

Jordan: The draft of the reorganization, bankruptcy and liquidation law for the year 2012 (The “Draft Law”)

Saleem Kharraz
s.kharraz@tamimi.com

According to Article 3 of the Draft Law, these provisions are applicable to all merchants practicing commercial activities except for the following:

1. Companies licensed in accordance with the provisions of the Banking Law and the Currency Exchange Law.
2. Companies licensed in accordance with the Laws regulating the dealings with the foreign stock exchange.
3. Insurance companies licensed in accordance with the Draft Law regulating the Insurance activities or any Draft Law that may replace the same.

When this Draft Law comes into effect, it will deal with issues such as the following:

1. The reorganization of businesses in financial trouble.
2. Judicial settlement of debt incurred by merchants practicing commercial activities.
3. Bankruptcy of merchants conducting commercial activities.
4. Optional liquidation of merchants conducting commercial activities.
5. Compulsory liquidation of merchants conducting commercial activities.
6. Penalties applicable to the actions carried out in discordance with the provisions of this Draft Law.
7. Other general provisions applicable to merchants carrying out commercial activities.

Reorganization:

According to Article 4 of the Draft Law, it is possible to reorganize the commercial activities of merchants conducting commercial activities, in the event they fall into financial turmoil, to a degree that would allow it to continue its operations. It is important to note, however, that in order to for a merchant to be eligible, there has to be a chance that his commercial operations could be revived. Further to the above, and given that a merchant is eligible for reorganization, the same could submit an application to the Controller of Companies or to the Registrar of Companies requesting that his commercial activities be reorganized in accordance with the regulations issued pursuant to the Draft Law. When submitting the application, the merchant is required to list the reasons which justify the application of the same as well as a proposed plan for reorganization, if possible. Further, the Draft Law provides that the merchant shall bear all the fees and expenses resulting from the submission of the said application.

After submission of the application, the controller of companies or the registrar shall review the aforementioned application, or appoint experts for the same. Afterwards, they are required to submit an initial report including the following information:

1. Whether the merchant's activities and financial standing are deteriorated to the point it would not revive without reorganization;
2. That the Merchant's business has the potential to be reorganized;
3. Any further suggestions the reviewer sees fit.

In the case the controller of companies or the registrar accepts the reorganization application; it is then transferred to the competent Court of First Instance (the “Court”) for their review. If the said court

approves the application, a "Reorganization Plan" is prepared. This plan shall include the merchant's rights and obligations as well as the names of the creditors and debtors. Further, the plan shall include the financial, administrative and operational procedures regarding the reorganization of the business.

Further, Article 10 of the Draft Law states that the court is responsible for sending a notice to all the company's creditors, within 7 days of receiving the Reorganization Plan, informing them of the name of the business holder, as well as a time and a place for holding the Creditor's Meeting. The court is also responsible for sending the creditors a copy of the Reorganization Plan. Either the merchant or his legal representative is required to attend the meeting. Further, the assessor that developed the Reorganization Plan is required to attend as well as any merchant whose presence the court requires. During the meeting, the people as well as the creditors are welcome to give notes and suggestions regarding the suggested Reorganization Plan and have the right to contest any of the proposed items. Creditors are required to then vote and sign on the issued discussed in the meeting before the court authorizes and endorses the Reorganization Plan.

According to Article 13 of the Draft Law, the court reserves the right to reconstruct the Plan and agree to the selling, renting, investing, or the giving up of a part of the merchant's assets and/or projects if they are not mentioned in the Plan. This is it may be necessary to do so for the purpose of discharging the same and conserving his business. This, however, could only be done after the following conditions are satisfied:

1. Notifying the merchant of the same and giving him no more than 7 days to object;
2. That the execution of the said action does not affect continuation of The merchant's activities or any other activity necessary for the implementation of the Plan;
3. That the proposed action cause the continuation of the merchant's activities for the longest time possible and achieve better pay to the creditors;
4. That the assessor supervise the undertaking of the proposed action after attaining the court's approval.

Article14 of the Draft Law states that the Reorganization Plan is considered to be executed in the following cases:

1. After the completion of the execution of the Plan in accordance with the provisions of the Draft Law and the regulations issued pursuant thereto.
2. If the merchant does not commit to or execute the Plan in accordance with the conditions agreed upon within the specified time limit.
3. If the merchant does any fraudulent or prohibited acts, or acts contrary to the agreed Plan.