in assessing the value of the piece of property being offered as a security for a certain debt to make sue that it is equal or higher of the loan's value. And the trend now is not to grant a loan which its guaranteed is a common owned (joint title) property consequent to the legal complications resulting thereof.

كما تم مناقشة صعوبة تحديد حقوق الدولة المتراكمة على الأرض من ضريبة مسقفات،رسوم الأمانة والمبيعات... والتي لا يجوز التصرف في العقار من قبل الدائن المرتهن قبل سدادها (تطهير العقار قبل بيعه) والتي قد يفاجأ الدائن المرتهن بمبالغ قد تتجاوز مقدار القرض الذي قد تم رهن العقار ضماناً لأدائه.

The difficulty of determining the amounts due to the treasury, is another issue in question, such as municipality fees, sales tax, income tax, etc… particularly, that no transfer may be done before the payment of all such dues, which surprisingly may exceed the secured debt.

3. Mortgage by possession.

3. الرهن الحيازي :

As for the possibility of granting loans guaranteed by movable property, the participants were of the view that it is not practical to extend loans guaranteed by such property. According to the civil law the mortgage by possession is "the detention of property in the possession of the creditor or a competent person as security for a right which can be totally or partially levied from him with priority over the remaining creditors". This seizure of the immovable property makes it very hard for a company to operate and carry out its business.

وأما حول إمكانية منح قرض بضمانة المنقولات. فظهر أنه ونتيجة لأن نصوص القانون المدني تعرف الرهن الحيازي بأنه احتباس مال في يد الدائن أويد عدل ضماناً لحق يمكن استيفاؤه منه كله أوبعضه بالتقدم على سائر الدائنين فمن الصعوبة أن تستغني الشركات عن موجوداتها وأموالها المنقولة وجعلها بيد الدائن أوالعدل لضمان قرض تحتاجه في تشغيل الشركة.

Consequently this type of mortgage is rarely used by debtor or creditors. Although in practice and in a way to avoid this legislative shortcoming, a mortgage by possession agreement is entered into by the two parties and documented at the Notary Public, simultaneously, a lending agreement is executed, where the debtor may continue to use the mortgaged property.

لذلك ونتيجة لعدم ملائمة أحكام هذا النوع من الرهون فقلة من الدائنين والمدينين يجعلون الأموال المنقولة ضماناً للقروض. على الرغم من أن الوسيلة لتجنب هذا الفراغ التشريعي ومن ناحية عملية يتم نقل الموجودات في إتفاقية بين الدائن والمدئن عند الكاتب العدل وبعد ذلك يتم تنظيم عقد إعارة للمدين كي يسترد حيازة المال المرهون رهناً حيازياً ضماناً للقرض.

5. the Netting :

4. وضع يد البنك على حسابات الشركة المتعثرة :

The participants inquired about the “best practices” regarding the possibility of

تساؤل حول مدى قانونية وإمكانية إعطاء البنك الدائن الحق في وضع اليد على حسابات وموجودات العميل المتعثر والموجوده

implementing the “Netting" in banks where the bank as a creditor is given the right to confiscate and place its authority over the stumbled company's accounts. (set-off)

في البنك الدائن (مقاصة).

- **Reasons for enacting the law:**

- **الاسباب الموجبة لإيجاد قانون :**

The participants encouraged the idea of enacting a unified law which regulates the issues in relation to Bankruptcy in its wide concept.

أيد المشاركون فكرة إيجاد قانون موحد ينظم المسائل المتعلقة بالإفلاس بمفهومه الواسع.

- **Reorganization:**

- **إعادة الهيكلة :**

A participant demonstrated that granting a stumbling company a grace period during its reorganization is one of the best measures that may prove useful to both the company and the creditors alike. Emphasizing that the reorganization decision shall be based on a feasibility study and the capability of the company to undertake its business.

أشار أحد الحاضرين الى أن إعطاء الشركة المتعثرة فترة سماح تقوم في أثنائها بإعادة الهيكلة قد يكون من الحلول المنطقية التي تعود بالنفع على كل من الشركة المتعثرة كي لا يتم تصفيتها وبيع موجوداتها في المزاد العلني لا سيما أن هذا البيع قد يضر بحقوق الدائنين ببيع موجوداتها بإثمان تقل عن قيمتها السوقية. مؤكدين أن إتخاذ قرار إعادة الهيكلة يجب أن يكون مبني على دراسة جدوى وإمكانية الشركة من متابعة أعمالها.

- **Political rights :**

- **الحقوق السياسية :**

The participants agreed that the depriving a merchant from his/her political rights is not such a deterrent penalty due to the lack of awareness of the importance of enjoying political rights and participating in the civic community.

رأى المشاركون أن حرمان التاجر من حقوقه السياسية ليس بالعقوبة التي من شأنها أن تردع التاجر عن اللجوء الى إشهار إفلاسه ويعود ذلك الى قلة الوعي حول الحقوق السياسية وأهميتها في تأكيد المواطنة.

Furthermore, such penalty may prove effective for political figures, not merchants whom economic rights outweigh such political considerations.

كما أن الحرمان من هذه الحقوق يكون مؤثر بشكل كبير بالنسبة لرجل السياسة وليس التاجر بالضروية طالما أن مثل هذه العقوبة لا تؤثر على مستقبله الإقتصادي.

However, participants agreed that only the merchants found guilty with fraudulent or negligent bankruptcy shall be deprived from their political rights

على كل حال لا بد من إقتصار الحرمان من الحقوق السياسية على المفلس إحتيالياً.

- **General recommendations :**

- **توصيات عامة :**

1. Establishing a central registry for mortgaging movable property (mortgage by possession), which may be placed at the Ministry of Industry and Trade or at the Chambers, provided that all registries are linked to avoid multiple mortgages on the

1. إيجاد سجل مركزي لرهن الاموال المنقولة (الرهن الحيازي) بأن يكون موجود في وزارة الصناعة والتجارة أوفي غرف الصناعة والتجارة على أن يتم ربط جميع السجلات في المملكة مع بعضها لتجنب تسجيل الرهن أكثر من مره.

same item of property.

2. Finding a middle ground between the French System that gives highest priority to the workers and the US system, which favors the secured creditor, through working a formula or capping such rights.

3. Providing for the option of reorganization for stumbling companies if the indicators of success were detected.

4. Investigating and verifying the legitimacy of the laborers' claims submitted during the liquidation process through different ways: the social security's subscription, the payment of social security's fees. Taking into consideration that companies with less than 5 employees are not legally bound to subscribe in the Social Security Corporation.

5. If Reorganization system was adopted then modifications to the Central Bank regulations shall take place. Especially that the said regulations oblige banks to flag delinquent accounts after three months of default and consequently certain procedures shall take place in this regard.

6. Clarifying the stay procedures under forced liquidation in the companies' law, as the mechanism is not clear.

7. The stay procedures in reorganization should not extend to property placed as a security if it was not critical for the operation of the company.

