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The Control over Limited Liability Company Operations: A Comparative Study

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Abstract

The limited liability company's creditworthiness is compromised due to the limited liability of its partners, resulting in reduced security for its creditors. To safeguard the interests of these creditors, it becomes necessary to enhance control measures. This study aims to explore various aspects of control within such a company, with a particular focus on the role of the company's auditor throughout its different stages. The study seeks to analyze the position of the Jordanian legislator in comparison to other legal frameworks, including those of Egypt, Syria, and Lebanon. Divided into three sections and a conclusion, the research reveals that the Jordanian legislator has granted the auditor discretionary power in determining the approval or rejection of the company's registration, without providing specific criteria for making this decision. Additionally, there are no guarantees in place to ensure debt repayment and protect the creditors. Furthermore, there is currently no regulation in place regarding the responsibility of auditors to ensure that partners deposit the outstanding portion of their capital within the designated timeframe. In light of these findings, the study proposes a number of suggestions.

Keywords: Liability Company, Control, Management Activities, Company Liquidation.

Introduction

In the Companies Law of Jordan, Articles 53 to 76 outline the regulations governing limited liability companies. These provisions highlight that such companies do not possess a strong credit standing, as they lack the assurance of absolute personal liability found in partnership companies or the security provided by substantial capital in joint-stock companies. The Jordanian legislator has established a minimum capital requirement of one Jordanian Dinar for these companies, and the liability of partners is limited to the value of their respective shares. Furthermore, partners in limited liability companies are not subject to bankruptcy provisions that determine their liability and oversee their management. This poses a potential risk to the company's creditors, who are unable to pursue

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the partners for their personal assets in the event of the company's failure to meet its debts (Al-Makhzoumi, et al., 2024).

Furthermore, in accordance with Jordanian law, as well as Egyptian law and various other legislations, it is permissible to establish a LLC with only one member. The purpose behind this provision is to incentivize small investors to channel their funds into limited liability ventures. The management of such a company bears liability limited to the amount of capital invested, while the sole partner enjoys autonomy and flexibility in the organization and administration of the business. This makes it an appealing choice for individuals seeking to invest their funds without assuming personal liability. Consequently, it becomes evident that the owner of the capital in a single-member company is solely accountable up to the extent specified in the company's founding agreement. As a result, this weakens the overall protection provided to creditors (Al-Sayed, 2019; Abu Al-Ghaith, 2021).

The importance of controlling a company's operations becomes apparent when considering the risks involved. Controlling these operations is crucial for safeguarding the company, and the specific forms of control differ from country to country. In Jordanian law, this control is demonstrated through the oversight of the company's auditor. Thus, the significance of this supervision is the focus of this research.

Control over the LLC during its Establishment Phase

To establish a LLC, there are certain conditions and procedures that must be adhered to, along with the general requirements that apply to all companies. The company's compliance with these conditions is monitored by the company auditor, who is responsible for evaluating and deciding whether to approve or reject the establishment of the company.

During the process of establishing a company, the auditor plays a crucial role in examining various aspects, with particular focus on the company's capital. This is because the capital serves as a significant safeguard for the company's creditors, making it a matter of utmost importance. Another area of scrutiny for the auditor is the allocation of shares among the partners, specifically in terms of their tangible contributions to the company. Prior to granting approval for the company's registration, the auditor must thoroughly assess whether all the establishment conditions have been met and if the company complies with the relevant laws. Only after this evaluation can the auditor make a decision to either approve or reject the establishment of the company (Amoush, 1994). In this section, we will study these issues as follows:

a. Control over the Company's Capital

In Law No. 57 of 2006, the Jordanian legislator established that a LLC must have a minimum capital of one Jordanian Dinar. Since the company's capital serves as the main assurance for its creditors, it is important to consider whether the legislator implemented any additional safeguards to protect the rights of these creditors when the company's capital falls short in this way.

Contrary to expectations, the Jordanian legislature failed to implement any safeguards to protect the interests of creditors. Instead, it bestowed upon partners the privilege of only paying a fraction, less than 50%, of the company's capital upfront, with the remaining sum to be settled within a two-year timeframe subsequent to registration. Notably, the company auditor does not possess any authority to oversee the payment of the outstanding balance (Malham & Al-Tarawneh, 2012).

