

# Jordan: Reasons for reorganising a public shareholding company

Abdallah Al Fraihat  
a.alfraihat@tamimi.com

November 2013

---

The Companies Law No. 22 of 1997, as amended, does not address the subject of company reorganisation, save for what surrounds the reorganisation of the company's capital by an increase or reduction in a General Assembly Meeting and in relation to forming an administrative committee if the company faces adverse financial or administrative conditions affecting shareholders' or third party rights.

However, the Insurance Regulatory Act No 33 of 1999, as amended, provides the following in Article 60(a):

For the purposes of restructuring the company in accordance with Article 41(b)(10) of this Law, the Board, upon the recommendation of the General Manager, may dissolve the Board of Directors and form a neutral committee made up experienced and competent members to reorganise the company, and appoint a Chairman of the Committee and a deputy, for a period not exceeding one year from the date of issuance of the decision to this effect.

It is possible to say that this law contains a partial definition of reorganization, being the dissolving of the company's administration and reorganization of its distressed financial position through negotiations with the creditors with the aim of determining the debt and possible settlement.

Reorganisation of a public shareholding company covers:

## **Administrative Reorganisation**

Every company's administration strives to achieve the objectives for which the company was formed. In a public shareholding company, this administration takes the form of the General Assembly and Board of Directors. As the Board is the executive body behind all of the company's activities, the legislator took care when defining its responsibilities and the provisions relating to its composition and the conditions of its membership, terms of reference and meetings. However, there are several reasons why a company can end up in a dire administrative position, including:

1. The inability of the Board to successfully carry out the duties entrusted to it, including not taking sound financial decisions, not applying modern administration methods and not developing the ability to anticipate future difficulties or mitigate their consequences.
2. The Board members' exploitation of powers in an illegal manner for their own or another's benefit, omitting an act required by law, manipulation, embezzlement, fraud, etc in such a way as to prejudice the rights of the shareholders or third parties.
3. The resignation of the Chairman or any of the members, or in the event that the Board loses its legal status as a result of such resignations.

## **Legal Reorganisation**

The basis of a company's success is dependent on its choice of legal structure. Therefore, choosing the appropriate structure for any company must fit with the size of the company's investments, capabilities and the expertise of its members.

Legal reorganisation of a company can be defined as:

1. Remedying a company's legal circumstances in situations where its structure is one of the reasons that has led to its financial difficulties.
2. Remedying the company's structure in situations where the structure is an obstacle hindering the company's progress, keeping in mind the activities exclusive to public shareholding companies.

Both circumstances are carried out through legal means that aim at developing and remedying the legal position of the company or merging the same with other companies.

### **Financial Reorganisation:**

A public shareholding company is established to run vast projects and accordingly the company's financial position changes annually based on its activities, profits and losses. The company's financial position is also affected by the deductions due to asset depreciation or capital restructuring, since a company deducts part of its net profit and refrains from distributing these amounts to its shareholders, putting them towards the company reserves as added insurance for future losses. These amounts can also be used to ensure a standard annual dividend paid to shareholders or as financial support for the company.

If a company is found to have drastic financial losses that affect shareholder, third party or creditor rights, or if a company is in a position where it is unable to adhere to its financial obligations, or in cases where a company's losses are more than 50% of its paid capital, the company is said to have entered into the state of "financial distress".

In such an event, the company will require "financial reorganisation", which can be achieved through negotiations with the company's creditors for the purposes of rearranging the company's debts and settlement. If done, the company may be able to avoid the risk of declaring bankruptcy. Mandatory bankruptcy may be automatically declared if the company is legally unable to pay back its debts or if its losses exceed 75% of its subscribed capital and the Board has not resolved to increase the share capital and effectively decrease the losses.

### **Economic Reorganisation:**

Public shareholding companies usually initiate their commercial activities by preparing a schedule of intended activities, which not only allows the examination of the success of a certain project, but also highlights possible factors that may affect the outcome of the project.

Notwithstanding the precautionary procedures that a company undertakes at the time of its establishment, economic problems will sometimes affect its financial position and its ability to achieve its goals (for example, as a result of miscalculating the project risks or due to regional or international economic changes not factored into the company's research).

Based on the above, the reorganisation of the public shareholding company aims at aiding the company with overcoming any difficulties that it faces administratively, financially, or legally, in addition to revitalising its commercial activities. Companies faced with such troubles can now work on improving their financial position in addition to reorganising their business plans and the relationships with their creditors.

The above is an introduction regarding the situations that may lead to the reorganisation of public shareholding companies. In future articles we shall provide further information regarding the ways in which the reorganising of companies takes place, in addition to the procedures for resolving issues with the board of directors and forming of the required administrative committees.