8. Allowing the creditors to participate in making the decision of whether to reorganize or liquidate the company. Moreover allow them to supervise the reorganizing procedures and make it possible to decide stopping the reorganizing of the company if it was clear that it is not useful.

2. إيجاد نظام مشترك ما بين النظام الأمريكي والفرنسي بإحتساب نسب معينة للدائنين المرتهنين والعمال وليس أعطاء أولوية لأحدها بشكل كلي وكامل على الحقوق الأخرى.

3. تبني أسلوب إعادة الهيكلة في الشركات المعثرة إن وجدت مؤشرات على إمكانية الإستمرار في أعمالها.

4. أن يتم التحري حول صحة المطالبات العمالية عند التصفية من خلال عدة أمور : الإشتراك بالضمان الإجتماعي، سداد الإشتراكات المترتبة عليه. مع الأخذ بعين الإعتبار أن الشركات التي يقل عدد عمالها عن خمسة غير ملزمة بالإشتراك في الضمان الإجتماعي وفقاً لأحكام القانون.

5. إذا تم تبني السماح بإعادة الهيكلة فيجب أن يتم هذا التعديل بالتزامن مع تعليمات البنك المركزي الذي يلزم البنوك عند تعثر أي دين لمدة ثلاثة شهور بأن يصنف الدين بأنه متعثر ويترتب على ذلك إجراءات خاصة.

6. فيما يتعلق بوقف الإجراءات في قانون الشركات عند التصفية الإجبارية. وعدم وضوح آلية عمل هذا الإجراء.

7. أن لا يشمل وقف الإجراء حالة ما إذا تقررت إعادة هيكلة الشركة إن كان العقار المرهون مثلاً لا يؤثر في أعمال الشركة وإعادة هيكلتها بمنح الدائن المرتهن الحق في التنفيذ عليه رغم إجراءات إعادة الهيكلة.

8. إعطاء الدائنين الحق في المشاركة بتقرير إعادة هيكلة الشركة أوتصفيتها. بالإضافة الى أن تكون مشاركة في مراقبة الإجراءات المتخذه وإمكانية تحويل إعادة الهيكلة الى تصفية إذا ظهر عدم جدوى إعادة هيكلة الشركة.

9. أن يتم تحديد مدة معينة لإنهاء جميع أعمال التصفية وأن يتم دراسة الإطار الزمني وإمكانية الإلتزام به عملياً من خلال:

أ) إعطاء جميع حقوق الشركة المدينة صفة الإستعجال لتحصيل حقوقها من مدينيها الآخرين لغايات إكمال أعمال التصفية.

ب) جعل أجور المصفي مبلغ مقطوع يدفع في نهاية عملية

التصفية.

9. deciding on an applicable timeframe to conclude liquidation procedures:

a) All debtor claims shall be pursued through expedited procedures for the purpose of completing the liquidation process as soon as possible.

b) The liquidator's remunerations shall be fixed at a lump sum amount paid at the end of the liquidation process.

10. Appointing specialized judges to examine liquidation and bankruptcy cases.

10. تخصيص قضاة لنظر قضايا التصفية والإفلاس.

Fourth Roundtable – Commercial Lawyers

Kempinski Hotel – Amman

11/6/2008

- **General discussion:**

The participants pointed out that the legal provisions governing the concept of "stopping payments" are scattered in several laws in Jordan. The Civil Code deals with insolvency, the Commercial Code provides terms of bankruptcy of merchants and the companies' law regulates liquidation issues related to companies.

The Court of Cassation reached the following in its decisions:

- The rules of civil insolvency shall apply to a merchant for debts incurred in his civil dealings, and shall be subject to Bankruptcy with regard to his commercial transactions.

- Companies shall be subject to liquidation

- **مناقشة عامة:**

تمت الإشارة من قبل المشاركين الى أن مفهوم التوقف عن الدفع متشعب في عدة قوانين بالنظام القانوني منها القانون المدني الذي يعالج الإعسار، القانون التجاري الذي يعالج إفلاس التاجر وقانون الشركات الذي يتناول مسائل تصفية الشركات.

توصلت محكمة التمييز الأردنية في عدة قرارات لها الى ما يلي:

- التاجر يطبق عليه الإعسار المدني في المعاملات المدنية التي يقوم بها خارج إطار عمله التجاري. أما نظام الإفلاس فينطبق على التاجر في معاملاته التجارية.

- الشركات تنطبق عليها أحكام شهر الإفلاس والصلح الواقي الواردة في قانون التجارة ومن بعد ذلك تطبق الأجراءات الخاصة بالتصفية الواردة في قانون الشركات.

بالإضافة الى أن أحكام تصفية الشركات شكلت بحد ذاتها مشكلة بالنسبة للقضاء وذلك لعدم وضوح أحكامها وعدم صدور نظام تصفية الشركات الوارد النص عليه في قانون الشركات

procedures in the companies' law but might be declared bankrupt and exercise Composition within the meaning of the Commercial Code.

على الرغم من وجود مسودة لهذا النظام وفقاً لممثل دائرة مراقبة الشركات.

The application of the provisions regulating the liquidation of the Company itself is a challenge to the judiciary, due to unclear provisions and the face that no liquidation's regulation, as mentioned in the Companies Law has been enacted yet, although, a draft of the mentioned regulation is ready according to the representative of the Companies' Control Department.

دور المحاكم في هذه المرحله غير واضح، كذلك السند القانوني لتدخلها كما لا يوجد تفرقة في الأحكام المتعلقة بالتصفية إن كانت التصفية إختيارية بسبب عدم قدرة الشركة على سداد ديونها عما إذا كانت التصفية لأي سبب آخر مع توافر الأموال اللازمة لتغطية جميع ديونها وإلتزاماتها.

The role of the courts and the basis and extent of their involvement in the voluntary liquidation process is unclear. There is no distinction in the procedures between the voluntary liquidation if it was due to the stop of payments or if it was for any other reason where the necessary funding is available to cover all its debts and obligations.

كما أن مصطلح قاضي التصفية غير واضح وغير معرف في القانون الحالي.

بالإضافة الى أن التصفية تتعلق بشركات قد تكون ذات طابع إستثماري ضخم لا يجوز تركها بصوره غير موضحة تفصيلاً.

The term of "liquidation judge" is unclear and is not defined in the current law.

Furthermore, liquidation is commonly linked to significant businesses, and as such shall not be left with no clear and detailed set of rules..

- **The concept of Bankruptcy:**

- **مفهوم الإفلاس:**

Bankruptcy in its broad sense shall include merchants and non-merchants, as the bankruptcy system is in essence similar to the interdiction system in the Civil Code; the insolvent debtor does not conduct any of his transactions by himself but through his trustee, and similarly, the merchant conducts his business through the receiver perform all his duties and transactions.