The proper establishment of a LLC in Lebanon necessitates a minimum capital of 5,000,000 Lebanese pounds in accordance with the country's legal framework (Nassif, 2008). In Egyptian law, the minimum value of shares is set at 100 Egyptian pounds, and partners are required to fully pay their value when the company is established (Ash-Shawarbi, 1991)

Different countries have different regulations regarding the amount and payment of capital for companies. For example, Lebanese legislation imposes strict regulations on the amount of capital, while Egyptian and French laws require immediate and direct payment of the entire capital upon registration. On the other hand, Jordanian law has reduced the minimum capital requirement to just one dinar. In order to ensure compliance and completion of capital payments, it is important for the legislator to consider increasing the company's capital and enforcing immediate and direct payments from partners. Alternatively, guarantees can be established to secure the remaining portion of the capital in case of partial payment. The auditor plays a crucial role in verifying the complete payment of the entire capital within the specified period. If partners fail to comply with the payment requirements, the company auditor must take necessary actions, including warning the partners to pay the remaining amount. If the partners still refuse to pay within the specified period, the auditor may decide to liquidate and terminate the company (Al-Jbour & Ibrahim, 2023).

b. Control over the Appraisal of In-kind Contributions

Regarding the ownership stakes held by partners in the company, they have the option to contribute either cash or assets. In the case of in-kind contributions, the individuals providing these shares are required to transfer ownership to the company within a 30-day timeframe following registration, as outlined in Article

58 of the Companies Law. It is worth noting that this period can be extended with the approval of the auditor (Meknass, 2023). Did the legislator intend here to make this period renewable only once, or several times in succession?

Upon examination of the legislation, it becomes evident that the auditor has been bestowed with discretionary power in this matter. The language used suggests that the auditor is permitted to extend this timeframe on multiple occasions. This potential for repeated extensions could result in a delay in the transfer of ownership of in-kind shares to the company, thereby compromising the overall protection provided to creditors.

In the event that the individuals providing in-kind contributions do not fulfill their obligation to deliver these shares as stipulated, they are deemed responsible for compensating their value in monetary form, at a rate determined by the company's founders within its established framework. The auditor is entitled to request supporting documentation that verifies the precise valuation of these shares. The Jordanian legislature has entrusted the institution with the responsibility of appraising the worth of these shares and has granted the auditor discretionary authority to verify the precision of this assessment (Al-Ma'mari, 2023).

Under the Egyptian law, partners must present in-kind contributions at the time of the contract, and their value must be evaluated by professionals in regulated fields based on the specific nature of each share (Qarman, 1995).

c. Control Over Ensuring That the Company's Articles of Association and Regulations Adhere to The Law

The company's auditor plays a crucial role in ensuring that the company's articles of association and regulations adhere to the law. Once the articles of association and regulations are organized and submitted to the auditor, it is their responsibility to thoroughly examine and verify compliance with all conditions, ensuring that there are no violations of the law.

However, in Jordanian legislation, the legislator has granted the partners the authority to contest the rejection decision by the auditor within 30 days of receiving notification. Should the minister uphold the rejection, the objectors have the option to appeal to the Supreme Court. It is commendable that our legislator has implemented this process. Contrastingly, the process for company registration in Syria involves submitting the articles of association and basic regulations to the court of first instance's registry and subsequently registering them in the commercial register (Al-Aqeeli, 1995).

Oversight of LLC During Operations

Once the LLC has completed the process of registration in the company register and made the necessary announcements, it transforms into a fully recognized legal entity. At this point, it acquires a designated domicile, a specific nationality, financial responsibilities, and the ability to engage in all activities that align with the company's established objectives. During this stage, it is crucial for the management's actions to be closely monitored and for oversight to be exercised over general assembly meetings and the appointment of auditors. The legislator has taken steps to regulate these matters in order to ensure that the company's operations are subject to appropriate oversight. This serves to safeguard the rights of third parties and provide them with the necessary assurances. In doing so, the legislator has demonstrated a commitment to preventing any potential lack of oversight in these areas. This is what we will discuss in the following study:

a. Oversight of Management Activities

In Jordanian law, the responsibility of managing the company is given to a director or a board of directors who possess complete authority. However, it raises the question of whether these directors are supervised in their management activities or if there is no oversight from any authority.

The absence of a provision in the Jordanian Companies Law mandating the establishment of a supervisory board to monitor the actions of the director or directors in a LLC is noteworthy. Instead, the law entrusts this responsibility to the partners, allowing each partner to exercise their right to oversee management activities without imposing specific regulations in the company's articles of association. The legislator's decision to handle this matter in such a manner is commendable.