نظام الإفلاس بمفهومه العام يجب أن يشمل الأفراد العاديين والتجار ويعود ذلك الى أن نظام الإفلاس يشابه الى حد كبير الحجر على المدين المعسر في القانون المدني حيث أن الأخير لا يمارس أعماله إلا من خلال القيم / الوصي كما هوالحال بالنسبة للتاجر المفلس الذي يتولى وكيل التفليسة جميع أعماله.

- **Stopping Payments**

When the company or the merchant stops to make payments of a commercial debt, the debtor shall obtain a court order or a deed and submit it to the execution department. If this execution is not completed then the procedures of declaring Bankruptcy or the Company's forced Liquidation may commence.

However, some judicial decisions relaxes this interpretation and restricted the declaration of bankruptcy or forced liquidation to cases that indicate that stopping the payment is a result of a bad or critical financial status of the company or the merchant and not only occasional. Such interpretation is a matter of judicial discretion.

- **The Central Bank authorities:**

It was agreed that the Central Bank and the Insurance Commission shall not be given the authorities they enjoy in their current laws to maintain the authority of the Court in deciding on bankruptcy and liquidation.

Furthermore, to have standing to challenge the Central Bank's decision before the competent court to liquidate a bank, a person must own at least (10%) of the liquidated bank's capital or be a creditor to the bank at a minimum of (10%) of it debts or have deposits with the bank of no less than (10%) of the total deposits held at the bank. the law does not provide whether such percentage may be achieved by several persons or only by one person. In the case that such percentage shall be achieved by only one person, any actual challenge or appeal becomes rather impossible due to the enormous amount of money with which the bank deal.

The participants agreed that excluding these sectors from the laws and devoting special rules and laws to govern them will open the door to other strong regulators to request the exclusion of their respective sectors, which is unacceptable.

- **التوقف عن الدفع:**

مجرد التوقف عن دفع الدين التجاري بأخذ حكم على الشركة أوالتاجر مثلاً أوسند وعدم تنفيذه بعد طرحه في دائرة التنفيذ يتم البدء بإجراءات شهر الإفلاس أوالتصفية الإجبارية للشركة.

وإن كانت بعض الإجتهادات القضائية خففت من هذا التطبيق واقتصرت على أن يكون التوقف عن الدفع منبئ بسوء الأحوال الإقتصادية للتاجر أوالشركة وليس توقف عرضي عن الدفع. لكن القانون لم يقم بهذه التفرقة ولا تعدوهذه التفرقة إلا إجتهاد قضائي لبعض القضاة.

- **صلاحيات البنك المركزي وهيئة رقابة التأمين:**

تم الاتفاق على عدم إعطاء البنك المركزي وهيئة رقابة التأمين الصلاحيات التي يملكاها حالياً وذلك لعدم المساس بسلطة المحاكم المختصة بإصدار قرار التصفية من عدمه.

بالإضافة الى أن إمكانية الطعن بقرار البنك المركزي غير متحقق إلا إذا تم تقديم هذا الطعن ممن يملك (10%) من رأسمال البنك أومن الدائن الذي يملك ما لا يقل عن (10%) من الديون في ذمة البنك. لا يوجد تفسيرات فيما إذا كانت النسبة السابقة يمكن أن تكون مشكلة من مجموعة أشخاص أومن شخص واحد سيما أنه إن كانت من شخص واحد فإن الطعن بهذا القرار سيكون أقرب الى الإستحالة وذلك لضخم المبالغ التي يتعامل بها أي بنك.

كما تم التوصل الى أن إستثناء القطاعين السابقين من القانون وتخصيص قواعد خاصة تحكمها ستجعلنا عرضة بالنهاية الى المطالبة بالإستقلالية كقطاع الإتصالات والكهرباء... الأمر الذي لا يعد مقبولاً.

ومن جهة أخرى إتجه جانب من الحضور الى الإشارة الى أن شركات التأمين والبنوك لها تأثير كبير على الإقتصاد الوطني بالإضافة الى أن المؤسسات المصرفية والمالية تعمل بأموال

الغير وعليه فإقترحوا بالأخذ بنصوص خاصة بهذه الشركات في القانون الموحد أوالإبقاء على القوانين الخاصة بها.

However, some participants pointed out that the fact that insurance companies and banks deal with funds of other people, justifies having special rules for bankruptcy and liquidation, which may still be part of a uniform law.

- **أسباب إصدار البنك المركزي لقرارات التصفية:**

- **The justifications of the Central Bank's decisions to liquidate a bank.**

في حالة تصفية البنك إختيارياً فيجب الحصول على موافقة البنك المركزي إبتداءً والذي يتمتع بصلاحية واسعة في القبول أوالرفض.

In the case of voluntary liquidation, the bank shall obtain the prior approval of the Central Bank which enjoys a broad discretion to approve or reject such request.

أما في التصفية الإجبارية فالنصوص التي تعطي البنك المركزي إمكانية تصفية البنوك تتسم بصفة العمومية والإتساع فلا يجوز أن تكون صلاحية البنك بهذا الخصوص واسعة، لا سيما أن للبنك المركزي صلاحية إلغاء ترخيص البنك وبالتالي عرقلة ممارسته لأعماله المصرفية.

As for the forced liquidation, the provisions regulating such decision are considered to be very wide and general. This grants the Central Bank unacceptable broad authorities with this regard, particularly, the Central Bank may cancel the bank's registration and therefore hinder the bank's transactions.

- **الممارسات الدولية فيما يتعلق بشركات التأمين والبنوك.**

- **International practices with regard to insurance companies and banks.**

وفقاً للخبير فقد وضح أنه عادة ما يتم وضع أحكام البنوك وشركات التأمين بشكل منفصل عن بقية الشركات الأخرى. وعليه فإن وضع البنك المركزي ومؤسسة ضمان الودائع هي من الممارسات الدولية والتي يؤخذ بها أيضاً في الولايات المتحدة الأمريكية. كما أنه من الأفضل أن يتم ترك الأمور على ما هي عليه بالنسبة للبنوك.

The Expert indicated that it is an international practice to have special rules for banks and insurance companies in separate special laws. Therefore the existence of Central Banks and the Deposit Insurance Committee is one of the best practices, which are applied in the United States as well. And it would be better to leave the status of banks as is.

أما فيما يتعلق بشركات التأمين فبين أنها أيضا تتتمتع بقواعد منفصلة في النظام الأمريكي.

Similarly, insurance companies have separate rules in the united states that are different from other companies.

- **Reasons for enacting the law:**

To provide for the priority of protecting shareholders with minor shares in the company and who work with these companies such as lawyers and auditors.

The importance of the social aspect is no less than the importance of protecting the creditors since both are strongly interrelated.

Having said that, it does not mean to neglect the investors, because treating them unfavorably will discourage further investments.

- **How is it possible to enact an efficient law?**

In the course of drafting a new law, the principle of general application and good faith dealings shall be given due consideration.