Contrary to that, the absence of a supervisory board was also evident in the Syrian Trade Law. In Article 308, the Ministry of National Economy was granted the authority to supervise the LLC, following the conditions outlined in the legislation. Furthermore, the law required a ministry representative to attend the company's general assembly. However, there was no mention of the existence of a supervisory board (Nassar , 2004).

According to Egyptian law, if there are more than 10 partners, they are obligated to establish a supervisory board comprised of the partners themselves, tasked with overseeing the directors' actions. Conversely, if the number of partners is less than 10, there is no requirement to establish a board. However, the company's articles of association may include provisions for the formation of a supervisory board in such instances (Younes, 1998).

b. Control over General Assembly Meetings

All partners make up the general assembly of the company. In cases where there are only a few partners, certain laws may not mandate the presence of a general assembly if the number of partners is below a specific limit. In France, for instance, a general assembly is not necessary if there are fewer than twenty partners, whereas in Jordanian law, the general assembly is considered to be in existence regardless of the number of partners (Sami, 1997).

The annual gathering of the general assembly, commonly known as the ordinary general assembly meeting, is a regular occurrence. Additionally, there are extraordinary meetings that take place in specific circumstances outlined in Article 64(b) of the Companies Law. When it comes to overseeing these meetings, the Jordanian legislator has not made it mandatory for observers to be present at either the ordinary or extraordinary general assembly meetings. Instead, it is sufficient to provide the observer with a copy of the meeting minutes. However, the legislator has granted the observer discretionary power to attend the meeting if requested by the director, the board of directors, or partners who collectively hold at least 15% of the company's capital (Al-Banna, 2022).

It is important to highlight that all partners in the company have the right to attend both regular and special general assembly meetings. According to Article 64/w of the legislation, if the proper notification procedures for all partners are not followed, the observer has the right to disregard the meeting minutes and decisions made during the meeting. However, this does not affect the participation of the partner or partners who were not notified in the quorum required for decision-making, unless they agree to consider themselves notified (Al Seiuf, 2018).

According to Egyptian law, it is customary for the director or board of directors to extend an invitation to the general assembly. However, if the director neglects to issue this invitation, partners who have a vested interest can seek the assistance of the judiciary to appoint a judicial deputy who will handle the invitation process (Younes, 1998).

Under Lebanese law, partners in a company are invited to the general assembly by the director, board of directors, or supervisory board (if applicable). If partners neglect the invitation, the right to invite other partners or a group of partners representing a quarter of the partners and a quarter of the capital, or at least half of the capital, is granted (Al-Khawli, 1967).

c. Control over the Sale and Transfer of Shares

Article 72 of the Companies Law in Jordan outlines the regulations for transferring shares to partners or third parties. According to this article, the

company's auditor plays a crucial role in overseeing the transfer process, ensuring that it adheres to the approved format, and that the transfer document is properly documented with the auditor. On the other hand, Article 73 focuses on the sale of a partner's share in the company. In this case, the partner is required to declare their intention to sell to the other partners, who are given priority to purchase the share at the offered price (Al-Kilani, 2012).

The flaws in the legislation are apparent in these provisions, as they create an opportunity for a partner who wants to sell their shares to bypass Article 73. This article grants priority purchase rights to other partners, but by presenting the transaction as a transfer, the partner can avoid its application. As a result, the company's auditor is reduced to a procedural role, simply overseeing the documentation of the transfer without actively deterring any attempts to circumvent the law.

In the realm of comparative laws, the treatment of the transfer and sale of shares varies. For example, Egyptian and Lebanese legislation do not make a distinction between the two, instead offering a unified provision that allows remaining partners to reclaim shares that have been sold to third parties. On the other hand, French law takes a different approach, granting the company itself the right to repurchase sold shares, as long as the repurchase is funded by profits rather than capital or legal reserves (Al-Nawaiseh, 2012).