And as such, granting banks extreme protection is considered unfair, especially that banks shall investigate the company before lending it and conduct proper due diligence.

- **The priorities of debts in the Liquidation:**

There has to be clear priorities and specific mechanism by which the companies' assets shall be distributed upon liquidation, rather than having scattered laws regulating these issues such as the civil, companies', execution, labor, banking and commercial law…

- **Specialized judges:**

The participants emphasized the need to have specialized judges in bankruptcy and liquidation cases.

- **الأسباب الموجبة للقانون:**

أن يتم إضافة أولوية حماية صغار المساهمين في الشركات ومن يعملون مع هذه الشركات كالمحامين ومدققي الحسابات.

كما أن الناحية الإجتماعية لا تقل أهمية عن حماية الدائنين وذلك لإرتباطهما الوثيق.

ذلك لا يعني إهمال فئة كبار المساهمين في الشركات وذلك لأنهم في الأغلب مستثمرين وأي تشدد غير مبرر عليهم سيؤدي الى الحد من الإستثمار.

- **كيف يمكن تطوير قانون فاعل ؟**

يجب أن يتم مراعاة العمومية عند صياغة القانون وعدم إفتراض سوء النية لدى الشركة أوالمصفي.

وأما عن تشديد القوانين لحماية البنوك فهو أمر غير منصف سيما وأن الأولى بالبنك أن يتحرى من إلتزامات الشركة المقترضة قبل منحها أي قرض.

- **أولويات توزيع الديون عند تصفية الشركة:**

يجب وضوح منهجية وآلية توزيع الأموال وأولويات الدفع وتجميعها عوضاً عن بعثرتها في عدة قوانين كالقانون المدني، الشركات، التنفيذ، العمل، البنوك، التجارة...

- **تخصص القضاة:**

أجمع الحاضرين على ضرورة ايجاد قضاة متتخصصين بقضايا الإفلاس أوالإعسار.

- **Political rights:**

The participants pointed out that depriving merchants from their political rights is not as significant to them as the obstacles that will face them after declaring their bankruptcy; socially, financially and their reputation…

- **الحقوق السياسية:**

أشار الحاضرين الى أن هذه العقوبة بحد ذاتها لا تشكل تهديد أورادع للتجار بقدر المعوقات التي ستلحق بهم بعد إشهار الإفلاس من معوقات إجتماعية، مالية والسمعة التجارية...

- **Reorganization:**

There has to be a distinction when reorganizing a company between small and bigger businesses, through looking into certain indicators to determine the size and importance of the project:

- The number of laborers.
- The company's capital
- The business duration

Such factors must be taken into consideration when deciding whether to liquidate or reorganize a company.

- **إعادة الهيكلة:**

تم الإشارة الى وجوب التفرقة عند إعادة الهيكلة والأخذ بعين الإعتبار حجم هذه الأعمال وتأثيرها على الإقتصاد. وذلك من خلال وضع عدة معايير لحجم المشروع أوالشركة:

- عدد العمال
- رأس المال
- عدد سنوات العمل

وعندها يتم أخذ هذه الأمور بعين الإعتبار وأن لا يتم اللجوء الى التصفية مباشرة بمجرد التوقف عن الدفع.

- **General recommendations:**

1. Devising a clear work plan with specific timeframe and fund.
2. Introducing modified provisions governing bankruptcy after analyzing bankruptcy and liquidation cases and taking into consideration all the legal gaps and practical limitations that faced the liquidator, receiver or the creditors…
3. Introducing provisions dealing with "fraudulent liquidation" similar to fraudulent bankruptcy.
4. Revising the provisions addressing bankruptcy in the current law, which are considered outdated with a special focus on the provisions regulating Liquidation since liquidation is more in use than bankruptcy.

- **توصيات عامة:**

1. وضع خطة عمل واضحة بجدول زمني معين وتمويل محدد.
2. وضع نصوص القانون الموحد للإفلاس بعد دراسة قضايا إفلاس وتصفية واقعية ووضع نصوص تشريعية تتجنب الثغرات التشريعية والمشاكل العملية التي واجهت المصفي، وكيل التفليسة، الدائنين...
3. وضع نصوص تعالج التصفية الإحتيالية كما هوحال الإفلاس الإحتيالي.
4. إعادة النظر بنصوص الإفلاس في قانون الشركات الطويلة والقديمة والتركيز على نصوص التصفية حيث ان تطبيق التصفية هوأوسع وأكثر إستعمالاً من الإفلاس نظراً لقضايا الإفلاس القليلة مقارنة مع تصفية الشركات.
5. استحداث صندوق ضمانات يقتطع مبلغ احتياطي معين من الشركات عند تسجيلها وذلك لتغطية نفقات التصفية إن وجد لها داع.

5. Introducing a fund for deducting reserved amounts from companies as to cover the liquidating expenses when necessary**.**

Fifth Roundtable – Judges

Kempinski Hotel – Amman

14/6/2008

- **General Discussion:**

One of the judges mentioned that Bankruptcy procedures (creditor's identification, sale of property…) are the part that takes so long whereas court proceedings with this regard do not exceed one or two years, which is considered as a short period in comparison with the neighboring countries.

One of the Judges – judge, differentiated between civil insolvency and Bankruptcy indicating that insolvency procedures that take place in court are no more than issuing the order of interdiction of the insolvent debtor, which does not take more than one or two court sessions.

The judges noted that courts' decisions regarding bankruptcy do not need a long time. But the most time consuming part is appointing a receiver. Nevertheless, this would not need a lot of time considering that procedures relating to commercial matters in the law are usually expedited.

The companies' controller added that according to the statistics, the reasons for delays are due to the complicated notification procedure, or for lack of funding to pay for the liquidation case, which needs to be settled before a case is considered closed.

- **مناقشة عامة:**

أشار القضاه الى أن إجراءات الإفلاس، حصر الدائنين والبيع... هي التي تستغرق الوقت الطويل بينما إجراءات المحاكم في هذا الشأن تكاد لا تستغرق سنة أوسنتين كي يتم إنجازها وهي من الأسرع في المنطقة.

أما أحد القضاه ، ففرق بين الإعسار المدني والإفلاس مبيناً أن إجراءات الإعسار المتعلقة بالمحكمة لا تتجاوز إصدار الحكم بوضع المدين تحت الحجر وذلك لا يستغرق أكثر من جلسة أوجلستين.

أما الإفلاس فإتخاذ القرار في المحكمة لا يحتاج الى وقت طويل ولكن ما قد يستغرق أكثر الوقت هو تعيين وكيل التفليسة ومع ذلك فهي مدة ليست بطويلة جداً فإجراءات قانون التجارة تتسم بطابع السرعة.

وأضاف مراقب الشركات الى أنه ووفقاً للإحصائيات فإن أسباب التأخير تعود أما الى صعوبة التبليغات وطول أمدها أوبسبب التكاليف في القضايا المنتهية التي تحتاج الى تغطيتهاً كي تعد منتهية.