The Control over Liquidation and Dissolution of Limited Liability Companies

The liquidation of limited liability companies in Jordan is subject to the same provisions as those governing the liquidation of public joint-stock companies. These provisions differentiate between voluntary liquidation and compulsory liquidation. Regardless of the type, the appointment of a liquidator and adherence to specific procedures are obligatory for the liquidation process (Al-Muhsin, 2009). The issue of company liquidation supervision gives rise to various inquiries, particularly regarding the involvement of the general company inspector and the appointment of the liquidator. Are there established criteria and benchmarks for selecting the liquidator? Is there any form of oversight during the execution of their duties, or do they operate without any form of scrutiny? We attempt to answer these questions in the following points:

a. The Role of the Inspector General in Company Liquidation

Upon examination of literature pertaining to the liquidation and dissolution of public joint-stock companies, which can also be applied to the dissolution of limited liability companies, the significance of the inspector's role becomes

evident during this phase. Once the process of liquidation is initiated, it becomes imperative for the entity responsible for the decision to provide the inspector with a duplicate of the resolution within a three-day timeframe from its issuance. Subsequently, the inspector is obliged to publish the resolution in the official gazette and two regional newspapers within a period not exceeding seven days from the date of notification.

Furthermore, in instances of voluntary liquidation, the Jordanian legislature has bestowed upon the inspector the power to designate the liquidator. If the partners within the general assembly are unable to reach a consensus on the appointment, the inspector takes on the responsibility of selecting the liquidator and establishing their remuneration.

In the realm of liquidation procedures, the role of the inspector is of utmost importance. The inspector holds the power, as outlined in Article 264, to convene the general assembly for discussions on liquidation processes, remove the liquidator, and select a new one upon request from partners who collectively own over 25% of the company's capital. Additionally, as per Article 265, the inspector is empowered to petition the court to convert voluntary liquidation into compulsory liquidation. Moreover, the inspector is granted the authority, as stated in Article 266/b, to halt the liquidation of the company if it manages to reconcile its affairs prior to the issuance of the liquidation decision. (Al-Nawaiseh, 2012).

As mandated by law, the liquidators are obligated to provide the inspector with a certified account of all funds received and disbursed for the purpose of liquidation at specified intervals. Alongside overseeing the liquidation accounts, the inspector plays a crucial role in the process. Once the company's liquidation is completed and a decision to dissolve it is issued, the liquidator must inform the inspector. This decision is then published in the official gazette as well as two local daily newspapers. Additionally, if any assets or rights belonging to the company are discovered after its dissolution and removal from the registry, the law necessitates referring this matter to the court. The court will then appoint a legal liquidator or reassign the previous liquidator to manage and settle these assets or rights in accordance with legal provisions.

b. Control over Liquidator Appointment

Under the Jordanian Companies Law, there is a clear distinction between voluntary and compulsory liquidation of a company, as stated in Article 252. When a decision is made to voluntarily liquidate a company based on any of the situations outlined in Article 259 of the Companies Law, the appointment of the liquidator is carried out through a resolution passed by the extraordinary general assembly of the company. In the event that the extraordinary general assembly

fails to appoint a liquidator, the responsibility falls upon the general company inspector to make the appointment and determine their fees. On the other hand, in cases of compulsory liquidation, if any of the conditions specified in Article 266 are met, the court is responsible for appointing the liquidator through a court decision.

The responsibility for appointing the liquidator and determining their authority in Lebanese law rests with the ordinary general assembly of the company. This is because, since the appointment of a liquidator or the determination of his powers is an administrative function that is regulated by the company's ordinary general meeting, it may happen that the extraordinary general meeting decides to wind up the company and appoint a liquidator and determine the liquidator's powers. The partners may decide among themselves on the method of appointing a liquidator. If the partners do not reach an agreement on the appointment of a liquidator, the matter is left to the court and, at the request of the partners, liquidation will also be ordered in this manner.

Indeed, in Egypt, "the liquidation will be carried out in accordance with the provisions of the articles of association which require majority consent." Therefore, the company has residual decision-making power on dissolution and liquidation.

c. Control over Liquidator's Activities

Section 270 of the Companies Code sets out the duties and responsibilities incumbent on the liquidator and at the same time gives the liquidator the right to seek assistance from external third parties in the performance of his duties: this will ensure a certain level of observation. The law mandates that the liquidator furnish the court and the inspector with an audited report from an accredited accounting firm detailing all monetary transactions associated with the liquidation process. Furthermore, the law stipulates that the liquidator must obtain official court certification for the ultimate financial statement.

Under Jordanian legislation, any party impacted by the actions, procedures, or decisions made by the liquidator possesses the right to contest them in court. The court's ruling on such challenges is definitive. Additionally, the law mandates that the liquidation process be concluded within one year from its initiation. Should the liquidation not reach completion within this timeframe, the liquidator is required to provide a report to the inspector outlining the progress of the liquidation, granting the inspector discretionary power to extend the duration. However, it is crucial to note that this extension should not surpass three years, unless there are exceptional circumstances as determined by the inspector in cases of compulsory liquidation.