- **Special Bankruptcy Rules of Procedure.**

One of the Judges pointed out that there shall be a special set of rules of procedure for bankruptcy and liquidation cases. The legal provisions of civil insolvency may not be combined with the commercial bankruptcy, as to expedite the judicial procedures with regard to these disputes in connection with merchants. Therefore specialized procedures shall be determined for these cases.

- **أصول محاكمات خاصة بالإفلاس:**

وضح أحد القضاه أنه يجب ان تكون هنالك أصول محاكمات خاصة بقضايا الافلاس والتصفية. كما أنه لا يمكن أن يتم جمع النصوص القانونية المتعلقة بالمدين المعسر ضمن أحكام قانون التجارة. أما فيما يتعلق بتسريع إجراءات التقاضي في هذه النزاعات كونها تتعلق بالتجار والشركات التجارية فيتوجب أن يكون هنالك إجراءات خاصة بها لتحقيق هذه الغاية.

- **The current law:**

One of the judges, described the complication and the lack of clearance in the current law especially with regard to voluntary liquidation; which hinders the court from properly supervising the procedures, which gives discretion to liquidators, who intentionally prolong the liquidation procedures, adversely affecting the rights of stakeholders.

In most cases, the liquidator's remunerations consumes the estate leaving very little to cover the expenses and pay the creditors.

- **القانون الحالي:**

أشار أحد القضاه الى تعقيد وعدم الوضوح في القانون الحالي خاصة فيما يتعلق بالتصفية الإختيارية والتي تشل يد المحكمة عن المراقبة الموضوعية لإجراءات التصفية وتطلق العنان للمصفي وإطالة أمد التصفية وبالتالي التأثير على أصحاب الحقوق.

فأتعاب المصفي تطغى على نتيجة التصفية.وفي بعض الأحيان قد لا يتم تحصيل أتعاب المصفي وذلك لصعوبة تحديدها.

- **Voluntary liquidation:**

The Companies' Controller mentioned that there is a critical aspect in the current law within the voluntary liquidation as there is no provision granting the court the authority to supervise this liquidation. This deficiency will prove more critical as the new Companies' Law brings down the minimum capital of a limited liability company

- **التصفية الإختيارية:**

أشار مراقب عام الشركات الى أن الجانب الخطر في القانون الحالي وهوالتصفية الإختيارية وبين أن دور المحكمة يتمثل في الإذن للمصفي ببيع الموجودات في الشركة فقط وذلك بموجب إستدعى لا يوجد نصوص تسعف بالرقابة القضائية.

ومما يزيد من أهمية هذا الشأن وخطورة الوضع هوتحفيض رأس مال الشركات ذات المسؤولية المحدودة الى 1000 دينار وفقاً لمسودة قانون الشركات.

to JD 1000.

- **Reorganization:**

One of the judges emphasized the importance of reorganization and noted that it may well be the only regulated alternative to avoid fraudulent liquidation.

The Companies' Controller added that the reorganization is presented through reorganizing the companies' capital, the administrative structure or altering the objectives of the company to comply with the needs of the local market. Furthermore, the new Companies' draft Law allowed companies under liquidation to be sold to or merged with another company. The creditors shall have the right to object to these decisions. All these procedures shall take place outside the court.

One of the Judges emphasized that the reorganization's procedures shall be taken in advance and not after or while liquidating the company and courts shall have an active role therein.

The companies' controller pointed out that individual enterprises may not be included in the reorganization process subsequent to its characteristic and its owner's free choice of how to run it. However, one of the mentioned that there is no reason for not including such businesses in the reorganization process especially when the mentioned business employs a significant number of workers.

- **أعادة الهيكلة:**

أشار احد القضاه أهمية إعادة الهيكلة بأنها الحل البديل الذي يمكن مراقبته لتجنب التصفية الإحتيالية.

وأضاف مراقب عام الشركات الى أن إعادة الهيكلة تتمثل إما في اعادة هيكلة رأسمال الشركة أوجوانب الإدارة التنظيمية اوتعديل أهدافها للتتوافق مع متطلبات السوق الحالي. كما أن مشروع قانون الشركات الجديد سيسمح للشركات تحت التصفية بان تندمج مع شركة أخرى ليتم عندها وقف التصفية أوبيع هذه الشركة المراد تصفيتها. ووضح أن هذه الإجراءات مقننة في مسودة قانون الشركات والتي سيتم بموجبه بيع الشركة المراد تصفيتها بقرار الهيئة العامة وشراءها من قبل شركة أخرى بقرار هيئتها العامة تحت رقابة دائرة مرقبة الشركات ويحق للدائنين إبداء إعتراضاتهم بهذا الخصوص. وكل هذه الإجراءات تحصل خارج إطار المحكمة.

بين أحد القضاه أن إجراءات إعادة الهيكلة يجب أن تتم قبل التصفية وأن يكون للقضاء دور فاعل فيها.

وأضاف مراقب عام الشركات الى أنه يجب مراعاة ان المؤسسة الفردية من غير المتصور ان يتم شمولها في إطار إعادة الهيكلة وذلك لخصوصيتها وحرية مالكها في إدارتها. ومن جانب آخر أحد القضاه أنه لا مانع من شمول المؤسسات الفردية وضح الضخمة في إعادة الهيكلة سيما التي تتعلق بها حقوق الأفراد والعمال بشكل كبير.

- **A need for a new law?**

One of the judges emphasized the importance of enacting an independent, separate and elaborate law including special, clear and smooth procedures.

One of Judges indicated the importance of including two aspects when introducing a new bankruptcy law in its broader sense to facilitate the quick settlement of such cases but not to include the two aspects in one law:

- Substantive aspect: that regulates filing the case till the point of issuing a liquidation or bankruptcy decision.
- Procedural aspect: regulates the procedures of the liquidation process.

One of the Judges seconded that and added that insolvency shall not be included in the same law whereas it is already regulated in the civil law and the insolvency cases are not as significant as the liquidation and bankruptcy cases.

From a practical point of view, there is an urgent need to introduce such law, as the importance of such cases is not measured by how frequent it occurs but by how much it affects the Jordanian economy. Especially the process governing

- **الحاجة الى قانون جديد؟**

أشارأحد القضاه الى ضرورة وجود قانون مستقل منفصل عن القوانين الأخرى وأن يتوسع فيه بأن يكون له إجراءات خاصة واضحة وسهلة.

أحد القضاه الى أن القيام بأي إستحداث ومن جهة أخرى عبر لقانون خاص بالإفلاس بمعناه الواسع يجب أن يشمل جانبين لتسهيل البت في مثل هذه القضايا بالسرعة القصوى:

- جانب موضوعي: وتمتد قواعد هذا الجانب من إقامة الدعوى لحين صدور الحكم بإعلان التصفية أوالإفلاس.
- جانب شكلي: يمثل الجانب الإجرائي من التصفية

ووأشار الى عدم جدوى وضع الإجراءات والقواعد الموضوعية في قانون واحد.

أحد القضاه رأي القضاة السابق بضرورة إستحداث وشارك تشريع ينظم حالات الإفلاس والتصفية كون هذه الحالات لا تكون إلا على شركة أوتاجر. أما الإعسار فوجد أنه منظم في القانون المدني وفيه ما يكفي لتنظيم هذه الحالة خاصة أنها حالات قليلة جداً لا تماثل حالات الإفلاس والتصفية.

وبين أنه من ناحية عملية فإنه يوجد حاجة ملحة الى استحداث قانون جديد حيث أن أهمية هذه القضايا لا تقاس بعددها بل بمدى تأثيرها على الإقتصاد الأردني خاصة في حكم عملية الإفلاس والتصفية وكيفية تحصيل الديون ومراتب الدائنين وليس من الضروري أن يتم إستحداث القانون من الصفر بل من خلال تجميع النصوص المبعثرة في القوانين المختلفة لتسهيل نظر الدعوى وتسريع البت فيها وتحقيق العدالة.

ومع ذلك إتجه بعض القضاة الى عدم الحاجة الى إيجاد تشريع جديد بل أن يتم تطوير وتحديث القانون الحالى بالنسبة لقانون التجارة. وأن التصفية لا تحتاج الى أي تعديل بإستثناء أحكام

bankruptcy and liquidation, the collection of debts and the priority of debtors. A new law does not necessarily mean that it shall be enacted from nothing. Provisions may be consolidated from different laws to be in one law as to facilitate and accelerate the process.

However, some judges indicated that it is not necessary to enact a new law but rather to amend and develop the current Commercial Code. And that liquidation provisions need no amendments except for the voluntary liquidation provisions.

التصفية الإختيارية.

- **the concept of bankruptcy:**

One of the Judges explained that there has to be a purpose for distinguishing between the terms (liquidation, bankruptcy and insolvency), since all of them have one meaning. The bankrupted merchant will reach the same result as the liquidated company.

- **مفهوم الإفلاس:**

أحد القضاه الى أنه لا بد من وجود غاية أوهدف من تحدث هدم التفرقة في المصطلحات بين الإعسار، الإفلاس والتصفية خاصة أن مؤداهم واحد في النتيجة فالتاجر المقرر إشهار إفلاسه سيصل الى نفس نتيجة إعلان تصفية الشركة.

- **Banks and Insurance Companies:**

The Companies' Controller explained that excluding banks and insurance companies from the terms of the law governing other companies' is unacceptable. In the meantime, he highlighted the necessity of maintaining special provisions to regulate banks within the law in connection with liquidation procedures only. As for the insurance companies, he said that such companies shall not be any different from any other public shareholding company.

- **البنك المركزي وشركات التأمين:**

وضح مراقب عام الشركات أن إستثناء البنوك وشركات التأمين من أحكام القانون المتعلق بالشركات الأخرى هوأمر غير محبذ مع تسليطه الضوء على منح البنوك ضمن إطار القانون نصوص معينة تراعي خصوصيتها بإجراءات التصفية. أما شركات التأمين فوضح أنها لا تتمتع بأي خصوصية عن أي شركة مساهمة عامة أخرى.

One of Judges explained that if the current law was improved with regard to bankruptcy and liquidation, whether by amending the current provisions or brining them together in a separate law that deals with all the bankruptcy and insolvency issues, there should be no need to exclude the mentioned companies. He also added that the provisions of the new law shall be clear and customized for the liquidation of banks and insurance companies.

أحد القضاه بين أنه إذا تم تعديل القانون الذي ينظم الإفلاس والتصفية بإطار جديد سواء بتعديل و/أوجمع النصوص المبعثرة بمعالجة جميع حالات الإفلاس والإعسار فالاستثناء لا يعود له مبرر أما إذا تم الإبقاء على الحال كما هوالآن فيجب أن يتم الإبقاء على شركات التأمين والبنوك على حالتها. مع ضرورة وضع نصوص خاصة واضحة في القانون الجديد تنظم تصفية شركات التأمين والبنوك.

Judge dded that giving the Central Bank the authorities it has now is justifiable. Since it is the

وأضاف القاضي الى أن إعطاء البنك المركزي الصلاحية المعطاة له حالياً تعلل بأنه الجهة الأكثر مقدرة من الناحية العملية والفنية على فهم واقع البنوك. أما بخصوص شركات التأمين فلا مبرر لاستحداث قوانين مستقلة لمثل هذا النوع من الشركات

only body practically and technically capable to relate to the banking business. As for the insurance companies, there is no reason for enacting independent and separate laws to regulate this type of business from other companies.

فأهميتها ليس بالمبرر الكاف لإفرادها عن الشركات الأخرى.

ومن جهة أخرى وضح جانب آخر من القضاة الى أن شركات التأمين يتعاملون مع قطاع واسع من العملاء كما هوالحال في البنوك. لذا فلا مانع من أن تكون بعيدة عن المحاكم وأن تتولى شؤونها هيئة خاصة بالتأمين.

While a number of judges explained that insurance companies deal with lots of clients as the case it is with banks. Therefore, entrusting its issues to a special insurance committee is understandable.

- **The priority of debts:**

- **أولويات الديون:**

The companies' controller pointed out that if the liquidation expenses (advertisements, stocktaking committees...) were not given the priority upon other expenses then no liquidation shall take place.

بين مراقب عام الشركات الى ان نفقات التصفية (الإعلانات، لجان الجرد...) إن لم يتم تقديمها على بقية الحقوق فلن تتم التصفية أساساً.

As for the liquidator's remunerations then this shall be linked to the period and the size of the liquidated business and the General Assembly shall determinate in advance (in the voluntary liquidation) the liquidator's remunerations and the liquidation period and this shall not be left to the discretion of the liquidator.

أما أتعاب المصفي فيجب أن ترتبط بمدة وحجم التصفية وأن تحدد الهيئة العامة في التصفية الإختيارية إبتداءً أتعاب النصفي ومدة التصفية وأن لا تترك لتقدير المصفي.

Afterwards the laborer's debts and the secured debtor then the ordinary (unsecured) debtors.

ومن ثم تأتي حقوق العمال والدائن المؤمن ومن بعده الدائن العادي.

The priority of the treasury debts was discussed especially the income tax, sales tax and social security. The participants agreed that it is illogical to grant these debts the priority of the treasury debts especially if the mentioned entities neglected the claim of such debts over the years to come and collect its debts before any other debtor.

تم بحث أولوية حقوق الدولة لا سيما ضريبة الدخل والمبيعات والضمان الإجتماعي وأجمع الحضور على عدم منطقية إعطاء الأولوية لها بوصفها أموال أميرية بعد أن تكون هذه الجهة قد قصرت في المطالبة على مدى السنوات السابقة لتأتي وتتصدر توزيع أموال التصفية أوالتفليسة فالمقصر أولى بالخسارة.