There is no set timeframe in Egyptian law for the completion of the liquidation process. However, Article 150 of the law mandates that the liquidator must finish the liquidation within the timeframe stated in their appointment document. If no timeframe is specified, any partner has the right to seek court intervention to establish a deadline for completing the liquidation. Furthermore, according to Article 144, the liquidator can be held personally responsible for their funds if they engage in activities unrelated to the liquidation process. Article 154 also requires the liquidator to compensate partners or third parties for any damages resulting from errors made during the liquidation process.

Conclusion

The focus of the study was to analyze the level of supervision imposed on an LLC throughout its lifecycle, encompassing its formation, day-to-day activities, and eventual dissolution. The study yielded multiple conclusions and put forth a multitude of recommendations as follows:

Findings

1. The legislators in Jordan did not succeed in finding a middle ground between the limited liability of partners in an LLC and its low capital. They overlooked the importance of implementing guarantees to ensure the completion of the remaining capital and neglected to establish regulations regarding the role of the supervisor in holding partners accountable for managing the unpaid portion of the capital within the specified timeframe.
2. In Jordan, the legislature has authorized the supervisor to exercise discretionary power in confirming the precision of the assessment of in-kind share values, as well as the formation of an expert committee to oversee this process. Nevertheless, partners maintain the right to raise objections to this estimation without incurring any liability for potential overvaluation of the in-kind shares.
3. The Jordanian legislature has granted the supervisor discretionary power to approve or reject company registrations without providing any guidelines for making this decision. This subjective approval authority allows for the establishment of companies even if they violate the law.
4. The legislator has bestowed upon the supervisor the power to exercise discretionary authority in approving the minutes of the general assembly meeting and the decisions made, even in situations where not all partners have been notified according to the established rules. This provision enables the supervisor to approve for the meeting minutes under such circumstances
5. The Companies Law made it clear that the legislator required public joint-stock companies to appoint an auditor according to Article 192, but no specific criteria or standards were set for selecting auditors of limited liability

companies. These criteria were limited to auditors of public joint-stock companies as stated in Article 197.

6. The importance of the Company's General Controller in the liquidation process of a company became evident. Nevertheless, the legislator did not provide any specific guidelines for the selection of a liquidator, giving partners the freedom to choose someone who may not be well-suited for the role. This lack of criteria results in a situation where significant accountability is at stake.

Recommendations

Based on these findings, the study recommends the following:

1. To safeguard the reputation and creditworthiness of the LLC, it is crucial to implement measures that bolster its financial stability. One effective approach is to augment the company's capital and require partners to promptly and fully contribute the entire capital or offer guarantees to cover any outstanding portion in the event of partial payment. Moreover, it is the supervisor's responsibility to ensure that the capital is paid in full within the designated timeframe.
2. To ensure the presence of the supervisor at general assembly meetings under certain circumstances, an amendment to Article 64(h) of the Companies Law is proposed. Specifically, if the agenda of the general assembly includes modifications to the company's articles of incorporation or a reduction in capital, the manager or the board of directors may request the supervisor's attendance.
3. The Companies Law should be amended to include a revision to Article 64, which would prevent the supervisor from approving meeting minutes if partners have not received proper notification. It is crucial to recognize that notification is a fundamental right of the partners, and therefore, the supervisor should not be empowered to endorse meeting minutes and assembly decisions in cases where partners have not been properly informed unless the non-notified partners voluntarily waive their notification rights.
4. The implementation of criteria and directives for the selection of auditors is crucial. It is imperative that auditors maintain an unbiased approach to safeguard the credibility of their work and avoid being swayed by internal influences within the organization.
5. I implore the lawmakers in Jordan to modify Article 197 in order to bring it in line with Article 192, broadening its scope to include companies beyond just public joint-stock entities. This would involve eliminating the phrase "public joint-stock" so that it encompasses any company where an auditor is involved. Furthermore, it is crucial to introduce a provision stating that the auditor must

not have any connections to the manager or any directors up to the fourth degree of relation, thus guaranteeing the auditor's impartiality.

6. To safeguard the creditors of a company, it is imperative to implement guidelines that both the general assembly and the court must follow when appointing a liquidator. These regulations guarantee that the liquidator fulfills their responsibilities with meticulousness and honesty, upholding the overall assurance of the company's creditors.

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