- **Specialized Courts and Judges.**

- **تخصص القضاة والمحاكم**

Specialization has many advantages as it speeds up the resolution of cases and the following up of procedures. The judges explained that the judicial council and the ministry of justice aim at establishing specialized commercial and civil chambers within the courts, which will dramatically speed up the dispute

التخصص يعود بفوائد سرعة البت في القضايا ومتابعة الإجراءات. وأشار القضاة الى أن المجلس القضائي ووزارة العدل يعملون على استحداث غرف تجارية ومدنية مما سيعمل على حل النزاع جذرياً في المستقبل.

resolution in the future.

- **Civil rights:**

The judges pointed that this is a common practice in most legislation; nevertheless, the deprivation of political rights shall be restricted to merchants who committed fraudulent bankruptcy.

- **الحقوق السياسية:**

معظم التشريعات قد أخذت بهذا الإتجاه بأن يحرم المفلس من حقوقه السياسية مدة معينة. إلا أن الحرمان من هذه الحقوق يجب أن يتم قصرها على المفلس إحتيالياً لا أن تشمل جميع حالات الإفلاس.

- **Stopping Payments.**

The judges were of the view that this should be a matter of discretion for the courts to assess whether such stoppage is due to serious delinquency of the company or occasional. In doing so, due consideration shall be given to the amount of the late payments, the commercial reputation of the merchant and the duration in which the debtor stopped paying.

- **التوقف عن الدفع:**

يجب أن يكون هناك صلاحية تقديرية للمحكمة لأن تحدد إن كان التوقف عن الدفع ناتج عن تعثر بسيط خاصة إن قدم الطلب من المدين. التحقق من أكثر من بداية الإنهيار فمن الممكن تجاوز أوتقليص الإنهيار. وأن يتم ربط قرار اعتبار الدائن متوقف عن الدفع بحجم المبالغ المالية المتوقف عن أدائها، السمعة التجارية والمدة التي تم التوقف فيها عن الدفع.

- **General recommendations:**

1. To differentiate between the provisions, which regulate the status of the individual merchant and the company as a merchant.

2. Establish a fund to collect a fixed sum by the company that is being founded to cover the liquidation expenses if necessary.

- **توصيات عامة:**

1. التفرقة في الأحكام التي تنظم حالة التاجر فيما إن كان شخص طبيعي عما إن كان شخص معنوي.

2. تأسيس صندوق (ضمانات) تدفع الشركة عند تأسيسها مبلغ إحتياطي لتغطية نفقات التصفية إذا وجد حاجة لذلك.

APPENDIX 2

QUESTIONNAIRE RESULTS

Surveys sent by YEA.

20 valid responses.

1. Are you a (check all that are applicable):
   A. Attorney **3**
   B. Business Association Representative ___
   C. Business Owner or Manager **8**
   D. Financial Institution Manager or Employee **4**
   E. Government Official **1**
   F. Judge ___
   G. Trustee ___
   H. Law Professor ___
   I. Other (please specify) **6**

2. How many Insolvency cases have you been involved in?
   A. 0 ___
   B. 1 (Bankruptcy 3, compulsory liquidation 2, non-compulsory liquidation 1)
   C. 2 to 5 (Insolvency 1)
   D. 6 to 15 -
   E. More than 15 -

3. In an insolvency law and system in Jordan what should be the priority of each of the following objectives? (please number in order of importance)
   A. More lending and better terms for borrowers (collateral requirements, loan period, interest rates) **6.125**
   B. Keeping the insolvent business in operation and preserving jobs **2.625**
   C. Fostering risk taking by entrepreneurs **2.625**
   D. Distributing proceeds to all creditors **2.75**
   E. Maximizing payment to creditors **2.5**
   F. Punishing insolvent debtors and bad management **2.37**
   G. Quickly winding up insolvent businesses and moving their assets to more productive uses **2.5**

4. Which creditors' claims should have the highest priority? (please number in order of priority)
   A. Costs of the Insolvency Case (Trustees fees, expenses) **2.375**
   B. Government Tax Claims **2.5**
   C. Spouse and Child Support **2.625**
   D. Secured Creditors **2.375**
   E. Employees Wages **2.25**
   F. Suppliers **2.625**
   G. Shareholders **2.65**
   H. Other Claims (please specify) _____

5. Should Jordan have restructuring/reorganization as an option?
   A. Yes **13**
   B. No **4**

   Please advise us of any comments you have on how restructuring/reorganization should be administered:

6. Should Jordan include consumer Insolvency in a new Insolvency Law?
   A. Yes **18**
   B. No **2**

   Please advise us of any comments you have on how consumer Insolvency should function:

7. Should Jordan have different insolvency proceedings for different sizes of businesses (small, medium, large) or form of entity (limited liability company, sole-proprietorship, public shareholding company, etc.)?
   A. Yes:**17**
   B. No: **4**

   Please advise us of any comments you have on how different sizes of businesses or types of entity should be treated:

8. Should Jordan have the following specialization in courts? (please choose only one)
   A. Specialized commercial courts **6**
   B. Specialized commercial divisions within first instance civil courts **2**
   C. Specialized insolvency courts **4**
   D. Specialized insolvency judges **2**
   E. Specialized commercial judges **3**

9. What are the most important problems that you have observed in administration of Insolvency cases in Jordan in the past?
   A. Slow case administration **4**
   B. Poor procedures for liquidation and sale of assets **3**
   C. Poor management by trustees **3**
   D. Uncertain provisions in the law **3**
   E. Poor decisions by courts **3**
   F. Lack of knowledge or preparation by creditors **3**
   G. Fraudulent acts by creditors **2**
   H. Delay tactics by debtors **2**
   I. Fraudulent acts by debtors **2**
   J. A lack of reorganization procedures and/or practices ___
   K. Other (please specify) _____
      _____

10. Is a new, consolidated Insolvency law needed or should the current laws be amended?
    A. New consolidated law **12**
    B. Amend current laws **8**

APPENDIX 3

UNCITRAL GUIDE LIST OF COMMON FEATURES OF AN EFFECTIVE AND EFFICIENT INSOLVENCY LAW

(a) Identifying the debtors that may be subject to insolvency proceedings, including those debtors which may require a special insolvency regime;

(b) Determining when insolvency proceedings may be commenced and the type of proceeding that may be commenced, the party that may request commencement and whether the commencement criteria should differ depending upon the party requesting commencement;

(c) The extent to which the debtor should be allowed to retain control of the business once insolvency proceedings commence, or be displaced and an independent party (in the Legislative Guide referred to as the "insolvency representative") appointed to supervise and manage the debtor, and the distinction to be made between liquidation and reorganization in that regard;

(d) Identification of the assets of the debtor that will be subject to the insolvency proceedings and constitute the insolvency estate;

(e) Protection of the insolvency estate against the actions of creditors, the debtor itself and the insolvency representative and, where the protective measures apply to secured creditors, the manner in which the economic value of the security interest will be protected during the insolvency proceedings;

(f) The manner in which the insolvency representative may deal with contracts entered into by the debtor before the commencement of proceedings and in respect of which both the debtor and its counterparty have not fully performed their respective obligations;

(g) The extent to which set-off or netting rights can be enforced or will be protected, notwithstanding the commencement of insolvency proceedings;

(h) The manner in which the insolvency representative may use or dispose of assets of the insolvency estate;

(i) The extent to which the insolvency representative can avoid certain types of transaction that result in the interests of creditors being prejudiced;

(j) In the case of reorganization, preparation of the reorganization plan and the limitations, if any, that will be imposed on the content of the plan, the preparer of the plan and the conditions required for its approval and implementation;

(k) Rights and obligations of the debtor;

(l) Duties and functions of the insolvency representative;

(m) Functions of the creditors and creditor committee;

(n) Costs and expenses relating to the insolvency proceedings;

(o) The treatment of claims and their ranking for the purposes of distributing the proceeds of liquidation;

(p) Distribution of the proceeds of liquidation;

(q) Discharge or dissolution of the debtor; and

(r) Conclusion of the proceedings.

APPENDIX 4

TRUSTEES' FEES

Comparing scales for trustees fees in Serbia, Germany, the United Kingdom, and the United States, we find the following general principles for allocation of fees and awards of trustees in insolvency cases.

- In all compared countries the fees and awards are determined as a percentage of the realized (sold) assets from the bankruptcy estate.
- All compared countries have different rules on additional award above the amount determined by the fixed scale. However, the principles are the same, e.g. complexity, rate of creditors' satisfaction, involvement in debtor business operations in bankruptcy, etc.. The differences between the compared countries in regard to the additional award are based on the level of detail provided in the regulations, standards and guidelines.
- In continental law countries (like Germany) fees and awards are determined by sub-law ordinances, which in detail regulate and fix the formula and scale according to which the fees and awards of the bankruptcy administrators are determined.
- In common law countries (like UK and US) the remuneration of the trustee/liquidator is fixed by the creditors'/liquidation committee. If there is no committee, it may be fixed at a meeting of creditors. The remuneration can be fixed as a percentage of the value of the assets realized or distributed or on a time basis. The Bankruptcy regulators provide standards and guidelines for the fees and awards calculation based on scale of realization or distribution. In case of remuneration based on time basis the regulator provides template form with guidelines for fulfillment along with request for proof of evidence.

Serbia	Germany	UK	US
Realization scale [1] (art.4) Up to 1.000 € 100% 1.001 - 2.500 € 1.000 € +20% above1K € 2.501 - 25.000 € 1.300 € +10% above2,5K € 25.001 - 50.000 € 3.550 € +8% above25K € 50.001 - 250.000 € 5.550 € +3% above50K € 250.001 - 500.000 € 11.550 € +1,5% above250K € 500.001 - 2,5 M € 15.300 € +1% above500K € Above 2,5 M € 35.300 € +0,5% above2,5M €	**Realization scale[2] (art. 2)** Up to 25.000 € 40% 25.000 – 50K € 10.000€+25% above 25K€ 50.000 - 250K € 16.250€ +7% above 50K€ 250.000 – 500K € 30.250€+3% above 250K€ 500.000 - 25M € 37.750€+2% above 500K€ 25M - 50M € 77.750€+1% above 25M€ above 50M € 552.750€+0,5% above 50M€	**Realization scale[3]** Up to 7.363 € 20% 7.363 – 14.727 € 1.473€+15% above 7K € 14.727 - 132.542 € 2.577€ +10% above 14K€ above 132.542 € 14.359+5% above 132K € Alternatively: **Distribution scale** Up to 7.363 € 10% 7.363 – 14.727 € 736€+7,5% above 7K € 14.727 - 132.542 € 1.289€ +5% above 14K€ above 132.542 € 7.179€+2,5% above 132K €	**Realization scale[4]** Up to 3.632 € 25% 3.632 – 36,318 € 908€+10% above 3,6K€ 36.318 - 726.360 € 4.177€ +5% above 36K€ above 726.318€ 36.679€+3% above 726K€
[1] Fee and awrds of bankruptcy administartors – Regulation issued by MoE, Serbia	*[2] Regulation on Bankruptcy fees and awards – 1998*	*[3] The Insolvency Rules No. 1925/1986 (Rules 4.127A, 4.127B,4.148B and 6.138A, Schedule 6)* *Statutorz Instrument 1994 No. 2507, Schedule 2, Table 1*	*[4] The United States Bankruptcy Code Title 11, Chapter 3 Case administration, Subchapter II Officers § 326 Limitation on compensation of Trustee (a) (under Chapter 7 and 11)*

Additional awards for bankruptcy administrators

Serbia	Germany	UK	US
Complexity of case (art.6) 1.001 - 2.500 € 10% of basic award 2.501 - 25.000 € 9% of basic award 25.001 - 50.000 € 8% of basic award 50.001 - 250.000 € 6% of basic award 250.001 - 500.000 € 4% of basic award 500.001 - 2,5M € 2% of basic award above 2,5M € 1% of basic award **Satisfaction of creditors claims(art. 5)** For every 10% recover above 50% recovery of creditors' claim additional award of 2% of proceeds of sale	**Application of special knowledge** If bankruptcy administrator will also perform the duties of a litigation lawyer, auditor or manager of running business, his award is additionally increased for the conducted job according the adopted tariff for the profession performed. The Bankruptcy court determines separately the fees and award of the bankruptcy administrator and his costs.	**Additional award** The Creditors' Committee or General Assembly of creditors may decide to additionally award the administrator in regard to their claim satisfaction	**Additional award** The Creditors' Committee or General Assembly of creditors may decide to additionally award the administrator in regard to their claim satisfaction

Example on calculation of fee and award of a bankruptcy administrator

Serbia	Germany	UK	US
Bankruptcy estate cashed for 500.000€ **Total Debt: 1.000.000€** Administrator fee: 11.550 € +1,5% of 250.000€ = **15.300€**	**Bankruptcy estate cashed for 500.000€** **Total Debt: 1.000.000€** Administrator fee: 30.250€+3% of 250.000€=**37.750€**	**Bankruptcy estate cashed for 500.000€** **Total Debt: 1.000.000€** Administrator fee: 13.254+5% of 367.458€=**32.731.62€** Alternatively: 6.627€+2,5% 367.458 €=**16.365.81€**	**Bankruptcy estate cashed for 500.000€** **Total Debt: 1.000.000€** Administrator fee: 3.632€ +5% of 463.682€=**27.360€**

USAID JORDAN ECONOMIC DEVELOPMENT PROGRAM

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